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THE LAW OF INDIA.

IN TWO VOLUMES.

BY

ANDREW LYON,

BOMBAY CIVIL SERVICE, AND SENIOR ASSISTANT JUDGE, SOLAPUR.

"Celui qui a le moins réussi dans la composition d'un Code a fait un bien immense."

—BENTHAM.

VOL. I.

THE CODES.

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1873.

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'Positive Laws,' says Thibaut, 'in order to be accurately understood, require to be represented in a scientific or systematic form, and when thus represented, they constitute the science of Positive Law (Jurisprudentia). A system of law founded on logical principles should consist of two parts—viz., a general part, in which the great leading ideas and principles of law are brought together; and a special part, in which the nature of each law is separately examined and its application to individual cases correctly determined. This special part should further be divided upon principles which lead to the most important practical results.' No attempt has yet been made in India to reduce the law to a science by carrying out this principle of Thibaut's of presenting it in a systematic form. It is true that several editions of portions of the Statute Law have been drawn up from time to time, but all that has been done has been to strike out those Statutes which have been repealed, leaving the rest in the chronological order merely in which they were passed. The consequence of this is that, in order to find the law on any one subject, it is necessary to consult several volumes of Statutes. Thus in order to ascertain the law on the subject of Government, for example, it is necessary to consult the old volume of Statutes relating to India published in 1855, where about 16 Statutes in different parts of the book have to be perused. The reader must then turn to the volume of Statutes drawn up by Mr. Stokes, which contains those passed from 1855 to 1870. He must, after reading the six or seven Acts relating to Government entered in this volume, find out, if he can, some volume containing the Statutes of 1871 and 1872, where three more
Acts relating to the Government will be found. The same process
must be gone through with the Acts of the Government of India, and
with the local Acts and local Regulations of the Bengal, Bombay,
and Madras Governments, respectively. Altogether, in order to
ascertain the authority of the Government of India, nearly twenty
volumes of Acts must be consulted, and in each volume even, the law is
not to be found in one place but scattered at random all over it. It
is hardly necessary to point out that nothing could be more
bewildering, nothing more unpractical or unscientific, than such an
arrangement (if it can be called so) of the law. This edition of the
Law of India has been drawn up with the view of making the law
more easily ascertained, and more accurately understood, than it could
possibly be so long as it retains the chaotic form in which it has
hitherto been presented to the public. It may be that the author
has not adopted the best possible system of arrangement. Some
other classification might perhaps give a clearer view of the whole
body of the Law of India, and a more accurate perception of its
details. Inasmuch, however, as any system must be better than none
at all, it is hoped that the result will be an improvement on the
Acts, and of local Regulations following each other in the nondescript
order merely in which they happened to be passed. The following are
the leading principles on which the law has been classified by the
author:—*

1. **All the law on one subject is put in one place.** The advantage
of doing this is so obvious that the only thing to be astonished at is,
that it has never been done before. A great deal has been accom-
plished by means of the consolidating Acts recently passed by the
Hon'ble Mr. Maine and the Hon'ble Mr. Stephen; there are still,
however, numerous topics, the law relating to which is contained in a
very large number of scattered enactments. Thus the law relating
to the army is contained in 23 Acts of Parliament, 12 Acts of the
Government of India, 4 Bengal Regulations, 1 Bombay Regulation,
1 Bombay Act, 3 Madras Regulations, and 1 Madras Act. The laws

*For further details as to the grounds on which this classification has been
adopted, see 'The Guide to the Law of India,' by the same author.
relating to land revenue in Bengal alone consists of 26 Bengal Regulations, 5 Bengal Acts, and 9 Acts of the Government of India. The law relating to civil procedure consists of 5 Acts of Parliament, 3 Letters Patent from the Crown, and 16 Acts of the Government of India. If the law relating to the jurisdiction of the Civil Courts is included, as it ought to be, in the procedure law, there will be found to be considerably more than one hundred distinct laws on this one subject alone. It is useless to quote further examples: a glance at the contents of these volumes is sufficient to show that, although a great deal has been done for the consolidation of Indian law, there is still more that has yet to be dealt with. By following out the rule at the head of this paragraph, most of these miscellaneous laws are virtually just as much consolidated as if an Act had been passed for the purpose. The rule may be stated to be a system of consolidation by means of scissors and paste.

2. The law applying to everybody is put in one volume (The Codes), and the laws applying only to limited classes of persons in other volumes (Miscellaneous Laws). Thus the law on parent and child, husband and wife, guardian and ward, the laws of inheritance, of possession, of buying and selling, of letting and hiring, of borrowing and lending, the laws of crimes and the laws relating to the procedure to be followed for obtaining one’s rights in courts of law—in short all the law on subjects of every-day life—will be found in the Codes. In the Miscellaneous Laws will be found the law affecting such limited classes of persons as clergymen, emigrants, European vagrants, foreigners, lunatics, post-office officials, railway servants, volunteers. This principle of classification was first recommended by Bentham,* one of the greatest of scientific jurists, and it has been approved of in the strongest terms by Austin in his learned work on Jurisprudence.† Its practical utility is further obvious from the fact that it has been followed in nearly every systematic codification hitherto made. These Codes do not, it is true, appear to have been founded avowedly on this rule, yet the advantage of it, and even necessity for it, have been so apparent that the rule has been followed almost intuitively. If all the special laws, which are usually of no importance except to the few individuals of the class to

which the law relates, were mixed up with the general law affecting every one, the body of laws would be so large, confused, and unintelligible, that it would be next to impossible to acquire any knowledge of its contents.

3. The alphabetical arrangement has been observed except where there is some special advantage to be derived by departing from it. This principle is also one of those recommended by Bentham,* and its utility is obvious. It has been followed in the French law for the arrangement of the miscellaneous special laws. It has also been adopted by the State of Maryland in America, where the whole of the law is arranged in alphabetical order, beginning with 'Abatement' and ending at 'Wildfowl.' To carry the principle, however, to such an extent as this is very inconvenient in several respects. The law of procedure, for instance, is much more easily understood by taking the course of a suit from its institution to its close, as is done in the Indian Codes, than it would be if the law as to witnesses was in one place, that as to summonses in another, as to warrants in a third, and so on.

4. All rights and liabilities are put under the event or title from which they arise. Thus the right of the husband to the conjugal society of his wife, the right of the wife to contract debts on behalf of her husband, the right of the wife to maintenance, all arise from marriage, and they are therefore put under that head. So a right to delivery, a right to a lien for purchase-money, a right to the price, &c., all arise from the contract of sale, and they are therefore entered under 'sale.' This rule is not quite the same as that laid down by Bentham and Thibaut on the subject. They both hold that the best arrangement is that which has reference to the persons upon or in whom the rights are vested.† The objection to such a course is that every person would have to seek in two places for the law by which he was bound. Whenever a right is given to one person, a corresponding liability is imposed upon another. Thus, if a child has a right to be maintained by his parent, the parent is under a liability to maintain the child. Every right might thus be put either under the name of the person to whom the right was given,

or under the person upon whom the liability was imposed. This difficulty has been noticed by Bentham. The answer he gives is, that all rights should be placed under the name of the person liable for them. Under this system all the liabilities of a wife, and the rights of the husband and others against the wife, would come under the word 'wife,' while all the rights of the wife and the liabilities of the husband would come under the word 'husband.' It surely seems more convenient that each should find all his or her rights and liabilities under one head, which might be called either the law of husband and wife, or the law of marriage. Another objection to Bentham's arrangement is that the definition of the event, the parties to it, and the ceremony, would have to be repeated. Thus, under 'wife,' before detailing her liabilities, it would be necessary to define what a wife was. In order to do this, it would be necessary to define marriage, to give a list of the persons capable of contracting marriage, and the ceremonies, such as attestation of witnesses, presence of a priest, &c., necessary to the validity of the contract. The same details would have to be repeated under the word 'husband.' The best evidence, however, that Bentham's proposal is inconvenient consists in the fact that no code has ever attempted such a method of classification. Even Bentham himself treats of the laws of husband and wife, guardian and ward, parent and child, &c., under one and the same head.

It is hoped that, from the foregoing view of the system of arrangement adopted, the reader will be enabled to find with ease the law on any point that may arise. With regard to the actual contents of the following volumes, it should be understood that this work is not intended to contain a digest of cases except for the purpose of filling up gaps in the Statute Law. The two volumes now published contain all the Statute Law relating to India, including the Letters Patent from the Crown, the Acts of Parliament, and the Acts of the Government of India. They also contain the Hindu and Mahomedan Codes of law, as these have been virtually made Statute law by the clauses which enact that they are to be followed as the rule where there is no express law to the contrary. The Mitakesara, the Dayabhaga, the Vyavahara Mayukha on
Inheritance and Adoption, the Dattaka Chandrika, the Dattaka Mimansa, and the Al Sirajiyah have been given in extenso. A digest of the texts of all the Hindu authorities has also been given, on the subjects of parent and child, husband and wife, guardian and ward, possession, occupancy, the contracts of gift, hire of immoveables, hire of services, mortgages and sales. The Hindu Law on other contracts has not been given, as it is virtually repealed by the new Contract Act. The Codes further contain a digest of the Hedaya on all points on which Mahomedan Law is still in force. That portion of this digest which relates to the law of landlord and tenant gives in great detail, and with remarkable precision, the law relating to the ordinary tenure of land in India, namely, on the condition that the tenant pays half or one-third of the crop as rent. This will be found, it is believed, of the greatest importance in settling the numerous questions that arise in India on this subject.

It is hoped that this work, by enabling the public at large, as well as lawyers, to provide themselves with copies of the law in a cheap and convenient form, will have the effect of taking away from Englishmen, in India at least, the reproach that they are utterly ignorant of the law under which they live. 'The very small place,' says Sir Henry Maine, 'filled by our own English law in our thoughts and conversation is a phenomenon absolutely confined to these islands. A very simple experiment, a very few questions after crossing the Channel, will convince you that Frenchmen, Swiss, and Germans of a very humble order have a fair practical knowledge of the law which regulates their every-day life. We in Great Britain and Ireland are altogether singular in our tacit conviction that law belongs as much to the class of exclusively professional subjects as the practice of anatomy.'
CIVIL CODE.
Chapter I.—LAW IN GENERAL.

Sources of the Law.

GENERAL.

Act No. XXI. of 1850.

Received the assent of the Governor-General on the 11th April 1850.

An Act for extending the principle of Section 9, Regulation VII. 1832 of the Bengal Code throughout the Territories subject to the Government of the East India Company.

Whereas it is enacted by Section 9, Regulation VII. 1832 of the Bengal Code that "whenever in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the Hindu and the other of the Mahomedan persuasion: or where one or more of the parties to the suit shall not be either of the Mahomedan or Hindu persuasions, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled; and whereas it will be beneficial to extend the principle of that enactment throughout the territories subject to the Government of the East India Company: It is enacted as follows:

1. So much of any law or usage now in force within the territories subject to the Government of the East India Company as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of any religion, or being deprived of caste, shall cease to be enforced as law in the Courts of the East India Company and in the Courts established by Royal Charter within the said territories.
BENGAL AND NORTH WESTERN PROVINCES.

ACT VI. of 1871, SEC. 24.—Where in any suit or proceeding it is necessary for any Court under this Act to decide any question regarding succession, inheritance, marriage or caste, or any religious usage or institution, the Mahomedan law in cases where the parties are Mahomedans, and the Hindu law in cases where the parties are Hindus, shall form the rule of decision, except in so far as such law has, by legislative enactment, been altered or abolished.

In cases not provided for by the former part of this section, or by any other law for the time being in force, the Court shall act according to justice, equity, and good conscience.

BOMBAY CITY.

37 GEO., CAP. 142, SEC. 12.—And, in order that due regard may be had to the civil and religious usages of the natives; be it enacted, that the rights and authorities of fathers of families, and masters of families according as the same may be exercised by the Gentoos or Mahomedan law, shall be preserved to them within their families respectively, nor shall the same be violated or interrupted by any of the proceedings of the said Courts; nor shall any act done in consequence of the rule or law of caste, so far as respects the members of the same family only, be deemed a crime, although the same may not be justifiable by the laws of England.

13. And be it further enacted, that the said Courts so to be erected as aforesaid, shall have full power to hear and determine all suits and actions that may be brought against the inhabitants of Madras and Bombay respectively, in the manner that shall be provided by the said charter; yet, nevertheless, their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party shall be determined, in the case of Mahomedans, by the laws and usages of the Mahomedans, where the parties are Gentoos, by the laws and usages of the Gentoos, or by such laws and usages as the same would have been determined by if the suit had been brought, and the action commenced, in a native Court; and where one of the parties shall be a Mahomedan or Gentoos, by the laws and usages of the defendant; and in all suits so to be determined by the laws and usages of the natives, the said Court shall make such rules and orders for the conduct of the same, and frame such process for the execution of their judgments, sentences, or decrees, as shall be most consonant to the religions and manners of the said natives and to the said laws and usages respectively and the easy attainment of the ends of justice; and such means shall be adopted for compelling the appearance of witnesses, taking their examination, as shall be consistent with the said laws and usages, so that the said suits shall be conducted with as much ease, and at as little expense, as is consistent with the attainment of substantial justice.

LETTERS PATENT 1823, SEC. 29.—And we do hereby further direct and ordain, that the said Supreme Court of Judicature at Bombay shall have full power to hear and determine all suits and actions that may be
brought against the inhabitants of Bombay. Yet, nevertheless, in the cases of Mahomedans or Gentoo, their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, shall be determined in the case of the Mahomedans, by the laws and usages of the Mahomedans, and where the parties are Gentoo, by the laws and usages of the Gentoo, or by such laws and usages as the same would have been determined by, if the suit had been brought and the action commenced in a native Court; and where one of the parties shall be a Mahomedan or Gentoo, by the laws and usages of the defendant.

And in all suits so to be determined by the laws and usages of the said natives, the said Courts shall make such rules and orders for the conduct of the same, and frame such process for the execution of their judgments, sentences, or decrees, as shall be most consonant to the religion and manners of the said natives, and to the said laws and usages respectively, and the easy attainment of the ends of justice. And in all cases, such means shall be adopted for compelling the appearance of witnesses, and taking their examination, as shall be consistent with the said laws and usages, so that all suits may be conducted with as much ease, and at as little expense, as shall be consistent with the attainment of substantial justice.

**Letters Patent 1862, Sec. 18.**—We do further ordain that, with respect to the law or equity to be applied to each case coming before the said High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original civil jurisdiction, such law or equity shall (until otherwise provided) be the law or equity which would have been applied by the said Supreme Court at Calcutta to such case if these Letters Patent had not issued.

**Letters Patent 1865, Sec. 19.**—And we do further ordain that with respect to the law or equity to be applied to each case coming before the said High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original civil jurisdiction, such law or equity shall be the law or equity which would have been applied by the said High Court to such case if these Letters Patent had not issued.

20. And we do further ordain that with respect to the law or equity and rule of good conscience to be applied to each case coming before the said High Court of Judicature at Fort William in Bengal, in the exercise of its extraordinary original civil jurisdiction, such law or equity and rule of good conscience shall be the law or equity and the rule of good conscience which would have been applied to such case by any local Court having jurisdiction therein.

21. And we do further ordain that with respect to the law or equity and rule of good conscience to be applied by the said High Court of Judicature at Fort William in Bengal to each case coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

30. And we do further ordain that all persons brought for trial
before the said High Court of Judicature at Fort William in Bengal, either in the exercise of its original jurisdiction or in the exercise of its jurisdiction as a Court of Appeal, reference, or revision, charged with any offence for which provision is made by Act No. XLV. of 1860, called the "Indian Penal Code," or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

BOMBAY PRESIDENCY.

Bom. Reg. IV. 1827, Sec. 26.—The law to be observed in the trial of suits shall be Acts of Parliament and Regulations of Government applicable to the case; in the absence of such Acts and Regulations, the usage of the country in which the suit arose; if none such appears, the law of the defendant; and in the absence of specific law and usage, justice, equity, and good conscience alone.

Act II. of 1864, Sec. 15.—In the administration of civil justice the Court of the Resident shall be guided by the spirits and principles of the Laws and Regulations in force in the Presidency of Bombay, and administered in the Courts of that Presidency not established by Royal Charter, and in the High Court in the exercise of its jurisdiction as a Court of Appeal from those Courts.

BURMA.

Act 7 of 1872, Sec. 6.—Where, in any suit or proceeding, it is necessary for any Court under this Act to decide any question regarding succession, inheritance, marriage or caste, or any religious usage or institution.

The Buddhist law in cases where the parties are Buddhists, the Mahomedan law in cases where the parties are Mahomedan and the Hindu law in cases where the parties are Hindus, shall form the rule of decision except in so far as such law has, by legislative enactment, been altered or abolished, or is opposed to any custom having the force of law in British Burma.

In cases not provided for by the former part of this section or by any other law for the time being in force, the Court shall act according to justice, equity and good conscience.

CALCUTTA.

21 Geo. 3 Cap. 70, Sec. 17.—Provided always, and be it enacted, that the Supreme Court of Judicature at Fort William in Bengal shall have full power and authority to hear and determine, in such manner as is provided for that purpose in the said Charter or Letters Patent, all and all manner of actions and suits against all and singular the inhabitants of the said city of Calcutta, provided that their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, shall be determined, in the case of Mahomedans,
by the laws and usages of Mahomedans, and in the case of Gentoos, by the laws and usages of Gentoos, and where only one of the parties shall be a Mahomedan or Gentoos, by the laws and usages of the defendant.

18. And, in order that regard should be had to the civil and religious usages of the said natives, be it enacted, that the rights and authorities of fathers of families and masters of families, according to the same might have been exercised by the Gentoos or Mahomedan law, shall be preserved to them respectively within their said families; nor shall any acts done in consequence of the rule and law of caste, respecting the members of the said families only, be held and adjudged a crime, although the same may not be held justifiable by the laws of England.

Letters Patent 1774, Sec. 17.—And whereas contracts or agreements in writing may be entered into by some of the inhabitants of India, residing in the said provinces or districts in Bengal, Bahar, and Orissa, or some of them, or some part thereof, with our British subjects, or some of them, wherein such inhabitant or inhabitants may agree; that, in case of dispute, the matter should be heard and determined in the said Supreme Court of Judicature at Fort William in Bengal, and wherefore a cause or causes of action may arise, exceeding in value respectively the sum of five hundred current Rupees, and suits may be brought thereupon in some of the Courts of Justice, already established in the said provinces or districts, we do hereby further grant, ordain, establish, and appoint, that in such cases it shall be lawful for either party, before or after sentence or judgment pronounced therein, by his, her, or their humble petition, suggesting such agreements in writing as aforesaid, and verifying the same upon oath, to appeal to the said Supreme Court of Judicature, at Fort William in Bengal, and upon such petition preferred, and filed of record in the said Supreme Court of Judicature at Fort William in Bengal, may, and is hereby authorized to award and issue a writ or precept, to be prepared in manner and form above mentioned, directed to the other party or parties, commanding him, her, or them, immediately to suer cease proceeding further in such suits, and thereupon such Supreme Court shall determine thereupon, according to right and justice, in like manner as if no proceedings had been in such other Court of Justice.

See also 37 Geo. 3, c. 142, and Letters Patent 1862 and 1865 ante.

MADRAS CITY.

Letters Patent 1800, Sec. 22.—And we do hereby further direct and ordain, that the said Supreme Court of Judicature at Madras shall have full powers to hear and determine all suits and actions that may be brought against the inhabitants of Madras. Yet, nevertheless, in the cases of Mahomedans or Gentoos, their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing, between party and party, shall be determined, in the case of the Mahomedans, by the laws and usages of the Mahomedans; and where the parties are Gentoos, by the laws and usages of Gentoos or by such laws and usages as the same would have been determined by, if the suit had been brought, and the action commenced, in a native Court; and where one of the parties shall be a Mahomedan or Gentoos by the laws and usages of the defendant,
and in all suits so to be determined by the laws and usages of the said natives, the said Courts shall make such rules and orders for the conduct of the same, and frame such process for the execution of their judgments, sentences or decrees, as shall be most consonant to the religion and manners of the said natives and to the said laws and usages respectively, and the easy attainment of the ends of justice. And in all cases such means shall be adopted for compelling the appearance of witnesses, and taking their examination, as shall be consistent with the said laws and usages, so that all suits may be conducted with as much ease, and at as little expense, as shall be consistent with the attainment of substantial justice.

See also 37 Geo. 3, c. 142 and Letters Patent 1862 and 1865 ante.

MADRAS PRESIDENCY.

Regulation 3 of 1802, Sec. 16.—In suits regarding succession, inheritance, marriage, and caste, and all religious usages and institutions, the Mahomedan laws with respect to Mahomedans, and the Hindu laws with regard to Hindus, are to be considered as general rules by which the judges are to form their decisions. The Mahomedan and Hindu law officers of the Courts are to attend to expound the law of their respective persuasions, in cases in which recourse may be required to be had to it. The Judge of the Zillah Court may further refer cases for the opinion of the law officers of the Superior Courts, through the medium of the Judges of those Courts; but no references to be made by the Judges to any individual not acting in a public and responsible capacity; yet this shall not prohibit parties in a suit submitting law opinions, quoting or referring to authorities in support of their claim.

Regulation 5 of 1802, Sec. 30.—In cases for which no specific rules may exist, the Sudder Adawlut is to act according to justice, equity, and good conscience.

N. W. PROVINCES.

Letters Patent 1866, Sec. 18.—And we do further ordain that, with respect to the law or equity to be applied to each case coming before the said High Court of Judicature for N. W. Provinces, in the exercise of its extraordinary original civil jurisdiction, such law or equity shall, until otherwise provided, be the law or equity which would have been applied to such case by any local Court having jurisdiction therein

14. And we do further ordain that, with respect to the law or equity and rule of good conscience to be applied by the said High Court of Judicature for the N. W. Provinces, to each case coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

See also Act VI. of 1871 ante.
PUNJAUB.

ACT 23 of 1865, Sec. 19.—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.

ACT 4 of 1866, Sec. 19.—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.

ACT 4 of 1872, Sec. 5.—In questions regarding inheritance, special property of females, betrothal, marriage, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partition, or any religious usage or institution,

the rule of decision shall be—

(1) any custom of any body or class of persons, which is not contrary to justice, equity and good conscience and has not been declared to be void by any competent authority,

(2) the Mahomedan law, in cases where the parties are Mahomedans and the Hindu law, in cases where the parties are Hindus, except in so far as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act, or has been modified by any such custom as is referred to in the preceding clause of this section.

6. In cases not otherwise specially provided for the Judges shall decide according to justice, equity and good conscience.

7. All local customs and mercantile usages shall be regarded as valid unless they are contrary to justice, equity or good conscience, or have before the passing of this Act, been declared to be void by any competent authority.

Effect of the Law.

33 Geo. 3, Cap. 13.

An Act to prevent Acts of Parliament from taking effect from a time prior to the passing thereof.

Whereas every Act of Parliament in which the commencement thereof is not directed to be from a specific time, doth commence from the first day of the Sessions of Parliament in which such Act is passed; and whereas the same is liable to produce great and manifest injustice; for remedy
whereof; be it enacted; and it is hereby enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, that the Clerk of the Parliament shall endorse (in English) on every Act of Parliament which shall pass after the 8th day of April 1793, immediately after the title of such Act, the day, month and year when the same shall have passed and shall have received the Royal Assent; and such endorsement shall be taken to be a part of such Act, and to be the DATE OF its COMMENCEMENT where no other commencement shall be therein provided.

48 GEO. 3, CAP. 106.

An Act to remedy the inconvenience which has arisen, and may arise, from the expiration of Acts, before the passing of Acts to continue the same.

Whereas Bills for the continuing of Acts in force only for a limited time have sometimes not passed before the expiration of the Act intended to be continued and great inconvenience may arise therefrom; be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, that where any Bill may have been or shall be introduced into this present of any future Session of Parliament, for the continuance of any Act which would expire in such Sessions, and such Act shall have expired before the Bill for continuing the same shall have received the Royal Assent, such continuing Act shall be deemed and taken to have effect from the date of the expiration of the Act intended to be continued, as fully and effectually, to all intents and purposes, as if such continuing Act had actually passed before the expiration of such Act, except it shall be otherwise specially provided in such continuing Act: provided, nevertheless, that nothing therein contained shall extend, or be construed to extend, to affect any person or persons with any punishment, penalty, or forfeiture, whatsoever, by reason of anything done or omitted to be done by any such person or persons contrary to the provisions of the Act so continued, between the expiration of the same and the date at which the Act continuing the same may have received or shall receive the Royal Assent.

24 & 25 VIC. CHAP. 67, SEC. 20.—When any Law or Regulation has been made by the Council at a meeting for the purpose of making Laws and Regulations as aforesaid, it shall be lawful for the Governor General, whether he shall or shall not have been present in Council at the making thereof, to declare that he assents to the same, or that he withholds his assent from the same, or that he reserves the same for the signification of the pleasure of Her Majesty thereon; and no such Law or Regulation shall have validity until the Governor General shall have declared his assent to the same or until (in the case of a Law or Regulation so reserved as aforesaid) Her Majesty shall have signified Her Assent to the same to the Governor General, through the Secretary of State for India in Council, and such assent shall have been duly proclaimed by the said Governor General.
40. The Governor shall transmit forthwith an authentic copy of every Law or Regulation to which he shall have so declared his assent to the Governor General, and no such Law or Regulation shall have validity until the Governor General shall have assented thereto, and such assent shall have been signified by him to and published by the Governor. Provided always, that in every case where the Governor General shall withhold his assent from any such Law or Regulation, he shall signify to the Governor in writing his reason for so withholding his assent.

The above Acts relate to the time at which the Law begins to take effect, as to the extent of territory over which it has effect there is a large number of enactments, but as they are only of local importance, they have been placed in the various local laws under the heading of 'Regulation Provinces' g. v.

Interpretation of the Law.

Act No. I. of 1868.

An Act for shortening the language used in Acts of the Governor-General of India in Council and for other purposes.

Whereas it is expedient to shorten the language used in Acts made by the Governor General of India in Council, and to make certain provisions relating to such Acts; It is hereby enacted as follows:

I. This Act may be cited as "The General Clauses' Act, 1868."

II. In this Act and in all Acts made by the Governor General of India in Council after this Act shall have come into operation,—unless there be something repugnant in the subject or context,—

(1.)—Words importing the masculine gender shall be taken to include females;

(2.)—Words in the singular shall include the plural, and vice versa;

(3.)—"Person" shall include any company, or association, or body of individuals whether incorporated or not;

(4.)—"Year" and "Month" shall respectively mean a year and month reckoned according to the British calendar;

(5.)—"Immoveable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to any thing attached to the earth;

(6.)—"Moveable property" shall mean property of every description, except immoveable property;

(7.)—"Her Majesty" shall include Her heirs and successors to the Crown;
(8.)—“British India” shall mean the territories for the time being vested in Her Majesty by the Statute 21 and 22 Vic., chap. 106 (An Act for the better Government of India), other than the Settlement of Prince of Wales' Island, Singapore, and Malacca;

(9.)—“Government of India” shall denote the Governor General of India in Council, or during the absence of the Governor General of India from his Council, the President in Council, or the Governor-General of India alone, as regards the powers which may be lawfully exercised by them or him respectively;

(10.)—“Local Government” shall mean the person authorized by law to administer Executive Government in the part of British India in which the Act containing such expression shall operate, and shall include a Chief Commissioner;

(11.)—“High Court” shall mean the highest Civil Court of appeal in such part;

(12.)—“District Judge” shall mean the Judge of a principal Civil Court of original jurisdiction; but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;

(13.)—“Magistrate” shall include all persons exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure;

(14.)—“Barrister” shall mean a barrister of England or Ireland, or member of the Faculty of Advocates in Scotland;

(15.)—“Section” shall denote a Section of the Act in which the word occurs;

(16.)—“Will” shall include a codicil and every writing making a voluntary posthumous distribution of property;

(17.)—“Oath,” “swear,” and “affidavit” shall include affirmation, declaration, affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing;

(18.)—“Imprisonment” shall mean imprisonment of either description as defined in the Indian Penal Code;

(19.)—And in the case of any one whose personal law permits adoption, “son” shall include an adopted son, and “father” and adoptive father.

III. In all Acts made by the Governor General of India in Council after this Act shall have come into operation—

(1.)—For the purpose of reviving, either wholly or partially, a Statute, Act or Regulation repealed, it shall be necessary expressly to state such purpose;

(2.)—For the purpose of excluding the first in a series of days or any other period of time, it shall be sufficient to use the word “from;”

(3.)—For the purpose of including the last in a series of days or any other period of time, it shall be sufficient to use the word “to;”
(4.)—For the purpose of expressing that a law relative to the chief or superior of an office, shall apply to the deputies or subordinates lawfully executing the duties of such office in the place of their superior, it shall be sufficient to prescribe the duty of the superior;

(5.)—For the purpose of indicating the relation of a law to the successors of any functionaries, or of corporations having perpetual succession, it shall be sufficient to express its relation to the functionaries or corporations; and

(6.)—For the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, it shall be sufficient to mention the official title of the officer at present executing such functions, or that of the officer by whom the functions are commonly executed.

IV. Whenever by any Act or Regulation now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof is leviable on any given quantity, by weight, measure, or value, of any goods or merchandise, a like duty shall be leviable according to the same rate on any greater or less quantity.

V. The provisions of Sections 63 to 70, both inclusive, of the Indian Penal Code, and of Section 61 of the Code of Criminal Procedure, shall apply to all fines imposed under the authority of any Act hereafter to be passed, unless such Act shall contain an express provision to the contrary.

VI. The repeal of any Statute, Act or Regulation, shall not affect anything done or any offence committed, or any fine or penalty incurred, or any proceedings commenced before the repealing Act shall have come into operation.

VII. All Courts of Justice, whether exercising civil or any other jurisdiction, and all persons having by law or consent of parties authority to receive evidence, shall take judicial notice of all Acts and Regulations heretofore made, or hereafter to be made, by the Governor General of India in Council, the Governor of Madras in Council, the Governor of Bombay in Council, and the Lieutenant-Governor of Bengal in Council, or by the like authority in other parts of British India, whether the same be of a public or of a private nature.

VIII. Any recital contained in any Act of the Governor General of India in Council heretofore made or hereafter to be made, shall be deemed by all such Courts and persons to be prima facie evidence of the truth of the fact recited.

Hindu Law.

With reference to the sources of Hindu Law the most elaborate account of the system is to be found in Morley's Digest. With reference to the authority of the various Shastras in different parts of India, he says "Five schools of law may be said to exist at the present day, viz., the Gauriya, (Bengal), Mithila (North Behar), Benares, Maharashtra (the Mahratta country), and Dravida (the south of the peninsula)."
"It would be almost impossible to define with accuracy the limits of these several schools; nor indeed, is there that great distinction between them which by some writers has been supposed to exist. The Bengal School, it is true, stands nearly alone, particularly with regard to the Law of Inheritance, in which there is a wide difference in doctrine between the northern and the other schools, the latter receiving some treatises in common, which are totally rejected by the Gauriya lawyers. The Bengal School assimilates in some points with that of Mithila; inheritance, however, being still excepted.

"Looking to the west and south of India, we find that the main distinction between the Benares, Maharashtra, and Dravida schools, is in fact, rather a preference shewn by each respectively for some particular work as their authority of law, than any real or important difference of doctrine, it is very probable that this preference for particular treatises arose originally, not so much from their actual, or even fancied, superiority over other works, as from the ignorance of the lawyers, practically, of the existence of authorities not generally current in their respective provinces, and from the fact that such law-books were, in most cases, first promulgated in the very districts in which they are now pre-eminent.

"In all the Western and Southern Schools the prevailing authority is the nearly-universal Mitacshara; and although the Mahrattas may prefer the Mayukha to the Madhaviya, and the contrary may be the case in the Karnata. The Mitakeshara of Vijnaneswara is one of the greatest, and, indeed, if we take into consideration the extent of its influence, the greatest of all the Hindu law authorities, "for it is received," as Colebrooke observes, "in all the schools of Hindu law, from Benares to the southern extremity of the peninsula of India, as the chief groundwork of the doctrines which they follow and as an authority from which they rarely dissent. The works of other eminent writers have concurrently with the Mitacshara considerable weight in the schools of law which have respectively adopted them as the Smiti Chandrica in the south of India; the Chintamani, Rtenacara, and Vivada Chandra in Mithila; the Vira-mitrodaya and Camalacara at Benares, and the Mayucha among the Mahrattas. But all agree in generally deferring to the authority of the Mitacshara in frequently appealing to its text, and in rarely and at the same time modestly dissenting from its doctrines on particular questions." The Mitacshara must thus be considered as the main authority for all the schools of law with the sole exception of that of Bengal."

The following is the list which Mr. Morley gives of the authorities prevailing in each school:


5. Dravida School—
   (a) Dravida Division—Mitacahara, Madhaviya, Sarasvati Vilasa, Varadarajya.
   (b) Karnataka Division—Mitacahara Madhaviya, Sarasvati Vilasa.
   (c) Andra Division—Mitacahara Madhaviya, Smriti Chandraka, Sarasvati Vilasa.

In questions of adoption the Dattaka Mimansa is preferred in Bengal and in the South, the Dattaka Chandrika in Mithila and Benares."

There is, however, considerable doubt not only as to whether there ever existed any schools of law at all, but also how far the so-called Hindu Shastras are anything more than codes of Brahminical law. When Courts of Justice were first established in India a Brahman Pandit was appointed to each Court for the purpose of instructing the Judge on points of Hindu law. No sufficient enquiry seems to have been made as to whether the law with which the Pandit was acquainted was the law actually in force among the Hindu community. So far as my experience goes the Hindu Shastras never formed the basis of the decisions of the Hindu Courts of Justice. Written decisions made by native judges, before the British occupation of the country, are frequently given in evidence and in no single case, so far as I am aware, have their decisions contained a single reference to the Shastras. That the Shastras were never in actual use as a body of law for the whole Hindu population is made sufficiently clear by the very valuable collection of customs made by Mr. Steele in 1823 at the request and with the assistance of the Bombay Government. On the question of the age of majority for instance instead of the castes all following the rule of the Shastras that majority is attained on the completion of the 16th year, the rule in 50 castes was that a boy attained his majority whenever he was able to acquire his own livelihood (from about 15 to 25). Twenty-nine castes answered that the age was 20 years, four said 16 years, two said 12 years, and twelve said either 18 or 20 years. The whole book is full of similar rules, in force in the several castes, entirely at variance with Shastras. Mr. Burnell in his preface to a translation of the Madhaviya has called attention to this subject. He says:—

"A great difference between the original Smritis is apparent, and this in accordance with the differences between the Brahmanical sakhas in other respects, but there is no reason to believe that these works do not represent the actual laws which were administered. On the other hand, the case of the modern so-called digesta is very different. They are based on the principle that one Smriti is to be supplemented by another, and thus the authors are sometimes much embarrassed by the differences in those books. This theory no doubt arose from the endeavours of the Vedantists and especially Sankara to bring every thing into harmony, and is con-
clusive as to the authority of the Smritis at that time. Had they not given
place almost entirely to custom it would not have been possible to attempt
the compilation of digests on such a plan; but though so far obsolete, the
belief that their texts were founded on the Vedas, saved them from
total neglect.

"The digests however were never intended to be actual Codes
of Law; they were written in a language understood by a very few,
and because of the Vedic quotations in them, they must have re-
mained almost exclusively in the hands of the Brahmas. Again they
refer for the most part to the Brahmans only, and utterly ignore the
numerous un-Aryan peoples scattered about India, and which form the
greater part of the population of the south, whose usages (whatever they
may call themselves) can in no wise be referred to the Dharma-Sastra. There
is not a particle of evidence to show that these works were ever even used
by the Judges of ancient India as authoritative guides; they were, it is
certain, considered as merely speculative treatises and bore the same rela-
tion to the actual practice of the Courts, as in Europe treatises on juris-
prudence to the law which is actually administered. As the Dharma-
Sastra is assumed to be of divine origin, and therefore worthy of study for
its own sake without any consideration of practical ends, nothing might
be omitted and customs admittedly obsolete were discussed with as much
seriousness as those still prevailing. Less than this would not satisfy
Brahmanical desires for exhaustive completeness in the treatment of a
subject; and this is why the question of the division of property between
sons by wives of different castes is considered, though marriages between
persons of different castes are now entirely unknown, and the only persons of
mixed origin in South India are the children of the 'Dasis' or consecrated
female dancers attached to Pagodas, whose fathers are Brahmans or per-
sons who belong to the higher classes of Dravidians, but they themselves
belong to no varna or jati mentioned in the Dharma-Sastra.

"As all the digests proceed according to one system of inter-
pretation, viz., the Mimamsa, the different conclusions at which the authors
often arrive, are to be traced to differences in their interpretation of
original texts from Smritis, not to local usage; and therefore they are by
no means decisive except so far as they convince the reader, and the
distinction of 'schools of law' is (besides being entirely strange to the
books themselves) quite meaningless. The Daya-bhaga has long been
studied at Nava-dvipa, and commentaries written on it there, so Colebrooke
could safely write of the Bengal as opposed to the Benares school, where
the Mitaxara was studied and annotated, but the addition made by subse-
quent writers of Andhra, Dravidian, and other schools, is without founda-
tion and useless. Except the Daya-bhaga and its commentaries, all the
other treatises on law are mere recasts of the Mitaxara and the Smriti-Can-
drika, and written entirely without reference to local peculiarities. Custom
has always been to a great extent superior to the written law in India,
and especially so in the south; but the Indian jurists never attempted to
record such merely human details, hence the difficulty of the law of mar-
rriage and caste usages on which questions of inheritance often depend.
By custom only can the Dharma-Sastra here be the rule of others than
Brahmans, and even in the case of Brahmans it is very often superseded
by custom."
The following are the principal texts in Hindu Law Books relating to the sources of law:

Immemorial custom is transcendent law, approved in the sacred scripture, and in the codes of divine legislators; let every man, therefore, of the three principal classes, who has a due reverence for the supreme spirit which dwells in him, diligently and constantly observe immemorial custom.—Menu I. 108.

A man of the priestly, military or commercial class, who deviates from immemorial usage, tastes not the fruit of the Veda; but, by an exact observance of it, he gathers that fruit in perfection.—Menu I. 109.

Thus have holy usages, well knowing that law is grounded on immemorial custom, embraced, as the root of all piety, good usages long established.—Menu I. 110.

The roots of law are the whole Veda, the ordinances and moral practices of such as perfectly understand it, the immemorial customs of good men, and, in cases quite indifferent, self-satisfaction.—Menu II. 6.

Whatever law has been ordained for any person by Menu, that law is fully declared in the Veda; for He was perfect in divine knowledge.—Menu II. 7.

A man of true learning, who has viewed this complete system with the eye of sacred wisdom, cannot fail to perform all those duties, which are ordained on the authority of the Veda.—Menu II. 8.

No doubt, that man who shall follow the rules prescribed in the Sruti and in the Smriti, will acquire fame in this life, and in the next, inexpressible happiness.—Menu II. 9.

By Sruti, or what was heard from above, is meant the Veda; and by Smriti, or what was remembered from the beginning, the body of law; those two must not be oppugned by heterodox arguments; since from those two, proceeds the whole system of duties.—Menu II. 10.

Whatever man of the three highest classes, having addicted himself to beretical books, shall treat with contempt those two roots of law, he must be driven, as an Atheist and a scorn of revelation, from the company of the virtuous.—Menu II. 11.

The scripture, the codes of law, approved usages, and, in all indifferent cases, self-satisfaction; the wise have openly declared to be the quadruple description of the juridical system.—Menu II. 12.

A knowledge of right is a sufficient incentive for men unattached to wealth or to sensuality; and to those who seek a knowledge of right, the supreme authority is divine revelation.—Menu II. 13.

Between the two divine rivers Saraswati and Drishadvati, lies the tract of land, which the sages have named Brahmvarta, because it was frequented by Gods.—Menu II. 17.

The custom preserved by inmemorial tradition in that country,
among the four pure classes, and among those which are mixed, is called approved usages.—Menu II. 18.

Curuchetra, Matsya, Panchala, or Canyacubja, and Surasena, or Mat’hura, form the region called Brahma, or Brahmarshi, distinguished from Brahmarsha-verte.—Menu II. 19.

From a Brahman who was born in that country, let all men on earth learn their several usages.—Menu II. 20.

That country which lies between Himawat and Vindhyas, to the east of Viñasasana, and to the west of Prayág, is celebrated by the title of Medhyadesa, or the central region.—Menu II. 21.

As far as the eastern and as far as the western oceans, between the two mountains just mentioned, lies the tract which the wise have named Aryawart, or inhabited by respectable men.—Menu II. 22.

That land, on which the black antelope naturally grazes, is held fit for the performance of sacrifices; but the land of Mlechhas or those who speak barbarously, differs widely from it.—Menu II. 23.

Let the three first classes invariably dwell in those beforementioned countries; but a Sudra, distressed for subsistence, may sojourn wherever he chooses.—Menu II. 24.

Each day let him decide causes, one after another, under the eighteen principal titles of law by arguments and rules drawn from local usages and from written Codes.—Menu VIII. 3.

A king, who knows the revealed law, must enquire into the particular laws of classes, the laws or usages of districts, the customs of traders, and the rules of certain families, and establish their peculiar laws, if they be not repugnant to the law of God—Menu VIII. 41.

Since all men, who mind their own customary ways of proceeding, and are fixed in the discharge of their several duties, become united by affection with the people at large, even though they dwell far assuredly.
—Menu VIII. 42.

What has been practised by good men and by virtuous Brahmans, if it be not inconsistent with the legal customs of provinces or districts, of classes and families, let him establish.—Menu VIII. 46.

If it shall be asked how the law shall be ascertained when particular cases are not comprised under any of the general rules, the answer is this: that which well-instructed Brahmons propound shall be held incontestable law.—Menu XII. 108.

Mitarshara Chap. II, Sec. 8 cl. 15.—But should it be objected, that “in a denial of more than one written claim,” &c. is one sacred text, and “in an action comprising many claims,” &c. is another sacred text:—that here no authority can attach to either, from their opposition to each other, and their being mutually conflicting; and that they cannot
be reconciled by applying them to different subjects; it is answered that—

21. "When two sacred texts oppose each other, that which is most applicable has most weight."

15a. Where two sacred texts contradict each other, the contradiction must be rejected by referring them severally; and that which is applicable, by general or particular inference or otherwise, has most weight or authority. Should it be asked how this applicability is to be made apparent, it is answered by experience, by ancient experience, showing the relation between cause and effect.

16. Moreover, in the instance in question, it is proper to apply the rules severally, and in all instances, it is optional to refer rules according to their applicability to particular cases.

17. A special exception is propounded to the general rule respecting conflicting authorities.

21a. It is a fixed rule, that the sacred code is of greater authority than the rule of ethics.

17a. Ethical codes, such as those compiled by Usanasa and others; indeed, having been already excluded by the text conformably to the sacred code of laws, it follows that the ethical rules here meant are those which treat of the duty of kings, and are included in the sacred code. Where the sacred and ethical codes are at variance, the former is more authoritative than the latter; this is the established rule or definition.

18. Although there is no essential discrepancy between the sacred and ethical codes, owing to the conjoint operation, yet, from the superiority of the subject of religious duty, and the inferiority of the moral code, the sacred is of greater authority; this is the meaning. The superiority of spiritual matters has been exhibited in the commencement of the work. Therefore, where the sacred and ethical codes oppose each other, the latter must give way, and it is not optional to refer them severally.

**Vyavahara Mayukha I, I, Sec. 11.**—Bhaspati: Let the king, sitting there in the first part of the day, together with old men, his ministers and his servants, examine causes and hear them read the Puranas, and the laws, the religious [dharma-] as well as the moral laws [artha-sastra] There in the Court. Moral laws, the laws of equity [nitisasra].

12. Narada, on the disagreement between the religious law and the moral law, says: "When a difference may occur between the religious law and the moral, then let them set aside what is declared in the moral law [artha-sastra] and follow that which is enjoined by the religious law [dharma-sastra]." But where discrepancy occurs in the dharma-sastra itself, Vajnavalkya says: "If two texts [smriti] differ, reason niti, or that which reason best supports, must in practice [vyavahara] prevail." The faults of those who do not look to the essentials of justice are thus declared by Bhaspati: "A decision must not be made solely by having recourse to the letter of written codes [sastra], since, if no decision were made according to the reason of the law, [or according to the immemorial usage, for the word yukti admits both senses] there might be a failure of justice."
13. They should fully attend to the customs of the country [Devas-
chara] and the like; thus Brhaspati says: "Let all Rules, of each
country, caste, and family, that have been derived and preserved from
ancient times, be still observed in the same way: otherwise the subjects
will rise in rebellion, discontent will be produced among the people, and
the army and the Treasury will suffer injury." The twiceborn classes,
dvija] in the Dakhan, take the daughter of a mother’s brother in marri-
age. In the Madhya deça, they follow various professions, and are
artizans, and eaters of kine; and in the east [pürve] the men eat fish
whilst their women are notorious prostitutes. In the North their
women drink intoxicating liquors, and women in their courses are by
the men there considered fit to be touched. These people are not
deserving of penance, or punishment for such acts as these. The
Pürve are the same as the Prácýáh, but in some copies they read sarve,
‘all,’ purve, that is all classes, Bráhmins and the rest. Punishment means
legal correction. Some one here declares: "However, what is laid down
by law as the penance, &c., for such acts, applies to countries which are
not included among the abovementioned." But others again say: "Punish-
ment is to be construed of the nature of Penance; thus the people of
that country will escape legal punishment only; and in other countries,
both legal punishment and penance will ensue."

14. Vyása says: "If a decision cannot be obtained from the other
[appointed] persons, in disputes among men who live by commerce, any
handicraft, tillage, dying or such profession, then let the matter be tried
by those skilled in the same trade." Manu: "Let not a prince, who seeks
the good of his own soul [hastily and alone] pronounce the law on a
dispute concerning any legal observance, among twice-born men in their
several orders."

Mahomedan Law.

Most of the Mahomedan law books have been written by the Judges
themselves who administered the law, and many of them consist of re-
ports of cases actually decided, such as the famous Fatáwa Alemgiri, the
Fátáwa Kazi Khan, and the Fátáwa Hamadiya. There is therefore no
room for doubt as to what the law was which prevailed in the Mahome-
dan community of India.

The Hedaya, of which a digest is given in the following pages, is
according to Mr. Morley the most celebrated law treatise according to the
doctrines of Abu Hanifah, and his disciples Abu Yusuf and the Imam
Muhammad, which exists in India. It has been declared like the Kuran
to have superseded all previous books on the law. Its celebrity induced
the British Government to select it for translation in order to be used
in the Courts of Justice in India. This work was written by Burhan Ad
Din Ali Ben Abu Bakr Al—Marghinani, who died in 1196 A. D. It
consists of a digest of approved law cases and the writings of eminent
Mahomedan Jurists. Among the authorities quoted are Imam Abu
Hanifa, the founder of the Hanifite sect of orthodox Mahomedans. He
was educated at Bagdad and afterwards distinguished himself as a pro-
fessor of law at Koofa. He died in prison at Bagdad in 767, A.D., where
he had been placed in confinement by the Khalif Al Mansur for having
refused to accept the office of Kázi.
The other authorities quoted by the author of the Hedayat are Imam
Abu Abdal Malik, founder of the Malekite sect of lawyers. Imam
Mohammed bin Idris Ash-Shafi, founder of the Shafeite sect, Imam Abu
Abdallah Ahmed Ibn Hansal, founder of the Hanbalite sect. Imam Abu
Yusuf Judge of Bagdad, and afterwards Chief Justice at the same place.
He died in 798 A.D. Imam Abu Abdallah Mahomed, who was appointed
by Khalif Harum Al Rushad to superintend the administration of Justice
in the province of Khurasan, where he died in 802 A.D. Abu Zufar bin
Al-Hazil, Chief Judge of Busrah, where he died in 774 A.D. Several col-
lections of reports are also referred to. The most famous is that by Kazi
Khan, a Judge first at Damascua, and afterwards at Ispahan. He died in
A.D. 1195. This work is according to Morley held in the highest esti-
mation in India. A lithographed edition of the original was published
in Calcutta in 1835. Several other books of cases and writers on Juris-
prudence are quoted by the Hedayat. It will sufficiently appear however
from those already mentioned that the book contains the law as it was
actually enforced by the Judges and does not like the Hindu Shastras
show merely the more or less fanciful ideas of the writer as to what
the law ought to be.

With reference to the Sirajiyyah which has been reprinted in this
book, under the chapter on Inheritance, Mr. Morley says that it is 'the
highest authority on the law of Inheritance amongst the Sunis of India.'

As to the countries where the doctrines of each sect prevails, Pro-
fessor Wilson says:—'The Suni sect of Mahomedans predominates in
Arabia, Turkey, Afghanistan, and Turkestan, the Shia in Persia. In India
both sects are found, generally the educated Mahomedans are Sunis, the
vulgar are Shias, and that sect also prevailed in the late Court of Lucknow.
The Suni code of law is that which is chiefly recognised by the Company's
Courts.'

* Introduction to Macnaghten's Hindu and Mahomedan Law.
CIVIL CODE.

Chapter II.—BIRTH.

Rights in General acquired by Birth.

There is no law by which these rights are declared directly. In the Penal Code however punishment is provided for any violation of personal liberty, personal security, reputation or religious belief, and these rights are thereby indirectly created.

The following proclamation of the Queen declares these rights directly, but it seems doubtful whether that proclamation has the force of law, as it does not appear to have been promulgated with the sanction of the supreme power. Whether it is law or not, however there can be no doubt that the principles there laid down will invariably be adhered to both by the legislature and the Courts of law.

Proclamation by the Queen in Council to the Princes, Chiefs, and People in India.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the Colonies and Dependencies thereof in Europe, Asia, Africa, America, and Australasia, Queen, Defender of the Faith.

Whereas, for divers weighty reasons, we have resolved, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in Parliament assembled, to take upon ourselves the Government of the territories in India heretofore administered, in trust for us by the Honourable East India Company.

Now, therefore, we do by these presents notify and declare, that, by the advice and consent aforesaid, we have taken upon ourselves the said Government, and we hereby call upon our subjects within the said territories to be faithful and to bear true ALLEGIANCE to us, our heirs, and successors, and to submit themselves to the authority of those whom we may hereafter from time to time see fit to appoint to administer the Government of our said territories, in our name and on our behalf.

And we, reposeing especial trust and confidence in the loyalty, ability and judgment of our right trusty and well-beloved cousin and councillor, Charles John Viscount Canning, do hereby constitute and appoint him, the said Viscount Canning, to be our First Viceroy and Governor General in and over our said territories, and to administer the Government thereof.
in our name, and generally to act in our name and on our behalf, subject to such orders and regulations as he shall from time to time receive from us through one of our principal secretaries of State.

And we do hereby confirm in their several offices, Civil and Military, all persons now employed in the service of the Honorable East India Company, subject to our future pleasure, and to such laws and regulations as may hereafter be enacted.

We hereby announce to the Native Princes of India, that all TREATIES and engagements made with them by or under the authority of the Honorable East India Company are by us accepted, and WILL BE scrupulously MAINTAINED; and we look for the like observing on their part.

We desire NO EXTENSION OF our present territorial POSSESSIONS; and while we will permit no aggression upon our dominions or our rights to be attempted with impunity, we shall sanction no encroachment on those of others.

We shall respect the RIGHTS, Dignity, and Honor OF NATIVE PRINCES as our own; and we desire that they, as well as our own subjects, should enjoy that prosperity and that social advancement which can only be secured by internal peace and good Government.

We hold ourselves bound to the NATIVES of our Indian territories by the same obligations of duty which bind us to all our other subjects; and those obligations, by the blessing of Almighty God, we shall faithfully and conscientiously fulfil.

Firmly relying ourselves on the truth of Christianity, and acknowledging with gratitude the solace of religion, we disclaim alike the right and desire to impose our convictions on any of our subjects. We declare it to be our Royal will and pleasure that none be in anywise favoured, none molested or disquieted, by reason of their RELIGIOUS FAITH or observances, but that all shall alike enjoy the EQUAL and impartial PROTECTION OF the LAW; and we do strictly charge and enjoin all those who may be in authority under us, that they abstain from all interference with the religious belief or worship of any of our subjects, on pain of our highest displeasure.

And it is our further will that, so far as may be, our subjects, of whatever Race or Creed, be freely and impartially admitted to OFFICES in our service, the duties of which they may be qualified, by their education, ability, and integrity, duly to discharge.

We know and respect the feelings of attachment with which the Natives of India regard the LANDS inherited by them from their ancestors, and we desire to protect them in all rights connected therewith, subject to the equitable demands of the State; and we will that generally, in framing and administering the law, due regard be paid to the ancient RIGHTS, usages, and customs of India. We deeply lament the evils and misery which have been brought upon India by the acts of ambitious men, who have deceived their countrymen by false reports, and led them into open rebellion. Our Power has been shown by the suppression of that rebellion in the
add: we desire to show our mercy by pardoning the offences of those who have been thus misled, but who desire to return to the faith of duty.

1st November 1858.

Parent and Child.

There is no law on this subject of general application. The Courts generally apply the rules of the Hindu and Mahomedan Codes to those actions of the community, and in the case of others English law is usually followed. The following abstract of the general principles of English law is given in order to supply as far as possible the absence of a legislative enactment on the subject.

DEFINITION.

Every child born during marriage is the LEGITIMATE CHILD of the husband whether begotten before marriage or not. (2 Steph. Com. 303.) A child born after the husband's death is legitimate unless the birth takes place so long afterwards that the child could not have been begotten by him. The extreme period between conception and birth is a question of fact and left to the decision of the jury. (2 St. 307.) All other CHILDREN are ILLEGITIMATE. (2 St. 303.)

Children born during marriage may be proved illegitimate by showing that the husband was impotent or out of the kingdom or by other circumstances. (2 St. 305.) The husband except in the case of divorce is always presumed to have access to his wife until the contrary is proved. (2 St. 306.)

RIGHTS AND LIABILITIES.

The father has a right to inflict CORRECTION on his child being under age in a reasonable manner. He may also delegate this power to a tutor or schoolmaster. (1 Hawkins P. C. 130.)

An illegitimate child is liable for the CRIME of incest in the same way as a legitimate child.

The father has, generally speaking, a right to the GUARDIANSHIP of his children in minority. In some cases the right ceases at fourteen, but he has always a right to the control of their persons until they reach 21 years of age. (2 Steph. 314.)

The mother has a right to the custody of the child until 7, but after that she has no legal power over it, in the father's lifetime. (2 and 3 Vic. c. 54.)

After the father's death she is entitled to the custody of the child till 21. (2 Steph. 316.)

As guardian the father has generally charge of the real estate of his child, and may receive the rents and profits during his minority subject to the liability to account for them on his attaining full age.
The father cannot as guardian charge his child with the cost of his maintenance, unless his fortune be insufficient, or the expectations of the child and the expense of his establishment are considerable. (Roach v. Garvan 1 Ves. 160. Hughes v. Hughes 1 Bro. c. c. 387. Jervois v. Silk, Coop 53.) The father may appoint by will a guardian to his infant children if unmarried. (12 Char. 2 c. 24.)

The father cannot, however, appoint by will a guardian to his illegitimate infant son. (2 Steph. 321.)

The mother of an illegitimate child has a right to its custody in preference to its putative father. (R. v. Hopkins 7 East 579. Ex parte Anne Knee 1 N. R. 148.)

An illegitimate child has no right to succeed by INHERITANCE to the property of any one.

The father and mother, grandfather and grandmother or children of poor persons not able to work are liable for their MAINTENANCE if of sufficient ability. (43 Eliz. c. 2 and 59, Geo. 3 c. 12.)

The stepfather is liable for the maintenance of the children of his wife, born before his marriage with her, until they are 21, or until the death of his wife. (4 and 5 Will. 4 c. 76.)

The mother is liable for the maintenance of an illegitimate child while she remains unmarried or until the child attains the age of 16 years or gains a settlement in its own right, or (being a female) is married, and in the event of the mother's marriage the same liability attaches to her husband. (Strangways v. Robinson 4 Taunt 498, R. v. Wendron 7 Ad. and Ell. 819, 4 and 5 Will. 4 c. 76.)

If the mother be not of sufficient ability she has a right to recover from the father a weekly sum of money for its maintenance until the child attain the age of 13 or die or until the mother be married. (7 and 8 Vic. c. 101, 8 and 9 Vic. c. 10.)

The consent of the father is required for the MARRIAGE of a person under 21 years not being a widow or widower. If the father is dead the guardian, or if there is no guardian the mother, or if she has married again a guardian appointed by the Court may give the required consent. If there is no person having authority to consent the marriage may be solemnized without the consent of anyone. If the father or mother or other person whose consent is necessary is incapable of manifesting his consent, whether from deprivation of his intellectual faculties or absence beyond seas, or if he refuse consent to a proper marriage unreasonably or from undue motives, the Court of Chancery may authorize the marriage. (4 Geo. 4 c. 76.)

The law as to the degrees of consanguinity within which marriage is prohibited applies to an illegitimate child. (2 St. 321.)
CIVIL CODE.  CHAPTER II.  

HINDU LAW.

Rights in General acquired by Birth.

The following texts of Manu show how the Hindus regarded the rights of men as such. Although these rules have been virtually repealed by English legislation they will be found useful for understanding the gist of Hindu Law.

To Brahmins he assigned the duties of reading the Veda, of teaching it, of sacrificing, of assisting others to sacrifice, of giving alms, if they be rich, and, if indigent, of receiving gifts. (Manu I., 88.)

To defend the people, to give alms, to sacrifice, to read the Veda, to shun the allurements of sensual gratification are, in a few words, the duties of a Kshatriya. (Manu I., 89.)

To keep herds of cattle, to bestow largesses, to sacrifice, to read the scripture, to carry on trade, to lend at interest, and to cultivate land are prescribed or permitted to a Vaisya. (Manu I., 90.)

One principal duty the supreme ruler assigns to a Sudra; namely, to serve the beforementioned classes, without depreciating their worth. (Manu I., 91.)

Whatever exists in the universe, is all in effect, though not in form, the wealth of the Brahmin, since the Brahmin is entitled to it all by his primogeniture and eminence of birth. (Manu I., 100.)

The Brahmin eats but his own food; wears but his own apparel; and bestows but his own in alms; through the benevolence of the Brahmin, indeed, other mortals enjoy life. (Manu I., 101.)

A code which must be studied with extreme care by every learned Brahmin, and fully explained to his disciples, but must be taught by no other man of an inferior class. (Manu I., 103.)

The king should order each man of the mercantile class to practise trade, or money-lending, or agriculture and attendance on cattle; and each man of the servile class to act in the service of the twice born. (Manu VIII., 410.)

Both him of the military, and him of the commercial class, if distressed for a livelihood, let some wealthy Brahmin support, obliging them without harshness to discharge their several duties. (Manu VIII., 411.)

A Brahmin, who, by his power and through avarice, shall cause twice-born men, girt with the sacrificial thread, to perform servile acts, such as washing his feet, without their consent, shall be fined by the king six hundred panas. (Manu VIII., 412.)

A Sudra, though emancipated by his master, is not released from a state of servitude; for of a state, which is natural to him, by whom can he be divested? (Manu VIII., 414.)
BIRTH—(Hindus).

There are servants of seven sorts; one made captive under a standard or in battle, one maintained in consideration of service, one born of a female slave in the house, one sold, or given, or inherited from ancestors, and one enslaved by way of punishment on his inability to pay a large fine. (Manu VIII., 415.)

A Brahmin may seize without hesitation, if he be distressed for a subsistence, the goods of his Sudra-slave; for, as that slave can have no property, his master may take his goods. (Manu VIII., 417.)

With vigilant care should the king exert himself in compelling merchants and mechanics to perform their respective duties; for, when such men swerve from their duty, they throw this world into confusion. (Manu VIII., 418.)

Servile attendance on Brahmins learned in the Veda, chiefly on such as keep house and are famed for virtue, is of itself the highest duty of a Sudra, and leads him to future beatitude. (Manu IX., 334.)

A mercantile man, unable to subsist by his own duties, may descend even to the servile acts of a Sudra, taking care never to do what ought never to be done; but, when he has gained a competence, let him depart from service. (Manu X., 98.)

A man of the fourth class, not finding employment by waiting on the twice-born, while his wife and son are tormented with hunger, may subsist by handicrafts. (Manu X., 99.)

No superfluous collection of wealth must be made by a Sudra even though he has power to make it, since a servile man, who has amassed riches, becomes proud, and, by his insolence or neglect, gives pain even to Brahmins. (Manu X. 129.)

Parent and Child.

DEFINITION.

BAUD'HAVANA.—A son who was begotten by a man himself on his wedded wife of equal class let him know to be the LEGITIMATE SON of his body. (Dig. V. 196.)

THE CALACA PURANA.—The son begotten by a man himself in lawful wedlock, the son begotten on his wife by a kinsman, a son given by his natural parents as son made by adoption, a son of concealed birth, and a son rejected take shares of the heritage.

2. The son of an unmarried girl, the son of a pregnant bride, a son bought, a son by a twice married woman, a son self-given, and a son by a Sudra are six sons who are contemptible as dust.

3. On failure of the first respectively invest the next with filial rights. (Dig. V. 192.)

They consider the male issue of a woman as the son of the lord; but,
on the subject of that lord, a difference of opinion is mentioned in the Veda, some giving that name to the real procreator of the child, and others applying it to the married possessor of the woman. (Manu IX., 32.)

A son, begotten through lust on a Sudra by a man of the priestly class, is even as a corpse, though alive, and is thence called in law a living corpse. (Manu IX., 178.)

Baudhayana.—A son begotten through lust on a Sudra woman by the chief of twice-born men is called a living corpse. (Dig. 5, 293.)

Smriti cited in the Retnacara.—Sons by women of the servile class though they be Sudras and slaves are in some instances deemed the legal sons of priests. (Dig. 5, 294.)

* For the rest of the law as to legitimacy and illegitimacy, see 'Adoption,' 'Marriage,' and 'Inheritance.'

RIGHTS AND LIABILITIES.

Manu.—A wife, a son, a servant, a pupil, and a younger whole brother, may be CORRECTED, when they commit faults, with a rope, or the small shoot of a cane. (Dig III., I., 11.)

But on the back part only of their bodies, and not on a noble part by any means: he who strikes them otherwise than by this rule, incurs the guilt, or shall pay the fine, of a thief. (Manu VIII., 300.)

A priest who performs his duties, who justly corrects his children and pupils, who advises expiations for sin and who loves all animated creatures is truly called a Brahmin. (Manu XI., 35.)

Vijnaneswara says if a teacher, from an impulse of wrath, strike his pupil with a great staff on a noble part, then should the pupil, hurt in a mode contrary to law, complain to the king; there exists a subject of litigation.

If it be said, that this contradicts the text cited (X), Vijnaneswara replies it is not intended to forbid important suits on the part of pupils and the like, for in some instances their suits are admitted: but the litigation of teachers and the rest is not laudable, either in a moral or civil view; therefore pupils and others should, in the first instance, be discouraged by the king or the court: this is the implied sense of the verse (X). But in very important cases, the suits of pupils and the rest may be entertained in the form mentioned.

But others hold, that the suit of a teacher against his pupil, a father against his son, a master against his servant, and, by parity of reasoning, a husband against his wife, is not legal, because the pupils and the rest are dependent on their teachers and so forth, and may be punished by them: the text (X) shows this very rule, and does not forbid the suit of a pupil and the rest against a teacher and so forth; for Gotama directs that a preceptor, ill treating his scholar shall be punished (XII). The text in question (X) signifies, that the pupil should proceed, in other matters, with the previous knowledge of his teacher. The meaning is, that a suit preferred before the king is irregular; and preferred by the teacher against his pupil is forbidden. But if the pupil, or son violate his duty, and the teacher, or
father, being weak, is not able to correct him, it is consistent with common sense that he should then apply to the king; for, by violating his duty, the pupil, or son, absolutely become pashenda, or irreligious. (Dig. III., I., 12.)

CATTAYANA.—The Judge shall compel a son to pay the DEBT OF his FATHER, provided he be involved in no distress, be capable of property, and liable to bear the burden; but in no other case shall he compel the son to pay his father’s debt.

2. If the son be afflicted with disease, or under the age fit for business, and another person be found to have taken the assets, the Judge must enforce payment from him; or, on failure of such persons, from one who has taken the widow. (Dig. I., V., 173.)

VYASA.—The son of a son shall in general pay the debt of his grand-father, but the son only shall pay the debt of his father incurred by his becoming a surety, and both of them without interest; but it is clearly settled, that their sons, the great grandson and grandson respectively, are not morally bound to pay. (Dig. I., IV., 157.)

SMBRTI, CITED IN THE MITACHARA—Should the debtor be insolvent, and the surety have assets, the principal only must be paid by his son; he is not liable for the payment of interest. (Dig. I., IV., 159.)

VRHASPTI.—The father’s debt must be first paid and next a debt contracted by the man himself; but the debt of the paternal grandfather must even be paid before either of those. (Dig. I., V., 167.)

2. The sons must pay the debt of their father, when proved, as if it were their own, or with interest; the son’s son must pay the debt of his grandfather, but without interest; and his son, or the great grandson, shall not be compelled to discharge it, unless he be heir, and have assets. (Dig. I., V., 167.)

Vishnu:—If he who contracted the debt should die, or become a religious anchoret, or remain abroad for twenty years, that debt shall be discharged by his sons or grandsons, but not by remoter descendants against their will. (Dig. I., V., 168.)

Narad:—A father being dead; his sons, whether after partition or before it, shall discharge his debt in proportion to their shares; or that son alone who has taken the burden upon himself. (Dig. I., V., 169.)

Yajnyawalcy:—The father being gone to a foreign country, or deceased naturally or civilly, or wholly immersed in vices, the sons, or their sons, must pay the debt; but, if disputed, it must be proved by witnesses. (Dig. I., V., 170.)

Yajnyawalcy:—He who has received the estate of a proprietor leaving no son capable of business, must pay the debts of the estate, or, on failure of him, the person who takes the wife of the deceased; but not the son whose father’s assets are held by another. (Dig. I., V., 171.)

Narada:—Of the successor to the estate, the guardian of the widow, and the son not competent to the management of affairs, he who takes the
assets becomes liable for the debts; the son, though incompetent, must pay the debt, if there be no guardian of the widow, nor a successor to the estate; and the person who took the widow, if there be no successor to the estate, nor competent son. (Dig. I., V., 172.)

Vrihaspati: — A debt of the father being proved, it must be discharged by his sons, even in his lifetime, if he were blind or deaf from his birth, or be degraded, insane, or afflicted with a phthisis or leprosy, or other hopeless disorder. (Dig. I., V., 178.)

Vrihaspati: — A debt contracted by the father acting for his co-heirs shall be paid by the son, if the father have been long abroad; but if the father die, the son shall pay only the share of his father, and never that of another debtor. (Dig. I., V., 182.)

Catayayana: — Among persons jointly and severally bound for a debt, whoever is found, may be compelled to pay that debt; the son if long absent abroad, may be compelled to pay the whole debt, but the son of one deceased need only pay his father's share. (Dig. I., V., 184.)

Vishnu: — A debt contracted jointly and severally by parcere v, shall be paid by any one of them, who is present and amenable; and so shall the debt of the father, by any one of the brothers before partition; but after partition, they shall severally pay according to their shares of the inheritance. (Dig. I., V., 185.)

Vrihaspati: — The sons are not compellable to pay sums due by their father for spirituous liquors, for losses at play, for promises made without any consideration, or under the influence of lust or of wrath; or sums for which he was a surety, except in the cases before mentioned or a fine, or a toll, or the balance of either. (Dig. I., V., 201.)

Gotama: — Money due by a surety, a commercial demand, a toll, the price of spirituous liquors, a loss at play, and a fine, shall not involve the sons of the debtor. (Dig. I., V., 202.)

Vyasa: — Neither a fine, nor a toll, nor the balance due for either, shall be necessarily paid by the son of the debtor; nor any debt for a cause repugnant to good morals. (Dig. I., V., 203.)

Narada: — But if a woman who has male issue, but no several property, desert her son, and recur to another man, her son alone must pay the whole debt of her deceased lord.

Catayana: — Let no man lend anything to women, to slaves, or to children: whatever thing of value has been lent to them, the lender cannot in general recover without the assent of their guardian or master. (Dig. I., I., 8.)

Yajnyawalcy: — Neither shall a wife or mother be in general compelled to pay a DEBT CONTRACTED BY her husband or SON, nor a father to pay a debt contracted by his son, unless it were for the behoof of the family; nor a husband to pay a debt contracted by his wife. (Dig. I., V., 207.)

Vishnu: — Neither shall a wife or mother be in general compelled to
pay the debt of her husband or son nor the husband or son to pay the debt of his wife or mother. (Dig. I., V., 208.)

Yajnywalcyana:—A debt acknowledged by her husband, or contracted by her jointly with her husband or son, or contracted by the woman herself, must be paid by a wife or mother; no other debts shall a woman be compelled to pay. (Dig. I., V., 210.)

Catyayana:—A debt contracted jointly with her husband or son, or singly by the woman herself, shall be paid by a wife or mother; in such and in no other cases shall the debts contracted by them be paid by her. (Dig. V., 211.)

Vrihaspati:—A debt contracted by a son shall be paid by the father, if he promised payment; or he may pay it from affection to his son; but unless he promise, he cannot be compelled. (Dig. I., V., 214.)

Catyayana:—By the general rule of law, a father need not pay the debt of his son; but he must pay it, if, either at the time of the loan, or afterwards, he promised payment. (Dig. I., V., 215.)

In childhood must a female be DEPENDENT on her father; in youth, on her husband; her lord being dead, on her sons; if she have no sons on the near kinsmen of her husband; if he left no kinsmen, on those of her father; if she have no paternal kinsmen, on the sovereign: a woman must never seek independence. (Manu Chapter V., 148.)

Never let her wish to separate herself from her father, her husband, or her sons; for, by a separation from them, she exposes both families to contempt. (Manu V., 149.)

By a girl, or by a young woman, or by a woman advanced in years, nothing must be done, even in her own dwelling place, according to her mere pleasure. (Manu V., 147.)

A mother, a father, a wife, and a son shall not be FORSAKEN; he, who forsakes either of them, unless guilty of a deadly sin, shall pay six hundred panas as a fine to the king. (Manu VIII., 389.)

A forsaker, without just cause, of his mother, father or preceptor, and a man who forms a connexion, either by scriptural or connubial affinity, with great sinners should be avoided. (Manu III., 157.)

Smriti:—But in case of strife between teacher and pupil, father and son, husband and wife, or master and servant, their mutual LITIGATION is not legal. (Dig. III., I., 10.)

The MAINTENANCE of the family is an indispensable obligation as Manu positively declares the support of the persons who should be maintained is the approved means of attaining heaven. But hell is the man's portion if they suffer, therefore (let a master of a family) carefully maintain them. (Dayabhaga.)

They who are born and they who are yet unbegotten, and they who are still in the womb require the means of support; no gift or sale should therefore be made. (Mitakshara I., I., 27.)
CATTAYANA—What has been borrowed for the benefit of the family, or during distress (while the principal was disabled, seized by the king, or afflicted with disease,) or in consequence of a foreign invasion.

2. Or for the nuptials of his daughter, or for funeral rites; all such debts contracted by one of the family, must be discharged by the chief of that family. (Dig. I., V., 193.)

A debt contracted by a son, a slave, and the rest, even without the assent of the absent principal, for the maintenance of his family, that absent principal must discharge: this Bhrigu approves. Such is the construction of the text. (IX.) (Dig. I., V., 193.)

NARADA—A father must equally pay the debt of his son, contracted either by his own appointment, or for the support of his family, or in a time of distress. (Dig. I., V., 194.)

CATTAYANA:—A debt which is contracted by a wife or mother for the behoof of the family, when her husband or son is gone to a foreign country, after authorizing the loan, must be paid by the husband or son.

If a husband or son, intending a journey to a foreign country, and being asked by his wife or mother for food and raiment, tell her, “contract debts”; the debt contracted by her must be paid by him when he returns to his own home. “After authorizing the loan” is an approximate expression; for, even though he did not authorize it, the reasoning would be the same.

The meaning is, if he go abroad without making provision for her food, vesture, and the like. “When he is gone to a foreign country,” is also illustrative of a general sense; the same rule should be admitted even though he remain at home. As is mentioned in the Ratnacara: ‘if he remain at home, or go abroad, without assigning any subsistence to his wife or mother.’ This again is merely illustrative; hence such a debt, even though contracted by a minor son or daughter, must be discharged. (Dig. I., V., 219.)

NARADA—A debt contracted by the wife shall by no means bind the husband, unless it were for necessaries at a time of great distress: a man is indispensably bound to support his family.

2. A wife or mother shall not in general pay the debt of her husband or son. (Dig. I., V., 209.)

MANU—If the debtor be dead, and if the money borrowed was expended for the use of his family, it must be paid by that family, divided or undivided, out of their own estate. (Dig. I., V., 186.)

VRIHASPATI—A house-keeper shall discharge a debt contracted by his uncle, brother, son, wife, servant, pupil, or dependants, for the support of the family during his absence. (Dig. I., V., 189.)

NARADA—Whatever debt has been contracted for the use of the family by a pupil, an apprentice, a slave, a wife, or an agent, must be paid by the head of the family. (Dig. I., V., 191.)

CATTAYANA—Bhrigu ordained, that a man shall pay a debt con-
tracted in his remote absence, even without his assent, by his servant, his wife, his mother, his pupil, or his son: provided it were contracted for the subsistence of the family. (Dig. I., I., 9.)

When he wishes to relieve his natural parents or spiritual father, his wife or others, whom he is bound to maintain, or when he is preparing to honor deities, or guests, he may receive gifts from any person, but must not gratify himself with such presents. (Manu Chap. IV., 251.)

CATAYANA.—Should a widow, who has several property, take the protection of another man without the assent of her son, her PROPERTY may be seized by that son, if there be no daughters.

2. He may seize it to discharge debts, but never for his own gratification, since he cannot compel his parents to pay anything for an improper cause.

3. Of that woman who has male issue, but deserts her son though opulent, Manu declares that her son may take the peculiar property, and discharge therewith his father's debts. (Dig I., V., 224.)

Three persons,—a wife, a son, and a slave,—are declared by law to have in general no wealth exclusively their own; the wealth, which they may earn, is regularly acquired for the man whom they belong. (Manu VIII., 416.)

Yajnyawalcy:—It is declared, that brethren, husband and wife, father and son, cannot become SURETIES for each other before partition, nor reciprocally lend their joint property, nor give EVIDENCE for each other in matters relating to the common stock. (Dig. I., IV., 140.)

ADOPTED CHILDREN.

Mitakshara on Adoption.

CHAPTER I. SECTION II.

DEFINITION OF ADOPTION.

1. A distribution of shares, among sons equal or unequal in class, has been explained. Next, intending to show the rule of succession among sons principal and secondary, the author previously describes them. "The legitimate son is procreated on the lawful wedded wife. Equal to him is the son of an appointed daughter. The son of the wife is one begotten on a wife by a kinsman of her husband, or by some other relative. One, secretly produced in the house, is a son of hidden origin. A damsel's child is one born of an unmarried woman: he is considered as son of his maternal grandsire. A child, begotten on a woman whose [first] marriage had not been consummated, or on one who had been deflowered [before marriage], is called the son of a twice-married woman.
He, whom his father or his mother give for adoption, shall be considered as a son given. A son bought is one who was sold by his father and mother. A son made is one adopted by the man himself. One, who gives himself, is self-given. A child accepted, while yet in the womb, is one received with a bride. He who is taken for adoption, having been forsaken by his parents, is a deserted son.”

2. The issue of the breast (urasa) is a LEGITIMATE SON (avraca). He is born of a legal wife. A woman of equal tribe, espoused in lawful wedlock, is a legal wife; and a son begotten [by her husband] on her, is a true and legitimate son; and is chief in rank.

3. The SON OF an APPOINTED DAUGHTER (putro-putra) is equal to him; that is equal to the legitimate son. The term signifies son of a daughter. Accordingly he is equal to the legitimate son: as described by VASISHTHA: “This damsel, who has no brother, I will give unto thee, decked with ornaments: the son, who may be born of her, shall be my son.” Or that term may signify a daughter becoming by special appointment a son. Still she is only similar to a legitimate son; for she derives more from the mother than from the father. Accordingly she is mentioned by VASISHTHA as a son, but as third in rank: “The appointed daughter is considered to be the third description of sons.”

4. The SON OF TWO FATHERS (dujamushyayana) is inferior to the natural father’s legitimate son, because he is produced in another’s soil.

5. A child, begotten by another person, namely, by a kinsman, or by a brother of the husband, is a WIFE’S SON (cakstrocaya).

6. The SON OF HIDDEN ORIGIN (guhjaya) is one secretly brought forth in the husband’s house. By excluding the case of a child begotten by a man of inferior or superior tribe, this must be restricted to an instance where it is not ascertained who is the father, but it is certain that he must belong to the same tribe.

7. A DAMSEL’S CHILD (cosina) is the offspring of an unmarried woman by a man of equal class as (restricted in the preceding instance); and he is son of his maternal grandfather, provided she be unmarried, and abide in her father’s house. But, if she be married, the child becomes son of her husband. So MENU intimates: “A son, whom a damsel conceives secretly in the house of her father, is considered as the son of her husband and denominated a damsel’s son, as being born of an unmarried woman.”

8. The SON OF a WOMAN TWICE-MARRIED is one begotten by a man of equal class, on a twice-married woman, whether the first marriage had or had not been consummated.

PARTIES TO AN ADOPTION.

9. He, who is given by his MOTHER with her husband’s consent, while her husband is absent, [or incapable though present,] or [without his assent] after her husband’s decease, or who is given by his FATHER, or by both, being of the same class with the person to whom he is given becomes his given son (dattaca). So MENU declares: “He is called a son given (dattima), whom is father or mother affectionately gives as a son,
being alike (by class), and in a time of distress; confirming the gift with water."

10. By specifying distress, it is intimated, that the son should not be given unless there be distress. This prohibition regards the giver (not the taker).

11. So an ONLY SON must not be given (nor accepted). For VASISHT'HA ordains "Let no man give or accept an only son."

12. Nor, though a numerous progeny exist, should an ELDEST SON be given: for he chiefly fulfils the office of a son; as is shown by the following text: "By the eldest son, as soon as born, a man becomes the father of male issue."

THE CEREMONY OF ADOPTION.

13. The mode of accepting a son for adoption is propounded by VASISHT'HA: "A person, being about to adopt a son, should take an unremote kinsman or the near relation of a kinsman, having convened his kindred and announced his intention to the king, and having offered a burnt offering with recitation of the holy words, in the middle of his dwelling.

14. [An unremote kinsman.] Thus the adoption of one very distant by country and language, is forbidden.

15. The same [ceremonial of adoption] should be extended to the case of sons bought, self-given, and made (as well as that of a son deserted) for parity of reasoning requires it.

16. The son bought (crita) is one who was sold by his father and mother, or by either of them: excepting as before an only son or an eldest one, and supposing distress and equality of tribe. As for the text of MENU, ("He is called a son bought, whom a man, for the sake of having issue, purchases from his father and mother: whether the child be equal or unequal to him") it must be interpreted "whether like or unlike in qualities;" not in class; for the author concludes by saying "This law is propounded by me, in regard to sons equal by class."

17. The son made (Critisima) is one adopted by the person himself, who is desirous of male issue: being enticed by the show of money and land, and being an orphan without father or mother: for, if they be living, he is subject to their control.

18. The son self-given is one, who, being bereft of father and mother, or abandoned by them (without cause), presents himself, saying "Let me become thy son."

19. The son, received with a bride, is a child, who, being in the womb, is accepted when a pregnant bride is espoused. He becomes son of the bridegroom.

20. A son deserted (apariddha) is one, who, having been discarded by his father and mother, is taken for adoption. He is son of the taker. Here, as in every other instance, he must be of the same tribe with the adoptive father.
RIGHTS AND LIABILITIES ARISING FROM ADOPTION.

21. Having premised sons chief and secondary, the author explains the order of their SUCCESSION to the heritage: "Among these, the next in order is heir, and presents funeral oblations on failure of the preceding."

22. Of these twelve sons abovementioned, on failure of the first respectively, the next in order, as enumerated, must be considered to be the giver of the funeral oblation or performer of obsequies, and taker of a share or successor to the effects.

23. If there be a legitimate son and an appointed daughter, Menu propounds an exception to the seeming right of the legitimate son to take the whole estate: "A daughter having been appointed, if a son be afterwards born, the division of the heritage must in that case be equal: since there is no right of primogeniture for the woman."

24. So the allotment of a quarter share to other inferior sons, when a superior one exists, has been ordained by Vasishtha: "When a son has been adopted, if a legitimate son be afterwards born; the given son shares a fourth part." Here the mention of a son given is intended for an indication of others also, as the son bought, son made by adoption, and [son self-given and] the rest: for they are equally adopted as sons.

25. Accordingly Cattyana says: "If a legitimate son be born, the rest are pronounced sharers of a fourth part, provided they belong to the same tribe, but if they be of a different class, they are entitled to food and raiment only."

26. "Those who belong to the same tribe," as the son of the wife, the son given and the rest [namely the sons bought, made, self-given, and discarded] share a fourth part, if there be a true legitimate son: but those who belong to a different class, as the damsel's son, the son of concealed origin, the son of a pregnant bride, and the son by a twice-married woman, do not take a fourth part, if there be a legitimate son: but they are entitled to food and raiment only.

27. "Exceptionable sons, as the son of an unmarried damsel, a son of concealed origin, one received with a bride, and a son by a twice-married woman, share neither the funeral oblation, nor the estate." This passage of Vishnu merely denies the right of those sons to a quarter share, if there be legitimate issue: but, if there be no legitimate son or other preferable claimant, even the child of an unmarried woman and the rest of the adoptive sons may succeed to the whole paternal estate, under the text before cited.

28. "The legitimate son is the sole heir of his father's estate; but, for the sake of innocence, he should give a maintenance to the rest." This text of Menu must be considered as applicable to a case, where the adopted sons (namely the son given and the rest) are disobedient to the legitimate son and devoid of good qualities.

29. Here a special rule [different from Cattyana's] is propounded by the same author (Menu) respecting the son of the wife: Let the legi-
timate son, when dividing the paternal heritage give a sixth part, or a fifth, of the patrimony to the son of the wife."* The cases must be thus discriminated: if disobedience and want of good qualities be united, then a sixth part should be allotted. But, if one only of those defects exist, a fifth part.

30. *Menu*, having premised two sets of six sons, declares the first six to be heirs and kinsmen; and the last to be not heirs but kinsmen:

"The true legitimate issue, the son of a wife, a son given, and one made by adoption, a son of concealed origin, and one rejected [by his parents,] are the six heirs and kinsmen. The son of an unmarried woman, the son of a pregnant bride, a son bought, a son by a twice-married woman, a son self-given, and a son by a *Sudra* woman, are six not heirs but kinsmen.*

31. That must be expounded as signifying, that the first six may take the heritage of their father's collateral kinsmen (*sapindas* and *sama-nodacar*) if there be no nearer heir; but not so the last six. However, consanguinity and the performance of the duty of offering libations of water and so forth, on account of relationship near or remote, belong to both alike.

32. It must be so expounded; for the mention of a given son in the following passage is intended for any adopted or succedaneous son. "A given son must never claim the family and estate of his natural father. The funeral oblation follows the family and estate: but of him, who has given away his son, the obsequies fail."

33. All, without exception, have a right of inheriting their father's estate, for want of a preferable son: since a subsequent passage ("not brothers, nor parents, but sons, are heirs to the estate of the father.") purposely affirms the succession of all subsidiary sons other than the true legitimate issue; and the right of the legitimate son is propounded by a separate text ("the legitimate son is the sole heir of his father's estate;") and the word "heir" (*dayada*) is frequently used to signify any successor other than a son.

34. The variation which occurs in the institutes of *Vasisht'ha* and the rest, respecting some one in both sets, must be understood as founded on the difference of good and bad qualities.

35. But the assignment of the tenth place to the son of an appointed daughter, in *Gautama's* text, is relative to one differing in tribe.

36. The following passage of *Menu*: "If, among several brothers of the whole blood, one have a son born, *Menu* pronounces them all fathers of male issue by means of that son;" is intended to forbid the adoption of others, if a brother's son can possibly be adopted. It is not intended to declare him son of his uncle: for that is inconsistent with the subsequent text; "brothers likewise and their sons, gentiles, coguates, &c."

37. The author next adds a restrictive clause by way of conclusion to what had been stated: "This law is propounded by me in regard to sons equal by class."
38. This maxim is applicable to sons alike by class, not to such as differ in rank.

39. Here the damsel's son, the son of hidden origin, the son received with a bride, and a son by a twice-married woman, are deemed of like class, through their natural father, but not in their own characters: for they are not within the definition of tribe and class.

40. Since issue, procreated in the direct order of the tribes, as the Marāṇaśaṅkta and the rest, are comprehended under legitimate issue, it must be understood, that, on failure of these also, the right of inheritance devolves on the son of the wife and the rest.

41. But the son by a Sudra wife, though legitimate, does not take the whole estate, even on failure of other issue. This Menu says: "But whether the man have sons, or have no sons, [by his wives of other classes] no more than a tenth part must be given to the son of the Sudra."

42. "Whether he have sons," whether he have male issue of a regenerate tribe; "or have no sons," or have no issue of such a tribe; in either case, upon his demise, the son of the wife or other [adoptive son,] or any other kinsman [and heir,] shall give to the Sudra's son, no more than a tenth part of the father's estate.

43. Hence it appears that the son of a Kshatriyā or Vaisyā wife takes the whole property on failure of issue by women of equal class.

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**Dattaka-Chandrika on Adoption.**

**SECTION I.**

*Reason of adoption—Who may adopt—What description of son—How to be selected—Preference to be given to a brother's son—The gift by whom to be made.*

1. By the favour of Chandrika, the Dattaka-Chandrika, the dispeller of the doubt arising from what was not propounded in the Chandrika, is compiled.

2. Every rule relative to the adopted son, ordained for the Kali age, which was not discussed by me, in the Chandrika in treating on the eighteen topics of litigation, propounded in the texts of Menu, and other saints, is fully and specially expounded here.

3. On this subject Mann says: "A son of any description must be anxiously adopted by a man desistute of male issue, for the sake of the funeral cake, water and solemn rites; and for the celebrity of his name."—Atri. "By a man desistute of male issue only, must the substitute for a son of some one description, always be anxiously adopted; for the sake of the funeral cake, water and solemn rites."

4. "By a man desistute of male issue:" that is,—by one to whom NO SON may have been borne: or whose son may have DIED; for, a text of Sannaka expresses: "One desistute of a son, or one whose son may have died, having tasted for male issue."
5. Therefore, although by the production of a son, the exemption from debt, deduced from the text of Manu subjoined, may have taken place; still on the death of such son, for the sake of funeral rites the affiliation of another son is indispensable. By the eldest, at the moment of birth a man becomes father of male issue, and absolved also from debt to his progenitors. He therefore is entitled to take the estate.”

6. The term ‘male issue,’ (putra) here used, is illustrative of the grandson, and great-grandson; for these equally present obligations of food, and preserve the line. Otherwise, it would follow that the adoption of a son, by one whose son had died, notwithstanding the existence of a grandson, were without reason. It therefore results that one only destitute of a grandson and great-grandson may adopt.

7. It must not be argued, that from the qualities of being male and singular, being attributed to the adopting party, by the expression “a man destitute of male issue,” something definite is meant: therefore the same person must not be adopted by two individuals nor any son by woman. For the adoption of the Dvyamushya: a son or son of two fathers by two persons will be pre-ently declared; [and] women with the sanction of their husbands are competent to adopt: as Vasishtha shews: “Let not a woman either give or receive a son in adoption: unless with the assent of her husband.”

8. “A substitute.” Now such is of eleven descriptions, the son of the wife and the rest. Thus Manu [ordains]: “Sages declare these eleven sons (the son of the wife and the rest) as specified to be substitutes for the real legitimate son; for the sake of preventing a failure of obsequies.” Vrihaspati also. “Of the thirteen sons who have been enumerated, by Manu in their order, the legitimate son and appointed daughter are the cause of lineage. As oil is substituted by the virtuous for liquid butter: so are eleven sons by adoption substituted for the legitimate son and appointed daughter.”

9. Of these however in the present age, all are not recognised. For a text recites:—“SONS OF MANY DESCRIPTIONS who were made by ancient saints CANNOT NOW BE ADOPTED by men,—by reason of their deficiency of power;” and against those other than the son given, being substitutes, there is a prohibition in a passage of law wherein after having been promised,—“The adoption, as sons of those other than the legitimate son and son given,’ it is subjoined,—These rules sages pronounce to be avoided in the kali age.”

10. The rules relative to the adopted son are now propounded. On this subject Samaaka ordains,—“the adoption of a son by any Brahmana must be made FROM amongst SAPINDAS, or kinsmen connected by an obligation of food: OR ON FAILURE OF THESE, AN ‘ASAPInda’ or one not so connected, otherwise let him not adopt.”

11. Here since it is mentioned generally, from amongst ‘sapinda,’ it is meant from such both of the same or a different general family; and, accordingly on default of a ‘sapinda’ kinsman, one belonging to the same general family and failing this latter, a person even of a different general family are to be adopted. Sakala declares this. Let one of a regenerate tribe destitute of male issue on that account adopt as a son the offspring of a ‘sapinda’ relation particularly: or also next to him one born in the same general family. If such exist not, let him adopt one born in another family: except a daughter’s son, and a sister’s son, and the son of the mother’s sister.”

12. “Otherwise let him not adopt.” By this, a given son being—other than a Brahmana,—a Kshatriya and so forth—in short of a DIFFERENT CLASS is excluded. This Manu declares: “He is called a son given, whom his father, or mother affectionately give as a son, being alike and in a time of distress, confirming the gift with water.”

13. “In a time of distress.”] The adopter being DESTITUTE OF MALE ISSUE—“Alika’] belonging to the same class.

14. “Alike not by tribe, but by qualities suitable to the family. Accordingly, a Kshatriya, or a person of any other inferior class may be the given son of a Brah-
15. Katyayana declares this: “If they be of a DIFFERENT CLASS, they are entitled to food and maintenance only.”—Sannaka also. “If one of a different class should, however, in any case be adopted as a son, he should not make him the participator of a share: this is the doctrine of Sannaka also.”—By Yajnavalkya also it is declared that one of the same class presents the funeral cake and participates in a share: but the filial relation of one of a different class is not denied;—and Yaska explicitly declares this: “A person of the same class must be adopted as a son. Such a son performs the oblations and takes the estate; on death of him, one different in class, who is regarded merely as prolonging the line. He receives food and maintenance only from the person succeeding to the estate.”

16. In fact, the construction of the word ‘alika’ (sadrīśa) in Menu’s text as signifying,—of the same class—is only proper; for elsewhere the participating as an heir of such adopted son is shewn: and the participating in the inheritance of one unequal in class is impossible.

17. “Except a daughter’s son and a sister’s son.” This prohibition against the DAUGHTER’S SON and SISTER’S SON refers to those other than Sudras. Accordingly Sannaka, “Of Kshatriyas in their own class positively, and [on default of a sapinda kinsman] even in the general family, following the same primitive spiritual guide (Guru). Of Vaisyas, from amongst those of the Vaisya class; of Sudras from amongst those Sudra classes: of all and the tribes likewise in [their own] classes only and not otherwise. But a daughter’s son and a sister’s son are affiliated by Sudras. For the three superior tribes, a sister’s son is no where [mentioned as a son].”

18. “Even in the general family, following the same primitive spiritual guide.” Since there are no distinct and peculiar general families of [primitive] Kshatriyas, the general family following the same primitive spiritual guide is specified; for it is declared in the passage subjoined, that one of the tribe in question participates in such general family. “He specifies the general families of Kshatriyas and Vaisyas, as distinguished by following the same primitive spiritual guide.”

19. “In [their own] classes only not otherwise.” This is a restriction intended to forbid the adoption of one of a different tribe; otherwise the text of Katyayana before cited would be contradicted.

20. In respect however to this subject [it is to be observed, that] where a BROTHER’S SON may exist amongst near kinsmen, he only is to be adopted. This Manu ordains. “If one among brothers of the whole blood be possessed of male issue, Manu pronounces that they all are fathers of the same by means of that son.” Vrishapati [also] “if there are several brothers, the sons of one man by the same mother, on a son being born to one even of them, all of them are declared to be fathers of male issue.” Under these two texts, if a brother’s son is in any manner capable of being a substitute, it is inferred that another is not to be adopted.

21. “Offspring must be produced: this precept is peremptory: in some manner or another it must be complied with. Since the representation of the filial relation here [contemplated] obtains in the brother’s son; the effects thereof, viz., the oblation of the funeral cake, libation of water and the like, and exemption from excision from heaven would be accomplished [by his existence]: hence there can be no occasion to proceed in the re-attainment of the same; consequently a brother’s son though unadopted is filially related; in conformity with this text of Vrihat Parasara. “Let the nephew of a paternal uncle desist from male issue be his son; he only should perform his obsequies of the funeral repeat and of oblations of food and of water.” Hence, a brother’s son existing, no affiliation [of him or another] as a son given, and so forth takes place.”
22. This is not to be argued: for although, by reason of the nephew's possessing the representation of the filial relation, he may be the means of procuring exemption from exclusion from heaven and so forth: still, as the celebration of name and the due perpetuation of lineage would not be attained,—for the sake of the name, the constituting him an adopted son is indispensable. Besides the two texts in question do not prohibit, where a brother's son may exist, the constituting [him or another] a son given and so forth: but indicate [as inherent in a nephew] the virtue of a son consuting in the capacity to perform the funeral rite and so forth.—For otherwise a contradiction of the rule for the production of a kshetrajya son, notwithstanding a brother's son may exist would follow: and since by the text subjoined, the resemblance of a son's son obtains in a daughter's son, according to the reasoning recited, the non-adoption of a son given, and the rest where a daughter's son also might exist would result. “By that male child, whom a daughter whether formally appointed or not, shall produce from a husband of a equal class, the maternal grandfather becomes the grand-sire of a son's son: let that son give the funeral obligation, and possess the inheritance.”

23. But, if where even a brother's son may exist, the constituting [him or another] a son given and so forth be legal; then, though in the texts subjoined, the resemblance of the virtue of a son is shown to obtain in the son of a rival wife, where even such son exists, the affiliation of a son given and so forth by the step-mother may take place. —Vrihaspati. “The same rule is also ordained in respect to many wives, of the same person.” Manu. “If among all the wives of the same husband, one bring forth a male child, Manu has declared them all by means of that son to be mothers of male issue.”

24. Should this be objected, it is wrong. In the same manner as where the curd,—which is the object contemplated by the person proceeding to produce the gumrous substance alluded to in the passage of the Vedas subjoined—is wanting, it is that substance which causes the individual to proceed therein and not the whey or serous part [incidentally produced]: for that not being the object is of no use.” He mixes coagulated milk (dahi) in boiled milk; that is a curd of two milk —hey (amiksha),—an oblation to the Vaisvadeva set of deities, and whey for horses.”—Or,—in the same manner, as on the anniversary of the decease of a father, [who died during the first half of Avanina denominated pitripaksha], the ceremonial of a parvansha rite having been completed in honor of the father and other two paternal ancestors in ascent above him,—a parvansha rite is not recommended on account of the fume a—repetition in honour of the maternal grandfather and other two male ancestors [on the mother's side]; for the commencement of the same depends on the funeral repast in honour of the maternal ancestors, [which in this instance would have been already completed]: —So also in the case in question, the affiliation of a son by woman proceeding legally, with the sanction of her husband, to constitute for him male issue, only takes place where no son of that person may exist. But, if he have any, although she may be destitute of the same, such adoption does not obtain; for to proceed therein would be unproductive of the object.

25. In that case she would not be exempted, from exclusion from heaven. In anticipation of this objection, the two texts of Manu, and Vrihaspati, by propounding the existence of filial relations, in the son of a rival wife, [to his step-mother] provide for her exemption, from exclusion from heaven, and the performance for her funeral obsequies: for, except the offspring of her husband, she can have no other.

26. Since, [a wife] can have no other offspring, but the issue of her husband, the son in question even preserves her lineage. Therefore, where, the son of a rival wife exists: as the whole benefit even of a son is attained, no affiliation (by the step-mother of him or another) as a son given and so forth, takes place.—But as the capacity of prolonging lineage, does not obtain in a brother's son, although such son may exist; [he, or if any impendunt exist, another] must be affiliated, as a son given and so forth: there is in this respect a maternal difference.

27. But if, a brother's son existing, the affiliation of him only is indispensable; where there may be only one brother's son, in that case the adoption cannot take place; on account of the text of Vasiisthas, which recites,—“an only son let no man give, or accept.”—For he is destined to prolong the line of his ancestors.”
28. Should this be alleged, it is not accurate. For, the text in question is applicable to a case, other than that of the Dvayamudra, or son of two fathers. In the case of the Dvayamudra, the extinction of lineage, contemplated in the clause of the text, containing the reason, would not take place; and an indication found in the Puranas, as to the affiliation, by Vetas, of the son as [his brother] Bhairava. Thus—"Accordingly he (Bhairava) at some time copulated with Urvashi, a celestial nymph, and procreated on her a son named Suvasa. Vetas also affiliated him, as his son; and in consequence by means of this son, both attained heavenly salvation."

29. In answer to the question—by whom is a son to be given? Saunaka declares. "By no man, having an ONLY SON is the gift of a son to be ever made. By a man having several sons, such gift is to be anxiously made."

30. The author apprehending an extinction of lineage in case of the gift of a son by one even having two sons says; "by one having several sons."

31. But by a WOMAN, the gift may be made with her HUSBAND'S SANCTION if he be alive; or even without it if he be dead, have emigrated or entered a religious order.—Accordingly Vasishtha. "Let not a woman either give or receive a son unless with the assent of her husband."

32. Now, if there be no prohibition even there is assent: on account of the maxim: "The intention of another, not prohibited, is sanctioned."—Yajnavalkya suggests, the independency of the woman. "He whom his father or mother gives is a son given."—Also, in another place: "deserted by his father and mother or either of them."

SECTION II.

The form for adoption—The most eligible period for selection—Rules under certain circumstances—The adopted son may be son of two fathers.

1. Next Saunaka propounds the form for the adoption of a son. "I, Saunaka, now declare the best adoption: One having no male issue or whose male issue has died, having fasted for a son;—"

2. Adoption.] The form for adoption—Having fasted.] Having observed a fast on the day preceding the adoption.—Vriddha Gantama has—"The impotent man or also one whose offspring has died."

3. "Having given two pieces of cloth, a pair of ear-rings, a turban, a ring for the fore-finger to a priest religiously disposed, a follower of Vishnu, and thoroughly read in the Vedas. Having venerated the king and virtuous Brahmans by a madhuparkha (or prepared food consisting of honey, liquid butter and carda)."

4. If the king be at a distance, [he should thus venerate] the chief of the village; for a text recites: having invited all kinsmen, and the chief of the village also," Brahmana. The plurality meant by this word, is restricted to three on account of the argument, exemplified in the instance of the white patridges.—The venerating Brahmana is with a view to their asking [the child in adoption.]

5. "Both a bunch of sixty-four stem, entirely of the kusa grass, and fuel of the palasa tree,—also having collected these articles: having earnestly invited kinsmen and relations: having entertained the kinsmen with food, and especially Brahmans: having performed the rites, commencing with that of placing the consecrated fire, and ending with that of purifying the liquid butter: having advanced before the giver let him cause to be asked thus; 'Give the boy.'—The giver being capable of the gift [should give] to him with recitation of the five prayers, the initial words of the first of which are ye-yajyena, &c."

6. 'Should give' is understood—'kinsmen' [the kinsmen of the father and mother. 'Relations'] sapindas. The inviting these is for the sake of witnessing.—
BIRTH—(Hindus).

Having entertained invited kinsmen, and Brahmans previously appointed, and (on account of the conjunction 'and') invited relations.—This is the meaning.

7. The same author continues.—"Having taken him by both hands with the recitation of the prayer, commencing,—' Devasya-tva, &c.,' having inaudibly repeated the mystical invocation,—' angadange, &c.,' having kissed the forehead of the child; having adorned with clothes, and so forth, the boy bearing the reflection of a son."

8. 'Reflection of a son.'—The resemblance of a son,—or in other words,—the CAPABILITY TO HAVE BEEN BEGOTTEN, BY THE ADOPTER, through appointment, and so forth.

9. The text continues.—"Accompanied with dancing songs and benedictory words, having seated him in the middle of the house; having according to ordinances, offered a burnt offering of milk and curds (to each incantation) with recitation of the mystical invocation 'yas-tva-hrida'—the portion of the Rig Veda, commencing, 'tubhyam-agne,'—and the five prayers of which the initial words of the first are 'Somadāt.'"

10. Vriddha Gautama.—"Let him then cause, to be offered, as burnt offerings an hundred oblations of milk, with liquid butter, contemplating in his mind, as the object, the lord of created beings, with recitation of the prayer,—' praja-pate-na-tva-detam.'"

11. Vasishtha.—"A person being about to adopt a son should take an unremote kinsman or the near relation of a kinsman; having conveyed his kinsmen, and announced his intention to the king and having offered a burnt offering with recitation if the prayers denominated 'Vyashriti,' in the middle of his dwelling. But if a doubt arise let him set apart like a Sudra one whose kindred are remote. For it is declared on the Vedas; 'many are saved by one.' When a son has been adopted, if a legitimate son be afterwards born, the given son shares a fourth part."

12. 'Dwelling'] house.—A doubt.] If from the great indifference of the country and language of one whose kinsmen are remote a doubt arise as to his lineage, disposition and so forth; this being the case till the ascertainment of these particulars let him not initiate such person.—On this point, a reason is assigned,—"many are saved, &c." 'Many'] The father and other ancestors."

13. One of these FORMS is INDISPENSABLE.

14. In continuation Samaksa says:—"Let the best of the regenerate, to the extent of his ability bestow a gratuity on the officiating priest; a king half even of his dominion; next in order a Vaisya three hundred pieces; a Sudra the whole even of his property; if indigent, to the extent of his means."

15. 'Half his dominion.'] The produce for one year of half his dominion; for a text of Vriddha Gautama recites:—"Let him proffer the profits arising from half his dominion received in one year."—According as he may be in a superior, middling or inferior condition [let a Vaisya give] three hundred pieces of gold, silver or copper respectively; on account of the text of Vridhna Gautama. "Let him proffer three hundred pieces in gold or in silver or in copper according as his condition may be superior or otherwise." 'His whole property'] that is the acquisition by hire for one year.

16. Baudhayana propounds a special rule for the followers of the Tittirī Veda.—"We are about to explain the mode for the adoption of a son. One about to adopt produces two pieces of cloth, a pair of ear-rings, a ring and a priest thoroughly read in the Vedas, a bunch of sixty-four stems of the kusa grass and fuel of the 'purna' tree. Then having invited kinsmen into the middle of the dwelling: and having made a representation to the king: having sat down by the direction of a Brahmana in the assembly: having caused to be exclaimed auspicious day! benediction! prosperity! having performed rites commencing with the recitation of the prayer—'yad-devay-jansa,—down to the placing the vessels for water: having advanced before the giver, let him beg; 'Give me this son.' The other replies 'I give.' He receives the child [and thus says;] 'I receive thee for the sake of religious duty: I adopt thee for offspring'—
Then having adorned him with the cloths, the ear-rings and ring, having performed the investiture and other ceremonies down to the kindling a flame of fire; having dressed the oblations, he offers a burnt offering after having recited the incantation in the first chapter of the [Yajur] Veda commencing—"yas-tva-hrida-kirinamanmanas"—with recitation of the sacrificial prayer—"yasyāy-vam-sukrite-jata-veda, &c."—he offers a burnt offering. Next having performed the burnt sacrifices, where the prayers denominated vyahriti are recited: and that designated 'svastik-krit' with other ceremonies, being completed, down to the bestowing an excellent cow be presents the fee [saying "yours are"] these two cloths, the ear-rings, and the ring likewise. "But subsequently, if a real legitimate son is born, he [the adopted son] succeeds to a fourth share—so says Baudhayana."

17. In case, NO FORM as propounded, should be OBSERVED, it will be declared, that the adopted son is entitled to assets, sufficient for his marriage.

18. On the subject [of adoption.] Manu says, "A given son must never claim the family and estate of his natural father. The funeral cake follows, the family and estate: but of him who has given away his son, the obsequies fail.""

19. It is declared by this, that through the extinction of his filial relation from gift alone, the property of the son given in the ESTATE OF THE GIVER ceases; and HIS RELATION TO THE FAMILY of that person is annulled.

20. And accordingly, since extinction of relation to the family [of the natural father] and so forth is shewn, and as a text recites,—"let the father initiate his own son,"—the initiatory rites even of the adoption, which are yet to be completed subsequent to adoption, are to be performed by the adopter; but those already performed by the natural father are not to be cancelled. For, any argument in respect to the renewal of these is wanting; since the removal of the taint of the seed and so forth, and the acquisition of priesthood, as suggested in the following texts have already taken place. Thus the sin produced by the seed, and womb acquires expiation, &c." "As a picture is produced gradually by many lines, priesthood in the same manner proceeds by the observance of form."

21. Otherwise, it would follow from the text subjoined, that he would have to perform also the rites of Punavarna and Simantonnayana: "Let the father himself perform the eight initiatory rites, (or on his default some other) in their order." Now, this would be improper; for, it would not be consistent with approved practice: besides, as his authority to perform initiatory rites is from his relation of father subsequent only to adoption, the incompetency of the adopter in respect to rites which should take place previous thereto, [no reason of extreme necessity operating] follows; for the appropriate time of performance no longer exists.

22. But, if however, the initiatory rites which should have taken place previously have not been performed by the natural father; they are in that case to be completed by the adopter even, no account of the indispensable necessity of removing the taint of the seed and womb; and for the sake of preserving the order prescribed for the performance of the rites in question.

23. And accordingly IF the rite of INVESTITURE MERELY BE PERFORMED [by the adopter, the previous rites having been performed by the natural father,] the aquisition of the son given, as son of the adopter is completed; in conformity with the text of Vasishtha subjoined. But this must be understood in respect to an adoption taking place within the primary season for the rite in question which extends to the eighth year; otherwise, [in the case of an adoption after the expiration of such season] the capacity of having been able to perform that rite, during the principal season being wanting, as there would be no ability for the same at a secondary season, the rite would remain unperformed, [unless as required in such inferior adoption the rite of tonsure; preceded by a sacrifice for male issue were renewed.] Text—"Sprung from one following a different Saka, (or branch of the Vedas,) the given son even when invested with the characteristic thread under the family name of the man himself, according to the form prescribed by his peculiar Sakha becomes participant of the duties of such Sakha.

24. And relative to the subject in question, [it is to be observed, that]
should an agreement subsist stipulating that the son adopted should be SON OF the NATURAL FATHER AND ADOPTER LIKewise, a special rule for his participating in the family of both by reason of being a DVYAMUSHYAYAYANA will be declared. See sec. V., 93.

25. "Oh! lord of the earth, a son having been regularly initiated under the family name of his [natural] father, unto the ceremony of tonsure, does not become the son of another man. When indeed, the ceremony of tonsure and other rites of initiation (chudadya sanskara) are performed [by the adopter] under his own family name, [then only] can sons given, and the rest be considered as issue: else they are termed slaves. Whether he be one, whose initiation has been completed, or one whose pupillage (Sasava) has passed on adoption after the fifth year, the adopter should first perform the sacrifice for male issue." As for what they thus read as from the Puranas, that is unauthentic.

26. Were it even authentic, still the interpretations given by some that,—"One initiated in ceremonies down to that of tonsure under the family name of the natural father bears no filial relation to the adopter; but such relation obtains, where the ceremonies commencing with that of tonsure are performed by the adopter only,"—and—"If a child, whose tonsure has been completed [by the natural father], or one past five years of age be adopted, then, his filial relation does not accrue"—are inaccurate. For, a repetition [of the same position in two sentences of the same passage] would follow;—the generally received rule, as recognized by all good persons in respect to the filial relation previous to the investiture of the characteristic thread of one also adopted under five years of age, [if unintitiated in tonsure by the natural father] would be invalidated;—and the adopter dying at that juncture, incompetency [of the adopted] to perform his obsequies would result.

27. On the contrary, this is the meaning of the passage.—FiliaL relation [to the adopter] of one initiated down to tonsure, under the family name of his natural father being first barred—on the repetition of that ceremony and the rest, such relation is exempted from the prohibition: and accordingly, since previous to the performance of tonsure and the other rites by the adopter, the servile state of one initiated [by his natural father unto that ceremony] and of him who has passed his fifth year is intimated: after the performance of that ceremony and the rest [by the adopter] filial relation to him is established. In respect to one whose initiation has not been performed [by his natural father] and a child who is under five years of age, this relation is obtained by law alone, and this is notorious.

28. Or, there may be this interpretation:—"A son [if adopted, though initiated as far as tonsure by his natural father is not a son [to such father].":—the author having thus presumed such son not to be filially related [to his natural father],—the sentence "anyataschaputrahatam yati" (meaning "and he acquires filial relation to another") is subjoined as a reason: and thus the objection that one term 'putrah' (son) and the particle 'cha' are unmeaning is obviated.

29. And thus, on account of uniformity of import with the text of Vasishtha before cited, (v § 23.) by the compound epithet 'chudadya' in the quality conveyed by which the term 'chuda' is not included, rites commencing with that of investiture for persons of a regenerate tribe would be suggested; but for Sudras marriage and so forth implied.

30. "After the fifth year." This regards a Brahmana, seeking the fruit of holiness resulting from the study of scripture. For since the fifth year only is the principal season for the investiture of the characteristic thread of one desirous of such holiness, as is shewn by this text,—"For a Brahmana desirous of holiness, resulting from the study of scripture, the fifth year, &c."—the passage in question has the same foundation. But for one not so desirous,—"after the eighth year, the adopter, &c."

31. [In adoption] respect should be shown to the several principal seasons, for the performance of the upanayana rites of the Kshatriya and the Vaisya respectively. For he only, to whom authority, produced in the principal season might have attached, is capable to perform such initiatory rite at a secondary season [if not qualified by the renewal of the ceremony of tonsure, preceded by a sacrifice for male issue.]
This was before declared (v § 23).—But in regard to tonsure, attention to the secondary season may be observed on account only of express passages of law.

32. 'Sacrifice for male issue.' Since, a person of the three first tribes only is competent to perform this by such person, the filial relation must be completed through the rites of tonsure and the rest, preceded by a sacrifice for male issue. But by a Seda, the same even [is produced], through the rite of marriage alone—Thus the whole is unimpeachable.

33. And thus, the practice of all the ancients even in respect to the ADOPTION of a son UNLIMITED TO any particular TIME is upheld. For, the construction suggested [by us of the supposed extract from the puranas] is self evident.

34. Also in the same manner under the second interpretation, (§ 28) the exclusive filial relation to the natural father, of the adopted son, whose tonsure has been completed, having been first barred by the conjunction 'and' in the sentence,—“and he acquires filial relation to another”—a common relation to the natural and adoptive fathers is obtained; on account of both even having performed initiatory rites: and this must be understood where there may be a stipulation to this effect between the two.——"This is son to us both," and such only is called a Dvayamushyayama having two fathers, and belonging to two families.

35. But is it not seen that the Kahetraja or son of the wife only is son of the two fathers? Accordingly Harita,—("The husband] living, [at the time of the appointment] they call [the offspring of the same] the son of the wife: for [the natural father] has no control over him. Were he dead [at such time,] they call him Dvayamushyayama: for there can be no doubt as to who was the natural father," Manu says, "But the owners of the seed and of the soil may be considered in this world as joint owners of the crop, which they agree by special compact, in consideration of the seed to divide between them.——The special compact proposed is a stipulation between the owners of the seed and soil, both destitute of male issue, to this effect.——'Mine is the soil, thine the seed: the offspring produced shall belong to both.' Conformably, there is this text,—"A son begotten by one who has no male issue on the wife of another man, under the legal appointment, is lawfully heir and giver of funeral obligations to both families."—But this relationship in question does not appear to apply to the son given; on the contrary, the following passage of Manu before cited is conclusive even of an opposite meaning. "A given son must never claim the family and estate of his natural father."

36. Should this be contended, it is wrong; the relation to both fathers of the son given also is established: since by referring to this text of Baudhayana,—"What is declared in respect to one even of many, regulated by the same law, let him perform that for the whole even. They are considered of the same description,"—the rules regarding the son of the wife are obtained in respect to the son given and the rest likewise:—and the following text has a general application in the Pravaradhaya of Sankhya—"He should perform two funeral repetitions, or at one, contemplating them separately, he should designate at each obligation, both the adoptive and natural fathers; together with the two ancestors in immediate ascent above each."

37. Accordingly Satya-shadha by the compendious rule,—"of absolute Dvayamushyayanas of both, &c."—having propounded a relation to both families (including the patriarchal saints) of absolute Dvayamushyayanas, who are sons of the soil, applies by analogy, the rule regarding these [to sons given and the rest] by another aphorism, commencing,—"of sons given and the rest, like the Dvayamushyayanas, &c."—and this is explained by the commentator:—"Treating on absolute Dvayamushyayanas, the author mentions those incompletely so,—'Of sons given and the rest, &c.' unto these only, not to issue beyond, [does the connection to both families extend.] If the initiatory rites are performed by the first only [the family is his:] but if by the adopter, that of the latter on account of priority. Through him only in the case of descendents beyond, [the family is determined.]"

38. The intent of this explanatory passage is this.—As in the case of the son of the wife,—should there be an AGREEMENT between the two, the adopted son participates in the family of both: otherwise where the whole of the INITIATORY RITES have been PERFORMED BY THE NATURAL FATHER
only, he shares the family of such father; but in the case of the initiation being PERFORMED BY the ADOPTER, in that of the latter,—that is the adopter, on account of 'priority,'—meaning superiority. 'Through him only, in the case of descendants beyond, the family is determined.

39. Accordingly Paithinisai. Those sons given, purchased, made, and the son of an appointed daughter, who are in such case affiliated through the adoption of a holy saint by another, are sons of two fathers.'

40. The meaning is. Where a mutual agreement between the natural father and adopter exists: [those affiliated] through the adoption of a holy saint, that is, one propounded by a holy saint, are Dvayamushyayanas.—This is clearly declared [in the prayoga-parijata]. "Sons given, purchased, and the rest are sons of two fathers; their marriage may not take place in either family even, as was the case of Sringa Saisira."

41. The state of a son given as Dvayamushyayana, cannot obtain since, the property of the natural father in such son not being extinguished, the rule for the gift propounded in the text,—"Whom the father or mother may give, &c."—would be unmeaning.

42. This must not be affirmed. From gift, preceded by an agreement, such [as that premised.] in the case in question even, the common relation [to both fathers.] of such given son is established; like the property of the owner, (since he himself is one of the objects), in water made common, (as a river, and so forth), by a relinquishment, allowed to its such passages, as that subjoined), the object of which, is every creature: and which extinguishes the peculiar property of the individual himself. "This water is relinquished by me as common to all beings, let all creatures enjoy it by bathing, drinking, and immersion." Enough has been said.

SECTION III.

Funeral rites performed by the absolutely adopted son,—by the Dvayamushyayana—Relation of Sapinda, in the families of the adoptive and natural fathers respectively.

1. Next, the funeral rites performed by a son given are determined. In respect to these, although the son given be first adopted, yet the legitimate son existing, he is not competent to officiate in the sixteen funeral repasts, ending with the Sapindakarana; for his superiority in rank is barred by Devala [who says.] "A real legitimate son being subsequently born, superiority of rank from age does not vest in them." And a text of Yajnavalkya recites; "Amongst these, the next in order is heir and presents funeral oblations, on failure of the preceding. Otherwise the adopted son in every respect resembles the real legitimate one.

2. A special distinction obtains at the funeral repast on the anniversary of the day of death. Accordingly Jatakarma. "Annually (pratyadha) let the son of the wife and legitimate son perform [obsequies] according to the Parvana form: the other ten sons should perform a rate dedicated to a single ancestor."

3. 'The other ten,'—the son given, and the rest.

4. Parasara likewise.—"[A funeral repast,] by the legitimate son for a father who has departed this life, on all occasions is in honor of three ancestors: that, by those belonging to more than one family, (aneka-gotra) is consecrated to a single ancestor, on the anniversary of the day of death."

5. "By those belonging to more than one family."—Meaning those belonging to two families.

6. The legitimate son, and the son of the wife also, if they preserve a consecrated fire, are competent to perform a Parvama, or double rite. For, the text of Javala,—"By one preserving a consecrated fire, the funeral repast is to be performed always after the Parvama form'—corresponds with the Matyta-Purana. "By those, other than the real legitimate son, and the son of the wife indifferently, whether they do or
do not preserve a consecrated fire, a rite in honour of a single ancestor is to be performed. This is an established rule.

7. An aphorism of Sankhayana propounds a distinction in respect to the observances prescribed for the Dhyamshayana. “Having duly performed the preparatory ceremonial called avanejana, where there may be a diversity of fathers, both at each oblation.”

8. Where there may be a diversity of fathers at each oblation, both the natural father and the adopter, — “let him celebrate” as is understood.

9. In the Pravaradhya also. “Those, who are begotten by a paternal uncle, for the obsequies of a single person, are the sons of the adoptive father only. Then, if there be no issue begotten on their [the natural fathers’] wives, let [the sons begotten on the wives of others], take the estate and offer in their honor oblations, consecrated to three ancestors, if however, there should be [such issue] still, such sons should present funeral cakes to both even. According to the text of a venerable aim, [the adopted son] should perform two funeral repasts, or at one, contemplating them separately, he should designate at each oblation, both the adoptive and natural fathers; together with the two ancestors in immediate ascent above each.”

10. The meaning is;—Where there may be no express agreement on the part of the adoptive father [that the adopted sons shall belong to both] and [the natural father] may not have other offspring: and where there may be such agreement by that person, and such offspring may exist, relation to both fathers obtains. In the passage cited, an option in respect to performing distinct funeral repasts or otherwise is contained.

11. Nor does this [merely] refer to the son of the wife; for by the compendious rule of Satya-shadha,—“of sons given and the rest like the Dhyamshayana, &c.”—the rules regarding such son are shewn to be applicable, also to the general adopted son who may be son to two fathers.

12. Accordingly Hariha. “Of these, in the first place, the tutelary saints of the natural father [are those of the adopted son]. He should perform two several sets of funeral oblations, each consisting of two; or designate both in each (eka) oblation [of one set]: his son—in his second, his grandson, in his third [should do the same]. Some hold three to be partakers of the wipings; others, that they extend to the seventh degree.”

13. Of these—That is from amongst these fathers, in the first place the set of tutelary saints of the natural father—in the second that of the husband of the wife [are those of the adopted son who] has thus two sets of tutelary saints.—“In each (eka) oblation”—a repetition [of the word ‘eka’] is understood on account of the text of Apastamba. “If son to both fathers, he should designate both at each several oblation.”—In his second] at his oblation to his grandfather, the son of the Dhyamshayana. “In his third.” That is,—at his oblation to his great-grandfather, the grandson of the Dhyamshayana.

14. But, if the adoptive father died first, [the son] should present the oblation [first] to him; if the natural father then to the natural father; should both have died [at once], then let him present first to the natural father and last to the adoptive. Marichi declares this: “Who may be procreated on a widow by a kinsman or one unrelated should first present the oblations to and perform the observances of the funeral repast in honour of the adoptive father, and after this to the natural father. If in any instance the adoptive father should survive [the natural one], let the issue present [the oblations] first to the natural father: but the same must be given [to him] last [should he survive: but the adoptive father being dead. If both may have died [together, the oblation must be given] first to the natural father: after him the son should present the same to the adoptive father. Should it not be first offered to the natural father, it does not endure.”

15. By this, the performance of a parvama rite, by the son of both fathers, on the death of either even is shewn.
16. In the same manner, by parity of reason, where there may be a diversity of mothers, the sires of the natural mothers are first designated by a son, who is son to two fathers, at the funeral repast, (suggested by the passage subjoined) in honour of the maternal grandsires: subsequently, the sires of her, who is the adoptive mother—"Where the paternal sires are honoured, there certainly are the maternal."

17. But the absolutely adopted son presents OBLATIONS to the Father and the other Ancestors of his adoptive Mother only; for he is capable of performing the funeral rites of that mother only: and thus, in conformity with the spirit of the sentence, "He is [destined] to continue the line of his ancestors," which is subjoined as the reason, [in the text of Vasishtha], the prohibition [therein],—"let not a man give an only son," refers to an adopted son, otherwise than the Dyramushyans, or son of both fathers; for [where the adopted son is such,] no extinction of lineage ensues, as has already been declared.

18. The relation as SAPINDA, is next considered. This extends THREE DEGREES; in the Family of the natural Father, by reason of consanguinity; and in that of the adopter, through connection by the funeral cake.

19. This Karshanjini declares—"As many as there may be degrees of fore-fathers: with so many, their own forefathers, let sons given and the rest associate, the deceased. In order, their sons with two fore-fathers, their grandsons with (samam) one [should do] the same,—The fourth degree is excluded. This [relation of sapinda] extends to three degrees."

20. This is the meaning of the text, according as the deceased adoptive fathers may be sons legitimate, adopted [absolutely], or of two fathers: as many as there may be degrees of fore-fathers, three or six, with so many, let sons given, and the rest associate them; that is—connect by admixture of funeral cakes.—Of the cases in question, where the adoptive fathers are real legitimate sons [the fore-fathers, with whom their association is to be made], are three, viz., the father, paternal grandfather and great-grandfather; where sons adopted absolutely, three, viz., their adoptive father, grandfather and great-grandfather; and were sons of two fathers, six, viz., their natural father and the other two, and their adoptive father, and the other two.

21. And thus it is intimated, that those who are the revered objects, contemplated at a varvama rite, performed by the adopted son himself are the same at the sapindikarana ceremony also celebrated for the adopted son by his own son: and the sons of an adopted son should perform his sapindi-karana with his adopter, and two out of the three forefathers of this latter.—And in the same manner the grand sons of the adopted son should perform the same—[that is, the association of their own fathers, by admixture of funeral cakes with—(for 'sama' is used by Karshanjini in the sense of this preposition,) the adopted son, the adopter, and one out of three fore-fathers of that person; viz., the father of the adopter.

22. 'The fourth degree is excluded.'] Whatever person, at any time, performs the ceremony of sapindi-karana for any one does the same with three fore-fathers only of that individual;—by this, [which is the meaning of what preceded the passage cited] the exclusion of the fourth degree is established. The propounding the same position, [by the passage in question,] in conformity with the rule of logic,—"a position having been established, its re-introduction is for the sake of a peremptory rule"—is meant to bar the relation as sapinda [to the adopted son], of those who (in the case of a real legitimate son,) would have partaken of the wipings of the obligations; by reason of their being precluded therefrom [in the present case]. The author declares this very position [in subjoining] 'this:' that is 'this relation of sapinda, &c.'

23. And thus, the general relation of Sapinda, extending to the seventh degree which is propounded in the Malayapurana, in the text subjoined, is barred by the special rule in question.—'The fourth and the rest in ascent are the partakers of wipings, the father and the others participate in obligations of food, the seventh presents the same.—The relation by obligations of food of these, extends to the seventh degree.' Consequently, the contrary doctrine suggested by Harita, in this passage, "They propound the partakers of the wipings to be three, or according
to some, they extend to the seventh degree"—is consistent, [as the opinion of the
opinion of the correct doctrine.]

24. This very position is elsewhere compactly declared—"But of adopted sons,
the relation of sapinda extends to three degrees, in the family of the natural father;
and in like manner in that of the adopter, this is a fixed rule."

25. This relation of sapinda extending to three degrees in both families,
is propounded in respect to the SON OF TWO FATHERS: for his performing
the ceremony of association by admixture of funeral cakes, with two sets of
three ancestors is declared [by Karshnajini.] But the connection by funeral
oblations of the absolutely adopted son obtains in the family of the adoptive
father only: on account of the extinction of the funeral oblation of him, who
has given away his son, intimated in the following text of Manu, before cited—
"A given son must never claim the family and estate of the natural father; the
funeral cake follows the family and estate: but of him, who has given away his son,
the obsequies fail."

26. "The sons given, purchased, and the rest who are adopted from those of his
own general family by observance of form acquire induction into FAMILY [OF the
ADOPTER].—But the RELATION OF SAPINDA is not included." The meaning is—sons given,
and the rest though adopted from those of his own general family by the observance of form only, participate in the family [OF the adopter].
But the relation of sapinda is not established in them: and such relation not obtaining
in those belonging to the same general family, of course, it cannot subsist in those
of a different general family. As for this text of Vridhha Gautama, it is prohibitory
of the relation of sapinda extending to seven degrees, which might be inferred from
analogy to the real legitimate son: or it bars the impurity for ten days and so forth,
raising from the relation of sapinda.—But it does not prohibit totally such relation
on account of the several texts before cited.

SECTION IV.

The impurity of the adopted son on occasions of birth and death—
His marriage.

1. Next the impurity and so forth of the adopted son [on occasions of birth and
death] is determined. In respect to this topic, [it is to be observed, that] there
is no reciprocal impurity of the absolute adopted son in the FAMILY [OF the
NATURAL FATHER; for relation to his family and the presenting in his honour,
funeral oblations being barred, the extinction of uncleanness is an obvious conse-
quence. But the impurity of the Dyamushyasayas, is in both families.

2. In the Brahma-purana [it is written.] "the son given, the son self-given,
the son made, as well as the son purchased and the deserted son, who are always
to be cherished, belong to a different family present distinct obligations,
and perpetuate a different lineage, and on occasions of birth and death, become im-
pure for three days."

3. Parasara. "On occasions of birth and death, impurity for three days is
ordained for him, who, whether of a different or of the same general family by the
will [OF the adopter] is initiated and adopted."

4. "So also, excepting the legitimate son on the death and birth of the son of
the wife and the rest, a general impurity, lasting three nights, always take place in every
tribe. This is a settled point."

5. 'Always'—subsequent even to the investiture of the characteristic thread.
As the relation of one, though of the same general family, to the family of his adopt-
tive father is attained through the observance of form, after the previous extinction
of relation to the family of his natural father; there is no distinction between an
adopted son of a different general family, [and one of the same.] Therefore, the
uncleanness for three days propounded in the text in question [indifferently for either] is even proper.

6. Thus, where the adopted son may be unmarried, the offence of parivedana is not incurred by the marriage of a legitimate son subsequently born: nor is there any objection against an adopted son marrying before his elder whole brother.

7. But since the extinction of his relation by oblations of food in the family of the natural father is shewn, the MARRIAGE of an absolutely adopted son, might take place therein: and the marriage of a Dryamushayana with the issue of a female removed in relation more than three degrees would be proper.

8. It is not so; for in the text of Manu, subjoined of which (on account of the conjunctive particle 'and') the construction is—' who is not connected as Sapinda, to his father [as well as mother ;']—the term 'father' is used to exclude [from marriage,] a female related as Sapinda to and belonging to the general family of the natural father also of an adopted son, although exclusively belonging to the family of his adoptive father.—' She who is not connected as Sapinda to his mother and father, and not belonging to the general family of either, is approved amongst twice born men for es; ususal and connubial intercourse.'

9. Nor must it be argued that, still, where the father of the adopted son might himself be an adopted son, there would be no reason barring the marriage with a female removed in relation to such father beyond the third degree; since her relation as Sapinda to, and being of, the general family of the father are wanting. Because, the relation of Sapinda in question does not apply to marriage: but is an universal relation of that denomination, predefined as extending to the seventh degree in the line of the father and to the fifth, in that of the maternal grand-father. —Thus there is no inconsistency. These several descriptions of relations of Sapinda will be enlarged on in their appropriate places respectively.

SECTION V.

The succession by inheritance of adopted sons lineally and collaterally—in the case of Sudras—of the Dryamushayana.

1. The inheritance of the adopted son is next propounded. On this subject Vrihaspati says,—" The real legitimate son alone is master of the paternal estate: for the sake of affection, let him allow subsistence to the rest."

2. 'The rest.'] Those who are excluded from participating in the estate—'Affection.'—'Love.'—'Subsistence.'—'Alimony.

3. Yama also.—" Sons are pronounced by intelligent saints to be twelve: of these, six are kinsmen and heirs; and six kinsmen but not heirs. Those versed in the distinctions of class declare that the first is the one begotten by the man himself; the second, the son of the wife; the third, the son of the appointed daughter; the fourth, the son of the twice-married woman; the son of the unmarried daughter is considered the fifth: and [the sixth,] the son secretly born in the man's house. These six present funeral oblations: the son deserted, and the one received with a pregnant bride, the son given, and the son made, and fifthly, the son purchased, and the son presented by himself. These six, whose filial relation proceeds from an overt act of acceptance are kinsmen but not heirs."

4. Narada. " The real legitimate son; the son of the wife by appointment; the son of an appointed daughter; the son of an unmarried daughter; the son received with a pregnant bride; the son of hidden origin; the son of a twice-married woman; the deserted son; the son given; the son purchased; the son made also; and the one given by himself; these are declared to be the twelve descriptions of sons. Of these, six are heirs to kinsmen and six not heirs to kinsmen. Each according to priority in order is considered as superior; and the last successively as inferior. On the death of the father, according to their order they succeed to his estate.
The meaning is on default of each proceeding, the next succeeding in order is entitled to the property.

6. After having previously enumerated as sons, the real legitimate son of the wife, the son of an appointed daughter, the son of a twice married woman, the son of an unmarried daughter, the son of hidden origin, the son reared with a pregnant bride, the son given, the son purchased (the son made), the son self-given, the desired son, and the son obtained in any manner whatsoever; Visnu adds "of these, the first in order respectively is the most worthy; he only is entitled to the estate; but he should support the rest."

7. After having enumerated, the legitimate son, the son of the appointed daughter, the son of the wife, the son of hidden origin, the son of an unmarried daughter, the son of the twice married woman, the son given, the son purchased, the son made, the son self-given, the son received with a bride, and the deserted son. Yajnavalkya subjoins: "And if rejected these, the next in order is heir, and presents funeral oblations on failure of the proceeding."

8. Manu. — "Not brothers nor parents; but sons are heirs to the deceased."
And again, "On failure of the best and of the next best, let the inferior in order take the heritage; but if there be many equal, let all be sharers of the estate."

9. 'Equal.' — In respect to virtue or quality as being legitimate, the son of the self or wife and so forth. — 'Of the best.'—that is of the legitimate son and the others. — 'The inferior in order, the less worthy.'—Meaning the son of the wife and those following.

10. The same author. — "The son of the body and the son of the wife may succeed to the paternal estate; but the ten other sons can only succeed in order to the family duties and their share of the inheritance." Harita. — "The son begotten by the man himself, the son of the wife, the son of the twice married woman, the son of the appointed daughter, and the son of hidden origin or kinsmen and heirs. The son given, the son purchased, the son deserted, the son received with a pregnant bride, the son self-given, and the son any how obtained are heirs but not kinsmen."

11. Manu. — "Of the twelve sons of men, whom Manu sprung from the self-existent has named, six are kinsmen and heirs: six not heirs, but kinsmen. The son begotten by a man himself, the son of the wife, the son given, the son made, a son of concealed birth, and a son rejected, are the six kinsmen and heirs. The son of an unmarried daughter, the son of a pregnant bride, the son bought, the son of a twice married woman, the son self-given, and the son by a Sudra are the six kinsmen but not heirs.

12. Bandhayana. — "He pronounces the real legitimate son, the son of an appointed daughter, the wife's son, the sons given and made, the son of concealed origin, and the deserted son also participants in the estate, the son of an unmarried daughter, the son received with a pregnant bride, the son bought, the son of a twice married woman, also the son self-given, and the Nishada, or son of a Sudra, he pronounces partakers of the family."

13. This declaration, that the son of the unmarried daughter and the rest participate in the family only, is for the sake of barring their taking a share of the heritage, where, one even of the others before enumerated, viz. the real legitimate son and the rest may exist.

14. Vasiṣṭha having previously mentioned, the son received with a pregnant bride, the son bought, the son self-given, the deserted son, and the son by a Sudra woman: and alluding to the legitimate son, and the rest in another place s-ya: "Where there may be no heir to a person of any of the tribes, let these take the heritage."

15. Devala having recited the real legitimate son, the son of an appointed daughter, the wife's son, the son of an unmarried woman, the son of secret origin, the
deserted son, the son received with a pregnant bride, the son of a twice-married woman, the son given, the sun self-given, the son made, the son purchased adds: "Those twelve are pronounced sons for the sake of issue: some are sprung from himself; some from another also; some acquired by [an overt act of adoption]: and others filially related independent thereof. Of these, the first six are kinsmen and heirs [to collateral], the rest are so merely to the father: and a special rule obtains, according to the priority in rank of the sons: all these sons are considered as heirs, to one having no real legitimate son; but should a son be subsequently born, no right of primogeniture attaches to them. Of these, those who are equal in class take a third share; but those inferior in rank should live in subjection to one of equal rank receiving maintenance."

16. Katyayana—"If a legitimate son be born, the rest are pronounced sharees of a third part provided they belong to the same tribe: but if they be of a different class, they are entitled to food and raiment only. In some copies the reading is—are pronounced sharers of a fourth part."

17. Vasishtha.—"When a son has been adopted, if a legitimate son be afterwards born, he shares a fourth part provided [the estate] may not have been expended in acts of merit."

18. 'He'] the adopted son. 'Provided' the whole estate (which is understood) may not have been expended by the legitimate son in acts of merit,—that is, in sacrifice and so forth.

19. For the sake of removing the conflicting contradictions of SEVERAL VARYING TEXTS texts of Manu and the rest, the following INTERPRETATIONS are offered on these texts. The declaration in Vrihaspati's text, that the real legitimate son succeeds exclusively to the estate, and that the rest are entitled merely to subsistence, regard such sons of the wife and the rest who are unequal in class, on account of uniformity with text of Katyayana and Devala. And the rule also in the texts of Narada and the rest, for the succession of the son given and the rest for the estate, on default of the son of the wife, and the rest, regards their succession to the whole estate, and therefore the rule for the fourth of the share of the real legitimate son propounded by Vasishtha, where such son may be born subsequent to the adoption of a son given must be understood as applying to a son given.

20. So also the rule for succeeding to a third share in the texts of Devala and Katyayana, must be alleged to refer to a son given, endued with eminent qualities, on account of uniformity with the following text of Manu.—"Of the man to whom a son has been given, adorned with every quality that son shall take the heritage, though brought from a different family"—1 With every quality] class, science, observance of duties.

21. Others affirm it must apply to the son of the wife in conformity with this passage in the Brahma Purana: "Let the real legitimate son even, who is subsequently born enjoy the whole estate—the son of the wife takes a third share, the son of an adopted daughter a fourth."

22. In the same manner the doctrine of one holy saint that the son given is an heir to kinsmen,—and that of another, that he is not such heir,—are to be reconciled by referring to the distinction of his being endued with good qualities or otherwise. By reason of succeeding to the estate of sapinda kinsmen, as well as to that of the father, he is [argued by the one to be] heir to kinsmen; and on account of the particle 'only' in the phrase "of the father only" (occurring in the passage subjoined) from inheriting merely of the father, he is [argued by the other, not to be] such heir.—"Of these, the first six are heirs to kinsmen: the other six of the father only."

23. And thus [the objection of] variation from the son given being enumerated higher and lower in the order of inheritance, and so forth, by different holy saints respectively, is obviated by the distinction as to his qualities good and bad.

24. Therefore, by the same relationship of brother, and so fourth, in virtue of
which the real legitimate son would succeed to the ESTATE of a BROTHER OR other KINSMEN, where such son may not exist [the adopted son] takes the whole estate even.

26. Since it is a restrictive rule, that a grandson succeed to the appropriate share of his own father, the son given, where his adopter is the real legitimate son of the paternal grandfather, is entitled to an equal share even with a paternal uncle, who is also such description of son; therefore, a grandson, who is an adopted son may [in all cases] inherit an equal share even with an uncle.—This must not be alleged, [as a general rule]. For, there would be this discrepancy: where the father of the grandson were an adopted son, he would receive a fourth share; but the grandson, if he were such son, [of him] would receive an equal share [with an uncle in the heritage of the grandfather]. And accordingly, whatever share may be established by law, for a father of the same description, as himself; to such appropriate share of his father, does the individual in question, [viz. the adopted son of one adopted] succeed. Thus what had been advanced, only is correct. The same rule is to be applied by inference to the great grandson also.

27. But, although the son of the wife, the son given, and the rest may succeed to the general estate, their non-succession to EMPIRE is advanced.—Thus it is ordained in the Vedas—"The legitimate son, the son of the wife, the son given, the son made, the son of concealed birth, and the son rejected, take shares of the heritage. The son of an unmarried girl, the son of a pregnant bride, the son bought, the son of a twice-married woman, the son self-given, and the slave's son, those six are contemptible as sons: on failure of the first in order respectively, let him invest the next with filial rights. But let him not appoint to the empire the son of a twice-married woman, nor a son self-given, nor one born of a female slave." In the same authority also—"Let not the king invest in the empire the wife's son and the rest: [nor] cause to be completed through such sons the solemnities for his fore-fathers, a legitimate son, existing."

28. It is replied—If another ordinance of law exist, a special rule for the sake of convenience [must be construed] as conveying even the same meaning. Therefore, the first passage cited, which is declaratory of the right to succession of the next in order, on failure of each preceding extends even to the whole empire, as conforming with the texts of Narada and the rest before mentioned; and the latter passage prohibits the equal participation of the son of the wife and the rest, if a legitimate son exist, or if it refers to a son of the wife and the rest unequal in class: otherwise it would be vexations were adverse meanings deduced from each passage. But if however this is admitted [and disregarded,] then [we allege] that by the passage in question, the appropriate shares of the son of the wife, the son given and the rest respectively are not forbidden if a real legitimate son exist; but the investing such son with empire is ordained [by that author] after having previously barred the same in respect to those sons, in case of the existence of a real legitimate son.

29. Thus, the son of the wife, the son given, and the rest receive the share prescribed for them by the general law. For grounds for contracting the operation of the same, are wanting; nor does the particular passage in question obstruct its operation: for that relates to a different subject. Accordingly, their right to inherit is clearly laid down in the preceding passage.—"Take shares of the heritage." Nor can it be said they participate [merely] in the estate other than the empire. For the empire also is treated on in the passage in question. The exclusion of the son of the twice-married woman and the rest from the empire, although each preceding in order may have failed, is in virtue of a distinct provision in respect to them.

29. The mode, however, of partition between the son of the wife, the son given and the rest and the legitimate son, which has been propounded in what preceded does not apply to the SUDRA TRIBE.

30. Since, in the following texts of Manu and Yajnavalkya respectively, a share equal to the tof the real legitimate son is prescribed for the SON even BY A FEMALE slave of a man of the class in question; and the co-heirship with the daughter's son of such son only when having no brother is intimated; the equal partition of the son of the wife, the son given and the rest, with the real legitimate son whilst the father lives and their succession to the moiety of the share of such son, where the
father may be dead at the time of partition, follow a fortiori. — And otherwise there would be a great inconsistency if, where the son of the wife, the son given, and the rest took the fourth of the share of the legitimate son, the son by a female slave, whose title is infinitely inferior in respect to these, were to take an equal share, the legitimate son. Manu — " But a son, begotten by a man of the servile class, on his female slave or on the female slave of his male slave may, by permission, take a share of the heritage. Thus is the law established. Yajnavalkya: " Even a son, begotten by a Sudra, on a female slave may take a share by the father's choice. But if the father be dead, the brethren should make him partaker of the moiety of a share; and one who has no brothers, may inherit the whole property, on default of daughter's sons."

81. If according to this authority, where there may be no son of the wife and the rest, but there may be a wife and daughters, the daughter's son be entitled to share [with the son by a female slave]; the rule for the succession of the daughter [or other proper heir] would be infringed; therefore, if any even in the series of heirs down to the daughter's son exist, the son by a female slave does not take the whole estate; but on the contrary shares equally with such heir.

82. Accordingly, the text subjoined must be construed as referring merely to Sudras. "A son given being thus adopted, if by any chance, a legitimate son should be born, let them be equal partakers of the father's estate." So also in the following text, the equal participation of all lawfully begotten Sudras having been first pronounced, the succession to equal shares of the other sons likewise is subsequently declared by the sentence, ("if there be an hundred sons") occurring therein. "For a Sudra is ordained a wife, of his own class and no other. Those begotten on her shall have equal shares; if there be an hundred sons [the same mode of partition shall obtain]." If the sentence in question be referred to the real legitimate son only, the position contained in it being obtained from what preceded, its repetition would be unmeaning.

83. The son given, who is a DvyaMushhayana if both his adoptive and natural fathers have no other male issue, takes the whole estate [of both]; one adopted, where legitimate issue [of the adopted] existed does not participate [in the estate of the adopter]; but a legitimate son being born [to the natural father] subsequent to the adoption, [the adopted son] takes half of the share of a legitimate son. If [however such issue be subsequently born to the adopter, the adopted son in question] takes half of the share which is pre-cribed by law for an adopted son, exclusively related to his adoptive father, [where legitimate issue may be subsequently born to that person.]

34. The Pravaradhyaya declares this—"Should they have no offspring begotten on their wives, [the adopted sons] take the whole estate."—A text of Narada also [declares] "Let those, being sons to both fathers, present separately to each, obligations of food and water; they take the half of a share in the estate of the contributor of the seed and owner of the soil." It has been before said, that the terms contributor of the seed and owner of the soil are illustrative severally of the natural and adoptive fathers.

SECTION VI.

Exclusion from inheritance, in what cases.

1. As sons blind, lame, and so forth do not inherit—and since it is ordained that their legitimate son and son of the wife only participate in the estate of the paternal grandfather; a son given, or other description of son, adopted by such persons, have no right to the estate of the paternal grandfather, but to maintenance only. For alimony being provided for the wives of persons blind and so forth, maintenance for their adopted sons is inferred a fortiori.

2. So also having previously declared sons blind, lame and so forth not to be
Dattaka Mimansa on Adoption.

1. Having prostrated himself before Vinayaka, whose two feet are to be adored by the world, Nanda Pandita argumentatively discusses the subject of adoption.

2. By whom; how qualified; at what time; for what purpose; from whom; and who may be adopted as a son? That, on which former writers have not deliberately treated, is fully propounded here.

3. On this subject Atri says, “By a man DISTITUTEx a SON only, must a substitute for the same, always be adopted, with some one resource, (yasmat tasmat prayanatas) for the sake of the funeral cake, water, and solemn rites.”

4. A man destitute of a son (aputra.) is one to whom no son, has been born, or whose son has died: for a text of Shankha expresses. “One to whom no son has been born or whose son has died, having fasted for a son, &c.” Another reading recites. “The impotent man or also one whose offspring has died.”

5. “By a man destitute of a son, &c.” Since it is shown by this, that the being so destitute, is a cause; in omitting to adopt a son, an offence even is incurred; for the precept enjoining the production of a son being positive, it results that the contravention of it, is the cause of an offence; and on defect of any son in general, exclusion from heaven is declared in this text; “Heaven awaits not one destitute of a son, &c.” And further in the following passage, also, a son in general, is shown to be the cause of redemption from debt. “A Brahmana immediately on being born, is produced a debtor in three obligations: to the holy saints, for the practice of religious duties: to the gods, for the performance of sacrifice: to his forefathers, for offspring. Or he is absolved from debt, who has a son: has performed sacrifices: and practices religious duties.”

6. “By a man destitute of a son only.”] The incompetency of one having male issue is signified by the term “only” in this passage.

7. By this the word ‘DISTRESS’ (apat) used by Manu in the following text is explained. “Whom the father or mother during distress, may give as a son, con-
firming the gift with water, &c." And it is explained in the same manner by Aparakara. "During distress, that is, the adopter having no son."

8. Or it may be interpreted 'during distress' during a famine and so forth: as in the Mitakshara. "By specifying distress it is intimated that the son should not be given, unless there be distress: this prohibition regards the giver." Accordingly Katyayana. "During a season of distress the gift or even sale of a son may be made: otherwise the same must not be done: this is the injunction of the holy institutes."

9. Manu also: "A son of any description must be anxiously adopted by one who has none: for the sake of the funeral cake, water, and solemn rites; and for the celebrity of his name." He who has no son may appoint his daughter in this manner to raise up a son for him, &c., &c."

10. As for the instance, appearing, of the adoption as sons of Devarata and the rest by Visvamitra, and others, although possessing male issue: that from its repugnancy to the revealed law, as contained in passages before quoted (v. § 5,) must be understood, (in the same manner as the eating the haunch of a dog, and so forth,) not to imply the existence of a revelation [authorising the act.*]

11. It is not to be argued, that a revelation recorded, from recollection, does not supersede the indication of a [different] revelation: for it is of greater authority being supported by direct passages of revealed law, such as: "Heaven awaits not one destitute of male issue;" and so forth.

12. But, however, if you pertinaciously insist on the superior cogency of the indication of a revelation, to a revelation recorded from memory: then we accede that a man though possessed of male issue, may adopt another son with the sanction of such issue: on account of the revelation indicated in the following passage: "By which our father recognized we abide. We place you before us, you, we follow, &c." Neither should it be urged, that this regards the making an elder son, not the adoption of a son; for the one would be invalid if the other, may not be done. It is useless to enlarge.

13. "By a man destitute of a son." The word son here used is inclusive also of the son's son and grandson, for [through these] the exclusion from heaven, denounced in such passages as "Heaven awaits not one destitute of a son" is removed: since it is declared in the text subjoined, that the mansions of the happy are attained through the grandson and the other. "By a son, a man conquers worlds: by a son's son, he enjoys immortality: and afterwards by the son of a grandson, he reaches the solar abode."

14. Nor can it be alleged that the adoption or a son [though a grandson and his son exist,] is for the sake of the funeral obsequies; for from this text it appears the other two also are competent to perform such rites. "The son of a son and the son of a grandson like these the offspring of a brother, &c., &c."

15. 'By a man destitute of a son.'] From the masculine gender being here used, it follows that a WOMAN is INCOMPETENT [to adopt.] Accordingly, Vaisishtha ordains, "Let not a woman either give, or receive a son in adoption: unless with the assent of her husband."

16. From this, the incompetency of the widow is deduced since the assent of her husband is impossible.

17. Nor should it be argued that the ASSENT OF THE HUSBAND is requisite for a woman whose husband is living: because she is subject to control: but not so the widow, for mention being made of woman in general, dependency on control is not the cause: and [were it.] her subjection to the control of kin-men exists as shewn in the following text: "On default of these the kin-men, &c."

* It may be here observed once for all that words or sentences included within these marks or brackets [ ] are not expressed in the original, but inserted by the translator to complete the sense of the text or render it more clear.
19. Accordingly, [as appears,] from this anhorism, ("lastly of the mother, first of the father, &c.") the connection of the son affiliated, through the wife to both, is declared in the following compendious rule of Satvashadhada: "Of the son by marriage: the Kathariya or wife's son: the son made: the son of an appointed daughter: the son affiliated through the wife: the son of a marriage according to the Asura form: the son of a female given as a gratuity, [the relation of lineage] to both parents [stain-.]-" Now the connection of lineage to the father, is the filiation as his son; and such filiation proceeds from the sanction only of the father; not from the act of adoption: for the agent of that, in this instance, is the wife.

20. "The son by marriage" is the son received with a pregnant bride (Sahodha). "The son affiliated through the wife," is the son demanded by the wife (Sri-yachita) or the son obtained through the wife. (Sri-sattaka.) "The son by a female given as a gratuity," is one born on a damsel obtained, as a fee at a sacrifice. The rest are obvious. Thus expounds Savarasvami.

21. And in the case in question, the wife being mentioned as the instrumental means, a primary author of the act, is obtained; for otherwise, one accepted in adoption by the wife, being son to such his mother [only], since his connection, as lineage to her husband, would be wanting, his incompetency to perform the funeral rites of the husband would result; and no father existing, at his marriage, and aforesaid the paternal family and other particulars must of consequence remain unspecified.

22. If the case is thus, then the assent of the wife is requisite for the husband also; for the purpose of such sanction would be the same; that of the husband to the adoption by the wife—This (if alleged) is wrong; for in consequence of the superioroty on the husband, by his mere act of adoption, the filiation of the adopted, as son of the wife, is complete in the same manner as her property, in any other thing accepted by the husband.

23. Moreover Vachaspati, "Having offered a burnt offering (Hutva) with recitation: the holy words, he should take an unremote kinsman, &c." In this text the ineluctable past participle 'Hutva,' (having offered, &c.), indicating the government of both verbs, by the same agent, being used: the adoption by one only, who may offer a burnt offering. (Homa) is valid: therefore women, from their disqualification to perform such sacrament, are incapable to adopt.

24. It must not be argued, that, since under a text of Shaunaka, the employment of a priest is according to the approved doctrine, the "Homa" may be completed by his intervention; for although that were completed, still would the adoption [by the woman] be imperfect since she is not competent to perform the prayers requisite for the same.

25. These Shaunaka has specified: "And taking him by both hands, with recitation of the prayer commencing ("Devasyatva, &c."): having audibly repeated the mystical invocation, "Angad-angat, &c." having kissed the forehead of the child, &c."

26. Nor does thus the want of power of Sudras follow: for their ability to adopt is obtained from an indication [of law], conclusive to that effect, in this passage: "Of Sudras from amongst those of the Sudra class." By this Vachaspati is refuted, who says: "Sudras are incompetent to affiliate a son, from their incapacity to perform the sacrament of the Homa, and prayers prescribed for adoption."

27. Since the [only] power of widows is fixed to be that of using property during their lives, it is established that they have not power to adopt a son. But it must not be affirmed, that it follows that in the same manner women also, whose husbands are living, are incompetent: on account of their incapacity to perform the burnt sacrifice, prayers, and so forth. For, by the reservation "unless with the
assent of her husband" ability to perform what is principal [viz., adoption], being established, from their consequent power to perform what is subordinate [viz., those sacrifices], the burnt sacrifice, prayers, and so forth, might be inferred. Therefore, since by this passage ("of women and Sudras without prayers") a dispensation with respect to prayers is established, the adoption [for the women in question] would be valid without prayers; like their acceptance of any chattel.

28. Besides, this part of the text, "unless with the assent of her husband," is an exceptive exemption from the general prohibition, contained in the part preceding; "Let not a woman either give, or accept a son;" and in it, the assent of the husband is the cause. Therefore, THE WIDOW IS INCOMPETENT [TO ADOPT]; for, her husband being dead, since his assent is impossible, the exemption destitute of the cause [to give it effect], is without validity; and other means of deducing [her authority] are wanting. Thus the doctrine of every writer is rendered even consistent.

29. Nor must it be argued, that this being the case, [that is, if the widow may not adopt] her exclusion from heaven would not be obviated. For that, in the following text, is declared by Manu to be removed by devotion to pious austerity. "Like those abstemious men, a virtuous wife ascend to heaven, though she have no child; if after the decease of her lord, she devote herself to pious austerity." Thus the whole is unexceptionable.

30. "By a man destitute of a son." From the singular number being here used, it follows that, the same son must not be adopted, by two or three persons.

31. But would not thus, the law as to the son given, and the rest, being 'Dyamushayanas,' (or sons of two fathers) be contradicted? Accordingly, there is this passage of law, in the Frayogaparjata. "Sons given, purchased, and the rest, are sons of two fathers. Their marriage may not take place in either family; as was the case of Sringsa and Saisira."

32. It is not so: for, the state as son of two fathers, imports both a natural and an adoptive father; and the prohibition regards two adoptive fathers. Thus there is no contradiction.

33. The substitute is of eleven descriptions: the son of the wife, and the rest, according to a text of Manu which recites, "Sages declare these eleven sons, (the son of the wife and the rest,) as specified, to be substitutes for the real legitimate son; for the obsequies would fail (Krishalopa)."

34. Of these, those are substitutes by right even, who are related, by containing portions of either, of the husband, and wife; and the text, [of Manu] intends a restriction [as to the substitutes not so circumstanced]. Again, those who bear not such connection, are substitutes in virtue of passages of Law.

35. For instance: the son of the wife, the son of an appointed daughter, the daughter appointed to be a son, the son of an unmarried daughter (Kanina), the son of a twice married woman, the son received with a pregnant bride, the son of hidden origin, are principal substitutes, as partaking partially of portions [of the pair], from their kindred, in some instances, to their mother only, and in others in a small degree, to both parents. The son given, the son bought, the son made, the son self-given (Datta), and the son rejected, are substitutes in virtue of express texts of Law. Now, the term 'substitute' is applicable to both classes even, by reason of its frequent use [in such general sense]; in the same manner as in the passage, "He places Bricks (Srishti)" the term 'Srishti' [intends bricks generally].

36. It has been said by Medhatithi—"These cannot be substitutes: a substitute is supplied on defect of the means of completion of an act commenced.—Now a son is no such means, for, he is the primary object of the act, of the production of offspring: Hence the term Putra (son,) applies even to the son of the wife, and other adoptive sons, the designing these substitutes, is for the sake of shewing respect to the son of the body (Aurasa); for, the expression 'substitute' as current, denotes a lesser degree of benefit. To the same extent, as the real son can confer much benefit, the others are unable."
37. This must be canvassed; for, the position to be proved, being this, that the sons given and the rest are not substitutes; the cause assigned, viz., the not being the means of completing the act, of the production of a son, does not apply to the persons affected by the point to be proved: since these, as they already exist, are not liable to be produced.

38. Again, in the precept, enjoining the production of a son, the son, being the object to be produced, is no means of completion. But this is the case in respect to that precept only, not any other precept.—For, from passages of scripture such as (“or he is absolved from debt who has issue, &c.”) (v. § 5.) this precept resulting ‘Let him procure absolution from debt through a son,’ it is established, that the son as being the instrumental cause of such absolution, is a means of completion; and the instrumentality of the son, is even expressly declared by Manus, in this and other passages, “By a son, a man conquers worlds &c.” (v. § 13.)

39. If this be the case: then there may be for the sake of attaining immortality, and the solar abode, a substitute for a grandson, and great grandson—Be it so: we are in no wise affected.

40. Nor does an identity of precept follow, from both, [viz., the precept enjoining the production of a son, and that directing the attainment of redemption from debt, through a son] having a common result: for, in the same precept, the two instrumental causes, (carnal intercourse at due season, and a son,) and their several effects (a son and redemption from debt,) cannot be included: and were they, three contradictory things would become two.

41. Consequently, the son being the instrumental cause, in an act, the object to result from which, is absolution from debt: on his failure the son given, and the rest may without repugnancy, be substitutes: in the same manner, as [at a sacrifice] where the ‘Soma’ plant is wanting, the ‘patika’ is a substitute.

42. This even is made obvious, by Manus [who says.] “For, the obsequies would fail” (v. § 83.) Because the failure of these would ensue; if on default of a legitimate son, the affiliation of a substitute might not take place. Obsequies, are funeral rites, consisting in presenting oblations of food and water, and so forth. In the same manner by Atri also [it is said]: “For the sake of the funeral cake, water and solemn rites” (v. § 8.) Thus the whole is unimpeachable.

43. “There is no substitute for mastership, a wife, a son, a country, time, fire, the divinity, an act and word, &c.,” as for also the exclusion of the substitute for a son, by this text of Satyashadha; that [is propounded by the author], after having authorized to one, having no son, a substitute for the same, (in such passages as that subjoined,) for the sake of obviating, the recital of the benediction [therein alluded to].

44. He recited, for offspring, that benedictory prayer called “Jyotishmati.” Accordingly, there is this passage of revealed Law. “He, to whom no son may have been born, should recite for offspring, the prayer commencing ‘Jyotishmati.’”

45. So in the Saman Veda, in the part treating on father and son, after having by such passages as “The father of such a one sacrifices, &c.,” authorized to one designate of a son, the substitute for the same: [the subsequent prohibition] is meant to avoid, such particular passages; but not intended to exclude, in every case even, a substitute for a son; for, that would contradict the following and other passages of recorded Law: “A substitute for a son must be adopted.” (§ 3.) “To be substitutes for the real legitimate son.” (§ 33.)

46. It is next deliberated, whether this substitute for a son, who is ordained, is so, in virtue of, the precept enjoining the production of a son, or that regarding the funeral obsequies. For, allusion has been made, as to both; for instance, with respect to the precept to produce a son, by the first part of Atri’s text. “By a man designate of a son only, substitute for the same, must always be adopted,”—and with respect to the precept regarding funeral obsequies, by the concluding part of same text: “For the sake of the funeral cake, water and solemn rites.”

47. Of these positions, the first is not correct: for, there can be no substitute in
virtue of the precept to produce a son; as the son, by reason of being the object to be produced, is no means of completion.

47. Neither is the second accurate; for, a contradiction would be involved. The substitute for a son is ordained for one having no male issue: but not for general obsequies performed by such person; and exequial rites, the agent of which is a son [are ordained]; but there is no precept executed by a son, directing a substitute on his (the son's) account. Nor is there a substitute for an agent.

48. Or it also may be affirmed that the substitute is supplied, with respect to being an agent, in the performance of the Act, but not in respect to enjoying the fruit; in the same manner as in the case of the death of either of the seventeen priests engaged in a sacrifice (Satra), a substitute is supplied, with respect to being an agent in the act; so also, in the case in question.

49. This also is wrong; for, the cases are not parallel. In the instance of the sacrifice, the substitute is for one, by whom an act was commenced: but in the case proposed, since the act's commencement even, (being completely non-existent,) is impossible, how can there be a substitute? Nor is the commencement of an act, by a substitute, admitted by one versed in logic.

50. Or it may be next alleged that there is a precept regarding oblations of food, and so forth, performed only by one having no son, at his own funeral repast (Sradhha), taking place during his life. In virtue of this only, is a substitute [ordained]. This is likewise incorrect: for, if [in this case] there might be, the substitute for a son, the precept itself, regarding the funeral repast to take place during the life of the individual, would be of no effect. Besides, himself being the agent, in the performance of the funeral repast, taking place during his life; the substitute would be even for himself, not for the son: since the son [in this case] is not the agent.

51. Therefore, in virtue of the two precept first mentioned, there can be no substitute for a son. Moreover, the assigning also as a reason, "For the sake of the funeral cake, water and solemn rites" (§ 3) would be inapposite; for, it would not apply, to the person to be affected by the point to be proved. It has already been said, that exequial rites, performed by the man having no son, are not suggested.

52. The question is thus solved: "By a son, a man conquers worlds, etc." In virtue of the precept, implied in this and other texts, and supported by confirmatory passages, (such as "Heaven awaits not one destitute or a son"); on failure of the legitimate son, the son of the wife, and the rest, are ordained to be, the eleven-fold substitutes; and in the precept alluded to, an act being required to operate immediately, in completing the state of Heaven, and the son, severally, as the effect to be produced, and the efficient means: it is added "For the sake of the funeral cake, water and solemn rites."

53. The term 'always' (§ 8) signifies, that in the present case, no definite period is required, as in such cases, as [that contemplated in this passage] "The barren woman, in the eighth year, is to be superseded."

54. The funeral cake the 'Sradhha' or funeral repast.—Water that is, the presenting water in the two united palms, and so forth. Solemn rites, meaning, rites in honor of the deceased, cremation and the like. These are the cause (hetu):

55. The reason, occasioning the adoption, is the cause. This, from being used in the singular number, shows that these ceremonies collectively, are the cause, and not individually; and consequently, the meaning is, that there is not a distinct affiliation, severally for each; but one adoption only, on account of the whole; for, on default of a son, the failure of the obligation of food, and other rites, is the consequence.

56. Accordingly, Manu says "Sages declare these to be substitutes; for, the obsequies would fail (kriyalopat)." Here, this part, "for, the obsequies would fail" as a reason, subjoined on a negative hypothesis: "The meaning is,—because, if there were no substitute for a son, the obsequies would fail."

57. Or, there may be this disjunction, [of the compound term 'kriyalopat;']
58. "On failure of the son, let the wife be, &c.," although, by this and other passages, the capacity of the wife, as other [heirs] also, &c., perform the obsequies, as declared: still, it must be unquestionably affirmed, that, from the authority of such passages, as this ("Heaven awaits (not one destitute of a son)"), the mansions of the happy, attainable by obsequies, performed by a son, are not acquired by such rites executed by the wife, and the rest. For, otherwise, the wife and other heirs, of one destitute of male issue, being competent to perform rites, which would be equally effective; the specification, of failure of the son, would be unmeaning; as an alternative result, from such equality.

59. Hence, for the acquisition of some particular Heaven, to be attained by obsequies performed by a son, the substitute for a son, is indispensable. And, it is said by Medhatithi, "Now, as for the assigning there, the first gradation to the legitimate son, that, is not productive of any temporal effect, [but, on account of] excessive, spiritual benefit: to the same extent as the legitimate son, can confer much benefit, the others are unable—and 'substitute' as generally accepted, implies a diminution of benefit."

60. Kriyalopat. The 'kriya' or act, here alluded to, is from "kriyate,' what is done:—the precept [by which it is enjoined], 'offspring, must be produced.' Let there be no omission (lopa), of this.—This precept is peremptory: in some manner, or another, it must be accomplished, by the householder. Of the offspring alluded to, the real legitimate son is the first in rank; should such not be acquired, these descriptions of sons [that of the wife and the rest], must be resorted to."—This interpretation by that author [Medhatithi] alone, must be canvassed. It is said [by him], that, the precept directing the adoption of the son given, and the rest, is a substitute for that directing the procreation of a son; or perhaps that the son given, and the rest, are the substitutes for a legitimate son?

61. Of these [supposed meanings], the first is not correct: for, the substitute of an act, is forbidden, in the passage "of the divinity, fire, a word, an act, &c." Neither, is the second accurate; since it would be at variance, with preceding passages [of the same author]; such as, "These [the wife's son, and the rest] cannot be substitutes, &c."' (§ 36). For, in this passage it is declared, there can be no substitute for a son: as a son, by reason of being the object to be produced, is no means of completion.

62. Therefore, from the term 'kriya' [in the expression 'kriyalopat'], the precept to produce a son cannot be inferred; but on the contrary, funeral rites alone must be understood; on account of unity of import with the text of Atri, which expresses: "For the sake of the funeral cake, water and solemn rites." It would be useless [to enlarge.]

63. 'Prayatnasas' (resource). The affix 'tasil' of the fifth case, is used to form this word, for the sake of agreeing in construction, with the preceding terms "yasmat tasmat" (with some one); and consequently the meaning is, that by some one resource (or mode) whatsoever, a substitute for a son is to be affiliated.—And, although in that text, any resource in general, is mentioned, still, since eleven descriptions of sons have been ordained, eleven resources only are recognized.

64. "Sons of many descriptions, who were made by ancient saints cannot now be adopted by men; by reason, of their deficiency, of power, &c." On account of this text of Vrihaspati, and because, in this passage, ("There is no adoption, as sons, of those, other than the son given, and the legitimate son, &c.") Other sons, are forbidden by Saunakas; in the kali or present age, amongst the sons however, [who have been mentioned], the son given, and the legitimate son only, are admitted.

65. The term "given" in conclusive also, of the son made (Kritrima) on account of a text of Parasara, on the occasion of treating on the law of the kali age, which expresses, "The son of the body, (aurasa), the son of the wife, also, the son given, the son made, &c."
66. Nor, is it to be argued from this, that, in the kali age, there may be the son of the wife [technically so called]: for, such is forbidden, by the mere prohibition, against the appointment in that age, [of a wife to raise issue to her husband by another.]

67. Should it be contended, that, then an option would proceed, from the wife's son, being ordained, and forbidden [by different authorities]. It is wrong, for many objections would be the consequence.

68. Again, if it be asked, in what light then, the mention of the son of the wife, in this passage, [must be regarded] ? We reply, as an epithet of Aurasa, (the son of the body). Accordingly Manu says: "Him, whom a man has begotten on his own wedded wife, let him know to be the first in rank, as the son of his body, (Aurasa)."

SECTION II.

Who is to be adopted?

1. Of these two: the rules regarding the 'Dattaka,' or adopted son, are now propounded. The three points, on this subject, to be considered, are,—who is to be adopted? how qualified? and in what manner?

2. As to the first of these points, Saunaka has declared: "The adoption of a son, by any Brahmana must be made from amongst 'Sapindas' or kinsmen connected by an oblation of food; or, ON FAILURE OF THESE, AN 'ASAPINDA' or one not so connected, may be adopted otherwise let him not adopt."

3. "From amongst 'sapindas' "—That is, from amongst such kinsmen, extending to the seventh degree inclusive: and the term being used in its general sense, it follows—from amongst such kinsmen belonging to the same or a different general family (gotra)."

4. Of these, with respect to the being of the same general family, this text of Vṛddha Gautama, is an authority—"The sons given, purchased, and the rest, who are adopted, from those of his own general family, by observance of form, acquire the state of lineage (gotrama) [to the adopter]. But the relation of sapinda, is not included."

5. State of lineage (gotrama) [that is, the condition of offspring (santatitva)]; for, a passage from the Kalika Purana recites—"Sons given, and the rest, though sprung from the seed, of another, yet being duly initiated [by the adopter], under his own family name, become sons [of the adoptive parent]"—and in the Trikanda or vocabulary, of Amara Sinha, the terms 'santati,' and 'gotra,' are exhibited with others, as synonyms signifying 'race or lineage.'

6. Nor, by the term 'gotrama,' is connection by the same general family, declared: for, the declaration would be unnecessary, as that connection is obvious, from the affiliation, taking place only, from amongst those of the general family, of the individual himself.

7. "But the relation of sapinda is not included"—By this, in the case of the affiliation, of one not being a 'sapinda,' such connection, as extending to both the fifth and seventh degrees, is barred.

8. With respect to the affiliation, of one, belonging to a different general family, the following passages, severally, from Manu, and Vrhat Manu, are authorities. "A given son, must never claim the family, and estate of his natural father, &c." "Sons given, purchased, and the rest, retain relation of sapinda, to the natural father as extending to the fifth and seventh degrees:—like this, their general family, [which is] also, that of their adopter."

9. That, which has been explained, is the primary class: in case, [the adoption]
cannot be made from this, the author [Saunaka] propounds a subordinate class; "on failure of these, an 'asapinda,' etc." "On failure of these,' that is of the sapindas, kinsmen connected by an oblation of food, a person, not so connected (asapinda), must be affiliated.

10. Those not sapindas are kinsmen beyond the seventh degree and persons not allied at all. And these also are of two descriptions: those belonging to the same, and those belonging to a different general family. For this also the passages before cited are authorities.

11. Of what has preceded, this is the abstracted meaning.—The 'sapinda' belonging to the same general family, is the first [in rank]: on failure of him, such kinsman of a different general family.

12. Although the "sapinda" of a different family, and a person of the same family, but not a "sapinda," are both equal with respect to their severally wanting a quality possessed by the other: still, however, by reason of propinquity, the individual deriving his claim, from the connection as "sapinda," is preferable, to him desiring by family; and hence it is, that though of a different family, a "sapinda" even, from the family of the maternal grandfather, must be adopted.

13. In every case, on default of a "Sapinda," one not related as such, is to be adopted: of this description, the KINSMAN allied by a libation of water (Sodaka) to the fourteenth degree, being of the same general family is the nearest:—on failure of him, ONE not so allied, but OF THE SAME GENERAL FAMILY, to the twenty-first degree; and on defect of such also, one, not belonging to the same General Family and NOT RELATED as a "sapinda."

14. Sakulya has declared this, "Let a regenerate man, being destitute of male issue, adopt as a son, the offspring of a 'sapinda' kinsman: or next in order, the son of one of the same general family (sagotha): on defect of such, let him bring up one born in a different general family."—By the expression 'sagota,' those allied by a libation of water (sodaka), and belonging to the same general family, are included.—Now, in this text, the proximity [in order], of each successively, is particularly shown.

15. Vasishtha also propounds the same—"should take an unremote kinsman or near relation of a kinsman, etc."

16. The construction of this passage is thus. He is an unremote kinsman, who is both a kinsman, and in a near degree;—meaning, a near 'sapinda.'—Now, propinquity is of two descriptions,—by belonging to the same general family,—and by the intervention of few degrees. Of those allied by propinquity, the 'sapinda,' of the same general family, and removed by few degrees, is the principal: on default of him, a 'sapinda' of the same general family, though removed by many degrees; on failure of such, a sapinda belonging to a different general family: on defect of this latter also, "the near relation of a kinsman,"—meaning, of a 'sapinda' kinsman, the near relation or 'sapinda,'—being one allied to the individual himself, by libations of water (sodaka), but not his 'sapinda.' Such is the import which is deduced.

17. Relationship also, there alluded to, is of two descriptions;—by belonging to the same general family,—and by the intervention of few degrees. The first in rank, is the 'sapinda' kinsman, of such kinsmen of the man himself, removed by few degrees, and belonging to the same general family, as that person, though not his own sapinda. On defect of such, the 'sapinda' of his own 'sapinda' kinsmen, being of the same general family, though removed by many degrees. One connected by a libation of water, is intended.

18. If a 'sapinda' or 'sodaka' relative, cannot be procured, one belonging to the same general family, to the twenty-first degree, must be adopted: should none such exist, a person of a different family, although not a sapinda, must be adopted; for the text of Sankha (§ 2) expresses, "or, on failure of these, and a 'sapinda':" and this is indicated by Vasishtha, [who says,] "But if doubt arise, let him set apart like a Sudra, one whose kindred are remote."
19. He, whose kinsmen are distant, is 'one whose kindred are remote': the meaning is,—one not allied by an origin from the same stock, or by the relation of 'sapinda.' The doubt, alluded to in this passage of Vasisththa, regards lineage; disposition, and so forth: it arises in the case, of one unconnected as a 'sapinda,' and not sprung from the same general family. This is also implied in the passage, 'otherwise let him not adopt' (v. § 2).

20. Although none other than such as are connected, as 'sapindas' and not so, can exist: still, since by this sequel of the text, ('of all, and the tribes likewise, in their own classes only, not otherwise)" those connected as sapindas, and not so, are qualified, as being of the same class; both sapindas, and those not such, who do not belong to the same class, are excluded [from being adopted]. For, they might be inferred as a subordinate class, by the rule of logic "What is not denied, is admitted."

21. Accordingly, Vyrdha Gautama forbids the participation in inheritance, of one, not of the same tribe, thus,—"or should one of a different class be taken as a son, in any instance, let him (the adopter) not make him a participator of a share, this is the doctrine of Saunaka."

22. Hence, it is established, that one of a DIFFERENT CLASS cannot be adopted as a son.

23. Accordingly Manu. "He is called a son given, whom his father, or mother affectionately gives as a son, being alike, &c." Alike,] that is,—of the same class; for, a text of the chief of the saints (Yajnavalkya) expresses, "This law is propounded by me, in regard to sons, equally by class."

24. As for what has been said by Manu himself: "He is called a son bought, whom a man, for the sake of having issue, purchases of his father, and mother: whether the child be like or unlike": this must be interpreted whether like, or unlike, in qualities, not in class.

25. "Alike not by tribe, but by qualities suitable to the family: accordingly, Kshatriya, or a person of any other inferior class, may be the son of a Brahmana. As for this interpretation of Medhatithi, and one in the Kalpataru, "a Sudra even is certainly a son, such is the meaning:"—these both must be rejected, on account of their repugnance, both to the passage from Yajnavalkya before cited, ("This law is propounded by me in regard to sons, equal by class")—and the text of Sankha, which recites, "[in their own] classes only: not otherwise."

26. "A son self-given, and a son by a Sudra, are the six kinsmen, but not heirs." The enumeration by Manu, in this passage, of the son by a Sudra, as a substitute, must be explained, as meaning that, one procreated by a Sudra, on a female slave, but not born in wedlock, inasmuch, as he is not a principal son, is a substitute for the same. For, a text of Yajnavalkya expresses "Even a son begotten, by a Sudra on a female slave, may take a share by the father's choice. But, if the father be dead, the brethren should make him the partaker of the moiety of a share: and the one who has no brothers, may inherit the whole property, in default of daughter's sons."

27. Hence, the explanation by Aparartha, of the term in question, is only correct; "alike, being of the same tribe, &c." Yajnavalkya also.---"This Law is propounded by me in regard to sons, equal by class."

28. Now amongst near sapinda kinsmen of the same general family, A BROTHER'S SON only must be affiliated: and this doctrine is recognized also, by Vijnanecvara.

29. By the position, that, 'a brother's son only must be affiliated,' it is meant that the son of a whole brother only, must be affiliated. Manu declares this: "If one, among brothers, of the whole blood (ekaj-ta), be possessed of male issue (putram), Manu pronounces, that, they all are fathers of the same, by means of that son."

30. In this text, the state of BROTHERS, as adoptive fathers being propounded, their INCAPACITY TO BE THE OBJECTS OF ADOPTION follows.
31. Of the whole blood]. By this expression it appears that, this condition of adoptive fathers alluded to, applies to those only, begotten by the same father, on the same mother, not to such as are borne of a different father or mother.

32. Brothers.] From the masculine gender being used, it results that BROTHERS, AND SISTERS ALSO, of the whole blood, are NOT RECIPROCALLY the ADOPTIVE PARENTS OF THE SON [OF ANY ONE OF THEM]: and this conclusion is confirmed by the mention of two terms [in that gender]. Virdha Gautama, declares the same. "In the three superior tribes, a sister's son is nowhere [mentioned as] a son."

33. The expression 'sister's son,' is inclusive of the son of a brother also. Hence, this meaning is deduced, that a BROTHER'S SON MUST NOT BE ADOPTED BY A SISTER; for, brothers only are mentioned, to be adoptive parents [in the text of Manu § 29].

34. "Brother" and 'son,' when occurring in combination, severally, with 'sisters' and 'daughters,' are retained; [the other terms being omitted.] Although, by this rule of grammar, [the term 'brothers'] may be a compound, formed by the retention of one term, and omission of an other: and thence, the reciprocal affiliation, by a brother and sister, of a sister's and brother's son, respectively, might be inferred: still, these are 'ekajata,' whose jata or jati (kind) is the same: for, these words with 'samanya,' are cited in the dictionary, as synonimes signifying kind or sort; [therefor] since by 'ekajata,' the epithet of 'brothers,' it is intimated, that, those [signified by that term] are of the same kind, the affiliation, by brothers, who are male, of a brother's son, and by sisters, who are female, of a sister's son would be established. The adoption of a brother's son by a sister, or a sister's son by a brother, could not take place, on account of the difference of their kind, in being male and female [respectively].

35. But the single expression 'ekajata,' once uttered, cannot bear two meanings, namely, 'being of the whole blood,' and 'being of the same kind:' for, this maxim in logic, would be contradicted: "A term once uttered, conveys a single meaning."—Should this objection be made, it is wrong: for, the word 'samsrihasta,' occurring in the following passage, has been explained by Vijnanevara, as signifying, a whole brother, and re-united as a coparcener: ".......though not re-united; but one united (samsrihasta) [by blood, though not by co-parcenery] may obtain the property, and not [exclusively] the son of a different mother." So even, in the present case likewise. Thus, there is no inconsistency. Sufficient has been said.

36. The plural number is inclusive also, of the dual: for, two are contained in many: and the being son of two fathers, is shewn in the following text: "If he be son of two fathers, let him designate both, in each distinct oblation of food."

37. "If one"—that is, 'if one even' By this, where two or more are the fathers, the author implies a forti_or, the more easy adoption of a son, by the others, destitute of the same: he does not bar the affiliation of the only son of a single brother: on account of,—the cogency of the specification of the term 'one,' and the singular number, in the expression 'that son.' The derivative adjective 'putravan' possessed of male issue, applies to him, of whom, there are, one, two, or more sons.

38. And hence, from the sanction of the gift, of an ONLY SON even, in the present case, there is no room, for the application of the prohibition, ("Let no man give or accept an only son, &c.") For, since, as propounded in the sequel of this text, assigning the reason "For he is [destined to continue the line of his ancestors]," the continuation, of the line of his ancestors (the father, and the rest), is completed, by means of a son, although common to two brothers: it is established, that THE PROHIBITION in question, REFERS TO persons OTHER THAN BROTHERS.

39. Besides, as gift, consists in the creation of another's property, after the previous extinction of one's own; and this is forbidden, by the text quoted;—and since, in the case proposed, there is no extinction of property, by making the son of one
brother, common to both;—the sense of the word gift, [as applied thereto,] like the
gift of a daughter in marriage, is figurative.

40. Since the word ‘putra,’ [in ‘putravan,’ ‘possessed of male issue’] in its
sense of the real legitimate son, is primary, it is established, that those designated by
that term, are sons of that description only; and consequently it follows, that
there is no ADOPTION, [BY OTHER BROTHERS,] OF THE substitute for the
real SON, MADE BY A BROTHER.

41. Since by the verb ‘be’ [in the present tense,] the actual existence, of the
condition of possessing male issue, is declared; [the author] excludes such condi-
tions, as past and future; and hence, the benefit mentioned, in such texts, as (‘should
the father see the face of a living son, &c.’) does not accrue to one brother, by the
means of the deceased son of another;—neither, in the expectation of an unborn son,
[of a brother,] must the adoption of another, be omitted.

42. Since the brothers only, destitute of male issue, would be designated by the
pronoun, ‘they’: ‘all’ is added, with a view to obviate [any inference], as to the
want of relation, of the natural father, to his own son.

43. As ‘they’ is a compound, formed by the retention, of one term, and omission
of others, being resolvable into the phrase “he and they (dual and plural);” at the
desire of one, two, or more [Brothers], for male issue, the affiliation of a brother’s son
takes place.

44. ‘By means of that.’] By him even, by whom, the natural parent becomes
his father of male issue, do all the brothers also become so.—Son.’] From the use
of the singular number, the relation as son, of one even, to many, being declared; the
prohibition, contained in the text, “Let no man give or accept an only son” is not
applicable here; as indeed, has been already declared. (§ 36.)

45. And accordingly, in the Kalika-purana, an indication of Vetalas and Bhairavas,
sons of Siva, becoming both fathers of male issue, by means of the same son, is thus
found: “The sages said: ‘There is no salvation for one destitute of male issue.
This is recognized in the world and Vedas. Vetalas and Bhairvas formerly went to a
mountain to perform devotion. Previous to that, they were unmarried, and sons of
them, are not mentioned, [as having been born or not born. If sons were born, O
excellent of the regenerate,] we much wish to hear, the particulars concerning them.’
Markandeya replied; ‘salvation is not for one destitute of male issue, both in the
next world, and in this: O excellent saints, those, who are fathers of male issue,
by means of their own sons, and those of brothers, attain heaven.’ Having in
this world attained great perfection, when Vetalas and Bhairavas reached the
abode of the great deity, they were happy on the hill Kailasa. Then, Oh! twice-born men, Nandi by the order of Siva, as one consoling address them, in private, in the following true and instructive speech: he said “Do you sons of
Siva, destitute of male issue, exert yourselves in the production of a son. By one
to whom a son is born everywhere salvation is easily attained.” Markandya continu-
ed:—‘having heard these words of Nandi, they became elated in their hearts, and
said to him: ‘we will make one [son] only.’ Accordingly Bhairava, at some time
copulated with Urvasi, a celestial nymph, and procreate on her a son named Suvaca.
Vetalas also affiliated him as his son: and in consequence, by means of this son, both
attained heavenly salvation.”

46. But must not this relation of one as son to many [brothers] be either pro-
duced at once, or in gradation? Not the first: for, there is no precept enjoining that
they should receive in adoption at once. Nor is the other supposition accurate: for a
boy precluded by a previous initiation, another initiation of the same description as
the first, cannot be performed.

47. Should this be alleged, it is wrong: for, analogous to the case exemplified in
the passage (“seventeen are inferior and twenty-four superior sacrifices, &c.”), the
words ‘they,’ and ‘all,’ being the abridged form of the conjunctive compound: the
association of the adopting brothers, is meant to be declared thereby: hence THE
GIFT EVEN [OF A SON TO SEVERAL BROTHERS ASSOCIATED, IS VALID.]

In the same manner, as at the religious gift denominated 'tulapurusha,' the united officiating priests are the objects to whom it is made, and the receivers.

48. Vachaspati Misra declares the same, thus: "Since the plural number is used in 'officiating priests' in this passage, ('having thus prayed to the gods, let him give the officiating priests ornaments of gold,') the whole of them conjointly even are the object, to whom the gift is made: and hence, after having placed, his spiritual preceptor's hand, above all, and arranged in order under it, those of the officiating priests, who read the Rig-vedas, &c. the ornaments are to be given."

49. Nor is even, the being son to many [brothers], at the same time, anomalous: for, analogous to Draupadi's being the wife [of several brothers] by simultaneous acceptance, that relation of one, as son to many, though somewhat differing, is acknowledged; like the recognized state of the 'Dvyamushyana' or son of two fathers.

50. "Fathers of male issue. [Putrinali]. Of whom, there is a son."—By the verb 'is' (signifying existence) in this phrase, (into which this derivative adjective resolves,) since existence is declared: and existence not applying to one who has not been produced, an act of the adoptive fathers is implied.

51. And accordingly Atri. "By a man, destitute of a son only, must a substitute for the same, be made, &c."—Vasiśthas also: "A person being about to adopt a son should take an unremote kinsman, or the near relation of a kinsman, having convened his kindred, and announced his intention to the king, and having offered a burnt offering, with recitation of the holy words, in the middle of his dwelling." Likewise Sannakha: "Having advanced before the giver, let him thus cause to be asked, 'Give this son,' &c."

52. "Cause to be asked." Here, by the casual form of the verb being used, it is meant:—'Let him ask, through a Brahmana employed for that purpose.'

53. And consequently, the position that, the son of a brother though unadopted bears filial relation to his paternal uncle on account of this text of Vrihat-Parasara, ('Let the nephew of a paternal uncle, destitute of male issue, be his son: he only should perform his obsequies, of the funeral repeat, and oblations of food, and of water,') is refuted. For, without an act of the adoptive parent, FILIATION, as his son, is not ACCOMPLISHED.

54. It must not be argued that in the cases of the son of hidden origin and the son self-given, there is no act of an agent, [as adoptor]; because, in these passages,—("one secretly born in the house, is considered a son of hidden origin"—"Self-given, meaning, given by himself") no such act is mentioned. For, it is inferred, as otherwise, the consecution of an effect, to an act, would not be attained.

55. Therefore, the text of Manu, and Vrihat Parasara (§ 29 and 58) are not pertinent, to the extent of their verbal import; for, thirteen descriptions of sons would be the consequence.

56. Nor would thus, what was intended result: for the enumeration of twelve, in this text, would be contradicted: "of the twelve sons of men, whom Manu, sprung from the self-existent, has named: six are kinsmen and heirs; six not heirs, but kinsmen."

57. But, may not this contradiction of number be admitted on account of the passages below cited? Firstly: A different text of law: "The legitimate son, the appointed daughter, the son begotten, on another's wife, the son of the wife, the son of an appointed daughter, the son of a twice-married woman, the damsel's son, the son received with a pregnant bride, the son of hidden origin, the son given, the son purchased, the son self-given, the son made, the deserted son, and the one born on a woman of unknown caste,—are the fifteen sons of a man." Secondly: A text of Vachaspati: "Of the thirteen sons, enumerated in their order, by Manu, the legitimate son, and appointed daughter, are the cause of lineage." Thirdly: A text [of Manu]: "Sages declare these eleven sons, (the son of the wife, and the rest,) as specified, to the substitutes for the real legitimate son, for the obsequies would fail."—And lastly:
A text also of Manu, which declares: "The son of the body, and, the son of the wife, may succeed to the paternal estate; but, the ten other sons, can only succeed in order, to the family duties, and to their share of the inheritance."

58. Should it be thus argued, by an opponent, we reply,—True! It is established, that there is no contradiction of the number twelve: for, the several enumerations in each authority, are consistent; since in some, particular sons are implied, and in others, expressed.

59. And, moreover, the assigning in the following text, the fifth place, in the order of succession to the estate of one, who died without male issue, would be contradicted: "The wife, and the daughters, also: both parents, brothers likewise, and their sons."

60. The exposition of this, is this. If the brother's son, though unadopted, bear filial relation to his uncle; the enumerating the brother's son, on account of his wanting such relation, in the fifth place, in the order of succession to one dying without male issue, would be contradicted. The same also must be understood, in respect to the right in gradation, to perform the obsequies, as declared in this, and other texts. "The son, the son of a son, the son of a grand-son: like these, the offspring of a brother, or, that of a Sapinda also, are born. Oh king! capable of performing obsequies."

61. But, is it not deducing a false conclusion, to argue a want of filial relation from not performing the obsequies and succeeding to the estate; for, the son of an unmarried daughter, and the rest, notwithstanding their filiation, are shown by Vishnu, in this text, to be incompetent to perform obsequies or succeed to the estate. "Exceptionable sons, as the son of an unmarried daughter, a son of concealed origin, one received with a pregnant bride, and a son of a twice-married woman, share neither the funeral oblation, nor the estate." So also, notwithstanding participation in the obsequies and estate may be wanting, the filial relation of the brother's son, though unadopted, may be admitted without objection.

62. Should this be objected: it is erroneous. Participation in the obsequies and estate has been declared to be the result of filial relation, in this passage ("Among these, the next in order is heir, and presents the funeral oblations, on failure of the preceding"); for, otherwise, like the impotent person and the rest, one, who merely bore the semblance of being a son, would be of no use; and in this text, ("By a man destitute of a son only, must the substitute for the same, always be adopted, etc."), an imperative mode of expression, being used, the filial relation of one unadopted, cannot exist.

63. Nor must it be affirmed that the injunction in question regards those other than the brother's son: for there is no proof of such partial application; and on the other hand, it would be at variance with the instance of the adoption by Vetalas of the son of Bhairava, contained in the portion [of the extract from the Kalikapurana, before quoted] commencing, "We will make one son only," and ending "Vetalas also affiliated him, as his son."

64. Moreover, in the case, where, of ten whole brothers, five have each ten sons, and five are wholly destitute of male issue, it would follow, that the five brothers destitute of male issue, would have each fifty sons and it would also result that the fifty sons would severally have ten fathers: thus, there would be a great absurdity.

65. Nor, would an intended consequence thus result: for, in the passage, ("a substitute for a son must be adopted"), unity, ascribed to the object to be adopted, is of definite import: and the singular number, used in the following passage to express severally both the male issue and the father of the same, would be contradicted. "If one among brothers of the whole blood be possessed of male issue, Manu pronounces that they all are fathers of the same, by means of that son."

66. Neither must it be alleged that because the plurality of brother's sons is mentioned in this passage, ("those who are fathers of male issue, by means of her own sons, and those of brothers, are completely saved," etc.) many brother's sons, even though unadopted, may be sons of one person: for, from occurring in respectful modes of expression, in which by popular acceptance, the plural number is used, it has an
67. Hence it is a settled point, that amongst near "sapinda" kinsmen of the same family, a brother’s son only must be affiliated: and therefore, by being adopted [the brother’s son, and other kinsmen,] are first in participating in the estate and personal obligations: but, not being adopted, they hold their respective places [in the order of heirs].

68. The text, too, of Vishnu, (§ 61) refers to where, any son prior in the order of enumeration, may exist. Thus there is no contradiction whatever.

69. But this being the case: the filial relation of one unadopted, declared in the following text also, would not subsist. "If among all the wives of the same husband, one bring forth a male child, Manu has declared them all, by means of that child, to be mothers of male issue." And this would not be an intended consequence; for, it would be contrary to custom, and at variance with the appellation of mother, occasioned merely by being the wife of the father, as expressed in this passage: "The wives of the father, are all mothers."

70. Should this be objected, it is wrong: for the son of a rival wife originating immediately from portions of the husband, may, though unadopted, bear the relation of son [to another wife, and the text [of Manu] intends a restriction, [as to substitutes, not so circumstanced] as has already been declared. But since the brother’s son is not connected, by containing portions of either the husband or wife even, he does not unadopted, bear filial relation.

71. "If there are several brothers, the sons of one man by the same mother, on a son being born to one even of them, all of them are declared to be fathers of male issue. The same rule is also ordained in respect to many wives of the same person: if one brings forth a son, he is the presenter of the funeral cake to the whole." As for the application by analogy of the rule regarding the brother’s son, to that of the rival wife, declared by Vrihaspati, in this text: that is propounded as meaning, [the son of the rival wife] to be a subsidiary son, not as intending his affiliation: for, his filial relation [to his step-mother] is established from his proceeding from portions of her husband. Also, she being a substitute, being established, from proceeding partially from portions [of the pair], the text [of Manu] intends a restriction, [as to substitutes, not so circumstanced,] as already has been declared.

72. "Either portion [of the passage from Vrihaspati.] has been made clear, by Deva-rami, in this text. In both, even, [it is meant, that,] another substitute, must not be adopted."—And this text is thus interpreted in the Chandrika—"‘In both, even—in the two texts commencing, (‘If there are several brothers, the sons of one man, &c.’) it is meant that,] the son of a brother, and that of a rival wife, being any-how capable of being substitutes, another must not be adopted, as a substitute."

73. Vijnanesvara also thus explains the text of Manu (§ 29) [This text] is intended to forbid the adoption of others if a brother’s son can possibly be adopted; it is intended to declare him son of his uncle: for that is inconsistent with the subsequent text: "Brothers likewise, and their sons, &c. &c."

74. If NO BROTHER’S SON exist, another even, being the NEAREST RELATIVE, according to the mode mentioned [must be adopted.] Conformably S-ushas[ continues.] “Of Kahatriyas, in their own class positively: and [on default of a sapinda kinsman] even in the general family, following in the same primitive spiritual guide (Guru): of Vaisyas, from amongst those of the Vai-ya class (Vaisyas-jata-hu; of Sudras, from amongst those of the Sudra class. Of all and the tribes likewise, [in their own] classes only: and not otherwise. But a daughter’s son, and a sister’s son, are affiliated by Sudras. For the three superior tribes, a sister’s son, is no where [mentioned as] a son."

75. "In their own class." In the Kahatriya tribe. Notwithstanding ‘class'
(jati), being used in its general sense, propinquity as before, here likewise, constitutes a restrictive condition; on account of the text of Vasishtha: "a person being about to adopt a son, should take an unremote kinsman, &c."

76. On default of a sapinda kinsman, "and even in the general family, following the same primitive spiritual guide."—Since there are no distinct and peculiar general families, of the [primal] Kshatriyas; the primitive spiritual guide is mentioned, [to particularize the class, from which, the adoption is to be made].

77. Accordingly, an account of his more remote connection, on failure of the "sapinda" kinsman, one, belonging to the same general family, is ordained. In respect to him also, the clause "In their own class, &c." is likewise applicable; on account of the conclusion of the passage "of all, &c." And hence a near or distant relation of a DIFFERENT CLASS is precluded [from being adopted].

78. 'Vaisya-jateshu') this must be rendered,—from amongst those of the Vaisya class,—as if, 'jateshu' had been used: for 'jata' or 'jati' [of which the words are several inflexions, are recited in the dictionary, as synonyms, signifying, 'class or sort'.

79. Here also, although the specification is general, propinquity as before constitutes a restrictive rule. The clause too, ("and even in the general family, following the same primitive spiritual guide,") is here likewise understood; on account of the text, commencing "[He specifies] the general families of Kshatriyas, and Vaisyas, as distinguished by following the same primitive spiritual guide: and because, the passage, the initial words of which, are "who are adopted from those of his own general family, &c., &c." is common to the three tribes. It is equally the case, in this instance also, that, on default of a 'sapinda' kinsman, one of the general family, following the same primitive spiritual guide, [is to be adopted.]

80. 'From amongst those of the Sudra class.' Here also propinquity as before, [constitutes a restriction:] and the clause, ("and even in general family following the same primitive spiritual guide," ) does not here apply: since, [amongst Sudras] a general family, distinguished by following the same primitive spiritual guide, is not ordained. Therefore it follows, that the Sudra class, in the general, [is the order from which the adoption is to be made.]

81. The same is declared in the Brahma-purana.—"In fact, for Sudras, gaining their livelihood by servitude, living on another's bread, whose bodies depend on another, there is not a son, from any order whatever, [but their own tribe]: because a slave only is produced from a male slave and a female slave."

82. On account of the superiority of those of the three first tribes, and of those born in their direct order; and of the inferiority of those born in the inverse order, a son cannot be adopted, from any order whatever, [by Sudras, but their own tribe]. A Sudra only, therefore, must be affiliated; for a slave is produced from slave parents.

83. But the three sentences regarding the 'Kshatriya' and the rest (§ 74) should not have been propounded; because their import is obtained from the passage preceding (v § 3): and even if propounded, there is tautology in the part commencing "of all, &c."

84. This if objected, is wrong; because by the terms 'Kshatriya' and the rest, the inclusion of the Murchhavasikta and other mixed classes regulated by the same rules as the Kshatriya and the rest, is meant: for, a text of Sankha expresses:—"one procreated,—on a female Kshatriya by a Brahmana, is a Kshatriya even: on a Vaisya woman, by a Kshatriya, is a Vaisya even: by a Vaisya on a female Sudra, is even a Sudra."

85. 'In their own class.' This is to shew that, though the same rules apply to the 'Murchhavasikta,' and other mixed classes, as to the Kshatriya and the rest; still those do not become sons to a Kshatriya, and the rest, on account of the indication, of direct order, in this text. "Three wives in the direct order of the tribes, &c. &c."
86. Nor is there any tautology in this sentence, "of all, &c." for this part of the text: "of all, &c." by reciting a restriction, as to their own classes, in respect to the tribes, and those born in the direct order of the same, is pertinent, in indicating, that does not apply to those, born in the inverse order.

87. The expression 'of all' implies in fact this. From the cogency in the specification of the word 'tripes,' the restriction to their own class, would apply to the tribes only: not to those, born in their direct order. To include these the word 'all' is used. Now, they are included, because they are regulated by the same rules, as the tribes. Nor is this term, an epithet of tribes; for the conjunction 'and' would be insignificant.

88. And therefore, the restriction is,—of the tribes, and those born in the direct order of the same, in their own classes only. 'Not otherwise'—meaning—not amongst others, born in the inverse order of the tribes.

89. But why should not this part, commencing 'of all, &c.' be considered, as an exception to the rule, as to propinquity, inferred from the preceding passage [in § 2]? Should it be replied, because, it would be repugnant to the text of Vaisisitha ("a person being about to adopt, &c.") the argument is wrong; for, the result, deduced from that text, is, that, it is identical in its import with the passage [in question] regarding Brahmanas.

90. Such objection, if made, is inaccurate: for, were the passage in question, such exception; the rule, founded on ancient practice, which makes propinquity as recognized by popular acceptance and in holy writ, a condition, would be contradicted: no advantage would result; it would be repugnant to the context: and lastly were an exception, as to propinquity in the general, meant even, by this passage, the exception as to particular relationship, conveyed in this part of the text, ("But a daughter's son, and a sister's son, &c.") would be inconsistent. Therefore, the interpretation only, as given, is pertinent.

91. This part of the text, ("but a daughter's son, &c.") propounds an exception, as to those of the three first tribes, with respect to the DAUGHTER'S SON, and SISTER'S SON, inferred from the mention of propinquity in the general.

92. Since, (the particle 'but,' having an exclusive import,) a restriction 'by Sodras only,' is conveyed; those of the three first tribes are excluded. On this point the author subjoins a reason: "For the three superior tribes, &c. &c."

93. Since the filial relation of a sister's son to one of the three first tribes, is not exhibited in any authority whatever, the passage is relative only to Sodras. This is the meaning of the whole.

94. The expression, 'a sister's son' is of indefinite import, in the [part subjoined as a] reason; for, [otherwise] it would follow, that it were therein an unmeaning term: or were it of definite import, one portion [of the preceding sentence, viz. 'A daughter's son'] would be void of sense.

95. The daughter's son, and that of the sister, refer to the Sudra tribe: for, in no other authority, do they relate to those of the three first tribes; an argument, the same as that, used in the question, as to drinking spirits, and so forth. Hence, it is not accurate that these two refer to those of the three first tribes.

96. Next it may be alleged, that, both passages by being construed in a literal manner only, are demonstrative of their several subjects, but not so by being construed from inference. Consequently, it is the sister's son alone, that does not refer to the three tribes: not the daughter's son.

97. This is also wrong: for a splitting of the text would result; and an option to those of the three first tribes, in respect to the daughter's son, follow: since by being an unremote kinsman, he would be inferred [as eligible] and interdicted [as such] by the restriction to Sodras only.
98. Or thus. By the restriction to Sudras only, a prohibition of the daughter's son, in respect to those of the three first tribes, would be established. And by the restriction that a sister's son only may not be [adopted] by those of the three first tribes, a sanction of the daughter's son would be obtained. Thus there would be an option.

99. Besides, if [the two passages in question,] are to be construed with reference merely to their verbal import, in the first passage, there would be either a restriction [as to the object of adoption], or one in respect to the agent (parisankhya). In what does the one, and in what the other consist? 'By Sudras, a daughter's son and a sister's son only [may be adopted].'-This is a restriction [as to the object; required,] because [otherwise,] the daughter's son, and the other, would be inerrible, from one portion [of the general text], and every relative commencing with the brother's son from another. 'By Sudras only, a daughter's son, and a sister's son [may be adopted].' This is a restriction in respect to the agent; [which would be required,] as the daughter's son, and the other might be inferred [as eligible], to the four tribes collectively.

100. If restriction, as to the object of adoption, be meant, then there would be, a contravention of the whole law ordaining the brother's son and the rest, [as eligible for adoption]: the word 'class' in this passage ("of all, and the tribes likewise in [their own] classes only: and not otherwise") as signifying the daughter's son and the sister's son, would be contracted in its import: and it would follow, where no daughter's son, or sister's son existed, the affiliation of a son could not take place.

101. But, supposing a restriction in respect to those who may be the agents, meant; then, by the mere restriction to Sudras only, the interdiction of the sons in question, the three first tribes, being conclusively established, it would follow that the passage commencing, ("for the three superior tribes, &c.") as again prohibiting the same, were unmeaning.

102. Therefore, by a construction deduced from inference only, is the interpretation of the two passages correct. And moreover, a verbal construction founded on revealed law, is more vexatious, than a construction deduced by the help of inference, and grounded on reasoning; and revealed law, being taken [as the basis of the construction], two revelations must be assumed. Now ratiocination being the groundwork, this would not be the case. Therefore, the apparent reason presenting itself, is the demonstrative means.

103. Although there is another reading.—"The daughter's son, and the sister's son, are declared to be sons of Sudras": still, [both] are identical in their import, since the passage, commencing,—"For the three superior tribes, &c."—is introduced, to manifest, that a restriction even is intended, for obviating a doubt, whether, "of Sudras only," or "of Sudras also,"—were meant.

104. Now, that a restriction is meant, thus [appears]. Were there no restriction, in respect to the act of affiliation, the object of which is the daughter's son and sister's son, the whole four tribes might be inferred, as the agents therein. [But] from the consequent restriction to Sudras, it is established, that 'of Sudras only' is meant.

105. And accordingly, the term 'sister's son' is inclusive even, of the daughter's son also; for, otherwise the restriction, that the daughter's son and sister's son refer to Sudras, would not be attained: or if attained, an option as to the daughter's son, in respect to those of the three first tribes, would result; as has been already noticed.

106. If this is the case, then, let the non-relation merely, of the sister's son, to those of the three first tribes, be proved by the daughter's son, and sister's son referring to Sudras: should this be alleged, it would be wrong. For, as such position would be established, by this reason alone,—'from referring to Sudras,'—the mentioning the daughter's son, and sister's son, would be unmeaning: and if a loose mode of expression must be assumed, the use of the term 'sister's son' only, without specific meaning, is less vexatious, than the use of both terms, in an indefinite import. Consequently, that only, which has been propounded, is accurate.
107. Lakṣaṇa has clearly laid down the above points: "Let one of a regenerate and destitute of male issue, on that account, adopted as a son, the offspring of a woman in relation particularly: or also next to him, one born in the same general family: if such exist not, let him adopt one born in another family: except a daughter's son, a sister's son and the son of the mother's sister."

108. By this it is clearly established, that the expression ‘sister’s son’ [in the last sentence of Saunaka's text (§ 74), is illustrative of the daughter's son, and MOTHER'S SISTER’S SON, and this is proper, for prohibited connection is common to all three. To enlarge would be useless.

SECTION III.

Rule, should one different by class be illegally adopted.

1. It has been declared that, one different by class, must not be adopted: should this rule be transgressed, what would be the case? In reply to this question, Saunaka says: "If one of a different class, should however, in any instance, have been adopted as a son, he should not make him the participator of a share. This is the doctrine of Saunaka."

2. The meaning is:—should one be adopted, according to form even, whose class is different,—being superior, or inferior, in respect to the adopter.

3. Exclusion, from participation in the whole estate, is implied, from the cогency of the term ‘share’; [which intends,] ‘a share of the estate’: and on account of,—a text of Katyayana, which expresses,—"But if they be of a different class, they are entitled to food and raiment only;" and a portion from Yajnavalkya, commencing, "amongst these, the next in order is heir, and presents funeral oblations, &c." and ending "this law is propounded by me, in regard to sons, equal by class."

SECTION IV.

The qualification of the person to be adopted.—The gift of a son, under what circumstances and by whom proper.—The son of a twice married woman, and slave's son specially referred to.

1. Next, in reply to the question, as to the qualification of the person to be affiliated, Saunaka declares: "By no man, having an ONLY SON (eka-putra), is the gift of a son to be ever made. By a man having several sons (bahu-putra), such gift, is to be made, on account of difficulty (prayastatas)."

2. He, who has one son only, is ‘eka-putra,’ or one having an only son: by such a one, the gift of that son must not be made: for a text of Vasishtha declares, "an only son, let no man give, &c."

3. Since, the word ‘gift,’ means the establishing another's property after the previous extinction of one's own: and another's property cannot be established without his acceptance: the author (Saunaka) implies this also, in his text in question. Therefore, a prohibition likewise against acceptance is established by that very text. Accordingly, Vasishtha: "an only son, let no man give or accept, &c. &c."

4. To this he subjoins a reason: "For, he is [destined] to continue the line of his ancestors.' His being intended for lineage, being thus ordained: in the gift of an only son, the offence of extinction of lineage is implied. Now, this is incurred by both the giver and adopter also. For the [reason in question,] is subjoined after both [verbs: viz. 'give' and 'accept.']

5. As for another text of recorded law,—"In instruction, the father is absolute over a son and sons' wives: but not so with respect to the son, in sale and gift," and
the text of the Holy Saint: "except a wife and a son, other things may be given."
—these texts regard the case of an only son.

6. 'Ever] in a time of calamity: accordingly, Narada says: "A deposit, a son, and a wife, the whole estate of a man, who has issue living; the sages have declared unalienable, even by a man oppressed by grievous calamities: although the property be solely that of the man himself."
This text also, regards an only son; for it is declaratory of the same import as the texts of Saunaka and Vasishtha.

7. Next, the author replies to the question.—By whom is a son to be given? 'By one having several sons.' He who has several sons is 'bahu-putra,' or one having several sons.

8. "By no man having an only son." From this prohibition, the gift, by one having two sons, being inferable: this part of the text ("By one, having several sons &c.") is subjoined, to prohibit the same, by one having two sons also. For, the speech of Santanu, to Bhishma expresses: "He who has only one son, is considered by me, as one destitute of male issue, oh! descendant of Kuru. One, who has only one eye is as one destitute of both: should his only eye be lost, he is absolutely blind."

9. "By a man having several sons." Since, the masculine gender is here used, the GIFT of a son, BY A WOMAN, is prohibited. Accordingly, Vasishtha says: "Let not a woman either give or accept a son;"—and [her] independency is not ordained.

10. With the HUSBAND'S ASSENT, a woman also is competent. Accordingly Vasishtha adds: "unless with the asent of her husband."

11. "Whom, his mother, or his father, gives (dadyat)"—"his mother or father give dadyatam.") As, for what is contained in these passages, as intimating the equality of the father and mother: that is merely with reference to the asent of the husband.

12. It must not be argued that thus the gift of her son by a widow, though during a season of calamity, could not take place, on account of the impossibility of the asent of her husband; analogous to her incapacity to adopt. For, by referring to the instance recorded of Galava, such gift may be inferred as legal, and the singular number, indicating independence of another, is used.

13. The HUSBAND, SINGLY even and independent of his wife, is COMPETENT to give a son: for in the two passages cited (in § 11) the father is mentioned singly and unassociated with the mother, and there is this reason of Baudhayana found: "From the predominance of the virile seed, sons are regarded even, as not produced of the womb." In the Bharata also, [a reason is found.] "The mother, is the fosterer: the son is of the father: he is [as it were] that very person, by whom produce." A passage of revealed law is likewise [confirmatory].
"His-self is truly born a son."

14. And, from the intimation of the agency of both together, by the verb 'give' in the dual in Manu's text, the competency of both united is principal. Accordingly Vasishtha says: "Man, produced from virile seed and uterine blood, proceeds from his father and mother, as an effect from it's cause, therefore, his father and mother have: ower, to give, to sell, or to abandon their sons." Baudhayana also: "For, the connection to the father and mother is equal."

15. Conformably, in this passage, ("the mother or father given") Manu, intending—from her dependant: on the asent of her husband, the inferiority of the mother [as the agent, in the gift of a son]—the mediocrity of the husband, on account of his independance of the wife;—and the pre-eminance of both united, from their being equally parents,—propounds each position in order last, according as he prefers it, to that preceding.

16. It must not be argued that this is merely a single sentence, on account of the only verb being used in the dual number: for the disjunction in the middle [by
the particle, 'or' would be inconsistent. Therefore the passage in question comprises three positions.

17. Accordingly, the chief of saints, in this passage, "whom his mother or his father gives," has used the verb in the singular number even, though referring to each [nominative case].

18. On the subject proposed, the author [Saunaka] assigns a reason,—"'on account of difficulty (prayatnasas)." That time in which there is great trouble is [a time of] difficulty, that is, a season of calamity.

19. Hence, the meaning is this:—A GIFT of a son is to be made IN a time of CALAMITY ONLY: not otherwise. Thus Katyayana says: "But during a season of distress, the gift or sale even, may be made; otherwise he must not attempt the same. This is the injunction of the holy institutes." From the context,—"of sons and wives," is understood. Mann also: "Whom his mother or father give during distress, confirming the gift with water."

20. "During distress."] In a famine, and so forth: should the gift be made, no distress existing, the giver commits a sin, on account of the prohibition, "otherwise he must not attempt the same."

21. OR, the term 'prayatnasas' may signify—'on account of difficulty of the adopter.' During distress; that is,—when DESTITUTE OF MALE ISSUE: on account of the text of Atri, commencing,—"By a man destitute of a son only, must a substitute for the same, always be adopted &c."; and it is thus interpreted, even by Aparanka, and in the Chandrika. "During distress—that is,—the adopter having no son."

22. Another special rule is propounded in the Kalika-purana. "Sons given, and the rest though sprung from the seed of another, yet being duly initiated under his own family name, become sons. O Lord of the earth, a son having been initiated under the family name of his father, unto the ceremony of tonsure inclusive, does not become the son of another man (anystas). The ceremony of tonsure and other rites (Chadasya) of initiation, being indeed performed, under his own family name, sons given, and the rest may be considered as issue: else, they are termed slaves. After their FIFTH YEAR, O King, sons, given, and the rest are not sons. [But] having taken a boy five years old, the adopter should first perform the sacrifice for male issue. But, the son of a twice married woman, immediately on being born, he should duly take as a son. Having performed positively (vai) for such, immediately on being born, the burnt sacrifice for the son of a twice-married woman, the man should complete every initiatory rite, the ceremony for a male born (jatakarma) and the rest. The burnt sacrifice for the son of a twice-married woman, being completed, from these (tatas) a son of that description is filially related."

23. The meaning is,—although sprung from the seed of another, sons given, and the rest, when 'duly initiated under his own family name,' (that is, by the adopter, according to the form prescribed by his own code, under the family name of himself,) into the different rites, commencing with that for a male born, then become sons of the adoptive parent, not otherwise.

24. Vasishtha declares this,—"and a given son, even sprung from one following a different branch of the Vedas, being initiated [by the adopter], under his own family name, according to the form prescribed in his own branch of the Vedas, is a follower of the same branch."

25. "The son given, and the rest." By the term "rest," here used, the son made, and the others, are included; on account of this part which preceded [in the Kalika-purana]. "The legitimate son, the son of the wife, the son given, the son made, the son of concealed birth, and the son rejected, take shares of the heritage. The son of an unmarried girl, the son of a pregnant bride, the son bought, the son by a twice-married woman, the son self-given, and the slave's son; these six are contemptible as sons: on failure of the first in order respectively, let him invest the next with dial rights. But let him not appoint to the empire, the son of a twice-married woman, nor a son self-given, nor one born of a female slave."
26. The non-appointment to empire of the son of the twice-married woman, and the other two, which is directed in the latter part of this quotation, holds, even on default of any other son besides the legitimate son. For this part of the passage is subjoined as an exception to the preceding part, ("on failure of the first would be respectively, &c.") and their non-succession to the empire, should a legitimate son exist, was declared in this preceding passage. — "A legitimate son existing, let not the king invest in the empire, the wife's son, and the rest: [nor] cause to be completed [through such sons] the solemnities for his forefathers."

27. The meaning is.—A legitimate son existing, let him not invest with empire the son of the wife, and the rest: [nor] cause to be completed,—that is, nor cause to be performed [by such inferior sons] the 'solemnities,' meaning the funeral repast and other rites, in honour of his forefathers.

28. "Under the family name (gotrena)."

Although, it is not ordained, that the family name is immediately instrumental in the ceremony, for a male born, and others; still since, in the vṛddhi-raddha, a component essential of those ceremonies, use of the family name is made: it applies also to what is principal, [viz. those ceremonies themselves]. But in the rites of tonsure and the rest, it is used directly; for a text expresses: — "The coronal locks of the boy must be made with the enunciation of his patriarchal tribe."

29. It is declared that filial relation proceeds from initiatory rites: these, [as applicable to different cases,] the author propounds affirmatively and negatively,—"a son having been initiated, under the family name of his father, &c. &c."

30. That son, who is initiated under the family name of his natural father, unto the ceremony of tonsure, that is in rites ending with that of tonsure, does not become the son of another man—'anyatas' must be rendered, in the sense of the regular genitive, 'anyasa' ['of another'].

31. In respect to the passage in question, there is this reconciliation.—It must certainly be affirmed, that, what is there declared, that, one on whom the ceremony of tonsure is completed, becomes not the son of the adopter, refers to the state, as son not in common; otherwise by this part,—"Having taken a child of five years, &c."

the propounding one even, whose ceremony of tonsure has been completed, to be son of the adopter, would be contradicted. That this passage necessarily regards a child on whom the ceremony of tonsure has been performed, will be made clear (v. § 48).

32. Hence, IF ONE who has been INITIATED in the different rites down to tonsure BE ADOPTED, he becomes son of two fathers: for he is initiated under both family names; and that the effect of this is his connection to both families, will be declared in the sequel.

33. Thus, the different INITIATORY CEREMONIES from that for a male born, down to tonsure inclusive, are declared to be the CAUSE OF Filiation, [in the case of the adoption of one wholly uninitiated].

34. Achdham (unto the ceremony of tonsure) might have been used [by itself]. The subjunction of the term 'inclusive' [anta] is for the sake of authorising, the affiliation of one whose coronal locks have not been made according to the form of his patriarchal tribe. For, the principal rites, not being completed, he is capable of becoming a son, and the part, commencing—("The ceremony of tonsure and other rites of initiation, &c. &c.") is about to be explained.

35. How is the case, should a boy, on whom the rites, commencing with that for a male born, have not been performed, not be procurable? Anticipating this question, the author adds—"the ceremony of tonsure and other rites of initiation, &c."

36. When, indeed, the rites of initiation, commencing with that of tonsure, are performed under his own family name,—that is—under the family name of the adopter, (the particle 'vaî' [indeed] having an exclusive import): then, only can sons given, and the rest be considered as issue, else they are termed slaves.
37. The complex phrase "chudadva" signifies those rites, of which tonsure is first; but not rites antecedent to tonsure. For, with reference to what preceded, usiology would result.

38. Therefore, EVEN SHOULD the CEREMONIES commencing with that after birth and ending with that of ‘annaprasana’ or feeding with rice, HAVE BEEN PERFORMED under the family name of the natural father, there is NO REPUGNANCE [IN THE ADOPTION]: and thus it is established, that the child, as when the ceremony for a male born and the rest, have not been performed, is principal [as the object of adoption]; and one, on whom the rite of tonsure has not been performed, but [the other previous rites have] is secondary.

39. Sons given, and the rest.] By the term ‘rest’ are included, the son made, and the others, as has in fact been declared: they become sons by initiatory ceremonies also: not merely by adoption: for that would defeat the opposite alternative subjoined “else they are termed slaves.”

40. ‘Else’. The meaning is, should the ceremony of tonsure, and the rest, be not performed [by the adopter], or should one be adopted, on whom the CEREMONY of tonsure and other rites have been PERFORMED; a servile state ensues, not that of a son.

41. Since, that filial ‘state is produced from ceremonies: in the same manner as the being a sacrificial post and so forth; it is established, that one uninitiated is to be adopted.

42. A limited period for adoption being necessary, the author adds “after their fifth year, &c.”

43. One, though uninitiated, is not to be adopted after the FIFTH YEAR: for, the time having gone by, he cannot become a son. By this it is declared, that the five [first] years only are the season for adoption. Now, the propounding this position negatively is for the purpose of shewing that an age beyond five years is not even a secondary season: for, otherwise by the rule, (“every season ulterior to the appropriate season, is pronounced secondary”) it would follow, that any time, beyond the fifth year, were secondary.

44. And, therefore, as by this passage (“commencing from birth, unto the third &c.”) the third year is the principal season for its performance: and since, year is mentioned in the conclusion (“after the fifth year &c.”) it follow that in the extract in question, the word ‘tonsure’ is meant to signify the THIRD YEAR. For, otherwise the consequence would be, that, where the ceremony of tonsure took place at the same time, with the investiture of the characteristic cord, at his eighth year; one on whom the ceremony of tonsure had not been performed, might be adopted. Nor would, what was meant thus result: for, it would be at variance with the part commencing “after the fifth year, &c.”

45. Hence, it is established, that the term ‘tonsure,’ in the passage,—“unto tonsure inclusive”—intending also, the third year, [limits] the proper season: that, beyond the third year, to the fifth, is the secondary season: but that after that, no time is even secondary [for the adoption of one initiated in rites preceding tonsure, but not in that rite].

46. ‘Are not sons.’] By this, it is intimated, that though filial relation be not produced, yet tonsure and other rites of initiation may be completed; for the time for the performance of these respectively, yet exists: still, however, they are only slaves, for filial relation is wanting; and this is the third cause of a servile state.

47. “Let not wives and sons, being unwilling, undergo sale, nor even gift.” As for the prohibition in this text, of Katyayana, against the gift and so forth, of persons unwilling, that even must be interpreted as forbidding the gift of a boy of five years only: not of one older.—And:—“one discriminating, not a minor.” As for, what is thus interpreted by Sarvajyasa, adverting to this reading,— (“discriminating good and evil”) in the text,—“whom a man takes being alike, &c.”: that must
be explained thus—'a boy of five years only, discriminating by the faculty of reason: but not a minor [generally].' The meaning is, 'he should not take [any] one, coming within this definition,—a minor (bala) is till the sixteenth year.'

48. Then, if there be none uninitiated [unto tonsure inclusive], what is to be done? In reply to this, the author adds,—'having taken, &c.' The meaning is having taken a boy five years old, initiated in rites ending with tonsure.

49. But how can such be adopted, since he is declared to be a slave? Anticipating this objection, the author subjoins,—'The adopter should first perform the sacrifice for male issue.' The objection is thus reconciled.

50. 'He who is desirous of issue should offer to Agni, parent of male offspring, an oblation of kneaded rice, roasted on eight potsherds; and to Indra, father of male issue, a similar oblation of rice, roasted on eleven potsherds. Fire grants him progeny, Indra renders it old.' In this passage [of the Vedas] sacrifice is declared as a cause productive of offspring.

51. Hence, in the case where the offspring is not born, its production is the effect to be produced; but where offspring already born is adopted, it is implied, that, in that case, since the birth has taken place, the filial relation is the effect to be produced: for otherwise, the precept proposed would not be accomplished. Now, this relation cannot subsist, without the removal of the servile state: therefore the removal of that also [by the sacrifice,] must of necessity be admitted: otherwise, were [the sacrifice] productive of filial relation only, it would take place in any mere adoption of a son; and if [it be argued that] there, it is not required, since the filial relation is produced from initiatory rites only; then, the same is the case, in the instance proposed: for those rites are here inferred from the term 'first;' and it is declared in the sequel: 'The man should complete every initiatory rite, the ceremony for a male born and the rest.'

52. Therefore, since filial relation, preceded by the removal of the state of slave, which had been occasioned by previous initiation, is produced by a sacrifice for male issue; it is established, that one THOUGH INITIATED [unto tonsure inclusive.] MAY BE ADOPTED.

53. If this is the case, then the passage should only recite,—'Having taken one initiated [unto tonsure inclusive].' What occasion is there, to use the expression, 'a boy five years old?—Should this be objected, it is erroneous; for the passage intends this restriction—'a boy five years old only [i.e., under six]:' and the restriction is for the sake of securing an investiture of the characteristic thread, conductive to the holiness, resulting from the study of scripture, which is preceded by the previous acquisition of letters.

54. And it must not be argued, that this restriction is established by the preceding sentence: for, this from its limiting the period, for [the adoption.] of one, whose initiation [as far as tonsure inclusive.] has not been performed, is received, as not intending the meaning in question.

55. 'First,'—that is, previous to initiatory rites being performed.

56. But it is asked, why is it not meant,—'previous to the sacrifice for adoption?' Because, the past participle 'having taken' being used, an antecedent time for the act of adoption, including all its essentials, is inferred: and the previous initiatory rites, being annulled by the sacrifice for male issue, the performance of other rites is absolutely necessary.

57. 'After their fifth year, sons given, and the rest are not sons.' In respect to this previous position, the author subjoins an exception: 'But the son of a twice-married woman, &c.'

58. A child begotten on a woman, whose [first] marriage had not been consummated, or on one, who had been deflowered [before marriage], is called the son of a twice-married woman. By this definition, one born on a twice-married woman of any of the seven descriptions, is included.
59. "Immediately on being born] that is, as soon as produced: hence the
time of birth only is meant, no other.

60. Duly take] that is adopt according to the rules of adoption.

61. But, for one just born, is not the ceremony for a male born, alone proper, on
account of this rule—"Before others have touched the new born boy, &c." There-
fore, how can it be said: "immediately on being born, he should duly take as a
son?" Excellent! for them, one unadopted, not having filial relation to the man him-
self, initiatory rites could not be performed: for, a text expresses,—"Let the father
initiate his own sons, &c."

62. Neither can it be said, that paternal right proceeds alone, from the relation,
as natural father: for, this is denied by this passage,—"the receptacle is more im-
portant than the seed;"—and a text of Gautama recites, "of the other by special
agreement, &c." The meaning is [the child begotten, on one man's wife,] is the son
of the other,—that is the procuerator,—by special agreement only, &c.

63. Hence in the case, in question, adoption takes place, anterior to the per-
formance of the ceremony for a male born.

64. The performance of the initiatory rites, being inferred, as following the
adoption, the author propounds a variation in this respect; "Having performed,
&c." The meaning is this: After the adoption, having performed the burnt sacri-
cifice, for the son of a twice-married woman, subsequently, let him perform the
ceremony for a male born, and the other initiatory rites.

65. But, is not this impossible, since it is contrary to the argument, exemplified
in the sacrifice [to fire] for a son born? Accordingly, on the same principle, as this
is ordained, so is the burnt sacrifice, for the son of a twice-married woman, directed
in the case in question. [Now this according to your opinion] is performed, previous
to the ceremony for a child born: therefore, since it is to be completed in five days,
the principal rite [being the ceremony] in question, would be barred.

66. Should this be objected: it is replied, that, in the case in question, the
burnt sacrifice for the son of the twice-married woman, is not analogous to the sac-
cifice [to fire] for a son born, which is ordained in respect to spiritual purposes.
Besides, [that used,] may be a mere unrestricted order, of mentioning the former
sacrifice, and the ceremony for a child born, and other rites for a son produced from
the wife of another: in the same manner, as in this passage,—"Having perfor-
cased the sacrifices prescribed for the day of the new moon, and that of the full moon, let
him offer an oblation with the Soma plant." Thus there is no repugnance.

67. The particle vai [positively], having an exclusive import, the construction is—"For one directly after birth only, at no other time:"—therefore, a restriction as
to the priority in time, or otherwise, of the sacrifice for the son of the twice-married
woman, is not deduced; as in the case of the sacrifice [to fire] for a son born.

68. By the term 'every' alone, the meaning being complete, the mention of the
ceremony, for a male born, and the rest, is added to exclude anterior rites, whilst the
offspring was in the womb.—As for the use of the expression 'all,' notwithstanding
the mention of the ceremony for a son born and the rest: that is, for the purpose of
suggesting, whatever initiatory rites may belong to any particular individual; and
hence, it is to be inferred, that although for Sudras there is no investiture of any
characteristic cord, and so forth, still they become sons even, by the ceremony of
tonsure and other rites.

69. "The man." Although a general expression is used, still, since one of the
three first tribes only is competent to perform, the burnt sacrifice, for the son of the
twice-married woman; in respect to others, the filial relation proceeds from mere
initiation alone.

70. The author thus concludes, that the burnt sacrifice, and initiatory rites
united, are the cause of filiation; 'Being completed, &c. &c.'
71. The meaning is: the burnt sacrifice for the son of the twice-married woman, being completed, 'from these,' that is,—from these initiatory rites,—a son of the twice-married woman becomes filially related.

72. Under the same head, the author of the Kalika-purana propounds a rule, applicable to the son of the twice-married woman. "He should perform, at the funeral repast of his father, a rite dedicated to a single ancestor (akoddaiha); not any parvana, or double rite, and so forth."

73. The son of a twice-married woman, at the funeral repast of his father, on the anniversary of the day of death, should perform rites, dedicated to a single ancestor, not any parvana, or double rites, and so forth.

74. By the terms, "and so forth," the different variations of the parvana rites are likewise prohibited. For, a text of Jatu-Karana expresses,—"Annually, let the son of the wife, and legitimate son, perform [obsequies] according to the parvana form: the other ten sons should perform a right, dedicated to a single ancestor,"—and, a text of Parasara recites, [A funeral repast] by the legitimate son, for a father, who has departed this life, on all occasions, is in honor of three ancestors: that, by those of a different general family, is consecrated to a single ancestor, on the anniversary of the day of death."

75. On the subject of sons, it had been said,—"The son self-given, and the slave's son, (Dasaputra)." Of these he describes the latter; "A female purchased by price, who is enjoyed, is a slave: it is thus declared. The son who is born on her, is considered a slave-son."

76. That female, though of equal class, being purchased by price, who is 'enjoyed,'—co-habited with,—is denominated by former sages, a slave. For, a text expresses,—"That woman, who is bought by price, is not considered a wife: she neither avails in rites, in honour of the gods, nor in rites, in honour of the names. The sages regard her as a female slave." One born on her, is a slave's son. The son of a female slave, is 'a slave's son (dasaputra), the feminine of 'Dasa.' (slave) being like the masculine in the Vedas.

77. Or, the compound Dasaputra may be explained,—'one who is both a slave and a son' or, thus,—a son denominated a slave.'

78. The author lays down the rules, regarding this son,—"[such a son] must not participate in the dominion of a king: nor of Brahmanas, perform the funeral repast: he is the lowest of all sons: hence, let him reject him."

79. The meaning is,—since, he is lowest of all sons, he must not share in the dominion of a king, nor perform the funeral repast of Brahmanas.

SECTION V.

The mode of adoption—Form by whom propounded—Necessity of observance—Effect of omission.

1. The qualification of the person to be adopted has been defined. The mode is now propounded.

2. On this subject, Saunaka has said: "I, Saunaka, now declare the best adoption: one having no male issue, or one whose male issue has died, having fasted for a son."

3. 'Adoption'—the form of adoption.—Having fasted on the day preceding, that of adoption—Vriddha Gautama has "the impotent man, or also, one whose offspring has died."

4. "Having given two pieces of cloth: a pair of ear-rings, a turban, a ring for the fore-finger, to a priest religiously disposed, a follower of Vishnu, and thoroughly
and in the Vedas; having venerated the king and virtuous Brahmans, by a ‘madhupaka’ (or prepared food consisting of honey, liquid butter and curds).

5. ‘The King’ here signifies, the chief of the village, for a text of Vriddha Gums recites,—‘having invited all kinsmen and the chief of the village also.’

6. As for the term, ‘Lord of the soil (Prithvisali)’ in a subsequent passage of the same author even,—‘After this, let him give a madhupaka to the Lord of the soil’—that intends only the owner of the village: for, this, being expressed in what precedes, is the more forcibly suggested.

7. The meaning is,—having venerated three Brahmans, by a madhupaka, and so forth, for the purpose of asking [for the child to be adopted].

8. ‘Both a bunch of sixty-four stems, entirely of the kusa grass, and fuel of the palasa tree also; having collected these articles, having earnestly invited kinsmen and relations’.

9. ‘Kinsmen’ (bandhun)—his own, his father’s and mother’s kinsmen. ‘Relations’ (jyatin)—sapindas. The invitation of kinsmen, and the others, is for the sake of their witnessing: in the same manner, as the invitation of the king: for both terms are confirmatory of this, in the sense,—‘They unite with (badhnanti)—and ‘know (jananti)’ as their own, the adopted person.

10. ‘Having entertained the kinsmen with food: and especially Brahmans;’—The meaning of this is,—having entertained invited kinsmen and Brahmans, previously appointed, and (on account of the conjunction ‘and’ in § 8) invited relations.

11. ‘Having performed the rites, commencing with that of placing the consecrated fire, and ending with that of purifying the liquid butter. Having advanced before the giver, let him cause to be asked thus,—’give the boy.’”

12. The meaning is,—let him cause a demand, to be made through Brahmans, previously appointed.

13. ‘The giver, being capable of the gift, [should give] to him, with the recitation of the five prayers, the initial words, of the first of which, are,—‘ye-yajnena, &c.’

14. The capacity to give, consists in having a plurality of sons, and the assent of the wife, and so forth.—‘Should give,’ is understood before this part,—“with the recitation of the five prayers;” for, gift is indicated in the prayer, commencing—“Let him receive a male from an intelligent person.”

15. ‘Having taken him by both hands, with the recitation of the prayer, commencing,—“devasayatva, &c.” having inaudibly repeated the mystical invocation “Angadangat, &c.” having kissed the forehead of the child; having adorned with cloths, and so forth, the boy, bearing the reflection of a son.

16. ‘The reflection of a son’] The resemblance of a son,—and that is, the capability to have sprung from [the adopter] himself, through an appointment [to raise issue on another’s wife], and so forth; as [is the case] of the son, of a brother, a near or distant kinsman, and so forth. Nor is such appointment of one unconnected impossible; for, the invocation of such [to raise issue] may take place under this text: “For the sake of seed, let some Brahma be invited by wealth, &c.”

17. Accordingly, the BROTHER, paternal and maternal UNCLEs, the DAUGHTER’S SON, and THAT OF THE SISTER, are excluded: for they bear not resemblance to a son.

18. Intending this very position, it is declared in the sequel, by the same author:—“The daughter’s son, and the sister’s son, are declared to be the sons of Sudras. For the three superior tribes, a sister’s son, is nowhere [mentioned as] a son.” Here even, the term, ‘sister’s son’ is illustrative of the whole not resembling a son, for prohibited connection is common to them all. Now, prohibited connection is the unfitness, [of the son proposed to be adopted,] to have been begotten by the individual himself, through appointment [to raise issue on the wife of another].
19. "The mutual relation between a couple, being analogous to the one, being the father or mother of the other, connection is forbidden: as for instance,—the daughter of the wife's sister, and the sister of the paternal uncle's wife."—The meaning of the text is this. Where, the relation of the couple, that is of the bride and bridegroom bears analogy to that of father or mother: if the bridegroom be, as it were, father of the bride, or the bride stand in the light of mother, to the bridegroom, such a marriage is a prohibited connection. The two examples illustrate these cases in their order.

20. In the same manner as in the above text, of the Grihyaparishishta, on marriage, prohibited connection, in the case of marriage, is excepted; so, in the case in question, [one, who, if begotten by the adopter, would have been the son of] a prohibited connection, must be excepted; in other words, SUCH PERSON IS TO BE ADOPTED, AS WITH THE MOTHER OF WHOM, THE ADOPTER MIGHT HAVE CARNAL KNOWLEDGE.

21. "Accompanied with dancing, songs and benedictory words, having seated him in the middle of the house: having according to ordinance, offered a burnt offering of milk and curds, (to each incantation,) with recitation of the mystical invocation,—'Yastva-brisda,' the portion of the Rig-veda, commencing,—'tubhyam-agne:' and the five prayers, of which the initial words of the first, are Somo-dadat, &c."

22. The meaning is,—with such seven incantations, having offered seven burnt offerings of milk and curds.

23. Vriddha Gautama, propounds a special rule: "Let him then, cause to be offered, as burnt offerings, and hundred oblations of milk with liquid butter, contemplating in his mind, as the object, the lord of created beings, with recitation of the prayer "prajapate-na-tva-detam, &c."

24. The stanzas, which follow the passage, [of Saunaka last quoted,] commencing,—"The adoption of a son, by a Brahmana, &c." and ending with,—"such gift is to be made, on account of difficulty,"—having been before explained.

25. Next in order, to these stanzas is this passage, "Let the best of the regenerate to the extent of his ability bestow a gratuity on the officiating priest."


27. "A king half even of his dominion: next in order a Vaisya three hundred pieces."

28. 'Half even of his dominion.] The produce for one year, of half his dominion; for a text of Vriddha Gautama recites,—"Let him proffer the profits, arising from half his dominion, received in one year." And, this is with respect to one of the royal tribe,—"Pieces." Three hundred stamped coins (nanaka), and this must be understood to mean of gold, silver or copper, with reference to the state of the individual, being superior, middling, or inferior, respectively: on account of the text of Vriddha Gautama,—"Let him proffer three hundred pieces in gold, or in silver, or in copper, according as his condition may be superior, or otherwise."

29. "A Sudra, the whole even of his property: if indigent to the extent of his means."

30. "The whole of his property."

That is, the amount earned by the labour of one year: for, the expression,—'Received in one year,'—is not special; and there is this prohibition, "if offspring exist, the whole of the property must not be given."

31. Vasishtha propounds another mode. "Man produced from virile seed and uterine blood, proceeds from his father and his mother, as an effect from its cause. Therefore, his father and mother have power to give, to sell, or to abandon, their son. But let no man give or accept, an only son: for, he is [destined] to continue the line of his ancestors. Let not a woman give or accept a son, unless with the assent of her husband. A person being about to adopt a son, should take an unremote kinsman, or the near relation of a kinsman: having convened his kindred and announced his intention to the king, and having offered a burnt offering, with
section of the prayers denominated 'Vyahrityi' in the middle of his dwelling, but if a doubt arise, let him set apart like a Sudra, one whose kindred are remote.

32. Of this, the part commencing from 'Man produced from virile seed and wine blood, &c.' and ending,—'unless with the assent of her husband,' has been before explained.

33. 'Kindred'] The kindred of himself, his father and mother 'The king.'] The chief of the village. ' Dwelling.'] His house.

34. 'With recitation of prayers, &c.' On conclusion of the 'ajayabha' sacraments, having offered with fire, four oblations with recitation of the prayers, denominated 'Vyahrityi' severally, and collectively. Such is the meaning.

35. 'An unremote kinsman'] this has been explained.

36. 'But if doubt arise, &c.;'] He, whose kinsmen are in a distant country, is one whose kindred are remote, being widely different by country and language: should such a person be adopted, a doubt even exists, with respect to his race, disposition, and so forth; this being the case, let him set apart like a Sudra: until the ascertainment [of doubtful particulars] let him not hold communion with him; this is the meaning.

37. On this point the author subjoins a passage of revealed law, as a reason, 'It is declared, &c.' through one son, 'many,—the father and other ancestors,—are to be saved. On this account the adoption of a son takes place: not that through one, many may be condemned: now, a doubt existing on one side, condemnation is possible: therefore, he should not hold communion with him: for an offence, though eventual, must be avoided.

38. But, the author of the Kalpataru, advertling to the reading,—'asannikrish-
tam-evam'—says: 'one even whose kinsmen are not at hand, (asannikrishtam-evam)—even one whose good or bad qualities are not known. The particle 'eva' is in the sense of,—even—or though. 'But if doubt arise';—on account of his kinsmen, not being near, should a doubt, with respect to his class arise; considering him as a Sudra, let him set him aside, destitute even of initiation,—A Sudra even is indeed a son, this is the implied import.'

39. Either of these expositions of the implied meaning is inaccurate: for the adoption of one of a different class is forbidden. Therefore the passage in its obvious sense only is correct.

40. After the adoption of a son given, should a real legitimate son be born, the author (Vasistha) propounds a special provision with respect to the division of the heritage;—'when, &c.' The meaning is: this son given, being adopted, if a real legitimate son be born, then the son given, receives a quarter-share: not an entire share.

41. It is to be considered, whether this form [for adoption] in question is to be applied, [generally] to the son bought, and the rest, or its application be determined by the distinction in the part, which preceded;—'to give, sell, or abandon their son.'

42. Bandhayana, propounds a particular rule, for those following the Taittiri portion of the Vedas;—'We are about to explain the mode, for the adoption of a son'—(here follows the same, as in the quotation from Vasistha, from 'Man produced, &c.' down to, 'unless with the assent of her husband.') "One about to adopt, produces two pieces of cloth, a pair of ear-rings, a ring, and a priest, thoroughly read in the Vedas, a bunch of sixty-four stems of the kusa grass, and fuel of the 'purna' tree. Then having invited kinsmen, into the middle of the dwelling, and having made a representation to the king: having sat down by the direction of a Brahmana, in the assembly, or in the middle of his house: having caused to be exclaimed, auspicious day! benediction! prosperity! having performed rites, commencing with the recitation of the prayer 'Yaddevayajana,' down to the placing the vessels
for water: having advanced before the giver, let him thus beg 'give me this son.' The other replies 'I give.' He receives the child [and says] 'I received thee, for the sake of religious duty. I adopt thee, for offspring.' Then having adorned him with cloths and ear-rings and ring: having performed the investiture, and other ceremonies, down to the kindling, a flame of fire: having preceded the oblations he offers a burnt offering. After having recited the incantation in the first chapter of the [Yajur-] Veda, commencing '(Yas-tva-bhradakiritinamanyaman)' with recitation of the sacrificial prayer 'Yasmai-tvan-sukritajata-vede, &c.' he offers a burnt offering—Next, having performed the burnt sacemtes where the prayers denominated vyahritis are recited: [and] that designated 'svihtaka' with other ceremonies, being completed, down to the bestowing an excellent cow, he presents the fee [saying, 'yours are'] these two cloths, the ear-rings, and the ring likewise.' But subsequently, if a real legitimate son is born, he [the adopted son] succeeds to a fourth share; so says Baudhayana.'

48. As for the text of Vridhha Gautama, "A given son abounding in good qualities (yatha-jata) existing; should a legitimate son, be born at any time: let both be equal sharers of the father's whole estate." That must be construed, as supposing the former possessed of good qualities, and the legitimate son, destitute of the same: on account of the epithet 'yatha-jata' ('abounding in good qualities'). He, in whom there is a 'jata,' that is an assemblage (samuhu) of good qualities, (implied by 'yatha') is 'yatha-jata,'—one abounding in good qualities. This is the meaning; for, the term "yatha" is significant of simultaneity, depending on quality.

44. Accordingly, by this text, ('of the man, to whom a son has been given, adorned with every virtue, he even, shall take the heritage, though duly brought from a different family,') Manu hath declared on defect of the real legitimate son, the succession [of the son given,] to the whole heritage. Therefore, his participation of a moiety, a legitimate son [not possessing good qualities] existing, is even proper.

45. The same author propounds a special rule, should the due form for adoption not be observed: "He, who adopts a son, without observing the rules ordained, should make him a participant of the rites of marriage: not a sharer of the wealth.'

46. The meaning is; the marriage only of one adopted, without the form for adoption, is to be performed; no wealth is to be bestowed on him: on the contrary, in such case, the wife and the rest even succeed to the estate: for, without observance of form, his filial relation is not produced.

47. Accordingly Vridhha Gautama. "The sons given, purchased, and the rest who are adopted from those of his own general family, by observance of form acquire the state of lineage [to the adopter]; but the relation of sapinda is not included." Here, there is this restrictive rule: 'by observance of form only, acquired the state of lineage;' for, the forms for gift, and so forth, from being comprehended in the descriptions of the son given and the rest, (are necessary to) complete the peculiar nature of each. For instance, [in Manu's description of the son given,] it is said: "give as a son in a time of distress confirming, the gift with water:' here the mention of water is illustrative of the whole form necessary for the gift [of a son]; and hence the form for adoption also is implied: for a text of Manu expresses,—" Though duly brought from a different family." The meaning is 'obtained legally,'—according to form.'

48. "Purchased and the rest." By the word 'rest' the sons made, deserted and self-given, are included. For, by the expression 'as specified' in the text subjoined, it is declared by Manu, that those only, who are qualified by the form, indicated in their respective descriptions, are substitutes for sons. "The sages declare these eleven sons, (the son of the wife, and the rest) as specified, to be substitutes for the real legitimate son; for, the obsequies would fail." Accordingly in the description of the son made,—"whom being equal in class a man affiliates (prakuryat,) &c."—by the preposition 'pra' [which has a perfective import],—in the description of the son deserted "whom a man receives (pari-griniyat) as his own son, &c."—by the preposition 'pari' [implying thoroughly],—and in the description of the son self-given,—"who offers (sparayet) himself, &c."—by the verb 'offer' synonymous with 'give,' reception in adoption (parigraha) with the observance of form, is declared.
49. Intending the same, after having premised,—"therefore his father and mother have power to give, sell or abandon their son," by Vasishtha also is the form for adoption declared. "A person being about to adopt a son, etc." Now from the expression 'adopt' (parigrahana), this form is to be applied to the adoption likewise of the sons made, a self-given: for the same is implied by Manna by each preposition respectively [in their several descriptions].

50. Therefore the filial relation of these five sons proceeds from adoption only with OBSERVANCE OF the FORM of either Vasishtha or Saunaka; NOT OTHERWISE.

51. As has been determined in the case of the son of the wife by Manna and Vyasvalkya: for, (the necessity of) observing form, is declared affirmatively and negatively in these and other texts—"Even the son of a wife duly authorized not begotten according to law is unworthy of the paternal estate. For he was procreated by an outcaste." "Either brother appointed for this purpose who deviates from the strict rule and acts from carnal desire shall be degraded, etc."

52. As for what is declared in the Subodhini, a commentary on the Mitakshara,—"and the elders regard that property as temporal; like the filial relation and so forth:" that must be rejected, as contradicted; since it is repugnant to authorities cited: and because from the adoption only of a holy saint (arsha) (that is,—one propounded by a holy saint) the relation as son is declared to proceed by Paithinasi in this text; "Now these sons given, purchased and made, and the son of the appointed daughter who are in this case affiliated through the adoption of a holy saint by another are not sons of two fathers (being) unconnected to those of the family, (asanga-kulinadvyamushyayana.)"

53. Such, to whom those of the family (that is the family of the natural father) are not connected, [are asangata-kulina; and] persons not sons of two fathers and the same, [are asangata-kulinadvyamushyayana.] The meaning is,—those who are adopted according to the form of a holy saint are not allied to those of the family of the natural father: therefore they are not sons of two fathers.

54. Or the reading 'Dvyanushyayana' (sons of two fathers) may be admitted. For it will be declared in the sequel, that where, both the natural and adoptive fathers perform the different ceremonies, the state as son of two fathers ensues.

55. "Although it may be used like the word Indra and so forth; still, since the prevailing sense proceeds from popular recognition and the production of [a son] is ordained in holy writ, the general acceptance of 'son,' like the general acceptance of 'wife' and the like, must be understood." By the purport of this and other passages, Madhavaksha also declares the filial relation in adopted sons to be occasioned only by the proper ceremonies.

56. It is therefore established that the FILIAL RELATION of adopted sons is occasioned ONLY BY THE [PROPER] CEREMONIES. Of gift, acceptance, a burnt sacrament, and so forth should either be wanting, the filial relation even fails.

SECTION VI.

Rule for Succession where the real son and one formally adopted; and where one formally and one informally adopted may co-exist—Relation in respect to family and so forth of the absolutely adopted son—of the Dvyanushyayana—who is described.

1. Next should the real legitimate son and son given and son adopted, without observance of form be co-existent; the same author propounds the succession to the estate. "Him, existing,—a son being created; and a son given, existing,—one being adopted informally: that estate is his only who is justly master of the father's wealth."

2. "Him,—the real legitimate son existing; whatever son is created by adop-
tion and so forth; of these to him only, who is master of the father's wealth - justly - that is — by obvious inherent right. - does that estate belong: not to another. The meaning is that if a real legitimate son exist, the adopted son is not a SHARER of the wealth: for in the affiliation of a son, the non-existence even of real legitimate issue is an essential condition.

3. Thus a son given, that is one adopted according to form existing, should a son be made without observance of law: of these likewise the son-given only is participant of the estate, not the ONE ADOPTED WITHOUT OBSERVANCE OF LAW. Such is the meaning: for, ordained form alone produces the filial relation.

4. Should a son-given, and the real legitimate son exist together, the son-given does not receive the SHARE of an elder brother. This, the same author propounds, - "Subsequent to the adoption of a son-given, other sons being born, - should the father divide his estate; let him not be the partaker of the share of an elder brother." 7

5. The meaning is this, - after the adoption of a son-given, a legitimate son also being born: the son-given does not receive the share of an elder brother.

6. Manu next propounds another rule. "A given-son must never claim the family and estate of his natural father. The funeral cake follows the family and estate; but of him who has given away his son, the obsequies fail." 6

7. The son-given must never claim his NATURAL FATHER'S FAMILY AND ESTATE. Thus, 'the obsequies' - that is, the funeral repast [which would have been] performed by the son-given fails of him who has given away his son.

8. The author of the Chandrika thus explains, "By this it is declared that by the act alone, creating the filial relation, property of the son-given in the estate of his adopter is established, and connection to him as belonging to the same family ensues: But through extinction of the filial relation from the mere gift, the property of the son-given in the estate of the giver is extinguished; and connection to the family of the giver annulled."

9. But although by the text of Manu, connection to the family of the natural parent is annulled: what proof is there as to the connection to the family of the adopter being established? On this point Vrata Manu declares, "sons given, purchased and the rest retain relation of sapinda to the natural father as extending to the fifth and seventh degrees; like this general family, [which is] also that of their adopter."

10. The RELATION AS SAPINDA of sons given, purchased and the rest to the natural parent CONTINUES: by gift, and so forth even that does not fail; for by reason of consisting in connection through containing portions [of the natural father], it is not possibly to be removed while the body lasts. By this it is declared that the relation of sapinda in question is the consanguineal connection only and not connection by the 'pinda' or funeral cake; for that this latter is barred is shown by this passage. '"Of him who has given away his son the obsequies fail."

Anticipating a question as to the extent of this relation as sapinda, the author adds, "Extending to the fifth and to the seventh degree, &c." The meaning is this: 'Extending to the fifth degree'—completing five, that is—embracing, five degrees. So of the expression 'to the seventh degree.'

11. Gautama also, "With the kinsmen on the side of the father (viz. of the procurator (viji) beyond the seventh degree; and with those on the mother's side beyond the fifth, &c."

12. Here the word 'viji' (the procurator) is used for the sake of comprehending every one even, the natural father of a son given and so forth; not merely the natural father of the son of the wife only; for a text of Manu expresses, "As for these, denominated from the context sons though produced from the seed (vijas) of others: they are [sons] of that person from whose seed they severally sprang; and of no other.

13. 'They are sons of that person.' This declaration that they are sons is for
as sake of propounding the connection of sapinda [by the body]; and not to establish filial relation. For that would be at variance with the declaration of filial relation to the adoptive father contained in this and other texts,—"Of these twelve sons [men, etc.—'Of no other'] not of the adopter.

14. But analogous to the case of the daughter may not the relation of 'sapinda' to both [the giver and the receiver] be admitted: for like the state of lineage, the relation of sapinda is established by the adoption.—Should this be objected it is wrong; for it would be at variance with the text of Vriiddha Gautama.—"The sons given, part-heirs and the rest who are adopted from those of his own general family by observance of form acquire the state of lineage [to the adopter]. But the relation of sapinda is not included."

15. Those sons given and the rest who are adopted 'from those of his own general family';—from among his general family acquire by the observance of form 'the state of lineage'—the state of offspring. But in respect to these the relation of sapinda is not included' by the form,—meaning—is not established.

16. If the relation of sapinda be not established in those even of the same general family, it is declared a fortiori, that such relation is not produced in the case of one of a different general family.

17. And this is proper. As [in the case of the daughter] by reason of her proceeding from the father and producing in concert with the husband, the same body, their issue, the relation of sapinda [by the body] to both is established: in the same manner in the case of the son given it is not established; for though he proceed from the natural father, the producing in concert with the adopter a common body is wanting.

18. Accordingly, Devala in the text subjoined [since the family name, a share on the funeral cake are specified,] by the term 'merely,' bars the relations even of sapinda. For the sake of religious merit [being adopted] like the real 'son under the family name of each respectively,' [tat-tat-gotrena] sons [who are] reared: for such merely participation in a share, and [the oblation of] the funeral cake is declared."

19. But is not this irrelevant to the subject proposed: for it regards the son for religious merit. Thus:—in those sons who like the real son are reared for the sake of religious merit 'under the family name of each respectively,' [that is under the family name severally of each only,] does the mere participation alone in a share and the funeral cake vest: not, [for such is the intent,] the relation of sapinda to the adopter. Hence the text imports the want of connection of sapinda of that son only to the adoptive father: not of the son-given.

20. This objection if made, is denied.—For a son for religious merit [dharma-putra] is not admitted, as such admission would be at variance with the enumeration in this text,—"Of the twelve sons of men whom Manu sprung from the self-existent has named etc.—'or even were such son admitted as he is not classed in the series of heirs, (the wife and the rest), he could not participate in a share: and the connection of sapinda, not being possibly implied to forbid it would be unmeaning. Therefore, that text regards only the son: since it propounds participation in a share.

21. Now of the text in question this is the meaning. For the sake of religious merit,—'that is, for the sake of acquiring religious merit obviating the exclusion of the man himself from heaven,) after being adopted 'like the real son,'—(that is as substitutes for the same:) by the adopter, 'under the family name of each respectively,'—(that is, even under a family name, different with reference to the natural father,) sons who are reared: in those merely participation alone in the heritage and (the oblation of) the funeral cake of the adopter vests: not connection as sapinda. Therefore, it is established that in the text in question the CONNECTION of the son given AS SAPINDA TO THE ADOPTER IS NOT DECLARED; but on the contrary his connection as such extending to the SEVENTH DEGREE inclusive to the family alone of the natural father.

22. But does it not follow on account of proximity, that sons mentioned in the
plural number required by the repetition of 'tat,' are designated by that pronoun, not on account of remoteness, the adopting party becoming possessed of male issue; for,
— it would be improper to apply to such, whose plurality is dubious, the repetition:

—not to apply to the object a word designating 'as it was the father not the mother,
cannot bear an import in the sense of 'stma' (self);— and the possessive pronoun
'sva' (own) denoting the person immediately obvious, only would have been proper.

23. Should this be alleged: we assert the contrary. According to the maxim,—

"The application of pronouns is to the object presented to the mind,"—the adopting
party is indicated by the pronoun 'tat' ('of each, &c.') For the being the object pre-

tented to the mind, depends on being principle; and the being principle proceeds

from the object to be perfected, or from relation to the effect. Now the

father is principal by reason of being the object to whom accrues the effect con-
sisting of heaven, which in virtue of such text as,— "by a son he conquests worlds,

&c." is to be produced by an act, the instrument of which is a son: and because by

thoroughly considering this and other texts,— "the rites for the father consisting of

oblations of food, and libations of water to be performed by the son, &c."—it appears

the father is the object to be perfected as such by rites of oblation of food and so forth,

the agent of which is the son.

24. Thus,— "He mixes coagulated milk [daddhi] in boiled milk: that is a card

of two milk whey [amikaha], an oblation for the Vaisvadeva set of divinities." It

being settled, that the card here alluded to by reason of being formed of mingled

coagulated milk and milk, is an altered mode of what was intended to be offered:

should it be alleged by the opponent that the coagulated milk is what is altered;

since that alone designated by the pronoun 'that' (for, the coagulated milk mentioned

in the accusative case, is principal by reason of the milk mentioned in the locative being

secondary,) refers to the divinities:—it is thus demonstrated by the supporter of the

right opinion, that the milk is what is altered. As the milk is pervaded by the

coagulated milk, although the object (of the verb 'mixed'), by reason of this con-

sequent result of the import of the passage,— ('he perfects milk by coagulated milk')

the milk alone is principal. Therefore, this only designated by the pronoun 'that,'

relates to the divinities. Analogous to this, in the case in point also, it is correct to

say, that since the father is principal, by being the object to be perfected, he only

is designated by the pronoun 'tat.'

25. But should it be objected, if the son given, bear not the relation of sapinda
to the family of the adoptive father; why should not his MARRIAGE take place
therein? Excellent! we reply,—on account of his belonging to the same general

family.

26. Then his marriage might take place with the offspring of the adopter's
sister and so forth, for connection by identity of family and that of sapinda are
wanting; nor do we at present find any text prohibitory of this. On the contrary,

there are passages in favour of it such as, "Let not any one marry the daughter
of that person, who taught him the savitri incantations: but marriage in the general

or also in the peculiar family of that person, does not however occasion an offence." Yet,

this is not an intended consequence: for, it is at variance with the universal

practice of good persons, uninfringed, and by holy writ unforbidden. Therefore,

what reason is there against marriage in such instance.

27. On this subject, it is replied by a certain author, "She who is not connect-
ed, as sapinda, to his mother and father, (pitus) and not belonging to the general
family of either, is approved amongst twice-born men, for espousal and connubial
intercourse." As for the mentioning a female not connected as sapinda to the
father, in this text of Manu, in which [if the son of the body were regarded,]
it should have been expressed,— not connected as sapinda to himself—that is only,
to declare, that the marriage of an adopted son, must not take place with a
woman connected, as sapinda, to the adoptive father; otherwise the

marriage of a bridegroom, the eighth in descent from the common ancestor, (his
kindred being through his father) with a bride, the sixth from such ancestor, (her
descent being through her mother) might not take place: for being related as

sapinda, to the father of the bridegroom, her non-connection as such is wanting.
But what was required, would not thus result: for, it would be at variance with the
practice of good persons, and texts of every code of law; such as: "Beyond the fifth
ad seventh degrees, on the mother's side, and the father's side, respectively, (matrih-pitritas-tatha) [the relation of sapinda, ceases]. Nor can it be alleged, that this relation is equally applicable to the adopted son also; since it follows, such son, the eighth, and a damsel, the sixth, in degree, by reason of her being related, as a cloud to his father, may not intermarry. For, under this text, subsequently recited ("the relation of sapindas ceases with the seventh person, etc. etc.") the father of the adopted son, the seventh in descent, not being related as sapinda, to the common ancestor,—by reason of the bridegroom, the sixth in descent, consequently not being connected to him,—such bride, the sixth, and the father of the bridegroom, the seventh, are not mutually connected as sapindas: as has been already declared. Therefore, there is no inconsistency in alleging that this text even is decisive of the relation of the adopted son as sapinda [to the daughter of his adoptive father's sister and so forth].

29. This is very erroneously stated: for, either of these alternatives, [one of which under the foregoing construction must be assumed] is admissible. Accordingly, the text in question decisive of the relation of sapinda, of an adopted son only; of both the adopted son, and the real legitimate son? The first proposition is not correct: the text may in two ways relate to the son-given; either from such son being the subject treated on, or the text having the same meaning with a special text conclusive of the adopted son's relation as sapinda. Now, in this case, there is not either of these two causes, since they do not appear. Besides, did the text in question intend the adopted son, the term 'father' by a secondary import, would mean the adopting father; and that is not intended; for, it would be at variance with the rule of logic, "in a precept, the sense of a term is not secondary." Nor, also is the second position accurate, since it is forbidden to attach both senses to the word 'father.' Nor is there as in this instance, "There are fish and a cow-house in the Ganges,"—any proof, arguing the implied intent of a secondary sense. Therefore the text in question is relative alone to the son of the body: for conception and so forth are the subjects treated on, and it is declaratory of the same effect, as this and other texts: "Beyond the fifth and seventh degree, etc."

29. Neither can the objection specified be alleged,—viz. that, if the text regard the real legitimate son, it would follow, that a bridegroom the eighth, from the common ancestor, and a bride the sixth, might not intermarry, on account of her non-connection to his father, as sapinda being wanting. For, that is no real objection from its being founded in a mistake of the ablative case, (pitha) for the genitive [inflected the same]. Accordingly, in this sentence "matrih-pitritas-tatha" (on the mother's side, and father's side, respectively)—the grammatical affix 'tashi' conclusive of the case being the ablative, is used by the chief of saints. Should a doubt arise from this affix also being used as the inflection of every [oblique] case — the ablative is rendered certain by this text of Gautama,—"With the kinsmen on the side of the father, (piti-bandhubbhayah) (viz. of the progenitor beyond the seventh degree, and with those on the mother's side (matri-bandhubbhayah) beyond the fifth, etc. Thus, that noticed is not any satisfactory reply, another must be declared.

30. This others have propounded,—"Sages declare these eleven sons [the son of the wife and the rest] as specified to be substitutes for a son; for, the obsequies would fail. Since in this text, the son of the wife and the rest, are declared to be substitutes for the real son: by the maxim of logic,—‘the substitute possesses his virtue,—the whole virtue of the legitimate son being inferred in them, the exception [from marriage with them] of a female sapinda of the adoptive father must follow."

31. This is not accurate: for, as the representation of the relation of sapinda forbidden by this passage—"the relation of sapinda is not included"—would be impossible: that not being obtained the exception of such female could not take place. Hence it is disproved that the exception [from marriage] of the female sapinda of the adoptive father is established from the representation of the virtue of the real legitimate son [existing in the substitute] by reason of the name of 'son.' For, analogous to the case exemplified in the passage,—an animal being an object he performs not these two [rites]—the representation of the relation of sapinda which is forbidden being impossible, the exception could not subsist.

32. Therefore, not being otherwise inferrable, the relation of 'sapinda' in the peculiar family (kula) of the adopter as founded only on express texts of law must
be admitted. This is declared. Relation of sapinda is of two descriptions;—through consanguinity and connection by a funeral oblation. Of these the relation as sapinda arising from consanguinity, being obviously barred in the case of the adopted son, Hemadri, (after having declared that relation as arising alone from connection by a funeral oblation, and consanguinity) has determined the relation of sapinda of sons given, and the rest in the family of the adoptive father as extending only to the third degree.

33. And so also Karahmajini—"As many as there may be degrees of forefathers: with so many their own forefathers, let sons given and the rest associate the deceased: in order their sons with two forefathers, their grandsons with one. This is general: the fourth degree is excluded: therefore this is a relation of sapinda] extending to three degrees."

34. This is the meaning of the text.—According as the deceased adoptive fathers may be sons legitimate, adopted absolutely or of two fathers; as many as there may be degrees of forefathers,—three or six,—(that is, in the first of these cases, three,—viz. the natural father, grandfather and great-grandfather [of the deceased],—in the second, three,—viz., the adoptive father, grandfather and great-grandfather,—in the third three;—the adoptive father and other two,—and three, the natural father and other two)—with so many not exceeding six, [as the case may be,] let sons given, and the rest associate their acquired fathers.

35. The epithet "their own" is used for the purpose of suggesting that all these as many as three or six, (as the case may be) who are forefathers of the adoptive father are divine objects, contemplated in the ceremony of 'sapindi-karana' performed for the adopted son, by his own son. And hence it being deduced, that the forefathers of the adopter are in fact divine objects in the ceremony of 'sapindi-karana' performed for the adopted son: the author propounds a distinction: "In order their sons with two [forefathers]"—that is, with two of three and four of six. On this principle let the grandsons of the adopted son perform the 'sapindi-karana' for their own father, with one the father of the adopter, from amongst three forefathers of the adopter of their one grandfather: or in the case of [such adopter] being sons of two fathers, with both grandfathers of their own grandfathers. The author points out this rule in respect to the adopted son and his issue likewise.

36. 'This is general':—that is, this ceremony of 'sapindi-karana,' where the adopted son, and his son also are sons of two fathers must be equally performed [by their descendents] with both sets of forefathers.

37. But, if this is the case: the 'sapindi-karana' for his own father, the grandson of the adopted son being performed by the great-grandson of that person, with these three,—the son of the adopted, the adopted, and the adopter,—no alliance by a funeral oblation with the three forefathers of the adopter would exist; as not one of them even is included. Accordingly, the author adds,—"the fourth degree is excluded." The meaning is,—when any person may perform for his own father, the 'sapindi-karana,' he should do it with three, the father and other two ancestors of deceased, not with the fourth.

38. But in the instance of the real legitimate son is not thus the performance of the sapinda-karana [for his father] with three forefathers only, established by holy writ? Being established then by this alone, for what purpose is the inconvenience of introducing another express text [to declare it]? Anticipating this objection the author subjoins: "Therefore this," of adopted sons is a relation of sapindas extending only to the third degree being productive of uncleanness and disability of remarriage, and consisting in connection by funeral oblations. It is not such relation including the seventh degree, declared in the subjoined passage from the Matyas-purana: for this being of a general nature is excepted by the special rule [in the case in point]—"The fourth in degree, and the rest are partakers of the wipings [of the oblations]. The father and the rest are participant of the oblation. The seventh in descent is the giver of the oblation. Of these the relation of sapinda extends to the seventh degree."

39. Intending merely this, it is said by the author of the Sangraha.—"The relation as sapinda of adopted sons, extends to three degrees in the family of the natur
father: and like that, in the family of the adopter. This is a rule of law." The
mention here of relation as sapinda in both families, is with reference to the son of
two fathers, for, it has been shown that the ceremony 'sapinda-kaранa' for such son,
is performed with two sets of three forefathers. Of the absolutely adopted son, the
RELATION of sapinda IN THE FAMILY of the ADOPTER, consisting in connection
by natural adoptees, extends to three degrees: IN THE FAMILY of the NATURAL
FATHER, arising only from consanguinity, it extends to seven degrees. To enlarge
would be useless.

40. "Like this, the general family"). 'Like this, analogously to the relationship
as sapinda the general family likewise [of sons given and the rest,] is that of
the natural father who contributes the seed; not only of the natural father
however, but also of the adopter. The general family of sons given and the rest, is
that of him also, who is the adopter of such son given and so forth. By this the
relation of sapinda is shown to vary from the general family. Thus, that relationship
is in the line of the natural father only; not so the general family; on the contrary,
this is that of both [fathers] even. This likewise does not apply to the general
adopted son: but is relative to the son of two fathers, a particular adopted son.

41. Accordingly sons given and the rest, [who are sons of two fathers] are of
two descriptions: Those absolutely sons of two fathers, and those incompletely so.
Of these, those are named ABSOLUTE 'DVYAMUSHYAYANAS' who are
given in adoption with this stipulation,—' this is son of us two' (the natural father
and adopter). The INCOMPLETE 'DVYAMUSHYAYANAS' are those who are
initiated by their natural father, in ceremonies ending with that of tonsure, and by the
adoptive father in those commencing with the investiture of the characteristic
thread, since they are initiated under the family names of both even, they are sons of
two fathers but incompletely so. Should a child directly on being born be adopted;
as his initiation under both family names would be wanting, he would partake only
of the family of the adopter.

42. Intending all this, Satyashadha says,—'Of absolute 'dvymushyayanas' of
both &c.' By this compendious rule, having declared the connection of absolu-
te dvymushyayanas to the patriarchal saints in both families, the author by
another aphorism commencing,—' Of sons given and the rest like the dvym-
ushyayana, &c.—ordains the same connection with respect to those incompletely
dvymushyayanas. Now this is thus explained by Savarnasvami. "Treating
on dvymushyayanas, the author mentions those incompletely so, 'Of sons given,
&c.' Unto those only not to issue beyond, [does the connection to both families
extend]. By the first only the initiatory rites [ending with tonsure are performed].
If by the adopter [the family of the adopted] is that of the latter: on account of
priority. From this alone [the same is the case] in respect to a descendant beyond.
So also those, who are affiliated by a descendant of the same general family, (for instance a nephew, by an uncle), are of the adopter's family only.

43. The meaning of this explanatory passage is this.—He only is connected to
both families, who has been initiated under both family names; not descendants
beyond. In reply to the question, as to the cause of connection to the family of the
natural father, the author says, "By the first, &c. " 'The first';—that is, the natural
father: [the cause is,—] on account of the initiatory rites, being performed by him
only.—Now the initiatory rites, [alluded to,] are those ending with tonsure: on ac-
count of this passage from the Kalika-purana. "Oh Lord of the earth, a son having
been regularly initiated under the family name of his [natural] father, unto the
ceremony of tonsure inclusive, does not become the son of another man." This has
been already before explained. He does not become exclusively, the son of another:
but, is a dvymushyayana, or son of two fathers.

44. Anticipating a question, as to what would be the case, were the initiation
performed by the first; the author adds,—'If by the adopter &c." If every initi-
atory rite from that on birth, or even those commencing with tonsure, be performed
by the adopter only, the family [of the adopted] is of the latter,—that is,—of the
adopter only. For this, a reason is subjoined: --'on account of priority'—meaning,
-from precedence in the performance of initiation.

45. The author declares the family (required to be known, in the instance of
the issue of the dvamushayanas, and that of the [absolutely] adopted son:—"from this alone"—from the initiation taking place under the family name only of the adopter in both instances even his, is the family of the descendants beyond.

46. The author alludes to the adoption of one belonging to the same general family,—"so also, &c." That is,—if the natural and adoptive fathers belong even to the same general family, the distinctive appellations are fixed by the adopter only for the adoption, and initiation are performed by him.

47. The text, ("A given son must never claim the family and estate of his natural father, &c.") must be considered applicable to the case where every initiatory rite, from that of birth is performed by the adopter only: but the son given, and the rest who are absolute dvamushayanas, belongs to both families; on account of this passage of Parijata;—"SONS GIVEN, purchased and the rest who are sent of two fathers, MAY NOT MARRY IN EITHER FAMILY even: as was the case of Sringa and Saisira" 'In either family'—in the family of the natural father, and in that of adopter.

48. With respect to the sons given, and the rest being sons of two fathers, this text and that of Satyashadha: commencing ("of absolute" dvamushayanas") are authority. With the same intent it is declared also in the "Pravara-manjarī": "For the most part sons given purchased and made the son of the appointed daughter and so forth belong to both general families with connection to the patriarchal saints of each." From this alone on the occasion of the marriage of those, appertaining to two families both families with each of which their connection to the patriarchal saints is involved, must be avoided.

49. The sakha or peculiar branch of the Vedas is that of the adopter only. Vasishtha declares so:—"Sprung from one following a different 'sakha' (or branch of the Vedas) the given son even when invested with the characteristic thread, under the family name of [the man] himself, according to the form prescribed by his peculiar "sakha" becomes participant of the duties of such sakha; (sakha-bhak"). That duty in which his peculiar, (that is the adopter's) sakha prevails, is a duty of such sakha; in this he shares or is "participant &c." Such rite only which is prescribed by the sakha, of the adopter must be performed by him. This is the meaning.

50. The forefathers of the adoptive mother only are also the maternal grand-sires of sons given, and the rest: for, the rule regarding the paternal, is equally applicable to the maternal grand-sires [of adopted sons].

51. As for what is said by Hemadri that the precept enjoining the performance of a funeral repast in honor of the maternal grandfather, refers to the natural maternal grandfather; that is inaccurate: for it is at variance with the passage—"of him who has given away his son, the obsequies fail. Nor is the capacity of the maternal grand-sires as givers wanting: for by reason of their affording their assent to the gift (as appears from this passage—"having convened his kindred, &c." ) they also are parties to the same. Besides, by this passage—"the funeral cake follows the family and estate"—the family and estate are declared to be the cause of performing the funeral repast; and the estate of the maternal grandfather also like that of the father lapses from the son given. His incapacity to perform a funeral repast in honor of his original maternal grandfather is properly declared.

52. Accordingly, Hemadri himself, from not being satisfied with that [just stated], has advanced the other position: "In the same manner as for the secondary father, a funeral repast must be performed in honor of the secondary maternal grandfather and the rest."

53. And this even is proper. The adopted son as substitute for the real legitimate son, being the agent of rites performed by a legitimate son, it follows that he is the performer of funeral repasts, the objects of which are the manes in honor of whom a legitimate son performs such repasts. For:—without difference, relation to the father and other sires of the adopter obtains; in the same manner as relation to the general family the sakha, the family-deity and family-rules of that person;—the term 'son' is used without restriction in these and other passages;—"Fathers
"The son who shall go to Gaya, &c."

54. Accordingly sons given and the rest do not incur the guilt of a 'parivriti' and the like: for a text of Gautama recites:—"By marriage and the establishing consecrated fire, the offence of 'parivedana' does not attach to a half brother, a son given and the son of a paternal uncle likewise."

55. 'To a half brother.'] On the marriage and so forth of either of two brothers by different mothers, the offence denounced 'parivedana' is not incurred. This is the meaning. 'A son given' it is meant,—that although there be an elder brother in the family of the natural father, the adopted son is not (should he marry and so forth,) a 'parivriti;' nor also by such previous MARRIAGE and the like of the younger, is the elder a parivitta or person passively implicated in the criminal acts alluded to. 'The son of a paternal uncle.'] On the marriage and so forth of the 'ksetrajja,' son of a brother begotten [on his wife] by her brother-in-law or on the same of the legitimate son of such brother-in-law, the guilt of being a parivitva, parivriti and the like, is not incurred by such son of the brother-in-law or such 'ksetrajja' son respectively. This is the meaning.

56. 'The son of a paternal uncle' in the general sense of the terms is not meant: for one adopted is suggested by the expression 'a son-given;' and by reason of there being no grounds for supposing an unadopted [nephew to be referred to] (as the prohibition [against previous marriage, and so forth, does not apply to him,) there can be no rule for exempting him from the same.

57. Nor must it be argued that from the particular authority in question, the filial relation of a brother's son though unadopted is established; for this is obviated by the several objections before stated: viz., by, where of ten brothers five were without male issue, and five had each ten sons, it would result that the brothers destitute of male offspring would severally have fifty sons; and it would follow that the fifty sons would each have ten fathers. Therefore the interpretation given only is accurate.

SECTION VII.

For the legitimate daughter, there may be the different substitutes, corresponding with those for the son.

1. As on defect of the legitimate son, so on defect of a legitimate daughter likewise, daughters of the wife and the rest are substitutes on account of the rule of logic, "on defect of the principal a substitute, &c." Now she is principal by reason of her being the means of completion in the precept enjoying gift and so forth. And a daughter produced according to the precept directing conjugal intercourse at due season is such means; in the same manner as rice and so forth acquired according to the rules of acquisition are the completion means of a sacrifice.

2. Accordingly it appears from the argument exemplified in the instance of the sacrifice at night, that progeny (praja) only deduced from revealed law and indifferently male or female is liable to be produced under the positive precept regarding conjugal intercourse at due season contained in such passages as this commencing—"Let him approach in due season, &c."—and inferred from these and other confirmatory passages;—"We (women) obtain progeny from the approach of [our husbands] at due season."—"They obtain progeny from approach at due season,"—For the etymology being thus; praja, (progeny) from 'prajanayati' (one who procreates), by the word praja a male or female being only possessing generative powers
is intended; not one of the neuter gender; for such being produced from equality of
the male and female seed is a monstrous production.

3. Therefore should no issue (santati) such as is contemplated in the passage
following, be produced; descent to a region of horror is ordained.—"Not having read
the Vedas: not having produced issue: and not having performed the various sacrifices,
a regenerate man desiring absorption falls to a region of horror."

4. What prolongs lineage, is 'santati' (issue) a synonyme of 'praja' (offspring);
for a passage of the kosha or vocabulary of Ámaṇa expresses: "praja stands for 'santati'
(issue) and 'jana' (people)." Thus is explained the word 'apatya' (offspring)
occuring in the passage subjoined: on account of,—a text of Yaska which expresses,
—"'apatya' (offspring) that is, from whom there is exemption from falling into hell
(apatana) : or through whom one falls not (patati) into hell;"—and this passage of the
kosha—"The synonyms signifying 'son' are—atmajastanayah-sunjh-sutah-putrah :
all these terms in the feminine signify a daughter. The terms 'apatya' and 'tokam'
apply to the two sexes."

5. "For the sake of offspring (apatya) were women created: woman is the soil;
men, the sowers of the seed: to one possessed of seed must the soil be given; but one
destitute thereof deserves not the soil."

6. "Here 'puman' (male) is 'puruman' (comprehending much); or its etymon, is
the root puna (to cover, daub, &c.)."—Although by this passage from Yaska, the word
pun (male) signifies one knowing much;—still from this part of his passage in question
—"or its etymon, is the root puna (to cover, &c.)"—it must be interpreted as signifying
persons both male and female possessing the procreative faculty.

7. Accordingly Yaska has shown by the following passage that the term 'putra'
there occurring signifies children of both sexes (mithuna). "That children male
and female (mithuna) are heirs is declared by these two stanzas.—From my several
limbs, thou art distilled ; from my heart, thou art produced. Thou art indeed self, but
denominated son (putra) : mayest thou live an hundred years."—Manu descendant from
the self-existent hath declared at the commencement of the world,—"without distinc-
tion that wealth is that of children (putra) male and female (mithuna)."

8. It must not be alleged that the term 'mithuna' in the above passage intends
the son and daughter-in-law; for the text—"From my several limbs thou art distilled
&c."—would be impertinent; and the exclusion of the daughter from inheritance ac-
cording to the doctrine of some mentioned in this passage would be incongruous. "Not
daughters: thus some. [But by me] the male is recognized as an heir: the female
as an heiress."

9. As for the term 'putra' (son) used in this and similar texts: "Heaven awaits
not one destitute of a son (putra)"; that also even signifies both sexes. For it is de-
clared by Panini in the following rule to be a complex expression (formed by the re-
jection of one term and retention of the other) denoting son and daughter.
The expressions bhṛṭri (brother) and 'putra' (son) are severally inclusive of sister and daughter." By this, is explained the term 'putra' (son) in such
texts also as,—"By one destitute of a son, must a substitute for the same always
be made, &c."

10. And, as conforming with this doctrine, the indication of the affiliation of
a daughter, will be subsequently declared.

11. Accordingly it is said,—"Equal to him, is the putrika-suta or daughter
appointed to be son"—"as a son, so does the daughter of a man, proceed from his
several limbs,"—and,—"If by the inauspiciousness of destiny, a daughter should not
be born; then that must be propitiated by the observance of rites, such as re-
pasts in honour of the deceased, on the first day of the dark fortnight; in the
same manner as the destiny for a son, by funeral repasts, and the like, on the
fourth day of the same."

12. "Thus approaching let him beget a son." As for what is suggested by
this, that a son only is the object proposed to be produced in an act, the only
means for completing which is the approaching; that is a recital of 'son,' intended to show the commencing act of one desirous of male issue; the author having first determined a son,—one of the male and female children alluded to by the term progeny (prajā),—to be the fruit of the essentials (guna) mentioned in the same passage.

13. And these essentials in this and other texts, ("thus, &c.") are explained by the holy saint Manu and the rest to be,—on a night whose date is an even number, predominance of the virile seed; and passiveness of the woman:—the moon being in an suspicous mansion:—the ceremony, 'punavāna,'—destiny and so forth.

14. It is explicitly propounded by Asvalayana also, that in marriage, a son and daughter are the fruit of particular essentials,—"Let the man take the thumb of the woman repeating the portion of the Vedas—'I take your hand for your prosperity'—should be thus desire—'may my children be born males only;'—[let him take] the fingers alone: if his desire be for female issue, the hand in the middle: if both be desired, the hand in the middle, including the thumb."

15. By this is explained the passage—"On the odd nights, daughters, &c."

16. Therefore, in the same manner as the son by reason of being the means of procuring heaven as the agent in the performance of the funeral repast and so forth, is principal; the daughter also being the same by reason of her being the means of accomplishing the precept enjoining gift, the funeral repast, and so forth; on defect of her a substitute is proper.

17. "'Duhita' (daughter)—that is—'duro-hita' or 'dure-hita' one remotely benefiting [derived] like 'doghiya' (a milker)." By this analysis, Tsaka shews that the daughter is not a daughter by many of her son also—Manu has this: "Nor between the sons of his son and of his daughter, there subsists in this world no difference: for even the son of a daughter delivers him in the next life like the son of his son." And in the Mahabharata this speech of Gandhari,—"This one daughter born after one hundred sons shall be mature. Hence I shall obtain words acquired by a daughter's son.—This is my persuasion."—In another authority also: "Are daughters also real legitimate children of their father and mother? Formerly one falling, being upheld by a daughter's sons did ascend to heaven."—By a daughter's sons,—by the sons of Magchadi of the description denominated 'kānina' through funeral rites performed on the eighth lunar day and the like.

18. Consequently on failure of the real legitimate daughter, for the sake of obtaining the heaven procured by the daughter's son, the constituting the kahetraja and other ADOPTIVE DAUGHTERS even substitutes is established. Nor is there any express passage of law as to there being a substitute for rice, [that it should be objected, that there is no express passage authorizing a substitute daughter.]

19. If this is the case; then in the same manner as on the death of the husband, the brother-in-law is a substitute; on the death of the wife the sister-in-law would be the same on account of her exact resemblance in point of consanguineal relation to the father-in-law, viz., her own father.

20. This objection if made is inaccurate. The designation of 'Wife' is not in consequence of 'consanguineal relation to the father-in-law,' but from being the lawfully wedded spouse of the husband. Now, the sister-in-law is not such: where such essential exists in younger wives, in that case one [according to the order of age] may be the substitute for the eldest. Accordingly the chief of saints hath negatively declared this. "Another wife of equal class [with himself] existing, he should not cause a religious act to be performed [by one of inferior class] amongst several wives equal in class except the eldest, no other officiates in a sacred rite."

21. Therefore it is established by reasoning even that these [the kahetraja and other secondary daughters], may be substitutes. Of these from amongst the following five subsidiary daughters, viz., the daughter of the wife that of hidden origin, the damsel's daughter, and that of the twice-married woman, Manu himself has propounded the production of the daughter of the wife:—"on failure of issue
BIRTH—(Hindus).

[by the husband] the desired offspring may be procreated either by his brother or some other sapinda on the wife who has been duly authorized.—It is meant by this that on failure of issue of both sexes, as offspring male or female is the object desired [that begotten by a kinsman] is a substitute for either as the case may be.

22. As to the other four subsidiary daughters in question there is no necessity for an express rule for their production: for their existence proceeds from the inclination of individuals.

23. The names of these [subsidiary daughters], are only those added (v. § 21) corresponding with those of the sons: for the cause from which they proceed is the same even in respect to both.

24. And their being substitutes for the legitimate daughter is established from analogy even from their originating partially from portions of the husband and wife; in the same manner as wild rice (nivara), is shown to be a substitute on defect of the cultivated rice which ripens in the rains (vrihi). Now, such portions are partial, because the connection being through portions of the wife only, relation through portions of the husband is wanting.

25. Allowing however that by force of analogy the daughter of the wife and other four secondary daughters are substitutes for the legitimate daughter,—How are a daughter given, one purchased, a daughter made, one self-given and a deserted daughter, (no analogy applying) substitutes?

26. This objection is invalid.—To these descriptions of daughters also analogy even does extend: since an exact resemblance exists through equality of tribe and so forth as intimated by the saint—"this law is propounded by me in regard to sons (tanyayehu) equal by class";—and this passage was before explained in treating on the substitute for a son.

27. But admitting that the daughter of the wife and other four daughters from relation as containing portions of the mother—and the daughter and the other four from equality of class—are substitutes; still since there is no difference in their resemblance, how is the order [of succession] as provided for [in the case of sons] by this passage ("on failure of the preceding the next in order is heir, &c.") to be applied?

28. This objection is wrong: we reply,—by the greater worthiness of each successively. This Vishnu declare—"among these the preceding successively is the more worthy."—Now worthiness is distinguished into what is temporal (drishta) and what is spiritual (adrihsa). That which is temporal proceeds from relationship through consanguinity and the like: that which is spiritual from being purified and so forth. And the text in question intends a restrictive rule: in the same manner as such text, as—"Should be not procure the 'Soma' creeper let him even admit the 'pustika' plant, &c."

29. Further particulars may be consulted in the Kesava-Vaijayanti, my commentary on Vishnu.

30. Instances indicating the substitute for a daughter are found in the Puranas.—Amongst these the recital to Dasaratha by Sumantra of the prophecy foretold by Sanat-kumara in the Bala-kanda of the Ramayana is an indication of a daughter given.—"In the race of Ishvaku one very meritorious shall be born: by name the warrior Dasaratha: illustrious and constant in truth.—Great friendship shall subsist between him and the magnanimous king of Anga; and he shall possess a daughter of exalted destiny of the name of Santa. But the king of Anga [called Lomapada] will be substitute of issue.—That monarch shall intreat the King Dasaratha thus:—'I am destitute of offspring; 'Oh! versed in morality, let this girl Santa of excessive beauty, with open heart be given me, for the sake of offspring.'—Then that Raja Dasaratha deliberating in his mind shall give the girl Santa to the sovereign of Anga. That king, having taken the damsel, (his desires being fulfilled,) with gladness of heart will quickly go to his capital—That potentate shall bestow the damsel on Rishya-sringa, &c.' There also is this address of Dasaratha to Lomapada, "Let your daughter Santa, Oh! warrior king, go with her husband to
my city—an affair of importance has arisen." There is likewise the address of Lomapada to Riasy-aringsa:—"This King Dasaratha is my amiable beloved friend. For the sake of offspring for me, this beautiful girl was given by him to me who demanded her: O Brahmana, Santa is most dear to me; as myself, Oh! sage he, this king is thy father-in-law."

31. In these quotations from the expressions,—"let be given"—"shall be given"—"having taken"—"and given"—a rule for the gift is manifest. So it being premised, [that the king of Anga will be] destitute of issue, it follows, from the conclusion of his prayer ("for the sake of offspring") that the daughter given, resembling the legitimate daughter, is the substitute for issue.

32. An indication of the daughter purchased, is found in Hemadri from the Skanda-purana. "One even of a different family, having through gold, made the daughter of another, his own, is capable of bestowing her [in marriage,] according to legal form"—Also in the Lingapurana—"After having conferred with the parents, having made his own a damsel, perfect and free from every defect: by the gift of great wealth, having brought her [to his house]: having presented her with new clothes of good quality: having adorned her with ornaments, let him honor her with scented necklaces.—He is first well to consider causes, their respective families, constellations and so forth: he is to study their respective dispositions and after having liberally gratified both, she is to be given by him to a Brahmana only, who is conversant in scripture, a practiser of devotion, one who hath notoriously read the Vedas, and a student of theology."

33. In these quotations, from the expressions—"having through gold made his own"—"by the gift of wealth, &c."—authority for the purchase, [of a daughter] is manifest.

34. An indication of the daughter made, is found in the Haribana where the offspring of Sura is enumerated. [The author] having thus premised,—"Ten males were begotten by Sura on the chief queen, the daughter of Bhoja, viz.—first Vasudeva the long-armed surnamed Anaka-Dundabhī &c."—then continuing,—"Next to him Deva-Bhaga was born, then Deva-Sravah, then Anavrishti, Kanavaka and Vasavana: after these Grinjoma, Syama, Samika, Gandusha—and of him were five daughters;"—and having thus enumerated the five—"Pritu-kirtti Pritha, and also Srutdeva, Sruta-nrava, Rajadhdevi, likewise. These five were mothers of warriors;"—subjoins—"Kunti made Pritha his daughter: Pandu married her: on whom was procreated by justice the king Yudhishtira well versed in morality."

35. In this quotation since by the verb 'made,' the act of an agent even shown: the female [the object] is a daughter made [kritirma].

36. Also in the Padma-purana, in the part treating on the Bhuma-vrata, or fast in honor of the planet Mars. "Formerly there was Sunandika, a Brahmana thoroughly read in the Vedas: his wife Sunandika was barren; but extremely anxious [for issue]. No offspring was born to him; from continuing barren, [premature] old age came on. Himself having taken her [in adoption],—Susila, who was the child of another, beautiful in form and born in the family of a Brahmana was educated by him: and that Brahman, also cherished her in her house as her daughter: and she was given in marriage to the Brahmana Somevvara who then according to the form declared in the Vedas married her, &c. &c."

37. Here the specification of—"himself having taken"—indicates an instance of a daughter made: and the construction was educated "by himself"—is not accurate: for as the agent to the verbs 'taking' and 'educating' is the same—as shown by the past participle 'having taken'—it is established that the act of educating is by himself.

38. An indication of the daughter self-given must be searched for in the other Purasas: One the daughter deserted occurs in this passage from, the first Parvan of the Mahabharata, reciting the conversation between Dushanta and Sakuntala. That hermit begot Sakuntala on Menuka. Menuka having deserted that infant born on the bank of the Malini river, on the delightful table-land of Himavat after having performed the necessary rites at that river repaired thence quickly to the assembly of Indra. The birds having seen that infant sleeping in the forest
uninhabited by men and abounding in lions and tigers surrounded it on all
sides with a view that the voracious devourers of flesh might not hurt
the child. The birds then guarded on all sides there, the daughter of Menuka;
and I (going to sip water) saw her sleeping surrounded in the beautiful uninhabited
forest by birds. Having brought her thence I adopted her as my daughter. The
maker of the body, the bestower of life, and whose food is eaten these three in
order are declared to be fathers in holy ordinations. Since she was surrounded in
the desert forest by birds her name also was in consequence fixed by me Sakuntala. Thus
recognize, oh! Brähmana my daughter Sakuntala.—Being asked this he declared
to the great saint to be my birth. Do you oh Lord of men regard me as the daugh-
ter of Kansa, I consider Kansa as my father: I know not my real father.

39. Here, from the use of the expression—“having deserted”—authority for the
deserted or discarded daughter is obvious. Hence, it is easy to establish authority
for each, by instances appropriate to each respectively. It is useless to enlarge.

SECTION VIII.

On the mourning, and so forth, of, or for, the adopted son.

1. Next uncleanness [on occasions of birth, and death] in respect to the adopted
son, is determined. That is not reciprocal, in the family of the natural father, on
account of the text of Manu. “A given son must never claim the family and the
estate of his natural father. The funeral oblation follows the family and estate : but
of him, who has given away his son the obsequies fail.”

2. The terms ‘funeral oblation’ and, ‘obsequies’ in this text are inclusive of every
observance in honour of manes, uncleanness and so forth; for the exclusion of the family
and estate, which are the cause of presenting the funeral oblation and so forth is men-
tioned; and it is a restrictive condition that uncleanness which is spiritual, precede the
presenting the funeral oblation, and so forth, in honour of the dead.

3. And hence, the funeral oblation being barred, the exclusion of uncleanness is
even implied; for by well considering such passages as the following the concomi-
tancy of the funeral oblation and uncleanness appears.—“Whether one of the same
family, or one not belonging to the family: whether a male or female; whoever on
the first day presents the funeral cake should complete the rites, till the tenth: and so
also, it is not well for those who previously receive any thing from the performer
of these rites,—“When the uncleanness lasts an ablution of water, and one funeral
cake.”—therefore, there is no reciprocal uncleanness, and the like, between the adopted
son and his natural father, and the rest.

4. As for the text,—“Impurity (aghani) arising from seminal connection also
continues three days”—that is overruled by this passage; “But of him who
has given away his son, the obsequies fail;” for, it applies to instances other than
that of the adopted son. Besides, since it appears that family and alliance by ob-
lation of food are collectively the cause of impurity, the libation of water, and so
forth; should one of these essentials be wanting, impurity and the rest, occasioned
(partly) by it, does not exist.

5. Accordingly Sanksa and Likhita. “The connection as sapinda from family
must be recognized, as extending to the seventh degree: and the funeral cake, and
the gift of water, purity and impurity, are consequent to it.”

6. On the DEATH OF THE SON GIVEN, and the rest, the UNCLEANNESS
of the adoptive father, and others, endures for three nights. This Vrihaspati declares :
—“Wives, having taken to other men, and children by the wife of another, being dead:
the best of the regenerate, having bathed, are purified.”—And this rule for uncleanness
applies to him only, to whom the relation of wife or son refers.

7. Marichi separately propounds [the uncleanness] of sapindas of the father,
connected within the third degree. “On occasions of birth and death likewise,
8. Although, no impurity of the adopter, by acceptance of sons given and the rest, (who are already born,) as arising from their birth obtains: still, uncleanness is incurred from the birth of their offspring.—But, on account of the birth of the son of the wife of the twice married woman, in his own house, uncleanness on that occasion is fit.—Thus, is impurity from birth shown.

9. This however regards sons of equal class only.—Accordingly the Brahma-purana,—“Excepting the legitimate son, on the death and birth of the son of the wife, and the rest, always in every tribe, the impurity of those equal by class endures three nights. This is a settled point.”

10. ‘Always’—that is,—every time subsequent to investiture of the characteristic thread.

11. [Prajapati also] “Wives having taken to another, and children by the wife of another, [being dead:] those of the same general family are purified by ablation: after three days at least, one versed in the divine truth.

12. Although, [it may be alleged, that] on the death of the adopter, the uncleanness of the adopted son, for ten days, is not fit, since the [general] relation of sapinda and connection by identity of family, associated together, are wanting [in him]; and no special rule in that respect is at present found: still, by the following passage of Marichi, uncleanness for ten days is propounded, for the purpose of the disciple’s performing the necessary rites, in honour of his deceased ‘Guru.’ “The disciple of a deceased ‘Guru,’ performing uninterruptedly for ten days, with food for manes, the obsequies for a father, is purified.”

13. Here the term ‘Guru’ represents the preceptor, and other superior; and such venerable superiority, obtains in the individual in question [the adopter], on account of his performing the rite of investiture, and so forth.—Therefore, in case of the adopter having performed the initiatory rites of the adopted, the impurity of the latter endures for ten days; if this be not the case, for three nights only: on account of the text before cited. (§ 9).

14. So on the death of a sapinda of the adopter, related within the third degree, the uncleanness of the adopted son, is for one day: for, the text in question of Marichi recites,—“that of the sapinda for one day.”

15. On the death of one connected by a oblation of water, and one belonging to the same general family, ablation only is necessary; on account of the text of Prajapati, before cited (v. § ii.) “Wives having taken to another, and children by the wife of another being dead, those of the same general family are purified by ablation, &c.”

SECTION IX.

On the funeral obsequies to be performed by the adopted son.

1. Next the funeral rites, performed by the adopted son, are described. On this subject, Jatukarna says:—“Annually let the son of the wife, and legitimate son perform [obsequies] according to the parvama form: the other ten sons, should perform the rite dedicated to a single ancestor.”

2. ‘Annually’—from this general mode of expression, although, the monthly (amavasya) and other periodical funeral repasts be inferrible; that only on the anniversary of the day of death is meant. For, the terms—“the anniversary of the day of death”—are expressly used in this text of Parasarita. “[A funeral repast] by the legitimate son, for a father, who has departed this life, on all occasions is in honour of three ancestors, that by those of a different general family (pravaka-gota), is the rite consecrated to a single person, on the anniversary of the day of death.”
3. The expression—'those of a different general family' (aneka-gotra)—in this text does not intend the maternal grand-father, and the rest: for, its construction as intending a secondary son, as contrasted with the legitimate son, is proper,—from its proximity in the same sentence with the terms 'father' and 'legitimate son': for, otherwise [no contradistinction between the legitimate and secondary sons being meant], if the meaning intended, be conveyed by merely declaring that, [a funeral repast,] in honour of three ancestors, must be performed by the son, on the anniversary of the day of the father's death, it would follow, that the specification of the term legitimate were impertinent.—Nor is there any restrictive rule that on the anniversary of the day of death, merely the rite consecrated to a single person takes place for the maternal grandfather and the rest.

4. Accordingly Marichi says,—"Commencing with the father of the mother, three are considered maternal grand-sires.—Let the sons of daughters perform for these, funeral oblations, as for the father."

5. By ordaining, in this text, funeral oblations in honour of three maternal grand-sires, the parvana or double rite only, is inferred.—From the expression—"as for the father,"—an option of performing, for the maternal grand-sires also, obsequies in the form of parvana, or ekodisa, is not obtained; for, the sentence in question is meant to enjoin, the absolute necessity for the performance of obsequies, in honour of the maternal grandfather.

6. Besides, why should not also the term 'yearly' in the following text, like the word 'annually' [in Jatukarna's text (§ 1.)—supposing this word, there occurring, to have such import,] intend the magha, and other periodical funeral repasts, "Excepting the first sixteen funeral repasts, with rites performed with fire included,—and the yearly obsequies,—at the remaining funeral repasts, let six cakes be presented: this is a settled rule."

7. Should it be objected, that this would be an intended consequence; it is wrong for it would follow, that the son given and the rest, at the different periodical funeral repasts would perform an ekodisa rite. Now this is not meant by any one. For, if the term comprehend any funeral repasts in general, other funeral repasts, (as must be understood from the term 'remaining') not existing, any exception would be impossible.

8. Therefore this is the accurate exposition of the law,—that on the anniversary of the day of death, in honour of the father and mother, a parvana funeral repast only should be performed by the legitimate son; by the other (the son given and the rest), merely one consecrated to a single ancestor. To enlarge would be useless.

SECTION X.

On the succession of the adopted son.

1. The inheritance of the adopted son is now propounded.—On that subject, Vasiṣṭha says:—"When a son has been adopted, if a legitimate son be afterwards born, the given son shares a fourth part."—On the default of him he is entitled to the whole.

2. Thus is the Dātaka-Mimāṃsā, compiled by the fortunate Nanda Pandita, the son of the fortunate Rama Pandita, lord of virtue, completed.

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Vyavahar Mayukha on Adoption.

CHAPTER IV. SECTION 4.

41. For the sake of consistency in deciding upon taking the heritage Yajnavalkya gives this [detailed] description of sons principal and secondary: "1st. The
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legitimate son, [svaroc] is one procreated on the lawful wedded wife: 2d. Equal to him is the son of an appointed daughter [putrika]: 3d. The son of the wife, [kahe-tma] is one begotten on a wife by a kinsman of her husband, or by some other relative: 4th. One secretly produced in the house, is a son of hidden origin: 5th. A damsel's child, is one born of an unmarried woman: he is considered as son of his maternal grand—sire: 6th. A child begotten on a woman whose [first] marriage had not been consummated, or on one who had been deflowered [before marriage] is called the son of a twice—married woman: 7th. He whom his father or his mother give for adoption, shall be considered as a son given [dattaka]: 8th. A son bought, is one who was sold by his father, and mother: 9th. A son made, is one adopted by the man himself: 10th. One who gives himself, is self—given: 11th. A child, accepted while yet in the womb, is one received with a bride: 12th. He who is taken for adoption, having been forsaken by his parents, is a deserted son.

42. The legitimate son, born of a woman of equal class, and lawfully married, is the principal, [of those secondary].

43. The son of an appointed daughter is of two kinds: Of which the first is thus explained by Vasishttha: "This damsel, who has no brother, I will give unto thee, decked with ornaments: the son, who may be born of her shall be my son." And the other [kind] is thus noticed by the same: "The appointed daughter is considered to be the third [description of sons]." In this case, the father's obsequies and the like, are to be performed by the [appointed] daughter alone.

44. The son of the wife is one begotten on the wife of a brother or other [relative dying] without male issue, under the orders of the eldest brother, by his younger brother, or other [relative as the case may be] being of the same lineage.

45. The son of a twice—married woman is he who is produced of the second marriage of a woman, whether a virgin unenjoyed by her first husband, or whose first marriage had been consummated.

46. Here we must mark, that with the exception of the given son, [all the OTHER ten] SECONDARY SONS ARE SET ASIDE IN the Kali or PRESENT AGE, for we read, in the prohibitions of it: "The acceptance likewise of affiliations, other than those of a legitimate and adopted son."

SECTION V.

On Adoption (Dattaka).

1. Manu says: "He is called a son given [dattima], whom his father or mother affectionately gives as a son, being alike [by class], and in a time of distress; confirming the gift with water." According to Madana: "The disjunctive 'or' means, that if the MOTHER be not present, the FATHER ALONE MAY GIVE him away; and if the father be dead, the MOTHER THE SAME; but if both be alive, then even both." From his using the word in DISTRESS, (it seems that) if not in distress, he must not be given.

2. Vijayanesvara says, 'This prohibition regards the giver only (and not the gift); as affecting the person, and not the religious ceremony [kratvartha]. But it is not so: for the certainty of the religious ceremony is ascertained from the invisible [or prospective] nature of this [rule regarding gift of a son] in the text. Or, if indeed a visible [existing] be allowed for obviating the exception, as to distress, still, by reason of the absolute necessity for the object of the rule being prospective in regard to the theme in hand, in going beyond it, the establishing of the invisible [prospective] benefit produced by the ceremony, and not before existing, [is brought about]. Some however say, 'To the word distress, the sense of a prohibition does not apply, because of the want of that quality of the Parisankhya rules, [which would shew] non—existence of distress, by the absurdity they would involve, among other things, of quitting the straightforward sense of the text: and that the language only to suppose some sign or motive of distress; not that, when distress is the inciting motive, by not giving the son the crime of [not relieving] distress [will be incurred]"
because the mere connexion of name and person in this text is to be understood, and there is, in [declaring] the necessity of distress, a want of the actual completion of the gift.

3. Moreover, the assertion made by him [Vijnanesvara] in his chapter on marriage that: 'In transgressing the prohibition against [spousing] sickly brides, and the like, it is merely an opposition to a manifest object, [or rule] whilst the state of a lawful wife is superinduced notwithstanding,' is by the above argument overruled.

4. Alike, according to Medhatithi, means, 'not by tribe, but by qualities suitable to the family: accordingly, a Kshatriya, or a person of any other inferior class may be the given son [dattaka] of a Brahmana. But Kulluka Bhatta says, it means 'EQUAL IN CLASS,' and this is correct; for Yajnavalkya, after enumerating the twelve sorts of sons, in this way: "The legitimate son is one procated on the lawful wedded wife:" &c., says: "This law is propounded by me in regard to sons equal by class." And this I will make clear by two texts of Saunaka, to be cited hereafter [para 9]. Vijnanesvara also declares the same: "By the eldest son, as soon as born, a man becomes the father of male issue;" 'for the eldest childfully fulfils the office of a son, and is therefore not to be given.' And this prohibition also regards the giver only, and not the taker, according to the same authority.

5. This prohibition might indeed apply to the giver alone, provided this text of Manu contained a prohibition of the gift of an eldest son. But it does not, for there is a want of proof [in the affirmative], and because the expression, becomes the father of male issue, is a declaration of parentage alone, and moreover that even, as regards its applicability to the discharge of debt alone. Accordingly, the last hemistich exactly agrees with this interpretation: "And is exonerated from debt to his ancestors; such a son therefore is entitled to take the whole." The whole, the wealth.

6. And a MALE child ALONE becomes ADOPTED, not a female, "He [son] is called a son given." From the pronoun he, entered in the text, [being masculine, and] referring to connexion between name and person, we must understand one, 'where a mother and father are agents; where affection, water, and proper qualifications exist; with necessity as a reason; and where the act of gift, equality of class, and male sex [are united],' in the same way as, from the [masculine] pronoun him, in the holy text: "Let a Brahman of eight years be initiated, and let him [same] be instructed," we infer, 'that the age is eight years; the order, that of a Brahman; and the sex, male; his initiation with the string completed,' &c.

7. From this results the refutation of what some persons have held, viz.: 'That the terminations kire, and mam being common to all genders; that the word datriima ending in ma-m therefore, since there is no distinction between it, and the act by which a gift is concluded, it may be applied in like manner even to a girl, when given, whether to her husband or to any other.'

8. Saunaka thus declares the MODE OF ADOPTING a son: "I, Saunaka, now declare the best adoption: One having no male issue, or one whose male issue has died, having fasted for a son; having given two pieces of cloth, a pair of earrings, a turban, a ring for the forefinger, to a priest religiously disposed, a follower of Vishnu, and thoroughly read in the Vedas; having venerated the king and virtuous Brahmanas, by a maduparkas: both a bunch of sixty-four stems entirely of the kusa grass and fuel of the palasa tree: having collected these articles, having earnestly invited kinsman and relations; having entertained the kinsmen with food; and especially Brahmanas: having performed the rites, commencing with that of placing the consecrated fire, and ending with that of purifying the liquid butter: having advanced before the giver, let him cause to be asked thus, 'Give the boy.' The giver, being capable of the gift, [should give] to him with the recitation of the five prayers, the initial words of the first of which are, Ye yajnyaena, &c. Having taken him by both hands, with recitation of the prayer, commencing, 'Devasyaiva, &c.;' having inaudibly repeated the mystical invocation, Angad ange, &c. "having kissed the forehead of the child: having adorned with clothes, and so forth, the boy bearing the reflection of a son: Accompanied with dancing, songs, and beneficent words, having seated him in the middle of the house: having according to ordinance, offered a burnt offering of milk and curds [to each incantation], with recitation of the mystical invocation, 'Yastva hrida': the portion of the Rigvoda commencing, 'tubhyam agha:' and the five prayers, of which the initial words of the first are Soma dada, &c." [let him close the ceremony.]"
3. "The adoption of a son, by any Brahman, must be made from amongst sapsindas, or kinsmen connected by an obligation of food, or on failure of these, an aspinda, or one not so connected, may be adopted; otherwise, let him not adopt."

"Of Kshatriyas, in their own class positively: and [on default of a sapinda kinsman] even in the general family, following the same primitive spiritual guide [guru]: Of Vaisyas from amongst those of the Vaisya class. [Vaisyajate]shu; of Sudras from amongst those of the Sudra class. Of all, and the tribes likewise, IN [THEIR OWN] CLASSES ONLY: and not otherwise. But a daughter's son, and a sister's son are affiliated by Sudras:"

"By no man, having an only son [ekaputra] is the gift of a son to be ever made. By a man having several sons [bahuputra] such gift is to be made, on account of difficulty [prayatanatas]:"" Let the best of the regenerates [the Brahman] to the extent of his ability, bestow a gratuity on the officiating priest. A king [Kshatriya], the produce of half even of his dominion: next in order, a Vaisya three hundred pieces; a Sudra, the whole even of his property: if indigent, to the extent of his means." Bearer of the reflection, equal to, [or like].

10. A daughter's son and a sister's son: Now, as in the instance of the stick in the formula: "[The sacrificer, yajaman] delivers the stick to [the Brahman, who personates] Maitra Varuna: though the stick [really] be the object required, from the necessity of its previous existence, still, by the use of the fourth case [to], Maitra Varuna is alone denoted as the object, as is the most fit, from his act of uttering the summons in the formula: "The holder of the stick [he who personates Maitra Varuna] then utters the invocations [to the deities, for their presence in the sacrifice]."

Even so, in this place, since the state of non-release from debt [results from want of a son], and because the sixth case [of Sudras, in the text] has the sense of the fourth [to or for], therefore both the daughter's and the sister's son alone are to be admitted for Sudras, as the means [of relieving the father from debt.] So, by the propriety of only these two, the purport of the restriction of the rule is declared: thus, "The daughter's son and the sister's son alone are for Sudras." But if the impossibility of it for Sudras [be urged], by reason of the impropriety of the restriction, [I answer]: they are both exhibited by the texts as the objects for Sudras alone, since it would be absurd to make the restriction apply to the agent, [parisaikhya] in respect to Brahman and the rest.

11. Therefore the DAUGHTER'S SON, and SISTER'S SON even, are the most proper for Sudras: In default of them, another also [may be adopted], if of similar class, as declared by the same author [para. 9]: "Of Sudras from amongst those of the Sudra class." This word, class, is not [necessarily] implied, by its connexion with 'daughter's son and sister's son,' alone, for there is no [necessary] mutual connexion between the states of 'daughter's son, sister's son and common caste.' And there is a risk of our [thereby] making an absurdity of parallel passages of the same author. This is fully explained by my father in his Dvaita Nirmaya, and the same is the rule [achara] ordained by sages.

12. And the assertion of their right [to adopt] being demonstrable in the very same way, as [the argument upon] the word Nisadastha ptt, the assertion in the Suddhi Viveka, that there is a want of title for Sudras to celebrate the acceptance of a son with a Homa authenticated by Vedaka mantras, is hereby refuted.

13. The Homa, however, being accompanied with mantras, must be celebrated by them through the instrumentality of a Brahman, in conformity to the text of Parasara: "When fasts, vows, burnt sacrifices, ablation at a tithra, silent meditation, or prayer, and the like, are performed by a Brahman [on the part of another] the benefit of them accrues to him who caused their performance." And the very same is declared, both by Smrtha and Harinatha.

14. However, what [in seeming contradiction] Parasara himself adds: "The Brahman who, for the sake of dakshina, performs Homa with sacrificial materials furnished by a Sudra, shall himself because a Sudra and the Sudra shall become a Brahman," means, according to Madana, that the whole benefit of the act accrues to the Sudra, whilst the crime fully attaches to the Brahmana.

15. The right also pertains to women, equally as to Sudras, by reason of the text: "Women and Sudras are governed by the same law."
16. Vasishtha: "Man, produced from virile seed and uterine blood, proceeds from his father and his mother, as an effect from its cause. Therefore his father and mother have power to give, to sell, or to abandon, their son. But let no man give, or accept, an only son: for he is [destined] to continue the line of his ancestors. Let not a woman give or accept a son, unless with the assent of her husband." "A person, being about to adopt a son, should take an unremote kinsman, or the near relation of a kinsman, having convened his kindred, and announced his intention to the king, and having offered a burnt offering, with recitation of the prayers denominated 'vyahriti' in the middle of his dwelling. But, if a doubt arise, let him set apart, like a Sudra, one whose kindred are remote; for it is declared [in the Vedas]: 'Many are saved by one.' When a son has been adopted, if a legitimate son be afterwards born, the given son SHARES a fourth part."

17. Therefore, if there must be an ORDER FROM THE HUSBAND, it is for a married woman only, as above shown: but, for a WIDOW, even without it [adoption] may be made, with the PERMISSION OF her FATHER, OR, on failure of him, of the RELATIONS [Nyati] under this precept: "Let a female be taken care of, by her father while a child, by her husband when married, and by her sons, in her old age. If none of these exist, let her other relations [Nyati] take care of her. A woman is never fit for independence." This has been declared by Yajnavalkya only with reference to difference of age, and the circumstances of a woman, being under the power of her husband. In case of his being dead, or [unable] from old age, or other [disqualification], or from helplessness, then [she is] indeed under the power of her sons or other relations.

18. By Katyayana also it has been said "If a woman, without the orders of her husband, has an only son, should perform obsequies, such obsequies are of doubtful validity." What is here said of the orders of her father, hu-band, &c. relates only to the difference of age. Obsequies here means, rites performed for the other world; therefore, at whatever age a married woman may [require to] receive the command of her husband, that very command is in the case of a widow not required, since the command of any other person, not here mentioned, is nowhere declared requisite. Therefore the right of adoption, even without the order of her [late] husband, does pertain to a widow.

19. The unremote kinsman, means, in each case, the sapinda nearest [to the adopter]; among whom again, the nearest of all is the BROTHER'S SON; for: "If among several brothers of the whole blood, one of them have a son born Manu pronounces them all fathers of a male child by means of that son" And the Mitakshara has the same. And this must be the proper motive of that precept; for it is impossible there can be any other. The remote kinsman, means [one of another caste.] And my father has said that: "A MARRIED MAN, who has even had a son born, MAY BECOME an ADOPTED son." This also is reasonable, for it is not in opposition [to other maxims].

20. As for this text of the Kalika Purana: "O Lord of the earth, a son, having been initiated under the family name of his father, unto the ceremony of tonsure inclusive, does not become the son of another man [anyastas]. The ceremony of tonsure and of investiture being indeed performed, under his own family name, sons given, and the rest may be considered as issue: else they are termed slaves. After their fifth year, O king, sons given, and the rest are not sons. [But] having taken a boy of five years old, the adopter should first perform the sacrifice for male issue. It relates to angrotas only. Unto the ceremony of tonsure inclusive; The particle, and, here is incentive, used for the sake of entirely including all such cases; for if it be meant as a limit conclusive, it will have the objection of being in opposition to the ceremonies of tonsure and investiture [specified in the text.] But such reliance is not to be placed on this last passage, because it is not to be found in two or three copies of the Kalika Purana.

21. The son given is of two sorts; first, simple; second, SON OF TWO FATHERS, (dvyamushayayana.) The first, is one bestowed without any special compact; the last, is one given under an agreement to this effect, 'he shall belong to us both.' Here the first will perform the funeral ceremony, and the other rites for the adopter only, as may thus [be demonstrated]: In the desire of accomplishing the acceptance of a son, by the term 'son' being in the second person, in the phrase,
"being about to adopt a son" [para. 16] and the like, detailing the rules for the ceremony, the production of a son is declared. And not that the adopter can possibly imagine, 'his filial relationship is derived from my capacity of begetting.' Therefore, from the word 'son,' after having instanced the whole duties of a son, we must admit the production of one, as far as requisite, and not previously existing. Hence, in the family of the acceptor, the condition may [in this way] be brought about: From which result the acts suitable to the different relations, of son, father, and the rest. Even as is declared by Mana: 'A given son must never claim the family and estate of his natural father; the funeral obligation follows the family and estate, but of him who has given away his son, the obsequies fail.'

22. Follows the family and estate, goes after the family and estate, the latter expression corresponding generally with the term "goes along with." The given son, the simple adopted; since, in the case of a Dvāyaṃadhāyayana, the [double] obligation of family connexion and the like, will be hereafter declared. The funeral obligation according to Medhatithi, Kulluṅka Bhṛta, and others, means the funeral ceremony, and other Śraddhas. According to other authors again the funeral obligation means auspices connexion; and obsequies, the funeral and other Śraddhas. The correct interpretation is this: As one passage says: "He, who has begotten a son, and whose hair is [still] black, may maintain a sacred fire," the difference as to his age and condition is exemplified, and again, the difference of place, by the passage: "He measures out the inner portion, and the outer portion of the altar;" even so, in this place, having merely exemplified the acts connected with the obligation of the funeral obligation for the natural father and the rest by the terms, 'family,' 'estate,' 'funeral obligation,' and 'obsequies,' the cessation of them is declared.

23. From this also results the establishment of the CESSATION OF FAMILY CONNEXION with the father's whole brother, and the rest. Therefore also, even the son, begotten by the simple adopted son, shall perform [his father's] sapindā kāram, parvāna obsequies, and the rest, in conjunction even with the [original] adopter. Even so, his son also.

24. However, what Katyāyana, opening the discussion of the 'son of two fathers,' by this text: "Now, when the family connexion of sons, either adopted, purchased, or son of an appointed daughter, remains unsettled, through their acceptance by another they become sons of two fathers," and the like, says: "If there be no offspring of these adopters by their own wives, they [the secondary sons] take the estate, and give the funeral obligations to three ancestors; if there be no offspring, to either [the giver or receiver], they will give the obligation for both. Having separately considered both in one Śraddha, they shall call upon both of them." Has reference to the 'son of two fathers,' because of his premising: 'They become sons of two fathers.'

25. If either the natural parent, or the adoptive father, have no OTHER MALE ISSUE, the Dvāyaṃadhāyayana, or 'son of two fathers,' shall present the funeral obligation to him, and shall take his estate: but not so if there be [male issue]. If both have legitimate sons, he offers an obligation to neither, but takes a quarter of the share allotted to a legitimate son of his adoptive father; from this text of Vasishthā. "When a son has been adopted, if a legitimate son be afterwards born, the given son takes a fourth part;" and likewise this of Katyāyana. "If a legitimate son be born, the rest are pronounced shares of a fourth part provided they belong to the same tribe: but if they be of a different class, they are entitled to food and raiment only." The reading in the Kalpataru is, 'a third part.' Those of the same tribe, according to Vījñānavāra, are the son of the wife, the son adopted, and the rest.

26. But if sons are wanting to both, then he shall perform a single Śraddha to both also; in the mode declared above, by the term "in one Śraddha," &c. Moreover in the Hemadri is a text of Krāhakaṇi: "As many as there may be degrees of forefathers, with so many, their own forefathers, let sons given, and the rest associate the deceased; in order, their sons with two forefathers, their grandsons with one should [do] the same. The fourth degree, at pleasure. This [sapinda relation] extends to three degrees." "At the regular seasons, there is no distinction of degrees: but on the [anniversary] day of death, having invoked them singly, let him perform the Śraddha according to the proper rite." Which sense is consonant also to the text of Katyāyana. [para. 24.]
27. This is the meaning: 'The son of two fathers, and the rest, shall perform the sapinda karan of those dying in the families of both the real and adoptive father, together with those of the same degree, [that is] in company with the father [of the deceased], and the rest. But the sons of those adopted, and the rest, shall perform their sapinda karan together with that of both the natural, and adoptive [father]. Their grandsons also shall associate their real father with their adoptive grandfather, and their real great-grandfather.' The fourth degree, their great-grandson. Pleasure, desire, [i.e.,] the adopter, or not, [as they please]; but the real father, they shall even summon. At the regular seasons; that is, at the days of new moon, [amavasya] and other seasons the Sraddha according to the degrees of [forefathers] of the real and adoptive fathers, is to be celebrated. But on the anniversary of death, having invoked the single person alone, let them celebrate the Ekodihsha sraddha for him.

28. Some however say: "Since the rite of simple adoption is not [mentioned], it does not exist; and there is no agreement to the effect: 'He belongs to us both,' because no rite for it exists. One taken without this agreement, therefore, is even a son of two fathers.—And even by him, either a double Sraddha, or a single one, may be celebrated by invoking [singly or together] both his real and adoptive father, in the Amavasya and other [Sraddhas]. But the sapinda karaṇ, Parvama, and other Sraddhas, must be performed for the adopted son, in company with both his real and adoptive father, by his son. Even so, by his son, and the rest."

29. This must be considered. Because, though the phrase 'simple adopted' is certainly nowhere mentioned, still however this [meaning] satisfactorily results, even from the declaration of the entire cessation of the connexion with the real father and the rest, by the above recorded text of Manu [para. 21] which prohibition does not apply in a Dvyamushayana adoption. Further: A marriage in the family of the procreator [Vijj] within seven degrees, which is altogether illegal according to the text of Gautama: With the kinsmen on the side of the father, viz. of the procreator [Vijj] beyond the seventh degree; and with those on the mother's side, beyond the fifth, &c.,' would be unmeaning in a Dvyamushayana adoption, because the sapinda affinity [to the procreator] still exists therein [beyond that]. Therefore, the term, 'simple adopted' must necessarily be expressed, to make the same agree with that of the text, because of the declaration of the prohibition of the sapinda connexion.

30. Moreover, in the Pravardhaya [it is said]: "They who become sons of two fathers, [dyvamushayana] whether adopted, purchased, or the rest cannot take in marriage any one of either Gotra, after the example of Saungra and Saihira." In which also the term either Gotra is spoken of the Dvyamushayana. And the prohibition of connexion in the real family [Gotra] is declared by the text of Manu; which is the difference [between the two]. By the distinction also, between adopted son 'simple' and, 'son of two fathers' [the term, simple] is proper to be included; whence even the propriety of the term 'simple adopted son' is established.

31. Even so Bhatta Somevvara satisfactorily reconciles the one doctrine, under the text of Manu [para 21]: "That there was a cessation of the sapinda connection between Arjuna [as] the son of Kunti, born after she was] given in adoption by [her father] Sura to Kuntibhoja, and Subhadra, [as] the daughter of Vasudeva, who was the son of Sura," with the opposite opinion, "that Arjuna could not marry the said Subhadra," as might seem to result from that text of Guatama [para. 29], applying solely to the prohibition of [a wife] come of the father's kindred, by adding the affirmation of the commentaries in favour of the utter exclusion of the family connexion [after the adoption].

32. As for what some author says: 'That the sapinda connexion of Kunti with the family of Sura is declared by Somevvara, under the text of Gautama, to continue through seven degrees,' the reason is, that he has not read the book. Therefore, the text of (Gautama, after having previously declared the cessation of sapinda relationship, refers to the prohibition of marriage) in the family of the natural father, and not as considering the subject of sapinda relationship. In this way the correctness of the terms, son 'simple adopted,' and 'son of two fathers,' being established, the possibility of an agreement to the effect: "He shall belong to us both," [para. 21] is likewise established; for the object is manifest, by the accepter knowing him to be 'son of two fathers.' And again, the sapinda relationship of the simple adopted son, extends, in his adoptive father's family, to seven degrees on the father's side, and to five degrees on the mother's side.
33. As for these texts of Vridhha Gautama: "The sons given, purchased, and the rest, who are adopted from those of his own general family, by the observance of form, enter into the lineage [gotrasta, of the adopter]. But the relation of sapinda is not included," as well as of Brhat Manu: "Sons given, purchased, and the rest, retain relation of sapinda to the natural father, as extending to the fifth and the seventh degrees: like this, their general family, which is also that of their adopter," and moreover of Narada: "For the sake of religious merit, [being adopted] like the real son, under the family name of each respectively [tat tat gotraena] sons [who are] reared: for such, merely participation in a share, and [the oblation of] the funeral cake, is declared" they are, all three, not of good authority; [at least, if their authority be good, they are to be used only for the sake of determining the want of sapinda relationship of the Dvyanushyanas, as far as seven generations, in the family of the adopter; for, in the case of a simple adopted son, his sapinda relationship, as far as seven generations in the family of the adopter [Pulaka] is declared [to commence] by the Before quoted text of Gautama, [para. 29] and because his sapinda relationship at the same time, in the family of his real father, is declared to cease by the text of Manu [para. 21].

34. As for the following matter, written by certain respectable authors in discussing the subject of sapinda relationship: "Yet if [an adopted son's] investiture and other initiatory rites, have been celebrated in the general family [gotra] of his real father his sapinda relationship to his real father's family [kula] is retained, both to the father, and to the mother: to the fifth degree [from the mother], and to the seventh [from the father]: but to the three degrees in the family of the adopter, by reason that there is a want of the state of begetting, and of investiture, to the author of the secondary paternal relation, the adopter. However, if the adopted son be [so] initiated in the general family of the adopter, his sapinda relationship with the adopter and the rest [of his family, will continue] even to seven generations, and to five as above:"

35. If the paternal relation exists not, by reason of the absence of the acts of begetting, of investiture, and the like, in what manner arises the adopted son's sapinda relationship to either [even] as far as three degrees or his performance of Sridhada and other ceremonies for the adopter and the rest of his family? Neither can it be said, 'the paternal relation and sapinda relation are [necessarily] connected,' because by this, on the absence of the first, the want of the sapinda relationship would cease. The result of it is this: Sapinda RELATIONSHIP even [of the adopted son] WITH THE ADOPTER AND the rest of HIS FAMILY, has been already pronounced from the text of Gautama and others [para. 29]: "With the kinsmen on the side of the procreator beyond the seventh degree." And this is conclusive.

36. Now this is the rite for gift and acceptance of a son. In this matter, the power of GIVING [in adoption], WHERE there are MORE SONS THAN ONE, allows even of any one of them, not being the eldest; and that of ACCEPTANCE, attaches to one who has not had a son born, or whose sons are dead. The right of MARRIED WOMEN [to adopt, is good] with the orders of the husband; in default of him, of their own [own] fathers, and the rest. Of Sudras [adopting] the DAUGHTER'S SON, or the SISTER'S SON, are to be taken, and no other. By the other [superior classes] however, the nearest sapinda relation; in default of them, the remote [kindred], but not one of another caste.

37. Then the giver, on the day [fixed] for the acceptance, having duly called to mind the [proper] time and the other [considerations] and having thus vowed: 'I am about to make a gift of my son for the cessation, between myself and the rest [of my family], and this son, of the several duties arising from the reciprocal connexion, at present existing between us, as, father, son, and the like,' shall perform the Ganesa puja, Svasati vachan, Matreka puja, Vridhhi sraddha, and the other rites.

38. The acceptor too, having fasted on the day preceding that for the acceptance and on the next day having summoned his kinsmen, and made known his taking a son to the king; having called to mind the time and other [considerations], and having thus vowed: 'I am about to take (this person) as a son, to the cessation of the mutual connexion of father, son, or the like, at present subsisting between him, and his procreator and the rest (of that family), and for the accession between him and me, and the rest (of my family), of the duties mutually arising from the respective connexion of father, son, and the like (by this adoption), and having performed the
88  BIRTH—(Mahomedans).

Ganesa puja, Svasti vachan, Matreka puja, Vridhhi Sraddha, Acharya varan, and the various reverences to be made, after a special vow to the acharya, with the ear-rings, ring, suit of clothes, turban, madhuparka and the rest, let him give a feast to three Brahmans, and to his kindred.

89. And the Acharya, having thus vowed: 'I am about to do my proper duties,' and having performed the marking out of the altar, and the other acts as far as the consecration of the fire, inclusive, shall celebrate the rites enjoined in the words of the Vedas and the rest, as far as the straining of the clarified butter inclusive.

40. Then let the accepter, having gone near the giver, thus beg, 'Give me this son'; and the giver, with relation of the five prayers [the initial words of the first of which are] Ye yajnena, having called to mind the time, and the rest, having repeated his motives as above detailed, shall declare, 'I give you this son, adorned with ornaments, according to my ability.' This is the gift of his son, commencing with the words of the Vedas.

41. Then the accepter, having accepted him with the prayer devasya tvā, and the others, and having repeated the Kama stuti in the form adjoined by his own sakha, having inaudibly repeated the mystical invocation angad angat, &c. having kissed the forehead of the child, let him carry him within his own house, adorned with clothes and so forth, accompanied with rejoicings.

42. Next, the Acharya, having performed the setting up of the clarified butter, and the rest, as far as the portioning of it, inclusive, having performed a burnt-offering even with the clarified butter, with the Yajhriti incantation, both backwards and in due order, having dressed the oblations, let him offer a burnt offering. He then commences the principal burnt-offering of dressed oblations, for acceptance of a son, with the words of the Veda. Having commenced with the words, 'Tubhyam aham,' &c. let him conclude with those commencing 'Pragavadattah.' Thus ends the rite of adoption.

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MAHOMEDAN LAW.

Rights in General acquired by Birth.

The Mahomedan law does not like English law give personal FREEDOM to every subject. The law relating to slaves need not however be quoted here as it has been repealed by the Penal Code and by special Acts relating to slavery.

The following texts show the amount of freedom allowed by Mahomedan law in matters of Religious belief.

In the case of difference of RELIGION a man is under no obligation to provide maintenance for any except his wife, his parents, grand-parents, children and grandchildren.—147.

Whenever either the husband or wife is a Mussulman their children are to be educated in the Mussulman faith.—64.

The evidence of a person who openly inveighs against the companions of the prophet and their disciples is not admissible.—362.

It is not lawful that an apostate marry any woman whether she be a believer, an infidel or an apostate, because an apostate is liable to be put to death.—64.

*The figures at the end of each clause refer to Grady's edition of Hamilton's 'Hedaya.'
A claim of Shirb, or RIGHT TO WATER is valid independent of any property in the ground, upon a favourable construction of the law, for a person may become endowed with it, exclusive of the ground, either by inheritance or bequest; and it sometimes happens that when a person sells his land he reserves to himself the right of shirb. Besides, shirb being a desirable object, and also capable of yielding advantage, the claim to it is therefore valid.—616.

Whoever has the property of an aqueduct, which runs through land belonging to another, is not (according to Haneefa) entitled to any adjacent space, unless he produce evidence to prove his right.—612.

If a person have the property of a canal, a well, or a reservoir, he cannot prohibit either man or beast from drinking of it. Here it is necessary to premise that water is of four kinds—I. The water of the ocean, which every person has a right to drink, or to carry away for the purpose of moistening his lands. II. The water of large rivers—such as the Oxus, the Euphrates, or the Tigris—in which every person has an absolute right to drink and also a conditional right to use it towards moistening his lands; that is to say, a person if he cultivates waste land, may dig a channel for the purpose of conveying water to it from the river provided his doing so be not detrimental to the people. III. Water in which several have a share, and in which, likewise, the right of drinking is allowed to everyone; for it is recorded in the traditions that three things are common to all, namely, water, grass, and fire. IV. Water which is preserved, or, in other words, kept in vessels, water of this description, is property because of its detention; and the right of others no longer extends to it.—614.

If also, a person be inclined to water the trees or small parterre before his house, he may lawfully carry away water for that purpose from the rivulet of another; for the law allows great liberty in the case of water, and considers the refusal of it as truly opprobrious.—614.

It is lawful for men to carry away water from a rivulet to perform their ablutions, or to wash their garments.—614.

Rivers are of three kinds.—I. Such as are not the property of any; and of which the waters have not been divided, like the Tigris, Euphrates, &c. II. Such as, being appropriated and divided, are at the same time public rivers, in which boats sail. III. Rivers that are held in property, and divided, and are also private, in which no boats sail.—615.

If a person be possessed of a well, fountain, or rivulet, he may prevent any one from drinking the water of them, or encroaching on his property, provided there be other water at a little distance, and which is not the particular property of any one. If, however, this be not the case, the proprietor must then either bring him water to drink, or permit him to take it himself, on condition that he destroy not the banks.—614.

Parent and Child.

DEFINITION.

If a person sell a female slave and she afterwards bring forth a child
and the seller claims it, in that case provided the birth take place in less
than six months from the sale, the child is adjudged to the seller.—422.

Supposing, however, the child to be born two years after the sale, the
seller's claim to PARENTAGE is not in that case valid because the con-
ception in this instance could not possibly have taken place during his
possession of the slave.

If a person acknowledge the parentage of a child who is able to give
an account of himself, saying "this is my son," and the ages of the
parties be such as to admit of the one being the child of the other, and
the parentage of the child be not well known to any person, and
the child himself verify the acknowledgment, his parentage is estab-
lished in the acknowledger, although he [the acknowledger] be sick;
because the parentage in question is one of those things which affect
the acknowledger himself only, and no other person. It is made a
condition, in this case, that the ages of the parties be such as to admit of
the relation of parentage, for if it were otherwise, it is evident that the
acknowledger has spoken falsely. It is also made a condition that the
parentage of the boy be unknown; for if he be known to be the issue of
some other than the acknowledger, it necessarily follows that theacknow-
ledgment is null. It is also made a condition, that the boy verify the
acknowledgment, because he is considered as his own master, as he is sup-
posed able to give an account of himself.—439.

It is to be observed that in all these cases the confirmation of the party concerning whom the acknowledgment is made is
requisite excepting in the acknowledgment with respect to a child,
when so young as not to be able to give any account of himself. If it is
also to be observed that the confirmation concerning parentage is valid,
although made after the death of the acknowledger; because the relation
of parentage exists after death. In the same manner, also, the confirma-
tion of a wife, after the death of her husband is valid; because the edict
is one of the effects of marriage, and that exists after the death of the
husband, whence it may be said that the marriage itself endures in one
shape.—439.

By the establishment of the parentage, therefore, the boy becomes
one of the acknowledger's heirs, in the same manner as any of his other
heirs.—439.

If a person acknowledge his parents or his son (as if he should
declare that "a certain man is his father," or, that "a certain woman is
his mother," or that "a certain person is his son,"—and the ages of the
parties admit of those relations), or, if a person acknowledge a particular
woman to be his wife, or a particular person to be his Mowla (that is,
either his emancipator, or his freedman) in all these cases the acknow-
ledgment is valid, as affecting only himself, and not any other. In the
same manner, also, if a woman acknowledge her parents, or her husband,
or her Mowla, it is valid, for the same reason. A woman's acknowledg-
ment of a son, however, is not valid, as such acknowledgment affects her
husband, in whom the parentage is established: her acknowledgment of
a son, therefore, is not valid unless the husband confirm her declaration (as
the right appertains to him), or that it be verified by the birth being proven
by the evidence of one midwife, which suffices in this particular.—439.
If a person acknowledge an uncle or a brother, such acknowledgment is not credited, so far as relates to the establishment of the parentage, because of its operating upon another than the acknowledger. If, therefore, the acknowledger have a known heir, whether near or remote, the whole of the inheritance goes to him, and not to the person in whose favour the acknowledgment is made, since the parentage not having been established on the part of the acknowledger, no obstacle can thence arise to the inheritance of a known heir. If, however, the acknowledger have no other heir, the person in whose favour he makes acknowledgment is in that case clearly entitled to the inheritance as every person has full power over his estate when he has no heirs; whence it is that a person may bequeath the whole of his property in legacy, provided he have no heirs.—439.

If a person die, and his son acknowledge another to be his brother, the parentage of the person in whose favour the acknowledgment is made is not established, but he is entitled to a share in the inheritance with the acknowledger.—440.

The descent of a child born of a woman enjoyed in an illegal marriage is established [in the reputed father], because in this regard is had to the child's preservation, since if the descent were not to be established, the child might perish for want of care.—53.

RIGHTS AND LIABILITIES.

The right of Hizanit with respect to a male child appertains to the mother, grandmother or so forth, until he become independent of it himself, that is to say, become capable of shifting, eating, drinking and performing the other natural functions without assistance, after which the charge devolves on the father or next paternal relation entitled to the office of GUARDIAN. But the right of Hizanit with respect to a girl appertains to the mother, grandmother and so forth until the first appearance of the menstrual discharge, but after that period the charge of her property belongs to the father.—139. See also 'Minority' Post.

The MAINTENANCE of infant children rests upon their father.—146.

It is the part of a father to hire a woman to suckle his infant child, as this is a duty incumbent upon him.—146.

But it is not lawful for the father to hire the mother of the child as its nurse, if she be his wife, or divorced from him; and in her edit.—146.

But a father may lawfully hire, to suckle his child, one of his wives, who is not the child's mother; as suckling it is not a duty incumbent upon her.—146.

He may also lawfully hire the mother of the child herself for this office, where her edit from divorce has been completed, because when that is past the marriage no longer remains in force in any respect, and the woman may then be hired as well as any different person.—146.

The maintenance of an infant child is incumbent upon the father, although he be of a different religion.—146.

But where the child is possessed of property, the maintenance is pro-
vided from that, as it is a rule that every person's maintenance must be furnished from his own substance, whether he be an infant or an adult.—147.

The maintenance to an adult daughter or to an adult son who is disabled, rests upon the parents in three equal parts, two-thirds being furnished by the father, and one-third by the mother, because the inheritance of a father from the estate of his son or daughter is two-thirds, and that of a mother one-third.—148.

It is incumbent upon a man to provide maintenance for his father, mother, grandfathers, and grandmothers, if they should happen to be in necessitous circumstances, although they be of a different religion from his father and mother.—147.

If an absent son be possessed of property, a maintenance to his parents is to be decreed out of it.—149.

It is a man's duty to provide maintenance for all his infant male relations within the prohibited degrees who are in poverty, and also to all female relations within the same degrees, whether infants or adults, where they are in necessity; and also to all adult male relations, within the same degrees, who are poor and disabled or blind.—147.

The maintenance of a relation within the prohibited degrees is not incumbent upon his heirs, if they be of a different religion, because in this case, they are incapable of inheriting from him, which is the condition of the obligation.—148.

There is no obligation upon a Christian to provide maintenance to his brother, being a Mussulman, neither is a Mussulman under any obligation to provide for the maintenance of his brother, being a Christian, because (according to what appears in the sacred text) maintenance is connected with inheritance.—147.

Maintenance is due to a relation within the prohibited degrees, in proportion to inheritance, in other words, upon him who has the greatest right of inheritance in the said relation's estate, the largest proportion of maintenance is incumbent, and upon him who has the smallest right, the smallest proportion, and so of the others.—148.

The maintenance of a brother, in poverty, rests upon his full paternal and maternal sisters, in five shares according to their degrees of inheritance, that is to say, three-fifths must be furnished by the full sisters, one-fifth by the paternal sisters, and one-fifth by the maternal.—148.

If the Kazee decree a maintenance to children, or to parents, or to relations within the prohibited degrees, and some time should elapse without their receiving any, their right to maintenance ceases.—149.

The MARRIAGE of a boy or girl under age by the authority of their paternal kindred is lawful whether the girl be a virgin or not.—36.

In defect of paternal relations authority to contract marriage appertains to the maternal (if they be of the same family or tribe) such as the mother or maternal uncle or aunt and all others within the prohibited degrees—38. See also 'Marriage' Post.

TESTIMONY in favour of a son or grandson or in favour of a father or grandfather is not admissible.—360.
CIVIL CODE.

Chapter III.—MINORITY.

The following Acts and Regulations on the subject of Minority do not for the most part apply to European British subjects. They are also incomplete in one or two other respects. The following digest of the leading principles of the English Law of Minority has been drawn up to supply these defects:

DEFINITION.

A minor is a person of either sex under the age of 21 years. Minority ceases on the day preceding the anniversary of the person's birth.

WHO MAY BE GUARDIANS.

The FATHER is guardian of his children during their infancy. Wellesley v. Duke of Beaufort. 2 Russ. 21, 2 Wh. & Tu. L, C. 614.

The MOTHER has a right on petition to the Court, to the custody of her children till they are seven years of age and access to them after that age, unless she has been adjudged guilty of adultery 2 & 3 Vic. C. 54 S 1 & 4.

She has not this right if she had left her husband without sufficient cause. In re Taylor 11 Sim. 178.

On the death of the father without appointing a testamentary guardian the mother has a right to be guardian by nature and nurture. Eyre v. The Countess of Shaftesbury. 2 Wh. & Tu. 598, see also Notes page 614.

A father has a right to appoint a GUARDIAN for his legitimate children BY DEED or WILL. 12 Car. 2 C. 24.

A mother has not this right but the Court will have regard to her wishes in making the appointment. Re Kaye, 14 W. R. (L. I.) 597.

This right is not affected by the religious belief of the parties. Villareal v. Mellis 3 Swanst 538. Talbot v. The Earl of Shrewsbury 4 My. & Cr. 672 Corbett v. Tottenham 1 Ball & B 59.

If a suit be brought relating to the estate or person of a minor he immediately becomes a WARD OF the COURT, whether he is plaintiff or de-
fendant, and even during the life of his father or of a testamentary guardian. Butler v. Freeman Amb. 303. Hughes v. Science 2 Wh. & Tu. 622.

The Court, although no suit be pending, has a right to appoint a guardian upon petition either of the minor himself or some other person on his behalf, and even when a testamentary guardian has been appointed if he declines to act or the minor has himself appointed a guardian. Villareal v. Mellish 2 Atk. 14, O'Keefe v. Casey 1 S. & L 106. Curtis vs. Rippon 4 Mad. 462.

The Court will not ordinarily appoint a married woman to be a guardian. Re Kaye 14 W. R. (L. I.) 597.

A grandfather, brother or other person has a right to make a gift of property to a minor on condition that the father should give up the guardianship of the minor, and if the father consent even tacitly, as for example, by accepting the gift he loses his right of guardianship, and the PERSON MAKING the GIFT has a right to dispose of it. Blake v. Leigh Amb. 306. Potts v. Norton 2 P. Wms. 109n.

HOW GUARDIANSHIP ENDS.

On the BANKRUPTCY or insolvency of a testamentary guardian he loses his right to the guardianship of the person of the minor and the Court has a right to appoint another. Smith v. Bate. 2 Dick 631.

Where the father is insolvent his CHARACTER is bad or he has deserted his children or is endangering their property and neglecting their education, the Court will commit the custody of the children to a person to act as guardian. 2 Wh. and Tu. 627, 628, 629, 630.

But the Court will not deprive a father of the custody of his children even though he is living in adultery, provided he does not bring the children in contact with the woman he is living with. Ball v. Ball 2 Sim 35 2 W. H. and Tu. 631.

Even when the children are taken from the custody of their father he has a right of communication with them by permission of the Court. Wellesley v. The Duke of Beaufort. 2 Russ. 43.

As in the case of a father so in that of a testamentary guardian the Court has a right to interfere if his CONDUCT be improper although it will not do so ordinarily as in the case of a guardian appointed by itself. Duke of Beaufort v. Berty 1 P. Wms. 704.

The DEATH of one guardian terminates the guardianship of the others if they were appointed by the Court but not if they were appointed by will. Bradshaw v. Bradshaw. 1 Russ. 528. Eyre v. The Countess of Shaftesbury 2 Wh. & Tu. 615.

The MARRIAGE of a female testamentary guardian does not terminate her guardianship. Roach v. Garvan 1 Ves. 160.
The marriage of a female guardian appointed by the Court, even if she be the mother of the minor, terminates her guardianship, but she may be re-appointed. In re Gornall 1 Beav. 347.

The marriage of a female not of a male minor terminates the office of her testamentary guardian. Mendes v. Mendes 1 Ves. 91.

RIGHTS AND LIABILITIES

A minor has no right until he come of age to compel his guardian to give an ACCOUNT, but a third person has even during the minority. Eyre v. The Countess of Shaftesbury 2 Wh. & Tu. 601.

The guardian has a right to all expenses reasonably incurred including the cost of drawing up the account. Walsh v. Highman. 2 P. W. 463.

A minor has a right to act as AGENT for another.

A minor has a right to contract to be an APPRENTICE and is liable under such a contract.

If a guardian accepts a BILL, in payment of rent due to the minor, he is liable for any loss caused in consequence. 2 Cha. Repts. 97.

A minor as a general rule has no right to make any CONTRACT or to do any legal act and he is not liable for any such acts or contracts. Clarke v. Eveline 5 Barn & Ald. 81.

A minor is not liable under a contract during minority unless he chooses, but he has a right to take the benefit of a contract so made if it is advantageous to him. 2 Str. 938.

A person of the age of 14 years is liable to be capably punished for CRIMES but not if under 7 years. 1 Hale P. C. 28.

Between 7 and 14 he is liable only if doli capax.

The guardian has a right to the CUSTODY OF the MINOR except when the child is sufficiently mature to exercise a choice in the matter. R. v. Smith Stra. 962.

He has a right to regulate the mode and select the place for the EDUCATION of his ward. Hall v. Hall. 3 Atk. 721.

He has no right to take a ward of Court out of its jurisdiction without the leave of the Court. Stuart v. The Marquis of Bute. 9 Ho. Lo. Ca. 440.

A minor has a right and is liable to appear to give EVIDENCE however young, provided he has competent discretion. 2 Hale P. C. 278.

A guardian can let his ward's land by LEASE for the term of his minority. Boe v. Hodgson 2 Wils. 129, 135.

He may do so even for a longer term with the sanction of the Court. 11 Geo. 4 and 1 Will. 4 C. 65 & S. 17.

The guardian has no right to give in LOAN the money of his ward otherwise than on the security of Government or of land. Pocock v. Bedlington 5 Ves. 779.
MINORITY.

The guardian is liable for the interest of all sums of money belonging to the minor left in the hands of the guardian and which he might have lent at interest.

The mother of an orphan child has a right to a complete indemnity out of the child's fortune for money actually expended on her child's MAIN-TENANCE within proper limits. Bruin v. Knott 1 Ph. 572.

A guardian has a right to spend on the maintenance and education of the minor so much of the property of his estate as the Court may deem sufficient. Hall v. Hall 3 Atk. 721.

In the case of wards of the Court whether male or female even when they have parents living or guardian, it is necessary to apply to the Court for leave for them to marry which will only be granted if the MARRIAGE and settlement are suitable. Smith v. Smith 3 Atk. 305.

The Court may punish by imprisonment, the person who marries a ward of the Court without leave and also those who contrive or assist at the marriage. Herbert's case and 2 Wh. and Tu. 643.

A guardian has no right to MORTGAGE the property of his ward. Hooper v. Eyles 2 Vern. 490.

Minors are not liable to lose their rights by PRESCRIPTION, by delay or neglect in demanding them during their minority. See Limitation Act, 1873, sec. 2.

A minor has a right to PRESENT to a benefice.

A minor has a right on attaining full age to annul any contract for the SALE or purchase of estates made by him in his minority. He has a right by permission of the Court to sell property mortgaged or entrusted to him. Ad. on Cont. 938.

He is liable for the price of necessaries purchased by him and for the cost of his education given at his request. Maddox vs. Miller 1 Man and Sel. 738.

A guardian has no right to sell the real property of his ward. Earl of Winchelsea v. Norcliffe 1 Vern. 437.

A guardian has no right to convert real property into personal property or vice versa, so as to change the order of SUCCESSION. Story § 1357.

A minor is not liable to be sued except with a guardian appointed by the Court for the particular SUIT. Castledine v. Mundy 4 Barn and Adal. 90.


A minor is liable for a private WRONG such as a slander and assault or a trespass upon land. Green v. Greenbank. 2 Marsh 485.

A guardian is liable for all losses caused by his willful default or negligence. Eyre v. Shaftesbury 2 Wh. and Tu.
ACT 9 OF 1861.  CIVIL CODE.  CHAPTER III.  

ACT No. IX OF 1861.

An Act to amend the Law relating to Minors.

Whereas it is expedient to amend the law for hearing suits relative to the custody and guardianship of minors; It is enacted as follows:

I. Any relative or friend of a minor who may desire to prefer any CLAIM in respect of the custody or GUARDIANSHIP of such minor may make an application by petition, either in person or by a duly constituted agent, to the principal Civil Court of original jurisdiction in the district by which such application, if preferred in the form of a regular suit, would be cognizable, and shall set forth the grounds of his application in the petition. The Court, if satisfied by an examination of the petitioner or his agent, if he appear by agent, that there is ground for proceeding, shall give notice of the application to the person named in the petition as having the custody or being in the possession of the person of such minor, as well as to any other person to whom the Court may think it proper that such notice should be given, and shall fix as early a day as may be convenient for the hearing of the petition and the determination of the right to the custody or guardianship of such minor.

II. The Court may direct that the person having the CUSTODY or being in possession of the person OF such MINOR shall produce him or her in Court or in any other place appointed by the Court on the day fixed for the hearing of the petition or at any other time, and may make such order for the temporary custody and protection of such minor as may appear proper.

III. On the day appointed for the hearing of the petition, or as soon after as may be practicable, the COURT shall hear the statements of the parties or their agents if they appear by agents, and such evidence as they or their agents may adduce, and thereupon shall proceed TO MAKE such ORDER as it shall think fit in respect to the custody or guardianship of such minor and the costs of the case.

IV. In cases instituted under this Act, the Court shall be guided by the PROCEDURE prescribed in Act VIII. of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter) in so far as the same shall be applicable and material; and any order made by the Court may be enforced as if such order had been made in a regular suit.

V. An APPEAL shall lie to the Sudder Court from any order made by a lower Court under this Act, under the rules applicable to regular appeals to such Sudder Court, except that the petition of appeal may be written on a stamp paper of the value prescribed for petitions to the Sudder Court.

VI. Any order passed under this Act in respect to the custody or guardianship of a minor, shall not be liable to be contested in a regular suit.

VII. Nothing in this Act shall be taken to interfere with the jurisdiction exercised under the laws in force by any Supreme Court of
Judicature or the Courts of Wards; or under Act XXI. of 1855 (for making better provision for the education of male minors and the marriage of male and female minors, subject to the superintendence of the Court of Wards in the Presidency of Fort Saint George), and Act XL. of 1858 (for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal).

VIII. The term “SUDDER COURT” in this Act shall denote the Highest Court of Appeal in any part of the British territories in India.

Bengal, N. W. Provinces and Punjab.*

ACT No. XL. of 1858.

An Act for making better Provision for the Care of the Persons and Property of Minors in the Presidency of Fort William in Bengal.

 Whereas it is expedient to make better provision for the care of the persons and property of minors, not brought under the superintendence of the Court of Wards; It is enacted as follows:

II. Except in the case of proprietors of estates paying revenue to Government, who have been or shall be taken under the protection of the Court of Wards, the care of the persons of all MINORS (not being European British subjects), and the charge of their property, shall be SUBJECT TO the jurisdiction of the CIVIL COURT.

III. Every person who shall claim a right to have charge of property in trust for a minor, under a WILL or DEED, OR BY reason of NEARNESS OF KIN, or otherwise, may apply to the Civil Court for a certificate of administration; and no person shall be entitled to institute or defend any suit connected with the estate of which he claims the charge, until he shall have obtained such certificate. Provided, that when the property is of small value, or for any other sufficient reason, any Court having jurisdiction may allow any relative of a minor to institute or defend a SUIT on his behalf, although a certificate of administration has not been granted to such relative.

IV. Any RELATIVE OR FRIEND of a minor, in respect of whose property such certificate has not been granted, OR, if the property consist in whole or in part of land or any interest in land, the COLLECTOR of the District MAY APPLY to the Civil Court to appoint a fit person to take charge of the property and person of such minor.

V. If the property be situate in more than one district, any such application as aforesaid shall be made to the Civil Court of the District in which the MINOR has his RESIDENCE.

* The Bombay Act is almost word for word the same as this. See Post, The Act was extended to the Punjab by Act 4 of 1872. For section 1 see Repealing Enactments pp. 35 and 74.
VI. When an application shall have been made to the Civil Court, either by a person claiming a right to have charge of the property of a minor, or by any relative or friend of a minor, or by the Collector, the Court shall issue NOTICE of the application, and fix a day for hearing the same. On the day so fixed, or as soon after as may be convenient, the Court shall inquire summarily into the circumstances, and pass orders in the case. Provided always, that it shall be competent to the Civil Court to direct any Court subordinate to it to make such inquiry, and report the result.

VII. If it shall appear that any person claiming a right to have charge of the property of a minor is entitled to such RIGHT BY virtue of a WILL OR DEED, and is willing to undertake the trust, the Court shall grant a certificate of ADMINISTRATION to such person. If there is no person so entitled, or if such person is unwilling to undertake the trust, and there is any near RELATIVE of the minor who is willing and fit to be entrusted with the charge of his property, the Court may grant a certificate to such relative. The Court may also, if it think fit (unless a GUARDIAN have been appointed by the father), appoint such person as aforesaid, or such relative or any other relative or friend of the minor, to be guardian of the person of the minor.

VIII. The Court may call upon the Collector or Magistrate for a report on the CHARACTER and qualification of any relative or friend of the minor who may be desirous or willing to be entrusted with the charge of his property or person.

IX. If no title to a certificate be established to the satisfaction of the Court by a person claiming under a Will or Deed, and if there be no near relative willing and fit to be entrusted with the charge of the property of the minor, and the Court shall think it to be necessary, for the interest of the minor, that provision should be made by the Court for the charge of his property and person, the Court may proceed to make such provision in the manner hereinafter provided.

X. If the estate of the minor consist of moveable property, or of houses, gardens, or the like, the Court may grant a certificate to the PUBLIC CURATOR appointed under section XIX. Act XIX. of 1841, OR, if there be no Public Curator to ANY FIT PERSON whom the Court may appoint for the purpose.

XI. Whenever the Court shall grant a certificate of administration to the estate of a minor to the Public Curator or other person as aforesaid, it shall at the same time appoint a GUARDIAN to take CHARGE OF the PERSON and MAINTENANCE of the minor. The person to whom a certificate of administration has been granted, unless he be the Public Curator, may be appointed guardian. If the person appointed to be guardian be unwilling to discharge the trust gratuitously, the Court may assign him such allowance, to be paid out of the estate of the minor, as under the circumstances of the case it may think suitable. The Court may also fix such allowance as it may think proper for the maintenance of the minor; and such allowance, and the allowance of the guardian (if any) shall be paid to the guardian by the Public Curator or other person as aforesaid.
XII. If the ESTATE of the minor CONSIST, in whole or in part of LAND, or any interest in land, the Court may direct the COLLECTOR to take charge of the estate, and thereupon the Collector shall appoint a manager of the property of the minor, and a guardian of his person, in the same manner, and subject to the same rules in respect of such appointments, and of the duties to be performed by the manager and the guardian respectively, so far as the same may be applicable, as if the property and person of the minor were subject to the jurisdiction of the Court of Wards.

XIII. In all inquiries held by the Civil Court under this Act, the Court may make such order as to the payment of COSTS by the person on whose application the inquiry was made, or out of the estate of the minor, or otherwise, as it may think proper.

XIV. Whenever one or more of the proprietors of an estate, which has come under the jurisdiction of the COURT OF WARDS on account of the disqualification of all the proprietors, ceases to be disqualified, and the estate, in consequence, ceases to be subject to the jurisdiction of the Court of Wards, notwithstanding the continued disqualification of one or more of the co-proprietors, the Collector of the District in which the estate is situate may represent the fact to the Civil Court; and the Court, unless it see sufficient reason to the contrary, shall direct the Collector to retain charge of the persons and of the shares of the property of the still disqualified proprietors, during the continuance of their disqualification, or until such time as it shall be otherwise ordered by the Court. The Collector shall, in such case, appoint a guardian for the care of the persons, and a manager for the charge of the property, of the disqualified proprietors, in the manner prescribed in Section XII. If the property be situate in more than one district, the representation shall be made by the Collector who had the general management of the property under the Court of Wards to the Civil Court of his own District, and the orders of the Court of that District shall have effect also in other districts in which portions of the property may be situate.

XV. The proceedings of the COLLECTOR in the charge of estates under this Act shall be SUBJECT TO the CONTROL of the superior Revenue Authorities.

XVI. The Public Curator, and every other Administrator to whom a certificate shall have been granted under Section X. shall, within six months from the date of the certificate, deliver in Court an INVENTORY of any immoveable property belonging to the minor, and of all such sums of money, goods, effects, and things, as he shall have received on account of the estate, together with a statement of all debts due by or to the same. And the Public Curator, and every such other Administrator, shall furnish annually, within three months from the close of the year of the era current in the district, an account of the property in his charge, exhibiting the amounts received and disbursed on account of the estate, and the balance in hand. If any relative or friend of a minor, or any public officer by petition to the Court, shall impugn the accuracy of the said inventory and statement, or of any annual account, the Court may summon the Curator or Administrator, and inquire summarily into the matter, and make such order thereon as it shall think proper, or the Court, at its discretion, may refer such petition to any subordinate Court.
XVII. All SUMS RECEIVED by the Public Curator, or such other Administrator, on account of any estate, in excess of what may be required for the current expenses of the Minor or of the estate, SHALL BE PAID INTO the Public TREASURY on account of the estate, and may be invested, from time to time, in the public securities.

XVIII. Every person to whom a certificate shall have been granted, under the provisions of this Act, may exercise the same POWERS in the management of the estate as might have been exercised by proprietor if not a minor, and may collect and pay all just claims, debts, and liabilities due to or by the estate of the minor. But no such person shall have power to sell or MORTGAGE any immoveable property, or to grant a LEASE thereof for any period exceeding five years, without an order of the Civil Court previously obtained.

XIX. It shall be lawful for any relative or friend of a minor, at any time during the continuance of the minority, to sue for an ACCOUNT from any manager appointed under this Act, or from any person to whom a certificate shall have been granted under the provisions of this Act, or from any such manager or person after his removal from office or trust, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate.

XX. If the disqualification of a person for whose benefit a suit shall have been instituted under this Act cease before the final decision thereof, it shall be lawful for such person to continue the prosecution of the suit on his own behalf.

XXI. The Civil Court, for any sufficient cause, may RECALL any CERTIFICATE granted under this Act, and may direct the Collector to take charge of the estate, or may grant a certificate to the Public Curator, or any other person, as the case may be, and may compel the person, whose certificate has been recalled, to make over the property in his hands to his successor, and to account to such successor for all monies received and disbursed by him. The Court may also, for any sufficient cause, REMOVE any GUARDIAN appointed by the Court.

XXII. The Civil Court may impose a fine not exceeding Five hundred Rupees on any person who may willfully NEGLECT or refuse TO DELIVER his ACCOUNTS, or any property in his hands, within the prescribed time, or a time fixed by the Court, and may realise such fine by attachment and sale of his property under the rules in force for the execution of decrees of Court, and may also commit the recusant to close custody until he shall consent to deliver such accounts or property.

XXIII. The Civil Court may permit any person to whom a certificate shall have been granted under this Act, not being the Public Curator, and any guardian appointed by the Court, to RESIGN his trust, and may give him a discharge therefrom on his accounting to his successor, duly appointed, for all monies received and disbursed by him, and making over the property in his hands.

XXIV. The Public Curator, and every other Administrator to whom a certificate shall have been granted under Section X., shall be entitled to receive such COMMISSION not exceeding five per centum on the sums
received and disbursed by him, or such other allowance, to be paid out of the minor's estate, as the Civil Court shall think fit.

XXV. Every guardian appointed by the Civil Court, or by the Collector, under this Act, who shall have charge of any male minor, shall be bound to provide for his EDUCATION in a suitable manner. The general superintendence and control of the education of all such minors shall be vested in the Civil Court or in the Collector, as the case may be; and the provisions of Act XXVI. of 1854 (For making better provision for the Education of Male Minors subject to the superintendence of the Court of Wards), shall, so far as is consistent with the provisions herein contained, be applicable to the Civil Court, or to the Collector, as the case may be, in respect to such minors, and to every such guardian.

XXVI. For the purposes of this Act, every person shall be held to be a MINOR who has not attained the age of eighteen years.

XXVII. Nothing in this Act shall authorise the appointment of a guardian of the person of a female whose HUSBAND is not a minor, or the appointment of a guardian of the person of any minor whose FATHER is living and is not a Minor; and nothing in this Act shall authorise the appointment of any person other than a female as the GUARDIAN OF the person of a female. If a guardian of the person of a minor be appointed during the minority of the father or husband of the minor the guardianship shall cease as soon as the father or husband (as the case may be) shall attain the age of majority.

XXVIII. All orders passed by the Civil Court, or by any subordinate Court under this Act, shall be open to APPEAL under the rules in force for appeals, in miscellaneous cases, from the orders of such Court and the subordinate Courts.

XXIX. The expression "CIVIL COURT," as used in this Act, shall be held to mean the principal Court of original jurisdiction in the district, and shall not include the Supreme Court; and nothing contained in this Act shall be held to affect the powers of the Supreme Court over the person or property of a minor subject to its jurisdiction. Unless the contrary appears from the context, words importing the singular number shall include the plural number, and words importing the plural NUMBER shall include the singular number, and words importing the masculine GENDER shall include females.

Section 25 was repealed by Bengal Act 4 of 1870 so far as regards guardians appointed under Act 4 of 1870, see Repealing Enactments p. 107.

Bengal.

BENGAL ACT NO. IV. OF 1870.

An Act to consolidate and amend the law relating to the Court of Wards within the Provinces under the control of the Lieutenant-Governor of Bengal.

Whereas it is expedient to consolidate and amend the law relating to the Court of
Wards within the Provinces subject to the control of the Lieutenant-Governor of Bengal; it is enacted as follows:

PART I.

Definitions.

I. In this Act the following words and expressions shall have the meanings hereby attributed to them respectively, unless a contrary intention appear from the context, that is to say—

The word "COLLECTOR" includes any officer in charge of the revenue jurisdiction of a district.

"THE COURT" shall mean the Court of Wards.

The word "ESTATE" shall mean any land subject to the payment to Government of revenue in respect of which the name or names of a proprietor or of proprietors are entered on the general register of estates paying revenue immediately to Government in the collector's office of the district.

The words "DISQUALIFIED PROPRIETOR" shall mean persons who by the provisions of this Act are subject to the superintendence and jurisdiction of the Court of Wards.

The word "MINOR" shall mean a person under the age of eighteen years.

PART II.

Persons disqualified to manage their own property; and properties which may be brought under the management of the Court of Wards.

II. All proprietors of entire estates (other than proprietors who are subject to the jurisdiction as respects infants and lunatics of a high court) who are, or may be, females not deemed by the court competent to the management of their own estates, or who are, or may be, minors, and all proprietors of entire estates who for the time being are, or may be, of unsound mind, or otherwise incapable of managing their affairs by reason of any disqualifying natural or acquired defect, shall be subject to the superintendence and JURISDICTION OF THE COURT of wards; and all estates, the property of any such disqualified proprietors, when taken charge of by the court of wards, shall, whilst they shall be under the superintendence and jurisdiction of the court, be exempt from sale for arrears of REVENUE. Provided, however, that all arrears of revenue shall be the first charge upon the proceeds of such estate in case the same may be sold for any other cause while under such superintendence and jurisdiction.

III. The superintendence of the court is not to extend to JOINT PROPRIETERS of estates, any one of whom may not be of any of the descriptions specified in Section II. Provided that whenever, by any order made under the provisions of Section XIV. of Act XL. of 1858, passed by the Legislative Council of India, any collector shall be directed to retain possession of the persons and properties of still disqualified proprietors, all further proceedings shall be had and taken according to the provisions of this Act as if such still disqualified proprietors were proprietors of an entire estate. And in case any of the qualified proprietors shall so consent, the management of the shares of such qualified proprietors may be retained or assumed by the collector and carried out under the provisions of this Act, so long as it shall seem fit to the collector and such qualified proprietors.

IV. No person shall become a ward of the court by reason of his ACQUIRING, WHILE SUBJECT TO any such DISQUALIFICATION as aforesaid, any ESTATE unless the same shall have accrued to him in the regular course of inheritance on the death of the person to whom he may succeed in such estate, or under, and by virtue
of, the will of, or some settlement made by, some deceased owner thereof. Provided always that it shall be competent to the Board of Revenue to direct the court to take charge of any estate, being the property of any disqualified person, or of any two or more persons, both or all of whom may be disqualified, although the same shall not have descended to such person or persons in any regular course of inheritance or succession, nor accrued to him or them by devise or settlement as aforesaid, whenever the same shall appear to the Board of Revenue to be advisable for the interests of Government, and of the proprietor or proprietors; and such estates under the superintendence and jurisdiction of the court shall be exempt from sale for arrears of revenue accruing whilst they shall be under the superintendence and jurisdiction of the court. Provided, however, that all arrears of revenue shall be the first charge upon the proceeds of such estates in case the same may be sold for any other cause while under such superintendence and jurisdiction. And such estates shall be considered in all respects, as far as regards the management of them by the court, as if they had developed to the proprietor or proprietors in the regular course of inheritance or succession or accrued to him or them by devise or settlement as aforesaid: and such proprietor or proprietors shall in all respects be treated by the court accordingly.

V. When any person shall become a ward, the COURT SHALL TAKE CHARGE OF all PROPERTY, real or personal, belonging to such proprietor, inclusive of any share in any joint undivided estate and of any tenures or shares of tenures of land. Provided that no such share, if subject to the payment of public revenue, shall be liable to sale for recovery of arrears of revenue, or for other demands similarly recoverable, until after the end of the year in which such arrears accrued. When, however, the share has been separated under Section X. or XI. of Act XL of 1859, passed by the Legislative Council of India, the protection given to entire estates under Section II. of this Act will be extended to such share subject to the provisions of Sections XIII. and XIV. of the said Act XI. of 1859.

VI. It shall be LAWFUL FOR the COURT, if it shall think fit, by an order under the seal thereof, TO REFUSE to admit any such disqualified proprietor as aforesaid to be a WARD thereof: or by like order, and with the sanction of the Board of Revenue, to discharge any estate from the court’s further superintendence and jurisdiction. Provided, however, that no estate, the sole property of a minor or of two or more minors, and descended to him or them by the regular course of inheritance, or by virtue of the will of some deceased owner thereof, shall, until such minor or some one or more of such minor shall have attained the age of eighteen years, be sold for arrears of revenue accruing subsequently to his or their succession to the same: Provided, also, that all arrears of revenue shall be the first charge upon the proceeds of such estate in case the same may be sold while such proprietor is disqualified. But the revenue authorities shall, on an arrear so accruing, be authorized to farm the estate for a period not exceeding ten years, nor exceeding the time when the minor or one of the minors shall have attained the age of eighteen years. Provided, further, that the court may by a further order rescind any such order and make such disqualified proprietor a ward of the court. The exemption from sale for arrears of revenue, given by this section, shall only apply to cases where due notice shall have been given to the collector, and been acknowledged by him before the sale, of the fact that the estate is the sole property of a minor, or the property of two or more minors.

VII. When an estate shall have been farmed under the provisions of the last preceding section, the PROCEEDS OF such FARM shall be paid to the collector, and the collector, after the deduction of the amount of the claims of the Government for revenue, shall, with the sanction of the Board of Revenue, either pay the same to the person authorized to receive it for the minor, or shall dispose of it for the minor’s benefit in any of the modes mentioned in Section XLIX.

PART III.

Constitution and powers of the Court of Wards.

VIII. In every division of the provinces subject to the control of the Lieutenant-Governor of Bengal, there shall, from and after the passing of this Act, be a
court of wards. The COMMISSIONER of Revenue of each such division shall be
such court, and shall have and exercise all the powers and authorities conferred by
this Act upon the court over the persons and property of all wards of such court.

IX. It shall be competent to the court to manage estates and other lands fall-
ing under their charge, either by appointment of a MANAGER, or by giving some
or all of the estates and lands in FARM, or by adopting such other form of manage-
ment as may to the said court seem most expedient. Provided that no lease or farm
shall, except under the sanction of the Board of Revenue, be given for a term ex-
ceeding ten years, nor beyond the period of expiration of the ward’s minority, and
provided that all leases given by the court, or by the collector acting for the court,
or by the manager, shall become null and void on the removal of the estate from the
superintendence of the court for whatever cause, save leases made with such sanction
as aforesaid.

X. It shall be lawful for the court from time to time to make such ORDERS
and to give such INSTRUCTIONS for the management of the estates and properties
and the care of the persons of the wards thereof, or of any of them, as to such court
shall seem fit, and from time to time to alter, vary, or revoke any such orders or
instructions, provided that such orders be not consistent with the provisions of this
Act or of any law for the time being in force, or of any orders which may from
time to time be made by the Lieutenant-Governor under the provisions of this
Act, or of any orders issued by the Board of Revenue.

PART IV.

Powers and duties of Collectors.

XI. When the ESTATE or lands of a ward are situated WITHIN ONE DIS-
TRICT only, the collector of such district shall exercise the duties of the court with
respect to the ward and to his moveable and immovable property.

XII. When the estate or lands of a ward are situate WITHIN MORE THAN
ONE district but within the same division, the court in that division shall appoint
some one of the collectors within the division to exercise the duties of the court with
respect to the PERSON OF THE WARD.

XIII. When the estate or lands of a ward are situated within more than one
district but within the same division, the collector of each district shall exercise the
duties of the court with respect to the WARD’S PROPERTY situate within his
district. Provided, however, that it shall be lawful to the court, with the sanction
of the Board of Revenue, to entrust to any one collector the control of the manage-
ment of any portion of the ward’s property not situate within his own district.

XIV. When the ESTATE or lands of a ward are situate WITHIN TWO OR
MORE DIVISIONS, the Board of Revenue shall determine the court which shall
have the charge of the person of the ward. And such court shall appoint some one
of the collectors within its own division to exercise the duties of the court with respect
to the person of the ward.

XV. When the estate or lands of a ward are situate within two or more divi-
sions, the court of each division and the collector of each district shall control and
superintend the management of such portion of the property as is situate within their
jurisdictions. Provided that the court to whom the charge of the ward’s person has
been committed under the preceding section shall exercise a general control over all
disbursements and payments connected with the ward’s property wherever situate
and over the accounts of such property. Provided also that it shall be competent to
the Board of Revenue to direct that the court in charge of the ward shall have the
entire control of all or of portions of the ward’s property wherever situate, under
such form of management as may appear to such Board advisable, or to take any
other action which may seem convenient for the due care of the ward’s interests and
the efficient management of his property.
XVI. Immediately on an estate being, under the provisions of Section XXX., declared subject to the jurisdiction of the court, the collector shall search for and take possession of all SEALS and such ACCOUNTS and PAPERS as it may appear to him advisable to take possession of, and shall, at his discretion, remove them to his own office, or send them to the custody of the court. He shall also take possession of all moveable property and place under proper custody such portion thereof as he may think necessary. And it shall be lawful for the collector in case he has reason to believe that any such seal, account paper or property is in any room, box, or receptacle, within any house or on any land in the actual possession of the ward, to break open the same for the purpose of searching for such seal, account paper or property.

XVII. Every collector shall within six months from the date of his taking possession of the property of a ward under the provisions of this Act, deliver to the court an INVENTORY of all immovable and moveable property so taken possession of.

XVIII. All ORDERS and proceedings OF a COLLECTOR, under the provisions of this Act, shall be SUBJECT TO the REVISION of the court, and every person aggrieved by any such order or proceeding may, within a month from the date of such order or proceeding, prefer an appeal therefrom to the court in charge of the estate in respect of which such order may have been made or proceeding taken; or in case such order may not have been made in respect to an estate, then to the court in charge of the ward in respect to whom or to whose property such order may have been made, or proceeding taken. Provided always that it shall be lawful for such court, if it shall think fit, to revise, modify, or reverse any such order or proceeding after the lapse of the said period of one month whether any appeal shall have been preferred or not.

PART V.

Mode of ascertaining the ground of disqualification.

XIX. Every COLLECTOR, immediately upon his receiving credible information that disqualification under this Act attaches to any proprietor of an estate in his district, SHALL REPORT the same to the court of his division, and shall specify the nature of the DISQUALIFICATION.

XX. Whenever any collector shall receive INFORMATION THAT any PROPRIETOR of an estate within his district HAS DIED, and that the heirs of such proprietor are disqualified, it shall be lawful for such collector to take order for the safety and preservation of any moveable property of such deceased proprietor, and of all deeds, documents, and papers relating to any portion of the property of such proprietor, and for that purpose to cause the same or any part thereof to be removed to any public treasury or to place such guards in charge thereof as to him shall seem fit.

XXI. If any FEMALE proprietor shall be reported to be disqualified from incompetency to manage her estate, the court shall immediately proceed to ascertain whether such proprietor be competent from her capacity and habits of business to manage her own estate, and such court shall, if satisfied that such proprietor is competent to the management of her own estate, by an order under the seal of such court, exempt her from the operation of this Act, and if not so satisfied, shall by a like order declare such proprietor to be a ward and shall immediately take charge of her estate under the provisions of this Act.

XXII. If any proprietor who is not subject to the jurisdiction, as respects infants, of a high court of judicature shall be reported to be a MINOR, the court shall direct the collector to proceed to enquire into the age of such proprietor, and for that purpose the collector shall have power to require the production in person of such proprietor, if a male, and of all documents from which the truth of such matter may appear, and to take evidence of witnesses upon oath or solemn affirmation. The collector shall record such evidence, and report thereupon, and shall submit such report
and all evidence taken by him to the court. The court shall thereupon make an order deeming the age of such proprietor, and such order shall be final and conclusive for all the purposes of this Act. The court shall retain all documentary evidence filed with such report until the minor shall have attained the age of eighteen years, unless, upon an application made thereto, it shall see fit to allow any such document to be restored to the owner thereof.

XXIII. The collector may direct that any person having the unlawful CUSTODY or being unlawfully in possession of the person of any MINOR ward shall produce him or her before the collector on a day fixed by him, and may make such order for the temporary custody and protection of such minor as may appear proper. In the event of disobedience to his orders under this section, the collector may impose a fine not exceeding five hundred rupees, and a daily fine not exceeding two hundred rupees, until the production of the person of the minor. In the case of a female minor ward she shall not be brought into court.

XXIV. If a proprietor who is not subject to the jurisdiction in lunacy of any of the High Courts of Judicature be deemed disqualified on the ground of idiotcy, or LUNACY, the court shall order the collector making such report to apply, in pursuance of the provisions of Act XXXV. of 1858, passed by the Legislative Council of India, to the civil court of the zillah within the jurisdiction of which such proprietor may reside.

XXV. If a proprietor shall, under the provisions of Act XXXIV. of 1858, passed by the Legislative Council of India, have been found by any High Court of Judicature to be of unsound mind and incapable of managing his affairs, the court may (subject to the powers of the High Court under the said Act XXXIV. of 1858) take charge of the estate and lands of such proprietor situate beyond the local limits of the jurisdiction of such High Court, and deal with the same subject to the provisions of this Act. Provided that in such case no further proceedings shall be taken under the last preceding section, nor shall it be competent to the court to appoint a guardian of the person of the said proprietor. Provided also that the surplus income of the property so taken charge of by the court, after providing for the discharge of the Government revenue and the expenses of management, shall be disposed of from time to time in such manner as the said High Court shall direct, and not otherwise.

XXVI. When a proprietor resident beyond the provinces subject to the Government of the Lieutenant-Governor of Bengal, shall, by a civil court of competent jurisdiction, under the provisions of Act XXXV. of 1858, passed by the Legislative Council of India, have been declared to be of unsound mind and incapable of managing his own affairs, the court may take charge of the estate and lands of such proprietor situate within the said provinces and deal with the same subject to the provisions of this Act. Provided that in such case no further proceedings shall be taken under Section XXIV. of this Act, nor shall it be competent to the court to appoint a guardian of the person of the said proprietor. Provided also that the surplus income of the property so taken charge of by the court, after providing for the discharge of the Government revenue and the expenses of management, shall be disposed of from time to time in such manner as the said civil court shall direct, and not otherwise.

XXVII. If a proprietor resident without the local limits of the jurisdiction of the High Court be deemed to be disqualified on the ground of some natural or acquired DEFECT OR INFIRMITY, other than unsoundness of mind, the court shall order the collector making the report to apply to the civil court within whose jurisdiction such person may be residing, and upon such collector so applying such civil court shall institute an enquiry for the purpose of ascertaining whether such person is or is not subject to such disqualifying defect or infirmity.

XXVIII. If a proprietor resident within the local limits of the jurisdiction of the High Court of Judicature at Fort William in Bengal or resident beyond the provinces subject to the government of the Lieutenant-Governor of Bengal shall be reported by the collector to be disqualified by reason of some natural or acquired defect or infirmity other than unsoundness of mind, the court, within whose division the estate or lands of such proprietor are situate, shall order the collector making such report to apply to the civil court of the 24-Pargunnahs, or to such other civil court
as the Lieutenant-Governor, on application made to him by the collector in that behalf, may determine. Such civil court shall thereupon enquire into, and determine the question as to the alleged disqualification, and the provisions of Sections IV., VII., and XXII. of the said Act XXXV. of 1858, shall apply to such enquiry.

XXX. When any enquiry is instituted before a civil court under Section XXVII. or Section XXVIII. of this Act, such court shall, for the purposes of making such enquiry, have such and the same or the like powers and authorities, and shall proceed in such and the same or the like manner and form as in and by the said Act XXXV. of 1858 are provided for making the enquiries in and by the same Act directed to be made. The civil court shall transmit to the court by which any enquiry, under Section XXIV. or XXV. shall have been directed, a copy of the order made on each such enquiry, and the court shall thereupon, in case the proprietor shall have been found by the civil court to be disqualified, treat such proprietor as subject to its superintendence and jurisdiction.

XXX. Whenever it shall have been determined under the provisions aforesaid that the proprietor of an estate is disqualified, the court shall make an ORDER DECLARING such ESTATE to be SUBJECT TO the JURISDICTION of the court, and directing charge of such proprietor and of his property to be taken, and the collector of every district within which there may be any property of the ward shall as soon as conveniently may be, take possession of such property, and the court shall be held to be in charge of such property from the time when possession shall have been so taken.

XXXI. Every collector in charge of a ward shall forthwith report to the court in charge of such ward, the condition of such ward, the PARTICULARS OF HIS PROPERTY, real and personal, so far as the same can be ascertained, and the persons who respectively may appear to be most eligible to be appointed manager and guardian, with the grounds of such opinion. Provided always that when a guardian of a minor ward shall have been appointed by will, such person shall be appointed guardian by the court unless the Board of Revenue, after a report received from the court, and after calling on the testamentary guardian to show cause, shall consider him disqualified or unfit.

PART VI.

Allowance for support of disqualified proprietors.

XXXII. The court shall allow for the SUPPORT OF each WARD and of his or her family such monthly sum as may seem fit with regard to the rank and circumstances of the parties and their indebtedness or freedom from debt.

PART VII.

Appointment and duties of Managers and Guardians.

XXXIII. The offices of MANAGER and GUARDIAN for wards shall be deemed to be wholly distinct.

XXXIV. When the offices of manager and guardian are vested in different persons, the manager shall have the care of the moveable and immovable PROPERTY OF such WARD, save such property as may be under the immediate charge of any collector and the guardian shall have the SUPERINTENDENCE AND CARE OF the PERSON and MAINTENANCE of the ward.

XXXV. It shall be lawful for the court in charge of a ward, if it shall think fit, to appoint the same person to be guardian and manager; but in every case where one person shall be appointed to be both manager and guardian, he shall render all such accounts, and perform all such duties as in and by this Act are required from manager and guardian respectively and severally.
XXXVI. Every manager and every guardian shall sign and seal all papers, deeds, documents, and writings which may be executed by him by virtue of his office with his own name and seal, and shall add to his name his description of manager or guardian of the ward for whom he may act as the case may be; and every manager shall deliver to the collector in charge of the estate of which he is a manager, and every guardian shall deliver to the collector in charge of the ward, all family seals belonging to the ward which may come to his power or control, and such seals shall be deposited wherever the court shall order.

XXXVII. Every MANAGER of the estate of any ward shall, subject to the approval of the Board of Revenue, be APPOINTED BY THE COURT in charge of such estate, and his commission shall be authenticated by the official seal of such court. Provided, however, that whenever any ward may have estates in more than one division, the manager appointed by the court in charge of such ward, shall be appointed manager of all other estates of such ward by the respective courts in and for the divisions in which such estates respectively are situate; but any such court may, with the assent of the Board of Revenue, appoint a separate manager for the estate or estates under its charge, or a submanager who shall act under the orders of the manager.

XXXVIII. Every manager of an estate, previous to the receipt of his commission, shall give SECURITY for the due performance of his duty as such manager, and shall execute an agreement with the collector for the time being in the form in Schedule (A). Provided that with the assent of the Board of Revenue such security may be dispensed with. Provided also that no security shall be required from a manager if he be the testamentary guardian.

XXXIX. The manager of every estate shall receive from such estate such remuneration, by salary, COMMISSION, or otherwise as shall be fixed and determined by the court with the assent of the Board of Revenue. Provided always that it shall be lawful for the court, with similar assent, by an order to alter or vary such remuneration, if it shall seem just and expedient so to do.

XL. All monies which may be recovered from any manager under the provisions of his obligation, shall be carried to the credit of the estate of the ward.

XLI. An ESTABLISHMENT of necessary officers to act UNDER the MANAGER or sub-manager shall be fixed by the court in charge of the estate. The collector, after consultation with the manager, shall nominate the persons to be employed on such establishment, subject to the approval of the court.

XLII. The MANAGER and all persons employed in the management of the estate of any ward, shall be DEEMED to be OFFICERS IN THE PAY OF GOVERNMENT, in respect of their employment and remuneration, and every manager, sub-manager, or guardian under this Act, shall be held to be a public accountant under the provisions of Act XII of 1860, passed by the Legislative Council of India.

XLIII. The COURT by which any manager or guardian or other person has been appointed, MAY, if it shall think fit, with the assent of the Board of Revenue, REMOVE such MANAGER OR GUARDIAN or other person, and may order the person so removed to make over, within a time fixed by the court, any property in his hands to such person as the Court may direct to receive the same, and to account to such person for all monies received and disbursed by such manager or guardian; and every such order may be enforced by the court by the imprisonment in the civil jail of the person disobeying the same, and by attachment of his property and keeping it under attachment, until the accounts or property shall have been delivered up. The collector in charge of any property of the ward may, if he shall think fit, remove any officer appointed by himself, and may order any officer so removed to deliver his accounts or any property in his hands, and such order shall be enforced in manner aforesaid, and the diet-money of every person imprisoned under this section shall be paid out of the proceeds of the estate. Provided that every order for imprisonment by the court shall be subject to appeal to the Board of Revenue.

XLIV. Every manager, sub-manager, or guardian, who may be removed or otherwise cease to fill such office, shall, notwithstanding his removal or cesser of office;
continue liable to ACCOUNT to the court for his receipts and disbursements during the period of his management or guardianship, or tenure of office; and when any present manager, sub-manager, or guardian, or past or present officer subordinate to a manager, sub-manager, or guardian, shall wilfully neglect or refuse to deliver his accounts or any property in his hands within such time as shall be fixed by the said court, the court may impose on him a fine not exceeding five hundred rupees, and in addition to any other remedy for the recovery of such fine, every such fine shall be a demand recoverable as an arrear of revenue.

XLV. The manager appointed by the court shall have the CARE OF the entire PROPERTY, real and personal, of the ward, save estates or lands to which another manager may be appointed or which are under the direct management of a collector. He shall have the exclusive charge of all lands, save as aforesaid, whether malguzary or lakensh; as well as of all houses, tenements, goods, movables of whatever nature belonging to the ward whose estate may be committed to his charge, excepting only the house wherein such ward may reside, the moveables wanted for his use, and the money allowed for the support of the ward and the members of his family entitled to a provision; but every manager shall be subordinate to the court and to the collector under whose superintendence the estate or lands may be.

XLVI. All monies received by any manager of an estate shall be applied by him in the first place in payment of the allowance fixed for the support of the ward and of all charges of management, and subject thereto in or towards the discharge of the monthly hists of Government revenue.

XLVII. In case any ATTACHMENT be issued FROM any CIVIL COURT against any sum of money which may be in the hands of the collector or manager, the payment of the charges of management and of all Government revenue which may for the time being be due from the estate of such ward shall have priority over such attachment. And no payment shall be made to the attaching creditor from any such sum until full provision shall have been made for the payment of such charges and revenue.

XLVIII. Every manager shall deliver a MONTHLY ACCOUNT current, accompanied with vouchers, of his receipts and disbursements to the collector in charge of the estate, who shall audit the disbursements therein specified.

XLIX. Whenever upon any such monthly account current there may be any SURPLUS after making the several payments directed in Section XLVI, such surplus shall, at the collector's discretion, with the sanction of the court, be carried to the credit of the ward, or shall be applied in liquidation of any debt which may affect the property of the ward or any part thereof, and subject thereto, the same shall, in such debts be outstanding, be expended by the manager, subject to the directions of the court, for the improvement of the lands of the ward, or otherwise for the benefit of the property under his charge.

L. Whenever the court in charge of a ward shall think it unnecessary or unadvisable to appropriate any surplus receipts to the improvement of the lands already under the manager's charge, the same shall, by the consent of the court, be applied in the purchase of other landed property, or at interest upon Government security, or in the purchase of Government paper securities, or such other securities, stocks, or shares guaranteed by the Government of India and approved of by the Board of Revenue, as to the court shall seem fit. All title-deeds and documents relating to any land purchased under the provisions aforesaid, and all Government paper securities, and other securities and shares as aforesaid, shall be deposited in such public treasury as the court may direct. The court shall obtain the treasurer's receipt for all deeds, documents, and papers when deposited in any such treasury, and shall transmit an attested copy thereof to the collector in charge of the estate, to be delivered by him to the manager. Every manager of an estate, and every guardian in charge of a ward shall deliver any title-deeds, or Government or other securities belonging to the estate or property of a ward under his charge, to the said collector in charge of such estate, and such collector shall return a receipt for the same and transmit such deeds and securities to the court in charge of the ward, or deposit them in his public treasury as above directed. All interests or divi-
demands which may become payable on Government or other securities or shares shall be paid to the manager and shall be accounted for by him in his monthly account current.

LII. In addition to the monthly account current required in Section XLVIII., the manager of every estate, at the expiration of every year, shall deliver to the collector in charge of such estate an ANNUAL ACCOUNT of all monies which have come to the lands of such manager during such year on account of such estate or on account of any property of such ward of which such collector may have charge, and of the application and disposal of all such monies; and the said collector shall audit the disbursements, and take order that the whole of the surplus receipts be duly appropriated in the manner specified in Sections XLIX. and LI.

LIII. Whenever it shall appear to the court that the produce or the ESTATE of any ward or of any other property of the ward is INSUFFICIENT TO PROVIDE FOR the expenses of a SEPARATE ESTABLISHMENT for the management in conformity with Sections XXXIV. and XLII. of this Act, the court shall take such order as from the circumstances of the case may appear best calculated for providing for the security of the public revenue and for the interests of the ward.

LIV. When portions of the same estate of any ward may be situated in different districts of the same division, the monthly and annual ACCOUNTS of all such estates or portions of an estate required to be furnished by the manager, shall be rendered to the collector in charge of the ward. When the property of the ward consists of different estates or lands or parts of the same estate or land in different divisions, it shall be optional with the Board of Revenue to order that the accounts for the lands in each district shall be submitted to the collector of that district, or to the collector in charge of the ward, or to the manager, or sub-manager.

LV. Whenever TWO OR MORE ESTATES belonging to different wards are so situated that they can be conveniently superintended by ONE MANAGER, the court may, if it shall see fit, entrust them, or so many of them as may seem convenient, to the management of the same manager.

LVI. NO PERSON who would be the NEXT LEGAL HEIR of a ward, or would otherwise be immediately interested in or living such ward, shall be appointed TO BE his GUARDIAN. Provided, however, that this section shall not apply to the MOTHER of a ward or to a TESTAMENTARY GUARDIAN appointed under Section XXXI.

LVI. Every guardian shall be appointed in the manner hereinbefore provided for the appointment of managers. Provided always that none but a FEMALE shall be appointed guardian of a female ward. Provided also that none but a person of the same religion, if Hindoo or Mahomedan, shall, except in the case of a testamentary guardian, be appointed guardian of a female ward, preference being given to female relatives if any such be eligible. Every guardian shall be subordinate to the court and to the collector exercising the duties of the court under Sections XI, XII, XIV, and XV.

LVII. It shall be lawful for the court to empower any female ward herself to receive and disburse the allowance fixed for her MAINTENANCE and in such case no guardian shall be appointed, or the guardian, if already appointed, shall be removed.

LVIII. The court may order reasonable REMUNERATION to be paid from the allowance fixed for the maintenance of any ward TO THE GUARDIAN of such ward.

LIX. The guardian, previous to the receipt of his commission, shall give SECURITY for the due performance of his duty during the continuance of it, and shall execute an agreement with the collector for the time being in charge of the ward in the form in Schedule (B). Provided that with the assent of the Board of Revenue such security may be dispensed with. Provided also that no security shall be required from a testamentary guardian.
LX. An establishment of necessary SERVANTS to act UNDER the GUARDIAN shall be fixed by the court, and the expense thereof shall be defrayed from the allowance fixed for the support of the ward.

LXI. The right to the CUSTODY of the person of every WARD not being an adult female, is hereby vested in the person who for the time being may be guardian of such ward under this Act, or, in the absence of such person, in the collector in charge of such ward. Provided always that no guardian shall be appointed nor continued for a female ward if she has an adult husband.

LXII. The guardian shall deliver a monthly ACCOUNT current, accompanied by vouchers, of his receipts and disbursements to the collector in charge of the ward, who shall audit the disbursements therein specified, and see that the receipts have been fairly and duly appropriated. The guardian shall also deliver an annual account current which shall be in like manner audited by such collector, and if there shall be any surplus remaining in the hands of such guardian which such collector may think unnecessary for the guardian’s expenses in the ensuing year, he shall cause the same to be paid into court to the credit of the ward, and the same shall be applied by the court for the increase of the property of the ward in manner hereinbefore provided for the application of the surplus of the income of such minor.

LXIII. Nothing in the preceding sections shall be held to interfere with the provisions of the said Act XXXV. of 1858.

PART VIII.

Education of Minors.

LXIV. The general superintendence and control of the EDUCATION of every minor ward is hereby vested in the court.

LXV. It shall be lawful for the court to direct that any such minor, if a male, shall RESIDE either with or apart from his guardian at the sudder station of the district or at any other place approved of by the Board of Revenue, and shall attend, for the purposes of education, such school or college as to the Board of Revenue may seem expedient, or be educated either at his own home or elsewhere by a private tutor, and to make such provision as may be necessary for the proper care and suitable maintenance of the said minor whilst attending such school or college.

LXVI. All charges and expenses which may be incurred on account of any such minor ward under the provisions of this Act for COLLEGE or SCHOOL FEES, or for other charges of tuition or education, or by reason of his residence in any place other than his own home, or otherwise, shall be defrayed from the profits of the property.

PART IX.

Debts of the Estate.

LXVII. Every manager to whom the existence of any DEBT payable out OF any ESTATE or out of any other property in his charge under this Act may become known, shall immediately report the same to the collector, who shall without delay report to the court the nature and amount of such debt, and in such report shall state his opinion respecting the best mode of satisfying the same.

LXVIII. With the consent of the Board of Revenue it shall be competent to the court in charge of any ward, in any case in which it shall appear expedient, to SELL or MORTGAGE any property of a ward for the purpose of liquidating any just debts due in respect of the property of such ward, or for the purpose of raising any money for the cost of any suit in which the ward may be a party, or for the purchase of any share of any property of which the ward may be a co-sharer, and for the default in payment of the revenue of which
the ward's share may, under the provisions of Act XI. of 1859, passed by
the Legislative Council of India, be liable to sale, and for the purpose of
any such sale or mortgage, any conveyance executed by the collector in charge of the
ward, under the order of the court, shall be valid to pass the estate and inheritance,
right, title, and interest in the property in such conveyance mentioned of such ward
and of every person whom such ward, if not disqualified, could have bound by a con-
veyance made for the payment of the debts of the ancestor from whom such property
descended. If the property so ordered to be sold or mortgaged be part of an estate
of which such ward be the sole proprietor, or if it be a share of an estate separated
under the said Act XI. of 1859, and if it shall appear to the court that it will be to
the interest of such ward or of the Government that such part or share be formed
into a separate estate prior to such sale or mortgage being effected, it shall be com-
petent to the court to direct the collector within whose jurisdiction such part or share
be situate, to partition it off into a separate estate, and such partition shall be con-
ducted in accordance with the law which may be for the time being in force for the
partition of estates.

PART X.

Suits.

LXIX. In every SUIT brought by or against any ward in any court other than
the High Court, he shall be therein described as a ward of court; and in case he have
a manager of his estate or estate, as hereinbefore provided, such MANAGER shall
in such suit be named as NEXT FRIEND or guardian in the suit of such ward,
and shall in such suit represent such ward, and no other person shall sue as next
friend or be named as guardian in the suit by any civil court in which such suit may
be pending. But the court of wards may by an order nominate or substitute any
other person to be next friend or guardian in any such suit; and upon receiving a
copy of any such order of substitution, the court in which such suit shall be pending
shall substitute the name of the next friend or guardian in the suit so appointed, for
the name of the manager of the ward's property. If the ward have no manager, the
collector in charge of such ward shall be named as next friend or guardian in the
suit of such ward.

LXX. If in any suit instituted by or against a ward any civil court may decree
any COSTS against the manager as guardian or next friend, or against any other
person nominated as guardian or next friend under the provisions of Section LXIX,
the court shall cause such costs to be paid out of any property of the ward which for
the time being may be in its hands.

LXXI. Every PROCESS which may be issued out of any civil court other
than the High Court against any ward, shall be served, through the court, upon the
next friend or guardian in the suit of such ward and upon the collector in charge of
the estate of such ward.

LXXII. No suit shall be brought ON BEHALF OF any WARD unless the
same be authorized by some order of the court in charge of such ward. Provided
that nothing herein shall be deemed or taken to apply to any suit instituted or depend-
ing in the High Court.

LXXIII. It shall be LAWFUL FOR the COURT to submit to arbitration, or
otherwise TO COMPROMISE, any claim which may be made by or on behalf of
or against any ward, and every such submission to arbitration or compromise shall
have the same force and effect as if the ward were not subject to any disqualification
and had personally entered into such submission or compromise; and for the pur-
pose of any such compromise, any conveyance executed by the collector under the
orders of the court shall be valid to pass the estate and inheritance, right, title, and
interest in the property therein comprised of the ward, and of all persons whom such
ward, if not disqualified, could have bound by a conveyance made for the payment of the debts of the ancestor from whom such property descended.
PART XI.

Adoption.

LXXIV. No adoption by any ward and no written or verbal permission to adopt given by any ward is to be deemed valid without the previous consent of the Lieutenant-Governor, on application made to him through the court and Board of Revenue.

PART XII.

Miscellaneous.

LXXV. Farmers and others holding tenures in estates in charge of the court direct from the collector shall be subject to the same rules, regulations and acts as are applicable to other persons holding similar tenures and interests under collectors of the land revenue; but when the farm is held from the manager these rules, regulations and acts, shall not apply.

LXXVI. When a ward's PROPERTY is MANAGED wholly or in part under the system of farms held direct from the collector, or is managed DIRECT BY the COLLECTOR, the collector shall prepare and submit to the court the same accounts that are ordered to be prepared by the manager when the property is managed by a manager.

LXXVII. Whenever an estate shall cease to belong to a disqualified proprietor, or it shall be considered advisable to remove an estate from the superintendence and jurisdiction of the court, the court shall make an ORDER THAT the SUPERINTENDENCE and JURISDICTION of the court over such estate shall CEASE on a date not more than sixty, and not less than fifteen days from the date of such order. Immediately on issue of this order a copy of such order shall be posted up in the office of the court, and copies thereof shall be sent to the collector in charge of the ward, and to every collector in charge of any estate or property of such ward and every such collector shall forthwith on receipt of such copy, notify the intended cessation of the court's charge by a notice put up in such collector's office, and in some conspicuous place in the estate.

LXXVIII. When an estate under the court of wards is released from the superintendence of such court a LIST in duplicate OF the PAPERS to be delivered, and of all immovable and moveable property which may be in the custody or charge of the court or of any collector or manager, shall be made by such officer of the court as the court may direct, and such papers and moveable property shall be given up to the late ward or other person who shall succeed to his estate with one of the lists, on a receipt being affixed to the other, signed either by the late ward or the person who shall succeed to his estate, or by some person authorized to act on his behalf; also a complete ACCOUNT of the management, while under the superintendence of the court, of the property of the proprietor of such estate from the beginning, shall be prepared by the manager or collector (as the case may be) and submitted to the court, and a copy thereof given to the late ward, or to the person who shall succeed to his estate.

LXXIX. If on the DEATH OF any WARD the succession to his property or any part thereof be in dispute, it shall be competent to the court, if it think fit, to continue the charge and management of such property or part thereof under the provisions of this Act, until an order for making over the possession and management of such estate shall have been made by a competent court.

LXXX. If within one year after the death of a ward the succession to whose property or some part thereof is in dispute, no suit be instituted to determine the right to the property so in dispute, it shall be LAWFUL TO the court with the sanction of the Board of Revenue either to make over such property to any claimant thereof, or TO CAUSE the same TO BE SOLD by public auction and the proceeds thereof, after deducting therefrom sums payable to Government, to be invested in Government promissory notes; such notes to be held by the court in trust for the person who may be entitled thereto.
LXXXI. Every sale to be made in pursuance of the last preceding section shall be valid to pass the right, title, and interest in the property so sold, of such deceased ward and of every person claiming by, through, or under such deceased ward or by way of succession, inheritance, remainder, or reversion, depending on the estate of such ward.

LXXXII. If a proprietor shall have been declared disqualified and shall have been afterwards restored, or if the estate of any disqualified proprietor shall legally devolve to, or come into the possession of, any person not disqualified for the management of it, such PROPRIETOR or his heir or successor is declared entitled to sue any person professing to HAVE ACTED UNDER THE authority of the court, for any acts done by them respectively whilst the estate may have been under the charge of the court of wards in opposition to this or any other Act that may be hereafter enacted regarding disqualified proprietors and their estates, or to any order issued by the court of wards, or FOR ANY BREACH OF their respective TRUSTS.

LXXXIII. In cases instituted under this Act, the court shall be guided by the PROCEDURE prescribed in Act VIII. of 1859 passed by the Legislative Council of India in so far as the same shall be applicable and material; and any order made by the court may be enforced as if such order had been made in a regular suit.

LXXXIV. It shall be lawful for the Lieutenant-Governor to make such general RULES for the better fulfilment of the purposes of this Act as he may think fit (provided such rules be not inconsistent with the provisions of this Act), and from time to time to alter, vary, or revoke any of such rules; and such rules, or alterations, or revocation of rules, shall be published in the Calcutta Gazette, and from and after such publication thereof, shall have the same force and effect as if they were inserted herein.

LXXXV. The powers and authorities vested by the provisions of this Act in the court shall be possessed and exercised subject to the entire control and supervision of the BOARD OF REVENUE and of the Lieutenant-Governor.

LXXXVII. This Act shall commence and take effect on the 1st day of June 1870.

LXXXVIII. This Act may be called "The Court of Wards' Act, 1870."

SCHEDULE A.—(Referred to in Section LXXXVIII.)

FORM OF AGREEMENT TO BE EXECUTED BY A MANAGER.

I, A. B., having voluntarily taken on myself the management of the estate of C., disqualified proprietor of D., do hereby engage with the collector of E., that I will manage the said estate diligently and faithfully for the said proprietor, and will use every means in my power to improve the same for his [her] benefit, and will act in every respect for his [her] interest in like manner as if the estate were my own. I also engage with the said collector to observe in all respects the provisions regarding managers contained in Part VII. of Act IV. of 1870 of the Council of the Lieutenant-Governor of Bengal, and that I will derive no personal advantage from the management beyond the remuneration annexed to me as manager. In the event of any breach of trust, neglect, or omission as manager being proved against me, I will pay to the said collector Rs. as liquidated damages.

SCHEDULE B.—(Referred to in Section LXIX.)

FORM OF AGREEMENT TO BE EXECUTED BY A GUARDIAN.

I, A. B., having voluntarily taken upon myself the guardianship of C., disqualified proprietor of D., do hereby agree with the collector of E., that I will execute

For section 86 see Repealing Enactments p. 107.
the trust committed to me diligently and faithfully, and according to the provisions regarding guardians contained in Part VII. of Act IV. of 1870 of the Council of the Lieutenant-Governor of Bengal, and that I will derive no advantage directly or indirectly from the ward’s allowance beyond the remuneration granted me as guardian. In the event of any breach of trust, neglect, or omission being proved against me, I will pay to the said collector Rs. as liquidated damages.

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**Bombay.**

**Act No. XX. of 1864.**

*An Act for making better provision for the care of the persons and property of Minors in the Presidency of Bombay.*

Whereas it is expedient to make better provision for the care of the persons and property of Minors in the Presidency of Bombay; It is enacted as follows:

I. The CARE OF the persons of all Minors (not being European British subjects) and the charge of their property shall vest IN the CIVIL COURT.

II. Every person who shall claim a right to have charge of property in trust for a Minor under a WILL or DEED or other instrument in writing, or by reason of NEARNESS OF KIN or otherwise, may apply to the Civil Court for a Certificate of Administration; and no person shall be entitled to institute or defend any SUIT connected with the estate of which he claims the charge, until he shall have obtained such Certificate. Provided that when the property is of small value, not exceeding Rupees two hundred and fifty, any Court having jurisdiction may allow any relative of a Minor to institute or defend a SUIT on his behalf, although a Certificate of Administration has not been granted to such relative.

III. Any RELATIVE OR FRIEND of a Minor in respect of whose property such Certificate has not been granted, OR, if the property consist in whole or in part of land or any interest in land, the COLLECTOR of the District MAY APPLY to the Civil Court to appoint a fit person to take charge of the property and person of such Minor.

IV. If the property be situate in more than one District, any such application as aforesaid shall be made to the Civil Court of the District in which the MINOR has his RESIDENCE.

V. When application shall have been made to the Civil Court either by a person claiming a right to have charge of the property of a Minor, or by any relative or friend of a Minor, or by the Collector, the Court shall issue NOTICE of the application and fix a day for hearing the same. On the day so fixed, or as soon after as may be convenient, the Court shall inquire summarily into the circumstances, and pass orders in the case. Provided always that it shall be competent to the Civil Court to direct any Court subordinate to it to make such inquiry and report the result.

VI. IF IT shall appear that any person claiming a right to have charge of the property of a Minor is entitled to such RIGHT BY virtue of a WILL OR DEED or other instrument in writing, and is willing to undertake the trust, the Court shall grant a Certificate of ADMINISTRATION to such person. If there is no person so entitled, or if such person is unwilling to undertake the trust and there is any near RELATIVE of the Minor who is willing and fit to be entrusted with the charge of his property, the Court may grant a Certificate to such relative. The Court may also if it think fit (unless a GUARDIAN have been appointed by the father), appoint such person as aforesaid, or such relative or any other relative or friend of the Minor, to be Guardian of the person of the Minor.
VII. The Court may call upon the Collector or Magistrate for a report on the 
character and qualification of any relative or friend of the Minor, who may 
be desirous or willing to be entrusted with the charge of his property or person, and 
it shall be incumbent on the Collector or Magistrate to furnish such report after 
making due inquiry.

VIII. If no title to a Certificate be established to the satisfaction of the 
Court by a person claiming under a Will or Deed or other instrument in writing, 
and if there be no near relative willing and fit to be entrusted with the 
charge of the property or person of the Minor, and the Court shall think it 
to be necessary for the interest of the Minor that provision should be made by the 
Court for the charge of his property or person, the Court shall proceed to make such 
provision in the manner hereinafter provided.

IX. If the estate of the Minor consists of moveable property or of houses, gar-
dens or the like, the Court shall grant a Certificate to the PUBLIC CURATOR ap-
pointed under Section XIX, Act XIX of 1841 (for the protection of moveable and 
immovable property against wrongful possession in cases of succession), OR if there be 
no Public Curator to ANY FIT PERSON whom the Court may select for the purpose.

X. Whenever the Court shall grant a Certificate of Administration to the estate 
of a Minor as aforesaid, it shall at the same time appoint a GUARDIAN to take 
CHARGE OF THE PERSON and MAINTENANCE of the Minor. The person to 
whom a Certificate of administration has been granted, unless he be the Public Curat-
or, the legal heir of the Minor, or next in succession to the property, may be ap-
pointed Guardian. Provided that in the case of Minors who have inherited property 
by adoption, the natural father may be appointed Guardian. If the person appointed 
to be Guardian is unwilling to discharge the trust gratuitously, the Court may assign 
him such allowance to be paid out of the estate of the Minor as under the circum-
stances of the case it may think suitable. The Court may also fix such allowance as 
may think proper for the maintenance of the Minor, surviving parent whether 
natural or adoptive, husband, wife or children, if any, and such allowance and the 
allowance of the Guardian (if any) shall be paid to the Guardian by the Public Curat-
or or other person as aforesaid.

XI. IF THE ESTATE of the Minor CONSIST in whole or in part OF LAND or 
any interest in land, the Court may direct the COLLECTOR of the District in which 
the larger part of the same may be situated to take charge of the estate.

XII. The Civil Court may take such SECURITY as it shall think necessary, 
from any person to whom it may grant a Certificate of Administration of the property 
of any Minor under this Act. Provided always that no such security shall be de-
manded from the Collector of a District or the Public Curator, when their services 
may be availed of.

XIII. In all inquiries and other proceedings held or had by the Civil Court un-
der this Act, the Court may make such order as to the payment of COSTS by the 
person on whose application such inquiry was made or proceeding had, or out of the 
estate of the Minor, or otherwise, as it may think proper.

XIV. Whenever ONE OR MORE of the PROPRIETORS of an estate which 
has been placed under the Collector's charge shall have passed his or their minority, 
the Collector shall represent the fact to the Civil Court, and the Court, unless it see 
sufficient reason to the contrary, may direct the Collector to retain charge of the 
shares of the property of the still disqualified proprietors during the continuance of 
their disqualification, or until it shall be otherwise ordered by the Court; or the 
Court may direct the whole estate to be made over to the management of the proprie-
tor or proprietors who shall have become of age with such directions as to the share 
or shares of the still disqualified proprietor or proprietors as to the Court shall seem 
fit and proper.

XV. The proceedings of the COLLECTOR in the charge of estates under this 
Act shall be SUBJECT TO THE CONTROL of the superior Revenue Authorities.

XVI. The Public Curator and every other Administrator to whom a Certificate
shall have been granted under Section X shall, within six months from the date of the Certificate, deliver in Court an INVENTORY of all the immovable property belonging to the Minor, and of all such sums of money, goods, effects, and things as he shall have received on account of the estate, together with a statement of all debts due by or to the same. And the Public Curator and every such other Administrator shall furnish annually within three months from the first of May of the Christian era an account of the property in his charge, exhibiting the amounts received, disbursed, and invested on account of the estate, and the balance in hand. If any relative or friend of a Minor, or any public Officer by petition to the Court shall impugn the accuracy of the said inventory and statement or of any annual account, the Court may summon the Curator or Administrator, and inquire summarily into the matter and make such order thereon as it shall think proper, or the Court, at its discretion, may refer such petition to any subordinate Court for investigation and report.

XVII. All SUMS RECEIVED by the Public Curator or such other Administrator on account of any estate, in excess of what may be required for the current expenses of the Minor or of the estate, SHALL by him BE INVESTED on account of the estate, from time to time IN THE PUBLIC SECURITIES.

XVIII. Every person to whom a Certificate shall have been granted under the provisions of this Act may exercise the same POWERS in the management of the estate as might have been exercised by the proprietor if not a Minor, and may collect and pay all just claims, debts, and liabilities due to or by the estate of the Minor. But no such person shall have power to SELL, alienate, MORTGAGE, or otherwise INCUMBER any immovable property, or to grant a LEASE thereof for any period exceeding five years, without the sanction of the Civil Court previously obtained.

XIX. It shall be lawful for any relative or friend of a Minor at any time during the continuance of the minority to sue for and ACCOUNT from any Manager appointed under this Act, or from any person to whom a Certificate shall have been granted under the provisions of this Act, or from any such Manager or person after his removal from office or trust, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate.

XX. If the disqualification of a person for whose benefit a suit shall have been instituted under this Act cease before the final decision thereof, it shall be lawful for such person to continue the prosecution of the suit on his own behalf.

XXI. The Civil Court for any sufficient cause may RECALL any CERTIFICATE granted under this Act, and may direct the Collector to take charge of the estate, or may grant a fresh Certificate to the Public Curator or any other person as the case may be, and may compel the person whose Certificate has been recalled to make over the property in his hands to his successor, and account to such successor for all moneys received and disbursed by him. The Court may also for any sufficient cause REMOVE any GUARDIAN appointed by the Court.

XXII. The Civil Court may impose a fine not exceeding five hundred Rupees on any person who may wilfully NEGLECT or refuse TO DELIVER his ACCOUNTS or any property in his hands, within the prescribed time or a time fixed by the Court, and may realize such fine by attachment and sale of his property under the rules in force for the execution of decrees of Court, and may also commit the recusant to confinement in the Civil Jail until he shall consent to deliver such accounts or property.

XXIII. The Civil Court may permit any person to whom a certificate shall have been granted under this Act not being the Public Curator, and any Guardian appointed by the Court, to RESIGN his trust, and may give him a discharge therefrom on his accounting to his successor duly appointed for all moneys received and disbursed by him and making over the property in his hands.

XXIV. The Public Curator and every other Administrator to whom a Certificate shall have been granted under Section X shall be entitled to receive such
COMMISSION not exceeding five percentum on the sums received and disbursed by him, or such other allowance to be paid out of the Minor's estate, as the Civil Court shall think fit.

XXV. Every Guardian appointed by the Civil Court under this Act who shall have charge of any Male Minor shall be bound to provide for his education in a suitable manner. The general superintendence and control of the education of all such Minor shall be vested in the Civil Court.

XXVI. In the exercise of this superintendence and control, it shall be lawful for the Civil Court to direct that such Minor shall RESIDE either with or without his Guardian at the Sudder Station of the District, or at any other place within the Presidency of Bombay, and shall attend for the purposes of EDUCATION such School or College as to the said Civil Court may seem expedient, and to make such provision as may be necessary for the proper care and suitable maintenance of the said Minor whilst attending such School or College.

XXVII. If it shall appear to the Civil Court inexpedient to place any such Minor at School or College, it shall, if the proceeds of the estate are sufficient for that purpose, cause such Minor to be educated by a PRIVATE TUTOR properly qualified, either at the family residence of such Minor or at the Sudder Station, or elsewhere within the Presidency of Bombay, and in that case also the Civil Court shall have power to determine, from time to time, the place of residence of such Minor, and to make such provision as may be necessary for his proper tuition and maintenance during the period of his education.

XXVIII. All charges and expenses which may be incurred on account of any Male Minor under the provisions of this Act, for College or SCHOOL FEES, or for other charges of tuition or education, or by reason of his residence in any place other than his own home or otherwise, shall be defrayed from the profits of his estate in the same manner as other expenses incurred under the authority or with the sanction of the Civil Court.

XXIX. Every Guardian appointed under this Act who shall have charge of an unmarried Minor, shall pay all the necessary expenses of the MARRIAGE of such Minor out of the estate; provided that these expenses shall in no case, without the sanction of the Civil Court, involve the Minor's estate in debt.

XXX. For the purposes of this Act every person shall be held to be a MINOR who has not attained the age of eighteen years.

XXXI. Nothing in this Act shall authorize the appointment of a Guardian of the person of a female whose HUSBAND is not a Minor or the appointment of any person other than a female as the Guardian of the person of a female. If a Guardian of the person of a Minor be appointed during the minority of the husband of the Minor, the Guardianship shall cease as soon as the husband shall attain the age of majority.

XXXII. Nothing in this Act shall be held to interfere with the provisions of Act XXXV. of 1858 (for making better provision for the care of the Estates of Infirmities).

XXXIII. All orders passed by the Civil Court under this Act shall be open to APPEAL to the High Court at Bombay, and shall be subject to all the provisions contained in Section 366 of the Code of Civil Procedure.

XXXIV. The expression "CIVIL COURT" as used in this Act shall be held to mean the principal Court of original Civil jurisdiction in the District, and shall not include the High Court of Judicature; and nothing contained in this Act shall be held to affect the powers of the HIGH COURT of Judicature over the person or property of any Minor subject to its jurisdiction. Unless the contrary appears from the context, words importing the singular NUMBER shall include the plural number, and words importing the plural number shall include the singular number, and words importing the masculine GENDER shall include females.
MINORITY—(Madras).

REG. 5 OF 1804.

Madras.

MADRAS REGULATION V. OF 1804.

[FRAMED UPON REGULATION X., 1793, OF THE BENGAL CODE.]

A Regulation for constituting a Court of Wards, for declaring the Powers vested in the said Court, and for defining the Rules under which those Powers are to be exercised.

Whereas sundry persons, being the legal inheritors of property, have been and may hereafter be incapacitated by minority, sex, or natural infirmity from taking charge in their own behalf of such property, by reason whereof, the said property has been liable to be transferred to the custody and management of other persons, not being liable to due responsibility or control; and whereas instances have frequently occurred wherein such temporary managers have abused the trust to which they have succeeded, by neglecting the interests or by the fraudulent dilapidation of such property, to the great injury and distress of the persons on behalf of whom the said trusts have been undertaken; and whereas it is expedient and necessary that secure and efficient means should be established, under the sanction of public authority and of legal provisions, for the due preservation of the property of incapacitated persons, the education of minors and the care of the persons of lunatics and idiots—wherefore the Governor in Council has been pleased to establish a Court of Wards for those purposes, under the following regulations:

II. The COURT OF WARDS SHALL CONSIST OF the members of the BOARD OF REVENUE at the Presidency for the time being, and shall possess full POWER and authority to take cognizance of all cases of property devolving to heirs incapacitated by minority, sex, or natural infirmity from administering their own affairs. The Court of Wards shall also possess power to select and appoint proper persons to the custody and management of property so situated, to the education of minors, and to the care of lunatics and idiots (as the case may happen), taking due means to secure and to render the persons so to be selected and appointed responsible for the proper execution of the trust reposed in them: provided, nevertheless, that the said Court of Wards shall not proceed to exercise any power of superintendence over the persons or property of incapacitated persons until each separate case, together with all the circumstances connected, shall have been submitted to the Governor in Council, and until the authority of the Governor in Council shall have been signified in writing for the exercise of the said powers by the Board of Revenue, acting in its capacity of the Court of Wards; and provided further, that the power of the Court of Wards shall not extend in any case to the property of persons not paying directly rent or revenue to Government.

III. First. Where property charged with the direct payment of rents or revenues to Government devolves, by inheritance, to persons incapacitated by minority, sex, or natural infirmity from taking charge of the said property on their own behalf, it shall be the duty of collectors to transmit, without delay, to the Board of Revenue, in their capacity of Court of Wards, a written REPORT (founded on personal inquiry or on the testimony of credible persons, according to the nature of the case), describing all the circumstances of each particular case; whereupon the Board of Revenue shall state such cases, together with their opinion and judgment, to the Governor in Council, to the end that the decision and orders of the Governor in Council may be passed thereon.

Second. It shall nevertheless be competent to the Court of Wards, upon due and sufficient proof of the means, ability, and discretion of FEMALES who may succeed to the possession of property by inheritance, gift, or otherwise, to regulate their own affairs, to put the said females respectively in the possession and management of their property.

IV. Where MINORS may succeed to inheritable property, they shall not, in any
V. Persons succeeding to property by inheritance but being incapacitated by lunacy, idiotism, or other natural infirmity, shall in no instance take charge or administer the affairs of such property on their own behalf.

VI. The PROCEEDINGS of the Court of Wards shall, in the first instance, be founded on the reports of the collectors respectively, to the end that no delay may occur in providing for the due security and management of the property of persons incapacitated by minority, sex, or natural infirmity; but collectors making such reports upon insufficient authority, whereby inheritors of property shall be deprived of the possession and management of the said property or their own behalf, shall be liable to prosecution in the Courts of Adawlut, either at the instance of the parties injured or of the Court of Wards; and upon proof that such UNDUE REPORTS have been made through negligence, or for malicious purposes, awards of damages, together with costs, shall be granted against collectors so offending.

VII. First. WHERE PERSONS being under the description of females, minors, lunatics, or idiots, and being by reason thereof deprived of the possession or management of their property, shall see reason to DISPUTE the grounds on which the REPORTS of the collectors in the cases respectively may have been framed, shall observe the following process, to the end that immediate RELIEF may be obtained.

Second. Such persons shall respectively lay their cases, together with the evidence and documents in support thereof, before the judge of the zillah, who shall in the first instance be competent to receive and entertain all such claims.

Third. Judges of zillahs shall transmit, with all reasonable expedition, copies of such cases, together with copies of the evidence and documents in support thereof, to the Court of Sudder Adawlut; whereupon the Court of Sudder Adawlut shall immediately issue a precept to the Courts of Appeal, or to the judges of zillahs (as it shall seem fit), to bring the parties complaining before those courts respectively.

Fourth. The courts so empowered shall make ocular observation in open court of persons so complaining, and shall further take in writing the oaths of not less than three credible persons well acquainted with the said parties complaining, setting forth their knowledge and belief of the facts and circumstances connected with the cases respectively, whereupon the inferior courts so empowered shall transmit to the Court of Sudder Adawlut the whole proceedings, together with the opinion of the said inferior court on such cases, the decision of which court shall in every instance be final, and certificates of these decisions shall be furnished by the Court of Sudder Adawlut to the Governor in Council, for the guidance of the Board of Revenue.

Fifth. Provided that females shall be at liberty to avail themselves, at their own risk, of the law and of the usages of the country to avoid personal appearance in court.

Sixth. Provided also, that in cases of lunacy or idiotism where reason may exist for supposing the cause of the malady removed, it shall be competent for the parties concerned to appear, or for the inferior courts to bring the said parties before the Courts of Adawlut from time to time, and upon due proof of the removal of the disqualification, the inferior courts shall observe the process hereinbefore described for bringing such cases under the Court of Sudder Adawlut.

VIII. First. Where the property of persons incapacitated as aforesaid may, on the decision of the Governor in Council, be committed to the care of the Court of Wards, the said court shall select and NOMINATE PERSONS duly qualified to MANAGE the affairs of persons so situated.

* So much of sections 6 and 7 as relates to 'Lunatics' or 'Idiots' was repealed by Act 35 of 1858, see Repealing Enactments p. 35.
Second. Collectors shall in the first instance recommend proper persons to be appointed managers.

Third. Females shall be free to include or exclude (as they may themselves see fit) their own husbands in their recommendation of persons to be appointed managers of their separate property.

Fourth. The aforesaid recommendations, being duly made, shall be accepted by the Court of Wards; provided that, when the said court shall see due and sufficient reason to reject such recommendations, the cases respectively shall be finally decided by the Governor in Council.

IX. Persons being GUARDIANS of minors shall not in any case be eligible to be appointed managers of the property of the said minors.

X. Persons appointed to manage the property of incapacitated persons shall give good and sufficient SECURITY for their personal appearance during the course of their management, and shall execute the following obligation: that is to say:

"I, A. B., having voluntarily taken upon myself the management of the property of C., incapacitated proprietor of D., do hereby solemnly promise and engage to manage the said property diligently and faithfully for the said proprietor; and to use all the means in my power to improve the property for the benefit of the owner. I also promise and engage to render a true and just account of my administration, and to be answerable for all embezzlement or misapplication of the property, to the extent of three times the amount which may be proven to have been embezzled or misapplied during my management. And I further engage to adhere to such regulations, as have been, or may hereafter be, framed for the guidance of managers by the Court of Wards, and to abstain from all other advantage, directly or indirectly, than the allowance granted to me from the property committed to my charge under the authority of the Court of Wards.

XI. First. Managers, having executed the aforesaid obligation, shall be furnished by the collectors respectively with public COMMISSIONS OF MANAGEMENT, under the seals and signatures of the said collectors.

Second. An allowance (to be specified in the commission) shall be granted to managers, which shall be proportioned to the extent of the trust, and shall be fixed by the Court of Wards, on the recommendation of collectors, as adequate COMPENSATION FOR the trouble and responsibility of the MANAGEMENT.

Third. The court of wards shall possess authority, in cases where managers may be proven to have abused their trust, to ENFORCE the PENALTY of the obligation, and to dismiss such managers from their charge; provided that all such amercement shall be carried to the account of the property in trust.

Fourth. But such decisions of the court of wards shall not preclude managers who may consider themselves to be aggrieved from instituting suits in the courts of adawlut for the recovery of the amount of the said penalty.

Fifth. Managers shall have power to nominate the several OFFICERS, and to appoint their salaries requisite FOR the ADMINISTRATION of property in trust, subject, however, to the revision of collectors, and to the final confirmation or rejection of the court of wards.

Sixth. Subordinate officers so chosen and appointed shall, upon proof of delinquency, be liable to punishment in the same manner as the principal managers.

XII. First. MANAGERS duly appointed shall HAVE the ENTIRE CHARGE of the estates real and personal of the incapacitated proprietors, including all mazurray and lakhrirj lands; and all houses, tenements, goods, and moveable property, excepting only the house in which the proprietors may reside, together with the articles of moveable property required for the use and comfort of the said proprietors.
Second. On receiving charge of their trust, managers shall furnish an exact INVENTORY under their seals and signature, to be lodged with the collector, of the property which may be committed to their custody.

Third. At the expiration of every year, managers shall deliver to the collectors respectively, true and faithful ACCOUNTS of their receipts and disbursements; and the said collectors shall be responsible for the due appropriation of the surplus funds, in the manner hereinafter provided.

XIII. The ASSESSMENT of lands being the property of incapacitated persons shall be fixed in the same manner as the assessment of other lands.

XIV. First. The entire SUMS of money RECEIVED by managers from the lands under their charge SHALL BE PAID monthly TO the COLLECTORS, who shall defray therefrom the authorized expenses of management.

Second. A sum equal to ten per cent. of the permanent assessment, or, when the whole permanent jumma may not be realized, a sum equal to ten per cent. of the revenue actually paid to Government, shall be allotted to the support of disqualified possessors of property, and of such parts of their families as may be entitled to MAINTENANCE at their expense.

Third. The said allowance shall be paid monthly by the collectors to the proprietors, or (as the case may be) to the guardians of the proprietors, for their use in the proportion of the public revenue actually received from the property, and not otherwise, except as may be especially provided under Clause Fifth of this section.

Fourth. The lands of incapacitated proprietors shall not be answerable for the payment of the public REVENUE assessed thereon; and if the next collections of any year should prove unequal to the discharge of the fixed assessment, the deficiency shall be made good by the surplus collections of future years; provided always, that the allowance for the support of the proprietors shall be paid as well in years of deficient as of surplus produce.

Fifth. Where the said proportion of ten per cent. of the public revenue may afford a fund greater than shall be requisite for the suitable expenses of disqualified possessors of property and of their families, or where the same effect may be produced by the accumulation of property not assessed, it shall be competent for collectors to reduce at their discretion the said proportion of ten per cent.; and where the said proportion of ten per cent., together with the produce of the unassessed property of incapacitated possessors, shall be inadequate to the due SUPPORT of the parties concerned, it shall be competent for collectors at their discretion to augment the proportion payable from maleficiary lands. Provided, however, that the exercise of the discretionary power shall be reported to the Court of Wards, and shall not be repeated after the first month without due authority had and obtained for the same.

Sixth. Where the proportion of ten per cent. may be reduced, the difference shall be incorporated in the assets of the property, and employed for the benefit of the owners.

XV. It shall not be competent for managers of the property of minors to grant LEASES extending beyond the period of one year, without the consent of the collector had in writing; nor to DISPOSE OF any part of the PROPERTY without the permission of the court of wards also obtained in writing.

XVI. First. Where estates, being the property of incapacitated owners, may yield under management funds more than adequate to the payment of the public revenue, to the charges of management, and to the expense of maintaining the said owners, it shall be competent for the collectors to employ such SURPLUS FUNDS for the purpose of improving the said property, or in the purchase of land, or in the purchase of the public securities of Government; provided that such appropriation to be made of the said surplus funds shall have been previously approved in writing by the court of wards.
Second. In cases of purchasing as aforesaid, the collector shall transmit the deeds of security, of whatever description, to the court of wards, for the purpose of being deposited in the treasury of Government.

Third. Receipts shall be granted by collectors to managers for such deeds of security on account of the owners, as may be deposited in the public treasury, and such deposits shall be at the risk of Government.

Fourth. The interest money accruing on the public securities which may be purchased on account of incapacitated possessors of property shall be receivable by the collectors respectively, to whom it shall be competent to grant discharge from the same.

XVII. Where DEBTS may be due to private creditors from the estates of disqualified proprietors, they shall be liquidated by the collectors respectively on the due substantiation of the said debts, and on demand of payment by the creditors; provided always, that the discharge of private debts shall not in any case interfere with the regular and complete payment of the public revenue assessed on such estates; and provided further, that the permission of the court of wards in writing shall have been had and obtained in every instance previously to the payment of any private debt.

XVIII. Where persons succeeding by right of inheritance to land or other property paying revenue directly to Government may happen to be incapacitated, by reason of sex, minority, or natural infirmity, from the management of such property on their own behalf, collectors shall respectively accompany their REPORTS of such cases to the court of wards, with a description of the conditions of the persons concerned, the value of the property devolving to them, and the names of persons most proper, in the judgment of them (the collectors), to be appointed guardians of the disqualified heirs; provided that guardians may not have been appointed for such disqualified heirs according to the will of persons authorized by law to make such appointment.

XIX. First. The court of ward shall proceed, according to the mode hereinbefore provided for the nomination of managers, to choose and appoint GUARDIANS of the disqualified persons.

Second. The next legal heir shall not in any case whatever be appointed guardian of a disqualified person.

Third. Persons who may appear to have a direct or indirect advantage in the death or continued incapacity of the disqualified possessors of property shall not in any case whatever be appointed to be guardians of such disqualified possessors.

Fourth. Guardians of the FEMALE sex shall be appointed to female minors and not otherwise.

Fifth. Possessors of property paying revenue directly to Government whose heirs may be incapacitated by sex, minority, or natural infirmity from managing such property, shall be free to choose and to NOMINATE BY WILL in writing, persons to be GUARDIANS of their heirs; and such nominations shall be valid, provided that the persons chosen shall be qualified and willing to accept the trust; and provided further, that such nominations shall be duly reported by the collector, and finally confirmed by the court of wards.

XX.* In cases of estates held by joint possessors and subject to an undivided assessment of the public revenue, where one or more of the joint possessors may die, leaving heirs incapacitated by minority, sex, or natural infirmity from the management of their inheritance, without nominating by will guardians of the said heirs, the collectors respectively shall report the case to the Court of Zilla; and the COURT upon such report from the collectors or from any other credible persons, shall proceed to examine the circumstances of the case, and upon due enquiry thereof SHALL

* Sections xx, xxi, and xxii. were extended by Reg. X, of 1881, to property not subject to the court of wards, and to heirs of single possessors of estates real and personal. See below.
NOMINATE forthwith proper persons to be the GUARDIANS of such disqualified heirs, to the end that injury may not arise to the property or persons of the said heirs by reason of delay; provided that such nominations shall always be subject to the confirmation or rejection of the Court of Sudder Adawlut.

XXI. First. Persons appointed to be guardians, and accepting the trust, shall give SECURITY for their personal appearance during the continuance of the said trust, and shall execute an obligation according to the following form; that is to say:

"I, A. B., having voluntarily accepted the office of guardian of C, being the disqualified proprietor of D, do hereby solemnly promise and engage to execute the duties committed to me zealously and faithfully, to the best of my judgment and according to the regulations; I will conscientiously appropriate the allowance granted for the maintenance and (if the ward be a minor) for the education of my ward, to the benefit of the said ward; and will abstain from all other advantage than what may be allowed to me by due authority, directly or indirectly arising from my office of guardian; I also engage to render true and faithful accounts of all moneys received by me on account of my ward, under the penalty of forfeiting treble the amount of any sums which may be proven to have been embezzled or misapplied; and I do hereby bind myself, my heirs and successors, to make good the said penalty upon due proof of my default."

After executing this obligation, persons appointed to be guardians shall be invested with their trust by a public commission under the seal and signature of collectors of zillahs respectively.

Second. Where persons may not be found, who by reason of consanguinity, friendship, or other good cause, may be willing to execute the office of guardian generally, the SALARY shall be allowed at the discretion of the court of wards, or of the Zillah courts respectively, as the case may be, as a full compensation for the trouble and responsibility of the said office.

Third. It shall be COMPETENT TO GUARDIANS regularly appointed TO RECEIVE the ALLOWANCE appropriated to the use of their wards, and to appropriate the said allowance at their discretion for the good and benefit of the wards; subject, however, to the inspection and control of the collectors and judges of the zillahs, and ultimately of the court of wards and of the Court of Sudder Adawlut.

Fourth. Guardians appointed under the authority of judges of zillahs and of the court of wards shall possess the same POWERS as guardians otherwise appointed.

Fifth. The duration of the office of guardian shall not continue longer than the eighteenth year of the age of wards being MINORS, provided that such wards may not be incapacitated by sex or natural infirmity from administering their own affairs.

Sixth. Guardians shall choose and recommend proper SERVANTS to be employed in the service of their wards, subject to the approval of collectors of zillahs and of the court of wards; or, as the case may be, to the approval of the zillah judges and of the Court of Sudder Adawlut; provided that the expense of the wages of such servants shall be defrayed from the funds appointed for the maintenance of wards.

Seventh. Guardians shall deliver MONTHLY ACCOUNTS to the collectors of their receipts and disbursements, which accounts shall be liable to revision and rectification by the said collectors.

Eighth. Guardians shall also furnish complete ANNUAL ACCOUNTS to the collectors, supported by good and true vouchers, and attested by a solemn declaration of their correctness.

Ninth. In cases of male minors, FEMALE RELATIONS shall not have charge of such minors after they shall have respectively attained the age of seven years; at which age proper TEACHERS shall be procured and appointed by the guardians for the education of their wards in a manner suitable to their rank and condition in life;

*See Note to Sec. xx.
†The rest of the clause was repealed by Madras Act 2 of 1869, see Repealing Enactments p. 119.
provided that the appointment of the said teachers shall be subject to the approval of the court of wards, or as the case may be, of the Court of Sudder Adawlut; and provided further, that the progress of the education of male minors shall be at all times liable to the inquiries and inspection of collectors, or, as the case may be, of judges of zillahs.

Tenth. The guardians of FEMALE minors shall also provide for the proper EDUCATION of their wards.

XXII.* The guardians and managers of disqualified persons shall authenticate papers by their own seals and signatures, and not otherwise. The seals of wards, together with the seal of their deceased parents, shall be delivered to the collectors and lodged in their treasuries.

XXIII. First. Disqualified persons being in the custody of guardians shall not be liable to be sued on any ACTION IN COURTS of Judicature, otherwise than as under the protection and in the joint name of their guardians.

Second. In cases of FRAUD, or supposed fraud, it shall be competent for disqualified persons, during the period of their disqualification, to employ proper agents to prosecute collectors, guardians, or managers before the court of wards; provided that such agents shall give due security for costs and damages; and provided further, that such agents shall receive the fines and costs which may be awarded.

XXIV. First. In cases of fraud imputed to guardians or managers, it shall be competent for the court of wards to order inquiry to be made in the first instance by the collectors, and to pass judgment on the result of such inquiries.

Second. In such cases where the attendance of WITNESSES may be required, the collectors or the court of wards shall apply by writing to the courts of zillahs, to the end that the said witnesses may be duly summoned to attend; and it shall further be competent to the collectors and to the court of wards to administer oaths, if they see proper, to such witnesses, provided that the administration of such oaths shall be conformable to the rules and restrictions prescribed for the administration of oaths in the zillah courts.

Third. Copies, duly authenticated, of the judgment of the court of wards shall be transmitted to the zillah courts respectively; and the said judgments shall be enforced in the same manner as if passed originally by the said zillah courts.

Fourth. An APPEAL shall lie from such judgments directly to the Sudder Adawlut, provided that the appeal be preferred to the court of wards, or to the zillah courts, or to the Sudder Adawlut within three calendar months next subsequent to the date of judgment.

Fifth. It shall nevertheless be competent for the Court of Sudder Adawlut to dispense with the said limitation with respect to appeals preferred to the Sudder Adawlut only, upon good and reasonable grounds shown for the delay.

XXV. It shall not be competent for disqualified landholders to ADOPT children without the consent of the court of wards previously had in writing.

XXVI. COLLECTORS, MANAGERS, and GUARDIANS shall be respectively LIABLE TO BE SUED in the courts of judicature for acts done by them respectively, with respect to the abuse of the property or persons of disqualified persons during the period of disqualification; and in cases where the property of incapacitated persons may have been restored to them or their heirs and successors, to institute process against collectors, managers, and guardians for the recovery of damages from those collectors, managers, and guardians respectively, for injuries sustained by them or by their property during the time of their incapacity.

XXVII. Such suits as may be instituted against collectors by virtue of this regulation shall be defended at the proper COSTS of the said collectors; provided that the acts and things for which they may be so prosecuted shall not have been authorized in writing by the court of wards.

* See Note to Sec. xx.
MADRAS REGULATION X. OF 1831.

A Regulation to prohibit the Sale of Estates belonging to Minors, not under the Charge of the Court of Wards, and to extend the Provisions of Section XX., Regulation V., 1804, to Property of every Description not subject to the Jurisdiction of that Court.

Whereas doubts have been entertained as to the liability of the estate of a minor, not taken under the management of the court of wards, to be sold for arrears of revenue; and whereas it is considered expedient, for the due protection of the property of minors and other incapacitated persons, that the provisions of Section XX., Regulation V., 1804, should be extended to property of every description not subject to the jurisdiction of that court,—the following rules have been enacted, to be in force from the date of their promulgation.

II. First. From and after the date of the promulgation of this regulation, no estate, the property of a minor, and descended to him by the regular course of inheritance, not under the charge of the court of wards, shall, during his minority, be sold for arrears of REVENUE accruing subsequently to his accession to the same.

Second. It shall be COMPETENT TO the court of wards to ASSUME CHARGE of such estates AT ANY TIME during the minority of the proprietor, notwithstanding they may have originally refrained from interfering.

III. In modification of the provisions contained in Section XVI., Regulation III, 1802, it is hereby enacted, that the provisions of Sections XX., XXI, and XXII., Regulation V., 1804, shall be extended to property of every description, not subject to the jurisdiction of the court of wards, and to the heirs of single as well as joint possessors of estates, real and personal.*

ACT NO. XXI. OF 1855.

An Act for making better Provision for the Education of Male Minors and the Marriage of Male and Female Minors, subject to the Superintendence of the Court of Wards in the Presidency of Fort St. George.

Whereas the existing laws are found insufficient to insure the proper education of Male Minors subject to the superintendence of the Court of Wards, and it is expedient to make further and better provision for the education of such persons and their younger brothers and for the exercise of a control over the marriages of all Minors under the superintendence of the court of wards; It is enacted as follows:

I. The general superintendence and control of the EDUCATION of every Male Minor, whose property has been, or shall be brought under the management of the court of wards, in, and for any part of the Presidency of Fort St. George, by virtue of any Act or Regulation which now is, or hereafter shall be in force, is hereby VESTED IN the COLLECTOR of Revenue, acting under the said court of wards, in the Zillah or District wherein such Minor’s estate is situate: or, if such Minor is possessed of immovable property in different districts, in such one of the Collectors of Revenue of such districts as the said court of wards shall select.

II. It shall be lawful for every Collector of Revenue, in whom the superintend-
ence of the education of any Minor is vested by this Act, to direct that such Minor shall reside, either with or without his guardian, at the Sudder Station of the district, or at any other place within the said Presidency, and shall attend, for the purposes of education, such SCHOOL or College as to the said Collector may seem expedient; and to make such provision as may be necessary for the proper care and suitable maintenance of the said Minor whilst attending such school or college.

III. If it shall appear to the collector inexpedient to place any such minor at a school or college, he shall cause such minor to be educated by a PRIVATE TUTOR, properly qualified, either at the family residence of such minor, or at the Sudder station, or elsewhere within the said Presidency, and in that case also, the collector shall have power to determine from time to time the place of residence of such minor, and to make such provision as may be necessary for his proper tuition and maintenance during the period of his education.

IV. All charges and expenses which may be incurred on account of any male minor ward under the provisions of this Act, for college or SCHOOL FEES OR for OTHER CHARGES of tuition or education, or by reason of his residence in any place other than his own home, or otherwise, shall be defrayed from the profits of his estate, in the same manner as other expenses incurred under the authority, or with the sanction of the court of wards.

V. It shall be lawful for the Court of Wards, on the application of a Collector to remove from office any GUARDIAN who shall NEGLECT or refuse to obey, or shall evade compliance with any ORDERS passed, or directions given by such Collector under the provisions of this Act, and to cause a new guardian to be appointed in his place, whether the person so removed shall have been first invested with the guardianship of the minor upon the nomination of a Collector acting under the Court of Wards, or by a testamentary appointment confirmed by the Court of Wards.

VI. The GUARDIAN so removed shall, notwithstanding his removal, CONTINUE LIABLE TO ACCOUNT to the Collector for his receipts and disbursements during the period of his guardianship, and every guardian appointed in the place of a guardian so removed, shall be chosen in the same way, and shall have the same rights and powers, and be subject to the same responsibilities, as persons originally appointed to be guardians of minors by a Collector of Revenue acting under the Court of Wards.

VII. The right to the CUSTODY of the person of any Male MINOR whose property is under the management of the Court of Wards, is hereby VESTED IN the person appointed with the sanction of the Court of Wards, either originally, or upon the removal of a former guardian, to be the GUARDIAN of such minor, or, in the absence of any such person, the Collector of Revenue having the superintendence of the education of such Minor, under the provisions of this Act.

VIII. Whenever a Minor whose property is under the management of the Court of Wards, has a YOUNGER BROTHER or brothers entitled to MAINTENANCE at the charge of the estate, all the powers and provisions hereinbefore contained for promoting the education of such Minor are hereby declared and made applicable to such younger brother or brothers.

IX. Whoever knowingly aids or abets the MARRIAGE of any Minor, whose property is under the superintendence of the Court of Wards, or the marriage of a younger brother or sister of such Minor, without the leave of the Collector of Revenue acting under the Court of Wards to such marriage first had and obtained shall, on conviction before a Court of Session, upon the prosecution of such Collector, be liable to a fine not exceeding two thousand Rupees, or to imprisonment not exceeding the term of six months, with or without hard labour.

X. All ORDERS and proceedings of a Collector under the provisions of this Act, shall be SUBJECT TO the REVISION of the Court of Wards, and every person aggrieved by any such order or proceeding, may prefer an appeal therefrom to the Court of Wards.
An Act to extend the Provisions of Act XXI. of 1855, in the Presidency of Fort St. George, to Minors not subject to the Superintendence of the Court of Wards.

Whereas by Section XX. Regulation V. 1804, and Section III. Regulation X. 1851 of the Madras Code, the Zillah Courts, subject to the confirmation of the Sudder Adawlut, are authorised and require to appoint guardians to the Minor heirs of property of every description not subject to the jurisdiction of the Court of Wards, and by Clause 9 Section XXI. of the former regulation, the guardians are required to provide for the education of their wards in a manner suitable to their rank and condition; and whereas, by Act XXI. of 1855, better provision has been made for the education of Minors subject to the superintendence of the Court of Wards, and it is expedient that the same powers which are thereby given to the Collectors and Court of Wards in respect of the Minors under their superintendence should be exercised by the Zillah Courts, subject to the control of the Sudder Adawlut, in respect of the Minor for whom they are required to appoint guardians; It is enacted as follows:

I. The general superintendence and control of the EDUCATION of every male Minor, for whom a guardian has been, or shall be appointed, by the Zillah Court, is hereby VESTED IN the Judge of the Zillah Court of the District within whose jurisdiction such Minor's estate is situate, or if such Minor is possessed of immovable property within the jurisdiction of more than one Zillah Court, in the Judge of such Court as the Sudder Adawlut shall direct.

II. The Judge of the Zillah Court, subject to the control of the Sudder Adawlut, is hereby authorised to exercise, in respect of such Minor and the guardian of such Minor, all the POWERS and authorities which, by Sections II., III., IV. and V. Act XXI. of 1855, the Collector of Revenue or the Court of Wards is authorised to exercise in respect of Minors and guardians of Minors whose property is under the management of the Court of Wards.

III. The right to the CUSTODY OF the person of every male MINOR, for whom a guardian is appointed by the Judge of the Zillah Court, is hereby VESTED IN the person appointed by the Judge of the Zillah Court, with the confirmation of the Court of Sudder Adawlut, either originally, or upon the removal of a former guardian, to be the GUARDIAN of such Minor.

IV. All ORDERS and proceedings of a Judge of a Zillah Court under the provisions of this Act shall be SUBJECT TO the REVISION of the Court of Sudder Adawlut, and every person aggrieved by any such order or proceeding may prefer an appeal there from to the Court of Sudder Adawlut.

North Western Provinces.*

A.D. 1803. Regulation LII.

A Regulation for establishing a Court of Wards in the Provinces ceded by the Nawab Vizier to the Honorable the English East India Company.

I. Whereas it is provided, in the proclamation published by the Honorable the late Lieutenant-Governor and the Board of Commissioners in the provinces ceded by

* See also Act 40 of 1858 ante.
the Nawab Visier to the Honorable the English East India Company, under date the 14th of July 1802, relative to the settlement of the land revenue in the said provinces, that the settlement shall be concluded with the zemindars or other actual proprietors of the soil, excepting in cases in which they shall be deemed to be disqualified, from the badness of their character or from other good and sufficient cause: and whereas it is essential to the interest and happiness of minors, and of such females as shall not be deemed competent to the management of their own estates, and of idiots, lunatics, and other proprietors of land paying revenue to Government, who are or may be rendered incapable of managing their lands, by natural defects or infirmities of whatever nature, that the lands of persons coming within the above descriptions should be managed for the benefit of the proprietors, by persons appointed to the trust by Government; and that a Court of Wards should be instituted, with powers to superintend the conduct and inspect the accounts of the managers of the estates of such persons, and with instructions to provide for the education of minors in a manner suitable to their rank and circumstances in life; the following rules have been accordingly enacted:

II. The BOARD OF REVENUE is hereby CONSTITUTED a COURT OF WARDS for the superintendence of the persons and estates of zemindars, and other actual proprietors of land paying revenue to Government, who are or may be disqualified for the management of their own lands, in consequence of their coming under any of the descriptions of disqualified landholders specified in section iii. of this Regulation.

III. With the exception specified in section vii. of this Regulation, the SUPERINTENDENCE OF THE COURT OF Wards SHALL EXTEND TO the persons and estates of all proprietors of entire estates paying revenue immediately to Government, who are or may be females not deemed by the Governor-General in Council competent to the management of their own estates, minors, idiots, lunatics, or others, rendered incapable of managing their estates by natural defects or infirmities of whatever nature; as well as all proprietors of such estates, who are or may be deemed disqualified on account of notoriously bad character. To prevent misconstruction, it is declared that, by the terms "all proprietors of entire estates paying revenue immediately to Government," are meant every such disqualified person who may be the sole proprietor of an estate, and any two or more persons, being proprietors of the whole of an estate, both or all of whom may be so disqualified.

IV. The SUPERINTENDENCE of this Court SHALL NOT EXTEND TO proprietors of estates not paying revenue immediately to Government, nor to joint proprietors of estates paying revenue immediately to Government, both or all of whom may not be of the description specified in section iii. of this Regulation.

V. First. Where MORE PROPRIETORS THAN ONE possess an undivided estate, and the whole of them be not within the description of disqualified landholders specified in section iii., the settlement shall be made with them jointly; and they are required to elect a serberakar, or manager, who shall have the exclusive management of their lands during the continuance of his appointment. The determination of the majority of the proprietors, or of the majority of those present in the event of the absence of any, shall be binding on the remainder in the choice of a manager; and when the votes of the proprietors are equal, the election of the manager shall be determined by the greater interest of the proprietors in the property. If, in any case, the interest also be equal, the manager shall be appointed by the Board of Revenue.

Second. In instances where part of the proprietors described in the foregoing Clause may be minors, lunatics, idiots, or others, having guardians, such guardians shall vote for them.

Third. If the joint proprietors of undivided estates, the whole of whom may not be of the description of disqualified landholders mentioned in the Section iii., shall neglect to elect a serberakar, on the requisition of the COLLECTOR of the Revenue of the sillah in which such estates may be situated, the latter is authorized TO NOMINATE a MANAGER for the approbation of the Board of Revenue, which manager, when confirmed by that Board, shall have the exclusive management, as long as it may be deemed advisable to continue him in that trust. The expense
attendant on the appointment of the manager shall nevertheless be defrayed by the proprietors, who shall also be responsible for the discharge of the public revenue.

Fourth. The DETERMINATION of the MAJORITY of the proprietors present under the restrictions specified in Clause First of this Section, shall also be BINDING on the remainder, in agreeing or disagreeing to the jumma proposed for undivided estates: the sharers, however, if dissatisfied, may obtain a division of their lands, and a proportionate allotment of the revenue assessed thereon, but at their own expense.

Fifth. The rules contained in the present Regulation for the management of the persons and estates of disqualified landholders shall not be held applicable to proprietors, managers, and guardians, of the descriptions specified in the foregoing Clauses of this Section.

VI. The LANDS of disqualified landholders, of the descriptions specified in Section iii. (with the exception specified in Section vii.), shall NOT BE LIABLE TO BE SOLD FOR arrears of public REVENUE, on account of the period during which such lands may be under the charge of the Court of Wards. In like manner, the PERSONS of disqualified landholders shall be EXEMPTED FROM ARREST and confinement for arrears of revenue, incurred whilst their respective estates were under the charge of managers, in conformity to the rules contained in this Regulation. The Collectors are also prohibited from ordering any disqualified female proprietor of land to attend them in person, under any pretext whatever.

VII. The ORDINARY JURISDICTION of the COURT of Wards is declared to extend to such estates only as devolve to disqualified landholders in the regular course of inheritance, on the demise of the party from whom they inherit the same. All landed estates, whether subject to or exempt from the payment of revenue, which have or may become the property of any disqualified landholder, by purchase, gift, or in virtue of any other right, excepting that of inheritance as aforesaid, are declared exempt from the jurisdiction and authority of the Court of Wards; and if subject to the payment of public revenue, shall be liable to sale for arrears thereof and all other demands on the part of Government, in the same manner as if the proprietor or proprietors were not under any disqualification. Provided, however, that it shall be competent to the Governor-General in Council to commit to the charge of the Court of Wards any estate paying revenue to Government, being the sole property of any disqualified person, or of any two or more persons, both or all of whom may be disqualified, although the same shall not have descended to such person or persons in the regular course of inheritance as aforesaid, and also any lakhiri lands belonging to such proprietor or proprietors, whenever the same shall appear to him for the interests of Government and the proprietor or proprietors; and such estate and lands so committed to the charge of the Court of Wards shall be exempt from sale for arrears of revenue accruing whilst they shall be under the charge of the Court, and shall be considered, in all respects, as far as regards the management of them by the Court, the same as if they had devolved to the proprietor or proprietors in the regular course of inheritance as aforesaid; and the proprietor or proprietors shall in all respects, be treated by the Court accordingly.

VIII. The COLLECTORS of the Revenue are TO ascertain and REPORT to the Board of Revenue, both now and hereafter, what proprietors in their respective villages may come within the descriptions of disqualified landholders specified in Section iii., and the following rules are prescribed for ascertaining the existence of the stated ground of disqualification in the first instance, and also for enabling proprietors of certain descriptions, who may have been declared disqualified, to recover the management of their estates when the ground of their disqualification may be removed.

IX. First. If a proprietor of land shall be reported disqualified solely from being a FEMALE, the Board of Revenue, in their capacity of a Court of Wards

* So much of Section 9 as relates to 'Lunatics' was repealed by Act 85 of 1858, see Repealing Enactments page 35.
shall immediately proceed to take the estate under their care, reporting the circumstance to the Governor-General in Council, who reserves to himself the power of declaring any female proprietor, whom he may deem competent to the management of her own estate, exempt from the operation of this Regulation.

Second. If a Collector shall report a proprietor of land to be disqualified on the ground of MINORITY, the Board of Revenue, in their capacity of a Court of Wards, provided they shall see no reason to doubt the nonsage of the proprietor, are to take the estate under their care, and report the circumstances to the Governor-General in Council. If a Collector shall report any proprietor to be a minor, and the proprietor, or any person on his behalf, shall deny that he is under age, such proprietor or person shall be at liberty to represent the circumstances to the Court of Dewanny Adawlut of the zillah wherein the estate may be situated, the Judge of which shall forward the representation to the Sudder Dewanny Adawlut, which Court shall issue a precept, under the seal of the Court and attested by the register, to the Judge of the zillah, or to the Provincial Court of Appeal of the division, to call the proprietor before the Court, and ascertain his age by the evidence, on oath, of not less than three credible persons well acquainted with him, and also by such other inquiries as may appear to the Court calculated to ascertain the truth, and certify its proceedings, including any representations or evidence that the proprietor, or any person on his behalf, may have to adduce, with its opinion on the case, to the Sudder Dewanny Adawlut, which Court shall determine whether such proprietor be a minor or not. The decision of the Sudder Dewanny Adawlut shall be final, and the Court shall certify a copy of its decision to the Governor-General in Council, who will order the estate to be put under the charge of the Court of Wards or not, according as the Proprietor may be adjudged by the Sudder Dewanny Adawlut to be a minor or otherwise.

Third. If a proprietor of land shall be deemed disqualified on the ground of LUNACY, IDIOTISM, OR OTHER disqualifying NATURAL DEFECT or infirmity, the Board of Revenue are to order the Collector to represent the circumstances, through the vakeel of Government, to the Court of Dewanny Adawlut of the Zillah, the Judge of which shall transmit a copy of the representation to the Sudder Dewanny Adawlut. This Court shall issue a precept to the Court of Appeal of the division or to the Judge of the zillah within the jurisdiction of which the proprietor may reside, to bring him before the Court, to ascertain his actual state by ocular proof; and the Court shall further take the declaration upon oath of no less than three credible persons acquainted with the party, setting forth their opinion of his condition, with the grounds of it. The Court is to transmit all its proceedings, with its opinion on the case, to the Sudder Dewanny Adawlut, which Court shall determine finally whether the stated ground of disqualification be well founded or not, and certify a copy of its decision to the Governor-General in Council, who will order the Court of Wards to take the estate of the proprietor under their care or not, according as the proprietor may be adjudged by the Sudder Dewanny Adawlut to be disqualified or otherwise.

Fourth. If a proprietor of land shall be deemed disqualified on the ground of NOTORIOUSLY BAD CHARACTER, the Board of Revenue shall instruct the Collector to submit a statement of the circumstances, through the vakeel of Government, to the Judge of the Adawlut of the zillah, who shall forward it to the Sudder Dewanny Adawlut. This Court shall issue a precept to the Judge of the zillah, or to the Provincial Court of Appeal, to inquire into the circumstances of the case, in the presence of the party or his vakeel, who are respectively to be allowed to produce any evidence which they may have to adduce. The Court shall report the result of its proceedings, with its opinion on the case, to the Sudder Dewanny Adawlut, which Court shall finally determine whether the stated ground of disqualification be well founded or not, and report its decision to the Governor-General in Council, who will order the estate to be committed to the charge of the Court of Wards, or not, according as the proprietor may be adjudged by the Sudder Dewanny Adawlut to be disqualified or otherwise.

Fifth. Persons not born in a state of idiotism, but who may have been declared by the Sudder Dewanny Adawlut disqualified as lunatics, are to be produced annually before the Judge of the Dewanny Adawlut in the jurisdiction of which they may reside,
SIXTH. Any persons who may have been adjudged disqualified, on any of the
grounds specified in clause second, third, or fourth, and who may deem the
ground of his disqualification removed, shall be at liberty to represent the
circumstances to the Judge of the Dewanny Adawlut of the zillah, who
shall forward the representation to the Sudder Dewanny Adawlut. This
Court shall issue a precept to the Judge of the Zillah Court, or the Provincial Court
of Appeal of the division, to inquire into the case, and to receive such evidence as
the disqualified proprietor may have to offer in support of his representation. The
Court is to report the result of its enquiry, with its opinion thereon, to the Sudder
Dewanny Adawlut, which Court shall determine finally whether the ground of disqua-
lification be or be not removed, and report its decision to the Governor-General in
Council, who will order the Court of Wards to restore the proprietor to the management
of his lands or not, according as the ground of disqualification may be adjudged by
the Sudder Dewanny Adawlut to be removed or otherwise.

X. The trusts of MANAGER for disqualified landholders and GUARDIAN to
them, are to be considered altogether distinct, but, as hereafter specified, they may
in some instances be vested in the same person; and the rules contained in the
following Sections, relative to managers and guardians respectively, are founded on
this distinction.

XI. Where the trusts of manager and guardian are vested in different persons,
the former is to have the CARE OF THE ESTATES real and personal; the latter,
the CARE OF THE PERSON, MAINTENANCE, and, if a minor, the EDUCATION
of the ward.

XII. The MANAGER, who shall be denominate serberakar, shall be CHOSEN
BY the COLLECTOR, subject to the approbation of the Court of Wards; and his
commission shall be signed by the Collector and authenticated by his official seal.
In recommending persons for this trust, capacity for the business, goodness of cha-
acter, and sufficient responsibility, are to be particularly attended to. The managers
of the estates of disqualified landholders shall be chosen without any regard to their
connection with the proprietors, or to the will of the disqualified proprietors them-
selves in the election of such managers, who are to be considered, in every respect,
held responsible for the nomination of proper persons, both as to character and
capacity for the trust. The Collectors will take into immediate consideration the
conduct of the present serberakars of the estates of disqualified landholders during
the period they have acted as managers respectively; and if, from a deficiency in
the collections or misappropriation of their receipts, or other cause, they shall see
reason to be dissatisfied with the conduct of any manager, they will report the
same to the Court of Wards, and propose the removal of such manager, with their
recommendation of a person better qualified to succeed him.

XIII. The manager, previous to the receipt of his commission, is to give SE-
URITY for his appearance during the continuance of it, and is to execute the follow-
ning obligation:

"I, A. B., having voluntarily taken on myself the management of the estate of
C, disqualified proprietor of D, do hereby solemnly promise and engage to manage
the said estate diligently and faithfully for the said proprietor; to use every means
in my power to improve the same for his or her benefit; and to act, in every respect,
to the best of my judgment, for his or her interest, in like manner as if the estate
were my own and I were acting for myself. I also promise and engage to render a
true and just account of whatsoever may be received by me from or on account of the
estate committed to my management; and in the event of it being proved that I
have been guilty of any embezzlement, or of any abuse of trust injurious to the
property of the abovementioned proprietor, I do hereby bind myself, my heirs and
successors, to make good treble the amount of the embezzlement or injury so
proved against me. I further promise and engage to adhere strictly to such
Regulations as may be passed for the guidance of managers by the Governor-
General in Council, and to such orders as I may receive from the Court of Wards,
and to derive no personal advantage whatever, directly or indirectly, from the
trust committed to me, beyond the allowance by them granted to me."

XIV. An allowance to the manager, proportionate to the extent of his trust and
adequate to a full COMPENSATION for his trouble, is to be proposed by the Collectors
and fixed by the Court of Wards; and if it be proved, to the satisfaction of the
Court of Wards, that any manager shall have appropriated to his own use, directly or
indirectly, any sum of money, or other property, above his fixed allowance, he is de-
clared liable for such embezzlement to the fine specified in his obligation, besides
dismission from his trust; and the fine is to be appropriated to the benefit of the estate
under his charge.

XV. An establishment of necessary OFFICERS, to act UNDER the MANA-
ger, is also to be proposed by the Collectors and fixed by the Court of Wards. The
persons to be employed on this establishment are to be nominated by the manager
himself, but approved by the Collector, who may object to such as may appear
to him disqualified by character or otherwise, and require the manager to appoint
others. These orders are to be considered applicable to the manager's sudder estab-
ishment, and also to his mofussil establishment, in estates of considerable extent,
where mofussil officers may be necessary. Any officer, sudder or mofussil, who
may be proved, to the satisfaction of the Court of Wards, to have appropriated to his
own use, directly or indirectly, any sum of money, or other property, beyond his fixed
allowance, is to be deemed guilty of EMBEZZLEMENT, and to be liable to the same
fine as the manager in similar cases, besides dismissal from his office.

XVI. First. The ASSESSMENT of the public revenue on lands, the property
of disqualified proprietors, shall be determined in the same manner as the assessment
of other lands subject to the payment of revenue to Government, under the rules
prescribed in Regulations XXV. and XXVII. 1803, and the following orders have
been passed for the guidance of the managers and Collectors, regarding the payment
of this assessment, as well as respecting the general appropriation of the receipts of
the managers from the lands under their charge.

Second. An allowance of ten per cent. on the public revenue assessed on the
lands of disqualified proprietors, or of ten per cent. on the actual revenue paid to
Government, in the event of the whole of the assessment not being realized, is to
be fixed for the SUPPORT of the PROPRIETORS, and such persons of
their families as may be entitled to receive a provision from them; and the ap-
pointed manager of such lands shall be authorized to pay this allowance monthly,
in proportion to his actual monthly payments of revenue to the Collector, and no
further. Instead of paying the whole of his receipts to the Collector, he is to pay
the monthly kists of Government's revenue only to the Collector, or such part
thereof as he may be able to discharge from his collections, after defraying the
charges of his approved establishment and the allowance of the proprietors; but he
is to deliver a monthly account-current of his receipts and disbursements to the
Collector, who is to audit the disbursements therein specified, and see that the
receipts, after defraying the necessary charges and providing the authorized allow-
ance of the proprietor, have been fairly appropriated to the payment of the revenue
due to Government. As the lands of disqualified proprietors are not held
answerable for the payment of the revenue assessed thereon, in the event of the
next collections of any year proving inadequate to the payment of the fixed assess-
ment, in addition to the allowance of the proprietor, and of there being a surplus collection in any future year, the Collector shall take
care that such surplus is appropriated to the discharge of the arrear due to Govern-
ment, and the proportion of the proprietor's allowance which must also, according to
the rule laid down, be at the same time in arrear; or if no such balance be outstanding,
he shall see the surplus expended by the manager for the improvement of the lands,
or otherwise for the benefit of the estate under his charge.
XVII. By the foregoing rules, ten per cent. on the revenue assessed or realized is fixed as the general allowance for the support of disqualified proprietors, and such persons of their families as may be entitled to receive a provision from them; but, in some instances, this allowance may be more than adequate to the expense of suitably maintaining and educating minors, or maintaining other disqualified proprietors, as well as of making a provision for their relations entitled thereto; or, on the other hand, may not be sufficient for these purposes, in some instances where there may be other funds arising from lakkheraj lands, or other resources independent of the malguzarry lands, which might be appropriated thereto, the Collectors are vested with a discretionary POWER TO REDUCE the ten per cent. ALLOWANCE in the former case, AND TO INCREASE IT in the latter, as on a consideration of the rank and circumstances of the parties and the amount of their allowances and other income, they may think proper. They are, however, to report any instances of the exercise of this power in their monthly communications to the Court of Wards, and previous to authorizing any increase of the fixed allowance, are to ascertain with accuracy, that there are lakkheraj lands, or other resources independent of the malguzarry lands, fully adequate to make good the same, without which no excess is to be admitted, unless the Governor-General in Council should think proper to grant a dispensation from the general rule, in any particular case that may appear to require it. In the event of any reduction of the allowance fixed for the support of disqualified proprietors, the difference is to be applied by the manager to the benefit of the estate under his charge, to which end he is also to apply the income arising from resources independent of the malguzarry lands, which the Collector, under the discretion above vested in him, may judge unnecessary for the education or maintenance of the proprietors, and the necessary provision of their relations entitled thereto.

XVIII. Where a distinct guardian may be appointed, as hereafter specified, the manager is to pay to him the amount of the allowance fixed for the MAINTENANCE or EDUCATION of the proprietors, and of the provision for persons of their families entitled thereto, as well as the amount of any resources independent of the produce of the malguzarry lands, which the Collectors, under the discretion vested in them by the foregoing article, may think it proper to allot for these purposes.

XIX. Agreeably to the distinction laid down in Section XI, the MANAGER is to have the entire care of the estate, real and personal. He will, therefore, have the exclusive charge of all lands, malguzarry or lakkheraj, as well as all houses, tenements, goods, money, and moveables of whatever nature, belonging to the proprietor whose estate may be committed to his charge, excepting only the house wherein such proprietor may reside, the moveables wanted for his or her use, and the money allowed for the support of the proprietor, and his or her family entitled to a provision, which are to be left to the care of the GUARDIAN, where distinct guardians may be appointed. Both managers and guardians, on their receiving charge of any property, are to sign an exact inventory of the same, which is to be deposited in the treasury of the Collectorship.

XX. The MANAGER, agreeably to the terms of his obligation, is TO MANAGE the ESTATE committed to him diligently and faithfully, FOR the BENEFIT OF the PROPRIETOR, and in every respect to act to the best of his judgment for the proprietor's interest, in like manner as if the estate were his own. In instances, however, where he may act for a proprietor under age, not otherwise disqualified he is not to grant any lease extending beyond the life of the proprietor, or contrary to Regulation XLVII, 1803, or to dispose of any part of the permanent property committed to his custody, without the sanction of the Court of Wards.

XXI. In addition to the MONTHLY ACCOUNT current required in Clause Second, Section XII, the manager, at the expiration of every year, is to deliver to the Collector an ANNUAL ACCOUNT current of his receipts and disbursements, upon oath, with vouchers for the latter, unless the Court of Wards shall be satisfied that it will be for the benefit of their general trust to admit the manager to deliver in such accounts under a solemn declaration of their being true and faithful accounts; in which case they are empowered to receive the accounts under such declaration instead of an oath, and the Collector is to audit the disbursements and take care that the whole of the surplus receipts be duly appropriated, in the manner specified in Clause Second, Section XVI.
XXII. If the Collector should think it unnecessary or unadvisable to appropriate such SURPLUS RECEIPTS to the improvement of the lands already under the manager's charge, he shall cause the same to be applied by the manager to the purchase of other landed property or to interest loans on mortgages or to the purchase of Government paper securities, as circumstances may render preferable; in which cases he shall transmit the title-deeds and mortgage-deeds of the land purchases or mortgages to the Court of Wards, to be deposited in the General Treasury; but as interest will occasionally become payable on the Government paper securities, he shall deposit them in the public treasury under his charge, giving in all cases a receipt to the manager, as well for the title and mortgage deeds as the paper securities. The Court of Wards are also to obtain the Sub-Treasurer's receipt for the two former when deposited in the General Treasury, and are to transmit an attested copy thereof to the Collector to be delivered by him to the manager. The manager shall also deliver any existing title or mortgage deeds or Government securities belonging to the estate under his charge to the Collector, who shall, in like manner, return a receipt for the same, and transmit them to the Court of Wards, or deposit them in his public treasury as above directed. Any interest becoming payable on Government securities is to be paid to the manager, to be appropriated by him, in common with other resources, independent of the produce of the malguzarry lands, as before mentioned.

XXIII. Any just DEBTS now outstanding against, or hereafter adjudged against the estates of disqualified landholders, must necessarily be satisfied (if required to be by the creditors), as far as may be consistent with the rights of Government, to whom the produce of the malguzarry lands is mortgaged, in the first instance, for the payment of the public revenue assessed thereon. The circumstances of all such debts, however, are to be immediately reported to the Collector, and by him without delay to the Court of Wards, with his sentiments on the best mode of satisfying the same, for their instructions, previous to any payment being made by the manager in discharge of them. In the event of any debts being compounded for a less sum than the full amount, the estate is to be debited by the manager for the actual payment only.

XXIV. Agreeably to Section XI, it will be the PROVINCE OF GUARDIANS appointed for disqualified landholders to take care of the person, MAINTENANCE, and, if a minor, the EDUCATION of the Wards.

XXV. The rules contained in Section XII, for the election of managers, are to be applied also to the CHOICE OF GUARDIANS: with these differences, that the guardianship shall in no instance be entrusted to the local heir, or other person interested in ousting the ward, and that female minors shall have guardians of their own sex. Further, under these restrictions, landholders whose heirs are disqualified may appoint guardians to such heirs by will in writing; and such guardians (provided they be duly qualified), if willing to accept the trust and execute the obligation hereafter specified, shall be preferred. Such testamentary appointments, however, shall in all instances be reported, with the sentiments of the Collector, for the confirmation of the Court of Wards, and shall not be deemed valid until confirmed by them.

XXVI. LANDHOLDERS DISQUALIFIED on account of minority, idiocy, lunacy, or other natural defect or infirmity, rendering them incapable of attending to the care of their own persons and maintenance, will alone require guardians. FEMALE as well as male proprietors, not so disqualified, may themselves receive and disburse the allowance fixed for their maintenance.

XXVII. For persons of the descriptions above mentioned, it is expected that some friend of the party will gratuitously discharge the trust of guardian, appropriating the fixed allowance to the maintenance, and, if a minor, to the education also of the ward. Should it, however, in any instance, be found necessary to make a pecuniary COMPENSATION TO a person to act as GUARDIAN, such compensation, after being approved by the Court of Wards, is to be provided from the allowance fixed for the maintenance of the ward.

XXVIII. The guardian, previous to the receipt of his commission, is to give SECURITY for his appearance during the continuance of it, and is to execute the following obligation:

"I, A. B., having voluntarily taken on myself the guardianship of C, disqualified
proprietor of D, do hereby solemnly promise and engage to execute the trust committed to me zealously and faithfully, to the best of my judgment, and according to the regulations which have been or may be prescribed for the guidance of guardians by the Governor-General in Council. I will conscientiously appropriate the allowance fixed for the maintenance, and (if the ward be a minor) the education of my ward, to his (or her) benefit, and will derive no advantage therefrom myself, directly or indirectly, beyond the compensation granted me for my superintendence. I also promise and engage to render a true and just account of whatsoever may be received by me on account of my ward above-mentioned; and in the event of it being proved that I have been guilty of any embezzlement, or of any breach of trust injurious to his (or her) property, I hereby bind myself, my heirs and successors, to make good treble the amount of the embezzlement or injury so proved against me."

XXIX. An establishment of necessary SERVANTS to act UNDER the GUARDIAN, is to be proposed by the guardian to the Collector, and fixed by the Court of Wards, and the several rules and restrictions in Section XV, regarding the establishments of managers, are to be considered equally applicable to the establishments of guardians. The expense of the latter is to be defrayed from the allowance fixed for the support of the proprietors.

XXX. The guardian is to deliver a MONTHLY ACCOUNT current of his receipts and disbursements to the Collector, who shall audit the disbursements therein specified, and see that the receipts have been fairly and duly appropriated. The guardian is also to deliver an ANNUAL ACCOUNT-CURRENT upon oath (unless the Court of Wards shall be satisfied that it will be for the benefit of their general trust to admit the guardian to deliver in such accounts under a solemn declaration of their being true and faithful accounts, in which case they are empowered to receive the accounts under such declaration instead of an oath), with vouchers, to be in like manner audited by the Collector; and in the event of any money, remaining in his hands which the Collector shall think unnecessary for the guardian’s expenses in the ensuing year, he shall cause the same to be repaid to the manager, to be applied by him to the benefit of the estate under his charge.

XXXI. In cases of minority, where the minor may be a male, the superintendence of his FEMALE RELATIONS is not to be allowed after the expiration of the fifth year; and on his attaining the age of tuition, it must be the FIRST care of the guardian to procure proper teachers to give him an education suitable to his situation in life.

XXXII. MINORITY, with respect to both Hindoos and Mahomedans, is limited to the expiration of the eighteenth year.

XXXIII. The guardians of FEMALE MINORS, who, agreeably to Section XXV, are to be of the same sex, are also to take care that their wards, when arrived at the age of tuition, receive an EDUCATION suitable to their condition.

XXXIV. The trusts of GUARDIAN AND MANAGER may be UNITED in persons to whom the inheritance cannot possibly descend, if circumstances should render the same eligible; but, in this case, the trustees shall be considered as acting in two distinct characters, and shall execute the obligations of both manager and guardian, and deliver the accounts required from each distinctly.

XXXV. Both manager and guardian shall sign and seal all papers with their own names and seals, adding to the former their designation of manager or guardian. They shall, on no account, sign or seal the name of their ward, or of his (or her) deceased parents, but shall deliver all family seals belonging to the ward to the Collector, to be deposited in the treasury of the Collectorship.

XXXVI. First—MINORS, and other disqualified landholders having guardians as described in Section XXVI shall not be SUED but under the protection and joint name of their guardians.

Second. They MAY, however, during the term of their disqualification, SUE the Collectors, their guardians, or managers, before the Court of Wards, for fraud by any person willing to undertake their cause, provided he shall previously give
MINORITY—(N.W.P.)  REG. LII. OF 1803.

security for the payment of all costs and damages in case of being nonsuited; in return for which, the person so suing shall receive any fine and costs that may be adjudged against the Collector, guardian, or manager, in the cause undertaken by him. The Court of Wards may order the Collector to inquire into and report upon any such charges against guardians or managers; but the Collector is not to pass judgment, which is to be given by the Court of Wards. If the Court of Wards or the Collector shall have occasion to require the attendance of any persons in the course of such inquiries, they shall make application to the Judge of the proper Dewanny Adawlut to summon them to attend, and the Court of Wards and Collectors are empowered to administer oaths to such persons, if necessary, under the rules and restrictions prescribed to the Zillah and City Courts for the administration of oaths. The Court of Wards are to transmit copies of any judgments which may be given by them, under this Clause, against a Collector, guardian, or manager, to the Court of Dewanny Adawlut of the zillah, and they shall be considered as judgments of the Court and be enforced accordingly. An appeal, however, shall lie from such judgments immediately to the Sudder Dewanny Adawlut, provided the petition of appeal be preferred to the Zillah Court, or to the Sudder Dewanny Adawlut, or to the Court of Wards, within three months after the date of the decision: and the Sudder Dewanny Adawlut is empowered to admit an appeal after that period, provided the petition of appeal be presented to that Court, and the appellant shall show good cause, to its satisfaction, for not having preferred the appeal within the prescribed time.

XXXVII. No ADOPTION by disqualified landholders is to be deemed valid without the previous consent of the Court of Wards, on application made to them through the Collector.

XXXVIII. When the COLLECTORS report to the Board of Revenue the disqualification of any landholder, they are at the same time to state the condition of the party, the particulars of his or her estate, real and personal, as far as can be ascertained, and the person who may appear to them most eligible for manager and guardian, with the grounds of such opinion. In cases of testamentary appointments of guardians, they are also to notice the same, adding whether there be any and what objections to the confirmation of such appointments.

XXXIX. The Collectors are further to make such MONTHLY or ANNUAL REPORTS to the Court of Wards as may be required by them, and they, as well as managers and guardians, are to observe all instructions transmitted to them by the Court of Wards, not contrary to this Regulation or such other Regulations as may be hereafter enacted by the Governor-General in Council.

XL. If a PROPRIETOR shall have been declared disqualified and shall have been afterwards restored, or if the estate of any disqualified proprietor shall legally devolve to or come into the possession of any person not disqualified for the management of it, such proprietor, or his or her heir or successor, is declared ENTITLED TO SUIT the COLLECTOR, the GUARDIAN (if such disqualified proprietor shall have had a guardian,) OR the MANAGER, in the proper Zillah or City Court, for any acts done by them respectively whilst the estate may have been under the charge of the Court of Wards, in opposition to this or any other Regulation that may be hereafter enacted regarding disqualified proprietors and their estates, or to any order issued by the Court of Wards, or for any breach of their respective trusts. The rules regarding the suits specified in Section 36 Regulation XXVII 1803, which the Collectors are required to defend at their own risk and expense, are to be considered applicable to suits that may be instituted against Collectors under this Section.

XLI. When the lands of disqualified landholders, paying revenue to Government, shall come under the immediate management of the officers of Government, in pursuance of the present Regulation, so that the rents are collected by such officers from the ryots, dependent talookdars, under-farmers, or other descriptions of tenants, the COLLECTORS SHALL PROCEED AGAINST defaulting UNDER-RENTERS, of whatever denomination, from whom arrears of rent may be due, and their sureties, conformably to the rules prescribed by Regulation XXVII. 1803, for the recovery of arrears of rent due to proprietors and farmers of land paying revenue to Government which rules shall be considered equally applicable to the managers of the estates of disqualified landholders.
BENGAL REGULATION VI. of 1822.*

A Regulation to establish a Court of Wards for Benares, and to define and explain certain of the Rules regarding the Powers and Jurisdiction of the several Courts of Wards.

1. The rules for constituting and for fixing the jurisdiction of the Court of Wards contained in Regulation X, 1793, extended to the Ceded and Conquered Provinces by Regulation LII. 1803, and Section xxxix. Regulation VIII. 1805, and to Cuttack by Section xxxvi. Regulation XII. 1803, have never been extended to the province of Benares, though such extension was obviously intended, and is distinctly alluded to in clause Seventh, Section vii. Regulation V. 1795. Moreover, the original rules for the management of the estates of minors, and other disqualified persons over which the Court of Wards have jurisdiction, provide only for the appointment of a manager, from amongst the relations, connections, or principal servants of the minor's family, to collect the rents and otherwise manage the estate under the general authority of the Court of Wards. This system of management was early abandoned in the case of the less valuable estates, where the expense incident to the system was found to consume the profits, and the Court of Wards were authorized in such cases to adopt, at their discretion, any mode of management they might judge fit. Subsequently the managers were declared to be merely ministerial officers of the Collector, by whom they were directed to be chosen, under the instructions of the Board of Revenue, without any regard to their connection with the proprietors. The revenue authorities were thus virtually vested with full powers of managing ward estates as might appear best, and the Court of Wards finding the charges of mofussil management by the said officers to be generally inordinate, obtained the authority and instructions of Government to substitute the system of farming in all ordinary cases. This system, which was adopted and pursued with a view to the interests of the minors, has now prevailed for a period of eighteen years. Nevertheless the terms in which the discretion of dispensing with a manager is vested in the Court by legislative enactment have led to doubts of the legality of the practice of farming, as applied to extensive or profitable estates; it has accordingly been deemed necessary to declare by a specific enactment the competency of the Court of Wards to exercise generally a discretion in regard to the management of estates under their charge, and further to declare the legality of farms heretofore made under their authority. It is moreover expedient to enable the Courts of Wards to refrain from interfering with the estates of minors or other disqualified proprietors, in cases wherein they deem their interposition unnecessary or inexpedient; the following rules have accordingly been enacted, to be in force, as provided therein, from the date of their promulgation.

II.† REGULATION LII. 1803, with the addition contained in Section xxix. Regulation VIII. 1805, is hereby EXTENDED TO the province of BENARES, and the Board of Revenue for the Central Provinces is constituted a Court of Wards for that province, under the above rules, as hereinafter modified and explained.

III. First. The several COURTS of Wards established within the territories subject to the Residency of Fort William are hereby declared COMPETENT TO FARM ESTATES falling under their jurisdiction for a term not exceeding ten years, or to adopt such other form of management, not involving an assignment of the minor's interests, for a period exceeding the above, is may in their discretion seem most expedient, anything in the existing Regulations to the contrary notwithstanding. It is hereby further declared and provided, that all farms heretofore made by or in pursuance of orders from the Courts of Wards, whether under the special authority

* This Regulation was repealed as to Bengal by Act 4 of 1870, see Repealing Enactments p. 107.

† So much of section 2 as relates to 'Lunatics' or 'Idiots' was repealed by Act 53 of 1858, see Repealing Enactments p. 85.
of the Governor-General in Council, or under the Court's own construction of its general powers, shall, to all intents and purposes, be held and considered to be legal and valid, and no exception shall be taken or allowed by any Court of Justice against such farms, on the ground of their having hitherto been no rule in any Regulation published according to the provisions of Regulation XLI. 1798, specifically authorising the practice.

Second. Farmers and others holding under the revenue authorities in their capacity of Courts of Wards shall be subject to the same rules and regulations as are applicable to other persons holding similar tenures and interest under Collectors of the land revenue.

IV. The several Courts of Wards are hereby vested with a discretion to refrain FROM INTERFERING with the estates of minors or other disqualified proprietors, in cases wherein they may deem their interposition unnecessary or inexpedient; provided however, that no estate, the sole property of a minor and descended to him by the regular course of inheritance, shall, during his minority, be sold for arrears of revenue accruing subsequently to his accession to the same; but the revenue authorities shall, on an arrear so accruing, be authorized to farm the estate for a period not exceeding ten years; and it will of course be competent to the Courts of Wards to assume charge of such estates at any time during the minority of the proprietor, notwithstanding they may have originally refrained from interfering.

ACT No. XXVI. of 1854.*

An Act for making better provision for the Education of Male Minors subject to the superintendence of the Court of Wards.

Whereas the existing laws are found insufficient to ensure the proper education of male minors subject to the superintendence of the Court of Wards, and it is expedient to make further and better provision for the education of such persons; It is enacted as follows:

I. The general superintendence and control of the EDUCATION of every male minor, whose property has been, or shall be brought under the management of the Court of Wards, in and for any part of the Presidency of Fort William, by virtue of any Act or Regulation, which now is or hereafter shall be in force, is hereby VESTED IN the COLLECTOR of Revenue, acting under the said Court of Wards, in the zillah or district wherein such minor's estate is situate; or, if such minor is possessed of immovable property in different districts, in such one of the Collectors of Revenue of such districts as the said Court of Wards shall select.

II. It shall be lawful for every Collector of Revenue, in whom the superintendence of the education of any minor is vested by this Act, to direct that such minor shall reside, either with or without his guardian, at the sudder station of the district, or at any other place within the said Presidency, and shall attend, for the purposes of education, such SCHOOL or college as to the said Collector may seem expedient; and to make such provision as may be necessary for the proper care and suitable maintenance of the said minor whilst attending such school or college.

III. If it shall appear to the Collector inexpedient to place any such minor at a school or college, he shall, if the proceeds of the estate are sufficient for that purpose, cause such minor to be educated by a PRIVATE TUTOR, properly qualified either at the family residence of such minor, or at the sudder station or elsewhere within the said Presidency; and in that case also the Collector shall have power to determine from time to time the place of residence of such minor, and to make such

* The whole Act was repealed as to Bengal by Bengal Act 4 of 1870, see Repealing Enactments p. 107.
provision as may be necessary for his proper tuition and maintenance during the period of his education.

IV. All charges and expenses which may be incurred on account of any male minor ward under the provisions of this Act, for college or SCHOOL FEES, or for OTHER CHARGES of tuition or education, or by reasons of his residence in any place other than his own home or otherwise, shall be defrayed from the profits of his estate in the same manner as other expenses incurred under the authority, or with the sanction of the Court of Wards.

V. It shall be lawful for the Court of Wards, on the application of a Collector, to remove from office any GUARDIAN who shall NEGLECT or refuse to obey, or shall evade compliance with any ORDERS passed, or directions given by such Collector under the provisions of this Act, and to cause a new guardian to be appointed in his place, whether the person so removed shall have been first invested with the guardianship of the minor upon the nomination of a Collector acting under the Court of Wards, or by a testamentary appointment confirmed by the Court of Wards; and if in any such case the guardian to be removed shall be also the manager of the minor's estate, it shall be lawful for the Court of Wards, at its discretion, either to remove him from both the said offices, or to continue him in that of manager only.

VI. The GUARDIAN so removed shall, notwithstanding his removal, CONTINUE LIABLE TO ACCOUNT to the Collector for his receipts and disbursements during the period of his guardianship; and every guardian appointed in the place of a guardian so removed shall be chosen in the same way, and shall have the same rights and powers, and be subject to the same responsibilities as persons originally appointed to be guardians of minors by a Collector of Revenue acting under the Court of Wards.

VII. The right to the CUSTODY of the person of any male MINOR, whose property is under the management of the Court of Wards, is hereby vested in the person appointed with the sanction of the Court of Wards, either originally, or upon the removal of a former guardian, to be the guardian of such minor, or in the absence of any such person, in the Collector of Revenue having the superintendence of the education of such minor under the provisions of this Act.

VIII. All ORDERS and proceedings of a Collector under the provisions of this Act, shall be SUBJECT TO the REVISION of the Court of Wards, and every person aggrieved by any such order or proceeding may prefer an appeal therefrom to the Commissioner of Revenue acting as a Court of Wards in and for the division to which such Collector belongs.

HINDU LAW.

DEFINITION.

"A minor (bala) is till the sixteenth year."—DATTAKA MIMANSA, IV., 47.

A youth is a minor to the end of his fifteenth year, as we shall show in the chapter on the Payment of Debts. (Dig. I., 9.)

An infant (issue) before his eighth year, must be considered as similar to a child in the womb; but a youth or adolescent (pogenda) is called a minor until he has entered his sixteenth year.

Afterwards he is considered as acquainted with affairs, or adult in law.
and becomes independent on the death of both parents; but however old, he is not deemed independent while they live.—Smriti. (Dig. II., IV., 15.)

It may be here noticed incidentally, that "until his sixteenth year," signifies to the nearest limit of his sixteenth year, consequently he is a minor until the close of his fifteenth year. The construction of the text is this: 'an adolescent is also called a minor.' But strictly the term (pogendra) is applicable only to a child under the age of ten years, agreeably to the text cited by Sridhara Swami. Infancy extends to the fifth year; childhood is limited to the tenth, adolescence continues to the sixteenth year, when puberty commences. "Under eight years," or before the commencement of his eighth year, he is an infant (siiu) and he also is a minor but distinguished from an adolescent. Another is also distinguished, called a young infant (cumara) to the commencement of his fifth year; agreeably to the same text cited by Raghunandana "infancy extends to the fifth year." The use of this distinction regards penance or expiation and the like. But here minority must be taken to the end of the fifteenth year, and this must be understood of a computation by vulgar or savannah time, from the day of his birth. Afterwards he is adult or competent to affairs, as is expressly declared by Catyayana. But a certain author has remarked, that if a youth become conversant with affairs before that age, in consequence of auspicious fortune merited in a former existence, or if a youth remain unacquainted with affairs beyond that age through ill auspices, both these should be considered accordingly as adult or as under age. But sages have mentioned an age near to which puberty may be expected. (Dig I., 188.)

WHO MAY BE GUARDIANS.

As the suspended water-pot matures the pippala tree, so a FATHER, a GRANDFATHER and a GREAT GRANDFATHER cherish a son from the moment of his birth.—Devala (Dig. V., 80.)

In like manner the KING or the kinsmen appointed by him should guard the minor's property received from his brothers as his share of the inheritance. Here "kinsmen" signify RELATIONS in the MALE line, or, on failure of them, a SISTER'S or DAUGHTER'S SON, or other near kinsman of the father. In practice, a MOTHER is guardian of a minor, and of his property, and that is proper, if she be capable of protecting the ward: but being a woman, she is under the control of her HUSBAND'S MOTHER and the rest, still the effects of the widow and of the grand son must be guarded: and since the mother-in-law is a woman, she requires the aid of another kinsman, and he should be selected with the concurrence of the PATERNAL GRANDMOTHER and be approved by the king; for the paternal grandmother best knows who among the kinsmen is skilled in the conduct of affairs, and the king is an universal superintendent: and if the widow be old and incapable of governing her own conduct, there is no harm in permitting the estate to be guarded by a kinsman selected by her; for it is only directed that a widow and the rest shall guard the property by any possible means. A contest arising between the mother-in-law and the widow, if the king, residing at a great distance, cannot accurately distinguish their good and bad characters, then indeed any person may be
appointed by the king's own selection. This method, established by lawyers on their own judgment, is consistent with the reason of the law. (Dig. V., 453.)

Their shares, if they be incapable from non-age of conducting their own affairs, let the king keep carefully guarded, together with the accumulation on those shares, until the minors arrive at years of discretion.—Bau-
drayana (Dig. V. 452.)

If there be guardians of the minors and the rest, namely, their MATER-
NAL UNCLE'S or the like, and these take up a loan from a money-lender for the benefit of the minor or other ward, executing a deed in the ward's name and their own; in that case the loan may be legally advanced after ascertaining that the guardian does not act fraudulently; although no text occurs to this purport, it is proved by the frequent practice of good men. Afterwards, when the minority expires, the creditor may recover the debt from that youth; but while the minority lasts, he could only recover it from the maternal uncle, or other person entitled to act as guardian. This should be observed by the wise. (Dig. I. 9.)

RIGHTS AND LIABILITIES.

ADOPTION.—"Let not wives and sons, being unwilling, undergo sale, nor even gift." As for the prohibition in this next, of Catayana, against the gift and so forth, of persons unwilling, that even must be interpreted as forbidding the gift of a boy of five years only: not of one order. And: "one discriminating not a minor." As for what is thus interpreted by Sarvajinya, adverting to this reading ("discriminating good and evil") in the text,—whom a man takes being alike, &c. that must be explained thus: 'a boy of five years only, discriminating by the faculty of reason: but not a minor (generally). The meaning is "he should not take (any) one, coming within this definition," a minor (bala) is till the sixteenth year.—Datta Mimansa. (IV., 47.)

A CONTRACT made by a person intoxicated, or insane, or grievously disordered, or wholly dependant, by an infant, or a decrepit old man, or in the name of another by a person without authority, is utterly null.—(Manu VIII., 163.)

A contract made by a person intoxicated, or insane, or grievously disordered, or disabled, by an infant, or a man agitated by fear or the like, or in the name of another by a person without authority, is utterly null.—Yajnyavalcy (Dig. II., IV., 58.)

On the death of a father, his DEBT shall in no case be paid by his sons incapable from nonage of conducting their own affairs: but at their full age, of fifteen years, they shall pay it in proportion to their shares; otherwise they shall dwell hereafter in a region of horror.—Catayana. (Dig. I., 187.)

Even though he be independent a son incapable from nonage of conducting his affairs is not immediately liable for debts.—Nareda (Dig. I, 188.)
But Miira cites the text of Catayana (Book III., Chap. IV., V., 151): it is therefore his opinion, that an independent son, or one who has neither father nor mother, and is not under the age of sixteen years, is liable for the payment of debts. (Dig. I., 188.)

GIFT.—What has been given by men agitated with fear, anger, lust, grief, or the pain of an incurable disease; or as a bribe, or in jest, or by mistake, or through any fraudulent practice, must be considered as ungiven. So must any thing given by a minor, an idiot, a slave or other person not his own master, a diseased man, one insane or intoxicated, or in consideration of work unperformed.—NAREDA (Dig. II., IV., 53.)

Vyavahar Mayukh (IX., 6.)

Let all the co-heirs guard the share which belongs to an absent parceiver.

But if a man die having an infant son, his wealth must be preserved entire by his kinsmen; and they may divide it in due proportions after the minor has passed adolescence.—CATYAYANA. (Dig. V., 453.)

If one who has an infant son die, his property must be preserved by the kinsmen or brother of the minor; it must not be immediately distributed: but they may divide the estate after he has passed adolescence. Such is the meaning of the phrase. Consequently the share of a minor must be preserved during his adolescence by kinsmen, like the allotment for an absent parceiver; for the reason of the law is the same, but before his adolescence partition is not proper.

In like manner the king or the kinsmen appointed by him should guard the minor’s property received from his brothers as his share of the INHERITANCE. (Dig. V., 453.)

To an excellent and handsome youth of the same class let every man give his daughter in MARRIAGE even though she have not attained her age of eight years.—(MANU IX., 88.) Before her breasts are prominent a girl should be given in marriage, both he who gives a damsels in marriage after her menses have appeared, and he who receives such a damsels sink to a region of torment, and the father, paternal grandfather and great grandfather of each are born again in ordure, therefore should a damsels be given in marriage before her menses appear.—PARTHINASI. (Dig. IV., 17.)

A man aged thirty years may marry a girl of twelve if he find one dear to his heart, or a man of twenty-four years a damsels of eight, but if he finish his studentship earlier, and the duties of his next order would otherwise be impeded, let him marry immediately.—(MANU IX., 94.)

The Hindu law does not seem to contemplate the marriage of a male minor. For the rest of the law on this subject see ‘Marriage.’

Accordingly (since PARTITION by the choice of one co-heir is lawful) Catayana, treating of partition, says: “Let them deposit, free from disbursement, in the hands of kinsmen and friends, the wealth of such as have not attained majority; as well as of those who are absent.” So a text expresses. The property of minors should be “so preserved until they attain their full age.”
CIVIL CODE. CHAPTER III.

Such as have not attained majority, whose age does not exceed fifteen years.—DATA BHAGA (III., 17.)

If he be neither an idiot, nor an infant under the full age of fifteen years, and if the chattel be adversely possessed in a place where he may see it, his property in it is extinct by law, and the adverse possessor shall keep it. (MANU VIII., 148.)

The injury to the remedy is here intended and not to the property. It happens when the possessor replies with this plea. “The plaintiff is neither an idiot, nor a boy, nor a minor. In his presence I enjoyed the property for twenty years without interruption. Had I unjustly got POSSESSION of the property, why did he remain passive all the time? To the truth of this assertion I have many witnesses.” In this instance the plaintiff will be unable to rejoin, but the suit of one not able to rejoin may be proceeded on.—MITAKSHARA on Judicature. (III., 7.)

A pledge, a boundary of land, the property of an infant, a deposit either open or in a chest sealed, female slaves, the wealth of a king and of a learned Brahmin, are not lost in consequence of adverse enjoyment.— (MANU VIII., 149.)

He who sees his land possessed by a stranger for twenty years, or his personal estate for ten years, without asserting his own right, loses his property in them.—YAJNYAWALCYA (Dig. I., 113.)

Except pledges, boundaries, sealed deposits, the wealth of idiots and infants, things amicably lent for use, and the property of a king, a woman or a priest versed in holy writ.—YAJNYAWALCYA (Dig. I., 114.)

The PROPERTY of a student and of an infant, whether by descent or otherwise, let the king hold in his custody, until the owner shall have ended his studentship, or until his infancy shall have ceased in his sixteenth year. (MANU VIII., 27.)

Let the king protect the effects of infants who are incapable from non-age of conducting their own affairs, and the goods belonging to widows of learned priests and of valiant soldiers; but effects of which there are no owners escheat to the king.—SANCHA AND LICHITA. (Dig. V., 451.)

The king should guard the property of an infant, and the effects of the husband and wife in the absence of the husband.—VISHNU. (Dig. V., 450.)

A SUIT adduced by one intoxicated, or deranged, or diseased, or distressed, or a minor, or terrified, or uninterested, &c. is not valid.

*A minor* one incompetent through nonage to the transaction of his affairs.—MITAKSHARA on Judicature (IV., 1, 7.)

A sick person, a minor, an old man, one surrounded with difficulties, &c. should not be summoned.—MITAKSHARA on Judicature (I., III., 3.)

The arrest and SUMMONS of a minor are also prohibited by this Smriti “a minor, a messenger, one ready to make a gift, one engaged in religious duties and one in distress should not be arrested and the king should not summon them.”—MITAKSHARA 51st verse.
MAHOMEDAN LAW.

DEFINITION.

The puberty of a boy is established by his becoming subject to nocturnal emission, his impregnating a woman, or emitting in the act of coition, and if none of these be known to exist, his puberty is not established, until he have completed his eighteenth year. The puberty of a girl is established by menstruation, nocturnal emission or pregnancy, and if none of these have taken place, her puberty is established on the completion of her seventeenth year. What is here advanced is according to Haneefa. The two disciples maintain that upon either a boy or girl completing the fifteenth year they are to be declared adult; there is also one report of Haneefa to the same effect, and Shafei concurs in this opinion. It is also reported from Haneefa, that to establish the puberty of a boy nineteen years are required; some, however, observe that by this is to be understood merely the completion of eighteen years and the commencement of the nineteenth, and consequently, that this report perfectly accords with the other. Some again affirm that this is not the sense in which the last report is to be received, for there have been other opinions reported from Haneefa on this point, different from that first recited as above, because some authorities expressly say that (according to him) the puberty of a boy is not counted by years until he shall have completed his nineteenth year. It is to be observed that the earliest period of puberty, with respect to a boy, is twelve years, and with respect to a girl nine years.—530.

When a boy or girl approaches the age of puberty and they declare themselves adult, their declaration must be credited, and they become subject to all the rules affecting adults.—530.

WHO MAY BE GUARDIANS.

The right of Hizanit with respect to a male child appertains to the MOTHER, GRANDMOTHER, or so forth, until he become independent of it himself, that is to say, become capable of shifting, eating, drinking, and performing the other natural functions without assistance, after which the charge devolves upon the FATHER, or NEXT PATERNAL RELATION entitled to the office of guardian, because, when thus far advanced, it then becomes necessary to attend to his education in all branches of useful and ornamental science, and to initiate him into a knowledge of men and manners, to effect which the father or paternal relations are best qualified. (Kasaaf says that the Hizanit with respect to a boy ceases at the end of seven years, as in general a child at that age is capable of performing all the necessary offices for himself, without assistance.) But the right of Hizanit WITH RESPECT TO A GIRL appertains to the MOTHER, GRANDMOTHER, and so forth, until the first appearance of the menstrual discharge (that is to say, until she attain*

* The figures at the end of each clause refer to Grady's edition of Hamilton's 'Hedaya.'
the age of puberty) because the girl has occasion to learn such manners and accomplishments as are proper to woman, to the teaching of which the female relations are most competent, but after that period the charge of her property belongs to the FATHER, because a girl after maturity requires some person to superintend her conduct, and to this the father is most completely qualified.—139.

A boy or girl, having passed the period of Hizanit, have no option to be with one parent in preference to the other, but most necessarily thenceforth remain in charge of the FATHER.—139.

If a separation take place between a husband and wife, who are possessed of an infant child, the right of nursing and keeping it rests with the MOTHER.—138.

A Zimmeea, or FEMALE INFIDEL subject, married to a Mussulman, is entitled to the Hizanit of her child, although he be a Mussulman like the father; but this only so long as the child is incapable of forming any judgment with respect to religion and whilst there is no apprehension of his imbibing an attachment to infidelity, but when this is the case, he must be taken from the mother, because, although it be for the child's advantage to be under her care until that period his remaining longer with her might prove injurious.—139.

If a MOKATIB, an absolute SLAVE or a ZIMMEEA contract a marriage on behalf of a minor daughter who is free and a Mursbina or make a purchase or sale in behalf of a minor child under such description it is unlawful (and the same of every other transaction which they perform relative to the property of such child) as a slave and an infidel are not endowed with authority.—392.

Haneefa, Aboo Yoosaf and Mohammed are of opinion that an APOSTATE who suffers death on account of his apostacy and an infidel alien are with respect to an infant daughter who is a Mursbina in the same predicament with a Zimmeea.—138.

If the mother of an infant die the right of Hizanit (or infant education) rests with the MATERNAL GRANDMOTHER in preference to the paternal, because it originates in, and is derived from the mother; but if she be not living, the PATERNAL GRANDMOTHER has then a right prior to any other relation, she being as one of the child's mother (whence it is that she is entitled to a sixth of the effects of a child of her son, which is the mother's share), and she must, moreover, be considered as having a more tender interest in her own offspring than any collateral relation. If there be no grandmother living, in this case a SISTER is preferable to either a maternal or paternal AUNT, as she is the daughter of the father and mother, or of one of them, whence it is that she would take place of the aunt's inheritance. (According to one tradition, the maternal aunt is preferable to a HALF SISTER by the father's side, the prophet having said, "the maternal aunt is as a mother.") A full sister, also, has preference to an half-sister, maternal or paternal; and a MATERNAL SISTER to a PATERNAL SISTER; because the right of Hizanit is derived to them through the mother. The MATERNAL AUNT has preference to the PATERNAL, because precedence is given, in this point, to the maternal relation. The same
distinction also prevails among the aunts as among the sisters;—that is, she who is DOUBLY RELATED, has a preference to her who is singly related, thus the maternal aunt, who is full sister to the mother, precedes an half sister, maternal or paternal; and in the same manner, a maternal sister precedes a paternal sister, and so also of the paternal aunt. IF, however, any of these WOMEN having the right of Hizanit, SHOULD MARRY a stranger, HER RIGHT IS thereby ANNULLED, on account of the tradition before quoted, and also because, where the husband is a stranger, it is to be apprehended that he may treat the child unkindly; where the woman, therefore, who has a charge of an infant marries, it is neither advantageous nor advisable that the infant remain with her, unless the person she marries be a relation as where the mother, for instance, having charge, marries the child’s paternal uncle, or the maternal grandmother marries the paternal grandfather, because these men being as parents, it is to be expected that they will behave with tenderness; and so also of any other relation within the prohibited degrees, for the same reason.

Any woman whose right of Hizanit is annulled by her marrying a stranger recovers the right by the dissolution of the marriage, the objection of her exercise of it being thereby removed.—138.

If there be no woman to whom the right of Hizanit appertains, and the men of the family dispute it, in this case the NEAREST PATERNAL RELATION has the preference, he being the one to whom the authority of guardian belongs (the degrees of paternal relationship are treated of in their proper place,) but it is to be observed that the child must not be entrusted to any relation beyond the prohibited degrees—138, 139.

If a father die without appointing an executor, the GRANDFATHER represent the father; because a grandfather is most nearly related to the children of his son, and most interested in their welfare, whence it is that the grandfather is empowered to contract the infant ward in marriage, in preference to the FATHER’S EXECUTOR, notwithstanding the latter have precedence of him in point of managing and acting with the property, for the reasons already assigned.—703.

According to Mohammed and Aboo Yoosaf, the EXECUTOR OF A BROTHER, with respect to an infant brother, or one of mature age, who is absent, stands in the same predicament as the executor of a father with respect to his adult absent son (in other words, he is empowered to sell the moveable property of the orphan or absentee); and so likewise of an executor appointed by the mother or uncle, for as the mother and uncle are permitted to interfere in the management of the property so far as relates to its preservation, so also is the executor who represents them.—703.

The power of the FATHER’S EXECUTOR, in the management of the property of his orphans, is superior to, and precedes that of the grandfather.—703.

It is lawful for a HUSBAND to take possession of any thing given to his wife, being an infant, provided she has been sent from her father’s house to his, and this although the FATHER be present; because he is held, by implication, to have resigned the management of her concerns to the husband. It is otherwise where she has not been
CIVIL CODE. CHAPTER III.

sent from her father's house, because then the father is not held to have
resigned the management of her concerns. It is also otherwise with
respect to a MOTHER, or any other having charge of her, because they
are not entitled to possess themselves of a gift in her behalf, unless the
father be dead, or absent, and his place of residence unknown, for their
power is in virtue of necessity and not from any supposed authority; and
this necessity cannot exist whilst the father is present.—485.

RIGHTS AND LIABILITIES.

The ACTS of an infant are not lawful unless authorized by his guardian,
nor the act of a slave unless authorized by his master.

The acts of an infant are unlawful, because of the defect in his
understanding, but the licensee or authority of his guardian is a mark of
his capacity, whence it is that in virtue thereof an infant is accounted
the same as an adult.—524.

REQUEST by an infant is not valid.—673.

No CONTRACT entered into, or acknowledgment made by an infant
or lunatic is valid, for the reasons before assigned; and in the same
manner divorce or manumission pronounced by them does not take place.—
525.

If a stranger make a GIFT of a thing to an infant the gift is ren-
dered complete by the seizin of the father of the infant.—484.

If a person make a gift of a thing to an orphan, and it be seized
in his behalf by his guardian, being either the executor appointed by
his father, or his grandfather, or the executor appointed by his grand-
father, it is valid.—484.

If a father make a gift of something to his infant son, the infant
in virtue of the gift, becomes proprietor of the same, provided the thing
given be, at the time, in the possession either of the father or of his
trustee.—484.

The MARRIAGE of a boy or girl under age by the authority of their
paternal kindred is lawful whether the girl be a virgin or not—36.  

The divorce or manumission pronounced by an infant are not sus-
pended, in their effect, upon the consent of the guardian.—525.

If, also the guardian, himself pronounce a divorce upon the infant's
wife, or grant manumission to his slave, it does not take place in op-
position to other acts, such as purchase, sale, and so forth.—525.

It is lawful for a father to PLEDGE, in security of his own debt, the
slave of his infant child, for a father has the privilege of depositing the
goods of his infant child in trust, and to pledge them is still more conduc-
tive to the interest of the proprietor than to place them in trust, since if a

* See also under 'Marriage.'
pledge be lost it must be accounted for, whereas a trustee is not responsible for the deposit in his hands. A guardian also is the same as a father in this particular, because such an authority vested in him is beneficial to the child.—638.

It is not lawful for a guardian to pledge into his own hands goods belonging to his ward on account of a debt due to him, or into the hands of his child being an infant, or into the hands of his slave being a merchant and free from debt (nor is it permitted to him to give anything of his own in pawn into the hands of an orphan for a debt owing to the orphan from himself); for a guardian being merely an agent, cannot of course have a double capacity in contract.—639.

If a guardian purchase victuals for an orphan, so as that the price is a debt upon the orphan, and pawn an article belonging to the orphan as a security for the debt, and the pawnee take possession of the same, and the guardian then borrow it from the pawnee for the use of the orphan, and it be destroyed in his [the guardian’s] hands, it is no longer included in the contract of pawn, nor is any person responsible for it, for the act of the guardian in this instance is the same as that of the orphan when he has attained maturity, he having borrowed the article for his use, in which case such is the rule.—640.

If a guardian purchase victuals or apparel for the use of his ward, and, having debited him for the price, take in pawn part of his goods as a security for the debt, it is valid.—639.

If a father pawn the goods of his infant son, and the infant attain maturity, still he is not at liberty to annul the contract of pawn and take back the pledge until he shall have discharged the debt.—639.

It is lawful for a father to pawn the goods of his son for a debt jointly due by both. If, therefore, the pledge be destroyed, the father must compensate to the son by the payment of a sum equivalent to his [the father’s] share of the debt.—639.

As, therefore, the contract of pawn is valid in this instance, it follows that in case of the pledge being destroyed in the pawnee’s hands, he is considered to have received payment of his debt, and that the father or guardian are responsible to the infant, as having discharged their debt by means of his property.—639.

In like manner it is lawful for a father or guardian to order the pawnee to sell the pledge; for both of these have the privilege of selling the goods of their infant ward.—639.

If a father pawn the goods of his infant child into his own hands for a debt due from the child, or into the hands of another of his children being an infant, or of his slave, being a merchant and not in debt, it is lawful.—639.

If a slave, an infant, or a lunatic, should sell or purchase any article, knowing at the time the nature of purchase and SALE, and intending one or other of those, the guardian, or other immediate superior, has it at his option either to give his assent if he see it advisable, or to annul the bargain.—524.
If a father or guardian resign the right of SHAFFA belonging to their infant ward, such resignation is lawful, according to Aboo Yoosaf and Haneefa. Mohammed and Ziffer say that it is not lawful; and that the right of the infant (safee) being still extant, he is entitled to claim it as soon as he attains maturity.—564.

If a person indebted to an orphan give a TRANSFER on some other person, and the executor (the guardian of the orphan) accept the same, such acceptance is approved, provided it be for the interest of the orphan, because of the person on whom the transfer is made being richer (for instance) than the transferrer, and also a man of probity, for the power of acting is vested in the executor, merely that he may employ it for the interest of the orphan; but if the transferrer be richer than the other, the acceptance is not approved, as being, in its tendency, prejudicial to the orphan.—702.

WRONGS.—If an infant or a lunatic destroy anything, they are liable to make a recompense, in order that the right of the owner may be preserved.—525.

Some say that this holds only where he sets fire to a stable during a calm, the wind rising afterwards; for if he set fire to it whilst the wind is blowing, he is responsible, as he must in such case be sensible that the fire will extend beyond his land.—512.
CIVIL CODE.

Chapter IV.—MARRIAGE.

Christians.

DEFINITION.

Marriage is a contract by which a man and woman enter into a mutual engagement in the form prescribed by law to live together as husband and wife during the remainder of their lives.—Mackenzie's Roman Law, p. 97.

PARTIES TO MARRIAGE.

Marriage contracted before the age of 14 for boys and 12 for girls is imperfect and has only the effect of a betrothal. Either of them may disavow the marriage, and consider it null on arriving at this age.—2 Stephen, 263.

A promise to marry like other contracts is not binding unless the party promising be of the full age of 21. Warwick v. Bruce, 2 Man and Sel. 205.

Under the age of 21 years persons not being widows or widowers cannot contract marriage without the consent of their father.—2 Stephen 262, 269, 315. 4 Geo. IV., c. 76.

If the father is dead the guardian or if no guardian has been duly appointed, then the mother, but if she have married again, a guardian appointed by the Court of Chancery may give the required consent. If there is no person having authority to give consent, the marriage may be solemnized without the consent of any one.—2 Steph. 269. 4 Geo. IV., c. 76, s. 16.

If the father, guardian, mother, or those whose consent is necessary, are incapable of manifesting their consent whether from deprivation of their intellectual faculties, or absence beyond seas, or if they refuse their consent to a proper marriage unreasonably or form undue motives, the Court of Chancery may authorize the marriage.—4 Geo. 4, c. 76, s. 17.
Persons above the age of 21 may marry without taking the advice of any one.—2 Stephen, 260.

If one party is IMPOTENT or unable to consummate the marriage from incurable corporal defect at the time of solemnization, the marriage though not ipso facto void may be declared null by the Court.—Bury's Case, 5 Rep. 98. Morris v. Webber Moor, 225.


A marriage contracted during the existence of a PRIOR MARRIAGE is null.—R. v. Harborne, 2 Ad. & El., 540.

Marriage is unlawful on the ground of RELATIONSHIP except between such persons as "are not prohibited by God's Law to marry." Nothing God's law except shall impeach any marriage without the Levitical degrees.—32 Hen. VIII., c. 38.

* The prohibited degrees are not stated in the Statute. They were partly stated in 25 Hen. 8, c. 22 and 28, Hen. 8, c. 7, which have both been repealed. So far as the Statute Law of England is concerned therefore it appears that it is only by a reference to Levitical that the persons, who are incapable of marriage on the ground of relationship, can be ascertained. The following is the law as there stated:

LEVITICUS—CHAPTER XVIII.

6. None of you shall approach to any that is near of kin to him, to uncover their nakedness: I am the Lord.

7. The nakedness of thy father, or the nakedness of thy mother, shalt thou not uncover: she is thy mother; thou shalt not uncover her nakedness.

8. The nakedness of thy father's wife shalt thou not uncover. It is thy father's nakedness.

9. The nakedness of thy sister, the daughter of thy father, or daughter of thy mother, whether she be born at home or born abroad, even their nakedness thou shalt not uncover.

10. The nakedness of thy son's daughter, or of thy daughter's daughter, even their nakedness thou shalt not uncover: for theirs is thine own nakedness.

11. The nakedness of thy father's wife's daughter begotten of thy father, she is thy sister, thou shalt not uncover her nakedness.

12. Thou shalt not uncover the nakedness of thy father's sister: for she is thy father's near kinswoman.

13. Thou shalt not uncover the nakedness of thy mother's sister: for she is thy mother's near kinswoman.

14. Thou shalt not uncover the nakedness of thy father's brother, thou shalt not approach to his wife: she is thine aunt.

15. Thou shalt not uncover the nakedness of thy daughter-in-law, she is thy son's wife; thou shalt not uncover her nakedness.

16. Thou shalt not uncover the nakedness of thy brother's wife: it is thy brother's nakedness.

17. Thou shalt not uncover the nakedness of a woman and her daughter, neither shalt thou take her son's daughter, or her daughter's daughter to uncover her nakedness, for they are her near kinswomen: it is wickedness.

18. Neither shalt thou take a wife to her sister to vex her, to uncover her nakedness, besides the other in her life time.
Marriage is prohibited between ascendants and descendants in infinitum.—Vaughan, 232.

Thus a man cannot marry his mother, grandmother, &c. or his daughter, granddaughter, &c.

Marriage is also prohibited between collaterals to the third degree inclusive, according to the computation of the Civilians. (See Civil Code Chapter V., p. 6 and 7.)

Thus a man cannot marry his sister as she is related in the 2nd degree, nor his aunt or niece as they are related in the 3rd degree. He may marry his cousin or if be like marry his grand-mother's sister, as they are related in the 4th degree.

The relations of the wife are also relations of the husband and vice versa. R. v. Chadwick 11, Q. B. 173. Brook v. Brook 9, H. of L. Case 193.

Thus a man cannot marry his deceased wife's sister as she is related in the 2nd degree, nor his wife's niece or aunt as they are both related in the 3rd degree. He may marry his wife's cousin as she is related in the 4th degree.

The relations of the wife however are not relations of the husband's relations, and vice versa.—2 Stephen, 265.

Thus two brothers may marry two sisters or a father and son may marry a mother and daughter. So also a man may marry his wife's brother's wife.

The prohibition on account of relationship extends to those who are related by the half-blood only, and also to bastards.—2 Stephen 265.

THE CEREMONY OF MARRIAGE.

It is unnecessary to quote the English law on this subject as complete provision is made in respect to this part of the marriage law by the Marriage Act 15 of 1872.—Pest.

RIGHTS AND LIABILITIES.

The husband and wife are bound to live together and each of them has a right by a suit for restitution of CONJUGAL RIGHTS to compel the other to live in the common house.—Barlee v. Barlee 1 Odd., 301.


A man has in general no right to make a CONTRACT with his wife, and generally speaking all contracts made between them when single are avoided by the marriage.—2 Stephen, 282.

The husband has however a right to contract with a third person as trustee for his wife.—2 Stephen, 282.

The wife by the common law has no right to make any contract without the express or implied consent of the husband.—2 Steph., 289.

When however the wife has a separate estate she has a right to make
contracts, and the separate estate being liable for them.—Hulme v. Tenant
1 Wh. and Tu. L. Cases, 435.

A wife has a right to contract for her husband by virtue of an express
or implied authority from him to act as his Agent.—2 Stephen, 289.

When the wife is living with her husband it is presumed that she has
her husband’s authority to contract for necessaries suitable to his degree
and estate.—Etherington v. Parrott 1 Sulk 118, 2 Sm. L. C. 441.

It is open to the husband however to prove that he has forbidden his
wife to pledge his credit and in that case he is not liable.—Jolly v. Rees
33 L. L. C. P. 177.

“ When the wife is not living with the husband there is no presump-
tion that she has authority to bind him even for necessaries suitable to
her degree in life, it is for the plaintiff to show that under the circumstances
of the separation or from the conduct of the husband she had such

The wife was considered by some ancient authorities, according to
Blackstone, so far under his power that he might give her moderate
CORRECTION, but this is not now the case.—Lord Leigh’s Case. 2 Lev., 123.

The husband has a right to the CUSTODY of the WIFE’S PERSON
—in re Cochrane, 8 Dowl 635.

He has also a right to restrain her of her liberty in case of any gross
misdemeanour.—Child v. Hardyman, Str., 875.

The husband has a right to compel those who detain his wife to give
her up to him.—R. v. Wiseman 2 Smith, 617.

For the liability of husband and wife to give EVIDENCE for or
against each other, see Evidence Act, sections 120 and 122, Civil Pro-
cedure Code p. 136.

A married woman is not liable to be prosecuted at all for some
FELONIES committed by her in the presence of her husband, the law sup-
posing her to act in such case under his coercion. But the exemption
extends not to treason, murder or manslaughter nor according to the pre-
valent opinion to any case of mere misdemeanour nor to any crime whatever
committed by her in the absence of her husband or even in his presence if
the evidence shows that she was acting voluntarily and was the principal
instrument.”—2 Stephen, 291.

A husband has generally no right to make a GIFT of anything to his
wife.—2 Stephen, 281.

He has a right however to give to a trustee for his wife and to give
land to a third person for her use.—2 Stephen, 282.

In the Court of Chancery a right to give is often even directly allowed
—2 Stephen, 292, 293.

* See Indian Penal Code generally and sections 212 and 217.
He has a right to make a settlement on her after marriage either of real or personal property, but he has no such right if he were indebted at the time without sufficient means of payment or if he make the settlement to defraud future creditors.—2 Stephen, 295.

The wife is entitled to MAINTENANCE during her husband's life. —Manby v. Scott, 2 Sm. L. C. 416.

The husband has during the marriage and after the marriage during his life a right to the usufruct of the real PROPERTY OF which his WIFE was in possession on the day of the marriage or which she had afterwards received by gift or inheritance, and he becomes by the fact of marriage owner of all the personal property of his wife if he reduces it into his possession.—2 Steph. 284.

"No SUIT can be brought against a wife, even for necessaries, in a court of law. In the Court of Chancery, however, she is liable to be sued with trustees for the purpose of making her property liable." —Murray v. Barlee, 3 My. and K. 220, 222, 1 Wh. and Tu. L. C. 442.

She has no right to bring an action in a law-court to obtain redress for any injury sustained in her person or property unless with her husband's consent, and in his name as well as her own.—Eubanke v. Owen, 5. Ad. and El. 298.

A husband has a right to bequeath anything to his wife by WILL.—2 Steph. 282.

A wife has no right to dispose by will of real or personal property without the consent of her husband, except in the case of personal property settled on her for her personal use.—2 Stephen 289.

A husband has a right to recover damages for any WRONG done to his wife's property or person.—Manby v. Scott, 2 Sm. L. C. 409.

**Act No. XV. of 1872.**

**The Indian Christian Marriage Act, 1872.**

**ARRANGEMENT OF SECTIONS.**

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*Compare Act 10 of 1865, Section 4, Civil Code Chapter V. page 8.*

a21
An Act to consolidate and amend the law relating to the solemnization in India of the Marriages of Christians.

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

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

It extends to the whole of British India, and, so far only as regards Christian subjects of Her Majesty, to the territories of Native Princes and States in alliance with Her Majesty; and it shall come into force on the passing thereof.

For clause xxiv. of section nineteen of the Court Fees' Act, 1870, the following shall be substituted:

'xxiv. Petitions under the Indian Christian Marriage Act, 1872, sections forty-five and forty-eight.'

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

"CHURCH OF ENGLAND" and "ANGLICAN" mean and apply to the Church of England as by law established;

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

"MINOR" means a person who has not completed the age of twenty-one years, and who is not a widower or a widow;

"NATIVE STATE" means the territories of any Native Prince or State in alliance with Her Majesty;

The expression "CHRISTIANS" means persons professing the Christian religion;

For section 2 and schedule V, see Repealing Enactments.
And the expression "NATIVE CHRISTIANS" includes the Christian descendants of Natives of India converted to Christianity, as well as such converts.

PART I.

THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED.

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

5. Marriages may be solemnized in India—

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

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

(3) by any Minister of religion licensed under this Act to solemnize marriages;

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

(5) by any person licensed under this Act to grant certificates of marriage between Native Christians.

6. The Local Government may grant LICENSES TO MINISTERS of religion to solemnize marriages within the territories under its administration, and may revoke such licenses.

7. The Local Government may appoint one or more Christians, either by name or as holding any office for the time being, to be the MARRIAGE REGISTRAR or Marriage Registrars for any District subject to its administration.

Where there are more Marriage Registrars than one in any District, the Local Government shall appoint one of them to be the SENIOR MARRIAGE REGISTRAR.

When there is only one Marriage Registrar in a District, and such Registrar is absent from such District, or ill, or when his office is temporarily vacant, the MAGISTRATE of the District shall act as, and be, Marriage Registrar thereof during such absence, illness, or temporary vacancy.

8. The Governor-General in Council may, by notification in the Gazette of India, appoint any Christian, either by name or as holding any office for the time being, to be a Marriage Registrar in respect of any district or place within the territories of any NATIVE Prince or STATE in alliance with Her Majesty.
The Governor-General in Council may, by like notification, revoke any such appointment.

9. The Local Government or (so far as regards any Native State) the Governor-General in Council may grant a license to any Christian, either by name or as holding any office for the time being, authorizing him to grant certificates of marriage between NATIVE CHRISTIANS.

Any such license may be revoked by the authority by which it was granted, and every such grant or revocation shall be notified in the official Gazette.

PART II.

TIME AND PLACE AT WHICH MARRIAGES MAY BE SOLEMNIZED.

10. Every marriage under this Act shall be solemnized between the hours of six in the morning and seven in the evening:

Provided that nothing in this section shall apply to—

(1) a Clergyman of the Church of England solemnizing a marriage under a SPECIAL LICENSE permitting him to do so at any hour other than between six in the morning and seven in the evening under the hand and seal of the Anglican Bishop of the diocese or his Commissary, or

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

11. No Clergyman of the Church of England shall solemnize a marriage in any PLACE other than a church,

unless there is no church within five miles distance by the shortest road from such place,

or unless he has received a SPECIAL LICENSE authorizing him to do so under the hand and seal of the Anglican Bishop of the Diocese or his Commissary.

For such special license, the Registrar of the Diocese may charge such additional fee as the said Bishop from time to time authorizes.

PART III.

MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THIS ACT.

12. Whenever a marriage is intended to be solemnized by a Minister of Religion licensed to solemnize marriages under this Act—
one of the persons intending marriage shall give NOTICE in writing, according to the form contained in the first schedule hereto annexed, or to the like effect, to the Minister of Religion whom he or she desires to solemnize the marriage and shall state therein

(a) the name and surname, and the profession or condition, of each of the persons intending marriage,

(b) the dwelling-place of each of them,

(c) the time during which each has dwelt there, and

(d) the church or private dwelling in which the marriage is to be solemnized:

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

13. If the persons intending marriage desire it to be solemnized in a particular church, and if the Minister of Religion to whom such notice has been delivered be entitled to officiate therein, he shall cause the NOTICE to be AFFIXED IN some conspicuous part of such CHURCH.

But if he is not entitled to officiate as a Minister in such church, he shall, at his option, either return the notice to the person who delivered it to him, or deliver it to some other Minister entitled to officiate therein, who shall thereupon cause the notice to be affixed as aforesaid.

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

15. When one of the persons intending marriage is a MINOR, every Minister receiving such notice shall, unless within twenty-four hours after its receipt he returns the same under the provisions of section thirteen, send by the post or otherwise a copy of such NOTICE TO the MARRIAGE REGISTRAR of the district, or, if there be more than one Registrar of such district to the Senior Marriage Registrar.

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

17. Any Minister of Religion consenting or intending to solemnize any such marriage as aforesaid, shall, on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making the declaration hereinafter required, issue under his hand a CERTIFICATE OF such NOTICE having been GIVEN and of such declaration having been made:
Provided—

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

(2) that no lawful impediment be shown to his satisfaction why such certificate should not issue; and

(3) that the issue of such certificate has not been forbidden in manner hereinafter mentioned by any person authorized in that behalf.

18. The certificate mentioned in section seventeen shall not be issued until one of the persons intending marriage has appeared personally before the Minister and made a solemn DECLARATION—

(a) that he or she believes that there is not any impediment of kindred or affinity or other lawful hindrance to the said marriage,

and, when either or both of the parties is or are a minor or minors,

(b) that the consent or consents required by law has or have been obtained thereto, or that there is no person resident in India having authority to give such consent, as the case may be.

19. The FATHER, if living, OF any MINOR, or, if the father be dead, the GUARDIAN of the person of such minor, and, in case there be no such guardian, then the MOTHER of such minor, MAY GIVE CONSENT to the minor’s marriage,

and such consent is hereby required for the same marriage, unless no person authorized to give such consent be resident in India.

20. Every person whose consent to a marriage is required under section nineteen, is hereby authorized to PROHIBIT the ISSUE OF the CERTIFICATE by any Minister, at any time before the issue of the same by notice in writing to such Minister, subscribed by the person so authorized with his or her name and place of abode and position with respect to either of the persons intending marriage, by reason of which he or she is so authorized as aforesaid.

21. If any such notice be received by such Minister, he shall not issue his certificate and shall not solemnize the said marriage until he has examined into the matter of the said prohibition, and is satisfied that the person prohibiting the marriage has no lawful AUTHORITY FOR such PROHIBITION,

or until the said notice is withdrawn by the person who gave it.

22. When either of the persons intending marriage is a minor and the MINISTER is not SATISFIED THAT the CONSENT of the person whose consent to such marriage is required by section nineteen, HAS BEEN OBTAINED such Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of the notice of marriage.

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

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

25. After the issue of the certificate by the Minister, marriage may be solemnized between the persons therein described according to such form or CEREMONY as the Minister thinks fit to adopt:

Provided that the marriage be solemnized in the presence of at least two WITNESSES besides the Minister.

26. Whenever a MARRIAGE is NOT SOLEMNIZED WITHIN TWO MONTHS after the date of the certificate issued by such Minister as aforesaid, such certificate and all proceedings (if any) thereon shall be void,

and no person shall proceed to solemnize the said marriage until new notice has been given and a certificate thereof issued in manner aforesaid.

PART IV.

REGISTRATION OF MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION.

27. All marriages hereafter solemnized in India between persons one or both of whom profess or profess the Christian religion, except marriages solemnized under Part V. or Part VI. of this Act, shall be registered in manner hereinafter prescribed.

28. Every Clergyman of the Church of England shall keep a REGISTER of marriages and shall register therein, according to the tabular form set forth in the third schedule hereto annexed, every marriage which he solemnizes under this Act.

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

Such quarterly returns SHALL CONTAIN all the entries of marriages contained in the said register from the first day of January to the thirty-first day of March, from the first day of April to the thirtieth day of June, from the first day of July to the thirtieth day of September, and from the first day of October to the thirty-first day of December, of each year, respectively, and shall be sent by such Clergyman within two weeks from the expiration of each of the quarters above specified.

The said Registrar upon receiving the said returns shall send one copy thereof to the Secretary to the Local Government.
30. Every marriage solemnized by a Clergyman of the CHURCH OF ROME shall be registered by the person and according to the form direct-
ed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is solemnized,

and such person shall forward quarterly to the Secretary to the Local Government RETURNS of the entries of all marriages registered by him during the three months next preceding.

31. Every Clergyman of the CHURCH OF SCOTLAND shall keep a REGISTER of marriages,

and shall register therein, according to the tabular form set forth in the third schedule hereto annexed, every marriage which he solemnizes under this Act,

and shall forward quarterly to the Secretary to the Local Government, through the Senior Chaplain of the Church of Scotland, RETURNS, simi-
lar to those prescribed in section twenty-nine, of all such marriages.

32. Every MARRIAGE solemnized BY any PERSON who has re-
ceived episcopal ordination, but who is NOT A CLERGYMAN of the Church of England, or of the Church of Rome, or by any Minister of Re-
ligion licensed under this Act to solemnize marriages, shall immediately after the solemnization thereof, be registered in duplicate by the person solemnizing the same (that is to say) in a marriage-register book to be kept by him for that purpose, according to the form contained in the fourth schedule hereto annexed, and also in a certificate attached to the marriage-
register book as a counterfoil.

33. The ENTRY of such marriage in both the certificate and mar-
riage register book shall be SIGNED by the person solemnizing the mar-
riage and also by the persons married, AND shall be ATTESTED by two credible witnesses, other than the person solemnizing the marriage, present at its solemnization.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register book.

34. The person solemnizing the marriage shall forthwith separate the CERTIFICATE from the marriage-register book and send it, within one month from the time of the solemnization, to the Marriage Registrar of the district in which the marriage was solemnized, or, if there be more Mar-
rriage Registrars than one, to the Senior Marriage Registrar,

who shall cause such certificate to be copied into a book to be kept by him for that purpose,

and shall send all the certificates which he has received during the month, with such number and signature or initials added thereto as are hereinafter required, to the Secretary to the Local Government.

35. Such copies shall be entered in order from the beginning to the end of the said book, and shall bear both the number of the certificate as copied, and also a number to be entered by the Marriage Registrar, indi-
35. The Marriage Registrar shall also add such last-mentioned number of the entry of the copy in the book to the certificate, with his signature or initials, and shall, at the end of every month, send the same to the Secretary to the Local Government.

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

Whoever has the control of the book at the time when it is filled, shall send it 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.

PART V.

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

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

or, if the parties dwell in different districts shall give the like notice to a Marriage Registrar of each district,

and shall state therein the name and surname, and the profession or condition, of each of the parties intending marriage, the dwelling place of each of them, the time during which each has dwelt therein, and the place at which the marriage is to be solemnized:

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

39. Every Marriage Registrar shall, on receiving any such NOTICE, cause a copy thereof to be affixed in some conspicuous place in his office.

When one of the parties intending marriage is a minor, every Marriage Registrar shall, within twenty-four hours after the receipt by him of the notice of such marriage, send, by post or otherwise, a copy of such notice to each of the other Marriage Registrars (if any) in the same district, who shall likewise affix the copy in some conspicuous place in his own office.
40. The Marriage Registrar shall FILE all such NOTICES and keep
them with the records of his office,

and shall also forthwith enter a true copy of all such notices in a
book to be furnished to him for that purpose by the Local Government,
and to be called the "Marriage Notice Book;"

and the Marriage Notice Book shall be open at all reasonable times,
without fee, to all persons desirous of inspecting the same.

41. If the party by whom the notice was given requests the Marriage
Registrar to issue the certificate next hereinafter mentioned, and if one
of the parties intending marriage has made oath as hereinafter required,
the Marriage Registrar shall issue under his hand a CERTIFICATE of
such NOTICE having been given and of such oath having been made:

Provided—

that no lawful impediment be shown to his satisfaction why such
certificate should not issue;

that the issue of such certificate has not been forbidden, in manner
hereinafter mentioned, by any person authorized in that behalf by this Act;

that four days after the receipt of the notice have expired, and further,

that where, by such oath, it appears that one of the parties intending
marriage is a minor, fourteen days after the entry of such notice have
expired.

42. The certificate mentioned in section forty-one shall not be issued
by any Marriage Registrar, until one of the parties intending marriage
appears personally before such Marriage Registrar, and makes OATH

(a) that he or she believes that there is not any impediment of
kindred or affinity, or other lawful hindrance, to the said marriage, and

(b) that both the parties have, or (where they have dwelt in the
districts of different Marriage Registrars) that the party making such
oath has, had their, his or her usual place of abode within the district of
such Marriage Registrar,

and, where either or each of the parties is a minor,

(c) that the consent or consents to such marriage required by law
has or have been obtained thereto, or that there is no person resident in
India authorized to give such consent, as the case may be.

43. When one of the parties intending marriage is a MINOR, and
both such parties are at the time resident in any of the towns of Calcutta,
Madras and Bombay, and are desirous of being married in less than
fourteen days after the entry of such notice as aforesaid, they may apply
by petition to a Judge of the High Court, for an order upon the Marriage
Registrar to whom the notice of marriage has been given, directing him
to issue his certificate before the expiration of the said fourteen days
required by section forty-one.
And on sufficient cause being shown, the said Judge may, in his discretion, make an order upon such Marriage Registrar, directing him to issue his certificate at any time to be mentioned in the said order, before the expiration of the fourteen days so required;

And the said Marriage Registrar, on receipt of the said order, shall issue his certificate in accordance therewith.

44. The provisions of section nineteen apply to every marriage under this Part, either of the parties to which he is a minor;

and any person whose CONSENT to such marriage would be required thereunder may enter a PROTEST against the issue of the Marriage Registrar’s certificate, by writing, at any time before the issue of such certificate, the word “forbidden,” opposite to the entry of the notice of such intended marriage in the Marriage Notice Book, and by subscribing there-to his or her name and place of abode, and his or her position with respect to either of the parties, by reason of which he or she is so authorized.

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

45. If any person whose consent is necessary to any marriage under this Part is of UNSOUND MIND,

or if any such person (other than the father) WITHOUT JUST CAUSE WITHHOLDS his CONSENT to the marriage,

the parties intending marriage may apply by petition, where the person whose consent is necessary is resident within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or if he is not resident within any of the said towns, then to the District Judge.

And the said Judge of the High Court, or District Judge, as the case may be, may examine the allegations of the petition in a summary way.

And if upon examination such marriage appears proper, such Judge of the High Court or District Judge, as the case may be, shall declare the marriage to be a proper marriage.

Such declaration shall be as effectual as if the person whose consent was needed had consented to the marriage;

and if he has forbidden the issue of the Marriage Registrar’s certificate, such certificate shall be issued and the like proceedings may be had under this Part in relation to the marriage as if the issue of such certificate had not been forbidden.

46. Whenever a Marriage REGISTRAR REFUSES to issue a CERTIFICATE under this Part, either of the parties intending marriage may apply by petition, where the district of such Registrar is within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or if such district is not within any of the said towns, then to the District Judge.
The said Judge of the High Court or District Judge, as the case may be, may examine the allegations of the petition in a summary way, and shall decide thereon.

The decision of such Judge of the High Court or District Judge, as the case may be, shall be final, and the Marriage Registrar to whom the application for the issue of a certificate was originally made shall proceed in accordance therewith.

47. Whenever a Marriage REGISTRAR resident IN any NATIVE STATE REFUSES to issue his CERTIFICATE, either of the parties intending marriage may apply by petition to the Governor General in Council, who shall decide thereon.

Such decision shall be final, and the Marriage Registrar to whom the application was originally made shall proceed in accordance therewith.

48. Whenever a Marriage REGISTRAR, acting under the provisions of section forty-four, is NOT SATISFIED that the PERSON FORBIDDING the issue of the certificate is AUTHORIZED by law so to do the said Marriage Registrar shall apply by petition, where his district is within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or, if such district be not within any of the said towns, then to the District Judge.

The said petition shall state all the circumstances of the case, and pray for the order and direction of the Court concerning the same,

and the said Judge of the High Court or District Judge, as the case may be, shall examine into the allegations of the petition and the circumstances of the case,

and if, upon such examination, it appears that the person forbidding the issue of such certificate is not authorized by law so to do, such Judge of the High Court or District Judge, as the case may be, shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid.

And thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage as if the issue had not been forbidden.

Whenever a Marriage Registrar appointed under section eight to act within any NATIVE STATE is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall send a statement of all the circumstances of the case, together with all documents relating thereto, to the Governor General in Council.

If it appears to the Governor General in Council that the person forbidding the issue of such certificate is not authorized by law so to do, the Governor General in Council shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

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

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

51. After the issue of the certificate of the Marriage Registrar, or where notice is required to be given under this Act to the Marriage Registrars for different districts, after the issue of the certificates of the Marriage Registrars for such districts,

MARRIAGE may, if there be no lawful impediment to the marriage of the parties described in such certificate or certificates, be solemnized between them, according to such FORM and ceremony as they think fit to adopt.

But every such marriage shall be solemnized in the PRESENCE OF some Marriage REGISTRAR (to whom shall be delivered such certificate or certificates as aforesaid), AND of two or more credible WITNESSES besides the Marriage Registrar.

And in some part of the ceremony each of the parties shall declare as follows or to the like effect—

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

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

52. Whenever a MARRIAGE is NOT SOLEMNIZED WITHIN TWO MONTHS after the copy of the notice has been entered by the Marriage Registrar, as required by section forty, the notice and the certificate, if any, issued thereupon, and all other proceedings thereupon, shall be void;

and no person shall proceed to solemnize the marriage, nor shall any Marriage Registrar enter the same, until new notice has been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid.

53. A Marriage Registrar before whom any marriage is solemnized under this Part may ask of the persons to be married the several PARTICULARS required TO BE REGISTERED touching such marriage.
54. After the solemnization of any marriage under this Part the Marriage Registrar present at such solemnization shall forthwith REGISTER the marriage IN DUPLICATE, that is to say, in a Marriage Register Book, according to the form of the fourth schedule hereto annexed, and also in a certificate attached to the Marriage Register Book as a counterfoil.

The entry of such marriage in both the certificate and the Marriage Register Book shall be signed by the person by or before whom the marriage has been solemnized, if there be any such person, and by the Marriage Registrar present at such marriage, whether or not it is solemnized by him, and also by the parties married, and attested by two credible witnesses other than the Marriage Registrar and person solemnizing the marriage.

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

55. The Marriage Registrar shall forthwith separate the CERTIFICATE from the marriage register book and send it, at the end of every month, to the Secretary to the Local Government.

The Marriage Registrar shall keep safely the said register book until it is filled, and shall then send it to the Secretary to the Local Government, to be kept by him with the records of his office.

56. The Marriage Registrars in NATIVE STATES shall send the certificates mentioned in section fifty-four to such officers as the Governor General in Council from time to time, by notification in the Gazette of India, appoints in this behalf.

57. When any NATIVE CHRISTIAN about to be married gives a notice of marriage, or applies for a certificate from a Marriage Registrar, such Marriage Registrar shall ascertain whether the said Native Christian understands the English language, and, if he does not, the Marriage Registrar shall translate, or cause to be translated, such notice or certificate, or both of them, as the case may be, to such Native Christian into a language which he understands;

or the Marriage Registrar shall otherwise ascertain whether the Native Christian is cognizant of the purport and effect of the said notice and certificates.

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

59. The REGISTRATION of marriages between Native Christians under this Part shall be made in conformity with the rules laid down in Section thirty-seven (so far as they are applicable), and not otherwise.
PART VI.

MARRIAGE OF NATIVE CHRISTIANS.

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

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

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

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

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

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

61. When, in respect to any marriage solemnized under this Part, the conditions prescribed in section sixty have been fulfilled, the person licensed as aforesaid, in whose presence the said declaration has been made, shall on the application of either of the parties to such marriage, and, on the payment of a fee of four annas grant a CERTIFICATE OF THE MARRIAGE.

The certificate shall be signed by such licensed person, and shall be received in any suit touching the validity of such marriage as conclusive proof of its having been performed.

62. A REGISTER BOOK of all marriages of which certificates are granted under section sixty-one, shall be kept by the person granting such certificates in his own vernacular language.

Such register-book shall be kept according to such form as the Local Government from time to time prescribes in this behalf, and true extracts therefrom, duly authenticated, shall be deposited at such places as the Local Government directs.

63. Every person licensed under this Act to grant certificates of marriage, and keeping a marriage register book under section sixty-two shall, at all reasonable times, allow SEARCH to be made in such book, and shall, on payment of the proper fee, give a copy, certified under his hand, of any entry therein.
64. The provisions of sections sixty-two and sixty-three as to the form of the register book, depositing extracts therefrom, allowing searches thereof, and giving copies of the entries therein, shall *mutatis mutandis*, apply to the books kept under section thirty-seven.

65. This Part of this Act, except so much of sections sixty-two and sixty-three as are referred to in section sixty-four, shall not apply to marriages between Roman Catholics. But nothing herein contained shall invalidate any marriage celebrated between Roman Catholics under the provisions of Part V. of Act No. XXV. of 1864, previous to the twenty-third day of February 1865.

PART VII.

PENALTIES.

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

67. Whoever forbids the issue by a Marriage Registrar of a certificate by falsely representing himself to be a person whose consent to the marriage is required by law, knowing or believing such REPRESENTATION to be FALSE, or not having reason to believe it to be true, shall be deemed guilty of the offence described in section two hundred and five of the Indian Penal Code.

68. Whoever, NOT BEING AUTHORIZED under this Act to solemnize a marriage in the absence of a Marriage Registrar of the district in which such marriage is solemnized, knowingly SOLEMNIZES a MARRIAGE between persons one or both of whom is or are a Christian or Christians, shall be punished with imprisonment which may extend to ten years, or (in lieu of a sentence of imprisonment for seven years or upwards) with transportation for a term of not less than seven years and not exceeding ten years, or, if the offender be an European or American with penal servitude according to the provisions of Act No. XXIV. of 1855 * (to substitute penal servitude for the punishment of transportation in respect of European and American convicts, and to amend the law relating to the removal of such convicts),

and shall also be liable to fine.

69. Whoever knowingly and wilfully solemnizes a MARRIAGE between persons, one or both of whom is or are a Christian or Christians at any time other than between the hours of six in the morning and seven in the evening, or IN the ABSENCE OF at least two credible WITNESSES other than the person solemnizing the marriage, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

* See Penal Code page.
This section does not apply to marriages solemnized under SPECIAL LICENSES granted by the Anglican Bishop of the Diocese or by his Commissary, nor to marriages performed between the hours of seven in the evening and six in the morning by a Clergyman of the Church of Rome, when he has received the general or special license in that behalf mentioned in section ten.

70. Any Minister of Religion licensed to solemnize MARRIAGES under this Act, who WITHOUT a NOTICE in writing, or when one of the parties to the marriage is a MINOR, and the required consent of the parents or guardians to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part III., shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

71. A MARRIAGE REGISTRAR under this Act, who commits any of the following OFFENCES:

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

(2) after the expiration of two months from the issue by him of a certificate in respect of any marriage solemnizes such marriage;

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

(4) issues any certificate, the issue of which has been prohibited as in this Act provided by any person authorized to prohibit the issue thereof, shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

72. Any Marriage Registrar knowingly and wilfully issuing any CERTIFICATE for marriage AFTER the expiration of THREE MONTHS after the notice has been entered by him as aforesaid,

or knowingly and wilfully issuing, without the order of a competent Court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage is a MINOR, before the expiration of fourteen days after the entry of such notice, or any certificate the issue of which has been forbidden as aforesaid by any person authorized in this behalf,

shall be deemed to have committed an offence under section one hundred and sixty-six of the Indian Penal Code.

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

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

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

knowingly and wilfully issues any certificate for MARRIAGE under
this Act, or solemnizes any marriage between such persons as aforesaid
WITHOUT PUBLISHING or causing to be affixed, the NOTICE of such
marriage as directed in Part III. of this Act, or after the expiration of
two months after the certificate has been issued by him;

or knowingly and wilfully issues any certificate for marriage, or
solemnizes a marriage between such persons when one of the persons
intending marriage is a MINOR, before the expiration of fourteen days
after the receipt of notice of such marriage or without sending, by the
post or otherwise, a copy of such notice to the Marriage Registrar, or if
there be more Marriage Registrars than one, to the Senior Marriage
Registrar of the district;

or, knowingly and wilfully ISSUES any CERTIFICATE, the issue
of which has been FORBIDDEN under this Act by any person authoriz-
ed to forbid the issue;

or knowingly and wilfully SOLEMNIZES any MARRIAGE FOR-
BIDDEN by any person authorized to forbid the same,

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

74. Whoever NOT BEING LICENSED to grant a certificate of
marriage under Part VI. of this Act, GRANTS such CERTIFICATE in-
tending thereby to make it appear that he is so licensed, shall be pun-
ished with imprisonment for a term which may extend to five years, and
shall also be liable to fine.

75. Whoever, by himself or another, wilfully DESTROYS or in-
jures any REGISTER book or the counterfoil certificates thereof, or any
part thereof, or any authenticated extract therefrom,

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

or wilfully inserts any false entry in any such register book or
counterfoil certificate or authenticated extract,

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

76. The PROSECUTION for every offence punishable under this
Act shall be commenced within two years after the offence is committed.
PART VIII.

MISCELLANEOUS.

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

(1.) Any statement made in regard to the dwelling of the persons married, or to the consent of any person whose consent to such marriage is required by law:

(2.) The notice of the marriage:

(3.) The certificate or translation thereof:

(4.) The time and place at which the marriage has been solemnized:

(5.) The registration of the marriage.

78. Every person charged with the duty of registering any marriage who discovers any ERROR IN the form or substance of any such ENTRY may, within one month next after the discovery of such error, in the presence of the persons married, or, in case of their death or absence, in the presence of two other credible witnesses, correct the error by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry, and add thereto the date of such correction, and such person shall make the like marginal entry in the certificate thereof.

And every entry made under this section shall be attested by the witnesses in whose presence it was made.

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

79. Every person solemnizing a marriage under this Act, and hereby required to register the same, and every Marriage Registrar or Secretary to a Local Government having the custody of the time being of any register of marriages, or of any certificate, or duplicate or copies of certificate under this Act, shall, on payment of the proper fees, at all reasonable times allow SEARCHES to be made in such REGISTER, or for such certificate, or duplicate or copies, and give a copy under his hand of any entry in the same.

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

81. The Secretary to the Local Government and the officers appointed under section fifty-six shall at the end of every quarter in each year, select from the certificates of marriages forwarded to them respectively during
such quarter, the CERTIFICATES of the marriages of which the Governor General in Council may desire that evidence shall be TRANSMITTED TO ENGLAND, and shall send the same certificates signed by them respectively to the Secretary to the Government of India in the Home Department, for the purpose of being forwarded to the Secretary of State for India and delivered to the Registrar General of Births, Deaths and Marriages:

Provided that in the case of the Governments of Madras and Bombay, the said certificates shall be forwarded by such Governments respectively directly to the Secretary of State for India.

82. FEES shall be chargeable under this Act for—

issuing certificates of marriage by Marriage Registrars and registering marriages by the same;

entering protests against, or prohibitions of, the issue of marriage certificates by the said Registrars;

searching register books or certificates, or duplicates, or copies thereof;

giving copies of entries in the same under sections sixty-three and seventy-nine.

The Local Government shall fix the amount of such fees respectively, and may from time to time vary or remit them either generally or in special cases, as to it may seem fit.

83. The Local Government may make RULES in regard to the disposal of the fees mentioned in section eight-two, the supply of register books, and the preparation and submission of returns of marriages solemnized under this Act.

84. The powers conferred on the Local Government by sections eighty-two and eighty-three may, so far as regards NATIVE STATES, be exercised by the Governor General in Council.

85. The Local Government may, by notification in the official Gazette, declare who shall, in any place to which this Act applies, be deemed to be the DISTRICT JUDGE.

86. The POWERS and functions given by this Act to the GOVERNOR GENERAL in Council MAY BE DELEGATED to and exercised by such officers as the Governor General in Council from time to time appoints in this behalf.

And all such powers and functions may be exercised, as regards Native States situate within the local limits of the Presidencies of Fort Saint George and Bombay, by the Governors in Council of those Presidencies respectively.

87. Nothing in this Act applies to any MARRIAGE performed BY any Minister, CONSUL, or Consular Agent between subjects of the State which he represents and according to the laws of such State.

88. Nothing in this Act shall be deemed to validate any MARRIAGE WHICH the personal LAW applicable to either OF the PARTIES FORBIDS him or her to enter into.
SCHEDULE I.

*(See Sections 12 and 38.)*

NOTICE OF MARRIAGE.

To a Minister (or Registrar) of

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

<table>
<thead>
<tr>
<th>Names</th>
<th>Condition</th>
<th>Rank or Profession</th>
<th>Age</th>
<th>Dwelling place</th>
<th>Length of residence</th>
<th>Church, Chapel, or Place of Worship in which the Marriage is to be solemnized</th>
<th>District in which the other party resides; when the parties dwell in different districts</th>
</tr>
</thead>
<tbody>
<tr>
<td>James Smith</td>
<td>Widower.</td>
<td>Carpenter.</td>
<td>Of full age</td>
<td>16, Clare Street</td>
<td>23 days.</td>
<td>Free Church of Scotland Church, Calcutta.</td>
<td></td>
</tr>
<tr>
<td>Martha Green</td>
<td>Spinster.</td>
<td>Minor.</td>
<td></td>
<td>20, Hastings Street</td>
<td>More than a month.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Witness my hand, this day of seventy-two.

*(Signed)* JAMES SMITH.

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

(See Sections 24 and 50.)

CERTIFICATE OF RECEIPT OF NOTICE.

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

<table>
<thead>
<tr>
<th>Names</th>
<th>Condition</th>
<th>Rank or Profession</th>
<th>Age</th>
<th>Dwelling place</th>
<th>Length of residence</th>
<th>Church, Chapel, or place of Worship in which the Marriage is to be solemnized</th>
<th>District in which the other party resides, when the parties dwell in different districts</th>
</tr>
</thead>
<tbody>
<tr>
<td>James Smith</td>
<td>Widower</td>
<td>Carpenter</td>
<td>Of full age</td>
<td>16, Gower Street</td>
<td>23 days</td>
<td>Free Church of Scotland Church, Calcutta</td>
<td></td>
</tr>
<tr>
<td>Martha Green</td>
<td>Spinster</td>
<td>Miner</td>
<td>More than a month</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

Date of notice entered

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

Date of Certificate given

Witness my hand, this day of seventy-two.

(Signed)

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

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

(See Section 28.)

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 originals and Official Quarterly Returns of
Marriage within the Archdeaconry of {Calcutta,
                                          {Madras,
                                          {Bombay,
as made and transmitted to me for
the quarter commencing the day of ending the day of
in the year of Our Lord

[Signature of Registrar.]

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

MARRIAGES solemnized at {Allahabad.
                        {Barrackpore.
                        {Bareli.
                        {Calcutta, &c., &c.

<table>
<thead>
<tr>
<th>WHEN MARRIED</th>
<th>NAMES OF PARTIES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year.</td>
<td>Month.</td>
</tr>
<tr>
<td>Day.</td>
<td>Christian.</td>
</tr>
<tr>
<td>Surname.</td>
<td>Age.</td>
</tr>
<tr>
<td>Condition.</td>
<td>Rank or profession.</td>
</tr>
<tr>
<td>Residence at the time of marriage.</td>
<td>Father's name and surname.</td>
</tr>
<tr>
<td>By banns or license.</td>
<td>Signatures of the parties.</td>
</tr>
<tr>
<td>Signatures of two or more witnesses present.</td>
<td>Signature of the person solemnizing the marriage.</td>
</tr>
<tr>
<td>Signature of the person solemnizing the marriage.</td>
<td></td>
</tr>
</tbody>
</table>
**Schedule IV.**

*(See Sections 32 and 54.)*

**Marriage Register Book.**

<table>
<thead>
<tr>
<th>Number</th>
<th>When Married</th>
<th>Names of Parties</th>
<th>Age</th>
<th>Condition</th>
<th>Rank or Profession</th>
<th>Residence at the Time of Marriage</th>
<th>Father's Name and Surname</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td></td>
<td>James White</td>
<td>26</td>
<td>Widower</td>
<td>Carpenter</td>
<td>Agra</td>
<td>William White</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Martha Duncan</td>
<td>17</td>
<td>Spinner</td>
<td></td>
<td>Agra</td>
<td>John Duncan</td>
</tr>
</tbody>
</table>

Married in the

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

**Certificate of Marriage.**

<table>
<thead>
<tr>
<th>Number</th>
<th>When Married</th>
<th>Names of Parties</th>
<th>Age</th>
<th>Condition</th>
<th>Rank or Profession</th>
<th>Residence at the Time of Marriage</th>
<th>Father's Name and Surname</th>
</tr>
</thead>
<tbody>
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<td>I</td>
<td></td>
<td>James White</td>
<td>26</td>
<td>Widower</td>
<td>Carpenter</td>
<td>Agra</td>
<td>William White</td>
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<td></td>
<td></td>
<td>Martha Duncan</td>
<td>17</td>
<td>Spinner</td>
<td></td>
<td>Agra</td>
<td>John Duncan</td>
</tr>
</tbody>
</table>

Married in the

This marriage was solemnized between us {James White, Martha Duncan} in the presence of us {John Smith, John Green}. 
An Act to amend the law relating to Divorce and Matrimonial Causes in India.

Whereas it is expedient to amend the law relating to the divorce of persons professing the Christian religion, and to confer upon certain Courts jurisdiction in matters matrimonial; It is hereby enacted as follows:

I.—Preliminary.

1. This Act may be called "The Indian Divorce Act," and shall come into operation on the first day of April 1869.

2. This Act shall extend to the whole of British India, and (so far only as regards British subjects within the dominions hereinafter mentioned) to the dominions of Princes and States in India in alliance with Her Majesty.

Nothing hereinafter contained shall authorize any Court to grant any relief under this Act, except in cases where the petitioner professes the Christian religion and resides in India at the time of presenting the petition;
or to make decrees of DISSOLUTION of marriage except IN the
FOLLOWING CASES:—(a) where the marriage shall have been solem-
nized in India; or (b) where the adultery, rape, or unnatural crime com-
plained of shall have been committed in India; or (c) where the husband
has, since the solemnization of the marriage, exchanged his profession of
Christianity for the profession of some other form of religion;
or to make decrees of NULLITY of marriage except in cases where
the marriage has been solemnized in India.

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

(1) "HIGH COURT" means, in any Regulation Province, the
Court there established under the Act of the twenty-fourth and twenty-
fifth of Victoria, Chapter one hundred and four,
in the territories for the time being subject to the government of the
Lieutenant Governor of the Panjab, the Chief Court of the Panjab,
in British Burmah, the High Court of Judicature at Fort William in
Bengal,

and in any other Non-Regulation Province and in any place in the
dominions of the Princes and States of India in alliance with Her Majesty,
the High Court or Chief Court to whose original criminal jurisdiction the
petitioner is for the time being subject, or would be subject, if he or she
were an European British subject of Her Majesty:

In the case of any petition under this Act, ‘High Court’ is that one of
the aforesaid Courts within the local limits of whose ordinary appellate
jurisdiction, or of whose jurisdiction under this Act, the husband and wife
reside or last resided together:

(2) "DISTRICT JUDGE" means, in the Regulation Provinces, a
Judge of a principal Civil Court of original jurisdiction,
in the Non-Regulation Provinces, other than British Burmah and Sind
a Commissioner of a Division,
in Pegu, the Recorder at Rangoon,
in Arrakan, the Recorder at Rangoon until a Recorder’s Court is estab-
lished at Akyab, and thenceforward the Recorder at Akyab,
in the Tenasserim Provinces, the Recorder at Maulmain,
in Sind, the Judicial Commissioner in that province,

and in any place in the dominions of the Princes and States aforesaid,
such officer as the Governor General of India in Council shall from time to
time appoint in this behalf by notification in the Gazette of India, and, in
the absence of such officer, the High Court in the exercise of its original
jurisdiction under this Act:

(3) "DISTRICT COURT" means, in the case of any petition under
this Act, the Court of the District Judge within the local limits of whose
ordinary jurisdiction, or of whose jurisdiction under this Act the husband
and wife reside or last resided together:

(4) "COURT" means the High Court or the District Court, as the
case may be:

(5) "MINOR CHILDREN" means, in the case of sons of Native
fathers, boys who have not completed the age of sixteen years, and, in
the case of daughters of native fathers, girls who have not completed the
age of thirteen years: In other cases it means unmarried children who
have not completed the age of eighteen years:

(6) "INCESTUOUS ADULTERY" means adultery committed by a
husband with a woman with whom, if his wife were dead, he could not
lawfully contract marriage by reason of her being within the prohibited
degrees of consanguinity (whether natural or legal) or affinity;

(7) "BIGAMY WITH ADULTERY" means adultery with the
same woman with whom the bigamy was committed:

(8) "MARRIAGE WITH ANOTHER WOMAN" means marriage
of any person being married to any other person, during the life of the
former wife, whether the second marriage shall have taken place within
the dominions of Her Majesty or elsewhere:

(9) "DESERTION" implies an abandonment against the wish of
the person charging it:

(10) And "PROPERTY" includes in the case of a wife any property
to which she is entitled for an estate in remainder, or reversion or as a
trustee, executrix or administratrix; and the date of the death of the
testator or intestate shall be deemed to be the time at which any such wife
becomes entitled as executrix or administratrix.

II.—Jurisdiction.

4. The jurisdiction now exercised by the High Courts in respect of
divorce a mensa et toro, and in all other CAUSES, suits, and matters
MATRIMONIAL, shall be exercised by such Courts and by the District
Courts subject to the provisions in this Act maintained, and not otherwise:
except so far as relates to the granting of marriage-licenses, which may be
granted as if this Act had not been passed.

5. Any DECREE or order OF the late SUPREME COURT of Judi-
cature at Calcutta, Madras, or Bombay sitting on the ecclesiastical side,
or of any of the said High Courts sitting in the exercise of their matrimo-
nial jurisdiction respectively, in any cause or matter matrimonial, may be
enforced and dealt with by the said High Courts, respectively, as herein-
after mentioned, in like manner as if such decree or order had been originally
made under this Act by the Court so enforcing or dealing with the
same.

6. All SUITS and proceedings in causes and matters matrimonial,
which when this Act comes into operation are PENDING in any High
Court, shall be dealt with and decided by such Court, so far as may be, as if they had been originally instituted therein under this Act.

7. Subject to the provisions contained in this Act, the High Courts and District COURTS SHALL, in all suits and proceedings hereunder, ACT and give relief ON PRINCIPLES and rules which, in the opinion of the said Courts, are as nearly as may be CONFORMABLE TO the principles and rules on which the COURT FOR DIVORCE and Matrimonial Causes IN ENGLAND for the time being acts and gives relief.

8. The High Court may, whenever it thinks fit, REMOVE and try and determine as a Court of original jurisdiction any SUIT or proceeding instituted under this Act in the Court of any District Judge within the limits of its jurisdiction under this Act.

The High Court may also withdraw any such suit or proceeding, and TRANSFER it for trial or disposal to the Court of any other such Dis- trict Judge.

9. When any question of law or usage having the force of law arises at any point in the proceedings previous to the hearing of any suit under this Act by a District Court or at any subsequent stage of such suit, or in the execution of the decree therein or order thereon,

the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the case, and refer it, with the Court's own opinion thereon, to the decision of the High Court.

If the question has arisen previous to or in the hearing, the Dis- trict Court may either stay such proceedings, or proceed in the case pending such REFERENCE, and pass a decree contingent upon the opinion of the High Court upon it.

If a decree or order has been made, its execution shall be stayed until the receipt of the order of the High Court upon such reference.

III.—Dissolution of Marriage.

10. Any HUSBAND may present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof, been guilty of ADULTERY.

Any WIFE may present a petition to the District Court or to the High Court, praying that her marriage may be dissolved on the ground that since the solemnization thereof her husband has exchanged his profession of Christianity for the profession of some other RELIGION, and gone through a form of marriage with another woman;

or has been guilty of INCESTUOUS ADULTERY, or of BIGAMY with ADULTERY, or of MARRIAGE with another woman WITH ADULTERY,

or of RAPE, SODOMY, or BESTIALITY,
or of ADULTERY coupled WITH such CRUELTY as without adultery would have entitled her to a divorce a mena et teto,

or of ADULTERY coupled WITH DESERTION, without reasonable excuse, for two years or upwards.

Every such petition shall state, as distinctly as the nature of the case permits, the facts on which the claim to have such marriage dissolved is founded.

11. Upon any such petition presented by a husband, the petitioner shall make the alleged adulterer a CO-RESPONDENT to the said petition, unless he is excused from so doing on one of the following grounds, to be allowed by the Court:

(1) That the respondent is leading the life of a prostitute, and that the petitioner knows of no person with whom the adultery has been committed.

(2) That the name of the alleged adulterer is unknown to the petitioner, although he has made due efforts to discover it.

(3) That the alleged adulterer is dead.

12. Upon any such petition for the dissolution of a marriage, the Court shall satisfy itself, so far as it reasonably can, not only as to the facts alleged, but also whether or not the petitioner has been in any manner accessory to, or CONNIVING at, the going through of the said form of marriage, or the adultery, or has CONDONED the same, and shall also inquire into any countercharge which may be made against the petitioner.

13. In case the Court, on the evidence in relation to any such petition is satisfied that the petitioner's CASE has NOT been PROVED, or is not satisfied that the alleged adultery has been committed,

or finds that the petitioner, has during the marriage, been accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

then and in any of the said cases the Court shall dismiss the petition.

When a petition is dismissed by a District Court under this section, the petitioner may, nevertheless, present a similar petition to the High Court.

14. In case the Court is satisfied on the evidence that the CASE of the petitioner has been PROVED,

and does not find that the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,
or that the petition is presented or prosecuted in collusion with either of the respondents,

the Court shall pronounce a decree declaring such marriage to be dissolved in the manner and subject to all the provisions and limitations in sections sixteen and seventeen made and declared:

Provided that the Court shall not be bound to pronounce such decree if it finds that the petitioner has, during the marriage, been guilty of adultery,

or if the petitioner has, in the opinion of the Court, been guilty of unreasonable delay in presenting or prosecuting such petition,

or of cruelty towards the other party to the marriage,

or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse,

or of such wilful neglect or misconduct of or towards the other party as has conduced to the adultery.

No adultery shall be deemed to have been CONDONED within the meaning of this Act unless where conjugal cohabitation has been resumed or continued.

15. In any suit instituted for dissolution of marriage, if the RESPONDENT OPPOSES the RELIEF sought ON the GROUND, in case of such a suit instituted by a husband, OF his adultery, cruelty, or desertion without reasonable excuse, or, in case of such a suit instituted by a wife, on the ground of her adultery and cruelty, the Court may in such suit give to the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had presented a petition seeking such relief, and the respondent shall be competent to give evidence of or relating to such cruelty or desertion.

16. Every decree for a dissolution of marriage made by a High Court not being a confirmation of a decree of a District Court, shall, in the first instance, be a DECREE NISI, not to be made absolute till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs.

During that period any person shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to show cause why the said decree should not be made absolute by reason of the same having been obtained by COLLUSION or by reason of material facts not being brought before the Court.

On cause being so shown, the Court shall deal with the case by making the decree absolute, or by reversing the decree nisi, or by requiring further inquiry, or otherwise as justice may demand.

The High Court may order the costs of Counsel and witnesses and otherwise arising from such cause being shown to be paid by the parties
or such one or more of them as it thinks fit, including a wife, if she have separate property.

Whenever a decree nisi has been made, and the petitioner fails, within a reasonable time, to move to have such decree made absolute, the High Court may dismiss the suit.

17. Every decree for a dissolution of marriage made by a District Judge shall be subject to CONFIRMATION by the High Court.

Cases for confirmation of a decree for dissolution of marriage shall be heard (where the number of the Judges of the High Court is three or upwards) by a Court composed of three such Judges, and in case of difference the opinion of the majority shall prevail, or (where the number of the Judges of the High Court is two) by a Court composed of such two Judges and in case of difference the opinion of the Senior Judge shall prevail.

The High Court, if it think further inquiry or additional evidence to be necessary, may direct such inquiry to be made, or such evidence to be taken.

The result of such inquiry and the additional evidence shall be certified to the High Court by the District Judge, and the High Court shall thereupon make an order confirming the decree for dissolution of marriage, or such other order as to the Court seems fit.

Provided that no decree shall be confirmed under this section till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs.

During the progress of the suit in the Court of the District Judge, any person suspecting that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce, shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to apply to the High Court to remove the suit under section eight and the High Court shall thereupon, if it think fit, remove such suit and try and determine the same as a Court of original jurisdiction, and the provisions contained in section sixteen shall apply to every suit so removed: or it may direct the District Judge to take such steps in respect of the alleged collusion as may be necessary to enable him to make a decree in accordance with the justice of the case.

IV.—Nullity of Marriage.

18. Any husband or wife may present a petition to the District Court or to the High Court, praying that his or her marriage may be declared null and void.

19. Such decree may be made on any of the following grounds:

(1) That the respondent was IMPOTENT at the time of the marriage, and at the time of the institution of the suit;
(2) That the parties are within the prohibited degrees of CONSANGUINITY (whether natural or legal) or affinity;

(3) That either party was a LUNATIC or idiot at the time of the marriage;

(4) That the former HUSBAND OR WIFE of either party was LIVING at the time of the marriage, and the marriage with such former husband or wife was then in force.

Nothing in this section shall affect the jurisdiction of the High Court to make decree of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.

20. Every DECREE of nullity of marriage made by a District Judge shall be subject to CONFIRMATION by the High Court, and the provisions of section seventeen, clauses one, two, three, and four, shall, mutatis mutandis, apply to such decrees.

21. Where a marriage is annulled on the ground that a former husband or wife was living, and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, or when a marriage is annulled on the ground of insanity, CHILDREN begotten before the decree is made shall be specified in the decree and shall be entitled to succeed, in the same manner as legitimate children, to the estate of the parent who at the time of the marriage was competent to contract.

V. — Judicial Separation.

22. No decree shall hereafter be made for a divorce a mensa et foro, but the husband or wife may obtain a decree of JUDICIAL SEPARATION, on the ground of adultery, or cruelty, or desertion without reasonable excuse for two years or upwards, and such decree shall have the effect of a divorce a mensa et foro under the existing law, and such other legal effect as hereinafter mentioned.

23. Application for judicial separation on any one of the grounds aforesaid, may be made by either husband or wife by petition to the District Court or the High Court; and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly.

24. In every case of a judicial separation under this Act, the wife shall, from the date of the sentence, and whilst the separation continues, be considered as unmarried with respect to PROPERTY of every description which she may acquire, or which may come to or devolve upon her.

Such property may be disposed of by her in all respects as an unmarried woman, and on her decease the same shall, in case she dies intestate, go as the same would have gone if her husband had been then dead:

Provided that, if any such wife again cohabits with her husband, all
such property as she may be entitled to when such cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

25. In every case of a judicial separation under this Act, the wife shall, whilst so separated, be considered as an unmarried woman for the purposes of CONTRACT, and WRONGS and injuries, and SUING and being sued in any civil proceeding; and her husband shall not be liable in respect of any contract, act or costs entered into, done, omitted, or incurred by her during the separation.

Provided that where, upon any such judicial separation, ALIMONY has been decreed or ordered to be paid to the wife, and the same is not duly paid by the husband, he shall be liable for necessaries supplied for her use:

Provided also that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

Reversal of Decree of Separation.

26. Any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may at any time thereafter, present a petition to the Court by which the decree was pronounced praying for a reversal of such decree on the ground that it was obtained in his or her absence, and that there was reasonable excuse for the alleged desertion, where desertion was the ground of such decree.

The Court may, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly; but such reversal shall not prejudice or affect the rights or remedies which any other person would have had in case it had not been decreed, in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the times of the sentence of separation and of the reversal thereof.

VI.—Protection Orders.

27. Any wife to whom the fourth section of the Indian Succession Act, 1865, does not apply, may, when deserted by her husband, present a petition to the District Court or the High Court, at any time after such desertion, for an ORDER TO PROTECT any PROPERTY which she may have acquired or may acquire, and any property of which she may have become possessed, or may become possessed, after such desertion against her husband or his creditors, or any person claiming under him.

28. The Court, if satisfied of the fact of such desertion, and that the same was without reasonable excuse, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and other property from her husband, and all creditors and persons claiming under him. Every such order shall
state the time at which the desertion commenced, and shall, as regards all
persons dealing with the wife in reliance thereon, be conclusive as to such
time.

29. The husband or any creditor of, or person claiming under, him
may apply to the Court by which such order was made for the discharge
or variation thereof, and the Court, if the desertion has ceased, or if for
any other reason it think fit so to do, MAY DISCHARGE or VARY the
ORDER accordingly.

30. If the HUSBAND or any creditor of, or person claiming under, the
husband SEIZES or continues to hold any PROPERTY of the wife after
notice of any such order, he shall be liable, at the suit of the wife (which
she is hereby empowered to bring), to return or deliver to her the specific
property, and also to pay her a sum equal to double its value.

31. So long as any such order of protection remains in force, the
wife shall be, and be deemed to have been, during such desertion of her
in the like position in all respects, with regard to PROPERTY and CON-
TRACTS, and suing and being sued, as she would be under this Act if she
obtained a degree of judicial separation.

VII.—Restitution of Conjugal Rights.

32. When either the husband or the wife has, without reasonable
excuse, withdrawn from the society of the other, either wife or husband
may apply, by petition to the District Court or the High Court, for resi-
tution of conjugal rights and the Court, on being satisfied of the truth of
the statements made in such petition, and that there is no legal ground
why the application should not be granted, may decree restitution of con-
jugal rights accordingly.

33. Nothing shall be pleaded in answer to a petition for restitution
of conjugal rights which would not be ground for a suit for judicial separa-
tion or for a decree of nullity of marriage.

VIII.—Damages and Costs.

34. Any husband may, either in a petition for dissolution of marriage
or for judicial separation, or in a petition to the District Court or the High
Court, limited to such object only, claim damages from any person on the
ground of his having committed ADULTERY with the wife of such
petitioner.

Such petition shall be served on the alleged adulterer and the wife,
unless the Court dispenses with such service, or directs some other service
to be substituted.

The damages to be recovered on any such petition shall be ascertained
by the said Court, although the respondents or either of them may not
appear.
After the decision has been given, the Court may direct in what manner such damages shall be paid or applied.

35. Whenever in any petition presented by a husband the alleged adulterer has been made a co-respondent, and the adultery has been established, the Court may order the co-respondent to pay the whole or any part of the costs of the proceedings:

Provided that the co-respondent shall not be ordered to pay the petitioner's costs.

(1) If the respondent was at the time of the adultery living apart from her husband and leading the life of a prostitute, or

(2) If the co-respondent had not at the time of the adultery reason to believe the respondent to be a married woman.

Whenever any application is made under Section seventeen, the Court if it thinks that the applicant had no grounds or no sufficient grounds for intervening, may order him to pay the whole or any part of the costs occasioned by the application.

IX.—Alimony.

36. In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection, the wife may present a petition for ALIMONY PENDING the suit.

Such petition shall be served on the husband; and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the suit as it may deem just:

Provided that alimony pending the suit shall in no case exceed one-fifth of the husband's average net income for the three years next preceding the date of the order, and shall continue, in case of a decree for dissolution of marriage or nullity of marriage, until the decree is made absolute or is confirmed, as the case may be.

37. The High Court may, if it think fit, on any decree absolute declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,

and the District Judge may, if he thinks fit, on the confirmation of any decree of his declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,

order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any) to the ability of the husband, and to the conduct of the parties, it thinks reasonable, and for that purpose may cause a proper instrument to be executed by all necessary parties.

In every such case the Court may make an order on the husband for
payment to the wife of such monthly or weekly sums for her MAINTENANCE and support as the Court may think reasonable:

Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part, as to the Court seems fit.

38. In all cases in which the Court makes any decree or order for ALIMONY, it may direct the same to be PAID EITHER TO the WIFE herself, OR to any TRUSTEE on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court seem expedient, and may from time to time appoint a new trustee, if it appears to the Court expedient so to do.

X.—Settlement.

39. Whenever the Court pronounces a decree of dissolution of marriage or judicial separation for ADULTERY of the WIFE, if it is made to appear to the Court that the wife is entitled to any PROPERTY, the Court may, if it think fit, order such settlement as it thinks reasonable to be made of such property or any part thereof, for the benefit of the husband, or of the children of the marriage, or of both.

Any instrument executed pursuant to any order of the Court at the time of or after the pronouncing of a decree of dissolution of marriage or judicial separation, shall be deemed valid, notwithstanding the existence of the disability of coverture at the time of the execution thereof.

The Court may direct that the whole or any part of the damages recovered under Section thirty-four shall be settled for the benefit of the children of the marriage, or as a provision for the MAINTENANCE OF the WIFE.

40. The High Court, after a decree absolute for dissolution of marriage, or a decree of nullity of marriage,

and the District Court after its decree for dissolution of marriage or of nullity of marriage has been confirmed,

may inquire into the existence of ANTE-Nuptial or POST-Nuptial Settlements made on the parties whose marriage is the subject of the decree, and may make such orders with reference to the application of the whole or a portion of the property settled, whether for the benefit of the husband or the wife, or of the children (if any) of the marriage, or of both children and parents, as to the Court seems fit:

Provided that the Court shall not make any order for the benefit of the parents or either of them at the expense of the children.
XI.—Custody of Children.

41. In any suit for obtaining a judicial separation the Court may from time to time, BEFORE making its DECREES, make such interim orders, and may make such provision in the decree, as it deems proper with respect to the CUSTODY, MAINTENANCE, and EDUCATION OF the MINOR CHILDREN, the marriage of whose parents is the subject of such suit, and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the said Court.

42. The Court, AFTER a DECREES of judicial separation, may upon application (by petition) for this purpose make, from time to time, all such ORDERS and provision with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of the decree, or for placing such children under the protection of the said Court as might have been made by such decree, or by interim orders in case the proceedings for obtaining such decree were still pending.

43. In any SUIT FOR obtaining a DISSOLUTION of marriage OR a decree of NULLITY of marriage instituted in, or removed to, a High Court, the Court may from time to time, before making its decree absolute, or its decree (as the case may be), make such interim orders, and may make such provision in the decree absolute or decree,

and in any such suit instituted in a District Court, the Court may from time to time before its decree is confirmed make such interim orders, and may make such provision on such confirmation,

as the High Court or District Court (as the case may be) deems proper with respect to the custody, maintenance, and education of the minor CHILDREN, the marriage of whose parents is the subject of the suit;

and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the Court.

44. The High Court AFTER a DECREES absolute for dissolution of marriage or a decree of nullity of marriage,

and the District Court after a decree for dissolution of marriage or of nullity of marriage has been confirmed,

may, upon application by petition for the purpose make from time to time all such ORDERS and provision, with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the said Court, as might have been made by such decree absolute or decree (as the case may be), or by such interim orders as aforesaid.

XII.—Procedure.

45. Subject to the provisions herein contained, all proceedings under this Act between party and party shall be regulated by the Code of CIVIL PROCEDURE.
46. The FORMS set forth in the schedule to this Act, with such variation as the circumstances of each case require, may be used for the respective purposes mentioned in such schedule.

47. Every PETITION under this Act for a decree of dissolution of marriage, or of nullity of marriage, or of judicial separation, shall STATE that there is not any collusion or connivance between the petitioner and the other party to the marriage.

The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in manner required by law for the verification of plaints, and may at the hearing be referred to as evidence.

48. When the husband or wife is a LUNATIC, or idiot, any suit under this Act (other than a suit for restitution of conjugal rights) may be brought on his or her behalf by the committee or other person entitled to his or her custody.

49. Where the petitioner is a MINOR, he or she shall sue by his or her next friend to be approved by the Court; and no petition presented by a minor under this Act shall be filed until the next friend has undertaken in writing to be answerable for costs.

Such undertaking shall be filed in Court, and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit.

50. Every PETITION under this Act shall be SERVED on the party to be affected thereby, either within or without British India, in such manner as the High Court by general or special order from time to time directs:

Provided that the Court may dispense with such service altogether in case it seems necessary or expedient so to do.

51. The WITNESSES in all proceedings before the Court, where their attendance can be had, shall be examined orally, and any party may offer himself or herself as a witness, and shall be examined, and may be cross-examined and re-examined, like any other witnesses:

Provided that the parties shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, or by direction of the Court, be subject to be cross-examined by or on behalf of the opposite party orally, and after such cross-examination may be re-examined orally as aforesaid by or on behalf of the party by whom such affidavit was filed.

52. On any petition presented by a wife, praying that her marriage may be dissolved by reason of her husband having been guilty of adultery coupled with cruelty, or of adultery coupled with desertion, without reasonable excuse, the HUSBAND AND WIFE respectively shall be COMPETENT and compellable to give evidence of or relating to such cruelty or desertion.

* For the rest of sections 47 and 49 see Act 7 of 1870, Repealing Enactments p. 71.
53. The whole or any part of any proceeding under this Act may be heard, if the Court thinks fit, with CLOSED DOORS.

54. The Court may from time to time ADJOURN the hearing of any petition under this Act, and may require further evidence thereon if it sees fit so to do.

55. All decrees and orders made by the Court in any suit or proceeding under this Act shall be enforced and may be appealed from in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced, and may be appealed from under the laws, rules, and orders for the time being in force:

Provided that there shall be no APPEAL from a decree of a District Judge for dissolution of marriage or of nullity of marriage: nor from the order of the High Court confirming or refusing to confirm such decree.

Provided also that there shall be no appeal on the subject of costs only.

56. Any person may APPEAL TO HER MAJESTY in Council from any decree (other than a decree nisi) or order under this Act of a High Court made on appeal or otherwise,

and from any decree (other than a decree nisi) or order made in the exercise of original jurisdiction by Judges of a High Court, or of any Division Court from which an appeal shall not lie to the High Court,

when the High Court declares that the case is a fit one for appeal to Her Majesty in Council.

XIII.—Re-marriage.

57. When six months after the date of an order of a High Court confirming the decree for a dissolution of marriage made by a District Judge have expired,

or when six months after the date of any decree of a High Court dissolving a marriage have expired, and no appeal has been presented against such decree to the High Court in its appellate jurisdiction,

or when any such appeal has been dismissed,

or when in the result of any such appeal any marriage is declared to be dissolved,

but not sooner, it shall be LAWFUL for the respective parties to the marriage TO MARRY AGAIN, as if the prior marriage had been dissolved by death:

Provided that no appeal to Her Majesty in Council has been presented against any such order or decree.

When such appeal has been dismissed, or when in the result thereof the marriage is declared to be dissolved, but not sooner, it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been dissolved by death.
58. NO CLERGYMAN in Holy Orders of the United Church of England and Ireland shall be COMPELLED TO SOLEMNIZE the MARRIAGE of any person whose former marriage has been dissolved on the ground of his or her adultery, or shall be liable to any suit, penalty, or censure for solemnizing or refusing to solemnize the marriage of any such person.

59. When any Minister of any Church or Chapel of the said United Church refuses to perform such marriage-service between any persons who but for such refusal would be entitled to have the same service performed in such Church or Chapel, such Minister SHALL PERMIT any OTHER MINISTER in Holy Orders of the said Church, entitled to officiate within the diocese in which such Church or Chapel is situate, TO PERFORM such MARRIAGE-SERVICE in such Church or Chapel.

XIV.—Miscellaneous.

60. Every decree for judicial separation or order to protect property obtained by a wife under this Act shall, until reversed or discharged, be deemed valid, so far as necessary for the protection of any PERSON DEALING WITH the WIFE.

No reversal, discharge, or variation of such decree or order shall affect any rights or remedies which any person would otherwise have had in respect of any contracts or acts of the wife entered into or done between the dates of such decree or order, and of the reversal, discharge, or variation thereof.

All persons who in reliance on any such decree or order make any PAYMENT TO, or permit any transfer or act to be made or done by, the WIFE who has obtained the same shall, notwithstanding such decree or order may then have been reversed, discharged, or varied, or the separation of the wife from her husband may have ceased, or at sometime since the making of the decree or order been discontinued, be protected and INDEMNIFIED as if, at the time of such payment, transfer, or other act, such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued,

unless, at the time of the payment, transfer or other act, such persons had notice of the reversal, discharge, or variation of the decree or order, or of the cessation or discontinuance of the separation.

61. After this Act comes into operation, NO person competent to present a petition under Sections two and ten shall maintain a SUIT FOR CRIMINAL CONVERSATION with his wife.

62. The High Court shall make such RULES under this Act as it may from time to time consider expedient, and may from time to time alter and add to the same.

Provided that such rules, alterations, and additions are consistent with the provisions of this Act and the Code of Civil Procedure.

All such rules, alterations, and additions shall be published in the local official Gazette.
No. 1.—Petition by husband for a dissolution of marriage with damages against co-respondent, by reason of adultery.

(See Sections 10 and 34.)

In the (High) Court of

To the Honourable Mr. Justice (or To the Judge of ).

The day of

The petition of A. B. of

SHOWETH,

1. That your petitioner was on the day of one thousand eight hundred and , lawfully married to C. B., then C. D., spinster at . (a)

2. That from his said marriage, your petitioner lived and cohabited with his said wife at and at , and lastly at , in , and that your petitioner and his said wife have had issue of their said marriage, , children, of whom two sons only survive, aged respectively twelve and fourteen years.

3. That during the three years immediately preceding the day of one thousand eight hundred and , X. Y. was constantly, with few exceptions, residing in the house of your petitioner at aforesaid, and that on divers occasions during the said period, the dates of which are unknown to your petitioner, the said C. B. in your petitioner’s said house committed adultery with the said X. Y.

4. That no collusion or connivance exists between me and my said wife for the purpose of obtaining a dissolution of our said marriage or for any other purpose.

Your petitioner, therefore, prays that this (Honourable) Court will decree a dissolution of the said marriage, and that the said X. Y. do pay the sum of Rs. 5,000 as damages by reason of his having committed adultery with your petitioner’s said wife, such damages to be paid to your petitioner, or otherwise paid or applied as to this (Honourable) Court seems fit.

(Signed) A. B. (b)

Form of Verification.

I, A. B., the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(a) If the marriage was solemnised out of India the adultery must be shown to have been committed in India.

(b) The petition must be signed by the petitioner.

o 26
No. 2.—Respondent’s statement in answer to No. 1.

In the Court of the day of
Between A. B., petitioner,
C. B., respondent, and
X. Y., co-respondent.

C. B., the respondent, by D. E. her attorney [or vakil] in answer to the petition of A. B. says that she denies that she has on divers or any occasions committed adultery with X. Y., as alleged in the third paragraph of the said petition.

Wherefore the respondent prays that this (Honourable) Court will reject the said petition.

C. B.

No. 3.—Co-Respondent’s statement in answer to No. 1.

In the (High) Court of

The day of
Between A. B., petitioner,
C. B., respondent, and
X. Y., co-respondent.

X. Y., the co-respondent, in answer to the petition filed in this cause saith that he denies that he committed adultery with the said C. B., as alleged in the said petition.

Wherefore the said X. Y. prays that this (Honourable) Court will reject the prayer of the said petitioner, and order him to pay the costs of and incident to the said petition.

X. Y.

No. 4.—Petition for Decree of Nullity of Marriage.

(See Section 18.)

In the (High) Court of
To the Honourable Mr. Justice [or To the Judge of ]

The day of 186

The petition of A. B., falsely called A. D.,

Sheweth,

1. That on the day of , one thousand eight hundred and , your petitioner, then a spinster, eighteen years of age, was
Act 4 of 1869.  Civil Code.  Chapter IV.

married in fact, though not in law, to C. D., then a bachelor of about thirty years of age at [some place in India].

2. That from the said day of one thousand eight hundred and , until the month of , one thousand eight hundred and , your petitioner lived and cohabited with the said C. D., at the divers places, and particularly at , aforesaid.

3. That the said C. D. has never consummated the said pretended marriage by carnal copulation.

4. That at the time of the celebration of your petitioner's said pretended marriage, the said C. D. was, by reason of his impotency or malformation, legally incompetent to enter into the contract of marriage.

5. That there is no collusion or connivance between her and the said C. D. with respect to the subject of this suit.

Your petitioner, therefore, prays that this (Honourable) Court will declare that the said marriage is null and void.

Form of Verification: See No. 1.

No. 5.—Petition by wife for judicial separation on the ground of her husband's adultery.

(See Section 22.)

In the (High) Court of

To the Honourable Mr. Justice [or To the Judge of ].

The day of 186.

The petition of C. B., of , the wife of A. B.

SOWETH,

1. That on the day of one thousand eight hundred and sixty , your petitioner, then C. D., was lawfully married to A. B. at the Church of , in the

2. That after her said marriage, your petitioner cohabited with the said A. B. and at , and that your petitioner and her said husband have issue living of their said marriage, three children, to wit, &c., &c. (a)

3. That on divers occasions in or about the months of August, September and October, one thousand eight hundred and sixty eight, the said A. B., at aforesaid, committed adultery with E. F., who was then living in the service of the said A. B. and your petitioner at their said residence aforesaid.

4. That on divers occasions in the months of October, November and December, one thousand eight hundred and sixty eight the said A. B., at aforesaid committed adultery with G. H., who was then living in the service of the said A. B. and your petitioner at their said residence place aforesaid.

(a) State the respective ages of the children.
5. That no collusion or connivance exists between your petitioner and the said
A. B. with respect to the subject of the present suit.

Your petitioner therefore prays that this (Honourable) Court will
decree a judicial separation to your petitioner from her said
husband by reason of his aforesaid adultery.

(Signed) C. B. (a)

Form of Verification: See No. 1.

No. 6.—Statement in answer to No. 5.

In the (High) Court of

B. against B.

The day of 186 .

The respondent, A. B., by W. Y., his attorney [or vakil] saith—

1. That he denies that he committed adultery with E. F., as in the 3rd para-
graph of the petition alleged.

2. That the petitioner condoned the said adultery with E. F., if any.

3. That he denies that he committed adultery with G. H., as in the 4th para-
graph of the petition alleged.

4. That the petitioner condoned the said adultery with G. H., if any,

Wherefore this respondent prays that this (Honourable) Court will
reject the prayer of the said petition.

No. 7.—Statement in reply to No. 6.

In the (High) Court of

B. against B.

The day of 186 .

The petitioner C. B. by her attorney [or vakil] says—

1. That she denies that she condoned the said adultery of the respondent with
E. F., as in the 2nd paragraph of the statement in answer alleged.

2. That even if she had condoned the said adultery the same has been revived
by the subsequent adultery of the respondent with G. H., as set forth in the 4th para-
graph of the petition.

(a) The petition must be signed by the petitioner.
No. 8.—Petition for a Judicial Separation by reason of Cruelty.

(See Section 22.)

In the (High) Court of

To the Honourable Mr. Justice [or To the Judge of ].

The day 186.

The petition of A. B. (wife of C. B.) of

SOWETH,

1. That on the day of , one thousand eight hundred and , your petitioner, then A. D., spinster, was lawfully married to C. B. at

2. That from her said marriage your petitioner lived and cohabited with her said husband at until the day of , one thousand eight hundred and , when your petitioner separated from her said husband as hereinafter more particularly mentioned, and that your petitioner and her said husband have had no issue of their said marriage.

3. That from and shortly after your petitioner's said marriage, the said C. B. habitually conducted himself towards your petitioner with great harshness and cruelty, frequently abusing her in the coarsest and most insulting language, and beating her with his fists, with a cane, or with some other weapon.

4. That on an evening in or about the month of , one thousand eight hundred and , the said C. B. in the highway and opposite to the house in which your petitioner and the said C. B. were then residing at aforesaid, endeavoured to knock your petitioner down, and was only prevented from so doing by the interference of F. D., your petitioner's brother.

5. That subsequently on the same evening, the said C. B. in his said house at aforesaid, struck your petitioner with his clenched fist a violent blow on her face.

6. That on one Friday night in the month of , one thousand eight hundred and , the said C. B., in , without provocation, threw a knife at your petitioner, thereby inflicting a severe wound on her right hand.

7. That on the afternoon of the day of , one thousand eight hundred and , your petitioner, by reason of the great and continued cruelty practised towards her by her said husband, with assistance withdrew from the house of her said husband to the house of her father at , that from and after the said day of , one thousand eight hundred and , your petitioner hath lived separate and apart from her said husband, and hath never returned to his house or to cohabitation with him.

8. That there is no collusion or connivance between your petitioner and her said husband with respect to the subject of the present suit.

Your petitioner, therefore, prays that this (Honourable) Court will decree a judicial separation between your petitioner and the said C. B., and also order that the said C. B. do pay the costs of and incident to these proceedings.

(Signed) A. B.

Form of Verification: See No. 1.
No. 9.—Statement in answer to No. 8.

In the (High) Court of

The day of

Between A. B., petitioner, and

C. B., respondent.

C. B., the respondent, in answer to the petition filed in this cause by W. J. his attorney [or vakil], saith that he denies that he has been guilty of cruelty towards the said A. B., as alleged in the said petition.

No. 10.—Petition for reversal of Decree of Separation.

(See Section 24.)

In the (High) Court of

To the Honourable Mr. Justice [or To the Judge of ]

The day of 186

The petition of A. B. of

SHOWETH,

1. That your petitioner was on the day of lawfully married to

2. That on the day of , this (Honourable) Court at the petition of , pronounced a decree affecting the petitioner to the effect following, to wit,—

[Here set out the Decree.]

3. That such decree was obtained in the absence of your petitioner, who was then residing at

[State facts tending to show that the petitioner did not know of the proceedings; and, further, that had he known, he might have offered a sufficient defence.]

or

That there was reasonable ground for your petitioner leaving his said wife, for that his said wife

[Here state any legal grounds justifying the petitioner's separation from his wife.]

Your petitioner, therefore, prays that this (Honourable) Court will reverse the said decree.

Form of Verification: See No. 1.
No. 11.—Form of Petition for protection-order.

(See Section 27.)

In the (High) Court of

To the Honourable Mr. Justice [or To the Judge of ].

The day of 186

The petition of C. B., of
the wife of A. B.,

SAYETH,

That on the day of she was lawfully married to A. B., at

That she lived and cohabited with the said A. B. for years at , and also at , and hath had children, issue of her said marriage, of whom are now living with the applicant, and wholly dependent upon her earnings.

That on or about , the said A. B., without any reasonable cause, deserted the applicant, and hath ever since remained separate and apart from her.

That since the desertion of her said husband, the applicant hath maintained herself by her own industry [or on her own property, as the case may be,], and hath thereby and otherwise acquired certain property, consisting of [here state generally the nature of the property].

Wherefore she prays an order for the protection of her earnings and property acquired since the said day of , from the said A. B., and from all creditors and persons claiming under him.

No. 12.—Petition for Alimony pending the suit.

(See Section 86).

In the (High) Court of

B. against B.

To the Honourable Mr. Justice [or To the Judge of ].

The day of 186 .

The petition of C. B., the lawful wife of A. B.,

SAYETH,

1. That the said A. B. has for some years carried on the business of at , and from such business derives the net annual income of from, Rs. 4,000 to Rs. 5,000.

2. That the said A. B. is possessed of plate, furniture, linen, and other effects, at his said house, aforesaid, all of which he acquired in right of your petitioner as his wife, or purchased with money he acquired through her, of the value of Rs. 10,000.

3. That the said A. B. is entitled, under the will of his father, subject to the life
interest of his mother therein, to property of the value of Rs. 5,000 or some other considerable amount (a).

Your petitioner, therefore, prays that this (Honourable) Court will decree such sum or sums of money by way of alimony, pending the suit, as to this (Honourable) Court may seem meet.

(Signed) C. B.

Form of Verification: See No. 1.

No. 13.—Statement in answer to No. 12.

In the (High) Court of

B. against B.

A. B., of , the above-named respondent, in answer to the petition for alimony pending the suit of C. B., says—

1. In answer to the first paragraph of the said petition, I say that I have for the last three years carried on the business of , at and that from such business I have derived a net annual income of Rs. 900, but less than Rs. 1,000.

2. In answer to the 2nd paragraph of the said petition, I say that I am possessed of plate, furniture, linen, and other chattels and effects at my said house aforesaid, of the value of Rs. 7,000, but as I verily believe of no larger value. And I say that a portion of the said plate, furniture, and other chattels and effects of the value of Rs. 1,500, belonged to my said wife before our marriage, but the remaining portions thereof I have since purchased with my own moneys. And I say that, save as hereinbefore set forth, I am not possessed of the plate and other effects as alleged in the said paragraph in the said petition, and that I did not acquire the same as in the said petition also mentioned.

3. I admit that I am entitled under the will of my father, subject to the life interest of my mother therein, to property of the value of Rs. 5,000, that is to say, I shall be entitled under my said father's will, upon the death of my mother, to a legacy of Rs. 7,000, out of which I shall have to pay to my father's executors the sum of Rs. 2,000, the amount of a debt owing by me to his estate, and upon which debt I am now paying interest at the rate of 5 per cent. per annum.

4. And, in further answer to the said petition, I say that I have no income whatever except that derived from my aforesaid business, that such income, since my said wife left me, which she did on the day of last, has been considerably diminished, and that such diminution is likely to continue. And I say that out of my said income, I have to pay the annual sum of Rs. 100 for such interest as aforesaid to my late father's executors, and also to support myself and my two eldest children.

5. And, in further answer to the said petition, I say that when my wife left my dwelling-house on the day of last, she took with her, and has ever since withheld and still withholds from me, plate, watches, and other effects in the 2nd paragraph of this my answer mentioned, of the value of, as I verily believe, Rs. 800 at the least; and I also say that within five days of her departure from my house as aforesaid, my said wife received bills due to me from certain lodgers of mine amounting in the aggregate to Rs. , and that she has ever since withheld and still withholds from me the same sum.

(Signed) A. B.

(a) The petitioner should state her husband's income as accurately as possible.
No. 14.—Form of undertaking by minor's next friend to be answerable for Respondent's costs.

(See Section 49.)

In the (High) Court of

I, the undersigned A. B., of being the next friend of C. D., who is a minor, and who is desirous of filing a petition in this Court, under the Indian Divorce Act, against D. D. of hereby undertake to be responsible for the costs of the said D. D. in such suit and that if the said C. D. fail to pay to the said D. D. when and in such manner as the Court shall order all such costs of such suit as the Court shall direct him [or her] to pay to the said D. D., I will forthwith pay the same to the proper officer of this Court.

Dated this day of 186

(Signed) A. B.

Act No. XXI. of 1866.

Passed by the Governor-General of India in Council.

(Received the assent of the Governor-General on the 2nd April 1866).

An Act to Legalise, under certain circumstances, the dissolution of marriages of Native Converts to Christianity.

Whereas it is expedient to legalise, under certain circumstances, the dissolution of marriages of Native Converts to Christianity deserted or repudiated, on religious grounds, by their wives or husbands; It is enacted as follows:

1. This Act may be cited as "The Native Converts' Marriage Dissolution Act, 1866."

2. This Act shall commence and take effect on and from the first day of May 1866.

3. In this Act—

"NATIVE HUSBAND" shall mean a married man domiciled in British India, who shall have completed the age of sixteen years, and shall not be a Christian, a Muhammadan nor a Jew:

"NATIVE WIFE" shall mean a married woman domiciled in British India, who shall have completed the age of thirteen years, and shall not be a Christian, a Muhammadan nor a Jewess:

"NATIVE LAW" shall mean any law, or custom having the force of law, of any persons domiciled in British India other than Christians, Muhammadans and Jews:
“MONTH” and “YEAR” shall respectively mean month and year according to the British calendar:

“HIGH COURT” shall mean the highest Civil Court of appeal in any place to which this Act extends:

And unless there be something repugnant in the subject or context, words importing the singular NUMBER shall include the plural, and words importing the plural number shall include the singular.

4. If a Native Husband change his religion for Christianity, and if in consequence of such change his Native Wife, for the space of six continuous months, desert or repudiate him, he may sue her for CONJUGAL SOCIETY.

5. If a Native Wife change her religion for Christianity, and if in consequence of such change her Native Husband, for the space of six continuous months, desert or repudiate her, she may sue him for conjugal society.

6. If the respondent, at the time of commencement of such suit, reside within the local limits of the ordinary original civil jurisdiction of any of the High Courts of Judicature, the SUIT shall be commenced in such Court: otherwise it shall be commenced in the principal Civil Court of original jurisdiction of the District in which the defendant shall reside at the commencement of the suit.

7. The suit shall be commenced by a petition in the form in the first Schedule to this Act, or as near thereto as the circumstances of the case will allow. The statements made in the petition shall be verified by the petitioner in the manner required by law for the verification of plaints; and the petition* may be amended by permission of the Court.

8. A copy of the petition shall be served upon the respondent, and the Court shall thereupon issue a citation under the seal of the Court and signed by the Judge.

9. In ordinary cases the CITATION shall be in the form in the second Schedule to this Act, or as near thereto as the circumstances of the case will allow. But where the respondent is exempt by law from personal appearance in Court, or where the Judge shall so direct, the citation shall be in the form in the third Schedule to this Act, or as near thereto as the circumstances of the case will allow.

10. A copy of the citation sealed with the seal of the Court shall be served on the respondent; and the provisions of the Code of Civil Procedure as to the service and endorsement of summonses shall apply, mutatis mutandis, to citations under this Act.

11. If the respondent shall not obey such citation, and comply with every other requirement made upon her or him under the provisions of this Act, she or he shall be liable to punishment under Section 174 of the Indian Penal Code.

* The words ‘shall bear a stamp of two rupees, and’ were repealed by Act 7 of 1870, see Repealing Enactments page 70, and Civil Procedure Code page 104.
12. On the day fixed in the citation the petitioner shall appear in Court, and the following POINTS shall be PROVED:—

(1.) The identity of the parties:

(2.) The marriage between the petitioner and the respondent:

(3.) That the male party to the suit has completed the age of sixteen years, and that the female party to the suit has completed the age of thirteen years:

(4.) The desertion or repudiation of the petitioner by the respondent:

(5.) That such desertion or repudiation was in consequence of the petitioner’s change of religion;

(6.) And that such desertion or repudiation had continued for the six months immediately before the commencement of the suit.

13. The respondent, if such points be proved to the satisfaction of the Judge, shall thereupon be asked whether she or he refuses to cohabit with the petitioner, and, if so, what is the ground of such refusal. In ordinary cases such INTERROGATION and every other interrogation prescribed by this Act shall be made by the Judge, but when the respondent is exempt by law from personal appearance in Court, or when the Judge shall, in his discretion, excuse the respondent from such appearance, the interrogations shall be made by Commissioners acting under such Commission as hereinafter mentioned.

14. Every interrogation mentioned in this Act and made by the Judge may, at the discretion of the Judge, take place in open Court or in his private room. If any such interrogation take place in open Court, the Judge may, so long as it shall continue, exclude from the Court all such persons as he shall think fit to exclude.

15. If the respondent be a FEMALE, and in answer to the interrogatories of the Judge or Commissioners, as the case may be, shall REFUSE TO COHABIT with the petitioner, the Judge, if upon consideration of the respondent’s answers and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the petitioner’s change of religion, shall make an order ADJOURNING the case FOR A YEAR, and directing that, in the interim, the parties shall, at such place and time as he shall deem convenient, have an interview of such length as the Judge shall direct, and in the presence of such person or persons (who may be a female or females) as the Judge shall select, with the view of ascertaining whether or not the respondent freely and voluntarily persists in such refusal.

16. At the expiration of such adjournment the petitioner shall again appear in Court and shall prove that the said desertion or repudiation had continued up to the time last hereinbefore referred to; and if the points mentioned in the twelfth and this Section of this Act shall be proved to the satisfaction of the Judge, and if the respondent on being interrogated by the Judge or Commissioners, as the case may be, AGAIN REFUSE to cohabit with the petitioner, the respondent shall be taken to have
finally deserted or repudiated the petitioner, and the Judge shall, by a
decree under his hand and sealed with the seal of his Court, declare that
the MARRIAGE between the parties is DISSOLVED.

17. If the respondent be a MALE, and in answer to the interroga-
tories of the Judge or Commissioners, as the case may be, shall refuse to
cohabit with the petitioner, the Judge, if upon consideration of the res-
pondent's answers and of the facts which may have been proved by the
petitioner he shall be of opinion that the ground for such refusal is the
petitioner's change of religion, shall adjourn the case for a year. At the
expiration of such adjournment, the petitioner shall again appear in
Court; and if the respondent on being interrogated by the Judge or Com-
missoners, as the case may be, again refuse to cohabit with the petitioner,
the Judge shall thereupon pass such a decree as last aforesaid: Provided
that if the petitioner shall so desire (but not otherwise), the proceedings
in the suit shall, mutatis mutandis, be the same as in the case of a female
respondent.

18. Notwithstanding anything hereinbefore contained, if it shall
appear at any stage of the suit that both or either of the parties had NOT
ATTAINED PUBERTY at the date of their marriage, AND that such
MARRIAGE has NOT been CONSOMMATED; and if, in answer to the
interrogatories made pursuant to the thirteenth Section of this Act, the
respondent shall refuse to cohabit with the petitioner, and allege, as the
ground for such refusal, that the petitioner has changed his or her reli-
gion, the Judge shall thereupon pass such a decree as last aforesaid.

19. When any decree dissolving a marriage shall have been passed
under the provisions of this Act, it shall be as lawful for the respective
parties thereto to MARRY AGAIN as if the prior marriage had been dis-
solved by death, and the issue of any such re-marriage shall be legitimate,
any Native law to the contrary notwithstanding. Provided always that
no minister of religion shall be compelled to solemnize the marriage of
any person whose former marriage may have been dissolved under this
Act, or shall be liable to any suit or penalty for refusing to solemnize
the marriage of any such person.

20. In suits instituted under this Act, the Judge shall order a
COMMISSION to issue to such persons, whether males or females or both,
as he shall think fit, for the examination on interrogatories or otherwise
of any persons so exempt as aforesaid. The provisions of the Code of
Civil Procedure shall, so far as practicable, apply to Commissions issued
under this Section.

21. At any stage of a suit instituted under this Act, cohabitation as
man and wife shall be sufficient presumptive EVIDENCE OF the MAR-
RIAGE of the parties, and proof of the respondent's refusal or voluntary
neglect to cohabit with the petitioner, after his or her change of religion
and after knowledge thereof by the respondent, shall be sufficient EVI-
DENCE OF the respondent's DESERTION or repudiation of the peti-
tioner, and shall also be sufficient evidence that such desertion or repudia-
tion was in consequence of the petitioner's change of religion, unless
some other sufficient cause for such desertion or repudiation be proved
by the respondent.
22. The provisions of the Code of Civil PROCEDURE as to the summoning and examination of witnesses, shall apply in suits instituted under this Act.

23. If at any stage of the suit it be proved that the male party to the suit is or was at the institution thereof UNDER the AGE of sixteen years, or that the female party to the suit is or was at the same time under the age of thirteen years, OR that the petitioner and the respondent are COHABITING as man and wife, or if the Court is satisfied by the evidence adduced that the respondent is ready and willing so to cohabit with petitioner, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

24. If at any time within twelve months after a decree dismissing the suit upon any of the grounds mentioned in the last preceding Section, the respondent again desert or repudiate the petitioner upon the ground of his or her change of religion, the SUIT MAY BE REVIVED by summoning the respondent; and upon proof of the former decree and of such renewed repudiation or desertion, the suit shall re-commence at the stage at which it had arrived immediately before the passing of such decree; and, after the proofs, interrogations, interview and adjournment which may then be requisite under the provisions hereinbefore contained, the Judge shall pass a decree of the nature mentioned in the sixteenth Section of this Act.

25. If at any stage of the suit it be proved that the respondent has deserted or repudiated the petitioner solely or partly in consequence of the petitioner’s CRUELTY or ADULTERY, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal. A suit dismissed under this Section shall not be revived.

26. If the petitioner, being a male, has at the time of the institution of the suit TWO OR MORE WIVES, he shall make them all respondents; and if at any stage of the suit it be proved that he is cohabiting with one of such wives as man and wife, or that any one of such wives is ready and willing so to cohabit with him, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal. The provisions as to revival contained in the twenty-fourth Section of this Act shall apply, mutatis mutandis, to a suit dismissed under this Section.

27. A dissolution of marriage under the provisions of this Act shall not operate to deprive the respondent’s children (if any) by the petitioner of their status as legitimate CHILDREN, or of any right or interest which they would have had, according to the Native law applicable to them, by way of maintenance, inheritance, or otherwise, in case the marriage had not been so dissolved as aforesaid.

28. If a suit be commenced under the provisions of this Act, and it appear to the Court that the wife has not sufficient separate property to enable her to maintain herself suitably to her station in life and to prosecute or defend the suit, the Court may, pending the suit, order the husband to furnish the wife with sufficient funds to enable her to prosecute or defend the suit, and also for her MAINTENANCE pending the suit. If the suit be brought by a husband against a wife, the Court may by the
decree order the husband to make such allowance to his wife for her maintenance during the remainder of her life as the Court shall think just, and having regard to the condition and station in life of the parties. Any allowance so ordered shall cease from the time of any subsequent marriage of the wife.

29. No APPEAL shall lie against any order or decree made or passed by any Court in any suit instituted under this Act; but if, at any stage of the suit, the respondent shall allege by way of defence that the marriage between the parties has been dissolved by the conversion of the petitioner, and that consequently the petitioner is not a Native husband or a Native wife (as the case may be) within the meaning of this Act, the Judge, if he shall entertain any doubt as to the validity of such defence, shall either of his own motion or on the application of the respondent, state the case and submit it with his own opinion thereon for the decision of the High Court.

30. Every such CASE shall concisely set forth such facts and documents as may be necessary to enable the High Court to decide the questions raised thereby, and the suit shall be stayed until the judgment of such Court shall have been received as hereinafter provided.

31. Every such case shall be decided by at least three Judges of the High Court, if such Court be the High Court at any of the Presidency Towns; and the petitioner and respondent may appear and be heard in the High Court in person or by Advocate or Vakeel.

32. If the High Court shall not be satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the High Court may REFER the CASE BACK to the Judge by whom it was stated, to make such additions thereto or alterations therein as the High Court may direct in that behalf.

33. It shall be lawful for the High Court upon the hearing of any such case to decide the questions raised thereby, and to deliver its JUDGMENT thereon containing the grounds on which such decision is founded; and it shall send to the Judge by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Judge shall, on receiving the same, dispose of the case conformably to such judgment.

34. Nothing contained in this Act or in Acts Nos. XXV. of 1864 and V. of 1865 shall be taken to render invalid any marriage of a Native convert to Roman Catholicism if celebrated in accordance with the rules, ceremonies and customs of the ROMAN CATHOLIC Church; and no Clergyman of such Church shall be liable to any suit or penalty under the provisions of either of the two Acts last hereinbefore mentioned, for solemnizing any such marriage.

35. This ACT shall EXTEND TO all the territories that are or shall become vested in Her Majesty or Her successors by the Statute 21 & 22 Vic., cap. 106, entitled "An Act for the better Government of India," except the Settlement of Prince of Wales' Island, Singapore and Malacca. But it may be extended, with the consent of the Governor-General of India in Council, by order of the Governor of such Settlement to all or
any part of the territory subject to his Government; and he may, with such consent as aforesaid, determine the Court in which suits against residents in such territory shall be commenced under provisions of this Act. In case of such extension, if the Indian Penal Code shall not then apply to the said Settlement, the respondent's personal appearance pursuant to this Act may be enforced by such procedure as the said Governor, with such consent as aforesaid, shall provide in that behalf.

THE FIRST SCHEDULE.

Form of Petition.

To the Judge of the Civil Court of

The day of 18 .

The petition of A. B. of

Showeth,

1. That your petitioner was born on or about the day of 18 .

2. That your petitioner was on the day of in the year 18 lawfully married to C. D. at

3. That the said C. D. is now of the age of years or thereabouts.

4. That after his said marriage, your petitioner lived and cohabited with his said wife at aforesaid until the day of 18 .

5. That previous to the day of 18 your petitioner changed his religion for Christianity, and that on such day he was baptised and became a member of the Church of

6. That on the day of 18 [at least six months prior to the date of the petition], the said C. D. deserted your petitioner, and has not since resumed cohabitation with him.

7. That such desertion was in consequence of your petitioner's said change of religion.

8. That there is no collusion nor connivance between your petitioner and the said C. D.

Your petitioner therefore prays that your Honour will order the said C. D. to live and cohabit with your petitioner, or declare that your petitioner's marriage is dissolved.

A. B.

Form of verification.

I, A. B., the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.
THE SECOND SCHEDULE.

Form of Citation in ordinary cases.

To C. D. of

Whereas A. B. of claiming to have been lawfully married to you the said C. D. has filed his [or her] petition against you in the Civil Court of alleging that you the said C. D. have deserted him [or her] for six months in consequence of his [or her] having changed his [or her] religion for Christianity, and praying that, unless you consent to live and cohabit with him [or her], it may be declared that his [or her] marriage is dissolved: Now this is to command you that, at the expiration of days [at least one month] from the date of the service of this on you, you do appear in the said Court then and there to make answer to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you.

And take notice that in default of your so appearing, you will be liable to punishment under Section 174 of the Indian Penal Code.

Dated the day of 18 (Signed) E. F.
Judge of the Civil Court of

Indorsement to be made after service.

This citation was duly served by G. H. on the within named C. D. of at 18 (Signed) G. H.

THE THIRD SCHEDULE.

Form of Citation in case of respondent exempt from appearance in Court.

To C. D. of

Whereas A. B. of claiming to have been lawfully married to you the said C. D. has filed his [or her] petition against you in the Civil Court of alleging that you the said C. D. have deserted him [or her] for six months in consequence of his [or her] having changed his [or her] religion for Christianity, and praying that, unless you consent to cohabit with him [or her], it may be declared that his [or her] marriage is dissolved. Now this is to command you that, at the expiration of days [at least one month] from the service of this on you, you do hold yourself in readiness to answer and do answer such interrogatories as may be put to you by Commissioners duly authorised in that behalf under a Commission issued by this Court, in reference to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you.

And take notice that in default of your so holding yourself in readiness and answering such interrogatories, you will be liable to punishment under Section 174 of the Indian Penal Code.

Dated the day of 18 (Signed) E. F.
Judge of the Civil Court of

Indorsement to be made after service.

This citation was duly served by G. H. on the within named C. D. of at 18 (Signed) G. H.
HINDU LAW.

DEFINITION.

Marriage is of three kinds, namely, for love, for children and for the accomplishment of religious duties. Marriage for children is also of two kinds, namely, for the sake of immortality, and for the satisfaction of desire.—MitaKhara, Book I., verse 56.

Let him not cease to perform day by day, according to the preceding rules, the five great sacraments; and, having taken a lawful consort, let him dwell in his house during the second period of his life.—Manu V., 169.

Then only is a man perfect when he consists of three persons united—his wife, himself and his son, and thus have learned Brahmins announced this maxim: 'The husband is even one person with the wife for all domestic and religious not for all civil purposes'.—Manu X., 45.

PARTIES TO MARRIAGE.

In the disposal of a girl the father, the paternal grandfather, the brother, a kinsman or the natural mother shall be consulted in the order here specified, upon the death of the first the right of giving away the damsel devolves on each of the others successively provided they be of sound understanding.—Yajnaswalya. (Dig. V., 185.)

If there be no persons competent to give her in marriage let the damsel herself choose a suitable bridegroom.—Yajnaswalya. (Dig. IV., 18.)

A woman may neither be given nor accepted against her own consent. —Catayana. (Dig. IV., 144.)

He who makes a marriage contract with the connubial fire, while his elder brother continues unmarried is called a Perivetttri, and the elder brother a Perivetttri.—Manu III., 171.

The Perivetttri, the Perivetttri, the damsel thus wedded, the giver of her in wedlock, and fifthly, the performer of the nuptial sacrifice, all sink to a region of torment.—Manu III., 172.

See also Manu III. 154, 160, 161 and 170 which are to the same effect.

To an excellent and handsome youth of the same class let every man give his daughter in marriage: even though she have not attained her age of eight years.—Manu IX., 88.

Three years let a damsel wait though she be marriageable, but after that term let her choose for herself a bridegroom of equal rank.—Manu IX., 90.

A man aged thirty years may marry a girl of twelve if he find one dear to his heart or a man of twenty-four years a damsel of eight, but if he finish his studentship earlier, and the duties of his next order would otherwise be impeded, let him marry immediately.—Manu IX., 94.
Before her breasts are prominent a girl should be given in marriage, both he who gives a damsel in marriage after her menses have appeared and he who receives such a damsel sink to a region of torment, and the father, paternal grandfather and great grandfather of each are born again in ordure therefore should a damsel be given in marriage before her menses appear.—Faithinasi. (Dig. IV., 17.)

If a damsel yet unmarried arrive at puberty in the house of her father he is guilty of infanticide by detaining her at a time when she might have been a mother and the damsel is held degraded to the servile class.—Cattayanã. (Dig. V., 126.)

A man aged thirty may marry a girl of sixteen whose seasons have not commenced.—Vasishtha. (Dig. V., 338.)

The discipline of a student in the Vedas may be continued for thirty-six years in the house of his preceptor or for half that time or for a quarter of it or until he perfectly comprehend them.—Manu III., 1.

A student whose rules have not been violated may assume the order of a married man after he has read in succession a sacha or branch from each of the three, or from two or from any one of them.—Manu III., 2.

As for the text which says that twice born men may marry a Sudra wife, I am not of that opinion since the man himself is born again in her.—Yajnyaawalcya, Book I., verse 56.

Three wives in the order of the Castes, two and one, in succession are (allowed) to Brahmans, Kabatriyas and Vaisyas. A Sudra can marry one of his own caste only.—Yajnyaawalcya, Book I., verse 57.

There are numerous texts in Hindu law relating to the right of Brahmans and others to marry persons of lower castes than themselves, except for their first wives. See for example Manu III., 13, 14, 15, 16, 17, 18, 19. Mitakshara, Book I., verses 56 & 57, &c.

It is unnecessary to quote them here as they are obsolete in practice and they have been virtually repealed by the following text.

The marriage of twice born men with damsels not of the same class, the slaughter in a religious war of Brahmans who are assailants with intent to kill, these parts of ancient law were abrogated by wise legislators as the cases arose at the beginning of the Cali age with an intent of securing mankind from evil.—Aditya Purana. (Dig. V., 173.)

Let the bachelor (Brahmachari) who has not broken the rules of his order, marry a woman, endowed with marks of excellence, one not (given) to another before (Ananyapurvikam) who is beautiful, not a Sapinda and younger than himself.—Yajnyaawalcya, Book I., verse 52.

'A woman,' for the exclusion of a eunuch, her womanhood must be examined.

'Ananyapurvikam,' or one who has not been taken by another man in marriage, nor been enjoyed by another.

'Not a Sapinda.' The word Sapinda is derived from Saman one, and Pinda body. Sapindasip therefore arises from RELATIONSHIP to one
body. Thus a son is of the same Pinda with his father by relationship with the body of the father. So also with the paternal grandfather, &c. by relationship to the same body through the father. So with his mother by relationship to the body of the mother. So also with the maternal grandfather, &c. through the mother. So also with the mother’s sister and mother’s brother, &c. by their relationship to one body. So also with the father’s brother and father’s sister, &c. So the wife is a Sapinda of the husband from their being connected in body. So the brother’s wives are Sapinda to each other by being connected in body with those who are descended from one body. Thus wherever the word Sapinda is used it is to be understood that a relationship to one body is meant either directly or by succession, hence the children of the mother are not Sapinda of the brother’s sons, &c. as there is no relationship of body.—Mitakshara, Book I., verse 52.

One not diseased, one who has brothers, one born of a man who is not of the same lineage (Arsha) or of the same Gotra, and one who is more than five degrees removed on the mother’s side and more than seven on the father’s side.—Yajnavalciya, Book I., verse 53.

‘Not diseased,’ i. e., not affected by an incurable disease.

‘Having brothers,’ i. e., from fear of her being made an appointed daughter.

‘Arsha.’ This word is derived from Rishi. It means Pravara (family.)

Gautama also says that marriage should be made with one not of the same Pravara. Manu also states that she who is married must not be a Sapinda of the mother nor of the same Gotra with the father. According to some she must not be of the same Gotra even with the mother. In the volume on penance too it is declared that he who marries the daughter of his mother’s brother or one of the same Gotra with his mother or even one of the same Pravara must undergo the Chandrayana penance. Sapindas here include the daughter of the father’s sister and of the mother’s sister. Sagotras include those of the same Gotra, that is those born of persons who are not Sapindas and of different parents. Pravara includes Sapindas and Sagotras. The rule that a Sapinda shall not be married applies to all castes; Sapindaship exists among them all. The rule that one of the same Arsha or Gotra shall not be married applies to the three castes. Although Kabhatiyas and Vaisyas have no Gotra and no Pravara of their own, yet the rule must be understood to apply to the Gotra and Pravara of their family priests (Purohit). It is stated by Aswalyana also that one must be chosen of the Arsha of the Yejman. Marriage cannot take place with one who is a Sapinda or a Sagotra, and although marriage may take place with one who is diseased, it appears contrary (to the Sastras). In treating of Sapindaship it has been said that Sapindaship arises from the relationship to one body either directly or by succession. As this however is the case with every person everywhere throughout the world, and that is more than is intended, the author adds: ‘More than five degrees removed on the mother’s side and more than seven on the father’s side.’ Hence, though the word Sapinda applies everywhere, the rule is limited. The father and other ascendants are six Sapindas, the sons and other descendants are also six and the person himself is the seventh. It is to
be understood always that he from whom the descent is calculated is to be included in counting the seven. So likewise counting her father, her grandfather, &c. the man who comes fifth beginning with the mother is considered five degrees removed from the mother and so also beginning with the father, counting his father, &c. the man who comes seventh is seven degrees removed on the father's side. From the marriage of two sisters to (two brothers) of a sister to her brother and of the daughter of the brother to the maternal uncle arose the division of races. Vasishtha says (one should marry) one more than five degrees removed from the mother and seven from the father. Paithinasi says three from the mother and five from the father. This is in favour of the modern prohibition and not for the marriage taking place, so that it is in accordance with all the Smritis. This rule applies to those who are of the same caste. With reference to those who are of different castes there is a special rule which is thus stated by Shankha: 

'if many persons be born from one, or in different soils, or of different women these are Sapindas. Of those who celebrate their mourning separately there is Sapindaship among three persons.

'Born from one,' i.e., born from a Brahman, &c.

'In different soils,' i.e., from women of different castes.

'Of different women,' i.e., from different women in one caste.—Mitakshara, Book I., verse 53.

She who is descended from his paternal or maternal ancestors within the sixth degree, and who is not known by her family name to be of the same primitive stock with his father or mother is eligible by a twice born man for nuptials and holy union.—Manu III., 5.

Her who has no brother or whose father is not well known let no sensible man espouse through fear lest in the former case her father should take her first son as his own to perform his obsequies or in the second case lest an illicit marriage should be contracted.—Manu III., 11.

Now the relation of Sapindas or men connected by the funeral cake ceases with the seventh person, or in the sixth degree of ascent or descent, and that of Samanodasas, or those connected by an equal obligation of water ends only when their births and family names are no longer known.—Manu V., 60.

He, who has wasted his manly strength with sisters by the same womb, with the wives of his friend or of his son, with girls under the age of puberty, or with women of the lowest classes, must perform the penance ordained for defiling the bed of a preceptor.—Manu XI., 171.

He who has carnally known the daughter of his paternal aunt, who is almost equal to a sister, or the daughter of his maternal aunt, or the daughter of his maternal uncle, who is a near kinsman, must perform the Chandrayana or Lunar penance.—Manu XI., 172.

No man of sense would take one of those three as his wife: they shall not be taken in marriage by reason of their consanguinity; and he, who marries any one of them, falls deep into sin.—Manu XI., 173.
THE CEREMONY OF MARRIAGE.

The nuptial texts are a certain rule in regard to wedlock and the bridal contract is known by the learned to be complete and irrevocable on the seventh step of the married pair hand-in-hand after these texts have been pronounced.—Manu VIII., 227.

The recitation of holy texts, and the sacrifice ordained by the lord of creatures, are used in marriages for the sake of procuring good fortune to brides; but the first gift, or the troth plighted, by the husband, is the primary cause and origin of marital dominion.—Manu V., 152.

The gift of daughters in marriage by the sacerdotal class, is most approved, when they previously have poured water into the hands of the bridegroom; but the ceremonies of the other classes may be performed according to their several fancies.—Manu 35.

Neither by water poured on his hands nor by verbal promise is a man acknowledged as husband of a damsel, the marital contract is complete after the ceremony of joining hands on the seventh step of the married pair.—Yama. (Dig. IV., 175.)

Now learn compendiously the eight forms of the nuptial ceremony, used by the four classes, some good and some bad in this world, and in the next.—Manu III, 20.

The ceremony of Brahma, of the Devas, of the Rishis, of the Prajapatis, of the Asuras, of the Gandharvas, and of the Rakshasas: the eighth and the basest is that of the Pisachas.—Manu III, 21.

Which of them is permitted by law to each class and what are the good and bad properties of each ceremony, all this I will fully declare to you, together with the qualities, good and bad, of the offspring.—Manu III, 22.

Let mankind know that the six first in direct order are by some held valid in the case of a priest; the four last, in that of a warrior; and the same four, except the Rakshasa marriage, in the cases of a merchant and a man of the servile class.—Manu III, 23.

Some consider the four first only as approved in the case of a priest; one, that of Rakshasa, as peculiar to a soldier; and that of Asuras, to a mercantile and a servile man.—Manu III, 24.

But in this code, three of the five last are held legal, and two illegal: the ceremonies of Pisachas and Asuras must never be performed.—Manu III, 25.

For a military man the beforementioned marriages of Gandharvas and Rakshasas, whether separate or mixed, as when a girl is made captive by her lover, after a victory over her kinsmen, are permitted by law.—Manu III, 26.

The gift of a daughter clothed only with a single robe, to a man learned in the Veda, whom her father voluntarily invites, and respectfully receives, is the nuptial rite called Brahma.—Manu III, 27.

The rite which sages call Daiva, is the gift of a daughter, whom her father has decked in gay attire, when the sacrifice is already begun, to the officiating priest, who performs the act of religion.—Manu III, 28.

When the father gives his daughter away, after having received from the bridegroom one pair of kine, or two pairs, for use prescribed by law, that marriage is termed Arahara.—Manu III, 29.
MARRIAGE—(Hindus).

The nuptial rite called Prajapatya, is when the father gives away his daughter, with due honor, saying distinctly, "May both of you perform together your civil and religious duties!"—Manu III., 30.

When the bridegroom, having given as much wealth as he can afford to the father and paternal kinsman, and to the damsel herself, takes her voluntarily as his bride, that marriage is named Asura.—Manu III., 31.

The reciprocal connexion of a youth and a damsel, with mutual desire, is the marriage denominated Gandharvya, contracted for the purpose of amorous embraces, and proceeding from sensual inclination.—Manu III., 32.

The seizure of a maiden by force from her house, while she weeps and calls for assistance, after her kinsmen and friends have been slain in battle, or wounded, and their houses broken open, is the marriage styled Rasahasa.—Manu III., 33.

When the lover secretly embraces the damsel, either sleeping or flushed with strong liquor, or disordered in her intellect, that sinful marriage, called Paisachya, is the eighth and the basest.—Manu III., 34.

Among these nuptial rights, what quality is ascribed by Manu to each, hear now ye Brahmas, hear it all from me, who fully declare it.—Manu III., 36.

The son of a Brahmi, or wife by the first ceremony, redeems from sin, if he performs virtuous acts, ten ancestors, ten descendants, and himself the twenty-first person.—Manu III., 37.

A son, born of a wife by the Daiwa nuptials, redeems seven and seven in higher and lower degrees; of a wife by the Arsha, three and three; of a wife by the Prajapatya, six and six.—Manu III., 38.

By four marriages, the Brahma and so forth, in direct order, are born sons illumined by the Veda, learned men, beloved by the learned.—Manu III., 39.

Adorned with beauty, and with the quality of goodness, wealthy, famed, amply gratified with lawful enjoyments, performing all duties, and living a hundred years.—Manu III., 40.

But in the other four base marriages, which remain, are produced sons acting cruelly, speaking falsely, abhorring the Veda, and the duties prescribed in it.—Manu III., 41.

From the blameless nuptial rights of men spring a blameless progeny; from the reprehensible a reprehensible offspring, let mankind, therefore, studiously avoid the culpable forms of marriage.—Manu III., 42.

The ceremony of joining hands is appointed for those, who marry women of their own class; but, with women of a different class, the following nuptial ceremonies are to be observed.—Manu III., 48.

By a Kshatriya on her marriage with a Brahman, an arrow must be held in her hand; by a Vaisya woman, with a bridegroom of the sacerdotal or military class, a whip; and by a Sudra bride, marrying a priest, a soldier, or a merchant, must be held the skirt of a mantle.—Manu III., 44.

When the bride is given being adorned according to ability after having invited (the bridegroom) that is a Brahma marriage. The son born of it purifies twenty-one men on each side.—Yajnyaawalya, Book I., verse 58.

When the bride is given to a sacrificing priest that is a Daiwa marriage. If he takes a pair of cows that is called an Arsha marriage. One born of the former purifies fourteen men and one born of the latter purifies six.—Yajnyaawalya, Book I., verse 59.
When a daughter is given to one who desires her with the words ‘perform your religious duties (together)’ that is a Kasya marriage, the son born of her purifies six and six generations together with himself.—YajnyaWalCya, Book I., verse 60.

An Asura marriage is made by the taking of wealth, a Gandharva marriage by mutual agreement, a Rakshasa marriage by seizure in war, a Paisacha marriage by deceiving a girl.—YajnyaWalCya, Book I., verse 61.

‘Deceiving,’ i.e., carrying away a girl fraudulently while she is asleep and so on.
—Mitakshara.

Among women of the same caste the hand should be taken, the daughter of a Kahatriya should take hold of an arrow and the daughter of a Vaisya should take hold of a spear. (A Sudra) should take hold of the ends of a mantle if she marry a Brahman.—YajnyaWalCya, Book I., verse 62.

Let no father who knows the law receive a gratuity however small for giving his daughter in marriage; since the man who through avarice takes a gratuity for that purpose is a seller of his offspring.—Manu III., 51.

Some say that the bull and cow given in the nuptial ceremony of the Rishis are a brie to the father but this is untrue whether large or small is an actual sale of the daughter.—Manu III., 53.

When money or goods are given to damsels whose kinsmen receive them not for their own use it is no sale: it is merely a token of courtesy and affection to the brides.—Manu III., 54.

When the husband has performed the nuptial rites with texts from the Veda, he gives bliss continually to his wife here below, both in season and out of season; and he will give her happiness in the next world.—Manu Chap. V., 158.

RIGHTS AND LIABILITIES.

Let the husband approach his wife in due season, that is, at the time fit for pregnancy, let him be constantly satisfied with her alone; but except on the forbidden days of the moon, he may approach her being affectionately disposed even out of due season with a desire of conjugal intercourse.—Manu III., 45.

Reprehensible is the father, who gives not his daughter in marriage at the proper time, and the husband who approaches not his wife in due season.—Manu IX., 4. See also Dig. IV., 14 and 61.

That woman who having bathed after her courses refuses the approaches of her husband, let him banish proclaiming her in the middle of the town guilty of infanticide.—Manu. (Dig. IV., 65.)

And her who through aversion from her husband falsely pretends to have her courses, let him banish proclaiming her in the presence of kinsmen guilty of infanticide—Manu. (Dig. IV., 65.)

A wife, a son, a servant, a pupil, and a younger whole brother, may be corrected, when they commit faults, with a rope or the small shoot of a cane.—Manu VIII., 299.

But on the back part only of their bodies and not on a noble part, by any means he who strikes them otherwise than by this rule incurs the guilt of a thief.—Manu VIII., 300.
Neither shall a wife or mother be in general compelled to pay a DEBT contracted by her husband or son nor a father to pay a debt contracted by his son unless it were for the behoof of the family nor a husband to pay a debt contracted by his wife.—YAJNYAWALCYA. (Dig. I., 207.)

A debt contracted by the wife shall by no means bind the husband unless it were for necessaries at a time of great distress a man is indispensably bound to support his family.—NAREDA. (Dig. I., 209.)

A wife or mother shall not in general pay the debt of her husband or son.—NAREDA. (Dig. I., 209.)

Neither shall a wife or mother be in general compelled to pay the debt of her husband or son nor the husband or son to pay the debt of his wife or mother.—VISHNU. (Dig. I., 208.)

A debt acknowledged by her husband or contracted by her jointly with her husband or son or contracted by the woman herself must be paid by a wife or mother: no other debts shall a woman be compelled to pay.—YAJNYAWALCYA. (Dig. I., 210.)

A debt contracted jointly with her husband or son or singly by the woman herself shall be paid of a wife or mother in such and in no other cases shall the debts contracted by them be paid by her.—YAJNYAWALCYA. (Dig. I., 210.)

If a wife be thus addressed by her lord at the point of death or just before a long journey “such a debt must be paid by thee,” she must pay it however unwilling if assets were left in her hands.—NAREDA. (Dig. I., 212.)

A debt which is contracted by a wife or mother for the behoof of the family when her husband or son is gone to a foreign country after authorizing the loan must be paid of the husband or son.—CATYAYANA. (Dig. I., 219.)

Briju ordained that a man shall pay a debt contracted in his remote absence even without his assent by his servant, his wife, his mother, his pupil or his son, provided it were contracted for the subsistence of the family.—CATYAYANA. (Dig. I., 9.)

Let no man lend anything to women, to slaves or to children, whatever thing of value has been lent to them the sender cannot in general recover without the assent of the guardian or master.—CATYAYANA. (Dig. I., 8.)

If the wife of a herdsman, a vintner, a dancer, a washerman or a hunter contract a debt, the husband shall pay it because his livelihood chiefly depends on the labour of such a wife.—YAJNYAWALCYA. (Dig. I., 216.)

The husband being a vintner, a hunter, or fowler, a washer, a shepherd or the like shall pay the debt of his wife: it was contracted in the concerns of the husband.—VRIHASPATI. (Dig. I., 217.)

Except the wife of a washer, hunter, herdsman or vintner for the liveli-
hood of such husband and the support of his family depend on her.—
Nakka. (Dig. I., 218.)

Day and night must women be held by their protectors in a state of
DEPENDENCE, but in lawful and innocent recreations though rather
addicted to them they may be left at their own disposal.—Manu IX., 2.

Their fathers protect them in childhood, their husbands protect them
in youth, their sons protect them in age, a woman is never fit for indepen-
dence.—Manu IX., 3.

By a girl, or by a young woman advanced in years, nothing must be
done, even in her own dwelling-place, according to her mere pleasure.—
Manu V., 147.

In childhood must a female be dependent on her father; in youth, on
her husband; her lord being dead, on her son; if she have no sons, on the
near kinsmen of her husband; if he left no kinsmen, on those of her father;
if she have no paternal kinsmen, on the sovereign: a woman must never
seek independence.—Manu V., 148.

Never let her wish to separate herself from her father, her husband,
or her sons; for, by a separation from them, she exposes both families to
contempt.—(Dig. III., 86.)

The following texts are of similar import to the above.—Manu IX. 5, 6, 7, 8, 9,
10, 11, 12, 13, 14, 15, 16, 17, 18.

Let mutual FIDELITY continue till death; this in few words may be
considered as the supreme law between husband and wife.—Manu IX., 101.

Fidelity is also enjoined in the following texts:—Manu V. 151, 154, 155, 156,
164, 165; IX. 103; VIII. 262 to 268 and 371 to 385; XI. 177; Digest IV. 56, 57, 58,
59, 60, 61, 62, 63, 66, 67, 72, 76, 77, 78, 79, 80, 81, 82, 83, 84, 103, 104, 105, &c.

Sages do not deem it a theft if a GIFT be made by a wife for a just
cause during the absence of her husband.—Apastamba. (Dig. V., 89.)

What a woman has received as a gift from her husband she may
dispose of at pleasure after his death if it be movable, but as long as he
lives let her preserve it with frugality or she may commit it to his family.
—Catsbyana. (Dig. V., 478.)

A portion amounting to two in the thousand out of the whole estate
should be given to a woman that and whatever wealth is bestowed on her
by her husband she may use as she pleases.—Vyas. (Dig. V., 482.)

If what is acquired by marriage be given with the assent of the wife
the gift has validity.—Vrihaspati. (Dig. II., IV., 18.)

In case of a strife between teacher and pupil, father and son, husband
and wife, or master and servant, their mutual Litigation is not legal.—
Swrit. (Dig. III., 10.)

Should a man have business abroad let him assure a fit MAINTEN-
ANCE to his wife.—Manu IX., 74.
The following texts also provide for the maintenance of the wife by the husband.—Manu IV., 251, IX. 96.

PARTITION does not take place between a wife and her lord.—Apastamba. (Dig. V., 89.)

Neither the husband nor the son nor the father nor the brother have power to use or to alien the legal PROPERTY of a woman.—Catayana. (Dig. V., 475.)

What was given before the nuptial fire, what was given at the bridal procession, what was given in token of love, and what was received from a mother, a brother or a father are considered as the six-fold property of a married woman.—Manu IX., 194.

These three persons—a wife, a slave, and a son—have, in general, no wealth exclusively their own; the wealth, which they may gain, is regularly acquired for the man whom they belong.—Narada. (Dig. III., 51.)

Three persons—a wife, a son, and a slave—are declared by law to have in general, no wealth exclusively their own: the wealth, which they may earn, is regularly acquired for the man to whom they belong.—(Dig. III, 1, 52.) Manu VIII., 416.

"Earn"; acquire.

The sense is, 'doing acts whence property may be obtained.' Such acts are the labours of husbandry and the like. But Cullucabhatta says, this merely illustrates the dependence of a wife and the rest, in respect of property acquired by themselves; for it will be mentioned that a wife has exclusive property of six kinds, and a wife being qualified for acts in which property must be used, a woman, with the assent of her husband, may even use wealth common to them both. Vijnaneswara holds the same opinion; and so do Jimutvahana and others. But it does not appear to be admitted by Chandeswara, Vachespati Misra, and others; for they otherwise explain these, and the texts which will be cited. The mode of reconciling the difficulties suggested by Cullucabhatta will be delivered in its place.—(Dig. III., 52.)

Whatever male relations through delusion of mind take possession of a woman's property be it only her carriages or her clothes, such offenders will sink to a region of torment.—Manu III., 52.

What a father, a mother, a husband or a brother has given to a woman, what is presented to her before the nuptial fire, what she receives to appease and console her on the second marriage of her lord, are universally known as her separate property.—Yajnyawalota. (Dig. V., 463.)

Whatever is given to women at the time of their marriage before the sacred fire which is the witness of nuptials is denominated by the sages their property "given before the nuptial fire."—Catayana. (Dig. V., 464.)

Anything which is given to the woman by the mother or father in token of affection and that which is given in return of her humble salutations is called wealth gained by loveliness.—Catayana. (Dig. V., 466.)

What is received by a woman after marriage from the kinmen of her lord or from those of her parents is called "a gift subsequent."—Catayana. (Dig. V., 468.)

Ornaments are the exclusive property of a wife and so is wealth given to her by kinmen or friends according to some legislators.—Apastamba. (Dig. V., 472.)

Such ornamental apparel as women wear during the lives of their husbands, the
heirs of those husbands shall not divide among themselves; they who divide it among themselves fall deep into sin.—Vishnu. (Dig. V, 473.)

1. What a woman after marriage or before it either in the mansion of her husband or of her father receives from her lord or her parents is called a gift from affectionate kindred.

2. And such a gift having by them been presented through kindness that the women possessing it may live well is declared by law to be their absolute property.—Cattayana. (Dig. V, 475.)

5. If any of them shall consume such property against her own consent he shall be compelled to pay its value with interest to her and shall also pay a fine to the king.—Cattayana. (Dig. V, 475.)

6. But if he consume it with her assent after an amicable transaction he shall pay the principal only when he has wealth enough to restore it.—Cattayana. (Dig. V, 475.)

Whatever she has put amicably into the hands of her husband, afflicted with disease, suffering distress or sorely pressed by creditors, he should repay that by his own free will.—Cattayana. (Dig. V, 475.)

Property given to her by her husband through pure affection she may enjoy at her pleasure after his death except land or houses.—Narada. (Dig. V, 475.)

If he give it away on a false consideration or consume it he must repay the value to the woman with interest but he may use the property of his wife to relieve a distressed son.—Devala. (Dig. V, 475.)

Food and vesture, ornaments, perquisites and wealth received by a woman from a kinsman are her own property. She may enjoy it herself and her husband has no right to it except in extreme distress.—Devala. (Dig. V, 478.)

If a husband in a famine for the performance of some indispensable duty or during extreme illness or while a creditor keeps him confined should appropriate the wealth of his wife he shall not while his distress lasts be compelled to restore it against his will.—Yajnavaloka. (Dig. V, 479.)

If he have taken a second wife and no longer give his first wife the honor due to her the king shall compel him even by violence to restore her property though it was put amicably into his hands.—Cattayana. (Dig. V, 481.)

What a woman receives from the family of her parents while she is led to the house of her husband is called the property of a woman "given at her procession."—Cattayana. (Dig. V, 485.)

The property of a woman is that which her father, mother, friend or brother has given her what she received in the presence of the nuptial fire on the bridal procession or when her husband took a second wife what her husband agrees to be her perquisite and what is received from his or her kinsman as a gift subsequent to marriage.—Vishnu. (Dig. V, 587.)

The absolute exclusive dominion over such a gift is perpetually celebrated and they have power to sell or give it away as they please even though it consist of lands and houses—Cattayana. (Dig. V, 585.)

If suitable food, apparel and habitation cease to be provided for a wife, she may by force take her own property and a just allotment for such a provision or she may if he die take it from his heir.—Cattayana. (Dig. V, 599.)
SUPERSESSION, REMARRIAGE AND DIVORCE.

Remarriage of the husband.

Having thus kindled sacred fires, and performed funeral rites to his wife, who died before him, he may again marry, and again light the nuptial fire.—Manu V., 168.

Four wives may be allowed to a priest in the order of the classes—three to a warrior, two to a merchant and one to a man of the servile class—Sancha and Lichita. (Dig. V., 152.)

A wife who drinks any spirituous liquors, who acts immorally, who shows hatred to her lord, who is incurably diseased, who is mischievous, who wastes his property, may at all times be superseded by another wife.—Manu IX., 80.

A barren wife may be superseded by another in the eight year, she whose children are all dead in the tenth, she who brings forth only daughters in the eleventh, she who speaks unkindly without delay.—Manu IX., 81.

But she who though afflicted with illness is beloved and virtuous must never be disgraced though she may be superseded by another wife with her own consent.—Manu IX., 82.

A superseded wife must be maintained else a great offence is committed.—Yajnyawaluya. (Dig. IV., 74.)

To a woman whose husband marries a second wife must be given an equal present on that second marriage or equal to what the new wife shall receive on her nuptials if she had herself received some of the wealth usually given to women, but if such wealth had been delivered to her she is held entitled only to a moiety or part of the gift at the second wedding.—Yajnyawaluya. (Dig. V., 87.)

One wife only shall be married by a Vaisya son of Euru, or a second wife of the servile class, but such a second marriage is not ordained in holy writ.—Mahabharata. (Dig. V., 143.)

If a wife legally superseded shall depart in wrath from the house she must either instantly be confined or abandoned in the presence of the whole family.—Manu IX., 83.

Remarriage of the wife.

Issue begotten on a woman by any other than her husband, is here declared to be no progeny of hers; no more than a child, begotten on the wife by another man, belongs to the begetter: nor is a second husband allowed, in any part of this code, to a virtuous woman.—Manu V., 162.

Such a commission to a brother or other near kinsman is nowhere mentioned in the nuptial texts of the Veda nor is the marriage of a widow even named in the laws concerning marriage.—Manu IX., 65.
Let her not when her lord is deceased even pronounce the name of another man.—Manu V., 157.

Eight years let a woman of the sacerdotal class wait for her absent lord or four years if she have borne no children; after these periods she may unite herself to another man.—Devala. (Dig. IV., 153.)

For women of the servile class no period is ordained nor do they violate their duty by an early second marriage but for those especially who have borne no children the settled rule prescribes one year.—Devala. (Dig. IV., 153.)

If a woman be secured from the hands of robbers, from a rapid river, from famine, from danger in a national calamity, or from a wilderness, or if she be forsaken by her husband or purchased from him, ?

There is no offence in the enjoyment of her this is a certain law: a man may accept a woman given by her lord if he freely bestow her and not otherwise—Cattavānā. (Dig. IV., 153.)

The damsel indeed whose husband shall die after troth verbally plighted but before consummation his brother shall take in marriage according to this rule.—Manu IX., 69.

If two sons begotten by two successive husbands who are both dead contend for their property then in the hands of their mother let each take exclusive of the other his own father's estate.—Manu IX., 191.

There are numerous other passages in Hindu Law, some in favour of the remarriage of a widow and even of a wife and some against it. It is not necessary to quote them here as by Act 15 of 1856 (see below) all marriages of Hindu widows have been declared to be valid. Most of the texts of Hindu Law on the subject will be found collected in Colebrook's Digest Book IV.

Act No. XV. of 1856.

An Act to remove all Legal Obstacles to the Marriage of Hindoo Widows.

Whereas it is known that, by the law as administered in the Civil Courts established in the territories in the possession and under the Government of the East India Company; Hindoo widows, with certain exceptions, are held to be, by reason of their having been once married, incapable of contracting a second valid marriage, and the offspring of such widows by any second marriage are held to be illegitimate and incapable of inheriting property; and whereas many Hindoos believe that this imputed legal incapacity, although it is in accordance with established custom, is not in accordance with a true interpretation of the precepts of their religion, and desire that the Civil law administered by the Courts of Justice shall no longer prevent those Hindoos who may be so minded from adopting a different custom, in accordance with the dictates of their own consciences; and whereas it is just to relieve all such Hindoos from this legal incapacity of which they complain, and the removal of all legal
obstacles to the marriage of Hindoo widows will tend to the promotion of good morals and to the public welfare; it is enacted as follows:

I. NO MARRIAGE contracted between Hindoos shall be INVALID, and the issue of no such marriage shall be illegitimate, BY reason of the WOMAN HAVING BEEN PREVIOUSLY MARRIED or betrothed to another person, who was dead at the time of such marriage, any custom and any interpretation of Hindoo law to the contrary notwithstanding.

II. All RIGHTS and interests which any widow may have IN her deceased HUSBAND'S PROPERTY by way of maintenance or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to re-marry, only a limited interest in such property, with no power of alienating the same, SHALL, upon her re-marriage, CEASE and determine as if she had then died; and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same.

III. On the re-marriage of a Hindoo widow, if neither the widow nor any other person has been expressly constituted by the will or testamentary disposition of the deceased husband the guardian of his children, the father or paternal grandfather, or the mother or paternal grandmother, of the deceased husband, or any male relative of the deceased husband, may petition the highest Court having original jurisdiction in Civil cases in the place where the deceased husband was domiciled at the time of his death, for the appointment of some proper person to be GUARDIAN OF the said CHILDREN; and thereupon it shall be lawful for the said Court, if it shall think fit, to appoint such guardian, who, when appointed, shall be entitled to have the care and custody of the said children, or of any of them, during their minority, in the place of their mother; and in making such appointment the Court shall be guided, so far as may be, by the laws and rules in force touching the guardianship of children who have neither father nor mother.

Provided that when the said children have not property of their own sufficient for their support and proper education whilst minors, no such appointment shall be made otherwise than with the consent of the mother, unless the proposed guardian shall have given security for the support and proper education of the children whilst minors.

IV. Nothing in this Act contained shall be construed to render any widow, who, at the time of the death of any person leaving any property, is a CHILDLESS WIDOW, capable of inheriting the whole or any share of such property, if before the passing of this Act she would have been incapable of inheriting the same by reason of her being a childless widow.

V. Except as in the three preceding Sections is provided, a WIDOW SHALL NOT, BY reason of her RE-MARRIAGE, FORFEIT any PROPERTY, or any right to which she would otherwise be entitled; and every widow who has re-married shall have the same rights of inheritance as she would have had, had such marriage been her first marriage.

VI. Whatever words spoken, or CEREMONIES performed, or en-
gagements made, on the marriage of a Hindoo female who has not been previously married, are sufficient to constitute a valid marriage, shall have the same effect if spoken, performed, or made on the marriage of a Hindoo widow: and no marriage shall be declared invalid on the ground that such words, ceremonies, or engagements, are inapplicable to the case of a widow.

VII. If the widow re-marrying is a MINOR, whose marriage has not been consummated, she shall not re-marry without the CONSENT of her father, or, if she has no father, of her paternal grandfather, or, if she has no such grandfather, of her mother, or failing all these, of her elder brother, or, failing also brothers, of her next male relative. All persons knowingly abetting a marriage made contrary to the provisions of this Section shall be liable to imprisonment for any term not exceeding one year, or to fine, or to both. And all marriages made contrary to the provisions of this Section may be declared void by a Court of law. Provided that, in any question regarding the validity of a marriage made contrary to the provisions of this Section, such consent as is aforesaid shall be presumed until the contrary is proved, and that no such marriage shall be declared void after it has been consummated. In the case of a widow who is of full age, or whose marriage has been consummated, her own consent shall be sufficient consent to constitute her re-marriage lawful and valid.

MAHOMEDAN LAW.

THE HEDAYA ON MARRIAGE AND DIVORCE.

Marriage.

DEFINITION.

Nikkah, in its primitive sense, means carnal conjunction. Some have said that it signifies conjunction generally. In the language of the law it implies a particular contract used for the purpose of legalizing generation.—25.

A Nikkah Matat, or usufructuary marriage, where a man says to a woman, "I will take the use of you for such a time for so much," is void, all the companions having agreed in the illegality of it.—33.

A Nikkah Mowakket, or temporary marriage, where a man marries a woman, under an engagement of ten days (for instance) in the presence of two witnesses, is null.—33.

The figures at the end of each clause refer to Grady's edition of Hamilton's 'Hedaya.'
PARTIES TO MARRIAGE.

The marriage of a boy or girl under age, by the authority of their paternal kindred, is lawful, whether the girl be a virgin or not, the prophet having declared "Marriage is committed to the paternal kindred."—36.

Relations stand in the same order in point of authority to contract minors in marriage as they do in point of inheritance, but this authority, in the more distant relatives, is superseded by the existence of those of a nearer degree.—37.

If the marriage of infants be contracted by the fathers, or grandfathers, no option after puberty remains to them; because the determination of parents in this matter cannot be suspected to originate in sinister motives, as their affection for their offspring is undoubted, wherefore the marriage is binding upon the parties, the same as if they had themselves entered into it after maturity.—37.

But if the contract should have been executed by the authority of others than their parents, each is respectively at liberty after they become of age to choose whether the marriage shall be confirmed or annulled.—37.

A separation between a husband and wife in consequence of option after maturity is not divorce from whatever side it proceed, because it may with propriety proceed from the wife, whereas divorce cannot. And so also separation in consequence of option after manumission is not divorce, for the same reason.—38.

In defect of paternal relations, authority to contract marriage appertains to the maternal (if they be of the same family or tribe) such as the mother, or maternal uncle or aunt, and all others within the prohibited degrees.—38.

Where persons are destitute of any natural guardian the authority of contracting them in marriage is vested in the Imam or the Kazee, because the prophet has in his precepts declared, "Persons being destitute of guardians have a guardian in the Sultan."—39.

If the parents, or other first natural guardians of an infant, should be removed to such a distance as it termed Gheebat Moonkatat, it is in that case lawful for the guardian next in degree to contract the infant in marriage.—39.

It is not lawful for a man to marry his foster-mother or his foster-sister, the Almighty having commanded, saying, "Marry not your mothers who have suckled you or your sisters by fosterage," and the prophet has also declared, "Everything is prohibited by reason of fosterage which is so by reason of kindred."—28.

RELATIONSHIP.—A man may not marry his mother, nor his paternal or maternal grandmother; because the word of God in the Koran says, "Your Ams (that is your mothers) and your daughters are forbidden to you."—27.
A man may not marry his daughter, nor his grand-daughter, nor any of his direct descendants.—27.

Neither may a man marry his sister, nor his sister’s daughter, nor his brother’s daughters, nor his paternal aunt, or his maternal aunt.—27.

All the degrees of aunts are also included in this prohibition, to wit, maternal and paternal aunts, as well as the aunts of the father, and the aunts of the mother, both paternal and maternal. So also the daughters of all the brothers; that is to say, of the full brother, and of the paternal brother, and of the maternal brother, and in like manner, the daughters of all sisters, to wit, of the full sisters, and of the maternal sisters, and of the paternal sisters; because the terms Amma, Khala, Okh, and Okht, which occur in the passage of the Koran already cited, apply to all those degrees of kindred.—27.

It is not lawful for a man to marry his wife’s mother, whether he may have consummated his marriage with her daughter or not, the Almighty having prohibited such a connexion in general terms without any regard to that circumstance.

It is unlawful for a man to marry the wife of his father, or of his grand-father, God having so commanded, saying, “Marry not the wives of your progenitors.”—28.

Neither is it lawful for a man to marry the wife of his son, or of his grandson, the Almighty having said, “Wed not the wives of your sons or your daughters who proceed from your loins.”—28.

Neither is it lawful for a man to marry the daughter of his wife; but this only provided he have already consummated his marriage with the latter, because the sacred text restricts the illegality of this union to that circumstance.—28.

Wherefore marriage with the daughter of the wife is illegal, where carnal connexion has taken place with the latter, whether the daughter be an inmate of the husband’s harem, or not.—28.

If a man repudiate his wife, either by a complete or a reversible divorce, it is not lawful for him to marry her sister until the expiration of her edit.—30.

It is not lawful to marry and cohabit with two women being sisters, neither is it lawful for a man to cohabit with two sisters in virtue of a right of possession (as being his slaves) because the Almighty has declared that such cohabitation with sisters is unlawful.—28.

It is unlawful for a man to marry two women, of whom one is the aunt or niece of the other.—29.

It is not lawful for a man to marry two women within such degree of affinity as would render a marriage between them illegal, if one of them were a man, and for the same reason, because this would occasion a confusion of kindred.—29.
If a man commit whoredom with a woman, her mother and daughter are prohibited to him.—29.

But a man may marry two women, one of them being a widow, and the other the daughter of that widow’s former husband by another wife, because here exists no affinity, either by blood or fosterage.—29.

If a woman touch a man in lust [i. e., manupenem fricane, stuprum excitat], the mother and daughter of that woman are thereby prohibited to him.—29.

RELIGION.—Marriage with a Kitabeesa woman is legal according to the word of God, “Women are lawful to you, such as are Mahsonas of the scriptural sect:” (the term Mahsona does not, in this passage, imply a Muslimite, but merely a woman of chaste reputation.)—30.

If the husband of a Kitabeesa become a Mussulman, their marriage still endures, because the marriage of a Mussulman with a Kitabeesa being legal ab initio, its continuance is so a fortiori.—65.

It is unlawful to marry a Majoosee woman, God having said, “Ye may hold correspondence with the Majoosees the same as with the Kitabeesas, but he must not marry their daughters, nor partake of their sacrifices.”—30.

It is unlawful to marry a Pagan woman, according to the words of Koran, “Marry not a woman of the Polytheists until she embrace the faith.”—30.

A Mussulman may marry a woman of the Sobeans, she believing the scriptures, and professing faith in the prophets; but if she worship the stars, and believe not in any of the divine scriptural revelations, it is unlawful to marry her.—30.

It is recorded as an opinion of Haneefa and Aboo Yoosaf, that the marriage is illegal if there be an inequality between the parties.—34.

THE CEREMONY OF MARRIAGE.

Marriage is contracted,—that is to say, is effected and legally confirmed,—by means of declaration and consent, both expressed in the preterite, because although the use of the preterite be to relate that which is past, yet it has been adopted, in the law, in a creative sense, to answer the necessity of the case. Declaration in the law signifies the speech which first proceeds from one of two contracting parties, and consent the speech which proceeds from the other in reply to the declaration.—25.

A woman who is an adult, and of sound mind, may be married by virtue of her own consent, although the contract may not have been made or acceded to by her guardians; and this, whether she be a virgin or a Sujeeba.—34.

It is not lawful for a guardian to force into marriage an adult virgin against her consent.—34.
Marriage, where both the parties are Mussulmans, cannot be contracted but in the presence of two male witnesses, or of one man and two women, who are sane, adult, and Mussulmans, whether they be of established integrity of character or otherwise, or may ever have suffered punishment as slanderers.—26.

Agents in matrimony are persons employed and authorized by the parties concerned to enter into contracts of marriage on their behalf, and the power so delegated is termed Wikalit-ba Nikkah.—42.

RIGHTS AND LIABILITIES ARISING FROM MARRIAGE.

A woman may refuse to admit her husband to a CARNAL CONNEXION until she receive her dower of him, so as that her right may be maintained to the return, in the same manner as that of her husband to the object for which the return is given, as in sale.—54.

When the husband has duly paid to his wife the whole of her dower, he is at liberty to carry her wherever he pleases, because the word of God says: "Ye shall cause them to reside in your own habitations." Some have alleged that the husband is not at liberty to carry his wife to another city different from her own, although he should have paid her the whole dower, because journeying and travelling may be injurious to her, but he is at liberty to carry her to the villages in the vicinity of her city, as this does not amount to travelling.—55.

If a man have two or more wives being all free women, it is incumbent on him to make an equal partition of his cohabitation among them.—66.

A marriage is valid, although no mention be made of the DOWER by the contracting parties, because the term Nikkah, in its literal sense, signifies a contract of union, which is fully accomplished by the junction of a man and woman, moreover, the payment of dower is enjoyed by the law, merely as a token of respect for its object (the woman), wherefore the mention of it is not absolutely essential to the validity of a marriage: and, for the same reason a marriage is also valid, although the man were to engage in the contract on the special condition that there should be no dower: but this is contrary to the doctrine of Malie.—44.

The smallest dower is ten Dirmas.—44.

The Mihr Mial (or proper dower) of any woman is to be regulated in its amount or value, by that of the dower of her paternal relations, such as her paternal sisters or aunts, or the daughters of her paternal uncles, and so forth, according to a precept of Ibu Mussaood, "To the woman belongs such a dower as is usually assigned to her female paternal relatives."—53.

In regulating the proper dower of a woman, attention must be paid to her equality with the woman from whose dowers the rule is to be taken, in point of age, beauty, fortune, understanding, and virtue, because it varies according to any difference in all these circumstances; and, in like manner, it differs according to place of residence, or time (that is to say
times of trouble and confusion, as opposed to times of tranquillity), and the
learned in the law have observed that equality is also to be regarded in
point of virginity, because the dower is different according as the woman
may be a virgin or otherwise.—53, 54.

If a woman contract herself in marriage, consenting to receive a
dower of much smaller value than her proper dower, the guardians have a
right to oppose it until her husband shall agree either to give her a com-
plete proper dower, or to separate from him.—41.

If a person specify a dower of ten or more Dirms, and should after-
wards consummate his marriage, or be removed by death, his wife, in either
case, has a claim to the whole of the dower specified, because, by consum-
mination, the delivery of the return for the dower, namely, the Booza or
woman's person, is established, and therein is confirmed the right to the
consideration, namely, the dower; and, on the other hand, by the decease
of the husband, the marriage is rendered complete, and everything becomes
established and confirmed by its completion, and consequently is so with
respect to all its effects.—44.

If the husband, in the case now stated, were to divorce his wife
before consummation, or Khalwat Saheeh, she, in this case, receives half
her specified dower; God having commanded, saying “If ye divorce
them before ye have touched them and have already settled a dower on
them, ye shall pay them one-half of what ye have settled.”—44.

If a man marry a woman without specifying any dower, or on the
express stipulation that she shall not have a dower, and he either have
carnal connection with her, or die, she is in that case entitled to her Mihr
Mial or proper dower.—45.

If a man marry a woman without any specification of a dower or on
condition of there being no dower, and divorce her before carnal connec-
tions, the woman in this case receives a Matat, or present; God having
commanded, saying, “Give her a present; the rich according to his wealth
and the poor according to his poverty.”—45.

It is to be remarked that the present must not exceed in value one-
half of the woman's proper dower nor be worth less than five Dirms:
the same is recorded in the Mabsoot.—45.

If a man marry a woman without naming any dower, and the parties
should afterwards agree to a dower, and specify its amount, such dower
goes to the woman, if the husband either consummate the marriage or die;
but if he divorce her before consummation she receives only a present.—45.

If a man make any addition to the dower in behalf of his wife subse-
quently to the contract, such addition is binding upon him.—45.

If a woman exonerate her husband from any part, or even from the
whole of the dower, it is approved; because, after the execution of the
contract, it is her sole right (as was already explained), and the case supposes
her dereliction of it to take place at a subsequent period.—45.
If a man retire with his wife, and there be no legal or natural obstruction to the commission of the carnal act, and he afterwards divorce her, the whole dower in this case goes to her.—45.

If a man marry a woman on a dower of one thousand Dirms, on a condition that he is not to carry her out of her native city—or that he is not to marry, during his matrimonial connexion with her, any other woman, in this case, if he observe the condition, the woman is entitled to the above specified dower only, as that consists of a sum sufficient to constitute a legal dower, and she has agreed to accept it; but if he should infringe the condition, by either carrying her out of her native city, or marrying another wife, she is in this case entitled to her proper dower, because he had acceded to a condition on behalf of the woman which was advantageous to her, and that not being fulfilled, the woman is not supposed to be satisfied with the thousand Dirms and must therefore be paid her complete proper dower.—49.

When a woman surrenders herself into the custody of her husband, it is incumbent upon him thenceforth to supply her with food, clothing, and lodging, whether she be a Mussulman or an infidel.—140.

If a husband make a GIFT of anything to his wife or a wife to her husband it cannot be retracted.—486.

In adjusting the obligation of the Nifka, or MAINTENANCE of a wife, regard is to be had to the rank and condition both of her and her husband: thus if the parties be both wealthy, he must support her in an opulent manner, if they be both poor, he is required only to provide for her accordingly, and if he be rich, and she poor, he is to afford her a moderate subsistence, such as the below the former and above the latter.—140.

Nifka, in the language of the law, signifies all those things which are necessary to the support of life such as food, clothes, and lodging: many confine it solely to food.—140.

If a woman refuse to surrender herself to her husband on account of her dower (that is, on account of its not having been paid to her), her maintenance does not drop, but is incumbent upon the husband, although she be not yet within his custody, since her refusal is only in pursuance of her right, and consequently the objection to the matrimonial custody originates with the husband.—141.

If a wife be disobedient or refractory, and go abroad without her husband’s consent, she is not entitled to any support from him until she return and make submission.

It is otherwise where a woman, residing in the house of her husband, refuses to admit him to the conjugal embrace, as she is entitled to maintenance, notwithstanding her opposition, because being then in his power, he may, if he please, enjoy her by force.—141.

If a man’s wife be so young as to be incapable of generation, her maintenance is not incumbent upon him, because although she should be within his custody, yet as an obstacle exists in her to the carnal embrace
this is not the custody which entitles to maintenance, that being described "custody for the purpose of enjoyment" which does not apply to the case of one incapable of the act.—141.

But if the husband be an infant incapable of generation, and the wife an adult, she is entitled to her maintenance at his expense, because in this case delivery of the person has been performed on her part, and the obstacle to the matrimonial enjoyment exists on the part of the husband.—141.

It is to be observed, however, that in the case of difference of religion, a man is under no obligation to provide maintenance for any except his wife, his parents, grand parents, children, and grand children, to all of whom it is due notwithstanding this circumstance, to the wife.—147.

The maintenance of relations within the prohibited degrees is not incumbent upon a person in poverty.

But this argument does not hold with respect to a wife or infant child, for whom it is incumbent upon a man to provide subsistence, notwithstanding his poverty, because in marrying he subjects himself to the expense of maintaining his wife.—148.

The Kazee is to give subsistence to the wife and children of a missing person out of his property. This rule is not restricted to his immediate children but extends to all related to him in the line of paternity.—214.

And in the same manner, if a woman be forcibly seized and carried off by any person, she has no claim to maintenance from her husband, and so also, if a woman go upon a pilgrimage under charge of a relation within the prohibited degrees.—141.

If a woman be imprisoned for debt her husband is not required to support her, because the objection to the matrimonial custody does not in this case originate with him.—141.

The maintenance of the wife's servants is incumbent upon her husband as well as that of the wife herself, provided he be in opulent circumstances.—142.

If a husband become poor, to such a degree as to be unable to provide his wife her maintenance, still they are not to be separated on this account, but the Kazee shall direct the woman to procure necessaries for herself upon her husband's credit, the amount remaining a debt upon him.—142.

But the wife is in this case restricted in her expenses to a rate which must be determined by the Kazee.—142.

The advantage of the Kazee desiring the woman to procure a maintenance upon her husband's credit, and of his fixing the rate thereof is that she is thereby enabled to make her husband responsible for the amount, for if she contract any debt without this authority, the creditor's claim lies against her, and not against her husband.—142.

If a length of time should elapse during which the wife has not
received any maintenance from her husband, she is not entitled to demand
any for that time, except when the Kazee had before determined and
decreed it to her, or where she had entered into a composition with the
husband respecting it, in either of which cases she is to be decreed her
maintenance for the time past.—142.

If the Kazee decreed a wife her maintenance, and a length of time
collapsed without her receiving any, and the husband should die, her main-
tenance drops, and the rule is the same if she should die.—143.

If a man give his wife one year's maintenance in advance, and
then die before the expiration of the year, no claim lies against the
woman for restitution of any part of it.—143.

It is incumbent upon a husband to provide a separate apartment
for his wife's habitation, to be solely and exclusively appropriated to her
use so as that none of the husband's family or others, may enter without
her permission and desire.—143.

If a woman's husband absent himself, leaving effects in the hands of
any person, and that person acknowledge the deposit, and admit the
woman to be the wife of the absentee, the Kazee must decree a mainten-
ance to her out of the said effects; and the same to the infant children
of the absentee, and also to his parents. And the rule is the same if the
Kazee himself be acquainted with the above two circumstances, where the
trustee denies both or either of them.—144.

What is now said supposes the property to be of the same nature
with the woman's right such as money, grain, or cloth: but where it is
otherwise, a maintenance must not be decreed out of it, because, in this
case, it cannot be furnished from it but by selling a part, and defraying
the expense of it out of the amount; and all our doctors agree that the
property of an absentee cannot be sold.—144.

Where a man divorces his wife, her subsistence and lodgings are in-
cumbent upon him during the term of her gift whether the divorce be
of the reversible or irreversible kind. Shafei says that no maintenance is
due to a woman repudiated by irreversible divorce unless she be pregnant.

The reason for maintenance being due to a woman under reversible
divorce is that the marriage in such a case is still held to continue in force,
especially according to our doctors, who on this principle maintain that it
is lawful for a man to have carnal connexion with a wife so repudiated.—
146.

But it would be otherwise if a woman repudiated by irreversible di-
vorce be pregnant at the time of divorce.—145.

Maintenance is not due to a woman after her husband's decease, be-
cause her subsequent confinement [during the term of gift, in consequence
of that event] is not on account of the right of her husband.—145.

When the separation originates with the woman from anything which
can be imputed to her as a crime such as apostatizing from the faith, or
having carnal connexion or alliance with the son of her husband, she has no claim to maintenance during edit, since she has deprived her husband of her person unrighteously in the same manner as if she were to go out of his house without permission.—145, 146.

A husband may be imprisoned for the maintenance of his wife, because in withholding it he is guilty of oppression, but a father cannot be imprisoned for a debt due to his son, because imprisonment is a species of severity, which a son has no right to be the cause of inflicting on his father. —329.

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Divorce and Remarriage.

DEFINITION.

Talak, in its primitive sense, means dismission,—in law it signifies the dissolution of a marriage, or the annulment on its legality by certain words.—72.

WHO MAY DIVORCE.

The divorce of every HUSBAND is effective, if he be of sound understanding and mature age, but that of a boy or a lunatic, or one talking in his sleep, is not affective.—75.

Kholo, in its primitive sense, means to draw off or dip up. In law it signifies an agreement entered into for the purpose of dissolving a connubial connexion in lieu of a compensation paid by the WIFE to her husband out of her property. This is the definition of it in the Jama Ramooz.—112.

Whenever enmity takes place between husband and wife, and they both see reason to apprehend that the ends of marriage are not likely to be answered by a continuance of their union, the woman need not scruple to release herself from the power of her husband by offering such a compensation as may induce him to liberate her, because the word of God says, “No crime is imputed to the wife or her husband respecting the matter in lieu of which she hath released herself;” that is to say, there is no crime in the husband’s accepting such compensation, nor in the wife’s giving it.—112.

If a husband offer to divorce his wife for a compensation and she consent, divorce take place, and she becomes answerable for the compensation because the husband is empowered of himself, to pronounce either an immediate or a suspended divorce, and he here suspends the divorce upon the assent of the woman, who is at liberty to agree to the compensation as she has authority over her own person and the matrimonial authority, like retaliation, is one of those things for which a compensa-
tion is lawful, although it do not consist of property and the divorce is irreversible for the reasons already assigned, and also because Khoola is understood to be an exchange of property for the person, and upon the husband being vested with a right in the property, the woman in return is vested with a right in her own person, in order that an equality may be established.—113.

A Mobarat, or mutual discharge (signified by a man saying to his wife, "I am discharged from the marriage between you and me," and her consenting to it) is the same as Khoola—that is to say, in consequence of the declaration of both, every claim which each had upon the other drops so far as those claims are connected with their marriage. This is the doctrine of Haneefa.—116.

The KAZEE first applies to the husband who is to give evidence for several times by saying, "I call God to witness to the truth of my testimony concerning the adultery with which I charge this woman" after which the Kazaar requires the woman to give evidence four separate times by saying, "I call God to witness that my husband's words are altogether false respecting the adultery with which he charges me."

And on both making imprecation in this matter, a separation takes place between them but not until the Kazaar pronounces a decree to that effect.—124.

Observe that the separation here mentioned is an irreversible divorce, according to Haneefa and Mahomed, because the act of the Kazaar must be referred to the husband, as in the cases of impotence.—125.

If, after imprecation, the husband should acknowledge that the accusation was false, by saying, "I falsely laid adultery to her charge," he becomes privileged with respect to her, that is to say, it is lawful for him to marry her as well as any other person. This is according to Haneefa and Mahomed.—125.

The Kazaar is not empowered to effect a separation between a missing person and his wife.—215.

If a husband be Ineen [impotent], it is requisite that the Kazaar appoint the term of one year from the period of litigation, within which if the accused have carnal connexion with his wife it is well; but if not, the Kazaar must pronounce a separation, provided such be the desire of the wife, because the same is recorded from Alee, Omar, and Ebu Musood.—126.

The separation here mentioned amounts to the execution of a single divorce irreversible because the act of the Kazaar is attributed to the husband, whence it is the same as if he had himself pronounced such a sentence upon her.

And this separation amounts to an irreversible divorce, not a reversible, because the intent of it is the woman's relief from a hardship, which cannot be effected but by complete divorce, for if it were not so, it would still remain in the husband's power to reverse it, which would defeat the design.—127.
The wife in the case here mentioned, is entitled to her whole dower, if the husband should ever have been in retirement with her, because retirement with an Innee is accounted a Khalwat Saeeh, or complete retirement, as well as with any other person; and an edict is incumbent upon her, as was mentioned in a former place.—127.

If the defect be on the part of the woman the husband has no right to annul the marriage.—128.

If the husband be lunatic, leprous, or scrophulous, yet his wife has no option, as in cases where he is an eunuch or impotent. This is according to Haneefa and Aboo Yoosaf.—128.

**HOW DIVORCE IS EFFECTED.**

The divorce of one acting upon compulsion, from threat, is effective according to our doctors.—75.

If a man pronounce a divorce whilst he is in a state of inebriety from drinking any fermented liquor, such as wine, the divorce takes place.—76.

If a man pronounce three divorces upon a wife who is free, or two upon one who is a slave, she is not lawful to him until she shall first have been regularly espoused by another man, who, having duly consummated, afterwards divorces her, or dies and her edict from him be accomplished, because God has said, “if he divorce her, she is not after that lawful to him” (that is after a third divorce) “until she marry another husband.”—108.

If a man give his wife one or two divorces reversible, he may take her back any time before the expiration of her edict, whether she be desirous or not. God having said in the Koran, “ye may retain them with humanity,” where no distinction is made with respect to the wife’s pleasure, or otherwise, and by the word retain is here understood Raijaat, or returning to, according to all the commentators.—103.

In a case of irreversible divorce, short of three divorces, the husband is at liberty to marry his wife again either during her edict, or after its completion, as the legality of the subject still continues, since the utter extinction of such legality depends upon a third divorce; and accordingly until a third divorce take place, the legality of the subject continues.—107.

The Talak Aheen, or most laudable divorce, is where the husband repudiates his wife by a single sentence, within a Tohr (or terms of purity) during which he has not had carnal connexion with her and then leaves her to the observance of her edict or prescribed term of probation. This mode of divorce is termed the most laudable, for two reasons, first, because the companions of the prophet chiefly esteemed those who gave no more than one divorce until the expiration of the edict, as holding this to be a more excellent method than that of giving three divorces, by repeating the sentence on each of the two succeeding Tohrs; secondly, because in pursuing this method the husband leaves it still in his power, without any shame, to recover his wife, if he be so inclined, by a reversal of the divorce during her edict: this method is, moreover, the least injurious to
the woman, as she thus remains a lawful subject of marriage of her husband, even after the expiration of her edit, which leaves a latitude in her favour unprobatred by any of the learned.—72.

The Talak Hooem, or laudable divorce, is where a husband repudiates an enjoyed wife by three sentences of divorce, in three Tohrs.—72.

The Talak Biddat, or irregular divorce, is where a husband repudiates his wife by three divorces at once—that is, included in one sentence or where he repeats the sentence separately, thrice within one Tohr; and if a husband give three divorces in either of those ways, the three hold good, but yet the divorcer is an offender against the law.—73.

Talak Sareeh, or express divorce, is where a husband deliver the sentence in direct and simple terms, as if he were to say, "I have divorced you," or "you are divorced," which effects a Talak Rijai, or divorce reversible, that is to say, a divorce such as leaves it in the husband's power lawfully to take back his wife at any time before the expiration of the edit, and these forms are termed Sareeh, or express, as not being used in any sense but divorce.—76.

Divorce by implication.—The second kind of divorce, namely, Talakkainayat, or divorce by implication, is where a man repudiates his wife (not in express terms) but by the mention of something from which divorce is understood.—84.

Alla, in its primitive sense, signifies a vow. In law it implies a husband swearing to abstain from carnal knowledge of his wife for any time above four months, if she be a free woman, or two months, if she be a slave.—109.

But if he have not carnal knowledge of her for the space of four months, a divorce irreversible takes place independent of any decree of separation from the Magistrate.—109.

RIGHTS AND LIABILITIES ARISING FROM DIVORCE.

When a man, having repudiated his wife by an irreversible divorce, marries her again during her edit, and afterwards divorces her before consummation, a complete DOWER is in this case incumbent upon him, and upon the woman all edit de novo, according to Haneefa and Aboo Yoosaf.—131.

If the Kazee separate a man from his wife, before cohabitation, on account of their marriage being invalid, the woman is not entitled to any part of her dower, because where the marriage is invalid, no obligation with respect to dower is involved in the contract, as that, in such a case, is also null, nor is the dower held to be due on any other ground than the fruition of the connubial enjoyment, which is not found in the present instance.—52.

If a man engage with a woman in an invalid marriage, and have carnal connexion with her, she is in this case entitled to her proper dower; but she is not entitled to more than the specified dower, according to our doctors.—53.
If a woman require her husband who is sick, to repudiate her by an irreversible divorce, and he accordingly pronounce the same upon her, or if he desire her to choose and she choose herself, or if she procure divorce of him in the manner of Khoola, that is, for a compensation, and he afterwards die before the expiration of her edit, she does not inherit of him, because the only reason for postponing the effect of the divorce is a regard for her right, to the destruction of which she in this case consents. But if she require him to repudiate her by a reversible divorce, and he pronounce three divorces upon her, she inherit, because a reversible divorce does not dissolve the marriage; and hence her requisition of such a divorce does not imply her consent to the destruction of her right.—100.

REMAR Marriage.—It is lawful for a free man to marry four wives, whether free or slaves; but it is not lawful for him to marry more than four because God has commanded in the Koran, saying, "ye may marry whatsoever women are agreeable to you, two, three, or four," and the numbers being thus expressly mentioned, and beyond what is there specified would be unlawful.—31.

If a man, having four wives, repudiate one of them, it is unlawful for him to marry any other woman during the term of that wife’s edit, whether the divorce, under which she stands repudiated, be reversible or complete.—32.

By edit is understood the term of probation incumbent upon a woman in consequence of the dissolution of marriage after carnal connexion: the most approved definition of edit is, the term by the completion of which a new marriage is rendered lawful.—128.

Her marriage with any other during her edit is forbidden on account of its inducing a doubtful parentage, but if the husband marry her, this objection cannot exist.—108.

When a man repudiates his wife being a free woman, either by a reversible or an irreversible divorce, or when separation takes place between a husband and wife, without a divorce, after carnal connexion, the edit or woman’s term of probation, consists of three terms of her courses, provided she be one who is subject to the menstrual discharge, God having so commanded in the Koran.—128.

The edit of a woman, who on account of extreme youth or age, is not subject to the menstrual discharge, is three months because God has so ordained in the sacred writings. The edit of a pregnant woman is accomplished by her delivery whether she be a slave or free, because God, in the sacred writings, has so ordained respecting woman in that situation.—128.

The edit of a free woman upon the decease of her husband is four months and ten days, such being the term mentioned in the Koran, and that of a female slave in the like circumstances two months and five days, bondage being restrictive to the half.—129.

The observance of an edit after separation, is incumbent upon a woman with whom a man has had carnal connexion in an invalid marriage.—53.
If a person of an upright and trusty character inform a woman that her husband who was absent had died, or that he had divorced her thrice, or if a person of a repugnant character deliver her a letter from her husband, wherein he acquaints her of his having divorced her, and she, not knowing for certain that the letter was written by her husband, should however be led to think so, in either of these cases she may lawfully observe her edit, and then marry, because in this instance a circumstance destructive of the former marriage has occurred without any person appearing to contradict it. In the same manner, also, if a woman informs a man that her husband had divorced her, and that the stated period of her forbearance had elapsed, the man may lawfully marry her. If, also, a woman informs her former husband who had divorced her thrice, that "after the lapse of her edit she had married another with whom she had cohabited and that having divorced her she had again completed her edit from that divorce," the first husband may in that case lawfully marry her again. The law is also the same where a woman informs a person that, having been a slave, she had received her freedom.—604.

PARSEE LAW.

Act No. XV. of 1865.

An Act to define and amend the Law relating to Marriage and Divorce among the Parsees.

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:

1. Preliminary.

1. This Act may be cited as "The Parsee Marriage and Divorce Act, 1865."

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

Words in the singular NUMBER include the plural, and words in the plural number include the singular.

"PRIEST" means a Parsee Priest and includes Dastur 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.
"SECTION" means a Section of this Act.

"CHIEF JUSTICE" includes Senior Judge.

"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 & 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" means the highest Civil Court of appeal in such part.

II. Of Marriages between Parsees.

3. 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 "Asirvad" by a Parsee Priest in the presence of two Parsee witnesses independently of such officiating Priest; and unless, in the case of any Parsee who shall not have completed the AGE of twenty-one years, the CONSENT of his or her father or guardian shall have been previously given to such marriage.

4. 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.

5. 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 life time of a husband or wife.

6. 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.

7. For the purposes of this Act a REGISTRAR shall be APPOINTED. Within the local limits of the ordinary original Civil jurisdiction of a High Court, the Registrar shall be appointed by the Chief Justice of such Court, and, without such limits, by the Local Government. Every Registrar so appointed may be removed by the Chief Justice or Local Government appointing him.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

* The rest of section 7 was repealed by Act 14 of 1870, see Repealing Enactments p. 78.
III. Of Parsee Matrimonial Courts.

15. For the purposes of hearing suits under this Act, a special Court shall be constituted in each of the Presidency Towns of Calcutta, Madras and Bombay, and in such other places in the Territories of the several Local Governments as such Governments respectively shall think fit.

16. The Court so constituted in each of the Presidency Towns shall be entitled the Parsee CHIEF MATRIMONIAL COURT of Calcutta, Madras, or Bombay, as the case may be. The local limits of the jurisdiction of a Parsee Chief Matrimonial Court shall be co-terminous 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 be 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.

17. Every Court so constituted at a place other than a Presidency Town shall be entitled the Parsee DISTRICT MATRIMONIAL COURT of such place. Subject to the provisions contained in the next following Section, the local limits of the jurisdiction of such Court shall be co-terminous 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.

18. The Local Government may from time to time alter the local limits of the JURISDICTION OF any Parsee DISTRICT Matrimonial COURT, and may include within such limits any number of Districts under its Government.

19. 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.

20. 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.

21. 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.

22. 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.

23. All Delegates appointed under this Act shall be considered to be public servants within the meaning of the Indian Penal Code.

24. The Delegates selected under the sixteenth and seventeenth Sections to aid in the adjudication of suits under this Act, shall be taken under the orders of the presiding Judge of the Court in due rotation from the Delegates appointed by the Local Government under the twenty-first Section.

25. 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 practice in any District Matrimonial Court constituted under this Act.

26. 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.

27. 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.

28. 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.

29. 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.

a 32
(c). For Divorce or Judicial Separation.

30. 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.

31. 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.

32. 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.

33. 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.

34. The Court may, if it shall think fit, ON any DECREES FOR DIVORCE or judicial separation, order that the husband shall, to the satisfaction of the Court, SECURE TO THE WIFE such GROSS SUM, OR such monthly or PERIODICAL PAYMENTS of money for a term not exceeding her life, as, having regard to her own property (if any), her husband's ability and the conduct of the parties, shall be deemed just, and for that purpose may require a proper instrument to be executed by all necessary parties and suspend the pronouncing of its decree until such instrument shall have been duly executed. In case any such order shall not be obeyed by her husband, he shall be liable to damages at her suit, and further to be sued by any person supplying her with neces-
saries, during the time of such disobedience, for the price or value of such necessaries.

35. In all cases in which the Court shall make any decree or order for ALIMONY it may direct the same to be PAID either TO the WIFE herself, OR to any TRUSTEE, on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court may seem expedient, and may from time to time appoint a new trustee, if for any reason it shall appear to the Court expedient so to do.

(d). For Restitution of Conjugal Rights.

36. Where a husband shall have deserted or without lawful cause ceased to cohabit with his wife, or where a wife shall have deserted or without lawful cause ceased to 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 DEGREE 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.

37. Notwithstanding anything hereinbefore contained, no suit shall be brought in any Court to enforce any marriage between Parsees or any contract connected with or arising out of any such marriage, if, at the date of the institution of the suit, the husband shall not have completed the AGE of sixteen years, or the wife shall not have completed the age of fourteen years.

38. In every suit preferred under this Act the case shall be tried with CLOSED DOORS, should such be the wish of either of the parties.

40. The provisions of the Code of Civil PROCEDURE shall, so far as the same may be applicable, apply to suits instituted under this Act.

41. In suits under this Act all QUESTIONS OF LAW and procedure shall be determined by the presiding Judge; but the decision on the FACTS shall be the decision of the majority of the Delegates before whom the case is tried.

42. 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.

Section 39 was repealed by Act 7 of 1870, see Repealing Enactments p. 70.
43. When the time hereby limited for appealing against any decree dissolving a marriage shall have expired and no appeal shall have been presented against such decree, or when any such appeal shall have been dismissed, or when in the result of any appeal any marriage shall be declared to be dissolved, but not sooner, it shall be LAWFUL for the respective parties thereto TO MARRY AGAIN, as if the prior marriage had been dissolved by death.

V. Of the Children of the Parties.

44. 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.

45. In any case in which the Court shall pronounce a decree of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife is entitled to any property either in possession or reversion, the Court may order such SETTLEMENT as it shall think reasonable to be made of such property or any part thereof FOR the BENEFIT OF the CHILDREN of the marriage or any of them.

VI. Of the Mode of enforcing Penalties under this Act.

46. All offences under this Act may be tried by any officer exercising the powers of a MAGISTRATE, unless the period of imprisonment to which the offender is liable shall exceed that with 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.

47. If any offence which by this Act is declared to be punishable with fine, or with fine and imprisonment not exceeding six months, shall be committed by any person within the local limits of the ordinary original Civil jurisdiction of the High Court, such offence shall be punishable upon summary conviction by any MAGISTRATE OF POLICE of the place at which such Court is held.

48. All FINES imposed under the authority of this Act may, in case of non-payment thereof, be LEVIED BY DISTRESS and sale of the offender's movable property by warrant under the hand of the Officer imposing the fine.

49. In case any such fine shall not be forthwith paid, such Officer
may order the offender to be arrested and kept in safe CUSTODY UNTIL
the RETURN can be conveniently made TO such WARRANT of distress
unless the offender shall give security to the satisfaction of such Officer
for his appearance at such place and time as shall be appointed for the
return of the warrant of distress.

50. 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 ex-
ceeding six calendar months in any other case, the commitment to be deter-
mineable in each of the cases aforesaid on payment of the amount of fine.

VII. Miscellaneous.

51. 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 estab-
lished, 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,
revisions, and alterations shall be published in the official Gazette.

52. 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.

53. This Act shall extend to the whole of British India.

SCHEDULE (see Section 6).

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<th>Name of the Husband and Wife</th>
<th>Condition at the time of Marriage</th>
<th>Bank or Profession</th>
<th>Age</th>
<th>Residence</th>
<th>Names of the Father or Guardian</th>
<th>Bank or Profession</th>
<th>Signature of the Officiating Priest</th>
<th>Signature of the Witness</th>
<th>Signature of father or guardian of wife if an Infant</th>
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* The rest of section 53 was repealed by Act 14 1870 see Repealing
  Enactments p. 75.
Miscellaneous Persons.

Act No. III. of 1872.

An Act to provide a form of Marriage in certain cases.

Whereas it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion, and to legalize certain marriages, the validity of which is doubtful; It is hereby enacted as follows:

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

2. Marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish or the Hindu or the Muhammadan, or the Parsi or the Buddhist, or the Sikh or the Jaina religion, upon the following CONDITIONS:

   (1).—Neither party must, at the time of the marriage, have a husband or wife living:

   (2).—The man must have completed his AGE of eighteen years, and the woman her age of fourteen years, according to the Gregorian calendar:

   (3).—Each party must, if he or she has not completed the age of twenty-one years, have obtained the CONSENT OF his or her FATHER OR GUARDIAN to the marriage:

   (4).—The parties must NOT be RELATED to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal.

1st Proviso.—No such law or custom, other than one relating to CONSANGUINITY or affinity, shall prevent them from marrying.

2nd Proviso.—No law or custom as to consanguinity shall prevent them from marrying, unless a relationship can be traced between the parties through some common ancestor who stands to each of them in a nearer relationship than that of great-great-grand-father or great-great-grand-mother, or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor, of the other.

3. The Local Government may appoint one or more REGISTRARS under this Act, either by name or as holding any office for the time being for any portion of the territory subject to its administration. The officer so appointed shall be called 'Registrar of Marriages under Act III. of 1872,' and is hereinafter referred to as 'the Registrar.' The portion of territory for which any such officer is appointed shall be deemed his district.

4. When a marriage is intended to be solemnized under this Act, one of the parties must give NOTICE in writing TO the REGISTRAR, before whom it is to be solemnized.
The Registrar to whom such notice is given must be the Registrar of a district within which one at least of the parties to the marriage has resided for fourteen days before such notice is given.

Such notice may be in the form given in the first schedule to this Act.

5. The Registrar shall file all such notices and keep them with the records of his office, and shall also forthwith enter a true copy of every such notice in a book to be for that purpose furnished to him by the Government, to be called the "MARRIAGE NOTICE BOOK under Act III. of 1872," and such book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

6. Fourteen days after notice of an intended marriage has been given under section four, such MARRIAGE MAY BE SOLEMNIZED, UNLESS it has been previously OBJECTED TO in the manner herein-after mentioned.

Any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section two.

The nature of the objection made shall be recorded in writing by the Registrar in the register, and shall, if necessary, be read over and explained to the person making the objection, and shall be signed by him or on his behalf.

7. On receipt of such notice of objection, the REGISTRAR shall NOT PROCEED to solemnize the marriage UNTIL the lapse of fourteen days from the receipt of such objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time until the lapse of fourteen days from the opening of such Court.

The person objecting to the intended marriage may file a suit in any Civil Court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree, declaring that such marriage would contravene some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section two.

8. The officer before whom such suit is filed shall thereupon give the person presenting it a CERTIFICATE to the effect THAT such SUIT has been FILED. If such certificate be lodged with the Registrar within fourteen days from the receipt of notice of objection, if there be a Court of competent jurisdiction open at the time, or if there be no such Court open at the time within fourteen days of the opening of such Court, the MARRIAGE SHALL NOT BE SOLEMNIZED TILL the DECISION of such Court has been given and the period allowed by law for appeals from such decision has elapsed; or, if there be an appeal from such decision till the decision of the Appellate Court has been given.

If such certificate be not lodged in the manner and within the period prescribed in the last preceding paragraph, or if the decision of the
Court be that such marriage would not contravene any one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section two, such marriage may be solemnized.

If the decision of such Court be that the marriage in question would contravene any one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section two, the marriage shall not be solemnized.

9. Any Court, in which any such suit as is referred to in section seven is filed, may, if it shall appear to it that the OBJECTION was NOT REASONABLE and bona fide, inflict a fine, not exceeding one thousand rupees, on the person objecting, and award it, or any part of it, to the parties to the intended marriage.

10. Before the marriage is solemnized, the parties and three witnesses shall, in the presence of the Registrar, sign a DECLARATION in the form contained in the second schedule to this Act. If either party has not completed the age of twenty-one years, the declaration shall also be signed by his or her father or guardian, except in the case of a widow, and in every case, it shall be countersigned by the Registrar.

11. The marriage shall be solemnized in the presence of the Registrar and of the three witnesses who signed the declaration. It may be solemnized in any FORM, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses, I, [A], take thee [B] to be my lawful wife (or husband).

12. The marriage may be celebrated either at the office of the Registrar or at such other PLACE, within reasonable distance of the office of the Registrar, as the parties desire. Provided that the Local Government may prescribe the conditions under which such marriages may be solemnized at places other than the Registrar's office, and the additional fees to be paid thereupon.

13. When the marriage has been solemnized, the Registrar shall enter a certificate thereof in a book to be kept by him for that purpose and to be called the 'MARRIAGE CERTIFICATE BOOK under Act, III. of 1872.' in the form given in the third Schedule to this Act, and such certificate shall be signed by the parties to the marriage and the three witnesses.

14. The Local Government shall prescribe the FEES to be paid to the Registrar for the duties to be discharged by him under this Act.

The Registrar may, if he think fit, demand payment of any such fee before solemnization of the marriage or performance of any other duty in respect of which it is payable.

The said Marriage Certificate Book shall at all reasonable times be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom shall on application be given by the Registrar on the payment to him by the applicant of a fee to be fixed by the Local Government for each such extract.
15. Every PERSON who, being AT THE TIME MARRIED, procures a marriage of himself to be solemnized under this Act, shall be deemed to have committed an offence under section four hundred and ninety-four or section four hundred and ninety-five of the Indian Penal Code, as the case may be; and the marriage so solemnized is void.

16. Every person married under this Act who, during the lifetime of his or her wife or husband, CONTRACTS any OTHER MARRIAGE, shall be subject to the penalties provided in sections four hundred and ninety-four and four hundred and ninety-five of the Indian Penal Code for the offence of marrying again during the lifetime of a husband or wife, whatever may be the religion which he or she professed at the time of such second marriage.

17. The Indian DIVORCE ACT SHALL APPLY to all marriages contracted under this Act, and any such marriage may be declared null or dissolved in the manner therein provided, and for the causes therein mentioned, or on the ground that it contravenes some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section two of this Act.

18. The ISSUE OF MARRIAGES solemnized under this Act shall, if they marry under this Act, be deemed to be subject to the law to which their fathers were subject as to the prohibition of marriages by reason of consanguinity and affinity, and the provisos to section two of this Act shall apply to them.

19. Nothing in this Act contained shall affect the validity of any marriage not solemnized under its provisions; nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage; but if the validity of any such mode shall hereafter come into question before any Court, such question shall be decided as if this Act had not been passed.

20. All persons who have heretofore contracted marriages in the presence of at least two witnesses, according to any form whatever, may at any time, PREVIOUS to the first day of January 1873, have such MARRIAGES REGISTERED under this Act, and such marriages shall thereupon be deemed to be and to have been as valid as if they had been contracted and solemnized under this Act; Provided that persons who have such marriages registered under this section must, on such registry, sign a declaration in the form given in the fourth schedule to this Act.

No marriage shall be registered under this section unless conditions (1), (3) and (4) of section two were complied with; and no such marriage shall be registered under this section if, during its continuance, either party has contracted a subsequent marriage.

21. Every person making, signing or attesting any DECLARATION or CERTIFICATE prescribed by this Act, containing a statement which is FALSE, and which he either knows or believes to be false, or does not believe to be true, shall be deemed guilty of the offence described in section one hundred and ninety-nine of the Indian Penal Code.
FIRST SCHEDULE.
(See Section 4.)

NOTICE OF MARRIAGE.

To a Registrar of Marriages under Act III. of 1872 for the District.

I hereby give you notice that a marriage under Act III. of 1872, is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say):—

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<th>Names</th>
<th>Condition</th>
<th>Rank or Profession</th>
<th>Age</th>
<th>Dwelling-place</th>
<th>Length of Residence</th>
</tr>
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<tbody>
<tr>
<td>C D</td>
<td>Spinstor.</td>
<td>..........</td>
<td>Minor.</td>
<td>......</td>
<td>......</td>
</tr>
</tbody>
</table>

Witness my hand, this day of 187.

(Signed) A. B.

SECOND SCHEDULE.
(See Section 10.)

Declaration to be made by the Bridegroom.

I, A B, hereby declare as follows:—

1. I am at the present time unmarried:

2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion:

3. I have completed my age of eighteen years:

4. I am not related to C D [the bride] in any degree of consanguinity or affinity which would according to the law to which I am subject, or to which the said C. D is subject, and subject to the provisions of clause (4) of section two of Act III. of 1872, render a marriage between us illegal.

[And when the bridegroom has not completed his age of twenty-one years:]

5. The consent of my father (or guardian, as the case may be) has been given to a marriage between myself and C D and has not been revoked.]
6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) A B (the bridegroom.)

Declaration to be made by the Bride.

1. C D, hereby declare as follows:

1. I am at the present time unmarried:

2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion:

3. I have completed my age of fourteen years:

4. I am not related to A B [the bridegroom] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said A B is subject, and subject to the provisions of clause (4) of section two of Act III. of 1872, render a marriage between us illegal.

[And when the bride has not completed her age of twenty-one years, unless she is a widow:

5. The consent of M N my father (or guardian, as the case may be), has been given to a marriage between myself and A B, and has not been revoked.]

6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment and also to fine.

Signed in our presence by the abovemented A B and C D.

G H,  
I J,  
K L,  
(three witnesses.)

[And when the bridegroom or bride has not completed the age of twenty-one years except in the case of a widow:

Signed in my presence and with my consent by the above A B and C D:

M N, the father [or guardian of the above named A B or C D, as the case may be.]

(countersigned) E F,

Registrar of Marriages under Act III. of 1872 for the District of

Dated the day of 18.
MARRIAGE—(Miscellaneous).
ACT 3 OF 1872.

THIRD SCHEDULE.
(See Section 13.)

Registrar’s Certificate.

I, E F., certify that on the 18th day of appeared before me A B and C D, each of whom in my presence and in the presence of three credible witnesses, whose names are signed hereunder, made the declarations required by Act III. of 1872, and that a marriage under the said Act was solemnized between them in my presence.

Signed) E F.,
Registrar of Marriages under Act III. of 1872 for the District of

(Signed) A B,
               C D,
               G H,
               I J,
               K L, (three witnesses.)

Dated the day of 18.

FOURTH SCHEDULE.
(See Section 20.)

Declaration to be made by the Husband.

I, A B, hereby declare as follows:—

1. I was married to C D at (place), on or about (date) in the presence of (two witnesses):

2. I was, at the time of my marriage to my wife, C D, unmarried:

3. I did not at such time profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion:

4. I have not contracted any subsequent marriage:

5. I am not related to C D [the wife] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said C D is subject and subject to the provisions of clause (4) of section two of Act III. of 1872, render a marriage between us illegal:

[And when the Bridegroom had not completed his age of twenty-one years:

6. The consent of my father (or guardian as the case may be), had been given to a marriage between myself and C D, and had not been revoked.]

7. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) A B (the husband.)
ACT 3 OF 1872. CIVIL CODE. CHAPTER IV.

Declaration to be made by the Wife.

1. I, C D, hereby declare as follows:—

2. I was married to A B at (place), on or about (date) in the presence of (two witnesses.)

3. I was, at the time of my marriage to my husband, A B, unmarried.

4. I did not at such time profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion:

5. I have not contracted any subsequent marriage:

6. I am not related to A B [the husband] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said A B is subject, and subject to the provisos of clause (4) of section two of Act III. of 1872, render a marriage between us illegal.

[And when the bride had not, at the time of her marriage, completed her age of twenty-one years, unless she was then a widow:

6. The consent of M N my father (or guardian, as the case may be), had at such time been given to a marriage between myself and A B, and had not been revoked.]

7. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment, and also to fine.

Signed in our presence by the abovenamed A B and C D.

G, J, I (two witnesses.)

(Countersigned) E F.

Registrar of Marriages under Act III. of 1872 for

the District of

Dated the day of 18.
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PART I.

Preliminary.

1. This Act may be cited as "The Indian Succession, Act, 1865."

2. 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.

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

Words importing the singular NUMBER include the plural: words importing the male SEX include females.

"PERSON" includes any Company or Association, or body of persons, whether incorporated or not.

"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.

"MOVEABLE PROPERTY" means property of every description except immovable property.

"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 Statute 21 and 22 Vic., Cap. 106 (An Act for the better Government of India) other than the Settlement of Prince of Wales' Island, Singapore, and Malacca.

"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.

4. 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.

PART II.

Of Domicile.

5. 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.
Illustration

(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 immovable, in British India. The succession to the whole is regulated by the law of British India.

(b) A, an Englishman having his domicile in France, dies in British India, and leaves property, both moveable, and immovable 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 immovable property is regulated by the Law of British India.

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

7. 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 the time of the father's death.

Illustrations.

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.

8. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

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

10. A man acquires a NEW DOMICILE by taking up his fixed habitation in a country which is not that of his domicile of origin.

Explanation.—A man is not to be considered as having taken up his fixed habitation in British India merely by reason of his residing there in Her Majesty's Civil or Military Service, or in the exercise of any profession or calling.

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.
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.

11. Any PERSON MAY ACQUIRE a DOMICILE in British India by making and deposing 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.

12. 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.

13. A new domicile continues until the former domicile has been acquired.

14. The DOMICILE OF a MINOR follows the domicile of the parent from whom he derived his domicile of origin.

Exception.—The domicile of a minor does not change with that of his parent, if the minor is married or holds any office or employment in the service of Her Majesty, or has set up, with the consent of the parent in any distinct business.

15. By MARRIAGE a woman acquires the domicile of her husband, if she had not the same domicile before.

16. The WIFE'S DOMICILE during the marriage follows the domicile of her husband.

Exception.—The wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

17. Except in the cases above provided for, a person cannot during MINORITY acquire a NEW DOMICILE.

18. An INSANE PERSON cannot acquire a NEW DOMICILE in any other way than by his domicile following the domicile of another person.

19. 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.

20. KINDRED or consanguinity is the connexion or relation of persons descended from the same stock or common ancestor.

21. 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, 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.

22. 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.

23. 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.

24. In the annexed TABLE OF KINDRED the degrees are computed as far as the sixth, and are marked by numeral figures.

The person whose relatives are to be reckoned, and his cousin-german or first cousin, are, as shown in the table, related in the fourth degree; there being one degree of ascent to the father, and another to the common ancestor, the grandfather; and from him one of descent to the uncle, and another to the cousin-german; making in all four degrees.

A grandson of the brother and a son of the uncle, i.e., a great-nephew and a cousin-german, are in equal degree, being each four degrees removed.

A grandson of a cousin-german is in the same degree as the grand-son of a great-uncle, for they are both in the sixth degree of kindred.
TABLE OF CONSANGUINITY.

The Person Whose Relatives are to be reckoned.

Son.

Grandson.

Great Grandson.

Great Grandfather.

Grandfather.

Father.

Son of the Nephew, or Brother's Grandson.

Son of the Cousin German.

Second Cousin.

Cousin German.

Son of the Cousin.

Son.

Nephew.

Brother.

Great Uncle's son.

Great Uncle.

Great Great Uncle.

Great Great Grandfather.

Great Great Grandfather's Father.
PART IV.
Of Intestacy.

25. A man is considered to die INTATEST in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

Illustrations.

(a) A has left no will. He has died intestate in respect of the whole of his property.

(b) A has left a Will, whereby he has appointed B his executor; but the Will contains no other provisions. A has died intestate in respect of the distribution of his property.

(c) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of the property.

(d) A has bequeathed 1,000 to B, and 1,000 to the eldest son of C, and has made no other bequest; and has died leaving the sum of 2,000 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.

26. 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.

27. 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.

28. 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.

PART V.
Of the Distribution of an Intestate's Property.

(a) Where he has left lineal descendants.

29. 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:—

30. 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.
31. 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.

32. 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.

33. 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 allowed 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 grand-children.

(b) Where the intestate has left no lineal descendants,

34. 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:

35. If the intestate's FATHER be living, he shall succeed to the property.
36. 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.

*Illustration.*

A die 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.

37. If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister, and the child or children of any brother or sister who may have died in the intestate's lifetime are also living, then the MOTHER and each living BROTHER or SISTER, and the living child or CHILDREN OF each deceased BROTHER or SISTER, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

*Illustration.*

A the intestate leaves his mother, his brothers John and Henry, and also one child of a deceased sister Mary, and two children of George, a deceased brother of the half blood, who was the son of his father but not of his mother. The mother takes one-fifth, John and Henry each take one-fifth, the child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth equally between them.

38. If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the MOTHER and the child or CHILDREN OF each deceased BROTHER OR SISTER shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

*Illustration.*

A the intestate leaves no brother or sister, but leaves his mother and one child of a deceased sister Mary, and two children of a deceased brother George. The mother takes one-third, the child of Mary takes one-third, and the children of George divide the remaining one-third equally between them.

39. 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.

40. 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.

41. 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.

*Illustrations.*

(a.) A, the intestate, has left a grand-father and grand mother and no other relative standing in the same or a nearer degree of kindred to him. They, being in the second degree, will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree.
(d.) 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.

(z.) Ten children of one brother or sister of the intestate, and one child of another bro-
ther 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.

42. Where a distributive share in the property of a person who
has died intestate shall be claimed by a CHILD, OR any DESCEND-
ANT 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 distribu-
tive share.

PART VI.

Of the Effect of Marriage and Marriage
Settlements on Property.

43. The HUSBAND surviving his wife has the same rights in
respect of her property, if she die intestate, as the widow has in re-
spect of her husband's property; if he die intestate.

44. 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 domici-
cled in British India at the time of the marriage.

45. The PROPERTY OF a MINOR may be settled in contempla-
ton of marriage, provided the settlement be made by the minor
with the approbation of the minor's father, or if he be dead or absent
from British India, with the approbation of the High Court.

PART VI.

Of Wills and Codicils.

46. Every person of sound mind and not a minor may dispose of
his property by will.

Explanation 1.—A married woman may dispose by Will of any
property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf, or dumb, or blind are not
thereby incapacitated for making a Will if they are able to know what
they do by it.

Explanation 3.—One who is ordinarily insane may make a Will
during an interval in which he is of sound mind.

Explanation 4.—No person can make a Will while he is in such a
state of mind, whether arising from drunkenness, or from illness, or
from any other cause, that he does not know what he is doing.
Illustration.

(a) A can persuec 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.

47. A FATHER, whatever his age may be, MAY BY WILL APPOINT a GUARDIAN or guardians for his child during minority.

48. A Will or any part of a Will, the making of which has been caused by FRAUD or COERCION, or by such IMPORTUNITY as takes away the free agency of the testator, is void.

Illustrations.

(a) A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act, and thereby induces the testator to make a Will in his, A's 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 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 such 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 interference and persuasion with him to induce him to make a Will of a certain purport. A, in consequence of the interference, 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 interference 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.

49. A Will is liable to be REVOKED or altered by the maker of it at any time when he is competent to dispose of his property by Will.

PART. VIII.

Of the Execution of unprivileged Wills.

50. Every TESTATOR, not being a soldier employed in an expedition, or engaged in actual warfare, or a mariner at sea, MUST EXECUTE his WILL ACCORDING TO the FOLLOWING RULES:

First.—The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

Second.—The signature or mark of the testator or the signature of the person signing for him shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.
Third.—The Will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the Will, or have seen some other person sign the Will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time and no particular form of attestation shall be necessary.

51. 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.

PART IX.

Of Privileged Wills.

52. Any soldier being employed in an expedition, or engaged in actual warfare, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a Will, made as is mentioned in the fifty-third Section. Such Wills are called PRIVILEGED WILLS.

Illustrations.

(a.) A, the surgeon of a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged Will.

(b.) A is at sea in a merchant ship; of which he is the purser. He is a mariner, and being at sea can make a privileged Will.

(c.) A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare and as such can make a privileged Will.

(d.) A, a mariner of a ship in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner, at sea, and can make a privileged Will.

(e.) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged Will.

(f.) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged Will.

53. Privileged Wills may be in writing, or may be made by word of mouth. The EXECUTION of them shall be governed by the following rules:—

First.—The Will may be written wholly by the testator with his own hand. In such case it need not be signed nor attested.

Second.—It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

Third.—If the instrument purporting to be a Will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his Will, if it be 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 mouth 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.

54. 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 claiming under either of them.

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

55. 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.

56. Every WILL shall be REVOKED BY the MARRIAGE of the maker except a Will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not in default of such appointment pass to his or her executor, or administrator, or to the person entitled in case of intestacy.

Explanation.—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have POWER TO APPOINT such property.

57. No UNPRIVILEGED WILL or Codicil, nor any part there- of 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.

58. 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.

59. 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.

Explanations.—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.

60. 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.

61. 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.

62. 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 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 bequeaths a legacy "to Thomas, the second son of his brother." 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 realty 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.

63. Where any word material to the full expression of the meaning has been OMITTED, it may be supplied by the context.

Illustration.

The testator gives a legacy of "five hundred" to his daughter A, and a legacy of "five hundred rupees" to his daughter B. A shall take a legacy of five hundred rupees.

63. IF the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the Will, but some PARTS OF THE DESCRIPTION DO NOT APPLY, such parts of the description shall be rejected as erroneous, and the bequest shall take effect.

Illustrations.

(a) A bequeaths to B "his marsh lands lying in L, and in the occupation of X." The testator had marsh lands lying in L, but had no marsh lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous and the marsh lands of the testator lying in L shall pass by the bequest.

(b) The testator bequeaths to B "his zamindari of Rampare." He had an estate at Rampare but it was a taluk and not a zamindari. The taluk passes by this bequest.

66. If the Will mention SEVERAL CIRCUMSTANCES as DESCRIPTIVE OF THE THING which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.
Explanation.—In judging whether a case falls within the meaning of this Section, any words which would be liable to rejection under the sixty-fifth Section are to be considered as struck out of the Will.

Illustrations.

(a) A bequest 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 bequest to B "his marsh lands lying in L, and in the occupation of X, comprising 1,000 bighas of land." The testator had marsh lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The measurement is wholly inapplicable to the marsh lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the Will, and such of the testator's marsh lands lying in L, as were in the occupation of X, shall alone pass by the bequest.

67. Where the words of the WILL are UNAMBIGUOUS, but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

Illustrations.

(a) A man having two cousins of the name of Mary, bequeaths a sum of money to "his cousin Mary." It appears that there are two persons, each answering the description in the Will. That description therefore admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(b) A, by his Will, leaves to B "his estate called Sultanpur Khurd." It turns out that he had two estates called Sultanpur Khurd. Evidence is admissible to show which estate was intended.

68. Where there is an AMBIGUITY or deficiency ON THE FACE of the Will, no extrinsic evidence as to the intentions of the testator shall be admitted.

Illustrations.

(a) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his will he bequeaths 1,000 rupees to "his aunt Caroline" and 1,000 rupees to "his cousin Mary," and afterwards bequeaths 2,000 rupees to "his before-mentioned aunt Mary." There is no person to whom the description given in the Will can apply, and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty under the 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.

69. The MEANING of any clause, in a Will is TO BE COLLECTED FROM THE ENTIRE INSTRUMENT, and all its parts are to be construed with reference to each other; and for this purpose a Codicil is to be considered as part of the Will.

Illustrations.

(a) The testator gives to B a specific fund or property at the death of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B: it appearing from the bequest to B that the testator meant to use in a restricted sense the words in which he describes what he gives to A.

(b) Where a testator having an estate, one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his Will bequeaths Black Acre to B, the latter bequest is to be read as an exception out of the first, as if he had said "I give Black Acre to B, and all the rest of my estate to A."

70. GENERAL WORDS may be understood in a restricted sense where it may be collected from the Will that the testator meant to use them in a restricted sense; and words may be understood in a wider
sense than that which they usually bear, where it may be collected from
the other words of the will that the testator meant to use them in such
wider sense.

Illustrations.

(a.) A testator gives to A "his farm in the occupation of B," and to C "all his marsh
lands in L." Part of the farm in the occupation of B consists of marsh lands in L, and the
testator also has other marsh lands in L. The general words, "all his marsh lands in L," are
restricted by the gift to A. A takes the whole of the farm in the occupation of B, including
that portion of the farm which consists of marsh lands in L.

(b.) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, but-
tons and chest of clothes, 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 spe-
cified 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.

71. Where a clause is susceptible of TWO MEANINGS, according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.

72. NO PART OF a WILL is TO BE REJECTED as destitute of meaning, if it is possible to put a reasonable construction upon it.

73. If the SAME WORDS OCCUR IN DIFFERENT PARTS OF the same WILL, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

74. The intention of the testator is not to be set aside because it cannot take effect to the full extent, but EFFECT is to be given to it AS FAR AS POSSIBLE.

Illustration.

The testator by a Will made on his death-bed bequeathed all his property to C D for life,
and after his decease to a certain hospital. The intention of the testator cannot take effect
to its full extent because the gift to the hospital is void under the hundred and fifth Section
but it shall take effect so far as regards the gift to C D.

75. Where two CLAUSES or gifts in a will are IRRECONCILE-
ABLE, so that they cannot possibly stand together, the last shall prevail.

Illustrations.

(a) The testator by the first clause of his Will leaves his estate of Ramnagar "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 lat-
ter disposition shall prevail.

76. 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.

77. 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 DE-
SCRIPTION AT THE DEATH OF THE TESTATOR.

78. Unless a contrary intention shall appear by the Will, a BE-
QUEST OF THE ESTATE OF THE TESTATOR shall be construed to
include any property which he may have power to appoint by Will to
any object he may think proper, and shall operate as an execution of such power: and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power.

79. Where property is bequeathed to or for the benefit of such of certain objects as a specified person shall appoint, or for the benefit of certain objects in such proportions as a specified person shall appoint; and the will does not provide for the event of no appointment being made; if the power given by the will be not exercised, the property belongs to all the objects of the power in equal shares.

Illustration.

A, by his will, bequeaths a fund to his wife for her life, and directs that at her death it shall be divided among his children in such proportions as she shall appoint. The widow dies without having made any appointment. The fund shall be divided equally among the children.

80. Where a bequest is made to the "heirs," or "right heirs," or "relations," or "nearest relations," or "family," or "kindred," or "nearest of kin," or next of kin," of a particular person, without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property.

Illustrations

(a) A leaves his property "to his own nearest relations." The property goes to those who would be entitled to it if A had died 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.

81. Where a bequest is made to the "representatives," or "legal representatives," or "personal representatives," or "executors or administrators," of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it.

Illustration.

A bequest is made to the "legal representatives" of A. A has died intestate and insolvent. B is his administrator. B is entitled to receive the legacy, and shall apply it in the first place to the discharge of such part of A's debts as may remain unpaid; if there be any surplus, it 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.

82. 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.
83. 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.

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 life-time 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 to his heirs. A and B survive the testator. B dies in A's life-time. 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 life-time. A survives the testator. Upon A's death the bequest to the heirs of B takes effect.

84. Where property is bequeathed to a person, and words are added which describe a class of persons, but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the Will.

Illustrations.

(a) A bequest is made—

to A and his children,
to A and his children by his present wife,
to A and his heirs,
to A and the heirs of his body,
to A and the heirs male of his body,
to A and the heirs female of his body,
to A and his issue,
to A and his family,
to A and his descendants,
to A and his representatives,
to A and his personal representatives,
to A, his executors and administrators.

In each of those 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.

85. 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.

86. The word "CHILDREN" in a Will applies only to lineal descendants in the first degree; the word "GRANDCHILDREN" applies only to lineal descendants in the second degree of the person whose "children" or "grandchildren" are spoken of; the words, "NEPHEWS" and "NIECES" apply only to children of brothers or sisters; the words "COUSINS" or "FIRST COUSINS" or "COUSINS-GERMAN" apply only to children of brothers or of sisters of the father or mother.
of the person whose "cousin," or "first cousin," or "cousin-german," are spoken of; the words "FIRST COUSINS ONCE REMOVED" apply only to children of cousin-german or to cousins-german of a parent, of the person whose "first cousin 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 cousin" 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.

37. In the absence of any intimation to the contrary in the Will, the term "CHILD," "SON," or "DAUGHTER" or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or where there is no such legitimate relative, a person who has acquired, at the date of the Will, the reputation of being such relative.

Illustrations.

(a) A, having three children, B, C, and D, of whom B and C are legitimate and D is illegitimate, leaves his property to be equally divided among "his children." The property belongs to B and C in equal shares, to the exclusion of D.

(b) A, having a niece of illegitimate birth, who has acquired the reputation of being his niece and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

(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.

88. Where a Will purports to make TWO BEQUESTS to the same person, and a question arises whether the testator intended to make the second bequest instead of, or in addition to the first; if there is nothing in the Will to show what he intended, the following rules shall prevail in determining the construction to be put upon the Will:

First.—If the same specific thing is bequeathed twice to the same legatee in the same Will, or in the Will and again in a Codicil, he is entitled to receive that specific thing only.

Second.—Where one and the same Will, or one and the same Codicil, purports to make in two places a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.
Third.—Where two legacies of unequal amount are given to the same person in the same Will, or in the same Codicil, the legatee is entitled to both,

Fourth.—Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a Will, and the other by a Codicil or each by a different Codicil, the legatee is entitled to both legacies.

Explanation.—In the four last rules, the word Will does not include a Codicil.

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 5,000 rupees, B is entitled to 11,000 rupees.

(e) A, by his Will bequeatheth to B 5,000 rupees, and by a Codicil to the Will he bequeatheth to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(f) A, by one Codicil to his Will, bequeatheth to B 5,000 rupees, and by another Codicil bequeatheth to him 6,000 rupees. B is entitled to receive 11,000 rupees.

(g) A, by his Will, bequeatheth 500 rupees to B because she was his nurse,” and in another part of the Will bequeatheth 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 bequeatheth 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, bequeatheth to B the sum of 5,000 rupees, and also bequeatheth to him the sum of 5,000 rupees if he shall attain the age of 15. B is entitled absolutely to one sum of 5,000 rupees and takes a contingent interest in another sum of 5,000 rupees.

89. 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.

Illustration.

(a) A makes his 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 bequeatheth all his property to B, except certain stocks and funds, which he bequeatheth to C. B is the residuary legatee.

90. 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.

Illustrations.

A by his Will bequeatheth certain legacies of which is void under the hundred and fifth section and another legacy by the death of the legatee. He bequeatheth the residue of his property to B. After the date of his Will, A purchases a zamindari, which belongs to him, at the time of his death. B is entitled to the two legacies and the zamindari as part of the residue.
91. 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.

92. If the legatee does not survive the testator, the legacy cannot take effect, but shall LAPSE and form part of the residue of the testator's property, unless it appear by the Will that the testator intended that it should go to some other person. In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Illustrations.

(a) The testator bequeaths to B 500 rupees which B owes him. B dies before the testator; the legacy lapses.

(b) A bequest is made to A and his children. A dies before the testator, or happens to be dead when the Will is made. The legacy to A and his children lapses.

(c) A legacy is given to A, and in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(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.

93. 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.

94. But where a legacy is given to legatees in words which show that the testator intended to give them DISTINCT SHARES of it, then if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

Illustration.

A sum of money is bequeathed to A, B and C to be equally divided among them. A dies before the testator. B and C shall only take so much as they would have had if A had survived the testator.

95. Where the share that lapses is a part of the general residue bequeathed by the will, that share shall go as undisposed of.

Illustration.

The testator bequeaths the residue of his estate to A, B, and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

96. Where a bequest shall have been made TO any child or other LINEAL DESCENDANT of the testator, and the legatee shall die in the lifetime of the testator, but any lineal descendant of his shall survive the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the Will.

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.
97. 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.

98. Where a BEQUEST is made simply TO a described CLASS OF PERSONS, the thing bequeathed shall go only to such as shall be alive at the testator’s death.

Exception.—If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise, the property shall at that time go to such of them as shall be then alive, and to the representatives of any of them who have died since the death of the testator.

Illustrations.

(a) A bequeaths 1,000 rupees to “the children of B” without saying when it is to be distributed among them. C died previous to the date of the Will, leaving three children, 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 B his executor. B has survived A. D and E are jointly entitled to so much of the leasehold term as remains unexpired.

(d) A sum of money was bequeathed to A for her life, and after her decease to the children of B. At the death of the testator, B had two children living, C and D, and after that event, two children, E and F, were born to B. C and E died in the lifetime of A, C having made a Will, E having made no Will. A has died leaving D and F surviving her. The legacy is to be divided into four equal parts one of which is to be paid to the executor of C, one to D, one to the administrator of E, and one to F.

(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 his 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 B. 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.

99. Where a bequest is made to a person by a particular description, and there is NO PERSON in existence at the testator’s death who ANSWERS the DESCRIPTION, the bequest is void.
Act 10 of 1865. Civil Code, Chapter V.

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 had no son. The bequest to C's eldest son is void.

(c) 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.

100. Where a bequest is made to a person not in existence at the time of the testator's death, subject to a prior bequest contained in the Will, the later bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Illustrations.

(a) Property is bequeathed to A for his life, and after his death to his eldest son for life, and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(b) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters, some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.

(c) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that if any of them 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.

101. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.
Illustrations.

(a) A fund is bequeathed to A for his life; 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 15 years have elapsed from the death of the longer livor 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 dies or becomes married under age, her share of the fund shall be devolved upon her daughter of marriage or daughter of marriage and inheritance, to whom the direction applies must be in existence at the decease of the testator, and any portion of the fund which may eventually be settled is directed must vest not later than 15 years from the death of the daughter whose share it was. All these provisions are valid.

102. If a bequest is made to a class of persons, with regard to some of whom it is inoperative by reason of the rules contained in the two last preceding Sections, or either of them, such bequest shall be wholly void.

Illustrations.

(a) A fund is bequeathed to A for life, and after his death to all his children who shall attain the age of 25. A survives the testator, and has some children living at the testator's death. Each child of A's living at the testator's death must attain the age of 25 [if at all] within the limits allowed for a bequest. But A may have children after the testator's decease, some of whom may not attain the age of 25 until more than 15 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 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, and 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.

103. 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.

(a) A fund is bequeathed to A for 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 A's sons 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 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.

104. 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.

Exception.—Where the property is immovable, or where accumulation is directed to be made from the death of the testator, the direction
shall be valid in respect only of the income arising from the property within one year next following the testator's death; and at the end of the year such property and income shall be disposed of respectively, as if the period during which the accumulation has been directed to be made had elapsed.

Illustrations.

(a.) The will directs that the sum of 10,000 rupees shall be invested in Government securities, and the income accumulated for 20 years, and that the principal, together with the accumulations, shall then be divided between A, B, and C. A, B, and C are entitled to receive the sum of 10,000 rupees at the end of the year from the testator's death.

(b.) The will directs that 10,000 rupees shall be invested, and the income accumulated until A shall marry, and shall then be paid to him. A is entitled to receive 10,000 rupees at the end of a year from the testator's death.

(c.) The will directs that the rents of the farm of Sultānpur 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 Sultānpur shall be accumulated for ten years, and that the accumulation 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.

105. No man having a nephew or niece or any near or 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.

106. Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the Will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy. And in such cases the legacy is from the testator's death said to be vested in interest.
Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, 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 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 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 devested in case A, B, and C shall all die under 18, and upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

107. A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens. A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible. In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

Exception.—Where a fund is bequeathed to any person upon his attaining a particular age, and the Will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit; the bequest of the fund is not contingent.

Illustrations.

(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, for 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.
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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) He leaves his farm of Sultanpur Khurd to B, if B shall convey his own farm of Sultanpur Huzurg 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 fulfillment 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 bequest 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 bequest to B 600 rupees when he shall attain the age of 14, 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.

108. 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.

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.

109. Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accept it fully.

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, bequests to B all his shares in joint stock companies. B refuses to accept the shares in (Y). He forfeits the shares in (X).

110. 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.

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, bequests 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.

111. 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.
Illustrations.

(a) A legacy is bequeathed to A, and in case of his death, to B. If A survives the testator, the legacy to C 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."

112. Where a BEQUEST is made TO such of certain PERSONS as shall be SURVIVING at some period, but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution, unless a contrary intention appear by the Will.

Illustrations.

(a) Property is bequeathed to A and B, to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.

(b) Property is bequeathed to A for life, and after his death to B and C, to be equally divided between them, or to the survivor of them. B dies during the lifetime 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.

113. 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.

114. A bequest upon a CONDITION, the fulfilment of which would be CONTRARY TO LAW OR TO MORALITY, is void.

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.

115. 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.
Illustrations.

(a) A legacy is bequeathed to A on the 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 the 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 the 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 the condition that he shall marry with the consent of B, C, and D. A marries without the consent of B, C, and D. A marries with the consent of B, C, and D. A has not fulfilled the condition.

(e) A marries the conditional legatee B (C, and D) to his or her life by a will. A afterwards renews B's and D's reversion. A marries E. A has fulfilled the condition.

(f) A legacy is bequeathed to A on the 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.

(g) 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.

116. Where there is a bequest to one person and a bequest of the same thing to another if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator.

Illustrations.

(a) A bequeaths a sum of money to his own children surviving him, and if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

(b) A bequeaths a sum of money to B on condition that he shall execute a certain document within three months after A's death and if he should neglect to do so to C. B dies in the testator's lifetime. The bequest to C takes effect.

117. Where the Will shows an intention that the SECOND BEQUEST shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect unless the prior bequest fails in that particular manner.

Illustration.

A makes a bequest to his wife, but in case she shall die in his lifetime, the bequests to B that which he shall bequeath 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.

118. A bequest may be made to any person with the condition super-added 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, and 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 vested, and 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.
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.

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.

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 A's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

119. An ULTERIOR BEQUEST of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Illustrations

A legacy is bequeathed to A with a proviso that if he marries without the consent of B and C, 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.

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.

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.

120. If the ulterior bequest be not valid, the original bequest is not affected by it.

Illustrations.

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.

A estate is bequeathed to A for her life, and if she do not desert her husband, to B. A is entitled to the estate during her life as if no condition had been inserted in the Will.

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 112, and A is entitled to the estate during his life.

121. A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

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.

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.

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.

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.

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 B shall cease to have any effect. B becomes a Nun in the lifetime of A. She thereby loses her contingent interest in the fund.

122. 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.
123. Where a bequest is made with a condition superadded that unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect; but no time is specified for the performance of the act; if the legatee takes any step which renders impossible, or indefinitely postpones, the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Illustrations.

(a) A bequest is made to A with a proviso that unless he enters the army, the legacy shall go to B. A takes holy orders, and thereby renders it impossible that he should fulfill 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 fulfillment of the condition. The bequest ceases to have effect.

124. 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.

125. 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.

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.

126. Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee the fund belongs to him as if the Will had contained no such direction.

Illustrations.

(a) A 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.

127. 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
been exhausted upon the objects contemplated by the Will, remains a
part of the estate of the testator.

Illustrations.

(a) A directs that the 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, be-
longs 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.

128. If a legacy is bequeathed to a person who is named an ex-
ecutor 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.

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

Illustrations.

(a) A bequeaths to B—

"The diamond ring presented to him by C."

"His gold chain."

"A certain bale of wool."

"A certain piece of cloth."

"All his household goods, which shall be in or about his dwelling-house in M. Street, in
Calcutta, at the time of his death."

"The sum of 1,000 rupees in a certain chest."

"The debt which B owes him."

"All his bills, bonds, and securities belonging to him, lying in his lodgings in Calcutta."

"All his furniture in his house in Calcutta."

"All his goods on board a certain ship then lying in the River Hooghly."

"2,000 rupees which he had 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 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 five and half per cent. loan of the Government of
India."

"All the Government securities he shall be entitled to at the time of his decease."

Each of these legacies is specific.
(b) A having Government promissory notes for 10,000 rupees, bequeaths to his executors "Government promissory notes for 10,000 rupees in trust to sell" for the benefit of B.

The legacy is specific.

(c) A, having property at Benares, and also in other places, bequeaths to B all his property at Benares.

The legacy is specific.

(d) A bequeaths to B—

- His house in Calcutta.
- His zamindari of Rampore.
- His taluk of Ramnagar.
- His lease of the Indigo factory of Sulkea.
- An annuity of 500 rupees out of the rents of his zamindari of W.

A directs his zamindari of X to be sold, and the proceeds to be invested for the benefit of B. Each of these bequests is specific.

(e) A by his Will charges his zamindari of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamindari to D. Each of these bequests is specific.

(f) A bequeaths a sum of money to buy a house in Calcutta for B.
- To buy an estate in Zillah Fureedpore for B.
- To buy a diamond ring for B.
- To buy a house 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.

130. 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.

Illustrations.

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.

131. Where a bequest is made in general terms, of a certain amount of any kind of stock, the legacy is not specific merely because the testator was at the date of his Will possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

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.

132. A money legacy is not specific merely because the Will directs its payment to be postponed until some part of the property of the testator shall have been reduced to a certain form, or remitted to a certain place.
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.

133. When a Will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.

134. Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.

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.

135. Where property comprised in a bequest to two or more persons in succession is not specifically bequeathed, it shall in the absence of any direction to the contrary be sold, and the proceeds of the sale shall be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the Will.

Illustration.

A, having a lease for a term of years, bequeaths "all his property" to B for life, and after B's death to C. The lease must be sold, and the proceeds invested as stated in the text, and the annual income arising from the fund is to be paid to C for life. At B's death the capital of the fund is to be paid to C.

136. 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.

137. Where a testator bequeaths a certain sum of money or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Explanation—The distinction between a specific legacy and a demonstrative legacy consists in this, that where specified property is given to the legatee, the legacy is specific; where the legacy is directed to be paid out of specified property, it is demonstrative.

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 Greensacre; 90 chests of the Indigo which shall be made at his factory of Rumpore; "10,000 rupees out of his five per cent. promissory notes of the Govt. 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 bequeath to B 10,000 rupees out of his estate at Ramnagar," or charges it on his estate at Ramnagar. 
"10,000 rupees, being his share of the capital embarked in a certain business."

Each of these bequests is demonstrative.

138. Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatees, 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 bequeath to B 1,000 rupees, being part of a debt due to him from W. He also bequeath to C 1,000 rupees to be paid out of the debt due to him by 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 Aedemption of Legacies.

139. If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect by reason of the subject-matter having been withdrawn from the operation of the Will.

Illustrations.

(a) A bequeath 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 bequeath 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 bequeath 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.

140. A demonstrative legacy is not adeemed by reason that the property on which it is charged by the Will does not exist at the time of the death of the testator, or has been converted into property of a different kind; but it shall in such case be paid out of the general assets of the testator.
141. Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

Illustrations.

(a) A bequeaths to B—
   "The debt which C owes him."
   "2,000 rupees which he has in the hands of D."
   "The money due to him on the bond of E."
   "His mortgage on the Rampley 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.

142. 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.

Illustration.

A bequeaths to B "the debt due to him by C." The debt amounts to 10,000 rupees. C pays 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.

143. 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.

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.

144. Where a portion of a fund is specifically bequeathed to one legatee and a legacy charge on the same fund is bequeathed to another legatee; if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

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.

145. 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 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,
146. Where stock which has been specifically bequeathed, does only in part exist at the testator’s death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Illustration.

A bequeaths to B—

“His 10,000 rupees in the five and half 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.

147. A specific bequest of goods under a description connecting them with a certain place, is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

Illustrations.

(a) A bequeaths to B “all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death.” The goods are removed from the house to save them from fire. A dies before they are brought back.

(b) A bequeaths to B “all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death.” During A’s absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

148. The removal of the thing bequeathed from the place in which it is stated in the Will to be situated, does not constitute an adeption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

Illustrations.

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

(b) A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only, which he removes with himself to each house. At the time of his death, the furniture is in the house at Chinsurah.

(c) A bequeaths to B all his goods on board a certain ship then lying in the River Hooghly. The goods are removed by A's directions to a warehouse, in which they remain at the time of A’s death.

No one of these legacies is revoked by adeption.

149. 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 adeption; but if he mixes it up with the general mass of his property, the legacy is adeemed.

Illustration.

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his property. The legacy is not adeemed.

150. Where a thing specifically bequeathed undergoes a change between the date of the Will and the testator’s death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

Illustrations.

(a) A bequeaths to B “all the money which he has in the five and a half per cent. loan of the Government of India.”

The securities for the five and a half per cent. loan are converted during A’s lifetime into 6 per cent. stock.
(b) A bequeaths to B the sum of 2,000l., invested in Consols in the names of trustees for A. The sum of 2,000l. is transferred by the trustees into A’s own name.

c) 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.

151. Where a thing specifically bequeathed undergoes a change between the date of the Will and the testator’s death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Illustration.

A bequeaths to B “all his 3 per cent. Consols.” The Consols are, without A’s knowledge, sold by his agent, and the proceeds converted into East India Stock. This legacy is not adeemed.

152. 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.

153. Where stock specifically bequeathed is sold; and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed.

PART XXII.

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

154. 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.

155. 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,
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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 made out of A's assets.

156. Where there is a bequest of any interest in immovable property, in respect of which payment in the nature of land revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them up to the day of his death.

Illustration.

A bequeaths to B a house, in respect of which 356 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.

157. 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.

Illustration.

(a) A bequeaths to B his shares in a certain railway. At A's death there was due from him the sum of £5 in respect of each share, being the amount of a call which had been duly made; and the sum of £5 in respect of each share, being the amount of interest which had accrued 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 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 £2 per share, payable by three instalments. A bequeaths his share 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.

158. 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.

Illustration.

(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 ass is 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.

159. 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 five and a half 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.

160. Where an annuity is created by Will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the Will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally or that a sum of money is bequeathed to be invested in the purchase of it.

Illustrations.

(a) A bequeaths to B 500 rupees a year. B is entitled during his life to receive the annual sum of 500 rupees.

(b) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(c) A bequeaths an annuity of 500 rupees to B for life, and on B's death to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

161. 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.

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.

162. 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.

163. 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.

164. 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.

165. 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 marrying portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 2,000 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.

166. No bequest shall be wholly or partially ademeed by a subsequent provision made by settlement or otherwise for the legatee.

Illustrations.
(a) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby ademeed.

(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 50,000 rupees. The legacy is not thereby diminished.

PART XXVII.
Of Election.

167. 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.

168. The interest so relinquished shall devolve as if it had not been disposed of by the Will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the Will.

169. This rule will apply whether the testator does or does not believe that which he professes to dispose of by his Will to be his own.

Illustrations.
(a) The farm of Sultanpur 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 Sultanpur, 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, owning real property in England, to which C is heir-at-law, bequeaths a legacy to C, and a subject thereto devises and bequeaths to B "all his property, whatsoever and wherewith he 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.

170. A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Illustration.

The farm of Sultanpur Khurd being the property of B, A bequeathed it to C; and bequeathed another farm called Sultanpur Burzurg to his own executors, with a direction that it should be sold, and the proceeds applied in payment of B's debts. B must elect whether he will abide by the Will or keep his farm of Sultanpur Khurd in opposition to it.

171. A person taking no benefit directly under the Will, but deriving a benefit under it indirectly, is not put to his election.

Illustration.

The lands of Sultanpur are settled upon C for life, and after his death upon D, his only child. A bequeaths the lands of Sultanpur to B, and 1,000 rupees to C. C dies intestate, shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the Will. In that capacity he receives the legacy of 1,000 rupees, and accounts to B for the rents of the lands of Sultanpur which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Sultanpur in opposition to the Will.

172. 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 Sultanpur is settled upon A for life, and after his death upon B. A leaves the estate of Sultanpur to D, and 2,000 rupees to B, and 1,000 rupees to C, who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultanpur in opposition to the Will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the Will.

Exception to the six last Rules.—Where a particular gift is expressed in the Will to be in lieu of something belonging to the legatee, which is also in terms disposed of by the Will, if the legatee claims that thing he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the Will.

Illustration.

Under A's marriage settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultanpur during her life.

A by his Will bequeaths to his wife an annuity of 500l during her life, in lieu of her interest in the estate of Sultanpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000l. 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 1,000l.

173. Acceptance of a benefit given by the Will constitutes an election by the legatee to take under the Will, if he has knowledge of his right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

Illustrations.

(a) A is owner of an estate called Sultanpur Khurd and has a life interest in another estate called Sultanpur Burzurg to which, upon his death, his son B will be absolutely entitled. The Will of A gives the estate of Sultanpur Khurd to B, and the estate of Sultanpur Burzurg to C. B, in ignorance of his own right to the estate of Sultanpur Khurd, enters into possession of it, and enters into possession of the estate of Sultanpur Khurd. B has not confirmed the bequest of Sultanpur Burzurg to C.
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174. 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.

175. Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

Illustration.

A bequeaths to B an estate to which C is entitled, and to C a coal mine. C takes possession of the mine, and exhausts it. He has thereby confirmed the bequest of the estate to B.

176. If the legatee shall not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the Will, the representatives shall, upon the expiration of that period, require him to make his election; and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the Will.

177. In case of disability the election shall be postponed until the disability ceases, or until the election shall be made by some competent authority.

PART XXVIII.

Of Gifts in contemplation of Death.

178. 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 a gift may be resumed by the giver. It does not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.

Illustrations.

(a) A being ill, and in expectation of death delivers to B, to be retained by him in case of A's death—

A watch.
A bond granted by C to A.
A Bank Note.
A promissory note of the Government of India endorsed in blank.
A Bill of Exchange endorsed in blank.
Certain mortgage deeds.

A dies of the illness during which he delivered these articles. B is entitled to—

The watch.
The debt secured by C's bond.
The Bank Note.
The promissory note of the Government of India.
The Bill of Exchange.
The money secured by the mortgage deeds.
(b) A being ill, and in expectation of death delivers to B the key of a trunk, or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A’s death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents, or to A’s goods of bulk in the warehouse.

(c) A being ill, and in expectation of death, puts aside certain articles in separate parcels, and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

PART XXIX.

Of Grant of Probate and Letters of Administration.

179. 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.

180. 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 annexed.

181. Probate can be granted only to an executor appointed by the Will.

182. 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 Codicil, 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 Codicil, signed of different dates.” The nephew is appointed an executor by implication.

183. 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.

184. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustrations.

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.

185. If a Codicil be discovered after the grant of probate, a separate probate of that Codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the Will. If different executors are appointed by the Codicil, the probate of the Will must be revoked, and a new probate granted of the Will and the Codicil together.

186. 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.
187. 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.

188. 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.

189. 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.

190. 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.

191. 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.

192. Letters of administration do not render valid any intermediate acts of the administrator, tending to the diminution or damage of the intestate's estate.

193. 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.

194. 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.

195. 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 Will annexed may be granted to the person who would be entitled to administration in case of intestacy.

196. When the deceased has made a Will, but has not appointed an executor, or when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the Will, or when the executor dies after having proved the Will but before he has administered all the estate of the deceased; an universal or a RESIDUARY LEGATEE may be admitted to prove the Will, and letters of administration with the Will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

197. 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.
193. 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.

199. 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 kins to accept or refuse letters of administration.

200. When the deceased has died intestate, THOSE who are CONNECTED with him either BY MARRIAGE OR by CONSANQUINITY, are entitled to obtain letters of administration of his estate and effects in the order and according to the rules hereinafter stated.

201. 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.

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.

202. 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.

203. If there be no widow, or if the court see cause to exclude the widow, it shall commit the administration to the PERSON or persons who would be BENEFICIALLY ENTITLED to the estate according to the rules for the distribution of an intestate's estate; provided that when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration.

204. Those who stand in equal degree of kindred to the deceased, are equally entitled to administration.

205. 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.

206. 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.

207. 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,
PART XXX.
Of Limited Grants.

(a) Grants limited in Duration.

208. 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.

209. 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.

210. 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.

211. 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.

212. 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.

213. When any person to whom, if present, letters of administration with the Will annexed might be granted, is absent from the Province, letters of administration with the Will annexed may be granted to his attorney, limited as above mentioned.

214. 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.

215. 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.

216. 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.
217. 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.

218. PENDING any SUIT touching the validity of the Will of a deceased person, or for obtaining or revoking any probate or 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.

219. 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.

220. 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.

221. Where a person dies, leaving property of which he was the sole 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.

222. 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.

223. 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.
224. 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.

225. 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.

(j.) Grants with Exception.

226. 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.

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

(e.) Grants of the Rest.

228. 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.

(f.) Grants of Effects unadministered.

229. 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.

230. 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.

231. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

(g.) Alteration in Grants.

232. 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.

233. 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.

234. 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.

235. The District Judge shall have JURISDICTION in granting and revoking probates and letters of administration in all cases within his District.

236. 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.

237. 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.

238. 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.

239. Until probate be granted of the Will of a deceased person, or an administration of his estate be constituted, the DISTRICT JUDGE within whose jurisdiction any part of the property of the deceased person is situate, is AUTHORIZED AND REQUIRED TO INTERFERE FOR THE PROTECTION OF SUCH PROPERTY, at the instance of any person claiming to be interested therein and in all other cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose, if he shall see fit, to appoint an officer to take and keep possession of the property.

240. Probate of the Will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it shall appear by a petition verified as hereinafter mentioned, of the person applying for the same, that the testator or intestate, as the case may be, at the time of his decease, had a fixed place of ABODE, OR ANY PROPERTY, moveable, or immovable, WITHIN the JURISDICTION of the Judge.

241. WHEN the application is made to the Judge of a District in which the deceased had NO FIXED ABODE at the time of his death, it shall be in the DISCRETION OF THE JUDGE TO REFUSE the APPLICATION, if in his judgment it could be disposed of more justly or conveniently in another District, or where the application is for letters of administration, to grant them absolutely or limited to the property within his own jurisdiction.

242. PROBATE or LETTERS OF ADMINISTRATION shall have effect over all the property and estate, moveable or immovable of the deceased, throughout the Province in which the same is granted, and shall be CONCLUSIVE as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted.

243. 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
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abode, or no property within the District at the time of death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

244. 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 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.

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

246. APPLICATIONS FOR LETTERS OF ADMINISTRATION shall be made by petition distinctly written as aforesaid, and stating the time and place of the deceased's death, the family or other relatives of the deceased, and their respective residences, the right in which the petitioner claims, that the deceased left some property within the jurisdiction of the District Judge to whom the application is made, and the amount of assets which are likely to come to the petitioner's hands.

247. 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."

248. 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)."

249. 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.
250. 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.

251. 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.

252. The caveat shall be to the following effect:—“Let nothing be done in the matter of the estate of A B, late of C D of deceased, who died on the day of at without notice to C D of

253. 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.

254. 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:—

“I, Judge of the District of hereby make known that on the day of in the year the last Will of late of , a copy whereof is hereunto annexed, was proved and registered before me and that administration of the property and credits of the said deceased, and in any way concerning his Will, was granted to the executor in the said Will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of a year next ensuing and also to render a true account thereof.

255. And wherever it shall appear to the District Judge that LETTERS OF ADMINISTRATION to the estate of a person deceased, with or without a copy of the Will annexed, should be granted he will grant the same under the seal of his Court in manner following:—

“I, Judge of the District of hereby make known that on the day of letters of administration (with or without the Will annexed as the case may be) of the property and credits of , late of, deceased, were granted to , the father (or as the case may be) of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of one year next ensuing, and also to render a true account thereof.”
256. Every person to whom any grant of ADMINISTRATION shall be committed shall give a BOND to the Judge of the District Court to ensure 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.

257. 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.

258. No probate of a Will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days from the day of the testator or intestate's death.

259. 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.

260. 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.

261. In any case before the District Judge in which there is contention, the PROCEEDINGS SHALL TAKE, as nearly as may be, the FORM OF A REGULAR SUIT, according to the provisions of the Code of CIVIL PROCEDURE, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared aforesaid to oppose the grant shall be the defendant.

262. Where any probate is or letters of administration are revoked, all PAYMENTS bona 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.
263. 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.

264. The HIGH COURT shall have CONCURRENT JURISDICTION with the District Judge in the exercise of all powers hereby conferred upon the District Judge.

PART XXXII,
Of Executors of their own Wrong.

265. A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong.

Exceptions. First.—Intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his funeral or for the immediate necessities of his family or property, does not make an executor of his own wrong.

Second.—Dealing in the ordinary course of business with goods of the deceased received from another, does not make an executor of his own wrong.

Illustrations.
(a) A man 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.

266. 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.

267. 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.

268. All demands whatsoever and all RIGHTS to prosecute or defend any action or special proceeding, existing in favour of or against a person at the time of his decease, SURVIVE TO and against his EXECUTORS or administrators; EXCEPT causes of ACTION FOR DE.
FAMINATION, 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 suite for divorce. A dies. The cause of action does not survive th his representative.

269. An executor or administrator has POWER TO DISPOSE of the PROPERTY of the deceased, either wholly or in part, in such manner as he may think fit.

Illustrations.
(a) The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it. The sale is valid.
(b) The executor, in the exercise of his discretion, mortgages a part of the immovable estate of the deceased. The mortgage is valid.

270. If an EXECUTOR or administrator PURCHASES, either directly or indirectly, any part of the property of the deceased, the SALE is VOIDABLE at the instance of any other person interested in the property sold.

271. When there are SEVERAL EXECUTORs or administratoRs, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the Will or taken out administration.

Illustrations.
(a) One of several executors has power to release a debt due to the deceased.
(b) One has power to surrender a lease.
(c) One has power to sell the property of the deceased, movable or immovable.
(d) One has power to assent to a legacy.
(e) One has power to endorse a promissory note payable to the deceased.
(f) The Will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

272. 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.

273. The administrator of EFFECTS UNADMINISTERED has with respect to such effects, the same powers as the original executor or administrator.

274. An administrator during MINORITY has all the powers of an ordinary administrator.

275. When probate or letters of administration have been granted to a MARRIED WOMAN, she has all the powers of an ordinary executor or administrator.

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PART XXXIV.

Of the Duties of an Executor or Administrator.

276. 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.
277. 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.

278. 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.

279. 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.

280. 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.

281. WAGES due for services rendered to the deceased WITHIN THREE MONTHS next preceding his death by any labourer, artizan, or domestic servant are next to be paid, and then the other debts of the deceased.

282. 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.

283. 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.

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, immovable property to the value of 5,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The debts on instruments under seal are to be paid in full out of the moveable estate, and the proceeds of the immovable estate are to be applied as far as they will extend towards the discharge of the debts not under seal. Accordingly, one-half of the amount of the debts not under seal is to be paid out of the proceeds of the immovable estate.

284. No creditor who has received PAYMENT OF his DEBT BY virtue of the LAST PRECEDING SECTION shall be entitled to share in the proceeds of the immovable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 5,000 rupees, and immovable property to the value of 10,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The
creditors holding instruments under seal receive half of their debts out of the proceeds of the movable estate. The proceeds of the immovable estate are to be applied in payment of the debts on instruments not under seal until one-half of such debts has been discharged. This will leave 5,000 rupees, which are to be distributed rateably amongst all the creditors without distinction in proportion to the amount which may remain due to them.

285. DEBTS of every description must be PAID BEFORE any LEGACY.

286. 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.

287. 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 account of a legacy to himself or to any person for whom he is a trustee.

288. 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.

289. 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.

290. 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.

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.

291. 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.

PART XXXV.

Of the Executor's Assent to a Legacy.

292. The assent of the executor is necessary to complete a legatee's title to his legacy.

Illustrations.

(a) A by his Will bequeatheth 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 will has bequeathed to C his house in Calcutta in the tenure of B. C is not entitled to receive the rents without the assent of the executor.
293. 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 bequest to the legatee, unless the nature or the 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.

294. 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 Sultanpur, 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.

295. 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.

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.

296. 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.

297. 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.

298. 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.

299. 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.

300. Where there is a direction that the first payment of an annuity shall be made within one mouth 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.

PART XXXVII.

Of the Investment of Funds to provide for Legacies.

301. 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.

302. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding Section. The intermediate interest shall form part of the residue of the testator's estate.

303. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased, or if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time authorize or direct.

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

305. Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in such securities as the High Court may for the time being regard as good securities, shall be converted into money and invested in such securities,
306. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

307. 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.

308. 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.

PART XXXVIII.
Of the Produce and Interest of Legacies.

339. 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.

310. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.
Exceptions.—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.

311. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of the year from the testator's death.

Exception.—(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.

312. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator unless a specific sum is given by the Will for maintenance.

313. The rate of interest shall be four per cent. per annum.

314. 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.

315. 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.

316. 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.

317. 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.
318. When the time prescribed by the Will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has been allowed under the one hundred and twenty-fourth Section, for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

319. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

320. Where an executor or administrator has given 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 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.

321. A creditor who has not received payment of his debts 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.

322. 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.

323. 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.

324. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,300 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 130 rupees.
325. The refunding shall in all cases be without interest.

326. 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.

PART XL.

Of the Liability of an Executor or Administrator for Devastation.

327. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(a) The executor pays out of the estate an unfounded claim. He is liable to make good the loss.

(b) The deceased has 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.

328. 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.

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.

330. 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 XXVII. of 1860 (to amend Act VIII. of 1855), The Regimental Debts Act, 1863, and the Administrator General's Act, 1886; 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.

331. The provisions of this Act shall not apply to Intestate or Testamentary succession to the property of any Hindu, Muhammadan or Buddhist; nor shall they apply to any Will made, or any intestacy occurring before the 1st day of January 1866. The fourth Section shall not apply to any marriage contracted before the same day.

332. The Governor-General of India in Council shall from time to time have power, by an order, either retrospectively from the passing of this Act, or prospectively, to exempt from the operation of the whole or any part of this Act the members of any race, sect or tribe in British India, or any part of such race, sect or tribe, to whom he may consider it impossible or inexpedient to apply the provisions of this Act, or of the part of the Act mentioned in the order. The Governor-General of India in Council shall also have power from time to time to revoke such order, but not so that the revocation shall have any retrospective effect. All orders and revocations made under this Section shall be published in the Gazette of India.

ACT No. XIX. of 1841.

An Act for the protection of Moveable and Immovable property against wrongful possession in cases of succession.

1. Whereas much inconvenience has been experienced when persons have died possessed of moveable and immovable property, and the same has been taken upon pretended claims of right by gift or succession; the difficulty of ascertaining the precise nature of the moveable property in such cases, the opportunities for misappropriating such property and also the profits of real property; the delays of a regular suit when vexatiously prosecuted, and the inability of heirs when out of possession to prosecute their rights, affording strong temptations for the employment of force or fraud in order to obtain possession; and whereas, from the above causes, the circumstance of actual possession, when taken upon a succession, does not afford an indication of rightful title equal to that of a decision by a Judge after hearing all parties to a summary suit, though such summary suit may not be sufficient to prevent a party removed from possession thereby from instituting a regular suit; and whereas such summary suit, though it will take away many of the temptations which exist for assuming wrongful possession upon a succession, will be too tardy a remedy for obtaining them all, especially as regards moveable property; And whereas it may be expedient, prior to the determination of the summary suit, to appoint a Curator to take charge of property upon a succession, where there is reason to apprehend danger of misappropriation, waste, or neglect, and where such appointment will, in the opinion of the authority making the same, be beneficial under all the circumstances of the case; and whereas it will be very inconvenient to interfere with successions to estates by the appointment of Curators or by summary suits, unless satisfactory grounds for such proceedings shall appear, and unless such proceedings shall be required by or on the behalf of parties giving satisfactory proof that they are likely to be materially prejudiced if left to the ordinary remedy of a regular suit:

It is hereby enacted, that whenever a person dies leaving property, moveable or immovable, it shall be lawful for any person claiming a right by succession there-to, or to any portion thereof, to make application to the Judge of the Court of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended.

2. And it is hereby enacted, that it shall be lawful for any agent, relative, or near friend or for the Court of the district, or any person within their cognizance, in the event of any minor, disqualified or absent person being entitled by succession to such property as aforesaid, to make the like application for relief.

3. And it is hereby enacted, that the Judge to whom such application shall be made shall in the first place enquire, by the solemn declaration of the complainant, and by

Sec. 33.—The Rules of procedure laid down in the succession Act apply to Buddhists In Re Rohya, Dine 3 Ben. L. R. 61.
INHERITANCE. ACT 19 OF 1841.

witnesses and documents at his discretion, whether there be strong reasons for believing that the party in possession, or taking forcible means for seizing possession, has no lawful title, and that the applicant for the possession whose behalf he applies, is really entitled, and is likely to be materially prejudiced if left to the ordinary remedy of a regular suit, and that the application is made bona fide.

4. And it is hereby enacted, that, in case the Judge shall be satisfied of the existence of such strong ground of belief, but not otherwise, he shall cite the party complained of and give notice of vacant or disturbed possession by publication, and after the expiration of a reasonable time, shall determine summarily the right to possession (subject to regular suit as hereinafter mentioned), and shall deliver possession accordingly; Provided always that the Judge shall have the power to appoint an officer who shall take an inventory of effects, and seal or otherwise secure the same upon being applied to for the purpose, without delay: whether he shall have concluded the inquiry necessary of citing the party complained of or not.

5. And it is hereby enacted, that in case it shall further appear upon such application and examination as aforesaid, that danger is to be apprehended of the misappropriation or waste of the property before the summary suit can be determined, and that the delay in obtaining security from the party in possession or the insufficiency thereof, is likely to expose the party out of possession to considerable risk, provided he be the lawful owner: it shall be lawful for the Judge to appoint one or more Curators, with the powers hereinafter next mentioned, whose authority shall continue according to the terms of his or their respective appointments, and in no case beyond the determination of the summary suit and the confirmation or delivery of possession in consequence thereof: Provided always, that in the case of land the Judge may delegate to the Collector or to his officer the powers of a Curator, and also that every appointment of a Curator in respect of any property be duly published.

6. And it is hereby enacted, that the Judge shall have power to authorize such Curator either to take possession of the property generally, or until security be given by the party in possession, or until inventories of the property shall have been made, or for any other purpose necessary for securing the property from misappropriation or waste by the party in possession; Provided always, that it shall be entirely discretionary with the Judge whether he shall allow the party in possession to continue in such possession on giving security or not, and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories, or the securing of deeds or other effects.

7. And it is hereby enacted, that the Judge shall direct the Curator in the faithful discharge of his trust, and for rendering satisfactory accounts of the same as hereinafter mentioned, and may authorize him to receive out of the property such remuneration as shall appear reasonable, but in no case exceeding 5 per centum on the personal property and on the annual profit of the real property. All surplus monies realized by the Curator shall be paid into Court, and invested in public securities for the benefit of the persons entitled thereto upon adjudication of the summary suit: Provided always that although security shall be required from the Curator with all reasonable despatch, and, where it is practicable, shall be taken generally to answer all cases for which the person may be afterward appointed Curator, yet no delay in the taking of security shall prevent the Judge from immediately investing the Curator with the powers of his office.

8. And it is hereby enacted, that where the estate of the deceased person shall consist wholly or in part of land paying revenue to Government, in all matters regarding the propriety of citing the party in possession, of appointing a Curator, and of nominating individuals to that appointment, the Judge shall demand a report from the Collector, and the Collector is hereby required to furnish the same. In cases of urgency the Judge may proceed, in the first instance, without such report, and he shall not be obliged to act in conformity thereto; but, in case of his acting otherwise than according to such report, he shall immediately forward a statement of his reasons to the Court of Sudder Dewany Adawult, and the (Court of Sudder Dewany Adawult), if they be satisfied with such reasons, shall direct the Judge to proceed conformably to the report of the Collector.

9. And it is hereby enacted, that the Curator shall be subject to all orders of the Judge regarding the institution or the defence of suits and that all suits may be instituted or defended in the name of the Curator on behalf of the estate: Provided that an express authority shall be requisite in the summons of the Curator's appointment for the collection of debts or rents; but such express authority shall enable the Curator to give a full acquittance for any sums of money received by virtue thereof.

10. And it is hereby enacted, that, pending the custody of the property by the Curator, it shall be lawful for the Judge to make such allowances to parties having a PRIMA FACIE right thereto, as, upon a summary investigation of the rights and circumstances of the parties interested he shall consider that necessity may require; and having at his discretion security for the re-payment thereof with interest, in case the party shall, upon the adjudication of the summary suit, appear not to be entitled thereto.

11. And it is hereby enacted, that the Curator shall file monthly accounts in abstract, and at the period of every three months, if his administration last so long, and upon giving up the possession of the property, file a detailed account of his administration to the satisfaction of the Judge.
ACT 27 OF 1860.

12. And it is hereby enacted that the accounts of any such Curator as is above described shall be open to the inspection of all parties interested; and it shall be competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by such Curator. And if it be found that the accounts of any such Curator are in arrear, or if they shall be erroneous or incomplete, or if the Curator shall not produce them whenever he shall be ordered to do so by the Judge, he shall be liable to a fine not exceeding, 1,000 rupees for every such default.

13. And it is hereby enacted, that after the Judge of any district shall have appointed any Curator, such appointment shall preclude the Judge of any other district within the same Presidency from appointing any other Curator, provided the first appointment be in respect of the whole of the property of the deceased. But if the appointment be only in respect of a portion of the property of the deceased, this shall not preclude the appointment within the same Presidency of another Curator in respect of the residue or any portion thereof: Provided always, that no Judge shall appoint a Curator or entertain a summary suit in respect of property which is the subject of a summary suit previously instituted under this Act before another Judge: And provided further, that, if two or more Curators be appointed by different Judges for various parts of an estate, it shall be lawful for the (Sudder Dewany Adawlut) to make such order as it shall think fit for the appointment of one Curator of the whole property.

14. And it is hereby provided that this Act shall not be put in force, unless the aforesaid application to the Judge be made within six months of the decease of the proprietor whose property is claimed by right in succession.

15. And it is hereby enacted, that this Act shall not be put in force to contravene any public act of settlement, either in cases in which the deceased proprietor shall have given legal directions for the possession of his property after his decease in the event of minority or otherwise, in opposition to such directions; but in every such case, so soon as the Judge having jurisdiction over the property of a deceased person shall be satisfied of the existence of such directions, he shall give effect thereto.

16. And it is hereby provided, that this Act shall not be put in force, for the purpose of disturbing the possession of the Court of Wards of any Presidency; and in case a minor, or other disqualified person whose property shall be subject to the Court of Wards, shall be the party on whose behalf application is made under this Act, the Judge, if he determines to cite the party in possession, and also appoint a Curator, shall invest the Court of Wards with the Custodianship of the estate pending the suit, without taking such security as aforesaid; and in case the minor, or other disqualified person shall, upon the adjudication of the summary suit, appear to be entitled to the property, possession shall be delivered to the Court of Wards.

17. And it is hereby provided, that nothing in this Act contained shall be an impediment to the bringing of a regular suit, either by the party whose application may have been rejected, before or after citing the party in possession, or by the party who may have been evicted from the possession under this Act.

18. And it is hereby enacted, that the decision of the Judge upon the summary suit under this Act shall have no other effect than that of settling the actual possession, but that for this purpose it shall be final, and not subject to any appeal or order for review.

19. And it is hereby enacted, that it is shall be lawful for the Governments of the respective Presidencies to appoint Public Curators for any district or number of districts. And the Judge having jurisdiction shall nominate such Public Curator or Curators in all cases where the choice of a Curator is left discretionary with him under preceding provisions of this Act.

20. Repealed by Act VIII., Section 1 of 1855.—See Repealing Enactments page 30.

Act No. XXVII. of 1860.

An Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons.

 Whereas it is expedient to consolidate and amend certain Acts now in force which provide greater security for persons paying to the representatives of deceased Hindoos, Mahomedans, and others not usually designated as British subjects, debts which are payable in respect of the estates of such deceased persons, and which facilitate the collection of such debts by removing all doubts as to the legal title to demand and receive the same; It is enacted as follows:
2. NO DEBTOR OF any DECEASED person shall be COMPELLED in any Court TO PAY his debt to any person claiming to be entitled to the effects of any deceased person or any part thereof, EXCEPT ON the PRODUCTION OF a CERTIFICATE to be obtained in manner hereinafter mentioned, or of a probate or letters of administration, unless the Court shall be of opinion that payment of the debt is withheld from fraudulent or vexatious motives, and not from any reasonable doubt as to the party entitled.

3. The DISTRICT COURT within the jurisdiction of which the deceased shall have ordinarily resided at the time of his death, or if at that time he had no fixed place of residence then within the jurisdiction of which any part of the property of the deceased may be found, SHALL HAVE AUTHORITY TO GRANT A CERTIFICATE under this Act. The applicant in his petition shall set forth his title. The Court shall issue notice of application, inviting claimants, and fixing a day for hearing the petition, and, upon the appointed day or as soon after as may be convenient, shall determine the right to the certificate and grant the same accordingly.

4. The CERTIFICATE of the District Court shall be CONCLUSIVE OF the REPRESENTATIVE TITLE against all debtors to the deceased, and shall afford full indemnity to all debtors paying their debts to the person in whose favor the certificate has been granted.

5. The Court may take such SECURITY as it shall think necessary from any person to whom it shall grant a certificate for rendering an account of debts received by him, and for indemnity of persons who may be entitled to the whole or any part of the moneys received by virtue of such certificate whose right to recover the same by regular suit against the holder of the certificate is not affected by this Act.

6. The granting of such certificate may be suspended by an APPEAL to the Sudder Court, which Court may declare the party to whom the certificate should be granted, or may direct such further proceedings for the investigation of the title as it shall think fit. The Court may also, upon petition, after a certificate shall have been granted by the District Court, grant a FRESH CERTIFICATE IN SUPERSESSION OF the CERTIFICATE GRANTED BY the DISTRICT COURT. Such fresh certificate shall not affect any payments made to the person to whom any former certificate may have been granted, without notice that the same has been superseded, but shall entitle the person named therein to receive all moneys that may have been recovered under the first certificate from the person to whom the same may have been granted.

7. Every CERTIFICATE SHALL GIVE AUTHORITY to the person to whom the same is granted THROUGHOUT THE PRESIDENCY within which the same is granted, and no certificate subsequently granted in respect of the same property shall be valid or effectual, except as hereinafter mentioned.

8. If the estate of the deceased shall include any Government Security or Bank Shares, or any shares in any Public Company, CERTIFICATE MAY EMPOW ER the person certified as aforesaid TO RECEIVE INTEREST or DIVIDENDS thereon, or on any of them,
OR TO NEGOTIATE the same or any of them: in such case the certificate shall describe the securities and shares in respect of which such powers are given, and such powers shall not be vested by the certificate except by express words.

9. In the case of DISPUTES AMONG PERSONS CLAIMING TO BE JOINTLY ENTITLED to be proprietors of any Government Securities as the representatives of any deceased person, the District Court, whenever sufficient cause shall be shown, and on the request of any such claimant, may, so far as concerns the said securities, grant a certificate under this Act to such person as shall be from time to time appointed by the Local Government to act as TRUSTEE under this Section, and shall specify in such certificate the several persons appearing to him to be such proprietors, and their several shares; and the said trustee by virtue of such certificate shall be entitled to receive and give discharges for the interest accruing due on such securities, and shall account for and pay the sum to the several persons specified in the certificate, to be thereunto entitled, according to the shares therein set forth, and shall be empowered to act in all other respects concerning the said securities as agent for such persons, and shall be entitled to receive such commission, not exceeding one per centum, on the sums received and paid by him, as the local Government shall think fit: Provided, nevertheless, that the right of any other person to recover the whole or any part of the monies so paid by regular suit against all or any of the persons to whom the same have been paid, shall not be affected by this Act.

10. If any such DISPUTES among persons claiming to be proprietors of Government Securities are NOT ENDED WITHIN TWO YEARS from the date of the certificate granted under the last preceding Section, the said TRUSTEE MAY APPORTION the PRINCIPAL SUM OF THE SAID SECURITIES RATEABLY among the parties appearing from the certificate to be proprietors thereof, and may apply for and receive new securities from the proper officer appointed to issue the same in the respective names of the several parties certified to be entitled thereto: Provided that such new securities shall be issued only according to the rules in use for the regulation and issue of such Government Securities, and the receipt of the said trustee for such new securities, by endorsement on the old securities, or otherwise, shall be a legal discharge to the Government against the disputing parties claiming to be entitled to the several amounts for which such securities shall be issued: Provided, always, that, if the amount of any Government Securities in dispute or any part thereof shall not be sufficient to admit of their rateable division according to the rules applicable to the issue of such securities, the said trustee may sell and dispose of the disputed securities, or such part as shall be necessary under this provision, and apportion the proceeds thereof among the parties entitled to receive the same.

11. Every CERTIFICATE granted TO the TRUSTEE appointed under Section 9 shall be taken TO SUPERSEDE and annul any PREVIOUS CERTIFICATE so far as such previous certificate relates to the said Government Securities.

12. When a certificate shall have been granted, in cases in which such certificate would be valid but for the previous grant of a certi-
ificate, all PAYMENTS made to the person holding the latter certificate IN IGNORANCE OF the grant of the PREVIOUS CERTI-
FICATE, shall be held good against claims under such previous
ertificate.

13. With regard to the property of a deceased HINDOO, MA-
HOMEDAN, or other person not usually designated by the term "Brit-
tish subject," NO CERTIFICATE in respect of any such property
shall be VALID IF MADE AFTER a PROBATE OR LETTERS
OF ADMINISTRATION granted in respect of the same, provided
assets belonging to the deceased were at the time of his death within
the local jurisdiction of the Court granting the probate or letters of ad-
ministration.

14. Where a certificate shall have been granted, in cases in which
such certificate would be valid but for a probate or letters of adminis-
tration previously granted, all PAYMENTS made to the person hold-
ing the certificate in IGNORANCE OF the PREVIOUS granting of
the PROBATE OR LETTERS OF ADMINISTRATION, shall be
held good against claims under the probate or letters of adminis-
tration so previously granted.

15. NO PROBATE or LETTERS OF ADMINISTRATION shall
be VALID for the purpose of the recovery of debts, or for the security
of debtors, AFTER a CERTIFICATE granted in respect of the same
property for which such probate or letters of administration shall have
been granted: Provided assets belonging to the deceased were at the
time of his death within the jurisdiction of the Court granting such
certificate.

16. Where probate or letters of administration may have been
granted in cases in which such probate or letters of administration
would be valid but for the previous grant of a certificate, all PAY-
MENTS MADE IN IGNORANCE OF the PREVIOUS grant of the
CERTIFICATE shall be held good against claims under such previous
certificate.

17. CURATORS appointed UNDER ACT XIX. OF 1841, who
may be invested with certain powers which are conferred on persons
obtaining certificates under this Act, shall not exercise any powers
which, but for the Act, would lawfully belong to persons obtaining
certificates, or to executors or administrators where a certificate,
probate, or letters of administration has been actually obtained; but
all persons who may have paid debts or rents to a curator authorized
by a Court to receive the same shall be indemnified, and the curator
shall be responsible for the payment of the same to the same person
who has obtained a certificate, the executor or administrator as the
case may be.

18. All PROBATES AND letters of ADMINISTRATION
GRANTED BY any SUPREME COURT of Judicature in cases in
which any assets belonging to deceased persons were at the time of
their deaths within the local jurisdiction of the Court granting the
probate or letters of administration, shall have the effect of probate and
letters of administration granted in respect of the property of British
subjects, but for the purpose of the recovery of debts only and the
security of debtors paying the same, except so far as is in this Act
provided.
19. A Certificate of Administration granted by the British Representative accredited to any foreign prince or State shall, as regards the residents within the territories of such prince or State, have the same effect, in respect to Government Securities, as a certificate granted to a Native subject of Her Majesty under the provisions hereinbefore contained.

20. Every Certificate of administration granted under the last preceding section shall, as regards the Government Securities, give authority to the person to whom the same shall be granted throughout the British territories in India, and have the same effect throughout the said territories as a certificate granted under section 7 of this Act has within the Presidency within which the same is granted.

21. Any Court or Officer authorized to grant a Certificate may from time to time extend the same to any Government Security or Bank share not originally specified therein, and every such extension shall have the same effect as if the Government Security or Bank share to which the certificate shall be extended had been originally specified therein.

22. Upon the extension of a certificate, Security may be required in the same manner as upon the original grant of a certificate.

23. Nothing in this act contained shall be held to extend to the property of any person usually designated as a British Subject.

24. The following words and expressions in this Act shall have the meaning hereby assigned to them, unless there be something in the subject or context repugnant to such construction, (that is to say):

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

Words importing the masculine gender shall include females.

The words "District Court" shall mean the principal Civil Court of original jurisdiction of a Zillah or District.

The words ["Sudder Court"] shall be deemed to include the highest Civil Court of Appeal in any part of the British territories in India not subject to the control and superintendence of a [Sudder Court.]

HINDUS.

ACT No. XXI. of 1870.

An Act to regulate the Wills of Hindus, Jains, Sikhs and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.

Whereas it is expedient to provide rules for the execution, attestation, revocation, revival, interpretation and probate of the wills of
Hindús, Jainas, Sikhs and Buddhists in the territories subject to the Lieutenant Governor of Bengal and in the towns of Madras and Bombay; it is hereby enacted as follows:—

1. This Act may be called "The Hindu Wills' Act, 1879."

2. The following portions of the Indian Succession Act, 1865, namely,—

sections 46, 48, 49, 50, 51, 55, and 57 to 77 (both inclusive),
sections 82, 83, 85, 88 to 103 (both inclusive),
sections 106 to 177 (both inclusive),
sections 179 to 189 (both inclusive),
sections 191 to 199 (both inclusive),

so much of Parts XXX and XXXI as relates to grants of probate and letters of administration with the will annexed, and

Parts XXXIII to XL (both inclusive), so far as they relate to an executor and an administrator with the will annexed,

shall, notwithstanding anything contained in section 331 of the said Act, apply—

(a) to all wills and codicils made by any Hindu, Jain, Sikh or Buddhist, on or after the 1st day of September 1870, within the said territories or the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such wills and codicils made outside those territories and limits, so far as relates to immovable property, situate within those territories or limits:

3. Provided that MARRIAGE shall not revoke any such will or codicil:

And that nothing herein contained shall AUTHORISE a testator TO BEQUEATH property which he could not have alienated inter vivos, or to deprive any persons of any right of MAINTENANCE of which but for section 2 of this Act, he could not deprive them by will:

And that nothing herein contained shall vest in the executor or administrator with the will annexed of a deceased person any property which such person could not have alienated inter vivos:

And that nothing herein contained shall affect any law of ADOPTION or INTESTATE SUCCESSION:

And that nothing herein contained shall authorise any Hindu, Jain, Sikh or Buddhist to create in property any interest which he could not have created before the 1st day of September 1870.

4. On and from that day, section 2 of Bengal Regulation V. of 1799 shall be repealed so far as relates to the executors of persons who are not Muhammadans, but are subject to the jurisdiction of a District Court in the territories subject to the Lieutenant Governor of Bengal.

5. Nothing contained in this Act shall affect the rights, duties and privileges of the ADMINISTRATORS GENERAL of Bengal, Madras and Bombay, respectively.
6. In this Act and in the said sections and Parts of the Indian Succession Act, all words defined in section 3 of the same Act shall, unless there be something repugnant in the subject or context, be deemed to have the same meaning as the said section 3 has attached to such words respectively:

And in applying sections 62, 63, 92, 98, 99, 100, 101, 102, 103, and 182 of the said Succession Act, to wills and codicils made under this Act, the words "son," "sons," "child" and "children" shall be deemed to include an adopted child; and the word "grand-children" shall be deemed to include the children, whether adopted or natural-born, of a child whether adopted or natural-born; and the expression "Daughter-In-Law" shall be deemed to include the wife of an adopted son:

And in making grants under this Act, of letters of administration with the will annexed or with a copy of the will annexed, section 195 of the said Succession Act shall be construed as if the words "and in case the Hindu Will's Act had not been passed" were added thereto; and section 196 of the said Succession Act shall be construed as if, after the word "intestate," the words "and the Hindu Will's Act had not been passed" were inserted; and sections 230 and 231 of the said Succession Act shall be construed as if the words "if the Hindu Will's Act had not been passed" were added thereto, respectively.

MITAKSHARA, ON INHERITANCE.

CHAPTER I.

Section 1.

Definition of Inheritance, and of Partition.—Disquisition on Property.

1. Evidence, human and divine, has been thus explained with (its various) distinctions; the partition of heritage is now propounded by the image of holiness.

2. Here the term habitatage (dāya) signifies that wealth, which becomes the property of another, solely by reason of relation to the owner—

3. It is of two sorts: unobstructed (apratibandha), or liable to obstruction (sapratabandha). The wealth of the father or of the paternal grandfather becomes the property of his sons or of his grandsons, in right of their being his sons or grandsons: and that is an inheritance not liable to obstruction. But property devolves on parents (or uncles), brothers and the rest, upon the demise of the owner, if there be no male issue: and thus the actual existence of a son and the survival of the owner are impediments to the succession; and on their ceasing, the property devolves (on the successor) in right of his being uncle or brother. This is an inheritance subject to obstruction. The same holds good in respect of their sons and other (descendants).
4. PARTITION (eibhaga) is the adjustment of divers rights regarding the whole, by distributing them on particular portions of the aggregate.

5. Entertaining the same opinion, Nareda says, "Where a division of the paternal estate is instituted by sons, that becomes a topic of litigation called by the wise partition of heritage." "Paternal" here implies any relation which is cause of property. "By sons" indicates propinquity in general.

6. The points to be explained under this (head of inheritance) are at what time, how, and by whom, a partition is to be made, of what. The time, the manner, and the persons, when, in which, and by whom it may be made, will be explained in the course of interpreting stanzas on those subjects respectively. What that is, of which a partition takes place, is here considered.

7. Does property arise from partition? or does partition of pre-existent property take place? Under this (head of discussion,) PROPRIETARY RIGHT is itself necessarily EXPLAINED: (and the question is) Whether property be deduced from the sacred institutes alone, or from other (and temporal) proof.

8. [It is alleged that] the inheriting of property from the sacred code alone is right, on account of the text of GAU'TAMA: "An owner is by inheritance, purchase, partition, seizure, or finding. Acceptance is for a Brahmana an additional mode; conquest is for a Vaisya, or king; gain is for a Vaisya, or Suta." For, if property were deduced from other proof, this text would not be pertinent. (So the precept, "A Brahmana, who seeks to obtain anything, even by sacrificing or by instructing, from the hand of a man, who had taken what was not given to him, is considered precisely as a thief,"[1]) which directs the punishment of such as obtain valuable, by officiating at religious rites, or by other similar means from a wrong-doer who has taken what was not given to him, would be irrelevant, if property were temporal. Moreover, were property a worldly matter, one could not say "My property has been wrongfully taken by him," for it would belong to the taker. Or, [if it be objected that] the property of another was seized by this man, and it therefore does not become the property of the usurper; [the answer is,] then no doubt should exist, whether it appertain to one or to the other, any more than in regard to the species, whether gold, silver, or the like. Therefore property is of holy institutes exclusively.

9. To this the answer is, property is temporal only, for it affects transactions relative to worldly purposes, just as rice or similar substances do: but the consecrated fire and the like, deducible from the sacred institutes, do not affect transactions relative to worldly purposes. [It is asked does not a consecrated fire effect the boiling of food; and so, of the rest?] [The answer is] No; for it is not as such that the consecrated flame operates the boiling of food; but as a fire perceptible to the senses; and so, in the other cases. But, here, it is not through its visible form, whether gold or the like, that the purchase of a thing is effected, but through property only. That which is not a person's property in a thing does give effect to his transfer of it by sale or the like. Besides, the use of property is seen also among inhabitants of barbarous countries who are unacquainted with the practice directed in the sacred code: for purchase, sale, and similar transactions are remarked among them.

10. Moreover, such are conversant with the science of reasoning deem regulated means of acquisition a matter of popular recognition. In the third clause of the Lipas the venerable author has stated the adverse opinion, after (obviasing) an objection to it, that if restrictions relative to the acquisition of goods regard the religious ceremony, there could be no property, since proprietary right is not temporal; [by showing, that] the efficacy of acceptance and other modes of acquisition in constituting proprietary right is matter of 'popular recognition.' Does not follow, if the mode of acquiring the goods concern the religious ceremony, there is no right of property, and consequently no celebration of a sacrifice. [Answer] it is a blunder of any one who affirms that acquisition does not produce a proprietary right, since this is a contradiction in terms. Accordingly, the author, having again acknowledged property to be a popular notion, when he states the demonstrated doctrine, proceeds to explain the purpose of the discussion in this manner: 'Therefore a breach of the restriction affects the person, not the religious ceremony;' and the meaning of the passage is thus expanded. 'If restrictions respecting the acquisition of chattels regard the religious ceremony, its celebration would be perfect with such property only as was acquired consistently with those rules; and not so if performed with wealth obtained by infringing them; and consequently, according to the adverse opinion, the fault would not affect the map if it deviated from the rule: but according to the demonstrated conclusion since the restriction regarding acquisition affects the person, the performance of the religious
ceremony is complete, even with property acquired by a breach of the rule; and it is an "offence on the part of a man, because he has violated an obligatory rule." It is consequently as knowledge, that even what is gained by infringing restrictions, is property: because otherwise there would be no completion of a religious ceremony.

11. It should not be alleged that even what is obtained by robbery and other nefarious means would be property. For proprietary right in such instances is not recognized by the world; and it disagrees with received practice.

12. Thus, since property obtained by acceptance or any other [sufficient] means is established to be temporal, the acceptance of alms as well as other [prescribed] modes for a Brahman, conquest and similar means for a Cakraviga, husbandoey and the like for a Vaisya, and service and the rest for a Sudra are propounded as restrictions intended for spiritual purposes; and inheritance and other modes are stated as means common to all. "An owner is by inheritance, purchase, partition, seizure or finding."

13. Unobstructed heritage is here denominated "inheritance." "Purchase" is well known. "Partition" intended heritage subject to obstruction. "Occupation" or seizure is the appropriation of water, grass, wood and the like not previously appertaining to any other (person as owner). "Finding" is the discovery of a hidden treasure or the like. "If these means exist, the person is owner." If they take place, he becomes proprietor. "For a Brahman, that which is obtained by acceptance or the like is additional, not common (to all the tribes). "Additional," is understood in the subsequent sentence: 'for a Cakraviga, what is obtained by victory, or by amarkom or the like is peculiar.' In the next sentence, 'additional' is again understood: what is gained or earned by agriculture, keeping of cattle (traffic) and so forth, is for a Vaisya peculiar; and so is, for a Sudra, that which is earned in the form of wages by obedience to the regenterge and by similar means. Thus likewise, among the various causes of property which are familiar to mankind, whatever has been stated as peculiar to certain mixed classes in the direct or reverse order of the tribes (as the driving of horses, which is the profession of the Sudra and so forth), is indicated by the word "earned" (nirvashi), for all such acquisitions assume the form of wages or hire; and the noun (nirdasa) as signifying wages.

14. As for the precept respecting the succession of the widow and the daughters, &c. the declaration (of the order of succession) even in that text is intended to prevent mistake, although the right of property be a matter familiar to the world, where many individuals might (but for that declaration) be supposed entitled to share the heritage by reason of their affinity to the late owner. The whole is therefore unexceptionable.

15. As for the remark that, if property were temporal, it could not be said "my property has been taken away by him," that is not accurate, for a doubt respecting the proprietary right does arise through a doubt concerning the purchase, or other transaction, which is the cause of that right.

16. The purpose of the preceding disquisition is this. A text expresses "When Brahmanas have acquired wealth by a blameless act, they are cleared by the abandonment of it, with prayer and rigid austerity." Now, if property be deducible only from sacred ordinances that which has been gained by a spectacle presents from an intoyer person, or by other means which are reprehended would not be property, and consequently would not be partible among sons. But if it be a worldly matter, then even what is obtained by such means, is property, and may be divided among heirs, and the statement above-mentioned regards the acquisition of property. But sons have the right by inheritance, and therefore no blame attaches to them, since Manus declares "There are seven virtuous means of acquiring property, viz., inheritance, &c."

17. Next, it is doubted WHETHER PROPERTY ARISE FROM PARTITION, OR THE DIVISION BE OF AN EXISTENT RIGHT.

18. Of these (positions), that of property arising from partition is right, since a man, to whom a son is born, is enjoined to maintain a holy fire: for, were property vested by birth alone, the estate would be common to the son as soon as born, and the father would not be competent to maintain a sacrificial fire and perform other religious duties which are accomplished by the use of wealth.

19. Likewise the prohibition of a division of that which is obtained from the liberality of the father previous to separation, would not be pertinent; since no partition of it can be supposed, for it has been given by consent of all parties. But Nareda does propound such a prohibition: "Excepting what is gained by valour, the wealth of a wife, and what is acquired by science, which are three sorts of property exempt from partition, and any favour conferred by a father."
20. So the text concerning an affectionate gift ("What has been given by an affectionate husband to his wife, she may consume as she pleases when he is dead or may give it away, excepting immovable property"); would not be pertinent, if property were vested by birth alone. Nor is it right to connect the words "excepting immovable property" with the terms "what has been given" (in the text last cited); for that would be a forced construction by connection of disjointed terms.

21. As for the text "The father is master of the gems, pearls and corals, and of all (other moveable property): but neither the father nor the grandfather is so of the whole immovable estate;" and this other passage "By favour of the father, clothes and ornaments are used, but immovable property may not be consumed, even with the father's indulgence;" which passages forbid a gift of immovable property through favour: they both relate to immovables which have descended from the paternal grandfather. When the grandfather dies, his effects become the common property of the father and sons; but it appears from this text alone, that the gems, pearls and other moveables belong exclusively to the father while the immovable estate remains common.

22. Therefore property is not by birth, but by demise of the owner, or by partition. Accordingly (since the demise of the owner is a cause of property), there is no room for supposing that a stranger could not be prevented from taking the effects because the property was vacant after the death of the father before partition. So likewise, in the case of an only son, the estate becomes the property of the son by the father's decease; and does not require partition.

23. To this the answer is: It has been shown, that property is a matter of popular recognition; and the right of sons and the rest, by birth, is most familiar to the word, as cannot be denied; but the term partition is generally understood to relate to effects belonging to several owners, and does not relate to that which appertains to another, nor to goods vacant or unowned. For the text of Gautama expresses "Let ownership of wealth be taken by birth; as the venerable teachers direct."

24. Moreover the text above cited. "The father is master of the gems, pearls, &c." (§ 21) is pertinent on the supposition of a proprietary right vested by birth. Nor is it right to affirm, that it relates to immovables which have descended from the paternal grandfather: since the text expresses "neither the father, nor the grandfather." This maxim, that the grandfather's own acquisition should not be given away while a son or grandson is living indicates a proprietary interest by birth. As according to the other opinion, the precious stones, pearls, clothes, ornaments and other effects, though inherited from the grandfather, belong to the father under the special provisions of the law; so, according to our opinion, the father has power, under the same text, to give away such effects, though acquired by his father. There is no difference.

25. But the text of Vishnu (§ 20), which mentions a gift of immovables bestowed through affection, must be interpreted as relating to property acquired by the father himself and given with the consent of his son and the rest: for by the passages (above cited, as well as others not quoted, viz.) "The father is master of the gems, pearls, &c.
(§ 21)," the fitness of any other but immovables for an affectionate gift was certain.

26. As for the alleged disqualification for religious duties which are prescribed by the Veda, and which require for their accomplishment the use of wealth (§ 18), sufficient power for such purposes is inferred from the cogency of the precept (which enjoins their performance).

27. THEREFORE IT IS A SETTLED POINT, THAT PROPERTY IN THE PATERNAL OR ANCESTRAL ESTATE IS BY BIRTH, (ALTHOUGH) THE FATHER HAVE INDEPENDENT POWER IN THE DISPOSAL OF EFFECTS OTHER THAN IMMOVABLES, FOR INDISPENSABLE ACTS OF DUTY AND FOR PURPOSES PRESCRIBED BY TEXTS OF LAW, as gifts through affection, support of the family, relief from distress, and so forth : but he is subject to the control of his sons and the rest, in regard to the immovable estate, whether acquired by himself or inherited from his father or other predecessor; since it is ordained, “Though immovables or bipeds have been acquired by a man himself, a gift or sale of them should not be made without convening all the sons. They, who are born, and they who are yet unbegotten, and they who are still in the womb, require the means of support, no gift or sale should, therefore, be made.”

28. An exception to it follows: “Even a single individual may conclude a donation, mortgage, or sale, of immovable property, during a season of distress, for the sake of the family, and especially for pious purposes.”

29. The meaning of that text is this: while the sons and grandsons are MINORS, and incapable of giving their consent to a gift and the like; or while brothers are so and continue unseparated; even ONE PERSON, WHO IS CAPABLE, MAY CONCLUDE A GIFT HYPOTHECATION, OR SALE, OF IMMOVABLE PROPERTY, if a calamity affecting the whole family require it, or the support of the family render it necessary or indispensable duties, such as the obsequies of the father or the like, make it unavoidable.

30. The following passage “Separated kinsmen, as those who are unseparated, are equal in respect of immovables; for one has not power over the whole, to make a gift, sale or mortgage;” must be thus interpreted: “AMONG UNSEPARATED KINSMEN, THE CONSENT OF ALL IS INDISPENSABLY REQUISITE, BECAUSE NO ONE IS FULLY EMPOWERED TO MAKE AN ALIENATION, since the estate is in common;” but, AMONG SEPARATED KINDRED, THE CONSENT OF ALL TENDS TO THE FACILITY OF THE TRANSACTION, by obviating any future doubt, whether they be separate or united: it is not required, on account of any want of sufficient power, in the single owner; and the transaction is consequently valid even without the consent of separated kinsmen.

31. In the text, which expresses that “Land passes by six formalities; by consent of townsmen, of kinsmen, of neighbours, and of heirs, and by gift of gold and of water,” consent of townsmen is required for the publicity of the transaction, since it is provided, that “Acceptance of a gift, especially of land, should be public:” but the con-
tract is not invalid without their consent. The approbation of neighbours serves to obviate any dispute concerning the boundary. The use of the consent of kinsmen and of heirs has been explained.

32. By gift of gold and of water.) Since the sale of immovables is forbidden ("In regard to the immovable estate, sale is not allowed;"
may be mortgaged by consent of parties interested;") and since donation is praised ("Both he who accepts land, and he who gives it, are performers of a holy deed, and shall go to a region of bliss;") if a sale must be made, it should be conducted, for the transfer of immovable property, in the form of a gift, delivering with it gold and water (to ratify the donation).

33. In respect of the right by birth, to the estate paternal or ancestral, we shall mention a distinction under a subsequent text (Section 5 § 3).

Section II.

Partition equal or unequal.—Four periods of partition—Provision for wives—Exclusion of a son who has a competence.

1. At what time, by whom, and how, partition may be made, will be next considered. Explaining those points the author says, "When " the father makes a partition, let him separate his sons (from himself) "at his pleasure, and either (dismiss) the eldest with the best share, or "(if he choose) all may be equal sharers."

2. When a father wishes to make a partition, he may at his pleasure, separate his children from himself, whether one, two, or more sons.

3. No rule being suggested (for the will is unrestrained) the author adds, by way of restriction, "he may separate (for this term is again understood) the eldest with the best share," the middlemost, with a middle share, and the youngest with the worst share.

4. This distribution of best and other portions is propounded by Menu: "The portion deducted for the eldest is the twentieth part of the heritage, with the best of all the chattels; for the middlemost, half of that; for the youngest quarter of it."

5. The term "either" (§ 1) is relative to the subsequent alternative "or all may be equal sharers." That is, ALL NAMED THE ELDEST AND THE REST, SHOULD BE MADE PARTAKERS OF EQUAL PORTIONS.

6. This UNEQUAL DISTRIBUTION SUPPOSES PROPER-
TY BY HIMSELF ACQUIRED. BUT IF THE WEALTH DESCENDED TO HIM FROM HIS FATHER, AN UNEQUAL PARTITION AT HIS PLEASURE IS NOT PROPER: for equal ownership will be declared.

7. One period of partition is when the father desires separation as expressed in the text "When the father makes a partition." (§ 1) Another period is while the father lives, but is indifferent to wealth and disinclined to pleasure, and the mother is incapable of bearing more
sons; at which time a partition is admissible, at the option of sons, against the father's wish: as is shown by NAREDA, who premises partition subsequent to the demise of both parents ("Let sons regularly divide the wealth when the father is dead;") and adds "Or when the mother is past child-bearing and the sisters are married, or when the father's sensual passions are extinguished." Here the words "let sons regularly divide the wealth" are understood. GAUTAMA likewise, having said "After the demise of the father, let sons share his estate;" states a second period, "Or when the mother is past child-bearing;" and a third, "While the father lives, if he desire separation." So, while the mother is capable of bearing more issue, a partition is admissible by the choice of the sons, though the father be unwilling, if he be addicted to vice or afflicted with a lasting disease. That SANCJA declares: "Partition of inheritance takes place without the father's wish, if he be old, disturbed in intellect, or diseased."

8. Two sorts of partition at the pleasure of the father have been stated; namely, equal and unequal. The author adds a particular rule in the case of equal partition; "If he make the allotments equal, his wives to whom no separate property has been given by the husband or the father-in-law must be rendered partakers of like portions."

9. When the father, by his own choice, makes all his sons partakers of equal portions, his WIVES TO WHOM PECULIAR PROPERTY HAD NOT BEEN GIVEN by their husband or by their father-in-law, MUST BE MADE PARTICIPANT OF SHARES EQUAL TO those SONS. But, if separate property have been given to a woman, the author subsequently directs half a share to be allotted to her: "Or if any had been given, let him assign the half."

10. But, if he give the superior allotment to the eldest son, and distribute similar unequal shares to the rest, his wives do not take such portions, but receive equal shares of the aggregate from which the son's deductions have been subtracted besides their own appropriate deductions specified by APASTHAMBHA; "The furniture in the house and her ornaments are the wife's [property]."

11. To the alternative before stated the author propounds an exception; "The separation of one, who is able to support himself and is not desirous of participation may be completed by giving him some trifle."

12. To one who is himself able to earn wealth, and who is not desirous of sharing his father's goods, anything whatsoever though not valuable, may be given, and the separation or division may be thus completed by the father; so that the children, or other heirs, of that son, may have no future claim of inheritance.

13. The distribution of greater and less shares has been shown. To forbid, in such case, an unequal partition made in any other mode than that which renders the distribution uneven by means of deductions, such as are directed by the law, the author adds "A legal distribution, made by the father among sons separated with greater or less shares, is pronounced valid."

14. When the distribution of more or less among sons separated by an unequal partition is legal, or such as ordained by the law; then
that division, made by the father, is completely made, and cannot be afterwards set aside: as is declared by Menu and the rest. Else it fails, though made by the father. Such is the meaning; and in like manner, Nareda declares "A father, who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by a beloved object, or who acts otherwise than the law permits, has no power in the distribution of the estate."

Section III.

Partition after the Father's decease.

1. The author next propounds another period of partition, other persons as making it, and a rule respecting the mode "Let sons divide equally both the effects and the debts after (the demise of) their two parents."

2. After their two parents.] After the demise of the father and mother: here the period of the distribution is shown. The sons,] The persons, who make the distribution, are thus indicated. Equally.] A rule respecting the mode is by this declared in equal shares only, should they divide the effects and debts.

3. But Menu, having premised "partition after the death of the father and the mother," and having declared "The eldest brother may take the patrimony entire, and the rest may live under him as under their father," has exhibited a distribution with deductions, among brethren separating after the death of their father and mother: "The portion deducted for the eldest is the twentieth part of the heritage with the best of all the chattels; for the middlemost, half of that; for the youngest, a quarter of it." The twentieth part of the whole amount of the property (to be divided,) and the best of all the chattels, must be given (by way of deduction) to the eldest; half of that, or a fortieth part, and a middling chattel, should be allotted to the middlemost; and a quarter of it, or the eightieth part with the worst chattel, to the youngest. He has also directed an unequal partition, but without deductions, among brethren separating after their parents' decease; allotting two shares to the eldest, one and a half to the next born, and one a piece to the younger brothers: "If a deduction be thus made, let equal shares of the residue be allotted: but, if there be no deduction, the shares must be distributed in this manner; let the eldest have double share, and the next born a share and a half, and the younger sons each a share: thus is the law settled." The author himself has sanctioned an unequal distribution when a division is made during the father's lifetime. ("Let him either dismiss the eldest with the best share, &c.") Hence an unequal partition is admissible in every period. How then is a restriction introduced, requiring that sons should divide only equal shares?

4. The question is thus answered: True, this unequal partition is found in the sacred ordinances; but it must not be practised, because it is abhorred by the world; since that is forbidden by the maxim "Practice not that which is legal, but is abhorred by the world, [for] it secures not celestial bliss:" as the practice [of offering bulls] is shunned, on account
of popular prejudice notwithstanding the injunction "Offer to a venerable priest a bull or a large goat;" and as the slaying of a cow is for the same reason disused, notwithstanding the precept "Slay a barren cow as a victim consecrated to Mitra and Varuna."

5. It is expressly declared, "as the duty of an appointment (to raise up seed to another,) and as the slaying of a cow for a victim, are disused, so is partition with deductions (in favor of elder brothers)."

6. Apastamba also, having delivered his own opinion, "A father, making a partition in his life time, should distribute the heritage equally among his sons;" and having stated, as the doctrine of some, the eldest's succession to the whole estate ("Some hold, that the eldest is heir;") and having exhibited, as the notion of others, a distribution with deductions ("In some countries, the gold, the black kine, and the black produce of the earth, belong to the eldest son; the car appertains to the father; and the furniture in the house and her ornaments are the wife's; as also the property [received by her] from kinsmen: so some maintain;") has expressly forbidden it as contrary to the law; and has himself explained its inconsistency with the sacred codes: "It is recorded in scripture, without distinction, that Menu distributed his heritage among his sons.

7. Therefore unequal partition, though noticed in codes of law, should not be practised, since it is disapproved by the world and is contrary to scripture. For this reason a restriction is ordained, that Brethren should divide only in equal shares.

8. It has been declared, that sons may part the effects after the death of their father and mother. The author states an exception in regard to the Mother's separate property; "The daughters share the residue of their mother's property, after payment of her debts."

9. Let the daughters divide their mother's effects remaining over and above the debts; that is, the residue after the discharge of the debts contracted by the mother. Hence, the purport of the preceding part of the text is, that sons may divide their mother's effects, which are equal to her debts or less than their amount.

10. The meaning is this: A debt, incurred by the mother, must be discharged by her sons, not by her daughters; but her daughters shall take her property remaining above her debts; and this is fit; for by the maxim "A male child is procreated if the seed predominate, but a female if the woman contribute most to the foetus;" the woman's property goes to her daughters, because portions of her abound in her female children; and the father's estate goes to his sons, because portions of him abound in his male children.

11. On the subject (of daughters) a special rule is propounded by Gautama: "A woman's property goes to her daughters, unmarried, or unprovided." His meaning is this: if there be competition of Married and Unmarried Daughters, the woman's separate property belongs to such of them as are unmarried; or, among the married, if there be competition of Endowed and Unequipped Daughters, it belongs exclusively to such as are unendowed: and this term signifies 'destitute of wealth.'
12. In answer to the question, who takes the residue of the mother's goods, after payment of her debts, if there be no daughter? the author adds "And the issue succeed in their default."

13. ON FAILURE OF DAUGHTERS, that is, if there be none, theSON or other male offspring, SHALL TAKE THE GOODS.

This, which was right under the first part of the text ("Let sons divide equally both the effects and the debts;") is here expressly declared for the sake of greater perspicuity.

Section IV.

Effects not liable to Partition.

1. The author explains what may not be divided "Whatever else "is acquired by the coparcener himself, without detriment to the "father's estate, as a present from a friend, or a gift at nuptials, does "not appertain to the co-heirs. Nor shall he, who recovers hereditary "property, which had been taken away, give it up to the co-parceners: "nor what has been gained by science."

2. THAT, WHICH HAD BEEN ACQUIRED BY THE CO- PARCENER HIMSELF WITHOUT ANY DETRIMENT TO THE GOODS OF HIS FATHER OR MOTHER; OR WHICH has been RECEIVED by him FROM A FRIEND OR obtained BY MARRIAGE, SHALL NOT APPERTAIN TO THE CO-HEIRS or bretheren. Any PROPERTY, which had descended in succession from ancestors, and had been SEIZED by others, and remained unrecovered by the father and the rest through inability or for any other cause, HE among the sons, WHO RECOVERS IT with the acquiescence of the rest, SHALL NOT GIVE UP TO THE BRETHREN OR OTHER CO-HEIRS: the person recovering it shall take such property.

3. IF it be LAND, HE TAKES THE FOURTH PART, AND THE REMAINDER IS EQUALLY SHARED among all the bretheren. So, SANC'HA ordains "Land (inherited) in regular succession, but which had been formerly lost and which a single (heir) shall recover solely by his own labour, the rest may divide according to their due allotments, having first given him a fourth part."

4. In regular succession.) Here the word "inherited" must be understood.

5. He need not give up to the co-heirs, WHAT HAS BEEN GAINED by him, THROUGH SCIENCE, by READING THE SCRIPTURES or by expounding their meaning: the acquirer shall retain such gains.

6. Here the phrase "anything acquired by himself, WITHOUT DETRIMENT TO THE FATHER'S ESTATE" must be everywhere understood: and it is thus connected with each member of the sentence; what is obtained from a friend, without detriment to the paternal estate; what is received in marriage without waste of the patrimony; what is redeemed, of the hereditary estate, without expenditure of
ancestral property; what is gained by science, without use of the father's goods. Consequently, what is obtained from a friend, as the return of any obligation conferred at the charge of the patrimony; what is received at a marriage concluded in the form termed Asura or the like; what is recovered, of the hereditary estate, by the expenditure of the father's goods; what is earned by science acquired at the expense of ancestral wealth; all that must be shared with the whole of the brethren and with the father.

7. Thus, since the phrase "without detriment to the father's estate" is in every place understood; what is obtained by simple acceptance, without waste of the patrimony, is liable to partition. But, if that were not understood with every member of the text, presents from a friend, a dowry received at a marriage, and other particular acquisitions, need not have been specified.

8. But, it is alleged, the enumeration of amicable gifts and similar acquisitions is pertinent, as showing, that such gains are exempt from partition, though obtained at the expense of the patrimony. Were it so, this would be inconsistent with the received practice of unerring persons, and would contradict a passage of Nareda: "He, who maintains the family of a brother studying science, shall take, be he ever so ignorant, a share of the wealth, gained by science." Moreover the definition of wealth, not participable, which is gained by learning, is so propounded by Catayana: "Wealth, gained through science which was acquired from a stranger while receiving a foreign maintenance, is termed acquisition through learning."

9. Thus, if the phrase "without detriment to the father's estate," be taken as a separate sentence, anything obtained by mere acceptance would be exempt from partition, contrary to established practice.

10. This [condition, that the acquisition be without detriment to the patrimony,] is made evident by Manu: "What a brother has acquired by his labour, without using the patrimony, he need not give up to the co-heirs; nor what has been gained by science."

11. By LABOUR] by science, war, or the like.

12. Is it not unnecessary to declare, that effects obtained as presents from friends, and other similar acquisitions made without using the patrimony, are exempt from partition: since there was no ground for supposing a partition of them? That what is acquired, belongs to the acquirer, and to no other person, is well known: but a denial implies the possible supposition of the contrary.

13. Here a certain writer thus states grounds for supposing a partition. By interpreting the text, "After the death of the father, if the eldest brother acquire any wealth, a share of that belongs to the younger brothers; provided they have duly cultivated science;" in this manner, 'if the eldest, youngest or middlemost, acquire property before or after the death of the father, a share shall accrue to the rest, whether younger or elder; grounds do exist for supposing friendly presents and the like to be liable to partition, whether or not the father be living; that is accordingly denied.

14. The argument is erroneous: since there is not here a denial of what might be supposed; but the text is a recital of that which was
demonstratively true: for most texts, cited under this head, are mere recitals of that which is notorious to the world.

15. Or you may be satisfied with considering it as an exception to what is suggested by another passage, "All the brethren shall be equal sharers of that which is acquired by them in concert;" and it is therefore a mere error to deduce the suggestion from an indefinite import of the word "oldest" in the text before cited. That passage must be interpreted as an exception to the general doctrine, deduced from texts concerning friendly gifts and the rest, that they are exempt from partition, both before the father's death and after his demise.

16. Other THINGS EXEMPT FROM PARTITION, have been enumerated by Menu: "Clothes, vehicles, ornaments, prepared food, women, sacrifices, and pious acts, as well as the common way, are declared not liable to distribution."

17. CLOTHES, which have been worn, must not be divided. What is used by each person, belongs exclusively to him; and what had been worn by the father, must be given by brethren parting after the father's decease, to the person who partakes of food at his obsequies: as directed by Vrīhaspati: "The clothes and ornaments, the bed and similar furniture, appertaining to the father, as well as his vehicle and the like, should be given, after perfuming them with fragrant drugs and wreaths of flowers, to the person who partakes of the funeral repast." But new clothes are subject to distribution.

18. VEHICLES] The carriages, as horses, litters or the like. Here also, that, on which each person rides, belongs exclusively to him. But the father's must be disposed of as directed in regard to his clothes. If the horses or the like be numerous, they must be distributed among co-heirs who live by the sale of them. If they cannot be divided, the number being unequal, they belong to the eldest brother: as ordained by Menu: "Let them never divide a single goat or sheep, or a single beast with uncloven hoofs: a single goat or sheep belongs to the first born."

19. The ORNAMENTS worn by each person are exclusively his. But what has not been used, is common and liable to partition. "Such ornaments, as are worn by women during the life of their husband, the heirs of the husband shall not divide among themselves: they, who do so, are degraded from their tribe." It appears from the condition here specified ("such ornaments as are worn,") that those, which are not worn, may be divided.

20. PREPARED FOOD, as boiled rice, sweet cakes and the like, must be similarly exempted from partition. Such food is to be consumed according to circumstances.

21. WATER, or a reservoir of it, as a well or the like, being unequal [to the allotment of shares] must not be distributed by means of the value; but it is to be used [by the co-heirs] by turns.

22. The WOMEN or female slaves, being unequal [in number, to the shares] must not be divided by the value, but should be employed in labour [for the co-heirs] alternately. But women (adultresses or others) kept in concubinage by the father, must not be shared by the sons, though equal in number: for the text of Gautama forbids it.
"No partition is allowed in the case of women connected [with the father or with one of the co-heirs]."

23. The term yogaesheva is a conjunctive compound resolvable into yoga and eseema. By the word yoga is signified a cause of obtaining something not already obtained: that is, a SACRIFICIAL ACT to be performed with fire, consecrated according to the Veda and the law. By the term eseema is denoted an auspicious act which becomes the means of conservation of what has been obtained: such as the making of a pool or a garden, or the giving of alms elsewhere than at the altar. Both these, though appertaining to the father, or though accomplished at the charge of the patrimony, are indivisible; as Laugachchi declares. "The learned have named a conservatory act eseema, and a sacrificial one yoga; both are pronounced indivisible: and so are the bed and the chair."

24. Some hold, that by the compound term yogaesheva, those who effect sacrificial and conservatory acts (yoga and eseema), are intended, as the king’s counsellors, the stipendiary priests, and the rest. Others say, weapons, cowtails, parasols, shoes and similar things, are meant.

25. The COMMON WAY, or road of ingress and egress to and from the house, garden, or the like, is also indivisible.

26. The exclusion of land from partition, as stated by Usanas, ("Sacrificial gains, land, written documents, prepared food, water, and women, are indivisible among kinsmen even to the thousandth degree;") bears reference to sons of a Brāhmaṇa by women of the military and other inferior tribes: for it is ordained [by Vihašpati:] "Land, obtained by acceptance of donation, must not be given to the son of a Cshatriya or other wife of inferior tribe: even though his father give it to him, the son of the Brāmīni may resume it, when his father is dead."

27. SACRIFICIAL gains] acquired by officiating at religious ceremonies.

28. What is obtained through the father’s favour, will be subsequently declared exempt from partition. The supposition, that anything, acquired by transgressing restrictions regarding the mode of acquisition, is indivisible, has been already refuted.

29. It is settled, that WHATEVER IS ACQUIRED AT THE CHARGE OF THE PATRIMONY, IS SUBJECT TO PARTITION. But the acquirer shall, in such a case, have a DOUBLE SHARE, by the text of Vasishtra. "He, among them, who has made an acquisition, may take a double portion of it."

30. The author propounds an exception to that maxim. "But, if the common stock be improved, an equal division is ordained."

Among unseparated brethren, if the common stock be improved or augmented by any one of them, through agriculture, commerce or similar means, an equal distribution nevertheless takes place; and a double share is not allotted to the acquirer.
Section V.

Equal rights of Father and son in property ancestral.

1. The distribution of the paternal estate among sons has been shown; the author next propounds a special rule concerning the division of the grandfather's effects by grandsons. "Among grandsons by different fathers, the allotment of shares is according to the fathers."

2. Although grandsons have by birth a right in the grandfather's estate, equally with sons; still the distribution of the grandfather's property must be adjusted through their father, and not with reference to themselves. The meaning here expressed is this: IF UNSEPARATED BROTHERS DIE LEAVING MALE ISSUE; AND THE NUMBER OF SONS BE UNEQUAL, one having two sons, another three, and a third four; the TWO RECEIVE A SINGLE SHARE IN RIGHT OF THEIR FATHER, the other THREE TAKE ONE SHARE appertaining to their father, AND THE REMAINING FOUR, SIMILARLY OBTAIN ONE SHARE due to their father. So, if some of the sons be living and some have died leaving male issue; the same method should be observed: the surviving sons take their own allotments, and the sons of their deceased brothers receive the shares of their own fathers respectively. Such is the adjustment prescribed by the text.

3. If the father be alive, and separate from the grandfather, or if he have no brothers, a partition of the grandfather's estate with the grandson would not take place; since it has been directed, that shares shall be allotted in right of the father, if he be deceased: or, admitting partition to take place, it would be made according to the pleasure of the father, like a distribution of his own acquisitions; to obviate this doubt the author says; "For the ownership of father and son is the same in land, which was acquired by the grandfather, or in a corrobly, or in chattels [which belonged to him]."

4. Land] a rice field or other ground. A corrobly.] So many leaves receivable from a plantation of betel pepper, or so many nuts from an orchard of areca. Chattels] gold, silver, or other moveables.

5. In such property, which was acquired by the paternal grandfather, through acceptance of gifts, or by conquest or other means (as commerce, agriculture, or service,) the ownership of father and son is notorious; and therefore partition does take place. For, or because, the right is equal, or alike, therefore partition is not restricted to be made by the father's choice; nor has he a double share.

6. Hence also it is ordained by the preceding text, that "the allotment of shares shall be according to the fathers," although the right be equal.

7. The first text "when the father makes a partition, &c." relates to property acquired by the father himself. So does that which ordains a double share: "Let the father, making a partition, reserve two shares for himself." The dependence of sons, as affirmed in the following passage, "While both parents live, the control remains, even though they have arrived at old age;" must relate to effects acquired by the father or mother. This other passage, "They
have not power over it (the paternal estate) while their parents live;" must also be referred to the same subject.

8. Thus, while the mother is capable of bearing more sons and the father retains his worldly affections and does not desire partition, a distribution of the grandfather's estate does nevertheless take place by the will of the son.

9. So likewise, the grandson has a right of prohibition, if his unseparated father is making a donation, or a sale, of effects inherited from the grandfather: but he has no right of interference, if the effects were acquired by the father. On the contrary, he must acquiesce, because he is dependent.

10. Consequently the difference is this: although he have a right by birth in his father's and his grandfather's property; still, since, he is dependant on his father in regard to the paternal estate and since the father has a predominant interest as it was acquired by himself, the son must acquiesce in the father's disposal of his own acquired property: but, since both have indiscriminately a right in the grandfather's estate, the son has a power of interdiction [if the father be dissipating the property.]

11. Menu likewise shows, that the FATHER, however reluctant, MUST DIVIDE WITH his SONS, at their pleasure, the EFFECTS ACQUIRED BY the PATERNAL GRANDFATHERS; declaring, as he does ("If the father recover paternal wealth, not recovered by his co-heirs, he shall not, unless willing, share it with his sons; for in fact it was acquired by him.") that, if the father recover property, which had been acquired by an ancestor, and taken away by a stranger, but not redeemed by the grandfather, he need not himself share it, against his inclination, with his sons; any more than he need give up his own acquisitions.

Section VI.

Rights of a posthumous son and of one born after the partition.

1. How shall a share be allotted to a son born subsequently to a partition of the estate? The author replies "When the sons have been separated, one who is [afterwards] born of a woman equal in class, shares the distribution."

2. The sons being separated from their father, one, who shall be afterwards born of a wife equal in class, shall share the distribution. What is distributed, is distribution, meaning the allotments of the father and mother: he shares that; in other words, he obtains after [the demise of] parents, both their portions: his mother's portion, however, only if there be no daughter; for it is declared that "Daughters share the residue of " the mother's property, after payment of her debts."

3. But a son by a woman of a different tribe, receives merely his own proper share, from his father's estate with the whole of his mother's property, if there be no daughter.]
4. The same rule is propounded by Menu: "A son, born after a division, shall alone take the parental wealth." The term parental (pitrāyam) must be here interpreted "appertaining to both father and mother:" for it is ordered that "A son, born before partition, has no claim on the wealth of his parents; nor one begotten after it, on that of his brother."

5. The meaning of the text is this: one, born previously to the distribution of the estate, has no property in the share allotted to his father and mother who are separated [from their elder children:] nor is ONE, BORN OF PARENTS SEPARATED [from their children] a proprietor of his brother's allotment.

6. Thus, whatever has been acquired by the father in the period subsequent to partition, belongs entirely to the son born after separation. For it is so ordained: "All the wealth, which is acquired by the father himself, who has made a partition with his sons, goes to the son begotten by him after the partition: those, born before it are declared to have no right."

7. But the son, born subsequently to the separation, must after the death of his father, share the goods with those who RE-UNITED themselves with the father after the partition: as directed by Menu; "Or he shall participate with such of the brethren, as are re-united with the father."

8. When brethren have made partition subsequently to their father's demise, how shall a share be allotted to a son born afterwards? The author replies "His allotment" must absolutely be made, out of the visible estate "corrected for income and expenditure."

9. A share allotted for ONE who is BORN AFTER a SEPARATION of the brethren, which took place SUBSEQUENTLY TO THE DEATH OF THE FATHER, at a time when the mother's pregnancy was not manifest is "his allotment." But whence shall it be taken? The author replies, "from the visible estate" received by the brethren, "corrected for income and expenditure." Income is the daily, monthly or annual produce. Liquidation of debts contracted by the father, is expenditure. Out of the amount of property corrected by allowing for both income and expenditure, a share should be taken and allotted to the [posthumous son.]

10. The meaning here expressed is this: Including in the several shares the income thence arisen, and subtracting the father's debts a small part should be taken from the remainder of the shares respectively, and an allotment, equal to their own portions, should be thus formed for the [posthumous] son born after partition.

11. This must be understood to be likewise applicable in the case of a NEPHEW, who is born after the separation of the brethren; the pregnancy of the brother's widow, who was yet childless, not having been manifest at the time of the partition.

12. But, if she were evidently pregnant, the distribution should be made, after awaiting her delivery; as Vasist'ha directs, "Partition
of heritage [takes place] among brothers [having waited] until the delivery of such of the women, as are childless [but pregnant]." This text should be interpreted, 'having waited until the delivery of the women who are pregnant.'

13. It has been stated, that the son, born after partition, takes the whole of his father's goods and of his mother's. But if the father, or the mother, affectionately bestow ornaments or other presents on a separated son, that gift must not be resisted by the son born after partition; or, if actually given, must not be resumed. So the author declares: "But effects, which have been given by the father, or by the mother, belong to him on whom they were bestowed."

14. What is given (whether ornaments or other effects) by the father or by the mother, being separated from their children, to a son already separated belongs exclusively to him; and does not become the property of the son born after the partition.

15. By parity of reason, what was given to any one, before the separation, appertains solely to him.

16. So among the brethren, dividing the allotment of their parents who were separated from them, after the demise of those parents, (as may be done by the brothers, if there be no son born subsequently to the original partition;) what has been given by the father and mother to each of them, belongs severally to each, and is shared by no other. This must be understood.

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Section VII.

Shares allotted to provide for widows and for the nuptials of unmarried daughters.—The initiation of uninitiated brothers defrayed out of the joint funds.

1. When a distribution is made during the life of the father, the participation of his WIVES equally with his sons, has been directed. ("If he make the allotments equal, his wives must be reckoned partakers of like portions.") The author now proceeds to declare their equal participation, when the separation takes place after the demise of the father: "Of heirs dividing after the death of the father, let the mother also take an equal share."

2. Of heirs separating after the decease of the father, the mother shall take a share equal to that of a son; provided no separate property had been given to her. But, if any had been received by her, she is entitled to half a share, as will be explained.

3. If any of the BRETHREN be UNINITIATED, when the father dies, who is competent to complete their initiation? The author replies: 'Uninitiated brothers should be initiated by those, for whom the ceremonies have been already completed.'

4. By the brethren, who make a partition after the decease of their father, the uninitiated brothers should be initiated at the charge of the whole estate.
5. In regard to unmarried sisters, the author states a different rule: "But sisters should be disposed of in marriage, giving them as an allotment, the fourth part of a brother's own share."

6. The purport of the passage is this: Sisters also, who are not already married, must be disposed of, in marriage, by the brethren, contributing a forth part out of their own allotments. Hence it appears, that DAUGHTERS, also participate after the death of their father. Here, in saying "of a brother's own share," the meaning is not, that a fourth part shall be deducted out of the portions allotted to each brother and shall be so contributed; but that the girl shall be allowed to participate for a quarter of such share as would be assignable to a brother of the same rank with herself. The sense expressed is this: if the maiden be daughter of a Brahmani, she has a quarter of so much as is the amount of an allotment for a son by a Brahmani wife.

7. For example, if a certain person had only a Brahmani wife, and leaves one son and one daughter, the whole paternal estate should be divided into two parts, and one such part be sub-divided into four; and, the quarter being given to the girl, the remainder shall be taken by the son. Or, if there be two sons and one daughter, the whole of the father's estate should be divided into three parts; and one such part be sub-divided into four; and, the quarter having been given to the girl, the remainder shall be shared by the son. But, if there be one son and two daughters, the father's property should be divided into thirds, and two shares be severally sub-divided into quarters: then, having given two [quarter] shares to the girls, the son shall take the whole of the residue. It must be similarly understood in any case of an equal or unequal number of brothers and sisters alike in rank.

8. But if there be one son of a Brahmani wife and one daughter by a Oshatriya woman, the paternal estate should be divided into seven parts: and the three parts, which would be assignable to the son of a Oshatriya woman must be subdivided by four; then, giving such fourth part to the daughter of the Oshatriya wife, the son of the Brahmani shall take the residue. Or, if there be two sons of the Brahmani and one daughter by the Oshatriya wife, the father's estate shall be divided into eleven parts: and three parts which would be assignable to a son by a Oshatriya wife, must be subdivided by four: having given such quarter share to the daughter of the Oshatriya, the two sons of the Brahmani shall share and take the whole of the remainder. Thus the mode of distribution may be inferred in any instance of an equal or unequal number of brothers and sisters dissimilar in rank.

9. Nor is it right to interpret the terms of the text ("giving the fourth part,")) as signifying 'giving money sufficient for her marriage,' by considering the word "fourth" as indefinite. For that contradicts the text of Manu, "To the maiden sisters, let their brothers give portions out of their own allotments respectively: to each the fourth part of the appropriate share; and they, who refuse to give it, shall be degraded."

10. The sense of this passage is as follows: Brothers, of the sacerdotal and other tribes should give to their sister belonging to the same tribes, portions out of their own allotments; that is, out of the shares or-
dained for persons of their own rank, as subsequently explained. They should give to each sister a quarter of their own respective allotments. It is not meant, that a quarter should be deducted from the share of each and be given to the sister. But to each maiden, should be severally allotted the quarter of a share ordained for a son of the same class. The mode of adjusting the division when the rank is dissimilar and the number unequal has been stated; and the allotment of such a share appears to be indispensably requisite, since the refusal of it is pronounced to be a sin: "They who refuse to give it, shall be degraded."

11. If it be alleged, that, here also, the mention of a quarter is indeterminate, and the allotment of property, sufficient to defray the expenses of the nuptials is all which is meant to be expressed: the answer is, no; for there is not any proof, that the allotment of a quarter of a share is indefinite in both codes; and the withholding of it is pronounced to be a sin.

12. As for what is objected by some, that a sister, who has many brothers, would be greatly enriched, if the allotment of a [fourth] part were positively meant; and that a brother, who has many sisters, would be entirely deprived of wealth; the consequence is obviated in the manner before explained: it is not here directed that a quarter shall be deducted out of the brother's own share and given to his sister; whence any such consequence should arise.

13. Hence the interpretation of Med'hatit'hi who has no compeer, as well as of other writers, who concur with him, is square and accurate; not that of Bharuchilli.

14. Therefore, after the decease of the father, an unmarried daughter participates in the inheritance. But, before his demise, she obtains that only, whatever it be, which her father gives; since there is no special precept respecting this case. Thus all is unexceptionable.

Section VIII.

Shares of Sons belonging to different tribes.

1. The adjustment of a distribution among brothers alike in rank, whether made with each other, or with their father, has been propounded in preceding passages ("When the father makes a partition, &c."). The author now describes partition among brethren dissimilar in class: "The sons of a Brahma, in the several tribes, have four shares or three, or two, or one; the children of a Cakatriya have three portions, or two or one; and those of a Vaisya take two parts, or one."

2. Under the sanction of the law, instances do occur of a Brahmana having four wives; a Cakatriya, three; Vaisya two: but a Sudra one. In such cases, the sons of a Brahmana born to him by women of the several tribes, shall have four shares, three, two, or one, in the order of those tribes.

3. The several tribes (varnas). Women of the different classes, the sacerdotal and the rest, are signified by the word tribe (varna). The termination sa, subjoined to noun in the singular number and locative or other case, bears a distributive sense, conformably with the grammatical rule.

4. The meaning here expressed is this: The sons of a Brahmana, by a Brahmanik woman, take four shares apiece; his sons by a Cakatriya wife, receive three shares; by a Vaisya, woman, two; by a Sudra, one.

5. The sons of a Cakatriya, born to him by women of the several tribes, (for that is here understood,) have three shares, or two, or one, in the order of the tribes: that is, the
sons of a Cakravrivya man, by a Cakravrivya woman, takes three shares each; by a Vaisya woman, two; by a Sudra wife, one.

6. The sons of a Vaisya by women of the several tribes, (for here, again, the same term is understood), have two shares, or one, in the order of the classes: that is, the sons of a Vaisya man, by a Vaisya woman, take two shares a piece; by a Sudra woman, one.

7. Since a man of the servile tribe cannot have a son of a different class from his own, because one wife only is allowed to him, (for "a Sudra woman only must be the wife of a Sudra man,"”) partition among his children takes place in the manner before mentioned.

8. Although no restriction be specified in the text it must be understood to relate to property other than land obtained by the acceptance of a gift. For it is declared (by VAIKAMPAKI). ”Land obtained by acceptance of donation, must not be given to the sons of a Cakravrivya or other wife of inferior tribe: even though his father give it to him, the son ‘of the Brahman may resume it, when his father is dead.”

9. Since acceptance of donation is here expressly stated, land obtained by purchase or similar means appertains also to the son of a Cakravrivya or other inferior woman. For the son by a Sudra woman is specially excepted ("The son, begotten on a Sudri woman by any man of a twice-born class, is not entitled to a share of land.") Now, if land acquired by purchase and similar means did not belong to the sons of a Cakravrivya or Vaisya wife, the special exception of a son by a Sudra woman would be inapplicable.

10. But the following text, "The son of a Brahman, or a Vaisya, by a woman of the servile class, shall not share the inheritance: whatever his father may give him, let that only be his property!": relates to the case where something, however inconsiderable, has been given by the father, in his life-time, to his son by a Sudra woman. But, if no affectionate gift have been bestowed on him by his father, he participates for a single share (of the moveables). Thus there is nothing contradictory.

Section IX.

Distribution of effects discovered after partition.

1. Something is here added respecting the residue after a general distribution of the estate. "Effects, which have been withheld by one co-heir from another, and which are discovered after the separtion, let them again divide in equal shares: this is a settled rule."

2. WHAT HAD BEEN WITHELD BY COPARCENERS from each other, AND WAS NOT KNOWN AT THE TIME OF DIVIDING the aggregate estate, THEY SHALL DIVIDE IN EQUAL PROPORTIONS, when it is discovered after the patrimony. Such is the settled rule or maxim of the law.

3. Here, by saying "in equal shares" the author forbids partition with deductions. By saying "let them divide," he shows, that the goods shall not be taken exclusively by the person who discovers them.

4. Since the text is thus significant, it does not imply, that no offence is committed by embezzling the common property.

5. Is it not shown by Manu to be an offence on the part of the eldest brother, if he appropriate to himself common property; and not so, on the part of younger brothers? "An eldest brother, who from avarice shall defraud his younger brothers, shall forfeit the honours of his primogeniture, be deprived of his [additional] share, and be chastised by the king."

6. That inference is not correct; for, by pronouncing such conduct criminal in an elder brother, who is independent and represents the father, it is more assuredly shown (by the argument exemplified in the loaf and staff) to be criminal in younger brothers, who are subject to the control of the eldest and hold the place of sons. Accordingly it is
declared [in the Veda] to be an offence without exception or distinction: "Him, indeed, who deprives an heir of his right share, he does certainly destroy; or, if he destroy not him, he destroys his son, or else his grandson."

7. Whoever debars, or excludes, from participation, an heir, or person entitled to a share, and does not yield to him his due allotment; he, being thus debarred of his share, destroys or annihilates that person who so debars him of his right: or, if he do not immediately destroy him, he destroys his son or his grandson.

8. It is thus pronounced to be criminal in any person to withhold common property, without any distinction of eldest [or youngest.]

9. It is argued, that blame is not incurred by one who takes the goods, thinking them his own, under the notion that the common property appertains also to him.

10. That is wrong. He does incur blame: for, though he took it thinking it his own; still he has taken the property of another person, contrary to the injunction which forbids his so doing.

11. As in answer to a proposed solution of a difficulty: 'If an obligation of green kidney beans be not procurable, and black kidney beans be used in their stead, by reason of the resemblance, the maxim, which prohibits the employment of these in sacrifices, is not applicable, because they were used by mistake for ground particles of green kidney beans; it is on the contrary maintained, as the right opinion, that, although the ground particles of green kidney beans be taken as being unforbidden, still the ground particles of black kidney beans are also actually employed: and the prohibitory command is consequently applicable in this case.'

12. Therefore it is established, both from the letter of the law and from reasoning, that an offence is committed by taking common property.

Section X.

Rights of the Dwyamushayana or son of two fathers.

1. Intending to propound a special allotment for the Dwyamushayana (or son of two fathers,) the author previously describes that relation. "A son, begotten by one, who has "no male issue, on the wife of another man, under a legal appointment, is lawfully heir, and "giver of funeral obligations, to both fathers."

2. A son, procreated by the husband's brother or other person (having no male issue), on the wife of another man, with authority from venerable persons, in the manner before ordained, is heir of both the natural father and the wife's husband: he is successor to their estates, and giver of oblations to them, according to law.

3. The meaning of this is as follows:—If the husband's brother, or other person duly authorized, and being himself destitute of male issue, proceed to an intercourse with the wife of a childless man, for the sake of raising issue both for himself and for the other; the son whom he so begets, is the child of two fathers and denominated Dwyamushayana. He is heir to both, and offers funeral oblations to their manes.
4. But, if one, who has male issue, being so authorised, have intercourse with the wife for the sake of raising up issue to her husband only; the child so begotten by him, is son of the husband not of the natural father; and, by this restriction, he is not heir of his natural father, nor qualified to present funeral obligations to his maps. It is so declared by Manu: "The owners of the seed and of the soil may be considered as joint owners of the crop, which they agree by special compact, in consideration of the seed, to divide between them." 

5. By special compact.) When the field is delivered by the owner of the soil to the owner of the seed, on an agreement in this form, "let the crop, which will be here produced belong to us both;" then the owners both of the soil and of the seed are considered by mighty sages as sharers or proprietors of the crop produced in that ground.

6. So [the same author] "Unless there be a special agreement between the owners of the land and of the seed, the fruit belongs clearly to the land owner; for the soil is more important than the seed."

7. But produce, raised in another's ground, without stipulating for the crop, or without a special agreement that it shall belong to both, appertains to the owner of the ground: for the receptacle is more important than the seed; as is observed in the case of cows, mares, and the rest.

8. Here, however, the commission for raising up issue is relative to a woman who was only betrothed, since any other such appointment is forbidden by Manu. For after thus promising a commission, "On failure of issue, the desired offspring may be procured, either by his brother or some other kinsman, on the wife who has been duly authorized: anointed with oil and sealed by the kinsman, let the wife, at the last, let the one son, but a second by no means, on the widow [or childless wife]" Manu has himself prohibited the practice; "By regenerate men, no widow must be authorized to conceive by any other: for they, who authorize her to conceive by any other, violate the primeval law. Such a commission is nowhere mentioned in the nuptial prayers; nor is the marriage of widows noticed in laws concerning wedlock. This practice, fit only for cattle, and reprehended by learned priests, was introduced among men, while Veda had sovereign sway. He, possessing the whole earth, and therefore eminent among royal saints, gave rise to a confusion of tribes, when his agreement was overcome by passion. Since his time, the virtuous censure that man, who through delusion of mind, authorizes a widow to have intercourse for the sake of progeny."

9. Nor is an option to be assumed from the contrast of present and prohibition. Since they, who authorize the practice, are expressly censured: and disloyalty is strongly reproached in speaking of the duties of woman; and continence is no less praised. This, Manu has shown: "Let the faithful wife emulate her body by living voluntarily on pure flowers, roots, and fruit; but let her not, when her lord is deceased, ever pronounce the name of another man. Let her continue till death forgiving all injuries, performing harsh duties, avoiding every sensual pleasure, and cheerfully practicing the incomparable rules of virtue, which have been followed by such women, as were devoted to one only husband. Many thousands of Srasánas, having avoided sensuality from their early youth, and having left no issue in their families, have ascended nevertheless to heaven: and, like those abstemious men a virtuous wife ascends to heaven, though she have no child, if, after the decease of her lord, she devote herself to pious austerity: but a widow, who, from a wish to bear children, has been disgraced her husband, brings her not, in that case, to be excluded from the abode of her lord." Thus the legislator has forbidden the resource of a widow or wife to another man, even for the sake of progeny. Therefore it is not right to deduce an option from the injunction contrasted with the prohibition.

10. The authorizing of a woman sanctified by marriage, [to raise up issue to her husband by another man,] being thus prohibited, what then is a lawful commission [to raise up issue]? The same author explains it: "The damsel, whose husband shall die after troth verbally plighted, his brother shall take in marriage according to this rule: having espoused her in due form, she being clad in a white robe, and pure in her conduct, let him privately approach her once in each proper season, until issue be had."

11. It appears from this passage, that he, to whom a damsel was verbally given, is her husband without a formal acceptance on his part. If he die, his own brother of the whole blood, whether older or younger, shall espouse or take in marriage the widow. "In due form," or as directed by law, "having espoused" or wedded her, and according to this rule," namely, with an injection of clarified butter and with restraint of voice, &c., let him "privately" or in secret, "approach her, clad in a white robe, and pure in her conduct," that is restraining her mind, speech and gesture, "once" at a time, until pregnancy ensue.

12. These espousals are nominal, and a mere part of the form in which an authorised widow shall be approached; like the injection of clarified butter, and so forth. They do not indicate her becoming the wedded wife of her brother-in-law.

13. Therefore the offspring, produced by that intercourse, appertains to the original husband, not to the brother-in-law. But, by special agreement, the issue may belong to both.
Section XII.

Rights of a son by a female slave, in the case of a Sudra's estate.

1. The author next delivers a special rule concerning the PARTITION OF A SUDRA'S GOODS. "Even a son begotten by a Sudra on a female slave may take a share by the father's choice. But, if the father be dead, the brethren should make him partaker of the moiety of a share; and one, who has no brothers, may inherit the whole property, in default of daughters' sons."

2. The SON begotten BY A SUDRA ON FEMALE SLAVE, obtains a share by the father's choice, or at his pleasure. But after [the demise of] the father, if there be SONS OF A WEDDED WIFE, let these brothers allow the son of the female slave to participate for half a share; that is, let them give half [as much as is the amount of one brother's] allotment. However, should there be no sons of a wedded wife, the son of the female slave takes the whole estate, provided there be no daughters of a wife, nor sons of daughters. But, if there be such the son of the female slave participates for half a share only.

3. From the mention of a Sudra in this place, [it follows, that] the SON begotten BY A MAN OF A REGENERATE TRIBE ON A FEMALE SLAVE, does not obtain a share even by the father's choice, nor the whole estate after his demise. But, if he be docile, he receives a simple maintenance.

CHAPTER II.

Section I.

Right of the widow to inherit the estate of one, who leaves no male issue.

1. That sons, principal and secondary, take the heritance, has been shown. The order of succession among all [tribes and classes] on failure of them, is next declared.

2. "The wife, and the daughters also, both parents, brothers like-wise, and their sons, gentiles, cognates, a pupil, and a fellow student: on failure of the first among these, the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue. This rule extends to all [persons and] classes."

3. He, who has no son of any among the twelve descriptions above stated (C. I.) is one having 'no male issue.' Of a man, thus leaving no male progeny, and going to heaven, or departing for another world, the heir or successor, is that person, among such as have been here enumerated, (viz., the wife and the rest) who is next in order, on failure of the first mentioned respectively. Such is the construction of the sentence.
4. **THIS RULE, or order of succession, in the taking of an inheritance, MUST BE UNDERSTOOD AS EXTENDING TO ALL TRIBES, whether the *Muni* and others in the direct series of the classes, or *Suta* and the rest in the inverse order; and as comprehending the several classes, the sacerdotal and the rest.**

5. In the first place, the WIFE shares the estate. " *Wife* (patsi) signifies a woman espoused in lawful wedlock; conformably with the etymology of the term as implying a connection with religious rites.

6. *Vriddha Menus also declares the widow's right to the whole estate. "The widow of a childless man, keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain [his] entire share." Vrihad-Vishnu likewise ordains it: "The wealth of him, who leaves no male issue, goes to his wife; on failure of her, it devolves on daughters; if there be none, it belongs to the father; if he be dead, it appertains to the mother." So does Cattayana: "Let the widow succeed to her husband's wealth, provided she be chaste; and, in default of her, the daughter inherits if unmarried." And again, in another place: "The widow, being a woman of honest family, or the daughters, or on failure of them the father, or the mother, or the brother, or his sons, are pronounced to be the heirs of one who leaves no male issue." Also Vrihaspati: "Let the wife of a deceased man, who left no male issue, take his share, notwithstanding kinsmen, a father, a mother, or uterine brethren, be present."

7. Passages, adverse to the widow's claim, likewise occur. Thus Nareda has stated the succession of brothers, though a wife be living; and has directed the assignment of a maintenance only to widows. "Among brothers, if any one die without issue, or enter a religious order, let the rest of the brethren divide his wealth, except the wife's separate property. Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord. But, if they behave otherwise, the brethren may resume that allowance." Menus propounds the succession of the father, or of the brother, to the estate of one who has no male offspring: "Of him, who leaves no son, the father shall take the inheritance, or the brothers." He likewise states the mother's right to the succession, as well as the paternal grandmother's: "Of a son dying childless, the mother shall take the estate; and, the mother also being dead, the father's mother shall take the heritage." Sancha also declares the successive rights of brothers, and of both parents, and lastly of the eldest wife: "The wealth of a man, who departs for heaven, leaving no male issue, goes to his brothers. If there be none, his father and mother take it; or his eldest wife." Cattayana too says, "If a man die separate from his coheirs, let his father take the property on failure of male issue; or successively the brother, or the mother, or the father's mother."

8. The application of these and other contradictory passages is thus explained by D'hareswara: "The rule, deduced from the texts [of Yaityawalaca, &c.] that the wife shall take the estate, regards the widow of a separated brother: and that provided she be solicitous of authority for raising up issue to her husband. Whence is it inferred, that a widow succeeds to the estate, provided she seek permission for raising up issue, but not independently of this consideration? From the text above cited, "Of him, who leaves no son, the father shall take
the inheritance;" and other similar passages [as Nārada's &c.] For here a rule of adjustment and a reason for it must be sought; but there is none other. Besides it is confirmed by a passage of Gautama: "Let kinsmen allied by the funeral oblation, by family name, and by descent from the same patriarch, share the heritage; or the widow of a childless man, if she seek to raise up offspring to him."

9. 'The meaning of the text is this: persons, connected by a common oblation, by race, or by descent from a patriarch, share the effects of one who leaves no issue; or his widow takes the estate, provided she seek progeny.'

10. Menu likewise shows by the following passage, that, when a brother dies possessed of separate property, the wife's claim to the effects is in right of progeny, and not in any other manner. "He who keeps the estate of his brother and maintains the widow, must, if he raise up issue to his brother, deliver the estate to the son." So in the case of undivided property likewise, the same author says, "Should a younger brother have begotten a son on the wife of his elder-brother, the division must then be made equally: thus is the law settled."

11. 'Vaishnā' also, forbidding an appointment to raise up issue to the husband, if sought from a covetous motive ("An appointment shall not be through covetousness:";) thereby intimates, that the widow's succession to the estate is in right of such an appointment, and not otherwise.

12. 'But if authority for that purpose have not been received, the widow is entitled to a maintenance only; by the text of Nārada: "Let them allow a maintenance to his women for life."

13. 'The same (it is pretended) will be subsequently declared by the contemplative saint: And their childless wives, conducting themselves aright, must be supported; but such, as are unchaste, should be expelled; and so, indeed, should those, who are perverse.'

14. Moreover, since the wealth of a regenerate man is designed for religious uses, the succession of women to such property is unfit; because they are not competent to the performance of religious rites. Accordingly, it has been declared by some author, "Wealth was produced for the sake of solemn sacrifices; and they who are incompetent to the celebration of those rites, do not participate in the property, but are all entitled to food and raiment." Riches were ordained for sacrifices. Therefore they should be allotted to persons who are concerned with religious duties; and not be assigned to women, to fools, and to people neglectful of holy obligations."

15. That is wrong; for authority to raise up issue to the husband is neither specified in the text, ("The wife and the daughters also &c.") nor is it suggested by the premises. Besides, it may be here asked; is the appointment to raise up issue a reason for the widow's succession to the property? or is the issue born by her the cause of her succession? If the appointment alone be the reason, it follows, that she has a right to the estate, without having borne a son; and the right of the son subsequently produced [by means of the appointment] does not ensue. But, if the offspring be the sole cause [of her claim] the wife should not be received as a successor: since, in that case, the son alone has a right to the goods.
16. But it is said, women have a title to property, either through the husband, or through the son, and not otherwise. That is wrong; for it is inconsistent with the following text and other similar passages. "What was given before the nuptial fire, what was presented in the bridal procession, what has been given in token of affection, what has been received by the woman from her brother, her mother, or her father, are denominated the sixfold property of a woman."

17. Besides, the widow and the daughters are announced as successors on failure of sons of all descriptions. Now by here affirming the right of a widow who has been appointed to raise up issue, the right of her son to succeed to the estate is virtually affirmed. But that had been already declared; and therefore the wife ought not to be mentioned under the head [of succession to the estate] of one who leaves no male issue.

18. But, it is alleged, the right of a widow, who is authorized to raise up issue to her husband, is deduced from the text of Gautama: “Let kinsmen allied by the funeral oblation, by family name, and by descent from the same patriarch, share the heritage; or the widow of a childless man: and she may either [remain chaste, or may] seek offspring.” This too is erroneous: for the sense, which is there expressed is not ‘If she seek to obtain offspring, she may take the goods of one who left no issue;’ but persons allied by the funeral oblation, by family name, and by descent from the same patriarch, share the effects of one who leaves no issue; or his widow takes his estate: and she may either seek to obtain progeny, or may remain chaste.” This is an instruction to her in regard to her duty. For the particle (ca)’ or,’ denoting an alternative, does not convey the sense of ‘if.’ Besides it is fit that a chaste woman should succeed to the estate, rather than one appointed to raise up issue, reprobated as this practice is in the law as well as in popular opinion. The succession of a chaste widow is expressly declared: “The widow of a childless man, keeping unsullied her husband’s bed, and persevering in religious observances, shall present his funeral oblation and obtain his entire share.” And an authority to raise up issue is expressly condemned by Mtrnu: “By regenerate men no widow must be authorized to conceive by any other; for they, who authorize her to conceive by another, violate the primeval law.”

19. But the text of Vaishetha “An appointment shall not be through covetousness;” must be interpreted: “if the husband die either unseparated from his coparceners or reunited with them, she has not a right to the succession; and therefore an appointment to raise up issue must not be accepted for the sake of securing the succession to her offspring.”

20. As for the text of Nareda, “Let them allow a maintenance to his women for life;” Since reunion of parceeners had been premised (in a former text, viz, “The shares of reunited brethren are considered to be exclusively theirs”;) it must be meant to assign only a maintenance to their childless widows. Nor is tautology to be objected to that passage, the intermediate text being relative to reunited parceeners (“Among brothers, if any one die without issue, &c.”) For women’s separate property is exempted from partition by this explanation of what had been before said, and a mere maintenance for the widow, is at the same time ordained.
21. The passage, which has been cited, "Their childless wives conducting themselves aright, must be supported;" will be subsequently shown to intend the wife of an impotent man and so forth.

22. As for the argument, that the wealth of a regenerate man is designed for religious uses; and that a woman's succession to such property is unfit, because she is not competent to the performance of religious rites; that is wrong; for, if everything, which is wealth, be intended for sacrificial purposes, then charitable donations burnt offerings, and similar matters, must remain unaccomplished. Or if it be alleged, that the applicability of wealth to those uses is uncontradicted, since sacrifice here signifies religious duty in general; and charitable donations, burnt offerings and the rest are acts of religious duty; still other purposes of opulence and gratifications, which are to be effected by means of wealth, must remain unaccomplished; and if that be the case, there is an inconsistency in the following passages of Yajña-vastra, Gautama and Manu. "Neglect not religious duty, wealth or pleasure in their proper season." "To the utmost of his power, a man should not let morning, noon for evening be fruitless, in respect of virtue, wealth and pleasure." "The organs cannot so effectually be restrained by avoiding their gratification, as by constant knowledge [of the ills incident to sensual pleasure]."

23. Besides, if wealth be designed for sacrificial uses, the argument would be reversed, by which it is shown, that the careful preservation of gold [inculcated by a passage of the Veda] "Let gold be preserved," is intended not for religious ends, but for human purposes.

24. Moreover, if the word sacrifice import religious duty in general, the succession of women to estates is most proper, since they are competent to the performance of auspicious and conservatory acts [as the making of a pool or a garden, &c.]

25. The text of Nareda, which declares the dependence of women, ("A woman has no right to independence,") is not incompatible with their acceptance of property; even admitting their thrldom.

26. How then are the passages before cited ("Wealth was produced for the sake of solemn sacrifices, &c." to be understood? The answer is, wealth, which was obtained [in charity] for the express purpose of defraying sacrifices, must be appropriated exclusively to that use even by sons and other successors. The text intends that: for the following passage declares it to be an offence [to act otherwise,] without any distinction in respect of sons and successors. "He, who, having received articles for a sacrifice, disposes not of them for that purpose, shall become a kite or a crow."

27. It is said by Catayana "Heirless property goes to the king, deducting however a subsistence for the females as well as the funeral charges; but the goods belonging to a venerable priest, let him bestow on venerable priests." "Heirless property," or wealth which is without an heir to succeed to it, "goes to the king," or becomes the property of the sovereign; "deducting however a subsistence for the females as well as the funeral charges:" that is, excluding or setting apart a sufficiency for the food and raiment of the women, and as much as may be requisite for the funeral repasts and other obsequies in
honor of the late owner, the residue goes to the king. Such is the construction of the text. An exception is added: "but the goods belonging to a venerable priest," deducting however a subsistence for the females as well as the charges of obsequies, 'let him bestow on a venerable priest.'

28. This relates to women kept in concubinage: for the term employed is "females" (go shid). The text of NABEDA likewise relates to concubines; since the word there used is "women" (shri). "Except the wealth of a Brahmana [property goes to the king on failure of heirs.] But a king, who is attentive to the obligations of duty, should give maintenance to the women of such persons. The law of inheritance has been thus declared."

29. But since the term "wife" (patri) is here employed, the succession of a wedded wife, who is chaste, is not inconsistent with those passages.

30. Therefore the right interpretation is this: when a MAN, who was SEPARATED from his coheirs and not, reunited with them, DIES LEAVING NO MALE ISSUE, his WIDOW [if chaste] TAKES THE ESTATE in the first instance. For partition had been promised; and, reunion will be subsequently considered.

31. It must be understood, that the explanation, proposed by SrIcara and others, restricting [the widow's succession] to the case of a small property, is refuted by this [following argument.] If there be legitimate sons, it is provided, whether partition be made in the owner's lifetime or after his decease, that the wife shall take a share equal to the son's. "If he make the allotments equal, his wives must be rendered partakers of like portions." And again: "Of heirs dividing after the death of the father, let the mother also take an equal share." Such being the case, it is a mere error to say, that the wife takes nothing but a subsistence, from the wealth of her husband, who died leaving no male issue.

32. But it is argued, that, under the terms of the texts above cited, ("his wives must be rendered partakers of like portions:" and "let the mothers also take an equal share;'”) a woman takes wealth sufficient only for her maintenance. That is wrong: for the words "share" or "portion," and "equal" or "like," might consequently be deemed meaningless.

33. Or suppose, that if the wealth be great, she takes precisely enough for her subsistence; but if small, she receives a share equal to that of a son. This again is wrong: for variableness in the precept must be the consequence. Thus, if the estate be considerable, the texts above cited, ("his wives must be rendered partakers of like portions:" and "let the mother also take an equal share;'”) assisted by another passage ("Let them allow a maintenance to his women for life;" § 12) suggest an allotment adopted for bare support. But, if the estate be inconsiderable, the same passages indicate the assignment of a share equal to a son's.

34. Thus in the instance of the Chaturmasya sacrifices, in the disquision [of the Mimansa] on the passage dwayoh pran ayaasti; where it is maintained by the opponent, that the rules for the preparation of
the sacrificial fire at the Soma-yaga extend to these sacrifices; in consequence of which the injunction not to construct a northern altar (utra-vedi) at the Vasistha and Sunasirya sacrifices, must be understood as a prohibition of such altar; [which should else be constructed at those sacrifices as at a Soma-yaga:] but it is answered by an advocate for the right opinion, that it is not a prohibition of that altar as suggested by extending to these sacrifices the rules for preparing the sacrificial fire at the Soma-yaga, but an exception to the express rule "prepare an uttara-vedi at this sacrifice [viz., at the Chaturmasya,]" it is urged in reply by the opponent, that variableness in the precept must follow, since the same precept thus authorizes the occasional construction of the altar, with reference to a prohibition of it, at the first and last of the [four] periods of sacrifice, and commands the construction of it at the two middle periods, independently of any other maxim: but it is finally shown as the right doctrine, for the very purpose of obviating the objection of variableness in the precept, that the prohibition of the altar at the first and last of the periods of sacrifice is a recital of a constant rule; and that the injunction, "prepare the uttara-vedi at this sacrifice," commands its construction at the two middle periods namely the Varuna-praghasa and Sacamedha with a due regard to that explanatory recital.

35. As for the doctrine, that, from the text of Manu ("Of him, who leaves no son, the father shall take the inheritance, or the brothers,") as well as from that of Sanc'ha ("The wealth of a man, who departs for heaven, leaving no male issue; goes to his brothers. If there be none, his father and mother take it: or his eldest wife.") The succession of brothers, to the estate of one who leaves no male issue, is deduced; and that a wife obtains a sufficiency for her support, under the text "Let them allow a maintenance to his women for life:" this being determined, if a rich man die, leaving no male issue, the wife takes as much as is adequate to her subsistence, and the brethren take the rest; but, if the estate be barely enough for the support of the widow, or less than enough, this text ("The wife and the daughters also;") is propounded, on the controverted question whether the widow or the brothers inherit, to show that the first claim prevails. This opinion the reverend teacher does not tolerate: for he interprets the text, "Of him who leaves no son, the father shall take the inheritance or the brothers;" as not relating to the order of succession, since it declares an alternative; but as intended merely to show the competency for inheriting, and as applicable when the preferable claimants, the widow and the rest, fail. The text of Sanc'ha too relates to a reunited brother.

36. Besides it does not appear either from this passage [of Yajnavalkya] or from the context, that it is relative to an inconsiderable estate; If the concluding sentence, "On the failure of the first among these the next in order is heir;" be restricted to the case of a small property, by reference to another passage, in two instances (of the widow and of the daughters,) but relate to wealth generally in the other instances (of the father and the rest,) the consequent defect of variableness in the precept (33) affects this interpretation.

37. "If a woman, becoming a widow in her youth, be headstrong, a maintenance must in that case be given to her for the support of life."
This passage of Harita is intended for a denial of the right of a widow suspected of incontinency, to take the whole estate. From this very passage [of Harita], it appears that a widow, not suspected of misconduct, has a right to take the whole property.

38. With the same view, Sancha has said "Or his eldest wife." (7) Being eldest by good qualities, and not supposed likely to be guilty of incontinency, she takes the whole wealth; and, like a mother, maintains any other headstrong wife [of her husband]. Thus all is unexceptionable.

39. Therefore it is a settled rule, that a wedded WIFE, being chaste, takes the whole estate of a man, who, being separated from his coheirs and not subsequently reunited with them, dies leaving no male issue.

Section II.

Right of the daughters and daughter’s sons.

1. On failure of her, the DAUGHTERS inherit. They are named in the plural number (Section 1, 2) to suggest the equal or unequal participation of daughters alike or dissimilar by class.

2. Thus Catayana says, "Let the widow succeed to her husband’s wealth provided she be chaste; and, in default of her, let the daughter inherit, if unmarried." Also Vrihaspati: "The wife is pronounced successor to the wealth of her husband; and, in her default, the daughter. As a son, so does the daughter of a man proceed from his several limbs. How then should any other person take her father’s wealth?"

3. If there be competition between a MARRIED AND UNMARRIED DAUGHTER, the unmarried one takes the succession under the specific provisions of the text above cited ("in default of her, let the daughter inherit, if unmarried.")

4. If the competition be between an UNPROVIDED AND ENRICHED DAUGHTER, the unprovided one inherits; but on failure of such, the enriched one succeeds: for the text of Gautama is equally applicable to the paternal, as to the maternal, estate. "A woman’s separate property goes to her daughters, unmarried or unprovided."

5. It must not be supposed, that this relates to the APPOINTED DAUGHTER: for, in treating of male issue, she and her son have been pronounced equal to the legitimate son ("Equal to him is the son of an appointed daughter," or the daughter appointed to be a son.)

6. By the import of the particle "also" (Sect. 1, 2) the DAUGHTER’S SON succeeds to the estate on failure of daughters. Thus Vissnu says "If a man leave neither son; nor son’s son, nor [wife, nor female] issue, the daughter’s sons shall take his wealth. For, in regard to the obsequies of ancestors, daughter’s sons are considered as son’s sons." Mans likewise declares, "By that male child, whom a daughter, whether formally appointed or not, shall produce from a husband of an equal class, the maternal grandfather
becomes the grandsire of a son's son: let that son give the funeral oblation and possess the inheritance."

Section III.

Right of the Parents.

1. On failure of those heirs, the two parents, meaning the mother and the father, are successors to the property.

2. Although the order, in which parents succeed to the estate, do not clearly appear [from the tenor of the text; Sect. 1, 2] since a conjunctive compound is declared to present the meaning of its several terms at once; and the omission of one term and retention of the other constitute an exception to that [complex expression:] yet, as the word 'mother' stands first in the phrase into which that is resolvable, and is first in the regular compound (malapitarau) 'mother and father' when not reduced [to the simpler form pitarau 'parents'] by the omission of one term and retention of the other; it follows from the order of the sense which is thence deduced, and according to the series thus presented in answer to an inquiry concerning the order of succession, that the mother takes the estate in the first instance; and, on failure of her, the father.

3. Besides the father is a common parent to other sons, but the mother is not so: and, since her propinquity is consequently greatest, it is fit, that she should take the estate in the first instance, conformably with the text "To the nearest sapinda, the inheritance next belongs."

4. Nor is the claim in virtue of propinquity restricted to (sapindas) kinsmen allied by funeral oblations: but on the contrary, it appears from this very text, (3) that the rule of propinquity is effectual, without any exception, in the case of (samnadaças) kindred connected by libations of water, as well as other relatives, when they appear to have a claim to the succession.

5. Therefore, since the MOTHER is the nearest of the two parents, it is most fit that she should take the estate.

But, on failure of her, the FATHER is successor to the property.

Section IV.

Right of the Brothers.

1. On failure of the father, BRETHREN share the estate. Accordingly Menu says, "Of him, who leaves no son, the father shall take the inheritance or the brothers."

2. It has been argued by Dharmara, that, under the following text of Menu, "Of a son dying childless, the mother shall take the estate: and, the mother also being dead, the father's mother shall take the heritage:" 'even while the father is living, if the mother be dead,
the father's mother, or in other words the paternal grandmother, and not the father himself, shall take the succession: because wealth, devolving upon him, may go to sons dissimilar by class; but what is inherited by the paternal grandmother, goes to such only as appertain to the same tribe: and therefore the paternal grandmother takes the estate.'

3. The holy teacher (Viswarupa) does not assent to that doctrine: because the heritable right of sons even dissimilar by class has been expressly ordained by a passage above cited: "The sons of a Brahmana, in the several tribes, have four shares, or two, or one."

4. But the passage of Menu, expressing that "The property of a Brahmana shall never be taken by the king," intends the sovereign, not a son [of the late owner by a woman of the royal or military tribe].

5. Among Brothers, such, as are of the whole blood, take the inheritance in the first instance, under the text before cited: "To the nearest Sapinda, the inheritance next belongs." Since those of the half blood are remote through the difference of the mothers.

6. If there be no uterine (or whole) brothers, those by different mothers inherit the estate.

7. On failure of Brothers also, their sons share the heritage in the order of the respective fathers.

8. In case of competition between brothers and nephews, the nephews have no title to the succession: for their right of inheritance is declared to be on failure of brothers ("both parents, brothers likewise, and their sons." Sect. I. 2.)

9. However, when a brother has died leaving no male issue (nor other nearer heir,) and the estate has consequently devolved on his brothers indifferently, if any one of them die before a partition of their brother's estate takes place, his son do in that case acquire a title through their father: and it is fit, therefore, that a share should be allotted to them, in their father's right, at a subsequent distribution of the property between them and the surviving brothers.

Section V.

Succession of kindred of the same family: termed Gotraja or gentiles.

2. In the first place the Paternal Grandmother takes the inheritance. The paternal grandmother's succession immediately after the mother, was seemingly suggested by the text before cited, "And, the mother also being dead, the father's mother shall take the heritage:" no place, however, is found for her in the compact series of heirs from the father to the nephew: and that text ("the father's mother shall take the heritage") is intended only to indicate her general competency for inheritance. She must, therefore, of course succeed immediately after the nephew; and thus there is no contradiction.
3. On failure of the paternal grandmother, the (gotraja) kinsmen sprung from the same family with the deceased and (sapinda) connected by funeral oblations namely the PATERNAL GRANDFATHER and the rest, inherit the estate. For kinsmen sprung from a different family, but connected by funeral oblations, are indicated by the term cognate (bandhu, Sect. 6.)

4. Here, on failure of the father’s descendants, the heirs are successively the paternal grandmother, the paternal grandfather, the UNCLEs and THEIR SONS.

5. On failure of the paternal grandfather’s line, the PATERNAL GREAT GRANDMOTHER, the GREAT GRANDFATHER, HIS SONS AND their ISSUE, inherit. In this manner must be understood the succession of KINDRED BELONGING TO THE SAME general FAMILY and CONNECTED BY FUNERAL OBLATIONS.

6. If there be none such, the succession devolves on KINDRED CONNECTED BY LIBATIONS OF WATER: and they must be understood to reach to seven degrees beyond the kindred connected by funeral oblations of food; or else, as far as the limits of knowledge as to BIRTH AND NAME extend. Accordingly Vrhat-Menu says “The relation of the sapindas, kindred connected by the funeral oblation, ceases with the seventh person; and that of samanodacatas, or those connected by a common libation of water, extend to the fourteenth degree: or as some affirm, it reaches as far as the memory of birth and name extends. This is signified by gotra or the relation of family name.”

Section VI.

Of the succession of cognate kindred bandhu.

1. On failure of gentiles, the COGNATES are heirs. Cognates are of three kinds; related to the person himself, to his father, or to his mother: as is declared by the following text, “The SONS OF his own FATHER’S SISTER, the SONS OF his own MOTHER’S SISTER, and the SONS OF his own MATERNAL UNCLE, must be considered as his own cognate kindred. The SONS OF his FATHER’S PATERNAL AUNT, the SONS OF his FATHER’S MATERNAL AUNT, and the SONS OF his FATHER’S MATERNAL UNCLE, must be deemed his father’s cognate kindred. The SONS OF his MOTHER’S PATERNAL AUNT, the SONS OF his MOTHER’S MATERNAL AUNT, and the SONS OF his MOTHER’S MATERNAL UNCLE, must be reckoned mother’s cognate.”

2. Here, by reason of near affinity, the cognate kindred of the deceased himself, are his successors in the first instance: on failure of them, his father’s cognate kindred: or, if there be none, his mother’s cognate kindred. This must be understood to be the order of succession here intended.
Section VII.

On the succession of strangers upon failure of the kindred.

1. If there be no relations of the deceased, the Preceptor, or, on failure of him, the pupil, inherits, by the text of Apastamba. "If there be no male issue, the nearest kinsman inherits; or, in default of kindred, the preceptor; or failing him the disciple."

2. If there be no pupil, the Fellow Student is the successor. He, who received his investiture, or instruction in reading or in the knowledge of the sense of scripture, from the same preceptor, is a fellow student.

3. If there be no fellow students, some learned and venerable Priest should take the property of a Brahmana, under the text of Gautama: "Venerable priests should share the wealth of a Brahmana, who leaves no issue."

4. For want of such successors, any Brahmana may be the heir. So Menu declares: "On failure of all those, the lawful heirs are such Brahmanas, as have read the three Vedas, as are pure in body and mind, as have subdued their passions. Thus virtue is not lost."

5. Never shall a King take the wealth of a priest: for the text of Menu forbids it: "The property of a Brahman shall never be taken by the king: this is a fixed law." It is also declared by Nareda: "If there be no heir of a Brahmana's wealth, on his demise, it must be given to a Brahmana. Otherwise the king is tainted with sin."

6. But the king, and not a priest, may take the estate of a Cshad-rya or other person of an inferior tribe, on failure of heirs down to the fellow student. So Menu ordains: "But the wealth of the other classes, on failure of all [heirs,] the king may take."

Section VIII.

On succession to the property of a hermit or of an ascetic

1. It has been declared, that sons and grandsons [or great grandsons] take the heritage; or, on failure of them, the widow or other successors. The author now propounds an exception to both those laws: "The heirs of a hermit, of an ascetic, and of a professed student, are, in their order, the preceptor, the virtuous pupil, and the spiritual brother and associate in holiness."

2. The heirs to the PROPERTY OF A HERMIT, of an ASCETIC, and of a STUDENT in theology, are in order (that is, in the inverse order), the preceptor, a virtuous pupil, and a spiritual brother belonging to the same hermitage.

3. The student (brahmechari) must be a professed or perpetual one: for the mother and the rest of the natural heirs take the property of a temporary student; and the Preceptor is declared to be heir to a professed student as an exception [to the claim of the mother and the rest.]
4. A VIRTUOUS PUPIL takes the property of a yati or ascetic. The virtuous pupil, again, is one who is assiduous in the study of theology, in retaining the holy science, and in practising its ordinances. For a person, whose conduct is bad is unworthy of the inheritance were he even the preceptor or (standing in) any other (venerable relation.)

5. A SPIRITUAL BROTHER and associate in holiness takes the goods of a hermit (vanaprastha). A spiritual brother is one who is engaged as a brotherly companion (having consented to become so. An associate in holiness is one appertaining to the same hermitage. Being a spiritual companion, and belonging to the same hermitage, he is a spiritual brother associate in holiness.

6. But on failure of these (namely, the preceptor and the rest,) any ONE ASSOCIATED IN HOLINESS takes the goods; even though sons and other natural heirs exist.

7. Are not those who have entered into a religious profession, unconcerned with hereditable property ? since VAsishTHA declares, "They, who have entered into another order, are debarred from shares." How then can there be a partition of their property ? Nor has a professed student a right to his own acquired wealth; for the acceptance of presents, and other means of acquisition, [as officiating at sacrifices and so forth,] are forbidden to him. And, since GAutAMA ordains, that "A mendicant shall have no hoard;" the mendicant also can have no effects by himself acquired.

8. The answer is, a hermit may have property: for the text [of YAJNYAWALGYA] expresses "The hermit may make a hoard of things sufficient for a day, a month, six months, or year; and, in the month of Asvina, he should abandon [the residue of] what has been collected." The ascetic too has clothes, books and other requisite articles: for a passage [of the sda] directs, that "he should wear clothes to cover his privy parts;" and a text [of law] prescribes, that "he should take the requisites for his austerities and his sandals." The professed student likewise has clothes to cover his body; and he possesses also other effects.

9. It was therefore proper to explain the partition of inheritance of such property.

Section IX.

On the reunion of kinsmen after partition.

1. The author next propounds an exception to the maxim, that the wife and other heirs succeed to the estate of one who dies leaving no male issue. "A reunited [brother] shall keep the share of his reunited [coheir,] who is deceased; or shall deliver it to [a son subsequently] born."

2. Effects, which had been divided and which are again mixed together, are termed REUNITED. He to whom such appertain, is a reunited parcellor.
3. That CANNOT TAKE PLACE WITH ANY PERSON in differently; but only with a father, a brother, or a paternal uncle: as VRIHASTHTI declares. "He, who being once separated, dwells again through affection with his father, brother, or paternal uncle, is termed reunited."

4. The share or allotment of such a reunited partner deceased; must be delivered by the surviving REUNITED PARCENER, to a son subsequently born, in the case where the widow's pregnancy was unknown at the time of the distribution. Or, on failure of MALE ISSUE, he, and not the WIDOW, nor any OTHER HEIRS, shall take the inheritance.

5. The author states exception to the rule, that a reunited brother shall keep the share of his reunited coheir: "But an uterine [or whole] brother shall thus retain or deliver the allotment of his uterine relation."

6. The words "reunited brother" and "reunited coheir" are understood. Hence the construction, as in the preceding part of the text is this: The allotment of a REUNITED BROTHER OF the WHOLE BLOOD, who is deceased, shall be delivered, by the surviving reunited brother of the whole blood, to a son born subsequently. But, on failure of such issue, he shall retain it. Thus, if there be brothers of the whole blood and half blood, an uterine [or whole] brother, being a reunited parcener, not a HALF BROTHER who is so, takes the estate of the reunited uterine brother. This is an exception to what had been before said (§1.)

7. Next, in answer to the inquiry, who shall take the succession when a reunited parcener dies leaving no male issue and there exists a WHOLE BROTHER NOT REUNITED, as well as a HALF BROTHER who was ASSOCIATED with the deceased? the author delivers a reason why both shall take and divide the estate. "A half brother being again associated, may take the succession, not a half brother though not reunited: but one, united [by blood, though not by coparceny,] may obtain the property; and not [exclusively] the son of a different mother."

8. A half brother, (meaning one born of a rival wife,) being a reunited parcener, takes the estate: but a half brother, who was not reunited does not obtain the goods. Thus, by the direct provisions of the text, and by the exception, reunion is shown to be a reason for a half brother's succession.

9. The term "not reunited" is connected also with what follows: and hence, even one who was not again associated, may take the effects of a deceased reunited parcener. Who is he? The author replies: "one united;" that is, one united by the identity of the womb [in which he was conceived:] in other words, an uterine or whole brother. It is thus declared, that relation by the whole blood is a reason for the succession of the brother, though not reunited in coparcenery.

10. The term "united" likewise is connected with what follows: and here it signifies reunited [as a coparcener.] The words "not, the son of a different mother" must be interpreted by supplying the affirmative particle (eva) understood. Though he be a reunited parcener,
yet, being issue of a different mother, he shall not exclusively take the estate of his associated co-heir.

11. Thus by the occurrence of the word "though" (api) in one sentence ("though not reunited," &c. § 7) and by the denial implied in the restrictive affirmation (e.g. "exclusively,"”) understood in the other, ("one united may take the property, and not exclusively the son of a different mother;”) it is shown, that a whole brother not reunited, and a half brother being reunited, shall take and share the estate: for the reasons of both rights may subsist at the same instant.

12. This is made clear by Menu, who, after premising partition among reunited parencers ("If brethren, once divided and living again together as parencers, make a second partition;”) declares "should the eldest or youngest of several brothers be deprived of his allotment at the distribution, or should any one of them die, his share, shall not be lost; but his uterine brothers and sisters, and such brothers as were reunited after a separation, shall assemble together and divide his share equally.”

13. Among reunited brothers, if the eldest, the youngest or the middlemost, at the delivery of shares, (for the indeclinable termination of the word denotes any case;) that is, at the time of making a partition, lose, or forfeit his share by his entrance into another order [that of a hermit or ascetic,] or by the guilt of sacrilege, or by any other disqualification; or if he be dead; his allotment does not lapse, but shall be set apart. The meaning is, that the reunited parencers shall not exclusively take it. The author states the appropriation of the share so reserved: “His uterine brothers and sisters, &c.” (§ 12) Brothers of the whole blood, or by the same mother, though not reunited, share that allotment so set apart. Even though they had gone to a different country, still, returning thence, and assembling together, they share it: and that “equally;” not by a distribution of greater and less shares. Brothers of the half blood, who were reunited after separation, and sisters by the same mother, likewise participate. They inherit the estate and divide it in equal shares.

Section X.

On exclusion from inheritance.

1. The author states an exception to what has been said by him respecting the succession of the son, the widow and other heirs, as well as the reunited parencer. “An impotent person, an outcast, and his issue, one lame, a madman, an idiot, a blind man, and a person afflicted with an incurable disease, as well as others [similarly disqualified.] must be maintained; excluding them, however from participation.”

2. “An IMPOTENT person,” one of the third gender (or neuter sex). “An OUTCAST;” one guilty of sacrilege or other heinous crime. “His issue;” the offspring of an outcast. “Lame;” deprived of the use of his feet. “A MADMAN;” affected by any of the various sorts of insanity proceeding from air, bile, or phlegm, from delirium,
or from planetary influence. "An idiot;" a person deprived of the internal faculty: meaning one incapable of discriminating right from wrong. "Blind;" destitute of the visual organ. "Afflicted with an INCURABLE DISEASE" affected by an irremediable distemper, such as marasmus or the like.

3. Under the term "others" are comprehended ONE who has ENTERED INTO AN ORDER OF DEVOTION, an ENEMY TO HIS FATHER, a SINNER in an inferior degree, and a person DEAF, DUMB, or WANTING ANY ORGAN. Thus VASISHTHA says, "They, who have entered into another order are debarred from shares." NAREDA also declares, "An enemy to his father, an outcast, an impotent person, and one who is addicted to vice, take no shares of the inheritance even though they be legitimate; much less, if they be sons of the wife by an appointed kinsman." MENU likewise ordains, "Impotent persons and outcasts are excluded from a share of the heritage; and so are persons born blind and deaf, as well as madmen, idiots, the dumb, and those who have lost a sense [or a limb]."

4. THOSE WHO HAVE LOST A SENSE OR A LIMB.] Any person, who is deprived of an organ [of sense or action] by disease or other cause, is said to have lost that sense or limb.

5. These persons (the impotent man and the rest) are excluded from participation. They DO NOT SHARE the estate. They must be supported by an allowance of FOOD AND RAIMENT only: and the penalty of degradation is incurred, if they be not maintained. For MENU says, "But it is fit, that a wise man should give all of them food and raiment without stint to the best of his power: for he who gives it not, shall be deemed an outcast." "Without stint" signifies 'for life.'

6. They are debarred of their shares, if their disqualification arose before the division of the property. But ONE ALREADY SEPARATED from his co-heirs, IS NOT DEPRIVED OF his ALLOTMENT.

7. If the DEFECT be REMOVED by medicaments or other means [as penance and atonement] at a period subsequent to partition, the right of participation takes effect, by analogy [to the case of a son born after separation]. "When the sons have been separated, one, who is afterwards born of a woman equal in class, shares the distribution."

8. The masculine gender is not here used restrictively in speaking of an outcast and the rest. It must be therefore understood, that the wife, the daughter, the mother, or any other FEMALE, being DISQUALIFIED for any of the defects which have been specified, IS LIKewise EXCLUDED from participation.

9. The disinherison of the persons above described seeming to imply disinherison of their sons, the author adds: "But their sons, whether legitimate, or the offspring of the wife by a kinsman, are entitled to allotments, if free from similar defects."

10. SONS OF THESE PERSONS, whether they be legitimate offspring or issue of the wife, ARE ENTITLED TO ALLOTMENTS; or are rightful partakers of shares; provided they be faultless or free from defects which should bar their participation, such as impotency and the like.
11. Of these [two descriptions of offspring] the impotent man may have that termed issue of the wife; the rest may have legitimate progeny likewise. The specific mention of "legitimate" issue and "offspring of the wife" is intended to forbid the ADOPTION of other sons.

12. The author delivers a special rule concerning the DAUGHTERS OF DISQUALIFIED PERSONS: "Their daughters must be maintained likewise, until they are provided with husbands."

13. Their daughters, or the female children of such persons, must be supported, until they be disposed of in marriage. Under the suggestion of the word "likewise," the expenses of their nuptials must be also defrayed.

14. The author adds a distinct maxim respecting the WIVES OF DISQUALIFIED PERSONS: "The childless wives, conducting themselves aright must be supported; but such, as are unchaste, should be expelled: and so indeed should those, who are perverse."

15. The wives of these persons, being destitute of male issue, and being correct in their conduct, or behaving virtuously, must be supported or maintained. But, if unchaste, they must be expelled; and so may those, who are perverse. These last may indeed be expelled: but they must be supported, provided they be not unchaste. For a maintenance must not be refused solely on account of perverseness.

Section XI.

On the separate property of a woman.

1. After briefly propounding the division of wealth left by the husband and wife, ("Let sons divide equally both the effects and debts, after the demise of their two parents") the partition of a man's goods has been described at large. The author, now intending to explain fully the DISTRIBUTION OF A WOMAN'S PROPERTY, begins by setting forth the nature of it: "What was given to a woman by the father the mother, the husband, or a brother, or received by her at the nuptial fire, or presented to her on her husband's marriage to another wife, as also any other separate acquisition, is denominated a woman's property,"

2. That, which was given by the father, by the mother, by the husband, or by a brother; and that, which was presented (to the bride) by the maternal uncles and the rest (as paternal uncles, maternal aunts &c) at the time of the wedding, before the nuptial fire; and a gift on a second marriage, or gratuity on account of supercession, as will be subsequently explained, ("To a woman whose husband marries a second wife, let him give an equal sum as a compensation for the supercession." 34,) and also property which she may have acquired by inheritance, purchase, partition, seizure or finding, are denominated by MENU and the rest ' WOMAN'S PROPERTY.'

3. The TERM (woman's property) conforms, in its import, with its etymology, and IS NOT TECHNICAL: for, if the literal sense be admissible, a technical acceptation is improper.

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4. The ENUMERATION OF SIX SORTS of woman's property by Manu ("What was given before the nuptial fire, what was presented in the bridal procession, what has been bestowed in token of affection or respect, and what has been received by her from her brother, her mother, or her father, are denominated the six-fold property of a woman;") IS INTENDED, NOT AS A RESTRICTION OF A GREATER NUMBER, BUT AS A DENIAL OF A LESS.

5. Definitions of presents given before the nuptial fire and so forth have been delivered by CATAYANA: "What is given to women at the time of their marriage, near the nuptial fire, is celebrated by the wise as woman's property bestowed before the nuptial fire. That, again, which a woman receives while she is conducted from her father's house (to her husband's dwelling,) is instanced as the property of a woman, under the name of a gift presented in the bridal procession. Whatever has been given to her through affection by her mother-in-law or by her father-in-law, or has been offered to her as a token of respect, is denominated an affectionate present. That which is received by a married woman or by a maiden, in the house of her husband or of her father, from her brother or from her parents, is termed a kind gift."

6. Besides (the author says) "That which has been given to her by her kindred; as well as her fee or gratuity, or anything bestowed after marriage." What is given to a damsel by her kindred; by the relations of her mother, or those of her father. The gratuity, for the receipt of which a girl is given in marriage. What is bestowed or given after marriage, or subsequently to the nuptials.

7. It is said by CATAYANA, "What has been received by a woman from the family of her husband at a time posterior to her marriage, is called a gift subsequent; and so is that, which is similarly received from the family of her father." It is celebrated as woman's property: for this passage is connected with that which had gone before. (§ 5.)

8. A woman's property has been thus described. The author next propounds the distribution of it: "Her kinsmen take it, if she die without issue."

9. If a woman die "without issue;" that is, leaving no progeny; in other words, having no daughter nor daughter's daughter nor daughter's son, nor son, nor son's son: the woman's property, as above described, shall be taken by her kinsmen; namely her husband and the rest, as will be (forthwith) explained.

10. The kinsmen have been declared generally to be competent to succeed to a woman's property. The author now distinguishes different heirs according to the diversity of the marriage ceremonies. "The property of a childless woman, married in the form denominated Brahma, or in any of the four (unblamed modes of marriage,) goes to her husband: but, if she leave progeny, it will go to her (daughter's) daughters: and, in other forms of marriage (as the A'sura, &c.) it goes to her father (and mother, on failure of her own issue.)"

11. Of a woman dying without issue as before stated, and who had become a wife by any of the four modes of marriage denominated Brahma, Daiva, Arsha and Prajapatiya, the (whole) property, as before described, belongs in the first place to her husband. On failure of him,
it goes to his nearest kinsmen (capindas) allied by funeral oblations. But, in the other forms of marriage called A'wara Gandharba Raisaha and Paisacha; the property of a childless woman goes to her parents, that is, to her father and mother. The succession devolved first (and the reason has been before explained,) on the mother, who is virtually exhibited (first) in the elliptical pitrigomi implying 'goes (gachh)ai to both parents (pitar vac;); that is, to the mother and to the father.' On failure of them, their next of kin take the succession.

12. In all forms of marriage, if the woman "leave progeny;" that is, if she have issue; her property devolves on her DAUGHTERS. In this place, by the term "daughters," GRAND-DAUGHTERS are signified; for the immediate female descendants are expressly mentioned in a preceding passage: "the daughters share the residue of their mother's property, after payment of her debts."

13. Hence, if the mother be dead, daughters take her property in the first instance: and here, in the case of competition between MARRIED AND MAIDEN DAUGHTERS, the unmarried take the succession: but, on failure of them, the married daughters: and here again in the case of competition between such as are PROVIDED and those who are unendowed, the unendowed take the succession first; but on failure of them, those who are endowed. Thus GAUTAMA says "a woman's property goes to her daughters unmarried, or unprovided," 'or provided,' as is implied by the conjunctive particle in the text. "Unprovided" are such as are destitute of wealth or without issue.

14. But this (rule, for the daughter's succession to the mother's goods,) is exclusive of THE FEE or gratuity. For that GOES TO BROTHERS OF THE WHOLE BLOOD, conformably with the text of GAUTAMA: The sister's fee belongs to the uterine brothers: after (the death of) the mother."

15. On failure of all daughters, the GRAND-DAUGHTERS in the female line take the succession under this text; "if she leave progeny, it goes to her [daughters'] daughters."

16. If there be a multitude of these [grand-daughters] children of different mothers, and unequal in number, shares should be allotted to them THROUGH THEIR MOTHERS, as directed by GAUTAMA: "or the partition may be according to the mothers: and a particular distribution may be made in the respective sets."

17. But if there be daughters as well as daughter's daughters, a trifle only is to be given to the grand-daughters. So MENUS declares: "Even to the daughters of those daughters, something should be given as may be fit, from the assets of their maternal grandmother, on the score of natural affection."

18. On failure also of daughters, the DAUGHTER'S SONS are entitled to the succession. Thus NAREDA says "Let daughters divide their mother's wealth; or, on failure of daughters, their male issue." For the pronoun refers to the contiguous term "daughters."

19. If there be no-grandsons in the female line, SONS take the property: for it has been already declared "the [male] issue succeeds in their default." MENUS likewise shows the right of sons, as well as of daughters to their mother's effect: "When the mother is dead let all..."
the UTERINE BROTHERS AND THE UTERINE SISTERS equally divide the maternal estate."

20. 'All the uterine brothers should divide the maternal estate equally: and so should sisters by the same mothers.' Such is the construction: and the meaning is, not that 'brothers and sisters share together;' for reciprocation is not indicated, since the abridged form of the conjunctive compound has not been employed: but the conjunctive particle (cha) is here very properly used with reference to the person making the partition; as in the example, DEVADATTA practises agriculture, and so does YAJNYADATTA.

21. "Equally" is specified (§ 19) to forbid the allotment of deductions [to the eldest and so forth.] The WHOLE BLOOD is mentioned to exclude the HALF BLOOD.

22. But, though springing from a different mother, the daughter of a rival wife, being superior by class, shall take the property of a childless woman who belongs to an inferior tribe. Or, on failure of the STEP-DAUGHTER, her issue shall succeed. So MAHUMU declares: "The wealth of a woman, which has been in any manner given to her by her father, let the Brahmani damsel take; or let it belong to her offspring."

23. The mention of a Brahmani includes any superior class. Hence the daughter of a Chatriya wife takes the goods of a childless Vaisya: (and the daughter of Brahmani, Chatriya or Vaisya inherits the property of a Sudra.)

24. On failure of sons, GRANDSONS inherit their paternal grandmother's wealth. For GAUTAMA says: "They, who share the inheritance, must pay the debts:" and the grandsons are bound to discharge the debts of their paternal grandmother; for the text expresses "Debts must be paid by sons and son's sons."

25. On failure of grandsons also, the HUSBAND and OTHER RELATIVES ABOVE-MENTIONED are successors to the wealth.

26. On occasion of treating of woman's property, the author adds something concerning a betrothed maiden: "For detaining a damsel, after affiancing her, the offender should be fined, and should also make good the expenditure together with interest."

27. One, who has verbally given a damsel [in MARRIAGE] but retracts the gift, must be fined by the king, in proportion to [the amount of] the property or [the magnitude of] the offence; and according to (the rank of the parties, their qualities, and) other circumstances. This is applicable, if there be no sufficient motive for retracting the engagement. But if there be good cause, he shall not be fined, since retraction is authorized in such a case. "The damsel, though betrothed, may be witheld, if a preferable suitor present himself."

28. Whatever has been expended, on account of the espousals, by the [intended] bridegroom, (or by his father or guardian,) for the gratification of his own or of the damsel's relations, must be repaid in full, with interest, by the affiancer to the bridegroom.

29. Should a damsel, anyhow affianced, die before the completion of the marriage, what is to be done in that case? The author replies,
"If she die (after troth plighted,) let the bridegroom take back the gifts which he had presented; paying however the charges on both sides."

30. If a betrothed damsel die, the bridegroom shall take the rings and other presents, or the nuptial gratuity which had been previously given by him (to the bride,) "paying however the charges on both sides." that is, clearing or discharging the expense which has been incurred both by the person who gave the damsel and by himself, he may take the residue. But her uterine brothers shall have the ornaments for the head, and other gifts, which may have been presented to the maiden by her maternal grandfather, (or her paternal uncle,) or other relations; as well as the property, which may have been regularly inherited by her. For Baudhāyana says: "The wealth of a deceased damsel, let the uterine brethren themselves take. On failure of them, it shall belong to the mother; or, if she be dead, to the father."

31. It has been declared, that the property of a woman leaving no issue, goes to her husband. The author now shows, that, in certain circumstances, a husband is allowed to take his wife's goods in her lifetime, and although she have issue: "A husband is not liable to make good the property of his wife taken by him in a famine, or for the performance of a duty, or during illness, or while under restraint."

32. In a famine, for the preservation of the family, or at a time when a religious duty must indispensably be performed, or in illness, or "during restraint" or confinement in prison or under corporal penalties, the husband being destitute of other funds and therefore taking his wife's property, is not liable to restore it. But, if he seize it in any other manner (or under other circumstances,) he must make it good.

33. The property of a woman must not be taken in her lifetime by any other kinsman or heir but her husband: since punishment is denounced against such conduct. ("The kinsmen who take their goods in their lifetime, a virtuous king should chastise by inflicting the punishment of theft") and it is pronounced an offence. "Such ornaments, as are worn by women during the life of their husband, the heirs of the husband shall not divide among themselves: they, who do so, are degraded from their tribe."

34. A present made on her husband's marriage to another wife has been mentioned as a woman's property (1). The author describes such a present: "To a woman, whose husband marries a second wife, let him give an equal sum, (as a compensation) for the supersession, provided no separate property have been bestowed on her: but, if any have been assigned, let him allot half."

35. She is said to be superseded, over whom a marriage is contracted. To a wife so superseded, as much should be given on account of the supersession as is expended (in jewels and ornaments, or the like,) for the second marriage: provided separate property had not been previously given to her by her husband; or by her father-in-law. But, if such property had been already bestowed on her, half the sum expended on the second marriage should be given. Here the word 'half' (āvādha) does not intend an exact moiety. So much therefore should be paid, as will make the wealth, already conferred on her, equal to the prescribed amount of compensation. Such is the meaning.
Section XII.

On the Evidence of a Partition.

1. Having thus explained partition of heritage, the author next propounds the evidence by which it may be proved in a case of doubt. "When partition is denied, the fact of it may be ascertained by the evidence of kinsmen, relatives and witnesses, and by written proof, or by separate possession of house or field."

2. If partition be denied or disputed, the fact may be known and certainty obtained by the TESTIMONY OF KINSMEN, relatives of the father or of the mother, such as maternal uncles and the rest, being competent witnesses, as before described; or by the evidence of a writing, or record of the partition. It may also be ascertained by SEPARATE or unmixed HOUSE AND FIELD.

3. The practice of AGRICULTURE OR other BUSINESS pursued APART from the rest, and the observance of the five great SACRAMENTS AND other RELIGIOUS DUTIES PERFORMED SEPARATELY from them, are pronounced by NAREDA to be tokens of a partition. "If a question arise among co-heirs in regard to the fact of partition, it must be ascertained by the evidence of kinsmen, by the record of the distribution, or by separate transaction of affairs. The religious duty of unseparated brethren is single. When partition indeed has been made, religious duties become separate for each of them."

4. Other signs of previous separation are specified by the same author: "Separated and unseparated brethren may reciprocally bear testimony, become sureties, bestow gifts, and accept presents."

DAYA-BHAGA ON INHERITANCE.

Partition of Heritage defined and explained.

Two periods of partition of the Father's wealth.

1 Partition of heritage on the subject of which various controversies have arisen among intelligent persons (not fully comprehending the precepts of Mānu and the rest) should be explained for their information. "Hear it, O ye wise!"

2 First, the term Partition of Heritage (dayabhaga) is expounded: and, on that subject NAREDA says, "Where a division of the paternal estate is instituted by sons, that becomes a "topic of litigation, called by the wise Partition of Heritage."

3 What came from the father is "paternal:" and this signifies property arising from the father's demise. The expressions "paternal" and "by sons" both indicate any relation: for the term "partition of heritage" is used for a division of the goods of any relation by any relative. Accordingly NAREDA, having prefixed "partition of heritage" as a topic of litigation, (3) shows under that head of actions, the distribution of effects left by the mother and the rest. So Mānu, likewise, premising inheritance, but without employing the word father or any other specific term, propounds the division of effects of any relative.

4 The term "heritage," by derivation, signifies "what is given." However the use of the verb (de) is here secondary or metaphorical; since the same consequence is produced, namely, that of constituting another's property after annuling the previous right of a person who is dead, or gone into retirement, or the like. But there is no abdication of the deceased and the rest in regard to the goods.
5. Therefore the word "heritage" is used to signify wealth, in which property, dependent on relation to the former owner, arises on the demise of that owner.

6. Is the partition of heritage a splitting of the divided thing into integrant parts? Or does partition consist in the chattel's not being united with the heritage of a co-heir? The first position is not correct; for the heritage itself would be destroyed. Nor is the second accurate: for, though goods be conjoined, it may be said, "this chattel, which was before parted, is not my property, but my brother's."

7. Nor can it be affirmed, that partition is the distribution to particular chattels, of a right vested in all the co-heirs, through the sameness of their relation, over all the goods. For relation, opposed by the co-existent claim of another relative, produces a right (determinable by partition) to portions only of the estate: since it would be burdensome to infer the vesting and divesting of rights to the whole of the paternal estate; and it would be useless as there would not result a power of alienating at pleasure.

8. The answer is: Partition consists in manifesting [or in particularizing] by the casting of lots or otherwise, a property which had arisen in lands or chattels, but which extended only to a portion of them and which was previously unascertained, being unfit for exclusive appropriation, because no evidence of any ground of discrimination existed.

9. Or partition is a special ascertainment of property, or making of it known [by reference of a particular share to a particular person.]

10. Even in the case where a single article, as a female slave, a cow, or the like, is common to many, the property is severed by separate use in carrying burdens, or in milking, during special periods, in turn, as directed by Vrihaspati. "A single female slave should be employed on labour in the houses [of the several co-heirs] successively, according to the number of shares: and water of wells or ponds is drawn for each, according to need [within limits] — and property [as is regularly not divisible] should be distributed by equitable adjustment; else it would be useless [to the owners]." These three half stammas occur in many places, as quotations from this author, though not found in their regular order in his institutes of law.

11. Does it not follow from the text of Narada ("let sons regularly divide the wealth when the father is dead") which authorizes sons to divide their father's estate after his decease, that sons have not property therein before partition? nor can partition be a cause of property, since that might be misunderstood as extending even to the goods of a stranger.

12. The answer is this: since it is the practice of all people to call an estate their own, immediately after the demise of their father or other predecessor; and the right of property is acknowledged to vest without partition in the case of an only son; the demise of the relative is the cause of property. Consequently there is no room for any misrepresentation.

13. Acquisition is the act of the acquirer; and one, who has the state of ownership dependent on acquisition, is the acquirer. Is not birth therefore, as the act of the son, rightly deemed his mode of acquisition? and have not sons, consequently, a proprietary right during their father's life, [even without its being degraded or otherwise disqualified; and not by reason of his demise?] and, therefore, is it declared "in some cases birth alone [is a mode of acquisition] as in the instance of a paternal estate."

14. That is not correct: for it contradicts Manu and the rest. "After the death of the father and the mother, the brethren, being assembled, must divide equally the paternal estate: for they have not power over it, while their parents live."

15. This text is an answer to the question, why partition among sons is not authorised, while their parents are living: namely because they have not ownership at that time.

16. It should not be argued, that the text intends want of independence, like another passage of the same author, concerning acquisitions by a wife or son: for there is no evidence of property then vested; but, in the other instance, dependence is rightly supposed to be meant since property is suggested by the phrase "what they earn" or acquire.

17. Besides it would contradict revealed law, if these persons had not ownership even in that which the law earned: since religious rights enjoined by the holy rite, and which must be effected by means of their own wealth, would be prevented.

18. Deva, too expressly denies the right of sons in their father's wealth. "When the father is deceased, let the sons divide the father's wealth: for sons have not ownership while the father is alive and free from defect."

19. Besides, if sons had property in their father's wealth, partition would be demandable even against his consent: and there is no proof, that property is vested by birth alone; nor is birth stated in the law as means of acquisition.

20. In some places it is alleged: but there, by the mention of birth, the relation of father and son, and the demise of the father are meditately indicated as causes of property.
21. The right of one may consistently arise from the act of another: for an express passage of law is authority for it; and that is actually seen in the word, since, in the case of donation, the donee's right to the thing arises from the act of the giver; namely, from his relinquishment in favour of the donee who is a sentient person.

22. Neither is property created by acceptance; since it would follow, that the acceptor was the giver: for gift consists in the effect of raising another's property; and that effect would here depend on the donee, in like manner as a votary, though making a relinquishment of a thing offered to a deity, is not a sacrificial; but the priest alone is so denominated, as performing the act of presenting its relinquishment, which act was the purpose of the ceremony termed a sacrifice. Besides the word gift occurs in passages of law as signifying something antecedent to acceptance.

23. Is not receipt acceptance? for the suffix, in the word svikara, implies a thing becoming what it before was not; and the act of making his own (svam karmam) what before was not his, constitutes appropriation or acceptance (svikara). How then can property be antecedent to that?

24. The answer is, though property had already arisen, it is now by the act of the donee, subsequently recognizing it for his own rendered liable to disposal at pleasure: and such is the meaning of term acceptance or appropriation. From its association with teaching, and assisting at sacrifices, receipt (pratigraha) is without question, a mode of acquisition, though it do not immediately create property: for, in the case of assisting at sacrifices and so forth, property in wealth so gained arises solely from the gift of the reward.

25. Or the survival of the son, at the time of his father's demise, may constitute his acquisition. Because, in the case of goods left by a brother or other relative, the property of the rest of the brethren or other heirs, must however reluctantly, be acknowledged to arise either from his death or from the survival of the rest at the time of his decease.

26. Hence [that is, because property is not vested in sons, while the father lives, or because property is not by birth, but by survival, or because the demise of the ancestor is a requisite condition], the passage before cited, beginning with the words "after the death of the father," being intended to declare property vested at that period, [namely at the moment of the father's decease, recites partition which of course then awaits the pleasure [of the successor.] For it cannot be a precept, since the same result [respecting the right of partition, at pleasure] was already obtained [as the necessary consequence of a right of property.]

27. Nor can it be a restrictive injunction. For, as that is contrary to the text of Manu "Either let them thus live together; or let them dwell apart for the sake of religious "merit;" and as it produces visible consequences only [not any unseen or spiritual,] result it cannot be an injunction for an immediate partition, nor a limitation of the time.

28. Besides, partition would be admissible, only at the moment immediately following the father's decease and not at any later period; for there is not in this instance, as in that, of a sacrifice on the birth of a child, an objection analogous to the hazard of the new born infant's life: and partition to be made at any time after the father's demise, while the sons live, and at their pleasure, is already obtained [as a necessary result of obvious reasoning, without need of a special precept for the purpose.]

29. Therefore, the text of Manu must be argued [by you] to intend the prohibiting of partition, although the son's right subsists during the life of the father. But that is not maintainable. For it would thus bear an import not its own.

30. Hence the texts of Manu and the rest [as Devala 18] must be taken as showing, that sons have not a right of ownership in the wealth of the living parents, but in the estates of both when deceased. One position is conveyed by the terms of the text; the other by its import.

31. Mere demise is not exclusively meant: for that intends also the state of a person degraded, gone into retirement, or the like: by reason of the analogy, as occasioning an extinction of property.

32. Accordingly Narada says: "When the mother is past child-bearing, and the sisters "are married, or if the father be lost, or no longer an householder, or if his temporal affections "be extinct."

33. "Lost" signifies degraded: "no longer a householder," having quitted the order of a householder. If the reading be "when he is exempt from death," then the sense is "when being exempt from death (that is alive,) he is devoid of affections." The variation in the reading is unfounded.

34. Here also, to show, that the son's property in their father's wealth arises from such causes as the extinction of his worldly affections, this one period of partition, known to be at their pleasure, is recited explanatorily: for the recital is conformable to the previous knowledge: and the right of ownership suggests that knowledge.

35. Since any one parsoner is proprietor of his own wealth, partition at the choice even of a single person is thence deducible; and con-
currence of heirs, suggested as one case of partition, is recited explanatory in the text "the brethren being assembled, &c." Else, since assemblage implies many, there could be no distribution between two; for no passage of law expressly propounds a division between two co-heirs.

36. Is not the eldest son alone entitled to the estate, on the demise of the co-heirs? and not three of the brethren! for Manu says: "The eldest brother may take the patrimony entire; and the rest may live under him, as under their father." And here eldest intends him who renews his father from the hell called Pata; and not the senior survivor. "By the eldest, as soon as born, a man becomes father of male issue, and is exonerated from debt to his ascendants; such a son, therefore, is entitled to take the heritage. That son alone, on whom he devolves his debt, and through whom he tastes immortality, was begotten from a sense of duty: others are considered as begotten from love of pleasure."

37. Not so: for the right of the eldest [to take charge of the whole] is pronounced dependent on the will of the rest. Thus Nanda says: "Let the eldest brother, by consent, support the rest, like a father; or let a younger brother, who is capable, do so: the prosperity of the family depends on ability." By consent of all, even the youngest brother, being capable, may support the rest. Primogeniture is not a positive rule. For Manu declares: "Either let them thus live together, or let them live apart for the sake of religious merit: since religious duties are multiplied apart, separation is, therefore, lawful." By the terms together or apart," and, "for the sake," he shows it optional at their choice.

38. Thus there are two periods of partition: one, when the father's property ceases; the other by his choice, while his right of property endures.

39. But three periods must not be admitted: one, when a father dies; another, when he is devoid of worldly regards, and the mother's courses have ceased; and a third by his own choice, while the mother continues to be capable of bearing children, and the father still retains temporal affections. For, if the cessation of the mother's courses be joined, as a condition, with the father's worldly inclinations, it might be concluded, that partition could not take place among sons, however desirous of it, when the father becomes a hermit (his temporal propensities being extinguished); since the cessation of the mother's courses cannot yet have happened (while she is still between thirty and forty years of age: for a double space as ordained by Manu, is twelve years for a girl to be married to a man and thirty and eight years for one to be espoused by a man aged twenty-four; and the age prescribed for entering into another order is fifty years.

40. If it be said, the extinction of passions, without any condition annexed to it, marks the period for a division of the father's estate: that is denied; for it might be then inferred, that partition would not take place, although the father were a degraded person, if he were not at the same time devoid of temporal regard.

41. But, if this be pronounced to be another period of partition, then four distinct periods will arise: 1. the demise of the father; 2. his degradation; 3. his disregard of secular objects; 4. his own choice.

42. The alleged power of sons to make a partition, when the father is incapable of business [by reason of extreme age, &c.] has been asserted through ignorance of express passages of law (to the contrary.) Thus Harita says: "While the father lives, sons have no independent power in regard to the receipt, expenditure, and bailment of wealth. But, if he be deceased, recently absent, or afflicted with disease, let the eldest son manage the affairs," and Licavra explicitly declare: "If the father be incapable, let the eldest manage the affairs of the family, or, with his consent, a younger brother conversant with business. Partition of the wealth does not take place if the father be not desirous of it, when he is old, or his mental faculties are impaired, or his body is afflicted with a lasting disease. Let the eldest, like a father, protect the goods of the rest; for [the support of] the family is founded on wealth. They are not independent, while they have their father living, nor while the mother survives."

43. These two passages, forbidding partition when the father is incapable of business, or when he labours under a lasting disorder, direct that the eldest son should superintend the household, or a younger son who is conversant with business. The text last cited, therefore, runs "not if the father desire it not," and it was by mistake that it was written "if he be incapable of business, partition of the wealth takes place, &c."

44. Therefore two periods only are rightly affirmed: one, when property ceases by the owner's degradation from his tribe, disregard of temporal matters, or actual demise; the other by the choice of the father, while his property still subsists.

45. The condition "when the mother is past child-bearing," regards wealth inherited from the paternal grandfather. Since other children cannot be borne by her, when her courses have ceased, partition among sons may then take place; still, however, by the choice of the father. But, if the maternal estates were divided, while she continued to be capable of bearing children, those, born subsequently, would be deprived of subsistence. Neither would that be right: for a text expresses, "They who are born, and they who are yet unbegotten," and they who are actually in the womb, all require the means of support; and the dissipation of their hereditary maintenance is censured."
46. It is because there are two periods of partition, in the case of the father's wealth, that Ganu, Gautama, and others, avoid the word "dead," and use the term "after." Since the father's right then ceases, the term "after" is employed to express that sense. Hence this one period of partition. Another, regulated by his choice, while he does retain worry of effects, is indicated by the division, a "son born after the division," &c.

47. The condition "and when the sisters are married" does not intend a distinct period, but inculcates the necessity of disposing of them in marriage, as the text of Nareda. "What "remains of the paternal inheritance over and above the father's obligations and after pay-"ment of his debts, may be divided by the brethren; so that their father continue not a "debtor;"" is intended to inculcate the obligation of paying the father's debts, not to regulate the time of partition.

48. From that text of Nareda, it results, that coheirs, making a partition, may apportion the debts of their father or other predecessor, with the consent of the creditors, or must immediately discharge the debts. For such is the purpose of ordaining a partition of the residue after payment of debts. Accordingly Yajnavalkya propounds the distribution of a mother's wealth, remaining over and above her debts. "Daughters share the residue of "their mother's property, after payment of her debts: and the male issue, in default of "daughters." This will be fully considered under head of debt.

49. Or the restriction may signify, that the mother's effects should be shared by the sons, if their sisters have been given in marriage: but, if they be unmarred the inheritance is held in common with them. This will be explained in due time.

50. It is thus established [by reasoning as well as by positive law,] that two periods exist for the partition of wealth appertaining to a father [whether acquired by himself or inherited from ancestors.]

CHAPTER II.

Partition, made by a Father,—of property ancestral,—and of his own acquisitions.

1. In the next place, the period for the distribution of an estate left by a paternal grandfather or other ancestor, is propounded. On that subject Vrihaspati says, "On the demise of both parents, participation among brothers is allowed: and even while they are both living, it is right if the mother be past child-bearing."

2. This passage does not relate to the father's wealth; for the text, concerning the exclusive right of a son born after partition, would be without relevancy: since there can be no son born when the woman is past child-bearing. Nor can it be supposed to relate to the mother's goods: for she would thus be stript of her wealth. The condition, that she be past child-bearing, must then relate to the estate of the grandfather or other ancestor.

3. Neither can the circumstance of her being past child-bearing, be a cause of partition, independently of choice: for there can be no partition without a will to make it.

4. If it be asked, "admitting a choice, whose must it be?" The answer is the father's; as deduced from the text of Gautama: "After the demise of the father, let sons share his estate. Or while he lives, if the mother be past child-bearing, and he desire partition."

5. Hence (since such is the import of Vrihaspati's text) the decease of both parents is one period (for the partition of the grandfather's estate:) and since "parents" are here exhibited in the dual number, a division of the father's estate, among brothers of the whole blood, ought [in strictness] to be made only after the decease of the mother.

6. The mention of the mother's demise, does not here imply partition of her goods: since the phrase "even while they are both living" cannot relate to the mother's separate property. It must be understood as relating to the property of another person; for the legality of par-"tition in the instance of survival is there propounded, (as appears from the word even,) in the same case in which the demise of both parents was declared a reason of distribution. The death of the mother must not be expounded as relative to her goods. This subject will be fully considered in its place.

7. Therefore the death of both parents is one period for partition of an estate inherited from a grandfather or other ancestor; and the other is by the choice of the father when the mother is past child-bearing.

8. A division of it does not take place without the father's choice: since Manu, Gautama, Baudhayana, (Sanah and Lichita, and others, in the following passages, "they have not power over it," "they have not ownership while their father is alive and free from defect," "while he lives if he desire partition," "partition of heredity by consent of the father," "partition of the estate being authorized while he is living," &c.,) declare without restriction, that sons have not a right to any part of the estate while
the father is living, and that partition awaits his choice: for these texts, declaratory of a want of power, and requiring, the father's consent, must relate also to property ancestral; since the same authors have not separately pronounced a distinct period for the division of an estate inherited from an ancestor.

9. The text of Yajnavalkya ("The ownership of father and son is the same in land which was acquired by his father, or in a corody, or in chattels.") properly signifies, as rightly explained by the learned Udyota, that, when one of two brothers, whose father is living, and who have not received allotments, dies leaving a son; and the other survives; and the father afterwards deceases; the text, declaratory of similar ownership, is intended to obviate the conclusion, that the surviving son alone obtains his estate, because he is next of kin. As the father has ownership in the grandfather's estate: so have his sons, if he be dead. There is not in that case, any distinction founded on greater or less propriety; for both equally confer a benefit by offering a funeral oblation of food, as enjoined at solemn-obsequies. Such is the author's meaning.

10. Accordingly a great grandson, whose father (as well as grandfather) is deceased, is in like manner an equal claimant with the son and grandson. For he likewise presents a funeral oblation.

11. But, if sons had ownership, during the life of their father, in their grandfather's estate, then, should a division be made between two brothers one of whom has male issue and the other has none, the children of that one would participate, since (according to your opinion) they have equally ownership.

12. It should not be objected that such cannot be the meaning of the text as not being the subject precipitated for the case of grandsons by different fathers, was the proposed subject.

13. A "corody" (9) signifies what is fixed by a promise in this form, "I will give that in every month of Kartik.

14. "Chattels." From their association with land, slaves must be here meant.

15. Or the meaning of the text (9) may be, as set forth by Dharmarāja, "A father, occupied in giving allotments at his pleasure, has equal ownership with his sons in the paternal grandfather's estate. He is not privileged to make an unequal distribution of it, at his choice, as he is in regard to his own acquired wealth."

16. So Vishnu says, "When a father separates his sons from himself, his will regulates the division of his own acquired wealth. But in the estate inherited from the grandfather, the ownership of father and son is equal."

17. This is very clear. When the father separates his sons from himself, he may, by his own choice, give them greater or less allotments, if the wealth were acquired by himself: but no so, if it were property inherited from the grandfather; because they have an equal right to it. The father has not in such a case an unlimited discretion.

18. Hence (since the text becomes pertinent by taking it in the sense above stated: or because they are governed by law in respect of shares, and not an unlimited discretion; both opinions, that the mention of like ownership provides for an equal division between father and son in the case of property ancestral, and that it establishes the son's right to require partition, ought to be rejected.

19. Other texts should be explained in the very same manner.

20. It is consequently true, (since the texts above cited do not imply co-ordinate ownership,) that the father has his double share of wealth inherited from the grandfather or other ancestor; and that a distribution takes place at the will of the father only, and not by the choice of his sons.

21. "If the father recover paternal wealth [seized by strangers, and] not recovered (by other sharers, nor by his own father,) he shall not, unless willing, share it with his sons: for in fact it was acquired by him." In this passage, Menu and Vishnu, declaring that he shall not, unless willing, share it, because it was acquired by himself, seem thereby to intimate a partition among sons even against the father's will, in the case of hereditary wealth not acquired (that is, recovered,) by him. But here also, the meaning is, that a father, setting about a partition, need not distribute the grandfather's wealth, which he retrieved; but must so distribute the rest of it, and not according to his own pleasure. Those authors do not thereby indicate partition at the choice of sons.

22. The father has ownership in gems, pearls, and other moveables, though inherited from the grandfather and not recovered by him, just as in his own acquisition: he has power to distribute them unequally, as Yajnavalkya intimates. "The father is master of the gems, pearls, and coral, and of all (other moveable property:) but neither the father, nor the grandfather, is so of the whole immovable estate."

23. Since the grandfather is here mentioned, the text must relate to his effects. By
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again saying "all" after specifying "gems, pearls, &c." it is shown, that the father has authority to make a gift or any similar disposition of all effects, other than land, &c., but not immovable, a corrobory and chattels (i.e., slaves.) Since here also it is said "the whole," this prohibition forbids the gift or other alienation of the whole, benefic (immovable) and similar possessing the family. For the maintenance of the family is an indispensable obligation; as Manu positively declares, "The support of persons who should be maintained is the approved means of attaining heaven. But hell is the man's portion if they suffer. Therefore (let a master of a family) carefully maintain them."

34. The prohibition is not against a donation or other transfer of a small part not incompatible with the support of the family. For the insertion of the word "whole" would be unmeaning (if the gift of even a small part were forbidden.)

25. From the express mention of immovable, a prohibition is inferred by the analogy exemplified in the loaf and staff, against the gift or other transfer of a corrobory or of slaves.

26. But, if the family cannot be supported without selling the whole immovable and other property, even the whole may be sold or otherwise dispensed; of course (immovable) and similar possessing the family. For the maintenance of the family is an indispensable obligation; as Manu positively declares, "The support of persons who should be maintained is the approved means of attaining heaven. But hell is the man's portion if they suffer. Therefore (let a master of a family) carefully maintain them."

37. It should not be alleged, that by the texts of Vyasa ("A simple parsoner may not without consent of the rest, make a sale or gift of the whole immovable estate, nor of what is common to the family.") "Separated kinsmen, as those who are unseparated, are equal in respect of immovables: for one has not power over the whole, to give, mortgage, or sell it.") one person has not power to make a sale or other transfer of such property. For here also (in the very instance of land held in common,) as in the case of other goods, there equally exists a property consisting in the power of disposal at pleasure.

28. But the texts of Vyasa (37.) exhibiting a prohibition, are intended to show a moral offence: since the family is distresses by a sale, gift or other transfer, which argues a disposition in the person to make an ill use of his power as owner. They are not meant to invalidate the sale or other transfer.

29. So likewise other texts (as this, "Though immovables or tippadas have been acquired by a man himself, a gift or sale of them should not be made by him, unless convening all the sons," must be interpreted in the same manner. For here the words "should" "be made" must necessarily be understood.

30. Therefore, since it is denied, that a gift or sale should be made, the precept is infringed by making one. But the gift or transfer is not null: for a fact cannot be altered by a hundred texts.

31. Accordingly (since there is not in such case a nullity of gift or alienation.) Narada says: "When there are many persons sprung from one man, who have duties apart, and transactions apart, and are separate in business, and character, if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please, for they are masters of their own wealth."

32. We resume the subject. Thus, for the reasons before stated, since the equal participation of father and son in the estate of the grandfather or other ancestor would be incongruous; and since it cannot be intended by the text (9) to confer on sons a right to demand partition; that text must either be meant to prevent an unequal distribution depending solely on the father's pleasure, (according to Dharmasastra's interpretation; 15.) or it must intend the equal right of a nephew whose father is deceased, to share with his uncle; (conformably with the other exposition. 9.)

33. Thus (since sons have not power to require partition) a division even of wealth inherited from the grandfather must be made by the sole choice of the father. But, with this difference, that it is requisite, the mother should have ceased to be capable of bearing issue; whereas, in the instance of his own acquired property, partition takes effect without that condition. But, after the demise of the father, it takes place equally in the case of both sorts of property (the father's estate or the grandfather's) without distinction.

34. Therefore the periods of partition are two, even in the case of wealth inherited from ancestors.

35. In such case, if the father voluntarily makes a partition with his sons, he may reserve for himself a double share of property ancestral. For Vrihaspati saying: "The father may himself take two shares at a partition made in his lifetime;" and Nala, "If the father, making a partition, reserve two shares for himself," do so ordain without restriction.

36. Besides, a double share of the grand-father's wealth is the father's due by this [following] argument.
37. Deductions of a twentieth part (with the best of all the chattels,) and of half a twentieth, and of a quarter thereof, are propounded by a passage of Manus; ("The portion deducted for the eldest is the twentieth part of the heritage, with the best of all the chattels; for the middlespeed, half of that; for the youngest a quarter of it,") and shares increased by one portion, by half of one, and by a quarter, are propounded by other passages of the same author; ("If a deduction be thus made, let equal shares of the residue be allotted; but if there be no deduction, the shares must be distributed in this manner; let the eldest have a double share; and the next born, a share and a half; and the youngest sons each a share; thus is the land settled.") Gaumata likewise, after directing, that "A twentieth part shall belong to the eldest, besides a pair of goats or sheep, a cow, together with beasts that have teeth in both jaws, and also a cow and bull;" (i.e. a pair of goats, or the like, a cow with horses or other beasts having teeth in both jaws, and a bull together with a cow; all this shall belong to the eldest;) and after directing, that "Cattle blind of one eye, or aged, dwarfish, or diseased, shall belong to the middlespeed, if there be more than one;" (i.e. aged or old, dwarfish or stunted, diseased or having a distorted tail; these shall appertain to the middlespeed, provided the cattle be numerous;) and after further directing, that "A sheep, goat, is a passage of the middlespeed, a cow together with a car, one of which, or a horse, or other beasts having teeth in both jaws, and also a cow and bull, shall be given to the youngest; all the residue shall be equally divided;" (i.e. a sheep and other things, as specified, shall be allotted to the youngest; but let the brethren divide equally the whole of the residue;) has by the following passage allotted a double share to the eldest; "Or let the first born have two shares, and the rest take one space."

38. It must not be argued, that the eldest has a double share allotted to him as the acquirer of the wealth. For the allotment of two shares is directed "if there be no deduction:" now a deduction could not be supposed in the case of an acquisition; and, since the middlespeed and youngest are not, inasmuch as they are acquirers of the property, distinguished from the eldest, the assigning of a share and a half, or other less portion, (as a share or a quarter,) to them, would be incongruous, and the use of the term "eldest," &c. would be impertinent.

39. Accordingly, in the case of a partition between an appointed daughter and a true legitimate son, Manus ordains, "A daughter having been appointed, if a son be afterwards born, the division of the heritage must in that case be equal, since there is no right of primogeniture for the woman." Thus propounding equal partition, because there is no right of primogeniture in this instance by reason of her sex; the author thereby intimates, that a male would have had a double share [in right of his being eldest.]

40. In regard to what is said, that as in the instance of the Holaka, a passage of revelation to this effect, "The Holaka ought to be performed," is assumed for the justification of the practice of celebrating that festival which is in use among the Prachyas; (for it can be sufficiently justified by such a passage; and one, containing the word Prachya or other restrictive term, need not be supposed, since the proof of it would be burdensome;) so, in this passage, grama, a passage of the middlespeed; in these words, "Let the acquirer have a double share," must be inferred, and not one containing the word "eldest" or other restrictive term. That argument is not right; for, in the one case, the practice observed by the Prachyas can be justified by a general precept of revelation, which must be presumed to that effect. It is not necessary, in containing the term Prachya, not to be supposed for the sake of justifying the omission of that festival by others than Prachyas. Omission, consisting in non-performance, is no fit reason for presuming a lost revelation. But, here, since Manus and the rest use the word "eldest," a passage of scripture containing that term ought to be presumed; not one exhibiting any insertion; and this, since there is no necessity for assuming this: nor is there any special authority for the proof of one containing both terms. It should not be alleged, that, since it is necessary to suppose a revelation for the purpose of authorising the acquirer's double share in other cases, that one containing the term "eldest" may signify the acquirer. The reverse is equally possible; for, if a revelation containing the term "eldest" be supposed, even the word "acquirer" might just as well be presumed to signify eldest, since there is no ground of preference. Besides, on the same principle of facility, a supposed passage, of scripture, containing the term "eldest," may be so interpreted from reason; and the terms of the whole law may be made to relate to it, by interpreting them according to analogy and metaphor; and thus may you demonstrate your skill in the law. Therefore, since an established practice, or a sentence of memorial law, from which a passage of scripture is to be inferred, may be sufficiently justified by assuming a passage in which the particular practice is described, or the words of the law are contained; more should not be presumed. And such is the import of the reasoning, instance under the head of Holakk.

41. Accordingly (since primogeniture and acquisition are severally, and independently of each other, reasons for the allotment of a double share,) Vasumarta, having ordained a double share for the eldest brother, separated the allotment of two shares to the acquirer. Thus, after premising "Partition of heritage among "brothers," he says "Let the eldest take two shares;" and at no great distance adds: "He, amongst them who has made an acquisition, may take a double portion of it." Two shares being thus ordained by this author in right of acquisition, his direction for a double allotment, to be given to the eldest brother would be impertinent.

42. The right of taking a double share, too, is not confined to the case of primogeniture.
Thus Varāhāpati says: "The eldest by birth, by science, and by good qualities, shall obtain "a double share of the heritage, and the rest shall share alike: but he is as a father to them." If the allotment of two shares were only in right of acquisition, the mention of birth science, and good qualities, would be useless.

43. This double portion is applicable to the case of partition among whole brothers [or among half brothers only] and the deduction of a twentieth part for the eldest is relative to partition among brothers of both the whole and the half blood. For Varāhāpati says: "All sons of regenerate men, born of women equal by class, should "share alike after giving a deduction to the eldest."

44. Since partition among sons born of several wives, equal by class, is here stated as preceded by a deduction, it follows, that the doctrine of a double share relates to the case of whole brothers: and this is proper, for the elder brother has the greater weight among his brethren, from the circumstance of his being the whole blood.

45. The deduction also of one in ten cows, &c., must not be made. So Māyūr declares: "Among brothers successful in the performance of their duties, there is no deduction of "the best in ten, though some three, as a mark of greater veneration, should be given to "the first born."

46. By the reasoning thus set forth, if the elder brother have two shares of the father's estate, how should the highly venerable father, being the natural parent of the brothers, and competent to sell, give or abandon the property, and being the root of all connection with the grandfather's estate, be not entitled, in like circumstances, to a double portion of his own estate? But Varāhāpati, regarding to the eldest son the right to a double share because he is like a father, as expressed in a passage above cited (42) does thereby intimate a maxim, that the father shall have two shares: and the maxim is actually propounded by Varāhāpati; for he ordains such an allotment in general terms: "The father may himself "take two shares in right of portion made in his life-time." So Nārāyaṇa says: "Let the father, "making a partition, reserve two shares for himself; and the mother shall take an "equal share with her sons, if her husband be deceased."

47. A father, distributing the goods, may take two shares for himself. The construction of the sentence is not: "A father, distributing his "own goods, may take two shares:" for that would contradict the doctrine before stated.

48. Besides, if the father and son are to share equally the grandfather's wealth, [under texts declaratory of their similar or equal rights,] it must be affirmed, that as much as is "the father's share, so much [in number and quantity] is the son's: not, that the very same effects, and same in quantity, which are the father's, are also the son's: for thus the property would be in common; and it might be concluded, that like the goods of husband and wife, no partition thereof could take place.

49. Now, if the case were so, [that is, if sons were entitled to share with their father allotments of equal amount, while his property continued; the eldest, together with his son] would have four shares, if two must be allotted to his son, at the same time that two are al-

50. As for the text of Vriśahāpati: "in wealth acquired by the grandfather, whether it consist of moveables or immovables, the equal participation of father and of son is ordain-
ed:" its meaning is, that the participation shall be equal or uniform, and the father is not entitled to make a distribution of greater or less shares at his choice, as he may do in the instance of his own acquired goods. It does not imply, that the shares must be alike.

51. Or the text, declaratory of equal shares, may relate to a father who is himself son of two fathers? [one the natural, and the other the adoptive parent.]

52. The passage, which declares that "the ownership of the father and son is the same," has been already expounded, (9. &c.)

53. Moreover, it is said, if that father be eldest, as rescuing his own father from the misery to which a childless person is doomed, it is assuredly reasonable, that he should have an allotment twice as great as his own sons, in the same case in which he would have double the allotment of his brothers, because he was as a father to them, for it is through him, that his sons are connected with the hereditary property. But if he be not the eldest son of his father, he takes only an equal share with his sons.

54. That is not accurate. For, since a share and a half, or other specific allotment, is ordained for the middlemost and other sons, it is assuredly fit, that the father should have a double share, in right of paternity; and it is unjust to the part of himself and the holy writers, to direct the equal participation of father and son in general terms.

55. Besides, the allotment of two shares to the father is not properly applicable to his own acquired wealth: as appears from the circumstance, that the distribution of it follows his choice. The precept regarding that allotment would be superfluous, since he may, at his
choice, have either more or less than two or than three shares. Nor can the text be restrictive, for it would contradict Vishnun, who says: "When a father separates his sons from himself, his own will regulates the distribution. But, in the estate inherited from the grandfather, the ownership of father and son is equal."

56. The meaning of this passage is, 'In the case of his own acquired property, whatever he may choose to reserve, whether half, or two shares, or three, all that is permitted to him by the law: but not so, in the case of property ancestral.'

57. Accordingly Harita says: "A father, during his life distributing his property, "may retire to the forest, or enter into the order suitable to an aged man; or he may remain at home, having distributed small allotments and keeping a greater portion: should he become indigent, he may take back from them."

58. By this text the father is authorised to distribute a small part, and to reserve the greatest portion of his wealth. 'The order suitable to an aged man,' intimated retirement.

59. As for the text of Sankha and Lihkita, "If he be son of one father" (sastra), he "may allot two shares to himself," the sense of it is this 'The word sastra means son of one man: it is not a compound epithet signifying one who has an only son; for that mode of construction prevails less than the other.' "A son of one man" is a true legitimate son. The father, being such, is entitled to a double share; not so one who is (castroga) issue of the soil, though he be the father of the family. But the text before cited (9), declaratory of the equal ownership of father and son, must be explained as intending a father who was (castroga) issue of the soil or wife.

60. The offspring of the soil is indeed son of two fathers. Baudhyanas declares him so: "The son who is begotten by another on the authorised wife of a man deceased, impotent, or determined once of the soil, is considered as son of two fathers, as partaking of both families, and as heir to the wealth and obsequies of both."

61. The meaning of this is, that the son begotten by another person on the wife of an impotent man or the like, with the husband's consent, is termed (castroga) the son of the soil.

62. So Narmada says: "The produce of seed which is sown in a field with permission of a proprietor, is considered as belonging to both the owner of the seed and the proprietor of the soil."

63. Hence [since the compound epithet is a construction not to be preferred] and because the term (sastra) ought to be made significant in the passage in question, as an epithet of the agent in the sentence; the notion, that it is vaguely used as an epithet of the subject, is confuted.

64. Besides, one, who continually explains in a vague sense, terms used by authors transcendentally wise, as Menu, Gandama, Daksha, and the rest, only demonstrates his own unsettledness.

65. Thus the father has a double share even of wealth acquired by his own son. For the expression is general: "let him reserve two shares;" or "he may take two shares." Catusvans says it very explicitly: "A father takes either a double share, or a moiety, of his son's acquisition of wealth; and a mother also, if the father be deceased, is entitled to an equal portion with the son."

66. The meaning of this passage is, that the father has a right to take either a double share or a moiety of his son's acquired wealth.

67. It must not be explained thus: From the acquisition of both son and wealth, the father becomes entitled to two shares; but from no acquisition of a son, the owner keeps the whole. For it is admitted, that, when partition is made with brothers, one, who even has not got a son, takes two shares, as the gainer of the wealth: how then can he keep the whole? It must therefore be affirmed, that, if any relative exist, who is entitled to participate, the acquirer has two shares; but, if there be none, he keeps the whole: and thus the specific mention of father and son becomes unmeaning, like the singing of a drunkard. Besides, acquisition is an act causing property; and it is a contradiction to say that it does not produce property, since it has been expressly declared to do so [by the wise.] Neither is it true, that a son is the property of his father. For the contrary is shown under the head of gift of a whole estate. The term acquisition would be therefore metaphorical in regard to sons, and literal in respect of wealth. But that is inadmissible in the instance of a single term once uttered.

68. It must not be argued, that the precept would be superfluous, since the son's right to a double share is demonstrable, because the wealth was acquired by him; and since the father's right is independently of this obtainable; and that equal participation may be thence inferred. The precept is significant: since, without this text, there is no ground for concluding a father's right to two shares of his son's wealth.

69. Besides, if the term "acquisition of wealth" be interpreted as relating to the father's goods, his right of taking two shares, or a moiety, at his choice, would be inapplicable, for
his power of taking according to his pleasure, and the exercise of his will, are unrestricted. He may choose to take a share and a half, or one and a quarter, or three quarters of one share according to the express twainess stated. That it cannot intend a restriction [to those two cases] nor relate to the father's own goods, has been already shown [from two passages before cited]; and it is as fit that he should have a moiety of his son's acquired wealth, as it is that he should have two shares of such wealth.

70. Nor does the text intend his taking a moiety of two shares, or, in other words, a single share. For moiety and share being relative terms, imply something of which they are parts; and, since they are equal in regard to the person and to the act of taking, they cannot relate to each other. As the interpretation, which takes the relative term “double share,” in construction with “acquisition of wealth” in the ablative, is unexceptionable, it is also right to construe the word moiety with it; for the terms are contiguous. A moiety of the wealth, therefore, is meant; not a moiety of two shares, or in other words a single share: for it would be improper, while the obvious term, “a single share,” might have been used, to employ a term, which does not express that sense. A moiety of the wealth, then, is the right interpretation.

71. Here, the father has a moiety of the goods acquired by his son at the charge of his estate: the son, who made the acquisition, has two shares; and the rest, take one apiece. But, if the father's estate have not been used, he has two shares; the acquirer, as many; and the rest are excluded from participation.

72. Or else, a father, endowed with knowledge and other excellencies, has a right to a moiety: for an increased allotment is granted to the eldest by science and other good qualities. But one destitute of such qualities has a double share in right merely of his paternity.

73. Therefore, the meaning of the text is, that a father may reserve for himself two shares of wealth which has descended in succession to his son, or of that which has been acquired by his son. He is not entitled to more, however desirous of it he may be. But, of his own acquired wealth, he may reserve as much as he pleases.

74. Among his sons, he may make the distribution either by giving [to the first-born] or withholding [from him] the deduction of a twentieth part of the grandfather's estate. But, if he make an unequal distribution of his own acquired wealth, being desirous of giving more to one, as a token of esteem, on account of his good qualities, or for his support on account of a numerous family, or through compassion by reason of his incapacity, or through favor by reason of his piety; the father, so doing, acts lawfully.

75. Yajñyavalkya declares it: “A lawful distribution, made by the father, among sons separated with greater or less allotments, is pronounced [valid].” So Vṛhaspati: “Shares, which have been assigned by a father to his sons, whether equal, greater, or less, should be maintained by them. Else they ought to be chastised.” Narada likewise: “For such as have been separated by their father with equal, greater, or less allotments of wealth, that is a lawful distribution; for the father is the lord of all.”

76. Since the circumstance of the father being lord of all the wealth is stated as a reason; and that cannot be in regard to the grandfather's estate, an unequal distribution, made by the father, is lawful only in the instance of his own acquired wealth. Accordingly Vīshnug says, “When a father separates his sons, from himself, his own will regulate the division of his own acquired wealth. But in the estate inherited from the grandfather, the ownership of father and son is equal.”

77. As a superior allotment, in the form of a deduction, is indicated by a passage of Yajñyavalkya, (“When the father makes a partition, let him separate his sons according to his pleasure; and either dismiss the eldest with the best share; or, if he choose, all may be equal sharers,”) how is any other unequal distribution here ordained? The answer is, such cannot be the meaning: for the text would be impertinent, since a superior allotment, resulting from the deduction of a twentieth part, is admissible when partition is made by brothers after the demise of the father.

78. Perhaps the text is propounded for the purpose of legalising an equal distribution made by the father, without the authorised deductions? No: for then a less allotment only is declared lawful, as made by the father; and the word greater would be impertinent.

79. Besides, if the mention of greater or less shares here intend the regulated deductions, the second verse of the stanzas (“let him separate his sons according to his pleasure”) becomes superfluous; for that, which was to be declared, is fully specified in the three other verses of that text. But, according to our interpretation, the phrase, “let him separate his sons according to his pleasure,” relates to his own acquired wealth; while the allotment of the best share, and an equal distribution, both regard an estate inherited from the grandfather. There is consequently nothing superfluous.

80. Moreover, two modes of partition after the death of the father are actually declared by Vṛhaspati in these words: “Partition of two sorts is ordained for co-heirs: one, in the order of seniority to the heir; the other, by payment of equal shares.” By saying “to the order of seniority,” the author indicates specific deductions. Equal participation is the other mode.
Now, since two sorts of mutual partition among brothers are thus expressly declared, there would be no distinction between that and a distribution made by a father.

81. So Nārada says: "The father, being advanced in years, may himself separate his sons; either dismissing the eldest with the best share, or in any manner as his inclination may prompt."

82. The unequal distribution, here intended, appears evidently to be different from that which consists in giving the best share to the first born; since the author, having noticed the allotment of the best share to the eldest, again says "or as his inclination may prompt;" thereby distinctly authorizing any unequal distribution, which the father, for reasons before mentioned, may think proper to make.

83. But the text of Nārada, which expresses, that "A father, who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by a beloved object, or who acts otherwise than the law permits, has no power in the distribution of the estate;" relates to the case where the father, through perturbation of mind occasioned by disease or the like, or though irritation against any one of his sons, or through partiality for the child of a favourite wife, makes a distribution not conformable to law. Nevertheless, unequal partition is lawful, when grounded on [either of the four] reasons abovementioned.

84. Thus Cattayana says: "But let not a father distinguish one son at a partition made in his life-time, nor on any account exclude one from participation without sufficient cause."

85. Let him not distinguish one by the allotment of a greater portion, nor exclude one from participation by depriving him of his share, without sufficient cause. [This does not relate to specific deductions:] for the distinguishing of sons by allotting to them the prescribed deductions,[of a twentieth, and half or a quarter of a twentieth,] extends to many [viz., eldest, middlemost, and youngest:] and is not confined to one. One son should not be distinguished without cause. But, for a sufficient reason, it may be done. Since the meaning is "even one son." The distinguishing of one, [as here forbidden.] has no reference to specific deduction; but intends a distribution made according to the father's mere pleasure, as before explained.

86. However, when sons request partition in the father's life-time, an unequal allotment should not be granted by him. Menu declares it. "Among undivided brethren if there be an exertion in common, the father shall on no account make an unequal distribution in such case."

87. But the regular deduction ought in this instance to be allowed by the father. For it is not of the nature of an unequal distribution; and the allotment of greater or less shares is alone forbidden.

88. Thus partition made by a father [has been explained.]

CHAPTER III.
Partition by Brothers.

Section I.

Partition improper in the Mother's life-time. Management of the affairs during the continuance of the family partnership. Any one co-parcer may insist on separation. Right by representation admitted as far as the third degree.

Partition among brothers, after the demise of the father, is next explained. That partition is pronounced to be not lawful, among brothers of the whole blood, while the mother lives, although the ownership of wealth be vested in them by the death of their father. For the text ("after the father and the mother," etc.) propounds a division of the paternal estate among brothers of the whole blood subsequent to the demise of both parents.

2. It does not intend a distribution of the mother's goods, after her demise. For partition of the patrimony only is suggested by the term paternal; and there is no authority for interpreting it parental.

3. Besides, it would be a repetition; for the division of the maternal estate, on the death of the mother, is subsequently noticed by Menu in a separate text.

4. Thus Yajnyawalcy says "Let sons divide equally the effects and the debts, after the death of both parents. But daughters share the residue of their mother's property, after payment of her debts; and the [male] issue in default of daughters."
5. Since the latter half of this passage shows, that sons have no right of participation in the mother's goods, if daughters exist; but, if none exist, then sons have the right of succession, being intimated by the term "issue"; the father's estate only can be meant, in the former half of the text, by the word "parents"! for otherwise there would be tautology.

6. The author, declaring that brothers may divide after the death of the father and mother, proposes a time subsequent to the demise of both as a fit period of partition; and the association [of their deaths] appears therefore to be designedly expressed.

7. Accordingly Sancha and Lichita say, "Since the family is supported on the inheritance, sons are not independent; but, as it were under the authority of a father, so long as the mother lives." They are not independent of their mother; they are not competent to make a partition.

8. Vyasa very explicitly declares it. "For brethren a common abode is ordained, so long as both parents live: but after their decease, religious merit of separated brethren increase."

9. Since the author forbids the separation of brethren by commanding them to live together, and prohibits partition with one whose father and mother are living, the association of their survival is not positively intended in the phrase "so long as both parents live." Therefore, if one parent be living, partition is not lawful: but it is so, when both are dead.

10. Thus Vyasa says: "The day of the demise of both parents, partition among brothers is allowed: and, even while they are both living, it is right if the mother be past child-bearing."

11. Since partition while the mother is living cannot be relative to the mothers particular property, and since the authorised partition after the demise of both parents, which is intimated by the particle in the phrase "even while they are both living," is thus pronounced to be proper; partition among brothers after the death of parents is evidently relative to the father's wealth.

12. Accordingly Vyasa proposes partition, in the mother's life-time, made with reference chiefly to her: "If there be many sons of one man, by different mothers, but equal in number, and alike by class, a distribution among the mothers is approved." So Vyasa says: "If there be many sprung from one, alike in number, and in class, but born of rival mothers, partition must be made by them, according to law, by the allotment of shares to the mothers."

13. Since there is no difference in the son's share, for they are equally numerous and of the same tribe, partition is to be made by an allotment to the mother, not to the sons. Therefore, in the case of other wealth of the mother's, so in this instance [of the father's wealth which is become their property], sons have not independent Power to make a partition among themselves, while the mother lives; but, with her consent, the partition is lawful.

14. Hence, what is said by Gantama and others ("In partition there is increase of religious merit;") must be understood after the demise of the mother.

15. If then they desire to remain unseparated, the eldest brother, being capable of the care and management of the estate, may take the whole; and the rest should live under him, as under a father. Thus Menon says, "The eldest brother may take the patrimonial share, and the rest may live under him, as under their father." So Gantama: "Or they may go to the first born, and he may support the rest as a father." From the particle "or" it appears, that they may either become separate or continue to dwell together; and their dwelling together must be by consent of all. Thus Nareda says, "Let the eldest brother, by consent, support the rest like a father; or let a younger brother, who is capable, do so. The continuance of the family depends on ability." Even the youngest, being capable, may govern all the brethren. The middlemost of course may, being here inferred by the analogy of the loaf and staff.

16. But partition takes place by the will of any one [of the co-heirs], as before intimated.

17. Accordingly [since partition by the choice of one co-heir is lawful;] Catayana treating of partition, says: "Let them deposit, free from disbursement, in the hands of kinsmen and friends, the wealth of such as have not attained majority; as well as of those who are absent." So a text expresses, "the property of minors should be so preserved until they attain their full age."

18. The rule of distribution among sons extends equally to them and to grandsons and great grandsons in the male line. There is not here an order of succession following the order of priority according to birth. For those three persons, the son, grandson and great grandson, do not differ, in regard to the presentation of two oblations at solemn obsequies, one which it was incumbent on the ancestor to present, and the other which is to be tasted by his manes. Hence it is, that Devala says, 'A father, a grandfather, and a great-grandfather, assiduously cherish a new born son, as birds the holy fig-tree, [reflecting] 'he will present to us a funeral repast with honey, meat, and herbs, with milk, and with rice and milk,
"In the season of rains, and under the asterism magha." So Sancha, Lichita, and Yama, 'A father, a grandfather, and a great grandfather, welcome a new born son, as birds the holy fig-tree, reflecting, "he will give us contentment with honey, and meat, and (especially the flesh of) an ox, with milk and rice and milk." In the season of rains, and under the asterism magha." From the mention of the great grandfather, it appears, that "son" here intends a descendant as low as great grandson. Thus since such a descendant confers benefits on his ancestors up to the great grandfather, by presenting oblations to the manes, the descendant within the degree of great grandson has an equal right of inheritance.

19. Hence it is, that the son and grandson, whose own fathers are living, have no right of succession; for they do not present oblations to the manes, since they are incompetent to the celebration of solemn obsequies.

20. After the death of parents, the special distribution, [which might have been] made by a father, cannot have effect among brethren. But all the rest, as before explained, must be here again admitted.

21. If there be one son living, and sons of another son [who is deceased], then one share appertains to the surviving son, and the other share goes to the grandchildren however numerous. For their interest in the wealth is founded on their relationship by birth, to their own father, and they have a right to just so much as he would have been entitled to.

22. The text, which expresses: "among the issue of different fathers, the allotment of shares is according to the fathers," does not relate to this case [partition between uncle and nephew.] For the whole estate belonged to the uncle’s father, and therefore the whole would belong to him, and no part of it, to his nephews. Or, if partition is to be made as between father and son, under the direction for the allotment of shares according to the fathers, the uncle would have two shares because a father has a right to a double portion; and the nephews would have a single share. But this is contrary to the approved usage of the wise.

23. The purport of the text, however, is this. If there be a numerous issue of one brother and few sons of another, then the allotment of shares is according to the fathers.

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Section II.

Partition with or without specific deductions—Provision for the Mother; and for the Sister.

24. In the next place, [after defining the periods, when partition among brothers may take place,] two modes of partition among brethren alike by class are propounded: namely, either with specific deductions of a twentieth and so forth, or else an equal division.

25. Harita ordains an equal distribution without deductions, in the following passage, after speaking of a father: "If he be dead, the partition of inheritance should be made equally." So Umasa says, "This rule of partition is declared for brethren of various tribes, being born of women of classes below the father’s; but the distribution among brothers born of women of the same tribe is ordained to be made equally." Thus Patthana says, "When the paternal inheritance is to be divided, the shares shall be equal." Yajnavalkya also declares, "Let the sons divide equally the effects and the debts, after the death of both parents." Thus, there are two modes of distribution; namely with or without specific deductions.

26. It must not be argued, that the practice of equal partition is indispensable, as the only mode authorized by law. For the brethren may consent to the deductions by reason of great veneration [for the eldest.] An option exists like that of making or omitting partition.

27. Accordingly, since persons of the present day [who are younger brothers] entertain not great veneration [for their elders,] equal distribution is alone seen in the world; as also because elder brothers desiring of deducted allotments are now rare.

28. If one of the co-heirs, through confidence in his own ability, declares his share of the wealth inherited from the father, grandfather or other ancestor, something should be given to him, be it only a prastra of rice, on his separation, for the purpose of obviating any future cavil on the part of his son or other heir. Thus Manu says, "If any one of the brethren has a competence from his own occupation and desires not the property, he may be debarred from his share, giving him some force in lieu of a maintenance." So Yajnavalkya; The separation of one who is able to support himself, and is not desirous of participation, may be completed by giving him some tride."
29. When partition is made by brothers of the whole blood, after the demise of the father, an equal share must be given to the mother. For the text expresses, "The mother should be made an equal share!"

30. Since the term mother intends the natural parent, it cannot also mean a stepmother. For a word employed once cannot bear the literal and metaphorical senses at the same time.

31. The equal participation of the mother with the brethren takes effect, if no separate property had been given to the woman. But, if any have been given, she has half (a share). And, if the father makes an equal partition among his sons, all the wives (who have no issue) must have equal shares with his sons. So Yajnavalkya declares: "If he make the allotments equal, his wives, to whom no separate property has been given by their husbands, or their father-in-law, must be rendered partakers of like portions." "To a woman, whose husband marries a second wife, let him give an equal sum, as a compensation for the supersession, provided no separate property have been bestowed on her: but, if any have been assigned, let him allot half."

32. Wives of the father (meaning step-mothers) who have no male issue, not those who are mothers of sons, (must be rendered) equal sharers (with the son.) So Vyasas ordains "Even childless wives of the father are pronounced equal sharers: and so are all the paternal grandmothers: they are declared equal to mothers." Vishnu likewise says, "Mothers receive allotments according to the shares of sons; and so do unmarried daughters."

33. According to the shares of sons.] As sons are entitled to four shares, three, two or one, in the order of the classes; so are the wives also.

34. Unmarried daughters, likewise, following the allotments of sons, take a quarter thereof. Thus Vrihaspati says, "Mothers are equal sharers with them; and daughters are entitled to a fourth part."

35. A son has three parts and a daughter one. So Katayana declares: "For the unmarried daughter a quarter is allowed: and three parts belong to the son. But the right of the owner (to exercise discretion) is admitted when the property is small."

36. If the fune be small, sons must give a fourth part to daughters, deducting it out of their own respective shares. Thus Manu says, "to the maiden sisters let their brothers give portions out of their own allotments respectively: let each give a fourth part of his own distinct share: and they, who refuse to give it shall be degraded."

37. Let each give. From the mention of giving, and the denunciation of the penalty of degradation, if they refuse, it appears, that portions are not taken by daughters as having a title to the succession. For one brother does not give a portion out of his own allotment to another brother who has a right of inheritance.

38. Thus Yajnavalkya, saying "Uninitiated brothers should be initiated by those for whom the ceremonies have been already performed; but sisters should be disposed of in marriage, giving them as an allotment, a fourth part of a brother's own share;" declares the obligation of disposing of them in marriage, not their right of succession.

39. Thus, since the daughter takes not in right of inheritance; if the wealth be great funds sufficient for the maternal should be allotted. It is not an indispensable rule, that a fourth part shall be assigned.

40. This [allotment of a fourth part if the funds be small] must be understood as applicable only, where the number of sons and the daughters is equal. For, if the number be unequal, either the daughter would have a greater portion, or the son would be entirely deprived of property. But that cannot be proper, since the son is principal [in relation to the inheritance].

41. It is stated as an objection, that, as the defraying of the nuptials of a sister is an indispensable obligation under the text of Nareda, which expresses, "If no wealth of the father exist, the ceremonies must without fail be defrayed by brothers already initiated; contributing funds out of their own portions;" the impoverishment of the brothers is no exceptionable consequence.

42. That is wrong. For the text is intended to provide for initiatory ceremonies of brothers; and the reading of it which expresses, that the ceremonies of brethren must be defrayed by those who are already initiated, is unsatisfactory; and the initiation of a brother was the subject treated of. It had been already said, "For those, whose forms of initiation have not been regularly performed by the father, these ceremonies must be completed by the brethren out of the patrimony." Here the pronouns "those," "whose" are in the masculine gender. But this text immediately precedes the one before cited ("If no wealth of the father exist, &c."). That passage therefore relates to the initiation of brothers.

43. Thus partition of the wealth of the father grandfather, or other ancestor, has been fully explained.
CHAPTER IV.
Succession to Woman's Property.

Section I.
Separate property of a Woman defined and explained.

1. In the next place, for the purpose of teaching the distribution of a woman's separate goods, such property is first described. On this subject Vishnu says, "What has been received by a woman before the nuptial fire, what has been presented to her on her husband's vespal of another wife, what has been given to her by kindred, as well as her perquisites, and a gift subsequent, are a woman's separate property."

2. Catayana defines a gift subsequent. "What has been received by a woman from the family of her husband at a time posterior to her marriage, is called a gift subsequent; and so is that which is similarly received from the family of her kindred. Whatever is received by a woman after her nuptials, either from her husband or from her parents, through the affection of the giver, Bhrgu pronounces to be a gift subsequent."

3. By the word "kindred" her father and mother are denoted. Hence the meaning is this: anything received subsequently to the marriage, from [maternal or paternal uncles or other] persons who are related through the father or the mother, or from those two parents themselves; or so received from the husband, or from his family, namely, her father-in-law and the rest; is a gift subsequent. But the term 'kindred,' in the next of Vishnu, intends maternal uncles and others; for the father and the rest are specified by the appropriate terms: either the husband, or the parents, inherit that which was received at the time of the nuptials, according to the difference between marriages denominated Brahma, etc., and those called AYura and so forth.

4. Menu and Catayana describe the separate property of a woman. "What was given before the nuptial fire, what was presented in the bridal procession, what has been conferred on the woman through affection, and what has been received by her from her brother, her mother, or her father, are denominated the six-fold property of a woman." So Narada says: "What was given before the nuptial fire, what was presented in the bridal procession, what has been given by her brother or by either of her parents, is termed the six-fold property of a woman."

5. Catayana explains this: "What is given to women at the time of the marriage, near the nuptial fire, is celebrated by the wise as the women's peculiar property bestowed before the nuptial fire. That again, which a woman receives while she is conducted from the parental [abode, to her husband's dwelling] is instanced as the separate property of a woman, unless it be afterwards presented in the bridal procession."

6. Since the term "parental" is derived from a complex expression, of which one member only is retained, the presents, which she receives from the family of either her father or her mother, while she is conducted to the house of her husband, are gifts presented in the bridal procession.

7. "Her husband's donation" (deya) is wealth given (dasa) to her by her husband: [not as the word might be supposed to signify, the heritage of her husband.] For Menu and others [viz., Catayana and Vishnu] notice that which is given (dasa) to her by him, without mentioning his donation (deya) and Narada specifies donation (deya), without any separate notice of given (dasa.).

8. In other instances also, "husband's donation" is used for wealth given by the husband. Thus Catayana says, "Let the woman place her husband's donation as she pleases, when he is deceased: but, while he lives, she should carefully preserve it, or else, if unable to do so, commit it to the family."

9. The meaning of the passage is this: wealth given to her by her husband, she may dispose of, as she pleases, when he is dead; but, while he lives, she should carefully preserve it. This is intended as a caution against profusion.

10. So the text of Vyasa, concerning the limits of the values which may be given by her husband, [exhibits the same term.] "A present, amounting to two thousand (padas) at the most, may be given to a woman, out of the wealth: and whatever property is given to her by her husband, let her use as she pleases."

Thus the term (deya) 'may be given' retains the literal sense of the verb (da) to give. But, since so much as is her deceased husband's estates, belongs to the widow, the sense becomes metaphorical [under another interpretation] and that is not reasonable.
11. And whatever property is given to her by her husband, let her use as she pleases. Hence (since the text relates to a gift made by her husband, and not to an allotment delivered to her by an umpire adjusting the succession:) the alleged conclusion, that the widow is competent to take so much of the property of her husband, who has died leaving no male issue, as amounts to two thousand [panas,] and not the whole estate, must be rejected by the wise.

12. This and (the right of the widow to take the whole estate of her husband who leaves no male issue) will be discussed at full length (under the head of succession to the estate of one who has no male issue.)

13. Yajnavalkya explains (a woman's property:) "What has been given to a woman (before or after her nuptials,) by the father, the mother, the husband or a brother, or received by her at the nuptial fire, or presented to her on her husband's marriage to another wife, (as also any other separate acquisition,) is denominated a woman's property."

14. That wealth, which is given to gratify a first wife by a man desirous of marrying a second, is a gift on a second marriage: for its object is to obtain another wife (with the consent of the first.)

15. So Devdas says: "Her subsistence: her ornaments, her perquisites, and her gains, are the separate property of a woman. She herself exclusively enjoys it; and her husband has no right to use it, unless in distress."

16. Vyasa also: "Whatever is presented at the time of the nuptials to the bridegroom, intending (the benefit of the bride;) belongs entirely to the bride; and shall not be shared by kinmen."

17. Intending.) Designing, that it shall appertain to the bride. It is not meant, that the property becomes hers, even without such intention. Accordingly the time of nuptials is here stated illustratively; and not as the sole motive. For the will of the giver is the cause of property. So the foregoing authentic text does not specify, that it must be at the time of the nuptials. "What is presented to the husband of a daughter, goes to the woman, whether her husband live or die; and, after her death, descends to her colleting." Here the giver's intention is not specified; because it is implied by the word daughter.

18. Since various sorts of separate property of a woman have been thus propounded without any restriction of number, the number of six, (as specified by Manu and others,) is not definitely meant. But the texts of the sages merely intend an explanation of woman's separate property. That alone is her peculiar property, which she has power to give, sell, or use, independently of her husband's control.

19. Katayana expresses this rather concisely: "The wealth, which is earned by mechanical arts, or which is received through affection from any other, (but the kindred,) is always subject to her husband's dominion. The rest is pronounced to be the woman's property,"

20. Over that, which has been received by her "from any other" but the family of her father, mother, or husband, or has been earned by her in the practice of a mechanical art, (as spinning or weaving,) her husband has no dominion and full control. He has a right to take it, even though no distress exist. Hence, though the goods be her's, they do not constitute woman's property; because she has not independent power over them.

21. But in other descriptions, a woman has the sole power of gift, declares. That which is received by a married husband or of her father, from her husband, is termed the gift of affection kindred. The independence of women in regard to that property; for it was given for maintenance. The power of women over the immovables, both in respect of donation and of alienation of immovables."

22. What is obtained from kind relations, (meaning persons of her father's family or her mother's,) is the gift of affectionate kindred.

23. But in the case of immovables bestowed on her by her husband, a woman has no power of alienation by gift or the like. So Narada declares: "What has been given by an affectionate husband to his wife, she may consume, as she pleases, when he is dead, or may give it away, excepting immovable property." It follows from the specific mention of "given by a husband:" that any other immovable property, except such as has been given to her by him, may be alienated by her. Else (if this text forbids donation in the case of immovables in general,) the preceding passage concerning the power of women in respect of donation and of sale, "according to their pleasure, even in the case of immovables," would be contradicted.
24. However, if the husband have no means of sustenance, without using his wife’s separate property, in a famine or other distress, he may take it in such circumstances: but not in any other case. So Yajnavalkya declares: “A husband is not liable to make good the property of his wife, taken by him in a famine, or for the performance of a duty, or during illness, or while under restraint.” Catayana, again, denies the right of the husband to do so in any other circumstances. Neither the husband, nor the son, nor the father, nor the brothers, can assume the power over a woman’s property to take it or to bestow it. If any one of these persons by force consumes the woman’s property, he shall be compelled to make it good with interest, and shall also incur a fine. If such person, having obtained her consent, uses the property amissfully, he shall be required to pay the principal, when he becomes rich. But, if the husband have a second wife and do not show honor to his first wife, he shall be compelled by force to restore her property, though amissfully lent to him. If food, raiment, and dwelling be withheld from the woman, she may exact her due supply, and take a share [of the estate] with the co-sisters.

25. If the husband, having taken the property of his wife, live with another wife and neglect her, he shall be compelled to restore the property taken by him. If he do not give her food, raiment, and the like, that also may be exacted from him by the woman.

26. Thus a definition of woman’s property has been propounded.

Section II.

Succession of a woman’s children to her separate property.

1. In the next place partition of woman’s property is explained. On that subject Manu says: “When the mother is dead, let all the uterine brothers and the uterine sisters equally divide the maternal estate.”

2. Since this suggests the participation of brother and sister, connected in the sentence by reciprocation, although the conjunctive compound do not there occur, by means however of the conjunctive particle, which bears the same import [and is contained in the text,] the meaning of the passage must be this; ‘Let sisters and brothers of the whole blood share the estate.’

3. Vihapati likewise expresses assemblage by the conjunctive particle in the following passage. “A woman’s property goes to her children; and the daughter is a sharer with them, provided she be unmanacled; but, if married, she shall not receive the maternal wealth.”

4. Here the term children intends sons; and they share their mother’s goods with unbetrothed daughters. So Cankha and Likhita say, “All uterine brothers are entitled to the wealth equally; and so are unmarried sisters.”

5. Since the son is mentioned first in all these passages, he has a right to the succession to his mother’s wealth, whatever be his estate [initiated or uninitiated]; and the conjunctive particle, which likewise occurs in every one of those texts, denotes assemblage.

6. A passage of Devala is conclusive against one who persists in the controversy notwithstanding the foregoing reasons. It is as follows: “A woman’s property is common to her sons and unmarried daughters, when she is dead; but, if she leave no issue, her husband shall take it, her mother, her brother, or her father.”

7. Here it is expressly declared, that the mother’s goods are common to the son (and unmarried daughter: and if the maiden daughter were exclusively entitled to the whole of her mother’s estate [notwithstanding the existence of her brother.] the special texts of Manu and others, [which will be cited,] concerning the (Yantuka) wealth given at the nuptials, would be unmeaning; since she would have the right in all cases indiscriminately.

8. But if one should propose this resolution: ‘the ordaining of equal partition is fit, if the brother and sister have alike a right of succession; only inherit equally, or, on failure of them, by a brother, since it might be deduced, without such declaration, from reasoning, because no exception to it has been specified; he might be thus answered [by an obstinate antagonist:] it is no less impertinent to declare equal inheritance, on the assumption, that brother and sister inherit; since their party may be in like manner deduced from reasoning.” The antagonist may other wise reply: “Besides, how is it impertinent? since, in the case of brothers inheriting alone, [upon failure of sisters] the term “equal” is unquestionably pertinent, as it obviates the supposition, that deductions of such instances of the mother’s estate, as in that of the parents, the like shall be allowed in the case of brothers; Therefore, the half learned person (who argues, that the declaration of equality would be impertinent,) must be disregarded, as the wise, as unacquainted with the letter of the law, and with the reasoning (which has been here set forth.)
8. But for the case above stated, the son and maiden daughter have equal rights of succession. On failure of either of them, the goods belong to the other. On failure of both of them, the succession devolves, with equal rights, on the married daughter who has a son, and on her who may have male issue. For, by means of their sons, they may present obligations at solemn obsequies.

9. Here, since the right is founded on the presenting of obligations at solemn obsequies, the daughter's son is entitled to the property, on failure of the daughters above described, for the text of Menu expresses: "Even the son of a daughter delivers him in the next world, like the son of a son." Neither a barren nor a widowed daughter inherits; for these present not obligations at solemn obsequies, either in person or by means of their offspring. Accordingly (since the daughter's right of succession is founded on benefits conferred through the means of her male issue; or since neither the barren nor the widowed daughter's right of equal succession is recognised; Nareda says, "On failure of the son, the daughter inherits; for she equally continues the lineage."

10. But, if there be a son's son and a daughter's son claiming the succession, the son's son has the exclusive title; for it is reasonable, since the married daughter is debared from the inheritances by the son, that the son of the deceased daughter shall be excluded by the son of the person who bears her claim.

11. On failure of all these abovementioned, including the daughter's son (and the son's grandson), the barren and the widowed daughters both succeed in their mother's property; for, these also are her offspring; and the right of others to inherit is declared to be on failure of issue.

12. But the text of Gautama, "A woman's separate property goes to her daughters unequally; that which is actually married;" that of Nareda, "the daughter divides their mother's wealth; or, on failure of daughters, her male issue;" a passage of Katyayana, "But, on failure of daughters, the inheritance belongs to the son;" as also one of Yajnavalkya, "Daughters share the residue of their mother's property, after payment of her debts; and the male issue succeeds in their default, relate only to the (yautkula) wealth given at nuptials; for these passages contradict the text of Devala above cited. Accordingly (since it is not the case of wealth given at nuptials, that the unmarried daughter has the prior right of succession; or has the exclusive right;) Manus says, "Property given to the mother on her marriage (yautkula), is the share of her unmarried daughter.

13. Here yautkula signifies property given at a marriage: the word yautka, derived from the verb yata to mix, imports "mingling;" and mingling is the union of man and woman as one person; and that is accomplished by marriage. For a passage of scripture expresses "Her bones become identified with his bones, flesh with flesh." Therefore what has been received at the time of the marriage, is denominated Yautkula.

14. Accordingly (Since the term signifies wealth received at the time of the marriage;) Vasishtha says, "Let the females share the nuptial presents (parinayya) of their mother." For parinayya signifies wealth received at a marriage (parinayana.)

15. As for a passage of Menu, "The wealth of a woman, which has been in any manner given to her by her father, let the breaksamed take; or let it belong to her offspring," since the text specifies "given by her father," the meaning must be, that property, which was given to her by her father, even at any other time besides that of the nuptials, shall belong exclusively to her daughter; and the term breaksamed is merely illustrative (indicating that a daughter of the same tribe with the giver inherits. Or, lest the term should be imperceptible, the text may signify that the Breakamed, being daughter of a contemporaneous wife, shall take the property of the Cakshriya and of other wives dying childless, which had been given to them by their fathers. The precept, which directeth, that "the property of a childless woman shall go to her surviving husband;" does not here take effect. Such is the meaning of the passage; for else (according to the preceding interpretation) all the texts (which declare the equal right of the son and daughter, to inherit their mother's property in certain cases,) would be incongruous.

16. It must not be argued, that the succession of the daughter's son, on failure of the daughter, is shown by Na'eda and others (as Yajnavalkya, &c.) because the word "issue" is connected in construction with daughters, which is the nearest term. For the word daughter, as signifying a female (vis., female) property requires a parent for its correlative, and must be connected in construction with "issue;" another correlative suggested by the term "issue:" since (both terms) alike (need a correlative indicating the parent.)

17. Nor should (the word) "issue" be expounded metaphorically, from the appropriate sense, (as signifying male, and "daughter" female; neglecting the relation to a parent indicated by these terms. (For all the terms (vis., "daughter," repeatedly occurring in various texts; or issue, or other equivalent word; or daughter, and issue, and, in the text of Caturyasa, son;) may be taken in their literal acceptance by connecting them with "mother,;"

18. And the word "daughter" is acknowledged to bear the literal sense, as connected with the term "mother."
19. Neither should the construction of the sentence be alleged to be “issue of the daughter" suggested by the pronoun "her issue" (18). For the pronoun would refer to her as daughter, (not as mother; since the meaning of the original term is such.

20. Besides, the word “daughter," in the text of Yajñyavalkya (18), having the termination of the first or nominative case, and the pronoun (“their”) having that of the fifth or ablative, cannot be connected with the term “issue,” by construction which requires the sixth or relative case. But this term governs the word “mother” notwithstanding the intervention of mediative terms. Thus then, with the certainty, that “issue of the mother" is here intended, it is reasonable to interpret issue of the mother [as signifying son] in the texts of Nareda and Catayana: for there can be no contradiction [since the passage must be presumed to be grounded on the same revelation.

21. Moreover, conformably with the text of Baudhayana “Male issue of the body being left, the property must go to them;" and because (the son, as immediate issue of the mother is) nearer of kin (that daughter’s son, who is a mediate descendant;) it is reasonable, that it should devolve on her body; and that the body of the woman’s property and not the daughter’s son, who is a mediate descendant not born of her person.

22. Hence a woman’s separate property, received by her at her nuptials, goes to her daughter; and not to her sons (if there be a daughter:) and the text of Gantama (18) is intended to explain the order of succession in this case (of an inheritance devolving on the female issue.)

23. First, the woman’s property goes to her unanffiliated daughters. If there be none such, it devolves on those who are betrothed. In their default, it passes to the married daughters (as indicated by the conjunctive particle in the text.) For the right of the female issue generally precedes (in Gantama’s text, 18) the special mention of “unanffiliated" and “unmarried," which follows, is pertinent as declaratory of the order of succession (and not as a limitation of the preceding general term.)

24. Thus Yajñyavalkya says, “The separate property of a childless woman married in the form denominated Brahma or in any of the four (unblamed forms of marriage) goes to her husband; but if she leave progeny, it will belong to her daughter; and in other forms of marriage, (as the Ashura, &c.,) it goes to the father (and mother, on failure of issue.)"

25. Here, in certain forms of marriage termed Brahman, &c., what has been received by a woman at the nuptial fire, goes after her death, first to her daughters (not, like property received at any other time but that of her nuptials to her sons as well as her daughters.) Again, the right devolves on the body of the last maiden daughter (conformably with the text above cited:) if there be none, it descends to the betrothed daughter; or for want of such, it goes to a married daughter (including even a barren or a widowed one;) or on failure of all daughters it devolves on the son. For the husband’s right of succession is relative to property of a wife who leaves no issue whatever.

26. The right of the married daughter, too, on failure of the unanffiliated one and the rest, has been hinted by Yvishapati using the term “unanffiliated." (31)

27. It should not be alleged, that this text of (Yajñyavalkya above cited, 24) does not relate exclusively to wealth received at nuptials; but is applicable to any property, whether obtained then or at any other time, and pertaining to a woman espoused by such forms of marriage. For the preceding passage (which is declaratory of a brother’s right of succession,) would have no pertinency, (since, even in that case, the husband or the father would inherit under the text in question;) and it would disagree with Menu; for he says, “it is admitted, that the property of a woman married by the ceremonies called Brahman, Deva, &c., passes as to her body on her death to her husband, if she die with issue. But her wealth, given to her on her marriage in the form called A’sams or either of the other two (Brahman and Pratiksha,) is ordained on her death without issue, to become the property of her mother and of her father." Here, the subsequent terms, “wealth given to her," are understood in the preceding sentence. Therefore by the same connecting the terms "wealth given to her at the nuptial ceremonies, &c.," it must appear to relate to property received at her marriage, and not generally to any property whatever.

28. So Yama, saying “Wealth, which is given at the marriages called A'sams, &c., (is acknowledged to belong to the parents, if the woman die without issue," appears to intend nuptial presents exclusively; that is, wealth which is given while the marriage ceremony lasts having been commenced but not being finished.

29. It must not be argued, that the denominations of Brahma, &c., regard the woman (who is married by such ceremonies) and that the text concerns any property belonging to her; the designations being relative to the person;) because there is no other rule provided for the descent of a childless woman’s property received by her before her nuptials, or after the occurrence of the case of succession, will be fully stated, conformably with express laws.
Section III.

Succession to the separate property of a childless woman.

1. The heir of the property of a woman who dies childless are next propounded.

2. "The separate property of a childless woman married in the form denominated Brahma, or in any of the four (unblamed forms of marriage,) goes to her husband."

3. The four forms of marriage, at the head of which is that called Brahma, are here intended. Those four are the Daiva, Araha, Prajapati, and Gandharba. With the Brahma, they make five. For Manu has specified five: namely, "the ceremonies called Brahma, Daiva, Araha, Gandharba and Prajapati."

4. Wealth which has been received by a woman while her marriage in any of those forms is celebrated, devolves on her husband, if she die without issue. Here issue signifies progeny.

5. It is not right to interpret the text as signifying, that any property of whatever amount, which belongs to a woman married by any of those ceremonies termed Brahma, &c., whether received by her before or after her nuptials, devolves wholly on her husband by her demise. For the terms employed in the text (3), signifying 'at marriage in the form denominated Brahma, &c,' indicate time: and, if the word Brahma, &c., (in Manu's text:) intended the woman (who is espoused in such form,) those terms (as expressive of the married person) would have been exhibited in the singular number and sixth or relative case: for the pronoun, denoting the woman, is exhibited in that case and number, in the (subsequent) passage; "But her wealth, given to her on her marriage, &c." If the time of nuptials be indicated the term as the metaphorical sense from relation to (time) present. But, if the woman be intended, it has the metaphorical meaning from relation to the past ceremony of marriage. Now this, being a less approved mode of construction, is not the proper one. Neither is it true, that the terms Brahma, &c., do signify the woman who is espoused; for they are used by Manu and the rest as importing the marriage celebrated in such form. Thus Manu, having premised these words "Now learn comprehensively the eight forms of the nuptial ceremony;" enumerates "the ceremony of Brahma, of the Deva, of the Bishis, of the Prajapatis, of the Asuras, &c." So Narada says, "Eight forms of Marriage are ordained for the perfecting of the several tribes; the first of them is the Brahma." Vishnu in like manner says, "Marriages are of eight sorts, the Brahma, the Daiva, &c."

6. Therefore, the observation of Viswarupa, that the text relates to woman's property received at the time of the nuptials, should be respected.

7. But a woman's property, received at a marriage in forms called Asura and the like, her mother may take on her demise, though her husband be living; and, on failure of the mother, the father. For that order of succession results from the text, "Her wealth is ordained to become the property of her mother and of her father." If then joint succession were intended, the author would have said "become the property of her two parents." And as the father's right of inheritance is declared to be on failure of the mother in the case of a maiden's property, the same is fitting in this instance also.

8. Accordingly Bandhayana says, "The wealth of a deceased damsel let the uterine brethren themselves take. On failure of them, it shall belong to the mother; or, if she be dead, to the father."

9. The property of maiden has been thus explained, [and the subject will not be resumed under a distinct head.]

10. It must not be argued, that in this case [of wealth received at nuptials,] as in that of a maiden's property, the brother has the prior right. For no text ordains it: and the succession of the mother and father only [not the brother] is expressly declared.

11. But wealth received by a woman after her marriage, from the family of her father, of her mother, or of her husband, goes to her brothers, [not to her husband]; as Yajnavalkya declares: "That which has been given to her by her kindred, as well as her fee or gratuity, and anything bestowed after marriage, her husband takes, if he live, without issue." Given by her kindred. Presented to her by her father or mother [during her maidenhood.] Hence (since the words "given by kindred" intend given by the father and mother;) their sons, who are her brothers, are the kinmen here signified.

12. This is confirmed by Vṛddha Catayana, who says "Immoveable property, which has been given by parents to their daughter, goes always to her brother, if she die "without issue." For it appears, that the brother's right of succession is founded simply on her leaving no issue (which is the case equally of a maiden, as of a childless wife.)

13. The remark of Viswarupa, that property of a childless woman married by any form of nuptials, from that of Brahma to that of the Piscachas, (as hinted by the term "always,") goes to her brother, should therefore be respected.
Under the term “immovable,” the same must be true of other property (such as described in the passage of Yajñayvakalyana above cited) by the argument a fortiori, exemplified in the loaf and staff.

By the phrase “given by her kindred” (10) is signified that which was given to her by her parents during her maiden state. For anything received by her, subsequently to her nuptials, is comprehended under the denomination of (anwadheya) gift subsequent; and either the husband, or the parents, inherit that which was presented at the time of the wedding.

Catayana describes a gift subsequent: “What has been received by a woman from the family of her husband, and at a time posterior to her marriage, is called a gift subsequent; and so in that which is similarly received from the family of her kindred.”

From the family of her husband. From her father-in-law and the rest. From the family of her kindred. From that of her father and mother.

The same author gives another definition: “Whatever is received by a woman after her nuptials, either from her husband, or from her parents, through the affection of the giver, Bhirgu pronounces to be a gift subsequent.”

He likewise explains the fee or perquisite (Sulka.) “Whatever has been received, as a price, of workmen on houses, furniture and carriages, milking vessels and ornaments, is denominated a fee.”

What is given to a woman by artists constructing a house or executing other work, as a price to send her husband or other person, (of her family) to labour on such particular work, is here fee. It is the price (of labour) since its purpose is to engage (a labourer.)

Or a fee is that which is described by Vyasa, “What is given to bring the bride to her husband’s house, is denominated her fee.” That is, what is given by way of bride or the like to induce her to go to the house of her husband.

This fee, (as described in both the passages above cited,) occurs indiscriminately in any form of marriage, whether that termed Brahma or another. Such, or any similar property of a childless woman, her brothers inherit.

But it does not intend a gratuity (Sulka) presented to damasciaat marriages called Asura and the rest. For that gratuity is restricted to the particular form denominated Asura (and does not occur in the rest.) Accordingly it is said, “The Asura marriage is grounded on the receipt of wealth; the Gandharves, on reciprocal connexion; the Rakshasa, on seizure in war; and the Paishaca is where the bride is obtained by fraud.”

Hence, since there is no gratuity at the Rakshasa marriage, nor at the other (viz., the Paishaca marriage,) the conclusion, deduced from association with mutual gratuity, that only such property goes to the brother as was received under the Asura and other similar marriages, must be rejected; as also because that is not the separate property of the woman; for only wealth received by the father or other person (who gives the girl in marriage) is denominated a gratuity. Thus Manu says, “Let no father, who is wise, receive a gratuity however small, for giving his daughter in marriage; since the man, who through avarice, takes a gratuity, is a seller of his offspring.” Father is here a general expression (intending the person who gives away the damsel.) Therefore, a brother, or any other person, accepting a present (for giving a gift in marriage,) is a receiver of a gratuity. Consequently, a gratuity (Sulka) is that which is accepted by the father or other person (so disposing of the damsel.)

Hence (since the gratuity belongs to the giver of the damsel, and not to the damsel herself,) the argument is refuted, which has been thus proposed; that, as a woman’s separate property received in the form of a gratuity (Sulka) is possible only in an Asura marriage, therefore the gifts of kindred and a gift subsequent, which are specified in the same passage (10,) shall also be inherited by the brother, provided they are relative to an Asura marriage.

But, since property, received as a fee or perquisite (Sulka) in the manner described (16 and 21,) is possible under every form of marriage—the brother is heir in all such instances; conformably with the text (of Yajñayvakalyana.) For it contains no restriction (to any particular form of marriage, not to that called Asura in particular.)

Thus the text of Gantama also conveys the same import with that of Katsayana. (19.) It is as follows: “The sister’s fee belongs to the uterine brothers; after them, it goes to the mother; and next to the father. Some say before her.”

The meaning of the passage is this: in the first place that property goes to her brother of the whole blood. But, on failure of them, it belongs to the mother. In her default, it devolves on the father. Some say before her. This is stated as the doctrine of others.

Therefore, the property goes first to the whole brother; if there be none, to the
mother; if she be dead, to the father; but, on failure of all these, it devolves on the husband. Thus Katyayana says, "That which has been given to her by her kindred goes on failure of kindred, to her husband."

30. By saying "on failure of the kindred," (or of the father and mother,) the failure of brothers is likewise indicated. For, since the parent's right of succession is in default of her kindred, on failure of the premiss, the right of the preferable claim must be concluded by the argument  jīviṣekā, exemplified in the case of a leaf and staff.

31. On failure of heirs down to the husband, this rule again is provided, which Vṛśtapati thus delivers, "The mother's sister, the maternal uncle, the father's sister, the mother-in-law, and the wife of an elder brother, are pronounced similar to mothers. If they leave no issue of their bodies, nor son (of a rival wife,) nor daughter's son, nor son of those persons, the sister's son and the rest shall take their property."

32. Both son and daughter are here signified by the terms "issue of the body." For they bar every other claimant. By "son" is meant the child of a rival wife. For a passage of law expresses, "If, among all the wives of the same husband, one bring forth a male child, Manu has declared them all, by means of that son, to be mothers of male issue." Nor is the term "son" an epithet of "issue of the body:" for it would be superfluous; and the sister's son or other remote heir would have the right of succession, though a son (or a grandchild) of a contemporary wife be living.

33. If there be no legitimate son or daughter, nor a grandson in the male line, nor a son or a rival wife, the right of succession devolves on the daughter's son.

34. By the pronoun in the phrase "sons of these persons" (51) the woman's own issue and child of a rival wife are signified. Therefore, these sons have a right to inherit; not the son of a daughter's son also, for he is excluded from the oblation of food at obsequies.

35. For want then of sons and other linear heirs as here specified, and in default of brothers or other preferable claimants, including the husband, the inheritance passes to the sister's son and the rest, although kinsmen, as the father-in-law, the husband's elder brother, or the like, be living. For the text (51) bears no other import; and the chief purpose of indicating, under the head of intestate feudatory, the present obligations, as is done by describing the women as similar to mothers, and certain persons as standing in the relation to them of sons, is to suggest the right of succession to that property.

36. Hence, since the text enumerates "sister's son," etc., if the order of succession consequently be, first the sister's son, then the husband's sister's son, next the child of the husband's younger brother, afterwards the child of the husband's elder brother, then the son of the brother, after him the son-in-law, and subsequently the younger brother-in-law, the right would devolve last of all on the younger brother of the husband, contrary to the opinion and practice of venerable persons. Therefore, the text is propounded, not as declaratory of the order of inheritance, but as expressive of the strength of the fact, (namely of the benefits conferred.) Thus it is declared by Manu, under the head of inheritance, "To three ancestors must water be given at their obsequies; for three is the funeral oblation of food ordained: the fourth is the giver of oblations; but the fifth has no concern with them." In like manner Tāṇyavākyika shows succession to property in right of the funeral oblation: "The next in order is the daughter, the next in order is the son of the father, on failure of the preceding." The son's preferable right too appears to rest on his presenting the greatest number of beneficent obligations, and on his rescuing his parent from hell. And a passage of Vṛddhī Civatapati expressly provides for the funeral obligations of these women: "For the wife of a maternal uncle, or of a sister's son of a father-in-law and of a spiritual parent, of a friend and of a maternal grandfather, as well as for the sister of the mother or of the father, the obligation of food at obsequies must be performed. Such is the settled rule among those who are conversant with the Vedas."

37. This then is the order of succession, according to the various degrees (of benefit to the owner of the property) from the oblation of food at obsequies. In the first place, the husband's younger brother is entitled to the woman's property; for he is a kinsman (Sabinda,) and presents oblations to her, to her husband, and to three persons to whom oblations were to be offered by her husband. After him, the son either of her husband's elder or of his younger brother, is heir to the separate property of his uncle's wife; for he is a kinsman, and presents oblations to her, to her husband, and to two persons to whom oblations were to be offered by her husband. On failure of such, the sister's son though he be not a kinsman (Sabinda,) inherits the separate property left by his mother's sister because; he presents oblations to her, and to three persons, (her father and the rest,) to whom oblations would have been offered by her son. In default of him, the son of her husband's sister (for it is reasonable, since the husband has a weaker claim than the son, that persons claiming under them should have similar relative precedence;) is heir to the property of his uncle's wife; because he presents oblations to three persons to whom they were to be offered by her husband, and also presents oblation, to her and to her brother's son in the rest, the two her husband's property, for he presents oblations to the father, to her grandfather, and to herself. If there be no nephew, the husband of his daughter is heir to his mother-in-law's property, since he presents oblations to his mother-in-law and father-in-law.
CHAPTER V.

Exclusion from Inheritance.

1. In the next place, persons incompetent to inherit are specified, for the purpose of making known, by the exception, competent heirs. On this subject Apastamba says, "All co-heirs, who are endowed with virtue, are entitled to the property. But he, who dissipates wealth by his vices, should be debarred from participation, even though he be the first born."

2. This passage is read by Baloka in a confused manner and contrary sense; "But he, who acquires wealth by his virtuous conduct, being the eldest son, should be made an equal sharer with the father." That reading is unauthorized.

3. So "The heritable right of one who has been expelled from society, and his competence to offer oblations of food and libations of water, are extinct." One, who has been expelled from society, is a person excluded from drinking water in company.

4. So Vrhaspati says, "Though born of a woman of equal class, a son destitute of virtue is unworthy of the paternal wealth. It is declared to belong to such kinsmen, offering funeral oblations [to the owner,] as are of virtuous conduct. A son redeems his father from debt to superior and inferior beings. Consequently there is no use for one who acts otherwise. What can be done with a cow which neither gives milk, nor bears calves? For what purpose was that son born, who is neither learned nor virtuous? A son, who is devoid of science, courage, and good purposes, who is destitute of devotion and knowledge, and who is wanting in conduct, is similar to urine and excrement."

5. Apastamba says, "A son, who diligently performs the obsequies of his father and other ancestors, is of approved excellence, even though he be uninitiated: not a son who acts otherwise, he be hereditary even with the whole Veda."

6. "Since a son delivers his father from the hell called poth therefor he is named puro by the self-existent himself." By this and similar passages, great benefits are stated, as affected by means of a son. His connection with the property is therefore the reward of his beneficial acts. If then he neglect them, how should he have his hire? Accordingly Mand says, "All those brothers, who are addicted to vice, lose their title to the inheritance."

7. So [the same author]: "Impotent persons and outcasts are excluded from a share of the heritage; and so are persons born blind and deaf; as well as madmen, idiots, the dumb, and those who have lost a sense [or a limb]."

8. The impotent person is described by Nāyāvāya: "That man is called impotent, whose urine froths not, whose faces sink in water, and whose virile member is void of erection and of semen."

9. The term 'born' is connected in construction with the words 'blind' and 'deaf.' One, who is incapable of articulating sounds, is dumb. An idiot is a person not susceptible of instruction.

10. Nāyāvālyka says, "An outcast and his issue, an impotent person, one lame, a madman, an idiot, a blind man, a person afflicted with an incurable disease, [as well as others similarly disqualified,] must be maintained; excluding them, however, from participation." One, who cannot walk; is lame.
11. Although they be excluded from participation, they ought to be maintained, excepting, however, the outcast and his son. That is taught by Devala: "When the father is dead [as well as in his lifetime] an impotent man, a leper, a madman, an idiot, a blind man, an outcast, the offspring of an outcast, and a person wearing the token [of religious mendicancy], are not competent to share the heritage. Food and raiment should be given to them, excepting the outcast. But the sons of such persons, being free from similar defects, shall obtain their father's share of the inheritance." A person wearing the token of mendicancy is one who has become a religious wanderer or ascetic.

12. By the term outcast, his son also is intended; for he is degraded, being procreated by an outcast. That is confirmed by Baudhayana, who says, "Let the co-heirs support with food and apparel those who are incapable of business, as well as the blind, idiots, impotent persons, those afflicted with disease and calamity, and others who are incompetent to the performance of duties, excepting, however, the outcast and his issue."

13. On this subject, Narada says, "An enemy to his father, an outcast, an impotent person, and one who is addicted to vices [or has been expelled from society], take no shares of the inheritance even though they be legitimate: much less, if they be sons of the wife by an appointed kinsman."

14. Katyayana ordains, that "The son of a woman married in irregular order; and begotten on her by a kinsman, is unworthy of the inheritance; and so is an apostate from a religious order."

15. If a woman of superior tribe be espoused after marrying one of inferior class, both marriages are contrary to regular order. The son of either of these women, castesra, or issue of the wife, procreated by a kinsman authorized to raise up issue to the husband, is unworthy of the inheritance. But a son begotten by the husband himself, being of the same tribe, on his wedded wife espoused in irregular order, is heir to the estate; so likewise a son begotten by the husband on a wife dissimilar in class but espoused in regular gradation.

16. That is declared by Katyayana: "But the son of a woman married in irregular order, may be heir provided he belongs to the same tribe with his father: and so may the son of a man, belonging to a different [but superior] tribe, by a woman espoused in the regular gradation. The son of a woman married to a man of inferior tribe, is not heir to the estate. Food and raiment only are considered to be due to him by his kinsmen. But, on failure of them, he may take the paternal wealth. The kinsmen shall not be compelled to give the wealth received by them, not being his patrimony."

17. A possibility exists of an impotent man, and the rest as above enumerated espousing wives. "If the eunuch and the rest should at any time desire to marry, the offspring of such as have issue, shall be capable of inheriting." Issue signifies offspring.

18. It must not be objected, how they can contract marriages, since the eunuch, not being male, is incapable of procreation and the dumb man and the rest [for those born deaf or blind] are degraded for want of initiation and investiture, because they are exempt for [the preparatory study] the eunuch may obtain issue from his wife by means of another man; and a person unfit for investiture with the sacerdotal string is not degraded from his tribe for want of that initiation, any more than a Sudra.

19. Therefore the sons of such persons, being either their natural offspring or issue raised up by the wife, as the case may be, are entitled, provided they be free from similar defects, to take their allotments according to the pretensions of their fathers. Their daughters must be maintained until married, and their childless wives must be supported for life. It is so declared by Yajñavalkya: "Their sons whether legitimate or the offspring of the soil, are entitled to allotments if free from similar defects. Their daughters also must be maintained until provided with husbands. Their childless wives, conducting themselves aright, must be supported: but such as are unchaste, should be expelled; and so indeed should those who are perverse."

20. Thus it has been explained, who are persons incompetent to inherit.

CHAPTER VI.

Effects liable, or not liable, to partition.

Section I.

1 In the next place, effects which may be divided, and such as are exempted from partition, are here explained. On that subject Katyayana says, "What belonged to the paternal grandfather, and any thing else [appertaining to the co-heirs, having been] acquired by themselves; must all be divided at a partition among heirs."
2. And any thing else.] Here the particle ‘and’ is connected, in the sentence, with the term themselves; viz., ‘acquired by themselves.’ Or, as implied by the conjunctive particle, acquired by another person: but his acquisition must have been made through the common property [or else by joint personal labour.] Such is the meaning.

3. Meem and Vishnu declare indivisible what is gained without expenditure. "What a brother has acquired by his labour, without using the patrimony, he need not give up without his assent; for it was gained by his own exertion."

4. Since the patrimony is not used, there is no exertion on the side of the others, through the means of the common property: and, since it was obtained by the man's own labour there is no corporeal effort on the part of the rest: it is, therefore, the separate property of the acquirer alone; for the phrase "it was gained by his own exertion," is stated as a reason.

5. So Vyasa ordains: "What a man gains by his own ability, without relying on the patrimony, he shall not give up to the co-heirs: nor that which is acquired by learning."

6. Since it is expressed in general terms, 'what he gains solely by his own ability,' all property, so acquired, being his own, is not common. But, as the gains of science, though obtained by the man's own ability, are shared by parunears equally or more proficient in knowledge, the phrase "nor that which is acquired by learning," is subjoined for the sake of excluding illiterate or less learned parunears.

7. So Yajnavalkya directs: "Whatever else is acquired by the co-parunears himself, without detriment to the father's estate, as a present from a friend, or a gift at nuptials, does not appertain to the co-heirs."

8. Here, the mention of "a present from a friend" and so forth is intended for illustration only; since it is in such modes that acquisitions are usually made without expenditure.

9. So Meem likewise says: "Wealth, however, acquired by learning, belongs exclusively to him who acquired it; and so does anything given by a friend, received on account of marriage, or presented as a mark of respect."

10. Vyasa (delivers a similar precept:) "Wealth gained by science, or earned by valour or received from affectionate kindred, belongs, at the time of partition, to him [who acquired it] and shall not be claimed by the co-heirs."

11. What is obtained through favour or the like, from a father, uncle, or other kind relations, is received from affectionate kindred.

12. Nareda similarly says: "Excepting what is gained by valour, the wealth of a wife, and what is acquired by science, which are three sorts of property exempt from partition; and any favour conferred by a father."

13. What was received at the time of obtaining a wife is here called the "wealth of a wife;" meaning effects obtained on account of marriage. Excepting these acquisitions (12), let him divide other property; for this phrase is here understood, as expressed in another sentence.

14. By these and other similar passages, the circumstance of the property having been acquired by valour or the like, is not stated as a sufficient reason for its being exempt from participation; since a distribution even of property so acquired, is expressly ordained in certain cases. Thus Vyasa directs, a partition of effects so gained with the use of the common goods. "The brethren partake in that wealth, which one of them gains by valour or the like using any common property, either a weapon or a vehicle. To him two shares should be given: but the rest should share alike." So Nareda ordains: "He, who maintains the family of a brother studying science, shall take, he be ever so ignorant, a share of the wealth gained by science."

15. Since the term "maintained" is exhibited in the singular number, if the family of the brother, who is studying science, be made to prosper by another brother at the expense of his own wealth, or by the labour of his body, then he also has a title to property gained by that science.

16. So [the same legislator says,] "A learned man need not give a share of his own acquired wealth, without his assent, to an unlearned co-heir: provided it were not gained by him using the paternal estate."

17. The word "paternal" intends joint property. What has been gained by him without using that, a learned man need not give up, against his will, to an unlearned co-heir. But to a learned or instructed co-heir, he must give a share of any thing acquired by him, even without the use of joint property. Accordingly Gantama says, "His own acquired wealth, a learned man need not give up, against his inclination, to unlearned co-heirs."

18. What is gained by his personal labour on his separate funds, being his own acquired property, he need not give up, if he be unwilling to surrender it, unto unlearned co-heirs: but he must yield it to learned brethren.
19. This however, relates only to the gains of science. So Catayana declares: "No part of the wealth, which is gained by science, need be given by a learned man, to his unlearned co-heirs: but such property must be yielded by him, to those who are equal or superior in learning."

20. The word learning, expressed in the text, [and occurring there on] is connected with both terms, "equal" and "superior." Therefore, it must be yielded to such as are equal or superior in learning: but those who are less learned, or who are unlearned, have no right to participate.

21. Since it appears from these and other texts, that partition does or does not take place, in the case of wealth acquired by science, valour, or the like, according as joint property is or is not employed; and since this alone is the reason; a revealed maxim, containing that term only, must be inferred in words such as these, 'divide that, which is acquired by use,' not as containing also the terms 'gained by valour' and so forth: for the purpose is accomplished by the general maxim, which must necessarily be inferred.

22. This is precisely the object of the reasoning taught [in the Mimasa] under the head of Holasa.

23. Or the same meaning may be deduced from reasoning [without trouble of inferring the origin of the rule from a lost passage of Scripture.] That, which is acquired by a person, belongs exclusively to him, so long as he lives; if there be no special rule [to the contrary]: but, where the exertion of one is merely through the joint property, and the other contributes to the acquisition by his person and wealth, it is a rule suggested by reason, that the one should have a single share, and the other two. Hence likewise it follows, that, if the joint stock be used, shares should be assigned to each person in proportion to the amount of his allotment, be it little or much, which has been used.

24. Moreover, the text of Catayana [is similarly founded on reason.] "When brethren separated in regard to the patrimony, and subsequently living anew together, make a [second] partition, he, from whom an acquisition has proceeded, shall again take a double share."

25. This is expounded by Srisara as signifying, that 'a re-united person, who has made an acquisition with the use of the joint stock, shall have two shares; and the rest, one apiece.'

26. Hence it appears to be the opinion both of the sānt and of the Commentator, that wealth, gained with no use of the common funds, appertains exclusively to the acquirer, even in the instance of a re-union of co-partners; and such wealth, is not joint property; no special allotment is directed in the case of a gain made without use of joint stock.

27. Such being their meaning, the same is equally proper for the unseparated co-partner, as for the re-united one: because residence in the same abode [which implies junction of property] is equally pertinent as a reason, when separation has not, yet taken place, as when it has been annulled. Since the text is likewise pertinent, as directing, that the acquirer shall have two shares of an acquisition made with the use of common property, it is not right to restrict it to the case of re-united co-partners: for the reasoning, taught under the head of Holasa, opposes that restriction.

28. Besides, it is an uncontested rule, that an acquirer, as such, shall have two shares of wealth gained by the use of joint funds: for that allotment has been ordained by a text [of Vyasa] above cited (14) in the single case of the use of common stock. It is not reasonable to assign two shares only in the instance of an acquisition made by personal exertion upon separate funds: but something more (than two shares) would be reasonable, either the whole or something less (than the whole.) Here, since something less (than the whole) has not been directed either by sages or by compilers; and since it appears, that 'the rest of the brethren participate (in one case) on account of the employment of their common stock; it is fit, that their participation should be null (in another case) where that does not exist.

29. The rule that the acquirer shall have twice as much as the rest, must be grounded on reasoning: otherwise, [if its foundation in a passage of Scripture is to be assumed, and reasoning is not to be taken as its ground; it would be necessary either to insert in the maxim of revelation in question the condition of a gain made (by the father who is declared entitled to two shares;) or else to establish separately the title of an acquirer to a double share.]

30. It is therefore true, that wealth gained without use of joint stock belongs to the acquirer alone, not to the rest of the co-partners.

31. Moreover, a general maxim [of Scripture] to this extent, 'Let all share what is gained by an unseparated co-partner; cannot be inferred. For an exception to wealth acquired by valour or the like [without use of the joint stock] does occur. Thus Manu says: 'With, however, acquired by learning, belongs exclusively to him who acquired it: and so does anything, which a friend received on account of his exertion, as a mark of respect.' So Manu and Vishaṇu ordain, 'What a brother has acquired by his labour, without using the patrimony; he need not give up without his assent; for it was gained by his own exertion.'
22. Without using.] This is connected likewise with wealth acquired by learning: for, in such instances also, a precept, ordaining partition if joint funds be used, does occur.

23. Thus Yajnavalkya says: "Whatever else is acquired by the co-parcer himself, without detriment to the other's estate, as a present from a friend, or a gift at nuptials, does not appertain to the co-heirs. Nor shall be, who recovers hereditary property, which had been taken away, give it up to the co-parcers; nor what he has been given by another."

So with respect to wealth acquired by labour, a wealth of brute, and what is acquired by science, which are three sorts of property exempt from partition; and any favour conferred by a father." Likewise Vyasa: "Wealth gained by science, or earned by valour, or received from affectionate kindred, belongs, at the time of partition, to him [who acquired it,] and shall not be claimed by the co-heirs."

24. Received from affectionate kindred. Obtained from kind relations.

25. "What is given by the paternal grandfather, or by the father, as a token of affection, belongs to him [who receives it;] neither that nor what is given by a mother, shall be taken from him stock. man gaining by his own ability, without relying on the patrimony, he shall not give up to the co-heirs, nor that which is acquired by learning."

26. By thus excepting, under these and other texts, in regard to all the tribes and all the classes of mixed or of介质 origin, wealth acquired, without use of the joint stock, by the acquiree's own ability; whether effected by means of any science; or received from affectionate kindred (being given by a relative;) or obtained from a friend, or at nuptials, or with a token of respect; or gained by valour (that is, by combat or the like;) or earned by labour (that is, by agriculture, service, merchandise, &c.;) every acquisition [made without use of joint funds,] is excepted; therefore, since there can be none other, the [alleged] precept has no pertinence.

27. Or a case or two (of acquisition made without use of the common stock) may be, in some manner, assumed, to which the precept may relate. Still those cases should have been declared by express words: since it would have been easy for the sages to have said, 'divide certain property gained by an unseparated co-parcer;' and such property would be readily understood under its own name; better too than by using a long and circumlocution expression, like this ('wealth acquired before partition,' other than the gains of valour, &c. [acquired without use of joint funds]) for it is burdensome. And, if the present be intended as an exception, all the sages ought to specify every excepted term: for without that, the meaning of "other than such" would be unexplained; and the restrictive words of the sages would consequently appear as idle as the prattle of children. But, if it be intended for illustration, then some one instance is negligently propounded by one author; and another by another writer; and the omission of specifying the whole is right.

28. Therefore the maxim is, 'divide wealth acquired with the use of the whole stock,' and the particular terms, as the gains of valour, &c., are inserted in the texts as instances.

29. Hence the declaring of property common, merely because it was gained by an unseparated co-parcer, is not grounded on authority.

30. Besides, the text of Yajnavalkya, ("Nor shall he who recovers hereditary property &c."") is acknowledged by Vyasa likewise, as signifying, that, if one recover the property of the father, grandfather, or other ancestor, which has been taken away by any person, it appertains to him alone, not to the rest. Thus, (the author) denying the right of unseparated co-heirs in the property, because it has been recovered, although a trace of the former right exists, declares the remotest of the rest to wealth originally gained by the man himself.

31. It has been said by Srikara; "If wealth, acquired without using the patrimony, belongs exclusively to the acquirer, then effects, received in a present, can never be shared with another brother; for the receipt of a present cannot be attended with expenditure of paternally wealth. It is indeed alleged, that valuables are employed, at the receipt of gifts for the gratification of the donor; as a helper or the like in the purchase of sacrificial materials; or as milk for the support of life, during the sacrifices denominated Jyotishtoma. Here the valuables are not employed for the gratification of the giver, since his gratification, by receipt of other effects, is not requisite for a donation, the intention of which is spiritual; and, as the act of receiving is momentary, nourishment for the person, who accepts the present, is not requisite, as it is during the tedious celebration of the Jyotishtoma, for him who by that ceremony seeks celestial bliss.'

32. That is futile; for instances often do occur, in the world, of expenditure of wealth, by giving presents to induce a donation; and, in the present age, wealth received in gifts is similar to that which is earned by service. Accordingly it is said "In the Kali age, (gifts are made) to a follower."

33. And as for what is alleged (by the same author), that 'gratification is no cause of receipt of presents, having no such operation, since long attendance is the cause; and wealth, then, was never the occasion of such receipt through the medium of gratification,' that is still more futile: for long attendance, the rest become cause of such receipt through the medium of gratification; and, according to the diversity of men's dispositions, (gratification) is seen to arise, in the mind of one, from pecuniary gifts; of another, from
long attendance or the like; of some, from the mere swining of particular qualities. If the effect be not produced, for want of an attendant circumstance, it must not be thence concluded, there be no cause; obo, as is observed accordingly, gratification is produced by means which are not invariable.

44. It has been further urged [by the same author:] if it be alleged, that wealth mediately accomplishes the receipt of presents, being employed during attendance; since receipt cannot take place without contiguity; nor can this be without nourishment; that is denied; for nourishment, used for the support of life, previous to the celebration of a Jyoti-sthona or other religious ceremony, would, mediately serve for that ceremony, since the Jyoti-sthona could not take place without previous support of life; all food would, therefore be intended for religious ends, not for human purposes; and consequently wealth, which supplies it, would be designed for sacrificial uses; and the means of acquiring it would also be meant for the same end; and thus the maxim, that the acquisition of wealth itself, and food, are adapted to human purposes, would be contradicted.

45. That is most futile; for, although it mediately contribute to the celebration of the Jyoti-sthona, food obviously serves the immediate purpose of satisfying hunger; and being designed for human uses, it contributes to religious ends; but there is no proof of its being intended for such ends; nor does its so contributing operate towards such a result. How then should it follow, that acquisition of wealth, wealth itself, and food, are adapted to religious purposes?

46. Hence, (because it was not intended for that purpose, though it contribute to the result, or for the reason which will be stated,) there is no room for the reproach, 'If wealth be acknowledged to contribute to the receipt of presents, by means of nourishment previous to such receipt, then the acquisition of wealth can be made of no nourishment from the time of the receiver's birth, every mode of gain would be accompanied with detraction to the patrimony; and the restriction, 'without using the 'patrimony,' (3) would therefore not be inserted.' For, lest the restriction become superfluous, the text is understood to signify employment of wealth other than an expenditure of it adapted to nourishment and similar uses.

47. Moreover, an expenditure of wealth for nourishment or other uses, must necessarily be made even by a person remaining at home; and such expenditure is not designed for the acquisition of wealth: but its having been actually intended for that purpose is a requisite [to its being the cause of the gain:] consequently the supposition does not go too far.

48. Accordingly (since its being actually intended for the purpose is positively required; its merely contributing to that end is not sufficient:) Visvarupa has said, 'When wealth is not acquired by giving (or using) paternal property, it is declared (by the sages) not to be common, any more than wealth received on account of marriage: it becomes not common, merely because property may have been used for food or other necessaries: since that is similar to the sucking of the (mother's) breast.'

49. Hence, (because its being actually intended for that purpose is a requisite to its being the cause of the acquisition,) though much wealth, belonging to the father, have been expended in festivity at the son's initiation, or at his wedding, what is obtained by him in alms during his austerities as a student, or received on account of his marriage, is not common; for that expenditure of wealth was not made with a view to gain.

50. It is, therefore, demonstrated, that wealth, acquired by means of joint stock used for the express purpose of gain, is common property; and no other is so.

51. The same import may be deduced by abridging the substance of what has been expressed, after various disquisitions, by Jitendrya, who says: 'Whatever is acquired on separate funds is several property. For the sake of perspicuity, gains of science and other particular sorts are specified by way of example, in these and other words, 'Wealth, however acquired by learning, belongs exclusively to him who acquired it.' Such sorts of property are exempted from partition, because they are separate; but even those sorts of wealth become common, if there be a sufficient cause of a joint right. This also has, for the sake of ready comprehension, been in certain instances described (in the writings of sages) by the circumstances of joint stock used; in others, by that of joint exertion made; in some, by that of common relation.'

52. It has been, likewise, said by Balasa, 'The rest cannot have a right to wealth gained by one brother through science, or similar means; (being acquired without use of joint funds and independently of the exertions of the rest:) since there is no argument for it.'

53. The practice of dividing wealth gained by receipt of presents without expenditure of joint property, which is observed to prevail among various peoples, is not unseemly, whether founded on the mutual affection of the brethren, or on a manly sentiment. Or (it may be thus accounted for:) people, observing the partition of wealth received in presents (for presents are in general gains of science; and, as such, the participation of co-heirs equally or more learned is ordained by a passage of law, though the property have been acquired without use of joint funds;) and not knowing, that this partition of the gains of learning is
made under a special rule respecting science, but erroneously supposing the partition to take effect because the wealth was gained by an unseparaté co-heir, have done so of their own accord. It is not, however, founded on uniform practice. There is consequently nothing incongruous.

54. But, as for the text of Manus, ("After the death of the father, if the eldest brother acquire any wealth, a share of that belongs to the younger brothers; provided they have duly cultivated science,") the meaning of it is this; under another text, placing the eldest and younger brothers in the relation of father and son, ("As a father should protect his sons, so should the first born cherish his younger brothers; and they should behave to their elder brother, like children to their father, conformably with their duty respectively,";) the younger brothers have a title in the wealth of the eldest, though obtained without use of joint stock, as they have in their father's acquisitions. But there is this difference: that even the unlearned sons are entitled to their father's acquired property; but the learned brothers only have a right to participate in the wealth gained by the eldest.

55. This interpretation is right; for the terms of the text would else become meaningless expressing 'after the death of the father,' if the eldest brother, &c., provided they have 'duly cultivated science.'

56. Consequently it was an inaccurate assertion, that another unseparaté brother participates, on the sole ground of the acquisition being made by an unseparaté co-heir.

Section II.
Definitions of the various sorts of acquisitions, &c., exempt from partition.

1. On this [occasion, or among topics hinted,] the gains of science are explained. Upon that subject Katyayana says, "What is gained by the solution [of a difficulty], after a price has been offered, must be considered as acquired through science, and is not included in partition [among co-heirs]. What has been obtained from a pupil, or by officiating as a priest, or for [answering] a question, or for determining a doubtful point, or through display of knowledge, or by [success in] disputations, or for superior [skill in] reading, the sages have declared to be the gains of science and not subject to distribution. The same rule likewise prevails in the arts; for the excess above the price [of the common goods], and that which is gained through skill by winning from another a stake at play, must be considered as acquired by science, and not liable to partition. So Vṛṣṇapati has ordained." 16

2. "If you solve this well, I will give you so much money;' after such an offer, if one solve the difficulty and obtain the prize, it is not subject to distribution.

3. From a pupil] From a person instructed by the acquirer.

4. By officiating as a priest] Received as a fee or gratuity from a person employing him to officiate at a sacrifice.

5. These are fees, not presents; for they are similar to wages or hire.

6. So, a question relative to science being resolved, if any one, through satisfaction, give anything which had not been previously offered.

7. Also what is obtained by clearing the doubts of one, by whom an offer has been thus made: "To him, who removes my doubts on the meaning of this passage, I will give this gold." Or [it may signify a fee, such as] the sixth part of the like, received for a correct decision between two litigant parties, who apply for the determination of a dubious and contested point.

8. Likewise, what is received in a present or the like for displaying his knowledge in the sacred ordinances and so forth.

9. So, in a contest between two persons respecting their knowledge of sacred ordinances, or in any other controversy whatsoever concerning their respective attainments, what is gained by surpassing the opponent.

10. Likewise, where a single article is to be given, and there are many competitors, what is received for reading in a superior manner.

11. Also, what is gained by painters, goldsmiths, and other artists, through skill in the arts and so forth.

12. In like manner, what is won by beating another at play.

13. All this is exempt from being shared with the rest of the co-heirs. The meaning is as follows: whatever is acquired by any [skill or] science, belongs to the acquirer, not to the rest. For illustration only, it has been stated at large by Katyayana, to obviate the error of Śrīkara and others.
14. Hence, (since it is enumerated by Katyayana among the gains of science;) what is obtained in a present by displaying and making known his own knowledge, is also an acquisition made by science: for a present is given to a learned man on account of his learning.

15. So Yama: "A man endowed with science, regular in (the performance of his) duties, contented, patient, with subdued passions, of strict veracity, grateful, disinterested, kind to cows, careful of them, generous, a performer of sacrifices, and a priest, the sages pronounce worthless to him. But a present should not be conferred on such as neglect rigid observances, or are ignorant of holy texts, or merely live by their class: for a stone transports not a stone (over the stream)."

16. For, it is in right of his learning, that he is a fit object of gifts; and unlearned men are unworthy objects.

17. Hence, what has been alleged by some one, that the gains of science signify such gifts (only) as are received on account of teaching; must be rejected, as having been said for want of seeing the text above cited: and because the word science (vidya) being derived from the root vid to know, signifies any knowledge (or skill.)

18. As for what is opposed by Sivakara, that 'by pronouncing wealth received in presents to be the earning of science, receipt of presents, instruction of pupils, and assistance in sacrifices, are confounded;' that is very futile; since, although presents and the rewards of teaching and assisting in sacrifices, and other particular sorts, be connected as being equally gains of science; yet the several sorts are not confounded: for still the rewards of teaching and of sacrificing are not presents; and it is an uncontroverted truth, that a black bull, a red or a piebald one, or other individuals, through equality bulls, are not confounded.

19. Accordingly, (as they are not confounded, or because things generally similar are specifically different; therefore,) since (it may be asked) 'how does the sage, by pronouncing what is received from a pupil or for officiating as a priest to be the earning of science, fall in discriminating the rewards of teaching and of sacrificing?' the allegation (of their being confounded,) merely by way of offering an objection, must be rejected.

20. Katyayana propounds the gains of valour, &c., "When (a soldier) performs a gallant action, despising danger; and favour is shown to him by his lord pleased with that action; whatever property is then received by him, shall be considered as gained by valour. That and what is taken under a standard are declared not to be subject to distribution. What is seized (by a soldier) in war, after risking his life for his lord and routing the forces of the enemy, is named spoil taken under a standard."

21. "But wealth received on account of marriage is considered to be that which has been accepted with a wish."

22. The meaning is, received at the time of accepting a bride.

23. So Mena and Vishnu state other sorts of property except from partition. "Clothes, vehicles, ornament, prepared food, waters, women, and furniture for repose or for meals, are declared not liable to distribution."

24. Clothes.) Personal apparel and raiment intended to be worn at assemblies. Vehicles.) Carriages or horses and the like. Ornaments.) Rings and so forth. Prepared food.) Sweetmeats, &c. Water.) Contained in a pond or well; as suited to use. Women.) Other than female slaves. Furniture for repose or for meals.) Beds, and vessels used for eating and sipping (or drinking) and similar purposes.

25. So Vyasa: "a place of sacrifice, a field, a vehicle, dressed food, water and women, are not divisible among kinsmen, though (transmitted) for a thousand generations."

26. A place of sacrifices. The spot, where sacrifices are performed; or else an idol: not wealth obtained by sacrificing; for that has been noticed as being the earning of science.

27. Thus Katyayana: "The path for cows, the carriage road, clothes, and any thing which is worn on the body, should not be divided: nor what is requisite for use, or intended for arts: so Vrhaspathi declares."

28. Requirest for use. What is fit for each person's use; as books and the like in the study of the Vedas, &c. That shall not be shared by ignorant brethren. So what is adapted to the arts belongs to artists; not to persons ignorant of the particular art.

29. Also Sancha and Lochita: "No division of a dwelling takes place; nor of water-pots, ornaments, and things not of general use, nor of women, clothes, and channels for draining water. Prajapatih has so ordained."
20. A house, garden, or the like, which one of the co-heirs had constructed within the site of the dwelling place, during the father’s life-time, remains his indivisible property: for his father has assented by not forbidding the construction of it.

21. So, even property inherited from the paternal grandfather, which has long been lost, and is not recovered by the rest through inability, or through aversion from (the efforts requisite for its) recovery, belongs exclusively to the father, if recovered by him on his own funds, and by his own labour; and is not common property.

22. Thus Menu ordains: “If a father recover the property of his father, which remained unrecovered, he shall not, against his will, share it with the sons, since, in fact it was acquired by himself.”

23. Property appertaining to his father, not recovered by the sons; not retrieved by them. The other readings, anusaya and anusayam (in place of anusayam) are unfounded.

24. Vrhaspati says, “over the grandfather’s property, which has been seized (by strangers) and is recovered by the father through his own ability, and over (any thing gained by him through science, valour, or the like, the father’s full dominion is ordained. He may give it away at his pleasure, or he may defray his consumption with such wealth; but, on failure of him, the sons are pronounced entitled to equal shares.”

25. Through his own ability.) The author thus indicates a separate personal execution.

26. In both texts, the term “father” is indefinite for a reason (of the precept) is stated: “since, in fact, it was acquired by himself.” (22.)

27. Thus the rule must be understood in the instance of any such hereditary property, other than land, exactly as in the case of property not hereditary, but acquired by the man himself.

28. Cankha propounds a special rule regarding land. “Land, inherited in regular succession, but which had been formerly lost, and which a single (heir) shall recover solely by his own labour, the rest may divide according to their due allotments, having first given him a fourth part.”

29. By the term “solely” the author intimates, that neither common funds were used nor joint personal exertions made, still it does not become the separate property of the person recovering it; but a fourth part of the land recovered must be given to him in addition (to his regular allotment) by force of the word land; and because there is no reason for supposing it to be vague.

30. Thus have been explained both, what is divisible and what is exempt from partition.

CHAPTER VII.

On the participation of Sons born after a partition.

1. The share of a son born after the partition of the estate is now declared. On that subject Menu and Nareda say, “A son; born after a division, shall alone take the paternal wealth; or he shall participate with such (of the brethren,) as are re-united with the (father.).”

2. If the father, having separated his sons, and having reserved for himself a share according to law without being re-united with his sons; then a son, who is born after the partition, shall alone take the father’s wealth; and that only shall be his allotment. But if the father die after re-uniting himself with some of his sons that son, shall receive his share from the reunited co-heirs.

3. Thus Gautama says: “A son, begotten after partition, takes exclusively the wealth of his father.”

4. He, of whom the conception was subsequent to the division of the estate, is a son begotten after partition; being procured by a person, who is separated (from co-heirs) for, without conception, there is no procreation. Therefore, if the sons were separated (from the father,) while his wife was pregnant but not known to be so, the son, who is afterwards born (of that pregnancy,) shall receive his share from his brothers.

5. Not one only, but even many sons, begotten after partition, shall take exclusively the paternal wealth. Thus Vrhaspati says: “The younger brothers of those, who have made a partition with their father, whether children of the same mother, or of other wives, shall take their father’s share. A son, born before partition, has no claim on the paternal wealth; nor one, begotten after it, on that of his brother.”

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8. One, born previously to the partition, is not entitled to the paternal estate; nor one begotten by the separated father, to the estate of his brother. So the same author declares: "All the wealth, which is acquired by the father himself, who has made a partition with his sons, goes to the son begotten by him after the partition. Those, born before it, are declared to have no right; as in the wealth so in the debts likewise, and in gifts, pledges and purchases.

7. Under the term "all," wealth, however considerable, which is acquired by the father, goes to the son begotten by him after partition.

8. "They have no claims on each other, except for acts of mourning and libations of water."

9. By specifying "Acts of mourning and libations of water" only, the author excludes the rest of pretensions to a participation in wealth.

10. This is applicable only to the case of wealth acquired by the father. But, if property inherited from the grandfather, or land or the like, had been divided, he may take a share of such property from his brothers: for partition of it is authorised, (only) when the mother becomes incapable of bearing more children. (Consequently, since the partition is illegal, having been made in other circumstances, it ought to be annulled.)

11. That is declared by Vishnu: "Sons, with whom the father has made a partition, should give a share to the son born after the distribution."

12. So Vamana: "When the sons have been separated, one afterwards born of a woman equal in class, shares the distribution. His allotment must positively be made out of the visible estate corrected for income and expenditure."

13. Since it discrees with the ordinance, that "he shall alone take the paternal wealth," it must relate to his hereditary property, for the reason abovementioned.

CHAPTER VIII.

On the allotment of a share to a co-parcener returning from abroad.

1. The participation of one, who arrives after the distribution of the estate, is next declared. On this subject Vribhast says, "Whether partition have, or have not, been made; whenever an heir appears, he shall receive a share of whatever common property there is. Be it debt, or a writing, or house, or field, which descended from his paternal ancestor, he shall take his due share of it, when he comes, even though he have been long absent."

2. "If a man leave the common family, and reside in another country, his share must no doubt be given to his male descendants when they return. Be the descendant third, or fifth, or even seventh, in degree, he shall receive his hereditary allotment, on proof of his birth and name."

3. "To the lineal descendants, when they appear, of that man, whom the neighbours and old inhabitants know by tradition to be the proprietor, the land must be surrendered by his kinsmen."

4. Under this text; the heir (of a co-parcener) long absent shall take his due allotment, after making himself known to the old inhabitants settled on all sides.

5. Such is the participation of one arriving after a division.

CHAPTER IX.

On the participation of sons by women of various tribes.

1. Partition among sons of the same father by different women; some equal to himself by class, others married in the direct order of the tribes, is now described.

2. Marriage is allowed with women in the order of the tribes, as well as with those of equal class; for Visnu says, "for the first marriage of the twice born classes, a woman of the same class is consecrated; but for such, as are impelled by desire, these following are preferable in the order of the classes. A Sudra woman only must be the wife of a Sudra; she and a woman of his own tribe [are the only wives] of a merchant; they two, and a woman of his own class, are alone eligible for a man of the royal (military) tribe; and those [three] and a woman of his own rank [may be wives] of a priest."
8. A Sudra woman only. The particle “only” is connected with every member of the sentence; that is, the term, expressed immediately before, is understood with the words “she,” “they two,” and “these three.” The meaning is, that marriage in the inverse order of the tribes must by no means be contracted.

4. But for such, as are impelled by desire, these, &c.] This indicates an alleviation of offence, not entire exemption from blame.

5. Cakka and Likhita declare, “Wives must be espoused. Women of like class are preferable for all persons.” This is stated as the principal rule. The succeeding one follows: “Four wives of a Brahman are allowed in the direct order; three, of a Kshatriya; two, of a Vaisya; and one, of a Sudra.”

6. The numbers here stated, “four,” &c. are intended to refer to the tribes.

7. These women are wedded wives. So Faithesoi shows: “Four wedded wives of a Brahman are allowed; and three, two, and one, of the rest respectively.

8. Of the rest.] Of the Kshatriya, &c. in their order, three, two, and one, may be allowed.

9. Though [such a marriage be] in the direct order of the classes, Manu and Vishnu have strongly censured the union of a man of a regenerate tribe with a Sudra woman. “Men of the twice born classes, who, through infatuation, marry a woman of the low tribe, soon descend like filthies and procreate the estate of Sudras. According to Athi and [Gautama] the son of Vasuda, he, who marries a Sudra woman is degraded instantly; according to Carus, on the birth of a son; and, according to Brugu, on the birth of a son’s son. A Brahman, who has ascended the couch of a Sudra woman, sinks to a region of torment: so, he who begot a child on her, he loses even his pristine rank.”

10. It thus appears, that the texts are applicable to the instance of such a woman married in regular gradation. Harita’s text also, which coincides with that of Manu and the rest, relates to a woman espoused. Thus he says, “No other is so sacrilegious, as is the husband of a woman of the servile tribe, for that Brahmana is slain by the child, which he himself begot on her.” Accordingly [since marriage with a Sudra woman, and procreation of issue by her, are forbidden;] Samba omits the Sudra in describing a wife eligible for a twice-born man. “A Brahmana, a Kshatriya, and a Vaisy, are propounded as the allowed wives of a Brahmana; a Kshatriya, and a Vaisy, of a Kshatriya; but a Vaisy is ordained the only wife of a Vaisy: and a Sudra, of a Sudra.

11. Hence these evils do not ensue on the procreation of offspring upon a Sudra woman, not married to [the Brahmana] himself: but a venial offence is committed, and a slight penance is requisite, as will be shown.

12. Manu propounds the distribution among sons of four classes. “Let the venerable son take three shares of the heritage; and the son of the Kshatriya wife, two shares; the son of the Vaisy, a share and a half; and the son of the Sudra wife, may take a share. Or let a person, conversant with law, divide the whole collected estate into ten parts, and make a legal distribution by this [following] rule: let the venerable son receive four parts; the son of the Kshatriya, three; the son of the Vaisy, have two parts; and let the son of the Sudra take a single part.”

13. Two modes are propounded on the supposition of some [superiority of] good qualities [in the sons belonging to regenerate tribes, or in the Sudra’s son.] 14. On this subject Vishnu has delivered rules: “If there be some of a Brahmana, by women of the four tribes,” &c., down to the concluding passage, “On this principle, shares should be distributed in other cases likewise.”

15. The son of a Brahmana by a Kshatriya wife, if eldest of all by birth, and superior in virility, shall be an equal sharer with the Brahmana son: and the son of a Brahmana, or of a Kshatriya, by a Vaisy wife, shall, in like circumstances, be an equal partidgeater with the Kshatriya son. Vrshapati directs: “The son of a Kshatriya wife, being eldest by birth, and endowed with superior qualities, shall have an equal share with the venerable son of the Brahman: and, in like manner, the son of a Vaisy wife shall share equally with the soldier.” So Banahdharsa says, “Of the sons by a woman of equal class and by one of the next inferior tribe, if this son of the wife one degree lower [than her husband] be [the most] virtuous; he may take the allotment of an eldest son. For a virtuous brother is the supporter of the rest.”

16. It is then shown, that the Sudra likewise, in similar circumstances, shall have an equal share with the Vaisy son.

If. But land, which has been acquired by the father, through acceptance (of a pious donation,) shall belong to the son of the Brahman exclusively, not to the Kshatriya, son and the rest: and the house, and hereditary field, appertains to the sons of regenerate classes, not to the Sudras. So Vasishtha declares: “The sons of the Brahman shall take land which was received as a pious gift; but all the sons of twice-born classes shall have the house, as well as the field, which has descended from ancestors.”
All sons, belonging to regenerate tribes, have a right to hereditary acquisitions gained both by the paternal grand-father and by the paternal great-grandfather; for it is expressed without restriction, “descended from ancestors.” But in the case of land obtained by acceptance (of a donation), since the right of the Kshatriya’s son and the rest is denied that of progeny and other descendants (claiming through such sons) is (properly) unknown.

This is declared by Vrihaspati: “Land, obtained by acceptance of donation, must be given to the son of a Kshatriya, or other wife of inferior tribe; even though his father give it to him, the son of the Brahman may return it, when [his father is] dead.” And thus [since the text of Vrihaspati has the same foundation, land, obtained by acceptance of donation, is the same which has been termed (by Manu) land received as a pious gift (brahmamayya): for the study of the Vedas (here signified by the term brahma,) and the knowledge of their meaning, have been propounded as qualifications for the receipt of gifts.

It is not land which has been received as a present, according to the text of Manu: “To priests returned from the mansion of their preceptors, let the king show due respect; for that holy mode of showing respect by kings, is pronounced unsurpassable.” Since this assumes the form of a token of respect.

Or else, this land is excepted by one author, as the other is by the other.

But the land of a Brahmana is not universally a holy heritage (brahmamayya): for it is expressly declared, that sons of twice-born classes have a right to the hereditary field; and the Sudra is alone excluded. So a passage of law expresses: “The son, begotten on a Sudra woman by any man of a twice-born class, is not entitled to a share of land; but one bearing the name of his father, being of equal class, shall take all the property [whether land or chattels]; thus is the law settled.”

Since land only is mentioned, it follows, that a Sudra’s son has no right to land acquired by his father, being of a regenerate tribe, through purchase, or through favour, or through any other means.

A Sudra, being the only son of a Brahmana, is entitled to a third part (of the inheritance); and (the remaining, two parts go to the Saptindas; or on failure of them, to the Saktulayas, or, if there be none, to the person, who performs the obsequies. So Devaiges ordains: “A Nishada, being the only son of a priest, shall have a third part (of the heritage); and let the kinsman, near or remote, who performs the obsequies (for the deceased, take the two (remaining) shares.

The son, begotten by a Brahmana on a Sudra, is termed a Nishada. The difference between the Saptindas and Saktulayas (the near and the remote kinsman) will be explained under the head of succession to the estate of a man who leaves no son.

If a Sudra be the only son of a Kshatriya or of a Vaisya, he takes half of his estate; and the next heir, according to the order of succession subsequently explained in regard to the estate of one who has no male issue, shall take the other half. So Vishnu says, “A Sudra, being the only son of any twice-born man, takes half his property; and the other half goes where the estate of a childless man would devolve.”

Here the right to a third part, or the succession to half the estate, must be understood as restricted to the instance of a person endowed with science, morality and virtues. For Manu says, “Whether he have sons, or have no sons, by other wives, no more than a tenth part must be given to his son by a Sudra wife.” Since more than a tenth part is by this text forbidden, although there be no son belonging to a regenerate tribe; it appears, that the preceding text relates to an excellent only son by a Sudra woman. As for the prohibition of his participating in the estate, as declared by Manu; (“The son of a Brahmana, a Kshatriya, or a Vaisya, by a woman of the servile class, shall not share the inheritance; whatever his father may give him, let that only be his property. It must be explained as implying, that the property received by him through his father’s favour, amounting to a tenth part of the estate.

A passage of Vrihaspati expresses, “the virtuous and obedient son, born by a Sudra woman, to a man who has no other offspring, should obtain a maintenance; and let the kinmen take the residue of the estate:” which signifies, that something should be given, to enable him to practise agriculture or some other profession adapted to earn a subsistence; but to one deficient in good qualities, food and other necessaries, as means of subsistence, may be given, in consideration of his behaving with humility and obedience like a pupil. Thus a passage of Manu declares, “A son, begotten through lust on a Sudra woman by a man of the priestly class, is even as a corpse though alive, and is hence called a living corpse (parasava).” These (two) passages imply, that the Sudra woman is unmarried. For a husband is enjoined to approach his wedded wife once in the proper season; and conception takes place then only, not on subsequent intercourse. Thus Vaiṣṇava interprets. “If a brother die without male issue, let another approach the widow once in the proper season;” and Manu ordains, “Having espoused her in due form, she being clad in a white robe, and pure in her moral conduct, let him approach her secretly once in each proper season, until issue be had. The first intercourse being the cause of pregnancy, the notion of “cess” may be intended for a secular purpose: else, it must be supposed to be meant for a spiritual end: Accordingly, in the practice of the world, months are counted from the day of the first intercourse, as well for regulating auspicious observances, as for determining the performance of
cereonies restricted to particular months, as the Punasvak and Simantonnayana. Hence the expression "A son begotten through lust on a Sudra," must relate to the child of an unmarried Sudra.

29. (But the son of a Sudra, by a female slave or other unmarried Sudra woman, may share equally with other sons, by consent of the father.) Thus Manu says, "A son, begotten by a man of the servile class on his female slave, or on the female slave of his slave, may take a share of the heritage, if permitted: thus is the law established."

30. (Without such consent, he shall take half a share) as Yajnavalkya directs: "Even a son, begotten by a Sudra on a female slave, may take a share by the choice of the father; but, if the father be dead, the brethren should make him partaker of half a share.

31. Regotten on an unmarried woman, and having no brother, he may take the whole property: provided there be not a daughter's son. So Yajnavalkya ordains: "One, who has no brothers, may inherit the whole property; for want of daughter's sons." But, if there be a daughter's son, he shall share equally with him: for no special provision occurs; and it is fit, that the allotment should be equal; since the one, though born of an unmarried woman, is son of the owner; and the other, though sprung from a married woman, is only his daughter's son.

CHAPTER X.

On the participation of sons by adoption.

1. If a true legitimate son be born after the appointment of a daughter to raise up issue, the distribution to be made between them is here pronounced.

2. In such a case, the appointed daughter and the legitimate son take equal shares: nor is the appointed daughter entitled to a deduction of a twentieth part in right of seniority. So Manu declares: "A daughter having been appointed, if a son be afterwards born, the division of the heritage must, in that case, be equal: since there is no right of primogeniture for the woman." For the appointed daughter does not herself perform the functions of an eldest son; but, through her son, presents funeral oblations: as is hinted by Manu: "He, who has no son, may appoint his daughter in this manner to raise up a son for him: saying, the child which shall be born of her, shall be mine for the purpose of performing my obsequies."

3. It must not be supposed, that, if the appointed daughter first bear a son, and a legitimate son of her father be afterwards born, her son should have the allotment of an eldest son: for he is considered as a son's son. Manu intimates as much, saying, "By that male child, whom a daughter, whether formally appointed or not, shall produce from a husband of an equal class, the maternal grandfather becomes grand sire of a son's son: let that son give the funeral oblation and possess the inheritance." For the appointed daughter is as it were a son (putra); and her son is deemed a son's son (pouter); and her father, to whom he thus appertains, becomes grand sire of a son's son. Now there has not been any mention of a peculiar allotment in right of primogeniture for the son's son.

4. As for the text of Vasišṭha, which declares the son of an appointed daughter to be an adopted son: ("This damsel, who has no brother, I will give unto thee decked with ornaments: the son, who may be born of her, shall be my son,") whence it appears, that both the appointed daughter and her son are (denominated) sons: this designation of him as a son must (since it contradicts Manu; and since the oblation of a funeral cake is the only quality of a son, which he possesses: he is figurative: for through him, the appointed daughter, offers the funeral oblation; and thus one actually is such, and the other is so by his means.

5. The distribution before mentioned must be understood in the case where the legitimate son and the appointed daughter are of the same tribe: but if they be of dissimilar classes a distribution between them must be made as between legitimate sons appertaining to different classes: for the true son and the appointed daughter are equal.

6. But, if a daughter, being actually appointed, becomes a widow without having borne a son, or if she be ascertained to be barren, she has not, in that case, a right to her father's wealth; since the appointment was made for the sake of a son, who may perform obsequies: and on failure of that, she is similar to any other daughter.

7. In a partition among sons of the wife and the rest, with a true legitimate son, such of them, as are of the same class with the (adoptive) father and superior by tribe to the
true son; whether they be sons of an appointed daughter, or issue of the wife, or offspring of an unmarried damsel, or secretly produced, or abandoned [by the natural parents,] or received with a bride, or born of a twice-married woman, or given, or self given, or made, or bought; shall be entitled to the third part of the share of a true son. So Devala after having described the twelve sons, expressly declares, "These twelve sons have been provided for the purpose of offering: being sons begotten by a man himself, or procured by another man, or received [for adoption.] or voluntarily given. Among these, the first six are heirs of kinsemen, and the other six inherit only from the father: the rank of sons is distinguished in order as enumerated. All these sons are pronounced heirs of a man who has no legitimate issue by himself begotten: but, should a true legitimate son be afterwards born, they have no right of primogeniture. Such, among them, as are of equal class [with the father,] shall have a third part as their allotment: but those of a lower tribe must live dependent on him supplied with food and raiment."

8. The true legitimate son and the rest, to the number of six, are not only heirs of their father, but also heirs of kinsemen; that is, of Sapindas and other relations. The others are successors of their [adoptive] father, but not heirs of collateral relations (Sapindas, &c.)

9. They take the whole estate of a father, who has no legitimate issue by himself begotten: but, if there be a true son, such of them, as are of the same tribe with the father, take a third part.

10. Since the appointed daughter is equal to the true legitimate son, the same order of distribution must be observed in her case.

11. But those [adopted sons] who are inferior by class to the father, yet superior to his legitimate son, shall take the fifth or the sixth part of a legitimate son's share, according to their good qualities, or the want of such qualities. Thus Manu says: "Let the legitimate sons, when dividing the patrimonial heritage, give a sixth part, or a fifth, of the patrimony to the son of the wife."

12. (Since all adopted sons are, in Devala's text [§ 7.] equal to the wife's son,) the term Kshetraja (son of the wife) is, in Manu's text, indefinite [and comprehends other descriptions of sons.]

13. (But such as are inferior by class to the father, and to their brother, his legitimate son, are entitled only to food and raiment.) So Manu declares: "The legitimate son is the sole heir of his father's estate; but, for the sake of pity, he should give a maintenance to the rest." Thus Katyayana says, "If a legitimate son be born, the rest are pronounced shareers of a third part, provided they belong to the same tribe [with the father;] but, if they be of a different class, they are entitled to food and raiment only."

14. The term "the rest" in the text of Manu, as well as the phrase "if they be of a different class," in that of Katyayana, signify one of inferior tribe: conformably with the text of Devala (§ 7.).

15. Manu states the distribution between a true son, and the issue of the wife produced without due authority. "If there be two sons, a legitimate one, and the son of a wife claiming the estate of the same person, each shall take the property which belonged to his father; and not the other."

16. Let each receive the wealth of him, from whose seed he sprung: and let not the other take it, who sprung from the seed of another person. Accordingly Narada says, ("If two sons, begotten by two fathers, contend for the wealth of the woman, let each of them take that which was his father's property: and not the other.")

17. The wealth, appertaining to the woman, which was given to her by the respective fathers, let the son of each father severally take: and not the other. It would be needless to enlarge.

CHAPTER XI.

On succession to the estate of one who leaves no male issue.

Section I.

On the Widow's right of succession.

1. In regard to (succession) to the wealth of a deceased person, who leaves no male issue, authors disagree, in consequence of finding contradictory passages of law.
2. Thus Vṛhaspati says, "In scripture and in the code of law, as well as in popular practice, a wife is declared by the wise to be half the body of her husband, equally sharing the fruit of pure and impure acts. Of him, whose wife is not deceased, half the body survives. How then should another take his property, while half his person is alive? Let the wife of a deceased man, who left no male issue take his share, notwithstanding kinsmen, a father, a mother, or uterine brother, be present. Dying before her husband, a virtuous wife partakes of his consecrated fire; or, if her husband die before her, she shares his wealth; this is a primeval law. Having taken his moveable and immovable property, the precious and the base metals, the grains, the liquors, and the clothes, let her duly offer his oblations and other funeral rites. With present offered to his manes, and by pious liberality, let her honour the paternal uncle of her husband, his spiritual parent and daughter's sons, the children of his sisters, his maternal uncles, and also ancient and unprotected persons, guests and females (of the family). Those near or distant kinsmen, who become her adversaries, or who injure the woman's property, let the king chastise by inflicting on them the punishment of robbery."

3. By these seven texts Vṛhaspati having declared, that (the whole wealth of a deceased man, who had no male issue, as well the moveable as the immovable property, the gold and other effects, shall belong to his widow), although there be brothers of the whole blood, paternal uncles, [daughters], daughter's sons and other heirs; and having directed, that any of them, who become her competitors for the succession, or who themselves seize the property, shall be punished as robbers; totally denies the right of the father, the brothers and the rest to inherit the estate of a widow remain.

4. In like manner Yajnavalkya says, "The wife and the daughters, also both parents, brothers likewise and their sons, gentiles, cognates, a pupil and a fellow-student; on failure of the first among these, the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue. This rule extends to all persons and classes." Thus affirming the right of the last mentioned on failure of the preceding, the sage propounds the succession of the widow in preference to all the other heirs.

5. So Vishnu ordains: "The wealth of him, who leaves no male issue, goes to his wife; on failure of her, it devolves on daughters; if there be none, it belongs to the father; if he be dead, it appertains to the mother; on failure of her, it goes to the brother's sons; if there be none, to his brother's sons; if none, to the brother's sons; if these fail, to the kinmen (bandhus) in their default, it devolves on relations (sakulyas) (failing them, it belongs to the pupil;) on failure of these, it comes to the fellow student; and, for want of all those, the property escheats to the king; excepting the wealth of a Brahmana."

6. By this text, relating to the order of succession, the right of the widow, to succeed in the first instance is declared. It must not be alleged, that the mention of the widow is intended merely for the assertion of her right to wealth sufficient for her subsistence. For it would be irrational to assume different meanings of the same term used only once, by interpreting the word w거더 as signifying the whole estate in respect of brothers and the rest, and not the whole estate in respect of the wife. Therefore, the widow's right must be affirmed to extend to the whole estate.

7. Thus Vṛhat Manu says, "The widow of a childless man, keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain [his] entire share."

8. "His" is repeated or understood from the words "his funeral oblation;" for that term alludes to his husband. The meaning therefore is, 'the wife shall obtain her husband's entire share: not 'she shall obtain her own entire share;' for the direction, that 'she shall obtain,' would be impertinent, in respect of her own complete share. Since the intention of the text is to declare a right of property, it ought not to be interpreted as declaring such right in regard to the person's own share; for that is known already from the recitation of it as that person's share, and it need not therefore be declared.

9. Nor should it be said, that the intention of the text is to authorize the taking [or using] of the goods, [not to declare the right of property;] for the taking or using of one's own property is a matter of course.

10. Nor can the text be supposed to intend a positive injunction [that she should take her own share]. For its purpose would be spiritual; and, if it were an injunction, a person who commanded and other particular [as sin in the omission, &c.] must be inferred.

11. It is alleged, that, as in the passage, "let a son, who is neither blind nor otherwise disqualified, take an entire share," [the meaning is] not 'his father's entire share,' but 'his own complete allotment;' so, in this instance likewise, the terms are [interpreted as] relative to the widow's own complete allotment. That is not accurate; for since there is no such passage of law as that stated, the example is impertinent; or admitting that there is, still, since for the reason before mentioned it would be impertinent as a precept, [the alleged example] will be rightly interpreted as relative to the father's share.
12. Accordingly [since the scope of the precept cannot be to declare a right of property in a person’s own wealth; the sages do, in all instances, propound the right of a different person as heir,] to the wealth of another [who is his predecessor;] for example, that of sons to the paternal estate; and that of widows and the rest to the goods of a man who leaves no male issue; and so in other cases. They do not needlessly bid a person take his own share.

13. It is alleged, that by the mention of the relative, the correlative is suggested; and thus, when the word mother is [slangly] employed, it is not understood to intend a stranger’s mother. This objection is irrelevant; for the maxim is applicable where the correlative is not specified; and thus, when it is said “called Ditha’s mother,” neither the mother of the messenger, nor of the sender, is supposed to be meant. In like manner, since the correlative is here indicated by the pronoun in the phrase, “his funeral oblation,” how can [the word share] refer to the wife? And the incongruity of supposing the text to be an injunction, has been already shown (§ 10).

14. Therefore, it is demonstrated, that Vrhat Manu (§ 7) declares the widow’s right of taking his [that is, her husband’s] entire share.

15. Passages of various authors, which declare the contrary of the widow’s right of succession, are the following. Sankha, Likhita, Pahlinsai and Yama say, “The wealth of a man, who departs for heaven, leaving no male issue goes to his brothers. If there be none, his father and mother take it; or his eldest wife, or a kinman, (sagotra) a pupil, or a fellow student.”

16. Here, in contradiction to the preceding text the succession of the father and another if there be no brother, or that of the wife, if they be both dead, is propounded.

17. So Devala ordains: “Next let brothers of the whole blood divide the heritage of him who leaves no male issue, or daughters equal [as appertaining to the same tribe:] or let the father if he survive, or [half] brothers belonging to the same tribe, or the mother or the wife, inherit in their order. On failure of all these, the nearest of the kinmen succeed.”

18. Here the contradiction is the brother being placed first of all the heirs, and the widow last.

19. Some reconcile the contradiction by saying, that the preferable right of the brother supposes him either to be not separated or to be re-united; and the widow’s right of succession is relative to the estate of one, who was separated from his co-heirs and not re-united with them.

20. That is contrary to a passage of Vrhaspati, who says, “Among brothers, who become re-united, through mutual affection, after being separated, there is no right of seniority in partition be again made. Should any one of them die, or in any manner depart [by entering into a religious order,] his portion is not lost but devolves on his uterine brother. His sister also is entitled to take a share of it. This law concerns one who leaves no issue, nor wife, nor parent. If any one of the re-united brethren acquire wealth by science, valour, or the like, [with the use of the joint stock,] two shares of it must be given to him, and the rest shall have each a share.”

21. Here, since re-union of pareners is specified at the beginning and at the close of the text, the intermediate passage, “his share is not lost, but devolves on his uterine brother,” must be understood as relating to a re-united parencer. And the author, saying “this law concerns one who leaves no issue, nor wife nor parent,” declares the right of a re-united uterine brother as taking effect on failure of son, daughter, widow and parent. How then does [the re-united brother] bar the widow’s title to the succession?

22. Besides the text expresses, that “his share is not lost,” and the expression is pertinent in regard to unseparated parencers and re-united co-heirs, since the lapes of the share might be supposed, because the property, being intermixed with another brother’s effects, is not seen apart; but, the property of a separated co-heir being distinctly perceived in a separate state, what room is there for supposing its lapes; therefore, these texts [of Vrhaspati vide § 20] relate to united co-heirs.

23. Moreover, the inference that the texts of Sankha and others above cited, (§ 15, &c,) which declare the preferable right of the brother before the widow and the rest, relate to a re-united brother, [as well as an unseparated one] must be drawn either from the authority of a text of Law or from reasoning. Now it is not deductible from a text of law, for there is none which bears that meaning; and the passage concerning the succession of the re-united parencer (sec. 8 § 18) containing special provisions regarding the brother succession, cannot intend generally the right of a brother to inherit [to the exclusion of a widow].

24. Since the texts of Vrhaspati just now cited (§ 20) contradict that inference; for the
brother's right is there declared to take effect in the case of re-union on failure of son, daughter, widow and parents; brethren not re-united must be the subject [of those passages of Sankha, &c., § 16.] That alone is right; and they do not relate to [unseparated and] re-united brethren.

26. But it is said, this inference is deduced from reasoning. Thus, in the instance of re-union, or in that of a subsisting co-parcenary, the same goods, which appertain to one brother, belong to another likewise. In such case, when the right of one ceases by his demise, those goods belong exclusively to the survivor, since his ownership is not divested. They do not belong to the widow, for her right ceases on the demise of her husband; in the like manner as his property devolves not on her, if sons or other (male descendants) be left.

27. That argument is futile. It is not true, that, in the instance of re-union and of a subsisting co-parcenary, what belongs to one, appertains also to the other parcenar. But the property is referred severally to unascertained portions of the aggregate. Both parceners have not a proprietary right to the whole; for there is no proof to establish their ownership of the whole: as has been before shown when defining the term partition of heritage. Nor is there any proof of the position, that the wife's right in her husband's property, accruing to her from her marriage, ceases on his demise. But the cessation of the widow's right of property, if there be male issue, appears only from the law ordaining the succession of male issue.

28. If it be said, that the cessation of her right, in this instance also, does appear from the law which ordains the succession of the re-united parceners; the answer is, no, for it is not true that the text relates to re-united parceners; since the law, which declares the brother's right of succession, may relate to re-united brethren, if it be true, the wife's right of ownership ceases by the demise of her husband who was re-united with his coheirs; and the widow's proprietary right does so cease, provided the law relate to the case of re-united brethren. Thus the propositions reciprocate.

29. Besides, if the texts of Sankha, Likhita and the rest, (§ 15, &c.) relate to unseparated or re-united parceners, they must be interpreted as signifying, that 'the wealth of one, who is either unseparated or re-united, goes to a brother who is so; or, if there be none such, the two parents take it.' In the case, a question may be proposed, shall parents, who are separated and not re-united, take the heritage? or parents who are either unseparated or re-united? Here the first proposition is not admissible; for how can the claim of parents who are separated and not re-united, be preferred to the wife's, since they are excluded by her, under the passage before cited? Nor is the second proposition maintainable; for all agree, that a father, being unseparated or re-united, takes the heritage in preference to an unseparated or re-united brother.

29. Moreover, as in the instance of the estate of one, who was separated from, and not re-united with, his father and his brother, the father has the right of succession before brothers, because he has authority over the person and wealth of his son; since he gave him life; (for their identity is affirmed in holy writ, where it is said 'he himself is born a son') and because the deceased, by participating with the manes of the grandfather and great-grandfather in funeral offerings, partakes of two oblations of food which his father must present to the grandfather and great-grandfather [at the same time that none are presented by his brother.] for sons do not offer the half monthly oblations of food, while their father lives; so the same [preference of the father before the brother] is fit in the other instance [of the estate of one, who is either unseparated or re-united.] or, since they are alive in respect of co-parcenary and re-union, the equal right of father and son would be proper, not the postponement of the father's claim to the brother's.

30. Further, the dual number, expressing that 'parents, who are unseparated or re-united, take the heritage,' is unsuitable: for there is neither partition, nor co-parcenary with the mother; and consequently no re-union of estates; since Vrhaspati says, 'He who, being once separated, dwells again, through affection, with his father, brother, or paternal uncle, is termed re-united.' He thus shows, that persons, who by birth have common rights in the wealth acquired by the father and grandfather, as father and son, brothers, uncle and nephew, are re-united, when after having made a partition, they live together, through mutual affection, as inhabitants of the same house, annulling the previous partition, and stipulating that 'the property which is mine, is thine; and that which is thine, is mine.' The possession of the succession devolves not so circumstance, and only act in common on an united capital, is no re-union. Nor are separated co-heirs re-united merely by junction of stock, without an agreement prompted by affection as above stated. Therefore, since neither re-union nor co-parcenary with a mother can exist, how is the contradiction in regard to the succession devolving on her before brothers, to be reconciled?

31. In the next place the manner, in which the difficulty is removed by the wise, will be stated. From the texts of Vishnu (§ 8) and the rest [as Yajasvalyka, &c., § 1] it clearly appears that the succession devolves on the widow, by failure of sons and the other [male descendants], and this is reasonable; for the estate of the deceased should go first to the son, grandson,
and great-grandson. Thus Manu and Vishnu say, "Since a son delivers (trayaate) his father from the hell called Put; therefore he is named putra by the self-existent himself." So Harita says, "A certain hell is named Put; and he, who is destitute of *offspring*, is tormented in hell. A son is therefore called putra, because he delivers his father from that region of horror." In like manner Sankha and Lokhita declare, "A father is exonerated in his lifetime from debt to his own ancestors, upon seeing the countenance of a living son: he becomes entitled to heaven by the birth of his son, and devolves on him his own debt. The sacrificial earth, the three vedas, and sacrifices rewarded with ample *gratuitues*, have not the sixteenth part of the efficacy of the birth of an eldest son." Thus Manu, Sankha, Vasishtha, Lokhita and Harita ordain. "By a son, a man conquers worlds; by a son's son, he enjoys immortality; and, afterwards, by the son of a grandson, he reaches the solar abode." So Yajnavalkya says, "The attainment of worlds, immortality and heaven depend on a son, grandson and great-grandson."

33. Thus the propertorial right of sons and the rest is expressly ordained, as already inferrible from reasoning; because the wealth, devolving upon sons and the rest, benefits the deceased; since sons or other male descendants produce great spiritual benefit to their father or ancestor from the moment of their birth; and they present funeral oblations, half-monthly in due form, after his decease. So Manu declares the right of inheritance to be founded on benefits conferred: "By the eldest son as soon as born, a man becomes the father of male issue, and is exonerated from debt to his ancestors; such a son, therefore, is entitled to take the heritage."

34. From the mention of it as a reason ("therefore," &c.), and since there can be no other purpose in speaking of various benefits derived from sons and the rest, while treating of inheritance, it appears to be a doctrine to which Manu assents, that the right of succession is grounded solely on the benefits conferred.

35. Accordingly (since benefits are derived from the great-grandson as well as from the son) the term "son" [in the text of Manu, § 32, or in that of Vishnu, § 5, or in those of Yajnavalkya, &c.] extends to the great-grandson; for, as far as that degree, descendants equally confer benefits by presenting oblations of food in the prescribed form of half-monthly obsequies.

36. Else [if it were not inferrible from reason, or if Manu did not mean, that the right of succession rests upon benefits conferred:] the word son could not quit its proper sense [for a larger import;] and a passage, declaratory of the grandson's right, must be somehow assumed. But, admitting that such a passage may be assumed, [as inferrible from the declared right of a daughter's son considered as a son's son;] still, there is no separate text concerning the great-grandson.

37. Therefore the great-grandson's right of succession is founded on benefits derived from him; and the word son is of comprehensive import.

38. Accordingly Sandhayana says, The paternal great-grandfather and grandfather, the father, the man himself, his brothers of the whole blood, his son by a woman of the same tribe, his son's son and his great-grandson; all these partaking of undivided oblations are pronounced sapindas. Those, who share divided oblations, are called sakulyas. Male issue of the body being left the property must go to them. On failure of sapindas or near kindred, sakulyas, or remote kinsmen, are heirs. If there be none, the preceptor, the pupil, or the priest, takes the inheritance. In default of all these, the king (has the eschat.)."

39. The meaning of the passage is this: since the father and certain other ancestors partake of three funeral oblations as participating in the offerings at obsequies; and since the son and other descendants, to the number of three, present oblations to the deceased [or to be shared by his manes:] and he, who, while living, presents an oblation to an ancestor partakes, when deceased, of oblations presented to the same person; therefore, such being the case, the middlemost [of seven] who, while living, offered food to the manes of ancestors, and when dead partook of offerings made to them, became the object to which the oblations of his descendants were addressed in their lifetime, and shares with them when they are deceased, the food which must be offered by the daughter's son and other [surviving descendants beyond the third degree.] Hence those [ancestors] to whom he presented oblations, and those [descendants] who present oblations to him, partake of an undivided offering in the obsequies. Persons, who do partake of such offerings, are sapindas. But one distant in the fifth degree neither gives an oblation to the fifth in ascent, nor shares the offering presented to his manes. So the fifth in descent neither gives oblations to the middle person who is distant from him in the fifth degree, nor partakes of offerings made to him. Therefore three ancestors from his grandfather's grandfather upwards, and three descendants from the grandson's grandson downwards, are denominated sakulyas, as partaking of divided oblations, since they do not partake in the same offering.

40. This relation of sapindas [extending no further than the fourth degree,] as well as that of sakulyas, has been pronounced relatively to inheritance.
40. Accordingly [since the right of succession to property is founded on competence for offering oblations at obsequies:] Manu likewise, after premising "Not brothers, nor parents but sons are heirs of the father;" proceeds, in answer to the question why? to declare, "To the fourth of descent must sacrifices be made, to three must oblations of food be presented; the fourth in descent is the giver of those offerings; but the fifth has no concern with them."

41. But for mourning and other purposes, the relation of sapindas extends to such as partake of the remains of oblations; for that relation is defined in the Markandeya purana as founded on participation in the wipings of offerings. "Three others, from the grand-father's grandaive upwards, are declared to be partakers of the residue of oblations; they and the (father's) son, who performs the religious rites, being seventh in descent, constitute that relation, which is termed by the holy sages kin within the seventh degree." The meaning here is kin which occasions impurity [on occasion of deaths and births.]

42. Accordingly Manu likewise has said, when treating of uncleanness by reason of mourning, &c. "The relation of sapindas ceases with the seventh person [in ascent or descent:] and that of samanadakas ends only where birth and family name are no longer known." Else this passage would be in contradiction to the text before cited: "To three must libations of water be made, &c. (§ 33.)

43. But, on failure of heirs down to the son's grandson, the wife, being inferior in pretensions to sons and the rest, because she performs acts spiritually beneficial to her husband from the date of her widowhood [and not, like them, from the moment of their birth, succeed] to the estate in their default. Thus Vyasa says, "After the death of her husband, the virtuous woman observe strictly the duty of continence; and let her daily, after the purification of the bath, present water from the joined palms of her hands to the manes of her husband. Let her day by day perform with devotion the worship of the gods, and especially the adoration of Vishnu, pralating constant abstinence. She should then aim to the chief of the venerable for increase of holiness, and keep the various fasts which are commanded by sacred ordinances. A woman, who is assiduous in the performance of duties, conveys her husband, though abiding in another world, and herself [to a region of bliss."

44. Since these and other passages it is declared, that the wife rescues her husband from hell; and since a woman doing improper acts through indiscretion, causes her husband to perish with her, they share the fruits of virtue and of vice; therefore the wealth devolving on her is for the benefit of the former owner: and the wife's succession is consequently proper.

45. Hence [since the wife's right of succession is founded on reason:] the construction in the text of Sankha, &c., (§ 16) must be arranged by connexion of remote terms, in this manner, 'The wealth of a man, who departs for heaven leaving no male issue, let his eldest [that is, his most excellent] wife take; or, in her default, let the parents take it; on failure of them, it goes to the brothers.' The terms "if there be none [that is, if there be no wife]," which occur in the middle of the text, (§ 16) are connected both with the preceding sentence "it goes to his brothers," and with the subsequent one "his father and mother take it." For the text agrees [with passages of Vishnu and Yajnavalkya, § 4 and 5, which declare the wife's right:] and the reasonableness of this has been already shown (§ 48).

46. The assumption of any reference to the condition of the brethren as unseparated or as re-united, not specified in the text is inadmissible [being burdensome and unnecessary.] Therefore the doctrine of Jitendriya, who affirms the right of the wife to inherit the whole property of her husband leaving no male issue, without attention to the circumstance of his being separated from his co-heirs, or united with them, (for no such distinction is specified,) should be respected.

47. The rank of wife belongs in the first place to a woman of the highest tribe: for the text [of Sankha, &c.] expresses, that "the eldest wife takes the wealth," (§ 16 and 45:) and seniority is reckoned in the order of the tribes. Thus Manu says, "When regenerate men take wives both of their own class and others, the precedence, honour and habitation of those wives must be settled according to the order of their classes." Therefore [since seniority is by tribe:] a woman of equal class, though youngest in respect of the date of marriage, is deemed eldest. The rank of wife (patni) belongs to her, for she alone is competent to assist in the performance of sacrifices and other sacred rites. Accordingly Manu says, "To all such married men, the wives of the same class only (not wives of a different class by any means) must perform the duty of personal attendance, and the daily business relating to acts of religion. For he, who foolishly causes those duties to be performed by any other than his wife of the same class, when she is near at hand, has been immemorially considered as a mere Chandaia begotten on a Brahman." But, on failure of a wife of the same tribe, one of the tribe immediately following [may be employed in such duties:] Thus Vishnu ordains, "If there be no wife belonging to the same tribe, [he may execute the business relating to acts of religion] with one of the tribe immediately following, in cases of distress. But a regenerate man must not do
so with a woman of the Sudra class." "Execute business relating to acts of religion," is understood from the preceding sentence. Therefore a Brahmani is lawful wife (patniya) of a Brahmana. On failure of such, a Kshatriya may be so, in case of distress; but not a Vaisya or a Sudra, though married to him. A Kshatriya man. In her default, a Vaisya woman may be so, as belonging to the next following tribes; but not a Sudra woman. A Vaisya is the only wife for a Vaisya: since a Sudra wife is denied in respect of the regenerative tribes simply.

48. In this manner must be understood the succession to property in the order in which the rank of wife is acknowledged. Therefore, since women actually espoused may not have the rank of wives, the following passage of Narada intends such a case. "Among brothers if any one die without issue, or enter a religious order, let the rest of the brethren divide his wealth, except the wife's separate property. Let them allow a maintenance to his women for life, provided these preserve the bed of their lord. But, if they behave otherwise, the brethren may resume that allowance." So [this other passage] of the same author;  "On failure of heirs, the property goes to the king:] except the wealth of a Brahmana. But a king, who is attentive to the obligations of duty, should give a maintenance to the women of such persons. "The law of inheritance has been thus declared." The allotment of a maintenance to the women of such person, not being of the rank of wives, and the declared right of wives to succeed to the whole estate, constitute no discrepancy.

49. Accordingly, Vrshapati propounds the king's right to an eschat in default of the wife: "If men of the military, commercial and servile tribe die childless, leaving neither wife nor brother, let the king take the property; for heirs indeed lord of all." But Narada directing that "he should give a maintenance to the women of such persons," (§ 48) authorizes the king to take the whole estate, giving to them enough for their support. This contradiction must be reconciled by distinguishing between the wife and the espoused woman. Accordingly in passages declaratory of the wife's right of succession, the term "wife" (patniya) is employed: and, in those which ordain a maintenance, the terms "woman" (stri or nari) or "espouse" (bharaya) or other similar word.

50. In the text of Devala (§ 17) which expresses, "Next let brothers of the whole blood divide the heritage of him, who leaves no male issue; or daughters, equal [as appertaining to the same tribe]; or let the father, if he survive, or brothers belonging to the same tribe, or the mother, or wife, inherit in their order; but, on failure of all, the nearest of the kinmen succeed;" where "daughters equal" are such as appertain to the same class (with the deceased); and "brothers belonging to the same tribe" intend those of the half-blood; for whole brothers are specified under the appropriate term and the distinction would be impertinent [as not excluding any one; or as superfluous, since whole brothers of course belong to the same tribe]. In this text, we say, the order in which heirs are enumerated, from the whole brother to the wife, is not intended for the order of their succession; since it contradicts Vishnu and the rest [as Vrshapati and Yajnavalkya]; but the meaning of the text is, that the heirs shall take the succession in the order declared by Vishnu and others. To mark uncertainty in the specified order, the author has twice used the word "or"; once in the phrase "or daughters," and again in the sentence "or let the father, &c." and the word is also understood in other places. Thus Devala has itself shown vagueness in his own enumeration, intimating that "either brothers, or daughters, or parents, &c., [take the succession]."

51. As for what has been said by Baloka, concerning the text of Sankha and the rest (§ 18) that it either relates to a wife inferior in class to her husband, or supposes the widow to be young, or his relative to be a brother unseparated or re-united; that author has manifested his own imbecility by thus proposing an indefinite interpretation of the law: for the doubt remains [which of the three is intended]; and neither rule could be followed in practice.

52. As for the assertion that the text, which ordains a maintenance, is relative to an unmarried woman and connotes, that must be rejected as intending a favour to the matrons, for the scope of the precept, which allot a maintenance to women, has been already shown.

53. Moreover, under the distinction respecting the wife as belonging to the same or to a different tribe how is the contradiction [of the text to passages of Vishnu and Yajnavalkya, § 4 and 6] regarding the succession of parents and brothers, to be reconciled [without transposition, or without connecting in construction remote terms]? If it be by distinguishing the cases of re-union and continued separation, the same distinction may pervade the whole subject; and what occasion is there for assuming a difference relative to the wife as belonging to the same or to another tribe? But the proposed distinction, founded on re-union and separation, (§ 19) has been already fully refuted by us (§ 80.)

54. The distinction regarding the whole and the half-blood is contradicted by Vrshapati, who says "Let the wife of a deceased man, who left no male issue, take his share, notwithstanding kinsmen, a father, a mother, or uterine brethren be present." Utterine brethren are brothers by the same mother [and of course of the whole blood]. The author declares the wife's right of succession, although such persons exist. By the term "his share," is un-
understood the entire share appertaining to her husband; not a part of it only [sufficient for her support.]

56. Therefore the interpretation of the law is right as set forth by us.

56. But the wife must only enjoy her husband's estate after his demise. She is not entitled to make a gift, mortgage or sale of it. Thus Katyayana says, "Let the childless widow preserving un-tiiled the bed of her lord, and abiding with her venerable protector, enjoy with moderation the property until her death. After her let the heirs take it."

57. Abiding with her venerable protector, that is, with her father-in-law or others of her husband's family, let her enjoy her husband's estate during her life; and not, as with her separate property, make a gift, mortgage or sell of it at her pleasure. But when she dies, the daughters or others, who would regularly be heirs in default of the wife, take the estate; not the kinmen or sapindas; since these, being inferior to the daughter and the rest, ought not to exclude those heirs; for the widow debar them of the succession; and the obstacle being equally removed if her right cease or never take effect, it can be no bar to their claim.

58. Nor shall the heirs of the woman's separate property [as her brothers, &c.] take the succession [on failure of daughters and daughter's sons, to the exclusion of her husband's heirs.] for the right of those persons whose succession is declared under that head C. 4.] is relative to the property of a woman [other than that which is inherited by her.] Katyayana has propounded by separate texts the heirs of a woman's property and [her text, declaratory of the succession to heritage,] would be tautology; [consequently heritage is not ranked with the woman's peculiar property.]

59. Therefore those persons, who are exhibited in a passage above cited (§ 4) as the next heirs on failure of prior claimants, shall, in like manner, as they would have succeeded if their predecessor had failed, equally succeed to the residue of the estate remaining after her use of it, upon the demise of the widow in whom the succession had vested. At such time [when the widow dies, or when her right ceases,] the succession of daughters and the rest is proper, since they confer greater benefits on the deceased [by the oblations presented by them] than other claimants [such as the sapindas abovementioned § 27.]

60. Thus in the Mahabharata, in the chapter entitled Danadharmas, it is said "For women, the heritage of their husbands is pronounced applicable to use. Let not women on any account make waste of their husbands' wealth."

61. Even use should not be by wearing delicate apparel and similar luxuries: but, since a widow benefits her husband by the preservation of her person, the use of property sufficient for that purpose is authorized. In like manner [since the benefit of the husband is to be consulted.] even a gift or other alienation is permitted for the completion of her husband's funeral rites. Accordingly the author says, "Let not women make waste." Here "waste" intends expenditure not useful to the owner of the property.

62. Hence, if she be unable to subsist otherwise, she is authorized to mortgage the property; or, if still unable, she may sell or otherwise alien it; for the same reason is equally applicable.

63. Let her give to the paternal uncles and other relatives of her husband presents in proportion to the wealth, at her husband's funeral rites. Vrshapati directs it, saying "With presents offered to his manes, and by pious liberality, let her honour the paternal uncles of her husband, his spiritual parents and daughter's sons, the children of his sisters, his maternal uncles, and also ancient and unprotected persons, guests, and females of the family. The term "paternal uncle" intends any sapinda of her husband; "daughter's sons," the descendants of her husband's daughter; "children of his sister," the progeny of her husband's sister's son; "maternal uncles," her husband's mother's family. To these and to the rest, let her give presents, and not to the family of her own father, while such persons are forthcoming: for the specific mention of paternal uncle and the rest would be superfluous.

64. With their consent, however, she may bestow gifts on the kindred of her own father and mother. Thus Narada says, "When the husband is deceased, his kin are the guardians of his childless widow. In the disposal of the property, and care of herself, as well as in her maintenance, they have full power. But, if the husband's family be extinct or contain no male, or be helpless, the kin of her own father are the guardians of the widow, if there be no relations of her husband within the degree of a sapinda." In the disposal of property by gift or otherwise, she is subject to the control of her husband's family, after his decease, and in default of sons.

65. In like manner, if the succession have devolved on a daughter, those persons, who
would have been heirs of her father's property in her default, [as her son, her paternal, grandfather, &c.] take the succession on her death; not the heirs of the daughter's property [as her daughter's son, &c.]

66. The widow should give to an unmarried daughter a fourth part out of her husband's estate, to defray the expenses of the damsel's marriage. Since sons are required to give that allotment, much more should the wife, or any other successor, give a like portion.

67. Thus has the widow's right of succession been explained.

Section II.

On the right of the Daughter and Daughter's Son.

1. The daughter's right of succession on failure of the wife [is declared.] On that subject Manu and Narada say, "The son of a man is even as himself; and the daughter is equal to the son: how then can any other inherit his property, notwithstanding the survival of her, who is as it were himself?" Narada particularizes the daughter [as in heritance in right of her continuing the line of succession:] "On failure of male issue, the daughter inherits, for the sake of perpetuating the race; since she and the son and daughter are the means of prolonging the father's line." The author states the circumstance of her continuing the line as a reason of the daughter's succession; and the line of descendants here intends such descendants as present funeral oblations; for one who is not an offerer of oblations, confers no benefits, and consequently differs in no respect from the offspring of a stranger or no offspring at all.

2. It is the daughter's son, who is the giver of a funeral oblation, not his son; nor the daughter's daughter: for the funeral oblation ceases with him.

3. Therefore the doctrine should be respected, which Dikshita maintains; namely that a daughter who is mother of male issue, or who is likely to become so, is competent to inherit; not one, who is a widow, or is barren, or fails in bringing male issue as bearing none but daughters, or from some other cause.

4. Here again, the unmarried daughter is in the first place sole heiress of her father's property [to the exclusion of any daughter verbally betrothed]. Accordingly Parasara says, "Let a maiden daughter take the heritage of one who dies leaving no male issue; or if there be no such daughter, a married one shall inherit." In the term "married" is here implied the restriction before mentioned [excluding one who fails in bringing male issue].

5. Thus Devala says, "To maidens should be given a nuptial portion out of the father's estate. But of him, who leaves no appointed daughter, [nor son,] the unmarried daughter belonging to his own tribe, and legitimate, shall take the inheritance, like a son." The term "appointed daughter" implies also son. "His own:" belonging to the same tribe with himself. "Legitimate:" his own lawful issue.

6. This is proper: for, should the maiden arrive at puberty unmarried, through poverty, her father and the rest would fall to a region of punishment, as declared by holy writ. Thus Vasiṣṭha says, "So many seasons of menstruation as overtake a maiden feeling the passion of love and sought in marriage by persons of suitable rank, even so many are the beings destroyed by both her father and her mother: this is a maxim of the law." So Paṇṭhinast "A damsel should be given in marriage, before her breasts swell. But, if she have menstruated [before marriage,] both the giver and the taker fall to the abyss of hell, and her father, grandfather and great-grandfather are born [insects] in ordure. Therefore she should be given in marriage while she is yet a girl."

7. Since then the father and the rest are saved from hell by sufficient property becoming applicable to the charge of her marriage; and, being accordingly married, she confers benefits on her father by means of her son; the wealth devolving on her is for the benefit of the [former] owner, and it is reasonable, therefore, that the property should descend to the unmarried daughter, on failure of the wife.

8. But, if there be no maiden daughter, the succession devolves on her who has, and on her who is likely to have, male issue. That is declared by Vṛṣapati "Being of equal class and married to a man of like tribe and being virtuous and devoted to obedience, she [namely the daughter,] whether appointed or not appointed to continue the male line, shall take the property of her father who leaves no son [nor wife.]"

9. Of equal class. [Belonging to the same tribe with her father. Married to a man of
like tribe.] This is intended to exclude one married to a man of a superior or inferior tribe. For the offspring of a daughter married to a man of a higher or lower class is forbidden to perform the obsequies of his maternal grandfather and other ancestors who are of inferior or of superior rank. But one, married to a man belonging to the same class, confers benefits on her father by means of her son.

10. The son of a daughter appointed to continue the male line is like a son, highly beneficial to his ancestor; and, through him, the appointed daughter is equal to a son: wherefore the appointed daughter and legitimate son have an equal right of succession. But a married daughter who was not so appointed, confers less benefit on her father than the son and the rest (viz. the son's son and grandson's son, and the widow;) and is of benefit by means only of her son; it is proper, therefore, that she should succeed only on failure of other heirs down to the unmarried daughter.

11. It must not be alleged, that, admitting this doctrine [of benefits conferred being the cause of a right of succession,] the daughter, who has male issue, should alone inherit in the first instance; but on failure of such, then a daughter who may have issue. For her son, born subsequently, might in this manner be excluded from the succession. Nor is this proper; for both equally confer benefits on their grandfather, as daughter's sons.

12. By specifying "obedience" to her husband (§ 8), the author indicates, that she is not in the state of widowhood, and that consequently she may have issue.

13. In the text before cited (§ 8) the pronoun refers to the word "daughter" contained in a preceding passage (which will be forthwith quoted §14). Thus, by the conditions specified, that she be "of equal class" and "married to a man of like tribe," &c. § 8, the author shows that she does not inherit her father's wealth merely in right of her relation as daughter. Else, since the daughter's right of succession is declared by the following passage, the mention of it by the same author in the foregoing text would be a vain repetition. But a special rule, regarding what was suggested generally, is not tautology.

14. "As a son, so does the daughter of a man proceed from his several limbs. How then should any other person take her father's wealth?"

15. Since a daughter's right of succession to the property of her father is founded on her offering funeral oblations by means of her son; therefore, even in the case of an appointed daughter, on whom the estate has devolved by the demise of her father, should she bear no male issue in consequence of her proving barren, or because her husband is incapable of procreation, the property does not go upon her death to her husband. Thus Sankha and Liktita say, "The husband is not entitled to the wealth of his wife being an appointed daughter, if she die leaving no issue." So Paithinaal: "On the death of an appointed daughter, her husband does not inherit her property: if she leave no issue, it shall be taken by her unmarried sister or by another." Hence her property is to be taken by her maiden sister, or by another sister likely to have issue. Therefore, when the succession has devolved on a female, [her husband's] claim [as her heir] is proscribed.

16. But the following passage of Manu must be understood to be applicable, on the demise of an appointed daughter, who has not been destitute of male issue, having borne a son who has died. "Should a daughter, appointed to continue the male line, die by any accident without a son, the husband of that daughter may without hesitation possess himself of her property."

17. Vrhaspati recites the gift of the funeral oblation as the sole cause [of right] in the instance of both [the daughter and the grandson]. "As the ownership of her father's wealth devolves on her, although kindred exist; so her son likewise is acknowledged to be heir to his maternal grandfather's estate." As the daughter is heirress of her father's wealth in right of the funeral oblation which is to be presented by the daughter's son; so is the daughter's son owner of his maternal grandfather's estate in right of offering that oblation notwithstanding the existence of kindred, such as the father and others.

18. "Nor does this text (§ 17) relate to the son of an appointed daughter, for the pronoun "her" in both the phrases ("devolves on her," and "her son is acknowledged,"') bears reference to the "daughter whether appointed or not appointed" who was mentioned in the preceding passage (§ 8.) Or, upon the principle of selecting the nearest term, the reference may properly be to the "daughter not appointed." But this term cannot be rejected to select the other.

19. Accordingly Manu propounds the daughter's origin from the person of the maternal grandfather as the reason of the daughter's son having a right to the succession; not her appointment to raise a son: else he would have specified this cause. "Let the daughter's son take the whole estate of his own father who leaves no [other] son; and let him offer two funeral oblations; one to his own father, the other to his maternal grandfather. Between a son and a daughter, there is no different in law; since their father and mother both sprung from the body of the same man."
20. Thus this very author expressly declares, that the daughter’s son, born of one not appointed to continue the male line, has the right of succession. "By that male child, whom a daughter, whether formally appointed or not, shall produce from a husband of an equal class; the maternal grandfather becomes in law the father of a son: let that son give the funeral oblation and possess the inheritance."

21. Besides the term ‘daughter’s son’ is in law restricted to signify the male offspring of an appointed daughter. Bandhayana intimates that, when he says, "[Considers] another [son] the daughter’s son termed son of an appointed daughter, being born of the female issue after an express stipulation." Here ‘consider’ is understood.

22. Hence also since such is the scope and purport of the text, §17 Bhajadeva has cited that passage of Vṛhaspati under the head of succession of a daughter appointed or unappointed.

23. But Govinda-ṛaja in his commentary on Mann, states the claim of the daughter’s son as preferable to that of the married daughter, on the grounds of the following passage of Viśnu, "If one die leaving neither son or grandson, the daughter’s son shall inherit the estate; for, by consent of all, the son’s son and the daughter’s son are alike in respect of the celebration of obsequies."

24. This does not appear to us satisfactory, for it contradicts the text above cited (§8).

25. But, in default of a married daughter such as above described, the succession assuredly devolves on the daughter’s son notwithstanding the existence of the father and other kinsmen. For it appears from the comparison of his condition to heirs, (§17), and more expressly from the purport of the term “likewise” in the phrase “her son likewise is accounted to be heir,” (§17) that his pretensions are inferior to hers. Therefore, it is a right deduction, that the succession of the daughter’s son is next after the daughter.

26. By the words “although kindred exist,” (§17) the succession of both parents, which reasonably should take effect on failure of the wife, but which is barred by the daughter and daughter’s son, is hinted as taking place when no such impediment exists. Accordingly Vṛhaspati immediately after (the passage above cited, §17) says “On failure of those persons, the brothers and nephews of the whole are entitled to the estate, or kinsmen, or cognates, or pupils, or venerable priests. Here the word “those” bears reference to the daughter’s son (named in the text.) and to the parents indicated (by the term kindred). Therefore, it is on failure of those persons, that the succession of brothers and the rest take place.

27. As for the assertion of Baloka, that the daughter’s son inherits after the whole series of heirs specified in the passage of (Yajñavalkya) above cited, “The wife, daughters also,” &c. (sect. 1 §4) that is mere childish prattle; for it contradicts the text of Vṛhaspati (§17). Nor is there anything inconsistent with that enumeration of heirs; for the maiden daughter, married daughter, and daughter’s son, are all signified by the term “daughters” in the plural number (sect. 1 §4). As the word “son,” in the phrase “who departed for heaven leaving no son,” intends male issue down to the great-grandson, since he is equally a giver of funeral oblations; so does the term “daughter” comprehend the daughter’s son, for he also is the giver of a funeral offering; or as the term “male issue,” in the sentence “on failure of male issue, the daughter inherits” (§1) intends the widow also. Else the plural number, in the word “daughter,” would be unmeaning; and the author would have used the singular number, as in the words “the wife,” “the son of the brother,” &c. We shall hereafter (in the course of expounding passages concerning the re-union of parners,) explain the intention of the plural number in the word “brothers” (sect. 1 §4.)

28. Moreover, since a series of heirs is specified from both parents to the king, it would follow, that the succession of the daughter’s son takes effect on failure of the king. But there never is a vacancy of the throne; and consequently the succession could never take place.

29. Therefore the succession of the daughter’s son on failure of daughters, as affirmed by Viśvarupa, Jitendriya, Bhajadeva and Govinda-ṛaja should be respected.

30. But, if a maiden daughter, in whom the succession had vested, and who has been afterwards married, die without bearing issue, the estate, which was her’s, becomes the property of those persons, a married daughter or others, who would regularly succeed if there were no such (unmarried daughter) in whom the inheritance vested, and in like manner succeed on her demise after it has so vested in her. It does not become the property of her husband or other heirs; for that (text, which is declaratory of the right of the husband and the rest. is relative to a woman’s peculiar property. Since it has been shown by a text before cited (sect. 1 §55), that, on the decease of the widow in whom the succession had vested, the legal heirs of the former owner, who would regularly inherit his property if there were no widow in whom the succession vested, namely the daughters
and the rest, succeed to the wealth; therefore the same rule [concerning the succession of the former possessor's next heirs] is inferred a fortiori, in the case of the daughter and grandson whose pretensions are inferior to the wife's.

31. Or the word "wife" [in the text above quoted, sect. 1 § 56] is employed with a general import; and it implies that the rule must be understood as applicable generally to the case of a woman's succession by inheritance.

32. Thus has the succession of the daughter and daughter's son been explained.

Section III.

On the Father's right of succession.

1. If there be no daughter's son, the succession devolves on the father; and not on the mother [before the father]; nor at once on both parents. For that is contrary to Vishnu's text: "If there be none, it belongs to the father; if he be dead, it appertains to the mother."

2. But the following passage of Mann, as well as that of Vyhaspati, must be understood as relating to a case of failure of heirs down to the father inclusively. "Of a son dying childless [and leaving no widow] the mother shall take the estate; and the mother also being dead, the father's mother shall take the heritage." Of a deceased son, who leaves neither wife nor male issue, the mother must be considered as heiress: or, by her consent, the brother may inherit.

3. This is a result too of reasoning. The father's right of succession should be after the daughter's son and before the mother; for the father, offering two oblations of food to other males in which the deceased participates, is inferior to the daughter's son who presents one oblation to the deceased and two to other males in which the deceased participates; he is preferable to the mother and the rest because he presents [personally] to others two oblations in which the deceased participates; and his superiority is indicated in a passage of Mann: "In a comparison of the male with the female sex the male is pronounced superior."

4. In the term pitaran "both parents" (sect. 1 § 4), the priority of the father is indicated: for the father is first suggested by the radical term pitar; and afterwards the mother is inferred from the dual number, by assuming that one term [of two which composed the phrase] is retained.

5. Hence (since the members of the series are presented to the understanding in the order here stated), the argument, that, 'the mental apprehension, of a series being co-extensive with the oral recital of its component members, recital, being wanting, necessarily precludes apprehension,' must be rejected as inconclusive; for it is not true, that an adequate indication is wanting [being deducible in the manner above stated; § 4] and [the joint succession of father and mother] would contradict the text of Vishnu.

6. Thus the father's right of succession has been explained.

Section IV.

On the Mother's right of succession.

1. If the father be not living, the succession devolves on the mother: for immediately after pronouncing the father's right to the estate, Vishnu's text declares, "If he be dead, it appertains to the mother."

2. This too is reasonable: for her claim properly precedes that of the brothers and the rest; since it is necessary to make a grateful return to her, for benefits which she has personally conferred by bearing the child in her womb and nurturing him during his infancy; and also because she confers benefit on him by the birth of other sons who may offer funeral oblations in which he will participate.

3. The notion, therefore, that the mother's right should precede the father's, because she is pronounced to surpass him in the degree of veneration due to her, must be rejected. For, if a superior in the degree of veneration were the reason of a right of inheritance, the succession would devolve on the spiritual preceptor before the father; since it is said "Of him
who is the natural parent, and him who gives holy knowledge, the giver of the sacred science is the more venerable father:” and paternal uncles and the rest would inherit in preference to a younger brother or a nephew. Therefore the mother’s right of succession is after the father [and before the brothers].

4. By thus declaring, that the mother’s succession takes place after the father of the deceased, and before the father’s offspring, the author intimates, that the paternal grandmother’s succession likewise takes place after the grandfather and before the grandfather’s offspring. For otherwise [if a different order of succession be assumed:] or if that order be not established; or that indication be not acknowledged; there is a contradiction between the specified order of succession, both parents, brothers, likewise, &c., [and this case which is perfectly analogous.] Accordingly since the grandmother’s right of succession is in this manner indicated by Yajnavalkya; Manu says, “And the mother also being dead, the father’s mother shall take the heritage.” The meaning is ‘being dead, that is, deceased, together with her offspring.’

5. Here the particle “and,” as well as “also,” must be joined in construction with both parts of the sentence. Therefore the sense is ‘and the mother being dead, the paternal grandmother also may take the heritage.’ What then becomes of the brothers and the rest? These persons, including the paternal grandfather, are indicated by the particle “also.”

6. The meaning then of the text [of Yajnavalkya] is this: the succession of both parents takes effect, in the order which has been explained, after the descendants of the deceased, down to his daughter’s son, and before [the father’s own offspring. Hence the succession of the paternal grandfather and grandmother is thus shown to take place before their own offspring. Accordingly it is not separately pronounced in the text of Yajnavalkya; since the right of the paternal grandfather and grandmother is virtually declared by showing the mother’s right of succession.

7. Thus the mother’s right of inheritance has been explained.

Section V.

On the Brother’s right of succession.

1. If the mother be dead, the property devolves on the brother; for Vishnu, having declared, that, “If the father be dead, it appertains to the mother,” proceeds to say “On failure of her, it goes to the brothers:” and here the pronoun refers to the mother. It appears also from the passage [of Yajnavalkya] “both parents, brothers likewise,” that the brother’s succession takes place in the case of the death of both parents.

2. It must not be alleged, that under the passage above cited, which expresses “brothers likewise and their sons,” the brother’s son, being declared heir in like manner as the brothers are, shall inherit also next to the mother. For the text of Vishnu, declaring that “it goes to the brothers,” adds “After them, it descends to the brother’s sons:” and in this place the pronoun refers to the brothers.

3. That too is reasonable: for the brother confers benefits on the deceased owner by offering three funeral oblations to his father and other ancestors, in which the deceased participates; and he occupies his place, as presenting three oblations to the maternal grandfather and the rest, which the deceased was bound to offer; and he is therefore superior to the brother’s son, who has not the same qualification. But deriving his origin from the mother, the brother, though he do possess these qualifications, is inferior to the mother; and his succession, therefore, very properly takes effect after her.

4. Besides, why may not the word ‘likewise’ be connected with the term ‘brother?’ and thus the parents and brothers may have an equal right of succession; the text being interpreted ‘as parents, so do brothers inherit.’

5. The question, then, must be negatived, as at variance with the text of Vishnu: and the same is to be done in the other instances likewise [of the claims of brother and brother’s son]. So Manu declares, that brothers take the inheritance, not the nephew. “Of him, who leaves no son, the father shall take the inheritance; or the brothers.”

6. Moreover, why has not the nephew, whose father is living, a right of succession? There is no other reason but this: that one, whose father is living, does not confer benefits since he is incompetent to offer oblations. If then it be thus settled, [that the order of succession is regulated by the decree in which benefits are conferred,] how should a nephew, whose father is deceased, inherit equally with the brother, since he does not confer equal
benefits? Accordingly Devala, in a passage before cited (sect. 1 § 17) not specifying the brother’s son in the series of heirs down to the half-brother, comprehending the widow, daughter equal by class, father, mother, brother of the whole blood, and brother of the half-blood, intimates that the succession of nephews and the rest takes place on failure of heirs down to the half-brother.

7. The passage, which pronounces a nephew to be as a son, (“They are all fathers by means of that son”;’) is intended to authorize his presenting a funeral oblation and to establish his right of succession on failure of brothers. [They do not inherit together.] For that contradicts the text [of Vishnu] above cited. Else why should not [his right of succession] be before the brothers.

8. Therefore the brother alone is heir in the first instance.

9. Here again, a brother of the whole blood has the first title; under the following text [§ 10] and even under the general rule for the brother’s succession (“Brothers also,” sect. 1 § 4). The meaning is, that the whole brother shall inherit in the first place; but, if there be none, then the half-brother; for he also is signified by the word brother, being issue of the same father.

10. The passage alluded to (§ 9) is as follows: “A re-united [brother] shall keep the share of his re-united [co-heir], who is deceased; or shall deliver it to [a son subsequently born].” Both an uterine brother [shall thus retain or deliver the allotment] of his uterine relation.” This text of Yajnavalkya also shows, that the term brother is applicable both to the whole and to the half-blood. Else, if it intended only the uterine [and of course whole] brother, the author would not have specified that “the uterine brother, should retain or deliver the allotment of his uterine relation?” for the whole blood would be signified by the single term “brother.”

11. Therefore the succession of brothers, whether of the whole or of the half-blood, is declared by the passage before cited (“Both parents; brothers likewise.” Sect. 1 § 4.) But, by here specifying the uterine relation, the prior right of the uterine (or whole) brother is intimated.

12. The succession of the half-brother, between [the whole brother and the brother’s son], as affirmed by Srikara and Viesarupa, should be acknowledged: for he is inferior to the whole brother, who presents oblations to six ancestors which the deceased was bound to offer, and also presents three oblations to the father and others, in which the deceased participates; while the half-brother only presents three oblations in which the deceased participates: and he is superior to the nephew, because he surpasses him in the conferring of benefits, since he offers three oblations of which the deceased participates.

13. In answer to the inquiry whether the half-brother, though re-united in co-parency, be inferior or not to the whole brother, Yajnavalkya says: “A half-brother, being again associated, may take the succession; not a half-brother, though not re-united: but one united [by blood] though not by co-parency, may obtain the property: and not exclusively the son of a different mother.”

14. The meaning of the text is this: ‘A brother by a different mother, but associated again in co-parency, shall first take the inheritance; not generally any half-brother [whether associated or separated].’ The latter part of the text is in answer to the question, whether, inheriting first, he excludes the whole brother or takes the succession jointly with him? ‘The whole brother, though not re-united in parency, shall take the heritage’; [here the word whole brother is understood from the preceding sentence]: ‘not exclusively the son of a different mother, though re-united.’ Or the term “united” may signify whole brother [or united by blood.] Accordingly the text is so read in the citation of it by Jitendra as a passage of Yuddha Yajnavalkya: and, in that case, the term “associated” is understood from the preceding sentence.

15. Therefore the half-brother, who is again associated in co-parency, shall not take the succession exclusively; but the whole brother [shares it] though not associated. Such is the whole brother and consequently, the whole brother who is not re-united in parency, and the half-brother who is associated, should divide the succession. Accordingly the author has employed the particle “but,” [with the connective sense.]

16. An objection is stated by Srikara Mira. The maxim, that “the re-united brother shall keep the share of his re-united co-heir,” (§ 11) is independent [of other precepts] as it applies to the case of re-united half-brothers exclusively; and, in like manner, the maxim that “the re-united brother retains the allotment of the uterine relation” (§ 10) bears no reference [to any other rule.] when it is applicable to the case of unassociated whole brothers only: but, when there is a half-brother associated and a whole brother unassociated, if the two maxims be applied to this case in consequence of finding both descriptions
of brethren, then both maxims take effect with reference to each other. Now it is not right to make the same rule operative with and without reference to another maxim; for this argues variability in the precept. Thus it is shown [by Jaimini] in the disquisition on the passage dvayoh pranayanti, that the prohibition, relatively to two sacrifices, of the use of the uttara-vedi or northern altar directed generally for the four sacrifices [in which those two are omitted] but an prohibition is not a prohibition concerning the northern altar be taken with reference to the [denial, implying consequently] an option, in the instant of two sacrifices, and be taken absolutely and without reference to any other maxim in the instance of the two other sacrifices, there would be variability in the precept. So, in regard to the subject under consideration, the maxims, that "the re-united brother shall keep the shares of his re-united co-heir," and that "the uterine [or whole] brother shall retain the allotment of his uterine relation," (§ 10) are applicable in those cases in which the rules are operative independently of any other; but if there be a half brother associated and a whole brother unassociated, the two rules are not applicable in this instance, and it would follow, that no one could take the estate [since there is no special provision in the law for this case]. Therefore [the true interpretation is, that in the case stated] where the associated half brother might be supposed to be heir of his associated parerem, under the rules, that "a re-united brother shall keep the share of his re-united co-heir," the maxim that "the uterine [or whole] brother shall retain the allotment of his uterine relation," serves as an exception to that rule. Thus the half brother, though associated, cannot be supposed to be heir, if there be a brother of the whole blood. Then how does the succession go? The whole brother whether re-united or not re-united in co-paronymy, inherits the property.

17. That is not congruent: for it is not true, that there is variability in a precept, merely because two rules, which are severally applicable to two cases, becomes applicable in a single instance at the same time.

18. Thus, in respect of the precepts enjoining the votary to bestow his whole wealth as a gratuity in one instance and no gratuity in the other, which are respectively applicable independently of each other, if either the priest belongs to the function of Udgata, or the one performing the office of Pratistotar, stumbles in passing from the one apartment to the other, at the celebration of the sacrifice called Jyotishtoma; but, if both those priests should stumble at the same time, neither injunction would be applicable; for that would be a variability in the precept.

19. In like manner, under the precepts, which direct the priest to touch an oblation with the prayer denominated Chaturhotra at the full moon, and with the prayer term of Bhuchala as the moon wanes; an oblation of curds consecrated to Indra is understood in the sacrifice named Upansu-yaga, and an offering of milk consecrated to Indra is similarly understood at the Agnihotra sacrifice; and, both precepts being thus severally applicable in those instances, neither of them would take effect at the Agnus sacrifice, since there would be variability in the precept if both were applied to this case.

20. Therefore the definition of variability in a precept is its being a positive injunction without reference to any opposition in one instance, and [an eventual one] with reference to the opposition of a different precept in another instance. Thus, in the example stated (§ 16), the prohibition bears reference to the injunction concerning the altar, expressed in these words, "At this sacrifice, the uttara-vedi shall be prepared to that [injunction], it would be no precept. Therefore it is a command which bears reference to the injunction respecting the altar. Nor is it in constant opposition to it: for, were it so, the prohibition [as well as the injunction] would be useless; since, without the prohibition [and injunction], the omission of the altar might be deduced [from the silence of the law]. Therefore, even the injunction concerning the altar is a command which bears relation to the contrary prohibition; but, in regard to two of the periods of sacrifice, it is independent of any other rule. Consequently there is variability in the precept; and an alternative must be inferred. But, in the case of anything supposed as a matter of spontaneous option, a prohibition is an absolute forbiddance; for the occasional omission of the act was inferrable without the aid of an express prohibition.

21. Accordingly since there is variability in the precept, when a general and a particular rule, or injunction and prohibition, are sometimes applicable in the same instance, but not when two particular rules are so; or since a prohibition, which is constant, is inferrable without the aid of either injunction or prohibition; the passage, which direct that the Shodasai shall be taken, and that it shall not be taken, [at an Atriatra sacrifice] constitute an alternative.

22. But according to the doctrine of those, who affirm, that an alternative is inferred by this reasoning; namely that, since a prohibition implies a previous supposition (to the contrary), the [negative] precept does not obviate the cause; an alternative would be inferred in the instance of a prohibition, concerning that which was supposed to be a matter of spontaneous choice: for example, the passage which expresses "the priest makes not two [portions of an oblation of liquid butter] when a victim is offered; [nor at the sacrifice with solid sacreplas]"; and other similar passages.
23. Moreover, since an effect cannot preclude its own cause, how can there be in one case opposition [which is necessary to constitute an alternative?] for the precepts are not equipollent. But, admitting that such is the nature of prohibition, that it eradicates its own cause; it should eradicate it altogether, for [the precept, which suggested] the previous supposition, is of inferior cogency.

24. But they affirm, that this prohibition concerns the supposition of something which spontaneous choice may suggest, and is not a forbiddance of anything deduced from a precept. That is an assertion which argues extreme ignorance: for it would follow, that an alternative does not exist; since the practice of what is commanded by precept, and the prohibition of a practice not commanded by precept, cannot be in opposition at the same time. The prohibition too would not be essential to the act of religion, since the practice of something suggested by spontaneous choice is not suppressable as an essential part of a religious act.

25. Therefore, [since the opposite opinion is erroneous,] an alternative is inferred [not in the manner there proposed, but] according to the reasoning set forth by us [viz., that, if the prohibition be constant, both injunction and prohibition would be unnecessary; and, if the injunction were invariably cogent, the prohibition would be vain.] But let that be; for why expatiate?

26. As for the remark of the same author, who says (§ 18) that 'if there be a half brother associated and a whole brother unassociated, in which case the half brother might be supposed to be the heir under the rule, that "a re-united brother shall keep the share of his re-united co-heir;"' (§ 10) then the maxim, that the uterine [or whole] brother shall retain the allotment of his uterine relation, (§ 16.) serves as an exception to that rule. That is unsuitable, for, in this very case, the rule concerning the re-united co-heir might on the contrary serve as an exception to the maxim, that "the uterine [or whole] brother shall retain the allotment of his uterine relation," under which the whole brother might be supposed to be the heir: since there is not in this instance any ground of preference.

27. But this author's interpretation of the text "A half brother being again associated," &c. (§ 13), as explanatory of the passage "a re-united brother shall keep the share of his re-united co-heir," is quite wrong: for, the intended purport being conveyed in that text the passage in question would become superfluous.

28. Moreover the exposition of the text [by Srikara], as signifying 'Let not the half brother, who is an associated half brother, take the estate; but the whole brother, (this term is understood,) who is not re-united, shall positively take it; a son of a different mother, though united, shall not inherit;' is also erroneous, for the same term 'half-brother' in the first part of the text, is needlessly repeated; and the phrase 'son of a different mother'; in the latter part of it, becomes superfluous; and the particle apt is taken in the sense of positively.

29. Besides, under the interpretation of the passage concerning the uterine [or whole] brother as an exception to the claim of the associated half brother if a whole brother unassociated exists; and its consequent inapplicability to the case of a whole brother and half-brother both unassociated; these would have an equal right of succession [under the general maxim, that brothers shall inherit; sect. i § 4 since no distinction is specified] or else the property would belong to neither of them [If the general rule be explained by the particular one.]

30. But, if the passage concerning the uterine [or whole] brother be applicable to this case also, [taking the term "uterine" as intending such a brother generally, whether associated or unassociated,) then the objection of variableness in the precept may be retorted on you; for the passage, concerning the re-united brother, bears reference to opposition in one case, [in that of the associated half brother and unassociated whole brother and bears no reference to opposition in another case [in that of a whole brother and half-brother both unassociated]:] in like manner as it is declared, that the general rule for preparing the ved or altar at a sacrifice with the Soma plant, must be understood as applicable to sacrifices in which the use of the altar has not been otherwise directed; since there would be variableness in the precept if it operate in the case of the Dikahniya and other similar sacrifices, in bar of a command forbidding the altar suggested by the extension of a rule [concerning sacrifices celebrated at the full moon], but in other instances operate without bar to anything else.

31. But according to our interpretation, there is no variableness in the precept, even as that is understood by Srikara: for the passages concerning the re-united brother and the uterine [or whole] brother (§ 10) are relative severally to different cases; and that regarding "a half brother again associated" (§ 13) declares the equal participation of a whole brother unassociated and a half brother associated. Thus the meaning of the first part of that text is, a half brother being re-united in co-parceny, she shall take the succession although a whole brother not re-united exist; but a half-brother, who is not re-united, shall not inherit.' The latter part of the text is in answer to the question, does not the whole brother inherit in that case? 'Though not re-united, the whole brother (this term is
understood) shall take the heritage; and not exclusively the son of a different mother who is again associated. But it shall be taken and shared by both. Thus the alleged variances in the precept is obviated.

32. So Manus likewise shows the same rule of succession. "His uterine brothers and sisters, and such brothers as were re-united after a separation, shall assemble together and divide his share equally."

33. Reciprocity being indicated by the plural number, in the term "uterine brothers" as respecting these exclusively; and in the words "brothers re-united," as relating to the half-brothers; the words "assemble together" are properly employed to mark association of both [descriptions of brethren] for they would otherwise be unmeaning terms. Therefore it is from mere ignorance that it has been asserted, that both [do not inherit together] because reciprocity is not expressed by the text. Moreover, since the text exhibits the conjunctive particle "and," in the phrase "and such brothers as were re-united, &c.," and the rule [of grammar] expresses, that a conjunctive compound is used when the sense of the conjunctive particle is denoted; the assertion, that reciprocity is not expressed by the text, would imply, that even the conjunction does not bear that sense [viz., the sense of reciprocation.]

34. Therefore, if whole brothers and half brothers only [not re-united brothers of either description] be the claimants, the succession devolves exclusively on the whole brothers. Accordingly Vrata Manus says, "If a son of the same mother survive, the son of her rival shall not take the wealth. This rule shall hold good in regard to the immovable estate. But, on failure of him, [the half brother] may take the heritage."

45. This rule shall hold good in regard to the immovable estate. This rule is relative to divided immovables. For immediately after treating of such [property,] Yama says, "The whole of the undivided immovable estate appertains to all the brethren; but divided immovables must on no account be taken by the half-brother."

35. All the brethren. Which of the whole blood or of the half-blood. But among whole brothers, if one be re-united after separation, the estate belongs to him. If an unassociated whole brother and re-united half-brother exist, it devolves on both of them. If there be only half-brothers, the property of the deceased must be assigned in the first instance to a re-united one; but, if there be none such, than to the half brother who is not re-united.

36. Accordingly the plural number is employed in the term "brothers," (sect. 1 § 4) for the purpose of indicating the succession of all descriptions of them, in the order here stated. Else it would be unmeaning.

37. The text, "a re-united [brother] shall keep the share of his re-united co-heir," (§ 10) is intended to provide a special rule governed by the circumstance of re-union after separation, and applicable to the case where a number of claimants in an equal degree of affinity occurs.

38. Hence, if there be competition between claimants of equal degree, whether brothers of the whole blood, or brothers of the half-blood, or sons of such brothers, or uncles or the like, the re-united parciener shall take the heritage: for the text does not specify the particular relation; and all [these relations.] were premised in the preceding text (sect. 1 § 4); and a question arises in regard to all of them. Therefore the text must be considered as not relating exclusively to brothers.

40. Thus the brother's right of succession has been explained.

Section VI.

On the Nephew's right of succession,—and that of other heirs.

1. On failure of brothers the brother's son is heir: for the text of Vishnu, having declared "it goes to the brothers," proceeds "After them it descends to the brother's sons."

2. Among these, the succession devolves first on the son of a uterine [or whole] brother but, if there be none, it passes to the son of the half-brother. For the text expresses, "An uterine [brother] shall retain or deliver the allotment of his uterine relation" (sect. 5 § 10). Indeed the son of the half-brother, being a giver of obligations to the father of the late proprietor, together with his own grandmother, to the exclusion of the mother of the deceased owner, is inferior to a son of a whole brother [who is the giver of obligations to the grandfather in conjunction with the mother of the deceased].
3. Nor can it be pretended that the stepmother, grandmother and great grandmother take their places at the funeral repast, in consequence of [ancestors being defiled] with their wives: for the terms “mother” [grandmother and great grandmother] &c. [in such texts as the following] bear the original sense of ‘his own natural mother,’ ‘father’s natural mother;’ and ‘grandfather’s natural mother;' and it is by those terms that they are described as taking their places at the funeral repast. Thus it is said, “A mother tastes with her husband the funeral repast consisting of oblations to the manes; and the paternal grandmother with her husband; and the paternal great grandmother with her.” But the introduction of stepmothers and the rest to a place at the periodic obsequies, is expressly forbidden. Thus the sage declares, “Whosoever die, whether man or woman, without male issue, for such person shall be performed funeral rites peculiar to the individual, but no periodic obsequies.

4. Besides, the command for the celebration of the funeral repast in honour of ancestors with their wives, is of invariable exigency; as it is universally acknowledged: but, since there are not stepmothers in every instance, the precept must relate to the natural mother; for the association of the variable and invariable exigency of the same command would be a contradiction.

5. Since the paternal uncle, like the nephew of the whole blood, offers two oblations, which the owner was bound to present, to two ancestors with their wives, should not the succession devolve equally on the uncle and nephew of the late proprietor? The answer is, the paternal uncle is indeed a giver of oblations to the grandfather and great grandfather of the proprietor; but the nephew is giver of two oblations to two ancestors including the owner’s father who is principally considered. He is therefore a preferable claimant, and inherits before the uncle.

6. Accordingly [since superior benefits are conferred by such a successor,] the brother’s grandson excludes the paternal uncle; for he is a giver of oblations to the deceased owner’s father who is the person principally considered.

7. But the brother’s great grandson, though a lineal descendant of the owner’s father, is excluded by the paternal uncle; for he is not a giver of oblations, since he is distant in the fifth degree. Thus Manu says, “To three must libations of water be made, to three must oblations of food be presented; the fourth in descent is the giver of those offerings; but the fifth has no concern with them.” By this passage the fifth in descent is debaunted.

8. But, on failure of heirs of the father down to the great-grandson, it must be understood, that the succession devolves on the father’s daughter’s son [in preference to the uncle] in like manner as it descends to the owner’s daughter’s son [on failure of the male issue, in preference to the brother.]

9. The succession of the grandfather’s and great grandfather’s lineal descendants including the daughter’s son, must be understood in a similar manner, according to the proximity of the funeral offering; since the reason stated in the text “for even the son of a daughter delivers him in the next world, like the son of a son,” is equally applicable; and his father’s or grandfather’s daughter’s son, like his own daughter’s son, transports his manes over the abyss, by offering oblations of which he may partake.

10. Accordingly Manu has not separately propounded their right of inheritance for they are comprehended under the two passages, “To three must libations of water be made, &c.” and “to the nearest kinsman (sapinda) the inheritance next belongs.” Yajnavalkya likewise uses the term “gentiles” or kinmen (gotraja) for the purpose of indicating the right of inheritance of the father’s and grandfather’s daughter’s son, as sprung from the same line, in the relative order of the funeral obligation; and for the further purpose of excluding females related as sapindas, since these also sprung from the same line.

11. Accordingly [since they are excluded,] Bandhayana, after premising “a woman is entitled,” proceeds “not to the heritage; for females, and persons deficient in an organ of sense or member, are deemed incompetent to inherit.” The construction of this passage is “a woman is not entitled to the heritage.” But the succession of the widow and certain others [viz., the daughter, the mother and the paternal grandmother] takes effect under express texts, without any contradiction to this maxim.

12. On failure of any lineal descendant of the paternal great grandfather, down to the daughter’s son, who might present oblations in which the deceased would participate; to intimate, that, in such case, the maternal uncle shall inherit in consequence of the proximity of oblations, as presenting offerings to the maternal grandfather and the rest, which the deceased was bound to offer, Yajnavalkya employs the term, “cognates” (bandhnu.) But Manu has indicated it only by a passage declaratory of succession according to the nearness of the oblation.
18. Since the maternal uncle and the rest present three oblations to the maternal grandfather and other ancestors, which the deceased was bound to offer, therefore the property should devolve on the maternal uncle and the rest; for it is by means of wealth, that a person becomes a giver of oblations. Two motives are indeed declared for the acquisition of wealth: one temporal enjoyment, the other the spiritual benefit of aims and so forth. Now, since the acquirer is dead and cannot have temporal enjoyment, it is right that the wealth should be applied to his spiritual benefit. Accordingly, Brhaspati says, "Of property which descends by inheritance, half should carefully be set apart for the benefit of the deceased owner to defray the charges of his monthly, six-monthly and annual obsequies." So Apastamba ordains, "Let the pupil or the daughter apply the goods to religious purposes for the benefit of the deceased." By saying to "defray the charges of his monthly, &c., obsequies" his participation, and by directing "religious purposes" his spiritual benefit, are stated as reasons. Accordingly the sage says, "Wealth is useful for aims and for enjoyment." It is reasonable, therefore, that, on failure of kindred who might present oblations in which he would participate, the succession should devolve on the maternal uncle and the rest, who present oblations which he was bound to offer.

14. Accordingly, since the succession devolves on heirs down to the maternal uncle and the rest, in the order of oblations in which the deceased may participate, or which he was bound to offer, Mann, considering that purport as sufficiently indicated by the two passages above cited, "To three must libations be made, &c.," says, "To the nearest kinsman the inheritance belongs;" (vide § 7 and 17) proceeds thus, "Then, on failure of such kindred, the distant kinsman shall be the heir, or the spiritual protector, or the pupil." The distant kinsman (sakulya) is the descendant of the paternal grandfather's grandfather or the remote ancestor. Such relatives are denominated Samanodakas. Their order of succession is in the series as exhibited. On failure of such heirs [down to the Samanodaka] the succession devolves on the spiritual protector, the pupil, &c.

16. Otherwise [if the text of Mann do not intend the maternal uncle and the rest] how is the admission of maternal uncles and others affirmed without contradiction to Mann? Therefore this meaning is intended by him in the passage above cited; and there is no contradiction.

17. Accordingly, having declared, while treating of inheritance, "To three must libations of water be made; to three must oblations of food be presented; the fourth in descent is the giver of those offsprings; but the fifth has no concern with them," he adds "To the nearest kinsman (sapinda) the inheritance next belongs;" for the purpose of showing, that the fifth in descent, not being connected even by a single oblation, is not the heir, so long as a person connected by a single oblation, whether sprung from the father's or the mother's family, exists. Otherwise, since the relation of sapinda has been declared by a distinct text, ("Now the relation of sapinda or men connected by the funeral cake, ceases with the seventh person");) and the right of the fourth in descent to inherit is declared by the text, "To the nearest kinsman the inheritance next belongs," the passage, which begins, "To three must libations be made, &c., would be tautological. It cannot be said, that it is intended to direct the celebration of funeral repast in honour of three ancestors; for it is inserted in the midst of a dissertation concerning inheritance; and the funeral repast is ordained by a different text. Thus Mann says, "Let the householder honour the sages by duly studying the Veda; the gods by oblations to fire by virtue of sacrifices; men, by supplying them with food; and spirits, by gifts to all animated creatures."

19. Nor should it be pretended, that the text of Mann, "To the nearest sapinda, &c.," § 17 is intended to indicate nearness of kin according to the order of birth, and not according to the presentation of offerings; for the order of birth is not suggested by the text. But Mann, declaring, that oblations of food, as well as libations of water, are to be offered to three persons, and that the fourth in descent is a giver of oblations, but neither is the fifth in ascent a receiver of offerings nor the fifth in descent a giver of them, thus declares nearness of kin, and shows that it depends on superiority of [benefits by] presentation of oblations. Therefore a kinsman who is allied by a common obligation as presenting funeral offerings to three persons in the family of the father, or in that of the mother, of the deceased owner, such kinsman having sprung from his family though of different male descent, as his own daughter's son or his father's daughter's son, or having sprung from a different family as his maternal uncle or the like, [is heir] and the next ("To three must libations of water be made," &c., § 7) is intended to propound the succession of such kinsmen; and the subsequent passage ("To the nearest sapinda, &c.," § 17) must be explained as meant to discriminate them according to their degrees of proximity.

20. The order of succession then must be understood in this manner: on failure of the father's daughter's son or other person who is a giver of three oblations (presented to the father, &c.,) which the deceased shares or which he was bound to offer, the succession devolves in the next place on the maternal uncle and others (namely his son or grandson) who offer oblations to the maternal grandfather and the rest which the deceased was bound to present.
21. But on failure of kin in this degree, the distant kinsmen (sakulya) is successor. For Manu says, "Then, on failure of such kindred, the distant kinman shall be the heir, or the spiritual preceptor, or the pupil." The distant kinman (sakulya) is one who shares a divided obligation (sect. 1 § 87) as the grandson's grandson or other descendant within three degrees reckoned from him; or as the offspring of the grandfather's grandfather or other remotest ancestor.

22. Among these claimants [whether ascending or descending] the grandson's grandson and the rest are nearest, since they confer benefits by means of the residue of obligations which they offer. [These descendants are therefore heirs.] On failure of such, the offspring of the paternal grandfather's grandfather inherits in right of presented obligations to the paternal grandfather's grandfather and other ancestors who are sharers of residue of the obligations which the deceased was bound to offer.

23. If there be no such distant kindred, the Samanodakas, or kinsmen allied by common libation of water, must be admitted to inherit, as being signified by the term sakulya [conformably with Baudhayana's explanation of it : sect. 1 § 87.]

24. On failure of these, the spiritual preceptor [or instructor in knowledge of the veda] is the successor. In default of him, the pupil [or student of the veda] is heir: by the text of Manu, "or the spiritual preceptor or the pupil." (§ 14.) On failure of him likewise, the fellow-student by the text [of Yajnavalkya] "a pupil and a fellow-student." (sect. 1 § 4.)

25. In default of these claimants, persons bearing the same family name (gotra) are heirs. On failure of them, persons descended from the same patriarch are the successors. For the text of Gantama expresses "Persons allied by funeral oblations, family name and patriarchal descent, shall share the heritage [of a childless man; or his widow shall partake.]"

26. On failure of all heirs as here specified, let the priests take the estate. Thus Manu says, "On failure of all these, the lawful heirs are such Bramhansas, as have read the three Vedas, as are pure in body and mind, as have subdued their passions. Thus virtue is not lost." Virtue which would be extinguished by the ample enjoyment [of its reward,] but is renewed by the acquisition of fresh merit through the circumstance of his wealth devolving on Brahmanas, is not lost. Here also the author indicates the appropriation of the property for the benefit of the deceased.

27. In default of them, the king shall take the wealth : excepting however the property of a Brahmana. A failure of descendants from the same patriarch and of persons bearing the same family name, as well as of Brahmanas, must be understood as occurring when there are none inhabiting the same village: else an escheat to the king could never happen.

28. If the right of the father's daughter's son, and of the maternal uncle and the rest be not considered as intended by the text, "To three must libations of water be made &c." (§ 7) they would have no right of succession, since they have not a place among distant kinsmen and others, whose order of succession is specified. Nor can this be deemed an admissible inference, since they are indicated by Yajnavalkya under the terms "Gentiles and cognates" (sect. 1 § 4.) Consequently it must be affirmed, that they have been indicated by Manu in this text (§ 7). Therefore such order of succession must be followed, as will render the wealth of the deceased most serviceable to him.

29. Accordingly [since inheritance is in right of benefits conferred, and the order of succession is regulated by the degree of benefit:] the equal right of the son, the son's son and the son's grandson, is proper: for their equal pretensions are declared in the text, "By a son a man conquers worlds," &c. (sect. 1 § 31) and in other similar passages. They equally present obligations to the deceased. Hence also the grandson and great grandson, whose fathers are living, do not inherit, for they do not confer benefits, since they are forbidden to celebrate the periodical obsequies by skipping the surviving father; the law providing, that obligations shall not be presented, overpassing a living person. Otherwise these [sons and grandsons, whose fathers are living] would have the same right of inheritance with those, whose fathers are deceased. Or the son alone would inherit as nearest of kin in the order of birth, to the exclusion of the son's son and son's grandson. Neither is there any express text declaratory of the equal rights of three descendants, son, grandson and great-grandson. Therefore it must be inferred, that the party in their right of inheritance arises from the equal benefits conferred by them.

30. In like manner the appropriation of the wealth of the deceased to his benefit, in the mode which has been stated, should in every case be deduced according to the specified order.

31. This doctrine, [that inheritance is deducible from reasoning and founded on service rendered,] must be admitted to have the assent of Manu and other sages: for there can be no other purpose of propounding, under the head of inheritance, the superior benefits derived from sons and the rest; and the exoneration of the father from debt is stated as a
reason for the son’s inheriting: (“By the eldest son a man is exonerated from debt to his ancestors; therefore that son is entitled to take the heritage,” sect. 1 § 33). Redemption also is exhibited as a cause of succession to property: (“Even the son of a daughter delivers him in the next world like the son of a son”) and there is no other reason for the equal right of inheritance of three descendants, the son and the rest, besides their deliverance (of their ancestors’); and the passage, “To three must libations of water be made, &c” (§ 3) would be unnecessary [if such were not the purpose]; and the exclusion of persons impotent, degraded, blind from their birth and so forth, is an opposite rule as founded upon their rendering no services; [but not so as grounded on the mere letter of the law] and it is troublesome to establish an assumed precept for debarring those before whom an heir intercedes; [as must be done upon any other supposition] and it is reasonable, that the wealth, which a man has acquired, should be made beneficial to him by appropriating it according to the degree in which services are rendered to him.

32. This doctrine, as illustrated by the irrefutable Udyota, should be respected by the wise.

33. If the learned be yet unsatisfied [with relying on reason for the ground of the law of inheritance,] this doctrine may be derived from express passages of law. Still the same interpretation of both texts [of Manu, § 17 and 17.] must be assumed. But let this be. What need is there of expatiating?

34. Excepting the property of a Brahmana, let the king take the wealth [on failure of heirs.] So Manu directs “the property of a Brahmana shall never be taken by the king: this is a fixed law. But the wealth of the other classes on failure of all [heirs:] the king may take.” By the term “all” is signified every heir including the Brahmana (§ 36).

35. The goods of a hermit, of an ascetic, and of a professed student, let the spiritual brother, the virtuous pupil and the holy preceptor take. On failure of these, the associate in holiness, or person belonging to the same order, shall inherit. Thus Vajnavaitya says, “The heirs of a hermit, of an ascetic and of a professed student, are, in their order, the preceptor, the virtuous pupil, and the spiritual brother and associate in holiness.”

36. Goods, such as they may happen to possess, should be delivered in the inverse order of this enumeration. The student must be understood to be a professed one: for, abandoning his father and relations, he makes a vow of service and of dwelling for life in his preceptor’s family. But the property of a temporary student would be inherited by his father and other relations.

37. Thus has the distribution of the wealth of one, who leaves no male issue, been explained.

CHAPTER XII.

On a second partition of property after the re-union of co-parencers.

1. Next the partition of the property of re-united co-parencers is explained. On that subject Manu and Vishnu say, “If brethren, once divided and living again together as parencers, make a second partition, the shares must in that case be equal: there is not in this instance any right of primogeniture.”

2. The shares must be equal.] This supposes reunion of brothers belonging to the same tribe. But, in the case of association of brothers appertaining, the one to the sacerdotal, and the other to the military tribe, the rule of distribution must be understood to conform with the original allotment of shares: for the text is intended only to forbid an elder brother’s superior portion as before allotted to him. Accordingly [since unequal partition, regulated by difference of tribes, is not denoted:] Vrhaspati, saying “Among brethren who, being once separated, again live together through mutual affection, there is no right of primogeniture when partition is again made:” prohibits only the assignment of a superior share to the eldest, but does not ordain equality of allotments.

3. Re-united co-parencers are described by Vrhaspati: “He who, being once separated, dwells again, through affection, with his father, brother or paternal uncle, is termed re-united.”

4. A special association among persons other than the relations here
enumerated, is not to be acknowledged as a re-union of parcers : for the enumeration would be meaningless.

5. Other particular rules, which have been set forth under the head of partition among brothers, must be observed in this case also.

6. Thus has the right of a re-united parcer been explained.

CHAPTER XIII.

On the distribution of effects concealed.

1. The distribution of that, which was concealed at the time of partition and is afterwards discovered, shall be now taught. On this subject Mann says, "When all the debts and wealth have been justly distributed according to law, any thing, which may be afterwards discovered, shall be subject to an equal distribution."

2. The division of it should be precisely similar to that which had been previously made; and a less share is not to be given, nor no share, to the person who concealed the property, as a punishment of his concealment. Such is the meaning of the sentence "shall be subject to an equal distribution." Nor is the text intended to enjoin the allotment of equal shares of the property to all the parcers: for there is no reason for prohibiting the deduction in favour of the eldest, and so forth; and it would follow, that brothers belonging, one to the sacerdotal, another to the military, and the rest to other tribes, would have equal shares.

3. Thus Yajnavalkya says, "Effects, which have been withheld by one co-heir from another, and which are discovered after the separation, let them again divide in equal shares: this is a settled rule."

4. So Katyayana declares (by the close of the following text,) that a division shall be again made of that which has been distributed in an undue manner. "What has been concealed by one of the co-heirs, and is afterwards discovered, let the sons, if the father be deceased, divide equally with their brethren. Effects, which are withheld by them from each other, and property which has been ill distributed, being subsequently discovered, let them divide in equal shares. So Bhrigu has ordained."

5. But the maxim, "Once is the partition of inheritance made," relates to the case of a fair distribution.

6. "Being subsequently discovered."

7. The meaning is, that what has been already divided, is not to be again distributed.

8. So Katyayana says, "Effects, which have been taken by a kinsman, he shall not be compelled by violence to restore: and the consumption of unseparated kinsmen, they shall not be required to make good." By gentle means, and not by violence, a kinsman shall be made to restore the effects taken by him. But what has been consumed by a co-heir during co-parcerency over and above his due proportion, he shall not be required to make good.

9. In answer to those authors, who contend, that, in this case, as there is the property of another in the common effects, he, who embalizes them, is a thief and of course a sinner, the following argument is propounded: since the received import of the term conveys, that a thief is he, who usurps a right in the property of another, without a title (by gift, sale or other act of the owner,) being clearly conscious, that the thing belongs to another; but, in the present case, the person cannot distinguish this is mine and that is another's, for the goods are undivided; therefore, an donation is complete then only, when the owner, conscious that the thing is his, relinquishes it with a view to its becoming the property of another person, and that other person is sensible of his property, apprehending this is come mine; but that cannot occur in respect to common goods, and therefore common property is pronounced unfit to be given; so theft likewise is complete by the consciousness that this is not mine, but another's: therefore the crime of theft is not imputable to the act of embalizing what is common.

10. But the term embalization or withholding (apahara) signifies concealment; and concealment is not exactly theft; for the word theft is in use for an unconcealed taking. Thus Katyayana says, "The taking of another's goods, whether privately or openly, by night or by day, is termed theft." Accordingly (since the concealment of common property is not theft,) it has been before declared, that the withholder of the goods shall not be com-
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10. This too [namely that such is the definition of theft] appears from the sages authorizing the allotment of a share even to the withholder of common property.

11. Accordingly it is observed by Visvarupa, 'The crime of theft is not here imputable; for the rectal of the text obviates that supposition.' His meaning is, because the sense of the verb to steal is not applicable to the case.

12. Hence also it is remarked by Jitendriya, in the chapter on expiation and penance that 'If a man seize gold appertaining to another by mistake for iron or other matter [of little value;] or something which is not gold, mistaking it for this substance; or a thing resembling some chattel of his own but belonging to another person, by mistake for his own in all these cases there is not a complete seizure [or wilful taking of the gold;] for, in these several instances, there is not a knowledge of its belonging to another person, being such as the thing in fact is.' In like manner, in the present instance also, [viz. in that of common property,] the same holds good: for, previous to partition, a discriminative property, referable to particular persons relatively to particular things, is not perceived. Consequently there is not in this case a complete theft.

13. Or, admitting that it is a theft, the guilt of robbery is not incurred: for the text allows a share even to the person who embezzeles the property. Else, in the case of embezzeled gold or other valuable effects, the offender, being degraded from his tribe, would have no allotment.

14. If it be alleged, that, since there is no text expressly authorizing the allotment of a share to the thief who has embezzeled gold to an amount sufficient to cause his degradation from his tribe, the rule for the allotment of a share is presumed to be applicable to the case of theft of other effects: but why may not the law which forbids the stealing of gold or the like, be the rather considered as relating only to goods appertaining to another, and not common? Still, however, there is no proof or authority on which to ground the selection [of one of these restrictions in preference to the other.] The answer to this alleged objection is as follows: in the legal definition, "the taking of another's goods is theft," "another's" signifies appertaining to a different person to the utter exclusion of any right of his own; for, of two sorts of property, common and several, the notion of several property is most readily presented. Therefore the proposition is similar to that which provides for the previous performance of a sacrifice, [preparatory to the sacrifice with the acid asclepias,] where an oblation, such as is presented at the full of the moon, intends particularly the offering of a cake of ground rice, as used at the Agnishoma [one of the ceremonies performed at that period] and not the oblation of liquid butter, as practised at the Upanasas, for this is common to the Agnishoma and to sacrifices bearing other denominations.

15. Accordingly [since it is not theft.] there is no censure anywhere expressed in Baloka on such a subject [viz. in regard to the taking of common property.]

16. It is a remark of Bala, that, as in the instance of green and of black kidney beans in relation to sacrifices, where it might be supposed, that black kidney beans would be a fit substitute when green kidney beans are not procurable, but the use of such beans is prohibited by an express passage of scripture which declares that black kidney beans are unfit to be employed at sacrifices; so, notwithstanding the taking of that of which is, and that which is not, his own, [being common,] is permitted, still the taking of what exclusively is not his own is forbidden: this is puerile; for the definition of theft, as above explained, is not applicable [to the case of embezzelement of common property.] It cannot be affirmed, that black kidney beans are unemploye at sacrifices; although ground particles of green beans, intermixed with black beans, be employed: for, in such case, mixed black beans, appear to be used at the sacrifice.

17. Thus has partition of effects concealed by co-partners from each other, been discussed.

CHAPTER XIV.

On the ascertainment of a contested partition.

1. The determination of a doubt, regarding the fact of a partition having been made is next explained. On that subject Narada says, "If a question arise among co-heirs in
regard to the fact of partition, it must be ascertained by the evidence of kinsmen, by the record of the distribution, or by the separate transaction of affairs."

2. The mention of kinsmen is intended to show, that, if such be forthcoming, other persons should not be made witnesses. Accordingly [since a recourse to other witnesses is forbidden when kinsmen are forthcoming.] Yajnavalkya says, "When partition is denied the fact of it may be ascertained by the evidence of kinsmen, relatives and witnesses, and by written proof; or by separate possession of house or field."

3. In the first place "kinsmen" or persons allied by community of funeral oblations, are witnesses. On failure of them, relatives, as signified by the term bandhu. In default of these, strangers may be witnesses. For, if they were equally admissible, the specific mention of "kinsmen" and "relatives" would be meaningless; since they are comprehended under the term "witnesses."

4. Hence also Sankha says, "Should a doubt arise on the subject of a partition of the wealth of kindred, the family may give evidence, if the matter be not known to the relations sprung from the same race." "Relations sprung from the same race" are kinsmen. If the matter be not known to them, "the family" or relatives (as the maternal uncles and the rest) may give evidence: but not a stranger [while a person of the family can bear testimony.] But, if these also be uninformed, any other person may be a witness.

5. Accordingly, kinsmen are stated by Narada (§ 1) as the chief evidences: and a different reading jnarbhith, 'persons acquainted with the matter,' (instead of jnarbhith, 'kinsmen,' ) is unfounded.

6. Next the proof is by written evidence: but written proof is [in general] superior to oral testimony: being so declared [by an express passage of law: "Testimony is better than presumption; and writing is better than oral evidence."

7. In the next place, the proof is by the circumstance of separate transaction of affairs (§ 1) as it is stated by Narada: "Gift and acceptance of gift, cattle, grain, houses, land and attendants, must be considered as distinct among separated brethren, as also diet, religious duties, income and expenditure. Separated, not unseparated, brethren may reciprocally bear testimony, become sureties, bestow gifts and accept presents. Those, by whom such matters are publicly transacted with their co-heirs, may be known to be separated even without written evidence."

8. So Vṛhaspati: "A violent crime, immovable property, a deposit, and a previous partition among co-heirs, may be ascertained by presumptive proof, if there be neither writing nor witnesses. The exertion of force, a blow, or the plunder, may be evidence of a violent crime; possession of the land may be proof of property; and separate wealth is an argument of partition. They, who have their income, expenditure and wealth distinct, and have mutual transactions of money-lending and traffic, are undoubtedly separate.

9. One brother gives and another accepts, or they have separate house and land, or their income and expenditure [of wealth] and abode are separate; or, when a loan or other affair is transacted by one, another is made witness to it, or becomes surety; or they have mutual transactions of money-lending or the like; or one, having bought certain goods from another person, sells it for traffic to his brother; in these and similar instances, since any such act can only take place among divided brethren, a presumption of partition is deduced from it by the intelligent.

10. It is not to be concluded from the use of the plural number in the phrase "by whom such matters are transacted" (§ 7), that the concurrence of all those circumstances is required. For these texts are founded on reason; and the reason is equally applicable in every several instance.

11. By saying "if there be neither writing nor witnesses," (§ 8) it is intimated, that presumptive proof is to be admitted only in default of written and oral evidence.

CHAPTER XV.

Peroration.

1. Gratification cannot be afforded in this work, to those whose comprehension of the principles of the law of inheritance is impeded by submission to the authority of teachers: but the author's labour has been devoted to reconcile the doctrines of sages whose intellect was governed by evidence [of holy writ].
VYAVAHARA MAYUKH ON INHERITANCE.

CHAPTER IV.

ON INHERITANCE, [DA'YA-VIBHA'GA].

Section I.

Of Property or Ownership, (Svatva.)

1. Now we come to speak of such ownership, as is necessary for deciding regarding heritable property. The distinctions as to its power and operation, are produced by purchase, acceptance, &c. The reason of this is, that the causes of purchases, &c. arise from worldly transactions alone, not from the Sutra; for proprietary rights are understood even by those not acquainted with that sacred code, in deducing it from which the subject is needlessly enlarged. Bhavanatha is of this opinion in his Naya Viveka.

2. As for the text of Gautama: "An owner is by inheritance, purchase, partition, seizure, or finding. Acceptance is for a Brahman an additional mode; conquest for a Kshatriya; gain for a Vaishya or Sudra," it is by way of repetition in matters established in the world. For people admit inheritance [to be] in that, which becomes one's own by the mere loss of the owner's property therein. The word mere is used to include purchase, seizure, [or acceptance] and the rest. Here even, in such like loss, the word inheritance, has force; by reason of its joint application [in the text] to purchase and the other means of ownership. And the same may be proved by the argument, that 'without admitting a cause [there can be no effect].'

3. According to Dhareeswara Acharya: 'The ownership of sons and the rest, in the wealth of the father, is not generated previously during his life, but is produced by partition.' And the author of the Smriti Samgraha says the same. But it is not so; for, from the plain sense of this text: "Even BY BIRTH, OWNERSHIP in wealth is obtained," and other similar ones, it is evident, that, ownership in the father's wealth depending on the tillial relation, it is generated even by the production of a son. And [the same results] from this text of Tulasivalya: "For the ownership of father and son is the same, in land which was acquired by the grandfather, or in a cowedy, or in chattels which belonged to him." 'And this does not mean, that the reason of the acquisition of ownership is found in the grandfather's death, and not in the production of a son,' for [if it did], such ownership would be wanting. In case no grandson were to be born to him up to the time of his death. In this way therefore, either the word grandfather is of no use [in the argument]; or it follows a fortiori [prasakthe] that there is no equal ownership in (property) acquired by the great-grandfather, and other [more remote ancestors]. And the argument of 'cause and effect' might here be repeated.

4. As for this text of Devala: "When the father is deceased, let the sons divide the father's wealth; for sons have not ownership, while the father is alive and free from defect;" the first hemistich comprehends up to the time of partition, because it declares the [ascertainment of] instrument, or agents, of the [act or] ceremony; but the last hemistich refers to their dependance, as declaring the same person's praises; but it does not mean the absence of ownership. It is also made clear in this text of T sankha: "From this it results, that while the father lives, sons shall not divide the wealth; even if there should be afterwards an increase by [means of] them, still the sons are unfit, by reason of their dependance upon the wealth and religious offices of the father." Here, depe dance is specified immediately, with a view more strongly to inculcate the foregoing prohibition. 'Even if by them subsequently, [be made] is the proper interpretation. By them, by the sons, consequentially to their birth. Increase, what is obtained by acceptance, or the like. The proposition is this: 'If in property accepted by sons or other [heirs], their dependance
6. As for this text: "The father is master of all gems, pearls and corals; but neither the father nor the grandfather, is of the whole immovable estate," it also means the father's independence, only in the wearing and other [use] of ear-rings, rings [&c.]: but not as far as gift or other [alienation]; neither is it with a view to the cessation of the cause of his ownership on the production of a son. This very meaning is manifest also by [the text] noticing [only] gems, and such things as are not injured by use. Even so, this text: "Those immovables and bided have been acquired by the man himself, a gift or sale of them should not be made without convening all the sons," is only a prohibition against their gift, sale, or the like, not against the use of them.

6. Now the pre-existing undefined [joint] ownership of more than one brother or other [co-heir] is by partition between each, defined and made apparent. On this point some one has said: "This [ownership] is produced different, as a separate portion, by the destruction of the former ownership contained in the common property." But, justly speaking, since proximity arises in considering the production of another ownership on the destruction of the former; therefore [separate] ownership, existing even originally from community [of interests], is discovered by partition, by the result furnishing separate substances or things.

7. To return to the text: Acceptance is for a Brahman an additional mode; that is, according to some. What is obtained by acceptance, is the Brahman's additional [mode of] increase. With reference to inheritance, and the other [five modes common to all], this acceptance is, for a Brahman alone, an additional mode. It results therefore, that conquest and the other [modes enumerated] are in like manner [additional] for Kshatriyas and the rest.

8. In conquest also, where the property of the conquered consists in houses, lands, money, or the like, there alone [ownership] is acquired by the conqueror; but in the revenues of the conquered, the conqueror possesses the same, but no property in them. Even so in the sixth [book of the Mimamsa]: "The whole earth must not be given away by the king of the world, neither a [whole] district [mandala] by the ruler of that district. But the property in each village, house, or other [portion] of a whole country or a district of it, belongs solely to the owner of the soil [bhumiaka] or other [proprietor]. The revenue only [may be taken] by the prince. Therefore, in gift, or other alienation of such lands as are here made mention of, a gift of the land is not brought about; we must only suppose a mere livelihood [given by the prince out of his revenues]. But in purchases from the owner, the even ownership accrues in the [property transferred], whether houses, land, or other. Then indeed, the benefits of a gift of land also may be obtained from it [by buying land from the owners and then giving it away in charity.]

9. Gain, [Nirvisha] is that which is acquired by usury, agriculture, commerce, tending of animals; and [secondly] what is acquired by service. From the dictionaries, we find the synonyms of 'Gain' to be 'Hire,' and 'Enjoyment.' Hire again, is defined to be Service. Gain is usury, and the rest. Here, the first [mentioned] are sources of 'gain' to the Vaisyas class: The second [service] to the Sudra class.

10. Now, the reason of sale and other transfer of property, is to be deduced solely from worldly motives, [and not from law; with which proposition we set out] And in like manner, popular practice is established in the ownership of calves and other [produce] of a man's own cow, or the like: but it would not be so, if it depended on such means only as the law furnishes [for deciding such a question], because we do not learn from the law the means of distinguishing the produce of one's own cow or the like.

11. Yet, an opponent may say: 'There may be ownership in daughters, sons or other issue of a wife, in the same way as there is in the produce of one's own cow; [and], a case of necessity being assumed, [for instance] by the rule: "In a vivaixit sacrifice a man gives the whole of his possessions," the gift of every thing being granted, the necessity thence arises for the gift of a daughter or son, and therefore your reasoning from the sixth book of the Mimamsa, [that they are not to be given,] will be at variance with such rule.'

12. [I answer] No; because there being no such property in a wife as there is in a cow or the like, there cannot be any property in the children produced from her: And in a worldly sense, the reason of ownership is determined, solely in the production of that which contains the principles of ownership. Neither can it be said, that property may also exist in wives, from acceptance [in marriage]; for then, by reason of the absence of property
possessed by Kshatriyas and the other [two classes in] their wives, from their want of the [right of] acceptance, there is also a want of it [property] in their issue.

13. Therefore, since the text: "This law is propounded by me in regard to sons equal by class," restricts the taking of an adopted son solely to one equal in class; and since with respect to Kshatriyas and the rest, acceptance of an adopted son is even secondary; then also with respect to Brahmanas, it is not the principal mode; because it is contrary to reason to have two contrary, but connected, explanations of performing one and the same rite.

14. Neither can it be said that a Brahman alone is entitled to the rite of accepting a son, and that a Kshatriya is not entitled, since we know that the right [of accepting a son] does pertain to them, from the following and other texts of Samakas and others: "A daughter's son as well as a sister's son, are affiliated by Sudras." Even so, in the marriage of a Brahman with the daughter of a Kshatriya or other [lower class], by the Brahma rite, the secondary rank must be admitted, both for the gift and acceptance; otherwise they are principal. Thus two explanations [of the same rite] are [here again] opposed. As regards Kshatriyas, the admisibility of all [to Brahma nuptial] and the rest is in no degree contrary to texta. Even so Mira in the Tantra Rakta has said: 'The gift of sons and the rest is inferior [or secondary].'

15. Neither are we to suppose [absolute] property, merely because the laws of language [admit the expression], 'own wife, son, daughter,' for in the same way as we say 'own father, 'own mother,' and the like, the expression also arises in speaking of kindred. If so, the power of the word 'own,' might likewise affect the term kindred, for in dictionaries we find: "In the word kindred, the pronoun own [is feminine]; in soul [it is masculine]; in kindred, it is [common to] three [genres]; and in the expression peculiar wealth, it is neuter."

16. However, since in the sixth book of the Mimamsas, gift of a slave born in the family is mentioned, this point must be considered. Since property is the mother is wanting from absence of the complete power of gift, acceptance, purchase, sale, and the like, then in the household-slave begotten on her, there is also an absence of the power, from the impropriety of it. This conclusion is conformable to the argument with which we set out.

Section II.

Of Heritage (Daya.)

1. Wealth not re-united, nor put back again into a common stock, and [still] admitting of partition, is Heritage. By not re-united, I mean to exclude wealth [never before joint, and now first] united for purposes of gain or the like, because the term 'partition of heritage,' does not apply to dividing of [wealth] thrown together by merchants. In like manner we must also exclude re-united property, in the sense in which that term will hereafter be defined. Even as we find in the Smriti Samgraha: "That which is received through the father, and that received through a mother, is described by the term Heritage. The partition of it is now related." And in the Nighantu, it is said: "The learned define heritage to be wealth of a father, which admits of partition." The word father is merely put to denote relations in general, as a part for the whole.

2. This heritage is of two kinds, obstructed and unobstructed. When the life of the owner of the property, or that of his sons, or other [heirs], is interposed, that [property] is [term] obstructed; for instance, the wealth of uncles, and the like. But where ownership accrues to sons, or other [next heirs], solely from affinity to the owner, without reference to other means of acquiring property, [the heritage] is then unobstructed, as, the wealth of a father. This is the definition of heritage.

Section III.

Of the Partition of Heritage.—(Daya-Vibhaga.)

1. This Narada declares: "Where a division of the paternal estate is instituted by sons, that becomes a topic of litigation, called by the wise, 'partition of heritage.' The word sons includes [by synecdoche] grandsons, and the rest. And in the same way, by paternal [is intended the estate of] the grandfather and the rest. But Madana has the very words, 'of a father and the rest.' And this definition, of 'partition of heritage,' has been declared.
Section IV.

The Periods of Partition.—(Vibhoga-Kala.)

1. Mann. "AFTER the DEATH OF the FATHER AND MOTHER, the brothers, being assembled, may divide among themselves the paternal [and maternal] estate ; but they have no power over it, while their parents live [unless the father choose to distribute it]." By inserting the word and the consummation of [both their] deaths is not required. Even thus, in the Madana Ratna and Smriti Samgraha: "A partition of the father’s wealth may take place, even whilst the MOTHER LIVES, for this reason, that without her husband, the mother does not from her independence also derive ownership. "A partition of the mother’s wealth also may take place, in like manner while the father is alive, for, if there be issue, the lord [of the wife] is not lord of the wife’s wealth."

2. This is opposed to a text of Brhaspati: "On the demise of both parents, participation among brothers is allowed: and even while they are both living it is right, if the mother be past child-bearing." Narada: "Let sons regularly divide the wealth, when the father is dead; or WHEN THE MOTHER IS PAST CHILD-BEARING, and the SISTERS are MARRIED; OR when THE FATHER’S SENSUAL PASSIONS are EXTINGUISHED." Sensual passions, desire. Extinguished, averse. The expression, and the sisters are married, must be taken collectively with [the mother’s] child-bearing, and extinction of [the father’s] passions, after the dimple of the crow’s eye.

3. Gantama: "After the demise of the father, let sons share his estate. Or, while he lives, and the mother be past child-bearing, if he desire partition." From this expression, if he desire, partition is declared legal also, BEFORE the MOTHER is PAST CHILD-BEARING, by the father’s wish alone.

4. Brhaspati declares partition in some cases without his wish: "The father and sons are equal sharers in houses, and lands, derived regularly from ancestors: but sons are not worthy [in their own right] of a share in wealth acquired by the father himself, when the father is unwilling: From which it results, that sons are worthy of a share in property, acquired by the grandfather or other anacessor, even though the father do not wish it.

5. In the GRANDFATHER’S PROPERTY also, partition in some cases depends on the father’s pleasure, say Mann and Vishnu: "And if a father by his own efforts, recover [a debt or property unjustly detained] which could not be recovered before [by his father], he shall not, unless by his free will, put it into parcomary with his sons, since in fact it was his. Brhaspati: "Over the grandfather’s property, which has been seized [by strangers], and is recovered by the father through his own ability, and over [any thing], gained by him through science, valour, or the like, the father’s full dominion is ordained. He may give it away at his pleasure, or he may defray his consumption with such wealth; but on failure of him, the sons are pronounced entitled to equal shares."

6. Narada: "A father who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by a beloved object, or who acts otherwise than the law permits, has no power in the distribution of the estate." Harita: "If the father be free from desire, old, perverted in mind, or long afflicted with disease, partition of his wealth [may be made]." Free from desire, according to the Madana Ratna, means, without desire of partition. Perverted mind, following the force contrary to law. The sense is, ‘that partition may be made, even against the will of [such a] father.’

7. Harita says, that when the father is incapable, PARTITION takes place BY THE CONCURRENCE OF THE ELDEST SON: "But if he be decayed, remotely absent, or afflicted with disease, let the eldest son manage the affairs as he pleases." Sankha and Likhita: "If the father be incapable, let the eldest son manage the affairs of the family; or with his consent, the next brother conversant with business.” The next, the one born after him. Partition by the pleasure of one capable of the maintenance and other [care] of the family [is intended.] From this it results that if all be so [qualified], it is [unmaterial or] undetermined.

8. Yajnavalkya: "When the father makes a partition, let him separate his sons [from himself] at his pleasure, and either [dismiss] the eldest with the best share, or [if he chooses], all may be equal sharers. A voluntary partition alone [is denoted] by the last hemistich; since the dependence of the will in the two cases mentioned, has been above declared, from the improprity of independence; [and further] from the inconsistency [which would result
INHERITANCE (Hindus).

In such construction of the text: [For then he might give to one a lākh [of rupees]; to another a single kauri; to a third, nothing at all; which would be no [fair] exposition of the text. A deduction in the share of the eldest is noticed by Manu: “The portion deducted for the eldest is a twentieth part [of the heritage], with the best of all the chattels; for the middiemost, half of that, [or a fortieth]; for the youngest, a quarter of it, [or an eightieth].” But if there be no deduction, the shares must be distributed in this manner: “Let the ELDDEST have a double share, and the next born, a share and a half, [if they clearly surpass the rest in virtue and learning:] the YOUNGERS SONS must have each a share: [if all be equal in good qualities, they must all take share and share alike.]"

9. Between twins, the birthright of that one first born is thus declared by Manu: “The right of invoking Indra by the texts, called Svabrahmanyas, depends on actual priority of birth; and of twins also, [if any such be conceived] among [different] wives, the eldest is he, who was first actually born.” “Among twins, to him whose face [kinsmen] first see after his birth, belong [the privileges of] male offspring, [the right of performing obsequies] for his father, and [the honours of] primogeniture.”

10. However, in the Pinda Siddhi and other medical books, the right of primogeniture is awarded to the last born [of twins]. This is opposed by the above [texts] in the matter at issue, because it has no foundation in the sacred writings; like as: “Purification ensues after a month [Sudras].” However, the right of primogeniture of the last born is declared in the Bhagvata, in this text and the like: “When a double fetus is conceived, the last conception is that first brought into the world.” [But] this doctrine is also opposed to the above texts [of Manu and Devala], whilst in the Puranas, many practices are disclosed, contrary to the written law. According to some, the question ought to be decided by the customs of the country. But what I stated at first, [in favour of the first born], is the proper doctrine.

11. And this PARTITION BY DEDUCTION, is not respected in the Kali [or present] age, for it is one of the things [expressly] set aside in the present age, as has been already proved by me in my Samaya Mayukha.

12. Narada allows the FATHER a double share: “Let the father, making a partition, reserve two shares for himself.” This text relates to an only son. For in the Madana Satra, it is thus of Sakha and Likhitas: “If there be one son, let [the father] himself reserve two shares, and the best of the slaves and cattle.” The word one relates to the most excellent. By the author of the Amara [Koeha], ‘chief,’ ‘other,’ ‘only,’ are declared the synonyms of one. All which, according to the Parijata, denote a son well qualified.

13. Brhaspati, however, declares the right to only an equal share with his sons, even if there be only one, in property acquired by the grandfather: “In wealth acquired by the grandfather, whether it consist of movables or immovables, the equal participation of father and son is ordained.” Yajnavalkya: “For the ownership of father and son is the same, in wealth which was acquired by the grandfather, or a cowry, or in chattels which belonged to him.” Katayana: “When the father and the sons even take all that, which has been made upon the common wealth, in equal shares, it is called a legal partition.”

14. As for this text of Yajnavalkya: “A legal distribution, made by the father, among sons unharried with greater or less shares, is pronounced valid,” according to Madana, Vijnanesvara and others, it means, ‘If the [distribution], made by the father be legal, it cannot be set aside.’ This text again, of Narada: “For such as have been separated by the father with equal, greater, or less, allotments of wealth, that is a lawful distribution: for the father is lord of all,” relates to the former ages.

15. In a case of equal partition between a father and his sons, a share belongs also to the WIFE; says Yajnavalkya: “If he make the allotments equal, his wife, to whom no separate property had been given by the husband or the father-in-law, must be rendered partakers of like portions.” If any had been given, they are only to get half, for he adds: "Or if any had been given, let him assign the half. The half; meaning, so much as, with what had been before given as separate property [stridhana], will make it equal to a son's share. But if her property be [already] more than such share, no share [belongs to her]."

16. The same author treats of a want of wish to participate, in the case of a SON able to earn, and NOT DESIRING A SHARE: “The separation of one who is able to support himself, and is not desirous of participation, may be completed by giving him some tribe.” Accordingly the Mitakshara it means that: “Any thing whatever may be given, for the sake of preventing the desire being entertained by his sons, of receiving [a share of] the heritage.”

17. An equal partition, after the death of the father, is declared in another smriti: “Let SONS divide equally both the effects and the debts, after [the demise of] both parents.” Harita: “When the father is dead, the partition of the inheritance should be made equally.”
18. Yajnavalkya: "Of heirs dividing after the death of the father, let the MOTHER also take an equal share." Vishnu: "Mothers receive allotments according to the shares of sons." In another smrti (it is said:) "A mother, if she be dowless, shall in a partition by sons, take an equal share." The meaning is, that if she have dower, she shall take only as much as, with that dower, will make her an equal sharer with her sons. But no share [belongs to her] if her property be more than such share.

19. Vyasa declares the [right to] share, even of a STEP-MOTHER, and the PATERNAL GRANDMOTHER: "Every childless wife of the father are pronounced equal sharers; and so are all the paternal grandmothers: they are declared equal to mothers." From this [word] all, the stepgrandmothers also are to be included.

20. Yajnavalkya declares the mode of partition among the sons of different brothers: "Among grandsons by different fathers, the allotment of shares is according to the fathers." It means, that if there be one son of one, two sons of a second, three of a third [or the like] their shares will be so allotted as to number of the fathers, and not in the number of the sharers themselves.

21. Katyayana: "Should a younger son die before partition, his share shall be allotted [by the elder brother] to his son, provided he had received no fortune from his great-grandfather, or his father, or his uncle, or from his [uncle's] son; and the same [proportionate] share shall be allotted to all the brothers according to law." Or [If that grandson be also dead] his son takes the share; beyond him succession stops." The younger son [antuja] denotes also that the eldest [is bound to portion off his brother's son]. Stops, at the great grandson.

22. We must thus understand it: "The SON OF THE GREAT GRANDSON, or the rest will not, on the death of the father [grandfather, and great-grandfather, without interval after the death of the great-great-grandfather, and so on] obtain his wealth, being of another [line], so long as his son, or other [heirs] are alive. In default of son, grandson, [and great-grandson] in the general [family] only, he also will take [the succession]."

23. And this does not refer to an UNDIVIDED FAMILY, but to a re-united one. For it is said by Devala: "Partition of heritage among undivided progeny, and a second partition among divided relatives living together [after re-union], shall extend to the fourth in descent: this is a settled rule." And "Be it debt, or a written contract; or a house, or arable land, descended from his grandfather, he shall take his due share of it, when he comes, even though he had been very long in a foreign country." "If a man leave the common family and reside in another province, his share must undoubtedly be given to his male descendants when they appear." It means: 'between the great-great-grandfather, and his sons, separated when in a state of union, and [afterwards] re-united.'

24. This refers to those fixed in the same district; because, where they reside in DIFFERENT DISTRICT, it will descend even to the fifth, as is declared by Brhaspati, in treating of residence in other lands: He be the third person, or the fifth, or even the seventh, [that is] to say, great-great-great-grandson; the sixth degree, he shall receive the share that gradually descends to him, on full proof of his birth and family-name.

25. Brhaspati declares a partition in some cases according to the mothers: "If there be many [SONS] sprung from one [father] alike in number, and in class, but born OF RIVAL MOTHERS, partition must be made by them according to law, by the allotment of shares to the mothers." Vyasa: "If there be many sons of one man, by different mothers, but equal in number, and like by class, a distribution among the mothers is approved."

26. Brhaspati gives this opposite example: "Among brothers, who are equal in class, but vary in regard to the number [of sons produced by each mother], the shares of the heritage are allotted to the males [not to their mothers]."

27. Yajnavalkya states a partition among SONS OF DIFFERENT classes: The sons of a Brahman, in the several tribes, have four shares, or three, or two, or one; the children of a Kshatriya have three portions, or two, or one; and those of a Vaisya take two parts, or one. The sons of a Brahma, that is, born by a Brahman, a Kshatriya, a Vaisya, and a Sudra. Those of a Kshatriya, those of a Kshatriya, Vaisya and a Sudra. Those of a Vaisya those borne to him by a Vaisya and a Sudra.

28. Brhaspati: "Land, obtained by acceptance of donation, must not be given to the sons of a Kshatriya, or other wife of inferior tribe; even though his father give it him, the son of the Brahman may resume it when his father is dead." Devala: "The son begotten on a Sudra woman by any man of a twice born class, is not entitled to a share of land; but one begotten on her, being of equal class shall take all the property [whether land or chattels]: thus is the law settled." Of land acquired by purchase, and the other modes also. Yet he does obtain a share of the movable wealth.

29. But the son by a Sudra woman, not legally married, does not obtain a share, even of the movable property. And Manna: "The son of a Brahman, a Kshatriya, or a Vaisya,
by a woman of the servile class, shall inherit no part of the estate [unless he be virtuous; nor jointly with other sons, unless his mother was lawfully married] whatever his father may give him, let that be his own."

30. Brhaspati declares this distinction after the father's death: "The virtuous and obedient son, borne by a Sudra woman to a man who has no other offspring, should obtain a maintenance; and let kinemce take the residue of the estate." Gautama: "A son by a Sudra woman, born unto a man who leaves no [legitimate offspring, shall] if he be strictly obedient like a pupil, receive a provision for his maintenance. A provision, for his maintenance; or, as a means of livelihood.

31. The same author: "Sons termed Pratiloma [shall have an allotment] similar to that of the son produced by a woman of the servile class. Sons termed Pratiloma, meaning, those produced by a woman, higher than the begoter with respect to class.

32. Yajnavalkya states a distinction with regard to a son begotten by a Sudra on a woman not married to him: "Even a son begotten BY A SUDRA ON A FEMALE SLAVE, may take a share, by the father's choice. But if the father be dead, the brethren should make him partaker of the moiety of a share. Choice, the pleasure of the father. From specifying by name, it is clear, that a son begotten by a woman, a female slave, may obtain a share, even by the father's choice: Neither after the death of the father, will he get the half; nor, in the absence of sons or other [heirs], will he get the whole. This is the argument of the Madana Ratna and others.

33. A distinction is thus declared respecting a SON BORN AFTER PARTITION; One born to a man separated [from his sons] will alone take the father's [wealth]." Brhaspati: "All the wealth, which is acquired by the father himself, who has made a partition with his son goes to the sons begotten by him after the partition; those born before it, are declared to have no right: "As in the wealth, so in the debts likewise, and in gifts, pledges, and purchases." They have no claims on each other except for acts of mourning and libations of water. If there be nothing but debts, then that [son] is not even bound to pay those debts, without receiving a share from those formerly separated; for, as will afterwards be shewn, "He who takes the estate, must be made to pay the debts of it."

34. But if any one of them have RE-UNITED [with the father], a partition with that [son born after partition] shall be made. As is declared by Manus: "A son born after a division shall alone take the paternal wealth: or he shall participate with such of the brethren as are re-united with the father." 

35. Yajnavalkya states a distinction, at a partition AFTER THE FATHER'S DEATH, with respect to a SON BORNE immediately afterwards, by a mother, or step-mother, or brother's wife, whose pregnancy was uncertain. "When the sons have been separated, one who is [afterwards] born of a woman equal in class, shares the distribution." The partition is to be thus effected: Something is to be contributed by all the brothers, or others [who had previously shared] each, something out of his own house, until the [posthumous son] is to have 5/6 of their own. Visvan: "Sons with whom the father has made a partition should give a share to the son born after the distribution."

36. And this we must understand as allowing for [subsequent] expenses and income. For if it be so, then, says the same author: "His allotment must absolutely be made, out of the visible estate, corrected for income and expenditure." Out of the visible estate, out of the wealth actually forthcoming.

37. At the time of a partition among brothers, this distinction is noted by Vasishtha: "Partition of heritage [takes place] among brothers [having waited] till after the delivery of such of the women as are childless [but pregnant]." Having waited is omitted [and supplied].

38. A further distinction in a partition after death of the father, is stated by Brhaspati: "For YOUNGER BROTHERS whose investiture and other ceremonies have not been performed, or elder brothers shall perform them, out of the collected wealth of the father."

The term yaviyasaah, [is substituted for yaviyamah with the freedom exercised by ancient sages] after the manner of the Vedas, by omitting the regular inflection [num] and the prolongation of the vowel [dirgha].

39. The mention of brothers, brings in the SISTERS also. Even so the same author: "And those unmarried daughters who are as yet uninitiated, must be initiated, by their eldest brother, even out of the father's wealth, according to the [usual] rite."

40. Yajnavalkya [premising] "Uninitiated brothers should be initiated by those, for whom the ceremonies have been already completed:" states a distinction in regard to initiation of sisters: "But sisters should be disposed of in marriage, giving them as an allotment, the fourth part of a brother's own share," meaning, that a fourth part of such share as would be allotted to a son of such class as the sister [happens to be], being given to each sister [according to her rank], they are to be initiated.
Section VI.

Partition of debts, and of concealed effects.

1. This settled, I return [to my subject]. Katyayana states a distinction in partition of debts, the debts incurred by a paremurer; one incurred by a paremurer himself; debts of the father, and one specially his own; debts so incurred, must be examined on a partition with the kinmen. On account of the debts of the father, incurred for the sake of discharging the father’s debts. Specially his own, [contradicted by other] than himself, for the maintenance of his family. The same author says: “A debt contracted by a brother, a paternal uncle, or a mother, for the [support of the] family, must be fully discharged by the co-heirs, when partition is made.”

2. The same author also says, in case the debt be less than the property: “But having given the debt [to the creditors], and what was bestowed through affection, let them divide the balance.” Bestowed, promised, Narada: “What remains, after discharging the father’s donation, and after payment of his debts, may be divided by the brethren so that their father continue not a debtor. The father’s donation, what had been promised by the father.” The same author says: “What has been given for religious purposes, and through affection, and the debt which has been added by himself, that [and] the visible [estate], let them divide; [any other debt] is not to be given, out of the paternal estate.” The meaning is this: “What has been given for religious purposes, as well as through affection [that is] what it has been added by the father himself, [that is] what has been made by himself; such debts [and the visible estate] they shall divide. Payment [dana] is not [allowable], out of the paternal estate, of debts other than these.”

3. The same author also says, in suspicion of EFFECTS UNDISCOVERED: “A house, arable land, or quadrupeds, discovered [after partition, as the property of the deceased], must be equally divided; if it be justly suspected that effects are concealed, a discovery by ordeal is prescribed by law.” Thus Manu declared, that household utensils, beasts of burden, and milch cattle, ornaments, and workmen, must be divided, when discovered [among the heirs]: if effects are [suspected to be] hidden, a discovery must be obtained by the Kosha mode of ordeal.” Workmen: slaves and the like. Here even, the Kosha ordeal itself has been fixed in such matters, in the chapter on ordeals by this very authority: “In sustaining the truth of doubts in partition among heirs, at all times, [and] in settling a multitude of proofs [kriya], let them even undergo the Kosha ordeal.”

Section VII.

On property not liable to division, (Avibhajyam.)

1. Manu says: “Wealth, however, acquired by learning, belongs exclusively to any one of them who acquired it; so does any thing given by a friend, received [at or] on account of marriage, or presented as a mark of respect to a guest.” Vyasa: “Wealth gained by science or earned by valour, or received from affectionate kindred, belongs, at the time of partition, to him [who acquired it], and shall not be claimed by the co-heirs.” Received from affectionate kindred; [sanyadakam; this term] will be hereafter explained.

2. This [WEALTH] must be understood to be acquired, WITHOUT LOSS TO THE FATHER’S ESTATE. Thus also Yajnavalkya: “Whatever else is acquired by the co-parner himself, without detriment to the father’s estate, as, a present from a friend, or a gift at nuptials, does not appertain to the co-heirs; nor shall he who recovers hereditary property, which had been taken away, give it up to the parencers; nor what has been gained by science.”

3. But Sankha declares a special rule, relating to the recovery of land, derived from ancestors but long lost: “Land [inherited] in regular succession, but which had been formerly lost, and which a single [heir] shall recover solely by his own labour, the rest may divide, according to the due allotments; having first given him a fourth part.” That is, ‘having given to the recoverer a fourth part, of the recovered property, they shall divide the balance equally, with the recoverer.’

4. Manu says: “What a brother has acquired by his labour without using the patrimony, he need not give up to the co-heirs; nor what has been gained by science.” Vyasa: “What a man gains by his own ability, without relying on the patrimony, he shall not give up to the co-heirs, nor what he acquired by learning.” Acquisition by learning is explained by Katyayana: “Wealth gained through science, which was acquired from a stranger while possessing a foreign maintenance is termed acquisition through learning.”
5. The same author elucidates this term: "What is gained by the solution [of a difficulty], after a prize has been offered, must be considered as acquired through science, and is not included in partition [among co-heirs]." What has been obtained from a pupil, or by others who have asked a question, or for [answering] a doubt or error, or through display of knowledge, or by [success in] disputation, or for superior [skill in] reading, the sages have declared to be the gains of science, and not subject to distribution. *The law is the same in regard also to artisans [silpi], and to increase of price.* "A prize which has been offered for the display of superior learning, or the gift of a learned and versed scribe for whom a sacrifice was formerly performed; or a present from a pupil formerly instructed, sages have declared to be the acquisition of science; what is otherwise acquired, is [the] joint property [of the co-heirs]." Even what is won by surpassing another in learning, after a stake has been deposited, Bhṛṣpati pronounces the acquisition of science, and impartible. What is obtained by the bosom of learning, what is received from a pupil, or for the performance of a sacrifice, Brīgūn calls the *acquisition of science.*

6. Solution, according to the Madana Ratnā, means, the reading of [passages of the Vedas] having the order [of construction, krama], and the sentences [jāta], and the like, duly linked together. Some, again, say it is the interpretation, in a public assembly, of concealed [meanings] required to be made known. The construction is, 'solved after a prize [has been offered]." Display public exhibitions. Superior reading, pre-eminent reading, is that by this law respecting science is to be applied also among artisans. Increase of price caused by great satisfaction [with the work]. Performance of a sacrifice is merely an example.

7. Here also, in all these cases indivisibility applies, only when no detriment has fallen on the paternal estate, in acquiring, as well superior knowledge, as wealth; for, in case of detriment [to the estate, the acquisition] is even divisible. Even so, Katyāyana says: "Yet Bhṛṣpati has ordained, that wealth shall be partible, if it was gained by learned brothers who were instructed in the family by their father, or paternal grandfather, or uncles; and it is the same, if the wealth were acquired by valour, [WITH ASSISTANCE FROM THE FAMILY ESTATE.]"

8. Also in case of loss to the paternal estate even, the acquirer gets a double share, from this text of Vasiṣṭha: "He amongst them, who has made an acquisition, may take a double portion of it."

9. Narada states a distinction in some cases, in acquisition of wealth through learning: "He who maintains the family of a brother studying science, shall take, even though not told [saṁrūta] a share of the wealth gained by science." The word saṁrūta means unlearned, according to the Madana Ratnā. But the proper sense is, not promised, thus: 'I will give a share.'

10. Gautama declares a distinction also, with regard to wealth acquired without detriment to the father’s estate: "His own acquired wealth, a learned man may, if he please give up to unlearned co-heirs." He who is versed in knowledge, is a learned man. The meaning is, that with his own pleasure, he may give part to his own splendid, to his unlearned co-heirs; but such property must be yielded by him, to those who are equal or superior, in learning: "A learned man need not give a share of his own acquired wealth, without his assent to an unlearned co-heir: provided it were not gained by him, using the paternal estate." According to Madana, this prohibition applies, only where there exists other property for those brothers who are present; but on failure of other property, [a share of it] even must be given to them.

11. Bhṛṣpati declares THAT to be impartible, WHICH HAS BEEN GIVEN BY THE FATHER or other [person]: "That which may have been given, either by the paternal grandfather, or the father as well as by the mother, is not to be taken back; any more than that acquired by valour, or the wealth of a wife." Narada: "Excepting what is gained by valour, the wealth of a wife, and what is acquired by science which are three sorts of property exempt from partition; and any favour conferred by a father." Katyāyana: "That which is taken under a standard, is declared not to be subject to distribution. And also, when [after the father] in war, after routing the forces of the enemy, and after risking his life for his lord, is named spoil taken under a standard." The same author says: "When [a soldier] performs a gallant action, despising danger; and favour is shown to him by his lord, pleased with that action; whatever property is then received by him, shall be considered as gained by valour."

12. Here Vyāsa states a distinction. "The brethren partake in that wealth, which one of them gains by valour or the like, using any common property, either a vehicle [for weapon] or the like; to him two shares should be given: but the rest should share alike.

13. Vyāsa defines the GIFT of affectionate kindred, [sandalakām]. "That which is received, by a married woman or by a maiden, in the house of her husband or of her father, from her husband or from her parents, is termed the gift of affectionate kindred." Katyā-
yana: "What is received with a damsel equal in class, at the time of accepting her [in marriage], let a man consider as wealth received with the maiden; it is deemed pure, and promotes increase [of prosperity]: But let him know that to be received on account of marriage, which is accepted by him with his bride: all such wealth is considered as vindicating the solemn rite."

14. What is acquired in this, or a similar manner: "The Arsha rite again [consists in giving his daughter] after having received a pair of kine," is denominated, wealth received with the maiden. Here even, like wealth acquired by learning, such acquisition also is im-partial, if it be acquired without detriment to the father's estate: But, if gained by any other means, except learning or the other [specified modes], it is even liable to partition. And so Manu: "And if all of them, being unlearned, acquire property [before partition] by their own labour, there shall be an equal division of that property [without regard to the first born]; for it was not the wealth of their father; this rule is clearly settled." Labour, employment in agriculture, &c. Not of their father, is to be taken, as without assistance from the father's wealth.

15. Other things exempt from partition, have been enumerated by Manu: "Clothes, vehicles, ornaments; prepared food, water, women, sacrifices and pious acts; as well as the common way, are declared not liable to distribution." VEHICLES, conveyances, The CLOTHES, conveyances, and ORNAMENTS, belong respectively to the respective parties, if they are of equal value. If the value of one article be more or less than that of another, then let them be divided.

16. But the CLOTHES, &c. and other [things] WORN BY THE FATHER must be given to the person who partakes of food at his obsequies; as directed by Brhaspati: "The clothes and ornaments, the bed, and similar furniture, appertaining to the father, as well as his vehicle and the like, should be given, after perfuming them with fragrant drugs and wreaths of flowers, to the persons who partakes of the funeral repast."

17. If the GOATS, &c. be UNEQUAL IN NUMBER, a distinct mode of disposal is ordained by Manu: "Let them never divide a single goat or sheep, or a single beast with uncloven hooves: a single goat or sheep belongs to the first born."

18. Both the PREPARED FOOD and WATER, are to be enjoyed [by all] according to their occasions. Women, FEMALE SLAVES. If they be of an odd number, they are to be assigned to work [for all] according to their occasions. But if of an even number, they are to be distributed.

19. However, if they were set apart by the father, they are not to be distributed, even if of an equal number, by reason of this text of Gautama: "No partition is allowed, in the case of women connected [with the father or with one of the co-hereis]."

20. According to the Kalpathuri: 'By the term SACRIFICES and PIOUS ACTS, [Yoga-kahema] holy conductors, family priests, and the like, are denoted.' But Langalaki says: "The learned have named a conservative act, kahema; and a sacrificial one, yoga: both are pronounced indivisible; and so are the bed and the chair." In this place, a conservative act, means [construction of] tanks, gardens, and the like; a sacrificial one, a grand sacrifice, a feast to Brahmans, and the like. The meaning is this: Whatever property is, with consent of all whilst in a state of unity, set apart for this purpose, and kept by one individual, with that very property that act of religion shall be executed, by that same individual, and by no other: Neither shall all join for the purpose. The common sway, the way to the house or the like, also land for a cattle pasture, and the like.

21. As for this text of Sankha and Likhita: "No division of a dwelling takes place; nor of water-pots, ornaments, and things not of general use:" and this of Vyasa: "A place of sacrifice, a field, a vehicle dressed, food, water, and women, are not divisible among kinmen, though [transmitted] for a thousand generations," whereby they declare the impartible nature, both of a dwelling and a field, they have reference to a RELIGIOUS FOUNDATION, and LAND FOR CATTLE PASTURE, and the like; or else to the prohibition of the partition, by the Kshatriya or other [son of a Brahman by women of the other tribes, of these two things, obtained [by the Brahman] by acceptance of donation; because it has been already noticed as forbidden. Or [thirdly], it may refer to a partition of even those two things, when of little price, at a valuation, and not by actual division of them.

22. Brhaspati declares a distinction, in regard to CLOTHES AND OTHER MATTERS: "They by whom it is affirmed, that clothes and the like are indivisible, have not proved that the collected wealth of opulent men, their vehicles and ornaments, shall not be divided; property held in common [would be] unemployed, for it cannot be given to one [in exclusion of another]; therefore it must be divided by [some mode deduced from] reasoning; else it would be useless. By the sale of clothes, and ornaments; on the recovery of a written debt; by compensating the dressed food with [an equal allotment of] undressed grain; an [equitable] partition is made." "Water drawn from a [single] well or pool,
shall be taken by turns: Let a [single] female slave be successively employed by co-heirs in their respective houses, according to their several shares; if numerous, the slave shall be distributed in equal allotments; such is the law in respect of female servants. A bridge and field shall be shared (by co-heirs) in due proportion; and parvany ground for cattle shall be used by the co-heirs in proportion to their allotments. On the recovery, meaning by levying it from the debtor.

23. Katyayana: "Wealth which has been fixedly assigned for the purpose of religion and entered in a deed; and likewise water; slaves also, and such fixed property [or a cowry, nbandha] as has gone in order of descent; clothes that have been worn, and ornaments, do not resemble [divisible effects]. According to the time they have been enjoyed, even so let them be made use of [in turns] by the brothers." Wealth, means, lands, has been set apart as the share [to be expedited] for religion, and so entered in a deed. Water, contained in wells or the like. Fixed property, a means of livelihood [vritti.] Do not resemble, [that is, are] unfit for partition.

24. The division of PROPERTY, CONCEALED by deceit from the other brethren, is thus explained by Yajnavalkya: "Effects which have been withheld by one co-heir from another and which are discovered after the separation, let them again divide in equal shares: this is a settled rule." Effects, withheld, whether by the eldest, younger, or other brother, among the co-heirs; for thus says Manu: "An eldest brother, who from avarice shall defraud his younger brothers, shall forfeit the honours of his primogeniture, be deprived of his [additional] share, and be chastised by the king."

25. In this place, also, the term eldest brother, is used merely to denote the heirs generally, by the argument exemplified in the loaf and staff; and the meaning is: "If blame attaches even to the eldest, how much more to the younger ones?" Even so Gautama: "Him indeed, who deprives an heir of his right share, he does certainly destroy; or, if he destroy not him, he destroys his son, or whoever debarred from participation, an heir, or person entitled to a share; he, being thus debarred of his share, destroys that person, who so debarred him of his right; or if he do not destroy him, he destroys his son, or his grandson.

26. Narada: "That WEALTH, which has been ACQUIRED by a man AFTER SEPARATION, belongs to himself alone: what has been recovered, after being seised or lost, and the before mentioned, [property] may be afterwards [divided]. Before mentioned, as [property] connected among the co-heirs. May be afterwards, divided; is nothing to the point, as it is complete sense. Manu: When any common property whatever, is brought to light after partition has been affected, that is not considered a [fair] partition: it must even be made over again."

27. Yajnavalkya states the modes of decision in case of denial of partition made by any one: "When partition is denied, the fact of it may be ascertained by the evidence of kinmen, relatives, and WITNESSES; and by WRITTEN PROOF, or by house or field separately possessed. From the term, separately possessed, we must understand it of house or land separately given [to each] from the connexion between the adjective, and the thing denoted by it. Narada also says: "If a question arise among co-heirs in regard to the fact of partition, it must be ascertained by the evidence of kinmen, by the record of the distribution, or by SEPARATE TRANSACTION OF AFFAIRS.

28. The same author says: "The religious duty of unseparated brethren is single. When partition has indeed been made, RELIGIOUS DUTIES are SEPARATE, for each of them. Here the term unseparated, is intended even to denote the condition, whilst the substantive, brethren, is [merely] a general term, of which the condition is so denoted. By this [reasoning] in every unseparated family, of whomsoever it may consist, father, grandfather; son, son's son; paternal uncle, brother, brother's son, or other [member], the religious duty is even single.

29. Here again, as in the unity of place, time, agent, and the like, one agent is by reasoning obtained for several causes, as supporting several parts of one act; so even, we may understand from the text, that there may be distinct acts, of agents [otherwise] unseparated. Hence all those religious acts required for performance of sacred, as well as of more common rites, even of unseparated brethren, are separate for each, in manner of the distinctions in the nature of a consecrated and a common fire, and the like, though mutually connected. Even so the Srdhas also, of the paternal uncle, brother, son, or other [dying without a son] at the Amavasya, and other [seasons], is even separate, by reason of the separation of the defled [person from the parvany rite]: But the sarvas &. of brothers [dying] without [maintenance of] a sacred fire, is to be executed by one instrument [or agent] only because all the defled persons are conjoined. In case of separation of place, by residence abroad, the sarvas are even separate. The [extra] acts with the fire, requisite for the rites of those who maintained a sacred fire, also, are even separate; but the worship of the household deities, the Vaisves and other rites, are to be done by one agent only. Even so Sakala says: "Residing with one dressing of food, worship of a single household deity, and moreover one single sacrifice at meals to the visdevas, or manes, show unity. In a family of divided brethren, these acts are performed in each house separately."
30. As for the text of Asvalayana, as quoted in the Parjata: "Of those who reside with one dressing of food, even if [previously] separated, O my lord, one alone shall perform those four sacrifices, which follow the Vajlagyna; if men of the twice-born classes, unseparated as well as separated, have their meals dressed separate, let them each celebrate these sacrifices distinct, previous to taking their food, day by day:" it has reference to persons re-united [after separation] because this conclusion is clearly ascertained, from the one phrase, of separated persons also, residing with one dressing of food," and the other: of separated, and unseparated [co-parceners] in the text.

31. Therefore, in case there be a separate dressing of food, among re-united [co-parceners] the great sacrifices [Mahayagyna] are separate. The Vajlagyna, is the Brahma-yagyna. The phrase, those which follow 14, is here the adadgna form of a Behurvihi compound, [not being a component part of that which it denotes;] or if it were of the other form, [being a component part,] the phrase, the Vajlagyna, and the rest, would be void of meaning; for the ascertainment of all the four is certain, even from the fact that: in giving up the first of the five ceremonies, there would be no attainment of the end. Hence the Brahma yagyna is to be even separately done. But [after all] these two texts are not respected by venerable authors.

32. And those texts also, recorded in the Dharma Pravrtti: "Sons unseparated must celebrate one anniversary Sraddha for both parents: if they be in different countries, they may perform separately [it, with] the Dursha [or Amavasya] and monthly Sraddhas: If they be abroad in other towns, unseparated brethren are, even at all times, to celebrate the Dursha, and monthly Sraddha for both parents, each separately: When unseparated, but residing in the same town, each living upon the wealth acquired by himself, those brothers should celebrate the Sraddha and Parvanas, each separately," with the following one in the Smriti Samuchchaya: "The Vavadeva sacrifice, and the anniversary Sraddha, as well as the Mahalysya [or Pitra paka] rite, are, in case the family be spread abroad, to be celebrated separately, and the Dursha Sraddha in like manner: are by a certain author, said to have reference to re-united brethren residing in different countries. The correct opinion however, is that these even are all unauthentic.

33. Or else, if there be unity of place, time, agent, and the rest, the instrumentality of one only, is found by reasoning. But where the agents are different, and the same results by the text itself; for, in a difference of place, there is a want of concurrence both of the text and reasoning too; and therefore, the separate performance of Sraddhas and other rites, by any one of them whatsoever, is founded in reason which is my conclusion.

34. Narada declares other signs also, of partition: "Separated but not unseparated, brethren, may reciprocally bear testimony, become sureties, bestow gifts, and accept presents." 'Gifts and acceptance; cattle, grain, house, land, and attendants, must be considered as divided between separated brethren as also the rules of gift; income and expenditure.' Those by whom such matters are publicly transacted with their co-heirs, may be known to be separate, even without written evidence.' Gifts and acceptance have reference to borrowing transactions. These very terms, gift and acceptance, are repeated in the second text for the sake of clearness. Acceptances of cattle and the rest among separated persons, accomplished by each apart, is even the means of generating [sole] ownership but among unseparated brethren, acceptance by one alone is the origin of the [joint] ownership of the others also. The rules of gift, written deeds, and the like. Income entry [or accumulation] of principal and interest, or the like, Bhapati: "They who have their income, expenditure, and wealth distinct, and have mutual transactions of money lending and traffic, are undoubtedly separate." Yajnavalkya: "It is declared, that brothen, husband and wife, father and son, cannot become sureties for each other before partition nor reciprocally lend, nor give evidence for each other.

35. In default of all these signs of partition, ordeal [must be resorted to], since the very same author has declared: "In the absence of all these, a divine test is prescribed." As for the text of Vrhddha Yajnavalkya: "In doubts upon the subject of partition, the division must be proved by the kinsmen, witnesses, and written deeds: proof by ordeal is not to be: it has reference to the existence of other signs.

36. In case also of total failure in ascertaining whether they were separated or united, a full partition is enjoined by Narada: "When there is a DOUBT OF PARTITION amongst the co-heirs, a partition must be again made, even though they have taken separate places of abode." Narada states the duties of separated co-heirs: "When there are many persons sprung from one man, who have their [religious] duties [dharma] apart, and transactions [karya] apart, and are separate in the materials of work [karma gunah], if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please: for they are masters of their own wealth." Duties; ceremonial, that is, the five great sacrifices, [para. 31.] and the like. Transactions, commerce, and the like worldly acts. The materials of work, household necessaries, and the like, as the means of performing the acts [of the household]. The separate existence of these, a partition is manifested. The sense is, that they, so separated, may [each], even without the consent of the others, make the gift, sale, or other alienation [of their respective shares].
37. As for the text of Brhaspati: "Separated heirs, as those who are unseparated, are equal in respect of immovables; for one has not power over the whole, to give, mortgage, or sell it;" according to Madana, it is for putting a stop to this. It is for preventing even separation as to their shares of [movable] effects, [though unseparated in other respects], to dispose, by gift or other mode, without [general] consent, of grain, or the like, the produce of undivided fields, or other [fixed property]. According to Vijnanesvara and others, it is for the sake of obviating any future doubt, whether they be separated or united for by the consent of those unseparated, the facility of the transaction is ensured.

38. The same author, with reference to one separated by his own wish, and afterwards disputing, says: "If he subsequently dispute a distribution, which was made with his own consent, he shall be compelled by the king to abide by his share, or be amerced if he persist in contention." Contention, pertinacious pursuit.

Section VIII.

On Obstructed Heritage or succession.—[Sapratisandha Daya.]

1. Now, of the degrees of succession to obstructed heritage. Yajnavalkya thus relates the ORDER OF SUCCESSION TO THE WEALTH OF ONE [DYING] SEPARATED and not re-united: "The wife and the daughters also; both parents; brothers likewise, and their wives; in the case of a pupil, a fellow student: on failure of the first among these, the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue. This rule extends to all [persons and] classes."

2. The WIFE, if faithful to her husband, takes his wealth; not if she be unfaithful; for it is declared by Katyayana: "Let the widow succeed to her husband's wealth, provided she be chaste." So Harita says: "If a woman become a widow in her youth, be headstrong, [suspected of inconstancy] a maintenance must in that case be given to her, for the support of life." Brhaspati: "Dying before her husband, a virtuous wife partakes of his succession fire; or if her husband die [before her, she shares] his wealth; this is a pravetmial law." Consecrated fire, all the [five sacred] fires. The same author says: "Having taken his movable and immovable property, the base and the precious metals, the liquids, and the clothes; let her duly offer his monthly, half-yearly, and yearly funeral repasts; with presents offered to his maids, and by plous liberality, let her honour the paternal uncle of her husband, his spiritual parents, and daughter's sons, the children of his sisters, his maternal uncles, and also ancient and unprotected persons, guests, and females, [of the family]." Base metals, namely, tin, lead, and the like.

3. As for this text of Brhaspati: "Whatever property a man possesses, of every kind, after division, whether mortgaged, or other, that the wife, [in whatever form married, jaya] shall enjoy after the death of her husband, with the exception of fixed property. Even if virtuous and if partition have not been made, a woman is not fit to enjoy real property." It, according to the Smrti Chandrika, refers to a wife who has not [even] a daughter; for a woman having a daughter obtains the fixed property also. Madhava, again, considers it to relate to the prohibition of sale, or other transfer, of real property, by a widow, without concurrence of the heirs.

4. As for this text of Katyayana: "After the death of the husband, the widow, preserving [the honor of] the family, shall obtain the shares of her husband, so long as she lives; but SHE HAS NOT PROPERTY THEREIN, TO THE EXTENT OF GIFT, MORTGAGE, OR SALE;" it is a prohibition of gift of money, or the like, to the Bandi, Charana, and the like [windslicks]. But gift for religious objects [not visible], and mortgage of the like, suitable to those objects, may even be made, since fixed and movable property are both noticed, in the above quoted text; "Having taken," &c. [para. 2nd] and from this of Katyayana himself: "A widow, actively engaged in meritorious observances and fasts, constant in the duties of her widowhood, intent upon restraining [her passions], and making holy gifts, even if wanting a son, shall reach the heavenly abodes."

5. Moreover, the text of the same author: "Heirless property goes to the king, deducting however a subsistence for the females, as well as the funeral charges; but the goods belonging to a venerable priest [Srotriya] let him bestow on venerable priests:" and further that of Narada: "Except the wealth of a Brahmana [property goes to the king on failure of heirs]. A king, who is attentive to the obligations of duty, should give something as maintenance to the women of such persons. The law of inheritance is thus declared: they have both reference to women set apart, because the term, 'lawful wife' [Patni], is not mentioned.

6. But as for this of Narada: "Among brothers, if any one die without issue, or enter a religious order, let the rest of the brethren divide his wealth, except the wife's separate property. Let them allow a maintenance to his women for life, provided these preserve
unsullied the bed of their lord. But if they behave otherwise, the brethren may resume that allowance,” it relates to the WOMEN OF ONE dying UNSEPARATED, or re-united, because the reading [of the text] is upon that very subject, according to Madana.

7. Katayana: “But if her husband have departed for heaven, the wife obtains food and raiment: Or [too], if unseparated, she will receive a share of the wealth, so long as she lives.” The term he is also an illustration of a re-united family. The word ‘but [too]’ has here the sense of ‘or.’ From this results a double object of the text, according to Madana: the last [hemistic] referring to a wife lawfully married; the first, to a woman set apart. The foundation of this exposition is to be considered. But [indeed] the same author clearly explains the real meaning: “She who is intent upon her service to her venerable Guru, is fit to enjoy the share assigned: should she not perform her proper duty, he shall order her [only] clothes [already] worn, and a morsel of food.” Her Guru, her father-in-law, and other [venerable relatives]. At his pleasure, she may receive a share: otherwise, merely food and raiment. This is the meaning.

8. The same author says: “But a wife, who does malicious acts injurious to her husband, who has no sense of shame, who destroys his effects, or who takes delight in being faithless to his bed, is held unworthy of separate property [stridhana].” As for this text: “Let them follow this very same rule also, with females degraded [by crime]; but clothes and grain are to be given to her, and let her be caused to reside within the house,” it has reference to a husband [living,] says a certain modern compiler. This very rule that is, regarding the divorce of a degraded [wife].

9. Even a mere maintenance is for a WOMAN SUSPECTED OF INCONTINENCE, from this text of Harita: “If a woman, becoming a widow in her youth, be headstrong [suspected of incontinence], a maintenance must in that case be given to her for the support of life. Headstrong, according to the Mitakshara, means suspected of incontinence.” This establishes our argument. [The wife, if faithfn., &c. para 2nd], that a lawfully married wife restrained [in her conduct], takes the wealth. But if there be MORE THAN ONE, they will divide it, and take shares.

10. In default of the wife, the DAUGHTER succeeds. Even as Manus says: “The son of a man is even as himself, and the daughter is equal to the son: how then can any other inherit his property, but a daughter, who is as it were himself?” If there be more daughters than one, they are to divide [the estate], and take [each a share.]

11. In a case also, where some of them are married, and some unmarried, the UNMARRIED ones alone [succeed], by reason of this text of Katayana: “Let the widow succeed to her husband's estate, provided she be chaste; and in default of her, the daughter inherits, if unmarried.”

12. Among the MARRIED ONES, when some ARE POSSESSsed OF [other] WEALTH and others are DESTITUTE of any, those [last] even will obtain [the estate], from this text of Gita: “If her daughters, unmarried, nor provided for.” Unprovided, destitute of wealth. Those acquainted with traditional law, hold, that the word, 'woman's' [wife] includes the father's also.

13. In default of daughters, the DAUGHTER'S SON [succeeds], by the text of Vashnu: “If a man leave neither son, nor son's son, nor [wife nor female] issue the daughter's son shall take his wealth. For in regard to the obsequies of ancestors, daughter's sons are considered as son's sons.”

14. In default of the daughter's son, comes the FATHER; in default of him, the MOTHER; even as Katayana says: “The widow, being a woman of honest tempery, or the daughters, or on failure of them, the father, or the mother, or the brother, or his sons, are pronounced to be the heirs of one who leaves no male issue:” and likewise Vashnu: “The wealth of him who leaves no male issue, goes to his wife; on failure of her, it devolves on daughters; in default of daughters, it devolves on the daughter's sons; if there be none, it belongs to the father; if he be dead, it appertains to the mother; on failure of her, it goes to the brothers; after them it descends to the brother's sons; if none exist, it goes to the relatives [sakalyas].”

15. As for the opinion of Vijnanesvara: ‘that in the complex term parentes,' the omission of one term and retention of the other [ekasheka] constitutes an exception to the regular compound [dvandva], and although the order [of construction] be not certainly defined, yet the meaning [in favour of the mother's priority] may be understood, because the word 'mother' stands first in the proper form of the compound; also, from the consecutive order of the particular compound ['mother and father'] being the rule, of which the omission of one term and retention of the other [parentes] is the exception, and since the father is a common parent to many sons, whilst the mother is not so; therefore, of the two the mother in the first instance takes the estate; and on failure of her the 'father,' it must be set aside, as contrary to those texts: for the Word 'mother' being placed first, in the proper form of the compound, is an exception to the general rule, in regard to the option
allowed for the omission of one term and retention of the other; and further, there is a want of proof, in fixing the proper order according to the diffusion or condensation [of the parental power].

16. In default of the mother, the UTERINE BROTHER; in default of him HIS SON. As for the declaration of Vijnanesvara and others, that in default of the uterine brother, those by different mothers succeed; on failure of them, the 'sons of the uterine brother', it is wrong; since the term 'brother' has the force of 'whole brother'; and a secondary quality is implied by the term, 'brother by another mother'; and hence an exposition in favour of both, is contrary [to reason]. Some however say, upon the term 'brothers': That since: 'Brothers and sisters, with sons and daughters' is one of the maxims [of Panini], and the term 'brothers and sisters', resolves into (the complex term) 'brothers', by the omission of one term and retention of the other, in a compound of two species; therefore, in default of brothers, the 'sister [succeeds]'. But it is not so, because there is a want of proof [of the correctness] of omitting one term, and retaining the other, in a compound of two species.

17. The sons of a brother, also, if themselves fatherless at the time of the paternal uncle's death, provided they are capable of understanding [the use of] property, will divide the father's share with their father's other brothers, after the example: "Among GRANDSONS by different fathers, the allotment of shares is according to the father."

18. In default, of brother's sons succeed the GENTILE RELATIONS, [Gotraja] WITHIN THE SEVENTH DEGREE, being connected by funeral oblations, [sapinda]. The first among these is the PATERNAL GRANDMOTHER, from this text of Manu: "The mother also being dead, the father's mother shall take the heritage, [on failure of brothers and nephews]." Even though she is here mentioned immediately next to the mother, still she is to be entered at the end, after the brother's sons, after the manner of the son-in-law (the daughter's son) [in] incidental persons at the end, [as deceased acquaintances, &c.], because the placing her in the middle [is in violation] of the rank fixed for each, as far as brother's sons. [para. 1.]

19. In default of her, comes the SISTER; under this text of Manu: "To the nearest sapinda [male or female], after him in the third degree, the inheritance next belongs;" and this of Brhaspati: "Where many claim the inheritance of a childless man, whether they be paternal or maternal relations, [sakulya], or more distant kinsmen [bandhava], he who is one of them shall take the estate." And [the next rank is] her sister both from her brother beenget under the brother's daughter, being no further; in the seniority with respect to the gentile relationship [Gotraja]: it does not particularly specify the same gentile kindred. Neither is she mentioned in the text as the occasion of taking the wealth; [but as next of kin, she succeeds].

20. On failure of her, the PATERNAL GRANDFATHER, and HALF-BROTHER are both to share and take it, their propinquity being equal, since the [deceased person's] own father was begotten by the former of those two, and was himself the begetter, of the latter, as well as of the deceased. The propinquity being equal, there being a want of any other notice, however slight, beyond the order of the text, or the like, therefore, in other cases also, we must act even thus. For this reason, in default of these two, the PATERNAL GREAT-GRANDFATHER, the FATHER'S BROTHER, and the SONS OF THE HALF-BROTHER, shall take and share it.

21. All the SAPINDAS and the SAMANODAKAS follow, in the order of propinquity, as enumerated by Manu: "Now the relation of the Sapindas, [or men connected by the funeral cake], ceases with the seventh person, [or in the sixth degree of ascendant, &c.], and that of Samanodakas, or those connected by an equal oblation of water, ends only when their births and family names are no longer known." The seventh, must be understood as of him passed away.

22. If no distant kinsmen [Sodaka] exist, then come the COGNATE KINDRED [Bandhu], who are thus specified in another Smriti: "The SONS OF his own FATHER'S SISTER, the SONS OF his own MOTHER'S SISTER, and the SONS OF his own MOTHER'S BROTHER, must be considered as his own cognate kindred." The SONS OF his FATHER'S PATERNAL AUNT, the SONS OF his FATHER'S MATERNAL AUNT, and the SONS OF his FATHER'S MATERNAL UNCLE, must be deemed his father's cognate kindred. "The SONS OF his MOTHER'S PATERNAL AUNT, the SONS OF his MOTHER'S MATERNAL AUNT and the SONS OF his MOTHER'S MATERNAL UNCLE, must be reckoned his mother's cognate kindred." Here also, the order [of succession] is even the order of the text.

23. If on the other hand [it be said]: "As the right of the wife and all the others, in succession to the wealth, is derived from the deceased himself alone, even so that the cognate kindred is derived in like manner from him; what title then can the cognates of the father or of the mother [of the deceased] have to the wealth? The term 'sons of the sister of the father's father', and the like, is only for the sake of shewing the connexion between the name and person, and does not mean a connexion with the wealth." [I answer]:
“Even without that text, if, after the example of ‘the father’s maternal uncle, his paternal uncle,’ and the rest, in like manner also, the continuous application of that term (cognate) among the fathers and the mothers of cognates be held to exist, by conjunction of kin through some intermediate person, we should have the absurdity of rendering unintelligible, the connexion between names and persons. Hence, the text is intelligible only by the acceptation of paternal and maternal cognates, in considering that subject in the rules of succession to property. The conclusion is, that the very same applies, by the declaration of the cognate affinity, in the rules for impurity and other (mutual obligations).”

24. In default of cognate kindred, the PRECEPTOR; on failure of him, the PUPIL; by this text of Apatasthagama: “If there be no male issue, the nearest kinship inherits: or, in default of kindred, the preceptor; or, failing him, the disciple.”

25. In default of the pupil, the FELLOW-STUDENT is the successor; in default of him, a Srotiya; from the text of Gantama: “Venerable PRIESTS (Srotiyas) should share the wealth of a Brahmana, who leaves no issue.”

26. In default of such an one, any other BRAHMANA, by reason of this text of Katayayana: “But in default of all those the lawful heirs are such Brahmanas, as have read the three Vedas, as are pure (in body and mind), as have subdued their passions. Thus virtue is not lost.” And Narada says the same: “In every case, the king may take the wealth of a subject dying without an heir, except the estate of a Brahmana: for the property of a Brahmana dying without an heir, must be given to a Srotiya.”

27. Brahmati: “If Kshatriyas, Vaisyas, or Sudras, die childless, leaving neither wife nor brother, let the KING take the property; for he is indeed lord of all.

28. Yajnavalkya states a distinction with regard to the ESTATES OF ASCETICS, and the like: “The heirs of a hermit, of an ascetic, and of a student (Brahmschari) are, in their order, the PRECEPTOR, the virtuous PUPIL, and the SPIRITUAL BROTHER and ASSOCIATE IN HOLINESS.” The student, a perpetual one, for the father and the rest even are (the natural heirs) of a temporary student. The spiritual brother, one who has agreed to bear the appellation of ‘brother.’ An associate in holiness, one appertaining to the same hermitage. ‘Being a spiritual companion, and belonging to the same hermitage.’ is a compound of nouns designating the same person. [Karmadharya samasa]. According to Vijnanavara (the preceptor) of preceptors and the rest, is in the inverse order. But Madana prefers the direct order, from this text of Vishnu: “The spiritual preceptor shall take the property of a deceased hermit.”

29. The funeral rites of the deceased, as far as the tenth day’s rites inclusive, must be performed by that person (among the heirs) who takes the estate, whoever it may be, [from the wife, downwards] even as far as the king himself. Even thus Vishnu says: “He who is heir to the estate, is the giver of the funeral oblations.” This same matter has been fully explained to me in the Braddha Mayukha, in determining the order of those entitled to perform them.

Section IX.

Of Re-union after Partition,—[Samvrishta.]

1. Now we proceed to expound the doctrine of re-united co-parencers. On this subject, Brahmati defines re-union: “He who, being once separated, dwells again, through affection with his father, brother, or paternal uncle, is termed re-united.” This re-union, according to the Mitakshara and others, can only take place with a father, brother, or paternal uncle, not with others, because no others are included in the text. But the proper sense is, that this [RE-UNION] ARISES even FROM THE JOINT LOCATION OF THE MAKERS OF THE [FIRST] PARTITION. For the words father, and the rest, are merely as a part to denote the whole, of the persons who make the partition, after the example: “He measures the altar, half within, and half without:” otherwise, there would be a division of the text itself [into three]. Hence, re-union may take place with a wife, a paternal grandfather, a brother’s grandson, a paternal uncle’s son, and the rest also. “He who, being once separated [from the co-heirs] dwells again [in common, is termed] re-united: from joint location of such an one, the sense of separated brothers, [one’s own] sons, and the like, does not result. [When two settle thus] ‘The present, of future, wealth of us two, is common property, until we make a partition a second time,’ when there exists such a sign, either by an understanding or expressed wish, it is an union.

2. In this place, Manu states a distinction: “If brethren, once divided and living again together as parencers, make a SECOND PARTITION, the shares must in that case be equal: there is not in this instance any right of primogeniture [Jyeshtyam].” Here, some say: “That, the unequal distribution being set aside by the phrase, the shares must in that
case be equal, the prohibition of the ‘eldest son’s right’ is repeated [though contrary to rules of composition] for the sake of making it clearly understood, that although there is to be no inequality in making up the share of the eldest, yet in the distribution the shares may be even unequal, when made up of greater and lesser shares, at the time of re-uniting the property.

3. But since the term, ‘eldest son’s right’ [Jyeshthya] and the like is merely a declaration of the general meaning; therefore, if [the contributions to] the wealth were greater and less, still the share of each must be equal. And the same is the popular practice. Hence, as the foundation of the practice is derived from this text, any supposition of a declaration contrary thereto, is at variance with reason; for another author has said: "The body of the law, like Grammar, furnishes, for the most part, the foundations of popular customs."

4. Bhaisajyapati: “If any one of the re-united brethren acquire wealth by science, valour, or the like [with the use of the joint stock], two shares of it must be given to him, and the rest shall have each a share.” According to Madana, the meaning of the text is, that a double share being established for the acquirer, by the phrase, ‘to the acquirer; two shares;’ then, in a partition among [unseparated] brethren not re-united, he gets two shares, only in what he has acquired without detriment to the father’s wealth; but in a [fresh] partition among re-united brethren, he gets two shares of what was acquired by him, even if at the detriment of the re-united property.

5. Yajnavalkya enumerates the ORDER OF THOSE ENTITLED TO SUCCEED TO THE wealth or ONE RE-UNITED: “As of a re-united [co-heir], the RE-UNITED [CO-HEIR], so, of the uterine brother, the UTERINE BROTHER,” which is an exception to the regular succession [falling male issue], of “The wife, the daughters,” and the rest. Hence, this meaning results, that it is the re-united parcerenship, and not the condition of the wife [the daughter], and the rest, which causes a preponderance of the right of inheriting the property of a re-united parceren.

6. As for the doctrine of Vijnanesvara, Madana, and others, ‘That this also refers to one devil of son, grandson, or great grandson, both from the maxim “that the subject forming an exception be of a nature similar to that [of the rule] which is rejected,” and from the word of connexion between the terms of ‘before’ and ‘begetter, having no male issue,” and the present one therefore, even though there exist a wife, or other un-reunited near heir, of such any one dying after re-union, still, the others alone who had re-united with him, will take his estate, it must be considered. Since, [in the second case], there is a want of proof, in the connexion, if the text is to be carried on even without that rule: nor [in the first case], is the complete similarity [of the rule and exception] to be looked for, in all cases of share, but only in a few points; [as may be instances] from the nature of a deceased Saptinda, where, in default of connexion between the term, ‘leaving no male issue,’ and that of, ‘one who departed for heaven,’ they would not find in a term, ‘of one deceased.’ Yet it cannot be so, for that very term is found in the text of Manu, to be presently added [para. 15]: “be deprived of his allotment at the distribution, or should any one of them die.” But if connexion [of the terms] be allowed, we should, in the case of sons, some re-united with the father, and some not re-united, or of grandsons so situated with sons, have them shares sharing equally, which is a contradiction: and in the case of one having male issue, this text does not apply.

7. And here again, such connexion is at variance with that practice, the origin of which may be demonstrated to be in the general code of Law, [para. 8]. But [should it be said], ‘though the text be inapplicable, in the case of one having male issue, in default of such connexion; yet if there be an resemblance of sons not re-united, with brothers re-united, or the like, then the brothers and others [re-united] would obtain the wealth, not the sons or others [not re-united].’ It is not so; because in the last hemistich of the [above] text, it will be shown to be unworthy of respect.

8. The sense of the first quarter [of the whole text]: “Of a re-united [co-heir], the re-united [co-heir], has an exception in the second quarter of the uterine brother,” with which the other is connected. The meaning therefore is, that, in a case embracing both whole and half brothers, all re-united together, only the RE-UNITED WHOLE BROTHER will take the wealth of the re-united brother deceased. The last hemistich is as follows: “Shall give up the share, to [a son at any time] born; or shall retain it, if he died [without issue];” and the sense of it is this: ‘If the pregnancy of the wife of a deceased re-united co-heir, be unascertained at the time of dividing the [re-united] property, and a son be afterwards born, the PATERNAL UNCLE or other re-united [parceren] shall give the share to that SON; but on failure of him, he [the uncle, &c.] himself shall take it.’

9. Here, the filial relation alone affords the right of taking the father’s share; not the fact of production posterior to the partition, since this cannot cause such a result besides, it creates [unnecessary] prolixity [to specify ‘subsequently born’], and [thirdly], would have the absurdity of denying the [known] right to a share, in the case of a son produced in another part of the country previously to partition, but unknown [at the time]. Therefore, to the SON previously born even, though not RE-UNITED, the uncle, or other [parceren] though re-united, shall give his share.
10. The same author propounds the right of an UTERINE BROTHER NOT RE-
UNITED, and a HALF BROTHER RE-UNITED, in taking shares of the wealth: "One of a
different womb, being again associated, may take the succession; not one of a different
womb, if not re-united, but the other half-brother, if re-united, obtains the property; and
not (exclusively) the son of a different mother." Here, from the terms, one of a different
womb; son of a different mother, the half brother alone is not designated, but the paternal
uncle, and others likewise, because there is nothing to distinguish such association: for if
otherwise, we should have the absurdity of rendering cancelable the union with uncles, and
the rest, already established [by the text at para. 1]. And there is a want of any other acts
suitable to a state of re-union.

11. If not re-united: this term applies to those both preceding and following it as a
lamp upon a threshold [gives light both within and without]. So, the word re-united, by
varying the application of it, is to be understood of the whole brother, as entitled by union,
both of the wealth and also of the womb. The word if, occurring in the former phrase, is
to be understood immediately after this, as well as at the end of the text. The word exclud-
atively [even see] should be supplied.

12. The following are the meanings of the terms of this text: 'One of a different
womb,' that is, one of a separate womb; [such], the wife, the father, the father's father,
the half-brother, the paternal uncle, and others, if they be re-united, may take the wealth.
If not re-united, those of a different womb do not [succeed]. Hence, by reason of the rule
respecting fitness and dissimilitude, the re-union of one of a different womb, is declared as
the reason for his taking the wealth. A whole brother, termed re-united, [by union of the
wealth], even if of a different womb alone, will take the property. By this reasoning, the community of womb alone even, is declared a sufficient reason. So, one re-
united, as possessing union of wealth; but if only born of a different mother, he will not
take any thing whatever.

13. From the above this results, that, the one from his re-union, the other from his com-
munity of womb, BOTH JOINTLY SHARE and take it [between them]. Manu specially de-
determines this very principle, in the right of succession among re-united persons: "Should the
eldest, or youngest, of several brothers, be deprived of his allotment at the distribution, or
should any one of them die, his share shall not be lost: but the uterine brothers and sisters,
and such as were re-united after a separation, shall assemble together and divide his share
equally." Be deprived of, by entering another order, by degradation from sin, or the like.
Uterine must be joined with brothers, in construction. And such as were re-assembled, that is,
the wife, the father, the paternal grandfather, the half brother, the paternal uncle, and
the rest [para. 1].

14. On this point, Prajapati states a distinction: "Whatever concealed wealth is
brought to light, becomes the property of the re-united parsons: but lands and houses,
those not re-united shall entirely take, according to their shares." Concealed wealth, what
is capable of being hidden, by depositing in the ground, or otherwise, as gold, silver, or
the like [such as were re-united, that is, of a different womb, shall take]; but landed pro-
erty, the uterine brother [takes]. King, horses, and other animals, the uterine and he of
a different womb [shall share]. According to Madana, he of a different womb alone, if re-
united, will take the houses, horses, and the like; but it is not so noted in the text.

15. According to the Smrti Chandrika: 'But if there exist only one species of pro-
erty, out of the [above sources, as] concealed wealth, land, kine, and the rest, the uterine
brother alone, even not re-united, takes it.' The proof of this must be considered. Among
uterine brothers, if some of them are re-united, but other brothers not, nevertheless, those
re-united alone will take the wealth, because community of womb, and re-united, exist as a
double cause [of succession]. Even so Gautama: "When a re-united [parsoner] dies,
his re-united co-heir shares his estate," and Bhagesh: "Two brothers, who become re-
united through affection, [after being separated] share mutually."

16. Here, this is the refined sense: 'A son, whether re-united with his father, or not
re-united, shall obtain the entire paternal share, since the power of interpreting the right
to take a share, lies in the filial relation. Among several sons also, when one is RE-
UNITED and the other is NOT, the re-united one alone [succeeds], by the text [para. 8th]:
"Of a re-united [co-heir] the re-united [co-heir]."

17. In a case of re-union, between a father, son, and any other, not being his son, the
son alone [succeeds], because the same has already been declared [para. 8th], by the terms:
"shall either give up, or shall retain, &c."

18. In an assemblage of father, brothers, paternal uncles, and others, not being sons
re-united, the parents alone [take it]. Of them again, the MOTHER is first, and then the
FATHER, according to Madana.

19. But [after them] the BROTHER, PATERNAL UNCLE and the rest, shall even tak
and share it [equally]: for among them all, the state of union exists, as the cause whence
their right of taking [shares] is derived.
20. So likewise, in an assemblage of un-reunited brothers, re-united paternal uncles half-brothers and others, they even share it in common, by reason of the two phrases [the one, para 10]: "If not re-united; but [a whole brother, if] re-united, obtains the property; and not (exclusively), the son of a different mother." (the other, para. 8): "As of a re-united [co-heir] the re-united [co-heir], so of the uterine brother, the uterine brother."

21. In case of the re-union of the WIFE alone, she alone takes it, from the same text: "of a re-united [co-heir] the re-united [co-heir]."

22. In an assemblage of the other persons, re-united together with her also re-united, they alone succeeded; she does not. Moreover, in commencing the topic of re-union, both Sankha and Narada have declared: "Among brothers, if any one die without issue, or enter a religious order, let the rest of the brethren divide his wealth, except the wife's separate property. Let them allow a maintenance to her women for life, provided these preserve unsullied the bed of their lord: but if they behave otherwise the brethren may resume that allowance." "The maintenance of the DAUGHTER of such an one, is enjoined, to be made out of her father's share: if still uninitiated, she will take a share [for the purpose]: if [he died] after that, her husband shall support her."

23. And here, like as no necessity exists for gifts in honour of the deceased at the Abhyudayashtri sacrifice, because there can be no doubt of the existence of materials for it, even so, the term, among brothers, is not necessarily required, since from the very commencement, there is a certainty of the re-united persons, in the shares, or like [succession], by death, or entry into a religious order.

24. As for what Sankha, in proceeding to expound re-union, says: "Of those also, departed for heaven without male issue, the property goes to the brothers: In default of them, both parents will take it, or the eldest wife," it, according to Madana, is intended to fix the order of the rest of the others, upon the death of the eldest brother, subsequently to the death of his paternal uncle, his brother's son, or half brother, with whom he had previously made a re-union. And, according to the same authority, in this case also, first is the MOTHER, and next the FATHER [para. 18]. The eldest that is, who [best] preserves her duty.

25. In default of a wife, the SISTER; according as Brahmapati says: "His sister also is entitled to take a share of it. This law concerns one who leaves no issue, nor wife nor parent." Some read this daughter. In default [therefore], both of DAUGHTER and sister, the NEAREST RAPANDA succeeds.

Section X.

Of a Woman's Peculiar Property.—(Stridhana.)

1. MANA:--"What was given before the nuptial fire [Adhyagni] what was presented in the bridal procession [Adhyasvanhika] what was given in token of love [Pritidatta] and what was received by her from her brother, her mother, or her father, are denominated the six-fold PROPERTY OF A WOMAN."

2. Sex-fold, is here used in order to prevent its reduction to a smaller number, a position which borne out by the word other in the following text of Yajnavalkya: "What was given to a woman by the father, the mother, the husband or a brother; or received by her at the nuptial fire [Adhyagni], or presented on her supersession [Adhivedanika], as also any other separate acquisition, is denominated a woman's property." Vishnu likewise specifies more (than those six): "What has been given to a woman by her father, her mother, her son, her brother; what has been received by her before the nuptial fire [Adhyagni yupa] what has been presented to her on her husband's espousal of another wife [Adhvivedanika], what has been given to her by kindred, as well as her puerile estate [Sulka], and a gift subsequent [Anvadheyaka], are a woman's separate property."

3. In explanation of property given before the nuptial fire [Adhyagni] and the other kinds, Katyayana says: "What is given to women at the time of her marriage, near, the nuptial fire, is celebrated by the wise as woman's property bestowed before the nuptial fire [Adhyagnika]." That, again, which a woman receives whilst she is conducted from her father's house to her husband's dwelling is instanced as the property of a woman, under the name of gift presented in the bridal procession [Adhyasvanhika]. "What has been given to her through affection by her mother-in-law, or by her father-in-law, or has been offered to her as a token of respect, is denominated an affectionate present [Pritidatta]. "What has been received by a woman at time subsequent to her marriage, from the family of her husband, is called a gift subsequent [Anvadheyaka] and so is that which has been similarly received from her own family." Whatever is received by a woman as the value of household utensils, of beasts of burden, of milch cattle, or ornaments of dress, or
for works, is called her perquisite (Bulka)." The meaning is, when the bride does not as usual obtain household utensils and the rest, then, whatever is given to her at the time of her marriage as the price of them, is termed her perquisite. What she receives on her supersession [adhivedanika] is explained by Yajnavalkya. "To a woman, whose husband makes a payment of an equal sum [as a compensation] for the supersession, provided no separate property have been bestowed on her: but if any have been assigned, let him allot half." Half, here means only so much as will [when added to her own property, make it] equal to the [prescribed] amount of supersession.

4. Devala: "That which a husband has promised for separate property [stridhana] must be made good by his sons, even as a debt." Promised, to his wife [stribal].

5. On the subject of giving property to women, Katyayana further declares: "Separate property, excepting immovables, is to be given to women by their father, mother, husband, brother, and kindred, according to their means, as far as two thousand." The wealth to be given excludes immovable property, and must not exceed two thousand panas, according to Madana. So Yajnavalkya: A present, amounting to two thousand [panas] at the most, may be given to a woman, out of the wealth. And this sum, of two thousand [panas] at the outside, is to be given every year, so that in a period of many years, more would by this [mean be given]. If they are able, even immovable property may be given, according to the same, [Madana].

6. But, in property given to a woman with a view of cheating the heirs out of it, as well as ornaments or the like, given to her merely for the purpose of wearing, a woman has no ownership [or property]; for thus says Katyayana: "But whatever has been given to women with a fraudulent design, as well as entrusted to them for use, by their father, brother, or their husband, is declared not to be women's property. [Stridhana]."

7. In WHAT THEY HAVE EARNED by the arts, or obtained from friends or those distinct from parents or the rest, women have no property; for thus says the same author: "The wealth, which is earned by mechanical arts, or which is received through affection from any other [but the kindred], is always subject to her husband's dominion. The rest is pronounced to be the woman's property." However, though a text says: "A wife, a son, and a slave, are [in general] incapable of property [Nirdhana] the wealth which they may earn, is [regularly] acquired for the man to whom they belong:" It also relates [only] to wealth earned by mechanical arts and the like. It is moreover agreeable to reason, to refer this also to their not having absolute dominion in wealth received on their supersession [Adhivedanika] and the rest.

8. Again, though Manu says: "A woman should never make expenditure from the goods of her kindred [which are] common to her and many; or even from the property of her lord without his consent." (Expended, is disbursement,) yet in some kinds of wealth they are declared to possess sole property, by Katyayana: "That which is received by a married woman, or with a maiden, in the house of her husband, or of her father, from her brother or from her parents, is termed the gift of affectionate kindred [Nandayakam]. The independence of women, who have received such gifts, is recognised in regard to, the property, for it was given by her kindred to soothe them, and for their maintenance;" The power of women over the gifts of their affectionate kindred is ever celebrated, both in respect of donation and of sale, according to their pleasure, even in the case of immovables.

9. But over IMMOVABLE PROPERTY GIVEN them by THEIR HUSBANDS, they do not possess full power, from the text of Narada: "What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead, or may give it away, excepting immovable property."

10. The non-existence of absolute power, in husbands and the rest, over WOMEN'S PROPERTY, is declared by the same author: "Neither the husband, nor the son, nor the father, nor the brothers, can assume the power over a woman's property to take it or bestow it: If any of these persons by force consume the woman's property, he shall be compelled to make it good with interest, and shall also incur a fine. If such person, having obtained her consent, uses the property amicably, he shall be required to pay the principal when he becomes rich." Manu: "Such usurers are [by any pretence] appropriate the fortunes of women during their lives, a just king must punish with the severity due to thieves:" Such ornamental apparel, as women wear during the life of their husbands, the heirs of the husband shall not divide among themselves: they who do so, are degraded from their tribe. Wear, meaning, things worn by them, which have been given to them for the purpose by their husbands or the others. Devala: "Her maintenance, ornaments, perquisite, and gain, are the separate property of a woman; she herself exclusively enjoys it, and her husband has no right to it unless in distress:" If he let it go on a false consideration, or consume it, he must repay the value to the woman with interest; but he may use the property of his wife, to relieve a distressed son. Maintenance, wealth given her by her father, or the others, for the purpose of subsistence. Gain, interest [or profit]. To let go, get rid of, and give away, have all the same meaning in this place. The word son is here used in its general sense, for [any member of] the family. Yajnavalkya: A husband
is not liable to make good the property of his wife, taken by him in a famine, or for the performance of some religious duty, or during illness, or while under restraint." Here, by using the word husband alone, it is virtually declared, that woman’s private property must not be taken by any other but him, even when distressed by a famine or other calamity. Religious duties, such as are indispensable. Under restraint, in prison.

11. In some cases a husband, though unwilling, may be forced to restore it; for, says Devaia: "But if the husband have a second wife, and do not show honour to his first wife, he shall be compelled by force to restore her property, though amicably lent to him. If suitable food, raiment, and dwelling, be withheld from the woman, she may exact her own property, and take a share of the estate with the co-heirs." That is, at their hands.

12. This, however, relates to a virtuous wife, for a wicked one should receive no portion; and accordingly, the same author says: "But a wife, who does malicious acts injurious to her husband, who acts improperly, who destroys his effects, or who takes delight in being faithless to his bed, is held unworthy of separate property." And again: "Wealth was conferred for the purpose of defraying sacrifices; therefore distribute wealth among honest persons, not among women, ignorant men, or such as neglect their duties."

13. The right of SUCESSION AFTER A WOMAN’S DECEASE, that [part of her] private property which is entitled a gift subsequent, [Anvadheyas] is thus settled by Manu: "What she received after marriage [Anvadheyas] from the family of her husband, and what her lord may have given her through affection [pritena] shall be inherited, even if she die in his lifetime, by her CHILDREN [Praja]." The term children is here expressed by the same author: "On the death of the mother, let all the uterine brothers, and the uterine sisters, equally divide the maternal estate."

14. When, from non-existence of DAUGHTERS and the rest, the right of inheritance devolves even to the SONS, from their connexion, then it becomes reciprocal. When this right is taken up by UNMARRIED DAUGHTERS, then [the son’s succession arising from] that connexion, is at end: but, according to the Mitakshara, ‘it is not declared that the succession pertains [equally or] reciprocally to the brothers and unmarried sisters,’ yet, it has been said by others: ‘it is declared, that there is no original connexion of sons and daughters, in property received by their mother after marriage [Anvadheyas], or given by her husband through affection [Pritidatta]."

15. The distinctions in succession among daughters, are pointed out by Manu: "A woman’s property goes to her children, and the daughter is a sharer with them, provided she be not given away; but if married, she receives a mere token of respect." Is a sharer, shares equally with the sons. Not given away, unmarried. It means, that if there be one [unmarried], then the MARRIED [DAUGHTER] receives a mere token of respect, that is, only something very small. If there be no unmarried daughter, the share of the married daughter is equal to that of the brothers, according to the text of Katyayana: "Married sisters shall share with [brothers or] kinsmen."

16. Some trite also must- be given to the DAUGHTERS OF those DAUGHTERS, according to the text of Manu. “Even to the daughters of those daughters something should be given, as may be fit, from the assets of their maternal grandmother, on the score of natural affection."

17. But ALL ACQUIRED BY MARRIAGE [Yautaka] goes to the UNMARRIED DAUGHTER alone not to the SON. So a prior text of the same. “Property given to the mother on her marriage [Yautaka] is inherited by her [unmarried] daughter.” Property given on her marriage whatever is received by her at the time of marriage or other [ceremony] whilst seated together with her husband; for according to Madana: ‘The word Yautaka is in the Nighantu, derived from their being then joined together [Yuta]."

18. In respect to woman’s property, before enumerated in the texts of other sages, distinct from that acquired subsequent to marriage [Anvadheyas] or through their husband’s affection [Pritidatta], these distinctions are declared by Gautama: "A woman’s property goes to her daughters, unmarried or unprovided. Unprovided, such as are destitute of wealth.

19. The daughter of a Brahmani wife, however, shall take the wealth of her step mother; thus Manu: "The wealth of a woman, which has been in any manner given to her by her father, let the Brahmani damsel take; or let it belong to her offspring; or let it belong to the particle or the sense of ‘and,’ we have it, and shall be shared by [her issue]." Some say, that the word Brahmani is used to denote any girl of equal or superior caste, but the proof of this must be well examined.

20. If there be no daughters, then the ISSUE OF those DAUGHTERS succeeds, according to the text of Narada. “Let daughters divide their mother’s wealth; or, on failure of daughters, their male issue [tad anvaya.]"
21. "A distribution among daughters by different mothers, as well as among the different daughter's sons, to be just must be apportioned after the example of that prescribed for the sons of different fathers, where the partition is according to their father's shares [not to the number of the sons of each father]."

22. However, Yajnavalkya says: "The daughters share the residue of their mother's property, after payment of her debts, and the same succeeds in their default." And here again, some say the word issue [anyaya] has reference to the offsprings of the daughters: whilst others hold, that if she leave no daughter, even her sons may take it, since the word tadd in the text of Narada above, distinctly points out the mother alone; and this [first] doctrine agrees with custom. The residue after payment of her debts on this subject those acquainted with the ancient law have declared, that the sons alone must take the property, [if only] equal to, or less than, the amount of debt.

23. If daughters or the rest do not exist, the sons, grandsons, and the rest must take it, for thus it is declared by Katyayana: "But on failure of daughters, the inheritance belongs to the son."

24. This right of inheritance, of daughters and the rest, in the mother's property exists only in wealth given before the nuptial fire [adyagni] and in the bridal procession [adyavahanika] and the other [kinds] above recorded in the texts [paras. 1—2—8], specifying woman's property: for, if relating to all wealth in which her mother has any property, it would go to set aside those texts [limiting it to six].

25. From this we must understand, that the often repeated term 'WOMAN'S PROPERTY' which Brhaspati Gautama, and the rest, have adopted; for example: "A woman's property goes to her children." [para. 16]. "A woman's property goes to her daughters," [para. 16] and the like, relates even to the texts above delivered. As many again as, even without actually keeping the phrase, 'woman's property' have parallel expressions, such as, 'divide the maternal estate,' [Manu, para. 18] or the like, all those in like manner have reference to the same texts, by a combination of objects having the same origin.

26. However, the text of Yajnavalkya: "Let sons divide equally the effects and the debts, after [the demise of] their two parents: relates to [what is] acquired by the act of partition and the like, with the exception of that declared in the above texts [as woman's property]." From this it is clear that, if there be daughters, the sons or other heirs even succeed to the mother's estate, distinct from that part before described [as woman's property].

27. Again, if there be no offspring of either sex, the further [succession] is declared by Yajnavalkya, referring to the abovementioned woman's property: "Her KINSMEN [Bandhava] take it, if she die without issue."

28. The same author expounds the succession of kindred [Bandhava] to be according to the different kinds of marriage: "The property of a childless WOMAN MARRIED IN THE FORM DENOMINATED BRAHMA, or in any of the other four [unblamed modes of marriage] goes to her HUSBAND: but if she leaves progeny, it will go to her DAUGH-

29. In the Brahman or in any of the other four, relates to the Brahmanical class, on account of these [rites] being the only ones lawful in respect to them. But as the Gandharva rite is also lawful to the Kshatriya class and the rest, so also, the wealth of her who has been married according to that form devolves to her HUSBAND alone. And so Manu: "It is ordained, that the property of a woman, married by the ceremonies called Brahman, Daiva, Arsha, Gandharva, or Prajapati, shall go to her HUSBAND, if she die without issue." But her wealth, given on the marriage called Asura, or on either of the two others [Paishacha and Raksha] is ordained, on her death without issue, to become the property of her MOTHER and her FATHER.

30. On failure of the husband of a deceased woman, if married according to the Brahma or other [four] forms; or of her parents, if married according to the Asura or other two forms, the heirs to the woman's property, as expounded above, are thus pointed out by Brhaspati: "The MOTHER'S SISTER; the MATERNAL UNCLE'S WIFE; the
INHERITANCE (Hindus).

PATERNAL UNCLE’S WIFE; the FATHER’S SISTER; the MOTHER-IN-LAW, and the WIFE OF AN ELDER BROTHER, are pronounced similar to mothers. If they leave no SON born in lawful wedlock, nor DAUGHTER’S SON nor HIS SON, then the SISTER’S SON and the rest shall take their property.” Here must be understood, ‘on failure both of the daughter, and also of her daughter,’ because only on failure of them does the right of inheritance pertain to the son born in wedlock, or to the daughter’s son.

31. In respect of PROPERTY GIVEN by the KINDRED (Bandhu) at an Asura marriage or the like, Katyayana says: ‘That which has been given to her by her kindred, goes, on failure of kindred, to her son.’

32. But on the subject of the perquisite, Gantama holds: “The SISTER’S PERQUISTE belongs to the uterine brothers; after [the death of] the mother.”

33. But what Sankha says: “The LOVER (may take back) his nuptial present [on the death of his betrothed mistress],” must be understood of one dying previous to the celebration of the marriage. Here it is further remarked by Yajnavalkya: “If she die [after troth plighted], let the bridegroom take back the gifts which he had presented; paying however, the charges on both sides.” The meaning is, that the husband may take back, if his bride be dead, what remains of the perquisite previously given, after calculating the expenses incurred by himself and by her father.

34. On some points Bandhavanyana records a distinction: “The wealth of a deceased damsel, let the UTERINE BROTHERS themselves take. On failure of them, it shall belong to the MOTHER; or if she be dead, to the FATHER.” Those skilled in the ancient law have declared, that this relates to ornaments or the like, presented by the maternal grandfather and the rest, at the time of betrothal, to a girl [who afterwards] dies before completion of the marriage. Here ends the subject of woman’s property.

Section XI.

Of exclusion from inheritance,—(Anasmar).

1. Yajnavalkya says: “An IMPOTENT person, an OUTCAST and HIS ISSUE; one LAME, a MADMAN, an IDIOT, a BLIND MAN, and a PERSON AFFLICTED WITH AN INCURABLE DISEASE, as well as others [similarly disqualified], must be maintained, excluding them, however, from participation.” His issue, means the offspring of an outcast.

2. If, after division, virility or the other [absent qualification] be regained, by medicine or other means, the person will then receive his share, like as a son born after partition [does].

3. Manu says: “Impotent persons and outcasts; persons born blind or deaf; madmen, idiots, the dumb, and such as have lost a sense [or limb, nirndryya], are excluded from a share of the heritage.” Have lost a sense, deprived of the nose [or smell,] or the like. Narada also declares: “An enemy to his father, an outcast, an impotent person, and one formally expelled (Apayatrita), take no shares of the inheritance, even though they be legitimate: much less if they be sons of the wife by an appointed kinsman.” “One afflicted with an obstinate or an agonizing disease, an idiot; one insane, blind, or lame, must be maintained by the family, but their sons take the shares [of their parents.]”

4. Formally expelled, one turned out by his kinsmen with the ceremony of kicking down a waterpot or the like, for high treason [Rajadroha] or a similar crime, according to Madana. It properly applies to one who goes across the sea in a vessel or the like, to another quarter of the globe, for the sake of a livelihood; [for] : “Communion is not permitted with a Brahman (Dvijā) who has passed the sea in a ship, even though he has performed penance for it;” therefore, connexion with such an one in this age of the world, is reprehended. And no form is laid down for performing the ceremony of kicking down the waterpot, or for expelulion for high treason. Sankha and Likhit: “The heritable right of him who has been formally degraded [Apayatrita], and his competence to offer oblations of food and libations of water, are extinct.”

5. Vasthusha: “They who have entered into another order, are debarred from shares.” Here are meant the PERPETUAL STUDENT, the HERMIT, and the ASCETIC. Katyayana “But the son of a woman married in irregular order, as well as he who is produced through a kinsman [Sagotra], and an APOSTATE from a religious order, never obtain the inheritance.”

6. [Produced] Through a Kinsman, means ONE BORN OF A WOMAN MARRIED TO ONE OF HER OWN [SAGOTRA] RELATIONS. The son of a woman married in irregular order, means, according to some, the kshetraja, Kanina, and other sons. But, when the
marriage of a younger daughter has been celebrated whilst her eldest sister is still unmarried, they are then both said to be "out of their order"; and this is the proper application of the term [Akrama]. If he be of the same class as his father, his qualification for inheriting is declared by the same author: "But the son of a woman married in irregular order may be heir, provided he belong to the same tribe with his father: and so may the son of a man, belonging to a different [but superior] tribe, by a woman espoused in the regular gradation.

7. Also, if some be begotten by a husband on a wife sprung from a higher class, they shall not take the inheritance, for thus says the same author: "The son of a woman married to a man of inferior tribe, is not heir to the estate. Food and raiment for life are considered to be due to him by his kinmen."

8. If there be other SONS endowed with good qualities, the inheritance is not to be taken by a VICIOUS one; for says Manu: "All those brothers, who are addicted to any vice, lose their title to the inheritance." Brhaspati: "Though born of a woman equal in class, a son destitute of virtue is unworthy of the paternal wealth; it is declared to belong to those kinmen who offer funeral obligations to the deceased, and are of virtuous conduct."

"A son redeems his father from debt to superior or inferior beings; consequently there is no use for one who acts otherwise."

9. But ALL THOSE EXCLUDED FROM PARTICIPATION must be MAINTAINED during the rest of their lives, by those who get the estate, from this text of Manu: "But it is fit, that a wise man should give all of them food and raiment, without stint, to the best of his power: for he who gives it not, shall be deemed an outcast." (Without stint, signifies "as long as they live") as well as from the foregoing one of Yajnavalkya (para. 1): "Those excluded from inheritance, must still be maintained."

10. THOSE WHO HAVE ENTERED INTO ANOTHER ORDER, and OUTCASTS, as well as THEIR respective SONS, are not to be maintained. Thus Vashishtha says: "They who have entered into another order, are debarred from shares [para. 5]: as also an impotent man, a madman and an outcast, but let the impotent and madman (receive) a maintenance." Here, the maintenance of two only being mentioned, is meant as an indication that the others are excluded. Devala: "When the father is dead [as well as in his life-time,] an impotent man, a leper, a madman, an idiot; a blind man, an outcast, the offspring of an outcast, and a person fraudulently wearing the token [of religious mendicancy,] are not competent to share the heritage: food and raiment should be given to them, excepting the outcast. Wearing the token, assuming a prohibited mark [linga]. Bandhavyas: "Let the co-heirs support with food and apparel those who are incapable of business, as well as the blind, idiots, impotent persons, those afflicted with disease and calamity, and others who are incompetent to the performance of duties, excepting however the outcast and his issue." Even those degraded from the life of an ascetic, as well as their sons, are neither of them to be maintained, according to Madana and others.

11. But the BLAMELESS SONS, even, OF ONE from those causes DISINHERITED, shall take a share, according to the text of Vishnu: "The legitimate sons, even of those [are sharers of the patrimony]; but not the sons born to a degraded man after the commission of the act which caused his degradation, nor those who are procreated [on a woman of a higher class, that is] in the inverse order of the classes: their sons do not participate, even in the property left by the paternal grandfather: and this of Yajnavalkya: "But their sons, whether legitimate, or the offspring" the wife by a kinsman, [Kahetraja] are entitled to allotments, if free from similar defects."

12. Yajnavalkya delivers a special rule concerning the DAUGHTERS and WIVES OF THOSE: "Their daughters must be maintained likewise, until they are provided with husbands." Their childish wives, conducting themselves avertly, must be supported; but such as are unchaste, should be expelled: and so indeed should those who are perverse." If she be unchaste, a woman must be turned out of doors, and without a maintenance. A perverse woman also should be turned out of doors, but a maintenance must be provided for her, according to Madana, and others.
MAHOMEDANS.

AL SIRAJIYYAH ON INHERITANCE.

THE INTRODUCTION.

In the name of the most merciful God!

Praise be to God, the Lord of all worlds; the praise of those who gave Him thanks! And His blessing on the best of created beings, Muhammed, and his excellent family! The Prophet of God, (on whom be His blessing and peace!) said:—"Learn the laws of inheritance, and teach them to the people; for they are one half of useful knowledge." Our learned in the law (to whom God be merciful!) say:—

"There belong to the property of a person deceased four successive duties to be performed by the magistrate: first, his FUNERAL ceremony and burial without superfluity of expense, yet without deficiency; next the discharge of his just DEBTS from the whole of his remaining effects; then, the payment of his LEGACIES out of a third of what remains after his debts are paid; and, lastly, the DISTRIBUTION OF THE RESIDUE among his successors, according to the Divine Book, to the Traditions, and to the Assent of the Learned." They begin with the persons entitled to shares, who are such as have each a specific share allotted to them in the book of Almighty God; then they proceed to the residuary heirs by relation, and they are all such as take what remains of the inheritance, after those who are entitled to shares; and, if there be only residuaries, they take the whole property; next to residuaries for special cause, as the master of an enfranchised slave and his male residuary heirs; then they return to those entitled to shares according to their respective rights of consanguinity; then to the more distant kindred; then to the successor by contract; then to him who was acknowledged as a kinsman through another, so as not to prove his consanguinity, provided the deceased persisted in that acknowledgment even till he died; then to the person, to whom the whole property was left by will; and lastly to the public treasury.

On Impediments to Succession.

Impediments to succession are four; 1, SERVITUDE, whether it be perfect or imperfect; 2, HOMICIDE, whether punishable by retaliation, or expiable; 3, Difference of religion; and 4, Difference of country, either actual, as between an alien enemy and an alien tributary; or qualified, as between a fugitive and a tributary, or between two fugitive enemies from two different states: now a state differs from another by having different forces and sovereigns, there being no community of protection between them.
On the Doctrine of Shares, and the persons entitled to them.

The furud, or shares, appointed in the book of Almighty God, are six: a moiety, a quarter, an eighth, two-thirds, one-third, and a sixth, some formed by doubling, and some by halving. Now those entitled to these shares are twelve persons; four males, who are the father and the true grandfather or other male ancestor, how high soever in the paternal line, the brother by the same mother, and the husband; and eight females, who are the wife, and the daughter, and the son’s daughter, or other female descendant how low soever, the sister by one father and mother, the sister by the father’s side, and the sister by the mother’s side, the mother and the true grandmother, that is, she who is related to the deceased without the intervention of a false grandfather. (A false male ancestor is, where a female ancestor intervenes in the line of ascent). The FATHER takes in three cases; 1. An absolute share, which is a sixth, and that with the son, or son’s son, how low soever; 2. A legal share, and a residuary portion also, and that with a daughter, or a son’s daughter, how low soever in the degree of descent; 3. He has a simple residuary title, on failure of children and son’s children, or other low descendants. The TRUE GRANDFATHER has the same interest with the father, except in four cases, which we will mention presently, if it please God; but the grandfather is excluded by the father, if he be living; since the father is the mean of consanguinity between the grandfather and the deceased. The MOTHER’S CHILDREN also take in three cases: a sixth is the share of one only; a third, of two, or of more: MALES and FEMALES have an equal division and right; but the mother’s children are excluded by CHILDREN OF THE DECEASED and by SON’S CHILDREN, how low soever, as well as by the FATHER and the GRANDFATHER; as the learned agree. The HUSBAND takes in two cases; half, on failure of children, and son’s children, and a fourth with children or son’s children, how low soever they descend.

WIVES take in two cases: a fourth goes to one or more on failure of children, and son’s children, how low soever; and an eighth with children or son’s children, in any degree of descent. DAUGHTERS begotten by the deceased take in three cases: half goes to one only, and two-thirds to two or more; and, if there be a son, the male has the share of two females, and he makes them residuaries. The SON’S DAUGHTERS are like the daughters begotten by the deceased; and they may be in six cases: half goes to one only, and two-thirds to two or more, on failure of daughters begotten by the deceased; with a single daughter of the deceased, they have a sixth, completing, (with the daughter’s half), two-thirds; but, with two daughters of the deceased, they have no share of the inheritance, unless there be, in an equal degree with or in a lower degree than, them, a boy, who makes them residuaries. As to the remainder between them, the male has the portion of two females; and all of the son’s daughters are excluded by the son himself.

If a man leave three son’s daughters, some of them in lower de-
grees than others, and three daughters of the son of another son, some of them in lower degrees than others, and three daughters of the son's son of another son, some of them in lower degrees than others as in the following table, this is called the case of tashibb.

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Here the eldest of the first line has non equal in degree with her; the middle one of the first line is equalled in degree by the eldest of the second; and the youngest of the first line is equalled by the middle one of the second, and by the eldest of the third line; the youngest of the second line, is equalled by the middle one of the third line, and the youngest of the third set has no equal in degree. When thou hast comprehended this then we say: the eldest of the first line has a moiety; the middle one of the first line has a sixth together with her equal in degree to make up two-thirds; and those in lower degrees never take anything unless there be a son with them who makes them residuaries, both her who is equal to him in degree, and her who is above him; but who is not entitled to a share: those below him are excluded.

SISTERS by the same father and mother may be in five cases: half goes to one alone; two-thirds to two or more; and, if there be brothers by the same father and mother, the male has the portion of two females; and the females become residuaries through him by reason of their equality in the degree of relation to the deceased; and they take the residue, when they are with daughters or with son's daughters by the saying of Him, on whom be blessing and peace! "Make sisters, with daughters, residuaries."

SISTERS BY THE SAME FATHER ONLY are like sisters by the same father and mother, and may be in seven cases: half goes to one, and two-thirds to two or more on failure of sisters by the same father and mother; and with one sister by the same father and mother, they have a sixth, as the complement of two-thirds; but they have no inheritance with two sisters by the same father and mother, unless there be with them a brother by the same father who makes them residuaries: and then the residue is distributed among them by the sacred rule "to the male what is equal to the share of two females." The sixth case is, where they are residuaries with daughters or with son's daughters, as we have before stated it.
BROTHERS AND SISTERS by the same father and mother, and
by the same father only, are all excluded by the SON and the SON'S
SON, in how low a degree soever, and by the FATHER also, as it is
agreed among the learned, and even by the GRANDFATHER according
to Abu Hanifah, on whom be the mercy of Almighty God! And
those of the HALF BLOOD are also excluded by the brothers of the
whole blood.

The MOTHER takes in three cases: a sixth with a child, or a son's
child, even in the lowest degree, or with two brothers and sisters or
more, by whichever side they are related; and a third of the whole on
failure of those just mentioned; and a third of the residue after the share
of the husband or wife; and this in two cases, either when there are
the husband and both parents, or the wife and both parents: if
there be a grandfather instead of a father, then the mother takes a
third of the whole property, though not by the opinion of Abu Yusuf,
on whom be God's mercy! for he says, that in this case also she has
only a third of the residue. The GRANDMOTHER has a sixth, whether
she be by the father or by the mother, whether alone or with more,
if they be true grandmothers and equal in degree; but they are all
excluded by the mother, and the paternal female ancestors also by the
father; and, in like manner, by the grandfather, except the father's
mother, even in the highest degree; for she takes with the grandfather,
since she is not related through him. The nearest grandmother, or
female ancestor, on either side, excludes the more distant grandmother
on whichever side she be; whether the nearer grandmother be entitled
to a share of the inheritance, or be herself excluded. When a grand-
mother has but one relation, as the father's mother's mother, and an-
other has two such relations, or more, as the mother's mother's mother,
who is also the father's father's mother, according to this table,

Mother               Mother

Mother          Father          Mother

Father          Mother

then a sixth is divided between them, according to Abu Yusuf, in
moisture, respect being had to their persons; but, according to MUHAM-
MED, (on whom be God's mercy!) in thirds, respect being had to the
side.

On Residuaries.

Residuaries by relation to the deceased are three: the residuary in
his own right, the residuary in another's right, and the residuary to-
gether with another. Now the RESIDUARY IN HIS OWN RIGHT is
every male, in whose line of relation to the deceased no female enters;
and of this sort there are four classes; the offspring of the deceased, and
his root, and the offspring of his father and of his nearest grandfather, a
preference being given, I mean a preference in the right of inheritance,
according to proximity of degree. The offspring of the deceased are his SONS first; then THEIR SONS, in how low a degree soever; then comes his root, or HIS FATHER; then his PATERNAL GRANDFATHER, and THEIR PATERNAL GRANDFATHERS, how high soever; then the offspring of his father, or his BROTHERS; then THEIR SONS, how low soever; and then the offspring of his grandfather or HIS UNCLEs; then THEIR SONS, how low soever. Then the strength of consanguinity prevails: I mean, he, who has TWO RELATIONS is PREFERABLE TO him, who has only ONE relation, whether it be male or female, according to the saying of Him, on whom be peace! “Surely, kinsmen by the same father and mother shall inherit before kinsmen by the same father only;” thus a BROTHER by the same father and mother is preferred to a brother by the father only, and a SISTER by the same father and mother, if she become a residuary with the daughter, is preferred to a brother by the father only; and the SON OF A BROTHER by the same father and mother is preferred to the son of a brother by the same father only; and the rule is the same in regard to the PATERNAL UNCLEs of the deceased; and, after them, to the PATERNAL UNCLEs of his FATHER, and, after them, to the PATERNAL UNCLEs of his GRANDFATHER.

The residuaries in another’s right are four females; namely, those whose shares are half and two-thirds, and who become RESIDUARIES IN RIGHT OF THEIR BROTHERS, as we have before mentioned in their different cases; but she, who has no share among females, and whose brother is the heir, doth not become a residuary in his right; as in the case of a PATERNAL UNCLE and a PATERNAL AUNT.

As to RESIDUARIES together WITH OTHERS: such is every female who becomes a residuary with another female; as a sister with a daughter, as we have mentioned before. The last residuary is the MASTER OF a FREEDMAN, and then his residuary heirs, in the order before stated; according to the saying of Him, on whom be blessing and peace! “the master bears a relation like that of consanguinity;” but females have nothing among the heirs of a manumittor, according to the saying of Him, on whom be blessing and peace! “Women have nothing from their relation to freedmen, except when they have themselves manumitted a slave; or their freedman has manumitted one, or they have sold a manumissio to a slave, or their vendee has sold it to his slave, or they have promised manumission after their death, or their promisee has promised it after his death, or unless their freedman or freedman’s freedman draw a relation to them.”

If the freedman leave the father and son of his manumittor, then a sixth of the right over the property of the freedman vests in the father, and the residue in the son, according to Abu Yusuf; but, according to both Abu Hamiath and Muhammed, the whole right vests in the son; and, if a son and a grandfather of the manumittor be left, the whole right over the freedman goes to the son, as all the learned agree. When a man possesses as his slave a kinsman in a prohibited degree, he manumits him, and his right vests in him; as if there be
three daughters, the youngest of whom has twenty dinars, and the eldest, thirty; and they two buy their father for fifty dinars; and afterwards their father die leaving some property; then two-thirds of it are divided in thirds among them, as their legal shares, and the residue goes in fifths to the two who bought their father; three-fifths to the eldest and two-fifths to the youngest; which may be settled by dividing the whole into forty-five parts.

On Exclusion.

Exclusion is of two sorts: 1. Imperfect, or an exclusion from one share, and an admission to another; and this takes place in respect of five persons, the husband or wife, the mother, the son's daughter, and the sister by the same father; and an explanation of it has preceded. 2. Perfect exclusion: there are two sets of persons having a claim to the inheritance: one of which sets is not excluded entirely in any case; and they are six persons, the son, the father, the husband, the daughter, the mother, and the wife; but the other set inherit in one case and in another case are excluded. This is grounded on two principles; one of which is, that "whoever IS RELATED to the deceased THROUGH ANY PERSON, shall not inherit, while that person is living;" as a SON'S SON, with the son; except the MOTHER'S CHILDREN, for they inherit with her; since she has no title to the whole inheritance; the second principle is "that the NEAREST OF BLOOD must take," and who the nearest is, we have explained in the chapter on residuaries. A PERSON INCAPABLE OF INHERITING DOETH NOT EXCLUDE ANY one, at least in our opinion; but, according to Ibn Masud (may God be gracious to him!) he excludes imperfectly; as an infidel, a murderer and a slave. A PERSON EXCLUDED MAY, as all the learned agree, EXCLUDE OTHERS; as, if there be two brothers or sisters or more on whichever side they are, they do not inherit with the father of the deceased, yet they drive the mother from a third to a sixth.

On the Increase.*

*Adul, or increase, is, when some fraction remains above the regular divisor, or when the divisor is too small to admit one share.

On the Return.*

The return is the converse of the increase; and it takes place in what remains above the shares of those entitled to them, when there is no legal claimant of it: this surplus is returned to the sharers according to their rights, except the HUSBAND or the WIFE; and this is

* The meaning of these clauses is simply that if the sum of the shares is greater than unity or less, the sharers take the estate in the proportion which their shares bear to each other.

Thus if a wife leave a husband, a father, a mother and a daughter, their shares are respectively \( \frac{1}{3}, \frac{1}{3}, \frac{1}{3} \) and \( \frac{1}{3} \) or altogether \( 1 \frac{1}{3} \), instead of getting these shares they get \( \frac{1}{3}, \frac{1}{3}, \frac{1}{3}, \frac{1}{3}, \frac{1}{3}, \frac{1}{3} \) & \( \frac{1}{3} \).
the opinion of all the Prophet's companions, as Ali and his followers, may God be gracious to them! And our masters (to whom God be merciful!) have assented to it: Zaid, the son of Thabit, says, that the surplus doth not revert, but goes to the public treasury; and to this opinion have assented Urwah and Alzuhri and Malic and Alshafi, may God be merciful to them!

On the Division of the Paternal Grandfather.

Abubecr the Just, (on whom be the grace of God!) and those, who followed him, among the companions of the Prophet, say, "The BRETHREN of the whole blood and the brethren by the father's side inherit not with the GRANDFATHER." This is also the decision of Abu Hanifa, (on whom be God's mercy!) and judgments are given conformably to it. Zaid the son of Thabit, indeed, asserts, that they do inherit with the grandfather, and of this opinion are both Abu Yusuf and Muhammed, as well as Malic and Alshafi. According to Zaid, the son of Thabit (on whom be God's mercy!) the grandfather, with brothers or SISTERS of the whole blood and by the father's side, takes the best in two cases, from the Mukasomah, or division, and from a third of the whole estate. The meaning of Mukasomah is, that the grandfather is placed in the division as one of the brethren, and the brethren of the HALF BLOOD enter into the division with those of the WHOLE BLOOD, to the prejudice of the grandfather; but, when the grandfather has received his allotment, then the half blood are removed from the rest, as if disinherited, and receive nothing; and the residue goes to the brethren of the whole blood; except when, among those of the whole blood there is a single sister, who receives her legal share, I mean the whole after the grandfather's allotment: then, if anything remains, it goes to the half blood; if not, they have nothing; and this is the case, when a man leaves a grandfather, a sister by the same father and mother, and two sisters by the same father only: in this case there remains to those sisters a tenth of the estate, and the correct denominator is twenty; but, if there be, in the preceding case, one sister by the same father only, nothing remains for her; and if one, entitled to a legal share, be mixed with them, then, after he has received his share, the grandfather has the best in the three arrangements; either the division, when a woman leaves her husband, a grandfather, and a brother; or a third of the residue is given, when a man leaves a grandfather, a grandmother, and two brothers, and a sister by the same father and mother. Or a sixth of the whole estate is given, when a man leaves a grandfather and a grandmother, a daughter, and two brothers; and, when a third of the residue is better from the grandfather, and the residue has not a complete third, multiply the denominator of the third into the root of the case. If a woman leave a grandfather, her husband, a daughter, her mother, and a sister by the same father and mother, or by the same father only, then a sixth is best for the grandfather, and the root of the case is raised to thirteen, and the sister has nothing. Know, that Zaid, the son of Thabit (on whom be God's grace!) has not placed the sister by the same father and mother, or by the same father as entitled to a share with the grandfather, except in the case, named acdariyyah, and that is, the husband, the mother, a grandfather, and a sister by the same father and mother, or by the same
father only; in which case the husband ought to have a moiety; the mother, a third; the grandfather, a sixth; and the sister, a moiety; then the grandfather annexes his share to that of the sister, and a division is made between them by the rule "a male has the portion of two females;" and this is, because the division is best for the grandfather. The root is regularly six, but is increased to nine, and a correct distribution is made by twenty-seven. The case is called acdariyyah, because it occurred on the death of a woman belonging to the tribe of Acdar. If, instead of the sister, there be a brother or two sisters, there is no increase, nor is that case an acdariyyah.

On Succession to Vested Interests.

If some of the shares become vested inheritances before the distribution, as if a woman leave her husband, a daughter, and her mother, and the husband die, before the estate can be distributed, leaving a wife and both his parents, if then the daughter die leaving two sons, a daughter, and a maternal grandmother, and then the grandmother die, leaving her husband and two brothers, the principle in this event is, that the case of the first deceased be arranged, and that the allotment of each heir be considered as delivered according to that arrangement; that, next, the case of the second deceased be arranged, and that a comparison be made between what was in his hands, or vested in interest, from the first arrangement, and between the second arrangement, in three situations; and if, on account of equality, what is in his hands from the first arrangement quadrate with the second arrangement, then there is no need of multiplication; but if it be not right, then see whether there be an agreement between the two, and multiply the measure of the second arrangement into the whole of the first arrangement; and if there be a disagreement between them, then multiply the whole of the second arrangement into the whole of the first arrangement, and the product will be the denominator of both cases. The allotments of the heirs of the first deceased must be multiplied into the former multiplicand, I mean into the second arrangement or into its measure; and the allotments of the heirs of the second deceased must be multiplied into the whole of what was in his hands, or into its measure; and, if a third or a fourth die, put the second product in the place of the first arrangement, and the third case in the place of the second, in working; and thus in the case of a fourth and a fifth, and so on to infinity.

On Distant Kindred.

A DISTANT KINSMAN IS every relation, who is neither a sharer nor a residuary. The generality of the Prophet's companions repeat a tradition concerning the inheritance of distant kinsmen; and according to this our masters and their followers (may God be merciful to them!) have decided; but Zaid, the son of 'habit (on whom be God's grace!), says: "there is no inheritance for the distant kindred, but the property undispersed of is placed in the public treasury;" and with him agree Malic and Alshafi, on whom be God's mercy! Now these distant kindred are of four classes: the first class is descended from the deceased; and they are the DAUGHTERS' CHILDREN, and the
CHILDREN OF the SON'S DAUGHTERS. The second sort are they from whom the deceased descend; and they are the EXCLUDED GRANDFATHERS and the EXCLUDED GRANDMOTHERS. The third sort are descended from the parents of the deceased; and they are the SISTER'S CHILDREN, and the BROTHER'S DAUGHTERS, and the SONS OF BROTHERS by the SAME MOTHER only. The fourth sort are descended from the two grandfathers and two grandmothers of the deceased: and they are, PATERNAL AUNTS, and UNCLEs BY THE SAME MOTHER only, and MATERNAL UNCLEs and AUNTS. These, and all who are related to the deceased through them, are among the distant kindred. Abu Sulaiman reports from Muhammad the son of Alhasan, who reported from Abu Hanifah (on whom be God's mercy!) that the second sort are the nearest of the four sorts, how high soever they ascend; then the first, how low soever they descend; then the third, how low soever; and lastly, the fourth, how distant soever their degree: but Abu Yusuf and Alhasan, the son of Ziyad, report from Abu Hanifah (on whom be the mercy of God!) that the nearest of the four sorts is the first, then the second, then the third, then the fourth, like the order of the residuaries; and this is taken as a rule for decision. According to both Abu Yusuf and Muhammad, the third sort has a preference over the maternal grandfather.

On the First Class.

The best entitled of them to the succession is the NEAREST of them IN DEGREE to the deceased; as the DAUGHTER'S DAUGHTER, who is preferred to the DAUGHTER OF the SON'S DAUGHTER; and if the claimants are equal in degree, then the CHILD OF an HEIR is preferred to the child of a distant relation; as the DAUGHTER OF a SON'S DAUGHTER is preferred to the SON OF a DAUGHTER'S DAUGHTER: but if their degrees be equal, and there be not among them the child of an heir, or if all of them be the children of heirs, then according to Abu Yusuf (may God be merciful to him!) and Alhasan, son of Ziyad, the PERSONS OF the BRANCHES are considered, and the property is distributed among them equally, whether the condition of the roots, as male or female, agree or disagree; but Muhammad (on whom be God's mercy!) considers the persons of the branches, if the sex of the roots agree, in which respect he concurs with the other two: and he considers the persons of the roots, if their sexes be different, and he gives to the branches the inheritance of the roots, in opposition to the two lawyers. For instance, when a man leaves a DAUGHTER'S SON, and a DAUGHTER'S DAUGHTER, then, according to Abu Yusuf and Alhasan, the property is distributed between them, by the rule "the MALE has the portion of two FEMALES," their persons being considered; and, according to Muhammad, in the same manner; because the sexes of the roots agree: and, if a man leave the DAUGHTER OF a DAUGHTER'S SON, and the SON OF a DAUGHTER'S DAUGHTER, then, according to the two first mentioned lawyers, the property is divided in thirds between the branches, by considering the persons, two-thirds of it being given to the male, and one-third to the female; but, according to Muhammad (on whom be God's mercy!), the property is divided between the roots,
I mean *those* in the second rank, in thirds, two-thirds *going* to the daughter of the daughter’s son, *namely*, the allotment of her father, and one-third of it to the son of the daughter’s daughter, *namely*, the share of his mother. Thus, according to Muhammed (to whom God be merciful !), when the children of the daughters are different in sex, the property is divided according to the first rank that differs among the roots; then the males are arranged in one class, and the females in another class, after the division, and what goes to the males is collected and distributed according to the highest difference that occurs among their children, and in the same manner what goes to the females; and thus the operation is continued to the end according to this scheme:

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Thus Muhammed (to whom God be merciful !) takes the sex from the root at the time of the distribution, and the number from the branches; as if a man leave two sons of a daughter’s daughter’s daughter, and a daughter of a daughter’s daughter’s son, and two daughters of a daughter’s son’s daughter, in this form:

The Deceased.

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<td>Two daughters</td>
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In this case, according to Abu Yusuf (on whom be God’s mercy !), the property is divided among the branches in seven parts, by considering their persons; but, according to Muhammed (to whom God be merciful !), the property is distributed according to the highest difference of sex. I mean in the second rank, in sevens by the number of branches in the roots; and according to him four-sevenths of it go to the daughters of the daughter’s son’s daughter; since that is the share of their grandfather, and three-sevenths of it, which are the allotment of the two daughters, are divided between their two children, I mean those in the third rank. In moieties; one moiety to the daughter of the daughter’s daughter’s son, which is the share of her father, and the other moiety to the two sons of the daughter’s daughter’s daughter, being the share of their mother; the correct divisor of the property is, in this case, twenty-
eight. The opinion of Muhammed (on whom be God's mercy!) is the more generally received of the two traditions from Abu Hanifah (to whom God be merciful!) in all decisions concerning the distant kindred: and this was the first opinion of Abu Yusuf; then he departed from it and said that the roots were by no means to be considered.

A Section.

Our learned lawyers (on whom be the mercy of God!) consider the different sides in succession: except that Abu Yusuf (may God be merciful to him!) considers the sides in the persons of the branches, and Muhammed (on whom be God's mercy!) considers the sides in the roots; as when a man leaves two daughters of a daughter's daughter, who are also the two daughters of a daughter's son, and the son of a daughter's daughter, according to this scheme:

The Deceased.

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    Daughter       Daughter       Daughter
    /              /                /
Daughter        Son              Daughter
    /              /                /
Son              Two Daughters.
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In this case, according to Abu Yusuf, the property is divided among them in thirds, and then the deceased is considered as if he had left four daughters and a son; two-thirds of it therefore go to the two daughters and one-third to the son; but according to Muhammed (to whom God be merciful!) the estate is divided among them in twenty-eight parts — to the two daughters twenty-two shares (sixteen in right of their father and six shares in right of their mother) and to the son six shares in right of his mother.

On the Second Class.

He among them, who is preferred in the succession, is the nearest of them to the deceased, on which side soever he stands; and, in the case of equality in the degrees of proximity, then he, who is related to the deceased through an heir, is preferred by the opinion of Abu Suhaib surnamed Alfaaradi, of Abu Fudail Alkhassaf, and of Ali, the son of Isai Albasri; but no preference is given to him according to Abu Sulaiman Aljurjani, and Abu Ali al Baihati Albusti. If their degrees be equal, and there be none among them who is related through an heir; or if all of them be related through an heir, then, if the sex of those, through whom they are related, agree, and their relation be on the same side, the distribution is according to their persons, but if the sex of those, to whom they are related, be different, the property is distributed according to the first rank that differs in sex, as in the first class; and if their relation differ, then two-thirds go to those on the father's side, that being the share of the father, and one-third goes to those on the mother's side, that being the share of the mother: then what has been allotted to each set is distributed among them as if their relation were the same.
On the Third Class.

The rule concerning them is the same with that concerning the FIRST CLASS; I mean, that he is preferred in the succession who is NEAREST TO the DECEASED; and if they be equal in relation, then the CHILD of a RESIDUARY is preferred to the child of a more distant kinsman; as if a man leave the DAUGHTER OF a BROTHER'S SON, and the SON OF a SISTER'S DAUGHTER, both of them by the same father and mother, or by the same father, or one of them by the same father and mother, and the other by the same father only: in this case the whole estate goes to the daughter of the brother's son, because she is the child of a residuary; and, if it be by the same mother only, distribution is made between them by the rule "A male has the share of two females," and, by the opinion of Abu Yusuf (to whom God be merciful!), in thirds, according to the persons, but, by that of Muhammed (may God be merciful to him!), in moieties according to the roots; and, if they be equal in proximity, and there be no child of a residuary among them, or if all of them be children of residuaries, or if some of them be children of residuaries, and some of them children of those entitled to shares, and their relation differ, then Abu Yusuf (to whom God be merciful!) considers the strongest in consanguinity: but Muhammed (may God be merciful to him!) divides the property among the brothers and sisters in moieties, considering as well the number of the branches as the sides in the roots; and what has been allotted to each set is distributed among their branches, as in the first class: thus, if a man leave the DAUGHTER OF the DAUGHTER OF a SISTER by the same father and mother, she is preferred to the SON OF the DAUGHTER OF a BROTHER by the same father only, according to Abu Yusuf (to whom God be merciful!), by reason of the strength of relation; but, according to Muhammed (may God be merciful to him!), the property is divided between them both in moieties by consideration of the roots. So, when a man leaves three daughters of different brothers, and three sons and three daughters of different sisters, as in this figure:

The Deceased.

Sister—Sister—Sister—Brother—Brother—Brother

by the same

Mother—Father—Father—Mother—Father—Father

and Mother

Son Son Son Daughter Daughter Daughter

Daughter Daughter Daughter

In this case, according to Abu Yusuf, the property is divided among the branches of the whole blood, then among the branches by the same
father, then among the branches by the same mother, according to the rule "the male has the allotment of two females," in fourths, by considering the persons; but, according to Muhammed (to whom God be merciful!), a third of the estate is divided equally among the branches by the same mother, in thirds, by considering the equality of their roots in the division of the parents, and the remainder among the branches of the whole blood in moieties, by considering in the roots the number of the branches; one-half to the daughter of the brother, the portion of the father, and the other between the children of the sister, the male having the allotment of two females, by considering the persons; and the estate is correctly divided by nine. If a man leave three daughters of different brothers' sons, in this manner:

The Deceased.

Daughter—Daughter—Daughter

Of a Son of a Brother by the same

Father and Mother—Father—Mother

all the property goes to the daughter of the son of the brother by the same father and mother, by the unanimous opinion of the learned, since she is the child of a residuary, and hath also the strength of consanguinity.

On the Fourth Class.

The rule as to them is, that, when there is ONLY ONE of them, he has a right to the whole property, since there is none to obstruct him; and when there are SEVERAL, and the SIDES OF their RELATION are the same as paternal aunts and paternal uncles by the same mother with the father, or maternal uncles and aunts, then the stronger of them in consanguinity is preferred, by the general assent; I mean, they, who are related by father and mother, are preferred to those who are related by the father only, and they who are related by the father are preferred to those who are related by the mother only, whether they be males or females; and if there be MALES and FEMALES and their relation be equal, then the male has the allotment of two females; as, if there be a paternal uncle and aunt both by one mother, or a maternal uncle and aunt both by the same father and mother, or by the same father, or by the same mother only, and if the sides of their consanguinity be different, then no regard is shown to the strength of relation; as, if there be a paternal aunt by the same father and mother, and a maternal aunt by the same mother, or a maternal aunt by the same father and mother, and a paternal aunt by the same mother only, then two-thirds go to the KINDRED OF THE FATHER, for they are the father's allotment, and one-third to the KINDRED OF THE MOTHER, for that is the mother's allotment; then what is allotted to each set is divided among them, as if the place of their consanguinity were the same.
On their Children, and the Rules concerning them.

The rule as to them is like the rule concerning the first class; I mean that the best entitled of them to the succession is the NEAREST of them TO THE DECEASED on whichever side he is related; and if they be equal in relation, and the place of their CONSANGUINITY be the same, then he who has the STRENGTH OF BLOOD is preferred, by the general assent; and if they be equal in degree and in blood, and the place of their consanguinity be the same, then the CHILD OF a RESIDUARY is preferred to whoever is not such; as, if a man leave the DAUGHTER OF a PATERNAL UNCLE, and the SON OF a PATERNAL AUNT, both of them by the same father and mother, or by the same father, all the property goes to the daughter of the paternal uncle; and if one of them be by the same father and mother, and the other by the same father only, then all the estate goes to the claimant who has the strength of consanguinity, according to the clearer tradition; and this by analogy to the maternal aunt by the same father, for though she be the child of a distant kinsman, yet she is preferred, by the strength of consanguinity, to the maternal aunt by the same mother only, though she be the child of an heir; since the weight which prevails by itself, that is, the strength of consanguinity, is greater than the weight by another, which is the descent from an heir. Some of them (the learned) say, that the whole estate goes to the daughter of the paternal uncle by the same father, since she is the daughter of a residuary; and, if they be equal in degree, yet the place of their relation differ, they have no regard shown to the strength of consanguinity, nor to the descent from a residuary, according to the clearer tradition; by analogy to the paternal aunt by the same father and mother, for though she have two bloods, and be the child of an heir on both sides, and her mother be entitled to a legal share, yet she is not preferred to the maternal aunt by the same father; but two-thirds go to whoever is related by the father; and there regard is shown to the strength of blood; then to the descent from a residuary; and one-third goes to whoever is related by the mother, and there too regard is shown to strength of consanguinity; then, according to Abu Yusuf (may God be merciful to him!), what belongs to each set is divided among the PERSONS OF their BRANCHES, with attention to the number of sides in the branches; and, according to Muhammed (may God be merciful to him!), the property is distributed by the first line, that differs, with attention to the number of the branches and of the sides in the roots, as in the first class; then this rule is applied to the sides of the paternal uncles of his parents and their maternal uncles; then to their children; then to the side of the paternal uncles of the parents of his parents, and to their maternal uncles; then to their children, as in the case of residuaries.

On Hermaphrodites.

To the hermaphrodite, whose sex is quite doubtful, is allotted the smaller of two shares, I mean the worse of two conditions, according to Abu Hanifah (may God be merciful to him!) and his friends, and this is the doctrine of the generality of the
Inheritance (Mahomedans).

Prophet's companions (may God be gracious to them!), and conformable to it are decisions given; as, when a man leaves a son and a daughter, and an hermaphrodite, then the hermaphrodite has the share of a daughter, since that is ascertained: and, according to Amir Alshabi (and this is the opinion of Ibn Abbas, may God be gracious to them both!), the hermaphrodite has a moiety of the two shares in the controversy; but the two great lawyers differ in putting in practice the doctrine of Alshabi; for Abu Yusuf says that the son has one share, and the daughter half a share, and the hermaphrodite three-fourths of a share, since the hermaphrodite would be entitled to a share if he were a male, and to half a share if he were a female, and this is settled by his taking half the sum of the two portions; or, we may say, he takes the moiety which is ascertained, together with half the moiety which is disputed, so that there come to him three-fourths of a share; for he (Abu Yusuf) pays attention to the legal share and to the increase, and he verifies the case by nine: or, we may say, the son has two shares, and the daughter one share, and the hermaphrodite a moiety of the two allotments, and that is a share and half a share. But Muhammad (may God be merciful to him!) says that the hermaphrodite would take two-fifths of the estate if he were a male, and a fourth of the estate if he were a female, and that he takes a moiety of the two allotments, that will give him one-fifth and an eighth by attention to both sexes; and the case is rectified by forty; since that is the product of one of the numbers in the two cases, which is four, multiplied into the other, which is five, and that product multiplied by two (which is the number of the) cases; and then he, who takes anything by five, has it multiplied into four, and he, who takes anything by four, has it multiplied into five; so that thirteen shares go to the hermaphrodite, and eighteen to the son, and nine to the daughter.

On Pregnancy.

The longest time of pregnancy is TWO YEARS, according to Abu Hanifah (may God be merciful to him!) and his companions; and according to Laith, the son of Sad Alshami (may God be merciful to him!), THREE years; and, according to Alshafi (may God be merciful to him!), FOUR years: but, according to Alzubi (may God be merciful to him!), SEVEN years: and the SHORTEST time for it is SIX months. There is reserved for the CHILD in the WOMB, according to Abu Hanifah (may God be merciful to him!), the portion of four sons, or the portion of four daughters, whichever of the two is most; and there is given to the rest of the heirs the smallest of the portions; but, according to Muhammad (may God be merciful to him!), there is reserved the portion of three sons or of three daughters, whichever of the two is most: Laith, son of Sad (may God be gracious to him!), reports this opinion from him; but, by another report, there is reserved the portion of two sons; and one of the two opinions is that of Abu Yusuf (may God be merciful to him!) as Hisham reports it from him; but Alkhassaf reports from Abu Yusuf (may God be merciful to him!) that there should be reserved the share of one son or of one daughter; and, according to this, decisions are made, and security must be taken according to his opinion. And, if the pregnancy was by the deceased, and the widow produce a child at the full time of the longest period allowed for pregnancy, or within it, and the woman hath not confessed her having broken her legal term of abstinence, that child shall inherit, and others may inherit from him; but, if she produce a child after the longest time of gestation, he shall not inherit, nor shall others inherit from him; and if the pregnancy was from another man than the deceased, and she, the kinswoman, produce a child in six months or less, he shall inherit; but, if she produce the child after the least period of gestation, he shall not inherit.

Now the way of knowing the LIFE of the CHILD at the time of its
birth, is, that there be found in him that by which life is proved, as a voice, or sneezing, or weeping, or smiling, or moving a limb; and if the smallest part of the child come out, and he then die, he shall not inherit; but if the greater part of him come out, and then he die, he shall inherit: and if he come out straight (or with his head first), then his breast is considered; I mean, if his whole breast come out, he shall inherit; but if he come out inverted (or with his feet first), then his navel is considered.

On a Lost Person.

A lost person is considered as living in regard to his estate, so that no one can inherit from him, and his estate is reserved until his death can be ascertained, or the term for a presumption of it has passed over: now the traditionary opinions differ concerning that term, for by the clearer tradition, "when not one of his equals in age remains, judgment may be given of his death;" but Hasan, the son of Ziyad, reports from Abu Hanifah (may God be merciful to him!) that the term is an hundred and twenty years from the day on which he was born; and Muhammed says an hundred and ten years; and Abu Yusuf says an hundred and five years; and some of them, the learned, say ninety years; and according to that opinion are decisions made. Some of the learned in the law say that the estate of a lost person must be reserved for the final regulation of the Imam, and the judgment suspended as to the right of another person, so that his share from the estate of his ancestors must be kept as in the case of pregnancy; and when the term is elapsed, and judgment given of his death, then his estate goes to his heirs, who are to be found, according to the judgment on his decease; and what was reserved on his account from the estate of his ancestor, is restored to the heir of his ancestor from whose estate that share was reserved; since the lost person is dead as to the estate of another.

On an Apostate.

When an apostate from the faith has died naturally, or been killed, or passed into a hostile country, and the Kadi has given judgment on his passage thither, then what he had acquired at the time of his being a believer, goes to his heirs, who are believers; and what he has gained since the time of the apostacy is placed in the public treasury according to Abu Hanifah (may God be merciful to him!), but according to the two lawyers (Abu Yusuf and Muhammed) both the acquisitions go to his believing heirs; and, according to Alshahifi (may God be merciful to him!), both the acquisitions are placed in the public treasury; and what he gained after his arrival in the hostile country, that is confiscated by the general consent: and all the property of a female apostate goes to her heirs, who are believers, without diversity of opinion among our masters, to whom God be merciful! but an apostate shall not inherit from any one, neither from a believer nor from an apostate like himself, and so a female apostate shall not inherit from any one; except when the people of a whole district become apostates altogether, for then they inherit reciprocally.

On a Captive.

The rule concerning a captive is like the rule of other believers in regard to inheritance, as long as he has not departed from the faith; but if he has departed from the faith, then the rule concerning him is the rule concerning an apostate; but if his apostacy be not known, nor his life nor his death, then the rule concerning him is the rule concerning a lost person.
On Persons drowned, or burned, or overwhelmed in ruins.

When a company of persons die, and it is not known which of them died first, they are considered as if they had died at the same moment, and the estate of each of them goes to his heirs who are living; and some of the deceased shall not inherit from others: this is the approved opinion. But Ali and Ibnu Masud say, according to one of the traditions from them, that some of them shall inherit from others, except in what each of them has inherited from the companion of his fate.

THE HEDAYA ON INHERITANCE.

Wills.

DEFINITION.

Willa literally means assistance and friendship. In the language of the Law it signifies (according to the exposition in the Inayat) that mutual assistance which is a cause of inheritance.—513.

Willa is of two species or descriptions—I. Willa Ittakit (which is also termed Willa Niamit), the occasion of which is manumission from right of property (according to the Rawayet-Sahoeheh), whence it is that if a person become proprietor of his kinsman by inheritance, such kinsman is free, and his Willa goes to that person. II. Willa Mawalat, the occasion of which is a contract of Mawalat [mutual amity or patronage and clientage] as shall be explained in its proper place. The occasion of the first species, therefore, being manumission, and of the second a contract of mutual amity, they are termed the Willa of manumission or the Willa of mutual amity, by a reference of the effect to the cause.—513.

The case of Willa Mawalat is where (for instance) a stranger says to the person whose proselyte he is, or to any other person, "I enter into a contract of Mawalat with you, so that if I die my property shall go to you, or if (on the other hand) I commit an offence, the fine is upon you or your Akila," and the person thus addressed assents accordingly, in consequence of which he becomes the Mawalat of the stranger, and upon his decease without heirs inherits his property.—517.

The Mawla Asfal, or client, is at full liberty to desert from his Mawla Aaila, or patron, and to enter into a contract of Mawalat with some other person, so long as the first shall not have paid any fine of his incurring, because a contract of Mawalat is, like bequest, a reversible deed.—518.

Wasayas is the plural of Waseeat:—Waseeat means endowment with the property of anything after death, as if one person should say to another, "Give this article of mine, after my death, to a particular person." The
thing so given is termed the Mose be hee, or legacy; the person who wills that it be given is denominated the Mawsee, or testator; the person in whose favour the will is made is called the Mose le hoo, or legatee; and the person appointed to carry the will into execution is called the Wasee, or executor.—670.

PARTIES.

If a ZIMMEE, residing in the Mussulman territory, make a will in favour of a HOSTILE INFIDEL, it is not valid, for as inheritance does not obtain between those because of the difference of country, it follows that a bequest from one to the other is of no effect, bequest being similar to inheritance.—697.

BEQUEST BY a MOKATIB is not valid, notwithstanding he leave effects sufficient to discharge his covenanted ransom, because the property of a Mokatib is not a fit subject of gratuitous acts. Some assert that this is according to Haneefa, but that the two disciples hold a contrary opinion.—674.

The bequest of a MUSSULMAN in favour of a ZIMMEE, or of a Zimmee in favour of a Mussulman, is valid.—672.

If a Zimmee bequeath more than a third of his estate to a stranger, or to an heir, it is not valid, as being contrary to the laws of the Mussulmans, to which they have agreed to conform with respect to all temporal concerns.—697.

The will of an APOSTATE WOMAN is valid. This is approved, because women in such cases are left to themselves, and not put to death, as in the case of men.—696.

If a JEW or CHRISTIAN will that, "after his death, his house shall be converted into a church or synagogue for a particular set of people," the bequest is valid, according to all our doctors, and takes effect to the extent of a third of the testator's property; because a bequest has two different characters—the appointment of a successor, and an actual endowment; and the testator is competent to either of these.—695.

If a SICK PERSON make an acknowledgment of debt due by him to his son, or make a bequest in his favour, or bestow a gift upon him, at a time when the SON was a CHRISTIAN, and he [the son] afterwards, previous to his father's death, become a Mussulman, all those deeds of acknowledgment, gift, or bequest are void; the bequest and the gift because of the son being an heir at the death of his father, as above explained, and the acknowledgment, because, although the son, or account of the bar (namely, difference of religion), was not an heir at the time of making it, still the cause of inheritance (namely, consanguinity) did then exist.—684.

Where a person makes a will in favour of part of his HEIRS, the same rule holds as in the case of bequeathing more than a third to a stranger—in other words, the deed is not valid unless the other heirs give their consent to the disposition after the death of the testator; and their consent previous to his death will have no effect.—671.
If a man make a bequest in favour of a part of his heirs, it is not valid because of a traditional saying of the prophet, "God has allotted to every heir his particular right," and also because a will in favour of a part of the heirs is an injury to the rest, and therefore, if it were deemed legal, would induce a breach of the ties of kindred; besides, it is said, in the traditions, "a bequest to particular heirs is unjust." It is to be observed that in judging whether the legatee be an heir, or otherwise, regard is paid to the time of the testator's death, not to the period of making the will.—672.

If a sick person make an acknowledgment of debt in favour of a STRANGE WOMAN, or make a bequest in her favour, or bestow a gift upon her, and afterwards marry her, and then die, the acknowledgment is valid, and the bequest or gift is void; for the nullity of an acknowledgment in favour of an heir depends on the person having been an heir at the time of making it, whereas the nullity of a bequest in favour of an heir depends on the legatee being so at the time of the testator's death, as has been already explained.—684.

If a person bequeath any article jointly to one of his heirs and a stranger, in this case the bequest in favour of the heir is not admitted, and a moiety only of the legacy is given to the stranger.—681.

If a sick person make an acknowledgment in favour of any of his heirs, it is not valid unless it be verified by the other heirs.—437.

A will in favour of a FOETUS are both valid, provided the birth happen in less than six months from the date of the will.—674.

So likewise, where a man, having made a bequest in favour of a particular person, is afterwards killed by that person, such bequest is invalid.—672.

If a person make a bequest in favour of another from whom he has received a mortal wound, it is not valid, whether the murderer be one of his heirs or a stranger, or whether he may have wounded him wilfully or by misadventure, provided he be the actual perpetrator of the deed; because it is recorded in the traditions that "there is no legacy for a MURDERER."—672.

If a person make a will jointly in favour of his murderer and a stranger, in that case the murderer is not entitled to anything, and the stranger receives only a moiety of the legacy, for the reason assigned in the foregoing case.—681.

It is to be observed, as a general rule, that where a person performs with his property any gratuitous deed, of immediate operation (that is, not restricted to his death), if he be in health at the time, such deed is valid to the extent of all his property; or, if he be SICK, it takes effect to the extent of one-third of his property; and where a person performs such deed with his property, restricted to the circumstance of his decease, it takes effect to the extent of a third of his property, whether at the time he be sick or in health. If, on the contrary, a person makes an acknowledgment of debt, such acknowledgment is of effect to the whole extent of his property, notwithstanding it be made during sickness, as this is not
a gratuitous deed. Still, however, a declaration of this nature, made in health, precedes a declaration of the same nature made in sickness. It is also to be remarked that a sickness of which a person afterwards recovers is considered in Law as health.—684.

If a person make an appropriation upon his death-bed, Tehavee reports that, according to Haneefa, it stands in the same predicament with a bequest after death (that is to say, is absolute): contrary to an appropriation made during health, which is held by Haneefa not to be of an absolute nature. The true statement, however, is that the appropriation in question is not absolute, according to Haneefa; but it is absolute according to the two disciples; with this distinction, however, that the appropriation here treated of is regarded as from the third of the appropriator's estate, whereas an appropriation made during health is regarded as from the whole of the appropriator's property.—233.

Paralytic, gouty, or consumptive persons, where their disorder has continued for a length of time, and they are in no immediate danger of death, do not fall under the description of sick [Mareez], whence deeds of gift, executed by such, take effect to the extent of their whole property.—685.

The acknowledgments of debt by a sick person, who does not owe any debts of health, are valid, as they occasion no injury to others. In such case also, the said debts are preferable to the claims of the heirs, because Omar has said, "Whenever a sick person acknowledges debts, they must be considered as obligatory, and discharged from his effects." Besides, the discharge of his debts is a matter of necessity, and the right of the heirs is connected with his estate on the sole condition of its being free from incumbrance, whence it is that the discharge of the funeral expenses precedes the right of the heirs, as that is also a matter of necessity.—437.

HOW MADE.

The property of a legatee in a LEGACY is established by his ACCEPTANCE of it.—673.

If a person bequeath a third of one thousand dirms to another who is at that time absent, and the heirs consign the said sum to the Kazee, in order to divide and set apart the share of the absent legatee, the DIVISION thus made BY the KAZEE is valid, because of the original validity of the will, insomuch that if the absentee should afterwards die, previous to his having declared his acceptance, the legacy nevertheless devolves to his heirs. —701.

If a person, on his death-bed, say to his heirs, "I am indebted to Zeyd, and you must credit what he says," in that case the claim of Zeyd, to any amount not exceeding a third of the estate, must be admitted, although the heirs should falsify it.—680.

WHAT MAY BE BEQUEATHED.

A bequest to any amount exceeding the THIRD OF the testator's PROPERTY is not valid.—671.
If a person make a will in favour of a stranger, to the amount of a third of his property, it is valid, although the heirs of the testator should not be consenting thereto, for it is so recorded in the traditions.—671.

It is to be observed, however, that although a will, bequeathing more than a third of the testator's property, be not lawful, yet if the heirs, being arrived at the age of maturity, and should give their consent to it, after the death of the testator, it then becomes valid, for the objection to its validity is founded merely on a regard to their right, and therefore does not operate any longer, after they themselves agree to forego such right. Their consent, indeed, during the life-time of the testator, is not regarded, for as this is an assent previous to the establishment of their right, they are therefore at liberty to annul it upon the death of the testator.—671.

If a sick person make an acknowledgment in favour of a stranger, it is valid, although it be tantamount to the whole of his property.—438.

If a person, on his death-bed, emancipate a slave, or give a portion of his property to another, or make a Mohabut, in purchase or sale, by buying an article at an over-value, or selling it at an under-value,—or concerning the dower, hire, or so forth,—or become security for another—all these deeds are considered in the light of a bequest, and take effect to the extent of a third of his estate.—685.

If a person bequeath the service of his slave, or the use of his house, either for a definite or an indefinite period, such bequest is valid.—692.

RIGHTS AND LIABILITIES.

If a person appoint another his EXECUTOR, it remains with that other either to accept of or decline the appointment, in the presence of the testator.—697.

But if a person, under such circumstances, should, immediately after the death of the testator, dispose of any part of the effects by sale, then, as an act of this kind is a clear indication of his acceptance, the executors-ship becomes obligatory on him.—697.

If all or part of the heirs prefer a complaint against the executor, still the Kazee must not dismiss him immediately, nor until his guilt be ascertained, as he acts under an authority derived from the deceased.—698.

If one of two executors die, it is incumbent on the Kazee to appoint another in his room.—700.

If a man appoint two executors, neither of them is entitled, according to Haneefa and Mahomed, to act without the other, except in particular cases, of which an explanation shall be hereafter given.—698.

Thus it is lawful for either executor, singly, to disburse the funeral charges, as a delay in this might occasion the body to become offensive. In the same manner, either of the executors, singly, may purchase victuals or clothes for the infant children of the testator, this being a matter of urgency, and which admits of no delay.—699.
In the same manner, either of them may institute a suit in claim of the rights of the testator.—699.

Where two heirs appear, and produce evidence to prove the death of their ancestor, and the number of his heirs, and the house or other inheritance is in their possession, but one of the heirs is absent, in this case the Kazee may order a PARTITION, if the heirs who attend require it, appointing an agent to take possession of the portion of the absentee; or if, under the same circumstances, one of the heirs be an infant, the Kazee may order a partition, appointing a guardian to take possession of his portion; because, in so doing, the interest of the infant or absentee is promoted.—568.

Where the respective share of each of the partners is capable of being separately converted to use, if any one of them demand a partition it must be granted; because partition is an indisputable right, when required in any article capable of partition as has been before explained.—569.

The drawing of lots is proposed in order to give satisfaction to the parties, and to prevent the partitioner from being influenced by partiality or favour. It is not, however, absolutely necessary, and if the partitioner choose to appoint a particular share to each, it is valid; for the making the partition is an act of magistracy, and the authority of the partitioner must therefore be enforced.—571.

If the parties differ regarding the road, some of them desiring that it should remain, as formerly, in common, but that all the rest of the property be divided, and others of them opposing this—in such case, provided it be practicable, the magistrate must divide the road, and assign a part of it to each particular share.—572.

Partition of property is therefore more effectual than partition of usufruct in accomplishing the enjoyment of the use; for which reason, if one partner apply for a partition of property and another for a partition of usufruct, the Kazee must grant the request of the former; and if a partition of usufruct should have taken place with respect to a thing capable of a partition of property (such as a house or a piece of ground), and afterwards one of the partners apply for a partition of property, the Kazee must grant a partition of property and annul the partition of usufruct.—576.

If an executor, the legatees being present, divide off the estate of the testator from the legacies, on behalf of his heirs who are infants, or adult absentees, and take POSSESSION of their portions, it is lawful, for an heir is successor to the deceased, and as an executor is also a successor to him, he is of course a competent litigant on behalf of infant or absent heirs, and may, of consequence, make a division, and possess himself of their portions on their behalf.—700.

If, on the contrary, an executor, the heirs being adult and present, divide off the legacies from the estate, and take possession of them on behalf of infant or absent legatees, it is unlawful; for a legatee is not a successor to the deceased in every respect, he being constituted a proprietor by a new and supervenient cause.—701.
If a person deeply involved in debt bequeath any legacies, such bequest is unlawful and of no effect; because debts have a preference to bequests, as the discharge of debts is an absolute duty, whereas bequests are gratuitous and voluntary.—673.

If a person bequeath a third of his property to one man and a third to another, and the heirs refuse their consent to the execution of both bequests, one-third is in that case divided equally between the two legatees.—676.

In the execution of all pious wills, where the objects of them are not incumbent duties (such as the erection of a mosque, of a receptacle for travellers, or of a bridge), it is requisite to follow the arrangement of the testator, since it may be inferred that he considered those first mentioned as the most urgent.—688.

If a person make several bequests, for the performance of sundry religious duties, such as pilgrimage, prayers, and so forth, it is requisite to execute first such as are absolutely incumbent and ordained, and this, whether the testator have mentioned them first or not; for the discharge of the ordained duties is of more importance than that of acts which are merely voluntary; and the law therefore supposes that the object of the testator was to begin with the performance of them.—688.

But if the several duties, the objects of the will, be all of the same importance and of similar force, and the third of the estate suffice not for the discharge of the whole, they must in that case be executed agreeably to the order in which they have been specified by the testator, as it may be inferred that those to which he gave the precedence were, in his opinion, the most urgent. Tehavee maintains that alms are to be executed before pilgrimage. There is also one report from Aboo Yoosaf to the same effect. Another opinion reported from him is, that pilgrimage precedes alms; and such is the opinion of Mahomed.—688.

Upon the testator either expressly rescinding his bequest (as if he were to say, "I retract what I had bequeathed"), or performing any act which argues his having rescinded it, retraction is established.—674.

Every act or deed which occasions an extinction of the property of the testator is a retraction from his bequest (as where, for instance, a testator sells the article he had bequeathed, and afterwards purchases it, or gives it to some person, and afterwards retracts the gift), and, consequently, the legacy does not go to the legatee after his (the testator's) decease.—675.

If a person say, "I will that a particular slave, which I formerly bequeathed to Zeyd, be given as a legacy to Amroo," in that case a retraction from the first will is established, as the tenor of his speech evidently shows that it was not his intention they should both partake of the legacy. It is otherwise where a person first leaves a particular article to one man, and then leaves the same thing to another; as if he should say, "I will that this thing be given to Zeyd," and afterwards make a bequest of the same thing in favour of Amroo; for in that case a retraction of
the first will does not take place; the subject being capable of division, and the separate sentences bearing that construction.—675.

If a person say, “the slave which I formerly left to Zeyd I now bequeath to Amroo,” and at that time Amroo be not alive, the first will, in favour of Zeyd, holds good; for that was annulled only on account of the legacy having been completely devised to Amroo; and upon this no longer remaining in force, because of Amroo’s death, the first will reverts. If, on the contrary, Amroo be alive at the time of the bequest in his favour, and afterwards die before the testator, the legacy (the slave) in that case passes to the heirs, both bequests being void—the first because of the retraction, and the last because of the death of the legatee previous to that of the testator.—675.

If a person bequeath to another “the third of his three slaves,” and two of them afterwards die, the legatee is entitled only to a third of the value of the remaining slave; and the same rule also holds with respect to different houses.—679.

If a person bequeath three garments of different prices, leaving the best to Zeyd, the next in value to Omar, and the worst to Bicker, and one of these garments be afterwards lost, without its being known which of them it was, and the heirs of the testator declare to each legatee in particular that “his share is lost,” the bequest is null in toto, as it is in this case uncertain who are the legatees, and such uncertainty occasions an annulment of the will, since the Kazee cannot pass a decree concerning a thing unknown.—681.

It is lawful for an executor to SELL or purchase moveables, on account of the orphan under his charge, either for an equivalent, or at such a rate as to occasion an inconsiderable loss, but not at such a rate as to make the loss great and apparent.—702.

But with respect to an inconsiderable loss, as in the commerce of the world it is often unavoidable, it is therefore allowed to him to incur it, since otherwise a door would be shut to the business of purchase and sale.—702.

It is not lawful for an executor to trade with the property of the orphan; for the conservation of it, merely, is committed to him, not the power of trading with it, according to what is mentioned in the Awzah upon this subject.—702, 703.

An executor has the power of selling every species of property belonging to an adult absent heir, excepting such as is immovable; for as a father is authorized to sell the moveable property of his adult absent son, but not such as is immovable, his guardian (the executor) has the same power. The ground of this is that the sale of moveable property is a species of conservation, as articles of that description are liable to decay, and the price is much more easily preserved than the article itself. —702.
An Act to define and amend the Law relating to Intestate Succession among the Parsees.

Whereas it is expedient to define and amend the Law relating to Intestate Succession among the Parsees; it is enacted as follows:

1. 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.

2. 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.

3. 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.

4. 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.

5. If any CHILD OF a PARSEE Intestate shall have DIED IN HIS or her LIFE-TIME, the widow or widower and issue of such child shall take the share which such child would have taken if living at the Intestate’s death in such manner as if such deceased child had died immediately after the Intestate’s death.

6. Where a Parsee dies leaving a widow or widower, but without leaving any lineal descendants, his or her FATHER and MOTHER, if both are living, or one of them if the other is dead, shall take one moiety of the property as to which he or she shall have died intestate, and the WIDOW or WIDOWER shall take the other moiety. Where both the father and the mother of the Intestate survive him or her, the father’s share shall be double the share of the mother. Where neither the father nor the mother of the Intestate survives him or her, the Intestate’s relatives on the father’s side, in the order specified in the first Schedule hereto annexed, shall take the moiety which the father and the mother would have taken if they had survived the Intestate. The next of kin standing first in the same Schedule shall be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed as that each male shall take double the share of each female standing in
the same degree of propinquity. If there be no relatives on the father's side, the Intestate's widow or widower shall take the whole.

7. When a Parsee dies leaving neither lineal descendants nor a widow or widower, his or her NEXT OF KIN, in the order set forth in the second Schedule hereto annexed, shall be entitled to succeed to the whole of the property as to which he or she shall have died intestate. The next of kin standing first in the same Schedule shall always be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity.

8. 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.

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.
CIVIL CODE.

Chapter VI.—POSSESSION.

Occupancy.

'Among the original modes of acquiring property,' says Lord MacKenzie, 'occupation is the most natural. It consists of taking possession of things which have no owner with a view to their appropriation.' According to the Romans also this was one of the 'natural modes' of acquiring property. Bentham says that the title of original occupation formed the primitive foundation of property. Blackstone and others all concur in the same view. Sir Henry Maine however has shown that this theory has very slight grounds to rest upon. He says:—'Occupancy is pre-eminently interesting on the score of the service it has been made to perform for speculative jurisprudence, in furnishing a supposed explanation of the origin of private property. It was once universally believed that the proceeding implied in occupancy was identical with the process by which the earth and its fruits, which were at first in common, became the allowed property of individuals. The course of thought which led to this assumption is not difficult to understand, if we seize the shade of difference which separates the ancient from the modern conception of natural law. The Roman lawyers had laid down that occupancy was one of the natural modes of acquiring property, and they undoubtedly believed that were mankind living under the institutions of nature, occupancy would be one of their practices. How far they persuaded themselves that such a condition of the race had ever existed, is a point, as I have already stated, which their language leaves in much uncertainty; but they certainly do seem to have made the conjecture, which has at all times possessed much plausibility, that the institution of property was not so old as the existence of mankind. Modern jurisprudence, accepting all their dogmas without reservation, went far beyond them in the eager curiosity with which it dwelt on the supposed state of nature. Since then it had received the position that the earth and its fruits were once res nullius, and since its peculiar view of nature led it to assume without hesitation that the human race had actually practised the occupancy of res nullius long before the organization of civil societies, the inference

* Roman Law, p. 168.
immediately suggested itself that occupancy was the process by which the "no man's goods" of the primitive world became the private property of individuals in the world of history. It would be wearisome to enumerate the jurists who have subscribed to this theory in one shape or another, and it is the less necessary to attempt it because Blackstone, who is always a faithful index of the average opinions of his day, has summed them up in his 2nd book and 1st chapter.

"The earth," he writes, "and all things therein, were the general property of mankind from the immediate gift of the Creator. Not that the communion of goods seems ever to have been applicable, even in the earliest ages, to aught but the substance of the thing; nor could be extended to the use of it. For by the law of nature and reason, he who first began to use it acquired therein a kind of transient property that lasted so long as he was using it, and no longer; or to speak with greater precision, the right of possession continued for the same time only that the act of possession lasted. Thus the ground was in common, and no part was the permanent property of any man in particular; yet whoever was in the occupation of any determined spot of it, for rest, for shade, or the like, acquired for the time a sort of ownership, from which it would have been unjust and contrary to the law of nature to have driven him by force, but the instant that he quitted the use or occupation of it, another might seize it without injustice." He then proceeds to argue that "when mankind increased in number, it became necessary to entertain conceptions of more permanent dominion, and to appropriate to individuals not the immediate use only, but the very substance of the thing to be used."

The only criticism which could be directly applied to the theory of Blackstone would consist in inquiring whether the circumstances which make up his picture of a primitive society are more or less probable than other incidents which could be imagined with equal readiness. Pursuing this method of examination, we might fairly ask whether the man who had occupied (Blackstone evidently uses this word with its ordinary English meaning) a particular spot of ground for rest or shade would be permitted to retain it without disturbance. The chances surely are that his right to possession would be exactly co-extensive with his power to keep it, and that he would be constantly liable to disturbance by the first comer who coveted the spot and thought himself strong enough to drive away the possessor.

In the view of Blackstone and those whom he follows, it was the mode of assuming the exclusive enjoyment which mysteriously affected the minds of the fathers of our race. But the mystery does not reside here. It is not wonderful that property began in adverse possession. It is not surprising that the first proprietor should have been the strong man armed who kept his goods in peace. But why it was that lapse of time created a sentiment of respect for his possession—which is the exact source of the universal reverence of mankind for that which has for a long period de facto existed—are questions really deserving the profoundest examination, but lying far beyond the boundary of our present inquiries.

Before pointing out the quarter in which we may hope to glean some information, scanty and uncertain at best, concerning the early history of
proprietary right, I venture to state my opinion that the popular impression, in reference to the part played by occupancy in the first stages of civilization, directly reverses the truth. Occupancy is the advised assumption of physical possession; and the notion that an act of this description confers a title to res nullius, so far from being characteristic of very early societies, is in all probability the growth of a refined jurisprudence and of a settled condition of the laws. It is only when the rights of property have gained a sanction from long practical inviolability, and when the vast majority of the objects of enjoyment have been subjected to private ownership, that mere possession is allowed to invest the first possessor with dominion over commodities in which no prior proprietorship has been asserted. The sentiment in which this doctrine originated is absolutely irreconcilable with that infrequency and uncertainty of proprietary rights which distinguish the beginnings of civilization. Its true basis seems to be, not an instinctive bias towards the institution of property, but a presumption, arising out of the long continuance of that institution, that everything ought to have an owner. When possession is taken of a res nullius, that is, of an object which is not, or has never been, reduced to dominion, the possessor is permitted to become proprietor from a feeling that all valuable things are naturally the subjects of an exclusive enjoyment, and that in the given case there is no one to invest with the right of property except the occupant. The occupant, in short, becomes the owner, because all things are presumed to be somebody's property, and because no one can be pointed out as having a better right than he to the proprietorship of this particular thing.\`

"Even were there no other objection to the descriptions of mankind in their natural state which we have been discussing, there is one particular in which they are fatally at variance with the authentic evidence possessed by us. It will be observed that the acts and motives which these theories suppose are the acts and motives of individuals. It is each individual who for himself subscribes the social compact. It is some shifting sandbank in which the grains are individual men, that according to the theory of Hobbes is hardened into the social rock by the wholesome discipline of force. It is an individual who, in the picture drawn by Blackstone, "is in the occupation of a determined spot of ground for rest, for shade, or the like." The vice is one which necessarily afflicts all the theories descended from the natural law of the Romans, which differed principally from their civil law in the account which it took of individuals, and which has rendered precisely its greatest service to civilization in enfranchising the individual from the authority of archaic society. But ancient law, it must again be repeated, knows next to nothing of individuals. It is concerned not with individuals, but with families—not with single human beings, but groups. Even when the law of the State has succeeded in permeating the small circles of kindred into which it had originally no means of penetrating, the view it takes of individuals is curiously different from that taken by jurisprudence in its maturest stage. The life of each citizen is not regarded as limited by birth and death; it is but a continuation of the existence of his forefathers, and it will be prolonged in the existence of his descendants."

"Our studies in the law of persons seemed to show us the family expanding into the Agnatic group of kinsmen, then the Agnatic group
dissolving into separate households; lastly, the household supplanted by the individual; and it is now suggested that each step in the change corresponds to an analogous alteration in the nature of ownership. If there be any truth in the suggestion, it is to be observed that it materially affects the problem which theorists on the origin of property have generally proposed to themselves. The question—perhaps an insoluble one—which they have mostly agitated, is, what were the motives which first induced men to respect each other's possessions? It may still be put, without much hope of finding an answer to it, in the form of an inquiry into the reasons which led one composite group to keep aloof from the domain of another. But if it be true that far the most important passage in the history of private property is its gradual elimination from the co-ownership of kinsmen, then the great point of inquiry is identical with that which lies on the threshold of all historical law—what were the motives which originally prompted men to hold together in the family union? To such a question jurisprudence, unassisted by other sciences, is not competent to give a reply."

Whatever doubts there may be as to the question why mankind have given proprietary rights to the first possessor, there is none whatever as to the fact that this is the universal practice of all nations, and that is all that the lawyer need concern himself with. In most civilized countries there are however one or two exceptions to the ordinary rule. The following are the leading principles of the English law on the subject.

ESTRAYS or tame animals, such as sheep, oxen, swine, and horses, found wandering in any manor or lordship, of which the owner is unknown, belong to the sovereign. If the owner claim them within a year and a day he will recover them.—2 Steph. 583.

The right of FISHING in navigable rivers belongs to the public at large, except when there is a particular title in some individual under a royal grant or by prescription.—1 Steph. 690. Magna Charta c. 16.

Whale and sturgeon, either thrown on the shore or caught near the coast, are the property of the sovereign.—2 Steph. 575.

In the case of a new ISLAND rising in the sea or in a public river, though the civil law gives it to the first occupant, by English law it belongs to the sovereign.—1 Steph. 467, 468.

By French law islands formed in public rivers (fleuves), or in navigable or floatable rivers (rivieres), belong to the State, in the absence of any adverse title or prescription.—Code Napoleon 560.

Islands formed in rivers (rivieres) not navigable or floatable belong to the proprietor on the side of the river on which it has been formed. If the island is not on one side it belongs to the proprietors on both sides, starting from an imaginary line drawn in the centre of the river.—Code Napoleon 561.

* For the law on this subject in India, see the Cattle Trespass Act, section 17, Miscellaneous Laws, page 105.
By another section of the Code it is provided that roads, highways, and streets maintained by the State, rivers (fleuves) and navigable or floatable streams (rivieres) are declared to form part of the public domaine. It may therefore be considered that the person who takes possession of islands in such rivers is not the first occupant, as they have already been appropriated by the State.—Code Napoleon 538.

LIGHT, AIR, and WATER may be occupied by means of windows, gardens, mills, and other conveniences. So long as these things remain in possession every man has a right to the enjoyment of them without disturbance.—1 Steph. 167, 712.

"The element of light, like that of water, is capable, to a certain extent, of appropriation by mere occupancy, for a man on his own land has a right to all the light that will come to him, and may erect a house (even at the boundary line of his own property and so as to overlook his neighbour) with as many windows as he pleases. His neighbour, however, may construct a wall or a house so as to intercept the light, unless a period of time has elapsed sufficient to give a prescriptive title."—1 Steph. 880.

"The finder of a LOST ARTICLE is entitled to it as against all parties except the real owner."—Patteson J., Bridges v. Hawkesworth, 21 L. J. Q.B. 75.

The place in which it was found makes no legal difference.—Bridges v. Hawkesworth, 21 L. J. Q. B. 75.

The finder of a jewel, though he does not, by such finding, acquire an absolute property or ownership, yet he has such a property or ownership as will enable him to keep it against all but the rightful owner.—Armory v. Delamirie, 1 Sm. L. C. 315.

TREASURE TROVE, that is, gold or silver hidden in the ground of which the owner is unknown, belongs not to the finder but to the sovereign.—2 Steph. 581.

Treasure which is not hidden belongs to the first finder.—2 Steph. 582.

By French law treasure trove belongs to the finder if he finds it in his own ground, but if he finds it in the ground of another, it belongs half to the finder and half to the owner of the ground.—Code Napoleon 716.

WILD ANIMALS, such as deer, hares, coneyrs in a warren, pheasants, partridges, &c., may become the property of an individual by his taming them, or by so confining them that they cannot escape, e.g. deer in a park, hares or rabbits in an enclosed warren, &c.—Steph. Com. I. 167, 688.

The property in them ceases if they regain their liberty, unless they have animus revertendi, as pigeons, tame hawks, &c.—Steph. I. 167.

* See Limitation Act, post section 27.
Wild animals are not in the possession of a person until they are actually caught; the highest probability of catching them is not sufficient. —Young v. Hichens, 6 Q. B. 606.

If a man starts a wild animal in his own ground and follows it into another’s, and kills it there, the property remains in himself; but if (being a trespasser) he starts it on another’s land, and kills it there, the property belongs to him in whose ground it was killed.—2 Steph. 22.

With respect to those wild animals which come under the denomination of game, there are various special enactments.—See 2 Steph. 19.

WRECK, or such goods as after a shipwreck are cast upon the land by the sea of which the owner is unknown, belongs to the sovereign. If the owner claim them within a year and a day he will recover them, otherwise not.—2 Steph. 576.

Possession.

A person in possession is presumed to be the owner until the contrary is proved.—Welb v. Fox, 7 T. R. 397.

This rule applies both to real and personal property, and in the former case raises a presumption of seizin in fee.—Dox v. Coulthred, 7 H. & E. 239.

Mere possession of the property of another is sufficient to enable the party enjoying it to obtain legal remedy against a mere wrong-doer.—Armorie v. Delamirie, 1 Sm. L. Cas. 315.

A person in bonâ fide possession of the property of another was entitled by the Roman law to retain the profits derived by him during such possession. The rule of French law is the same (Code Napoleon 549, 550). By English law the possessor even in good faith is bound to restore the profits taken by him during possession.—2 Inst. 285. Attorney-General v. Balliol College, 9 Mod. 411; but see Hicks v. Sallit 3 De. G. M. and G. 782.

He who attempts to dispossess another, or to damage things in his possession, may be opposed by force.—Com. Dig. Plead. (3 M. 16 & 17).

An action of trespass will lie for a wrongful interference with possession.—Com. Dig. Trespass.

Act No. XIV. of 1859.*

15. If any person shall without his consent have been dispossessed of any immoveable property otherwise than by due course of law, such person, or any person claiming through him, shall, in a suit brought to recover possession of such property, be entitled to recover possession there-

* The whole Act, except so much of section 15 as does not relate to limitation, was repealed by Act 9 of 1871.—See Repealing Enactments, p. 73.
of, notwithstanding any other title that may be set up in such suit, provided that the suit be commenced within six months from the time of such dispossession. But nothing in this Section shall bar the person from whom such possession shall have been so recovered, or any other person, instituting a suit to establish his title to such property, and to recover possession thereof within the period limited by this Act.

Prescription.

Act No. IX. of 1871.

The Indian Limitation Act.

An Act for the Limitation of Suits and for other Purposes.

Whereas it is expedient to consolidate and amend the law relating to the limitation of suits, appeals, and certain applications to Courts; and whereas it is also expedient to provide rules for acquiring ownership by possession; It is hereby enacted as follows:

PART I.

PRELIMINARY.

1. This Act may be called 'The Indian Limitation Act, 1871':

It extends to the whole of British India; but nothing contained in sections two and three or in Parts II. and III. applies—

(a) to suits instituted before the first day of April 1873,
(b) to suits under the Indian Divorce Act,
(c) to suits under Madras Regulation VI. of 1831.

This Act shall come into force on the first day of July 1871.

For section 2 and the 1st Schedule, see Repealing Enactments, p. 79.

3. In this Act, unless there be something repugnant in the subject or context, 'MINOR' means a person who has not completed his age of eighteen years:

'PLAINTIFF' includes also any person through whom a plaintiff claims:

'NUISANCE' means any thing done to the hurt or annoyance of another's immovable property and not amounting to a trespass:

'BILL OF EXCHANGE' includes also a hundi:
'TRUSTEE' does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title:

'REGISTERED' means duly registered under the law for the registration of documents in force at the time and place of executing the document referred to in the context:

'FOREIGN COUNTRY' means any country other than British India;

and nothing shall be deemed to be done in 'good faith' which is not done with due care and attention.

PART II.

LIMITATION OF SUITS, APPEALS, AND APPLICATIONS.

4. Subject to the provisions contained in sections five to twenty-six (inclusive), every suit instituted, appeal presented, and application made after the period of limitation prescribed therefor by the second schedule hereto annexed, shall be dismissed, although limitation has not been set up as a defence.

Explanation.—A SUIT is INSTITUTED in ordinary cases WHEN the plaint is presented to the proper officer: in the case of a pauper, when his application for leave to sue as a pauper is filed; and in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

Illustrations.

(a.) A suit is instituted after the prescribed period of limitation. Limitation is not set up as a defence, and judgment is given for the plaintiff. The defendant appeals. The appellate Court must dismiss the suit.

(b.) An appeal presented after the prescribed period is admitted and registered. The appeal shall, nevertheless, be dismissed.

5. a. If the period of limitation prescribed for any suit, appeal, or application expires on a day when the COURT is CLOSED, the suit, appeal, or application may be instituted, presented, or made on the day that the Court re-opens:

b. Any appeal or application for a review of judgment may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient CAUSE FOR NOT PRESENTING the appeal or making the application within such period.

6. When, by any law not mentioned in the schedule hereto annexed and now or hereafter to be in force in any part of British India, a period of limitation differing from that prescribed by this Act is specially prescribed for any suits, appeals, or applications, nothing herein contained shall affect such law.
And nothing herein contained shall affect the periods of limitation prescribed for appeals from, or applications to review, any decree, order, or judgment of a HIGH COURT in the exercise of its original jurisdiction.

**Legal Disability.**

7. If a person entitled to sue be, at the time the right to sue accrued, a MINOR, or INSANE, or an IDIOT;

he may institute the suit within the same period after the disability has ceased, or (when he is at the time of the accrual affected by two disabilities) after both disabilities have ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed.

When his disability continues up to his death, his representative in interest may institute the suit within the same period after the death as would otherwise have been allowed from the time prescribed therefor in the third column of the same schedule.

Nothing in this section shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which the suit must be brought.

**Illustrations.**

(a.) The right to sue for the hire of a boat accrues to A during his minority. He comes of age four years after the accrual of the right. He may institute his suit at any time within three years from the date of his coming of age.

(b.) A, to whom a right to sue for a legacy has accrued during his minority, attains full age eleven years after such right accrued. A has, under the ordinary law, only one year remaining within which to sue. But under this section an extension of two years will be allowed him, making in all a period of three years from the date of his majority, within which he may bring his suit.

(c.) A right to sue for an hereditary office accrues to A, who at the time is insane. Six years after the accrual of the right A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under this section.

(d.) A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accrual of the right, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. This section does not extend that time.

8. When ONE OF SEVERAL joint creditors or claimants is UNDER any such DISABILITY, and when a discharge can be given without the concurrence of such person, time will run against them all; but where no such discharge can be given, time will not run as against any of them until they all are free from disability.

9. When once time has begun to run, no SUBSEQUENT DISABILITY or inability to sue stops it.
Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in TRUST for any specific purpose, or against his representatives, for the purpose of following in his or their hands such property, shall be barred by any length of time.

Explanation.—A purchaser in good faith for value from a trustee is not his representative within the meaning of this section.

11. Suits in British India on CONTRACTS entered into in a FOREIGN COUNTRY are subject to the rules prescribed by this Act.

12. No FOREIGN RULE OF LIMITATIONS shall be a defence to a suit in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract, and the parties were domiciled in such country during the period prescribed by such rule.

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

13. In computing the period of limitation prescribed for any suit, the DAY ON WHICH the RIGHT to sue ACCRUED shall be EXCLUDED.

In computing the period of limitation prescribed for an appeal, an application for leave to appeal as a pauper, an application to the High Court for the admission of a special appeal, and an application for a review of judgment, the DAY ON WHICH the JUDGMENT complained of was pronounced, and the TIME requisite FOR obtaining a COPY of the decree, sentence, or order appealed against or sought to be reviewed, shall be EXCLUDED.

In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

14. In computing the period of limitation prescribed for any suit, the TIME during which the defendant has been ABSENT FROM British INDIA shall be EXCLUDED, unless service of a summons to appear and answer in the suit can, during such absence, be made under the Code of Civil Procedure, section sixty.

15. In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence ANOTHER SUIT, whether in a Court of first instance or in a Court of appeal, against the same defendant or some person whom he represents, shall be excluded, where the last-mentioned suit is founded
upon the same right to sue, and is instituted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to try it.

Explanation 1.—In excluding the time during which a former suit was pending, the day on which that suit was instituted, and the day on which the proceedings therein ended, shall both be counted.

Explanation 2.—A plaintiff resisting an appeal presented on the ground of want of jurisdiction, shall be deemed to be prosecuting a suit within the meaning of this section.

16. In computing the period of limitation prescribed for any suit, the commencement of which has been stayed by INJUNCTION, the time of the continuance of the injunction shall be excluded.

17. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which the judgment-debtor has been prosecuting a SUIT TO SET ASIDE the SALE shall be excluded.

18. When a PERSON who would, if he were living, have a right to sue, DIES before the right accrues, the period of limitation shall be computed from the time when there is a representative in interest of the deceased capable of suing.

When a person against whom, if he were living, a right to sue would have accrued, dies before the right accrues, the period of limitation shall be computed from the time when there is a representative whom the plaintiff may sue.

Nothing in the former part of this section applies to suits for the possession of land or of an hereditary office.

19. When any person having a right to sue has, by means of FRAUD, been kept from the knowledge of such right or of the title on which it is founded,

and where any document necessary to establish such right has been fraudulently concealed,

the time limited for commencing a suit,

(a) against the person guilty of the fraud or accessory thereto, or

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

20. a. No promise or acknowledgment in respect of a debt or legacy
shall take the case out of the operation of this Act, unless such promise or acknowledgment is contained in some writing signed, before the expiration of the prescribed period, by the party to be charged therewith, or by his agent generally or specially authorized in this behalf.

b. When such writing exists, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the promise or acknowledgment was signed.

c. When the writing containing the promise or acknowledgment is undated, oral evidence may be given of the time when it was signed. But when it is alleged to have been destroyed or lost, oral evidence of its contents shall not be received.

Explanation 1.—For the purposes of this section,

a promise or acknowledgment may be sufficient, though it omits to specify the exact amount of the debt or legacy, or avers that the time for payment or delivery has not yet come, or is accompanied by a refusal to pay or deliver, or is coupled with a claim to a set-off, or is addressed to any person other than the creditor or legatee;

but it must amount to an express undertaking to pay or deliver the debt or legacy, or to an unqualified admission of the liability as subsisting.

Explanation 2.—Nothing in this section renders one of several partners or executors chargeable by reason only of a written promise or acknowledgment signed by another of them.

Illustrations.

Z, a bond-debtor, himself writes a letter promising to pay the debt to his creditor

A. Z affixes his seal, but does not sign the letter;

Z pays part of the debt and promises orally to pay the rest;

Z publishes an advertisement, requesting his creditors to bring in their claims for examination:

In none of these cases is the debt taken out of the operation of this Act.

21. When interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent generally or specially authorized in this behalf,

or when part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent generally or specially authorized in this behalf,

a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made:

Provided that, in the case of part payment of principal, the debt has arisen from a contract in writing, and the fact of the payment appears in
the handwriting of the person making the same, on the instrument, or in his own books, or in the books of the creditor.

22. When, after the institution of a suit, a NEW PLAIN TIFF or defendant is substituted or added, the suit shall, as regards him, be deemed to have commenced when he was so made a party:

Provided that, when a PLAIN TIFF DIES, and the suit is continued by his representatives in interest, it shall, as regards them, be deemed to have commenced when it was instituted by the deceased plaintiff.

Provided also, that, when a defendant dies, and the suit is continued against his representatives in interest, it shall, as regards them, be deemed to have been commenced when it was instituted against the deceased defendant.

23. In the case of a suit for the breach of a CONTRACT, where there are SUCCESSIVE BREACHES, a fresh right to sue arises, and a fresh period of limitation begins to run, upon every fresh breach; and where the breach is a continuing breach, a fresh right to sue arises, and a fresh period of limitation begins to run, at every moment of the time during which the breach continues.

Nothing in the former part of this section applies to suits for the breach of contracts for the payment of money by instalments, where, on default made in payment of one instalment, the whole becomes due.

Illustrations.

(a.) A contracts to pay an annuity to B for his life by quarterly instalments. A fails to pay any of the instalments. Here upon every fresh failure, a fresh right to sue arises and a fresh period of limitation begins to run; and this Act may bar the remedy on the earlier breaches without affecting the remedy on the later breaches.

(b.) A, a tenant, covenants with B, his landlord, to keep certain buildings in repair. At every moment of the time during which the buildings continue out of repair and B retains his right of entry, a fresh right to sue arises and a fresh period of limitation begins to run.

24. In the case of a CONTINUING NUISANCE a fresh right to sue arises and a fresh period of limitation begins to run at every moment of the time during which the nuisance continues.

Illustration.

A diverts B's watercourse. At every moment of the time during which the diversion continues and B retains his right of entry, a fresh right to sue arises and a fresh period of limitation begins to run.

25. In the case of a suit for compensation for an ACT lawful in itself, WHICH BECOMES UNLAWFUL in case it causes damage, the period of limitation shall be computed from the time when the damage accrues.
I.LLUSTRATION.

A owns the surface of a field. B owns the subsoil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation runs from the time of the subsidence.

26. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian CALENDAR.

Illustrations.

(a) A Hindu makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiry of four months after date computed according to the Gregorian calendar.

(b) A Hindu makes a bond, bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiry of one year after date computed according to the Gregorian calendar.

PART IV.

ACQUISITION OF OWNERSHIP BY POSSESSION.

27. Where the access and use of LIGHT or AIR to and for any building has been peaceably enjoyed therewith, as an EASEMENT, and as of right, without interruption, and for twenty years,

and where any WAY or WATERCOURSE, or the USE OF any WATER, or any other easement (whether affirmative or negative), has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, way, watercourse, use of water, or other easement, shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanations.—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to, or acquiesced in, for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Illustrations.

(a) A suit is brought in 1871 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff prove that the right was peaceably and openly enjoyed by him claiming title thereto as an easement and as of right, without interruption, from 1st January 1850 to 1st January 1870. The plaintiff is entitled to judgment.
(b.) In a like suit also brought in 1871 the plaintiff merely proves that he enjoyed the right in manner aforesaid from 1848 to 1868. The suit shall be dismissed, as no exercise of the right by actual user has been proved to have taken place within two years next before the institution of the suit.

(c.) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had asked his leave to enjoy the right. The suit shall be dismissed.

28. Provided that, when any land or water upon, over or from which any easement (other than the access and use of light and air) has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof,

the time of the enjoyment of such easement, during the continuance of such interest or term, shall be excluded in the computation of the said last mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

Illustration.

A sues for a declaration that he is entitled to a right of way over B’s land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years, C, a deceased Hindu widow, had a life-interest in the land, that on C’s death B became entitled to the land, and that within two years after C’s death he contested A’s claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

29. At the determination of the period hereby limited to any person for instituting a suit for possession of any LAND or HEREDITARY OFFICE, his right to such land or office shall be extinguished.

SECOND SCHEDULE.

(See Section 4.)

FIRST DIVISION: SUITS.

Part I.—Thirty Days.

Description of Suit.

1.—To contest an award of the Board of Revenue under Act No. XXIII. of 1868 (to provide for the adjudication of claims to waste-lands).

Time when Period begins to run.

When notice of the award is delivered to the plaintiff.

Part II.—Ninety Days.

2.—For doing, or for omitting to do, an act in pursuance of any enactment in force for the time being in British India.

When the act or omission took place.
Part III.—Six Months.

Description of Suit.

3.—Under Act No. XIV. of 1859 (to provide for the limitation of suits), section fifteen, to recover possession of immovable property.

4.—Under Act No. IX. of 1860 (to provide for the speedy determination of certain disputes between workmen engaged in Railway and other public works and their employers), section one.

5.—Under Act No. V. of 1866 (to provide a summary procedure on bills of exchange, and to amend, in certain respects, the commercial law of British India).

Time when Period begins to run.

When the dispossessio runs.

When the wages, hire, or price of work claimed accrued due.

When the bill or promissory note becomes due and payable.

Part IV.—One Year.

6.—Upon a Statute, Act, Regulation, or bye-law, for a penalty or forfeiture.

7.—For the wages of a domestic servant, artisan, or labourer not provided for by this schedule, No. 4.

8.—For the price of food or drink sold by the keeper of an hotel, tavern, or lodging-house.

9.—For the price of lodging.

10.—To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract.

11.—For damages for infringing copyright or any other exclusive privilege.

12.—By executors, administrators, or representatives, under Act No. XII. of 1855 (to enable executors, administrators, or representatives to sue and be sued for certain wrongs).

13.—By executors, administrators, or representatives under Act No. XIII. of 1855 (to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong).

14.—To set aside any of the following sales:

(a) sale in execution of a decree of a Civil Court;

(b) sale in pursuance of a decree or order of a Collector or other officer of revenue;

(c) sale for arrears of Government revenue or for any demand recoverable as such arrears;

When the penalty or forfeiture is incurred.

When the wages sued for accrue due.

When the food or drink is delivered.

When the lodging ends.

When the purchaser takes actual possession under the sale sought to be impeached.

The date of the infringement.

The date of the death of the person wronged.

The date of the death of the person killed.

When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.
Description of Suit.

(d) Sale of a patni taluq sold for current arrears of rent.

Explanation.—In this clause 'patni' includes any intermediate tenure saleable for current arrears of rent.

15.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.

16.—To set aside any act of an Officer of Government in his official capacity, not herein otherwise expressly provided for.

17.—Against Government to set aside any attachment, lease, or transfer of immovable property by the Revenue Authorities for arrears of Government revenue.

18.—Against Government to recover money paid under protest in satisfaction of a claim made by the Revenue Authorities on account of arrears of revenue or on account of demands recoverable as such arrears.

19.—Against Government for compensation for land acquired for public purposes.

20.—Like suit for compensation when the acquisition is not completed.

21.—For false imprisonment.

22.—For any other injury to the person.

23.—For a malicious prosecution.

24.—For libel.

25.—For slander.

26.—For taking or damaging moveable property.

27.—For loss of service occasioned by the seduction of the plaintiff's servant or daughter.

28.—For inducing a person to break a contract with the plaintiff.

29.—For an illegal, irregular, or excessive distress.

30.—For wrongful seizure of moveable property under legal process.

Time when Period begins to run.

The date of the final decision or order in the case by a Court competent to determine it finally.

The date of the act.

When the attachment, lease, or transfer is made.

When the payment is made.

The date of determining the amount of the compensation.

The date of the refusal to complete.

When the imprisonment ends.

When the injury is committed.

When the plaintiff is acquitted.

When the libel is published.

When the words are spoken.

When the taking or damage occurs.

When the loss occurs.

The date of the breach.

The date of the distress.

The date of the seizure.

Part V.—Two Years.

31.—For obstructing a way or a water-course.

32.—For diverting a water-course.

The date of the obstruction.

The date of the diversion.
Part V.—Two Years.—continued.

33.—For wrongfully detaining title-deeds.

Time when Period begins to run.

When the title to the property comprised in the deeds is adjudged to the plaintiff, or the detainer's possession otherwise becomes unlawful.

34.—For wrongfully detaining any other moveable property.

When the detainer's possession becomes unlawful.

35.—For specific recovery of moveable property in cases not provided for by this schedule, numbers 48 and 49.

When the property is demanded and refused.

36.—Against a carrier for losing or injuring goods.

When the loss or injury occurs.

37.—Against a carrier for delay in delivering goods.

When the goods ought to be delivered.

38.—Against one who, having a right to use property for specific purposes, perverts it to other purposes.

The time of the perversion.

39.—Under Act No. XII. of 1855 (to enable executors, administrators, or representatives to sue and be sued for certain wrongs) against an executor, administrator, or other representative.

When the wrong complained of is done.

40.—For compensation for any wrong, malfeasance, nonfeasance, or misfeasance independent of contract and not herein specially provided for.

When the wrong is done or the default happens.

41.—For the recovery of a wife.

When possession is demanded and refused.

42.—For the restitution of conjugal rights.

When restitution is demanded and refused.

Part VI.—Three Years.

43.—For trespass upon immovable property.

When the trespass takes place.

44.—To contest an award under any of the following Regulations of the Bengal Code:

VII. of 1822,
IX. of 1825, and
IX. of 1883.

The date of the final award or order in the case.

45.—By a party bound by such award to recover any property comprised therein.

Ditto.

46.—By any person bound by an order respecting the possession of property made under Act No. XVI. of 1886, section one, clause two, or Act No. XXV. of 1861, chapter twenty-two, or Bombay Act No. V. of 1864, or by any one claiming under such person, to recover the property comprised in such order.

The date of the final order in the case.
Part VI.—Three Years.—continued.

Description of Suit. Time when Period begins to run.

47.—For lost moveable property not dishonestly misappropriated or converted. When the property is demanded and refused.

48.—For moveable property acquired by theft, extortion, cheating, or dishonest misappropriation or conversion. Ditto.

49.—For the hire of animals, vehicles, boats, or household furniture. When the hire becomes payable.

50.—For the balance of money advanced in payment of goods to be delivered. When the goods ought to be delivered.

51.—For the price of goods sold and delivered where no fixed period of credit is agreed upon. The date of the delivery of the goods.

52.—For the price of goods sold and delivered to be paid after the expiry of a fixed period of credit. The expiry of the period of credit.

53.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given. When the period of the proposed bill elapses.

54.—For the price of trees or growing crops sold by the plaintiff to the defendant, where no fixed period of credit is agreed upon. The date of the sale.

55.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment. When the work is done.

56.—For money payable for money lent. When the loan is made.

57.—Like suit when the lender has given a cheque for the money. When the cheque is paid.

58.—For money lent under an agreement that it shall be payable on demand. When the demand is made.

59.—For money payable to the plaintiff for money paid for the defendant. When the money is paid.

60.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use. When the money is received.

61.—For money payable for interest upon money due from the defendant to the plaintiff. When the interest becomes due.

62.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them. When the accounts are stated, unless where the debt is made payable at a future time, and then when that time arrives.

63.—Upon a promise to do anything at a specified time, or upon the happening of a specified contingency. At the time specified, or upon the contingency happening.
Part VI.—Three Years.—continued.

Description of Suit. Time when Period begins to run.

64.—Against a factor for an account. When the account is demanded, or, where no such demand is made, when the agency terminates.

65.—On a single bond where a day is specified for payment. The day so specified.

66.—On a single bond where no such day is specified. The date of executing the bond.

67.—On a bond subject to a condition. When the condition is broken.

68.—On a bill of exchange or promissory note payable at a fixed time after date. When the bill or note falls due.

69.—On a bill of exchange payable at or after sight. When the bill is presented.

70.—On a bill of exchange accepted payable at a particular place. When the bill is presented at that place.

71.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand. When the fixed time expires.

72.—On a bill of exchange or promissory note payable on demand, and not accompanied by any writing restraining or postponing the right to sue. When the demand is made.

73.—By the endorsee of a bill or promissory note against the endorser. The date of the endorsement.

74.—On a promissory note or bond payable by instalments. The expiration of the first term of payment, as to the part then payable; and, for the other parts, the expiration of the respective terms of payment.

75.—On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one instalment, the whole shall be due. The time of the first default, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made.

76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen. The time of the delivery to the payee.

77.—On a dishonored foreign bill where protest has been made, and notice given. When the notice is given.

78.—By the payee against the drawer of a bill of exchange which has been dishonored by non-acceptance. The date of the refusal to accept. Ditto.

79.—Like suit when the bill has been dishonored by non-acceptance, and afterwards by non-payment. When the bill or note becomes payable.

80.—Suit on a bill of exchange or promissory note not herein expressly provided for.
Part VI.—Three Years.—continued.

Description of Suit.

81.—By the acceptor of an accommodation-bill against the drawer.

82.—By a surety against the principal debtor.

83.—By a surety against a co-surety.

84.—Upon any other contract to indemnify.

85.—By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.

86.—For compensation for damage caused by an injunction wrongfully obtained.

87.—For the balance due on a mutual, open, and current account, where there have been reciprocal demands between the parties.

88.—On a policy of insurance when the sum assured is payable after proof of the death or loss has been given to, or received by, the insurers.

89.—By the assured to recover premia paid under a policy voidable at the election of the insurers.

90.—By a principal against his agent for moveable property received by the latter, and not accounted for.

91.—Other suits by principals against agents for neglect or misconduct.

92.—To cancel or set aside an instrument not otherwise provided for.

93.—To declare the forgery of an instrument issued, or registered, or attempted to be enforced.

94.—For property which the plaintiff has conveyed while insane.

95.—For relief on the ground of fraud.

96.—To set aside a decree obtained by fraud.

97.—For relief on the ground of mistake in fact.

98.—For money paid upon an existing consideration, which afterwards fails.

Time when Period begins to run.

When the acceptor pays the amount.

When the surety pays the creditor.

When the plaintiff pays anything in excess of his own share.

When the plaintiff is actually damni
fied.

The termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.

When the injunction ceases.

The time of the last item admitted or proved in the account.

When proof of the death or loss is given to, or received by, the insurers, whether by, or from, the plaintiff, or any other person.

When the insurers elect to avoid the policy.

When the account is demanded and refused.

When the neglect or misconduct occurs.

When the instrument is executed.

The date of the issue, registration, or attempt.

When the plaintiff is restored to sanity, and has knowledge of the conveyance.

When the fraud becomes known to the party wronged.

Ditto.

When the mistake becomes known to the plaintiff.

The date of the failure.
### Part VI.—Three Years.—continued.

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<th>Time when period begins to run</th>
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<td>The date of the trustee's death, or if the loss has not then been occasioned, the date of the loss.</td>
</tr>
<tr>
<td>100. For contribution by a party who has paid the whole amount due under a joint decree, or by a sharer in a joint estate who has paid the whole amount of revenue due from himself and his co-sharers.</td>
<td>The date of the plaintiff's advance in excess of his own share.</td>
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<td>101. By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.</td>
<td>When the right to contribution accrues.</td>
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<td>102. For a seaman's wages.</td>
<td>The end of the voyage during which the wages are earned.</td>
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<td>103. By a Muhammadan for exigible dower (mas'ald).</td>
<td>When the dower is demanded and refused, or (where, during the continuance of the marriage, no such demand has been made) when the marriage is dissolved by death or divorce.</td>
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<tr>
<td>104. By a Muhammadan for deferred dower (musaqqat).</td>
<td>When the marriage is dissolved by death or divorce.</td>
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<tr>
<td>105. By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.</td>
<td>The date of the receipt.</td>
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<td>The date of the dissolution.</td>
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<td>107. By a Hindu manager of a joint estate for contribution in respect of a payment made by him on account of the estate.</td>
<td>The date of the payment.</td>
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<td>108. By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.</td>
<td>When the trees are cut down.</td>
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<td>When the profits are received, or, where the plaintiff has been dispossessed by a decree afterwards set aside on appeal, the date of the decree of the Appellate Court.</td>
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<td>110. For arrears of rent.</td>
<td>When the arrears become due.</td>
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<tr>
<td>111. By a vendor of immoveable property to enforce his lien for unpaid purchase-money.</td>
<td>The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.</td>
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<tr>
<td>112. For a call by a company registered under any Statute or Act.</td>
<td>When the call was made.</td>
</tr>
<tr>
<td>113. For specific performance of a contract.</td>
<td>When the plaintiff has notice that his right is denied.</td>
</tr>
<tr>
<td>114. For the rescission of a contract.</td>
<td>When the contract is executed by the plaintiff.</td>
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</table>
Part VI.—Three Years. —continued.

Description of Suit.

115.—For the breach of any contract, express or implied, not in writing registered, and not herein specially provided for. When the contract is broken, or (where there are successive breaches) when the breach sued for occurs, or (where the breach is continuing) when it ceases.

Part VII.—Six Years.

116.—Upon a judgment obtained in a foreign country. The date of the judgment.

117.—On a promise or contract in writing registered. When the period of limitation would begin to run against a suit brought on a similar promise or contract not registered.

118.—Suit for which no period of limitation is provided elsewhere in this schedule. When the right to sue accrues.

Part VIII.—Twelve Years.

119.—By an auction-purchaser, or any one claiming under him to avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue, the estate being, by virtue of such sale, freed from incumbrances and under-tenures. When the sale becomes final and conclusive.

120.—To avoid incumbrances or under-tenures in a gomis taluk or other saleable tenure sold for arrears of rent, the taluk or tenure being, by virtue of such sale, freed from incumbrances and under-tenures. Ditto.

121.—Upon a judgment obtained in British India, or a recognizance. The date of the judgment or recognizance.

122.—For a legacy or for a distributive share of the moveable property of a testator or intestate. When the legacy or share becomes payable or deliverable.

123.—For possession of an hereditary office. When the defendant, or some person through whom he claims, took possession of the office adversely to the plaintiff.

Explanation.—An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.

124.—Suit during the life of a Hindu widow by a Hindu, entitled to the possession of land on her death, to have an alienation made by the widow declared to be void, except for her life. The date of the alienation.

125.—By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property. Ditto.
Part VIII.— Twelve Years.—continued.

Description of Suit.

126.—Like suit by a Hindu governed by the law of the Dayabhaga.

127.—By a Hindu excluded from joint-family property to enforce a right to share therein.

128.—By a Hindu for maintenance.

129.—To establish or set aside an adoption.

130.—For the resumption or assessment of rent-free land.

131.—To establish a periodically recurring right.

132.—For money charged upon immovable property.

Explanation.—The allowance and fees called malikana and haqiq shall, for the purposes of this clause, be deemed to be money charged upon immovable property.

133.—To recover movable property conveyed in trust, deposited, or pawned, and afterwards bought from the trustee, depositary, or pawnee in good faith and for value.

134.—To recover possession of immovable property conveyed in trust or mortgaged, and afterwards purchased from the trustee or mortgagee in good faith and for value.

135.—Suit instituted in a Court, not established by Royal Charter, by a mortgagee for possession of immovable property mortgaged.

136.—By a purchaser at a private sale for possession of the immovable property sold, when the vendor was out of possession at the date of the sale.

137.—Like suit by a purchaser at a sale in execution of a decree, when the execution-debtor was out of possession at the date of the sale.

138.—By a purchaser of land at a sale in execution of a decree, for possession of the purchased land, when he never has had possession.

Time when Period begins to run.

When the father dies.

When the plaintiff claims, and is refused his share.

When the maintenance sued for is claimed and refused.

The date of the adoption, or (at the option of the plaintiff) the date of the death of the adoptive father.

When the right to resume or assess the land first accrued:

Provided that no such suit shall be maintained where the land forms part of a permanently-settled estate, and has been held rent-free from the time of the Permanent Settlement.

When the plaintiff is first refused the enjoyment of the right.

When the money, sued for becomes due.

The date of the purchase.

Ditto.

When the mortgagee is first entitled to possession.

When the vendor is first entitled to possession.

When the execution-debtor is first entitled to possession.

The date of the sale.
Part VIII.—Twelve Years.—continued.

Description of Suit. Time when Period begins to run.

188.—Like suit when the purchaser had possession, but was afterwards dispossessed. The date of the dispossesion.

189.—By a landlord to recover possession from a tenant. When the tenancy is determined.

191.—By a remainderman, a reversioner (other than a landlord), or a devisee, for possession of immoveable property. When his estate falls into possession.

192.—Like suit by a Hindu entitled to the possession of immoveable property on the death of a Hindu widow. When the widow dies.

194.—For possession of immoveable property, when the plaintiff, while in possession of the property, has been dispossessed, or has discontinued the possession. The date of the dispossesion or discontinuance.

194.—Like suit when the plaintiff has become entitled by reason of any forfeiture or breach of condition. When the forfeiture was incurred, or the condition broken.

195.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for. When the possession of the defendant, or of some person through whom he claims, became adverse to the plaintiff.

196.—For a declaration of right to an easement. When the easement ceased to be enjoyed by the plaintiff, or the persons on whose behalf he sues.

Part IX.—Thirty Years.

197.—Against a depositary or pawnee to recover moveable property deposited or pawned. The date of the deposit or pawn, unless where an acknowledgment of the title of the depositor or pawnor, or of his right of redemption, has, before the expiration of the prescribed period, been made in writing, signed by the depositary, or pawnee, or some person claiming under him; and, in such case, the date of the acknowledgment.

Part X.—Sixty Years.

198.—Against a mortgagee to recover possession of immoveable property mortgaged. The date of the mortgage, unless where an acknowledgment of the title of the mortgagee, or of his right of redemption, has, before the expiration of the prescribed period, been made in writing, signed by the mortgagee, or some person claiming under him; and, in such case, the date of the acknowledgment:

Provided that all claims to redeem arising under instruments of mortgag of immoveable property
Part X.—Sixty Years.—continued.

Description of Suit.

149.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immovable property mortgaged.

150.—Any suit in the name of the Secretary of State for India in Council.

SECOND DIVISION: APPEALS.

Thirty Days.

Description of Appeal.

151.—Under the Code of Civil Procedure to the Court of a District Judge.

152.—Under the Code of Criminal Procedure to any Court other than the High Court.

Sixty Days.

153.—Under the same Code to the High Court.

Ditto.

Ninety Days.

154.—Under the Code of Civil Procedure to the High Court.

The date of the decree appealed against.

THIRD DIVISION: APPLICATIONS.

Ten Days.

Description of Application.

155.—Under the Code of Civil Procedure to set aside an award.

When the award is submitted to the Court, and notice of the submission has been given to the persons and in manner prescribed by the High Court.

Thirty Days.

156.—By a plaintiff for an order to set aside a judgment by default.

The date of the judgment.

157.—By a defendant for an order to set aside a judgment ex-parte.

The date of executing any process for enforcing the judgment.
Thirty Days.—continued.

158.—Under the Code of Civil Procedure, by a person dispossessed of immovable property, and disputing the right of the decree-holder to be put into possession.

159.—To set aside a sale in execution of a decree, on the ground of irregularity in publishing or conducting the sale.

160.—Complaining of resistance or obstruction to delivery of possession of immovable property sold in execution of a decree, or of dispossession in the delivery of possession to the purchaser of such property.

161.—For re-admission of an appeal dismissed for want of prosecution.

Time when Period begins to run.

The date of the dispossession.

The date of the sale.

The date of the resistance, obstruction, or dispossession.

The date of the dismissal.

Ninety Days.

162.—For leave to appeal as a pauper.

The date of the decree appealed against.

163.—To a High Court for the admission of special appeal.

Ditto.

164.—For a review of judgment.

The date of the decree.

Six Months.

165.—Under the Code of Civil Procedure, section three hundred and twenty-seven, that an award be filed in Court.

The date of the award.

One Year.

166.—For the execution of a decision (other than a decree or order passed in a regular suit or an appeal) of a Civil Court, or of a Revenue Court.

The date of the decision, or of taking some proceeding to enforce, or keep in force, the decision.

Three Years.

167.—For the execution of a decree or order of any Civil Court not provided for by No. 169.

The date of the decree or order,

or (where there has been an appeal) the date of the final decree or order of the Appellate Court,

or (where there has been a review of judgment) the date of the decision passed on the review,

or (where the application next hereinafter mentioned has been made) the date of applying to the Court to enforce, or keep in force, the decree or order,
POSSESSION. ACT 9 OF 1871.

Three Years.—continued.

Description of Application. Time when Period begins to run.

or (where the notice next hereinafter made has been issued) the date of issuing a notice under the Code of Civil Procedure, section two hundred and sixteen,

or (where the application is to enforce payment of an instalment which the decree directs to be paid at a specified date) the date so specified.

Six Years.

168.—For the execution of any such decree or order of which a certified copy has been registered under the Indian Registration Act.

The date of the decree or order,

or (where there has been an appeal) the date of the final decree or order of the Appellate Court,

or (where there has been a review of judgment) the date of the decision passed on the review.

Twelve Years.

169.—To enforce a judgment, decree, or order of any Court established by Royal Charter, in the exercise of its ordinary original civil jurisdiction.

When a present right to enforce the judgment, decree, or order accrued to some person capable of releasing the right:

Provided that, when the judgment, decree, or order has been revived or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest or his agent to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment, or acknowledgment, or the latest of such revivors, payments, or acknowledgments, as the case may be.

HINDU LAW.

Occupancy.

DEFINITION.

There are seven virtuous means of acquiring property—succession, occupancy or donation, and purchase or exchange (which are allowed to all
classes), conquest (which is peculiar to the military class), lending at interest, husbandry or commerce (which belong to the mercantile class), and acceptance of presents (by the sacerdotal class) from respectable men.
—Manu X., 115.

'Occupancy' or gain, (i.e.) the finding of a waif or the like.—(Dig. II., IV., 20.)

If it be alleged that the soil is not unowned, since the subject has property by occupancy, it is asked, Cannot the king occupy land? The king may also have property in the land by occupancy.—(Dig. II., II., 24.)

Should a thing be unoccupied property also vests by occupancy as is declared by Gautama—'A man becomes owner of wealth by purchase, partition, occupancy, hypothecation, and gain.'—(Dig. III., IV., 22.)

An owner is by inheritance, purchase, partition, seizure, or finding. Gautama quoted in Vyāvahar Mayukha, IV., I., 2, and in the Mitakshara, I., I., 8.

RIGHTS AND LIABILITIES.

Sages who know former times consider this earth (Prithivi) as the wife of king Prithu, and thus they pronounce cultivated LAND to be the property of him who cut away the wood (or who cleared and tilled it), and the ANTELOPE of the first hunter who mortally wounded it.—Manu X., 44.

Three years let the king detain the property of which no owner appears (after a distinct proclamation): the owner appearing within the three years may take it; but after that term the king may confiscate it.—Manu VIII., 30.

Of old hoards and PRECIOUS MINERALS in the earth, the king is entitled to half by reason of his general protection and because he is the lord paramount of the soil.—Manu VIII., 39.

PROPERTY LOST by one man and found by another let the king secure by committing it to the care of trustworthy men, and those whom he shall convict of stealing it, let him cause to be trampled on by an elephant.—Manu VIII., 34.

A learned (Brahman) having found a TREASURE formerly HIDDEN may take it without any deduction: since he is the lord of all.—Manu VIII., 37.

But of a treasure anciently repositied under ground which (any other subject or) the king has discovered, the king may lay up half in his treasury, having given half to the (Brahmans).—Manu VIII., 38.

Let the king receiving UNCLAIMED PROPERTY give half to Brahmans, but a learned Brahman may keep the whole, for he is lord of all.

And the king shall receive a sixth part of unclaimed property occupied by any other person.—Yajnya Walcaya. (Dig. II., II., 13.)
(Question.) Since the word 'king' here denotes lord of the soil, and since the cultivator, being owner of that land, is so far equal to the king, he would be entitled to the sixth part of the unowned property occupied by him. The answer is, the word 'king' may be explained lord of the soil to exclude another king, but a royal property is supposed in the use of the word; the cultivator has a subordinate usufructuary property, not a royal property. But whence is it deduced that such property vests in the cultivator? There is no proof of it. His property is not by occupancy, for the king being a more powerful owner, his occupancy cannot be maintained: It is not by sale for, &c.-(Dig. II., II., 13.)

Possession.

Possession, even independent of a title, may be EVIDENCE OF right. But it must be understood that it is independent of the production of a title, and not independent of its existence, for its existence is inferable from that possession.—Mitakshara III., V., 4 & 5.

He who sees his land possessed by a stranger for twenty years, or his personal estate for ten years, without asserting his own right, loses his property in them.—Yajnyaawalya. (Mit. III., III., 1.)

The loss of the PROFITS accruing from the real and personal property is here intended, not the loss of the remedy or of the right.

It is true that it may be considered improper to propound a loss of the accruing profits because the right to them also exists, but this can only apply where the profits remain essentially in status quo; as, for instance, in the case of betel-nut and bread-fruit plantations, if the fruit be forthcoming as well as the trees which yielded it; but where, from the consumption of the produce, there is an essential destruction of the profits, there the right to it also is destroyed.—Mitakshara, III., III., 8 & 10.

Prescription and Limitation.

The Hindu Law on this subject is superseded by the Limitation Act (9 of 1871) ante. The law will be found in the Mitakshara, chapter III., sections 2, 3, 5, and 6.—Colebrooke's Digest I., III., 113 & 114, and V., 395 & 396.

MAHOMEDAN LAW.

Occupancy.

The hunting of every species of ANIMAL is lawful, whether they be fit for eating or otherwise, because the legality of hunting has been absolutely declared by the Koran without restricting it to animals fit to eat.—629.

The figures at the end of each clause refer to Grady's edition of Hamilton's "Hedaya."
CIVIL CODE. CHAPTER VI.

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The sale of BEES is not lawful according to the two elders. Mohammed is of opinion that it is lawful provided the bees be in a place of custody and not wild.—269.

The sale of a BIRD in the air or of one which after having been caught is again set at liberty, is null, because in the one case it is not property, and in the other the delivery is rendered impracticable.—268.

The sale of FISH not yet caught is null, as it is not in the State property. In the same manner also the sale of a fish which the vendor may have caught and afterwards thrown into a large fountain from which it cannot be taken without difficulty, is null, because then the delivery is impracticable. It is lawful, however, in case the fountain be so small as to admit its being caught with ease.—268.

Whosoever cultivate waste LANDS, with the permission of the chief, obtains a property in them; whereas, if a person cultivate them without such permission, he does not in that case become proprietor, according to Hanseefa. The two disciples maintain that, in this case also, the cultivator becomes proprietor, because of a saying of the prophet, "Whosoever cultivates waste-lands does thereby acquire the property of them;" and also because they are a sort of common goods, and become the property of the cultivator in virtue of his being the first possessor; in the same manner as in the case of seizing game, or gathering firewood.—610.

If a Zimmee cultivate waste-lands, he becomes proprietor of them, in the same manner as Mussulmen; because cultivation endows with a right of property.—610.

Lands through which the Euphrates, the Tigris, or any similar river formerly ran, must not be cultivated if it be possible that the river may again run over them; as the people whose lands lie adjacent to the river in its former course have an interest in desiring that the river may not be prevented from returning to it. If, however, the lands be not likely to be again overflowed, they are then held to be waste, provided they do not adjoin to any cultivated spot; because such lands are not the property of any one; for the superiority of water repels all other superiority, but as soon as the land appears above the water it becomes subject to the Imam.—612.

The sale of PIGEONS, of which the number is ascertained and the delivery practicable, is lawful, as in such circumstances they constitute property.—270.

If a person find a kans or deposit of buried TREASURE, a fifth is due upon it.—15.

If the treasure be found in common land, four-fifths of it appertain to the finder; and the same rule obtains if it be found in appropriated land, whether such be his own property or belonging to another (according to Aboo Yoosaf), because the claim is established in virtue of salvage or recovery and the treasure has been recovered by the finder.—15.
Possession.

Ghazb, or usurpation, in its literal sense means the forcibly taking a thing from another. In the language of the law it signifies the taking of the property of another without the consent of the proprietor, in such a manner as to destroy the proprietor’s possession of it.—533.

If any person knowingly and wilfully usurp the property of another, he is held in law to be an offender, and becomes responsible for COMPENSATION; but if, on the contrary, he should not have made the usurpation knowingly and willingly (as where a person destroys property on the supposition of its belonging to himself and it afterwards prove the right of another), he is in that case also liable for a compensation because a compensation is the right of man, but he is not an offender.—533.

The FRUIT of an usurped orchard and the children of an usurped female slave, together with their produce (such as their increase of stature and beauty), are a trust in the hands of the usurper. If, therefore, they be destroyed, he is not responsible for them, unless however he should have committed a trespass with regard to them, or refused to answer the demand of the proprietor to deliver them up to him.—542.

An usurper is not responsible for the use of the article usurped, but if it be injured he is responsible for the damage. Shafei maintains that an usurper is liable for the use of a thing usurped, and consequently that he owes an adequate rent or hire for it. In the case where a person usurps a house and leaves it unoccupied or occupies it himself, the usurper, according to both doctrines, is not liable for the use of it.—544.

If two men claim a piece of ground, each respectively asserting it to be in his possession, the Kazee in this case must not pass a decree in favour of the possession of either until evidence be produced.—422.

If usurped land be damaged by the cultivation of it, the usurper must compensate for the damage, since he has destroyed part of the land. He must moreover deduct from the PRODUCE of the land the amount of his stock, that is to say, the quantity of the seed sown and also the amount he may have paid for the damage, and if any surplus should then remain, he
must bestow it in charity. This is according to Haneefa and Mohammed, but Aboo Yoosaf has said that it is not necessary to bestow the surplus in charity.—535.

Whenever either an usurper or a trustee perform any act with respect to the thing usurped or the deposit, and thereby acquire PROFIT, such profit (according to Haneefa and Mohammed) is not lawful and sanctified to them, in opposition to the opinion of Aboo Yoosaf.—536.

Prescription and Limitation.

For the law on this subject, see Act 9 of 1871 ante. Mahomedan Law contains no rules of limitation or prescription.—See Macnaghten’s Mahomedan Law, chapter XII.
CIVIL CODE.

Chapter VII.—ACCESSION.

There are no Acts of general application on this subject: the following principles are given to supply this deficiency as far as possible.

DEFINITION.

"Another mode of acquiring property is by accession, whereby the principal thing draws after it the property of the accessory."—Mackenzie's Roman Law, 171.

"Things considered with reference to one another may be divided into principal—i.e., those which are independent and not regarded as part of, or subordinate to, anything else—and accessory, i.e., those which are dependent upon, and only regarded as part of, or subordinate to, some other thing."—Thibaut Syst. 144.

RIGHTS AND LIABILITIES.

In the case of lands gained from the sea either by ALLUVION, by the washing up of sand and earth so as in time to make terra firma, or by dereliction, as when the sea shrinks back below the usual water-mark—if this gain be by little and little, by small and imperceptible degrees, it belongs to the owner of the land immediately behind.—1 Stephen 427.

If the alluvion or dereliction be sudden and considerable, it belongs to the Crown.—1 Stephen 427.

When the sea gains upon the land by gradual advance, the Crown, being the owner between high and low water-mark, becomes also owner of the land newly covered with water.—1 Stephen 427.

A sudden inundation from the sea does not deprive the former owner of the land submerged of his right.—1 Stephen 427.

If a river, running between two lordships, by degrees gains upon the one and thereby leaves the other dry, the owner who loses his ground thus imperceptibly has no remedy; but if the course of the river be changed by a sudden and violent flood or other hasty means, his land will not be lost.—1 Stephen 428.
"Houses or other BUILDINGS, though erected with materials and at the expense of another, belong to the owner of the ground on which they are built, but indemnity should be given for such expenditure when made in good faith."—Mackenzie's Roman Law, p. 171.

In the CONFUSION OF GOODS, that is, where those of two persons are so intermixed that the several portions can be no longer distinguished, if the intermixture be by consent, the proprietors have an interest in common in proportion to their respective shares.—2 Stephen 22.

If one wilfully intermixes his money, corn, or hay with that of another man without his approbation or knowledge, or casts gold, in like manner, into another's melting-pot or crucible, the entire property goes to him whose original dominion was invaded.—2 Stephen 22.

By the Roman Law, when a new subject or species is formed from materials belonging to another, if the new species can be again reduced into the matter of which it was made, as plate into bullion, the property belongs to the original owner; but when the substance is wholly changed, so that it can never be restored to its former condition, as in the case of wine from grapes, the property belongs to the workman under an obligation to give satisfaction for the value of the materials to the owner.—Mackenzie's Roman Law, p. 172.

A painting drawn on another man's board or canvass belonged to the painter on account of the excellence of his art. Matter written on paper, however, went to the owner of the paper.—Mackenzie's Roman Law, p. 172.

"The natural or industrial FRUITS of land, civil fruits, such as the rents of houses, or the interest of money and the increase of animals, all belong to the proprietor of the principal subject by right of accession."—Mackenzie's Roman Law, p. 171.

The OFFSPRING of animals belongs to the owner of the dam or mother, on the principle of the Roman law that porta sequitur ventrem.—2 Stephen 21.

In the case of young cygnets, however, there is an exception to this rule. They belong equally to the owner of the cock and hen.—2 Stephen 21.

"TREES and shrubs taking root in your ground, though planted by a stranger, become yours."—Mackenzie's Roman Law, p. 171.

**BENGAL REGULATION XI. OF 1825.**

A Regulation for declaring the Rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.

In consequence of the frequent changes which take place in the channel of the principal rivers that intersect the provinces immediately subject to the presidency of Fort William, and the shifting of the sands which lie in the beds of those rivers, churs or small islands are often thrown up by alluvion in the midst of the stream, or near one of the banks, and large portions of land are carried away by an encroachment of the river on one side, whilst accessions of land are at the same time, or in subse-
The laws on this subject, called for reports from their law officers of each persuasion, and on consideration of the reports furnished by the law officers in consequence, as well as of the decisions which have been passed by the Court of Sudder Dewanee Adawlut, in cases brought before them in appeal which involved the rights of claimants to lands gained by alluvion, or by dereliction of rivers or the sea, the Governor-General in Council has deemed it proper to enact the following rules for the general information of individuals, as well as for the guidance of the Court of Judicature; to be in force, as soon as promulgated, throughout the whole of the provinces subject to the presidency of Fort William.

II. Whenever any clear and definite usage of shokust paywast, respecting the disjunction and junction of land by the encroachment or recess of a river, may have been immemorially established for determining the rights of the proprietors of two or more contiguous estates divided by a river (such as that the main channel of the river dividing the estates shall be the constant boundary between them), whatever changes may take place in the course of the river by encroachment on one side and accession on the other, the usage so established shall govern the decision of all claims and disputes relative to alluvial land between the parties whose estates may be liable to such usage.

III. Where there may be no local usage of the nature referred to in the preceding section, the general rules declared in the following section shall be applied to the determination of all claims and disputes relative to lands gained by alluvion or by dereliction either of a river or the sea.

IV. First.—When land may be gained by gradual accession, whether from the recess of a river or of the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed, whether such land or estate be held immediately from Government by a seigneur or other superior landholder, or as a subordinate tenure by any description of under-tenant whatever. Provided that the increment of land thus obtained shall not entitle the person in possession of the estate or tenure to which the land may be annexed, to a right of property or permanent interest therein beyond that possessed by him in the estate or tenure to which the land may be annexed, and shall not in any case be understood to exempt the holder of it from the payment to Government of any assessment for the public revenue to which it may be liable under the provisions of Regulation II. of 1819, or of any other Regulation in force. Nor if annexed to a subordinate tenure held under a superior landholder, shall the under-tenant, whether a khoodkaast ryot, holding a meurooosee istimraree tenure at a fixed rate of rent per beegah, or any other description of under-tenant liable by his engagements, or by established usage, to an increase of rent for the land annexed to his tenure by alluvion, be considered exempt from the payment of any increase of rent to which he may be justly liable.

Second.—The above rule shall not be considered applicable to cases in which a river, by a sudden change of its course, may break through and intersect an estate, without any gradual encroachment, or may by the violence of stream separate a considerable piece of land from one estate and join it to another estate, without destroying the identity, and preventing the recognition of the land so removed. In such cases the land, on being clearly recognised, shall remain the property of its original owner.

Third.—When a chur or island may be thrown up in a large navigable river (the bed of which is not the property of an individual) or in the sea, and the channel of the river or sea between such island and the shore may not be fordable, it shall, according to established usage, be at the disposal of Government. But if the channel
between such island and the shore be fordable at any season of the year, it shall be considered an accession to the land tenure or tenures of the person or persons whose estate or estates may be most contiguous to it, subject to the several provisions specified in the first clause of this section, with respect to increment of land by gradual accession.

Fourth.—In small and shallow rivers, the beds of which, with the julkur right of fishery, may have been heretofore recognised as the property of individuals, any sand-bank or chur, that may be thrown up, shall, as hitherto, belong to the proprietor of the bed of the river, subject to the provisions stated in the first clause of the present section.

Fifth.—In all other cases of claims and disputes respecting land gained by allu- vion, or by dereliction of a river or the sea, which are not specially provided for by the rules contained in this Regulation, the Court of Justice, in deciding upon such claims and disputes, shall be guided by the best evidence that it may be able to obtain of established local usage, if there be any applicable to the case, or, if not, by general principles of equity and justice.

V. Nothing in this Regulation shall be construed to justify any encroachments by individuals on the beds or channels of navigable rivers or to prevent zilla and city magistrates, or any other officers of Government who may be duly empowered for that purpose, from removing obstacles which appear to interfere with the safe and customary navigation of such rivers, or which shall in any respect obstruct the passage of boats by tracking on the banks of such rivers, or otherwise.

ACT No. IX. OF 1847 (BENGAL).

An Act regarding the Assessment of Lands gained from the Sea or from Rivers by alluvion or dereliction within the Provinces of Bengal, Behar, and Orissa.

I. It is hereby enacted that such parts of the Regulations of the Bengal Code as establish tribunals and prescribe rules of procedure for investigations regarding the liability to assessment of lands gained from the sea or from rivers by alluvion or dereliction, or regarding the right of Government to the ownership thereof, shall, from the date of the passing of this Act, cease to have effect within the provinces of Bengal, Behar, and Orissa; and that all such investigations, pending before the Collectors and Deputy Collectors in the said provinces at the said date, shall forthwith be discontinued; and that no measures shall hereafter be taken for the assessment of such lands, or for the assertion of the right of Government to the ownership thereof, except under the provisions of this Act.

II. And it is hereby enacted that the expression “Province of Orissa” in this Act shall be taken to mean only so much of the Province of Orissa as is subject to the Government of Bengal.

III. And it is hereby enacted that, within the said provinces, it shall be lawful for the Government of Bengal, in all districts or parts of districts of which a revenue survey may have been, or may hereafter be, completed and approved by Government, to direct from time to time, whenever ten years from the approval of any such survey shall have expired, a new survey of lands on the banks of rivers and on the shores of the sea, in order to ascertain the changes that may have taken place since the date of the last previous survey, and to cause new maps to be made according to such new survey.

IV. And it is hereby enacted that the approval of the revenue survey of the
following districts and parts of districts shall be deemed to have taken place on the undermentioned days, viz.:

Of the district of Chittagong, on the 6th September 1842.
Of the district of Behar, on the 9th November 1844.
Of the district of Patna, on the 22nd June 1844.
Of the district of Shahabad, on the 28th November 1846.
Of the district of Sarun, on the 18th February 1847.
Of Pergunnah Furkysah, in the district of Monghyr, on the 19th September 1839.
Of the Northern Division of the Province of Cuttack, on the 24th October 1842.
Of the Central Division of the Province of Cuttack, on the 22nd February 1843.
Of the Southern Division of the Province of Cuttack, on the 19th October 1842.
Of the district of Midnapoor, except Hidgellee and Tumlook, on the 12th September 1845.
Of Hidgellee and Tumlook, in the district of Midnapoor, on the 5th October 1842.
Of the district of Cachar, on the 5th February 1844.
Of Jynteeah and Pergunnah Chapghat, Echamuttee, Ittisamnuggur, and Bhurrun, in the district of Sylhet, on the 5th February 1844.
Of the district of Goalparah, on the 24th December 1842.
Of the district of Luckimpore, on the 10th November 1845.
Of the district of Seebpore, on the 8th May 1843.

And that the approval of the revenue surveys of districts or parts of districts which may be hereafter surveyed shall be deemed to have taken place on such day as may be specified as the day of such approval in the Calcutta Government Gazette.

V. And it is hereby enacted that whenever, on inspection of any such new map, it shall appear to the local Revenue Authorities that land has been washed away from, or lost to, any estate paying revenue directly to Government, they shall, without loss of time, make a deduction from the sudder Jumma of the said estate equal to so much of the whole sudder Jumma of the Estate as bears to the whole the same proportion as the mofussil Jumma of the land lost bears to the mofussil Jumma of the whole estate; but if the mofussil Jumma of the whole estate, or of the land lost, cannot be ascertained to the satisfaction of the local Revenue Authorities, then the said local Revenue Authorities shall make a deduction from the sudder Jumma of the estate equal to so much of the whole sudder Jumma of the estate as bears to the whole the same proportion as the land lost bears to the whole estate. And this deduction, with the reasons thereof, shall be forthwith reported by the local Revenue Authorities for the information and orders of the Sudder Board of Revenue, whose orders thereupon shall be final.

VI. And it is hereby enacted that whenever, on inspection of any such new map, it shall appear to the local Revenue Authorities that land has been added to any estate paying revenue directly to Government, they shall without delay assess the same with a revenue payable to Government according to the rules in force for assessing alluvial increments; and shall report their proceedings forthwith to the Sudder Board of Revenue, whose orders thereupon shall be final.

IX. And it is hereby enacted that, except as regards the proprietary right to islands, no suit or action in any Court of Justice shall lie against the Government, or any of its Officers, on account of anything done in good faith in the exercise of the powers conferred by this Act.

Section 7 was repealed by Ben. Act 4 of 1868.—See Repealing Enactments, p. 105.
Section 8 was repealed by Act 14 of 1870.—See Repealing Enactments, p. 78.
ACT No. XXXI. OF 1858 (BENGAL).

An Act to make further provisions for the settlement of Land gained by alluvion in the presidency of Fort William in Bengal.

Whereas, for the removal of doubts respecting the course proper to be followed in the settlement of land added by alluvial accession to estates paying revenue to Government, it is expedient to lay down certain rules to be observed in the settlement of such land; It is enacted as follows:

I. When land added by alluvial accession to an estate paying revenue to Government becomes liable to assessment, if it be so agreed on between the Revenue Authorities and the proprietor or proprietors, the revenue assessed upon the alluvial land may be added to the jumma of the original estate; and in such case a new engagement shall be executed for the payment of the aggregate amount, and that amount shall be substituted in the Collector’s rent-roll for the former jumma of the original estate. If the proprietor or proprietors object to such an arrangement, or if the Revenue Authorities are of opinion that a settlement of the alluvial land cannot properly be made for the same term as the existing settlement of the original estate, the alluvial land shall be assessed and settled as a separate estate with a separate jumma, and shall thenceforward be regarded and treated as in all respects separate from, and independent of, the original estate, whether the separate settlement be made with the proprietor or proprietors, or the land be let in farm in consequence of the refusal of the proprietor or proprietors to accept the terms of settlement. The separate settlement may be permanent if the settlement of the original estate is permanent.

II. Nothing contained in the preceding section shall affect the rights of any under-tenant in any alluvial land under the provisions of clause 1, Section 4, Regulation XI., 1825. It shall be the duty of all Officers making settlements of such land, whether the land be settled separately or incorporated with the original estate, to ascertain and record all such rights according to the rules prescribed in Regulation VII., 1822; and to determine whether any, and what, additional rent shall be payable in respect of the alluvial land by the person or persons entitled to any under-tenures in the original estate. The provisions of the said Regulation, so far as the same may be applicable, are hereby declared to extend to all settlements made under this Act.

III. Every separate settlement of alluvial land heretofore made shall be as good and effectual, for the purposes specified in Section 1, as the same would have been if made subsequently to the passing of this Act: Provided that nothing contained in this Act shall be held to affect the rights which any person may have acquired, under a judicial decision or otherwise, before the passing of this Act.

BENGAL ACT NO. IV. OF 1868.

An Act to amend the provisions of Act IX. of 1847 (An Act regarding the assessment of lands gained from the sea or from rivers by alluvion or dereliction within the Provinces of Bengal, Behar, and Orissa).

Whereas it is expedient to amend the provisions of Act IX. of 1847; It is enacted and declared as follows:—

I. Section VII. of the said Act IX. of 1847 is hereby repealed.

II. It is hereby declared that, when any island shall, under the provisions of Clause 3 Section IV. of Regulation XI. of 1825 of the Bengal Code, be at the disposal of Government, all lands gained by gradual accession to such island, whether from a recess of the river or of the sea, shall be considered an increment to such island, and shall be equally at the disposal of Government.
III. Whenever it shall appear to the local Revenue Authorities that an island has been thrown up in a large and navigable river liable to be taken possession of by Government under Clause 3 Section IV. of Regulation XI. of 1825 of the Bengal Code, the local Revenue Authorities shall take immediate possession of the same for Government, and shall assess and settle the land according to the rules in force in that behalf, reporting their proceedings forthwith for the approval of the Board of Revenue, whose order thereupon, in regard to the assessment, shall be final. Provided, however, that any party aggrieved by the act of the Revenue Authorities in taking possession of any island as aforesaid, shall be at liberty to contest the same by a regular suit in the Civil Court.

IV. Any island, of which possession may have been taken by the local Revenue Authorities on behalf of the Government under Section III. of this Act, shall not be deemed to have become an accession to the property of any person by reason of such channel becoming fordable after possession of such island shall have been so taken.

V. Whenever an island, of which possession shall have been taken by Government under Section III. of this Act, shall become attached to the mainland, any person having an estate or interest in any part of the riparian mainland to which such island may become attached while it is in the possession of the Government, may apply to the Collector to take measures for the construction of ways, paths, and roads on the island: the costs thereof to be equally divided between the applicant and the Government.

VI. Thereupon the Collector may require the applicant to make such deposit of money as to the Collector shall seem sufficient, and on such deposit being made, the Collector shall proceed to lay out and construct such ways, paths, and roads in and through the island as he may deem necessary for securing access to the river or sea from the land to which the island may have become attached.

VII. In every case the applicant shall be liable to pay and make good to the Government one-half of the costs of laying out and constructing such ways, paths, and roads as aforesaid, and any moneys due from the applicant under the provisions of this Section may be deducted and retained by the Collector out of the deposit so made by the applicant as aforesaid.

VIII. Every way, road, and path, which shall be laid out or appointed under the provisions aforesaid, shall be deemed a public highway.

Hindu Law.

Manu forbids the levying of revenue from a field occupied by a priest. ... If some river be described as the boundary and the quantity of land be specified, then, should the river encroach on it, the loss falls on the priest, because his land is destroyed. But if the river assigned as the boundary should recede, the land gained by ALLUVION belongs to the king, because the gift did not intend that land, and it exceeds the quantity (specified). But where the quantity is not specified and the grant expresss—"The land as far as the river is thine: what is carried away by the river is thy loss, what is left by the river is thy gain"—then the loss or the gain (whichever it be) is the priest's.—Dig. IV., 43.

The FRUIT and FLOWERS of trees produced upon the boundary between two fields are declared to be joint property pertaining in common to the masters of the two fields. But where the BRANCHES OF TREES growing in one man's field be spread out over that of another, then he shall be considered as the owner (of their produce) over whose field they are so situated.—KATYAYANA in VIYAVHARA MAYUKHA XV., 12.
ACCESSION.

Should a bull beget a hundred calves on cows not owned by his master, those calves belong solely to the proprietors of the cows and the strength of the bull was wasted.—Manu X., 50.

Such is the law concerning the OFFSPRING of cows and mares, of female camels, goats, and sheep, of slave-girls, hens, and milch buffaloes (unless there be a special agreement).—Manu X., 55.

Mahomedan Law.

Whenever an ARTICLE usurped is ALTERED, in consequence of an act of the usurper, in such a manner that it loses both its name and its original purpose, it is then separated from the right of the proprietor and becomes the property of the usurper, and the usurper becomes responsible for it, but he is not entitled to derive any advantage from it until he pays the compensation. An example of this occurs where a person usurps a goat, kills it and afterwards roasts or boils it, or usurps wheat and afterwards grinds it into flour, or usurps iron and makes a sword from it, or usurps clay and makes a vessel from it.—537.

If a person usurps gold or silver and convert it into dirms or deensars, or make a vessel from it, such silver or gold does not separate from the property of the proprietor according to Hanseefa—whence he is entitled to take it from the usurper without giving him any compensation.—538.

If a person usurp the cloth of another and then dye it red, or the flour of another and then mix it with oil, in that case the proprietor has the option of taking from the usurper a compensation equal to the value of the white cloth or an equal quantity of flour, giving the red cloth or the mixed flour to the usurper, or of taking the red cloth or the mixed flour, giving to the usurper a compensation equal to the additional value these articles may have acquired from the red dye or the mixture of oil.—540.

If a person usurp a beam and build a house upon it, the beam is in that case separated from the property of the proprietor, and the usurper must make a compensation to him for the value of it. Shafeei maintains that the proprietor is entitled to take it.—538.

If a person sell his house, the FOUNDATION and superstructure are both included in such sale, although they may not have been specified by the seller, because they are comprehended in the common acceptance of the term, and also because, being joined to the ground in the nature of fixtures, they are considered as dependent parts of it.—245.

The FRUIT of an usurped orchard and the children of an usurped female slave, together with their produce (such as their increase of stature and beauty), are a trust in the hands of the usurper.—542.

If a person should sell a tree on which fruit is growing, the fruit belongs to the seller, unless it had been specifically included in the sale. Although the fruit be in fact a part of the tree, yet as it is intended to be plucked and gathered, and not to be suffered to hang on the tree, it is therefore the same as grain.—245.
In a sale of ground, the GRAIN then growing on it is not included unless particularly specified by the seller, because it is joined to the ground not as a fixture, but for the purpose of being cut away from it, in the same manner as goods of any kind which may have been placed upon it.—245.

If a plaintiff and possessor should both bring evidence to prove a generation, as if each should bring evidence to prove that a camel, for instance, is the OFFSPRING of a particular camel which had brought it forth while in his possession, in this case the claim of the possessor must be preferred.—419.

If, in a suit respecting a horse, the plaintiff assert that he had purchased it from Zeyd, and that it was the offspring of a horse of Zeyd, and the possessor assert that he had bought it from Omar, and that it was the offspring of a horse of Omar, and each bring evidence in proof of the horse having been produced from a dam in the possession of the seller, it is the same as if each had adduced evidence in proof of the horse having been produced in his own possession.—419.

The property in honey vests in the proprietor of the ground in which it is gathered together, because honey is considered as the PRODUCE of the ground, and hence the proprietor of the ground obtains a property in it as a dependant of the sort, in the same manner as in the trees which grow in his land, or in water which flows through it.—312.

If a person usurp land and plant TREES in it, or erect a building upon it, he must in that case be directed to remove the trees and clear the land and to restore it to the proprietor.—538.

If however the removal of the trees or the building be injurious to the land, the proprietor of the land has in that case the option of paying to the proprietor of the trees or the building a compensation equal to the value they would bear when removed from the ground.—539.

In a sale of land the trees upon it are included, although they be not specified, because they are joined to it.—245.
CIVIL CODE.

Chapter VIII.—CONTRACTS AND CONVEYANCES.

Act No. IX. of 1872.

THE INDIAN CONTRACT ACT.

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

PRELIMINARY.

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

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

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

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

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

(c.)—The person making the proposal is called the "PROMISOR," and the person accepting the proposal is called the "PROMISEE."

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

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

For the rest of Section 1 and the Schedule see Repealing Enactments page 184.
Promises which form the consideration or part of the consideration for each other, are called RECIPROCAL promises:

An AGREEMENT not enforceable by law is said to be VOID:

An agreement enforceable by law is a CONTRACT:

An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a VOIDABLE CONTRACT:

A CONTRACT which ceases to be enforceable by law becomes VOID when it ceases to be enforceable.

CHAPTER I.

Of the Communication, Acceptance and Revocation of Proposals.

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

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

The communication of an acceptance is complete

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

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

The communication of a revocation is complete,

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

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

Illustrations.

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

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

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

The communication of the acceptance is complete,

as against A when the letter is posted:
as against B, when the letter is received by A.

(c.) A revokes his proposal by telegram.

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

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

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

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

Illustration.

A proposes, by a letter sent by post, so sell his house to B.

B accepts the proposal by a letter sent by post.

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

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

6. A proposal is revoked—

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

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

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

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

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

(1) be absolute and unqualified;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner and not otherwise; but, if he fails to do so, he accepts the acceptance.

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

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

CHAPTER II.

Of contracts, voidable Contracts, and void Agreements.

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

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

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

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

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

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

Illustrations.

(a.) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b.) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

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

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

(1) coercion, as defined in section fifteen, or

(2) undue influence, as defined in section sixteen, or
(3) fraud, as defined in section seventeen, or
(4) misrepresentation, as defined in section eighteen, or
(5) mistake, subject to the provisions of sections twenty, twenty-one and twenty-two.

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

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

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

Illustration.

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

A afterwards sues B for breach of contract at Calcutta.

A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Indian Penal Code was not in force at the time when or place where the act was done.

16. UNDUE INFLUENCE is said to be employed in the following cases:

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

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

17. FRAUD means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

(1.)—The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2.)—The active concealment of a fact by one having knowledge or belief of the fact;

(3.)—A promise made without any intention of performing it;

(4.)—Any other act fitted to deceive;
(5.)—Any such act or omission as the law specially declares to be fraudulent.

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

*Illustrations.*

(a.) A sells by auction to B a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(b.) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(c.) B says to A, "If you do not deny it, I shall assume that the horse is sound;" A says nothing. Here A's silence is equivalent to speech.

(d.) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

18. MISREPRESENTATION means and includes—

(1.) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true though he believes it to be true;

(2.) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him;

(3.) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing, which is the subject of the agreement.

19. When consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a CONTRACT VOIDABLE at the option of the party whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

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

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

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

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

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

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

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

20. Where both the parties to an agreement are under a MISTAKE AS TO a matter of FACT essential to the agreement, the agreement is void.

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

Illustrations.

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

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

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

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

Illustrations.

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

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

22. A contract is not voidable merely because it was caused by one of the parties to it being under a MISTAKE AS TO a matter of FACT.
23. The consideration or object of an AGREEMENT is LAWFUL, UNLESS—

it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent; or

involves or implies injury to the person or property of another; or

the Court regards it as immoral or opposed to public policy.

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

Illustrations.

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

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

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

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

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

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

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

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

(i.) A’s estate is sold for arrears of revenue under the provision of an Act of the legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction in effect a purchase by the defaulter and would so defeat the object of the law.
(j.) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

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

Void Agreements.

24. If any part of a single CONSIDERATION for one or more objects, or any one or any part of any one of several considerations for a single object, is UNLAWFUL, the agreement is void.

Illustration.

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

25. An AGREEMENT made WITHOUT CONSIDERATION is void unless

(1) it is expressed in writing and registered under the law for the time being in force for the registration of assurances and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

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

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

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

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate: but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations.

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

(b.) A, for natural love and affection, promises to give his son B, Rs. 1,000; A puts his promise to B into writing and registers it. This is a contract.
(c) A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.

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

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

(f) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(g) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given. The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

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

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

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

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

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

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

Exception 1.—This section shall not render illegal a contract, by which two or more persons agree that any dispute, which may arise between them in respect of any subject or class of subjects, shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

When such a contract has been made, a suit may be brought for its specific performance; and if a suit, other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party, in respect of any subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit.
Exception 2.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

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

Illustrations.

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

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

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

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

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

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

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

This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.

Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code apply.

CHAPTER III.

Of Contingent Contracts.

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

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

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

If the EVENT BECOMES IMPOSSIBLE such contracts become void.

Illustrations.

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

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

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

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

Illustration.

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

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

Illustration.

A agrees to pay B a sum of money if B marries C.

C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die, and that C may afterwards marry B.

35. Contingent CONTRACTS to do or not to do anything IF a specified uncertain EVENT happens WITHIN a FIXED TIME, become void if, at the expiration of the time fixed, such event has not happened, or if before the time fixed such event becomes impossible.

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

Illustrations.

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

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

Illustrations.

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

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

CHAPTER IV.

Of the Performance of Contracts.

Contracts which must be performed.

37. The PARTIES to a contract MUST either PERFORM, or offer to perform, their respective PROMISES, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

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

Illustrations.

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

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

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

Every such offer must fulfil the following conditions:

1. It must be unconditional:

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

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

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

Illustration.
A contract to deliver to B at his warehouse, on the first March 1873, 100 bales
of cotton of a particular quality. In order to make an offer of performance with the
effect stated in this section, A must bring the cotton to B's warehouse, on the appoint-
ed day, under such circumstances that B may have a reasonable opportunity of satis-
fying himself that the thing offered is cotton of the quality contracted for, and that
there are 100 bales.

39. When a party to a contract has REFUSED TO PERFORM, or
disabled himself from performing, his promise in its entirety, the pro-
misee may put an end to the contract, unless he has signified, by words or
conduct, his acquiescence in its continuance.

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

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

By Whom Contracts must be performed.

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

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

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

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

42. When two or more persons have made a JOINT PROMISE,
then, unless a contrary intention appears by the contract, all such persons,
during their joint lives, and, after the death of any of them, his repre-
sentative jointly with the survivor or survivors, and, after the death of
the last survivor, the representatives of all jointly, must fulfil the promise.
43. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one of such joint promisors to perform the whole of the promise.

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

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

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

Illustrations.

(a.) A, B and C jointly promise to pay D $8,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(b.) A, B and C jointly promise to pay D the sum of 8,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1,250 rupees from B.

(c.) A, B and C are under a joint promise to pay D $8,000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(d.) A, B and C are under a joint promise to pay D $8,000 rupees. A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

44. Where two or more persons have made a joint promise, a RELEASE OF ONE OF such JOINT PROMISORS by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.

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

Illustration.

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

Time and Place for Performance.

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

Explanation.—The question ‘What is a reasonable time’ is, in each particular case, a question of fact.

47. When a promise is to be performed ON a CERTAIN DAY, and the promisor has undertaken to perform it WITHOUT APPLICATION by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Illustration.

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

48. When a promise is to be performed ON a CERTAIN DAY, and the promisor has NOT undertaken to perform it WITHOUT APPLICATION by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

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

49. When a promise is to be performed WITHOUT APPLICATION by the promisee, and NO PLACE is FIXED for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Illustration.

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

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

Illustrations.

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

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

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

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

51. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the PROMISEE is READY AND WILLING to perform his reciprocal promise.

Illustrations.

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

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

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

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

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

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

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

Illustrations.

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

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

53. When a contract contains reciprocal promises, and one PARTY to the contract PREVENTS the OTHER from PERFORMING his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss, which he may sustain in consequence of the non-performance of the contract.

Illustration.

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

54. When a contract consists of reciprocal promises, such that ONE of them CANNOT BE PERFORMED, or that its performance cannot be
claimed, TILL the OTHER HAS BEEN PERFORMED, and the promisor of the promise last mentioned FAILS to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Illustrations.

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

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

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

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

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

If it was NOT the intention of the parties that time should be of the ESSENCE OF THE CONTRACT, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

If, in case of a contract, voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee ACCEPTS PERFORMANCE of such promise AT ANY TIME OTHER THAN THAT AGREED, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisee of his intention to do so.

56. An agreement to do an ACT IMPOSSIBLE in itself is void.

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

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did
not know, to be impossible or unlawful, such promisor must make COMPEN-
SATION to such promisee for any loss which such promisee sustains
through the non-performance of the promise.

Illustrations.

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

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

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

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

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

57. When persons reciprocally PROMISE, firstly TO DO certain
THINGS which are LEGAL, AND, secondly, under specified circumstances,
to do certain other things which are ILLEGAL, the first set of pro-
mises is a contract, but the second is a void agreement.

Illustration.

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

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

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

58. In the case of an alternative promise, ONE BRANCH of which is
LEGAL and the OTHER ILLEGAL, the legal branch alone can be
enforced.

Illustration.

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

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

Appropriation of Payments.

59. Where a debtor, owing several distinct debts to one person, makes
a payment to him, either with express INTIMATION, or under circum-
stances implying, THAT the PAYMENT is to BE APPLIED TO the
discharge of some PARTICULAR DEBT, the payment, if accepted, must
be applied accordingly.
Illustrations.

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

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

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

61. Where NEITHER PARTY MAKES any APPROPRIATION, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionally.

Contracts which need not be performed.

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

Illustrations.

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

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

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

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

Illustrations.

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

(b.) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.
(c.) A owes B 5,000 rupees. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.

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

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

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

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

Illustrations.

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

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

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

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

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

67. If any promisee NEGLECTS or refuses TO AFFORD the promisor reasonable FACILITIES FOR the PERFORMANCE of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Illustrations.

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.
A is excused for the non-performance of the contract, if it is caused by such neglect or refusal.

CHAPTER V.

Of certain Relations resembling those created by Contract.

68. If a PERSON, INCAPABLE OF entering into a CONTRACT, or any one whom he is legally bound to support, is supplied by another person with NECESSARIES suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Illustrations.

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

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

69. A PERSON, who is INTERESTED IN the PAYMENT of money which another is bound by law to pay, and who therefore PAYS IT, is entitled to be REIMBURSED by the other.

Illustration.

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

70. Where a PERSON lawfully DOES ANYTHING FOR ANOTHER person, or delivers anything to him, not intending to do so gratuitously, AND SUCH OTHER PERSON ENJOYS the BENEFIT thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Illustrations.

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

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

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

72. A person to whom MONEY has been PAID or any thing delivered BY MISTAKE, or under coercion, must repay or return it.
Illustrations.

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

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

CHAPTER VI.

Of the Consequences of Breach of Contract.

73. When a CONTRACT has been BROKEN, the party who suffers by such breach is entitled to receive from the party who has broken the contract COMPENSATION for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

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

When an OBLIGATION RESEMBLING those created by CONTRACT has been incurred and has NOT been DISCHARGED, any person injured by the failure to discharge it is entitled to receive the same COMPENSATION from the party in default as if such person had contracted to discharge it and had broken his contract.

Explanations.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Illustrations.

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

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

(c.) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.
(d) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

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

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

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

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

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

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

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

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

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

(n.) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

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

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

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

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

74. When a contract has been broken, if a SUM is NAMED IN the CONTRACT as the amount TO BE PAID IN CASE OF such BREACH, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract REASONABLE COMPENSATION not exceeding the amount so named.

Exception.—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law or under the orders of the Government of India or of any Local Government, gives any bond for the performance of any public duty or act, in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty or promise to do an act in which the public are interested.
Illustrations.

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

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

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

75. A person who RIGHTFULLY RESCINDS a CONTRACT, is entitled to COMPENSATION for any damage which he has sustained through the non-fulfilment of the contract.

Illustration.

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

CHAPTER VII.

Sale of Goods.

When Property in Goods Sold Passes.

76. In this chapter, the word ‘GOODS’ means and includes every kind of moveable property.

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

78. Sale is EFFECTED BY offer and acceptance of ascertained goods for a price, or of a price for ascertained goods,

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

Where there is a contract for the sale of ascertained goods, the property in the goods sold passes to the buyer when the whole or part of the price, or when the earnest, is paid, or when the whole or part of the goods is delivered.
If the parties agree expressly, or by implication, that the payment or delivery, or both shall be postponed, the property passes as soon as the proposal for sale is accepted.

Illustrations.

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

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

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

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

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

79. Where there is a contract for the sale of a THING which has YET TO BE ASCERTAINED, made, or finished, the ownership of the thing is not transferred to the buyer until it is ascertained, made, or finished.

Illustrations.

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

80. WHERE, by a contract for the sale of goods, the SELLER IS TO DO ANYTHING TO THEM for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such thing has been done.

Illustration.

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

81. WHERE ANYTHING remains TO BE DONE to the goods by the seller FOR the purpose of ASCERTAINING the amount of the PRICE, the sale is not complete until this has been done.

Illustrations.

(a.) A, owner of a stack of bark, contracts to sell it to B, weigh 'and deliver it, at 100 rupees per ton. B agrees to take and pay for it on a certain day. Part is weighed and delivered to B, the ownership of the residue is not transferred to B until it has been weighed pursuant to the contract.
(5.) A contracts to sell a heap of clay to B at a certain price per ton. B is, by the contract, to load the clay in his own carts, and to weigh each load at a certain weighing machine, whose carts must pass on their way from A's ground to B's place of deposit. Here nothing more remains to be done by the seller; the sale is complete and the ownership of the heap of clay is transferred at once.

82. Where the GOODS are NOT ASCERTAINED AT the TIME OF making the CONTRACT of sale, it is necessary to the completion of the sale that the goods shall be ascertained.

Illustration.

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

83. Where the GOODS are NOT ASCERTAINED AT the TIME OF making the AGREEMENT for sale, but goods answering the description in the agreement are subsequently Appropriated by one party, for the purpose of the agreement, and that appropriation is assented to by the other, the goods have been ascertained, and the sale is complete.

Illustration.

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

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

Illustration.

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

85. Where an agreement is made for the sale of IMMOVEABLE AND MOVEABLE property COMBINED, the ownership of the moveable property does not pass before the transfer of the immovable property.

Illustration.

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

86. When goods have become the property of the buyer, he must bear any LOSS arising FROM their DESTRUCTION or injury.
Illustrations.

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

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

87. When there is a contract for the sale of GOODS NOT yet IN EXISTENCE, the ownership of the goods may be transferred by acts done, after the goods are produced, in pursuance of the contract by the seller, or by the buyer with the seller's assent.

Illustrations.

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

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

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

88. A contract for the SALE OF GOODS to be delivered at a future day is binding, though the goods are NOT IN the POSSESSION OF the SELLER at the time of making the contract, and though, at that time, he has no reasonable expectation of acquiring them otherwise than by purchase.

Illustration.

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

89. Where the PRICE of goods sold is NOT FIXED by the contract of sale, the buyer is bound to pay the seller such a price as the Court considers reasonable.

Illustration.

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

90. DELIVERY of goods sold may be MADE BY doing anything which has the effect of putting them in the possession of the buyer, or of any person authorized to hold them on his behalf.

Illustrations.

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

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

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

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

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

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

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

Illustration.

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

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

Illustrations.

(a.) A ship arrives in a harbour laden with a cargo consigned to A, the buyer of the cargo. The captain begins to discharge it, and delivers over part of the goods to A in progress of the delivery of the whole. This is a delivery of the cargo to A for the purpose of passing the property in the cargo.
(a) A sells to B a stack of firewood, to be paid for by B on delivery. After the sale, B applies for and obtains from A leave to take away some of the firewood. This has not the legal effect of delivery of the whole.

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

93. In the absence of any special promise, the seller of goods is NOT BOUND TO DELIVER them UNTIL the buyer APPLIES for delivery.

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

SELLER'S LIEN.

95. Unless a contrary intention appears by the contract, a seller has a LIEN on sold goods, AS LONG AS they remain IN his POSSESSION, AND the PRICE or any part of it remains UNPAID.

96. Where, by the contract, the PAYMENT is to be made at a FUTURE day, BUT NO TIME is FIXED FOR the DELIVERY of the goods, the seller has NO LIEN, and the buyer is entitled to a present delivery of the goods without payment. But if the buyer becomes insolvent before delivery of the goods, or if the time appointed for payment arrives before the delivery of the goods, the seller may retain the goods for the price.

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

Illustration.

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

97. Where, by the contract, the PAYMENT is to be made at a FUTURE day, AND the BUYER ALLOWS the goods to remain in the POSSESSION of the SELLER until that day, and does not then pay for them, the seller may retain the goods for the price.

Illustration.

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

98. A SELLER, IN POSSESSION of goods sold, MAY RETAIN them for the price AGAINST any SUBSEQUENT BUYER, unless the seller has recognized the title of the subsequent buyer.
STOPPAGE IN TRANSIT.

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

100. GOODS ARE to be deemed IN TRANSIT WHILE they are in the possession of the carrier, or lodged at any place in the course of transmission to the buyer, and are not yet come into possession of the buyer or any person on his behalf, otherwise than as being in possession of the carrier or as being so lodged.

Illustrations.

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

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

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

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

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

101. The seller's RIGHT OF STOPPAGE DOES NOT, except in the case hereinafter mentioned, CEASE ON the BUYER'S RE-SELLING the goods, while in transit, and receiving the price, but continues until the goods have been delivered to the second buyer, or to some person on his behalf.

102. The RIGHT of stoppage CEASES IF the BUYER, HAVING obtained a BILL of lading or other document showing title to the goods, ASSIGNS IT, while the goods are in transit, to a second buyer, who is acting in good faith, and who gives valuable consideration for them.

Illustrations.

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

(b.) A sells and consigns certain goods to B. A being still unpaid, B becomes insolvent, and while the goods are still in transit, assigns the bill of lading for cash to C, who knows that B is insolvent. The assignment not being in good faith, A may still stop the goods in transit.
103. Where a BILL OF LADING or other instrument of title to any goods is ASSIGNED by the buyer of such goods BY WAY OF PLEDGE, to secure an advance made specifically upon it, in good faith, the seller cannot, except on payment or tender to the pledgee of the advance so made, stop the goods in transit.

**Illustrations.**

(a.) A sells and consigns goods to B of the value of 12,000 rupees, B signs the bill of lading for these goods to C, to secure a specific advance of 5,000 rupees made to him upon the bill of lading by C. B becomes insolvent, being indebted to C to the amount of 9,000 rupees. A is not entitled to stop the goods except on payment or tender to C of 5,000 rupees.

(b.) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C, to secure the sum of 5,000 rupees due from him to C, upon a general balance of account. B becomes insolvent. A is entitled to stop the goods in transit without payment or tender to C of the 5,000 rupees.

104. The seller may EFFECT STOPPAGE in transit, either BY TAKING actual POSSESSION of the goods, OR by GIVING NOTICE of his claim to the carrier or other depository in whose possession they are.

105. Such NOTICE may be GIVEN either TO the person who has the immediate possession of the goods, or to the principal, whose servant has possession. In the latter case, the notice must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer.

106. STOPPAGE in transit ENTITLES the seller TO HOLD the goods stopped UNTIL the PRICE of the whole of the goods sold is PAID.

**Illustration.**

A sells to B 100 bales of cotton; 60 bales having come into B's possession, and 40 being still in transit, B becomes insolvent, and A being still unpaid, stops the 40 bales in transit. A is entitled to hold the 40 bales until the price of the 100 bales is paid.

**Resale.**

107. Where the BUYER of goods FAILS TO PERFORM HIS part of the CONTRACT, either by not taking the goods sold to him, or by not paying for them, the seller, having a lien on the goods, or having stopped them in transit, may, after giving notice to the buyer of his intention to do so, re-sell them, after the lapse of a reasonable time, and the buyer must bear any loss, but is not entitled to any profit, which may occur on such re-sale.

**Title.**

108. No seller can give to the buyer of goods a better title to those goods than he has himself, except in the following cases:—

**Exception 1.**—When any person is, by the consent of the owner, in possession of any goods, or of any bill of lading, dock-warrant, ware-
house-keeper's certificate, wharfinger's certificate or warrant or order for delivery, or other document showing title to goods, he may transfer the ownership of the goods, of which he is in possession, or to which such documents relate, to any other person, and give such person a good title thereto, notwithstanding any instructions of the owner to the contrary: Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods or documents has no right to sell the goods.

Exception 2.—If one of several joint-owners of goods has the sole possession of them by the permission of the co-owners, the ownership of the goods is transferred to any person who buys them of such joint-owner in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods has no right to sell them.

Exception 3.—When a person has obtained possession of goods under a contract voidable at the option of the other party thereto, the ownership of the goods is transferred to a third person who, before the contract is rescinded, buys them in good faith of the person in possession; unless the circumstances which render the contract voidable amounted to an offence committed by the person in possession or those whom he represents.

In this case the original seller is entitled to compensation from the original purchaser for any loss which the seller may have sustained by being prevented from rescinding the contract.

Illustrations.

(a) A buys from B, in good faith, a cow which B had stolen from C. The property in the cow is not transferred to A.

(b) A, a merchant, entrusts B, his agent, with a bill of lading relating to certain goods, and instructs B not to sell the goods for less than a certain price, and not to give credit to D. B sells the goods to D for less than that price, and gives D three months' credit. The property in the goods passes to D.

(c) A sells to B goods of which he has the bill of lading, but the bill of lading is made out for delivery of the goods to C, and it has not been endorsed by C. The property is not transferred to B.

(d) A, B and C are joint Hindu brothers who own certain cattle in common. A is left by B and C in possession of a cow, which he sells to D. D purchases bond. The property in the cow is transferred to D.

(e) A, by a misrepresentation not amounting to cheating, induces B to sell and deliver to him a horse. A sells the horse to C before B has rescinded the contract. The property in the horse is transferred to C; and B is entitled to compensation from A for any loss which B has sustained by being prevented from rescinding the contract.

(f) A compels B by wrongful intimidation, or induces him by cheating or forgery, to sell him a horse, and before B rescinds the contract, sells the horse to C. The property is not transferred to C.

WARRANTY.

109. If the buyer, or any person claiming under him, is by reason of the INVALIDITY OF THE SELLER'S TITLE, deprived of the thing
sold, the seller is responsible to the buyer, or the person claiming under him, for loss caused thereby, unless a contrary intention appears by the contract.

110. An IMPLIED WARRANTY OF goodness or QUALITY may be established BY the CUSTOM of any particular trade.

111. On the sale of PROVISIONS, there is an implied warranty that they are sound.

112. On the SALE of goods BY SAMPLE, there is an implied warranty that the bulk is equal in quality to the sample.

113. Where GOODS are sold as being OF A CERTAIN DENOMINATION, there is an implied warranty that they are such goods as are commercially known by that denomination, although the buyer may have bought them by sample, or after inspection of the bulk.

Explanation.—But if the contract specifically states that the goods, though sold as of a certain denomination, are not warranted to be of that denomination, there is no implied warranty.

Illustrations.

(a.) A, at Calcutta, sells to B twelve bags of "waste silk," then on its way from Murshidabad to Calcutta. There is an implied warranty by A that the silk shall be such as is known in the market under the denomination of "waste silk."

(b.) A buys, by sample and after having inspected the bulk, 100 bales of "Fair Bengal" Cotton. The cotton proves not to be such as is known in the market as "Fair Bengal:" there is a breach of warranty.

114. Where GOODS have been ORDERED FOR a SPECIFIED PURPOSE, for which goods, of the denomination mentioned in the order, are usually sold, there is an implied warranty by the seller that the goods supplied are fit for that purpose.

Illustration.

B orders of A, a copper manufacturer, copper for sheathing a vessel. A, on this order, supplies copper. There is an implied warranty that the copper is fit for sheathing a vessel.

115. Upon the sale of an ARTICLE OF a WELL-KNOWN ASCERTAINED KIND, there is no implied warranty of its fitness for any particular purpose.

Illustration.

B writes to A, the owner of a patent invention for cleaning cotton—"Send me your patent cotton-cleaning machine to clean the cotton at my factory." A sends the machine according to order. There is an implied warranty by A that it is the article known as A's patent cotton-cleaning machine, but none that it is fit for the particular purpose of cleaning the cotton at B's factory.
116. In the absence of fraud and of any express warranty of quality, the seller of an article, which answers the description under which it was sold, is not responsible for a LATENT DEFECT in it.

Illustration.

A sells to B a horse. It turns out that the horse had, at the time of the sale, a defect, of which A was unaware. A is not responsible for this.

117. Where a SPECIFIC ARTICLE, sold with a warranty, has been delivered and accepted, and the WARRANTY is BROKEN, the sale is not thereby rendered voidable; but the buyer is entitled to COMPENSATION from the seller for loss caused by the breach of warranty.

Illustration.

A sells and delivers to B a horse, warranted sound. The horse proves to have been unsound at the time of sale. The sale is not thereby rendered voidable, but B is entitled to compensation from A for loss caused by the unsoundness.

118. Where there has been a contract with a warranty, for the sale of GOODS which, at the time of the contract, were NOT ASCERTAINED OR not IN EXISTENCE, and the warranty is broken, the buyer may accept the goods or refuse to accept the goods when tendered,

or keep the goods for a time reasonably sufficient for examining and trying them, and then refuse to accept them; provided that, during such time, he exercises no other act of ownership over them than is necessary for the purpose of examination and trial.

In any case the buyer is entitled to compensation from the seller for any loss caused by the breach of warranty; but if he accepts the goods and intends to claim compensation, he must give notice of his intention to do so within a reasonable time after discovering the breach of the warranty.

Illustrations.

(a.) A agrees to sell and, without application on B's part, deliver to B 200 bales of uns certained cotton by sample. Cotton, not in accordance with sample, is delivered to B. B may return it if he has not kept it longer than a reasonable time for the purpose of examination.

(b.) B agrees to buy of A twenty-five sacks of flour by sample. The flour is delivered to B, who pays the price. B, upon examination, finds it not equal to sample; B afterwards uses two sacks, and sells one. He cannot now rescind the contract and recover the price, but he is entitled to compensation from A for any loss caused by the breach of warranty.

(c.) B makes two pairs of shoes for A by A's order. When the shoes are delivered, they do not fit A. A keeps both pairs for a day. He wears one pair for a short time in the house, and takes a long walk out of doors in the other pair. He may refuse to accept the first pair, but not the second. But he may recover compensation for any loss sustained by the defect of the second pair.

Miscellaneous.

119. When the SELLER SENDS to the buyer GOODS NOT OR-
DERED with goods ordered, the buyer may refuse to accept any of the goods so sent, if there is risk or trouble in separating the goods ordered from the goods not ordered.

Illustration.

A orders of B specific articles of china. B sends these articles to A in a hamper, with other articles of china which had not been ordered. A may refuse to accept any of the goods sent.

120. If a buyer wrongfully REFUSES TO ACCEPT the GOODS sold to him, this amounts to a breach of the contract of sale.

121. When GOODS sold have been DELIVERED to the buyer, the SELLER is NOT ENTITLED TO RESCIND the contract on the buyer's failing to pay the price at the time fixed, unless it was stipulated by the contract that he should be so entitled.

122. Where goods are sold by AUCTION, there is a distinct and separate sale of the goods in each lot, by which the ownership thereof is transferred as each lot is knocked down.

123. If, at a sale by auction, the seller makes use of PRETENDED BIDDINGS to raise the price, the sale is voidable at the option of the buyer.

CHAPTER VIII.

Of Indemnity and Guarantee.

124. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a contract of INDEMNITY.

Illustration.

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

125. The PROMISEE in a contract of indemnity, acting within the scope of his authority, is ENTITLED TO RECOVER from the promisor—

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;
(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

126. A contract of GUARANTEE is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the SURETY, the person, in respect of whose default the guarantee is given, is called the principal debtor, and the person to whom the guarantee is given is called the creditor. A guarantee may be either oral or written.

127. Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient CONSIDERATION to the surety for giving the guarantee.

Illustrations.

(a.) B requests A to sell and deliver to him goods on credit. A agrees to do so provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(b.) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that, if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(c.) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

128. The LIABILITY OF the SURETY is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Illustration.

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable, not only for the amount of the bill, but also for any interest and charges which may have become due on it.

129. A guarantee which extends to a series of transactions, is called a CONTINUING GUARANTEE.

Illustrations.

(a.) A, in consideration that B will employ C in collecting the rents of B's zamindari, promises B to be responsible, to the amount of 5,000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(b.) A guarantees payment to B, a tea-dealer, to the amount of £100, for any tea he may from time to time supply to C. B supplies C with tea to above the value of £100, and C pays B for it. Afterwards B supplies C with tea to the value of £200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100.

(c.) A guarantees payment to B of the price of five sacks of flour to be delivered
by B to C and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

130. A continuing guarantee may at any time be REVOKED by the surety, as to future transactions, by notice to the creditor.

Illustrations.

(a) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B for twelve months the due payment of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees, on default of C.

(b) A guarantees B, to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

131. The DEATH OF THE SURETY operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

132. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

Illustration.

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

133. Any VARIANCE, MADE without the surety's consent, IN the terms of the CONTRACT, between the principal and the creditor, DISCHARGES the SURETY as to transactions subsequent to the variance.

Illustrations.

(a) A becomes surety to C for B's conduct as a manager in C's Bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(b) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of the legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the later Act.
(c.) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duty accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him and not by a fixed salary. A is not liable for subsequent misconduct of B.

(d.) A gives to C a continuing guarantee to the extent of 8,000 rupees for any oil supplied by C to B on credit. Afterwards B becomes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(a.) C contracts to lend B 5,000 rupees on the 1st March. A guarantees repayment. C pays the 5,000 rupees to B on the first January. A is discharged from his liability, as the contract has been varied, inasmuch as C might sue B for the money before the first of March.

134. The SURETY is DISCHARGED by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the DISCHARGE of the principal DEBTOR.

Illustrations.

(a.) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(b.) A contracts with B to grow a crop of indigo on A's land and to deliver it to B at a fixed rate, and C guarantees A's performance of this contract. B diverts a stream of water which is necessary for the irrigation of A's land, and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

(c.) A contracts with B for a fixed price to build a house for B within a stipulated time. B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

135. A contract between the creditor and the principal debtor, by which the creditor makes a COMPOSITION WITH, or promises to give time to, or not to sue, the principal DEBTOR, discharges the surety unless the surety assents to such contract.

136. Where a CONTRACT TO GIVE TIME to the principal debtor is MADE by the creditor WITH a THIRD PERSON, and not with the principal debtor, the surety is not discharged.

Illustration.

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

137. Mere FORBEARANCE on the part of the creditor TO SUE the principal debtor, or to enforce any other remedy against him, does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.
Illustration.

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

138. Where there are CO-SURETIES, a RELEASE by the creditor of ONE of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.

139. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual REMEDY OF the SURETY himself AGAINST the principal DEBTOR is thereby IMPAIRED, the surety is discharged.

Illustrations.

(a.) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.

(b.) C lends money to B on the security of a joint and several promissory note made in C's favour by B and by A as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture, and apply the proceeds in discharge of the note. Subsequently C sells the furniture but, owing to his misconduct and wilful negligence only a small price is realized. A is discharged from liability on the note.

(c.) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

140. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the SURETY, UPON PAYMENT or performance of all that he is liable for, IS INVESTED WITH all the RIGHTS WHICH the CREDITOR HAD against the principal debtor.

141. A SURETY is ENTITLED TO the benefit of EVERY SECURITY, WHICH the CREDITOR HAS against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

Illustrations.

(a.) C advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(b.) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.
(c) A, as surety for B, makes a bond jointly with B to C to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently C gives up the further security. A is not discharged.

142. Any guarantee, which has been obtained by means of MISREPRESENTATION made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

143. Any guarantee, which the creditor has obtained by means of KEEPING SILENCE as to a material circumstance, is invalid.

Illustrations.

(a) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B’s duly accounting. A does not acquaint C with B’s previous conduct. B afterwards makes default. The guarantee is invalid.

(b) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

144. Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as CO-SURETY, the guarantee is not valid if that other person DOES NOT JOIN.

145. In every contract of guarantee there is an IMPLIED PROMISE by the principal debtor TO INDEMNIFY the SURETY; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Illustrations.

(a) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but he is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

(b) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill, demands payment of it from A, and on A’s refusal to pay sues him upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(c) A guarantees to C, to the extent of 2,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

146. Where two or more persons are CO-SURETIES for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are
LIABLE, as between themselves, TO PAY each an EQUAL SHARE of the whole debt, or of that part of it which remains unpaid by the principal debtor.

Illustrations.

(a.) A, B and C are sureties to D for the sum of 8,000 rupees lent to E. E makes default in payment. A, B and C are liable as between themselves to pay 1,000 rupees each.

(b.) A, B and C are sureties to D for the sum of 1,000 rupees lent to E, and there is a contract between A, B and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter, and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

147. CO-SURETIES, who are BOUND IN DIFFERENT SUMS, are liable to pay equally as far as the limits of their respective obligations permit.

Illustrations.

(a.) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 20,000 rupees. A, B and C are each liable to pay 10,000 rupees.

(b.) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

(c.) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees. A, B and C have to pay each the full penalty of his bond.

CHAPTER IX.

Of Bailment.

(INCLUDING DEPOSIT, HIRE, LOANS AND PLEDGES.)

148. A BAILMENT is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the BAILOR. The person to whom they are delivered is called the BAILEE.
Explanation.—If a person, already in possession of the goods of another, contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

149. The DELIVERY to the bailee may be MADE BY doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

150. The BAILOR is BOUND TO DISCLOSE to the bailee FAULTS in the goods bailed of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

If the goods are bailed for HIRE, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations.

(a) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

(b) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

151. In all cases of bailment the bailee is bound to take as much CARE of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

152. The BAilee, in the absence of any special contract, is NOT RESPONSIBLE for the loss, destruction or deterioration of the thing bailed, IF he has taken the amount of CARE of it described in section 151.

153. A contract of BAILMENT is VOIDABLE at the option of the bailor, IF the bailee does any act with regard to the goods bailed inconsistent with the conditions of the bailment.

Illustration.

A lets to B for hire a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

154. If the BAilee MAKES any USE OF the GOODS bailed which is NOT ACCORDING TO the CONDITIONS of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Illustrations.

(a) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidently falls and is injured. B is liable to make compensation to A for the injury done to the horse.
(a) A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

155. If the BALEE, WITH the CONSENT of the bailor, MIXES the GOODS of the bailor WITH HIS OWN goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

156. If the bailee, WITHOUT the CONSENT of the bailor, mixes the goods of the bailor with his own goods, AND the GOODS CAN BE SEPARATED or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

Illustration.

A bails 100 bales of cotton marked with a particular mark to B. B without A's consent mixes the 100 bales with other bales of his own bearing a different mark. A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales and any other incidental damage.

157. If the bailee, WITHOUT the CONSENT of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is IMPOSSIBLE TO SEPARATE the goods bailed from the other goods, and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Illustration.

A bails a barrel of Cape flour worth Rs. 45 to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

158. Where, by the conditions of the bailment, the GOODS are TO BE KEPT or to be CARRIED, OR to HAVE WORK DONE UPON them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

159. The lender of a thing for use may at any time require its return, if the LOAN was GRATUITOUS, even though he lent it for a specified time or purpose. But if, on the faith of such loan, made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

160. It is the DUTY of the BALEE TO RETURN, or deliver according to the bailor's directions, the GOODS bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

161. If by the fault of the bailee the GOODS are NOT RETURNED, delivered, or tendered at the proper time, he is responsible to the
bailor for any loss, destruction, or deterioration of the goods from that time.

162. A gratuitous bailment is terminated by the DEATH either of the bailor or the bailee.

163. In the absence of any contract to the contrary, the BAILEE is BOUND TO DELIVER to the bailor, or according to his directions, any INCREASE OR PROFIT which may have accrued from the goods bailed.

Illustration.

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

164. The BAILOR is RESPONSIBLE to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them.

165. If several JOINT OWNERS of goods BAIL them, the bailee may deliver them back to, or according to the directions of one joint owner without the consent of all, in the absence of any agreement to the contrary.

166. If the BAILOR has NO TITLE to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of the bailor, the bailee is not responsible to the owner in respect of such delivery.

167. If a PERSON OTHER THAN the BAILOR CLAIMS GOODS bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

168. The FINDER OF GOODS has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.

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

(1.) when the thing is in danger of perishing or of losing the greater part of its value, or,

(2.) when the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.

170. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract
to the contrary, a RIGHT TO RETAIN such GOODS UNTIL he receives due REMUNERATION FOR the SERVICES he has rendered in respect of them.

Illustrations.

(a.) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

(b.) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give A three months' credit for the price. B is not entitled to retain the cost until he is paid.

171. BANKERS, FACTORS, WARFINGERS, ATTORNEYS of a High Court and POLICY BROKERS may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them unless there is an express contract to that effect.

BAILMENTS OF

Pledges.

172. The bailment of goods as security for payment of a debt or performance of a promise is called PLEDGE. The bailor is in this case called the pawnor. The bailee is called the pawnee.

173. The PAWNEE MAY RETAIN the GOODS pledged, not only FOR payment of the DEBT or the performance of the promise, but for the INTEREST of the debt, AND all necessary EXPENSES incurred by him in respect of the possession or for the preservation of the goods pledged.

174. The pawnee shall NOT, in the absence of a contract to that effect, retain the goods pledged FOR any debt or promise OTHER than the DEBT or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to SUBSEQUENT ADVANCES made by the pawnee.

175. The pawnee is entitled to receive from the pawnor EXTRAORDINARY EXPENSES incurred by him for the preservation of the goods pledged.

176. If the PAWNON MAKES DEFAULT in payment of the debt, or performance, at the stipulated time, of the promise, in respect of which the goods were pledged, the PAWNEE MAY BRING a SUIT against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; OR he may SELL THE THING pledged, on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.
177. If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the PAWNOR makes default in payment of the debt or performance of the promise at the stipulated time, he MAY REDEEM the goods pledged at any subsequent time BEFORE the ACTUAL SALE of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

178. A PERSON who is IN POSSESSION OF any GOODS, OR of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or any other document of TITLE TO GOODS, MAY make a valid PLEDGE of such goods, or documents; Provided that the pawnee acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly:

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

179. Where a person pledges goods in which he has only a LIMITED INTEREST, the pledge is valid to the extent of that interest.

Suits by BaileeS or Bailors against Wrong-doers.

180. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

181. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

CHAPTER X.

Agency.

Appointment and Authority of Agents.

182. An AGENT is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the PRINCIPAL.

183. Any PERSON who is of the age OF MAJORITY according to the law to which he is subject, and who is of SOUND MIND, MAY EMPLOY an agent.
184. As between the principal and third persons, ANY PERSON MAY BECOME an AGENT; BUT no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

185. No CONSIDERATION is necessary to create an agency.

186. The AUTHORITY of an agent may be express or implied.

187. An authority is said to be EXPRESS when it is given by words spoken or written. An authority is said to be IMPLIED when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Illustration.

A owns a shop in Serampore, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

188. An agent, having an AUTHORITY to do an act, has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on a business, has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business.

Illustrations.

(a) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(b) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the purpose of carrying on the business.

189. An agent has AUTHORITY, IN an EMERGENCY, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence in his own case under similar circumstances.

Illustrations.

(a) An agent for sale may have goods repaired if it be necessary.

(b) A consigns provisions to B at Calcutta, with directions to send them immediately to C at Cuttack. B may sell the provisions at Calcutta if they will not bear the journey to Cuttack without spoiling.

Sub-Agents.

190. An agent cannot lawfully employ another to perform acts
which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed.

191. A SUB-AGENT is a person employed by, and acting under the control of, the original agent in the business of the agency.

192. Where a sub-agent is properly appointed, the PRINCIPAL is, so far as regards third persons, represented by the sub-agent, and is bound by and RESPONSIBLE for his acts, as if he were an agent originally appointed by the principal.

The AGENT is RESPONSIBLE to the principal FOR the acts of the sub-agent:

The SUB-AGENT is RESPONSIBLE for his acts to the agent, but not to the principal, except in cases of fraud or wilful wrong.

193. WHERE an AGENT, WITHOUT having AUTHORITY to do so, has APPOINTED a person to act as a SUB-AGENT, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons; the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal.

194. Where an AGENT, HOLDING an express or implied AUTHORITY TO NAME ANOTHER person TO ACT for the principal in the business of the agency has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Illustrations.

(a.) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

(b.) A authorizes B, a merchant in Calcutta, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is solicitor for A.

195. In selecting such agent for his principal, an agent is BOUND TO EXERCISE the same amount of DISCRETION as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Illustrations.

(a.) A instructs B, a merchant, to buy a ship for him. B employs a ship-surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently, and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

(b.) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.
Ratification.

196. Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

197. Ratification may be expressed or may be implied in the conduct of the person, on whose behalf the acts are done.

Illustrations.

(a) A, without authority, buys goods for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.

(b) A, without B's authority, lends B's money to C. Afterwards B accepts interest on money from C. B's conduct implies a ratification of the loan.

198. No valid ratification can be made by a person whose KNOWLEDGE OF THE FACTS of the case is materially DEFECTIVE.

199. A person ratifying any unauthorized act done on his behalf, ratifies the WHOLE of the TRANSACTION, of which such act formed a part.

200. An act done by one person on behalf of another without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Illustrations.

(a) A, not being authorized thereto by B, demands, on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

(b) A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

Revocation of Authority.

201. An AGENCY is TERMINATED BY the principal REVOKING his AUTHORITY; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

202. WHERE the AGENT HAS himself AN INTEREST in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.
Illustrations.

(a.) A gives authority to B to sell A's land, and to pay himself out of the proceeds the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(b.) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

203. The principal may, save as is otherwise provided by the last preceding section, REVOKE the authority given to his agent AT ANY TIME BEFORE the AUTHORITY has been EXERCISED so as to bind the principal.

204. The principal CANNOT REVOKE the authority given to his agent AFTER the AUTHORITY has been PARTLY EXERCISED, so far as regards such acts and obligations as arise from acts already done in the agency.

Illustrations.

(a.) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(b.) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

205. Where there is an express or implied CONTRACT THAT the AGENCY should BE CONTINUED FOR ANY period of TIME, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

206. Reasonable NOTICE must be given OF such REVOCATION or renunciation, otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

207. REVOCATION and renunciation may be EXPRESSED or may be IMPLIED in the conduct of the principal or agent respectively.

Illustration.

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

208. The TERMINATION of the authority of an agent does NOT, so far as regards the agent, take effect BEFORE it becomes KNOWN to him, or, so far as regards third persons, before it becomes known to them.
Illustrations.

(a) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(b) A, at Madras, by letter, directs B to sell for him some cotton, lying in a warehouse in Bombay, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Madras. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

(c) A directs B, his agent, to pay certain money to C. A dies and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

209. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

210. The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority), of the authority of all sub-agents appointed by him.

Agent's Duty to Principal.

211. An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and if any profit accrues, he must account for it.

Illustrations.

(a) A, an agent engaged in carrying on a business, in which it is the custom to invest from time to time at interest the moneys which may be in hand, omits to make such investment. A must make good to B the interest usually obtained by such investments.

(b) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment becomes insolvent. B must make good the loss to A.

212. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses: and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill, or misconduct.
Illustrations.

(a.) A, a merchant in Calcutta, has an agent, B, in London, to whom a sum of money is paid on A’s account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as, e.g., by variation of rate of exchange—but not further.

(b.) A, an agent for the sale of goods, having authority to sell on credit, sells to B, on credit, without making the proper and usual enquiries as to the insolvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(c.) A, an insurance broker, employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

(d.) A, a merchant in England, directs B, his agent at Bombay, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

213. An agent is bound to render proper ACCOUNTS to his principal on demand.

214. It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in COMMUNICATING WITH his PRINCIPAL, and in seeking to obtain his instructions.

215. IF an AGENT DEALS ON HIS OWN ACCOUNT in the business of the agency, WITHOUT first obtaining the CONSENT of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal MAY REPUDIATE the transaction, if the case show, either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Illustrations.

(a.) A directs B to sell A’s estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(b.) A directs B to sell A’s estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

216. If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal IS ENTITLED TO claim from the agent any BENEFIT which may have resulted to him from the transaction.
Illustration.

A directs B, his agent, to buy a certain house for him. B sells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

217. An AGENT MAY retain, OUT OF any SUMS RECEIVED on account of the principal in the business of the agency, all MONEYS DUE TO HIMSELF in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

218. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

219. In the absence of any special contract, PAYMENT for the performance of any act is NOT DUE to the agent UNTIL the COMPLETION OF such act; but an agent may retain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

220. An agent, who is guilty of MISCONDUCT in the business of the agency, is not entitled to any remuneration in respect of that part of the business which he has misconduted.

Illustrations.

(a.) A employs B to recover 10,000 rupees from C, and to lay it out on good security. B recovers the 10,000 rupees and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security, which he ought to have known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 10,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(b.) A employs B to recover 1,000 rupees from C. Through B’s misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

221. In the absence of any contract to the contrary, an AGENT is ENTITLED TO RETAIN GOODS, PAPERS, and other PROPERTY, whether moveable or immovable, of the principal received by him, UNTIL the AMOUNT DUE TO HIMSELF for commission, disbursements, and services in respect of the same has been PAID or accounted for to him.

Principal’s Duty to Agent.

222. The employer of an agent is bound to INDEMNIFY him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

Illustrations.

(a.) B, at Singapore, under instructions from A of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for
breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs, and expenses.

(b) B, a broker at Calcutta, by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B. B informs A, who repudiates the contract altogether. B defends but unsuccessfully, and has to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs, and expenses.

223. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.

Illustrations.

(a) A, a decree-holder and entitled to execution of B's goods, requires the officer of the Court to seize certain goods representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay to C, in consequence of obeying A's directions.

(b) B, at the request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C, and for B's own expenses.

224. Where one person employs another to do an ACT, which is CRIMINAL, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

Illustrations.

(a) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

(b) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

225. The principal must make compensation to his agent in respect of injury caused to such agent by the PRINCIPAL'S NEGLECT or want of skill.

Illustration.

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make compensation to B.

EFFECT OF AGENCY ON CONTRACTS WITH THIRD PERSONS.

226. CONTRACTS entered into THROUGH an AGENT, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.
Illustrations.

(a.) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set off against that claim a debt due to himself from B.

(b.) A, being B's agent with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

227. When an AGENT DOES MORE THAN he is AUTHORIZED to do, and when the part of what he does, which is within his authority, can be separated from the part, which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Illustration.

A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

228. Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

Illustration.

A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

229. Any NOTICE given TO or information obtained by the AGENT provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties have the same legal consequence as if it had been given to or obtained by the principal.

Illustrations.

(a.) A is employed by B to buy from C certain goods, of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set off a debt owing to him from C against the price of the goods.

(b.) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set off against the price of the goods a debt owing to him from C.

230. In the absence of any contract to that effect, an AGENT CANNOT PERSONALLY ENFORCE CONTRACTS entered into by him on behalf of his principal, NOR is he PERSONALLY BOUND by them.
Such a contract shall be presumed to exist in the following cases:

(1.) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad:

(2.) Where the agent does not disclose the name of his principal:

(3.) Where the principal, though disclosed, cannot be sued.

231. If an agent makes a CONTRACT WITH a PERSON WHO NEITHER KNOWS, nor has reason to suspect, THAT HE IS an AGENT, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

232. Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

Illustration.

A, who owes 500 rupees to B, sells 1,000 rupees worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set-off A’s debt.

233. In cases WHERE the AGENT is PERSONALLY LIABLE, a person dealing with him may hold either him or his principal, or both of them, liable.

Illustration.

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

234. When a person who has made a contract with an agent INDUCES the agent to act upon the BELIEF THAT the PRINCIPAL ONLY will be held LIABLE, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

235. A person UNTRUMLY REPRESENTING HIMSELF TO BE the authorized AGENT of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.
236. A person, with whom a contract has been entered into in the character of agent, is NOT ENTITLED TO require the performance of it, IF he was IN REALITY ACTING, not as agent, but ON HIS OWN ACCOUNT.

237. When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the PRINCIPAL is BOUND by such acts or obligations IF HE has by his words or conduct INDUCED such third persons TO BELIEVE THAT such ACTS and obligations were WITHIN the scope of the AGENT’S AUTHORITY.

Illustrations.

(a.) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B’s instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(b.) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

238. Misrepresentations made, or FRAUDS committed, BY AGENTS acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or fraud had been made or committed by the principals; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

Illustrations.

(a.) A, being B’s agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.

(b.) A, the captain of B’s ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

CHAPTER XI.

Of Partnership.

239. ‘PARTNERSHIP’ is the relation which subsists between persons who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them.

Persons who have entered into partnership with one another are called collectively a ‘FIRM.’

Illustrations.

(a.) A and B buy 100 bales of cotton, which they agree to sell for their joint account; A and B are partners in respect of such cotton.
(b.) A and B buy 100 bales of cotton agreeing to share it between them. A and B are not partners.

(c.) A agrees with B, a goldsmith, to buy and furnish gold to B, to be worked up by him and sold, and that they shall share in the resulting profit or loss. A and B are partners.

(d.) A and B agree to work together as carpenters, but that A shall receive all profits, and shall pay wages to B. A and B are not partners.

(e.) A and B are joint owners of a ship. This circumstance does not make them partners.

240. A LOAN to a person engaged or about to engage in any trade or undertaking, UPON a CONTRACT with such person that the lender shall receive interest at a rate varying with the profits, or THAT HE shall RECEIVE a share of the PROFITS, does not, of itself, constitute the lender a PARTNER, or render him responsible as such.

241. In the absence of any contract to the contrary, property left by a retiring partner, or the representative of a deceased partner to be used in the business, is to be considered a LOAN within the meaning of the last preceding section.

242. No contract for the REMUNERATION OF a SERVANT or agent of any person, engaged in any trade or undertaking, BY a SHARE OF the PROFITS of such trade or undertaking shall, of itself, render such servant or agent responsible as a partner therein nor give him the rights of a partner.

243. No person, being a WIDOW or CHILD of a deceased partner of a trader, and RECEIVING, by way of ANNUITY, a proportion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him.

244. No person RECEIVING, by way of annuity or otherwise, a portion of the PROFITS of any business, IN CONSIDERATION OF the sale by him of the GOOD-WILL of such business, shall, by reason only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities.

245. A person who has, by words spoken or written, or by his conduct, LED another TO BELIEVE that he is a PARTNER in a particular firm, is responsible to him as a partner in such firm.

246. Any one, CONSENTING to allow himself TO BE REPRESENTED AS a PARTNER, is liable as such, to third persons who, on the faith thereof, give credit to the partnership.

247. A PERSON, who is UNDER the age of MAJORITY according to the law to which he is subject, may be admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm.

248. A person, who has been admitted to the benefits of partnership under the age of majority, becomes, on attaining that age, liable for all
obligations incurred by the partnership since he was so admitted, unless he gives public notice within a reasonable time of his repudiation of the partnership.

249. Every PARTNER is LIABLE FOR all DEBTS and obligations incurred while he is a partner in the usual course of business by or on behalf of the partnership; but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such firm for anything done before he became a partner.

250. Every partner is liable to make compensation to third persons in respect of loss or damage arising from the NEGLECT or FRAUD OF any PARTNER in the management of the business of the firm.

251. Each PARTNER, who does any act necessary for or usually done in carrying on the business of such a partnership as that of which he is a member, BINDS his CO-PARTNERS to the same extent as if he were their agent duly appointed for that purpose.

Exception.—If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement.

Illustrations.

(a.) A and B trade in partnership. A residing in England and B in India. A draws a bill of exchange in the name of the firm. B has no notice of the bill, nor is he at all interested in the transaction. The firm is liable on the bill, provided the holder did not know of the circumstances under which the bill was drawn.

(b.) A, being one of a firm of solicitors and attorneys draws a bill of exchange in the name of the firm without authority. The other partners are not liable on the bill.

(c.) A and B carry on business in partnership as bankers. A sum of money is received by A on behalf of the firm. A does not inform B of such receipt, and afterwards A appropriates the money to his own use. The partnership is liable to make good the money.

(d.) A and B are partners. A, with the intention of cheating B, goes to a shop and purchases articles on behalf of the firm, such as might be used in the ordinary course of the partnership business, and converts them to his own separate use, there being no collusion between him and the seller. The firm is liable for the price of the goods.

252. Where partners have by contract regulated and defined, as between themselves, their rights and obligations, such CONTRACT can be ANNULLED or altered ONLY BY CONSENT OF ALL of them, which consent must either be expressed or be implied from a uniform course of dealing.

Illustration.

A, B, and C, intending to enter into partnership, execute written articles of agreement, by which it is stipulated that the nett profits arising from the partnership business shall be equally divided between them. Afterwards they carry on the partnership business for many years, A receiving one-half of the nett profits, and the
other half being divided equally between B and C. All parties know of and acquiesce in this arrangement. This course of dealing supersedes the provision in the articles as to the division of profits.

253. In the absence of any contract to the contrary, the RELATIONS OF PARTNERS to each other are determined by the following RULES:

1. All partners are joint owners of all property originally brought into the partnership stock, or bought with money belonging to the partnership, or acquired for purposes of the partnership business. All such property is called partnership property. The share of each partner in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss:

2. All partners are entitled to share equally in the profits of the partnership business, and must contribute equally towards the losses sustained by the partnership:

3. Each partner has a right to take part in the management of the partnership business:

4. Each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business:

5. When differences arise as to ordinary matters connected with the partnership business, the decision shall be according to the opinion of the majority of the partners; but no change in the nature of the business of the partnership can be made, except with the consent of all the partners:

6. No person can introduce a new partner into a firm without the consent of all the partners:

7. If from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members:

8. Unless the partnership has been entered into for a fixed term, any partner may retire from it at any time:

9. Where a partnership has been entered into for a fixed term, no partner can, during such term, retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever, except by order of Court:

10. Partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.

254. At the suit of a partner the COURT MAY DISSOLVE the PARTNERSHIP in the following cases:

1. When a partner becomes of unsound mind:

2. When a partner, other than the partner suing, has been adjudicated an insolvent under any law relating to insolvent debtors:
(3.) When a partner, other than the partner suing, has done any act by which the whole interest of such partner is legally transferred to a third person:

(4.) When any partner becomes incapable of performing his part of the partnership contract:

(5.) When a partner, other than the partner suing, is guilty of gross misconduct in the affairs of the partnership or towards his partners:

(6.) When the business of the partnership can only be carried on at a loss.

255. A partnership is in all cases dissolved by its BUSINESS being PROHIBITED by law.

256. If a PARTNERSHIP, entered into FOR a FIXED TERM, be continued after such term has expired, the rights and obligations of the partners will, in the absence of any agreement to the contrary, remain the same as they were at the expiration of the term, so far as such rights and obligations can be applied to a partnership dissolvable at the will of any partner.

257. PARTNERS are BOUND TO carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

258. A partner must ACCOUNT to the firm for any benefit derived from a transaction affecting the partnership.

Illustrations.

(a.) A, B and C are partners in trade. C, without the knowledge of A and B obtains for his own sole benefit a lease of the house in which the partnership business is carried on. A and B are entitled to participate, if they please, in the benefit of the lease.

(b.) A, B and C carry on business together in partnership as merchants trading between Bombay and London. D, a merchant in London, to whom they make their consignments, secretly allows C a share of the commission which he receives upon such consignments, in consideration of C’s using his influence to obtain the consignments for him. C is liable to account to the firm for the money so received by him.

259. If a partner, without the knowledge and consent of the other partners, carries on any BUSINESS competing or INTERFERING WITH THAT OF the FIRM, he must account to the firm for all profits made in such business, and must make compensation to the firm for any loss occasioned thereby.

260. A continuing guarantee, given either to a firm or to a third person, in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions by any CHANGE IN the constitution of the FIRM to which, or in respect of the transactions of which, such guarantee was given.
261. The ESTATE OF a PARTNER who has DIED is not, in the absence of an express agreement, liable in respect of any obligation incurred by the firm after his death.

262. Where there are JOINT DEBTS due from the partnership, and also SEPARATE DEBTS due from any partner, the partnership property must be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner must be applied in payment of his separate debts or paid to him. The separate property of any partner must be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

263. AFTER a DISSOLUTION of partnership, the RIGHTS and OBLIGATIONS of the partners continue in all things necessary for winding-up the business of the partnership.

264. Persons dealing with a firm will not be affected by a DISSOLUTION, of which no public NOTICE has been given, unless they themselves had notice of such dissolution.

265. In the absence of any contract to the contrary, after the termination of a partnership, each partner or his representatives may apply to the COURT TO WIND UP the business of the firm, to provide for the payment of its debts, and to distribute the surplus according to the shares of the partners respectively.

Explanation.—The Court in this section means a Court not inferior to the Court of a District Judge within the local limits of whose jurisdiction the place or principal place of business of the firm is situated.

266. EXTRAORDINARY PARTNERSHIPS, such as partnerships with limited liability, incorporated partnerships, and joint-stock companies shall be regulated by the law for the time being in force relating thereto.

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Bills of Exchange.

Act No. VI. of 1840.

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 2ND MARCH 1840.

An Act for the amendment of the law concerning the negociation of Bills of Exchange.

1. Whereas it is expedient to extend to the Territories under the Government of the [East India Company] the amendments of the law respecting Bills of Exchange contained in the Statutes 58 Geo. 3, c. 98; 1 and 2 Geo. 4, c. 78; 6 and 7 W. 4, c. 58; 2 and 3 W. 4, c. 98:

It is hereby enacted that from and after the first day of May, in the year of our Lord 1840, if any person shall accept a Bill of Exchange payable at any other place than at his own place of residence without further expression in his acceptance, such
ACQUISITION shall be deemed and taken to be to all intents and purposes a general acceptance. But if the acceptor shall in his acceptance express that he accepts the Bill payable at such other place only, and not otherwise or elsewhere, such acceptance shall be deemed and taken to be to all intents and purposes a qualified acceptance of such Bill, and the acceptor shall not be liable to pay such Bill except in default of payment when such payment shall have been duly demanded at such other place.

2. And it is hereby enacted that after the day and year aforesaid no acceptance of any Bill of Exchange drawn within the territories of the [East India Company] shall be sufficient to charge any person unless such ACCEPTANCE be IN WRITING on such Bill, or if there be more than one part of such Bill, on one of the said parts.

3. And it is hereby enacted that it shall not be necessary to present BILLS of Exchange ACCEPTED SUPRA PROTEST for honour, or having a reference thereon in case of need to the acceptor or acceptors, for honour, or to the referee or referees, until the day following the day on which such Bills of Exchange shall become due; and if the place of address on any such Bill of Exchange of such acceptor or acceptors for honour, or of such referee or referees, be other than where such Bill shall therein be made payable, than it shall not be necessary to forward such Bill of Exchange for presentment for payment to such acceptor or acceptors for honour, or referee or referees, until the day following the day on which such Bill of Exchange shall become due.

4. And it is hereby enacted that all Bills of Exchange wherein the drawer or drawers thereof shall have expressed that such Bills of Exchange are to be payable in any PLACE other than the place by him or them therein mentioned to be the place of residence of the drawer or drawer thereof, and which shall not on the presentment thereof be accepted, shall or may be, without further presentment, to the drawer or drawers, protested for nonpayment in the place in which such Bills of Exchange shall have been by the drawer or drawers expressed to be payable, unless the amount owing upon such Bills of Exchange shall have been paid to the holder or holders thereof on the day on which such Bill would have become payable had the same been duly accepted.

5. And it is hereby enacted that no Bill of Exchange or Promissory Note that shall be drawn or made after the passing of this Act shall, though it may have been given for a USURIOUS CONSIDERATION, or upon a usurious contract, be void in the hands of an endorsee or other valuable consideration, unless such endorsee had, at the time of discounting or paying such consideration for the same, actual notice that such Bill of Exchange or Promissory Note had been originally given for a usurious consideration or upon a usurious contract.

6. And it is hereby provided that this ACT shall NOT be construed TO EXTEND TO affect BILLS of Exchange or Promissory Notes in any case which, but for the passing of this Act, would NOT be GOVERNED BY the LAW OF ENGLAND, or to extend or alter the jurisdiction of any of Her Majesty's Courts of Justice.

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**Act No. V. of 1866.**

An Act to provide a summary procedure on Bills of Exchange, and to amend in certain respects the Commercial Law of British India.

Whereas it is expedient to provide a summary procedure for the recovery of money due on dishonoured Bills of Exchange, Hoondis, and Promissory Notes; and whereas inconvenience is felt by persons engaged in trade by reason of the laws of British India being in some particulars different from those of England in matters of common occurrence in the
course of such trade; and whereas, with a view to remedy such inconvenience, it is expedient to amend the laws of British India as hereinafter is mentioned: It is enacted as follows:

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

"BRITISH INDIA" shall mean the territories which are or may become vested in Her Majesty or Her successors by the Statute 21 & 22 Vic., Cap. 106 (An Act for the better Government of India):

"HIGH COURT" shall mean the High Court of Judicature at Calcutta, Madras, or Bombay, as the case may be:

And in every part of British India in which this Act shall operate "LOCAL GOVERNMENT" shall mean the person authorised by law to administer executive Government in such part.

All suits upon Bills of Exchange, Hooindis, or Promissory Notes commenced in any High Court within six calendar months after the same shall have become due and payable, may, in case the plaintiff shall desire to proceed under this Act, be commenced as hereinafter is mentioned; (that is to say) the PLAINT shall be in the FORM prescribed by the Code of Civil Procedure; but the SUMMONS shall be in the FORM contained in the Schedule to this Act; and in any case in which the plaint and summons shall be in such forms respectively, it shall not be lawful for the defendant to appear to or defend the suit unless he shall obtain leave from a Judge as hereinafter mentioned so to appear and defend; and in default of his obtaining such leave or of appearance and defence in pursuance thereof the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and a sum for costs to be fixed by a rule of the High Court, unless the plaintiff claim more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be enforced forthwith.

3. The High Court shall, upon application within the period of seven days from the service of such summons, give LEAVE TO appear and to DEFEND the suit, upon the defendant paying into Court the sum mentioned in the summons or upon affidavits satisfactory to the Court which disclose a defence, or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application, and on such terms as to security, framing and recording issues, or otherwise, as to the Court may seem fit.

4. After decree, the High Court MAY, under special circumstances, SET ASIDE the DECREE, and if necessary stay or set aside execution, and may give leave to appear to the summons and to defend the suit if it shall seem reasonable to the Court so to do, and on such terms as to the Court may seem just.

5. In any proceedings under this Act it shall be competent to the
High Court to ORDER the BILL or Note sought to be proceeded upon TO BE forthwith DEPOSITED with an Officer of the Court, and further to order that all proceedings shall be stayed until the plaintiff shall have given security for the costs thereof.

6. The holder of every dishonoured Bill of Exchange or Promissory Note shall have the same remedies for the recovery of the EXPENSES incurred IN NOTING the same FOR NON-ACCEPTANCE or non-payment, or otherwise by reason of such dishonour as he has under this Act for the recovery of the amount of such Bill or Note.

7. The provisions of the Code of Civil PROCEDURE, and all rules made under or by virtue of the said Code, shall, so far as the same are or may be made applicable, extend and apply to all proceedings to be had or taken under this Act.

8. It shall be LAWFUL FOR the Local GOVERNMENT TO DIRECT that all or any part of the provisions in Sections 2 to 7, both inclusive, of this ACT SHALL, mutatis mutandis, APPLY TO ALL or any COURTS or Court in the territories under such Government other than a High Court; and within one month after such order shall have been made and published in the Official Gazette, such provisions shall extend and apply in manner directed by such order, and any such order may be in like manner from time to time altered and annulled. In and by any such order the Local Government may direct by whom any powers or duties incident to the provisions applied under this Act shall and may be exercised with respect to matters in such other Courts or Court, and may make any orders or regulations which may be deemed requisite for carrying into operation in such Courts or Court the provisions so applied.

11. NO ACCEPTANCE of any Bill of Exchange, whether Inland or Foreign, made after the first day of May 1866 shall be sufficient TO BIND or charge any person, UNLESS the same be IN WRITING on such Bill, or, if there be more than one part of such Bill, on one of the said parts, and signed by the acceptor or some person duly authorised by him.

12. Every Bill of Exchange or Promissory Note drawn or made in any part of British India, and made payable in or drawn upon any person resident in any part of British India, shall be deemed to be an INLAND BILL; but nothing herein contained shall alter or affect the stamp duty, if any, which, but for this enactment, would be payable in respect of any such Bill or Note.

13. PROTEST of a Bill of Exchange, whether Inland or Foreign, when purporting to be made BY a NOTARY Public, shall be primâ facie evidence that the Bill has been dishonoured.

14. In case of any suit founded upon a Bill of Exchange or other negotiable instrument, if it shall be proved to the satisfaction of the Court that the INSTRUMENT is LOST, and if an indemnity be given by the plaintiff, to the satisfaction of the Court, against the claims of any other

Sections 9 and 10 were repealed by Act 9 of 1872.—See Repealing Enactments, page 154.
person upon such instrument, it shall be lawful for the Court to make such decree as it would have made if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

15. Every ASSIGNEE, by endorsement or otherwise OF a POLICY OF marine INSURANCE, or of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred to and vested in him all rights of suit, as if the contract contained in the policy had been made with himself.

SCHEDULE.

NO. OF SUIT.

In the High Court of___________at______________

_________________________Plaintiff.

_________________________Defendant.

To [here enter the defendant’s name, description, and address].

Whereas [here enter the plaintiff’s name, description, and address] has instituted a suit in this Court against you under Act V. of 1866 (to provide a summary procedure on Bill of Exchange, and to amend in certain respects the Commercial Law of British India) for Rs.— principal and interest [or Rs.—balance of principal and interest] due to him as the Payee [or Indorsed] of a Bill of Exchange [or Hoondi or Promissory Note] of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within seven days from the service hereof, inclusive of the day of such service, to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled, at any time after the expiration of such seven days, to obtain a decree for any sum not exceeding the sum of Rs.—[here state the sum claimed] and the sum of Rs.—for costs.

Leave to appear may be obtained on an application to the Court supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

[Here copy the Bill of Exchange, Hoondi, or Promissory Note, and all endorsements upon it.]

Hire of Immoveables.

DEFINITION.

The hiring of things is a contract by which one person engages to give the use of a thing to the other for a limited time in consideration of a certain rent or hire.—Mackenzie’s Roman Law, p. 225.

‘Where there is an instrument by which it appears that one party is to give possession and the other take it, that is a LEASE, unless it can be collected from the instrument itself that it is an agreement only for a lease to be afterwards made.’—Dowding v. Bissell, 3 Saint 67.
A TENANCY-AT-WILL is where the demise is for no certain term, but to continue during the joint will of both parties, and no longer.—Sm. L. & T. 16.

A TENANCY FROM YEAR TO YEAR is where the lease can only be determined on giving reasonable notice.—Sm. L. & T. 24.

It has now been settled that this notice must be given six months before the day of the year on which the tenancy commenced.—Sm. L. & T. 26.

A TENANT BY SUFFERANCE is one who comes in by right and holds over without right.—Coke Ins. I., 57b.

Every right which may be alienated for ever may be let for a term of years.—Sm. L. & T. 74, 77.

With regard to the rights called incorporeal hereditaments, it is said that they cannot be let, but by this all that is meant is that, if they are let, the transaction is called a sale, and in an action for rent thereon the plaintiff was obliged to use the form of plaint laid down for sales.

Offices that concern the public revenue or the administration of justice cannot be let.—5 & 6 Ed. 6 c. 16; and 49 Geo. 3 c. 126.

PARTIES.

EVERY PERSON has a right to grant a lease to the extent of his own interest in the property.—Sm. L. & T. 36.

In some cases however persons have been authorized by law to grant leases exceeding in duration the extent of their own interests.—Sm. L. & T. 37.

An EXECUTOR may make a lease of the property of the deceased.—Sm. L. & T. 59.

A GUARDIAN may make a lease which will be good as long as his own interest lasts, and when that is at an end will be voidable only, not absolutely void.—Sm. L. & T. 59.

A lease made or taken by a MINOR is not binding.—Sm. L. & T. 61, 69.

Some doubt exists as to whether it is void absolutely or only voidable.

A minor may be liable for rent if the house was a necessary of life for him.—Lowe v. Griffith, 1 Scott 458.

A lease made by a WIFE alone, without the concurrence of her husband and not under a power, is void, unless it be made in respect to her sole and separate property.—Sm. L. & T. 61.

HOW MADE.

A lease may be made by deed, by a simple writing, or by verbal agreement.—Sm. L. & T. 76.

All leases, estates, interests of freehold or terms of years, or any
uncertain interest of, in, to, or out of, any messuages, manors, lands, tenements, or hereditaments made or created by livery and seisin only, or by parol and not put in WRITING and signed by the parties so making or creating the same, or their agents therunto lawfully authorised by writing, shall have the force and effect of leases or estates at will only.—29 Car. II. c. 3 section 1.

Section 2 excepts 'all leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord during such term shall amount unto two-thirds, at the least, of the full improved value of the thing demised.'

'A lease required by law to be in writing made after the 1st October 1845 shall be void at law unless made by deed.'—8 & 9 Vic. c. 106 section 3.

The lessee has not an estate in the property, but only an interesse termini until he has taken POSSESSION by virtue of the lease.—Sm. L. & T. 13.

In the absence of an express agreement, the lease is presumed to be from year to year.—Sm. L. & T. 27.

If the landlord receives a rent after the expiration of the tenancy, this is held to create a new tenancy from year to year.—Sm. L. & T. 24.

If a tenant keeps possession after the expiration of his tenancy, he is considered as a tenant by sufferance.—Sm. L. & T. 31.

HOW EXTINGUISHED.

A tenancy may be extinguished—first, by efflux of time; second, by forfeiture; third, by notice to quit; fourth, by surrender. A tenancy is extinguished by EFFLUX OF TIME when by the terms of the lease the occupation is to cease on a certain day. In this case no notice is necessary.—Cobb v. Stokes, 8 East. 358.

A tenancy is extinguished by FORFEITURE when the tenant commits breach of any of the conditions in the lease to which that penalty is attached by the agreement.—Sm. L. & T. 141.

If the landlord accepts rent subsequently to the breach, this is held to be a waiver of the forfeiture.—Goodright v. Davids, Cwp. 803.

The tenant loses his estate by forfeiture if he disclaim and deny his landlord's titles.—Doe d'Graves v. Wells, 10 A. & E. 427.

A surrender is defined by Lord Coke to be 'the yielding up of an estate for life or years to him that hath an immediate estate in the reversion or remainder.'—Inst. 337b.

No surrender is valid unless it is in writing, signed by the party making it, or his agent, or unless made 'by act and operation of law.'—29 Car. II. c. 3.

* Compare the Registration Act, sections 17 and 49.—Mis. Laws, pp. 516 and 525.
A surrender by operation of law may be made by taking a new lease instead of the one surrendered.—Sm. L. & T. 306.

'Anything which amounts to an agreement on the part of the tenant to abandon, and on the part of the landlord to resume, possession of the premises, amounts to a surrender by operation of law.'—Erle, C. J., in Phené v. Popplewell, Sm. L. & T. 314.

A surrender is never allowed to operate injuriously upon the right of third parties, e. g., under-tenants.—Sm. L. & T. 315.

The lease is not extinguished by the DEATH either of the landlord or of the tenant.—Sm. L. & T. 400 et seq.

RIGHTS AND LIABILITIES.

Both the tenant and the landlord may make an ASSIGNMENT of their respective rights over the property.—Sm. L. & T. 380 et seq.

An assignment by the landlord must be made by deed, and notice must be given to the tenant before he can be bound by it.—2 Sm. L. & T. 380.

A tenant has a right to assign his tenure unless there is a condition to the contrary.—Sm. L. & T. 150.

It has been held that this condition is not broken by sub-letting.—Crusoe d'Blencowe v. Bugby, I. Sm. L. C. 43.

An assignment by the tenant must be made by writing in certain cases.—29 Car. II. c. 3—see above.

When the tenant assigns his lease, the landlord may refuse to accept the assignee as his tenant, and continue to hold the original tenant liable for the rent.—Sm. L. & T. 395.

It was formerly held that if the landlord consented to one assignment, a subsequent assignment without his consent was not a breach of the condition.—Dumpor's Case, I. Sm. L. C. 30.

This rule has however been repealed by 22 & 23 Vic. c. 35, and 23 & 24 Vic. c. 38.

By an assignment of the lease all covenants relating to the subject-matter of demise pass to the assignee.'—Sm. L. & T. 384.

Such covenants are technically described as 'covenants running with the land.' Perhaps the rule would be better stated to be that 'an assignment of a lease includes its accessories.'

The following are examples of contracts running with the land.—I. Sm. L. C. 55.

1. To BUILD a new smelting mill for the purpose of working the mines leased.
2. To CULTIVATE in a particular manner.
3. For quiet ENJOYMENT.
4. For FURTHER ASSURANCE.
5. To GRIND at the LANDLORD'S MILL all corn produced on the property.
6. To INSURE against fire.
7. To give the landlord a free PASSAGE to rooms not let.
8. To leave POSSESSION to the lessor.
9. To make a RAILWAY over the land to carry thereon all coal got out of the tenant's colliery.
10. To pay RENT.
11. For RENEWAL.
12. To REPAIR.
13. To RESIDE on the premises.
14. Not to carry on a particular TRADE.

When the determination of the tenancy depends on an uncertain event, the tenant is usually entitled to the CROPS growing on the land when the estate determines.—Sm. L. & T. 342.

The tenant is bound to CULTIVATE according to the general custom of the country where the lands are situated.—Sm. L. & T. 276.

In addition to the ordinary remedy by action, the landlord may recover his rent by DISTRESS. By distress is meant a right to take personal chattels found on the demised premises, for the purpose of obtaining payment of the rent in arrear.—Sm. L. & T. 188.

With regard to FIXTURES, the general rule is that wherever anything is once firmly and permanently annexed to the inheritance, even though by the tenant himself, he cannot remove it again.—2 Sm. L. & T. 359.

Thus tenants are not allowed to remove—

Agricultural Fixtures erected without the landlord's consent.—2 Sm. L. C. 178.

Beast-Houses of brick and mortar tilled and let into the ground.—Elwes v. Mawe, 2 Sm. L. C. 156.

Carpenters' Shops do. do.

Cart-Houses do. do.

Chimney-Pieces.—Poole's Case, 2 Sm. L. C. 165, 179, & 180.

Hearths.—Poole's Case, 2 Sm. L. C. 165.

Shrubs planted by others than nursery-men.—Empson v. Soden, 2 Sm. L. C. 176.

Trees do. do.
There are, however, many exceptions to the foregoing rule.

Thus a tenant is allowed to remove—

_**Agricultural Fixtures**_ erected with the landlord's consent.—14 & 15 Vic. c. 25.

_Barns_ erected on pattens, and blocks of timber lying on, but not let into, the ground.—Gilling v. Tufnell, 2 Sm. L. C. 156, 170.


_Cider-Mills._—2 Sm. L. C. 156.

_Conservatories_ erected by nursery-men for the purpose of their trade.—Penton v. Robart, 2 Sm. L. C. 176.

_Coppers_ fixed by a soap-boiler.—Poole's Case, 2 Sm. L. C. 165.

_Cupboards_ supported by holdfasts.—R. v. St. Dunstan, 4 B. & C. 686.

_Engine-Houses_ merely accessory to the engine and built to cover it.—2 Sm. L. C. 175.

_Fire-Engines_ erected under sheds and not removeable without considerable injury to the freehold.—Lawton v. Lawton, 2 Sm. L. C. 174.

_Furnaces_ fixed with mortar to the freehold.—2 Sm. L. C. 165.

_Granaries_ resting upon straddles which were built into the ground, but to which they were not attached except by their weight.—Wiltshire v. Cottrell, 2 Sm. L. C. 170.


_Greenhouses_ erected by nursery-men.—Penton v. Robart, 2 Sm. L. C. 176.

_Hanging._—Beck v. Robow, 1 P. Wms. 94.

_Iron Backs to Chimneys._—Do.

_Looking Glasses._—Do.

_Machinery_ for manufacturing purposes attached slightly so as to be capable of removal without the least injury to the fabric of the building or to themselves.—Hellowell v. Eastwood, 2 Sm. L. C. 170.


_Pumps_ for domestic use fastened by iron pins which passed completely through the wall.—Grymes v. Boweren, 2 Sm. L. C. 178.

_Salt Pans._—Lawton v. Salmon, 2 Sm. L. C. 166.

_Sheds_ erected for trading purposes on a brick-work foundation.—Fitzherbert v. Shaw, 2 Sm. L. C. 174.

_Shrubs_ planted by nursery-men with a view to sale.—2 Sm. L. C. 176.

_Stoves_ fixed into the chimney by brick-work.—R. v. St. Dunstan, 2 Sm. L. C. 178.

_Tapestries._—Harvey v. Harvey, Str. 1141.

_Trees_ planted by nursery-men with a view to sale.—2 Sm. L. C. 176.

_Varnish Houses_ erected for the purpose of trade.—Penton v. Robart, 2 Sm. L. C. 168.
Vats erected by a soap-boiler for the purpose of his trade.—Poole's Case, 2 Sm. L. C. 174.

Wainscot fixed by screws.—Lawton v. Lawton, 2 Sm. L. C. 178.

On the death either of the lessor, or lessee, their respective rights pass by INHERITANCE to their heirs.—Sm. L. & T. 402.

'Heirs' is here used in the ordinary sense of the term, not in the technical sense of English law. The question whether a particular right is personal property and goes to the heirs, called personal representatives, or real property, and goes to the heirs technically so called, is one of no importance in India.

When no day has been fixed by the lease, the landlord must give reasonable NOTICE to quit, and the tenant must give similar notice of his intention to vacate the premises.—Sm. L. & T. 23.

Reasonable notice has been held to be six months before the end of the current year, in the case of a tenancy from year to year, one month in the case of a monthly tenancy, and one week in the case of a weekly tenancy.—Doe d'Parry v. Hazell, 1 Esp. 94. Doe d'Peacock v. Raffan, 6 Esp. 4.

The lessor is bound to give POSSESSION to the lessee.—Coc v. Clay, 5 Bing. 440.

The contract to demise implies a contract for quiet enjoyment, and that the party assuming to demise has a title to do so.—De Medina v. Norman, 9 M. & W. 820.

If the demise is made verbally, a contract for quiet enjoyment is implied, but not one for good title.—Bandy v. Cartwright, 8 Ex. 913.

If the landlord evict the tenant from the whole or a part of the property, the tenant ceases, during the continuance of the eviction, to be liable for rent. The tenancy is not however thereby extinguished. The tenant is still liable for the other covenants in the lease.—Newton v. Allen, 1 Q. B. 519.

The landlord is bound to indemnify the tenant against eviction or disturbance by his own act or the act of those who claim under or paramount to him.—Sm. L. & T. 286.

If the tenant retains possession after 'demand made and notice in writing given for the delivery of possession,' he is liable for double the yearly value.—4 Geo. II. c. 28 s. 1.

The statute does not apply unless the holding over is willful and contumacious.—Wright v. Smith, 5 Esp. 203.

It does not apply to tenancies other than 'for life, or lives, or years.'—Lloyd v. Rosbee, 2 Camp. 453.

The right to rent as between the parties themselves takes PRIORITY over a debt due on a deed. As against an executor it ranks with such debts, but before debts due on simple contracts.—Thompson v. Thompson, 9 Price 471.
'No action, &c., shall be had, &c., against any person in whose house, &c., any fire shall accidentally begin.'—14 Geo. III. c. 78 s. 86.

As all express agreements have been excepted by the statute, it has been held that when the tenant agrees to repair the premises, and leave them in repair,' he is liable to REBUILD them if they are accidentally burnt down.—Earl of Chesterfield v. Duke of Bolton, Comyn. 267.

The tenant is bound to pay the RENT at the times agreed upon.—Sm. L. & T. 166.

Rent is not payable until the midnight of the day specified in the lease for payment of it.—Cutting v. Derby, 2 W. Bl. 1077.

The amount of rent ought to be certain.—Sm. L. & T. 120.

If however no rent has been fixed, the landlord can recover a reasonable sum by an action for use and occupation.—Sm. L. & T. 184 et seq.

The tenant is liable for the rent he has covenanted to pay, even if the house is destroyed by fire.—Weighall v. Waters, 6 T. R. 488.

The landlord is not liable to REPAIR, except when he has agreed to do so.—Gott v. Gandy, 2 E. & B. 847.

The tenant is liable to repair whether he has expressly agreed to do so or not.—Harnett v. Maitland, 16 M. & W. 257.

The tenant has a right to SUB-LET unless the lease contains a condition to the contrary.—Palmer v. Edwards, 2 Stra. 1221.

The tenant has a right to prosecute or sue any person who commits TRESPASS on the property.—Andrew's Case Cro. Eliz. 214.

The landlord is not liable to indemnify the tenant for a wanton trespass committed by third persons.—Andrew's Case Cro. Eliz. 214.

There is no implied WARRANTY, on the letting of a house or land, that it is fit for the purpose for which it is let.—Hart v. Windsor, 12 M. & W. 68. Sutton v. Temple, 12 M. & W. 52; but see Smith v. Marrable, 11 M. & W. 5.

The tenant is liable for WASTE.—Sm. L. & T. 260.

Tenants are said to be guilty of voluntary waste if they fell timber except for the purpose of their reasonable estovers and botes, if they pull down or damage houses, if they open mines, or if they destroy heirlooms incident to the inheritance.—Sm. L. & T. 260, 264.

'The principle on which waste depends is well stated in the case of Lord Darcy v. Askwith, Hob. 234, thus:—'"It is generally true that the lessee hath no power to change the nature of the thing demise'd; he cannot turn meadow into arable, nor stub a wood to make it pasture, nor dry up an ancient pool or piscary, nor suffer ground to be surrounded,
nor destroy the pale of a park; nor he may not destroy the stock or
breed of any thing, because it disherits and takes away the perpetuity of
succession, as villains, fish, deer, young spring of woods, or the like."...
On the other hand, those acts are not waste which, as Richardson,
C. J., in Barrett v. Barrett, Hetley, 35, says, are not prejudicial to the
inheritance; as, in that case, the cutting of sallows, maples, beeches,
and thorns, there alleged to be of the age of thirty-three years, but
which were not timber either by general law or particular local custom.
So, likewise, cutting even oaks or ashes, where they are of seasonable
wood, i.e., where they are cut usually as underwood, and in due course are
to grow up again from the stumps, is not waste."—Sm. L. & T. 264.

The tenant of a furnished house is not liable for ordinary WEAR AND
TEAR in the reasonable use of the property of the landlord.—Ad. Cont. 377.

Hire of Services.

DEFINITION.

The hiring of work is a contract by which one of the parties engages
to do something for another for a certain hire.—Mackenzie's Roman Law,
p. 225.

PARTIES.

The contract of hiring of services may be made between any persons
who are competent to contract.

HOW MADE.

The contract of hiring of services may be made verbally or in writing,
by express words or by implication.

Where no time is limited expressly or by implication, the hiring is
Emmens, 4 C. B. 479.

HOW EXTINGUISHED.

The contract of service is put an end to by the death of the master
or servant.—Farrow v. Wilson, 38 L. J. C. P. 326.

When the hiring is a yearly one it cannot in general be put an end
to by either party until the end of the year.—Smith's Master and Ser-
vant, 51.

The contract with domestic and menial servants may be determined
at any time by giving a month's warning or paying a month's wages.—

RIGHTS AND LIABILITIES.

The master has a right to damages against a third person for loss of

The master is not bound to give a CHARACTER to the servant.—Carrol v. Bird, 3 Esp. 204.

The master is liable if he give a false character maliciously.—Gardner v. Slade, 13 Q. B. 801.

If the master DISCHARGE his servant without cause, he is liable for full wages up to the end of the period for which he was engaged.—Bracegirdle v. Heald, 1 B. & Ald. 721.

If he take another situation before the period expires, he is entitled only to wages up till the date of entering on the new service.—Hochester v. De la Tour, 2 E. & B. 678.

A servant may be dismissed for the following causes:—

CONDUCT calculated seriously to injure his master’s business, or of a grossly immoral character.

DISHONESTY.

DISOBEEDIENCE of a wilful nature to his master’s lawful orders.

DRUNKENNESS.

ILLNESS such as permanently disables him.

INCOMPETENCE.

NEGLIGENCE of a habitual character.—Smith’s Master and Servant, 76 et seq.

If the servant quit his master’s service or is rightfully dismissed for misconduct during the term, he is not entitled to any wages even for the time he has already served.—Smith’s Master and Servant, 51.

A third person who deprives the master of the servant’s labour by ENTICING the SERVANT AWAY before the end of the hiring, is liable to the master for the damage sustained thereby.

The servant is liable for any injury to the PROPERTY OF his MASTER entrusted to him, if it was caused by his gross negligence.—Cro. Eliz. 777, 784.

The master has a right to damages for loss of service caused by a third party SEDUCING his FEMALE SERVANT.—Forbes v. Wilson, Peake 55.

A servant is liable for any WRONG committed by him, even if done in obedience to his master’s orders.—Smith’s Master and Servant, 134.

The servant has a right to recover damages from the master for a wrong which the servant committed in obedience to his master’s orders and which the servant believed at the time to be lawful.—Smith’s Master and Servant, 134.
The master is liable for any wrong caused by the negligence of his servant, if at the time the servant was acting in the execution of his master's orders and within the scope of his employment as a servant.—Joel v. Morrison, 6 C. & P. 501.

The servant is also liable to his master for any damages the master may be compelled to pay a third party for injuries caused by the servant's negligence or misconduct.—4 T. R. 589.

**Gifts.**

**DEFINITION.**

A gift is a voluntary conveyance without consideration.—Wharton's Law Lexicon.

A "donatio mortis causa" is a gift which is not to take effect until the death of the donor or of a third party.—Just. Inst. II. 7.

A grant is a conveyance in writing of incorporeal hereditaments not lying in livery and which cannot pass without a deed.—Co. Litt. 172.

By 8 and 9 Vic. c. 106, after the 1st October 1845 all corporeal tenements shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as in livery.

**PARTIES.**

Generally speaking, all persons capable of contracting are empowered to make a gift, but see below under 'undue influence'.

A gift by a client to COUNSEL, expressed to be in consideration of the services of counsel, is invalid.—Brown v. Kennedy, 2 Wh. & Tu. L. C. 536.

A SOLICITOR can take nothing from his client beyond his regular fees until the connection is bona fide dissolved.—2 Wh. & Tu. L. C. 535.

An attorney may take a gift under a will, although he himself has prepared it, if it was not made under a mistake or misapprehension caused by the attorney.—Hindson v. Weatherill, 2 Wh. & Tu. L. C. 536.

An attorney cannot take from his client a security for future costs.—Jones v. Tripp, 2 Wh. & Tu. L. C. 537.

When there is no cause pending, and it is proved that no undue influence was exercised by the attorney, a gift to him will be valid.—Oldham v. Hand, 2 Wh. & Tu. L. C. 538.

**HOW MADE.**

In a verbal gift of chattels the property does not pass to the donee without delivery.—Irons v. Smallpiece, I. Sm. L. C. 148.

* For the law on this subject, see Civil Code, chapter V., p. 45, ante.
This is the case even where the intended donee is in possession at the time of the gift.—Shower v. Pilck, I. Sm. L. C. 148.

A grant is made by delivery of the deed.

**RIGHTS AND LIABILITIES.**

A person who receives a gift takes it subject to the **CONDITIONS** imposed by the donor.—Seale v. Hayne, 1 Wh. & Tu. L. C. 262.

Debts take priority over a *donatio mortis causa* in a deficiency of assets.—Ward v. Turner, 1 Wh. & Tu. L. C. 816.

A gift is void as to those who were creditors of the donor at the time of its being made, but valid as to subsequent creditors.—3 Hen. 4 c. 4, and 13 Eliz. c. 5.

A donor may RESCIND a gift (voluntary settlement) of real estate made by him by selling the estate to another person for a valuable consideration even with notice of the settlement, and although it is a fair provision for wife and children, unless the settlement be in favour of a charity.—Pulvertoft v. Pulvertoft, I. Wh. & Tu. L. C. 259. 27 Eliz. c. 4.

This rule does not apply to chattels personal.—Sloane v. Cadogan, I. Wh. & Tu. L. C. 260.


A gift obtained by **UNDUE INFLUENCE** will be set aside.—Huquerien v. Baseley, 2 Wh. & Tu. L. C. 504.

'Wherever one person obtains by voluntary donation a large pecuniary benefit from another, the burden of proving that the transaction is righteous falls on the person taking the benefit. But this proof is given if it be shown that the donor knew and understood what it was that he was doing.'—Sir John Romilly in Hoghton v. Hoghton, 15 Beav. 299.

'In many cases the Court, from the relations existing between the parties to the transaction, infers the probability of undue influence having been exerted. And in such cases the Court watches the whole transaction with great jealousy, not merely for the purpose of ascertaining that the person likely to be so influenced fully understood the act he was performing, but also for the purpose of ascertaining that his consent to perform that act was not obtained by reason of the influence possessed by the person receiving the benefit.'—Sir John Romilly in Hoghton v. Hoghton, 15 Beav. 299.

This rule has been applied—

Where a gift was made by a child to a parent, especially where the child had just come of age.—2 Wh. & Tu. L. C. 581.

Where a father had advanced money to his son in infancy, and on his coming of age—

* See also *ante* Contract Act, Section 16.
age took from him a bond to a greater amount than the sums advanced and which the son appeared to be totally unable to pay.—Carpenter v. Harriot, 2 Wh. & Tu. L. C. 531.

Where a niece, two months after she came of age, entered into a voluntary security for her uncle by whom she had been brought up.—Archer v. Hudson, 2 Wh. & Tu. L. C. 531.

Where the Duke of Hamilton entered into marriage articles, by one of which he agreed to release his intended wife's mother, who was her guardian, of all accounts of the mean profit of the estate.—Duke of Hamilton v. Lord Mohun, 2 Wm. & Tu. 535.

Where a younger sister made a settlement of all her property principally in favour of her elder sister, who had obtained great ascendancy over her.—Harvey v. Mount, 2 Wh. & Tu. 540.

Where a gift was obtained by a medical attendant from his patient.—Dent v. Bennett, 2 Wh. & Tu. L. C. 589.

Where an uncle was trustee and acted as guardian to his nephew, and upon coming to an account and delivering up the estate to the nephew, who was then about 22, took from him a gift of an annuity of £60.—Hylton v. Hylton, 2 Ves. 547.

Where the transaction is reasonable and entered into with good faith, the Court will not interfere to set it aside.

Thus—Where a son in plentiful circumstances gave his father a bond to pay him an annuity of £120 for his life, this appearing to have been the free act of the son and what he thought himself obliged in honor to do.—Blackburn v. Edgeley, 2 Wh. & Tu. L. C. 532.

Where the influence, as well as the legal authority, of the guardian over the ward has completely ceased, and the ward has been put in possession of his property after a full and fair settlement of accounts, the Court will not interfere to set aside a reasonable gift to the guardian.—Hatch v. Hatch, 2 Wh. & Tu. L. C. 535.

' Whoever receives the gift must take it tainted and infected with the undue influence and imposition of the person procuring the gift; his partitioning and cantoning it out amongst his relations and friends will not purify the gift and protect it against the person imposed upon.'—Chief Justice Wilmot in Bridham v. Green, 2 Wh. & Tu. L. C. 544.

This rule, however, appears not to apply to a bonâ fide purchaser without notice.—Blackie v. Clark, 2 Wh. & Tu. L. C. 546.

Loans.

Act No. XXXII. of 1839.

An Act concerning the allowance of Interest in certain cases.

1. Whereas it is expedient to extend to the Territories under the Government of the [East India Company], as well within the jurisdiction of Her Majesty's Courts as elsewhere, the provisions of the Statute 3rd and 4th William IV. Cap. 42, Section 28, concerning the allowance of Interest in certain cases:

It is therefore hereby enacted that upon all debts or sums certain payable at a certain time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the
creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment: provided that interest shall be payable in all cases in which it is now payable by law.

**Act No. XXVIII. of 1855.**

**An Act for the repeal of the Usury Laws.**

Whereas it is expedient to repeal the laws now in force relating to Usury: It is enacted as follows:

2. In any suit in which INTEREST is recoverable, the amount shall be adjudged or decreed by the Court AT the RATE (if any) AGREED UPON by the parties; and if no rate shall have been agreed upon, at such rate as the Court shall deem reasonable.

3. Whenever a Court shall direct that a JUDGMENT or decree shall bear interest, or shall award interest upon a judgment or decree, it may order the interest to be calculated at the rate allowed in the judgment or decree upon the principal sum adjudged, or at such other rate as the Court shall think fit.

4. A MORTGAGE or other contract for the loan of money, by which it is agreed that the use or USUFRUCT of any property shall be allowed in lieu of interest, shall be binding upon the parties.

5. Whenever, under the Regulations of the BENGAL Code, a deposit may be made of the principal sum, and interest due upon any mortgage on conditional sale of land hereafter to be deposited shall be at the rate stipulated in the contract, or, if no rate has been stipulated and interest be payable under the terms of the contract, at the rate of twelve per centum per annum. Provided that, in the latter case, the amount deposited shall be subject to the decision of the Court as to the rate at which interest shall be calculated.

6. In any case in which an adjustment of accounts may become necessary between the lender and the borrower of money upon any mortgage, conditional sale of landed property, or other CONTRACT whatsoever, which may be entered into AFTER the passing of THIS Act, INTEREST shall be calculated AT the RATE STIPULATED therein; OR if no rate of interest shall have been stipulated and interest be payable under the terms of the contract, at SUCH RATES AS the Court shall deem REASONABLE.

For Section 1 see Repealing Enactments, pages 31 and 74.

Section 3 see section 10 Act 23 of 1861, Civil Procedure Code, page 10.

Sections 1, 7, and 8 and the Schedule were repealed by Act 14 of 1870.—See Repealing Enactments, page 74.
Mortgage.

DEFINITION.

A mortgage is where a man borrows from another a specific sum (e. g. £200), and grants him an estate on condition that if the mortgagor repay the sum with interest on a certain day mentioned in the deed he may re-enter on the estate.—(1 Steph. 314.)

Whatever property is capable of an absolute sale may be the subject of a mortgage.—(2 St. 207.)

PARTIES.

Generally speaking, whoever is capable of contracting is able to make a valid mortgage.—See Contract Act, section 10 et seq. ante.

HOW MADE.

'No action shall be brought upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in WRITING and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised.'—29 Car. II. c. 3 s. 4.

Notwithstanding this statute it has been held that a mere DEPOSIT OF TITLE-DEEDS by a debtor, for the purpose of securing a sum of money, creates a mortgage.—Russel v. Russel, 1 Wh. & Tu. L. C. 603.

RIGHTS AND LIABILITIES.

The mortgagee is liable for any DAMAGE done to the property while he was in possession.

Thus he has been held liable—

(a) for pulling down buildings improperly.—Sanden v. Hooper, 6 Beav. 246.

(b) for losing the title-deeds.—Brown v. Sewel, 11 Hare 49.

The mortgagee has a right to EXPENSES necessarily incurred by him on account of the property.

Thus he has been allowed for—

(a) Repairs necessary for the preservation of the property.—Sendon v. Hooper, 6 Beav. 246.

(b) Expenses necessarily incurred to protect the title of the mortgagor.—Parker v. Watkins, Johns 183.

(c) The cost of insuring the property against fire.—23 & 24 Vic. c. 145.
(d) Money laid out in increasing the value of the property with the consent of the mortgagor.—Lord Trimlestone v. Hamill, 1 Ball and B. 386.

But not for—

(a) Money laid out in improvements to increase the value of the property.—Sanderson v. Hooper, 6 Beav. 248.

(b) Or for opening mines.—Millett v. Davy, 81 Beav. 470.

By FORECLOSURE is meant the absolute transfer of the estate to the mortgagee. The usual decree is that an account be taken of the profits of the estate taken by the mortgagee and of the principal, interest, and costs, and that payment be made within six months, otherwise the right to redeem will be foreclosed.—2 Wh. & Tu. 961.

If the mortgagor fail to pay within the six months, the Court will in certain cases extend the time.—Thornhill v. Manning, 1 Sim. N. S. 451.

The time will only be extended when sufficient cause is shown and when the security is ample.—Nanny v. Edwards, 4 Russ. 125. Eyre v. Hanson, 2 Beav. 479. See 2 Wh. & Tu. 963, 964, 965.

The mortgagee in a foreclosure suit must offer to redeem prior burdens.—Inman v. Wearing, 3 De G. & Sm. 729.

A mortgagee who has transferred his debt, reserving the security to himself, has a right to the usual foreclosure decree.—Morley v. Morley, 25 Beav. 253.

If the mortgagee has so dealt with the estate as not to be able to restore it on full payment, an injunction will be given to prevent him suing for the money.—Palmer v. Hendrie, 27 Beav. 349.

The mortgagee has a right either to sue the defendant personally for the debt, or to sue for a foreclosure or for a sale of the property.—Palmer v. Hendrie, 27 Beav. 351.

* If a third mortgagee buy in a first mortgage, both the first mortgagee and the third take PRIORITY over the second, provided the third mortgagee had no notice of the second at the time of making his mortgage.—Marsh v. Lee, 1 Wh. & Tu. 550.

This is the case even though the second mortgagee afterwards give notice of his claim.—Peacock v. Burt, 4 L. I. ch. 33.

The purchase may be made at any time before a decree is drawn up settling the priorities.—Earl of Bristol v. Hungerford, 2 Vern. 524.

A first mortgagee may also on the same conditions buy in the third.—Bates v. Johnson, Johns 315.

If the first mortgagee buy for another person, the third mortgagee does not take priority over the second.—Monett v. Paske, 2 Atk. 52.

Although the first mortgage was made to secure a sum and further

* This is called 'tacking.'
advances, any further advances with notice of an intermediate mortgage do not take priority over it.—Shaw v. Neale, 20 Beav. 157.

But this was doubted in Blunden v. Desart, 2 Dru. & W. 405.

The mortgagor is not liable for the PROFITS while he is in possession.—Colman v. Duke of St. Albans, 3 Ves. 25.

The mortgagee is liable for the profits from the time he takes possession.—Smart v. Hunt, 1 Vern. 418.

He is liable for rents even which he has not received, if it was through his own wilful default that they were not received.—Hughes v. Williams, 2 Wh. & Tu. 975.

When the profits exceed the interest, annual rests are sometimes ordered, so that the excess may be applied to the payment of the principal.—Shepherd v. Elliott, 4 Madd. 254.

Thus annual rests have been directed—

When no interest was due at the time the mortgagee takes possession.—Gould v. Tancred, 2 Atk. 583.

When the mortgagee got possession under a contract to purchase, which was not carried out.—Patch v. Wild, 30 Beav. 99.

They have not been allowed—

When there were no arrears of interest at the date of assuming possession.—Wilson v. Cleave, 3 Beav. 140.

When there was no reasonable certainty that the ground-rent and insurance would be duly paid, the houses kept in repair, and the property secured against forfeiture.—Patch v. Wild, 30 Beav. 100.

A mortgagor cannot, by any contract entered into with the mortgagee at the time of the mortgage, give up his right of REDEMPTION.—Howard v. Harris, 2 Wh. & Tu. L. C. 947.

'If the parties however intended an absolute sale, a contemporaneous agreement for a re-purchase not acted upon will not of itself entitle the vendors to redeem.'—Lord Cottenham in Williams v. Owen, 5 My. & Cr. 303.

'This Court will treat a transaction as a mortgage, although it was made to bear the appearance of a sale, if it appears that the parties intended it to be a mortgage.—Ibid.

'A man shall not have interest for his money and a collateral advantage besides for the loan of it, or clog the redemption with any by-agreement.'—Master of the Rolls in Jennings v. Ward, 2 Vern. 520.

On this principle the following stipulations in mortgages have been held invalid:—

That interest unpaid at the end of the year shall be converted into principal.—Chambers v. Goldwin, 9 Ves. 271.

That the mortgagees shall receive a commission for personally collecting the rents or as auctioneer.—Langstaffe v. Fenwick, 10 Ves. 405. Broad v. Selfe, 11. W. R. (M. R.) 1086.
That the mortgage shall not be redeemable after the death of the mortgagor
(provided the mortgage is in the nature of a family settlement).—Bonham v. New-
comb, 1 Vern. 214, 232.

That the mortgagor will not redeem.—E. I. Co. v. Atkyns, Com. Rep. 349.

That the mortgage shall not be redeemable after the death of the mortgagor.—
Kilvington v. Gardiner, 2 Wh. & Tu. L. C. 932.

That if the mortgagor fail to redeem, the property shall belong to the mortgagee

That the mortgagee should be allowed to buy if he liked ground rents worth
£16,000 at 20 years' purchase.—Jennings v. Ward, 2 Vern. 520.

That the mortgagee of an advowson (right to appoint a clergyman) shall make
the appointment.—Jory v. Cox, Prec. Ch. 71.

That the mortgagee shall receive increased interest if default be made in the
regular payment of the interest reserved in the deed.

The following stipulation has however been held to be valid:—

That the mortgagee shall have the option of pre-emption in case the mortgagor
determine to sell.—Orby v. Trigg, 2 Eq. Ca. Ab. 599.

All persons having an interest in the estate have a right to redeem.—
2 Story 1023.

Thus the following persons have been held to have such a right:—

A tenant for life, a tenant by the courtesy, a jointress, a tenant in dower
in some cases, a reversioner, a remainder-man, a judgment-creditor, a
tenant by elegit, the lord of a manor holding by escheat, a jointress, the
Crown upon forfeiture of the right to redeem a tenant, a subsequent mort-
gagee, an assignee, and an assignee in bankruptcy.

A creditor annuitant or legatee of the mortgagor who has no interest
in the estate, however, has no right to redeem.—2 Story 1023, 2 Wh.
& Tu. 967.

No person has a right to redeem before the time fixed in the mortgag-
deed.—Brown v. Cole, 14 Sim. 427.

The mortgagee may purchase the right to redeem.—Davis v. Thomas,
1 Russ. & My. 506.

Except in special cases, the mortgagee has no right to a decree for the
SALE of the mortgaged property.—2 St. 1026.

A sale has been decreed in the following cases:—

Where the estate is worth less than the debt.—Dashwood v. Bithazey, Mosel.
R. 196.

Where the mortgagor was dead and there was a deficiency of personal assets.—

Where the mortgage was of a dry reversion.—How v. Vigures, 1 Ch. Rep. 32.

Where the mortgagor became bankrupt and the mortgagee sued for a sale.

Or where the mortgagor was dead and the mortgagee sued for a sale on the
ground that the estate was scanty security.—King v. Smith, 2 Hare R. 239.
Where the method of creating the mortgage had been by depositing the titledeeds.—Payne v. Smith, 2 Mylns & Kean 417.

In Ireland and America a sale, instead of a foreclosure, has always been directed.—Hutton v. Payne, 3 I. & L. 586. 2 St. 1025.

A mortgagee has a right to TRANSFER the mortgage.—Mathews v. Wallwyn, 4 Ves. 118.

If the mortgagee transfer the mortgage without the assent of the mortgagor, he is liable for the profits both before and after the transfer, e. g., if the purchaser becomes insolvent.—2 Wh. & Tu. 959.

The purchaser of a mortgage has a right to the full amount due on it, whatever price he may have paid.—Phillips v. Vaughan, 1 Vern. 336.

He has a right only to the price he paid, as against a subsequent mortgagee.—Williams v. Springfield, 1 Vern. 476.

If the purchaser, however, is a prior mortgagee and has no notice of an intervening mortgage, he has a right to the full amount due even against subsequent mortgagees.—Morret v. Paske, 2 Atk. 54. Long v. Clopton, 1 Vern. 464.

If the purchaser of a mortgage is a trustee, agent, or guardian of the mortgagor, he has a right to the price only, against subsequent mortgagees.—Morret v. Paske, 2 Atk. 54.

If the purchaser of a mortgagee is heir-at-law of the mortgagor, he has a right to the price only, as against a purchaser or creditors, even without notice of their debts.—Long v. Clopton, 1 Vern. 464. Lancaster v. Evora, 10 Beav. 164.

If however the heir-at-law purchases to protect a mortgage of his own, he has a right to the full sum due.—Darcy v. Hall, 1 Vern. 49.

The purchaser, by an ordinary assignment of a mortgage, does not acquire a right to arrears of rent.—Salmon v. Dean, 3 Mac. & G. 344.

Sales of Immoveables.

DEFINITION.

Sale is a contract by which one person becomes bound to deliver a subject to another with the view of transferring the property in consideration of a money price.—Mackenzie's Roman Law, p. 219.

PARTIES.

For the law relating to purchases by FOREIGNERS, see 33 Vic. c. 14 s. 2.—Miscellaneous Laws of India, p. 256.

Generally speaking, deeds executed by MARRIED WOMEN for the purpose of conveying away their estates are void.—Co. Litt. 3.
A married woman has however a right to sell her separate property.—Hulme v. Tennant, Wh. & Tu. L. C. 435.

A MINOR may purchase, but he may cancel it when he is of full age. —Co. Litt. 2b.

A minor may also sell, but except in the case of settlements, he may either affirm or avoid the deed.—Co. Litt. 51b.

HOW SALES ARE MADE.

Sales of immoveables in England are generally made by public AUCTION.

Every bidding is nothing more than an offer on the one side which is not binding on the other side until it is assented to.—Warlow v. Harrison, 28 L. J. Q. B. 18.

A bidding may be retracted at any time before an acceptance of the bidding by the auctioneer signified by the fall of his hammer.—Payne v. Cave, 3 T. R. 148.

The retraction must be loud enough for the auctioneer to hear.—Jones v. Nanney, 13 Price 76.

The 'particulars and conditions of sale' must specify whether the property is to be sold without reserve.—30 & 31 Vic. c. 48 s. 5.

When property is advertised to be sold without reserve, the sale will be void as regards the purchaser if any person be employed as a puffer and actually bid at the auction.—R. v. Marsh, 3 You. & Jer. 331.

If the property is to be sold subject to a reserve, the seller may bid himself or employ one person only to bid for him.—30 & 31 Vic. c. 48 s. 6.

In sales by auction the provisions of the Statute of Frauds must be complied with just as in other sales.

Sales of land are generally effected by two documents—first, an agreement or CONTRACT to sell; and secondly, a CONVEYANCE or actual transfer by sale.

'No action shall be brought whereby to charge any person upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in WRITING, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised.'—Statute of Frauds, Section 4.

RIGHTS AND LIABILITIES.

The seller is bound to give DELIVERY of the property at the time agreed upon.—Berry v. Young, 2 Esp. 640n.

Possession is usually given by means of a deed of conveyance.
If the seller fail to give possession as agreed upon, the purchaser may either sue him for damages or for specific performance of the contract.

There are however several cases in which the purchaser has no right to get specific performance.

Thus specific performance has been refused—

'Where the purchaser lay by with a view to see whether the contract will prove a gaining or losing bargain, and, according to the event, either to abandon it or, considering time as nothing, to claim a specific performance.—Lord Erskine in Alley v. Deschamps, 2 Wh. & Tu. L. C. 483.

Where the contract was inequitable.—Whorwood v. Simpson, 2 Wh. & Tu. L. C. 483.

Where delay occurred because the purchaser was in reality unable to pay the price. —Gee v. Pearse, 2 Wh. & Tu. 488.

Where the purchaser made trifling and vexatious objections to the title, and showed a disinclination to perform the contract, especially when the value of the property had increased.—Hayes v. Cary, 2 Wh. & Tu. L. C. 485.

Where the purchaser had not shown himself 'ready, desirous, prompt, and eager.' —Milward v. Earl of Thanet, 2 Wh. & Tu. L. C. 482.

In all cases where the Court decrees specific performance, notwithstanding the time for completing the contract has elapsed, the parties are entitled to compensation for the delay.—2 Wh. & Tu. L. C. 487.

Where the seller has contracted to sell a larger interest in the estate than he has to give, the purchaser may, if he chooses, compel the seller to give him that interest and an abatement in the price for the deficiency.—Martlock v. Buller, 2 Wh. & Tu. 499.

This rule has been applied—

Where the vendor had as to 24 acres of the estate only a life-interest and agreed to sell the whole as absolutely his own.—Dale v. Lester, 2 Wh. & Tu. 499.

Where the land sold was subject to a right to dig for mines.—Seaman v. Vandery, 2 Wh. & Tu. 500.

Where there was less land than was agreed to be sold. In such cases the ordinary mode of settling it is to ascertain the quantity and take it rateably.—Bill v. Buckley, 2 Wh. & Tu. L. C. 501.

It has been held that the buyer was not entitled to specific performance and an abatement—

Where the seller had only nine-sixteenths of an estate and agreed to sell the whole, a third person having a lien on the estate for a debt which would nearly exhaust the whole purchase-money.—Whateley v. Slade, 2 Wh. & Tu. L. C. 499.

When the purchaser knew at the time of the contract of the limited interest of the seller.—Lawrenson v. Butler, 2 Wh. & Tu. 500.

Where the land was represented by mistake to measure 21,750 acres, but in fact contained only 11,814 acres.—Bill v. Buckley, 2 Wh. & Tu. L. C. 501.

The EXPENSE OF preparing the CONVEYANCE must be borne by the purchaser if there is no express stipulation to the contrary.—2 Ves. Jun. 155.
If the vendor, after he has contracted to sell, makes IMPROVEMENTS, he has no right to recover their value from the purchaser.—2 Wh. & Tu. L. C. 489.

Where any deficiency in certain events arises as to the extent or duration of an interest in an estate contracted to be sold, not admitting of compensation, the purchaser cannot be compelled to take, nor can the seller be compelled to give, an INDEMNITY.—Balamanno v. Lumley, 2 Wh. & Tu. L. C. 502.

The liability under an agreement to sell descends by INHERITANCE to the heirs of the seller.—Gill v. Vermuden, 2 Freem. 199.

The purchaser is liable for INTEREST on the purchase-money from the time fixed for completing the purchase.—Sir J. Lowther v. Countess of Andover, 2 Wh. & Tu. L. C. 487.

If delay in taking possession is caused by the fault of the vendor, the purchaser is not liable for interest.—Vickers v. Hand, 2 Wh. & Tu. 489.

The seller has a LIEN on the property FOR the satisfaction of unpaid PURCHASE-MONEY.—Mackreth v. Symmons, 1 Wh. & Tu. L. C. 278.

The seller's lien is not 'a charge by way of mortgage' within the meaning of 17 & 18 Vic. c. 113. The personal estate will therefore be primarily liable for its payment.—Hood v. Hood, 1 Wh. & Tu. L. C. 300.

With regard to the costs of an administration suit, the lien must be regarded as an ordinary mortgage.—Barnewell v. Iremonger, 1 Wh. & Tu. L. C. 300.

'The lien exists unless an intention, and a manifest intention, that it shall not exist appears.'—Lord Eldon in Mackreth v. Symmons, 1 Wh. & Tu. L. C. 272.

'It depends on the circumstances of each case whether the Court is to infer that the lien was intended to be reserved, or that credit was given, and exclusively given, to the person from whom the security was taken.'—Lord Eldon in Mackreth v. Symmons, 1 Wh. & Tu. L. C. 279.

(a) In the following cases it has been held that there was no lien:

Where for the purchase-money a bond was given and acknowledged in the following terms—"Received from J. P. a bond for the sum of £2,000, being the full consideration within expressed to be given by him; this receipt being endorsed on the indenture of release.—Parrott v. Sweetland, 1 Wh. & Tu. L. C. 288.

Where the seller took as a special security a long annuity of £100 a year by way of pledge.—Nairn v. Prowse, 1 Wh. & Tu. L. C. 291.

Where it was stipulated that the purchase-money should be paid within two years after a re-sale ex-parte.—Parkes, 1 Wh. & Tu. 291.

Where the purchase-money was an annuity for which a deed had been given and the conveyance was made expressly in consideration of that deed.—Buckland v. Pocknell, 1 Wh. & Tu. L. C. 288.
A lien was allowed in the following cases:

Where a bond bill of exchange or promissory note was given as security for the purchase-money. — 1 Wh. & Tu. L. C. 284.

Where the consideration was an annuity and a bond was given to secure it. — Tardif v. Scruphan, 1 Wh. & Tu. L. C. 296. But see the other cases there cited.

In those general cases in which there would be the lien as between seller and buyer, the seller will have the lien against a third person who had notice that the money was not paid. — Lord Eldon in Mackreth v. Symmons, 1 Wh. & Tu. L. C. 279.

Thus it has been held that there was no lien against a subsequent purchaser

Where, although in the recital the title is deduced from the first seller, it does not show that the estate was not paid for. — Cator v. Earl of Pembroke, 1 Wh. & Tu. L. C. 296.

Where the seller is in possession of the estate as lessee, but has acknowledged receipt of the purchase-money in the body of the deed and by endorsement. — White v. Wakefield, 1 Wh. & Tu. 296.

A lien has been allowed against a subsequent purchaser

Where the seller retained the conveyance and title deeds. — Worthington v. Morgan, 1 Wh. & Tu. 296.

The seller's lien is assignable even by parol. — Dryden v. Frost, 1 Wh. & Tu. 293.

If the purchase-money, or part of it, has been paid prematurely, before a conveyance, the purchaser will have a lien on the estate in the hands of the seller. — Wythes v. Lee, 1 Wh. & Tu. L. C. 293.

Where under the contract of sale one person is entitled to the conveyance and another takes it, the latter has a lien for the purchase-money which he may pay. — Nesson v. Clarkson, 1 Wh. & Tu. L. C. 295.

He has this lien not only against the seller but against a subsequent mortgagee, who had notice of the payments having been made. — Watson v. Rose, 1 Wh. & Tu. L. C. 295.

A purchaser with NOTICE of a right in another is liable to the same extent, and in the same manner, as the person from whom he made the purchase. — 2 Wh. & Tu. L. C. 39.

Thus the purchaser is liable

Where he has notice of an unregistered conveyance, the purchaser's own conveyance being registered. — Le Neve v. Le Neve, 2 Wh. & Tu. L. C. 28 et seq.

Where he has notice of a lien for unpaid purchase-money. — Mackreth v. Symmons, 2 Wh. & Tu. L. C. 40.

Where he had notice of a trust. — 2 Wh. & Tu. L. C. 40.

A purchaser without notice from a person who bought with notice is not bound by the right. — Harrison v. Forth, 2 Wh. & Tu. L. C. 42.

A purchaser from a person who bought without notice is not bound
by the right, even though he had notice of it.—Lowther v. Carlton, 2 Wh. & Tu. L. C. 42.

Actual notice to be binding must proceed from some person interested in the property.—Barnhart v. Greenshields, 2 Wh. & Tu. L. C. 43.

Mere vague reports from strangers, or mere general assertions that some other persons claim a title, are not sufficient.—Wildgoose v. Wayland, 2 Wh. & Tu. L. C. 43.

Whatever is sufficient to put any person of ordinary prudence on inquiry is constructive notice of everything to which that inquiry might have led.—Ogilvie v. Jefferson, 2 Gil. 353, 378.

Thus where an estate was in the possession of another than the seller, this was held sufficient notice to make all the rights of the possessor binding on the purchaser. —Taylor v. Stibbon, 2 Wh. & Tu. L. C. 47.

So where the title-deeds are in another person's possession.—2 Wh. & Tu. L. C. 44 & 45.

For other illustrations of the doctrine, see White and Tudor's Leading Cases, p. 49 to 65.

Registration does not of itself, under the English Act, amount to notice.—Morecock v. Dickens, 2 Wh. & Tu. L. C. 41.

A purchaser for valuable consideration is not bound by a voluntary settlement, even though he had notice of it.—Buckle v. Mitchell, 2 Wh. & Tu. L. C. 43.

The OWNERSHIP in the estate belongs to the purchaser from the time agreed upon for completing the contract.—Paine v. Miller, 6 Ves. 349.

Hence—

The buyer is entitled to any PROFIT that may accrue to the estate between the time agreed upon for completing the contract and the execution of the conveyance.—Mortimer v. Capper, 1 B. C. C. 196.

He is also liable for any LOSS that may happen to the estate between the time agreed upon for completing the agreement and the execution of the conveyance.—Paine v. Miller, 6 Ves. 349.

The purchaser is bound to pay the PRICE of the property at the time and place agreed upon. If he fail to do so, the seller may sue for specific performance.

The seller is sometimes entitled to sue for specific performance even when he has not strictly performed his own part of the contract.

Thus he has been allowed to do so—

Where the failure is not substantial, as, for instance, if the contract is for the sale of a lease for 99 years and the vendor has only 98 years.—2 Wh. & Tu. 498.

Where the plaintiff was unable to perform the contract in time, from the incomplete state of his own title, if he got a good title at the time of the decree in a suit by
him for specific performance, provided time was not material, i.e., the essence of the contract.—Longford v. Pitt, 2 Wh. & Tu. L. C. 494.

Where the sale included a right to possession on a particular date, and possession could not be given by the vendor for some months on account of a lease that was unexpired.—Hall v. Smith, 2 Wh. & Tu. L. C. 488.

Where, after the period at which the contract ought to have been completed, some time elapsed before the completion of the repairs of a house described as being in good repair.—Dyer v. Hargrave, 2 Wh. & Tu. L. C. 483.

Where the time has elapsed but the vendor has endeavoured to make out his title and has not been guilty of gross laches or negligence.—Fordyce v. Ford, 2 Wh. & Tu. L. C. 483.

Where the vendor delivered the abstract after the day appointed, and the purchaser make no objection to the delay.—Smith v. Burnam, 2 Wh. & Tu. L. C. 482.

Where he has not made a tender of the abstract at the time fixed, provided the purchaser has not asked for it.—Guest v. Homfrey, 2 Wh. & Tu. L. C. 482.

Where in the sale of quit rents an immaterial mistake was made in their amount.—2 Wh. & Tu. L. C. 496.

Specific performance has been refused—

Where the seller had taken no steps whatever to complete the contract, and the purchaser had immediately, when the time elapsed, insisted upon his deposit and refused to perform his agreement.—Lloyd v. Collett, 2 Wh. & Tu. L. C. 482.

Where the vendor contracted to sell land on one tenure while he tendered another, as a leasehold or copyhold instead of a freehold.—Drew v. Corp, 2 Wh. & Tu. L. C. 495.

Where the vendor contracted to sell an original lease and had only an underlease to give the purchaser.—Madeley v. Booth, 2 Wh. & Tu. L. C. 494.

Where the failure on the part of the vendor was substantial, and such as did not admit of compensation, as where he contracted to sell a term of 16 years whereas he had only a term of 6 years.—Long v. Fletcher, 2 Wh. & Tu. L. C. 494.

Where time was the essence of the contract and the vendor did not convey within the time agreed upon.—Hudson v. Bartram, 2 Wh. & Tu. L. C. 491.

Where the price was unreasonable.—Whorwood v. Simpson, 2 Wh. & Tu. L. C. 483.

Where the entirety of an estate was contracted to be sold and the vendor had only an undivided share in it.—Attorney-General v. Day, 2 Wh. & Tu. L. C. 495.

The purchaser is entitled to the RENTS AND PROFITS of the estate from the time fixed for the completion of the purchase, whether he takes possession or not.—De Visme v. De Visme, 2 Wh. & Tu. L. C. 487.

In sales by order of the Court, the purchaser is entitled to the rents and profits from the quarter day preceding his purchase, he paying the price before the following one.—Mackrell v. Hunt, 2 Wh. & Tu. L. C. 488.

Mere inadequacy of price does not constitute by itself a ground for RESCINDING the SALE.—St. S. 244.
The price may be so grossly inadequate as to amount to conclusive evidence of imposition or some undue influence, and in such cases the Court will rescind the sale on the ground of fraud.—St. S. 246.

The presumption of fraud is strengthened if there are other circumstances of a suspicious nature.—Harrison v. Guest, 6 D. M. & G. 424.

Thus fraud has been presumed—

If proper time for deliberation was not allowed.—Sm. Eq., p. 63.

Where persons in whom the buyer placed confidence made use of strong persuasion.—Sm. Eq., p. 64.

Where the buyer was not permitted to consult disinterested friends or counsel.—Sm. Eq., p. 64.

Where he was an illiterate person and advantage was taken of his necessities.—Sm. Eq., p. 64.

Where he was a person of weak understanding.—Sm. Eq., p. 64.

TIMBER blown down after the contract belongs to the purchaser.—Poole v. Shergold, 2 Wh. & Tu. 489.

If timber be cut, the purchaser will be entitled to compensation, or if it is ornamental timber, to rescind the contract.—Ibid.

In contracts for the sale of real estates, a good TITLE is always implied, unless the liability is expressly excluded.

A misdescription wilfully introduced into the particulars, whether material or not, will vitiate the sale.

Thus sales have been held invalid—

Where property was stated to be one mile from a borough town instead of four.—Duke of Norfolk v. Wortley, 1 Camp. 337.

Where the particulars stated that a lot was to be subject to the same rights of way over the same as were then enjoyed under the existing leases of certain houses, and a plan which was referred to disclosed one way but not another over the lot, which was also then existing.—Dykes v. Blake, 4 Bing. N. C. 463.

Where the particulars of sale were so vague and indefinite that a buyer could not know what he was contracting for, and might easily be misled.—Steward v. Alliston, 1 Mer. 26.

If the misdescription be slight and unintentional, the contract will be enforced with a compensation for the difference.—Leach v. Mullett, 3 C. & P. 115. Stewart v. Allerton, 1 Mer. 26.

Notwithstanding the clause in the contract, 'provided the title be approved by the purchaser's counsel,' yet if it appear to the Court to be good, a purchaser will be bound to complete his contract, although it may be objected to by his counsel.—Lewis v. Lechemere, 10 Mod. 535.
HINDU LAW.

Gifts.

PARTIES.

At a time of distress, for the support of the household, and particularly for the performance of religious duties, even a single CO-PARCENER may give, mortgage, or sell the immoveable estate.—VYASA. (Dig. IV., 55.)

If they severally give or sell their own (undivided) shares, they do what they please with their property of all sorts, for surely they have dominion over their own.—NAREDA. (Dig. IV., 6.)

Except his whole estate and his dwelling-house, what remains after the food and clothing of his family, a man may give away whatever it be (whether fixed or moveable); otherwise it may not be given.—CATYAYANA. (Dig. IV., 19.)

A man may give what remains after the food and clothing of his family; the giver of more (who leaves his family naked and unfed) may taste honey at first, but shall afterwards find it poison. At his pleasure he may give what he himself acquired; a pledge must be disposed of by the law of pledges (or subject to redemption), but of property acquired by marriage, or inherited from ancestors, not every gift subsists.

(But) if what is acquired by marriage, what has descended from an ancestor, or what has been gained by valour, be given with the assent of the wife, of the co-heirs, or of the king, the gift has validity. Heirs have a lien equally on the immoveable heritage, whether they be divided or undivided, and a single parcener has no power to give, pledge, or sell the whole.—VRIHASPATI. (Dig. IV., 18.)

In distress, for the maintenance of the family, property may be given away, except a wife or a son, but not the whole of a man's estate if he have issue living, nor what he has promised to another.—YAJNYAWALCYA. (Dig. IV., 16.)

Of precious (metals or) stones of pearls, coral (and other moveables), the father has power to give or sell the whole; but neither the father nor the grandfather shall alien the whole of his immoveable property.—YAJNYAWALCYA. (Dig. IV., 13.)

(Land or other) immoveable property and slaves (employed in the cultivation of it) a man shall neither give away nor sell, even though he acquired them himself, unless he convene all his sons.—YAJNYAWALCYA. (Dig. IV., 14.)

1. Joint property deposits for use bailments in the form called Nyasa (pledges), a wife her property deposits for delivery bailments (in general), and the whole of a man's estate if he have issue alive.
2. Are things which the learned have declared unalienable even in times of distress; the man who gives them away is a fool, and must expiate the sin by penance.—DACSHA. (Dig. IV., 9.)

A wife or a son, or the whole of a man's estate, shall not be given away without the assent of the persons interested.—CATTAYANA. (Dig. IV., 7.)

1. What is bailed for delivery, what is lent for use, a pledge, joint property, a deposit, a son, a wife, and the whole estate of a man who has issue living.

2. The sages have declared unalienable even by a man oppressed with grievous calamities, and (of course) what has been promised to another.—NAREDA. (Dig. IV., 4.)

The prohibition of giving away is declared to be eight-fold; a man shall not give joint property, nor his son, nor his wife (without their assent in extreme necessity), nor a pledge, nor all his wealth (if he have issue living), nor a deposit, nor a thing borrowed for use, nor what he has promised to another.—VRIHASPATI. (Dig. IV., 5.)

1. What has been given by men agitated with fear, anger, lust, grief, or (the pain of) an incurable disease, or as a bribe, or in jest, or by mistake, or through any fraudulent practice, must be considered as ungiven.

So must anything given by a MINOR, an idiot (slave or other) person not his own master, a diseased man, one insane or intoxicated, or in consideration of work unperformed.—NAREDA. (Dig. IV., 53.)

A man shall not give even what he has promised to a person whom the law declares incapable of receiving.—GOTAMA. (Dig. IV., 47.)

**HOW MADE.**

Land is conveyed by six formalities—by the assent of townspeople, of kindred, of neighbours, and of heirs, and by the delivery of gold and of water. (Dig. IV., 33.)

Let the acceptance be public, especially of immovable property, (and) delivering what may be given and has been promised, let not a wise man resume the donation.—YAJNYAWALCYA. (Dig. IV., 32.)

1. Let a king, having given land or assigned a corrod, cause his gift to be written, for the information of good princes who will succeed him,

2. Either on prepared silk or on a plate of copper sealed above with his own signet. Having described his ancestors and himself,

3. The quantity of the gift with the penalty of resumption, and set his own hand to it, and specified the time, let him render his donation firm.—YAJNYAWALCYA. (Dig. IV., 34.)

When a man has given away land, the deed which he gets drawn out, "for holding the land as long as the moon and sun shall last, unreserved and incapable of being seized by any one",—that is known as a writing of gift.—VYAVAHARA MAYUKHA II. I., 2.
RIGHTS AND LIABILITIES.

Of houses and of land acquired by any of the seven modes of acquisition, whatever is given away should be DELIVERED, distinguishing (land) as (it was) left by the father or gained by the occupier himself.—*VRIHASPATI*. (Dig. IV., 18.)

What a man has promised, in health or in sickness, for a religious purpose must be given; and if he die without giving it, his son shall doubtless be compelled to deliver it.—*CATYAYANA*. (Dig. IV., 3.)

He who delivers not a present which he has promised to a priest, shall be compelled to pay it as a debt and incurs the first amercement.—*CATYAYANA*. (Dig. IV., 44.)

If a man give not what he has (legally) promised, let the king fine him one (suverna) or (eighty) raticas (of gold).—*MATSYA PURANA*. (Dig. IV., 45.)

A promise (legally) made in words, but not performed, is a debt of conscience both in this world and the next.—*HARITA*. (Dig. IV., 46.)

He who gives not what he has promised, and he who takes back what he has given, sinks to various regions of torment and springs again to birth from the womb of some brute animal.—*HARITA*. (Dig. IV., 40.)

When the Judge discovers a fraudulent pledge or sale, a fraudulent gift and acceptance, or in whatever other case he detects FRAUD, let him annul the whole transaction.—*MANU VIII.*, 165.

If a bribe be promised for any purpose, it shall by no means be given, although the consideration be performed.—*VYAVAHARA MAYUKHA IX.*, 9.

In all other contested matters the latest act shall prevail; but in the case of a pledge, a gift, or a sale, the PRIOR CONTRACT has the greatest force.—*YAJNYAWALGYA*. (Dig. II., 28.)

The giver of land remains in heaven sixty thousand years, but he who RESUMES it or assents (to the resumption) shall so long inhabit a region of torment.—*ADI PURANA*. (Dig. IV., 35.)

Things once delivered on the following eight accounts cannot be resumed, as wages for (the) pleasure (of hearing poets or musicians, and the like), as the price of goods sold, as a nuptial gift to a bride (or her family), as an acknowledgment to a benefactor, as a present to a worthy man, from natural affection or from friendship.—*VRIHASPATI*. (Dig. IV., 49.)

They who know the law of gifts declare that things once delivered as the price of goods sold, as wages, for (the) pleasure (of hearing poets, musicians, or the like), from natural affection, as an acknowledgment to a benefactor, as a nuptial gift to a bride (or her family), and through regard, cannot be resumed.—*NAREDA*. (Dig. IV., 50.)

Should money or goods be given (or promised as a gift) by one man
to another who asks it for some religious act, the gift shall be void if that act be not afterwards performed.—MANU VIII., 212.

If the money be delivered, and the receiver, through pride or avarice, refuse (in that case) to return it, he shall be fined one (suvera) by the king as a punishment for his theft.—MANU VIII., 213.

Such as here declared is the rule for withdrawing what has been given.—MANU VIII., 214.

Hire of Things.

DEFINITION.

Whatever man owns a field, if seed, conveyed into it by water or wind, should germinate, the plant belongs to the land-owner; the mere sower takes not the fruit.—MANU X., 54.

But the owners of the seed and of the soil may be considered in this world as joint owners of the crop which they agree by special compact, in consideration of the seed, to divide between them.—MANU X., 53.

RIGHTS AND LIABILITIES.

Unless there be a special agreement between the owners of the land and of the seed, the FRUIT belongs clearly to the land-owner, for the receptacle is more important than the seed.—MANU X., 52.

They who have no property in the field, but having grain in their possession sow it in soil owned by another, can receive no advantage whatever from the corn which may be produced.—MANU X., 49.

As the arrow of that hunter is vain who shoots it into the wound which another had made just before in the antelope, thus instantly perishes the seed which a man throws into the soil of another.—MANU X., 43.

Things hired (for a time) at a settled price, let the hirer GIVE BACK when the time has elapsed; whatever be broken or lost he shall make good, except in the case of inevitable accident or irresistible force. —NAREDÁ. (Dig. III., 104.)

1. He who dwells in a HOUSE which he built on the ground of another man, and for which he pays rent, shall take with him, when he leaves it, the thatch, the wood, and the bricks.

2. But if he live without paying rent on the ground of another, without the owner's assent, he shall by no means, when he quits it, take away the thatch and the timber.—NAREDÁ. (Dig. III., 99.)

The grass, wood, and bricks, which are thus removed, belong to him who leaves the ground, provided he paid rent for the spot, and not otherwise.—NAREDÁ. (Dig. III., 100.)
If LAND be INJURED by the fault of the farmer himself (as if he fails to sow it in due time), he shall be fined ten times as much as the (king's) share (of the crop that might otherwise have been raised), but only five times as much if it was the fault of his servants without his knowledge.—MANU VIII., 243.

He who hires, at a fixed rent, a house, a pool of water, a marketplace, or the like, shall be compelled (in a court of justice) to pay the RENT of it until he restore it to the owner.—CATYAYANA. (Dig. III., 101.)

He who hires, at a fixed price, an elephant, a horse, a bull or cow, an ass, or a camel, shall be made to pay for the hire of it as long as he delays to restore the cattle, having used it according to agreement.—NAREDA. (Dig. III., 102.)

He who has hired a carriage (or vehicle of any sort), and takes it and goes away with it, but (afterwards) refuses to pay the hire, shall be compelled to pay it, even though he never used the carriage.—(VRIDDEHA) MANU. (Dig. III., 103.)

Hire of Services.

DEFINITION.

Labourers should be considered as of three sorts—highest, middle, and low. The hire of their labour should be proportioned to their strength and to the benefit (derived from their exertions).

A soldier is the highest of these, a servant in husbandry is middlemost, a carrier of burdens is lowest. This is the three-fold distinction of hired servant.—NAREDA. (Dig. III., 23.)

The servant for pay is declared to be of many sorts; another is the servant for a share (of the gain). Of all, a low, a middle, and a high rank is propounded.

2. A servant hired for a day, a month, a fortnight, six months, or a year, must perform the work engaged for, and he receives the promised (reward).

3. The soldier is the highest of these, the ploughman is the middlemost, the porter is declared the lowest, and so is a servant employed in the business of the household.

4. A servant of the second description is declared to be one hired for a share (of the gain) in the service of a person living by agriculture, or by (attendance on) herds (of cattle): no doubt he shall receive (a share) of the grain produced, or of the milk.—VRISHAPATI. (Dig. III., 24.)

RIGHTS AND LIABILITIES.

Though he have learned (his art), the APPRENTICE must fulfil his stipulated time; and the profit of his labour during that period shall belong to his teacher.—NAREDA. (Dig. III., 20.)
Though he have acquired his art, the apprentice must reside in his master's house during the period stipulated, receiving his subsistence from the teacher, and giving to him the fruit (of his art).—YAJNYAWALOYA. (Dig. III., 21.)

A housekeeper shall discharge a DEBT CONTRACTED by his uncle, brother, son, wife, SERVANT, pupil, or dependents for the support of the family (during his absence).—VRIHASPATI. (Dig. V., 189.)

Should a merchant (having hired a servant for a certain journey) sell his goods by the way, and DISCHARGE the SERVANT, (wages) must be paid even for the part of the way which they never passed; but the servant shall receive half only of the hire (which would have been due if they had gone to their journey's end).—(VRIDDHA) MANU. (Dig. III., 90.)

And if the goods be stopped or seized on the way, the servant shall receive wages for so much of the way as has been passed by him.—CATYAYANA. (Dig. III., 91.)

If the master dismiss the servant before the full time has passed, he shall pay him his whole wages, and a hundred (panas) to the king, unless the servant were in fault.—VISHNU. (Dig. III., 80.)

A servant stipulating (wages for a journey), but leaving the cart on the way, shall be forced to give a sixth part of those wages; but the man who employs labour and pays not (its hire on demand), must (afterwards) pay it with INTEREST (computed from the sixth month after the demand).—NAREDA. (Dig. III., 92.)

A servant shall pay the full value of what he has lost by mere inattention; twice the value of what he has lost by gross NEGLIGENCE or malice; but he shall not be forced to pay anything for what robbers have seized, for what has been burned, or for what an inundation has carried away (unless he were himself blameable).—(VRIDDHA) MANU. (Dig. III., 83.)

If a servant, by the command of his master, and for his benefit only, do an improper act, the offence shall be imputed to the master.—VRIHASPATI. (Dig. III., 84.)

The herdsman himself shall make good the loss of a beast which through his want of due care has strayed, has been destroyed by reptiles or killed by dogs, or has died by falling into a pit.—MANU VIII., 232.

But he shall not be compelled to make it good when robbers have carried it away; if, after fresh proclamation and pursuit, he give notice to his master in a proper place and season.—MANU VIII., 233.

A flock of goats or of sheep being attacked by wolves, and the keeper not going (to repel the attack), he shall be responsible for every one of them which a wolf shall violently kill.—MANU VIII., 235.

But if any one of them, while they graze together near a wood and the shepherd keeps them in order, shall be suddenly killed by a wolf springing on it, he shall not in that case be responsible.—MANU VIII., 236.
The implements (of work), and whatever is intrusted (to servants) for their master's business, should be diligently preserved, not wickedly (neglected) by any means.—NAREDA. (Dig. III., 70.)

Let the herdsman restore the cattle each evening in the same condition in which he received them, for such as have been seized or killed through his negligence, he shall pay, if he had made an agreement for wages.—YAJNYAWALCYA. (Dig. III., 6.)

But he shall not be compelled to make it good when robbers have carried it away notwithstanding his exertions, provided he give notice to his master in a (proper) place and season.—MANU and NAREDA. (Dig. III., 7.)

The herdsman is not chargeable, if he be made captive, if the village be overpowered, or if the district be thrown into confusion, and any of the cattle be seized or destroyed.—VYASA. (Dig. III., 8.)

By day the blame falls on the herdsman, by night on the owner (if the cattle be fed and kept) in his own house; but if the place of their food and custody be different, the keeper incurs the blame.—MANU. (Dig. III., 9.)

Let the herdsman preserve the cattle from danger of insects and reptiles, of robbers and tigers, and from falling into caverns or pits; let him defend them to the utmost of his power; let him call aloud for help, or give notice to his master.—VRISHAPATI. (Dig. III., 10.)

The herdsman himself shall make good the loss of a beast which through his want of due care has strayed, has been destroyed by reptiles or killed by dogs, or has died by falling into a pit.—MANU and NAREDA. (Dig. III., 12.)

By day, if cattle be in danger from venom or fire, and the herdsman go not (to their assistance), he shall pay to their owner the price of the cattle (thus) destroyed by his fault; and if he milk them without permission, he shall be fined twenty-five (carshapanas).—VISHNU. (Dig. III., 14.)

1. Should a herdsman, having received his hire, leave his cattle in a desolate forest, and go for his pleasure to the village, he shall be chastised by the king, like a surgeon (or barber) who (leaves his master in the town) and goes for his pleasure to the woodlands.

2. When a cow, committed to the care of a herdsman, dies through his fault, he shall be compelled to make good the loss, and pay a penalty to the lord of the land.

3. If a cow die by the violence of disease, or the like, in the stall of its owner (who took no pains to heal or relieve her), that owner shall be fined, and shall pay the wages due to his herdsman.—BRAHMAPURANA. (Dig. III., 15.)

1. A flock of goats or of sheep being attacked by wolves, and the keeper not going (to repel the attack), he shall be responsible for every one of them which a wolf shall violently kill.

2. But if any one of them, while they graze together near a wood
and the shepherd keeps them in order, shall be suddenly killed by a wolf springing on it, he shall not in that case be responsible.—Manu and Nareda. (Dig. III., 16.)

By this rule shall a dispute with the keeper of all sorts of cattle be decided; and if any cows die naturally, he shall be cleared by producing their tails and horns.—Nareda. (Dig. III., 17.)

The master who leaves in the way a tired or SICK SERVANT, without taking care of him in a village for three days, shall pay the first (or lowest) amercement.—Catyaña. (Dig. III., 94.)

Let the master, for whom work is performed, pay WAGES to the servant, according to their agreement, at the beginning, the middle, or end of his labours, as may be settled between them.

2. Wages not being stipulated, let the factor, the herdsman, and the servant in husbandry (respectively) receive a tenth part of the profit on goods sold, of the milk, and of the grain.—Nareda. (Dig. III., 62.)

He who causes work to be performed without fixing the wages, shall be compelled by the king to give a tenth part of the (profit) arising from commerce, cattle, or grain.—Yajnyaśalya. (Dig. III., 63.)

The will of the master (determines the wages) of him who transgresses time and place, and of him who does the work otherwise (than was stipulated): but more shall be paid if more be done.—Yajnyaśalya. (Dig. III., 64.)

According to the work performed by a servant, though the whole task imposed might be too much for both (master and servant together) must wages be given; if either of them could have performed it (and it be performed), let the promised reward be paid.—Yajnyaśalya. (Dig. III., 65.)

Let the man who guides the ploughshare have a third or a fifth part (of the grain if no special agreement be made).—Vṛihaspati. (Dig. III., 66.)

Let (the ploughman), to whom food and vesture are given, take a fifth; and let him who is supported by the profit (alone), receive a third part of the grain produced.—Vṛihaspati. (Dig. III., 67.)

(The) wages (of seamen) shall be such as are (usually) given by men who understand sea voyages, and who know countries, and seasons, and commodities; unless there be a special agreement.—(Vṛiddha) Manu. (Dig. III., 69.)

For a hundred head of cattle, the annual wages of the herdsman are a heifer three years old; for two hundred, a milch cow, and the milk of the whole herd every eighth day.—Nareda. (Dig. III., 3.)

One pana of copper must be given (each day) as wages to the lowest servant, with two cloths (for apparel) every half-year and a drona†

* One pana = 80 cowries.
† One drona = 30 lbs. 12 ounces, and also sometimes 7 lbs. 11 ounces.
of grain every month, to the highest (must be given in wages the ratio of) six (to one).—MANU VII., 126.

That hired servant whose wages are paid with milk may, with the assent of the owner, milk the best cow out of ten; such are the wages of herdsmen unless they are paid in a different mode.—MANU VIII., 231.

If an officiating priest, actually engaged in a sacrifice, abandon his work, a share only, in proportion to his work done, shall be given to him by his partners in the business (out of their common pay).—MANU VIII., 206.

But if he discontinue his work (without fraud) after the time of giving the sacrificial fees, he may take his full share, and cause what remains to be performed by another priest.—MANU VIII., 207.

The master who pays not the hire of labour after the work is performed, shall be compelled by the king to pay it, as well as a proportionate amercement.—VRIHASPATI. (Dig. III., 93.)

1. The owner of goods, who hires beasts for drought or burden, and takes them not, shall be compelled to pay a fourth part of the hire, or the full amount if he leave them on the road.

2. And so shall a carrier forfeit his hire if he transport not (the goods).—NAREDA. (Dig. III., 89.)

That hired servant or workman who not from any disorder but from indolence fails to perform his WORK according to his agreement, shall be fined eight raticas and his wages or hire shall not be paid.—MANU VIII., 215.

But if he be really ill, and when restored to health shall perform his work according to his original bargain, he shall receive his pay even for a very long time.—MANU VIII., 216.

Yet whether he be sick or well, if the work stipulated be not performed (by another for him or by himself), his whole wages are forfeited, though the work want but a little of being complete.—MANU VIII., 217.

1. If the servant do not perform any part of his master’s business, he forfeits his wages, and may afterwards be sued (for a fine).

2. And if a servant, having received his wages, perform not his work, though able to do it, he shall pay twice the amount as a fine (to the king) and (the full amount of) those wages (to his master).—VRIHASPATI (Dig. III., 71.)

A servant who desists from working after he has received his wages shall pay twice their amount, and their full amount (only) if he have not received them; the implements of husbandry must be diligently kept by the servants.—YAJNYAWALOYA. (Dig. III., 72.)

A servant who refuses to perform the work he has undertaken, shall be compelled to fulfill his agreement, first paying him his wages; but if he persist in his refusal after receiving his wages, he shall forfeit twice their amount.—NAREDA. (Dig. III., 73.)
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He who begins, but does not perform, his task, shall by force be compelled to finish it; if he refuse to do so, he incurs an amercement. —CATAYANA. (Dig. III., 74.)

He who has promised to perform work, and does it not, shall be compelled even by forcible means; and if he (still) refuse to complete it, he shall be fined two hundred (panas) of copper.—VRIHASPATI. (Dig. III., 75.)

That hired servant, or workman, who, not from any disorder, but from insolence, fails to perform his work according to his agreement, shall be fined eight (crishnulas) or (aticas) of gold, and his wages or hire shall not be paid.—MANU. (Dig. III., 76.)

Yet, whether he be sick or well, if the work stipulated be not performed (by himself, or by another for him), his whole wages are forfeited, though the work want but a little of being complete.—MANU. (Dig. III., 78.)

He who (is hired for a time), and leaves his work before the expiration of the full term, shall forfeit all his wages; (but) if he desist by the fault of his master, he shall receive as much as was stipulated.—NAIKEDA. (Dig. III., 79.)

A servant (or workman by time), who leaves the work before the expiration of the full term, shall forfeit the whole price of his labour, and pay one hundred (panas) to the king. Whatever may be injured by his fault, he shall make good to his master, unless the injury happen by the act of God or of the king.—VISHNU. (Dig. III., 80.)

But if he be really ill, and, when restored to health, shall perform his work according to his original bargain, he shall receive his pay even after a very long time.—MANU. (Dig. III., 81.)

He who does not perform his task at the full time (agreed on), and disappoints the business, shall be forced to pay twice the amount of his wages, and another shall be employed in his stead.—(VRIDHHA) MANU. (Dig. III., 86.)

One who declines (the work) when yet distant, (shall be compelled to pay) the seventh part of the wages, or the fourth part if (he decline it) on the way; but he who quits it half way shall be forced to give the full amount of the wages.—YAJNYAWALCYA. (Dig. III., 87.)

He who does not perform (business of) science or art, after receiving a consideration, shall be amerced in the full amount of it, by a king who knows the law.—MATSYA-PURANA. (Dig. III., 88.)

Mortgage.

DEFINITION.

A pledge (adhi) is called (bandha), and is declared to be divisible into four (pairs).
2. Moveable (or personal), and fixed (or real); for custody only, and for use; unlimited, and limited as to time; with a written contract, and with a verbal attested agreement.—VRIHASPATI. (Dig. I., 80.)

That to which a (secondary) title is given (adhicriyate) is adhi, a pledge.

2. It has two forms—to be released at a fixed time, or to be retained until payment be tendered. It is again declared to be of two sorts—for custody only, and for use.

3. Even so must it be diligently kept: on its loss or destruction by the negligence of the lender, the interest (on his loan) is forfeited, and even if it be only spoiled or altered.—NARED. (Dig. I., 81.)

A debtor shall be compelled to pay, with interest, a debt contracted on the pledge of religious merit; and he shall be compelled to repay two-fold a debt contracted on a chattel (of small value) delivered with a solemn asseveration.—YAJNYAWALCYA. (Dig. I., 124.)

PARTIES.

But at a time of distress, for the support of his household, and particularly for the performance of religious duties, even a single CO-PARCENER may give, mortgage, or sell the immoveable estate.—VYASA. (Dig. II., 55.)

HOW MADE.

By the acceptance (or actual possession) of a pledge, (the) validity (of the contract) is (maintained). If it be spoiled, though carefully kept, another chattel must be pledged, or the creditor must receive the amount (of principal and interest).—YAJNYAWALCYA. (Dig. I., 96.)

Pledges are declared to be of two sorts—immoveable and moveable; both are valid when there is actual enjoyment, and not otherwise.—VYASA. (Dig. I., 125.)

Of him who does not enjoy a pledge, nor possess it, nor claim it (on evidence), the written contract (for that pledge) is nugatory (like a bond) when the debtor and witnesses have deceased.—VRIHASPATI. (Dig. I., 126.)

RIGHTS AND LIABILITIES.

If a pledge for custody only be used, there shall be no interest, nor if a pledge for use be DAMAGED.—YAJNYAWALCYA. (Dig. I., 84.)

The pledge is FORFEITED if it be not redeemed when the debt is doubled: (since it is) pledged for a stipulated period, it is forfeited at that period; but a pledge to be used (for an unlimited time) is not forfeited.—YAJNYAWALCYA. (Dig. I., 112.)

After the time for payment has past, and when interest ceases (on becoming equal to the principal), the creditor shall be owner of the pledge; but the debtor has a right to redeem it before ten days have elapsed.—VRIHASPATI. (Dig. I., 115.)
1. Gold being doubled, and the stipulated period having expired, the creditor becomes owner of the pledge after the lapse of fourteen days.

2. But a pledge to be used, of which the term has elapsed, the debtor shall (only) recover, on (then) paying, from other funds, the exact amount of the principal.—Vyasā. (Dig. I., 116.)

If the debtor be missing or dead, let the creditor produce the writing (in a Court of Justice), and obtain a certificate from the Court, specifying the period which it bore.—Smṛti. (Dig. I., 120.)

1. When the debt is doubled by the interest, and the debtor is either dead or has absconded, the creditor may attach his (pledge, or the debtor's) chattel, and sell it before witnesses:

2. Or having appraised it in an assembly of good men, he may keep it ten days; after which, having received the amount of his debt, he must relinquish the balance (if there be any):

3. Having ascertained his own demand by the help of men skilled in arithmetic, and taken the attestation of witnesses, he commits no offence by thus recovering it.—Vrihaspati. (Dig. I., 121.)

1. When a house or field mortgaged for use has not been held to the close of its term, neither can the debtor obtain his property, nor the creditor obtain the debt—

2. After the period is completed, the right of both to their respective property is ordained; but, even while it is unexpired, they may restore their property to each other by mutual consent.—Vrihaspati. (Dig. I., 118.)

A debt secured (merely) by a written contract shall be discharged (from a moral and religious obligation) only by three persons (the debtor, his son, and his son's son); but a pledge shall be enjoyed, until actual payment of the debt, by any heir in any degree.—Yajñayālgya. (Dig. I., 38.)

Monthly interest is declared to be an eightieth part of the principal if a pledge be given; an eighth part is added if there be (only) a surety; and if there be neither pledge nor surety, two in the hundred may be taken from a debtor of the servodental class.—Vyasā. (Dig. I., 27.)

An eightieth part (of the principal) is the monthly interest when a pledge has been delivered; otherwise it may be, in the direct order of the classes, two, three, four, or five in the hundred.—Yajñayālgya. (Dig. I., 28.)

1. If (he have no pledge, a lender of money) may take two in the hundred by the (month), remembering the duty of good men: for by (thus) taking two in the hundred, he becomes not a sinner for gain.

2. He may thus take (in proportion to the risk), (and) in the direct order of the classes, two in the hundred (from a priest), three (from a soldier), four (from a merchant), and five (from a mechanic or servile man), but never more, as interest by the month.—Manu. (Dig. I., 29.)
Interest on interest is (chacrəvərdhə) ; monthly interest is (named) calica ; that which is stipulated by the party himself is carita ; but cayica accrues from the body (of a pledged quadruped).—YAJNYAVALCOTA. (Dig. I., 38.)

A lender of money may take, in addition to his capital, the interest allowed by Vasishtha, (that is) an eightieth part of a hundred, or one and a quarter by the month, if he have a pledge.—MANU VIII., 140.

Or (if he have no pledge) he may take two in the hundred (by the month), remembering the duty of good men : for by (thus) taking two in the hundred, he becomes not a sinner for gain.—MANU VIII., 141.

He may thus take in proportion to the risk, (and) in the direct order of the classes, two in the hundred (from a priest), three (from a soldier), four (from a merchant), and five (from a mechanic or servile man), but never more, as interest by the month.—MANU VIII., 142.

Interest on money received at once (not month by month, or day by day, as it ought) must never be more than enough to double the debt (that is, more than the amount of the principal paid at the same time) : on grain, on fruit, on wool, or hair, on beasts of burden (but to be paid in the same kind of equal value), it must not be more than enough to make the debt quintuple.—MANU VIII., 151.

Stipulated interest beyond the legal rate, and different from the (preceding) rule, is invalid ; and the wise call it an usurious way (of lending); the lender is not entitled (at most) to five in the hundred.—MANU VIII., 152.

But when a pledge has been given (which the creditor promised to return on the debt being doubled), then surely, the interest having equalled the principal, the pledge must be released on the double sum being paid, or having been received from the use of the pledge.—YAJNYAVALCOTA. (Dig. I., 46.)

Even if the highest interest (or that equal to the principal sum) have accrued, the creditor shall not (be forced to) restore a pledge fixed (in his hands) unless there have been a special agreement.—VISHNU. (Dig. I., 47.)

By the use of a pledge (to be kept only) the interest is forfeited.—VISHNU. (Dig I., 78.)

A loan secured by a pledge (to be kept only) yet used, bears no interest, nor money tendered, nor a sum (of which part is undelivered by the lender, or) of which he disturbs the possession.—GOTAMA. (Dig. I., 79.)

If he take a beneficial pledge, or he must have no other interest on the loan.—MANU VIII., 143.

Let no lender (for a month, or for two or three months, at a certain interest) receive (such) interest beyond the year; nor any interest which is unapproved; nor interest upon interest by previous agreement; nor monthly interest exceeding in time the amount of the principal; nor interest exacted from a debtor (as the price of the risk, when there is no
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Neither a pledge (without limit), nor a deposit, are lost to the owner by lapse of time; they are both recoverable, though they have long remained (with the bailee).—MANU VIII., 145.

The creditor shall make good the loss of a pledge, unless it was caused by the act of God or the king, and without his fault.—VISHNU. (Dig. I., 82.)

When a pledge becomes unfit for use, or perishes, without any fault on the part of the creditor, the debtor shall be compelled to deliver another pledge, (for) he is not exonerated from the debt.—CATAYANA. (Dig. I., 97.)

Mortgaged land being carried away by a rapid stream, or being seized by the king, another pledge (of land) must be delivered, or the sum lent must be restored to the lender.—YAJNYAWALCYA. (Dig. I., 100.)

Whatever pledge has been lost by the act of God or the king, the debt, for which it was given, shall be paid by the debtor to the creditor with interest.—CATAYANA. (Dig. I., 101.)

If one field has been mortgaged to two creditors, (so) nearly at the same time that no (priority can be proved), it shall belong to that mortgagee by whom it was first possessed (without force).—VRIHASPATI. (Dig. I., 132.)

In all other contested matters, the latest act shall prevail; but in the case of a pledge, a gift, or a sale, the prior contract has the greatest force. —YAJNYAWALCYA. (Dig. II., 26.)

By two creditors claiming the pledge (on the grounds of possession) for an equal time, it shall be shared equally; and the same rule is declared in the cases of a gift and a sale.—SMRITI. (Dig. I., 133.)

1. But if a man first mortgaged land without noticing all (circumstances), and afterwards mortgaged it with express description by name (and the like), that writing which contains an express description shall prevail.

2. If a field or a house be described in a written instrument by its limits, and if villages, and the like, be (so) described, the contract is valid.

3. When a distinction is expressed in a writing to one man, and no distinction to another, the express distinction, says Catayana, shall preponderate.—SMRITI. (Dig. I., 135.)

Should a man hypothecate the same thing to two creditors, what must be decided? The first hypothecation shall be established, and the debtor shall be punished as for theft.—CATAYANA. (Dig I., 128.)

He who has mortgaged even a bull’s hide of land to one creditor, and, without having redeemed it,-mortgages it to another, shall be corporally punished (by whipping or imprisonment); if the quantity be less, he shall pay a fine of sixteen (suvarnas).—VISHNU. (Dig. I., 129.)
To the debtor who comes to REDEEM his pledge, the creditor shall restore it, or be punished as a thief; and if the creditor be (dead or) absent, the debtor may pay the debt to his kinsmen, and shall take back his pledge.—YAJNYAWALCYA. (Dig. I., 104.)

The whole amount due to the pledgee not being paid, he shall on no account be compelled to restore the pledge against his will (nor shall it be obtained from him) by deceit or confinement.—VRIHASPATI. (Dig. I., 102.)

When a house or field mortgaged for use has not been held to the close of its term, neither can the debtor obtain his property, nor the creditor obtain the debt.—VRIHASPATI. (Dig. I., 105.)

Or appraised at the value it then bears, it may remain with the creditor exempt from interest.—YAJNYAWALCYA. (Dig. I., 106.)

That immovable property, which has been delivered (restorable) when the sum borrowed is made good, the creditor must restore when the sum borrowed has been made good.—VISHNU. (Dig. I., 107.)

When land or other (immovable property) has been enjoyed, and more (than the principal debt) has accrued therefrom, then the principal and interest having been realized, the debtor shall obtain his pledge.—VRIHASPATI. (Dig. I., 108.)

1. When a debtor mortgages land to his creditor, declaring and specifying, "This shall be enjoyed by thee, even though interest cease" (on becoming equal to the principal)—

2. That pledge shall be restored to the debtor, whenever the principal and interest shall have been received. This is declared to be the legal rule concerning pledges for loans on interest.—YAJNYAWALCYA. (Dig. I., 109.)

Even though the utmost interest have accumulated, (the creditor need) not (restore) an immovable pledge without a special agreement.—VISHNU. (Dig. I., 110.)

He who cannot pay the debt (at the fixed time), and wishes to RENEW the contract, may renew it in writing (with the creditor's assent), if he pay all the interest then due.—MANU VIII., 154.

But if (by some unavoidable accident) he cannot pay the whole interest, he may insert (as principal) in the renewed contract so much of the interest accrued as he ought to pay.—MANU VIII., 155.

Or, even in the absence of the debtor, the creditor may SELL the pledge before witnesses.—YAJNYAWALCYA. (Dig. I., 123.)

1. When the pawnee is missing, let the creditor produce his pledge before the king; it may be then sold with his permission: this is a settled rule.

2. Receiving the principal with interest, he must deposit the surplus with the king.—CATTAYANA. (Dig. I., 122.)
If he take a beneficial pledge (or a pledge to be used for his profit), he must have no other interest on the loan; nor, after a great length of time (or when the profits have amounted to the debt), can he give or sell such a pledge (though he may assign it in pledge to another).—Manu VIII., 143.

By the use of a pledge (to be kept only), the interest is forfeited. Vishnu. (Dig. I., 82.)

The fool who secretly uses a pledge without (though not against) the assent of the owner, shall give up half of his interest, as a compensation for such use. —Manu VIII., 150.

A pledge (to be kept only) must not be used by force (that is, against consent): the pawnnee so using it must give up his whole interest, or must satisfy the pawnner (if it be spoiled or worn out) by paying him the original price of it; otherwise he commits a theft of the pawn. —Manu VIII., 144.

After giving notice to the debtor’s family, a pledge for custody may be used when the principal is doubled, and so may a pledge for a limited period when that period is expired. —Smriti. (Dig. I., 119.)

Should the creditor, against, or even without, the assent of his debtor, possess himself of more (land or other) property than was expressly mortgaged, he shall pay the first amercement and the debtor shall receive back his whole pledge. —Smriti. (Dig. I., 138.)

A pledge shall be enjoyed until actual payment of the debt. —Yajñyawälcyta. (Dig. I., 111.)

Sale of Immoveables.

Definition.

Two kinds of property are universally acknowledged—immoveable and moveable; when a contract of sale is made, both are called by the name of vendible property. —Vriháspati. (Dig. I., 1.)

Property, in this world, is of two kinds—immoveable and moveable; and in the laws of purchase and sale, both are called vendible property. —Nareda. (Dig. I., 2.)

Parties.

Heirs have a lien equally on the immoveable heritage, whether they be divided or undivided; and a single parcener has no power to give, pledge, or sell the whole. —Vriháspati. (Dig. I., 18.)

Of precious (metals or) stones, or pearls, coral (and other moveables), the father has power to give or sell the whole; but neither the father nor the grandfather shall alien the whole of immoveable property. —Yajñyawälcyta. (Dig. I., 13.)
(Land or other) immovable property and slaves (employed in the cultivation of it), a man shall neither give away nor sell, even though he acquired them himself, unless he convene all his sons.—Yajñyāvalcyā.

(Dig. I, 14.)

A gift or sale, thus made by any other than the true owner, must, by a settled rule, be considered in judicial proceedings as not made.—Manu VIII., 199.

Where occupation (for a time) shall be proved, but no sort of title shall appear (the sale cannot be supported): title, not occupation, is essential to its support; (and) this rule (also) is fixed.—Manu VIII., 200.

If they severally give or sell their own (undivided) shares, they may do what they please with their property of all sorts, for surely they have dominion over their own.—Nāreda. (Dig. I., 6.)

RIGHTS AND LIABILITIES.

He who accepts not a thing which he has bought and secured, and he who delivers not free from blemish (a thing which he has sold), shall (each) take back his own property, forfeiting a tenth part of the price.—Cātayāna. (Dig. I., 25.)

If a vendee refuse to accept the commodity which he has bought, when it is offered, the vender commits no offence if he sell it to another.—Nāreda. (Dig. I., 34.)

If the first vendee refuse to receive the thing sold, it may be sold to another, and if a loss arise by the fault of the vendee, on him alone shall it fall.—Yajñyāvalcyā. (Dig. I., 29.)

He who, having received the price of a thing sold, delivers not that thing to the buyer, shall be compelled to deliver it, together with interest; or, among those who trade to foreign countries, with a foreign profit.—Yajñyāvalcyā. (Dig. I., 21.)

He who, having received the price of a thing sold, delivers not that thing to the buyer, shall (be) made to pay him the value of it (with damages and) be fined a hundred panas of copper to the king.—Vishnū. (Dig. I., 22.)

If a man sell to one what had been (already) sold (by him) to another, or a blemished commodity as unblemished, the fine shall be double the price of the thing.—Yajñyāvalcyā. (Dig. I., 32.)

He shall be compelled to repay two-fold a sum received as earnest.—Yajñyāvalcyā. (Dig. I., 35.)

By him who has given earnest, and appointed no specific time for delivery, it shall be forfeited if he refuse to accept the commodity when offered.—Vyāsa. (Dig. I., 36.)

He then who, having sold vendible property for a just price, delivers it not to the buyer, shall be compelled, if it be immovable, to pay for
any subsequent damage (as the LOSS of a crop, and the like); and if moveable, for the use and PROFITS of it.—NAREDA. (Dig. I., 18.)

Should the value be diminished (in the interval), he shall deliver it together with the difference of the value; such is the rule for merchants in the same place; but among those who trade to foreign countries, the foreign profit must be made good to the purchaser.—NAREDA. (Dig. I., 19.)

This rule has been declared for vendible commodities, of which the price has been paid (or tendered); but where it has not been paid (or tendered), there is no injury to the buyer by (delaying the delivery), unless there have been a special agreement (as to the times of delivery and payment).—NAREDA. (Dig. I., 20.)

Should the thing sold be injured, or burned, or carried away (after the time when it ought to have been delivered), the loss shall fall on the vender, who delivered it not when he ought.—NAREDA. (Dig. I., 27.)

A man, who has bought or sold anything in this world (that has a fixed price, and is not perishable, as land or metals), and wishes to RESCIND the contract, may give or take back such a thing within ten days.—MANU VIII., 222.

But after ten days he shall neither give nor take it back: the giver or the taker (except by consent) shall be fined by the king six hundred (panas).—MANU VIII., 223.

If a man, having bought vendible things, as milch cattle and the like, which have no blemish, repent of his bargain, and give them up within the limited time (and before they are delivered to him), he must pay a tenth part of the price to the owner.

2. But if a buyer has received the commodity sold, and repent of his purchase, Brhigu has ordained that he shall pay a sixth part of the price when he returned it.—CATYAYANA. (Dig. I., 8.)

He who has bought or sold any article in this world that has a fixed price, and is not perishable, as land, or copper, or the like, and repents of the contract, thinking it ill-made, may return the goods within ten days, or may take back the thing sold.—CULUCABHATTA. (Dig. I., 23.)

MAHOMEDAN LAW.

Gift.

DEFINITION.

Hibba, in its literal sense, signifies the donation of a thing from which the donee may derive a benefit: in the language of the law, it means a transfer of property made immediately, and without any exchange.—482.

The figures at the end of each clause refer to Grady's edition of Hamilton's 'Hadays.'
Wakf, in its primitive sense, means detention. In the language of the law (according to Hansefa), it signifies the APPROPRIATION of any particular thing in such a way that the appropriator's right in it shall still continue, and the advantage of it go to some charitable purpose in the manner of a loan.—231.

An Amree, or LIFE-GRANT, is lawful to the grantee during his life, and descends to his heirs, because of the tradition before quoted. Besides, the meaning of Amree is a gift of a house (for example) during the life of the donee, on condition of its being returned upon his death. The conveyance of the house, therefore, is valid without any return; and the condition annexed is null, because the prophet has sanctioned the gift in this instance, and annulled the condition, as before mentioned. An Amree, moreover, is nothing but a gift and a condition, and the condition is invalid; but a gift is not rendered null by involving an invalid condition, as has been already demonstrated.—489.

WHAT MAY BE GIVEN.

If a person having a DEBT due to him of one thousand dirms, should say to the debtor, "when to-morrow arrives the said thousand dirms are your property," or, "you are exempted from the debt;" or if he should say, "whenever you pay me one-half of the said thousand, the other half is your property," or "you are exempted from the debt of the other half," the gift so made is null.—488.

A gift of PART OF A THING, which is capable of division, is not valid unless the said part be divided off and separated from the property of the donor; but a gift of part of an indivisible thing is valid.—483.

If, however, the appropriation consist of an undefined part of anything and (in conformity with the doctrine of Aboo Yoseaf) become absolute, and the partner require it to be divided off, such division is lawful.—235.

If a person appropriate his share in PARTNERSHIP LANDS, he must divide it off and detach it from those of his partner; because he alone has authority to do this during his life, or his executor after his decease. If, on the other hand, a person appropriate the half (for instance) of his own land, in this case the Kazee is to divide it off, and alienate it from the appropriator.—235.

If a person bestow or sell a ROAD, it is lawful; but neither the sale nor the gift of a water-course is valid.—271.

HOW GIFTS ARE MADE.

Gifts are rendered valid by tender, acceptance, and seizin. Tender and acceptance are necessary because a gift is a contract, and tender and acceptance are requisite in the formation of all contracts; and seizin is necessary in order to establish a right of property in the gift, because a right of property, according to our doctors, is not established in the thing given merely by means of the contract, without seizin.—482.
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If the donee take possession of the gift, in the meeting of the deed of gift, without the order of the giver, it is lawful, upon a favorable construction. If, on the contrary, he should take possession of the gift after the breaking up of the meeting, it is not lawful, unless he have had the consent of the giver so to do.—482.

If the thing given be in the hands of the donee in virtue of a trust, the gift is in that case complete, although there be no formal seizin, since the actual article is already in the donee's hands, whence his seizin is not requisite. It is otherwise where a depositor sells the deposit to his trustee, for in this case the original seizin does not suffice, because seizin in virtue of purchase is a seizin inducing responsibility, and therefore cannot be substituted by a seizin in virtue of a trust; but seizin in virtue of gift, on the contrary, as not being a seizin inducing responsibility, may be substituted by a seizin in virtue of a trust.—484.

Upon an appropriation becoming valid (that is, absolute according to the various opinions of our doctors, as here stated: according to Haneefa, in consequence of the appropriator's declaration, and the magistrate's subsequent decree; according to Aboo Yoosaf, by his simple declaration; and according to Mohammed, by his declaration and delivery to a procurator), it passes out of the possession of the appropriator, but yet it does not become the property of any other person; because if this were the case, it would follow that it is not in a state of detention, but may be sold in the same manner as other property.—233.

If a person build a mosque, his right of property in it is not extinguished so long as he does not separate it from the rest of his property, or give general admission to people to come and worship in it; but as soon as the people in general, or a single person, say their prayers in it, his right of property is extinguished, according to Haneefa.—239.

If a person construct a reservoir for public use, or a caravanserai for travellers, or erect a house upon the infidel frontiers for the accommodation of the Muselman warriors in their excursions (which is termed a Ribat), or dedicate ground as a burying-place,—

It is therefore requisite either that the magistrate issue a decree in order to complete the alienation, or that the founder himself refer the appropriation to his decease, in order that it may stand as a bequest, and become absolute upon that event, in the same manner as in the case of an appropriation made to the use of the poor.—240.

If a person make a gift of the flour of wheat which is yet in grain, or of oil of sesame which is not yet expressed from the seeds, such gift is invalid; and if he afterwards grind the wheat into flour, or extract the oil from the sesame seeds, and so deliver them to the donee, still the gift is not thereby rendered valid. The same rule also holds with respect to butter which is yet in milk. The reason of this is that the thing given, in all these cases, is a nomenity (whence it is that if an usurper of wheat, or of seeds, should either grind the one into flour or press the other into oil, he then becomes proprietor of them).—484.

If one person make a gift of a house to two men, the deed is invalid according to Haneefa.—485.
RIGHTS AND LIABILITIES.

It is proper to observe that it is not lawful for the occupant (of an appropriated house) to LET the house, since he is not the proprietor. The magistrate, on the contrary, possesses a general power, as being the agent of the community.—237.

If a person appropriate a house with this condition, that his son or any other person shall reside therein during life, the REPAIRS are incumbent on him who has the right to inhabit it.—236.

If, therefore, the person in question refuse or neglect to repair the house, or be incapable of so doing from poverty, the magistrate must in this case let it, and provide for the repairs out of the rent, and must return it to him upon the repairs being completed.—236.

It is lawful for a donor to RETRACT the gift he may have made to a stranger.—485.

If a person make a gift of anything to his relation within the prohibited degrees, it is not lawful for him to resume it.—486.

It is further to be observed that the bars to a retraction of a gift are many, amongst which are the following: —I. The donee giving the donor a return or consideration, because this fulfils the donor's object. II. The incorporation of an increase with the gift, because in that instance a retraction cannot take place without including the increase, as that is implicated; and it cannot take place so as to include the increase, since that was not included in the deed of gift. III. The death of one of the parties; for if the donee should die, his property shifts to his heir, and becomes the same as if it had shifted during his life-time, and if the donor should die, his heirs are stranger with respect to the contract, since they made no tender of the thing given.—486.

If a person make a gift to another of a piece of land destitute of buildings or plantations, and the donee plant trees in it or build a house, a stable, or a shop of such a size as to be deemed an increase, in that case the donor is not entitled to retract the gift because of the increase which it has received. The restriction is stated with respect to the shop, because shops are sometimes so small as not to be deemed an increase, and sometimes the land is very extensive, the shop occupying only one particular part of it, in which case the bar operates only with respect to that part. —486.

If a person appropriate ground for the purpose of erecting a mosque, he cannot afterwards resume or sell it, neither can it be inherited.—240.

A gift cannot lawfully be retracted but with the consent of both parties, or by a decree of the Kazee, because the retraction of a gift is a disputed point amongst the learned.—487.

When a person retracts his gift, either in virtue of a decree of the Kazee or of the mutual consent of the parties, it is an annulment of the original gift, and not a gift de novo on the part of the donee, and therefore seizin by the donor is not in such case a requisite condition.—487.

Upon an appropriation becoming valid and absolute, the SALE or TRANSFER of the thing appropriated is unlawful.—235.
Hire of Immoveables.

DEFINITION.

Ijara, in its primitive sense, signifies a sale of usufruct, namely, a sale of certain usufruct for a certain hire, such as rent or wages. In the language of the law it signifies a contract of usufruct for a return.—489.

Mosara, in the language of the law, signifies a compact betwixt two persons, one being a proprietor of land and the other the cultivator, by which it is agreed that whatever is produced from the land shall belong to both in such proportions as may be therein determined.—579.

Mosakat, in the language of the law, signifies a contract entered into by two men, by which it is agreed that the one shall deliver over to the other his fruit trees, on condition that the other shall take care of them, and that whatever is produced shall belong to them both, in the proportions of one-half, one-third, or the like, as may be stipulated.—584.

A compact of cultivation is not valid according to Haneefa. The two disciples maintain it to be valid.—579.

In the present times, however, the adjudication of the Court is given according to the doctrine of the two disciples, both because compacts of cultivation are convenient to mankind, and also because they have become everywhere customary.—579.

Compact of cultivation (according to the two disciples) are of four different kinds—I. Where the ground and the seed are supplied by the one, and the cattle and the labour by the other; and this is lawful. II. Where the ground alone is supplied by one of the parties, and the labour, seed, and cattle by the other; and this also is lawful. III. Where the ground, the seed, and the cattle are supplied by the one, and the labour alone by the other; and this likewise is lawful. IV. Where the ground and the cattle are supplied by one of the parties, and the seed and labour by the other; this is not valid.—580.

Besides the four species of compacts of cultivation above enumerated, there are two more, which are however invalid:—I. Where it is stipulated that the seed shall be supplied by one of the parties, and the ground, the labour, and the cattle by the other, which is invalid, because the sixth condition before mentioned is not found in it. II. Where it is stipulated that the seed and cattle shall be furnished by one of the parties, and the ground and labour by the other, which is likewise invalid, for the same reason. In both these cases the produce of the lands (according to the one opinion) belongs to him who supplied the seed, upon the same principle that it belongs to him in any other cases of compacts of cultivation which are invalid. But according to the other opinion, the produce belongs to the proprietor of the land; and he therefore stands (as it were) as merely a borrower of the seed of which he has obtained possession by its being sown in his ground.—580.
PARTIES.

It is essential to the validity of a contract of cultivation that the proprietor of the ground and the manager be both qualified to make such a compact; that is to say, that they be both in their right REASON, of AGE, and conversant in such compacts; for unless the parties be so qualified, no compact whatever is valid.—579.

RIGHTS AND LIABILITIES.

It is essential to the validity of a compact of cultivation that the ground be capable of CULTIVATION, for otherwise the object of the compact cannot be accomplished.—579.

A lease of land is not valid unless mention be made of the article to be raised in it, because land is hired, not only with a view to cultivation, but also for other purposes, such as building, and so forth; moreover, the articles sown in the land may be of different qualities, since some vegetables come quickly to maturity, whilst others are slower of growth. It is therefore requisite that the article be specified to avoid disputes between the lessor and lessee, or that the lessor declare—"I let the land on this condition, that the lessee shall raise whatever he pleases in it;" in which case, as the lessor expressly leaves the lessee at full liberty, the uncertainty which might occasion a dispute is removed.—494.

If a person hire land, without mentioning that it is for the purpose of cultivation, or without mentioning what species of cultivation he means to employ in it, the contract is invalid; because land is hired for tillage, and also for other purposes, and, in the same manner, it is cultivated for various uses, some more and some less injurious to the soil. The thing contracted for is therefore uncertain, and accordingly the contract is not lawful. Notwithstanding this, however, if the person who hires the land should cultivate it, and the term of the lease expire, he is entitled to the specified rent, on a favourable construction.—503.

It is lawful to hire land for the purpose of cultivation, as this is the use to which land is commonly applied. In this case also the hirer is entitled to the use of the road leading to the land, and likewise to the water (that is, to his turn of watering), although no mention of these be made in the contract.—494.

If a person hire land for the cultivation of wheat, and sow therein trefoils or clover, he is responsible in proportion to the DAMAGE the land sustains, because the cultivation of any species of grass is more injurious to the land than the cultivation of wheat, as these require more water and their roots spread more in the ground.—497.

It is lawful to hire a house or shop for the purpose of residence, although no mention be made of the business to be followed in it; because, as the ostensible purpose to which it is to be applied is residence, this must be taken for granted, and residence does not admit of various descriptions. The contract in question is therefore valid, and the lessee is at liberty to carry on in the place any business he pleases, as the case is absolute.—494.
A blacksmith, however, or a fuller or miller, must not reside in the house, as this would be evidently injurious, since the exercise of those trades would shake the building. Although, therefore, the contract in question be absolute, still it is virtually restricted to what may not be injurious to the building.—494.

Land, however, and every other article not liable to be differently affected by a different occupant (such as a tent or pavilion), is not restricted in point of use by the mention of a particular person, and consequently the hirer is at liberty to put any one to reside in it that he pleases, since the exclusive restriction is of use only because of its preventing a difference of effect. But the residence of persons whose business is of injurious tendency to a building (such as blacksmiths, and so forth) is always excepted from the contract, as was before explained.—495.

It is essential to the validity of a compact of cultivation that the proprietor of the land DELIVER up the land to the cultivator, in order to the cultivation of it, and that he himself abstain from any management or enjoyment of it, insomuch that if it be stipulated in the compact of cultivation that he also shall manage, the compact is null because of the invalidity of such stipulation.—580.

If a person hire a house, and then discover a defect in it, such as renders it uninhabitable, he is at liberty to DISSOLVE the CONTRACT.—509.

If, also, the lessor perform what is requisite to remedy the defect, the hirer is in that case without an option, as the reason for such option is then done away.—509.

If a house fall to decay, or the wells for watering land dry up, or a mill-stream cease to run, the contract of hire is dissolved, because in such case the thing contracted for (namely, exclusive advantage) is defeated before possession.—509.

If a mill-stream cease from running, and the mill-house be applicable to any other use than that of grinding grain, the hirer must pay a rent proportionably to the use derived from such house, as that is a part of what was contracted for.—510.

If a person let to hire a house or shop, and afterward become poor and involved in debt to a degree which he is unable to discharge but by the price of the house or shop, the Kazee must in this case dissolve the contract of hire, and sell the place for payment of the debt; because in the endurance of the contract the lessor sustains a superinduced injury not incurred by the contract, which superinduced injury, in this instance, is that the Kazee will otherwise seize and imprison him on account of the debts, as he cannot be certain whether the debtor speaks truly in declaring that "this is his only property." From the expression "the Kazee must in this case dissolve the contract," it may be inferred that a decree of the Kazee is requisite to the dissolution; and the same is mentioned in the Zeedat, treating of a pretext of debt.—511.

It is lawful for the proprietor of the ground to dissolve the compact, in case he have occasion to sell the ground to discharge considerable
debts which he may have incurred, for this is a pretext which he may avail himself of, in the same manner as in hire.—583.

If, however, the crop have begun to grow, although it be still unfit for reaping, the land must not be sold for the payment of the proprietor's debt until the grain be ready to cut down, because if the land were to be sold under such a circumstance, the sale would be injurious to the right of the cultivator.—583.

The proprietor of the orchard cannot dissolve the compact unless he have some plea for so doing, such as when the claims of his creditors oblige him to sell it. In the same manner also, the gardener cannot cease to work, and thereby dissolve the compact, unless he adduce some plea, such as sickness. It is otherwise in compacts of cultivation, for (as has been already observed) in those instances the party who supplies the seed is at liberty to dissolve the compact at any time previous to the sowing.—586.

Compacts of gardening may be dissolved by particular pleas, such as where the gardener is a thief, and there is reason to be apprehensive of his stealing the branches or leaves of the date trees, or the fruit before it is ripe, or where he (the gardener) is disabled from working by sickness.—586.

FIXTURES.—If a person borrow a piece of land for the cultivation of grain, the lender has not the power of resuming the loan until the gathering-in of the grain.—481.

It is otherwise with respect to trees, because, as the period of their existence is uncertain, the suffering them to remain would be an injury to the lender.—481.

If a person borrow land, with a view to build upon it or plant trees in it, it is lawful; because the use to which the loan is to be applied is here ascertained, and as such use is the subject of property in leases, so also in loans. But in this case it is permitted to the lender to resume the land; and as he is to receive it back in the state in which he lent it, he is therefore empowered to compel the borrower to remove his houses or trees. It is to be considered, however, whether or not any period was fixed for the loan. If no period was fixed, then no compensation is due by the lender for the loss he may have occasioned to the borrower by the destruction of his buildings or trees, since no deceit was practised on the borrower, but rather he deceived himself in trusting to a contract which was absolute and unaccompanied with any condition. If, on the other hand, a period was fixed for the loan, and it be resumed before the expiration of that period, the resumption so made is valid, since a lender (as was before explained) may resume a loan when he pleases, but it is nevertheless abominable in this instance, as it involves a breach of promise, and the lender is responsible to the borrower for the loss he sustains in the removal of his trees and buildings, insomuch as he deceived the borrower in fixing a period which it was natural to suppose he would adhere to; the borrower therefore is entitled to a compensation from the lender in consideration of the damage he receives.—480, 481.
If a person hire unoccupied land, for the purpose of building or planting, it is lawful, since these are purposes to which land is applied. Afterwards, however, upon the term of the lease expiring, it is incumbent on the lessee to remove his buildings or trees, and to restore the land to the lessor in such a state as may leave him no claim upon it, because houses or trees have no specific limit of existence, and if they were left upon the land it might be injurious to the proprietor. It is otherwise where land is hired for the purpose of tillage, and the term of the lease expires at a time when the grain is yet unripe; for in such case the grain must be suffered to remain upon the land, at a proportionable rent, until it be fit for reaping, because as the time that it may require is limited and ascertainable, it is possible to attend to the right of both parties. In the case, on the contrary, of trees or buildings, it is impossible to pay attention to the right of both parties; and it is therefore incumbent on the lessee to remove his trees or houses from the land, unless the proprietor of the soil agree to pay him an equivalent, in which case the right of property in them devolves to him (still, however, this cannot be without the consent of the owner of the houses or trees, except where the land is liable to sustain an injury from the removal, in which case the proprietor of the land is at liberty to give an equivalent and appropriate the trees or houses without the lessee’s consent); or unless the proprietor of the land assent to the trees or houses remaining there, in which case they continue to appertain to the lessee, and the land to the landlord, for as the right of removing them belongs to the landlord, he is at liberty to forego that right.—494.

If one of the contracting parties die, and the hirer had entered into the contract of hire on his own account, it (the contract of hire) is dissolved; because if the contract were still to remain in force, it would follow that the usufruct, or rent, then becomes the right of a person who was not a party to the contract, namely, the heir (since it would shift from the deceased to his heir), which is unlawful. Besides, with respect to the lessor, it is the use of his property which forms the subject of the contract; and as in consequence of his decease this property changes to his heir, it follows that the contract of hire becomes null because the subject being lost; for a change in the right of property is the same as a change in the thing itself. With respect to the hirer, or renter, on the contrary, if the contract were to remain in force after his decease, it can only do so upon the principle that his heir is his substitute. But the use of a house cannot be a heritage without the house itself, because INHERITANCE is a succession, which is impossible except with respect to a thing which endures at both times.—510.

When one of the parties dies, the compact of cultivation, like compacts of hire, becomes dissolved. (The reason of this is fully set forth in treating of hire.)—582.

If a man give up a piece of ground to another for a term of three years, and afterwards, when the first year’s crop has begun to grow but is still unfit for reaping, the man die, the ground in this case remains in the hands of the cultivator until the crop be fit for reaping, and the produce is then divided according to the conditions of the compact; and the compact is dissolved with respect to the remaining two years of the term; because analogy would suggest that it discontinues even for the first year, as the duration of a compact depends on the duration of the parties, but it
is continued throughout the first year in order to the preservation of the
rights of both parties (that is, the cultivator and the heirs of the proprietor),
since, if it were to discontinue, the cultivator would sustain an injury.
—582.

If the proprietor of the ground die after the cultivator has ploughed
the land, and dug rivulets for watering it, but previous to the crop appear-
ing, the compact is dissolved, since in such case the dissolution of it is not
injurious to the cultivator's property. (It is otherwise where the proprietor
of the ground dies after the crop has begun to grow and appears like
grass; for in that case the compact is not dissolved, as the cultivator would
then be injured in his property by the dissolution of it.) In this case the
cultivator is not entitled to anything for his labour; because the use of a
person's service cannot be appreciated but by a compact, and when the
compact becomes null the estimation of the service no longer remains.—582.

If the cultivator should die after the crop has begun to grow, and his
heirs should offer to continue the cultivation until it be fit for reaping,
and the proprietor of the land should not consent, in this case they are
nevertheless authorized to continue the cultivation, as the proprietor will
sustain no injury thereby, but they are not entitled to any hire or wages,
as the compact is continued with a view to their benefit. If, on the con-
trary, the heir should desire to pull up the crop, and not to continue to cul-
tivate, they cannot be compelled to continue to cultivate for the reason above
assigned, but the proprietor of the ground has in his option the three modes
already recited.—583.

If, in a compact of gardening, one of the parties should die, the compact
becomes null, because it is in reality a contract of hire. If the owner of
the orchard die whilst the fruit is yet green, the gardener may continue
to work as usual until it be ripe, notwithstanding the dissent of the heirs.
—586.

But if the gardener should rather choose to submit to the injury, the
heirs have in that case three things at their option—in other words, they
may either divide the green fruit, agreeably to the proportion stipulated;
or they may keep the whole of the green fruit, and pay to the gardener
the value of his proportion; or, lastly, they may take care of the fruit
until it be ripe, and expend such sums as may be necessary for that pur-
pose, and afterwards recover a proportionable part of the expense from
the share of the gardener,—for the gardener is not at liberty to occasion
an injury to the heirs.—586.

If the gardener die, his heirs may continue to work, although the pro-
priator should not consent thereto, because it tends to their mutual benefit.
If, on the contrary, the heirs of the gardener decline working and rather
choose to gather the fruit whilst it is still green, the proprietor of the
orchard has the three things in his option as mentioned above.—586.

If both the parties die, the heirs of the gardener may continue to
work, for as if the gardener had lived and the proprietor of the orchard had
died, he (the gardener) might have continued to work, it follows that his
heirs, as being his substitutes, have the same thing in their option. If,
however, they should decline it, the heirs of the proprietor are in that case
at liberty to pursue either of the three ways above mentioned.—586.
A reserve of option is valid in hire. The argument of our doctors is that a contract of hire is a contract of commerce, in which it is not required that possession be taken at the meeting of the contract, and a condition of option may therefore be lawfully inserted in it, in the same manner as in a contract of sale.—510.

It is essential to the validity of the compact of cultivation that both participate in the produce of the ground after it is reaped; for a compact of cultivation is ultimately a compact of partnership, wherefore every stipulation repugnant to partnership invalidates the compact. (For example, if a precise quantity of the produce be stipulated for one of the parties, it is invalid, since as it is uncertain whether so much will be produced, the partnership is therefore defeated.)—580.

That the particular share which is to fall to him who does not supply the seeds be expressed, for in consequence of the agreement he is entitled to a share, and it is requisite that the proportion be determined, because a thing which is unknown cannot be established by the compact, notwithstanding a share be in general terms stipulated.—580.

Compacts of cultivation are not valid unless the period of their duration be known, nor unless the produce of the land be indefinitely participated between the parties (such as in a third, a fourth, &c.), in order that partnership may be established betwixt them. If, therefore, it be stipulated that either of them in particular shall receive a certain number of measures of grain from the produce of the ground, the compact is null, as in this case partnership is defeated (in other words, it is not established).—580.

In the same manner also, compacts of cultivation are invalid where it is stipulated that he who supplies the seed shall receive an equal quantity of grain from the produce of the ground, and that the rest shall be divided betwixt the parties.—580.

It is otherwise where two men agree that one-tenth of the produce shall go to one of the parties, and that the remainder shall be divided betwixt both; for a stipulation of this nature does not defeat partnership.—581.

When a compact of cultivation is valid, the produce of the ground is the joint property of the parties, in such proportions as they may have stipulated, such as an half, a third, or the like. If, on the contrary, nothing be produced, the cultivator is not entitled to anything, for he has a right only to a share of what may be produced.—581.

When a compact of cultivation proves invalid, the crop belongs to him who furnished the seed, it being the produce of his property.—581.

If the seed be supplied by the proprietor of the ground, the cultivator is entitled to a suitable hire for his labour, provided it do not exceed the conditions of the compact, because in subscribing to these conditions he consented to relinquish his right to the excess.—581.

In the same manner also, a compact of cultivation is invalid if it stipulate that whatever is produced on a particular spot (such as on the
banks of a rivulet) shall belong to one of the parties, and that the remainder of the produce of the whole ground shall be divided betwixt both; for such a stipulation defeats partnership, since it is possible that nothing may be produced except upon that particular spot, and it is in like manner invalid where it is stipulated that the produce of one spot of ground shall go to one of the parties, and the produce of another spot to the other.—581.

In the same manner also, a compact of cultivation is invalid where it is stipulated that the one shall get the straw and the other the grain, for it is possible that nothing may be produced but straw; and it is equally invalid if it be stipulated that the straw shall become their joint property, and that the grain shall belong to one of them only, for here a partnership is not established with respect to the grain, which is the particular object of cultivation.—581.

If it be stipulated in the compact of cultivation that the grain shall be divided equally betwixt the parties, and no mention be made of the straw, still the compact is valid, because a partnership is stipulated in that thing which is the chief object of cultivation, and in this case the straw will belong to him who supplied the seeds, as of that the straw is the produce. The Sheikhs of Balkh are of opinion that the straw should also be divided equally betwixt the parties, because such is the usual practice when no mention is made of the straw; and also because, as the straw is subordinate to the grain, it should, as well as the grain, be held in partnership.—581.

If it be stipulated that the grain shall be divided equally, and that the straw shall go to him who supplied the seed, it is valid, because this is consistent with the spirit of compacts of cultivation.—581.

If, on the contrary, it be stipulated that the straw shall go to him who did not supply the seed, it is invalid, as such a stipulation defeats the partnership in case nothing but straw should be produced.—581.

If the seed be supplied by the cultivator, the proprietor of the ground is to receive a suitable rent for his ground, whether there be any produce or not.—581.

If the cattle be provided by the proprietor of the ground, so as that the compact (according to the Zahir Rawayet) becomes invalid, the cultivator is in that case liable for a suitable hire on account both of the cattle and the ground.—582.

Where the proprietor of the ground, in consequence of having supplied the seed, is entitled to the produce, he may lawfully, on the compact proving invalid, enjoy the whole, since it was yielded from ground which was his own property.—582.

If the term of the compact of cultivation should expire before the crop be ready for cutting, the cultivator must pay to the proprietor of the land a hire or rent for his (the cultivator's) proportion of the ground until the crop be ripe, and in the meantime any work which it may require must be performed by both parties according to their respective proportions.—583.
If a man deliver to another a piece of open ground, for a certain number of years, that he may plant trees thereon, and stipulate that the trees and the ground shall be in partnership between them, each holding a half, it is invalid, for two reasons—first, because they have stipulated a partnership in the ground, being a thing which already exists without the previous aid of the gardener's labour; and secondly, because such a compact is liable to the same objection as Kafeez Tahan; for in this instance the master of the orchard in effect hires the gardener, and settles, as his wages, a part of the thing produced by his labour, namely, one-half of the trees. In this case, therefore, the whole of the fruit and trees go to the master of the ground, and the gardener is entitled to the price of his trees, and also to an adequate consideration as the hire of his labour; for as it is impossible to restore to him the trees because of their adhesion to the ground, he necessarily gets their value, and also an adequate hire, nor is his hire included in what he receives for the trees, that is to say, they are both due, distinctly, the use of labour being in this case of itself capable of estimation.—587.

The expense of cutting down the crop, of carrying it to the stack or thrashing it, and of cleaning the grain from the straw, falls upon both the parties in proportion to their several shares. If, therefore, they were to stipulate in the compact that the expenses shall fall on only one of them, the compact would be invalid.—583.

In short, all the above-mentioned charges must be sustained by both parties in proportion to their several shares, and not by any one of them in particular; because when the crop is ready, the object of the compact being accomplished, the compact itself is at an end.—583, 584.

In fine, every operation of agriculture, previous to the maturity of the crop (such as watering and watching it), falls upon the cultivator; and every subsequent operation requisite until the partition (such as reaping, &c.) falls equally upon both; and lastly, every operation that is necessary after the partition (such as carrying, watching, &c.) falls upon each of them severally, for their respective shares.—584.

The foregoing rule holds good also in cases of Mosakat, or compacts of gardening; that is to say, all operations previous to the maturity of the fruit, such as watering, grafting, and watching the trees, falls upon the gardener; and all subsequent operations, such as gathering the fruit, and watching it, previous to a partition, falls upon both.—584.

When compacts of gardening are invalid, the gardener is entitled to suitable wages, as an invalid compact of gardening is equivalent to an invalid contract of hire, and therefore resembles an invalid compact of cultivation.—586.

If the term of the compact should expire whilst the fruit is still green and unripe, the gardener may continue in his employment until it become ripe, and in this case he is not liable for any rent on account of the trees; the letting of trees being unlawful. It is otherwise with respect to compacts of cultivation, for if their term expire whilst the crop is yet green, the cultivator may continue to work until it be fit for reaping, but he is liable for the rent of the ground, the letting of ground being lawful. —586.
If the term of a compact of gardening expire at a time when the fruit is still green, the gardener alone is obliged to perform the rest of the work, whereas, on the contrary, if the term of a compact of cultivation expire at a time when the crop is still green, both parties are obliged to work until the crop be brought to maturity. The reason of this distinction is that, in compacts of cultivation, the cultivator being liable for the rent of the ground after the expiration of the term of the compact, it would be unjust that he alone should afterwards perform the labour; whereas, in cases of compacts of gardening, the gardener, as not being liable for any rent, is obliged to perform the work alone, after the expiration of the term, in the same manner as before.—586.

Upon a tenant taking possession of a house, he becomes bound for the RENT, although he should not reside therein; because as it is impossible to make delivery of the usufruct, the delivery of the subject from which the usufruct is derived is a substitute for it, since in delivering the article an ability to enjoy the usufruct is established.—491.

If, therefore, any person were to usurp the house from the tenant, he (the tenant) is no longer responsible for the rent.—491.

If, also, a person usurp the house at any time before the expiration of the term of the lease, the rent drops in proportion, since the contract is broken in that proportion.—491.

If a person hire a house, the lessor is at liberty to demand the rent from the tenant from day to day, because the object was daily use, and that has been obtained; the lessor may therefore insist upon his rent from day to day, unless the time for claiming the rent be specified in the contract.—491.

Where two men enter into a compact of cultivation, and he who was to supply the seed afterwards RETRACTS, previous to the sowing, the Kazee must not compel him to abide by the compact, because he cannot abide by it without sustaining an immediate loss from the sowing of his seed; and the case is therefore similar to where a man hires another to break down his house, in which instance, if the hirer were to retract, the Kazee could not compel him to abide by his agreement. If, on the contrary, the party retract who was not to supply the seed, the Kazee may compel him to fulfil the compact, for in so doing he does not sustain any loss.—582.

If the proprietor of the ground, being made to furnish the seed, should retract after the cultivator has tilled the ground, the cultivator is not entitled to receive anything for the work he has performed.—582.

It is essential to the validity of a compact of cultivation that it be expressly stipulated by whom the SEED is to be supplied, in order that the grounds of the compact may be known;—in other words, in order that it may be known whether it is founded on the use of the labour, or on the use of the land, and that no source of dispute may remain.—579.

That the particular species of seed, such as wheat, barley, &c., be expressed, in order that the species in which the hire of the labourer is to be paid may be known.—580.
That the period or TERM be expressed, for such a compact is in the nature of an agreement, either for the use of the ground (as when the cultivator supplies the seed), or for the use of the labour (as when the seed is supplied by the proprietor of the ground), and the determinate use of either can be ascertained only by the period.—579.

If a person hire a house for a year at the rate of twelve dirms, it is lawful, although no mention is made of the rent of each month respectively.

It is to be observed that if the day of the year's commencement be specified (as if the lessee were to say, "I take this house for a year, from the first of the month Rajab"), the lease commences from that date. If, on the contrary, no date of commencement be specified, the lease commences from the date of the deed itself.—498.

It is also to be observed that if, in this instance, the contract of hire be concluded on the first day of the month, all the succeeding months of the year are counted from the appearance of the new moon, as this is the original standard of calculation. If, on the contrary, the contract be concluded after the lapse of some days, from the commencement of a month, the lease is in that case for three hundred and sixty days, according to Hanefis, and there is one report from Aboo Yoosaf to the same effect.—498.

If a person hire a house, on a condition thus expressed, that "he shall pay one dirm every month," such contract is valid for one month, but invalid for every subsequent month, unless the whole of the months for which it is to be hired be specified, in which case it continues valid.—498.

It is also otherwise where a man delivers to another his date garden, or his herb roots, desiring him to water and nourish them always until they die, or until their roots be pulled, and their vegetation be thereby terminated, or where he sets no bounds whatever to the duration of the compact with respect to the herbs; for in this case the compact is invalid, its period being uncertain, because herbs grow as long as their roots are suffered to remain in the ground.—585.

The specification of a term is requisite in compacts of gardening, by analogy, in the same manner as in compacts of cultivation, the one being, in reality, a contract of hire, the same as the other. According to a more favourable construction, however, compacts of gardening are lawful without any specification of a term. Thus, if two men enter into a compact, by which it is agreed that the one shall deliver his date trees to the other, who shall water and nourish them until they produce fruit and it become ripe, and no particular period (such as a year, or the like) be specified, the compact is nevertheless valid, and continues in force with respect to the first fruit that may be produced, for the season for producing and ripening fruit is known, and seldom differs much. In the same manner also, if two men enter into a compact, and agree that the one shall deliver to the other the roots of shrubs which are in the ground, and that the other shall water and nourish them until they yield ripe seed, to be shared between them, without mentioning any term, the compact is nevertheless valid, and takes place, with respect to the first seed that shall be produced and arrive at maturity.—585.
It is also otherwise in cases of gardening, where one man delivers to another his young trees newly planted, for in that case the compact is not valid unless a period be fixed, it being very uncertain when the trees may arrive at that stage in which they are capable of bearing fruit, as that is a circumstance which depends on the strength and fertility of the soil.—585.

**Hire of Services.**

**DEFINITION.**

*Ijara*, in its primitive sense, signifies a sale of usufruct, namely, a sale of certain usufruct for a certain hire, such as rent or wages. In the language of the law it signifies a contract of usufruct for a return.—489.

A particular hiring signifies one who is entitled to his hire in virtue of a surrender of himself during the term of hire, although he do no work; as for instance, a person who is hired as a servant for a month, or to take care of flocks for a month, at a certain rate, under a condition that he shall not serve or tend the flocks of any other person during that term.—505.

**HOW MADE.**

A contract of hire is not valid unless both the usufruct and the hire be particularly known and specified.—490.

Whatever is lawful as a price is also lawful as a recompense in hire; because the recompense is a price paid for the usufruct, and is therefore analogous to the price of an article purchased.—490.

The extent of usufruct may be defined by fixing a term, as in the hire of a house for the purpose of residence, or the hire of land for the purpose of cultivation. A contract of hire, therefore, stipulated for a certain term, to whatever extent, is valid; because, upon the term being known, the extent of the usufruct for that term is also known.—490.

Usufruct may also be ascertained by a specification of work, as where a person hires another to dye or sew cloth for him, or an animal for the purpose of carrying a certain burden, or of riding upon it a certain distance; because, upon showing the cloth, and mentioning a particular colour, and the degree of the dyeing (such as dipping once or twice, for instance) in the first case, or explaining the nature of the needle-work (such as whether it is to be after the Persian or Turkish fashion) in the second case, or explaining the weight and nature of the load in the third case, or the length of the journey in the fourth case, the usufruct is fully ascertained, and the contract is consequently valid. It moreover frequently happens that a contract of hire is a contract for work, as in the case of hiring a fuller or a tailor, where it is requisite that the work be particularly specified. It is also sometimes a contract for usufruct, as in the case of hiring a domestic servant, and in this case a specification of the term is requisite.—490.
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Usufruct may also be ascertained by specification and pointed reference, as where a person hires another to carry such a particular load to such a particular place: because, upon seeing the load and the place to which it is to be carried, the service to be performed is precisely ascertained, and the contract is consequently valid.—490.

RIGHTS AND LIABILITIES.

Every artificer whose work produces a visible effect upon an article (such as a dyer or fuller) is at liberty to DETAIN such ARTICLE until he receive his hire.—492.

If, therefore, a dyer or fuller detain cloth for the purpose of being paid his hire, and the cloth perish in his hands, he is not responsible, according to Haneefa, inasmuch as he has not transgressed in so detaining it, the cloth remaining as a deposit with him after detention, in the same manner as before.—492.

A workman, the effect of whose labour is not visibly extant in an article (such as a boatman or a porter), is not at liberty to detain the article with a view to receiving the hire; because, in this instance, the subject of the contract is merely labour, which is in no manner existent in the article conveyed or carried; and the washing or bleaching of cloth is analogous to the porterage of it in this particular.—492.

Hire is rendered invalid by involving an invalid condition, in the same manner as sale, for hire stands in the place of sale, whence it is that a contract of hire may be DISSOLVED in the same manner as a contract of sale.—497.

If a person, being afflicted with the toothache, hire a surgeon to draw one of his teeth, and the pain afterwards cease, or hire a cook to prepare a marriage-feast, and afterwards repudiate the bride by her own desire, the contract of hire is dissolved; because if it were to continue in force, the hirer would suffer a superinduced injury not incurred by the contract.—511.

If a person hire a slave as a servant, he is not at liberty to carry such slave along with him upon a journey, unless this be a condition of the contract; because, as travelling is attended with additional trouble, a contract in general terms is not held to extend to it, whence it is that travelling is a sufficient plea for breaking off a contract of hire.—507.

NEGLIGENCE.—An article delivered to a common hireling is a deposit in his hands. If, therefore, it perish whilst in his possession, he is not in any degree responsible for it, according to Haneefa, and such also is the opinion of Ziffer. The two disciples maintain that he is responsible, except where the article is lost or destroyed by any irremediable and irresistible accident, such as a fire burning down his house, or robbers in such force as not to be repelled.—503.

If a surgeon perform the operation of phlebotomy in any customary part, he is not responsible in case of the person dying in consequence of such operation.—504.
If an article be lost whilst in the hands of a particular hireling, without his act, by a thief stealing it (for instance), or an usurper carrying it away, or if it be lost by his act, he is not responsible for it. He is not responsible in the former instance, because the article is a deposit in his hands, since he took possession of it with the owner’s consent.—505.

He is also not responsible in the second instance, because, as the advantage of this hireling’s service is the property of the hirer, it follows that, where he directs him to act with his property, such direction is valid, consequently the hireling is his deputy; his acts, therefore, are the same as the acts of his principal, the hirer, and of course he is not responsible.—505.

If a person hire a baker to bake bread in his (the hirer’s) house, at the rate of one kafeez of flour for a dirh, the baker so hired is not entitled to his WAGES until he draw the bread out of the oven, since until this be done his work is not completed. If, therefore, the bread be burnt, or fall out of his hands, and thus be spoiled, he is not entitled to his hire, because of the destruction of the bread before delivery of it to the hirer. If, on the other hand, he draw the bread out of the oven, and it be afterwards burnt or otherwise destroyed, without his act, he is entitled to his hire, because he has made a due delivery of it to the hirer, in virtue of having deposited it in his house; neither is he, in this instance, liable to make any compensation, as he has not been guilty of any transgression.—492.

A workman is not at liberty to demand his hire until his work be finished, unless an advance of payment were stipulated; because some of the work still remains unobtained, whence he is not entitled to his hire. The same rule also holds if the workman perform his business in the house of his employer, for in this instance he is not entitled to his hire before his work is finished, since some of his work still remains unobtained, as has been mentioned above.—491.

If an advance of hire be stipulated in the agreement, the workman is in such case at liberty to require his pay before his work be finished, as a stipulation of this nature, in a contract of hire, is binding.—492.

If a person hire another to go to Basra, and bring his family thence, and this person accordingly go to Basra, and there find some of the family dead, and bring away the remainder, he is entitled to his whole hire for the journey to Basra, and to a hire for returning back in proportion to the number he brings with him; because, as he has performed a part of his contract, and not the whole, it follows that he is entitled to an equivalent for what he performs, and that his right is annulled in proportion to what he does not perform.—493.

If a person hire another to carry a letter to Basra and bring back an answer, and he accordingly go to Basra and there find the person dead, to whom the letter is addressed, and come back and return the letter, he is not entitled to any wages whatever. This is according to the two disciples. Mohammed maintains that he is to receive the usual hire for going to Basra, since in so doing he has performed a part of the contract,
namely, the journey, the reason of which is that the hire or recompense is in lieu of the journey, as it is that which is attended with labour, not the carriage of the letter.—493.

If a person hire another to carry wheat to a certain person at Basra, and he accordingly carry the wheat to Basra, and then find the person dead to whom it was consigned, and he bring back and return the wheat to the hirer, he is not entitled to anything whatever according to all our doctors, as he has failed in the performance of what he had contracted for.—493.

In a case of hire rendered invalid by involving an invalid condition, a proportionate hire is due.—497.

It is not lawful to accept a recompense for summoning the people to prayers, or for the performance of a pilgrimage, or of the duties of an Imam, or for teaching the Koran or the law; for it is a general rule with our doctors that no recompense can be received for the performance of any duty purely of a religious nature.—499.

Some of our modern doctors, however, hold it lawful to receive wages for teaching the Koran in the present age, because an indifference has taken place with respect to religion, whence if people were to withhold from paying a recompense for instruction in the sacred writings, they would in time be disregarded, and decrees pass accordingly.—499.

It is not lawful to receive wages for singing or lamentation, or for any other species of public exhibition, as this is taking a recompense for an act which is of a criminal nature, and acts of that nature do not entitle to a recompense in virtue of a contract.—499.

Hire is not due immediately on concluding the contract, but becomes claimable on one of three grounds; for it is claimable in advance, in virtue of a previous agreement, or in advance independent of such agreement, or in consequence of the hirer obtaining the thing contracted for.—491.

If a person hire a camel to Mecca (for instance), the owner is at liberty to insist upon the hire stage by stage, because the object was to travel by stages.—491.

If the hirer stipulate with the workman that he shall himself perform the WORK, he (the workman) is not at liberty to employ any other person; because the subject of the contract is the work of this person and not of any other, and therefore the right of the hirer is connected with his work in particular, in the same manner as the right of the person who hires a place, or an article is connected with the use of that particular place or article. If, on the other hand, the work be absolute, without any stipulation that the workman shall himself perform it (as if a person were to say to a tailor, "make up this garment"), the workman is at liberty to hire any other person to perform the work, as the right of the hirer, in this instance, is merely to tailor's work, which may be performed either by this or by any other tailor, in the same manner as the payment of a debt, which may be made either by the debtor himself or by any other person.—493.
Mortgage.

DEFINITION.

Rahn literally signifies, to detain a thing on any account whatever. In the language of the law it means the detention of a thing on account of a claim which may be answered by means of that thing, as in the case of debt.—630.

It is unlawful to pawn an indefinite part of anything. Shafei maintains that it is lawful.—635.

It is not lawful to pledge fruit without the trees which bear it, crops without the land on which they are produced, or trees without the ground on which they stand; for as the pledge, in all these cases, has a natural connection with an article which is unpledged, it is therefore in effect indefinite, until such time as it be separated from that article. In the same manner also, it is unlawful either to pawn a piece of ground without the trees which are produced upon it, a field without its produce, or a tree without its fruit; because in these cases a mortgage is induced of an article naturally conjoined with another which is not pledged.—635.

PARTIES.

It is lawful for a FATHER to pledge, in security of his own debt, the slave of his infant child; for a father has the privilege of depositing the goods of his infant child in trust, and to pledge them is still more conducive to the interest of the proprietor than to pledge them in trust, since if a pledge be lost it must be accounted for, whereas a trustee is not responsible for the deposit in his hands. A GUARDIAN also is the same as a father in this particular, because such an authority vested in him is beneficial to the child.—638.

As, therefore, the contract of pawn is valid in this instance, it follows that in the case of the pledge being destroyed in the pawnee's hands, he is considered to have received payment of his debt, and that the father or guardian are responsible to the infant, as having discharged their debt by means of his property.—639.

In like manner it is lawful for a father or guardian to order the pawnee to sell his pledge; for both of these have the privilege of selling the goods of their infant ward.—639.

If a father pawn the goods of his infant child into his own hands for debt due from the child, or into the hands of another of his children being an infant, or of his slave, being a merchant and not in debt, it is lawful.—639.

It is not lawful for a guardian to pledge into his own hands goods belonging to his ward on account of a debt due to him, or into the hands of his child being an infant, or into the hands of his slave, being a merchant and free from debt (nor is it permitted to him to give anything of his own in pawn into the hands of an orphan for a debt owing to the
orphan from himself); for a guardian being merely an agent, cannot of course have a double capacity in contracts.—639.

If a guardian purchase victuals or apparel for the use of his ward, and, having debited him for the price, take in pawn part of his goods as a security for the debt, it is valid.—639.

If a father pawn the goods of his infant son, and the infant attain maturity, still he is not at liberty to annul the contract of pawn and take back the pledge until he shall have discharged the debt.—639.

It is lawful for a father to pawn the goods of his son for a debt jointly due by both. If, therefore, the pledge be destroyed, the father must compensate the son by the payment of a sum equivalent to his (the father’s) share of the debt.—639.

If a guardian purchase victuals for an orphan, so as that the price is a debt upon the orphan, and pawn an article belonging to the orphan as a security for the debt, and the pawnnee take possession of the same, and the guardian then borrow it from the pawnnee for the use of the orphan, and it be destroyed in his (the guardian’s) hands, it is no longer included in the contract of pawn, nor is any person responsible for it, for the act of the guardian in this instance is the same as that of the orphan when he has attained maturity, he having borrowed the article for his use, in which case such is the rule.—640.

If an EXECUTOR pawn part of the effects of the defunct to one of his creditors, it is illegal.—656.

HOW MADE.

Contracts of pawn are established by declaration and acceptance, and are rendered perfect and complete by taking possession of the pledge.—630.

If a person purchase anything for a particular sum and request of the seller “to keep his robe until such time as he pays him the purchase-money,” the robe is considered as a pledge. In every agreement regard is to be had to the spirit, not to the letter.—642.

RIGHTS AND LIABILITIES.

ACCESSION.—Every species of increase accruing from a pledge after the execution of the contract (such as milk, fruits, wool, or progeny) belong to the pawner as being the offspring of his property.—657.

If a person pledge or mortgage his house, and remain himself, or keep his goods therein, a DELIVERY to the pawnnee is not established until he evacuate it, or withdraw his goods therefrom, whence, if it be destroyed in the interim, the pawnnee is not answerable.—636.

A pawnnee is not permitted to LET out, or give the PLEDGE in loan.—633.

PRIORITY.—The tithe from the revenue of tithe-lands held in pawn, precedes the right of the pawnnee.—634.
If a pawnee die, leaving a pledged slave (for instance) in the hands of two pawnees, and each of them produce evidence to prove that the slave had been pledged wholly to him, a moiety of the slave is in that case awarded in pledge to each.—643.

A contract of pawn is not rendered void until the pawnee RESTORE the PLEDGE to the pawner, according to the prescribed mode of annul-

ment.—633.

If the pledge perish in the hands of the pawnee, after the parties have in concert dissolved the contract, his debt is in that case considered as discharged, provided the value of the pledge be adequate to it, the agreement being still held in force.—633.

If the pawner empower a trustee to SELL his pledge, and he sell it accordingly, either for ready money or on credit, it is lawful, the power of the pawner to sell it being indisputable.—632.

If a pawner die, his executor is empowered to sell the pledge and discharge the debt, provided he obtain the consent of the pawnee.—656.

If the pawner sell the pledge without the consent of the pawnee, the sale remains suspended upon his will, because of his right being involved in the pledge.—647.

A pawnee has not a power of selling the pledge without the consent of the pawner, as the property of it belongs absolutely to him.—645.

If the pawner constitute the pawnee, or any other person of character, an agent for the sale of the pledge towards effecting a discharge of his debt at the expiration of the stipulated term, such agency is valid.—645.

If a pawner TRANSFER the debt, which he owes the pawnee, upon another person who agrees to pay the same, and the pawnee, having assented to such transfer, acquit the pawner of the debt, and the pledge be afterwards destroyed in the pawnee's hands, the transfer is thereby rendered ineffectual, and the claim of the pawnee is annihilated; for although, in consequence of the transfer, the transferrer (the pawner) be acquitted of any further concern in the matter, yet this acquittance is the same as an actual payment.—659.

It is not lawful for the pawnee to enjoy, in any shape, the USUFRUCT of the pledge.—633.

Sale of Immoveables.

DEFINITION.

Beeys, or sale, in the language of the law, signifies an exchange of property for property with the mutual consent of the parties.—241.

A sale is invalid where it is lawful with respect of its essence, but not with respect of its quality, and null, where the subject is not of an appreciable nature; and the terms 'invalid' and 'null' are often indiscriminately used.—266.
A sale in exchange for carrion, blood, or the person of a freeman, is null, because none of these cases bears the characteristic of sale (namely, an exchange of property for property), since these articles do not constitute property with any person. A sale in exchange for wine or pork (on the other hand) is merely invalid because the characteristic of sale does exist in these instances, as these articles are considered as property with some descriptions of people, such as Christians and Jews; but they do not constitute property with Mussulmans, and a contract comprehending these articles is therefore invalid.—266.

If a person sell a slave, on condition that “he shall serve him for the space of two months after the sale,” or a house, on condition that “he shall reside in it for the space of two months after the sale,” or if a person sell any other article, on condition of the purchaser’s lending him a dirm (for instance) or making him some present, the sale so suspended on any of these conditions is invalid.—274.

If a person purchase cloth on condition that the seller sew it into the form of a vest on his account, the sale is in such case invalid, since this condition, besides being attended with an advantage to the purchaser, is not a requisite of the contract of sale. Moreover this necessarily supposes the implication of terms of two different contracts, that is, either of sale and loan, or of sale and hire.—274.

If, however, the condition of suffering the fruit to remain on the tree be stipulated, the sale is null, because such a condition is illegal, since it implicates together the right of property of the two parties, which is repugnant to the nature of sale, and every condition of this kind invalidates the sale. Besides, in this case, it must necessarily follow that one deed is interwoven with another; in other words, that either a loan or a lease is implicated with the sale, which is unlawful.—246.

HOW MADE.

Sale is completed by declaration and acceptance, the speech of the first speaker of the contracting parties being termed the declaration, and that of the last speaker the acceptance.—241.

When the declaration and acceptance are absolutely expressed, without any stipulations, the sale becomes binding, and neither party has the power of retracting, unless in a case of a defect in the goods, or their not having been inspected.—242.

RIGHTS AND LIABILITIES.

The rights of a sale are things essentially necessary to the use of the subject of the sale, such as, in the purchase of a house, the right of passing through the road that leads to it; or, in the purchase of a well, the right of drawing water from it. APPENDAGES imply things from which an advantage is derived, but in a subordinate degree, such as a cockroom or a drain.—293, 294.

If a person purchase a manzil above which there is another manzil, he is not entitled to the upper manzil, unless he have stipulated the
purchase of the manzil "with all its rights and all its appendages," or "with everything great and small upon it, in it, or of it." If, on the other hand, a person purchase a bait above which there is another bait, with a stipulation of all its rights, still he is not entitled to the upper bait. But if a person purchase a dar (that is, a serai) with its enclosure, he is entitled to the upper storeys and the offices; because the term 'dar' signifies a place comprehended within an enclosure, which is considered as the original subject, and of which the upper storey is a dependant part.—294.

If a person purchase a room (bait) in a house (dar) or dwelling-place (manzil), he is not entitled to the use of the road, unless he have stipulated the rights and appendages, or the great and small belonging to it. In the same manner, in the sale of land, a well or drain is not included, unless by a specification of the rights or appendages, because they are not considered as a part of the ground, but as a dependant on it. It is otherwise with respect to a lease, for that virtually includes the well and road without any specification, because the object of a lease is an usufruct, which is not to be obtained but by the use of the road and well, and it is not a custom amongst farmers to rent a road or a well.

But the object of a sale may be answered without the necessity of including the road or well, since it is customary amongst purchasers to sell and trade with the subjects of their purchase, and to dispose of them into the hands of another; whence an advantage is derived from the transaction, without the road or other appendage being included.—294.

The DISSOLUTION OF a SALE previous to taking possession of the article sold, whether of a moveable or immovable description, is a breaking off, according to Haneefa. According to Aboo Yoosaf, it is a breaking off with regard to moveable property only.—281.

A dissolution with respect to immovable property, on the contrary, previous to the taking possession of it, is a sale according to Aboo Yoosaf, as he holds that the sale of immovable property, previous to the seizin of it, is lawful.—281.

If a person sell the place of his abode (in other words, his house), the foundation and superstructure are both included in such sale, although they may not have been specified by the seller, because they are comprehended in the common acceptation of the term; and also because, being joined to the ground in the nature of FIXTURES, they are considered as dependant parts of it.—245.

In a sale of land, the trees upon it are included, although they be not specified, because they are joined to it, in the same manner as foundation and superstructure in the preceding case.—245.

In a sale of ground, the grain then growing on it is not included, unless particularly specified by the seller; because it is joined to the ground, not as a fixture, but for the purpose of being cut away from it, in the same manner as goods of any kind which may have been placed upon it.—245.

So also if a person should sell a tree on which fruit is growing, the fruit belongs to the seller, unless it had been specifically included in the sale.—245.
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If a person sell a piece of ground in which seed has been sown, but of which the growth has not appeared above ground, in this case the seed is not included in the sale.—246.

If a person possessing the option of inspection should die, the option in such case becomes null, for (according to our doctors) it is not a HEREDITAMENT, as has already been explained in treating of optional conditions.—257.

In a SALE that is NULL, the purchaser is not empowered to perform any act with respect to the subject of the sale, but it remains as a trust in his hands, according to some of our modern doctors.—267.

If a person purchase a house by an invalid sale, and afterwards convert it into a mosque, he is in that case responsible, according to Haneefa, for the value of the house.—277.

The stipulation of a condition of OPTION, on the part either of the seller or purchaser, is lawful, and it may be stipulated to continue for three days or less, but it must not be extended beyond that term.—248.

An optional condition is where one of the parties stipulates it as a condition that he may have the option, for a period of two or three days, of annulling the contract if he please.—249.

If the seller stipulate a condition of option, the right of property over the goods does not in that case shift from him, because the completion of the sale depends on the mutual consent of the parties, and the condition of option evinces that the seller has not completely consented. —250.

If the merchandise, where the stipulation of option is on the part of the purchaser, perish or be destroyed, the purchaser is in that case answerable for the price.—250.

It is otherwise where the merchandise perishes in the possession of the purchaser when the option had been stipulated by the seller; for in this case the purchaser is answerable only for the value.—250.

If the condition of option be stipulated by the purchaser, the right of property over the goods shifts from the seller, because the sale is rendered complete on his part. The right of property, however, although it shift from the seller, does not vest in the purchaser.—250.

In case of a sale on a condition of option, it is lawful, according to Haneefa and Mohammed, for the party possessing the option to annul the contract within the stipulated period, or to confirm it; which latter he may do without the knowledge of the other party, but it is not lawful for him to annul it without the knowledge of the other.—251.

If a person possessing the right of option in a sale should die, the sale is then complete, and the right of option becomes void, and does not descend to his heir.—252.

If a person purchase a house under a condition of option, and the adjoining house be afterwards sold before the expiration of the period
of option, and the purchaser under the condition of option claim the right of Shaffa, in this case his assent to the first sale is thereby virtually given, and his right of option exists no longer.—254.

If a person purchase an article without having seen it, the sale of such article is valid, and the purchaser after seeing it has the option of accepting or rejecting it as he pleases.—255.

The right of option of inspection is not, like an optional condition, confined to a particular period; on the contrary, it continues in force until something take place repugnant to the nature of it.—255.

If a person should look at a heap of grain, or at the outward appearance of cloth which is folded up, or at the face of a female slave, or at the face and posterior of an animal, and then make purchase of the same, he has no option of inspection. In short it is a rule that the sight of all the parts of the merchandise is not a necessary condition, because it is often impracticable to obtain it, and therefore it is sufficient to view that part whence it may be known how far the object of the purchaser will be obtained.—255.

If a person look at the front of a house, and then purchase it, he has no option of inspection, although he should not have seen the apartments. —256.

The inspection of an agent appointed to take possession of an article purchased is equivalent to the inspection of the purchaser, and consequently, after the inspection of such agent, the purchaser has no power of rejecting the article purchased, unless in a case of defect.—256.

If a person purchase and take possession of an article, and should afterwards discover it to have been defective at the time of sale, it is at his option either to take it for the full price or to reject it.—258.

It is not lawful for a person to sell moveable property which he may have purchased until he receive possession of the same.—286.

The sale of land, previous to seizin, is lawful according to Haneefa and Aboo Yoosaf.—286.

SHAFFA, in the language of the law, signifies the becoming proprietor of lands sold for the price at which the purchaser has bought them, although he be not consenting thereunto. This is termed Shaffa, because the root from which Shaffa is derived signifies conjunction, and the lands sold are here conjoined to the land of the Shaffee, or person claiming the right of pre-emption.—547.

The right of Shaffa appertains—I., to a partner in the property of the land sold; II., to a partner in the immunities and appendages of the land (such as the right to water and to roads); and III., to a neighbour.

A partner merely in the road or the rivulet, or a neighbour, cannot be entitled to the privilege of Shaffa during the existence of one who is a partner in the property of the land, for his is the superior right, as has been already shown.—549.
If a partner in the property of the land relinquish his right of Shaffa, it devolves next to him who is a partner in the road; and if he also relinquish his right, it falls to the Jar Molasick, or person whose house is situated at the back of that which is the object of Shaffa, having the entry to it by another road.—549.

A person who is a joint proprietor of only a part of the property sold (such as a partner in a particular room or wall of a house), has a right superior to one who is neighbour to that particular part, so likewise has he a right superior to one who is a neighbour to the rest of the house. This is an approved maxim of Aboo Yoosaf, for the conjunction holds stronger in the case of a person who is a joint proprietor of only a part of the house, than in that of one who is merely a neighbour.—549.

When there is a plurality of persons entitled to the privilege of Shaffa, the right of all is equal, and no regard is paid to the extent of their several properties.—549.

If some of the partners happen to be absent, the whole of the Shaffa is to be decreed equally amongst those who are present.—549.

If the Kazee should have decreed the whole of the Shaffa to one who is present, and an absentee afterwards appear and claim his right, the Kazee must decree him the half, and so likewise if a third appear, he must decree him one-third of the shares respectively held by the other two, in order that thus an equality may be established amongst them.—550.

A Mussulman and a Zimmee, being equally affected by the principle on which Shaffa is established, and equally concerned in its operations, are therefore on an equal footing in all cases regarding the privilege of Shaffa; and for the same reason, a man or a woman, an infant or an adult, a just man or a reprobate, a free man or a slave (being either a Mokatib or a Mazoon), are all equal with respect to Shaffa.—558.

The privilege of Shaffa takes place with respect to immoveable property, notwithstanding it be incapable of division, such as a bath, a mill, or a private road.—558.

It is observed, in the abridgment of Kadooree, that Shaffa does not affect even a house or trees when sold separately from the ground on which they stand. This opinion (which is also mentioned in the Matsoot) is approved, for as buildings and trees are not of a permanent nature, they are therefore of the class of moveables. There is, however, an exception to this in the case of the upper-storey of a house, for it is subject to Shaffa, whence the proprietor of the under-storey is the Shaffee, as is also the proprietor of the upper the Shaffee of the under one, notwithstanding their entries be by different roads.—558.

When a man acquires a property in land for a consideration (in the manner, for instance, of a grant for a consideration), the privilege of Shaffa takes place with respect to it, because it is in the power of the Shaffee to fulfil the stipulation.—558.

The privilege of Shaffa cannot take place relative to a house assigned by a man as a dower to his wife, or by a woman to her husband, as the condition on which he is to grant her a divorce, or which is settled on a
person as his hire or reward, or made over in composition for wilful murder, or assigned over as the ransom of a slave; for with, as it is a rule, that Shaffa shall not take place unless there exist an exchange of property for property, which is not the case in any of these instances, as the matters to which the house is opposed are not property.—559.

The privilege of Shaffa does not operate relative to a house concerning which there has been a dispute betwixt two men, compromised by the defendant (who was the possessor) paying the plaintiff a sum of money after denying his claim; for in this case, the compromise being made after the denial, the house, in the imagination of the defendant, still belongs to him under his original right of property, and consequently no sale or exchange of property for property can here be established in regard to him.—559.

The privilege of Shaffa is not admitted in the case of grants, unless when the grant is made for a consideration, in which case it is, in effect, ultimately a sale.—559.

If a man sell his house under a condition of option, the privilege of Shaffa cannot take place with respect to that house, the power reserved by the seller being an impediment to the extinction of his right of property; but when he relinquishes that power, the impediment ceases, and the privilege of Shaffa takes place, provided the Shaffee prefer his claim immediately. This is approved.—559.

If, on the contrary, a man purchase a house under a condition of option, the privilege of Shaffa takes place with respect to it, for such a power reserved by the purchaser is held, in the opinion of all the learned, to be no impediment to the extinction of the seller's right of property, and that the right of Shaffa is founded and rests upon the extinction of the seller's right of property, as has been already explained.—560.

If two or more partners divide the ground in which they have hitherto held a joint property, the privilege of Shaffa cannot be claimed by any neighbour.—560.

If five persons purchase a house from one man, the Shaffee may take the proportion of any one of them. If, on the contrary, one man purchase a house from five persons, the Shaffee may either take or relinquish the whole, but is not entitled to take any particular share or proportion.—564.

If a man purchase one-half of a house, and afterwards the seller and purchaser make the partition betwixt themselves, the Shaffee may either take or relinquish that half which fell to the lot of the purchaser, on whichever side it happens to be situated; but he cannot object to the partition and insist upon a new one.—564.

'Where a purchaser, under an invalid sale, builds upon the ground he has purchased, the neighbour has no right of Shaffa therein, according to the two disciples, any more than previous to the purchase.'—277.

The privilege of Shaffa is established after the sale; for it cannot take place until it be manifest that the proprietor is no longer inclined to keep his house, and this is manifested by the sale of it.—550.
The right of Shaffa is not established until the demand be regularly made in the presence of witnesses, and it is requisite that it be made as soon as possible after the sale is known, for the right of Shaffa is but a feeble right, as it is the dissecting another of his property merely in order to prevent apprehended inconveniences.—550.

When the demand has been regularly made in the presence of witnesses, still the Shaffee does not become proprietor of the house until the purchaser surrender it to him, or until the magistrate pass a decree, because the purchaser's property was complete, and cannot be transferred to the Shaffee but by his own consent, or by a decree of a magistrate, in the same manner as in the case of a retraction of a grant, where the property of the grantee being completely established by the grant, it cannot be transferred to the grantor but by the surrender of the grantee or by a decree of a magistrate.—550.

Claims to Shaffa are of three kinds. The first of these is termed Talb Mawasibat, or immediate claim, where the Shaffee prefers his claim the moment he is apprised of the sale being concluded; and this it is necessary that he should do, insomuch that if he make any delay his right is thereby invalidated.

If the Shaffee receive a letter which, either in the beginning or the middle, apprises him of the circumstance of his Shaffa, and he read it on to the end, his right of Shaffa is thereby invalidated.—550.

In another place, however, it is reported from him that if the man claim his Shaffa in the presence of the company amongst whom he may be sitting when he receives the intelligence, he is the Shaffee, his right not being invalidated, unless he delay asserting it till after the company have broken up.—550.

It is not material in what words the claim is preferred, it being sufficient that they imply a claim.—551.

When news of the sale is brought to the Shaffee, it is not necessary, according to Hanefia, that he assert his intention of claiming the Shaffa before witnesses, unless the news be communicated to him by two men, or one man and two women, or one upright man.—551.

The second mode of claim to Shaffa is termed the Talb Takreer wa Ish-had, or claim by affirmation and taking to witness; and this also is requisite, because evidence is wanted in order to establish proof before the magistrate, and it is probable that the claimant cannot have witnesses to the Talb Mawasibat, as that is expressed immediately on intimation being received of the sale. It is therefore necessary afterwards to make the Talb Ish-had wa Takreer, which is done by the Shaffee taking some person to witness, either against the seller, if the ground sold be still in his possession, or against the purchaser, or upon the spot regarding which the dispute has arisen; and upon the Shaffee thus taking some person to witness, his right of Shaffa is fully established and confirmed.—551.

The third mode of claim to Shaffa is termed Talb Khasoomat, or claim by litigation, which is performed by the Shaffee petitioning the Kazee to command the purchaser to surrender up the ground to him, the method of doing which will hereafter be particularly explained.—551.
If the Shaffee delay making claim by litigation, still his right does not drop, according to Hancefa. Such also is the generally received opinion, and decrees pass accordingly. There is likewise one opinion recorded from Aboo Yoosaf to the same effect. Mahommed maintains that if the Shaffee postpone the litigation for one month after the taking of evidence, his right drops. This is also the opinion of Ziffer; and it is related, as an opinion of Aboo Yoosaf, that the right of the Shaffee becomes null if he delay the litigation after the Kazee has held one court; for, if he willingly, and without alleging any excuse, omit to commence the litigation at the first court held by the Kazee, it is a presumptive proof of his having declined it.—551.

If the Shaffee delay to pay the price to the purchaser after the Kazee has ordered him, still his privilege of Shaffa is not invalidated, for it has become firmly established by the litigation and the decree of the Kazee.—552.

If the seller abate a part of the price to the purchaser, the Shaffee is entitled to the benefit of such abatement.—555.

If the purchaser wilfully break down the erections, the Shaffee may either resign his claim, or may take the area of ground for a proportionable part of the original price, but he is not entitled to the ruins.—557.

If the Kazee decree in favour of the Shaffee at a time when he has not yet seen the property in dispute, he (the Shaffee) has an option of inspection, and if any defect be afterwards discovered in it, he has an option from defect, and may, if he please, reject it, notwithstanding the purchaser should have excepted such defect from the bargain, or, in other words, should have exempted the seller from responsibility for such defect.—553.

If a man purchase a house or garden subject to a claim of Shaffa, and the building (owing to some unforeseen calamity) be destroyed, or the trees decay, it rests in the option of the Shaffee either to resign the house or garden, or to take it and pay the full price.—557.

If the Shaffee, previous to the decree of the Kazee, sell the house from which he derives his right of Shaffa, the reasons or grounds of his right being thereby extinguished, the right itself is invalidated, notwithstanding he be ignorant of the sale of the house to which it related.—562.

If the purchaser die, yet the right of Shaffa is not extinguished, for the Shaffee who is entitled to it still exists, and no alteration has taken place in the reasons or grounds of his right.—562.

If the Shaffee die, his right of Shaffa becomes extinct. Shaffee maintains that the right of Shaffa is hereditary. The compiler of the 'Hedaya' remarks that this difference of opinion obtains only where the Shaffee dies after the sale, but previous to the Kazee decreeing him the Shaffa; for if he die after the Kazee has decreed his Shaffa, without having paid the price, or obtained possession of the property sold, his right devolves to his heirs, who become liable for the price.—562.

If intelligence be brought to the Shaffee of the house, which is the subject of his right, being sold for one thousand dirms, and he relinquish
his right of Shaffa, and afterwards learn that the house was sold for a less price, his resignation is not binding, and he may still assert his right of Shaffa.—562.

If the Shaffee be first informed that a particular person is the purchaser, and thereupon resign his Shaffa, and be afterwards learn that the purchaser was another person, he is still entitled to his Shaffa, because a man might not wish to have one person for his neighbour.—563.

If news be brought to the Shaffee that one-half of the house is sold and he resign his right, and it afterwards appear that the whole was sold, he must still in such case claim his Shaffa.—563.

Where a man sells the whole of his house, excepting only the breadth of one yard extending along the house of the Shaffee, he (the Shaffee) is not in this case entitled to claim his privilege, because of his neighbourhood being thus cut off. This is a device by which the Shaffee may be disappointed of his right; and it is still the same if the seller grant the intervening part of his house as a free gift to the purchaser, and put him in possession of it.—563.

If a man purchase a house for a certain price, and afterwards, in lieu of that price, give a Jamma, or gown, to the seller, the Shaffee must take the house for the price first settled, and not for the value of the gown, for the exchanging of the price for the gown was a distinct and separate bargain, and the price which the Shaffee is to pay is on account of the house, not on account of the gown. The compiler of the 'Hedaya' remarks that this also is a device by which the right of Shaffa, either in a partner or a neighbour, may be eluded; as the house may be sold for a price equal to twice its value, and then, in lieu of that price, a gown may be given to the seller equal to the real value of the house.—563.
CIVIL CODE.

Chapter IX.—WRONGS.

DEFINITION.

Every invasion of a legal right, such as the right of property, or the rights incident to the possession of property, or the right of personal security, constitutes a tort, and so does every neglect of a legal duty, and every injury to the person or character or reputation of another.—Add. on Torts, Pref. p. 5.

"There must be a damage either already fallen upon the party or inevitable; there must also be a thing done amiss."—Hobart, C. J., in Waterer v. Freeman, Hob. 266.

"An action cannot be supported for telling a bare naked lie, but if it be attended with damage, it then becomes the subject of an action."—Kenyon, C. J., in Pasley v. Freeman, 3 T. R. 65.

"When one man doth damage to another by using the same employment, no action will lie, because one man has as much liberty to use an employment as another."—11 Hen. 4 fol. 47.

Actions ex-contractu are just as much founded on injury as the actions which are said to be ex-delicto.—Austin.

The distinction between private and public wrongs, or civil injuries and crimes, would seem to consist in this: Where the wrong is a civil injury, the sanction is enforced at the discretion of the party whose right has been violated. Where the wrong is a crime, the sanction is enforced at the discretion of the sovereign, and accordingly the same wrong may be private or public as we take it with reference to one or to another sanction. Considered as a ground of action on the part of the injured individual, a battery is civil injury. The same battery considered as a ground for an indictment, is a crime or public wrong.—Austin, 518.

In the language of the Roman law, the term 'delict,' as applied to civil injuries, is commonly limited to civil injuries which are infringe-ments of rights in rem. Violations of rights in personam, or breaches of contracts and quasi-contracts, are not commonly styled delicts or injuries, and are not commonly considered in a peculiar or appropriate deportation. In the Institutes of Gaius, as well as in those of Justinian, they are
considered with contracts and quasi-contracts, or with primary rights
in personam of which they are infringements.

In the language of the English law (here manifestly borrowing the
language of the Roman), the term 'delict' (in so far as the term is employed
by English lawyers) is also limited to civil injuries which are infringe-
ments of rights in rem. Remedies by action are not unfrequently
distinguished into actions ex-delicto and actions ex-contractu. The former
are remedial of injuries which are infringements of rights in rem; the latter are remedial of breaches of contracts and of breaches of quasi-
contracts: such at least is the nature of the distinction as conceived and
stated generally. The various classes of actions having been much con-
founded, the foregoing general statement of the nature or rationale of the
distinction must be taken with numerous qualifications. For example,
in cases strictly so called the general issue is not guilty; and the ground
of the action is properly a tort, that is to say, the ground of the action is
properly a delict (in the narrower signification of the term to which I
have now adverted); but this notwithstanding, the action is frequently
brought on breaches of contracts and on breaches of quasi-contracts. The
department of the English law which relates to rights of action is
signally impressed with the disgraceful character of the system, namely, a
want of broad and precise principles, and of large, clear, and conspicuous
distinctions. In the language of the Roman law, the term 'delict' has
another and a larger meaning, being co-extensive with the term 'injury,'
and signifying any violation of any right or duty. This is the meaning
with which I employ the term, unless I employ it expressly with its
narrower significations.—Austin, p. 63, Note.

PARTIES.

The HUSBAND is liable for all torts and trespasses committed by
his wife during coverture.—Add. 933.

An INFANT in the actual occupation of land is responsible for nuis-
sances and injuries to his neighbour arising from the negligent use and
management of the property.—Add. 935.

Where a lad hired a mare and injured it by immoderate riding, it was
held that a plea of infancy was an answer to the action, the action being
founded on a contract.—Add. 935.

Where an infant hired a horse on the terms that it was to be ridden
on the road and not over fences in the fields, and the infant lent it to a
friend who took it off the road, and in endeavouring to jump the animal
over a hedge, transfixed it on a stake and killed it, it was held that the infant
was responsible for the value of the horse, this being a tort independent of
contract.—Add. 935.

A MASTER is responsible for the wrongful act of his servant, even
if it be wilful, or reckless, or malicious, provided the act is done by the
servant within the scope of his employment, and in furtherance of his
master's business or for the master's benefit.—Add. 23.
HOW WRONGS ARE COMMITTED.

Intention, negligence, heedlessness, or rashness is an essentially component part of injury or wrong; but intention, negligence, heedlessness, or rashness is not of itself injury or wrong.

Action, forbearance, or omission is a necessary ingredient in the notion of injury, guilt, or imputability, as the intention, negligence, heedlessness, or rashness by which the action, forbearance, or omission is preceded or accompanied. The notion of injury, guilt, or imputability does not consist of either, considered alone, but is compounded of both taken in conjunction. This may be made manifest by a short analysis. If I am negligent, I advert not to a given act, and by reason of that inadvertence I omit the act. If I am heedless, I will and do an act, not adverting to its probable consequences, and by reason of that inadvertence I will and do the act. If I am rash, I will and do an act, adverting to its probable consequences; but by reason of a misapposition which I examined inadvertently, I think that those probable consequences will not ensue, and by reason of my insufficient advertence to the ground of the misapposition, I will and do the act. Consequently, negligence, heedlessness, or rashness supposes an omission or act which is the result of inadvertence. To that inadvertence, as taken or considered in conjunction with the omission or act, we give the name of negligence, heedlessness, or rashness.—Austin's Jurisprudence, 475.

Unlawful intention or unlawful inadvertence is of the essence of injury, and for this reason, that the sanction could not have operated upon the party as a motive to the fulfilment of the duty, unless, at the moment immediately preceding the wrong, he had been conscious that he was violating his duty, or unless he would have been conscious that he was violating his duty if he had adverted or attended as he ought.

If we examine the grounds of the various exemptions from liability, we shall find that most (though not all) of them are reducible to the principles which I have now stated. We shall find (generally speaking) that the party is clear of liability because he is clear of intention or inadvertence, or (what, in effect, comes to the same thing) because it is presumed that he is clear of intention or inadvertence.

Thus: No one is liable for a mischief resulting from accident or chance (cosus), that is to say, from some event (other than act of his own) which he was unable to foresee, or, foreseeing, was unable to prevent. Whether the event happen through the intervention of man, or whether it happen without the intervention of man, is not important. The essence of cosus, chance, or accident lies in this—that the event was not an act done by the given party, and could not have been foreseen or prevented by that given party. This (I think) is the meaning of cosus or accident in the Roman, of chance or accident in our own law.

'By the common law' (says Lord Mansfield) 'a carrier is an insurer. It is laid down that he is liable for every accident, except by the act of God or the king's enemies.' Here the term 'accident' includes the acts of men, namely, of the king's enemies. And in the Digest it is expressly said 'fortuita casibus solet etiam adnum erari aggrega pura latronum.'
It would seem, then, that \textit{cosus} or accident includes the act of man. But (I think) it is never extended to the act of the party himself. An act of his own is hardly called an accident, although the act be not imputable, inasmuch as it is not accompanied by unlawful intention or inadvertence, or is excusable for other reasons. In the language of the English law, an event which happens without the intervention of man is styled "the act of God." The language of the Roman law is nearly the same. Mischiefs arising from such events are styled \textit{damna fatalia} or \textit{detrimenta fatalia}. They are ascribed to \textit{vis divina}, or to a certain personage styled \textit{fatum}, or the \textit{cosus} or accident takes a specific name and is called \textit{fatalitas}. The language of either system is absurd. For the act of man is as much the act of God as any event which arises without the intervention of man. And if we choose to suppose a certain fate or destiny, we must suppose that she or it determines the acts of men as well as the events which are not acts of men. In the language of the Roman law, events which happen without the intervention of man are sometimes distinguished from the others by the term 'natural,' or (what comes to the same thing) they are ascribed to \textit{vis naturalis}. Returning to the legal effect of \textit{cosus}, chance, or accident, no man is liable, civilly or criminally, for a purely accidental mischief. For as he could not foresee the event from which the mischief arose, or was utterly unable to obviate the event or its consequences, the mischief is not imputable to his intention or negligence. For example, if I am in possession of a house or of a moveable belonging to another, and the subject, whilst in my possession, is destroyed by an accidental fire, I am not liable to the owner in respect of the damage. \textit{Damnnum ex casu senti dominus}.

But when I say that no man is liable in respect of an accidental mischief, I mean that he is not liable as for an injury or wrong. For by virtue of an obligation arising \textit{aliunde}, he may be liable. To revert to the instance which I have just cited, I am liable to the owner for the damage done by the fire, in case if I contracted with him to that effect. I am also liable in case I am carrier, and the subject has come into my possession in the course of my calling. If the subject was deposited with me in order that I might keep it safely, I am also liable (according to the Roman law). If I am in \textit{mora}, that is to say, if the owner has requested me to return the subject and that I have nevertheless kept possession of it. But in these and similar cases I am not liable as for an injury, but by virtue of an obligation \textit{ex-contractu} or quasi \textit{ex-contractu}. The mischief done by the fire is not the consequence of an injury done by me, although I shall be answerable as for an injury, in case I perform not my special obligation to make good the loss arising from the accident.

—Austin's Jurisprudence 494.

Another ground of exemption is ignorance or error with regard to matter of fact.

Now here, although the proximate ground is ignorance or error, the ultimate ground is the absence of unlawful intention or unlawful inadvertence; for unless the ignorance or error was inevitable or invincible (or, in other words, unless it could not have been removed by due attention or advertence), the act, forbearance, or omission, which was the consequence of the ignorance or error, is imputable to negligence, heedlessness, or temerity.—Austin 495.
If I hire your servant, knowing that he is your servant, I am guilty of
an offence against your right in the servant, and am liable to an action in
the case; but if I hire your servant not knowing that he is your servant, I
am not guilty of wrong, and am not liable to an action until I receive notice
of his previous contract with you.

If I keep a dog given to worry cattle, and if I am apprised of that his
mischievous inclination, I am liable for damage done by the dog to my
neighbour's cow or sheep. But unless I am apprised of his vicious dispo-
sition, I am not guilty of an injury, and I am not liable to make good the
damage, for the damage is not imputable to my intention or inadvertence.

If, intending to kill a burglar who has broke into my house, I strike
in the dark and kill my own servant, I am not guilty of murder nor even of
manslaughter; for the mischief is not imputable to intention or inadvert-
ence, but to inevitable error, that is to say, to error which could not have been
prevented by any attention or advertence practicable under the circum-
stances.—Austin 496.

Before I dismiss the subject I will briefly advert to ignorance or error
with regard to the state of the law.

A mistake (says he) in point of law, which every person of discretion
not only may, but is, bound and presumed to know, is in criminal cases no
sort of defence.

Now to affirm that every person may know the law, is to affirm the
thing which is not, and to say that his ignorance should not excuse him
because he is bound to know, is simply to assign the rule as a reason for
itself. Being bound to know the law, he cannot effectually allege his
ignorance of the law as a ground of exemption from the law. But why
is he bound to know the law? or why is it presumed, juris et dejure, that
he knew the law?

The only sufficient reason for the rule in question seems to be this—
that if ignorance of law were admitted as a ground of exemption, the
courts would be involved in questions which it were scarcely possible to
solve, and which would render the administration of justice next to im-
practicable. If ignorance of law were admitted as a ground of exemption,
ignorance of law would always be alleged by the party, and the court in
every case would be bound to decide the point. But in order that the
court might decide the point, it were incumbent upon the court to
examine the following questions of fact:—1st. Was the party ignorant
of the law at the time of the alleged wrong? 2ndly. Assuming that
he was ignorant of the law at the time of the wrong alleged, was his
ignorance of the law inevitable ignorance, or had he been previously placed
in such a position that he might have known the law if he had duly tried?

It is manifest that the latter question is not less material than the
former. If he might have known the law in case he had duly tried, the
reasoning which I have produced from the Pandits would apply to his
case—that is to say, inasmuch as the conduct in question were directly
imputable to his ignorance, it were not imputable directly to unlawful
intention or inadvertence. But inasmuch as his ignorance of the law
were imputable to unlawful inadverence, the conduct in question were imputable in the last result to his negligence.

Now either of these questions were next to insoluble. Whether the party was really ignorant of the law, and was so ignorant of the law that he had no surmise of its provisions, would scarcely be determined by any evidence accessible to others; and for the purpose of determining the cause of his ignorance (its reality being ascertained), it were incumbent upon the tribunal to unravel his previous history and to search his whole life for the elements of a just solution.

An infant or a person insane is exempted from liability, not because he is an infant or because he is insane, but because it is inferred from his infancy or insanity that at the time of the alleged wrong he was not capable of unlawful intention or inadverence.—Austin 506.

That the ultimate basis of the exemption of infants and lunatics is the presumed absence of unlawful intention or inadverence, will appear from the following consideration. For if the infant was doli capax (or was conscious that his conduct conflicted with the law), his infancy does not excuse him. Certain evidence of his capacity of unlawful intention, or even the specific and precise evidence afforded by the fact or its circumstances, rebuts the general and uncertain presumption which arises from his age; and if the alleged wrong was done in a lucid interval, the fact is imputed to the mad man. There are indeed cases wherein the presumptio juris founded on infancy is juris et dejure—that is to say, the inference which the law pre-appoints is conclusive as well as pre-appointed. The tribunal is not only bound to draw the inference, but to reject counter-evidence.—Austin 507.

In the English law drunkenness is not an exemption. In criminal cases, never; nor in civil cases when the ground of the liability is of the nature of a delict; but a party is at times released from a contract which he entered into when drunk. In the Roman law drunkenness was an exemption even in the case of a delict, provided the drunkenness itself was not the consequence of unlawful intention; if, for instance, I resolve to kill you and drink in order to get 'pluck,' according to the vulgar expression, the mischief, although committed in drunkenness, is ultimately imputable to my intention. In all other cases drunkenness was a ground of exemption in the Roman law.

The ultimate grounds of this exemption is the same as in the case of sanity or infancy. The party is unable to remember the law if he knew it, or to appreciate distinctly the fact he is about, or to subsume it as falling under the law.

Where unintentional drunkenness—that is, drunkenness which is not itself the consequence of unlawful intention—is not a ground of exemption, the party, it is evident, is liable in respect of heedlessness. There is no unlawful consciousness at the time of the offence, but he might have known before he got drunk that he was likely, when drunk, to commit acts inconsistent with the ends of his duties. He has heedlessly placed himself in a position of which the probable consequence will be the commission of a wrong. This remote inadverence is very often a ground
of liability. Remote inadvertence is what I have just explained. The party is guilty of remote inadvertence where the alleged wrong is not imputable directly to unlawful intention or inadvertence, but is a natural consequence of a position in which he has placed himself from inadvertence, and is therefore a remote effect of inadvertence. When the party commits the wrong in consequence of his ignorance of law, the ground of liability might be referred to remote inadvertence. Were it not for the legal presumption that he knows the law, the fact would be imputable to him, if at all, from his having previously neglected to make himself acquainted with the law.—Austin 513.

Liability for injuries done by third parties is ascribed justly by Mr. Bentham to the same cause. I am liable for injuries done by persons whom I employ, because it is generally in my power not to employ persons of such a character, or to form them by discipline and education, so as to be incapable of the commission of wrong. The first reason applies to a man’s servant, the last to his children. The obligation is peculiarly strong in the Roman law, because of the great extent of the patria potestas, by reason of which it probably was in the power of the father not only to form the character of his child by previous discipline, but in most cases to prevent the specific mischief by specific care. Before I quit the subject I shall remark on a distinction which is made by the Roman lawyers, and which appears to me illogical and absurd (a rare and surprising thing in the Roman law); I mean the distinction between delicts and quasi-delicts. I cannot discover any ground for this distinction from the capricious way in which they arrange offences under these two heads. The imprimitia, for instance, of a physician is a delict; but the imprudentia of a Judge, who is liable in certain cases for erroneous decisions, is a quasi-delict.

The ground of the liability in these two cases is precisely the same. The guilt of the party in both cases consists in taking upon himself the exercise of a function without duly qualifying himself by previous preparation.—Austin 513.

Another ground of exemption is sudden and furious anger. In English law this is never a ground of exemption; in Roman law it is, for the same reason as drunkenness and insanity. Where the party is answerable for an alleged wrong done in furious anger, the reasoning is the same as in the case of drunkenness. He is guilty, not in respect of what he has done in furious anger, but in respect of his having neglected that self-discipline which would have prevented such furious fits of anger.

‘An event is accidental when it results from the operation of natural causes over which the human will has no control; such an event is not to be considered as that of any person.’—Thibaut’s System, p. 129.

‘Negligence is where an illegal act is performed, neither with the intention of disobeying any law nor with a morally wrong intention, but under such circumstances that a knowledge of the illegality of the act might have been attained.’—Thibaut’s System, p. 129.

‘A free but not imputable transaction is one which a person might have prevented, but of the legality of which he could not become aware.’—Thibaut’s System, p. 129.
Fraud is where an act is committed by a person who, having knowledge of a law, disobeys it wilfully and with a morally wrong intention.'—Thibaut's System, p. 129.

By injuria is meant a tortious act; it need not be wilful and malicious, for though it is accidental, an action will lie.'—Willes, C. J., in Winsmore v. Greenbank, Add. 2.

Looking into all the cases from the year-book in the 21 Hen. 7, down to the latest decision on the subject, I find the principle to be that, if the injury be done by the act of the party himself at the time, or if he be the immediate cause of it, though it happen accidentally or by misfortune, yet he is answerable.'—Grose, J., in Leame v. Bray, 3 East. 599.

If I am guilty of negligence in leaving anything dangerous in a place where I know it to be extremely probable that some other person will unjustifiably set it in motion to the injury of a third party, and if that injury should be so brought about, the sufferer may have redress by action against both or either of the two, but unquestionably against the first. If, for example, a gamekeeper returning from his daily exercise should rear his loaded gun against a wall in the play-ground of the school-boys, and one of these should playfully point the gun at a schoolfellow and fire it off and maim him, the gamekeeper must answer in damages to the wounded party.'—Lord Denman in Linch v. Nurdin, 1 Q. B. 36.

The action for negligence proceeds upon the idea of an obligation on the part of the defendant towards the plaintiff to use care, and a breach of that obligation to the plaintiff's injury.'—Wilde, B., 7 H. & N. 603.

Where a landowner, by running out an embankment, gave a new direction to the current and caused his neighbour's land to be washed away, Gibbs, C. J., said—'If an individual for his own benefit makes an improvement on his own land, and thereby unwittingly injures his neighbour, he is answerable.'—6 Taunt. 44.

If I ride upon a horse and J. S. whips the horse, so that he runs away with me and runs over any other person, he who whipped the horse is guilty of the assault and battery, and not I.'—Gibbons v. Pepper, 1 Ld. Raym. 38.

If I turn suddenly round and knock a man down without intending it, I am responsible for the injury I do him.'—Lawrence, J., in Leame v. Bray, 3 East. 595.

If I put in motion a dangerous thing, as if I let loose a dangerous animal, and leave to hazard what may happen, and mischief ensue to any person, I am answerable in an action of trespass.'—Lord Ellenborough in Leame v. Bray, 3 East. 595.

If A takes the hand of B and with it strikes C, A is the trespasser, and not B.'—Gibbons v. Pepper, 1 Ld. Raym. 38.

It is a vain thing to imagine a want of right without a remedy, for want of right and want of remedy are reciprocal.'—Holt, C. J., 2 Ld. Raym. 953.

Whenever it is shown that the comfort or enjoyment of a man or his
family in the occupation of his house is seriously interfered with, and still more where he is prevented from carrying on his business with the same degree of convenience and advantage as theretofore, there is sufficient ground for the interference of the Court.'—Kindersley, V. C., in Martin v. Headon, L. R. 2 Eq. Ca. 434.

'Whenever an act done would be evidence against the existence of a right, that is an injury to the right, and the party injured may bring an action in respect of it.'—Parke in Nicklin v. Williams, 10 Exch. 227.

'Where a violent or malicious act is done to a man's occupation, profession, or way of getting a livelihood, there an action lies in all cases.'—11 Hen. 4 fol. 47.

'No man does wrong or contracts guilt in defending himself against an aggressor.'—De Grey, C. J., 3 Wils. 412.

'If a man should lie in wait and fright boys from going to school, that schoolmaster might have an action for the loss of his scholars.'—Lord Holt in Keeble v. Hickeringill, 11 East. 576.

RIGHTS AND LIABILITIES.

'There is no decided case which sanctions the ABATEMENT BY an INDIVIDUAL of nuisances of omission, except that of cutting the branches of trees which overhang a public road or the private property of the person who cuts them. The security of lives and property may however sometimes require so speedy a remedy as not to allow time to call on the persons, on whose property the mischief has arisen, to remedy it, and in such instances an individual would be justified in abating a nuisance from an omission without notice. In all other cases of such nuisances persons should not take the law into their own hands, but follow the advice of Lord Hale and appeal to a court of justice.'—Best, J., Add. 189.

If a man has a limited right to the use of a window, and he enlarges the window considerably, the person annoyed by the enlargement of the window may, by erecting a screen or barrier on his own land, stop up the whole of it.—Add. 190.

To justify a private individual in pulling down a wall or destroying a fence, on the ground of its being an obstruction in a public highway, it must be shown not only that the wall or fence encroached upon the public thoroughfare, but that the defendant was unable to enjoy his right of passing along the road without the removal of the obstruction.—Add. 191.

'The DAMAGE is not merely pecuniary; for if a man gets a cuff on the ear from another, though it cost him nothing—no, not so much as a little diachylon—yet he shall have his action, for it is a personal damage.'—Lord Holt, Add. on Torts, p. 6.

'I entertain considerable doubt whether a person, who has been guilty of negligence, is responsible for all the consequences which may, under any circumstances, arise, and, in respect of mischief, which could by no possibility have been foreseen and which no reasonable person would have anticipated. I am inclined to consider the rule of law to be this: that a person is
expected to anticipate and guard against all reasonable consequences, but that he is not by the law of England expected to anticipate and guard against that which no reasonable man would expect to occur.'—Pollock, C. J., in Greenland v. Chaplain, 5 Exch. 248.

Violent and illegal conduct, on the part of officers charged with the execution of legal process, 'is calculated to lead to dangerous conflicts, and the proper amount of damages to be awarded must depend so much on the general circumstances that it is very difficult to discover any standard by which to measure the amount.'—Add. 667.

In actions for ADULTERY, the amount of damages to be awarded depends on the circumstances and situation in life of the husband, on the mode in which he fulfilled his marital duties, the terms upon which the husband and wife were living together, and upon the general character of the wife at the time she was led astray.
—Add. 899.

The jury ought to give compensation for the injury sustained without reference to the wealth of the defendant, but if the co-respondent has used his wealth for the purpose of seducing the respondent, the jury may, it seems, take it into consideration in assessing the damages.—Add. 900.

Evidence of the humble condition in life and of the poverty of the defendant has been received in mitigation of damages, for the purpose of showing that the allurements to the adultery did not emanate from the defendant.—Add. 900.

Letters from the wife enticing the co-respondent into the adulterous connexion are admissible in mitigation of damages.—Add. 900.

In actions for ASSAULT, the circumstances of time and place as to when and where the assault was committed, and the degree of personal insult, must be considered in estimating the amount of damages. 'It is a greater insult to be beaten on the Royal Exchange than in a private place.'—Add. 585.

When the assault is accompanied by a false charge, affecting the honour, character, and position in society of the plaintiff, the offence will of course be greatly aggravated and the damages proportionately increased.—Add. 585.

Circumstances of provocation and excuse may be given in evidence in mitigation of damages, so long as they do not amount to a justification and could not be pleaded as such.—Add. 585.

In all cases of serious assault, the jury should take into consideration the probable future injury that will result to the plaintiff, for the damages are taken to embrace all the injurious consequences of the wrongful act.—586.

The damages recoverable in actions for DEFAMATION will materially depend upon the nature and character of the libel, the extent of its circulation, the position in life of the parties, and the surrounding circumstances of the case.—Add. 820.

'If a man is in the habit of libelling others, he complains with a very bad grace of being libelled himself; and if two men are concerned in publishing monstrous libels against each other every day, there can be no claim to damages on either side.'—Sir J. Mansfield, Add. 821.

In the case of a libel by a newspaper, the defendant is entitled to plead, in mitigation of damages, that the libel was made without actual malice, and that a full apology had been given and published.—6 & 7 Vic. c. 96.

In an action for the DETENTION OF GOODS, their value may be assessed at the price they bore in the market at the time of demand by the plaintiff or at the time of trial, whichever is highest.—Add. 444.
A defendant who has wrongfully detained the plaintiff's horse cannot make the expense of the horse's keep a ground for reduction of the damages.—Add. 444.

The true measure of damages in actions against a sheriff for an ESCAPE is the value of the custody of the debtor at the moment of the escape, and no deduction can be made therefrom on account of anything which the plaintiff might have obtained by diligence after the escape.—Add. 665.

In actions for FALSE IMPRISONMENT, every expense that the plaintiff necessarily incurs to restore himself to a complete state of freedom from imprisonment is recoverable as part of the damages.—Add. 587.

It will be too remote damage that the plaintiff, by reason of his detention, missed the opportunity of being taken into a certain employment.—Hoey v. Felton, 8 Jur. N. S. 746.

The recovery of damages in an action for false imprisonment is no bar to an action for malicious prosecution.—Add. 688.

All special damages, which are the natural result of FRAUDULENT MISREPRESENTATION and deceit, are recoverable if claimed in the declaration (plaint).—Add. 865.

Thus, where a cable was warranted sound, and a purchaser, relying on the warranty, attached an anchor to the cable and the cable was unsound and broke, and the purchaser lost his anchor, the plaintiff was held entitled to the value of the anchor in addition to the price of the cable.—Add. 865.

There are three sorts of damages resulting from a MALICIOUS and unfounded INDICTMENT, any of which would be sufficient to support an action:—1. The damage to a man's fame, as if the matter whereof he is accused be scandalous. 2. Where a man is put in danger to lose his life, limb, or liberty. 3. The damage to a man's property, as where he is forced to expend his money in necessary charges to acquit himself of the crime of which he is accused.—Lord Holt, Add. 816.

Every expense that the plaintiff has necessarily incurred, in order to defend himself from the false and malicious charge, is recoverable as part of the damages if claimed in the declaration.—Add. 615.

Where an action is brought by a reversoner to recover damages in respect of an injury to his reversonior's estate in certain lands and premises, by reason of a NUISANCE committed by the defendant, the diminution in the saleable value of the premises is not the true criterion of damage, because every day that the defendant persists in continuing the nuisance, he renders himself liable to another action. Nominal damages are generally given in the first action; and then, if the defendant persists in continuing the nuisance, another action is brought and a verdict is obtained against him for continuing the nuisance. The jury generally give exemplary damages to compel an abatement of the nuisance.—Add. 207.

In estimating the damages to be given to a father for the SEDUCTION of his daughter, the jury are not confined to the mere loss of service, but may give damages for the distress and anxiety of mind which the parent has sustained in being deprived of the society and comfort of his child, and by the dishonour which he receives.—Add. 908.

The jury also must take into consideration the situation in life and circumstances of the parties, and say what they think, under all the circumstances of the case, is a reasonable compensation to be given to the injured parent.—Add. 908.

If in the course of the trial a promise of marriage is inadvertently proved, the jury must be told to exclude the injury resulting to the seduced girl, from the breach of promise of marriage, from their consideration.—Add. 909.

It is competent to the defendant to show that the girl was immoral at the time of her seduction, in order to reduce the damages.—Add. 909.
In TRESPASS, upon reality all damages which naturally result from the wrongful act of the defendant, and are directly traceable thereto, may be recovered by the plaintiff if he claims them in the declaration.—Add. 299.

Surrounding circumstances of aggravation will materially influence the amount of damages to be recovered for a trespass upon land.—Add. 299.

In trespasses in dwelling-houses, 'rights of action are given in respect of the immediate and present violation of the possession of the plaintiff, independently of his right of property; they are an extension of that protection which the law throws round the person, and substantial damages may be recovered in respect of such rights, though no loss or diminution in the value of property may have occurred.'—Lord Denman, Add. 800.

In the case of the wrongful demolition of a house in actual occupation of the owner, the question for the jury is, what sum of money will repair the injury done to the plaintiff by the loss of his house, and what sum will be required to replace the house, as nearly as practicable, in the situation and state in which it was at the time of the commission of the injury?—Add. 800.

In the case of any breach of contract or other injury, the party injured has a right to apply to the court for an INJUNCTION to restrain the defendant from the repetition or continuance of the wrong.—See Civil Procedure Code, p. 17.

**Act No. XII. of 1855.**

An Act to enable Executors, Administrators, or Representatives to sue and to be sued for certain Wrongs.

Whereas it is expedient to enable executors, administrators, or representatives in certain cases to sue and be sued in respect of certain wrongs, which, according to the present law, do not survive to or against such executors, administrators, or representatives; It is enacted as follows:

I. An action may be maintained by the executors, administrators, or representatives of any person deceased, for any wrong committed in the lifetime of such person, which has occasioned pecuniary loss to his estate, for which wrong an action might have been maintained by such person, so as such wrong shall have been committed within one year before his death; and the damages, when recovered, shall be part of the personal estate of such person; and further, an action may be maintained against the executors or administrators or heirs or representatives of any person deceased for any wrong committed by him in his lifetime for which he would have been subject to an action, so as such wrong shall have been committed within one year before such person's death, and the damages to be recovered in such action shall, if recovered against an executor or administrator, bound to administer according to the English law, be payable in like order of administration as the simple contract debts of such person.

II. No action commenced under the provisions of this Act shall abate by reason of the death of either party, but the same may be continued by

* The rest of Section 1 was repealed by Act 9 of 1871.—See Repealing Enactments, p. 79.
or against the executors, administrators, or representatives of the party deceased: Provided that, in any case in which any such action shall be continued against the executors, administrators, or representatives of a deceased party, such executors, administrators, or representatives may set up a want of assets as a defence to the action, either wholly or in part, in the same manner as if the action had been originally commenced against them.

**Act No. XIII. of 1855.**

An Act to provide Compensation to families for loss occasioned by the death of a person caused by actionable wrong.

Whereas no action or suit is now maintainable in any court against a person who, by his wrongful act, neglect, or default, may have caused the death of another person, and it is oftentimes right and expedient that the wrong-doer in such case should be answerable in damages for the injury so caused by him: It is enacted as follows:

1. Whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime. And it is enacted further that every such action or suit shall be for the benefit of the wife, husband, parent, and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator, or representative of the person deceased; and in every such action the court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought, and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them, in such shares as the court by its judgment or decree shall direct.

2. Provided always that not more than one action or suit shall be brought for, and in respect of, the same subject-matter of complaint; provided that in any such action or suit the executor, administrator, or representative of the deceased may insert a claim for, and recover, any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect, or default, which sum, when recovered, shall be deemed part of the assets of the estate of the deceased.

3. The plaint in any such action or suit shall give a full particular of the person or persons for whom, or on whose behalf, such action or

* The rest of Section 2 was repealed by Act 9 of 1871.—See Repealing Enactments, p. 79.
suit shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

4. The following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject-matter; that is to say, words denoting the singular number are to be understood to apply also to a plurality of persons or things; and words denoting the masculine gender are to be understood to apply also to persons of the feminine gender; and the word "person" shall apply to bodies politic and corporate; and the word "parent" shall include father and mother, and grandfather and grandmother; and the word "child" shall include son and daughter, and grandson and grand-daughter, and stepson and stepdaughter.
CIVIL PROCEDURE CODE.
CODE OF CIVIL PROCEDURE.

ACT No. VIII. of 1859.

(Received the assent of the Right Honorable the Governor General on the 22nd March 1859.)

Cap. I. Of the Jurisdiction of the Civil Courts .......................... Sec. 1.
II. Preliminary Rules .................................................. 16.
III. Of a Suit till Final Decree .......................................... 25.
IV. Execution of Decrees ................................................ 199.
V. Of Pauper Suits ..................................................... 367.
VI. Reference to Arbitration ............................................ 312.
VII. Of Proceedings on agreement if Parties ......................... 428.
VIII. Of appeals .......................................................... 333.
IX. Of appeals in forma Pauperis ....................................... 367.
X. Of Special Appeals .................................................. 372.
XI. Review of Judgment ................................................ 376.
XII. Miscellaneous ...................................................... 382.

Whereas it is expedient to simplify the Procedure of the Courts of Civil Judicature not established by Royal Charter; It is enacted as follows:—

CHAPTER I

Of the Jurisdiction of the Civil Courts.

1. The CIVIL COURTS shall take COGNISANCE OF all SUITS of a Civil nature, with the exception of suits of which their cognisance is barred by any Act of Parliament or by any Regulation of the Codes of Bengal, Madras, and Bombay respectively, or by any Act of the Governor General of India in Council.

2. The Civil Courts shall not take cognisance of any suit brought on a cause of ACTION which shall have been HEARD AND DETERMINED by a Court of competent jurisdiction in a former suit between the same parties or between parties under whom they claim.

3. The JUDGMENTS of the Civil Courts shall not be subject to REVISION, otherwise than by those Courts under the rules contained in this Act.

3. For reviews see Section 376 post. For appeals see Section 352 post.
in this Act applicable to reviews of judgment, and by the constituted Courts of Appellate Jurisdiction.

4. NO PERSON whatever shall, by reason of place of birth, or by reason of descent, be in any Civil proceeding whatever EXCEPTED from the jurisdiction of any of the Civil Courts.

5. Subject to such pecuniary or other limitations as are or shall be prescribed by any law for the time being in force the Civil Courts of each grade shall receive, try, and determine all SUITS hereby declared to be cognisable by those Courts, if, in the case of suits FOR LAND or other immovable property, such land or property shall be situate WITHIN the LIMITS to which their respective jurisdictions may extend, AND in all OTHER CASES IF the CAUSES OF ACTION shall have arisen, OR the DEFENDANT at the time of commencement of the suit shall dwell, or personally work for gain, WITHIN such LIMITS.

6. Every SUIT, shall be instituted IN the COURT OF the LOWEST GRADE competent to try it. But it shall be lawful for the District Court to withdraw any suit instituted in any Court subordinate to such District Court, and to try such suit itself, or to refer it for trial to any other Court subordinate to its authority and competent in respect of the value of the suit to try the same, whenever it may see sufficient cause for so doing. In like manner the Sudder Court may order that the cognisance of any suit or appeal which may be instituted in any Court subordinate to such Sudder Court shall be transferred to any other Court subordinate to its authority and competent in respect of the value of the suit or appeal to try the same.

7. Every SUIT SHALL INCLUDE the WHOLE of the CLAIM arising out of the cause of action, but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. If plaintiff relinquish or omit to sue for any portion of his claim, a suit for the portion so relinquished or omitted shall not afterwards be entertained.

8. CAUSES OF ACTION by and against the same parties, and cognisable by the same Court, MAY BE JOINED in the same suit, provided the entire claim in respect of the amount or value of the property in suit do not exceed the jurisdiction of such Court.

9. If two or more causes of action be joined in one suit, and the Court shall be of opinion that they cannot conveniently be tried together, the COURT MAY ORDER SEPARATE TRIALS of such causes of action to be held.

10. A claim for the recovery of LAND AND a claim for the MESNE PROFITS of such land shall be deemed to be DISTINCT CAUSES of action within the meaning of the two last preceding Sections.

11. If the suit be for LAND or other immovable property situate WITHIN the limits of a single DISTRICT, BUT within the

5. "Civil Courts" The jurisdiction of the General Civil Courts that is the Privy Council, the High Courts and the Small Cause Courts will be found at the end of this Code. For the jurisdiction of the Bengal, Bombay and other Local Courts See "Civil Courts" See also Sections 3 and 4 Act 23 of 1851, post and Sections 308 and 308 post.
jurisdiction of DIFFERENT COURTS, the suit may be brought in the Court within the jurisdiction of which any portion of such land or other immovable property is situate, provided the entire claim in respect of the value of the property in suit be cognisable by such Court; but in such case the Court in which the suit is brought shall apply to the District Court for authority to proceed with the same.

12. In like manner, if the PROPERTY be situate WITHIN the limits of DIFFERENT DISTRICTS, the suit may be brought in any Court, otherwise competent to try it, within the jurisdiction of which any portion of the land or other immovable property in suit is situate: but in such case the Court in which the suit is brought shall apply to the Sudder Court for authority to proceed with the same; if the suit is brought in any Court subordinate to a District Court, the application shall be submitted through the District Court to which such Court is subordinate.

13. If the Districts within the limits of which the PROPERTY is situate are SUBJECT TO DIFFERENT SUDDER COURTS the application shall be submitted to the Sudder Court to which the District in which the suit is brought is subject; and the Sudder Court to which such application is made may, with the concurrence of the Sudder Court to which the other District is subject, give authority to proceed with the same.

14. If, in a suit for LAND situate ON the BORDERS of the Court's local jurisdiction, the defendant object to the hearing of the suit on the ground that the land is not included within the local jurisdiction of the Court, the Court shall have power to determine the point; and if the Court shall find that the land is included within its local jurisdiction it shall proceed to try the suit. Provided that, if it be shown that the land in dispute has been adjudged by competent authority to belong to an estate, village, or other known division of land situate within the local jurisdiction of another Court, the Court in which the suit is brought shall reject the plaint, or return it to the plaintiff in order to its being presented in the proper Court.

15. No suit shall be open to objection on the ground that a merely DECLARATORY DEGREE or order is sought thereby, and it shall be lawful for the Civil Courts to make binding declarations of right without granting consequential relief.

CHAPTER II.

Preliminary Rules.

16. All applications to any Civil Court, and all APPEARANCES of parties in any Civil Court, except when otherwise specially provided by this Act, shall be made BY the PARTY IN PERSON, OR by his recognised AGENT, OR by a PLEADER duly appointed to act on his behalf.

16 “Pleader”. Includes counsel and advocate, See Section 41 Act 23 of 1861 post.
17. The recognised AGENTS of parties by whom such applications and appearances may be made are—

First.—Persons holding general powers of attorney from parties not within the jurisdiction of the Court, authorising them to make such applications and appearances on behalf of such parties.

Secondly.—Persons carrying on trade or business for and in the name of parties not within the jurisdiction of the Court, in matters connected with such trade or business only, when no other agent is expressly authorised to make such applications or appearances.

Thirdly.—Persons being ex-officio or otherwise authorised to act for Government in respect of any suit or judicial proceeding:

Fourthly. Persons specially appointed by order of Government at the request of any Sovereign Prince, or Independent Chief, whether residing within or without the British Territories, to prosecute or defend a suit on his behalf.

Whenever the personal appearance of a party to a suit is required by this Act, such appearance may be made by his recognised agent, unless the Court shall otherwise direct; and anything which by this Act is required or permitted to be done by a party in person, may be done by his recognised agent. Notes given to or processes served on a recognised agent relative to a suit shall be as effectual for all purposes in relation to the suit as if the same had been given to or served on the party in person, unless the Court shall otherwise direct; and all the provisions of this Act relative to the service of notices or processes on a party to a suit shall be applicable to the service of notices and processes on such recognised agent.

18. The APPOINTMENT OF A PLEADER to make any such application or appearance as aforesaid shall be in writing, and shall be filed in the Court. When so filed, it shall be considered to be in full force until revoked by a writing filed in the Court. All notices given to or processes served on the pleader of any party or left at the office or ordinary residence of such pleader relative to a suit, and whether the same be for the personal attendance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and shall be as effectual for all purposes in relation to the suit as if the same had been given to or served on the party in person, unless the Court shall otherwise direct.

19. When an OFFICER or SOLDIER in the service of the Government is a party to a suit, and cannot obtain a furlough or leave of absence for the purpose of prosecuting or defending the suit in person, he MAY AUTHORISE ANY member of his family or any other PERSON TO commence, CONDUCT, and manage the SUIT or the defence, as the case may be in his stead. The authority shall be in writing, and shall be signed by the officer or Soldier in the presence of his Commanding Officer, who shall countersign the same and it shall be filed in the Court. When so filed, the counter-signature of the Commanding Officer shall be sufficient proof that the authority was duly executed, and that the Officer or Soldier by whom it was granted could not obtain a furlough or leave of absence for the purpose of prosecuting or defending the suit in person.
20. Any PERSON who may be AUTHORISED, as in the last proceeding Section mentioned, by an Officer or Soldier to prosecute or defend a suit in his stead, shall be competent to prosecute or defend it in person in the same manner as the Officer or Soldier could do if present; or he MAY APPOINT a PLEADER of the Court to prosecute or defend the suit on behalf of such Officer or Soldier. And all notices or processes relative to the suit which may be served upon any person who shall be so authorised as aforesaid by an Officer or Soldier, or upon any pleader who shall be appointed as aforesaid by such person to act for or on behalf of each officer or Soldier shall be as effectual for all purposes relative to the suit as if the same had been served on the party in person or on a pleader appointed by him.

21. WOMEN, who according to the custom and manners of the country, ought not to be compelled to appear in public, shall be EXEMPT FROM PERSONAL APPEARANCE in Court.

22. The GOVERNMENT MAY, at its discretion, EXEMPT, FROM PERSONAL APPEARANCE in Court any PERSON whose RANK, in the opinion of the Government, entitles him to the privilege of exemption, and may at its discretion withdraw such privilege. The names of the persons so exempted (if any) residing within the jurisdiction of the Principal Civil Court of each District shall from time to time be forwarded to such Court by the local Government, and a list of such persons (if any) shall be kept in such Court, and in the several Subordinate Courts of the District.

24. If any plaint, written statement, or declaration in writing, required by this Act to be verified, shall contain any averment which the person making the VERIFICATION shall know or believe to be FALSE, or shall not know or believe to be true, such person shall be subject to punishment according to the provision of the law for the time being in force for the punishment of giving or fabricating false evidence.

CHAPTER III.

Of a Suit Till Final Decree.

Of the Institution of Suits.

25. ALL SUITS shall be COMMENCED BY a PLAIN'T which, except when otherwise specially provided by this Act, shall be presented to the Court by the plaintiff in person, or by his recognised Agent or by a pleader duly appointed to act on his behalf.

26. The plaint shall be distinctly written in the LANGUAGE in ordinary use in proceedings before the Court, and shall contain the following PARTICULARS:

1st. The name, description, and place of abode of the plaintiff.
2nd. The name, description, and place of abode of the defendant, so far as they can be ascertained.

21 "Women." May be examined by commission See Section 175 post.
23. Repealed by section 1 Act 33 of 1861 See Repealing Enactments page 43, See also section 2 of the same Act post.
3rd. The relief sought for, the subject of the claim, the cause of action and when it accrued, and if the cause of action accrued beyond the period ordinarily allowed by any law for commencing such a suit, the ground upon which exemption from the law is claimed.

The following are instances:

If the suit be for money due on a bond or other written instrument:—

| Principal | ... |
| Interest | ... |
| Amount paid (if any) | ... |

Balance due......

If the plaintiff claim exemption from any law of limitation, say—“The plaintiff was an infant (or as the case may be) from the day of to the day of”.

If the suit be for the price of goods sold:—Payment of on account of mounds of (rice, indigo, sugar, or as the case may be) sold on the day of and the price of which became payable on the day of as per account at foot.

If the suit be for damages for an injury done:—Payment of on account of injury done to the plaintiff, [(here set out the nature of the injury, and state the particulars of the pecuniary loss (if any,)]

4. When the claim is for any property other than money, its estimated value.

The following is an instance:

If the suit be for an estate or for a share in an estate paying revenue to Government:—Possession of the estate or of share in the estate called situate in the Zillah of the sudder jumma of which is estimated value of which the plaintiff was dispossessed (or forcibly or fraudulently dispossessed, if the case be so) on the day of; or to which the plaintiff became entitled by inheritance from (or by gift, purchase, or otherwise as the case may be) on or about the day of

5.—When the claim is for land or for any interest in land, the nature of the tenure or interest must be specified; and if the claim be for land forming part of a village or other known division, or for a house, garden, or the like, its situation shall be described by the setting forth of boundaries, or in such other manner as may suffice for its identification.

6.—In all suits by or against the Government or one of its Officers in his official capacity, or any Corporation, or any Company authorised to sue and be sued in the name of an Officer or Trustees, the words “The Government,” or “The Collector of” or otherwise
as the case may be, or the name of the Corporation, or the name or names of the Officer or Trustees of the Company, shall be inserted in Nos. 1 and 2 instead of the name and description of the plaintiff or defendant. But in all other cases it shall be necessary to specify the names of all the parties.

27. The PLAIN'T SHALL BE SUBSCRIBED by the plaintiff and his pleader (if any), AND shall be VERIFIED at the foot by the plaintiff, in the manner following, or to the like effect:—

I (A. B.), the plaintiff named in the above plaint, do declare that what is stated therein is true, to the best of my information and belief.

28. If the PLAINTIFF, by reason of absence or for other good cause, be UNABLE TO SUBSCRIBE AND VERIFY the plaint, the Court may allow the plaintiff to be subscribed and verified on behalf of the plaintiff by any person whom the Court may consider competent to make the verification. In SUITS BY a CORPORATION OR a COMPANY authorised to sue and be sued in the name of an Officer or Trustees, the plaintiff shall be subscribed and verified on behalf of the Corporation or Company by any Director, Secretary, or other principal Officer of the Corporation or Company who may be able to depose to the facts of the case.

29. If the plaint do not contain the several particulars hereinbefore required to be specified therein, or if it contain particulars other than those required to be specified, whether relevant to the suit or not, or if the statement of particulars be unnecessarily prolix, or if the plaint be not subscribed and verified as hereinbefore required, the COURT MAY REJECT the PLAIN'T, or, at its discretion, may allow the plaint to be amended.

30. If the amount or estimated value of the claim, as stated by the plaint, be beyond the jurisdiction of the Court, the PLAIN'T shall be RETURNED to the plaintiff in order to its being presented in the proper Court.

31. If it appear to the Court that the claim is improperly valued, or, being properly valued, that the plaint is written upon stamped paper of inadequate value, and the plaintiff, on being required by the Court to correct such improper valuation, or to supply such additional stamp paper as may be necessary, shall not comply with the requisition the COURT SHALL REJECT the plaint.

32. If, upon the face of the plaint, or after questioning the plaintiff, if appear to the Court that the subject matter of the plaint do not constitute a cause of action, or that the right of action is barred by lapse of time, the COURT SHALL REJECT the plaint. Provided that the Court may in any case, allow the PLAIN'T to be AMENDED, if it appear proper to do so.

34. A SUIT BY a PARTY ordinarily RESIDING OUT OF the British territories in INDIA, and not possessing any land or other immoveable property within those territories, independent of the property

31. "Stamped paper." For the proper stamps on Plaints see the Court fees Act at the end of this Code.

33. Repealed by Section 1 Act 23 of 1861 See "Repealing Enactments" page 43.
in suit shall not be entertained, unless the plaintiff, at the time of presenting the plaint, or within such time as the Court shall order, furnish security for the payment of all costs that may be incurred by the defendant in the suit. In the event of such security not being furnished, the Court shall return the plaint to the plaintiff.

35. IF, IN ANY STAGE OF A SUIT, IT shall APPEAR to the Court THAT the PLAINTIFF (being sole plaintiff) IS a person RESIDING OUT of the British territories in INDIA, the Court may order him, within a time to be fixed by such order to furnish security for the payment of all costs incurred and to be incurred by the defendant in the suit. In the event of such security not being furnished within the time so fixed, the Court shall pass judgment against the plaintiff by default, unless he be permitted to withdraw from the suit under the provisions of Section 37.

36. Whenever a plaint is rejected under any of the foregoing Sections, an APPEAL shall lie FROM the ORDER REJECTING the PLAINT. The rejection of a plaint on any of the grounds mentioned in Sections 29 and 31 shall not preclude a plaintiff from presenting a fresh plaint in respect of the same cause of action.

37. If the SUIT be FOR LAND or other immovable property situate PARTLY WITHIN the JURISDICTION of the Court and partly within the Jurisdiction of some other Court or Courts, the Court shall proceed according to the rules contained in Section 11, Section 12, or Section 13, as the case may be,

38. If the Court consider the plaint admissible, the particulars mentioned in Section 26 of this Chapter shall be entered in a book to be kept for the purpose, and called the REGISTER OF CIVIL SUITS: and the entries shall be numbered in every year according to the order in which the plaint is presented. The Register shall be kept in the form contained in the Schedule (A) hereunto annexed.

39. When the plaintiff sues upon any WRITTEN DOCUMENT or relies upon any such document as evidence in support of his claim, he SHALL PRODUCE the same in Court WHEN THE PLAINT is PRESENTED, and shall at the same time, deliver a copy of the document to be filed with the plaint; if the document be an ENTRY IN a shop-book or other BOOK, the plaintiff shall produce the book to the Court, together with a copy of the entry on which he relies. The Court shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original, shall return the document to the plaintiff. The plaintiff may, if he think proper deliver the original document to be filed instead of the copy. The Court may, if it see sufficient cause, direct any written DOCUMENT so produced to be IMPounded and kept in the custody of some Officer of the Court for such period and subject to such conditions as to the Court shall seem meet. Any document not produced in Court by the plaintiff when the plaint is presented, shall not be received in evidence on his behalf at the hearing of the suit without the sanction of the Court.
40. If the plaintiff require the PRODUCTION OF any written DOCUMENT IN the POSSESSION or power OF the DEFENDANT, he may, at the time of presenting the plaint, deliver to the Court a description of the document, in order that the defendant may be required to produce the same.

Of Summoning the Defendant.

41. When the plaint has been registered, a SUMMONS, under the signature of the Judge and the seal of the Court, shall be issued TO the DEFENDANT, to appear and answer the claim, on a day to be therein specified, in person or by a pleader of the Court duly instructed and able to answer all material questions relating to the suit, or by a pleader who shall be accompanied by some other person able to answer all such questions. The Court shall determine, at the time of issuing the summons, whether it shall be FOR the settlement of ISSUES only OR for the FINAL DISPOSAL of the suit, and the summons shall contain a direction accordingly.

42. If the Court see reason to require the PERSONAL ATTENDANCE of the defendant, the summons shall order the defendant to appear personally in Court on the day therein specified. If the Court see reason to require the personal attendance of the plaintiff on that day it may make an order for such attendance; Provided that no plaintiff or defendant shall be ordered to attend in person, who at the time is bonâ fide residing at a distance of more than fifty miles from the place where the Court is held, unless he be resident within the limits of the jurisdiction of the Court.

43. The summons to appear shall order the DEFENDANT TO PRODUCE any written DOCUMENT in his possession or power, of which the plaintiff demands inspection, or upon which the defendant intends to rely in support of his defence.

44. The SUMMONS shall be in the FORM contained in the Schedule (B) hereunto annexed, or to the like effect.

45. The DAY FOR the APPEARANCE of the defendant shall be fixed by the Court with reference to the place of residence of the defendant, and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant a sufficient time to enable him to appear and answer in person or by a pleader on such day.

46. In suits against a Corporation or a Company authorised to sue and be sued in the name of an Officer or Trustees, the Court may, if it think proper, require the PERSONAL ATTENDANCE OF any DIRECTOR, Secretary, or other principal Officer of the Corporation or Company who may be able to answer all material questions relating to the suit.

Service of Summons on the Defendant.

47. The SUMMONS shall be DELIVERED TO the NAZIR or other proper Officer of the Court to be served by himself or one of his subordinates, and such Officer shall be responsible for its due service.

40. See also Section 107 post.
48. SERVICE OF the SUMMONS shall be MADE BY DELIVERING or tendering a COPY thereof under the signature of the Judge and seal of the Court; and when there are more defendants than one, service of the summons shall be made on each defendant.

49. Whenever it may be practicable, the SERVICE shall be ON the DEFENDANT IN PERSON, UNLESS he have an AGENT empowered to accept the service, in which case service on such agent shall be sufficient.

50. Besides the recognised agents described in Section 17, any person residing within the jurisdiction of the Court may be appointed an AGENT TO RECEIVE the SERVICE of summonses and other processes.

51. The APPOINTMENT OF SUCH AGENT shall be IN WRITING, and the original appointment, or a copy thereof, if the appointment be a general one, shall be filed in the Court.

52. The Government pleader in each Court shall be accounted the AGENT OF THE GOVERNMENT for the purpose of receiving services of summonses and other judicial processes against the Government issuing out of the Court in which he may be the pleader of Government.

53. When the defendant cannot be found, and has no agent empowered to accept the SERVICE of the summons, it may be made ON any ADULT MALE MEMBER OF his FAMILY residing with him.

54. In all cases where the summons is served on the defendant personally, or any agent or other person on his behalf, the SERVING OFFICER SHALL REQUIRE the SIGNATURE of the person on whom the service may be made, to an acknowledgment of service, to be endorsed on the original summons or on a copy thereof under the seal of the Court. If such person refuse to sign the acknowledgment, the service of the summons shall nevertheless be held sufficient, if it be otherwise proved to the satisfaction of the Court.

55. When the defendant cannot be found, and there is no agent empowered to accept the service, nor any other person on whom the service can be made, the serving Officer shall FIX the COPY OF the SUMMONS ON the OUTER DOOR OF the HOUSE in which the defendant is dwelling; and if he is not dwelling in the place mentioned in the summons, the serving Officer shall return the summons to the Court from whence it issued, with an endorsement thereon that he has been unable to serve it. Provided that, if the serving Officer is informed that the defendant is to be found, or has his dwelling in a place within the jurisdiction of the Court other than that indicated in the summons, the Officer may proceed to that place to serve the summons.

56. The SERVING OFFICER SHALL, in all cases in which the summons has been served, ENDORSE on the original summons or on a copy thereof under the seal of the Court, the TIME when AND THE MANNER in which it was served.

57. When a summons is returned to the Court without having been served, if the plaintiff shall satisfy the Court that there is reasonable ground for believing that the defendant is keeping out of the way
of its Officer for the purpose of avoiding the service of the summons, the Court shall order the SUMMONS to be SERVED BY FIXING UP A COPY thereof upon some conspicuous place IN THE COURT HOUSE, and also upon the door of the house in which the defendant shall have last resided, if it be known where he last resided; or that the summons shall be served in such other manner as the Court shall think proper. And the service which shall be substituted by order of the Court shall be as effectual to all intents and purposes as if it had been effected in the manner above specified.

58. Whenever SERVICE shall be SUBSTITUTED by order of the Court by virtue of the power contained in the last preceding Section, the Court shall fix such TIME FOR the APPEARANCE of the defendant as the case may require.

59. If the DEFENDANT be RESIDENT WITHIN the JURISDICTION OF any COURT OTHER THAN THAT IN WHICH the SUIT is INSTITUTED, and have no agent empowered to accept the service, the court in which the suit is instituted shall transmit the summons, either by an Officer of the court or by post, to any court having jurisdiction at the place where the defendant resides, by which it can be most conveniently served, and shall fix such time for the appearance of the defendant as the case may require; and the court to which the summons is transmitted shall, upon receipt of the summons, deliver the same to the Nazir or other proper Officer of such court, to be served in the manner above directed; and upon the return of the summons by the serving Officer, it shall be re-transmitted to the court from whence it originally issued.

60. If the DEFENDANT be RESIDENT OUT OF the British territories in INDIA, and have no agent empowered to accept the service, the summons shall be addressed to the defendant at the place where he may reside, and forwarded to him by post; in such case the time for the appearance of the defendant shall be regulated by the time which may be required for communication by post between the place at which the court is held and the place where the defendant resides; and if, on the day fixed for the hearing of the suit, or on any day to which the hearing may be adjourned, the defendant shall not appear in person or by pleader, the plaintiff may apply to the court, and it shall be lawful for the court to direct that the plaintiff shall be at liberty to proceed with his suit, in such manner and subject to such conditions as to the Court may seem meet.

61. When the SUIT is FOR LAND or other immovable property, and the summons for any reason cannot be served on the defendant in person, and the defendant has no agent empowered to accept the service, the SUMMONS may be SERVED on any AGENT of the defendant IN CHARGE OF such LAND or other immovable property.

62. When the DEFENDANT is IN THE SERVICE OF GOVERNMENT, the Court may transmit a copy of the summons to the head Officer of the Office in which the defendant is employed, for the purpose of being served on him, if it shall appear to the Court that the summons may be most conveniently so served. If the DEFENDANT
be an OFFICER or SOLDIER, the Court shall transmit a copy of the summons to the Commanding Officer of the Corps to which the defendant belongs, for the purpose of being served on him. The Officer to whom the summons is transmitted, after causing the summons to be served on the person to whom it is addressed, if practicable, shall return it to the Court with the written acknowledgment of such person endorsed therein. If, from any cause, the summons cannot be served upon the person to whom it is addressed, it shall be returned to the Court by which it was transmitted, with information of the cause which has prevented the service. In such case the Court shall adopt such other means of serving the summons as it may deem proper:

63. When the SUIT is AGAINST a CORPORATION or a Company authorized to sue and be sued in the name of an Officer or Trustees, the summons may be served by leaving the same at the registered Office (if any) of the Company, or sending it through the Post Office by a letter addressed to such Office, or by giving it to any Director, Secretary, or other principal Officer of the Corporation or Company.

64. Nothing contained in the preceding rules shall be construed to prevent the Court from substituting for the summons a LETTER or other appropriate communication under the signature of the Judge and seal of the Court, when the PERSON whose appearance is required is of a RANK which entitles him to such mark of consideration. The letter or other communication shall contain all the particulars required to be stated in the summons, and shall be treated in all respects as a summons:

65. When a LETTER or other communication is substituted for a summons under the authority of the last preceding Section, it MAY BE TRANSMITTED THROUGH the POST Office, or by a special messenger selected by the Court, or in any other manner which the Court may deem sufficient; unless the party shall have an agent empowered to accept service of judicial process, in which case delivery to such agent shall be deemed sufficient service.

66. Whenever it is provided that any summons, letter, or other communication may be transmitted to the person to whom it is addressed though the Post Office, proof that the same was correctly addressed to such person at his place of residence, and that it was duly posted according to Section 38. of Act XVII. of 1854 (For the Management of the Post Office, for the Regulation of the Duties of Postage and for the Punishment of Offences against the Post Office), shall be sufficient PROOF of the due SERVICE and delivery of the summons, letter, or other communication, in the absence of evidence to the contrary.

Of Suits against Government and Public Officers:

67. If the SUIT be AGAINST the GOVERNMENT, the SUMMONS shall be SERVED ON the GOVERNMENT PLEADER. The Court in fixing the day for the Government to answer to the plaint, shall allow a reasonable time for the necessary communication with the
Government through the proper channels, and for the issue of instructions to the Government Pledger to appear and answer on behalf of the Government, and may extend the time at its discretion on the application of the Government Pledger. The Court may also, if it think proper, direct the attendance of a person who may be able to answer all material questions relating to the suit.

68. If the suit be against an officer of the government for an act which the plaintiff alleges to have been done by such officer in his official capacity, the summons shall be served upon such officer in the manner hereinbefore provided.

69. If the officer on receiving the summons shall consider it proper to make a reference to government before answering to the plaint, he may move the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference, and to receive orders thereon through the proper channels; and the Court upon such motion may extend the time for so long as shall appear to it to be requisite.

70. If the government shall undertake the defence of the suit, the Government Pledger shall be furnished with authority to appear and answer to the plaint; and upon motion made by him the Court shall order a note to that effect to be entered in the Register.

71. If such motion shall not be made by the Government Pledger on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed as in a suit between private parties, except that the defendant shall not be liable to arrest before judgment.

72. If in any such suit the Court shall require the personal appearance of the defendant, and the defendant shall satisfy the Court that he cannot absent himself from his duty without injury to the public service, the Court shall exempt him from such appearance; but he shall be liable to be examined in any way in which an absent witness may be examined.

How persons not before the Court may be made parties to a suit.

73. If it appear to the Court at any hearing of a suit, that all the persons who may be entitled to, or who claim some share or interest in the subject matter of the suit and who may be likely to be affected by the result, have not been made parties to the suit, the Court may adjourn the hearing of the suit, to a future day to be fixed by the Court, and direct that such persons shall be made either plaintiffs or defendants in the suit, as the case may be. In such case the Court shall issue a notice to such persons in the manner provided in this Act for the service of a summons on a defendant.

Of arrest before judgment.

74. If in any suit, not being a suit for land or other immovable property, the defendant, with intent to avoid or delay the plaintiff, or to obstruct or delay the execution of any decree that may be passed
against him, is about to leave the jurisdiction of the Court or has disposed of or removed from the jurisdiction of the Court his property or any part thereof. The plaintiff may either at the institution of the suit, or at any time thereafter until final judgment, make an APPLICATION to the Court that SECURITY be taken FOR the APPEARANCE OF the DEFENDANT to answer any judgment that may be passed against him in the suit.

75. If the Court, after examining the applicant and making such further investigation as it may consider necessary, shall be of opinion that there is probable cause for believing that the defendant is about to leave its jurisdiction with the intent of avoiding or delaying the plaintiff or that he has disposed of or removed from the jurisdiction of the Court his property or any part thereof, with the intent to obstruct or delay the execution of any decree, it shall be lawful for the Court to issue a WARRANT to the proper officer, enjoining him TO BRING the DEFENDANT BEFORE the COURT that he may show cause why he should not give good and sufficient bail for his appearance.

76. If the defendant fail to show such cause, the Court shall order him to give BAIL FOR his APPEARANCE at any time when called upon while the suit is pending, and until execution or satisfaction of any decree that may be passed against him in the suit; and the sureties or sureties shall undertake, in default of such appearance, to pay any sum of money that may be adjudged against the defendant in the suit with costs. Any order made by the Court, under the provisions of this Section, shall be open to APPEAL by the defendant.

77. Should a defendant offer, IN LIEU OF BAIL for his appearance, to DEPOSIT a sum of money or other valuable property sufficient to answer the claim against him, with the costs of the suit, the Court may accept such deposit.

78. In the event of the DEFENDANT neither furnishing security nor offering a sufficient deposit, he may be COMMITTED TO CUSTODY UNTIL the DECISION of the suit, or, if judgment be given against the defendant, until the execution of the decree, if the Court shall so order.

79. If it shall appear to the Court that the ARREST of the defendant was applied for ON INSUFFICIENT GROUNDS, or if the suit of the plaintiff is dismissed or judgment is given against him by default or otherwise, and it shall appear to the Court that there was no probable ground for instituting the suit, the Court may (on the application of the defendant) award against the plaintiff in its decree, such amount, not exceeding the sum of One Thousand Rupees, as it may deem a reasonable COMPENSATION to the defendant for any injury or loss which he may have sustained by reason of such arrest. Provided that the Court shall not award a larger amount of compensation under this Section than it is competent to such Court to decree in an action for damages. An award of compensation under this Section shall bar any suit for damages in respect of such arrest.

76. See Section 24, Act 23 of 1861, post.
80. If in any suit the DEFENDANT is ABOUT TO LEAVE the
British territories in INDIA with intent to remain absent so long that
the plaintiff will or may thereby be obstructed or delayed in the execu-
tion of any decree that may be passed against the defendant, the plain-
tiff may make an application to the Court to the effect and in the man-
ner aforesaid, and the procedure thereupon shall be in all respects the
same as hereinbefore provided.

Of Attachment before Judgment.

81. If the defendant, with intent to obstruct or delay the execu-
tion of any decree that may be passed against him, is about to dispose of
his property or any part thereof, or to remove any such property from
the jurisdiction of the Court where the suit is pending, the PLAIN-
tIFF MAY APPLY to the Court either at the time of the institution of
the suit, or at any time thereafter until final judgment, TO CALL UP-
ON the DEFENDANT TO FURNISH sufficient SECURITY to fulfil
any decree that may be passed against him in the suit, AND ON HIS
FAILING to give such security, to direct THAT any PROPERTY,
moveable or immovable, belonging to the defendant, shall BE AT-
TACHED until the further order of the Court.

82. The APPLICATION shall contain a specification of the prop-
erty required to be attached, and the estimated value of each article or
item thereof; and the plaintiff shall, at the time of making the applica-
tion, declare that the defendant is about to dispose of or remove his
property with such intent as aforesaid.

83. If the Court, after examining the applicant and making such
further investigation as it may consider necessary, shall be satisfied that
the defendant is about to dispose of or remove his property with intent
to obstruct or delay the execution of the decree, it shall be lawful for
the Court to issue a WARRANT to the proper Officer, commanding
him to call upon the defendant, within a time to be fixed by the Court,
either TO FURNISH SECURITY in such sum as may be specified in
the order to produce and place at the disposal of the Court when requir-
ed the said property or the value of the same or such portion thereof as
may be sufficient to fulfil the decree, OR to appear and SHOW CAUSE
why he should not furnish security. The Court may also in the warrant
direct the ATTACHMENT until further order of the whole or any por-
tion of the property specified in the application.

84. If the DEFENDANT FAIL TO SHOW such CAUSE, or to
furnish the required security within the time fixed by the Court, the
Court may direct that the PROPERTY specified in the application, if
not already ATTACHED, or such portion thereof as shall be sufficient
to fulfil the decree, shall be attached until further order. If the defen-
dant show such cause, or furnish the required security, and the property
specified in the application or any portion of it shall have been attach-
ed, the Court shall order the ATTACHMENT TO BE WITHDRAWN.

85. The ATTACHMENT shall be MADE according to the nature
of the property to be attached, IN THE MANNER hereinafter PRE-
CRIBED FOR the ATTACHMENT of property IN EXECUTION of
a decree for money. Any order for the attachment of property under
the preceding Section shall be open to APPEAL by the defendant.
86. In the event of any CLAIM being preferred TO the PRO-
PERTY ATTACHED before judgment, such claim shall be investigated
in the manner hereinafter prescribed for the investigation of claims to
property attached in execution of a decree for money.

87. In all cases of attachment before judgment, the Court which
passed the order for the ATTACHMENT shall at any time REMOVE
the same, ON the DEFENDANT FURNISHING SECURITY as
above required, together with security for the costs of the attachment

88. If it shall appear to the Court that the ATTACHMENT was
applied for ON INSUFFICIENT GROUNDS, or if the suit of the
plaintiff is dismissed, or judgment is given against him by default or
otherwise, and it shall appear to the Court that there was no probable
ground for instituting the suit, the Court may (on the application of the
defendant) award against the plaintiff in its decree such amount, not
exceeding the sum of One Thousand Rupees, as it may deem a reason-
able COMPENSATION to the defendant for the expense or injury oc-
casioned to him by the attachment of his property. Provided that the
Court shall not award a larger amount of compensation under this Sec-
tion than it is competent to such Court to decree in an action for da-
mages. An award of compensation under this Section shall bar any suit
for damages in respect of such attachment.

89. ATTACHMENTS before judgment shall NOT AFFECT the
rights of PERSONS NOT PARTIES to the suit, nor bar any person
holding a decree against the defendant from applying for the sale of the
property under attachment in execution of such decree.

90. If it shall appear to the Court by whose order the property
may have been attached before judgment, that there is reasonable
ground for supposing that the DEGREE, in satisfaction of which the
sale of the property is applied for, was OBTAINED BY FRAUD or
other improper means, the Court may REFUSE TO ALLOW the pro-
PERTY TO BE SOLD in execution, if the decree be a decree of that
Court; or if it be a decree of another Court, may stay the proceedings
for a reasonable time, to enable the plaintiff in the pending suit to ad-
opt proceedings to set aside the decree.

91. Whereas lands paying revenue to Government or a tenure li-
able to summary sale under the provisions of Regulation VIII. of 1819
of the Bengal Code (to declare the Validity of certain Tenures and to define
the relative Rights of Zemindars and Putres Talookdars, &c.) from the
subject of a suit, if the PARTY IN POSSESSION of such lands or
tenure shall NEGLECT TO PAY the GOVERNMENT REVENUE
or the rent due to the proprietor of the estate, as the case may be, and
a public sale shall in consequence be ordered to take place, the party
not in possession shall, upon payment of the revenue or rent due previ-
ously to the sale (and with or without security at the discretion of the
Court), be put in immediate possession of the lands or tenure; and the
Court in its decree may award against the defendant the amount so paid
with interest thereupon at such rate as to the Court may seem fit, or
may charge the amount so paid, with interest thereupon at such rate
as the Court may order, in any adjustment of accounts which may be
directed in the final decree upon the suit.
Of Injunctions.

92. In any suit in which it shall be shown to the satisfaction of the court that any property which is in dispute in the suit is in danger of being wasted, damaged or alienated by any party to the suit, it shall be lawful for the court to issue an INJUNCTION to such party commanding him to refrain from doing the particular act complained of, or to give such other orders for the purpose of staying and PREVENTING him FROM WASTING, damaging, or alienating the property, as to the court may seem meet. And in all cases in which it may appear to the court to be necessary for the preservation or the better management or custody of any property which is in dispute in a suit, it shall be lawful for the court to appoint a RECEIVER or manager of such property and, if need be, to remove the person in whose possession or custody the property may be from the possession or custody thereof, and to commit the same to the custody of such receiver or manager, and to grant to such receiver or manager all such powers for the management or the preservation and improvement of the property, and the collection of the rents and profits thereof, and the application and disposal of such rents and profits, as to the court may seem proper. If the property be land paying revenue to Government, and it is considered that the interests of those concerned will be promoted by the management of the Collector, the COURT MAY APPOINT the COLLECTOR to be RECEIVER and manager of such land, unless the Government shall by any general order prohibit the appointment of Collectors for such purpose, or shall in any particular case prohibit the appointment of the Collector to be such receiver.

93. In any suit for restraining the defendant from the committal of any breach of contract or other injury, and whether the same be accompanied with any claim for damages or not, it shall be lawful for the plaintiff, at any time after the commencement of the suit, and whether before or after judgment, to apply to the Court for an INJUNCTION TO RESTRAIN the defendant FROM the repetition, or the continuance of the BREACH OF CONTRACT or WRONGFUL ACT complained of, or the committal of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right; and such injunction may be granted by the Court on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as to such Court shall seem reasonable and just, and in case of disobedience such injunction may be enforced by imprisonment in the same manner as a decree for specific performance: Provided always, that any order for an injunction may be discharged, or varied or set aside by the Court, on application made thereto by any party dissatisfied with such order.

94. Any order made under either of the last two preceding Sections shall be open to APPEAL by the defendant.

95. The Court may in every case, BEFORE granting an INJUNCTION direct such reasonable NOTICE of the application for the same to be given to the opposite party as it shall see fit.

96. If it shall appear to the Court that the INJUNCTION was applied for ON INSUFFICIENT GROUNDS or if the claim of the
plaintiff is dismissed or judgment is given against him by default or otherwise, and it shall appear to the Court that there was no probable ground for instituting the suit, the Court may (on the application of defendant) award against the plaintiff in its decree such sum, not exceeding One Thousand Rupees, as it may deem a reasonable COMPENSATION to the defendant for the expense or injury occasioned to him by the issue of the injunction: Provided that the Court shall not award a larger amount of compensation under this Section than it is competent to such Court to decree in an action for damages. An award of compensation under this Section shall bar any suit for damages in respect of the issue of the injunction.

Of the Withdrawal and Adjustment of Suits.

97. If the plaintiff, at any time before final judgment, satisfy the Court that there are sufficient grounds for permitting him to WITHDRAW FROM the SUIT with liberty to bring a fresh suit for the same matter, it shall be competent to the Court to grant such permission on such terms as to costs or otherwise as it may deem proper. In any such fresh suit the plaintiff shall be bound by the rules for the limitation of actions in the same manner as if the first suit had not been brought. If the plaintiff withdraw from the suit without such permission, he shall be precluded from bringing a fresh suit for the same matter.

98. If a suit shall be adjusted by mutual agreement or COMPROMISE, or if the defendant satisfy the plaintiff in respect to the matter of the suit, such agreement, compromise, or satisfaction shall be recorded, and the suit shall be disposed of in accordance therewith.

Of the Death, Marriage, and Bankruptcy or Insolvency of Parties.

99. The DEATH OF a PLAINTIFF OR DEFENDANT shall not cause the suit to abate if the cause of action survive.

100. If there be TWO OR MORE PLAINTIFFS or DEFENDANTS, AND ONE of them DIE, and if the cause of action survive to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, and against the surviving defendant or defendants.

101. If there be TWO OR MORE PLAINTIFFS, AND ONE of them DIE, and if the cause of action shall not survive to the surviving plaintiff or plaintiffs alone, but shall survive to them and the LEGAL REPRESENTATIVE of the deceased plaintiff jointly, the Court may, on the application of the legal representative of the deceased plaintiff, enter the name of such representative in the Register of the suit in the place of such deceased plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and such legal representative of the deceased plaintiff. If no application shall be made to the Court by any person claiming to be the legal representative of the deceased

99. The remainder of this Section was repealed by Section 2, Act 7 of 1870. See "Repealing enactments" page 69.
plaintiff, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and the legal representative of the deceased plaintiff shall be interested in and shall be bound by the judgment given in the suit in the same manner as if the suit had proceeded at his instance conjointly with the surviving plaintiffs.

102. In the case of the DEATH OF A SOLE PLAINTIFF or sole surviving plaintiff, the Court may, on the application of the LEGAL REPRESENTATIVE of such plaintiff, enter the name of such representative in the place of such plaintiff in the Register of the suit, and the suit shall thereupon proceed; if no such application shall be made to the Court within what it may consider a reasonable time by any person claiming to be the legal representative of the deceased sole plaintiff or sole surviving plaintiff, it shall be competent to the Court to pass an order that the suit shall abate, and to award to the defendant the reasonable cost which he may have incurred in defending the suit to be recovered from the estate of the deceased sole plaintiff or surviving plaintiff; or the Court may, if it think proper, on the application of the defendant, and upon such terms as to costs as may seem fit, pass such other order for bringing in the legal representative of the deceased sole plaintiff or surviving plaintiff, and for proceeding with the suit in order to a final determination of the matters in dispute, as may appear just and proper in the circumstances of the case.

103. If any DISPUTE arise AS TO who is the LEGAL REPRESENTATIVE of a deceased plaintiff, it shall be competent to the Court either to stay the suit until the fact has been duly determined in another suit, or to decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit.

104. If there be TWO OR MORE DEFENDANTS, AND ONE of them DIE, and the cause of action shall not survive against the surviving defendant or defendants alone, and also in case of the death of a sole defendant or sole surviving defendant, where the action survives, the plaintiff may make an application to the Court specifying the name, description, and place of abode of any person whom the plaintiff alleges to be the legal representative of such defendant, and who he desires to be made the defendant in his stead; and the Court shall thereupon enter the name of such representative in the Register of the suit in the place of such defendant, and shall issue a summons to him to appear on a day to be therein mentioned to defend the suit; and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant and had been a party to the former proceedings in the suit.

105. The MARRIAGE OF A WOMAN plaintiff or defendant shall NOT CAUSE the SUIT to ABATE, but the suit may notwithstanding be proceeded with to judgment, and the decree thereupon may be executed upon the wife alone; and if the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and in case of judgment for the wife, execution of the decree may, with the permission of the Court, be issued upon the application of the husband.
where the husband is by law entitled to the money or thing which may be the subject of the decree.

106. The BANKRUPTCY or INSOLVENCY OF the PLAIN-
TIFF, in any suit which the Assignee might maintain for the benefit of the creditors, shall not be a valid objection to the continuance of such suit, unless the Assignee shall decline to continue the suit and to give security for the costs thereof within such reasonable time as the Court may order; if the Assignee neglect or refuse to continue the suit and to give such security within the time limited by the order, the defen-
dant may, within eight days after such neglect or refusal, plead the bankruptcy or insolvency of the plaintiff as a reason for abating the suit.

Of Notice to Produce, and how they are to be served.

107. Whenever any of the parties to a suit is desirous that any document, writing, or other thing, which he believes to be in the pos-
session or power of another of the parties thereto, should be produced at any hearing of the suit, and the production of such document, writ-
ing, or other thing has not previously been required under the pro-
vision of Sections 49 and 43, he shall at the earliest opportunity de-
liver to the Court two NOTICES in writing TO the PARTY in whose possession or power he believes the document, writing, or other thing to be, calling upon him TO PRODUCE the same; and one of such notices shall be filed in Court, and the other shall be delivered by the Court to the Nazir or other proper Officer, to be served upon such party.

108. In all cases in which a party to a suit has not appointed a pleader to act for him, all notices and other judicial PROCESSES shall be SERVED upon such party IN THE MANNER hereinbefore pro-
vided for the service OF A SUMMONS upon a defendant to appear and answer.

Of the Appearance of the Parties, and Conse-
quences of non-appearance.

109. ON the DAY FIXED in the summons for the defendant to appear and answer, the PARTIES SHALL BE IN ATTENDANCE at the Court house in person or by a pleader, and the suit shall then be heard, unless the hearing be adjourned to a future day which shall be fixed by the Court.

110. If, on the day fixed for the defendant to appear and answer, or any other day subsequent thereto to which the hearing of the suit may be adjourned, NEITHER PARTY shall APPEAR either in person or by pleader, when duly called upon by the Court, the SUIT SHALL BE DISMISSED. Whenever a suit is dismissed under the provisions of this Section the plaintiff shall be at liberty to bring a FRESH SUIT, unless precluded by the rules for the limitation of actions; or if he shall, within the period of thirty days, satisfy the Court that there was a sufficient excuse for his non-appearance, the Court may issue a fresh summons upon the plaint already filed.
111. **If the plaintiff shall appear in person or by a pleader, and the defendant shall not appear in person or by a pleader, and it shall be proved to the satisfaction of the Court that the summons was duly served, the Court shall proceed to hear the suit ex parte. If the defendant appear on any subsequent day to which the hearing of the suit is adjourned, and shall assign good and sufficient cause for his previous non-appearance, he may, upon such terms as the Court may direct as to payment of costs or otherwise, be heard in answer to the suit in like manner as if he had appeared on the day fixed for his appearance.**

112. **If the plaintiff shall appear in person or by a pleader, and the defendant shall not appear in person or by a pleader, and it shall not be proved to the satisfaction of the Court that the summons was duly served in any of the modes of service hereinbefore provided, the Court may direct a second summons to the defendant to be issued in any of the said modes.**

113. **If the plaintiff shall appear in person or by a pleader, and the defendant shall not appear in person or by a pleader, and it shall be proved to the satisfaction of the Court that the summons was served on the defendant, but not in sufficient time to enable the defendant to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and may direct notice of such day to be given to the defendant.**

114. **If the defendant shall appear in person or by a pleader, and the plaintiff shall not appear in person or by a pleader, the Court shall pass judgment against the plaintiff by default unless the defendant admit the claim, in which case the Court shall pass judgment against the defendant upon such admission. When judgment is passed against a plaintiff by default, he shall be precluded from bringing a fresh suit in respect of the same cause of action.**

115. **When there are two or more plaintiffs, any one or more of them may be authorised to appear, plead, and act for the other or others of them; and in like manner, when there are two or more defendants, any one or more of them may be authorised to appear, plead, and act for the other or others of them; provided that the authority shall in all cases be in writing, and shall be filed in the Court, when so filed it shall be as effectual to all intents and purposes as if the person so authorised to appear, plead, and act, were a pleader of the Court.**

116. **If there are two or more plaintiffs, and one or more of them shall appear in person or by a pleader or by a co-plaintiff duly authorised, and the other or others of them shall not appear in person or by a pleader or by a co-plaintiff duly authorised, it shall be competent to the Court to proceed with the suit at the instance of the plaintiff or plaintiffs who shall have appeared, in the same way as if all the plaintiffs had appeared, and to pass such order as may be just and proper in the circumstances of the case; and if there are two or more defendants and one or more of them...**

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112. See Sections 5, 6 and 7 Act 25 of 1891, post.
shall APPEAR in person or by a pleader or by a co-defendant duly authorised, and the other or others of them shall not appear in person or by a pleader or by a co-defendant duly authorised, the COURT SHALL PROCEED WITH the SUIT to judgment, and shall, at the time of passing judgment, give such order with respect to the defendants who shall not have appeared as shall be just and proper in the circumstances of the case.

117. If any plaintiff or defendant, who shall have been ordered or SUMMONED TO APPEAR PERSONALLY under the provisions of Section 42, SHALL NOT APPEAR in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, such plaintiff or defendant shall be subject to all the provisions of the foregoing Section applicable to plaintiffs and defendants respectively, who do not appear either in person or by pleader.

118. IN SUPPORT OF the CAUSE SHOWN by a plaintiff or defendant for failure to appear in person, the Court shall receive any DECLARATION in writing if signed by such plaintiff or defendant and verified in the manner hereinbefore provided for any verification of plaintiff.

119. No APPEAL shall lie from a judgment passed EX PARTE against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance. But in all cases in which JUDGMENT may be passed EX PARTE against a defendant, he may apply to the Court by which the judgment was passed for an ORDER TO SET it ASIDE; and if it shall be proved to the satisfaction of the Court that the summons was not duly served, or that the defendant was prevented by any sufficient cause from appearing when the suit was called on for hearing the Court shall pass an order to set aside the judgment and shall appoint a day for proceeding with the suit. In all cases of JUDGMENT against a plaintiff BY DEFAULT, he may apply, for an ORDER TO SET it ASIDE; and if it shall be proved to the satisfaction of the Court that the plaintiff was prevented by any sufficient cause from appearing when the suit was called on for hearing the Court shall pass an order to set aside the judgment by default, and shall appoint a day for proceeding with the suit. But no judgment shall be set aside on any such application as aforesaid unless NOTICE thereof has been served on the opposite party. In all cases in which the Court shall pass an order under this Section for setting aside a judgment, the order shall be final; but in all appealable cases in which the Court shall reject the application, an APPEAL shall lie from the order of rejection to the tribunal to which the final decision in the suit would be appealable; Provided that the appeal be preferred within the time allowed for an appeal from such final decision.

118. The words "on unstamped paper" in this Section were repealed by Section 3, Act 7 of 1870, see "Repealing Enactments" page 63.

119. The words "and he written on stamp paper of the value prescribed for petitions to the Court where a stamp is required for petitions" were repealed by Section 3, Act 7 of 1870, see "Repealing Enactments" page 63.

The words "within a reasonable time not exceeding 20 days after any process for enforcing the judgment has been executed" and the words "within 20 days from the date of the judgment" were repealed by Act 2 of 1871, see "Repealing Enactments" page 69.
Of written Statements.

120. The parties or their pleaders may tender AT the FIRST HEARING of the suit WRITTEN STATEMENTS of their respective cases, and the Court shall receive the same and put them on the record. Such statement shall be written on the stamp paper prescribed for petitions to the Court where a stamp is required for petitions.

121. If in a suit for debt the defendant desire to SET-OFF against the claim of the plaintiff the amount of any debt due to him from the plaintiff he shall tender a written statement containing the particulars of his demand, and the Court shall thereupon inquire into the same. Provided that, if the sum claimed by the defendant exceed the amount cognizable by the Court, the defendant shall not be allowed to set-off the same unless he abandon the excess.

122. No WRITTEN STATEMENT shall be received AFTER the FIRST HEARING of the suit, unless called for by the Court. But it shall be competent to the Court, at any time before final judgment, to call for a written statement, or an additional written statement, from any of the parties.

123. Written statements shall be as brief as the nature of the case will admit, and shall not be argumentative, nor by way of answer one to the other; but each STATEMENT SHALL BE confined, as much as possible, to A SIMPLE NARRATIVE OF THE FACTS which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he believes he will be able to prove if called upon by the Court. Written statements shall be SUBSCRIBED and verified in the manner hereinbefore provided for subscribing and verifying plaints, and no written statement shall be received unless it be so subscribed and verified.

124. If it shall appear to the Court that any WRITTEN STATEMENT presented by or on behalf of a party, whether the same have been spontaneously tendered or have been called for by the Court, is ARGUMENTATIVE or unnecessarily prolix, or that it contains matter IRRELEVANT to the suit, the COURT MAY REJECT the same and return it to the party with the order of rejection endorsed thereon; and it shall not be competent to a party whose written statement has been rejected for any of these causes to present another statement, unless it shall be expressly called for or allowed by the Court.

Of the Examination of the Parties.

125. All the first hearing of the suit, and, if necessary at any subsequent hearing, any PARTY who appears in person or is present in Court, OR the PLEADER of any party who appears by a pleader, or if the pleader be accompanied by another person able to answer all material questions relating to the suit, then such other person MAY BE EXAMINED ORALLY BY THE COURT. Such examination shall (unless the pleader be the person examined) be upon oath or affirmation or otherwise, according to the provisions of the law for the time being in force in relation to the examination of witnesses. The substance of

122. The remainder of this section was repealed by Section 3 Act 7 of 1870, See "Repealing Enactments" page 70.
of the examination shall be reduced to writing, and form part of the record.

126. If any PARTY who appears in person or is present in Court shall, without lawful excuse, REFUSE TO ANSWER any material question relating to the suit, which the Court may think proper to put to such party, the Court may pass judgment against him, or make such order in relation to the suit as it may deem proper in the circumstances of the case.

127. If the PLEADER of any party who shall appear by a pleader shall REFUSE OR be UNABLE TO ANSWER any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall attend in person on such day; and if the party so directed to attend shall without lawful excuse fail to appear in person on the day to be so appointed, the Court may pass judgment against him, or make such other order in relation to the suit as if may deem proper in the circumstances of the case.

Of the Production of Documents.

128. The parties or theirpleaders SHALL BRING with them, and have in readiness AT THE FIRST HEARING of the suit, to be produced when called upon by THE Court, ALL their DOCUMENTARY EVIDENCE of every description which may not already have been filed in Court, and all documents, writings, or other things which may have been specified in any notice which may have been served on them respectively within a reasonable time before the hearing of the suit; and no documentary evidence of any kind which the parties or any of them may desire to produce shall be received by the Court at any subsequent stage of the proceedings, UNLESS good CAUSE be SHOWN to its satisfaction for the non-production thereof at the first hearing.

129. All exhibits produced by the parties shall be received and inspected by the Court; but it shall be competent to the Court, after inspection, to REJECT any EXHIBIT which it may consider irrelevant or otherwise INADMISSIBLE, recording the ground of such rejection.

132. When an EXHIBIT is received by the Court and ADMITTED IN EVIDENCE, it SHALL BE ENDORSED with the number and title of the suit, the name of the party producing it, and the date on which it was produced, and shall be filed as part of the record. Provided that, if the exhibit be an entry in any shop BOOK or other book, the party on whose behalf such book is produced shall furnish a copy of the entry, which copy shall be endorsed as aforesaid, and shall be filed as part of the record, and the book shall be returned to the party producing it.

134. When an EXHIBIT is REJECTED by the Court, it SHALL BE ENDORSED in the manner specified in Section 132 with the addition of the word "rejected," and the endorsement shall be subscribed by the
Judge. The exhibit shall then be returned to the party who produced it, unless the Court shall think proper, for special reasons (as on suspicion of forgery), to detain it.

135. When the time for preferring an appeal from the decision passed in the suit has elapsed, or if an appeal has been preferred from such decision, then, after the appeal has been finally disposed of, any person, whether a party to the suit or not, who may be desirous of RECEIVING BACK any EXHIBIT produced by him in the suit, shall be entitled, on application to the Court in which such exhibit may be, to receive back the same, unless the further use of such exhibit has been superseded by the terms of the decree, or the Court has directed it to be detained for purposes of public justice.

136. Any EXHIBIT may be RETURNED BEFORE the TIME MENTIONED in the last preceding Section, if the Court, in which the document may be, shall think proper, for special reasons, to order its return. But in every case a COPY, properly certified and made at the expense of the applicant, shall be substituted for the original in the record of the suit.

137. Whenever an exhibit once received by a Court of Justice and admitted in evidence is returned a RECEIPT shall be given by the party receiving it in a receipt-book kept for the purpose.

138. Any Civil COURT MAY of its own accord, or upon the application of any of the parties to a suit, SEND FOR, either from its own record or from any other public Office or Court, the record of any other suit or case, or any other OFFICIAL PAPERS (not being documents relating to affairs of State, the production of which would be contrary to good policy), and inspect the same, when the inspection of such record or papers shall appear likely to elucidate the facts of the suit before the Court, and to promote the ends of justice.

Of the Settlement of Issues.

139. At the first hearing of the suit the Court shall inquire and ascertain upon what questions of law or fact the parties are at issue, and shall thereupon proceed to frame and record the ISSUES of law and fact on which the right decision of the case may depend. The Court may frame the issues from the allegations of fact which it collects from the oral examination of the parties or their pleaders, notwithstanding any difference between such allegations of fact and the allegations of fact contained in the written statements, if any, tendered by the parties or their pleaders.

140. If the Court shall be of opinion that the issues cannot be correctly framed without the examination of some person other than the persons already before the Court, or without the reading of some document not produced by any of such persons, it MAY ADJOURN the FRAMING OF the ISSUES to a future day, to be fixed by the Court, and may compel the attendance of such person, or the production of the document by the person in whose hands it may be, by summons or other suitable process.

141. At any time before the decision of the case, the Court may AMEND the ISSUES or frame ADDITIONAL ISSUES on such
terms as to it shall seem fit, and all such amendments as may be necessary for the purpose of determining the real question or controversy between the parties shall be so made.

Of Issues by Agreement of Parties.

142. When the PARTIES to a suit ARE AGREED AS TO the QUESTION or questions of fact or of law TO BE DECIDED between them, they may state the same in the form of an issue, and enter into an agreement in writing, which shall not be subject to any stamp duty, that upon the finding of the Court, in the affirmative or the negative of such issue, a sum of money specified in the agreement, or to be ascertained by the Court upon a question inserted in the issue for that purpose shall be paid by one of the parties to the other of them, or that upon such finding some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or that upon such finding one or more of the parties shall do or perform some particular legal act, or shall refrain from doing or performing some particular act, specified in the agreement, and having reference to the matter in dispute.

143. If the COURT shall be SATISFIED, after an examination of the parties or their pleaders, and taking such evidence as it may deem proper, THAT the AGREEMENT WAS duly EXECUTED by the parties, and that the parties have a bona fide interest in the decision of such question, and that the same is fit to be tried and decided, IT MAY proceed to record and TRY the same, and deliver its finding or opinion thereon in the same manner as if the issue had been framed by the Court, and may, upon the finding or decision on such issue, give judgment for the sum so agreed on or so ascertained as aforesaid, or otherwise according to the terms of the agreement; and upon the judgment which shall be so given, decree shall follow and may be executed in the same way as if the judgment had been pronounced in a contested suit.

When the Suit may be disposed of at the first Hearing.

144. If at the first hearing of a suit it shall appear that the PARTIES are NOT AT ISSUE on any question of law or fact, the Court may at once give Judgment.

145. When the PARTIES are AT ISSUE on some question of law or fact, and issues have been framed by the Court as hereinbefore provided, if the Court shall be satisfied that no further argument or evidence than such as the parties or their pleaders can at once supply is required upon any such of the issues of law or fact as may be sufficient for the decision of the suit, the Court, after hearing such argument and evidence may proceed to determine such issue or issues, and if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons shall have been issued for the settlement of issues only or for the final disposal of the suit; otherwise the COURT shall postpone the further hearing of the suit, and SHALL FIX A DAY FOR the production of such further EVIDENCE OR for such further ARGUMENT as the case may require. Provided that
if the summons shall have been issued for the final disposal of the suit, and either party shall fail without sufficient cause to produce the evidence on which he relies, the Court may at once give judgment.

Of Adjournments.

146. The Court may, if sufficient cause be shown, at any stage of the suit, grant time to the parties, or to either of them, and may from time to time ADJOURN the hearing of the suit; and in such cases the Court shall fix a day for the further hearing of the suit. Provided that in all such cases the party applying for time shall pay the COSTS occasioned by such adjournment, unless the Court shall otherwise direct.

147. If on any day to which the hearing of the suit may be adjourned, the PARTIES or either of them SHALL NOT APPEAR in person or by pleader, the Court may proceed to dispose of the suit in the manner specified in Section 110, Section 111, or Section 114, as the case may be, or may make such other order as may appear to be just and proper in the circumstances of the case.

148. If either PARTY to a suit to whom time may have been granted shall FAIL to produce his proofs, or to cause the attendance of his witnesses, or TO PERFORM any other ACT FOR WHICH TIME may have been ALLOWED, the COURT SHALL PROCEED TO A DECISION of the suit on the record, notwithstanding such default.

Or Summoning Witnesses.

149. The parties or their pleaders may at any time after the issue of the summons to the defendant, if the summons be for the final disposal of the suit, or after the issues have been recorded, if the summons to the defendant be for the settlement of issues only, obtain, on application to the Court, SUMMONSES TO WITNESSES or other persons to attend either to give evidence or to produce documents, and in any such summons the names of any number of persons may be inserted.

151. The person applying for a summons shall pay into Court such a sum of money as shall appear to the Court to be reasonable to defray, the travelling and other EXPENSES OF each WITNESS, or other person mentioned in the summons, in passing to and from the Court in which he may be required to attend, and for one day's attendance. If the Court be a subordinate Court, regard shall be had, in fixing the scale of such expenses, to the rules (if any) established by the Court to which such Court shall be immediately subordinate. The sum so paid into Court shall be tendered to the witness or other person at the time of serving the summons, if it can be served personally. If it shall appear to the Court that the sum paid into Court on account of the travelling and other expenses of the witness or other person in passing to and from the Court is not sufficient to cover such expenses, the Court may direct such further sum to be paid to the witness or other person as may appear to be necessary on that account, and in case of default in payment,
may order such sum to be levied by attachment and sale of the goods of
the person ordered to pay the same or may discharge the witness with-
out requiring him to give evidence. If it shall be necessary to detain
the witness or other person summoned for a longer period than one day,
the Court may from time to order the party at whose instance he was
summoned to pay into Court such sum as may be sufficient to defray the
expenses of his detention for such further period, and in default of such
deposit being made, may order the witness to be discharged without re-
quiring him to give evidence.

152. Every SUMMONS for the attendance of a witness or other
person SHALL SPECIFY the time and place at which he is required to
attend, and also whether attendance is required for the purpose of
giving evidence or to produce a document, or for both purposes; and
any particular document, which the witness or other person may be
called on to produce, shall be described in the summons with convenient
certainty.

153. Any person, whether a party to a suit or not, may be SUM-
MONED to PRODUCE a DOCUMENT, without being summoned to
give evidence; and any person summoned merely to produce a docu-
ment, shall be deemed to have complied with the summons, if he cause
such document to be produced instead of attending personally to pro-
duce the same.

Service of Summons on a Witness.

154. Every SUMMONS TO a WITNESS or other person shall
be SERVED BY EXHIBITING the ORIGINAL AND DELIVER-
ing or tendering a COPY; and the service shall in all cases be made a
sufficient time before the time specified in the summons for the attend-
ance of the witness or other person to allow him a reasonable time for
preparation and for travelling to the place at which his attendance is
required.

155. Whenever it may be practicable, the SERVICE of the sum-
mons shall be UPON THE PERSON thereby required to attend; but
when he cannot be found the service may be made on any ADULT
MALE MEMBER OF his FAMILY residing with him.

156. When the person required to attend cannot be found and
there is no adult male member of his family on whom the summons can
be served, the serving Officer shall return the summons to the Court
from whence it issued, with an ENDORSEMENT thereon that he has
been UNABLE TO SERVE it.

157. The serving Officer shall, in all cases in which the summons
has been served, ENDORSE on the original summons the time when,
and the MANNER IN WHICH, it was SERVED.

158. If the person required to attend be RESIDENT WITHIN
the JURISDICTION OF any OTHER COURT than that in which
the suit is pending, the summons shall be transmitted by the Court in
which the suit is pending, to any Court having jurisdiction at the place
where the witness resides by which it can be most conveniently served;
and the Court to which the summons is sent shall, upon receipt thereof,
deliver the same to the Nazir or other proper Officer of such Court, to
be served in the manner above directed; and upon the return of the summons by the serving Officer, it shall be transmitted to the Court from whence it originally issued.

159. If the summons for the attendance of any person either to give evidence or to produce a document cannot be served in either of the ways hereinbefore specified, the Court, on being certified thereof by the return of the serving Officer, and upon proof that the evidence of such witness or the production of the document is material, and that the WITNESS or other person ABSCONDS or keeps out of the way for the purpose of avoiding the service of the summons, may cause a PROCLAMATION requiring the attendance of such person to give evidence, or produce the document, at a time and place to be named therein, to be affixed in some conspicuous place upon his house or place of abode; and if such person shall not attend at the time and place named in such proclamation, the Court may, at the instance of the party on whose application the summons was issued, make an order for the attachment of the moveable property of such person, to such amount as the Court shall deem reasonable, not being in excess of the amount of the costs of attachment and of any fine to which the person may be liable under the provisions of the following Section.

160. If, on the attachment of the property, such witness or other person shall appear and satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the PROPERTY be RELEASED FROM ATTACHMENT, and shall make such order in regard to the costs of the attachment as it shall deem fit. If such witness or other person shall not appear, or appearing shall fail to satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not such a notice of the proclamation as aforesaid, it shall be lawful for the Court to order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of any fine which the Court may impose upon such witness or other person under the provisions of any law for the time being in force for the punishment of a witness who may abscond or keep out of the way in order to avoid the service of a summons. If the witness or other person shall pay into Court the costs and fine as aforesaid, the Court shall order the property to be released from attachment.

Of the Examination of Parties as Witnesses.

161. When a PARTY to a suit appears in person at any hearing of the suit, he may be EXAMINED AS a WITNESS, either in his own behalf or on behalf of any other party to the suit, in the same way as if he were not a party thereto.

162. If any party to a suit shall require to enforce the attendance of any other party thereto as a witness, he shall, by himself or his pleader, make a SPECIAL APPLICATION to the Court FOR an order requiring the ATTENDANCE OF the PARTY, and shall show to the satisfaction of the Court sufficient grounds in support of such application, otherwise a summons shall not be issued.
163. The Court, if it think fit, may before making such order, cause NOTICE to be given to the party or his pleader, fixing a day for such party to show cause why he should not attend and give evidence; and may also, from time to time, if necessary, for good and sufficient reason, enlarge the time for such purpose.

164. IN SUPPORT OF the CAUSE SHOWN, the Court shall receive any DECLARATION in writing of the party if signed by him and verified in the manner hereinbefore provided for the verification of plaintiffs, and delivered into the Court by himself or his pleader.

165. If NO SUFFICIENT CAUSE be SHOWN on the day fixed, or upon any subsequent day to which the Court shall enlarge the time for that purpose, the Court shall issue its ORDER requiring the PARTY TO ATTEND and give evidence.

166. If the Court shall think it necessary for the ends of justice to examine any party to the suit, or to inspect any document in his possession or power, the COURT MAY of its own accord in any stage of the suit CAUSE such PARTY TO BE SUMMONED to attend as a witness to give evidence or to produce such document if in his possession or power, on a day to be appointed in the summons, and may examine such party as a witness in open Court, or may cause such party to be examined in such other manner as the Court may direct.

Attendance of Witnesses and consequence of Non-Attendance.

167. Any PERSON who shall be SUMMONED to appear and give evidence in a suit shall be BOUND TO ATTEND at the time and place named in the summons for that purpose.

168. If any person, on whom any summons to give evidence or produce a document shall have been served in either of the ways specified in Section 155, shall, without lawful excuse, FAIL to COMPLY WITH the SUMMONS, the Court may order such person to be APPREHENDED and brought before the Court. If such person abscond or keep out of the way, so that he cannot be apprehended or brought before the Court, his property shall be liable to attachment and sale in the manner and subject to the rules provided in Sections 159 and 160, with respect to a witness or other person on whom the service of a summons cannot be effected.

169. If any witness, attending or being present in Court, shall, without lawful excuse, REFUSE TO GIVE EVIDENCE, or to produce any document in his custody or possession named in such summons as aforesaid, upon being required by the Court so to do, the Court may COMMIT such witness TO close CUSTODY for such reasonable time as it may deem proper, unless he shall, in the meantime, consent.

164. The words "on unstamped paper" were repealed by Section 3 Act 7 of 1870 See "Repealing Enactments" page 70.

166. See Section 9 Act 23 of 1861, post.

169. Disobedience to a summons is also punishable under Section 174 Act 45 of 1860 See "Penal Code."

169. Refusing to answer a question is also punishable under Section 179' Act 45 of 1860, See "Penal Code"
to give his evidence, or to produce the document. If after the expiration of such time the witness shall persist in his refusal, the Court may proceed to deal with him according to the provisions of any law for the time being in force for the punishment of persons refusing to give evidence.

170. If any person, being a PARTY to the suit, who shall be ordered to attend to give evidence or produce a document, shall, without lawful excuse, FAIL TO COMPLY WITH such ORDER, OR, attending or being present in Court, shall, without lawful excuse, REFUSE TO GIVE EVIDENCE, or to produce any document in his custody or possession named in such summons as aforesaid, upon being required by the Court so to do, the Court may either pass judgment against the party so failing or refusing, or make such other order in relation to the suit as the Court may deem proper in the circumstances of the case.

171. Any PERSON present IN COURT, whether a party to the suit or not, MAY BE CALLED UPON BY THE COURT to GIVE EVIDENCE and to produce any document then and there in his actual possession or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence or to produce such document, and shall be liable to be dealt with by the Court as a party or witness as the case may be, would, under any of the preceding provisions, be liable to be dealt with for any refusal to obey the order of the Court.

When and how Witnesses are to be Examined.

172. On the day appointed for the hearing of the suit or on some other day to which the hearing may be adjourned, the EVIDENCE of the witnesses in attendance SHALL BE TAKEN ORALLY in open Court, in the presence and hearing and under the personal direction and superintendence of the Judge. In cases in which an APPEAL lies to a higher tribunal, the evidence of each witness given upon such examination shall be taken down IN WRITING, in the language in ordinary use in proceedings before the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witnesses, and also in the presence of the parties to the suit or their pleaders, or such of them as are in attendance, and shall, if necessary, be signed by the Judge. If the evidence be taken down in a different language from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his deposition as taken down in writing to be interpreted to him in the language in which it was given. Where all the parties to the suit present, and the pleaders of such as are absent, consent to have such evidence as is given in English taken down in English, the Judge may so take it down in his own hand. It shall be in the discretion of the Court to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for so doing, or any party or his pleader shall require it. If any QUESTION put to a witness be OB-}
shall allow the same to be put, the question and answer shall be taken down and the objection and the name of the party making it shall be noticed in taking down the depositions together with the decision of the Court upon the objection. The Court shall record such remarks as it may think material respecting the demeanour of the witness while under examination. In cases in which the evidence is not take down in writing by the Judge himself, he shall be bound, as the examination of each witness proceeds, to make a MEMORANDUM of the substance of what such witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall accompany the record. In cases in which an APPEAL DOES NOT LIE to a higher tribunal, it shall NOT be necessary to take down the deposition of the witness IN WRITING AT LENGTH but the Judge, as the examination of each witness proceeds, shall make a MEMORANDUM of the substance of what such witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record. If the Judge shall be prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and, in cases not appealable shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same, and such memorandum shall form part of the record.

173. If a WITNESS be about to leave the jurisdiction of the Court, or other good and sufficient cause can be shown to the satisfaction of the Court why his EXAMINATION should be TAKEN IMMEDIATELY, it shall be competent to the Court, upon the application of either party or of the witness, at any time after the institution of the suit, to take the examination of such witness forthwith, or on any day that may be fixed for that purpose, of which due notice shall be given to the parties if the day be fixed in their absence. The witness shall be examined, and his deposition shall be taken down in writing, in the manner hereinbefore prescribed; and the deposition so taken down may be read in evidence at any hearing of the suit.

174. A witnesses shall be examined upon OATH or AFFIRMATION or otherwise according to the provisions of the law for the time being in force in relation to the examination of witnesses.

Of Commissions to Examine absent Witnesses and make Local Inquiries.

175. When the evidence of a witness is required who is resident at some place distant more than A HUNDRED MILES from the place where the Court is held, or who is unable from SICKNESS or infirmity to attend before the Court to be personally examined, or is a person exempted by reason of RANK or SEX from personal appearance in Court; the Court may of its own motion, or on the application of any of the parties to the suit, or on the representation of the witness, order a COMMISSION to issue FOR the EXAMINATION of such witness on interrogatories or otherwise; and may, by the same or any subsequent order, give all such directions for taking such examinations as may appear reasonable and just. If the witness be resident within the jurisdiction of the Court issuing the Commission, the Commission may be issued
to any Officer of the Court, or to any subordinate Court, or to any other person or persons whom the Court issuing the Commission may think proper to appoint. If the witness be resident at some place which is beyond the jurisdiction of the Court issuing the Commission, and not within the local jurisdiction of Her Majesty's Supreme Court, but within the jurisdiction of the Sudder Court the Commission shall ordinarily be issued to the Court within whose jurisdiction the witness may reside, and which can most conveniently execute the same; but, under special circumstances, the Commission may be issued to any other person or persons whom the Court issuing the Commission may think proper to appoint.

176. If the witness be RESIDENT WITHIN the local JURISDICTION of Her Majesty's SUPREME COURT, the COMMISSION shall ordinarily be issued to the COURT OF SMALL CAUSES held under Act IX. of 1854 (for the more easy Recovery of small Debts and Demands in Calcutta, Madras and Bombay), but may, under special circumstances, be directed to any person or person whom the Court issuing the Commission may think proper to appoint.

177. When the evidence of a witness is required, who is RESIDENT at some place NOT WITHIN the JURISDICTION of the SUDDER Court OR of Her Majesty's (SUPREME) COURT BUT within the British territories IN INDIA OR within the territories of a NATIVE Prince or STATE in alliance with the British Government, the Court, if it be satisfied that the evidence of such witness is necessary, may, of its own motion or on the representation of any of the parties to the suit, issue a COMMISSION for the examination of the witness; Provided that, if the suit be pending in any Court subordinate to the principal Civil Court of a District, such subordinate Court shall not issue the Commission, but the principal Civil Court of the District may issue the Commission on the application of the subordinate Court.

178. When the evidence of a witness is required, who is RESIDENT at some place BEYOND the SAID TERRITORIES, and not within the territories of a Native Prince or State in alliance with the British Government, the Sudder Court, if the suit in which the evidence of the witness is required be pending in that Court, and the Court be satisfied that such evidence is necessary, may, of its own motion or on the application of any of the parties to the suit, issue a Commission to examine the witness; if the suit be not pending in the Sudder Court, that Court may issue the Commission on the application of the Court in which the suit is pending. In all such cases, the Commission may be issued to any person or persons whom the Sudder Court may think proper to appoint.

179. After the Commission has been duly executed, it shall be returned, together with the deposition of the witness who may have been examined thereunder, to the Court out of which the Commission issued unless otherwise directed by the order for issuing the Commission, in which case it shall be returned in terms of such order, and the Commission and the return thereto and the deposition of the witness who may have been examined under such Commission, shall in all cases form part of the record of the suit. But NO DEPOSITION taken under a Commission SHALL BE READ IN EVIDENCE without the consent.
of the party against whom the same may be offered, UNLESS it be proved that the DEponent is BEYOND the JURISDICTION of the Court, or dead, or UNABLE from sickness or infirmity TO ATTEND to be personally examined, or distant, without collusion, more than a hundred miles from the place where the Court is held, or exempted by reason of rank or sex from personal appearance in Court, or unless the Court shall, at its discretion, dispense with the proof of any of the above circumstances or shall authorise the deposition of any witness being read in evidence, notwithstanding proof that the causes for taking such deposition have ceased at the time of reading the same.

186. In any suit or other judicial proceeding in which the Court may deem a LOCAL INVESTIGATION to be requisite or proper for the purpose of elucidating the matters in dispute, or of ascertaining the amount of any mesne profits or damages, the Court may issue a COMMISSION to an officer of the Court appointed to execute such Commissions, or, if there be no such officer, to any suitable person, directing him to make such investigation and to report thereon to the Court. In all such cases unless otherwise directed by the order of appointment, the Commissioner shall have power to examine any witnesses who may be produced to him by the parties or any of them, the parties themselves, and any other persons whom he may think proper to call upon to give evidence in the matters referred to him; and also to call for and examine documents and other papers relevant to the subject of inquiry; and persons not attending on the requisition of the Commissioner, or refusing to give their testimony or to produce any documents or other papers, shall be subject to the like disadvantages, penalties, and punishments, by order of the Court on the report of the Commissioner, as they would incur for the same offences in suits tried before the Court. The Commissioner, after such local inspection as he may deem necessary and after reducing to writing in the manner hereinbefore prescribed for taking the depositions of witnesses in the presence of the Judge, the depositions taken by him, shall return the depositions, together with his report in writing subscribed with his name, to the Court. The report and depositions shall be taken as evidence in the suit, and shall form part of the record; but it shall be competent to the Court, or to the parties to the suit or any of them, with the permission of the Court, to examine the Commissioner personally in open Court, touching any of the matters referred to him or mentioned in his report, or the manner in which he may have conducted the investigation.

131. In any suit or other judicial proceeding in which an INVESTIGATION OR ADJUSTMENT OF ACCOUNTS may be necessary, it shall be lawful for the Court to appoint such officer or other person as aforesaid to be a COMMISSIONER for the purpose of making such investigation or adjustment, and to direct that the parties or their attorneys or pleaders shall attend upon the Commissioner during such investigation or adjustment. In all such cases, the Court shall furnish the Commissioner with such part of the proceedings and such detailed instructions as may appear necessary for his information and guidance; and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the enquiry, or also to report his own opinion on the point referred for his investigation. The proceedings of the Commissioner shall be received in
evidence in the case, unless the Court may have reason to be dissatisfied with them; in which case the Court shall make such further inquiry as may be requisite, and shall pass such ultimate judgment or order as may appear to it to be right and proper in the circumstances of the case.

182. Whenever a Commission is issued either for taking evidence or for a local investigation or an investigation into accounts, the Court, before issuing the Commission, may order such sum as may be thought reasonable for the EXPENSES OF THE COMMISSION, to be paid into Court by the party at whose instance or for whose benefit the Commission is issued.

Of Judgment and Decree.

183. When the exhibits have been perused, the witnesses examined and the parties heard in person or by their respective pleaders, the Court shall pronounce its JUDGMENT. The judgment shall be pronounced in open Court, either immediately or on some future day of which due notice shall be given to the parties or their pleaders.

184. The judgment shall be written in the vernacular LANGUAGE OF the JUDGE. Provided that if the vernacular language of the Judge be not English, and the Judge be sufficiently conversant with the English language to be able to write a clear and intelligible decision in that language, and prefer to write his judgment in it, the judgment may be written in English.

185. The JUDGMENT shall CONTAIN the point or points for determination, the decision thereupon, and the reasons for the decision, and shall be dated and signed by the Judge in open Court at the time of pronouncing it. Whenever the judgment is written in any other language than that which is in ordinary use in the Court, the JUDGMENT SHALL BE TRANSLATED into the language in ordinary use in the Court, and the translation shall also be signed by the Judge.

186. In all suits in which issues have been framed, the Court shall state its FINDING or decision ON EACH separate ISSUE, unless the finding upon any one or more of the issues be sufficient for the decision of the suit.

187. The judgment shall in all cases direct by whom the COSTS of each party are to be paid, whether by himself or by another party, and whether in whole or in what part or proportion; and the Court shall have full power to award and apportion costs in any manner it may deem proper.

188. UNDER the denomination of COSTS ARE INCLUDED the whole of the expenses necessarily incurred by either party on account of the suit, and in enforcing the decree passed therein, such as the expense of stamps, of summoning the defendants and witnesses, and of other processes, or of procuring copies of documents, fees of pleaders, charges of witnesses, and expenses of Commissioners either in taking evidence or in local investigations or in investigations into accounts.

189. The DEGREE shall bear date the day on which the judgment was passed. It SHALL CONTAIN the number of the suit, the names and descriptions of the parties, and particulars of the claim, as
stated in the Register of the suit, and shall specify clearly the relief
granted or other determination of the suit. It shall also state the
amount of costs incurred in the suit, and by what parties and in what
proportions they are to be paid, and shall be signed by the Judge, and
sealed with the seal of the Court.

190. When the suit is for land or other immovable property with
specified boundaries, if the decree be for the recovery of a portion only
of such property, it shall specify the BOUNDARIES OF the LAND
or property adjudged.

191. When the suit is for moveable property, if the decree be for
the delivery of such property, is shall also state the AMOUNT OF
MONEY to be paid AS an ALTERNATIVE if delivery cannot be had.

192. When the suit is for damages for breach of contract, if it ap-
pear that the defendant is able to perform the contract, the Court, with
the consent of the plaintiff, may decree the SPECIFIC PERFORM-
ANCE of the contract within a time to be fixed by the Court, and in
such case shall award an AMOUNT OF DAMAGES to be paid AS an
ALTERNATIVE if the contract is not performed.

194. In all decrees for the payment of money, the Court may for
any sufficient reason order that the amount shall be paid by INSTAL-
MENTS with or without interest.

195. If the defendant shall have been allowed to SET-OFF any
demand against the claim of the plaintiff, the decree shall state what
amount is due to the plaintiff and what amount (if any) is due to the
defendant, and shall be for the recovery of any sum which shall appear
to be due to either party. The decree of the Court with respect to any
sum awarded to the defendant shall have the same effect and be subject
to the same rules as if such sum had been claimed by the defendant in
a separate suit against the plaintiff.

196. When the suit is for land or other property paying rent, the
Court may provide in the decree for the payment of MESNE PROFITS
or rent on such land or other property from the date of the suit until
the date of delivery of possession to the decree-holder with the inte-
rest thereupon at such rate as the Court may think proper.

197. When the suit is for land and for mesne profits which have
accrued thereon during a period prior to the date of suit, and the
amount of such profits is disputed, the Court may either determine the
amount prior to passing a decree for the land, or may pass a decree for
the land and RESERVE the INQUIRY INTO the AMOUNT OF
MESNE PROFITS for the execution of the decree according as may
appear most convenient.

198. CERTIFIED COPIES of the decree and judgment shall
be furnished to the parties or their pleaders on application to the Court
and on the production of the necessary stamps where stamps are re-
quired by any law for the time being in force.

193. Repealed by Section 1 Act 23 of 1861, See "Repealing Enactments" page 38.
198. The words "The application may be made either orally or by writing on un-
stamped paper," were repealed by Section 4, Act 29 of 1877, See "Repealing Enactments"
page 59.
CHAPTER IV.

Execution of Decrees.

199. If the DECREES be FOR land or other IMMOVABLE PROPERTY, the same shall be delivered over to the party to whom it shall have been adjudged.

200. If the DECREES be FOR any specific MOVEABLE, or for the SPECIFIC PERFORMANCE of any contract, OR for the PERFORMANCE OF any other PARTICULAR act, it shall be enforced by the seizure, if practicable, of the specific moveable, and the delivery thereof to the party to whom it shall have been adjudged, or by imprisonmment of the party against whom the decree is made, or by attaching his property and keeping the same under attachment until further order of the Court, or by both imprisonment and attachment if necessary; or if alter. ative damages be awarded, by levying such damages in the mode hereinafter provided for the execution of a decree for money.

201. If the DECREES be FOR MONEY, it shall be enforced by the imprisonment of the party against whom the decree is made, or by the attachment and sale of his property, or by both if necessary; and if such party be other than a defendant, the decree may be enforced against him in the same manner as a decree may be enforced under the provisions of this Chapter against a defendant. When the decree is against Government or against any Officer acting on behalf of Government, if the Officer whose duty it is to satisfy the decree neglect or refuse to satisfy the same, the Court shall report the case through the Sudder Court for the orders of Government and execution shall not issue on the decree unless the same shall remain unsatisfied for the space of three months from the date of such report.

202. If the DECREES be FOR the EXECUTION OF A CONVEYANCE OR for the ENDORSEMENT of a NEGOTIABLE INSTRUMENT, and the party ordered to execute or endorse such conveyance or negotiable instrument shall neglect or refuse so to do, any party interested in having the same executed or endorsed may prepare a conveyance or endorsement of the instrument in accordance with the terms of the decree, and tender the same to the Court, for execution upon the proper stamp (if any is required by law), and the signature thereof by the Judge shall have the same effect as the execution or endorsement thereof by the party ordered to execute.

203. If the DECREES be AGAINST a party as the REPRESENTATIVE OF a DECEASED person, and such decree be for money to be paid out of the property of the deceased person, it may be executed by the attachment and sale of any such property or if no such property can be found and the defendant fail to satisfy the Court that he has duly applied such property of the deceased as shall be proved to have come into his possession, the decree may be executed against the defendant to the extent of the property not duly applied by him, in the same manner as if the decree had been against the defendant personally.

204. Whenever a person has become liable as SECURITY FOR the PERFORMANCE OF a DECREES or of any part thereof, the decree
may be executed against such person to the extent to which he has rendered himself liable in the same manner as a decree may be enforced against a defendant.

205. The following PROPERTY is LIABLE TO ATTACHMENT AND SALE IN EXECUTION OF a DECREE, namely lands, houses, goods, money, bank-notes, cheques, bills of exchange, promissory notes, Government securities, bonds, or other securities for money, debts, shares in the capital or joint-stock of any Railway, Banking, or other Public Company or Corporation, and all other property whatsoever, moveable or immovable belonging to the defendant and whether the same be held in his own name or by another person in trust for him, or on his behalf.

206. ALL MONIES payable under a decree SHALL BE PAID INTO the COURT whose duty it is to execute the decree, unless such Court or the Court which passed the decree shall otherwise direct. NO ADJUSTMENT of a decree in part or in whole shall be RECOGNISED by the Court UNLESS such adjustment be MADE THROUGH THE COURT or be certified to the Court by the person in whose favor the decree has been made or to whom it has been transferred.

Application for Execution.

207. When any PARTY in whose favor a decree has been made is desirous of enforcing the same, he SHALL APPLY to the Court whose duty it is to execute the decree either in person or through his pleader in the suit or some other pleader duly appointed to act for him in that behalf. If there be two or more decree-holders, one or more of them may make the application, if the Court shall see sufficient cause for allowing him or them to make such application; and the Court shall pass such order as it may deem necessary for protecting the interests of the other decree-holders.

208. If a DECREE shall be TRANSFERRED by assignment or by operation of law from the original decree-holder to any other person APPLICATION for the execution of the decree MAY BE MADE BY the PERSON TO WHOM it shall have been so TRANSFERRED or his pleader; and if the Court shall think proper to grant such application, the decree may be executed in the same manner as if the application were made by the original decree-holder.

209. If there be CROSS-DECrees between the same parties for the payment of money, execution shall be taken out by that party only who shall have obtained a decree for the larger sum, and for so much only as shall remain after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum, and if both sums shall be equal, satisfaction shall be entered upon both decrees.

The above rules shall apply to decrees sent to a Court for execution as well as to decrees in the same Court.

Whenever a suit shall be pending in any Court against the holder of a decree of such Court, by the person or persons against whom the

207. See Section 13, Act 29 of 1861 post.
decree was passed, the Court may, if it appear just and reasonable to do
so, stay execution on the decree either absolutely or on such terms as it
may think just, until a decree shall be passed in the pending suit.

210. If any person against whom a decree has been made shall
die before execution has been fully had thereon, application for EXECU-
TION thereof may be made AGAINST the LEGAL REPRESENTA-
TIVE or the estate of the person so dying as aforesaid; and if the
Court shall think proper to grant such application, the decree may be
executed accordingly.

211. If the decree be ordered to be executed against the legal re-
presentative, it shall be executed in the manner provided in Section 203
for the execution of a decree for money to be paid out of the property of
a deceased person.

212. The APPLICATION FOR EXECUTION of a decree shall
be in writing and shall contain in a TABULAR FORM the following
particulars, namely, the number of the suit, the names of the parties the
date of the decree, whether any appeal has been preferred from the
decree, and whether any and what adjustment of the matter in dispute
has been made between the parties subsequently to the decree; the
amount of the debt or damages due upon it, or other relief granted by
the decree; the amount of costs, if any were awarded; the name of the
person against whom the enforcement of the decree is sought; and the
mode in which the assistance of the Court is required, whether by the
delivery of property specifically decreed, the arrest and imprisonment of
of the person named, or attachment of his property, or otherwise as the
case may be.

213. When the application is for an ATTACHMENT OF any land
or other IMMOVABLE PROPERTY belonging to the defendant, it
shall be accompanied with an inventory or list of such property, contain-
ing such a description of the property as may be sufficient to identify it,
with a specification of the defendant's share or interest therein,
to the best of the applicant's belief and so far as he has been able to
ascertain the same. And where the property is an estate paying reve-
uue to Government or any portion of such estate, the application for an
attachment shall be accompanied with an authenticated extract from
the Register of the Collector's Office, specifying the revenue of such
estate, and the names and (where registered) the shares of the register-
ed proprietors.

214. Where the application is for an ATTACHMENT OF the
defendant's MOVEABLE property or any part thereof, it may be ac-
accompanied with an inventory or list of the property to be attached,
containing a reasonably accurate description thereof; or the applicant
may apply for a general attachment of the defendant's moveable property
wheresover the same can be found, to the amount of the judgment
and costs.

213. See Section 13, Act 23 of 1861 and Section 13, Act 11 of 1865, post.
215. Repealed by Section 1 Act 23 of 1861 See "Repealing Enactments" page 43.
Measures Required in certain Cases Preliminary to the Issue of the Warrant.

216. If an interval of MORE THAN ONE YEAR shall have elapsed between the date of the decree and the application for its execution OR if the enforcement of the decree be applied for AGAINST the heir or REPRESENTATIVE of an original party to the suit, the COURT SHALL ISSUE a NOTICE to the party against whom execution may be applied for requiring him to show cause, within a limited period to be fixed by the Court, why the decree should not be executed against him: Provided that no such notice shall be necessary in consequence of an interval of more than one year having elapsed between the date of the decree and the application for execution, if the application be made within one year from the date of the last order passed on any previous application for execution; and provided further that no such notice shall be necessary in consequence of the application being against an heir or representative, if upon a previous application for execution against the same person, the Court shall have ordered execution to issue against him.

217. When such notice is issued, if the party shall not attend in person or by a pleader, or shall not show sufficient cause to the satisfaction of the Court why the decree should not be forthwith executed, the Court shall order it to be executed accordingly. If the party shall attend in person or by a pleader and shall offer any objection to the enforcement of the decree, the Court shall pass such order as in the circumstances of the case may appear to be just and proper.

218. Where the application is for a GENERAL ATTACHMENT OF the MOVEABLE PROPERTY of the defendant, it shall be competent to the Court, if it shall think proper, before issuing an order for such attachment, to require the applicant to give SECURITY to the satisfaction of the Court, in such sums may be considered adequate, for any injury that may be occasioned by the attachment of property belonging to any other person than the defendant.

219. BEFORE granting the order for a GENERAL ATTACHMENT or at the instance of the plaintiff at any time after judgment and before complete execution of the decree, the Court may summon the person against whom the application is made, and EXAMINE him as to the property liable to be seized in satisfaction of the judgment. The Court may also, of its own motion or at the instance of any person interested in the enquiry, summon any other person whom it may think necessary and examine him in respect to such property, and may require the person summoned to produce all deeds and documents in his possession or power relating to such property.

220. In all cases in which A SUMMONS may be issued for the attendance of a party to a suit or any other person at any time after judgment, the rules applicable to the summoning and examination of parties and witnesses after issues recorded, shall apply to the party or witnesses so summoned.
Issue of the Warrant.

221. When all necessary preliminary measures have been taken where any such are required, the Court, unless it see cause to the contrary, shall issue the proper warrants for the execution of the decree.

222. Every warrant for the execution of a decree shall bear the date of the day on which it is issued, and shall be signed by the Judge and sealed with the seal of the Court, and delivered to the Nazir or other proper Officer of the Court. A DAY SHALL BE SPECIFIED IN the WARRANT on or BEFORE WHICH IT MUST BE EXECUTED and the Nazir or other proper Officer shall endorse upon the warrant the day and the manner in which it was executed, or if it was not executed, the reason why it was not executed and shall return it with such endorsement to the Court from which it issued.

Of the Execution of Decrees for Immoveable Property.

223. If the decree be for a house, land, or other IMMOVEABLE PROPERTY IN the OCCUPANCY OF a DEFENDANT or some person on his behalf, or of some person claiming under a title created by the defendant subsequently to the institution of the suit, the Court shall order DELIVERY thereof to be made BY PUTTING THE PARTY to whom the house, land or other immoveable property may have been adjudged, or any person whom he may appoint to receive delivery on his behalf, IN POSSESSION THEREOF, and if need be, by removing any person who may refuse to vacate the same.

224. If the decree be for land or other IMMOVEABLE PROPERTY IN THE OCCUPANCY OF RYOTS or other persons entitled to occupy the same, the Court shall order DELIVERY thereof to be made BY affixing a COPY of the warrant in some conspicuous place on the land or other immoveable property, AND proclaiming to the occupants of the property by BEAT OF DRUM, or in such other mode as may be customary, at some convenient place or places, the substance of the decree in regard to the property.

225. If the decree be for the DIVISION OF AN ESTATE or for the separate possession of a share of an undivided estate paying revenue to Government, the division of the estate or the separation of the share shall be made BY the COLLECTOR under the orders of the Court according to the rules in force for the partition of an estate paying revenue to Government.

226. If in the execution of a DECREE FOR land or other IMMOVEABLE PROPERTY, the OFFICER executing the same shall be resisted or OBSTRUCTED BY ANY PERSON, the person in whose favor such decree was made may apply to the Court at any time within one month from the time of such resistance or obstruction. The Court shall fix a day for investigating the complaint, and shall summons the party against whom the complaint is made to answer the same.

227. If it shall appear to the satisfaction of the Court that the OBSTRUCTION or resistance was occasioned BY the DEFENDANT
or by some person at his instigation, on the ground that the land or other immoveable property is not included in the decree, or on any other ground, the Court shall inquire into the matter of the complaint and pass such order as may be proper under the circumstances of the case.

223. If the Court shall be satisfied, after such investigation of the facts of the case as it may deem proper, that the resistance or obstruction complained of was without any just cause, and that the complainant is still resisted or obstructed in obtaining effectual possession of the property adjudged to him by the decree, by the defendant or some person at his instigation, the Court may, at the instance of the plaintiff, and without prejudice to any proceedings to which such defendant or other person may be liable under any law for the time being in force for the punishment of such resistance or obstruction, commit the defendant or such other person to close CUSTODY for such period not exceeding thirty days as may be necessary TO PREVENT the continuance of such OBSTRUCTION or resistance.

229. If it shall appear to the satisfaction of the Court that the resistance or OBSTRUCTION to the execution of the decree has been occasioned BY any PERSON OTHER THAN the DEFENDANT, claiming bona fide to be in possession of the property on his own account or on account of some other person than the defendant, the claim shall be numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant, and the Court shall, without prejudice to any proceedings to which the claimant may be liable under any law for the time being in force for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of this Act, and shall pass such order for staying execution of the decree, or executing the same, as it may deem proper in the circumstances of the case.

230. If any PERSON OTHER THAN the DEFENDANT shall be DISPOSSESSED OF any land or other IMMOVEABLE PROPERTY in execution of a decree, and such person shall dispute the right of the decree-holder to dispossess him of such property under the decree on the ground that the property was bona fide in his possession on his own account or on account of some other person than the defendant, and that it was not included in the decree, or, if included in the decree, that he was not a party to the suit in which the decree was passed, he may apply to the Court, and if, after examining the applicant it shall appear to the Court that there is probable cause for making the application, the application shall be numbered and registered as a suit between the applicant as plaintiff, and the decree-holder as defendant, and the Court shall proceed to investigate the matter in dispute in the same manner and with the like powers as if a suit for the property had been instituted by the applicant against the decree-holder.

231. The decision passed by the Court under either of the last two Sections shall be of the same force as a decree in an ordinary suit, and

230. The words "within 1 month from the date of the dispossess" were repealed by Section 2 Act 9 of 1871, See "Repealing Enactments" page 79.
shall be subject to APPEAL under the rules applicable to appeals from decrees; and no fresh suit shall be entertained in any Court between the same party or parties claiming under them in respect of the same cause of action.

Of the Execution of Decrees for Money by Attachment of Property.

232. If the DECREES be FOR MONEY, and the amount thereof is to be levied from the property of the person against whom the same may have been pronounced, the Court shall cause the PROPERTY TO BE ATTACHED in the manner following.

233. Where the property shall consist of goods, chattels, or other MOVEABLE PROPERTY IN the POSSESSION OF the DEFENDANT, the attachment shall be made by actual seizure, and the Nazir or other Officer shall keep the same in his own custody, or in the custody of his subordinates, and shall be responsible for the due custody thereof.

234. Where the property shall consist of goods, chattels, or other MOVEABLE PROPERTY to which the defendant is entitled, SUBJECT TO A lien or RIGHT OF some OTHER person TO the IMMEDIATE POSSESSION thereof, the attachment shall be made by a written order prohibiting the person in possession from giving over the property to the defendant.

235. Where the property shall consist of lands, houses, or other IMMOVEABLE PROPERTY, the attachment shall be made by a written order prohibiting the defendant from alienating the property by sale, gift, or in any other way, and all persons from receiving the same by purchase, gift, or otherwise.

236. Where the property shall consist of DEBTS not being negotiable instruments, or of shares in any Railway, Banking, or other public Company or Corporation, the attachment shall be made by a written order prohibiting the creditor from receiving the debts, and the debtor from making payment thereof to any person whomsoever, until the further order of the Court, or prohibiting the person in whose name the shares may be standing from making any transfer of the shares or receiving payment of any dividends thereof, and the Manager, Secretary, or other proper Officer of the Company or Corporation from permitting any such transfer or making any such payment until such further order.

237. Where the property shall consist of money, or of any security, in DEPOSIT IN any COURT OF JUSTICE or in the hands of any OFFICER OF GOVERNMENT which is or may become payable to the defendant or on his behalf, the attachment shall be made by a notice to such Court or Officer requesting that the money or security may be held subject to the further order of the Court by which the notice may be issued. Provided that, if such money or security is in deposit in any Court of Justice, any question of title or priority which may arise between the decree-holder and any other person, not being the defendant, claiming to be interested in such money or security by virtue of any assignment, attachment, or otherwise, shall be determined by the Court in which such money or security is in deposit.
EXECUTION OF DECREES.

238. Where the property shall consist of a NEGOTIABLE INSTRUMENT, the attachment shall be made by actual seizure, and the Nazir or other Officer shall bring the same into Court, and such instrument shall be held subject to the further orders of the Court.

239. In the case of goods, chattels, or other MOBILE PROPERTY NOT IN THE POSSESSION OF the DEFENDANT, the written order shall be fixed up in some conspicuous part of the Court-house, and a copy of the order shall be delivered or sent registered by post to the person in possession of the property. In the case of lands, houses, or other IMMEDIATE PROPERTY the written order shall be read aloud at some place on or adjacent to such lands, houses, or other property, and shall be fixed up in some conspicuous part of the Court-house; and when the property is land or any interest in land, the written order shall also be fixed up in the Office of the Collector of the Zillah in which the land may be situated. In the case of DEBTS, the written order shall be fixed up in some conspicuous part of the Court-house, and copies of the written order shall be delivered or sent registered by post to each individual debtor. And in the case of SHARES in the capital or joint-stock of any Railway, Banking, or other public Company or Corporation, the written order shall in like manner be fixed up in some conspicuous part of the Court-house, and a copy of the order shall be delivered or sent registered by post to the Manager, Secretary, or other proper Officer of the Company or Corporation.

240. AFTER any ATTACHMENT shall have been made by actual seizure, or by written order as aforesaid, and in the case of an attachment by written order after it shall have been duly intimated and made known in manner aforesaid, any PRIVATE ALIENATION of the property attached whether by sale, gift, or otherwise and any payment of the debt or debts or dividends or shares to the defendant during the continuance of the attachment, shall be NULL and void.

241. In every case in which a DEBTOR shall be prohibited from making payment of his debt to the creditor, he MAY PAY the amount INTO COURT and such payment shall have the same effect as payment to the party entitled to receive the debt.

242. In all cases of attachment under the preceding Sections, it shall be competent to the Court, at any time during the attachment, to direct that any part of the property so attached as shall consist of MONEY or BANK-NOTES, or a sufficient part thereof, shall be PAID OVER TO the PARTY applying for execution of the decree; or that any part of the PROPERTY so attached as may NOT consist of MONEY OR BANK-NOTES, so far as may be necessary for the satisfaction of the decree, shall be SOLD, and that the money which may be realized by such sale, or a sufficient part thereof, shall be paid to such party.

243. When the property attached shall consist of debts due to the party who may be answerable for the amount of the decree, or of any lands, houses, or other immovable property, it shall be competent to the Court to appoint a MANAGER of the said property, with power to sue for the debts, and to collect the rents or other receipts and profits of the land or other immovable property, and to execute such deeds or
instruments in writing as may be necessary for the purpose, and to pay and apply such rents, profits, or receipts towards the payment of the amount of the decree and costs; or when the property attached shall consist of land, if the judgment debtor can satisfy the Court that there is reasonable ground to believe that the amount of the judgment may be raised by the MORTGAGE OF the land, or by letting it on lease, or by disposing by private sale of a portion of the LAND or of any other property belonging to the judgment debtor, it shall be competent to the Court, on the application of the judgment debtor, to postpone the sale for such period as it may think proper to enable the judgment debtor to raise the amount. In any case in which a manager shall be appointed under this Section, such manager shall be bound to render due and proper accounts of his receipts and disbursements from time to time as the Court may direct.

244. When in any District, where land paying revenue to Government is ordinarily sold by the Collector, as provided in Section 248 the property attached shall consist of any such land, or of a share in any such land, if the Collector shall represent to the Court that the public SALE of the LAND or share is OBJECTIONABLE, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the Court may authorize the Collector, on security for the amount of the decree or for the value of such land or share being given, to make provision for such satisfaction in the manner recommended by the Collector, instead of proceeding to a public sale of the land or share.

245. If the amount decreed with costs and all charges and expenses which may be incurred by the attachment be paid into Court, or if SATISFACTION of the DECREE be otherwise made, an order shall be issued for the WITHDRAWAL OF the ATTACHMENT; and if the defendant shall desire it, and shall deposit in Court a sum sufficient to cover the expense, the order shall be proclaimed or intimated in the same manner as herebefore prescribed for the proclamation or intimation of the attachment; and such steps shall be taken as may be necessary for staying further proceedings in execution of the decree.

Of claims to Attached Property.

246. In the event of any CLAIM being preferred TO or objection offered against the sale of lands or any other IMMOVABLE or MOVABLE PROPERTY which may have been ATTACHED in execution of a decree or under any order for attachment passed before judgment, as not liable to be sold in execution of a decree against the defendant, the Court shall, subject to the proviso contained in the next succeeding Section, proceed to investigate the same with the like powers as if the Claimant had been originally made a defendant to the suit and also with such powers as regards the summoning of the original defendant as are contained in Section 220. And if it shall appear to the satisfaction of the Court that the land or other immovable or movable property was not in the possession of the party against whom execution is sought, or of some other person in trust for him, or in the occupancy of ryots or cultivators or other persons paying rent to him at the time

246. The remainder of this Section was repealed by Section 2 Act 9 of 1871, See "Repealing Enactments" page 79.
when the property was attached, or that, being in the possession of the
party himself at such time, it was so in his possession not on his own
account or as his own property, but on account of or in trust for some
other person, the Court shall pass an order for releasing the said pro-
erty from attachment. But if it shall appear to the satisfaction of the
Court that the land or other immovable or moveable property was in
possession of the party against whom execution is sought as his own
property, and not on account of any other person, or was in the posses-
sion of some other person in trust for him, or in the occupancy of ryots
or cultivators or other persons paying rent to him at the time when the
property was attached, the Court shall disallow the claim. The order
which may be passed by the Court under this Section shall not be sub-
ject to APPEAL, but the party against whom the order may be given
shall be at liberty to bring a suit to establish his right.

247. The CLAIM or objection SHALL BE MADE AT the EAR-
LIEST OPPORTUNITY to the Court which shall have ordered
the attachment; and if the property to which the claim or objection
applies shall have been advertised for sale, the sale may (if it appears
necessary) be postponed for the purpose of making the investigation
mentioned in the last preceding Section. Provided that no such inves-
tigation shall be made if it appear that the making of the claim or ob-
jection was designedly and unnecessarily delayed, with a view to ob-
struct the ends of justice. The order disallowing the investigation shall
not be subject to APPEAL, and the claimant shall be left to prosecute
his claim by a regular suit.

Of sales in Execution of Decrees.

248. SALES in execution of decrees shall be conducted by an
officer of the Court or by any other person whom the Court may appoint
and shall in all cases be made BY PUBLIC AUCTION in manner here-
inafter mentioned. Provided that if the property to be sold shall con-
sist of negotiable securities or of shares in any Railway Banking, or
other public Company or Corporation, it shall be competent to the Court
instead of directing the sale to be made by public auction, to authorise
the sale of such securities or shares THROUGH A BROKER at the
market-rate of the day. If the property to be sold shall be land paying
revenue to Government and the Government shall so direct, the sale
shall be conducted BY the COLLECTOR on the requisition of the
Court.

249. In all cases of intended sale by public auction, whether of
moveable or immovable property, in execution of a decree, a PRO-
CLAMATION OF the intended SALE, specifying the time and place of
sale, the property to be sold, the revenue assessed upon the estate when
the property to be sold is an estate or a part of an estate paying re-
venue to Government and the amount for the recovery of which the
sale is ordered, together with any other particulars that the Court may
think necessary shall be made in the current language of the District.
The proclamation shall also declare that the sale extends only to the
right, title, and interest of the defendant in the property specified
therein. Such proclamation shall be made on the spot where the pro-
property is attached by beat of drum or in such other mode as may be
customary; and a written notification to the same effect shall be affixed
in the Court-house of the Judge who shall have ordered the sale, and in some conspicuous spot in the town or village in which the attachment may have taken place. When the property ordered to be sold may consist of land or of any right or interest in land, the written notification shall also be affixed in the Office of the Collector of the District in which such land is situate and in the Court-house of the principal Civil Court of the District where the Court which ordered the sale is subordinate to such Court. The sale shall not take place until after the expiration of at least thirty days in the case of immovable property and of at least fifteen days in the case of movable property, calculated from the date on which the notification shall have been affixed in the Court-house of the Judge ordering the sale.

250. The usual process for ATTACHMENT and SALE when the property to be attached consists of goods, chattels, or other personal estate other than debts, may be issued either SUCCESSIVELY OR SIMULTANEOUSLY as the Court directing the sale may in each instance think proper.

251. In all cases of sale of MOVEABLE PROPERTY, the PRICE of every lot SHALL BE PAID for AT THE TIME OF SALE, or as soon after as the Officer holding the sale shall direct, and in default of such payment the property shall forthwith be again put up and sold. On payment of the purchase money, the Officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

252. NO IRREGULARITY IN the SALE OF MOVEABLE PROPERTY under an execution SHALL VITIATE the SALE; but any person who may sustain any injury by reason of such irregularity may recover damages by a suit in Court.

253. In all cases of sale of IMMOVEABLE PROPERTY, the party who is declared to be the purchaser shall be required to DEPOSIT immediately TWENTY-FIVE PER CENTUM on the amount his bid and in default of such deposit the property shall forthwith be again put up and sold.

254. The FULL AMOUNT of purchase money shall be made good by the purchaser BEFORE sunset of the FIFTEENTH DAY from that on which the sale of the property took place, or if the fifteenth day be a Sunday or other close holiday, then on the first office day after the fifteenth day; and in default of payment within such period, the deposit, after defraying the expenses of the sale shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold. If the proceeds of the sale which is eventually consummated be less than the price bid by such defaulting purchaser, the difference shall be leviable from him under the rules for enforcing the payment of money in satisfaction of a decree of Court.

255. Every RE-SALE of immovable property in default of payment of the purchase money shall be made AFTER the issue of a FRESH NOTIFICATION in the manner and for the period prescribed for original sales.
256. No sale of immovable property shall become absolute until the SALE has been CONFIRMED by the Court. Application may be made to the Court to set aside the sale on the ground of any material irregularity in publishing or conducting the sale, but no sale shall be set aside on the ground of such irregularity unless the applicant shall prove to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.

257. If no such application as is mentioned in the last preceding section be made, or if such application be made and the OBJECTION be DISALLOWED, the Court shall pass an ORDER CONFIRMING the sale; and in like manner if such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale for irregularity. If the objection be allowed the order made to set aside the sale shall be final; if the objection be disallowed, the order confirming the sale shall be open to APPEAL; and such order, unless appealed from and if appealed from then the order passed on the appeal, shall be final; and the party against whom the same has been given shall be precluded from bringing a suit for establishing his claim.

258. Whenever a SALE of immovable property is SET ASIDE the purchaser shall be entitled to RECEIVE BACK his PURCHASE MONEY with or without interest, in such manner as it may appear proper to the Court to direct in each instance.

259. After a sale of immovable property shall have become absolute in manner aforesaid, the Court shall grant a CERTIFICATE TO the person who may have been declared the PURCHASER at such sale to the effect that he has purchased the right, title, and interest of the defendant in the property sold, and such certificate shall be taken and deemed to be a valid transfer of such right, title and interest.

260. The CERTIFICATE SHALL STATE the NAME OF the person who at the time of sale is declared to be the ACTUAL PURCHASER, and any suit brought against the certified purchaser on the ground that the purchase was made on behalf of another person not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

261. Where the property sold shall consist of goods, chattels, or other MOVEABLE PROPERTY IN the POSSESSION OF the DEFENDANT or to the immediate possession of which the defendant is entitled and of which actual seizure has been made, the property shall be delivered to the purchaser.

262. Where the property sold shall consist of goods, chattels, or other MOVEABLE PROPERTY to which the defendant is entitled SUBJECT TO a lien or right of any person to the IMMEDIATE POSSESSION thereof, the delivery to the purchaser shall, as far as practicable, be made by giving notice to the person in possession, prohibiting him from delivering possession of the property to any person except the purchaser thereof.

263. The words "At any time within 30 days from the date of the sale" were repealed by Section 3 Act 9 of 1874, see "Repealing Enactments" page 79.
263. If the property sold shall consist of a house, land, or other IMMOVEABLE PROPERTY in the OCCUPANCY of a DEFENDANT or some person on his behalf or of some person claiming under a title created by the defendant subsequently to the attachment of such property, the Court shall order delivery thereof to be made by putting the party to whom the house, land, or other immoveable property may have been sold, or any person whom he may appoint to receive delivery on his behalf, in possession thereof, and, if need be, by removing any person who may refuse to vacate the same.

264. If the property sold shall consist of land, or other IMMOVEABLE PROPERTY in the OCCUPANCY OF RYOTS or other persons entitled to occupy the same, the Court shall order delivery thereof to be made by affixing a copy of the certificate of sale in some conspicuous place on the land or other immoveable property, and proclaiming to the occupants of the property by beat of drum, or in such other mode as may be customary, at some convenient place or places, that the right, title, and interest of the defendant has been transferred to the purchaser.

265. Where the property sold shall consist of DEBTS, not being negotiable instruments, or of shares in any Railway, Banking, or other public Company or Corporation, the delivery thereof shall be by a written order of the Court prohibiting the creditor from receiving the debts and the debtor from making payment thereof to any person or persons except the purchaser or prohibiting the person in whose name the share may be standing, from making any transfer of the shares to any person except the purchaser, or receiving payment of any dividends thereon, and the Manager, Secretary, or other proper Officer of the Company or Corporation from permitting any such transfer or making any such payment to any person except the purchaser.

266. Where the property sold shall consist of NEGOTIABLE SECURITIES of which actual seizure has been made, the same shall be delivered to the purchaser thereof.

267. If the endorsement or conveyance of the party in whose name any NEGOTIABLE SECURITY OR any SHARE in a public Company or Corporation is standing, shall be required to transfer the same, the Judge may endorse the security or the certificate of the share or may execute such other document as may be necessary for transferring the same. The endorsement or execution shall be in the following form, or to the like effect—"A. B. by C. D. Judge of the Court of (or as the case may be); in a suit by E. F. versus A. B." Until the transfer of such security or share, the Judge may, by order, appoint some person to receive any interest or dividend due thereon, and to sign receipts for the same; and any endorsement made or document executed or receipts signed as aforesaid shall be as valid and effectual for all purposes as if the same had been made or executed or signed by the party himself.

268. If the PURCHASER OF any IMMOVEABLE PROPERTY sold in execution of a decree shall be resisted or OBSTRUCTED in obtaining possession of the property, the provisions contained in Sections 236, 237, and 238, relating to resistance or obstructions to a
party in whose favour a suit has been decreed in obtaining possession of the property adjudged to him, shall be applicable in the case of such resistance or obstruction.

269. If it shall appear that the resistance or OBSTRUCTION to the delivery of possession was occasioned BY any PERSON OTHER THAN the DEFENDANT claiming a right to the possession of the property sold, as proprietor, mortgagee, lessee, or under any other title, or if in the delivery of possession to the purchaser, any such person claiming as aforesaid shall be dispossessed, the Court, on the complaint of the purchaser, or of such person claiming as aforesaid, shall inquire into the matter of the complaint and pass such order as may be proper in the circumstances of the case. The order shall not be subject to appeal, but the party against whom it is given shall be at liberty to bring a suit to establish his right at any time within one year from the date thereof.

270. Whenever property is sold in execution of a decree, the person on whose application such property was attached shall be entitled to be FIRST PAID out of the proceeds thereof, notwithstanding a subsequent attachment of the same property by another party in execution of a prior decree.

271. If, after the claim of the person on whose application the property was attached has been satisfied in full from the proceeds of the sale, any surplus remain, such SURPLUS SHALL BE DISTRIBUTED RATEABLY amongst any other persons who, prior to the order for such distribution, may have taken out execution of decrees against the same defendant and not obtained satisfaction thereof; Provided that, when any property is sold subject to a mortgage, the mortgagee shall not be entitled to share in any surplus arising from such sale.

272. If it shall appear to the Court, upon the application of a decree-holder, that any other DEGREE under which property has been attached was OBTAINED BY FRAUD or other improper means, the Court may order that the applicant shall be satisfied out of the proceeds of the property attached, so far as the same may suffice for the purpose, if such other decree be a decree of that Court, or, if it be a decree of another Court, may stay the proceedings to enable the applicant to obtain a similar order from the Court by which the decree was made.

**Of Arrest in Execution of Decrees for Money.**

273. Any PERSON ARRESTED under a warrant in execution of a decree for money, MAY, on being brought before the Court, APPLY FOR his DISCHARGE on the ground that he has no present means of paying the debt, either wholly or in part, or, if possessed of any property, that he is willing to place whatever property he possesses at the disposal of the Court. The application shall contain a full account of all property of whatever nature belonging to the applicant, whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or

269. The words "if made within one month from the date of such resistance or obstruction or of such dispossesion as the case may be," were repealed by Section 3 Act 9 of 1871, 54 "Repealing Enactments" page 78.
by others in trust for him (except the necessary wearing apparel of himself and his family, and the necessary implements of his trade), and of the places respectively where such property is to be found, or shall state that, with the exceptions above mentioned, the applicant is not possessed of any property, and the application shall be subscribed and verified by the applicant in the manner hereinbefore prescribed for subscribing and verifying plaints.

275. The discharge of the defendant under the last preceding Section shall not protect him from being ARRESTED AGAIN and imprisoned, IF it should be shown that, in the application made by him, he had been guilty of any CONCEALMENT, or of wilfully making any false statement respecting the property belonging to him, whether in possession or in expectancy or held for him in trust, or had fraudulently concealed, transferred, and removed any property, or had committed any other act of bad faith; nor shall such discharge exempt from attachment and sale any property then in the possession of the defendant, or of which he may afterwards become possessed.

Of the Execution of Decrees by Imprisonment.

276. When a DEFENDANT is COMMITTED TO PRISON in execution of a decree, the Court shall fix whatever monthly allowance it shall think sufficient for his SUBSISTENCE, not exceeding FOUR ANNAS per day, which shall be supplied by the party at whose instance the decree may have been executed, to the proper Officer of the Court or of the gaol where the defendant may be in custody, by monthly payments in advance, before the first day of each month: the first payment to be made for such portion of the current month as may remain unexpired before the defendant is committed to prison.

277. The Court may, in case of ILLNESS, or for other special cause, fix the monthly allowance at such sum not exceeding SIX ANNAS per day as shall appear necessary. The order fixing such allowance may from time to time be revised and altered on due cause being shown.

278. A DEFENDANT SHALL BE RELEASED at any time on the decree being fully satisfied, or at the request of the person at whose instance he may have been imprisoned or on such person omitting to pay the allowance as above directed. No person shall be imprisoned, on account of a decree for a longer period than two years, or for a longer period than six months if the decree be for the payment of money not exceeding Five Hundred Rupees, or for a longer period than three months if the decree be for the payment of money not exceeding Fifty Rupees.

279. Sums disbursed by a plaintiff for the SUBSISTENCE of a defendant in gaol shall be ADDED TO the COSTS of the decree, and shall be recoverable by the attachment and sale of the property of the defendant under the foregoing rules; but the defendant shall not be detained in custody or arrested on account of any sums so disbursed.

274. Repealed by Section 1 Act 23 of 1861, See "Repealing Enactments" page 43.
EXECUTION OF DECREES.

280. Any PERSON IN CONFINEMENT under a decree may apply to the Court for his DISCHARGE. The application shall contain a FULL ACCOUNT OF ALL PROPERTY of whatever nature belonging to the applicant, whether in expectancy or in possession, whether held exclusively by himself or jointly with others, or by others in trust for him (except the necessary wearing apparel of himself and his family and the necessary implements of his trade), and of the places respectively where such property is to be found; and such application shall be subscribed and verified by the applicant in the manner hereinbefore provided for subscribing and verifying plaints.

281. On such application being made the Court shall cause the PLAINTIFF TO BE FURNISHED WITH a copy of the ACCOUNT of the defendant's property and shall fix a reasonable period within which the plaintiff may cause the whole or any part of such property to be attached and sold or may make proof that the defendant, for the purpose of procuring his discharge without satisfying the decree, has wilfully concealed property, or his right or interest therein, or fraudulently transferred or removed property, or committed any other act of bad faith. If within such period the plaintiff shall fail to make such proof, the Court shall cause the defendant to be set at liberty. If the plaintiff shall within the time specified or at any subsequent period prove to the satisfaction of the Court that the DEFENDANT has been GUILTY of any of the acts above mentioned, the COURT SHALL, at the instance of the plaintiff, either RETAIN the defendant IN CONFINEMENT, or commit him to prison, as the case may be, unless he shall have already been in confinement two years on account of the decree; and may also, if it shall think proper, send the defendant to the Magistrate to be dealt with according to law.

282. A defendant once discharged shall not again be imprisoned on account of the same decree, except under the operation of the preceding Section, but his PROPERTY SHALL CONTINUE LIABLE, under the ordinary rules, to attachment and sale until the decree shall be fully satisfied, unless the decree shall be for a sum less than One Hundred Rupees and on account of a transaction bearing date subsequently to the passing of this Act. When the decree shall be for a sum less than One Hundred Rupees and on account of a transaction bearing date as above, the Court may declare a defendant who shall be discharged as aforesaid absolved from further liability under that decree.

Of Execution of a Decree out of the Jurisdiction of the Court by which it was passed.

283. A DECREE of any Civil Court within any part of the British territories in India, or established by the authority of the Governor General of India in Council in the territories of any Foreign Prince or State, which cannot be executed within the jurisdiction of the Court whose duty it is to execute the same, MAY BE EXECUTED WITHIN

283. Repealed by Section 1 Act 23 of 1941, See "Repealing enactments" page 43.
284. As to the execution of decrees of Small Cause Courts see Section 27 Act 11 of 1865 post.
As to the execution of Mosesli process in Presidency towns see Acts 23 of 1843, 8 of 1859, 38 of 1852, 34 of 1865, and 7 of 1866 post "Miscellaneous Acts relating to Civil Procedure."
the JURISDICTION OF any OTHER such COURT in the manner following:

283. The plaintiff in such case may apply to the Court whose duty it is to execute the decree, to TRANSMIT A COPY thereof, together WITH a CERTIFICATE that satisfaction of such decree has not been obtained by execution within the jurisdiction of the said Court, and a copy of any order for execution of such decree that may have been passed, to the Court by which the applicant may wish the decree to be executed.

286. The Court, unless there be any sufficient reason to the contrary, shall cause such copies and certificate to be prepared; and the same, after being signed by the Judge and sealed with the seal of the Court, shall be transmitted to the Court indicated by the applicant if that Court be within the same District, otherwise to the principal Civil Court of original jurisdiction in the District in which the applicant may wish the decree to be executed; and the COURT TO WHICH such COPIES AND CERTIFICATES are TRANSMITTED, SHALL CAUSE THE SAME TO BE FILED therein, without any proof of the judgment or order for execution, or of the copies thereof, or of the seal or jurisdiction of any Court, or of the signature of any Judge, unless it shall, under any peculiar circumstances to be specified in an order, require such proof.

287. The COPY of any decree, or of any order for execution, when filed in the Court to which it shall have been TRANSMITTED for the purpose of being executed as aforesaid, SHALL for such purpose HAVE THE SAME EFFECT as A DECREES or order for execution made by such Court, and may, if the Court be the principal Civil Court of original jurisdiction in the District, be executed by such Court, or any Court subordinate thereto to which it may entrust the execution of the same.

288. When application shall be made to any Court to execute the decree of any other Court as aforesaid, the COURT to which the application shall be made or referred SHALL PROCEED TO EXECUTE the same according to its own rules in the like cases; provided that such Court shall have no power to inquire into the validity of the decree unless it appear upon the face of the decree that the Court by which it was made had no jurisdiction to make the same.

289. The COURT to which such application is made or referred for execution as aforesaid, SHALL take cognizance of and PUNISH all WRONGFUL ACTS or IRREGULARITIES done or committed in executing such decree; and all persons disobeying or obstructing the execution of such decree, shall be punishable by such Court in the same manner as if the decree had been made by such Court.

290. The Court to which such application is made MAY upon good and sufficient cause being shown, STAY the EXECUTION of the decree for a reasonable time, to enable the defendant to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof for an order to stay the execution, or for any other order relating to the decree or the execution thereof, which such Court of first instance or Court of Appeal might have made if execution had been issued by
such Court of first instance, or if application for execution had been made to such Court; and in case the property or person of the defendant shall have been seized under an execution, the Court which issued the execution may order the restitution of the property or the discharge of the person of the defendant pending the result of such application.

291. BEFORE making an order to STAY EXECUTION or for the restitution of property or the discharge of the defendant under the last preceding Section, the Court may require such SECURITY from or impose such conditions upon the defendant as it may deem reasonable.

292. Any ORDER OF the COURT IN WHICH the DECREES was PASSED or of such Court of Appeal as aforesaid, shall be BINDING upon the Court to which the application for execution was made and shall be a sufficient indemnity for all persons acting in execution of process issued by such last mentioned Court.

293. No discharge of a defendant under the provisions of Section 290 shall prevent him from being RETAKEN in execution of the decree.

294. All orders of a Court for executing the decree of another Court shall be subject to the same rules, in respect to APPEAL, as if the decree had been originally passed by the Court making such order.

295. If, in execution of a decree, a warrant of arrest or other PROCESS is to be enforced WITHIN the limits of a Garrison, CANTONMENT, Military Station, or Military Bazaar, the Officer entrusted with the execution of such warrant or other process shall carry the same to the Commanding Officer, or in his absence to the Senior Officer actually present in the Garrison, Cantonment, Station, or Military Bazaar; and the Commanding Officer or such Senior Officer, upon such warrant or other process being produced to him, shall back the same with his signature, and in the case of a warrant of arrest, shall cause the person named in the warrant to be arrested if within the limits of his command and delivered, according to the exigency of the warrant, to the Civil Officer charged with the execution thereof.

296. The RULES contained in this Chapter shall be APPLICABLE TO the execution of ANY JUDICIAL PROCESS for the sale of property or for the payment of money which may be ordered by a Civil Court in any Civil proceeding.

CHAPTER V.
Of Pauper Suits.

297. A SUIT may be brought IN FORMA PAUPERIS in the Court having jurisdiction over the claim, subject to the following rules.

298. No pauper suit shall be brought for the recovery of any sum of money on account of damages for loss of CASTE, SLANDER, ABUSIVE LANGUAGE, or ASSAULT.
299. The APPLICATION to the Court for permission to sue *in forma pauperis* shall be BY PETITION, which shall be written.

300. The PETITION SHALL CONTAIN the particulars required by Section 26 of this Act, in regard to plaintiffs, and shall have annexed to it a Schedule of any moveable or immoveable property belonging to the petitioner, with the estimated value thereof, and shall be subscribed and verified in the manner hereinbefore prescribed for the subscription and verification of plaints.

301. The petition shall be PRESENTED to the Court by the petitioner IN PERSON; but if the petitioner satisfy the Court that he is prevented by SICKNESS from attending Court in person, or if the petitioner be a FEMALE, who, according to the custom and manners of the country ought not to be compelled to appear in public, the petition may be presented by a duly authorised agent who may be able to answer all material questions relating to the application and who shall be liable to be examined in the same manner as the party represented by him might have been examined had such party attended in person.

302. If the petition be not framed or presented in the manner laid down in the last two preceding Sections, the Court shall REJECT the petition.

303. If the petition be in form and duly presented, the COURT SHALL proceed to EXAMINE the PETITIONER, or the agent of the petitioner as the case may be, regarding the merits of the claim and the property of the petitioner. When the petition is presented by an agent the Court may also, if it think proper, order that the petitioner be examined in the manner hereinbefore prescribed for the examination of absent witnesses.

304. If it appear to the Court upon such examination that the defendant, or the matter of the suit, is not within the jurisdiction of the Court, or that the claim is barred by the Statute of Limitations, or that the allegations of the petitioner do not constitute a reasonable ground of action, or (if none of the objections above stated exist) that the petitioner has failed to show that he is not possessed of sufficient means to enable him to pay for the stamps required for the institution and prosecution of the suit, or that the petitioner has recently disposed of any property fraudulently or with a view to obtain the benefit of this Chapter, the COURT SHALL REFUSE TO ALLOW the petitioner TO SUE AS A PAUPER.

305. If upon such examination the Court shall see no reason to refuse the application on any of the grounds stated in the last preceding Section, it shall FIX A DAY (of which at least ten days' previous notice shall be given to the opposite party) FOR receiving such EVIDENCE as the petitioner may adduce in proof of his PAUPERISM and for hearing any evidence which the opposite party may bring forward in disproof of the pauperism of the petitioner.

299. The words "on a stamp paper of the value of 8 annas" were repealed by Section 2 Act 9 of 1870. See "Repealing Enactments" page 70.
306. ON the DAY APPOINTED for the hearing or as soon after as the business of the Court will permit, the Court shall consider any objections made by the opposite party, and shall examine any witness produced by either party and make a memorandum of the substance of their evidence, and shall either ALLOW or REFUSE to allow the petitioner to sue as a pauper.

307. Previously to passing a final order in the case the Court may if it deem fit, institute a LOCAL INQUIRY, in the manner laid down in Section 180 of this Act, regarding the property of the petitioner or regarding the amount or value of any property claimed.

308. IF the APPLICATION of the petitioner be GRANTED and numbered, it shall be REGISTERED and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as an ordinary suit, except that the plaintiff shall not be liable to any further stamp duty in respect of any petition, appointment of a pleader, or other proceeding connected with the suit or with the execution of any decree passed in it.

309. On the decision of the suit, the Court shall calculate the amount of stamps which would have been paid by the plaintiff if he had not been permitted to sue as a pauper, and such amount shall be recoverable by Government from any party ordered by the decree to pay the same, in the same manner as COSTS of suit are recoverable.

310. The REFUSAL to allow the petitioner to sue as a pauper shall be a BAR to any SUBSEQUENT APPLICATION of the like nature in respect of the same cause of action; but the plaintiff shall be at liberty to institute a suit in the usual manner in respect of such cause of action, unless precluded by the rules for the limitation of suits.

311. The orders passed by the Court under the provisions of this Chapter shall not be subject to APPEAL.

CHAPTER VI.

Reference to Arbitration.

312. If the PARTIES to a suit are desirous that the matters in difference between them in the suit or any of such matters, shall be referred to the final decision of one or more arbitrator or arbitrators, they MAY APPLY to the Court at any time before final judgment FOR an order of REFERENCE.

313. The APPLICATION shall be made by the parties in person or by their pleaders specially authorized in that behalf by an instrument IN WRITING, which shall be presented to the Court at the time of making the application, and shall be filed with the proceeding in the suit.

314. The arbitrator or arbitrators shall be nominated by the parties in such manner as may be agreed upon between them. If the parties cannot agree with respect to the NOMINATION OF the ARBITRATOR or arbitrators, or if the person or persons nominated by them shall refuse to accept the arbitration, and the parties are desirous that the nomination shall be made by the Court, the Court shall appoint the arbitrator or arbitrators.
315. The COURT SHALL, by an order under its seal, REFER to the arbitrator or arbitrators the matters in difference in the suit which he or they may be required to determine, and shall fix such time as it may think reasonable for the delivery of the award, and the time so fixed shall be specified in the order.

316. If the reference be to two or more arbitrators, provision shall be made in the order for a DIFFERENCE OF OPINION among the arbitrators, by the appointment of an umpire, or by declaring that the decision shall be with the majority, or by empowering the arbitrators to appoint an umpire, or otherwise as may be agreed upon between the parties; or if they cannot agree, as the Court may determine.

317. When a reference is made to arbitration by an order of Court the COURT SHALL ISSUE the same PROCESSES to the parties and witnesses whom the arbitrator or arbitrators or umpire may desire to have examined, as the Court is authorized to issue in suits tried before it; and persons not attending in consequence of such process, or making any other default, or refusing to give their testimony, or being guilty of any contempt to the arbitrator or arbitrators or umpire during the investigation of the suit, shall be subject to the like disadvantages, penalties, and punishments, by order of the Court on the representation of the arbitrator or arbitrators or umpire, as they would incur for the same offences in suits tried before the Court.

318. When the arbitrator or arbitrators shall not have been able to complete the award within the period specified in the order from the want of the necessary evidence or information or other good and sufficient cause, the COURT MAY from time to time ENLARGE THE PERIOD FOR the DELIVERY OF the AWARD, if it shall think proper. In any case in which an umpire shall have been appointed, it shall be lawful for him to enter on the reference in lieu of the arbitrators if they shall have allowed their time or their extended time to expire without making an award, or shall have delivered to the Court or to the umpire a notice in writing stating that they cannot agree. Provided that an award shall not be liable to be set aside only by reason of its not having been completed within the period allowed by the Court, unless on proof that the delay in completing the award arose from corruption or misconduct of the arbitrator or arbitrators or umpire, or unless the award shall have been made after the issue of an order by the Court superseding the arbitration and recalling the suit.

319. If, in any case of reference to arbitration by an order of Court the ARBITRATOR or arbitrators or umpire shall DIE, OR REFUSE or BECOME INCAPABLE to ACT, it shall be lawful for the Court to appoint a new arbitrator or arbitrators or umpire, in the place of the person or persons so dying or refusing or becoming incapable to act. Where the arbitrators are empowered by the terms of the order of reference to appoint an umpire and do not appoint an umpire, any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if within seven days after such notice shall have been served, no umpire be appointed, it shall be lawful for the Court, upon the application of the party having served such notice as aforesaid, and upon proof to its satisfaction of such notice having been served, to appoint an umpire. In any case of appointment under this Section, the
arbitrator or arbitrators or umpire so appointed, shall have the like power to act in the reference, as if their name or names had been inserted in the original order of reference.

320. When an AWARD in a suit shall be made either by the arbitrator or arbitrators or by the umpire, it SHALL BE SUBMITTED TO the COURT under the signature of the person or persons by whom it may be made, together with all the proceedings, depictions, and exhibits in the suit.

321. It shall be lawful for the arbitrator or arbitrators or umpire, upon any reference, by an order of Court, if he or they shall think fit and if it is not provided to the contrary, to STATE his or their award as to the whole or any part thereof in the form of a SPECIAL CASE FOR the OPINION OF the COURT.

322. The Court may on the application of either party, modify or correct an award where it appears that a part of the AWARD is UPON MATTERS NOT REFERRED to the arbitrators, provided such part can be separated from the other part, and does not affect the decision on the matter referred; or where the award is IMPERFECT in form or contains any obvious error which can be amended without affecting such decision. The Court may also, on such application, make such order as it thinks just respecting the COSTS of the ARBITRATION, if any question arise respecting such costs, and the award contain no sufficient provision concerning them.

323. In any of the following cases, the Court shall have POWER TO REMIT the AWARD or any of the matters referred to arbitration TO the RE-CONSIDERATION of the same arbitrator or arbitrators or umpire upon such terms as it may think proper (that is to say)—

If the award has left undetermined some of the matters referred to arbitration, or if it determine matters not referred to arbitration.

If the award is so indefinite as to be incapable of execution.

If an objection to the legality of the award is apparent upon the face of the award.

324. No award shall be liable to be set aside, except on the ground of CORRUPTION or MISCONDUCT of the arbitrators or umpire.

325. If the Court shall not see cause to remit the award or any of the matters referred to arbitration for re-consideration in manner aforesaid, and if no application shall have been made to set aside the award, or if the Court shall have refused such application, the COURT SHALL proceed to PASS JUDGMENT ACCORDING TO the AWARD, or according to its own opinion on the special case, if the award shall have been submitted to it in the form of a special case; and upon the judgment which shall be so given decree shall follow, and shall be carried into execution in the same manner as other decrees of the Court. In every case in which judgment shall be given according to the award, the JUDGMENT shall be FINAL.

326. When any persons shall by an instrument in writing AGREE THAT any DIFFERENCES between them or any of them SHALL

324. The remainder of this Section was repealed by Act 9 or 1871 See "Repealing Enactments" page 79.

326. The words "on a stamp paper of one-fourth of the value prescribed for plaints in suits" were repealed by Act 7 of 1870 See "Repealing Enactments" page 70.
BE REFERRED TO the ARBITRATION of any person or persons named in the agreement or to be appointed by any Court having jurisdiction in the matter to which it relates, application may be made by the parties thereto or any of them that the agreement be filed in such Court. On such application being made, the Court shall direct such notice to be given to any of the parties to the agreement, other than the applicants, as it may think necessary, requiring such parties to show cause, within a time to be specified, why the agreement should not be filed. The application shall be written and shall be numbered and registered as a suit between some or one of the parties interested or claiming to be interested as plaintiffs or plaintiff, and the others or other of them as defendants or defendant, if the application have been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants. IF NO SUFFICIENT CAUSE be SHOWN against the agreement, the AGREEMENT SHALL BE FILED, and an order of reference to arbitration shall be made thereon. The several provisions of this Chapter, so far as they are not inconsistent with the terms of any agreement so filed, shall be applicable to all proceedings under an order of reference made by the Court and to the award of arbitration and to the enforcement of such award.

327. When any MATTER has been REFERRED TO ARBITRATION WITHOUT the INTERVENFION OF any COURT of Justice, and an award has been made, any person interested in the award may make application to the Court having jurisdiction in the matter to which the award relates, that the award be filed in Court. The Court shall direct notice to be given to the parties to the arbitration other than the applicant, requiring such parties to show cause, within a time to be specified, why the award should not be filed. The application shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants. IF NO SUFFICIENT CAUSE be SHOWN against the award, the AWARD SHALL BE FILED, and may be enforced as an award made under the provisions of this Chapter.

CHAPTER VII.
Of Proceedings on Agreement of Parties.
How Questions may be Raised for the Decision of a Civil Court by any Persons Interested.

328. PARTIES INTERESTED or claiming to be interested IN the DECISION of any QUESTION of fact or law, MAY ENTER INTO an AGREEMENT that upon the finding of a Court in the affirmative or negative of such question of fact or law, a sum of money fixed

327. The words "shall be written on the stamp paper required for petitions to the Court where a stamp is required for petitions by any law for the time being in force and" were repealed by Act 7 of 1870, See "Repealing Enactments" page 70.

The words "within 6 months from the date of the award" were repealed by Act 9 of 1871 See "Repealing Enactments" page 70.

328. The words "which shall be subject to the same stamp duty as prescribed for plaintiffs in suits" were repealed by Act 7 of 1870 See "Repealing Enactments" page 70.
by the parties, or to be determined by the Court, shall be paid by one of the parties to the other of them; or that some property; moveable or immovable; specified in the agreement, shall be delivered by one of the parties to the other of them; or that one or more of the parties shall do or perform some particular legal act, or shall refrain from doing or performing some particular act specified in the agreement. Where the agreement is for the delivery of some property moveable or immovable, or for the doing or performing, or the refraining to do or perform any particular act, the estimated value of the property to be delivered or to which the act specified may have reference, shall be stated in the agreement.

339. The AGREEMENT MAY BE FILED in any Court having jurisdiction in the matter, and, when so filed, shall be numbered and registered as a suit between some or one of the parties interested or claiming to be interested as plaintiffs or plaintiff, and the others or other of them as defendants or defendant; and notice shall be given to all the parties to the agreement other than the party or parties by whom it was presented.

340. AFTER the AGREEMENT shall have been FILED all the PARTIES to it SHALL BE SUBJECT TO the JURISDICTION of the Court, and shall be bound by the statements contained therein.

341. The case shall be set down for HEARING AS AN ORDINARY SUIT; and if the Court shall be satisfied, after an examination of the parties or their pleaders, or taking such evidence as it may deem proper, that the agreement was duly executed by the parties, and that they have a bona fide interest in the question of fact or law stated therein, and that the same is fit to be tried or decided, it shall proceed to record, and try, or hear the same, and deliver its finding or opinion thereon in the same way as in an ordinary suit; and shall upon its finding or deciding upon the question of fact or law, give judgment for the sum fixed by the parties, or so ascertained as aforesaid, or otherwise, according to the terms of the agreement, and upon the judgment which shall be so given, decree shall follow, and may be executed in the same way as if the judgment had been pronounced in a contested suit.

CHAPTER VIII.

Of Appeals.

How Appeals are to be Preferred.

333. Appeals shall be made in the FORM of a memorandum which shall be presented in the Appellate Court.

334. The MEMORANDUM of appeal SHALL SET FORTH concisely, and under distinct heads, the grounds of objection to the decision appealed against, without any argument or narrative, and such grounds shall be numbered consecutively. The appellant shall not

332. Repealed by Act 23 of 1861 See "Repealing Enactments" page 43.
This Section was again repealed by Act 32 of 1871 so far as it relates to Oudh. See "Repealing Enactments" page 82.

333. The remainder of this Section was repealed by Act 9 of 1871, See "Repealing Enactments" page 79.
without the leave of the Court, urge or be heard in support of any other ground of objection, but the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant.

335. The memorandum of appeal shall be in the following FORM, or to the following effect, and shall be accompanied by a copy of the decree appealed against:—

Memorandum of Appeal.

(Name, &c., as in Register.) Plaintiff.

(Name, &c., as in Register.) Defendant.

(Name of Appellant) Plaintiff (or Defendant.) above-named appeals to the Sudder Court at (or Zillah Court at as the case may be) against the decree of in the above suit, dated the day of for the following reasons, namely (here state the reasons).

336. If the memorandum be not drawn up in the manner hereinbefore prescribed, the COURT MAY REJECT it, OR may RETURN it to the party for the purpose of being corrected. If the memorandum be not presented within the prescribed period, and no sufficient cause be shown for the delay, the appeal shall be rejected.

337. If there be two or more plaintiffs or two or more defendants in a suit, and the decision of the Lower Court proceed on any ground common to all, any ONE OF the PLAINTIFFS or defendants MAY APPEAL against the whole decree, and the Appellate Court may reverse or modify the decree in favour of all the plaintiffs or defendants.

Of Staying and Executing Decrees under Appeal.

338. Execution of a decree shall not be stayed by reason only of an appeal having been preferred against such decree; but the APPELLATE COURT MAY, for sufficient cause shown, ORDER that EXECUTION be STAYED. If application for execution be made before the time allowed for appeal has expired; and the Lower Court has not received intimation of an appeal having been preferred, the LOWER COURT, if sufficient cause be shown, MAY STAY the execution. Before making an order to stay execution, the Court making the order shall require SECURITY to be given by the party against whom the decree was passed for the due performance of the decree or order of the Appellate Court.

340. In suits instituted or defended under the authority and at the expense of Government, NO such SECURITY as is mentioned in the last two preceding Sections shall, in any case, be required FROM GOVERNMENT OR from any PUBLIC OFFICER.

Of Procedure in Appeals from Decrees.

341. When a memorandum of appeal is presented in the prescribed form, and within the time allowed, the Appellate Court, or the proper Officer of that Court, shall endorse thereon, the date of presentment, and shall register the appeal in a book to be kept for the purpose, and called the REGISTER OF APPEALS. Such Register shall be in the form contained in the Schedule (C) hereunto annexed.

342. It shall be in the discretion of the Appellate Court to demand security for costs from the appellant or not, as it shall see fit, before the respondent is called upon to appear and answer. Provided that the Court shall demand such security in all cases in which the appellant is residing out of the British territories in India, and is not possessed of any land or other moveable property within those territories independent of the property to which the appeal relates; and, in the event of such security not being furnished at the time of presenting the memorandum of appeal or within such time as the Court shall order, the Court shall reject the appeal.

343. When the memorandum of appeal has been registered, the Appellate Court shall send intimations thereof to the lower court. If the appeal be from a court the records of which are not deposited in the Appellate Court, the lower court shall, upon the receipt of the intimation, transmit to the Appellate Court, with all practicable despatch, all material papers in the suit, or such papers as may be specially called for by the Appellate Court. Either party may give notice in writing to the lower court specifying any exhibits of which he requires copies to be made and deposited in the lower court, and copies of such exhibits shall be prepared at the expense of the party giving the notice, and shall be deposited in the lower court.

344. A day shall be fixed by the Appellate Court for the hearing of the appeal. The day shall be so fixed with reference to the place of residence of the respondent, and the time necessary for the service of the notice of appeal, as to allow the respondent a sufficient time to enable him to appear in person or by a pleader on such day.

345. Notice of the day which has been fixed for hearing the appeal shall be affixed in the Appellate Court, and a like notice shall be sent by the Appellate Court to the lower court, and shall be served on the respondent in the same way as hereinafter provided for the service of a summons to a defendant to appear and answer, and all rules applicable to such summons and to proceedings with reference to the service thereof shall apply to the service of such notice. The notice to the respondent shall contain an intimation that, if he does not appear in the Appellate Court on the day so fixed for the hearing of the appeal, the case will be heard and decided ex parte in his absence. Provided that, if the respondent has appointed a pleader to appear in his behalf in the Appellate Court, the service of the notice on such pleader shall be sufficient.

346. If, on the day fixed for hearing the appeal or any other day subsequent thereto to which the hearing of the appeal may be adjourned, the appellant shall not appear in person or by a pleader the appeal shall be dismissed for default. If the appellant shall appear in person or by a pleader, and the respondent shall not appear in person or by a pleader, the appeal shall be heard ex parte in his absence.

347. If an appeal be dismissed for default of prosecution, the appellant may apply to the Appellate Court for the re-admission

345. See also Sections 5, 6 and 7, Act 32 of 1861, post.

347. The words "within 30 days from the date of the dismissal" were repealed by Act 9 of 1871. See "Repealing enactments" page 79.
OF the APPEAL; and if it shall be proved to the satisfaction of the Court that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Court may re-admit the appeal.

348. Upon the hearing of the appeal, the RESPONDENT may take any OBJECTION TO the DECISION of the Lower Court which he might have taken if he had preferred a separate appeal from such decision.

349. The Appellate Court after hearing the appeal, shall proceed to give its Judgment in the manner hereinbefore prescribed for giving judgment in Courts of original jurisdiction.

350. The judgment may be for confirming or reversing or modifying the decree of the Lower Court. But no decree shall be reversed or modified, nor shall any case be remanded to the Lower Court on account of any error, defect, or IRREGULARITY either in the decision or in any interlocutory order passed in the suit NOT AFFECTING the MERITS of the case or the jurisdiction of the Court.

351. If the Lower Court shall have disposed of the case upon any preliminary point, so as to exclude any evidence of fact which shall appear to the Appellate Court essential to the rights of the parties, and the decree of the Lower Court upon such preliminary point shall be reversed by the decree in appeal, the Appellate Court may, if it think right, REMAND the case together with a copy of the decree in appeal to the Lower Court, with directions to restore the suit to its original number in the Register and proceed to investigate the merits of the case and pass a decree therein.

352. It shall NOT be competent to the Appellate Court to REMAND a case for a second decision by the Lower Court, EXCEPT AS PROVIDED in the last preceding Section.

353. When the EVIDENCE upon the record of the Lower Court is SUFFICIENT to enable the Appellate Court to pronounce a satisfactory judgment, the Appellate COURT SHALL finally DETERMINE THE CASE notwithstanding that the judgment of the Lower Court has proceeded wholly upon some other ground.

354. If the Lower Court shall have omitted to raise or try any issue, or to determine any question of fact which shall appear to the Appellate Court essential to the right determination of the suit upon the merits, and the evidence upon the record is not sufficient to enable the Appellate Court to determine such issue or question of fact, the Appellate Court may frame an issue or ISSUES FOR TRIAL BY the LOWER COURT, and may refer the same to the Lower Court for trial. Thereupon the Lower Court shall proceed to try such issue or issues, and shall return to the Appellate Court its finding thereon, together with the evidence, such finding and evidence shall become part of the record in the suit and either party may within a time to be fixed by the Appellate Court, file a memorandum of any objection to the finding; and after the expiration of the period so fixed the Appellate Court shall proceed to determine the appeal.
355. It shall not be competent to the parties in an appeal to produce ADDITIONAL EVIDENCE IN the APPELLATE COURT whether of exhibits or witnesses; but if it appear that the Lower Court refused to admit competent evidence, or if the Appellate Court require any exhibits to be produced or witnesses examined to enable it to pronounce a satisfactory judgment, or for any other substantial cause, the Appellate Court may allow additional exhibits to be received and any necessary witnesses to be examined, whether such witnesses shall have been previously examined, in the Court below or not. Provided that whenever additional evidence is admitted by an Appellate Court, the REASONS for the admission shall be RECORDED on the proceedings of such Court.

356. Whenever additional evidence is permitted to be received, it shall be competent to the APPELLATE COURT to TAKE SUCH EVIDENCE before ITSELF, OR to REQUIRE the LOWER or any other COURT or to empower any person TO TAKE such evidence, and to transmit the evidence so taken to the Appellate Court. It shall also be competent to the Appellate Court to prescribe the manner in which such evidence shall be taken.

357. In all cases where additional evidence is permitted to be taken, the Appellate Court shall define the point or POINTS TO WHICH the EVIDENCE is TO BE CONFINED, and record the same on its proceedings.

359. The JUDGMENT of the Appellate Court shall be pronounced in open Court. It SHALL CONTAIN the point or points for determination the decision thereupon, and the reasons for the decision and shall be dated and signed by the Judge or by the Judges concurring therein at the time of pronouncing it. The judgment shall be written in the ENGLISH LANGUAGE; but if the Judge shall not be able to write an intelligible judgment in that language, the judgment shall be written in the vernacular language of the Judge. When the language in which the judgment is written is not the language in ordinary use in proceedings before the Court the judgment shall be TRANSLATED into such language, and the translation shall be signed by the Judge or Judges. Any Judge dissenting from the judgment of the Court shall state his opinion in writing, which shall form part of the record.

360. The DEGREE of the Appellate Court shall bear date the day on which the judgment was passed. It SHALL CONTAIN the number of the suit, the names and description of the parties appellant and respondent, and the memorandum of appeal, and shall specify clearly the relief granted or other determination of the appeal. It shall also state the amount of costs incurred in the appeal, and by what parties, and in what proportions such costs and the costs in the original suit are to be paid. The decree shall be signed by the Judge or Judges who passed it, and shall be sealed with the seal of the Court. If there be a difference of opinion among the Judges of the Court, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree, but the opinion of such Judge shall be recited in the

decree. CERTIFIED COPIES of the decree shall be furnished to the parties in the same manner as hereinbefore provided in regard to the decrees of Courts of original jurisdiction.

361. A COPY of the decree or other order disposing of the appeal, certified by the Appellate Court or the proper Officer of such Court, and sealed with the seal of the Court, SHALL BE TRANSMITTED to the COURT WHICH PASSED the FIRST DECREES in the suit appealed from, and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the original Register of the suit.

362. Application for EXECUTION of the decree of an Appellate Court shall be made to the Court which passed the first decree in the suit, and shall be executed by that Court in the manner and according to the rules hereinbefore contained for the execution of original decrees.

Appeals from Orders.

363. NO APPEAL shall lie FROM any ORDER passed IN the COURSE OF A SUIT and relating thereto prior to decree; but if the decree be appealed against, any error, defect, or irregularity in any such order affecting the merits of the case or the jurisdiction of the Court, may be set forth as a ground of objection in the memorandum of appeal.

364. No APPEAL shall lie FROM any ORDER passed AFTER DECREES and relating to the execution thereof, except as is hereinbefore expressly provided.

365. All ORDERS AS TO FINES OR the levying thereof, or as to IMPRISONMENT under this Act (except when the imprisonment is in execution of a decree) shall be subject to appeal.

366. When an appeal from any order is allowed, the period for preferring the appeal and the PROCEDURE thereon shall be in all respects the same as in an appeal from a decree.

CHAPTER IX.

Of Appeals in Forma Pauperis.

367. Any party to a suit who may be unable to pay for the stamps required for the prosecution of an appeal from the decision passed therein, may be allowed to APPEAL AS A PAUPER from such decision, subject to all the rules contained in the last preceding Chapter and in Chapter V in so far as they are applicable.

368. The APPLICATION to be allowed to appeal in formâ pauperis shall be written, and shall be presented in the Appellate Court within the period allowed for the presentation of a memorandum of appeal.

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364. See Section 11, Act 23 of 1861, post.
368. The words "on a stamp paper of the value of 1 Rupee if the appeal lie to the District Court and on a stamp paper of the value of 2 Rupees if the appeal lie to the Sudder Court" were repealed by Act 7 of 1870, see "Repealing Enactments" page 79.

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369. The APPLICATION SHALL CONTAIN the particulars required to be set forth in the memorandum of appeal, and shall be drawn up in the like manner. It shall have annexed to it a schedule of any moveable or immovable property belonging to the applicant, with the estimated value thereof, and shall also be accompanied by copies of the judgment and decree from which the appeal is made.

370. If the Appellate Court, upon a perusal of the application and of the judgment and decree of the Court below, shall see no reason to think that the decision of that Court is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust, it shall REJECT the APPLICATION. IF the application be NOT REJECTED upon any of the grounds abovementioned, INQUIRY shall be made INTO the alleged PAUPERISM of the applicant, and such inquiry may be conducted either by the Appellate Court or by the Court from whose decision the appeal is made under the orders of the Appellate Court. Provided that, if the applicant was allowed to sue in forma pauperis in the Court below, no further inquiry in respect of his pauperism shall be necessary unless the Appellate Court shall see special cause to direct such inquiry.

371. The ORDER passed by the Appellate Court on an application to be allowed to appeal in forma pauperis, whether for the admission or rejection of the application shall be FINAL; but if the application be rejected the Appellate Court may, if it think proper allow the applicant a reasonable time for the preferring an appeal on a stamp of the value prescribed for appeals from decrees.

CHAPTER X.
Of Special Appeals.

372. Unless otherwise provided by any law for the time being in force, a special appeal shall lie to the Sudder Court from all decisions passed in regular appeal by the Courts subordinate to the Sudder Court on the GROUND of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in law in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits, and on no other ground.

373. The application for the admission of a special appeal shall be presented in the Sudder Court, and shall be accompanied by copies of the judgments and decrees of the Lower Appellate Court and of the Court of first instance. The application shall be written on a STAMP paper of the value prescribed for regular appeals; but if the applicant be unable to pay for the stamps required for the prosecution of the appeal, the Sudder Court may admit him to appeal as a PAUPER, subject to all the rules contained in Chapter IX. in respect to appeals from decrees in forma pauperis in so far as the same may be applicable.

Chap. X. Sections 372, 373, 374 and 475, were repealed by Act 32 of 1871, so far as they relate to Oudh. See "Repealing Enactments" page 82.

372. There is no special appeal in Small Cause Court cases. See Section 27. Act 22 of 1861, post.

373. The words "within the period prescribed for the presentation of a memorandum of appeal" were repealed by Act 9 of 1871. See "Repealing Enactments" page 79.
374. The APPLICATION SHALL SET FORTH concisely the grounds of objection to the decision appealed against, without argument or narrative, and such grounds shall be numbered consecutively. The applicant shall not, without the leave of the Court, be heard in support of any other ground of objection; but the determination of the Court may be upon any ground on which a special appeal would lie.

Chapter XI.
Review of Judgment.

376. Any person considering himself aggrieved by a decree of a Court of original jurisdiction, from which no appeal shall have been preferred to a Superior Court—or by a decree of a District Court in appeal, from which no special appeal shall have been admitted by the Sudder Court—or by a decree of the Sudder Court from which either no appeal may have been preferred to Her Majesty in council, or, an appeal having been preferred, no proceedings in the suit have been transmitted to Her Majesty in Council—and who, from the discovery of new matter or evidence which was not within his knowledge or could not be adduced by him at the time when such decree was passed, or from any other good and sufficient reason, may be desirous of obtaining a review of the judgment passed against him—may apply for a REVIEW OF JUDGMENT by the Court which passed the decree.

378. If the Court shall be of opinion that there are not any sufficient grounds for a review, it shall reject the application, but if it shall be of opinion that the review desired is necessary to correct an evident error or omission, or is otherwise requisite for the ends of justice, the Court shall grant the review, and its ORDER in either case, whether for REJECTING the application OR GRANTING the REVIEW, shall be FINAL. Provided that, no review of judgment shall be granted without previous NOTICE to the opposite party to enable him to appear and be heard in support of the decree of which a review is solicited.

379. If the Court to which the application for a review of its judgment has been presented be a Court consisting of two or more Judges, whenever the Judge or Judges who may have passed the decree, or if the decree have been passed by two or more Judges, when any of such Judges shall continue attached to the Court at the time when the application for a review is presented, and shall not be precluded by absence or other cause, for a period of six months after the application from considering the judgment to which the application refers, it shall NOT be COMPETENT TO any OTHER JUDGE of the same Court TO ENTER UPON a CONSIDERATION OF the merits of the APPLICATION, and record an order or opinion thereon.

380. When application for a review of judgment is granted, a note thereof shall be made in the REGISTER of Suits or appeals (as the

375. Repealed by Act 33 of 1861, See "Repealing Enactments" page 43.
377. Part of this Section was repealed by Act 7 of 1870, See "Repealing Enactments" page 70.
The remainder by Act 9 of 1871, See "Repealing Enactments" page 79.
and the Court shall give such order in regard to the RE-
HEARING of the suit as it may deem proper in the circumstances of
the case.

Chapter XII:
Miscellaneous:

382. Except so far as relates to the examination of witnesses under
Commission and to the execution of decrees out of the jurisdiction of
the Court a by which they were passed, this Act shall not extend to any
suit instituted in any COURT FOR the more easy recovery of SMALL
DEBTS and demands in CALCUTTA, MADRAS, AND BOMBAY.

383. Nothing in this Act shall be held to alter or affect the jurisdic-
tion or procedure in Civil cases of VILLAGE MOONSIFHS or
Village OR District PUNCHAYETS under the provisions of the
MADRAS Code; or the jurisdiction or procedure of Military COURTS
OF REQUEST; or the jurisdiction or procedure of a single Officer duly
authorized and appointed under the rules in force in the Presidencies of
Fort St. George and Bombay respectively, for the trial of small suits
in Military Bazars at CANTONMENTS and Stations occupied by the
Troops of those Presidencies respectively; or by PUNCHAYETS in
regard to suits against Military persons, according to the rules in force
under the Presidency of Fort St. George.

384. Nothing in this Act shall be held to affect the jurisdiction ex-
cercised by certain JAGHEERDARS and other authorities invested
with powers under the provisions of Regulation XIII. 1830 of the
Bombay Code (for vesting certain Jagheerdars, Surinjameedars, and E-
traders with the power of deciding suits within the boundaries of their
respective estates) and Act XV. of 1840 (for extending Regulations XV. 1827
and XIII. 1830 of the Bombay Code, to the Agents of Foreign Sovereigins),
or their procedure in the exercise of such jurisdiction; or to affect suits
instituted under REGULATION XI. 1816 of the BENGAL CODE,
(for receiving, trying and deciding claims to the right of inheritance or suc-
cession in certain Tributary estates in Zillah Buttak), or cases of the na-
ture defined in REGULATION XXIX. 1837 (for bringing under the
operation of the Regulations the Bombay Territories in the Dekkan
and Khondeish), REGULATION VII. 1880 (for bringing under the
operation of the Regulations the Territories comprised in the the
Southern Maratha Country) REGULATIONS I. AND XVI. 1831
of the Bombay Code (for extending the jurisdiction of the Agent
of Government in the Dekkan and Khondeish and of the Political
Agent in the South Maratha Country over suits in which certain
privileged persons are concerned), ACT XIX. OF 1835 relating to
the jurisdiction and authority of the Assistant to the Agent for Sirdars in
the Dekkan), and ACT XIII. of 1842 (to enable the holders of revenue
which has been alienated to them by the State to collect that revenue within
the Presidency of Bombay): except that such suits and cases, and the re-

381. Repealed by Act 23 of 1861 See "Repealing Enactments" page 43.
382. The words "in any Court of Judicature established by Royal charter, or" were re-
pealed by Act 14 of 1870, Sec "Repealing Enactments" page 74.
unless where those rules are inconsistent with any specific provisions contained in the Regulations and Acts above quoted.

385. This Act shall not take effect in any part of the TERRITORIES NOT SUBJECT TO the general REGULATIONS of Bengal Madras, and Bombay until the same shall be extended thereto by the Governor General in Council or by the Local Government to which such territory is subordinate and notified in the Gazette.

386. The following words and expressions in this Act shall have the MEANINGS hereby assigned to them unless there be something in the subject or context repugnant to such construction (that is say):

Words importing the singular NUMBER shall include the plural number, and words importing the plural number shall include the singular number.

Words importing the masculine GENDER shall include females.

The local jurisdiction of a Principal Civil Court of original jurisdiction shall be deemed a DISTRICT for the purposes of this Act; and the words "DISTRICT COURT" shall mean such Court.

In any part of the British territories in India to which this Act may be extended under the provisions of Section 385, the expression "Sudder Court" shall be deemed to include the highest Civil Court of Appeal in such part of the said territories.

388. From and after the time when this Act shall come into operation in any part of the British territories in India, the PROCEDURE of the Civil Courts in such part of the said territories shall be REGULATED by this Act, and except as otherwise provided by this Act, BY NO OTHER LAW or Regulation.

SCHEDULE A, referred to in the foregoing Scheme of Procedure.

<table>
<thead>
<tr>
<th>Court of the</th>
<th>Register of Civil Suits in the year 18</th>
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<tbody>
<tr>
<td>No. of Suit.</td>
<td>Name.</td>
<td>Description.</td>
<td>Place of abode.</td>
<td>Amount or value.</td>
<td>Full name of defendant.</td>
<td>Date and cause of action.</td>
<td>Day for parties to appear.</td>
<td>Place of appeal.</td>
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385. See Section 39 Act 28 of 1861, post.
SCHEDULE B.

No. of Suit.

Plaintiff.

Defendant.

In the Court of

(Date, description, and address.)

Whereas [here enter the name, description, and address of the Plaintiff] has instituted a suit in this Court against you [here state the particulars of the claim as in the Register] you are hereby summoned to appear in this Court on the day of at in the forenoon [if not specially required to appear in person, state: "in person or by a pleader of the Court duly instructed and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions"] to answer the above-named plaintiff. [If the summons be for the final disposal of the suit, this further direction shall be added here:] and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day; and you are hereby required to take notice that in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence; you will bring with you (or send by your agent) [here mention any document, the production of which may be required by the plaintiff] which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.

SCHEDULE C to the foregoing Scheme of Procedure.

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<td>REGISTER OF APPEALS FROM DECREEs IN THE YEAR 18.</td>
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<tr>
<th>APPELLANT.</th>
<th>RESPONDENT.</th>
<th>DEGREE APPEALED FROM.</th>
<th>APPEARANCE.</th>
<th>JUDGMENT.</th>
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SCHEDULE D to the foregoing Scheme of Procedure.

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<th>SUDDER COURT AT</th>
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<tr>
<td>REGISTER OF SPECIAL APPEALS.</td>
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<th>APPELLANT.</th>
<th>RESPONDENT.</th>
<th>DEGREE APPEALED FROM.</th>
<th>APPEARANCE.</th>
<th>JUDGMENT.</th>
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MISCELLANEOUS ACTS RELATING TO
CIVIL PROCEDURE.
In Chronological Order.

Act No. XXIII. of 1840.
An Act for execution within the local limits of the jurisdiction of Her Majesty's Courts, legal process issued by authorities in the Mofussil.

I. Whereas great inconvenience has been experienced, in consequence of the difficulty of procuring the attendance as witnesses before the Mofussil authorities of persons resident within the local limits of Her Majesty's Supreme Courts, and in consequence of justice being often frustrated by reason of persons and property within such limits being exempted from process issued by such authorities, which has also occasioned inconvenience to the inhabitants within such limits, in suits in the Mofussil Courts to which they are parties;

It is hereby enacted, that any writ, warrant, or other PROCESS ISSUED by any Court, Judge or Magistrate in the territories BEYOND the LOCAL LIMITS OF THE SUPREME COURTS of Calcutta, Madras, and Bombay, respectively, MAY BE EXECUTED WITHIN those limits in manner following. A copy of such writ, warrant, or other process authenticated as such by the attestation of the Court, Judge, or Magistrate signing or issuing the same, accompanied by a certified translation in the English language, shall be presented to any Judge of Her Majesty's Courts, who may thereupon, under his hand and signature, indorse and direct the same to be executed within the local limits of any of Her Majesty's Courts by the Sheriff, or by any Justice of the Peace according to the nature of such writ, warrant, or other process.

II. And it is hereby provided, that, upon the delivery of every such writ, warrant, or process so indorsed as aforesaid to any such Sheriff as aforesaid, every such SHERIFF shall make a memorandum of the date of such delivery, and SHALL EXECUTE SUCH writ, warrant, or PROCESS in like manner as if the same had originally issued from any of Her Majesty's Courts, and had been delivered at the date as appearing by the memorandum; and such Sheriff shall make no distinction as to priority or otherwise between the execution of any

Act 23 of 1840. This Act was extended to the straits settlement by Act 7 of 1866, sec.
writ, warrant, or other process originally issued from any of Her Majesty's Courts, and the execution of any writ, warrant, or other process under this Act. But every writ, warrant, and other process, whether original or indorsed as aforesaid, shall, amongst each other, be subject to the same rules touching the mode and order of execution as are now established in respect of writs, warrants, and other process originally issued from Her Majesty's Courts of Justice.

III. And it is hereby enacted, that every such SHERIFF shall be LIABLE to be proceeded against in Her Majesty's Courts of Justice for all matters touching the execution of any writ, warrant, or other process executed under this Act, in like manner as if the same had originally issued from any of Her Majesty's Courts of Justice. And all persons and property, seized or detained under any writ, warrant, or process executed by virtue of this Act, shall be dealt with in like manner as if such persons or property had been seized or detained under the like writ, warrant, or other process issued from any of Her Majesty's Courts of Justice.

IV. And it is hereby enacted, that all PERSONS DISOBEDIENT or OBSTRUCTING the execution of any writ, warrant or other PROCESS indorsed under this Act, shall be PUNISHABLE in Her Majesty's Courts of Justice, in like manner as if the same had issued from such Courts: Provided always, that, in the case of process for the attendance of witnesses, Her Majesty's Courts shall be governed by the like rules touching expenses and other matters as are established in regard to summonses issued from such Courts.

V. And it is hereby enacted, in the case of persons seized or detained by virtue of any writ, warrant, or other process executed under the authority of this Act by any Justice of the Peace or by any Sheriff, that it shall be the duty of every such SHERIFF or Justice of the Peace, if so required by the endorsement of the Judge, TO DELIVER the PARTY IN CUSTODY TO such AUTHORITY or persons as shall be particularly SPECIFIED in such endorsement and who shall have been charged with the execution of the writ, warrant, or other process by the authority originally issuing the same, and for that purpose to cause the party in custody to be conveyed to any place within the Company's territories beyond the local limits of the jurisdiction of Her Majesty's Courts.

VI. And it is hereby provided, that in the case of any writ, warrant, or other process required to be endorsed under the authority of this Act, it shall be lawful for the Judge who shall be required to endorse the same, to remit the same for AMENDMENT to the authority issuing the same, if the same shall appear to be defective in any matter of form.

VII. And it is hereby provided, that, in the case of any writ warrant, or other process required to be endorsed under the authority of this Act, for the seizure or detention of any person, it shall be lawful for the Judge, who shall be required to endorse the same, to direct by endorsement that BAIL (the amount and number of sureties to be specified in such endorsement,) may be taken; and for this purpose to call for such documents and to make such inquiry as he shall think proper.
8. And whereas it is expedient, that offenders sentenced by the Mofussil authorities to imprisonment, with or without hard labour, should be subjected to the most improved rules of prison-discipline, which cannot in all cases be conveniently done, except in the prisons locally situate within the jurisdiction of Her Majesty's Supreme Courts; it is hereby enacted, that all civil and criminal jails and houses of correction within the jurisdiction of any of Her Majesty's Supreme Courts shall according to the nature of the case, be liable to be used by the Sheriff for the purposes of this Act, and the parties imprisoned therein under the authority of this Act shall be liable to the prison-discipline thereof, and all SENTENCES of imprisonment passed by any Judge, Court or Magistrate in the territories of the East India Company, BEYOND the LOCAL LIMITS of Her Majesty's Supreme Court, MAY BE EXECUTED in whole or in part WITHIN ANY of the JAILS or HOUSES OF CORRECTION aforesaid, provided that a Copy of the warrant of commitment, or other process authorizing the imprisonment be so indorsed as aforesaid, and such indorsement contain the necessary directions.

ACT No. VIII. 1852.

An Act for remunerating the Sheriffs of Calcutta, Madras, and Bombay for the execution of Mofussil process under Act XXIII. of 1840.

For making better provision for the Sheriffs of Calcutta, Madras, and Bombay, in remuneration for the execution of legal process issued by Courts out of the said towns respectively, It is enacted as follows:—

1. The several SUDDER COURTS of the Presidency of Fort William in Bengal, and the Sudder Courts of the Madras and Bombay Presidencies respectively SHALL MAKE, and from time to time amend, a TABLE OF reasonable FEES, to be taken on account of the execution by the Sheriff in such Presidency of any legal process issued by any Court, Judge, or Magistrate, beyond the jurisdiction of the several Supreme Courts established by Royal Charter in Calcutta, Madras, and Bombay, and of the sums to be allowed for costs of advertisements or other notifications of sales of property, according to the amount of the decrees to be satisfied by such sales,—which fees and sums shall be payable by the party applying for the process before it is sent to the Sheriff for execution, and shall be deemed costs in the cause.

2. The said TABLE OF FEES and sums, when made or amended as aforesaid, SHALL BE SUBMITTED by the Sudder Court of the Lower Provinces of the Presidency of Fort William to the Governor of Bengal, and by the Sudder Court of the North-Western Provinces of the said Presidency to the Lieutenant-Governor of those Provinces, and by the Sudder Courts of Madras and Bombay respectively to the

Sec. 8. Repealed so far as it relates to the Bengal Division of the Presidency of Fort William by Act 2 of 1864, Bengal Council. See "Repealing Enactments" page 103.

Also repealed so far as it affects the Presidency of Fort Saint George by Madras Act 5 of 1869, See "Repealing Enactments" page 121.
Governor in Council of the Presidencies in which such Courts respectively have jurisdiction, for his approval; and the said table of fees and sums shall have full force and effect, and the fees and sums therein mentioned may be lawfully demanded and taken, from and after the approval thereof by the said Governor, Lieutenant-Governor, or Governor in Council, as the case may be.

3. Every such Court, Judge, and Magistrate, issuing process as aforesaid, shall cause a separate account to be kept of the amount of all fees and sums so paid, and shall from time to time, as directed by Government, cause the amount thereof to be paid into the local Treasury.

4. The government of each of the Presidencies and provinces aforesaid shall twice in each year account for and pay over to the Sheriff, for the time being, the amount of fees and sums so paid, after deducting all necessary expenses of receiving and keeping account thereof, and remitting the nett proceeds thereof to Calcutta, Madras, or Bombay, as the case may be; or, where the amount has accrued in the sheriffalty of more than one Sheriff, shall apportion the sum paid accordingly between the Sheriff for the time being, and the then late Sheriff.

5. The said governments respectively may compound with the Sheriff for a monthly payment to be made to him instead of such fees and sums and during such composition may appropriate the said fees and sums to the purposes of Government.

6. Over and above such fees and sums, or any such monthly payment received instead of such fees and sums, the Sheriff shall be entitled to a fee after the rate of rupees eight annas for each two hundred Rupees of the value of any goods or property taken and sold by him in execution of any process issued by any Court, Judge, or Magistrate beyond the local jurisdiction of the said Supreme Courts, which fee shall be taken to cover all expenses connected with the seizure and sale, except the expense of advertisements.

7. No fee estimated upon the amount of the sum for which any person is taken in execution, shall be payable to the Sheriffs of Calcutta, Madras, or Bombay, or any of their Bailiffs for taking the body of any person in execution on any process issued by any Court, Judge, or Magistrate out of the local jurisdiction of the said Supreme Courts respectively; but instead thereof, such fees shall be payable to the Sheriff for taking the body of any person in execution of any such process as shall be settled, from time to time, by the Sudder Court as aforesaid.

8. If any person taken in execution on any such process shall escape out of the legal custody of the Sheriff, the Sheriff shall not be liable to an action of debt for such escape, but shall be liable only to an action upon the case for damages in consequence of such escape sustained by the person or persons at whose suit the prisoner was taken.
CIVIL PROCEDURE CODE

ACT No. XXXIII, of 1852.

An Act to facilitate the enforcement of judgments in places beyond the jurisdiction of the Courts pronouncing the same.

1. Every PARTY, who shall have obtained a judgment in any Court of Her Majesty, or of the East India Company, in any part of the territories under the Government of the East India Company, or in any Court established by the authority of the Governor-General of India in Council in the territory of any foreign Prince or State, and who shall be unable to enforce or obtain satisfaction of the same by execution within the jurisdiction of such Court, MAY ENFORCE or obtain EXECUTION of the same IN ANY PART OF the said territories under the Government of the East INDIA Company in manner following:

2. The party may apply to the Court which shall have pronounced such judgment for a COPY thereof, AND also for a CERTIFICATE THAT SATISFACTION of such judgment has NOT been OBTAINED by execution within the jurisdiction of the said Court, also for a copy of any order for execution of such judgment that may have been passed, and, if necessary, for a translation of the said judgment and order for execution into the English language. The Court, unless there be any sufficient reason to the contrary, shall cause such copy and certificate, and translation if necessary, to be furnished, and the same shall be signed by the judge, or one of the judges of the Court, and sealed with the seal of the Court.

3. If such Court shall be the PRINCIPAL CIVIL COURT of original jurisdiction in the district, the judge shall describe himself accordingly in the certificate, and shall also name the Court and the district.

4. If the COURT shall NOT be THE PRINCIPAL CIVIL COURT of original jurisdiction in the district, the copy of the judgment and of the order for execution, if any, the certificate of the judge, and the translation, if any, shall without delay be transmitted to the principal Civil Court of original jurisdiction in the district, and the judge or one of the judges of such Court shall issue a certificate under his hand and the seal of the Court, verifying the signature of the judge of the Court in which the judgment shall have been given to the documents above-mentioned; and in such certificate the judge signing the same shall describe himself as the judge, or one of the judges of the principal Civil Court of the district, and shall also name the Court and the district.

5. All COPIES, TRANSLATIONS, AND CERTIFICATES, which may be furnished by, or transmitted to the principal Civil Court of original jurisdiction in the district in which such judgment shall have been given, SHALL BE TRANSMITTED by such Court without delay TO THE PRINCIPAL CIVIL COURT of original jurisdiction in the district IN WHICH the PARTY MAY WISII to have JUDGMENT ENFORCED or executed, and, if such last-mentioned Court be the

Act 33 of 1852. The whole Act except so far as it relates to the enforcement of Judgments by any Court established by Royal Charter and also except so far as it relates to the enforcement of decrees of Military Courts of Requests, was repealed by Act 10 of 1861, See "Repealing Enactments" page 46.
Supreme Court of Judicature of either of the Presidencies, to the Pro-
thonotary of the Court; and such Court shall cause the said documents
to be filed therein without any proof of the judgment or order for ex-
ecution, or of the copies thereof or of the translations, if any, or of the
seal or jurisdiction of any Court, or of the signature of any judge, un-
less the Court to which such documents shall be transmitted shall,
under any peculiar circumstances to be specified in an order, require
the same.

6. The COPY OF any JUDGMENT or of any order for execution
WHEN FILED in the Court to which it shall be transmitted for the
purpose of being executed or enforced as aforesaid, SHALL for such
purpose HAVE the SAME EFFECT AS A JUDGMENT or order for
execution made by such Court, and may be enforced or executed by such
Court or any Court subordinate thereto, to which it may intrust the en-
forcement or execution thereof.

7. When application shall be made to any of the said Courts to
enforce or execute the judgment of any other Court as aforesaid, the
COURT, to which the application shall be made or referred, SHALL
proceed to enforce or EXECUTE the same ACCORDING TO ITS
OWN RULES and mode of procedure in like cases; and the last men-
tioned Court shall take cognizance of and punish all wrongful acts or
irregularities done or committed in enforcing and executing such judg-
ment; and all persons disobeying or obstructing the enforcement or
execution of any such judgment shall be punishable by such last-men-
tioned Court, in the same manner as if the said judgment had been
pronounced by such Court.

8. The decrees, of which execution is to be general of any MILI-
TARY COURTS of Requests holden within the said territories under
the Government of the East India Company, or mentioned in Section
17, Act No. 11, 1841, may be enforced in the manner provided by this
Act. No such decree, however shall be enforced under this Act against
the person of the debtor, if a soldier. In the case of a decree of a Mil-
tary Court of Requests the copy, decree, and certificate, and translation,
if any shall be signed by the Officer Commanding the station or can-
tonment, who shall describe himself accordingly; and no proof of the
decree, or of the signature or appointment of such Officer, or of the
jurisdiction of the Court, shall be necessary, unless the Court to which
the same may be presented shall think fit; under any peculiar circum-
stances to be specified in an order, to require the same.

10. An APPEAL shall lie from any order for the enforcement or
execution of a judgment under this Act in the same manner, and sub-
ject to the same rules and regulations, as if the judgment had been ori-
ginally given by the Court making such order.

11. In this Act the word "JUDGMENT" means a judgment in a
civil suit or proceeding, and includes any final decree or order in a civil
suit or proceeding. The word "PARTY" shall include any person
who would be entitled to maintain a suit upon the judgment. The
masculine GENDER shall include the feminine, and the singular
NUMBER shall include the plural.

Sec. 9. Repealed by Act 7 of 1870, See "Repealing Enactments" page 69.
ACT No. XXXIV. of 1855.

An Act to explain and amend Act XXXIII, of 1852.

Whereas doubts have arisen whether a Court to which application is made to enforce or execute a judgment under the provisions of Act 33 of 1852, has power to inquire into the validity of the judgment; and it is expedient to remove such doubts, and to prevent any such Court from inquiring into the validity of a judgment in respect of which it has no appellate jurisdiction, and to provide for a stay of execution when such Court thinks it reasonable that the validity of the judgment should be inquired into: It is enacted as follows:

1. The Court to which application is made to enforce or execute a judgment under the provisions of Act 33, of 1852, shall not have POWER TO INQUIRE INTO the VALIDITY OF such JUDGMENT unless it appear, upon the face of such judgment, that the Court by which the judgment was given had no jurisdiction to pronounce the same.

2. The Court to which the application is made may, upon reasonable cause being shown, STAY the EXECUTION OF the JUDGMENT for a reasonable time, to enable the judgment-debtor to apply to the Court by which the judgment was given, or to any Court having appellate jurisdiction in respect of the judgment or execution thereof, for an order to stay the execution, or for any other order relating to the judgment or the execution thereof, which such Court of first instance or Court of Appeal might have made if execution had been issued by the Court of first instance, or if application for execution had been made to such Court; and in case the property or person of the judgment-debtor shall have been seized under an execution, the Court which issued the execution may order the restitution of the property, or the discharge of the person of the debtor, in the meantime.

3. Before making an order to stay execution, or for the restitution of property, or the discharge of the judgment-debtor, under this Act, the Court may require such SECURITY from, or impose such conditions upon, the judgment-debtor, as it may deem reasonable.

4. Any ORDER OF the COURT IN WHICH the JUDGMENT was GIVEN or of such Court of Appeal as aforesaid, shall be BINDING upon the Court to which the application for execution was made, and shall be a sufficient indemnity for all persons acting in execution of process issued by such last-mentioned Court.

5. No DISCHARGE OF a DEFENDANT under the provisions of this Act shall prevent him from being RE-TAKEN in execution of the judgment.

6. This Act shall be read with, and taken as part of Act 33 of 1852.

Act 34 of 1855. The whole Act except so far it relates to the enforcement of Judgments by any Court established by Royal Charter, was repealed by Act 10 of 1861, See "Repealing Enactments" page 121.
ACT No. XXIII. of 1861.

An Act to amend Act VIII. of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter.)

Whereas it is expedient to amend Act VIII. of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter), and to consolidate the Acts previously passed for the amendment of the said Act: It is enacted as follows:—

2. Every PROCESS required to be issued under Act VIII. of 1859 shall be SERVED AT the EXPENSE OF the PARTY at whose instance it is issued, unless otherwise specially directed by the Court: and the sum required to defray the costs of such service shall be paid into Court before the process is issued, within a period to be fixed by the Court issuing the process.

3. If it appear to the Court in any case relating to LAND or other immoveable property that such land or other property is NOT situate WITHIN the limits of the JURISDICTION of the Court, OR in any other case that the CAUSE OF ACTION did not arise, AND that the DEFENDANT is NOT dwelling or personally working for gain WITHIN SUCH LIMITS, the Court shall return the plaint to the plaintiff in order to its being presented in the proper Court.

4. If in any suit there are more defendants than one, and at the date of the institution of the suit all the defendants shall not reside within the jurisdiction of the Court in which the suit is brought, but ONE OR MORE OF THE DEFENDANTS shall reside WITHIN such JURISDICTION, the suit shall not be rejected by reason of all the defendants not residing within the jurisdiction of the Court in which the suit is brought, but the District Court, if the suit is pending in any Court subordinate to such Court, or the Sudder Court, may order that the suit be heard in any Court subordinate to such Sudder or District Court, and competent in respect of the value of the suit to try the same.

5. If on the day fixed for the defendant to appear and answer to a suit, it shall be found that the summons to the defendant has not been served in consequence of the FAILURE OF THE PLAINTIFF TO DEPOSIT WITHIN the TIME allowed the sum required to defray THE COST OF ISSUING the SUMMONS, the Court may order that the suit be dismissed: Provided that no such order shall be passed although the summons shall not have been served upon the defendant, if on the day fixed for the defendant to appear and answer he shall have entered an appearance by a pleader or by a duly authorised agent when he is allowed to appear by agent, or shall be in attendance in person.

6. The provisions of the last preceding Section shall apply to APPEALS also.

7. Whenever a suit is dismissed under the provisions of Section 5 of this Act, the plaintiff shall be at liberty to institute a FRESH SUIT, unless precluded by the rules for the limitation of actions, or if the plaintiff shall satisfy the Court within the period of thirty days from

the date of the order dismissing the suit that there was sufficient excuse for his not making the deposit required within the time allowed, the Court may order a fresh summons to issue upon the plaint already filed.

8. WHEN a PERSON ARRESTED under a warrant in execution of a decree for money shall, on being brought before the Court, APPLY FOR HIS DISCHARGE on either of the grounds mentioned in Section 273 of Act VIII. of 1859, the court shall examine the applicant the presence of the plaintiff or his pleader as to his then circumstances and as to his future means of payment, and shall call upon the plaintiff to show cause why he does not proceed against any property of which the defendant is possessed, and why the defendant should not be discharged, and should the plaintiff fail to show such cause, the Court may direct the discharge of the defendant from custody. Pending any inquiry which the Court may consider it necessary to make into the allegations of either party the Court may leave the defendant in the custody of the Officer of the Court to whom the service of the warrant was entrusted, on the defendant depositing the fees of such Officer, which shall be at the same daily rate as the lowest rate charged in the same Court for serving process; or if the defendant furnish good and sufficient SECURITY for his appearance at any time when called upon while such inquiry is being made, his surety or sureties undertaking in default of such appearance to pay the amount mentioned in the warrant, the Court may release the defendant on such security.

9. If the Court shall at any time think it necessary for the ends of justice to examine any person other than a party to the suit, and not named as a witness by a party to the suit, the COURT MAY OF ITS OWN ACCORD CAUSE such PERSON TO BE SUMMONED AS A WITNESS to give evidence, or to produce any document in his possession on a day to be appointed, and may examine such person as a witness. The costs of summoning such person, if not deposited by either party to the suit, shall be paid by the Collector under an order of the Court, and shall be costs in the suit, and shall be paid out of any money recovered on account of costs in the suit, whether at the instance of the Government or of either party, before any other costs in the suit are paid.

10. When the suit is for a sum of money due to the plaintiff, the Court may in the decree order INTEREST at such rate as the Court may think proper to be paid on the principal sum adjudged from the date of suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the date of suit, with further interest on the aggregate sum so adjudged and on the costs of the suit from the date of the decree to the date of payment.

11. All questions regarding the amount of any mesne profits which, by the terms of the decree, may have been reserved for adjustment in the execution of the decree or of any mesne profits or interest which may be payable in respect of the subject matter of a suit between the date of the institution of the suit and execution of the decree, as well as questions relating to sums alleged to have been paid in discharge or satisfaction of the decree or the like, and any other QUESTIONS arising BETWEEN THE PARTIES TO THE SUIT in which the
decree was passed and relating to the execution of the decree, SHALL BE DETERMINED BY order of the COURT EXECUTING THE DECREE, and not by separate suit, and the order passed by the Court shall be open to appeal: Provided that if upon a perusal of the petition of appeal and of the order against which the appeal is made the Court shall see no reason to alter the order, it may reject the appeal, and it shall not be necessary in such case to issue a notice to the respondent before the order of rejection is passed.

13. When a decree is passed in any suit of the nature and amount cognizable by Courts of SMALL CAUSES constituted under Act XLII. of 1863, the Court passing the decree, whether such Court be a Court constituted as aforesaid or any other Court, may, at the same time that it passes the decree, ON the VERBAL APPLICATION of the party in whose favour the decree is given, direct IMMEDIATE EXECUTION thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court passing the decree, or against the personal property of the judgment-debtor within the same limits. If the warrant be directed against the personal property of the judgment-debtor, it may be general against any personal property of the judgment-debtor wherever it may be found within the local limits of the jurisdiction of the Court, or against any personal property belonging to the judgment-debtor within the same limits, which shall be indicated by the judgment-debtor.

14. When the land sold in execution of a decree is a share of a PUTTEEDAREE ESTATE paying revenue to Government as defined in Section 2, Act 1, of 1841 (for facilitating the collection of the Revenue of Government, and defining the interest intended to be conveyed by public sales for the realization of arrears of the Public Revenue in Putteedaree states), if the lot shall have been knocked down to a stranger, any co-sharer other than the judgment-debtor, or any other member of the co-partnership may claim to take the share sold at the sum at which the lot was knocked down: Provided that the claim be made on the day of sale, and that the claimant fulfil all the conditions of the sale.

15. The Court on receiving any APPLICATION FOR EXECUTION of a decree containing the particulars mentioned in Section 212 of Act VIII of 1859, or such of them as may be applicable to the case, shall enter a note of the application and the date on which it was made in the Register of the suit. IF it shall be shown to the Court that the PARTICULARS DO NOT CORRESPOND WITH the original DEGREE, the Court shall either return the application for CORRECTION to the person making it, or shall with the consent of each person, cause the necessary correction to be made. If the application be admitted, the Court shall order execution of the decree according to the nature of the application,

16. When in any case pending before any Court any witness or other person shall appear to the Court to have been guilty of an offence

Sec 12. Part of this Section was repealed by Act 7 of 1870, See “Repealing Enactments” page 70.

The whole was repealed by Act 9 of 1871, See “Repealing Enactments” page 79.
described in SECTIONS 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, or 210, of the Indian Penal Code, the COURT MAY COMMIT such PERSON TO TAKE HIS TRIAL for the offence before the Court of Session, or after making such preliminary inquiry as may be necessary, may send the case for investigation to any Magistrate having jurisdiction to try or commit for trial the accused person for the offence charged, and such Magistrate shall thereupon proceed according to law.

17. The COURT MAY SEND the person accused in custody or take sufficient bail for his appearance before the MAGISTRATE, and may bind over any person to appear and give evidence before the Magistrate.

18. When the commitment is made by the Court, the Court shall frame a CHARGE in the manner provided in Chapter 13 of the Code of Criminal Procedure, and shall transmit the same, with the order of commitment and the record of the case, to the Magistrate, and such Magistrate shall bring the case, together with the witnesses for the prosecution and defence, before the Court of Session.

19. When in any case pending before any Court there shall appear to the Court sufficient ground for sending for investigation to the Magistrate, a charge described in SECTIONS 463, 471, 475, or 476 of the Indian Penal Code, which may be preferred in respect to any deed or paper offered in evidence in the case, the COURT MAY SEND the PERSON accused in custody TO the MAGISTRATE, or take sufficient bail for his appearance before the Magistrate. The Court shall send to the Magistrate the evidence and documents relevant to the charge, and shall bind over any person to appear and give evidence before such Magistrate. The Magistrate shall receive such charge and proceed with it under the rules for the time being in force.

20. If the person accused, or any one of the persons accused in any case falling under Section 16 or Section 19 of this Act is a EUROPEAN BRITISH SUBJECT, the Court shall send such person in custody or take sufficient bail for his appearance, before an officer empowered to commit or hold to bail persons charged with offences for trial before a Supreme Court of Judicature, and such officer shall proceed according to law.

21. When any such offence as is described in SECTION 175, 178, 179, 180, or 228 of the Indian Penal Code is committed in the view or presence of any Court, it shall be COMPETENT TO such COURT to cause the offender, whether he be a European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day to take cognizance of the offence; and TO ADJUDGE the offender to PUNISHMENT by fine not exceeding 200 Rupees, or by imprisonment in the Civil Jail for a period not exceeding one month, unless such fine be sooner paid. In every such case the Court shall record the facts constituting the contempt, with any statement the offender may make, as well as the finding and sentence. If the COURT in any case shall CONSIDER THAT a PERSON accused of any offence above referred to SHOULD BE IMPRISONED OR that a FINE EXCEEDING 200 RUPEES should be imposed upon him, such Court after recording the
facts constituting the contempt, and the statement of the accused person as before provided, SHALL FORWARD THE CASE TO a MAGIS-
TRATE, or if the accused person be a European British subject, to a Justice of the Peace, and shall cause bail to be taken for the appearance of such accused person before such Magistrate or Justice of the Peace, or if sufficient bail be not tendered, shall cause the accused person to be forwarded under custody to such Magistrate or Justice of the Peace. If the case be forwarded to a Magistrate, such Magistrate shall proceed to try the accused person in the manner provided for trials before a Magis-
trate, and it shall be competent to such Magistrate to adjudge such of-
fender to punishment, as provided in the Section of the Indian Penal
Code under which he is charged. If the case be forwarded to a Justice
of the Peace, such Justice of the Peace shall inquire into the circum-
stances, and shall have the same powers of punishing the offender as
are vested by the Statute 53 George III., C. 155, S 105, in a Justice
of the Peace for the punishment of an assault, and may deal with the
offender in the same manner as is provided in that behalf in the said
Statute. If such Justice of the Peace shall consider the offence to re-
quire a more severe punishment than a Justice of the Peace is com-
petent to award under the said Statute, he may commit the offender to
a Supreme Court of Judicature.

22. When any person has been sentenced to punishment under the
last preceding Section for refusing or omitting to do anything which
he was lawfully required to do, it shall be competent to the Court to
DISCHARGE the offender, or to remit the punishment ON the SUB-
MISSION OF the OFFENDER to the order or requisition of such
Court.

23. Except when otherwise expressly provided in this or any other
Regulation or Act for the time being in force, an APPEAL shall lie
FROM the DECREES of the Courts of original jurisdiction to the
Courts authorized to hear appeals from the decisions of those Courts.
If the appeal lie to the Sudder Court, it shall be heard and determined
by a Court consisting of two or more Judges of that Court. If, when
the Court shall consist of only TWO JUDGES, there is a DIFFERENCE
OF OPINION upon the evidence in cases in which it is competent to
the Court to go into the evidence, and one Judge concur in opinion
with the Lower Court as to the facts, the case shall be determined ac-
cordingly; if in a Court so constituted there is a difference of opinion upon
a point of law, the Judges shall state the point upon which they differ
and the case shall be re-argued upon that question before one or more
of the other Judges, and shall be determined according to the opinion
of the majority of the Judges of the Sudder Court by whom the appeal
is heard.

24. The sureties for the appearance of any person under Section 76
of the said Act VIII. of 1859 may at any time apply to the Court in which
they became such SURETIES to be discharged from their engage-
ments. On such application being made the Court shall summon such
person to attend, or, if it shall think fit may issue a warrant in the first
instance for his appearance. On the appearance of such person pursuant
to the summons or warrant or on his voluntary surrender, the Court
shall direct the recognizances of the sureties to be discharged, and shall
call upon such person to find other sureties, and thereupon proceedings shall be had under Sections 77 and 78 of the said Act.

25. If the application for the admission of a SPECIAL APPEAL be not written on a Stamp paper of the prescribed value, or if it be not drawn up in the manner laid down in Section 374 of Act VIII. of 1859, or if it do not state any ground on which a special appeal will lie under the provisions of Section 372 of the said Act, the Court may reject the application, or may return it to the party for the purpose of being corrected. The order for rejecting the application, or for returning it to the party, may be passed by a single Judge of the Court. When the application is correctly drawn up it shall be registered in a book to be kept for that purpose, which shall be in the form contained in the Schedule D of the said Act, and the case shall proceed in all other respects as a regular appeal, and shall be subject to all the rules hereinbefore provided for such appeals, so far as the same may be applicable.

26. NO APPEAL shall lie from any order or decision passed IN any SUIT instituted UNDER SECTION 15, ACT 14, OF 1859 (to provide for the limitation of suits), nor shall any review of any such order or decision be allowed.

27. NO SPECIAL APPEAL shall lie from any decision or order which shall be passed on regular appeal after the passing of this Act by any Court subordinate to the Sudder Court, in any suit of the nature cognizable IN Courts of SMALL CAUSES under Act XLII, of 1860 (for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter), when the debt, damage, or demand for which the original suit shall be instituted shall not exceed five hundred rupees; but every such order or decision shall be final.

28. If in any suit, in which an order or decision is made final under the last preceding Section, any question of law or usage having the force of law, or the construction of a document affecting the merits of the case, shall arise on which the Courts trying such suit shall entertain reasonable doubts, the Court may, either of its own motion, or on the application of either of the parties to the suit, draw up a STATEMENT OF THE CASE, and submit such statement, with its own opinion, FOR THE DECISION of the Sudder Court.

29. The Court may proceed in the case notwithstanding a reference to the Sudder Court, and may pass a DECREE CONTINGENT UPON the OPINION of the Sudder Court on the point referred; but no execution shall be issued in any case in which a reference shall be made to the Sudder Court until the receipt of the order of that Court.

30. CASES REFERRED for the opinion of the Sudder Court SHALL BE DEALT WITH BY TWO OR MORE JUDGES of that Court.

31. The Sudder Court shall fix an early DAY FOR the HEARING of the case, and shall notify the same by proclamation to be fixed up in the Court-house of that Court.

32. The PARTIES TO the case MAY APPEAR and be heard in the Sudder Court in person or by pleader.
33. The SUDDER COURT, when it has heard and considered the case, SHALL TRANSMIT A COPY OF ITS JUDGMENT under the seal of the Court and the signature of the Registrar to the Court by which the reference was made; and such Court shall, on the receipt thereof proceed to dispose of the case conformably to the decision of the Sudder Court.

34. COSTS, if any, consequent on the reference of a case for the opinion of the Sudder Court shall be costs in the suit.

35. The Sudder Court may call for the Record of any case decided on appeal by any subordinate Court in which no further appeal shall lie to the Sudder Court if such subordinate Court shall appear in hearing the appeal to have exercised a jurisdiction not vested in it by law; and the Sudder Court may set aside the decision passed on appeal in such case by the subordinate Court, or may pass such other order in the case as to such Sudder Court may seem right.

36. When an order is made for the execution of a decree against which an appeal has been preferred, it shall be lawful for the Court which pronounced the decree to require SECURITY to be given for the restitution of any property which may be taken in execution of the decree or of the value thereof, and for the due performance of the decree or order of the appellate Court. The appellate Court may in any such case direct the Court which pronounced the decree to take such security.

37. Unless, when otherwise provided, the APPELLATE COURT shall have the same Powers in cases of appeal which are vested in the Courts of original jurisdiction in respect of original suits.

38. The procedure prescribed by Act VIII of 1859 shall be followed, as far as it can be, in all MISCELLANEOUS CASES and proceedings which, after the passing of this Act, shall be instituted in any Court.

39. When, under the provisions of Section 385 of the said Act, the ACT IS EXTENDED TO any part of the TERRITORIES NOT SUBJECT TO the General REGULATIONS of Bengal, Madras, and Bombay, it shall be lawful for the Government to which the territory is subordinate to declare that the Act shall take effect therein, subject to any restriction, limitation, or proviso which it may think proper. In such case the restriction, limitation, or proviso shall be inserted in the declaration or notification of such extension. When the Act is extended by the Local Government to any territory subordinate to such Government, and such extension is made subject to any restriction, limitation, or proviso, the previous sanction of the Governor General of India in Council shall be requisite.

40. The Sudder Court shall have power to make and issue general RULES for regulating the practice and proceedings of that court and the courts subordinate to it, and also to frame forms for every proceeding in the said courts for which it shall think necessary that a form be provided, for keeping all books, entries, and accounts to be kept by the Officers, and for the preparation and submission of any
statements to be prepared and submitted by such courts, and from time
to time to alter any such rule or form, provided that such rules and
forms be not inconsistent with the provisions of this Act or of any other
law in force. Any rules framed under this Section shall be published
in the Official Gazette.

41. The word "PLEADER" as used in this Act shall include the
words "Counsel" and "Advocate."

42. Act VIII. of 1859 shall be called the Code of Civil Procedure.

44. This Act shall be read and taken as part of Act VIII. of 1859.

Act No. IX. of 1863.

An Act to amend the Code of Civil Procedure.

Whereas the Code of Civil Procedure requires that appeals from
decisions or orders to the Sudder Court shall ordinarily be heard and
determined by two or more Judges of the said Court; and whereas in
the Territories, not subject to the general Regulations, the highest Ci-
vil Courts of Appeal, which are declared by Section 386 of Act
VIII. of 1859 to be included in the expression "Sudder Court" in any
part of the said Territories to which the said Code may be extended,
generally consists of only a single Judge, and it is expedient to make
provision for the powers to be exercised by such single Judge in hear-
ing appeals from decisions and orders, or in proceedings relating to any
other matter which may be brought before him it is enacted as
follows:

1. When in any part of the British Territories in India to which
the Code of Civil Procedure had been or shall be extended under the pro-
visions of Section 385 of the said Code, the HIGHEST CIVIL
COURT OF APPEAL consists of a SINGLE JUDGE, such Judge
shall have all the powers vested by such CODE in two or more Judges
of the Sudder Court:

2. NO ORDER PASSED BY or proceeding held before the
SINGLE JUDGE of any such highest Civil Court of Appeal, subse-
quent to the extension of the Code of Civil Procedure to such part of the
British Territories in India, SHALL BE DEEMED INVALID or be liable to be questioned on the ground that such order or proceeding
was passed by or held before a single Judge.

ACT No. VII. of 1866.

An Act to extend to the Court of Judicature of Prince of Wales' Island,
Singapore, and Malacca, Act XXIII, of 1840 (for executing within the local
limits of the jurisdiction of Her Majesty's Courts legal process issued by
Authorities in the Mofussil).

Whereas it is expedient to extend to the Court of Judicature of
Prince of Wales' Island, Singapore, and Malacca, the provisions of

Soc. 43. Repealed by Act 14 of 1870, See "Repealing Enactments" page 45.
Act XXIII, of 1840, (for executing within the local limits of the jurisdiction of her Majesty’s Courts legal process issued by Authorities in the Mofussil); It is enacted as follows:

1. The said Act XXIII of 1840 shall be read as if the words “SUPREME COURTS of Calcutta, Madras and Bombay,” INCLUDED the COURT OF JUDICATURE of Prince of Wales’ Island, Singapore, and Malacca: Provided that no writ, warrant, or other process shall be endorsed under the said Act by such Court so as to compel the attendance beyond the limits of its jurisdiction of any person living within such limits unless special grounds be proved to the satisfaction of the Judge of such Court to whom such endorsement shall be applied for in support of the application, which grounds shall be recorded in the endorsement of the writ, warrant, or other process.

2. Any SUMMONS or other process ISSUED TO COMMENCE A SUIT BY any HIGH COURT, may be served within the local jurisdiction of the said Court of Judicature of Prince of Wales’ Island, Singapore, and Malacca, if endorsed for service by a Judge of such Court of Judicature as hereinafter provided and any summons or other process issued to commence a suit or action by the same Court of Judicature may be served within the local jurisdiction of any High Court, if endorsed for service by a Judge of such High Court as hereinafter provided. The summons or other process intended for service shall be accompanied by a certificate annexed thereto signed by a Judge of the Court from which the same is issued, stating some special cause why such summons or other process should be served within the jurisdiction of the High Court or Court of Judicature, as the case may be, and application shall be made to a Judge of such Court, on production of such summons or other process, and of such certificate, prior to such service thereof. On such application being made, it shall be in the discretion of such Judge to require proof, by affidavit or otherwise, that it is proper to allow such service, and on hearing such proof such Judge shall either endorse the summons or other process for service, or shall endorse thereon the reason for not ordering the service thereof. If such summons or other process be not endorsed for service as aforesaid, it shall not be served under this Act. When endorsed for service it shall be served in the same manner as if it had originally issued out of the Court in which such endorsement is made.

ACT No. VII. of 1870.
The Court Fees’ Act, 1870.

CHAPTER 1.
Preliminary.

1. This Act may be called “The Court Fees’ Act, 1870:”

It extends to the whole of British India;
And it shall come into force on the first day of April 1870.

Act 7 of 1870 Sec. 2. Repealed by Act 14 of 1870, Sec. “Repealing Enactments” page 79.
CHAPTER II.

Fees in the High Courts and in the Courts of Small Causes at the Presidency Towns.

3. The fees payable for the time being to the clerks and officers (other than the sheriffs and attorneys) of the HIGH COURTS established by Letters Patent, by virtue of the power conferred by Statute twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four section fifteen,

or chargeable in each of such Courts under No. eleven of the first and Nos. seven, twelve, fourteen, sixteen, twenty, and twenty-one, of the second schedule to this Act annexed;

and the fees for the time being chargeable in the COURTS OF SMALL CAUSES AT THE PRESIDENCY TOWNS and their several offices;

shall be collected in manner hereinafter appearing.

4. No document of any of the kinds specified in the first or second schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited, or recorded in, or shall be received or furnished by, any of the said HIGH COURTS in any case coming before such Courts in the exercise of its EXTRAORDINARY ORIGINAL CIVIL JURISDICTION;

or in the exercise of its EXTRAORDINARY ORIGINAL CRIMINAL JURISDICTION;

or in the exercise of its jurisdiction as regards APPEALS FROM the judgment of two or more Judges of the said Court, or of a DIVISION COURT,

or in the exercise of its jurisdiction as regards APPEALS FROM the COURTS SUBJECT to its superintendence;

or in the exercise of its jurisdiction as a COURT OF REFER- ENCE or revision;

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

5. When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall when the difference arises in any of the said High Courts, be referred to the TAXING OFFICER, whose DECISION thereon shall be FI- NAL, EXCEPT WHEN the QUESTION IS, in his opinion, ONE OF GENERAL IMPORTANCE, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

When any such difference arises in any of the said Courts of SMALL CAUSES, the question shall be referred to the CLERK OF THE COURT, whose decision thereon shall be final except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the First Judge of such Court.
CHAPTER III.

Fees in other Courts and in Public Offices.

6. Except in the Courts hereinbefore mentioned, no document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited, or recorded in ANY COURT OF JUSTICE, OR shall be received or furnished by any PUBLIC OFFICER, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

7. The AMOUNT of fee PAYABLE under this Act in the suits next hereinafter mentioned shall be COMPUTED as FOLLOWS:—

i. In SUITS FOR MONEY (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically)—according to the amount claimed:

ii. In SUITS FOR maintenance and annuities or other SUMS PAYABLE PERIODICALLY—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year:

iii. In SUITS FOR MOVEABLE PROPERTY other than money, WHERE the subject-matter has a MARKET VALUE—according to such value at the date of presenting the plaint:

iv. In suits—

(a) For MOVEABLE PROPERTY where the subject matter has NO MARKET VALUE, as, for instance, in the case of documents relating to title,

(b) To enforce the right to share in any property on the ground that it is JOINT FAMILY PROPERTY,

(c) To obtain a DECLARATORY DECREE or order, where consequential relief is prayed,

(d) To obtain an INJUNCTION,

(e) FOR A RIGHT TO SOME BENEFIT (not herein otherwise provided for) to arise OUT OF LAND, and,

(f) FOR ACCOUNTS—according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought, and the provisions of the Code of Civil Procedure, section thirty-one, shall apply as if for the word 'claim' the words 'relief sought' were substituted.

V. In suits for the POSSESSION OF LAND, HOUSES, and GARDENS—according to the value of the subject-matter; and such value shall be deemed to be—

where the subject-matter is land, and—

(a) Where the land forms an entire estate or a definite share of an estate, paying annual revenue to Government,

or forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue,
and such revenue is PERMANENTLY SETTLED—
TEN TIMES the REVENUE so payable:
(b) where the land forms an entire estate, or a definite share of an
estate, paying annual revenue to Government, or forms part of such
estate and is recorded as aforesaid;
and such revenue is SETTLED BUT NOT PERMANENTLY—
FIVE TIMES THE REVENUE so payable:
(c) where the LAND pays no such revenue, or has been partially
EXEMPTED from such payment, or is charged with any fixed payment
in lieu of such revenue,
and nett profits have arisen from the land during the year next
before the date of presenting the plaint—
FIFTEEN TIMES such NETT PROFITS:
but where no such nett profits have arisen therefrom—the amount
at which the court shall estimate the land with reference to the value
of similar land in the neighbourhood:
(d) where the land forms part of an estate paying revenue to
Government, but is NOT A DEFINITE SHARE of such estate and is
not separately assessed as above-mentioned—the MARKET-VALUE
of the land:
Provided that in the territories subject to the Governor of BOM-
BAY in Council, the value of the land shall be deemed to be—
(1) where the land is held on a SETTLEMENT for a period NOT
EXCEEDING THIRTY YEARS and pays the full assessment to Go-
vernment, a sum equal to FIVE TIMES the SURVEY ASSESSMENT;
(2) where the land is held on a PERMANENT SETTLE-
MENT, or on a settlement for any period exceeding thirty years, and
pays the full assessment to Government,—a sum equal to TEN TIMES
THE SURVEY ASSESSMENT; and
(3) WHERE the whole or any part of the annual survey ASSESS-
MENT is REMITTED—a sum computed under paragraph (2) of this
proviso, as the case may be, in addition to ten times the assessment, or
the portion of assessment, to be remitted.
Explanation.—The word 'ESTATE' as used in this paragraph,
means any land subject to the payment of revenue, for which the pro-
ponent or a farmer or ryot shall have executed a separate engagement
to Government or which, in the absence of such engagement, shall have
been separately assessed with revenue.
(e) Where the subject-matter is a HOUSE or GARDEN— accord-
ing to the market-value of the house or garden.
vii. In suits to enforce a right of PRE-EMPTION—according to
the value (computed in accordance with paragraph v. of this section)
of the land, house, or garden in respect of which the right is claimed.
vii. In suits for the INTEREST OF an ASSIGNEE OF LAND
REVENUE—fifteen times his nett profits as such for the year next be-
fore the date of presenting the plaint:
viii. In suits TO SET ASIDE ATTACHMENT of land or revenue
—according to the amount for which the land or interest was attached.
Provided that, where such amount exceeds the value of the land
or interest the amount of fee shall be computed as if the suit were for
the possession of such land or interest;
ix. In suits against a mortgagee FOR the RECOVERY OF the
PROPERTY MORTGAGED, and in suits by a mortgagee TO FORE-
CLOSE the mortgage,
or, where the mortgage is made by conditional sale to have the sale declared absolute,—
according to the principal money expressed to be secured by the instrument of mortgage:

x. In suits FOR SPECIFIC PERFORMANCE—
(a) of a contract of SALE—according to the amount of the consideration:
(b) of a contract of MORTGAGE—according to the amount agreed to be secured:
(c) of a contract of LEASE—according to the aggregate amount of the purchase or premium (if any) and of the rent agreed to be paid during the first year of the term:
(d) of an AWARD—according to the amount or value of the property in dispute:

xi. In the following suits BETWEEN LANDLORD AND TENANT:—
(a) for the delivery by a tenant of the counterpart of a lease,
(b) to enhance the rent of a tenant having a right of occupancy,
(c) for the delivery by a landlord of a lease,
(d) to contest a notice of ejectment,
(e) to recover the occupancy of land from which a tenant has been illegally ejected by the landlord, and
(f) for an abatement of rent—
according to the amount of the rent of the land to which the suit refers, payable for the year next before the date of presenting the plaint.

8. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the ACQUISITION OF LAND FOR PUBLIC PURPOSES, shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

9. If the Court sees reason to think that the annual NETT PROFITS OR the MARKET-VALUE of any such land, house, or garden as is mentioned in section seven, paragraphs five or six, have or has been wrongly estimated, the Court may for the purpose of computing the fee payable in any suit therein mentioned, issue a COMMISSION to any proper person directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

10. i. IF in the result of any such investigation the Court finds that the nett profits or market-value have or has been WRONGLY ESTIMATED, the Court, if the estimation has been excessive, may in its discretion REFUND the excess paid as such fee: but if the estimation has been insufficient, the Court shall require the plaintiff to pay so much ADDITIONAL FEE as would have been payable had the said market-value or nett profits been rightly estimated.

ii. In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix the suit shall be dismissed.

iii. Section one hundred and eighty of the Code of Civil Procedure shall be construed as if the words "the market-value of any property or" were inserted after the word "ascertaining," and as if the words "or annual nett profits" were inserted after the word "damage."
11. In suits FOR MESNE PROFITS or for immoveable property and mesne profits, OR FOR AN ACCOUNT IF the profits or AMOUNT DECREED are or IS IN EXCESS OF the PROFITS CLAIMED or the amount at which the plaintiff valued the relief sought the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

12. i. Every question relating to valuation for the purpose of determining the AMOUNT OF any FEE chargeable under this chapter on a plaint or memorandum of appeal, SHALL BE DECIDED BY the COURT in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

ii. But whenever any such suit comes before a Court of APPEAL, reference, or revision, if such Court considers that the said question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided and the provisions of section ten, paragraph ii, shall apply.

13. If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a SUIT IS REMANDED in appeal, on any of the grounds mentioned in section three hundred and fifty-one of the same Code, for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:

Provided that, if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

14. Where an APPLICATION FOR a REVIEW of judgment is presented on or AFTER the NINETYFIFTH DAY from the date of the decree, the Court, unless the delay was caused by the applicant’s laches, may, in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

15. Where an application for a REVIEW of judgment is ADMITTED, AND where, on the rehearing, the COURT REVERSES or modifies ITS former DECISION on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee
paid on the plaintiff or memorandum of appeal as exceeds the fee payable on any other application to such Court under the second schedule to this Act, No. 1, clause (b) or clause (d).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to FRESH EVIDENCE which might have been produced at the original hearing.

16. When any appeal is presented to a Civil Court, not against the whole of a decision, but only against so much thereof as relates to a portion of the subject matter of the suit, and, on the hearing of such appeal, the RESPONDENT TAKES, under section three hundred and forty-eight of the Code of Civil Procedure, AN OBJECTION TO ANY part of the said DECISION OTHER THAN the PART APPEALED against, the Court shall not hear such objection until the respondent shall have paid the additional fee which would have been payable had the appeal comprised the part of the decision so objected to.

17. Where a SUIT EMBRACES TWO OR MORE DISTINCT SUBJECTS, the plaintiff or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaintiffs, or memorandums of appeal in suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, section nine.

18. When the first or only EXAMINATION of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence for which police officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is REDUCED TO WRITING UNDER the provisions of the CODE OF CRIMINAL PROCEDURE, the complainant shall pay a FEE OF EIGHT ANNAS, unless the Court thinks fit to remit such payment.

19. NOTHING contained IN this ACT shall RENDER the FOLLOWING DOCUMENTS CHARGEABLE with any fee:—

i. Power of attorney to institute or defend a suit when executed by an officer, warrant-officer, non-commissioned officer or private of Her Majesty's Army not in civil employment.

ii. Declarations mentioned in section one hundred and eighteen and section one hundred and sixty-four of the Code of Civil Procedure.

iii. Written statements called for by the Court after the first hearing of a suit.

iv. Plaintiff presented to a Military Court of Requests and petition for execution of a decree of such Court.

v. Plaints in suits tried by Village Munsifs in the Presidency of Fort St. George.

vi. Plaints and processes in suits before District Panchayats in the same Presidency.

vii. Plaints in suits before Collectors under Madras Regulation XII. of 1816.

viii. Probate of a will, letters of administration, and certificate mentioned in the first schedule to this Act annexed, No. 12, where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one thousand rupees.
ix. Application or petition to a Collector or other officer making a settlement of land revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land, or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.

x. Application relating to a supply for irrigation of water belonging to Government.

xi. Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land-revenue by a person holding under direct engagement with Government land of which the revenue is settled, but not permanently.

xii. Application for service of notice of relinquishment of land or of enhancement of rent.

xiii. Written authority to an agent to distrain.

xiv. First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document, or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.

xv. Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.

xvi. Petition, application, charge, or information respecting any offence, when presented, made, or laid to or before a Police officer, or to or before the heads of villages or the village Police, in the territories respectively subject to the Governors in Council of Madras and Bombay.

xvii. Petition by a prisoner, or other person in dures or under restraint of any Court or its officers.

xviii. Complaint of a public servant (as defined in the Indian Penal Code) a municipal officer or an officer or servant of a Railway Company.

xix. Application for permission to cut timber in Government forests, or otherwise relating to such forests.

xx. Application for the payment of money due by Government to the applicant.

xxi. Petition of appeal against the chaukidari assessment under Act No. XX. of 1855, or against any municipal tax.

xxii. Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes.

xxiii. Petitions presented to the special Commissioner appointed under Bengal Act No. II. of 1809 (to ascertain, and record certain tenures in Chota Nagpore.)

xxiv. Petitions under the fourteenth and fifteenth of Victoria, chapter forty (An Act for Marriages in India), section five, or under Act No. V. of 1852, section nine.

CHAPTER IV.

Process Fees.

20. The High Court shall, as soon as may be, make rules as to the following matters:—

i. the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil and Revenue Courts established within the local limits of such jurisdiction;
ii. the fees chargeable for serving and executing processes issued
by the Criminal Courts established within such limits in the case of
of
ences other than offences for which police officers may arrest without a
warrant; and
iii. the remuneration of the peons and all other persons employed
by leave of a Court in the service or execution of processes.

The High Court may from time to time alter and add to the rules
so made.

All such rules, alterations, and additions shall after being con-

confirmed by the Local Government, and sanctioned by the Governor Ge-

eral of India in Council, be published in the local official Gazette, and

shall thereupon have the force of law.

Until such rules shall be so made and published, the fees now levi-
able for serving and executing processes shall continue to be levied,
and shall be deemed to be fees leviable under this Act.

21. A Table in the English and Vernacular languages, showing
the fee chargeable for such service and execution, shall be exposed to
view in a conspicuous part of each Court.

22. Subject to rules to be made by the High Court, and approved
by the Local Government and the Governor General of India in
Council,

every District Judge and every Magistrate of a District shall fix,
and may from time to time alter, the number of peons necessary to be
employed for the service and execution of processes issued out of his
Court and each of the Courts subordinate thereto,

and for the purposes of this section, every Court of Small Causes
established under Act No. XI. of 1865 (to consolidate and amend the
law relating to Courts of Small Cause beyond the local limits of the ordi-
nary original civil jurisdiction of the High Courts of of Judicature) shall
be deemed to be subordinate to the Court of the District Judge.

23. Subject to rules to be framed by the Chief Controlling Reven-
ue Authority, and approved by the local Government and the Gover-
nor General of India in Council, every officer performing the functions
of a Collector of a District shall fix, and may from time to time alter,
the number of peons necessary to be employed for the service and ex-
ecution of processes issued out of his Court or the Courts subordinate
to him.

24. Every process served or executed under this chapter shall be
held to be a process within the meaning of section one hundred and
eighty-eight of the Code of Civil Procedure, and of section two of Act
No. XXIII. of 1861 (to amend Act VIII. of 1858.)

CHAPTER V,
Of the mode of Levying Fees.

25. All fees referred to in section three or chargeable under this
Act shall be collected by stamps.

26. The stamps used to denote any fee chargeable under this Act
shall be impressed, or adhesive, or partly impressed and partly adhe-
sive, as the Governor General of India in Council may, by notification
in the Gazette of India, from time to time direct.
27. The Local Government may, from time to time, make rules for regulating—
   (a) the supply of stamps to be used under this Act.
   (b) the number of stamps to be used for denoting any fee charge-
       able under this Act.
   (c) the renewal of damaged or spoiled stamps, and
   (d) the keeping accounts of all stamps used under this Act:

Provided that, in the case of stamps used under section three in a
High Court, such rules shall be made with the concurrence of the Chief
Justice of such Court.

All such rules shall be published in the local official Gazette, and
shall thereupon have the force of law.

28. No document which ought to bear a stamp under this Act
    shall be of any validity, unless and until it is properly stamped;
    but if any such document is through mistake or inadvertence re-
    ceived, filed, or used in any Court or office without being properly stam-
    ped, the presiding Judge or the head of the office, as the case may be,
    or, in the case of a High Court, any Judge of such Court, may, if he
    thinks fit, order that such document be stamped as he may direct; and
    on such document being stamped accordingly the same and every pro-
    ceeding relative thereto shall be as valid as if it had been properly
    stamped in the first instance.

29. Where any such DOCUMENT is AMENDED in order merely
to correct a mistake and to make it conform to the original intention of
the parties, it shall not be necessary to impose a fresh stamp.

30. No document requiring a stamp under this Act shall be filed
    or acted upon in any proceeding in any Court or office until the STAMP
    has been CANCELLED.

    Such officer as the Court or the head of the office may from time to
time appoint shall, on receiving any such document, forthwith effect
such cancellation by punching out the figure-head so as to leave the
amount designated on the stamp untouched, and the part removed by
punching shall be burnt or otherwise destroyed.

CHAPTER VI.

Miscellaneous.

31. i. Whenever an application or petition containing a complaint
    or charge of an offence, other than an offence for which Police officers
    may arrest without warrant, is presented to a Criminal Court, the Court,
    if it convict the accused person, shall, in addition to the penalty imposed
    upon him, order him to REPAY to the COMPLAINANT the FEE
    PAID ON such APPLICATION or petition.

   ii. In the case mentioned in section eighteen, the Court, if it con-
    vict the accused person, shall, in addition to the penalty imposed upon
    him, order him to repay to the complainant the fee, if any, paid by the
    latter for the examination.

   iii. When the complainant has paid fees for serving processes in
    either of the cases mentioned in the first and second paragraphs of this
    section, the Court, if it convict the accused person, shall, in addition
to the penalty imposed upon him, order him to repay such fees to the complainant.

iv. All fees ordered to be repaid under this section may be recovered as if they were fines imposed by the Court:

32. The Code of Civil Procedure, sections three hundred and eight and three hundred and nine, shall be read as if, for the words 'stamp-duty' and 'stamps' the words and figures 'fees chargeable under the Court Fees' Act, 1870,' were substituted; section three hundred and seventy-one of the same Code shall be read as if, for the words 'a stamp of the value' the words 'the payment of the fee' were substituted; and section three hundred and seventy-three of the same Code shall be read as if, for the words 'on a stamp paper of the value,' the words 'and shall be chargeable with the fee' were substituted: and as if, for the words 'for the stampe,' the words 'the fees were substituted.

33. Whenever the FILING or exhibition IN a CRIMINAL COURT OF DOCUMENT in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in section four or section six shall be deemed to prohibit such filing or exhibition.

34. In the General Stamp Act, 1869, section forty-eight shall be read as if for the words and figures 'Act No. XXVI. of 1867 (to amend the law relating to Stamp Duties),' the words and figures 'The Court Fees' Act, 1870,' were substituted.

35. The GOVERNOR GENERAL of India in Council MAY from time to time, by notification in the Gazette of India, REDUCE or REMIT in the whole or in any part of British India all or any of the FEES mentioned in the first and second schedules to this Act annexed, and may in like manner cancel or vary such order.

36. Nothing in Chapters II. and V. of this Act applies to the commission payable to the Accountant General of the High Court at Fort William, or to the FEES which any OFFICER OF a HIGH COURT is allowed to receive in addition to a fixed salary.

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Sec. 32. The remainder of this Section was repealed by Act 18 of 1870, See "Repealing Enactments" page 77.
SCHEDULE I.

Ad valorem Fees.

1. Plaintiff or memorandum of appeal (not otherwise provided for in this Act), presented to any Civil or Revenue Court, except those mentioned in section three.

When the amount or value of the subject-matter in dispute does not exceed five rupees. Six annas.
When such amount or value exceeds five rupees, for every five rupees or part thereof, in excess of five rupees, up to one hundred rupees. Six annas.
When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees. Twelve annas.
When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees up to five thousand rupees. Five rupees.
When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees. Ten rupees.
When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees. Fifteen rupees.
When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees. Twenty rupees.
When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees. Twenty rupees.
When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees. Twenty-five rupees.

Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees.

2. Plaintiff or memorandum of appeal in a suit for possession under Act No. XIV. of 1859 (to provide for the limitation of suits), section fifteen. A fee of one-half the amount prescribed in the foregoing scale.

4. Application for review of judgment if presented on or after the ninetieth day from the date of the decree. The fee leviable on the plaint or memorandum of appeal.

5. Application for review of judgment if presented before the ninetieth day from the date of the decree. One-half of the fee leviable on the plaint or memorandum of appeal.

6. Copy or translation of a judgment or order not being, or having the force of a decree.
SCHEDULE 1.—Continued.

When such judgment or order is passed by any Civil Court other than a High Court or by the presiding officer of any Revenue Court or Office, or by any other Judicial or Executive Authority,—
(a) If the amount or value of the subject-matter is fifty or less than fifty rupees. Four annas.
(b) If such amount or value exceeds fifty rupees. Eight annas.

When such judgment or order is passed by a High Court. One Rupee.

7. Copy of a decree or order having the force of a decree. When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court,—
(a) If the amount or value of the subject matter of the suit where in such decree or order is made is fifty or less than fifty rupees. Eight annas.
(b) If such amount or value exceeds fifty rupees. One rupee

When such decree or order is made by a High Court, Four rupees.

8. Copy of any document liable to stamp-duty under the General Stamp Act, 1869, when left by any party to a suit or proceeding in place of the original withdrawn.
(a) When the stamp-duty chargeable on the original does not exceed eight annas, The amount of the duty chargeable on the original.
(b) In any other case, Eight annas.

9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like taken out of any Civil or Criminal or Revenue Court or Office or from the Office of any chief officer charged with the executive administration of a division.

For every three hundred and sixty words or fraction of three hundred and sixty words, Eight annas.

10. Certificate of administration granted under Act No. XL. of 1858 (for making better provision for the care of the persons and property of minors in the presidency of Fort William in Bengal), or under Act No. XX. of 1864 (for making better provision for the care of the persons and property of minors in the Presidency of Bombay).

If the amount or value of the property in respect to which such certificate is granted does not exceed five hundred rupees, Five rupees.
If such amount or value exceeds five hundred rupees but not one thousand rupees, Ten rupees.
And for every one thousand rupees, or part thereof, in excess of one thousand rupees, Five rupees.

11. Probate of a will or letters of administration with or without will annexed.

12. Certificate granted under Act No. XXVII. of 1860, (for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons), or under Bombay Regulation VIII. of 1827 (to provide for the formal recognition of Heirs, Executors, and Administrators, and for the appointment of Administrators and Managers of Property by the Courts).
SCHEDULE I.—Continued.

If the amount or value of the property in respect of which the probate or letters or certificates shall be granted exceeds one thousand rupees. Two percentum on such amount or value.

Note.—The person to whom any such certificate is granted, or his representative, shall after the expiration of twelve months from the date of such certificate and thereafter whenever the Court granting such certificate requires him so to do, file a statement on oath of all moneys recovered or realised by him under such certificate. If the moneys so recovered or realised exceed the amount of debts or other property as sworn to by the person to whom the certificate is granted the Court may cancel the same, and order such person to take out a fresh certificate and pay the fee prescribed by this schedule for such excess.

In default of filing such statement within the time allowed, the Court may cancel the certificate.

Table of Rates of ad valorem Fees leviable on the institution of Suits.

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When the amount or value of the subject matter exceeds 4,10,000.
Ruppes 3000.

The above table is constructed on the principles laid down in Section 1 of this Schedule.
SCHEDULE II.

Fixed Fees.

1. Application or petition.

(a) When presented to any officer of the Customs or Excise Department, or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings. One anna;

or when presented to any officer of Land Revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement. One anna;

or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement. One anna;

or when presented to any Civil Court other than a principal Civil Court of original jurisdiction, or to any Cantonment Magistrate sitting as a Court of Civil Jurisdiction under Act No. III, of 1859, or to any Court of Small Causes constituted under Act No. XI. of 1865, or under Act No. XVI. of 1866, section 20, or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees; One anna.

or when presented to any Civil, Criminal, or Revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any Judgment, decree or order passed by such Court Board, or officer, or of any other document on record in such Court or Office. One anna.

(b) When containing a complaint or charge of any offence other than an offence for which Police officers may, under the Criminal Procedure Code, arrest without warrant, and presented to any Criminal Court. Eight annas;

or when presented to a Civil, Criminal, or Revenue Court, or to a Collector, or any revenue officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act. Eight annas;

or to deposit in Court revenue or rent. Eight annas;

or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant. Eight annas.

(c) When presented to a Chief Commissioner or other chief controlling revenue or executive authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a Division and not otherwise provided for by this Act. One rupee.

(d) When presented to a High Court. Two rupees.

2. Application for leave to sue as a pauper. Eight annas.

3. Application for leave to appeal as a pauper.

(a) When presented to a District Court. One rupee.

(b) When presented to a Commissioner or a High Court. Two rupees.
SCHEDULE II.—Continued.

4. Plaint or memorandum of appeal in a suit to obtain possession under Act No. XVI. of 1838, or Bombay Act No. V. of 1864 (to give Mamlüßars' Courts jurisdiction in certain cases to maintain existing possession, or to restore possession to any party dispossessed otherwise than by course of law) Eight annas.

5. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy, Eight annas.

6. Bail-bond or other instrument of obligation not otherwise provided for by this Act, when given by the direction of any court or executive authority, Eight annas.

7. Undertaking under section forty-nine of the Indian Divorce Act, Eight annas.


10. Mukhtarnama or Wakalatnama. When presented for the conduct of any one case—
(a)—to any Civil or criminal Court other than a High Court, or to any Revenue Court, or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (b) and (c) of this Number. Eight annas.
(b)—to a Commissioner of Revenue, Circuit, or customs, or to any officer charged with the executive administration of a division, not being the chief revenue or executive authority, One rupee.
(c)—to a High Court, Chief Commissioner, Board of Revenue, or other controlling revenue or executive authority, Two rupees.

11. Memorandum of appeal when the appeal is not from an order rejecting a plaint or from a decree or an order having the force of a decree, and is presented—
(a)—to any Civil Court other than a High Court, or to any Revenue Court or executive officer other than the High Court or chief controlling revenue or executive authority, Eight annas.
(b)—to a High Court or Chief Commissioner, or other chief controlling executive or revenue authority, Two rupees.


13. Application under Act No. X. of 1859, section twenty-six, or Bengal Act No. VI. of 1862, section nine, or Bengal Act No. VIII. of 1869, section 37, Five Rupees.

14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866, Five Rupees.

Schedule II Clause 9. The words "Section 21" in this clause were repealed by Act 16 of 1870, See "Repealing Enactments" page 77.
ACT 7 OF 1870.  CIVIL PROCEDURE CODE.

SCHEDULE II.—Concluded.

15. Plaintiff or memorandum of appeal in a suit to obtain possession of a wife, Five rupees.


17. Plaintiff or memorandum of appeal in each of the following suits:—Ten Rupees.
   i. to alter or set aside a summary decision or order of any of the
      Civil Courts not established by Letters Patent or of any Revenue Court:
   ii. to alter or cancel any entry in a register of the names of proprietors
       of revenue-paying estates;
   iii. to obtain a declaratory decree where no consequential relief is
       prayed:
   iv. to set aside an award;
   v. to set aside an adoption.
   vi. every other suit where it is not possible to estimate at a money-
       value the subject-matter in dispute, and which is not otherwise provided
       for by this Act.

18. Application under section three hundred and twenty-six of the

19. Agreement under section three hundred and twenty-eight of the
    same Code. Ten rupees.

20. Every petition under the Indian Divorce Act except petitions
    under section forty-four of the same Act, and every memorandum of appeal
    under section fifty-five of the same Act. Twenty Rupees.

21. Plaintiff or memorandum of appeal under the Parsi Marriage and
    Divorce Act, 1865. Twenty-rupees.

ACT No. XX. of 1870.

An Act to correct two clerical errors in the Court Fees' Act, 1870.

For the purpose of correcting two clerical errors in the Court Fees' Act, 1870; It is hereby enacted as follows:

1. Section 15 of the said Act shall be read as if, for the words
   "plaint or memorandum of appeal," the word "application" were sub-
   stituted; and in Schedule I to the said Act annexed, No. 2 shall be read
   as if the words "or memorandum of appeal" were omitted therefrom.

ACT No. I. of 1872.

THE INDIAN EVIDENCE ACT.

PART I.

Relevancy of Facts.

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<th>Chapter I.—Preliminary</th>
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Schedule III. Repealed by Act 14 of 1870, See "Repealing Enactments" page 78.
PART II.
On Proof.
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Chapter IV.—Oral Evidence 59
Chapter V.—Of documentary Evidence 61
Public documents 74
Presumptions as to documents 79
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PART III.
Production and Effect of Evidence.
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Chapter IX.—Of Witnesses 118
Chapter X.—Of the Examination of Witnesses 135
Chapter XI.—Of improper Admission & Rejection of Evidence 167

1. This ACT may be CALLED "The Indian Evidence Act, 1872."
   It EXTENDS TO the whole of British India, and applies to all
   judicial proceedings in or before any Court, including Courts Martial
   but not to affidavits presented to any Court or Officer, nor to proceed-
   ings before an arbitrator.
   and it shall COME INTO FORCE on the first day of September
   1872:

3. In this Act the following words and expressions are used in the
   following senses, unless a contrary intention appears from the con-
   text:—
   "COURT" includes all Judges and Magistrates, and all persons, ex-
   cept arbitrators, legally authorised to take evidence.
   "FACT" means and includes—
   (1) any thing, state of things, or relation of things capable of
   being perceived by the senses;
   (2) any mental condition of which any person is conscious.

Illustrations.
(a) That there are certain objects arranged in a certain order in a certain place, is a fact.
(b) That a man heard or saw something is a fact.
(c) That a man said certain words is a fact.
(d) That a man holds a certain opinion, has a certain intention, acts in good faith, or
    fraudulently, or uses a particular word in a particular sense, or is or was at a specified time
    conscious of a particular sensation, is a fact.
(e) That a man has a certain reputation is a fact.

One fact is said to be RELEVANT to another when the one is con-
ected with the other in any of the ways referred to in the provisions of
this Act relating to the relevancy of facts.

The expression "FACTS IN ISSUE" means and includes—
any 'fact from which, either by itself or in connection with other
facts the existence, nonexistence, nature, or extent of any right, liability
or disability, asserted or denied in any suit or proceeding, necessarily
follows.

Act 1 of 1872 Sec. 2. This Section & the Schedule will be found in the "Repea-
ring Enactments" of 1872.
Explanation.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue, is a fact in issue.

Illustrations.

A is accused of the murder of B. 
At his trial the following facts may be in issue:—
That A caused B's death;
That A intended to cause B's death;
That A had received grave and sudden provocation from B;
That A at the time of doing the act which caused B's death, was by reason of unsoundness of mind, incapable of knowing its nature.

"DOCUMENT" means any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations.

A writing is a document,
Words printed, lithographed or photographed are documents.
A map or plan is a document.
An inscription on a metal or plate or stone is a document.
A caricature is a document.

"EVIDENCE" means and includes—
(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;
such statements are called ORAL EVIDENCE;
(2) all documents produced for the inspection of the Court;
such documents are called DOCUMENTARY EVIDENCE.

A fact is said to be PROVED when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

A fact is said to be DISPROVED when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

A fact is said NOT to be PROVED when it is neither proved nor disproved.

4. Whenever it is provided by this Act that the Court MAY PRESUME a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

Whenever it is directed by this Act that the Court SHALL PRESUME a fact, it shall regard such fact as proved, unless and until it is disproved.

When one fact is declared by this Act to be CONCLUSIVE PROOF of another, the Court shall on proof of the one fact regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

5. EVIDENCE MAY BE GIVEN in any suit or proceeding of the existence or non-existence OF every FACT IN ISSUE AND of such other facts as are hereinafter declared to be RELEVANT, AND of NO OTHERS.
Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations.

(a) A is tried for the murder of B by beating him with a club with the intention of causing his death.
At A's trial the following facts are in issue—
A's beating B with the club;
A's causing B's death by such beating;
A's intention to cause B's death.

(b) A suitor does not bring with him and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

6. FACTS which, though not in issue, are SO CONNECTED with a fact in issue AS TO FORM PART OF the same TRANSACTION, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations.

(a.) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b.) A is accused of waging war against the Queen by taking part in an armed insurrection, property is destroyed, troops are attacked, and gallows broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(c.) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the object out of which the libel arose, and forming part of the correspondence in which it is contained are relevant facts, though they do not contain the libel itself.

(d.) The question is whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

7. Facts which are the OCCASION, CAUSE, OR EFFECT, immediate or otherwise, OF RELEVANT FACTS, OR FACTS IN ISSUE, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations.

(a.) The question is, whether A robbed B.
The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it, to third persons, are relevant.

(b.) The question is whether A murdered B.
Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(c.) The question is, whether A poisoned B.
The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

8. Any fact is relevant which shows or constitutes a MOTIVE or PREPARATION FOR any fact in issue or relevant fact.
The CONDUCT OF any PARTY, or of any agent to any party, to any suit or proceeding in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.
Explanation 1.—The word "CONDUCT" in this section does not include statements, unless those statements accompany and explain acts other than statements: but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations.

(a.) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b.) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(c.) A is tried for the murder of B by poison.

The fact that before the death of B, A procured poison similar to that which was administered to B is relevant.

(d.) The question is whether a certain document is the will of A.

The facts that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate, that he consulted vails in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(e.) A is accused of a crime.

The facts that either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f.) The question is whether A robbed B.

The facts that, after B was robbed, C said in A's presence——the police are coming to look for the man who robbed B,——and that immediately afterwards A ran away, are relevant.

(g.) The question is, whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing——I advise you not to trust A, for he owes to B 10,000 rupees,—and that A went away without making any answer, are relevant facts.

(h.) The question is, whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(i.) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j.) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which and the terms in which the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant as a dying declaration under section 32 (one), or as corroborative evidence under section 157.

(k.) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed without making any complaint is not relevant as conduct under this section, though it may be relevant as a dying declaration under section 32, clause (one), or as corroborative evidence under section 157.

9. FACTS NECESSARY to EXPLAIN or introduce a fact in issue or RELEVANT FACT, or which support or rebut an inference suggested by a fact in issue or relevant fact or which establish the identity of any thing or person whose identity is relevant, or fix the time or
place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant insofar as they are necessary for that purpose.

Illustrations.

(a.) The question is whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(b.) A sues B for a libel imputing disgraceful conduct to A, B affirms that the matter alleged to be libellous is true.

The position and relation of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c.) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his home, is relevant, under section 5, as conduct subsequent to and affected by facts in issue.

The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(d.) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A: "I am leaving you because B has made me a better offer."

This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(e.) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says, as he delivers it, "A says you are to hide this," B's statement is relevant as explanatory of the nature of the transaction.

(f.) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

10. WHERE there is reasonable ground to believe that two or more PERSONS HAVE CONSPIRED together to commit an offence or an actionable wrong, ANY THING said, done or written by any one of such persons IN REFERENCE TO THEIR COMMON INTENTION, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration.

(a.) Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Calcutta the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the person by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

11. FACTS NOT OTHERWISE RELEVANT are relevant—

(1) if they are inconsistent with any fact in issue or relevant fact:

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations.

(a.) The question is, whether A committed a crime at Calcutta on a certain day.

The fact that on that day A was at Lahore is relevant.
The fact that near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C, or D. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either B, C, or D, is relevant.

12. In suits in which damages are claimed, any fact which will enable the Court to determine the AMOUNT OF DAMAGES which ought to be awarded is relevant.

13. Where the question is as to the EXISTENCE OF any RIGHT OR CUSTOM, the following facts are relevant:

(a) Any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence.

(b) Particular instances in which the right or custom was claimed recognized, or exercised, or in which its exercise was disputed, asserted, or departed from.

Illustrations.

The question is, whether A has a right to a fishery. A deed conveying the fishery on A's ancestors, a mortgese of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgese, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

14. Facts showing the existence of any STATE OF MIND—such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling—are relevant, when the existence of any such state of mind or body or bodily feeling, is in issue or relevant.

Explanation.—A fact relevant as showing the existence of a relevant state of mind must show that it exists, not generally, but in reference to the particular matter in question.

Illustrations.

(a) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that at the same time he was in possession of many other stolen articles is relevant as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(b) A is accused of fraudulently delivering to another person a piece of a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin, is relevant.

(c) A sues B for damage done by a dog of B's, which B knew to be ferocious.

The facts that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.

(d) The question is whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant, as showing that A knew that the payee was a fictitious person.

(e) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The fact that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.
(c.) A sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(i.) A is sued by B for the price of work done by B, upon a house of which A is owner by the order of C, a contractor, A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question so that C was in a position to contract with B on D's own account, and not as agent for A.

(a.) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(i.) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

(j.) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(k.) The question is, whether A has been guilty of cruelty towards B, his wife, Expressions of their feeling towards each other shortly before or after the alleged cruelty, are relevant facts.

(t.) The question is, whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms, are relevant facts.

(m.) The question is, what was the state of A's health at the time when an assurance on his life was affected.

Statements made by A as to the state of his health at or near the time in question, are relevant facts.

(n.) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage, is relevant.

The fact that B was habitually negligent about the carriages which he let to hire, is irrelevant.

(o.) A is tried for the murder of B by intentionally shooting him dead.

The fact that A, on other occasions, shot at B is relevant, as showing his intention to shoot B.

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that A was in the habit of shooting at people with intent to murder them, is irrelevant.

(p.) A is tried for a crime.

The fact that he said something indicating a general disposition to commit crimes of that class, is irrelevant.

15. When there is a question whether an act was accidental or intentional, the fact that such act formed part of a SERIES OF SIMILAR OCCURRENCES, in each of which the person doing the act was concerned, is relevant.

Illustrations

(a.) A is accused of burning down his house in order to obtain money for which it is insured.

The fact that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(b.) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amount received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.
The question is, whether this false entry was accidental or intentional.

The fact that other entries made by A in the same book are false and that the false entry is in each case in favour of A are relevant.

(c) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to A was not accidental.

16. When there is a question whether a particular act was done, the existence of any COURSE OF BUSINESS, according to which it naturally would have been done, is a relevant fact.

Illustrations.

(a) The question is, whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that the particular letter was put in that place, are relevant.

(b) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office are relevant.

17. An ADMISSION is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances, hereinafter mentioned.

18. STATEMENTS made BY a PARTY to the proceeding, OR by an AGENT to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

Statements made BY PARTIES to suits suing or SUED IN a REPRESENTATIVE CHARACTER are not admissions, unless they were made while the party making them held that character.

Statements made BY—

(1) PERSONS WHO HAVE any proprietary or pecuniary INTEREST in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

(2) PERSONS FROM WHOM the PARTIES to the suit have DERIVED their INTEREST in the subject-matter of the suit, are admissions if they are made during the continuance of the interest of the persons making the statements.

19. Statements made BY PERSONS WHOSE POSITION or liability IT IS NECESSARY TO PROVE AS AGAINST any PARTY TO the SUIT, are admissions if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Illustration.

A undertakes to collect rents for B.

B says A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

20. Statements made BY PERSONS TO WHOM a PARTY to the suit HAS EXPRESSLY REFERRED for information in reference to a matter in dispute are admissions.
Illustration.
The question is, whether a horse sold by A to B is sound.
A says to B—'Go and ask C, C knows all about it.' C's statement is an admission.

21. ADMISSIONS are RELEVANT and may be proved as AGAINST THE PERSON WHO MAKES THEM, OR his REPRESENTATIVE in interest: but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:

(1) An admission may be proved by or on behalf of the person making it when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section thirty two,

(2) An admission may be proved by or on behalf of the person making it when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable,

(3) An admission may be proved by or on behalf of the person making it if it is relevant otherwise than as an admission.

Illustrations.
(a) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.
A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine nor can B prove a statement by himself that the deed is forged.

(b) A, the Captain of a ship is tried for casting her away.
A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day and indicating that the ship was not taken out of her proper course. A may prove these statements because they would be admissible between third parties if he were dead under section 32 clause (two).

(c) A is accused of a crime committed by him at Calcutta.
He produces a letter written by himself and dated at Lahore on that day and bearing the Lahore post mark of that day.
The statement in the date of the letter is admissible, because, if A were dead it would be admissible under section 32, clause (one).

(d) A is accused of receiving stolen goods knowing them to be stolen.
He offers to prove that he refused to sell them below their value.
A may prove these statements, though they are admissions because they are explanatory of conduct induced by facts in issue,

(e) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.
He offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.
A may prove these facts for the reason stated in the last preceding illustration.

22. ORAL ADMISSIONS AS TO THE CONTENTS OF A DOCUMENT are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules herinafter contained, or unless the genuineness of a document produced is in question.

23. In civil cases no ADMISSION is relevant, if it is made either UPON an express CONDITION THAT EVIDENCE OF IT IS NOT TO BE GIVEN, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.
Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the CONFESSON appears to the Court to have been CAUSED BY any INDUCEMENT, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

23. No CONFESSON made to a POLICE OFFICER, shall be proved as against a person accused of any offence.

26. No CONFESSON made BY any PERSON whilst he is IN the CUSTODY of a Police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

27. Provided that, when any FACT is deposed to as DISCOVERED IN CONSEQUENCE OF INFORMATION received from a person accused of any offence, in the custody of a Police officer, so much of such information, whether it amounts to a confession or not as relates distinctly to the fact thereby discovered, may be proved.

28. If such a CONFESSON as is referred to in section twenty-four is made AFTER the impression caused by any such INDUCEMENT, threat, or promise has, in the opinion of the Court, been fully REMOVED, it is relevant.

29. If such a CONFESSON is otherwise relevant, it does not become irrelevant merely because it was made UNDER a PROMISE OF SECRECY, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

30. When more PERSONS than one are being TRIED jointly FOR the SAME OFFENCE, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

31. ADMISSIONS are NOT CONCLUSIVE PROOF of the matters admitted, but they may operate as ESTOPPELs under the provisions hereinafter contained.

Statements by persons who cannot be called as Witnesses.

32. STATEMENTS, written or verbal, of relevant facts made BY a PERSON who is DEAD, or who CANNOT BE FOUND, or who has become INCAPABLE of giving evidence, OR WHOSE ATTEN- DANCE CANNOT BE PROCURED without an amount of delay or
expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:—

(1.) When the statement is made by a person, AS TO THE CAUSE OF HIS DEATH, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2.) When the statement was made by such person IN THE ORDINARY COURSE OF BUSINESS, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him.

(3.) When the statement is AGAINST the pecuniary or proprietary INTEREST of the person making it, or when, if true it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

(4.) When the statement gives the OPINION of any such person, AS TO the existence of any PUBLIC RIGHT OR CUSTOM, or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

(5.) When the statement relates to the existence of any RELATIONSHIP between persons as to whose relationship the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(6.) When the statement relates to the existence of any relationship between persons deceased, and is MADE IN ANY WILL or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7.) When the statement is contained in any deed, will or other document which RELATES TO any such TRANSACTION as is MENTIONED IN SECTION THIRTEEN, clause (a).

(8.) When the statement was made BY A NUMBER OF PERSONS, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations

(a.) The question is, whether A was murdered by B; or
A dies of injuries received in a transaction in the course of which he was ravished. The question is whether she was ravished by B; or
The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.

(b.) The question is as to the date of A's birth.
An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother and delivered her of a son, is a relevant fact.

(c.) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business that, on a given day, the solicitor attended A at a place mentioned in Calcutta for the purpose of conferring with him upon specified business, is a relevant fact.

(d.) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm, by which she was chartered to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(e.) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

(f.) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime is relevant.

(g.) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day, is relevant.

(h.) The question is, what was the cause of the wreck of a ship.

A protest made by the captain, whose attendance cannot be procured, is a relevant fact.

(i.) The question is, whether a given road is a public way.

A statement by A, a deceased headman of the village that the road was public, is a relevant fact.

(j.) The question is, what was the price of grain on a certain day in a particular market.

A statement of the price, made by a deceased banya in the ordinary course of his business is a relevant fact.

(k.) The question is, whether A who is dead, was the father of B.

A statement by A that B was his son, is a relevant fact.

(l.) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(m.) The question is, whether, and when, A and B were married.

An entry in a memorandum book by C the deceased father of B, of his daughter's marriage with A at a given date, is a relevant fact.

(n.) A was B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

33. EVIDENCE GIVEN by a witness IN A JUDICIAL PROCEEDING, or before any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or enquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.
Statements made under special circumstances.

34. ENTRIES IN BOOKS OF ACCOUNT, regularly kept in the course of business, are relevant whenever they refer to a matter in which the Court has to enquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration-

A suit B for Rs. 1,000 and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient without other evidence to prove the debt.

35. An ENTRY IN any PUBLIC or other official BOOK, register, or record, stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact.

36. Statements of facts in issue or relevant facts, made in PUBLISHED MAPS or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans; are themselves relevant facts.

37. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any ACT of Parliament or in any Act of the Governor General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a NOTIFICATION OF the GOVERNMENT appearing in the Gazette of India, or in the Gazette of any Local Government, or in any printed paper purporting to be the London Gazette or the Government Gazette of any colony or possession of the Queen, is a relevant fact.

38. When the Court has to form an opinion as to a LAW OF ANY COUNTRY, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

How much of a Statement is to be proved.

39. WHEN any STATEMENT of which evidence is given FORMS PART OF a LONGER STATEMENT, or of a CONVERSATION or part of an isolated DOCUMENT, OR is contained in a document which forms part of a BOOK, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book, or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

Judgments of Courts of Justice when relevant.

40. The existence of any JUDGMENT, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit, or to hold such trial.
41. A final JUDGMENT order or decree of a competent Court, in the exercise of PROBATE, MATRIMONIAL, ADMIRALTY OR INSOLVENCY JURISDICTION, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character or to be entitled to any specific thing not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to such thing, is relevant.

Such judgment, order or decree is conclusive proof, that any legal character which it confers accrued at the time when such judgment, order or decree came into operation:

that any legal character to which it declares any such person to be entitled, accrued to that person at the time when such judgment declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment declared that it had ceased or should cease;

and that any thing to which it declares any person to be so entitled was the property of that person at the time from which such judgment declares that it had been or should be his property.

42. JUDGMENTS, orders or decrees other than those mentioned in section forty-one, are relevant if they relate to MATTERS OF a PUBLIC NATURE relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration.

A sues B for trespass on his land. It alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

43. JUDGMENTS, orders or decrees, OTHER THAN THOSE MENTIONED in sections forty forty-one and forty-two, are IRRELEVANT, unless the existence of such judgment, order or decree, is relevant under some other provision of this Act.

Illustrations.

(a) A and B separately sue C for a libel which reflects upon each of them. C in each case says, that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b) A prosecutes B for adultery with A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was B's wife.

The judgment against B is irrelevant as against C.

(c) A prosecutes B for stealing a cow from him. B is convicted.

A, afterwards, sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

44. Any party to a suit or other proceeding may show that any JUDGMENT, order or decree which is relevant under section forty-four, forty-one or forty-two and which has been proved by the adverse party, was delivered by a COURT NOT COMPETENT to deliver it, or was obtained BY FRAUD or COLLUSION.
Opinions of Third Persons when Relevant

43. When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting, the opinions upon that point of persons specially skilled in such foreign law, science or art, are relevant facts.

Such persons are called EXPERTS.

Illustrations

(a.) The question is, whether the death of A was caused by poison.
The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b.) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.
The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the act, which they do or of knowing that what they do is either wrong or contrary to law, are relevant.

(c.) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.
The opinions of experts on the question whether the two documents were written by the same person or by different persons are relevant.

46. FACTS, not otherwise relevant, are relevant if they SUPPORT OR are INCONSISTENT WITH the OPINIONS OF EXPERTS, when such opinions are relevant.

Illustrations.

(a.) The question is, whether A was poisoned by a certain poison.
The fact that other persons, who were poisoned by that poison exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b.) The question is, whether an obstruction to a harbour is caused by a certain sea wall.
The fact that other harbours similarly situated in other respects, but where there were no such sea walls, began to be obstructed at about the same time, is relevant.

47. When the Court has to form an opinion as to the persons by whom any document was written or signed, the opinion of any person acquainted with the HANDWRITING of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanaston.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person or when in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustrations.
The question is, whether a given letter is in the handwriting of A, a merchant in London.
B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.
The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant though neither B, C or D ever saw A write.

48. When the Court has to form an opinion as to the existence of any general custom or right, the OPINIONS, AS to the existence of such CUSTOM or right, of persons who would be likely to know of its existence if it existed, are relevant.
Explanation.—The expression ‘general customs or right’ includes customs or rights common to any considerable class of persons.

Illustration.
The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

49. When the Court has to form an opinion as to—
the USAGES and tenets of any body of men or family,
the CONSTITUTION and government OF any RELIGIOUS or charitable FOUNDATION, or
the MEANING OF WORDS or terms used in particular districts or by particular classes of people,
the opinions of persons having special means of knowledge thereon, are relevant facts.

50. When the Court has to form an opinion as to the RELATIONSHIP of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under Section four hundred and ninety-four, four hundred and ninety-five, four hundred and ninety-seven or four hundred and ninety-eight of the Indian Penal Code.

Illustrations.
(a.) The question is, whether A and B were married.
The fact that they were usually received and treated by their friends as husband and wife is relevant.
(b.) The question is whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

51. Whenever the opinion of any living person is relevant, the GROUNDS on which such OPINION is based are also relevant.

Illustration.
An expert may give an account of experiments performed by him for the purpose of forming his opinion.

Character when Relevant.

52. In CIVIL CASES, the fact that the CHARACTER of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant.

53. In CRIMINAL PROCEEDINGS, the fact that the person accused is of a GOOD CHARACTER, is relevant.

54. In criminal proceedings, the fact that the accused person has been PREVIOUSLY CONVICTED of any offence is relevant; but the fact that he has a BAD CHARACTER is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

55. In CIVIL CASES, the fact that the CHARACTER of any person is such as to affect the amount of DAMAGES which he ought to receive, is relevant.
Explanation.—In sections fifty-two, fifty-three, fifty-four and fifty-five, the word 'character' includes both reputation and disposition; but evidence may be given only of general reputation and general disposition, and not particular acts by which reputation or disposition were shown.

56. No fact of which the Court will take judicial notice need be proved.

57. The COURT SHALL TAKE JUDICIAL NOTICE OF the following facts:—

(1.) All laws or rules having the force of law now or heretofore in force or hereafter to be in force in any part of British India:
(2.) All public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed:
(3.) Articles of War for Her Majesty's Army or Navy:
(4.) The course of proceeding of Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils' Act, or any other law for the time being relating there-to.

Explanation.—The word 'Parliament,' in clauses (2) and (4), includes—

1. The Parliament of the United Kingdom of Great Britain and Ireland;
2. The Parliament of Great Britain;
3. The Parliament of England;
4. The Parliament of Scotland, and
5. The Parliament of Ireland.
(5.) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great and Ireland:
(6.) All seals of which English Courts take judicial notice: the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor General or any Local Government in Council: the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries public, and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India:
(7.) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the Gazette of India, or in the official Gazette of any Local Government:
(8.) The existence, title, and national flag of every State or Sovereign recognized by the British Crown:
(9.) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the official Gazette:
(10.) The territories under the dominion of the British Crown:
(11.) The commencement, continuance, and termination of hostilities between the British Crown and any other State or body of persons:
(12.) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys,
proctors, vakils, pleaders and other persons authorized by law to appear or act before it:

(13.) The rule of the road.
In all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.
If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

58. No FACT need be proved in any proceeding WHICH the PARTIES thereto or their agents AGREE TO ADMIT at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

CHAPTER IV.
Of Oral Evidence:

59. ALL FACTS, except the contents of documents, MAY BE PROVED BY ORAL EVIDENCE.

60. ORAL EVIDENCE MUST, in all cases, whatever, BE DIRECT; That is to say—
   If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;
   If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;
   If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;
   If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:
Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable;
Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

CHAPTER V.
Of Documentary Evidence.

61. The CONTENTS OF DOCUMENTS may be proved either by primary or by secondary evidence.
62. PRIMARY EVIDENCE means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document:

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

63. SECONDARY EVIDENCE means and includes—

(1.) Certified copies given under the provisions hereinafter contained;

(2.) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3.) Copies made from or compared with the original;

(4.) Counterparts of documents as against the parties who did not execute them;

(5.) Oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(a.) A photograph of an original is secondary evidence of its contents, though the two have not been compared if it is proved that the thing photographed was the original.

(b.) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(c.) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original; although the copy from which it was transcribed was compared with the original.

(d.) Neither an oral account of a copy compared with the original nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

65. SECONDARY EVIDENCE may be given of the existence, condition, or contents of a document IN the FOLLOWING CASES:—

(a.) When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved; or

(b.) Of any person out of reach of, or not subject to, the process of the Court, or

(c.) Of any person legally bound to produce it, and when, after the notice mentioned in section sixty-six, such person does not produce it;
(b.) When the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c.) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d.) When the original is of such a nature as not to be easily moveable;

(e.) When the original is a public document within the meaning of section seventy-four;

(f.) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence;

(g.) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

66. Secondary evidence of the contents of the documents referred to in section sixty-five, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, such NOTICE TO PRODUCE it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:—

(1.) When the document to be proved is itself a notice;

(2.) When from the nature of the case, the adverse party must know that he will be required to produce it;

(3.) When it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(4.) When the adverse party or his agent has the original in Court;

(5.) When the adverse party or his agent has admitted the loss of the document;

(6.) When the person in possession of the document is out of reach of, or not subject to, the process of the Court.

67. If a document is alleged to be signed or to have been written wholly or in part by any person, the SIGNATURE OR the HANDWRITING of so much of the document as is alleged to be in that person’s handwriting must be proved to be in his handwriting.

68. If a document is required by law to be attested, it shall not be used as evidence until one ATTESTING WITNESS at least has been called for the purpose of proving its execution, if there be an at-
testing witness alive, and subject to the process of the Court and capable of giving evidence.

69. IF NO such ATTESTING WITNESS can be FOUND, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

70. The ADMISSION OF a PARTY to an attested document OF its EXECUTION by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

71. IF the ATTESTING WITNESS DENIES or does not recollect the EXECUTION of the document, its execution may be proved by other evidence.

72. An attested document not required by law to be attested may be proved as if it was unattested.

73. In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any SIGNATURE, WRITING, OR SEAL admitted or proved to the satisfaction of the Court to have been written or made by that person MAY BE COMPARED with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

Public Documents.

74. The following documents are PUBLIC DOCUMENTS: —

1. Documents forming the Acts, or records of the Acts—
   (i) of the sovereign authority,
   (ii) of official bodies and tribunals, and
   (iii) of public officers, legislative, Judicial and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country.

2. Public records kept in British India of private documents.

75. All other documents are private.

76. Every PUBLIC OFFICER having the custody of a public document, which any person has a right to inspect, SHALL GIVE that person on demand a COPY of it on payment of the legal fees therefor, together WITH a CERTIFICATE written at the foot of such copy that it is a true copy of such document or part thereof as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation.—Any officer who, by the ordinary course of official duty, is authorised to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.
77. Such CERTIFIED COPIES MAY BE PRODUCED in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

78. The following public documents may be proved as follows:—

(1.) Acts, orders or notifications of the Executive Government of British India in any of its departments, or of any Local Government or any department of any Local Government,

by the records of the departments certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government:

(2.) The proceedings of the Legislatures,

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government:

(3.) Proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,

by copies or extracts contained in the London Gazette, or purporting to be printed by the Queen's Printer:

(4.) The Acts of the Executive or the proceedings of the legislature of a foreign country,

by journals published by their authority or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign or by a recognition thereof in some public Act of the Governor General of India in Council:

(5.) The proceedings of a municipal body in British India,

by a copy of such proceedings certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body:

(6.) Public documents of any other class in a foreign country,

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

Presumptions as to Documents.

79. The COURT SHALL PRESUME every document purporting to be a certificate, CERTIFIED COPY, or other document, which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified, by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorised thereto by the Governor General in Council, TO BE GENUINE: Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf. The Court shall also presume that any officer, by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

80. Whenever any document is produced before any Court purporting to be a record or MEMORANDUM OF the EVIDENCE or of any part of the evidence given by a witness in a judicial proceeding
or before any officer authorised by law to take such evidence, OR to be a statement or CONFESSION by any prisoner or accused person taken in accordance with law and purporting to be signed by any Judge or Magistrate or by any such officer as aforesaid, the COURT SHALL PRESUME—

that the document is GENUINE; that any statements, as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was DULY TAKEN.

81. **The COURT SHALL PRESUME the GENUINENESS OF every document purporting to be the LONDON GAZETTE, or the GAZETTE OF INDIA, or the Government GAZETTE OF any LOCAL GOVERNMENT, OR of any COLONY, dependency or possession of the British crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.**

82. **When any document is produced to any Court purporting to be a DOCUMENT which, by the law in force for the time being in England or Ireland, would be ADMISSABLE in proof of any particular in any Court of Justice IN ENGLAND OR IRELAND WITHOUT PROOF OF THE SEAL or STAMP OR SIGNATURE authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held at the time when he signed it, the judicial or official character which he claims.**

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

83. The Court shall presume that MAPS OR PLANS purporting to be MADE BY the authority of GOVERNMENT were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

84. **The COURT SHALL PRESUME the GENUINENESS OF every BOOK purporting to be printed or published under the authority of the Government of any country, and to contain any OF the LAWS of that country, and of every book purporting to contain REPORTS OF DECISIONS of the Courts of such country.**

85. The Court shall presume that every document purporting to be a POWER OF ATTORNEY, and to have been executed before, and authenticated by a notary public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty or of the Government of India, was so executed and authenticated.

86. The Court may presume that any document purporting to be a CERTIFIED COPY OF any JUDICIAL RECORD of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India resident in such country to be the manner commonly in use in that country for the certification of copies of judicial records.
87. The Court may presume that ANY BOOK to which it may refer for information on matters of public or general interest, AND that ANY PUBLISHED MAP or chart, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

88. The Court may presume that a message, forwarded from a TELEGRAPH office to the person to whom such MESSAGE purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

89. The Court shall presume that every DOCUMENT, called for and NOT PRODUCED AFTER NOTICE to produce, was attested, stamped and executed in the manner required by law.

90. Where any DOCUMENT, purporting or proved to be THIRTY YEARS OLD, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document which purports to be in the handwriting of any particular person is in that person's handwriting, and in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section eighty-one.

Illustrations.

(a.) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his title to it. The custody is proper.

(b.) A produces deeds relating to landed property of which he is the mortgagee. The mortgagee is in possession. The custody is proper.

(c.) A, a connex of B produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody. The custody is proper.

CHAPTER VI.

Of the Exclusion of Oral by Documentary Evidence.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter except the document itself, or SECONDARY EVIDENCE OF its CONTENTS in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.
Exception 2.—Wills under the Indian Succession Act may be proved by the Probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or disposition of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement in any document whatever of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(a.) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b.) If a contract be contained in a bill of exchange, the bill of exchange must be proved.

(c.) If a bill of exchange is drawn in a set of 3, 1 only need be proved.

(d.) A contracts in writing with B for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion. Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e.) A gives B a receipt for money paid by B. Oral evidence is offered of the payment. The evidence is admissible.

92. WHEN the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a DOCUMENT, have been PROVED according to the last section, NO EVIDENCE OF any ORAL AGREEMENT or statement SHALL BE ADMITTED as between the parties to any such instrument or their representatives in interest, FOR the purpose of CONTRADICTING, VARYING, ADDING TO OR SUBTRACTING FROM, ITS TERMS:

Provido (1).—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Provido (2).—The existence of any separate oral agreement as to any matter on which a document is silent and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Provido (3).—The existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract grant or disposition of property, may be proved.

Provido (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property may be proved except in cases in which such contract grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.
Proviso (6).—Any usage or custom by which incidents, not expressly mentioned in any contract, are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with the express terms of the contract.

Proviso (6).—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(a) A policy of insurance is effected on goods "in ships from Calcutta to London." The goods are shipped in a particular ship which is lost. The fact that that particular ship was verbally excepted from the policy, cannot be proved.

(b) A agrees absolutely in writing to pay B Rs. 1,000 on the 1st March 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the 31st March cannot be proved.

(c) An estate called the Rampore tea estate is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed, cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions as that provision was inserted in it by mistake. A may prove that such mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: 'Bought of A a horse for Rs. 500.' B may prove the verbal warranty.

(h) A hires lodgings of B, and gives B a card on which is written—'Rooms, Rs. 200 a month.' A may prove a verbal agreement that these terms were to include partial board. A hires lodgings of B for a year, and a regularly stamped agreement drawn up by an attorney is made between them. It is silent on the subject of board. A may not prove that board was included in the terms verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

93. When the language used in a DOCUMENT is, ON ITS FACE, AMBIGUOUS or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations.

(a) A agrees in writing to sell a horse to B for 'Rs. 1,000 or Rs. 1,500.'

Evidence cannot be given to show which price was to be given.

(b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

94. When language used in a DOCUMENT is PLAIN IN ITSELF, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration.

A sells to B by deed 'my estate at Rampore containing 100 bighas.' A has an estate at Rampore containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

95. When language used in a DOCUMENT is PLAIN in itself, but is UNMEANING IN REFERENCE TO EXISTING FACTS, evidence may be given to show that it was used in a peculiar sense.
Illustration.

A sells to B by deed "my house in Calcutta." A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, EVIDENCE may be GIVEN of facts which show WHICH of those PERSONS OR THINGS it was INTENDED to apply to.

Illustrations.

(a.) A agrees to sell to B for Rs. 1,000 "my white horse." A has two white horses. Evidence may be given of facts which show which of them was meant.

(b.) A agrees to accompany B to Hyderabad. Evidence may be given of facts showing whether Hyderabad in the Deccan or Hyderabad in Sind was meant.

97. When the LANGUAGE used APPLIES PARTLY TO ONE SET OF EXISTING FACTS, AND PARTLY TO ANOTHER set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Illustrations.

A agrees to sell to B "my land at X," in the occupation of Y. A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

98. Evidence may be given to show the meaning of ILLEGIBLE OR NOT INTELLIGIBLE CHARACTERS, of FOREIGN, obsolete technical, local, and provincial EXPRESSIONS, of abbreviations and of words used in a peculiar sense.

Illustrations.

A, a sculptor, agrees to sell to B "all my mods." A has both models and modelling tools. Evidence may be given to show which he meant to sell.

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a CONTEMPORANEOUS AGREEMENT VARYING the terms of the DOCUMENT.

Illustrations.

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C if it affected his interests.

100. Nothing in this chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1865) as to the CONSTRUCTION OF WILLS.

PART III.

PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.

Of the Burden of Proof.

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.
When a person is bound to prove the existence of any facts, it is said that the BURDEN OF PROOF lies on that person.

Illustrations.
(a.) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime.
(b.) A desires a Court to give judgment that he is entitled to certain land in the possession of B by reason of facts which he asserts and which B denies to be true. A must prove the existence of those facts.

102. The burden of proof in a suit or proceeding LIES ON that PERSON WHO WOULD FAIL IF NO EVIDENCE at all were given on either side.

Illustrations.
(a.) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father. If no evidence were given on either side, B would be entitled to retain his possession. Therefore the burden of proof is on A.
(b.) A sues B for money due on a bond. The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies. If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved. Therefore the burden of proof is on B.

103. The burden of proof as to any PARTICULAR FACT lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration.
(a.) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission. B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

104. The burden of proving any FACT NECESSARY to be proved in order to enable any person TO GIVE EVIDENCE OF any OTHER FACT is on the person who wishes to give such evidence.

Illustrations
(a.) A wishes to prove a dying declaration by B. A must prove B's death.
(b.) A wishes to prove, by secondary evidence, the contents of a lost document. A must prove that the document has been lost.

105. When a person is accused of any offence, the burden of PROVING the existence of circumstances bringing the case within any of the GENERAL EXCEPTIONS in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations.
(a.) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act. The burden of proof is on A.
(b.) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control. The burden of proof is on A.
(c.) Section three hundred and twenty-five of the Indian Penal Code provides that whoever, except in the case provided for by section three hundred and thirty-five, voluntarily causes grievous hurt, shall be subject to certain punishments.
A is charged with voluntarily causing grievous hurt under section three hundred and twenty-five.

The burden of proving the circumstances bringing the case under section three hundred and thirty-five lies on A.

106. When any FACT is ESPECIALLY WITHIN the KNOWLEDGE of any person, the burden of proving that fact is upon him.

Illustrations.

(a.) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b.) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

107. When the question is WHETHER A MAN IS ALIVE OR DEAD, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

108. When the question is whether a man is alive or dead, and it is proved that he has NOT been HEARD OF FOR SEVEN YEARS by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is on the person who affirms it.

109. When the question is whether persons are PARTNERS, landlord and TENANT, or principal and AGENT, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

110. When the question is whether any person is OWNER of anything of which he is shown to be IN POSSESSION, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

111. Where there is a question as to the GOD FAITH of a transaction BETWEEN PARTIES, ONE OF WHOM stands to the other IN a position of ACTIVE CONFIDENCE, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

(a.) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(b.) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

112. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the LEGITIMATE SON of that man unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

113. A notification in the Gazette of India that any portion of British TERRITORY has been CEDED to any Native State, Prince or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

114. The COURT MAY PRESUME the existence of any FACT which it thinks LIKELY TO HAVE HAPPENED, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case.
Illustrations.

(a) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(b) That an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(c) That a bill of exchange, accepted or endorsed, was accepted or endorsed, for good consideration;

(d) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence;

(e) That judicial and official acts have been regularly performed;

(f) That the common course of business has been followed in particular cases;

(g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(h) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;

(i) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxima do or do not apply to the particular case before them:

As to illustration (a)—A shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business:

As to illustration (b)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself:

As to illustration (c)—A crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concealment highly improbable:

As to illustration (d)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence:

As to illustration (e)—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course:

As to illustration (f)—A judicial act, the regularity of which is in question, was performed under exceptional circumstances:

As to illustration (g)—The question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances:

As to illustration (h)—A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family:

As to illustration (i)—A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked:

As to illustration (j)—A bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.

Estoppe1.

115. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale he had no title. He must not be allowed to prove his want of title.
116. NO TENANT of immoveable property, or person claiming through such tenant, shall during the continuance of the tenancy, be PERMITTED TO DENY that the landlord of such tenant had, at the beginning of the tenancy, a TITLE to such immoveable property; and no person who came upon any immoveable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.

117. NO ACCEPTOR OF a BILL of exchange shall be PERMITTED TO DENY that the drawer had AUTHORITY TO DRAW such bill or to endorse it, nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation (1).—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation (2).—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX.
Of Witnesses.

118. All PERSONS shall be COMPETENT to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.—A lunatic is not incompetent to testify unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

119. A witness who is UNABLE TO SPEAK may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

120. In all civil proceedings the PARTIES to the suit, and the HUSBAND or WIFE of any party to the suit shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

121. No JUDGE or MAGISTRATE shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.
Illustrations.

(a.) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a Superior Court.

(b.) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the Superior Court.

(c.) A is accused before the Court of Session of attempting to murder a Police officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

122. No person who is or has been married, shall be compelled to disclose any COMMUNICATION made to him DURING MARRIAGE by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any AFFAIRS OF STATE, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

124. No public officer shall be compelled to disclose COMMUNICATIONS made to him IN OFFICIAL CONFIDENCE, when he considers that the public interests would suffer by the disclosure.

125. No Magistrate or police officer shall be compelled to say whence he got any INFORMATION AS TO the commission of any OFFENCE.

126. No barrister, attorney, pleader or vakil, shall at any time be permitted, unless with his client's express consent, to disclose any COMMUNICATION MADE TO him in the course and for the purpose of his employment as such BARRISTER, pleader, attorney, or vakil by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

(1.) Any such communication made in furtherance of any criminal purpose;

(2.) Any fact observed by any barrister, pleader, attorney or vakil in the course of his employment as such showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, attorney, or vakil was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

Illustrations.

(a.) A, a client, says to B, an attorney,—I have committed forgery, and I wish you to defend me.

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.
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(3.) A, a client, says to B, an attorney,—'I wish to obtain possession of property by the use of a forged deed on which I request you to sue.'

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(3.) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

127. The provisions of section one hundred and twenty-six shall apply to INTERPRETERS, AND the clerks or SERVANTS OF BARRISTERS, attorneys and vakils.

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have CONSENTED thereby TO such DISCLOSURE as is mentioned in section one hundred and twenty-six; and if any party to a suit or proceeding calls any such barrister, attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney, or vakil on matters which, but for such question, he would not be at liberty to disclose.

129. No one shall be compelled to disclose to the Court any CONFIDENTIAL COMMUNICATION which has taken place BETWEEN HIM AND his LEGAL professional ADVISER, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

130. No witness who is not a party to a suit shall be compelled to produce his TITLE-DEEDS to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, OR any DOCUMENT the production of WHICH MIGHT TEND TO CRIMINATE him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

131. No one shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the ANSWER to such question WILL CRIMINATE, or may tend, directly or indirectly, to criminate such witness, or that it will expose, or tend, directly or indirectly, to expose such witness to a penalty or forfeiture of any kind:

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

133. An ACCOMPLICE shall be a competent witnesses against an accused person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.
134. No particular number of witnesses shall in any case be required for the proof of any fact.

CHAPTER X:

Of the Examination of Witnesses.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

136. When either party proposes to give evidence of any fact the Judge may ask the party proposing to give the evidence in what manner the alleged fact if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may in his discretion either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(a.) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 82.

The fact that the person is dead must be proved by the person proposing to prove the statement before evidence is given of the statement.

(b.) It is proposed to prove by a copy the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy before the copy is produced.

(c.) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may in its discretion either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(d.) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist, before the fact A can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C or D is proved, or may require proof of B, C and D before permitting proof of A.

137. The examination of a witness by the party who calls him shall be called his examination-in-chief.

The examination of a witness by the adverse party shall be called his cross-examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

138. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.
The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

139. A PERSON SUMMONED TO PRODUCE a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

140. WITNESSES TO CHARACTER may be cross-examined and re-examined.

141. Any question suggesting the answer which the person putting it wishes or expects to receive, is called a LEADING QUESTION.

142. LEADING QUESTIONS MUST NOT, if objected to by the adverse party, BE ASKED IN an EXAMINATION-IN-CHIEF, OR in a RE-EXAMINATION, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion been already sufficiently proved.

143. Leading questions may be asked IN CROSS-EXAMINATION.

144. Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustrations.

The question is, whether A assaulted B.

C deposes that he heard A say to D—'B wrote a letter accusing me of theft, and I will be revenged on him.' This statement is relevant, as showing A's motive for assault, and evidence may be given of it, though no other evidence is given about the letter.

145. A witness may be CROSS-EXAMINED AS TO PREVIOUS STATEMENTS made by him IN WRITING or reduced into writing and relevant to matters in question without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

146. When a WITNESS is CROSS-EXAMINED, he MAY, in addition to the questions hereinbefore referred to, be ASKED any QUESTIONS WHICH TEND.
(1) to test his veracity;
(2) to discover who he is and what is his position in life, or
(3) to shake his credit, by injuring his character, although the
answer to such questions might tend directly or indirectly to criminize
him, or might expose or tend directly or indirectly to expose him to a
penalty or forfeiture.

147. If any such question relates to a matter relevant to the suit
or proceeding, the provisions of section one hundred and thirty-two
shall apply thereto.

148. If any such question relates to a matter not relevant to the
suit or proceeding, except in so far as it affects the credit of the witness
by injuring his character, the COURT SHALL DECIDE WETHER
or not the WITNESS shall be COMPELLED TO ANSWER
it; and may, if it thinks fit, warn the witness that he is not obliged to
answer it. In exercising its discretion, the Court shall have regard to
the following considerations:

(1). Such questions are proper if they are of such a nature that
the truth of the imputation conveyed by them would seriously affect
the opinion of the Court as to the credibility of the witness on the
matter to which he testifies.

(2). Such questions are improper if the imputation which they
convey relates to matters so remote in time, or of such a character, that
the truth of the imputation would not affect, or would affect in a slight
degree, the opinion of the Court as to the credibility of the witness on
the matter to which he testifies.

(3). Such questions are improper if there is a great disproportion
between the importance of the imputation made against the witness's
character and the importance of his evidence.

(4). The Court may, if it sees fit, draw, from the witness's refusal
to answer, the inference that the answer if given would be unfavourable.

149. No such question as is referred to in section 148 ought to be
asked, unless the person asking it has REASONABLE GROUNDS
FOR thinking that the IMPUTATION which it conveys is well-

Illustrations.

(a.) A barrister is instructed by an attorney or vakkil that an important witness is a
dacoit. This is a reasonable ground for asking the witness whether he is a
dacoit.

(b.) A pleader is informed by a person in Court that an important witness is a dacoit.
The informant on being questioned by the pleader gives satisfactory reasons for his statement.
This is a reasonable ground for asking the witness whether he is a dacoit.

(c.) A witness, of whom nothing whatever is known, is asked at random whether he is a
dacoit. There are here no reasonable grounds for the question.

(d.) A witness, of whom nothing whatever is known, being questioned as to his mode of
life and means of living, gives unsatisfactory answers. This may be a reasonable ground for
asking him if he is a dacoit.

150. If the Court is of opinion that any such question was asked
WITHOUT REASONABLE GROUNDS, it may, if it was asked by
any barrister, pleader, vakkil or attorney, REPORT the circumstances of
the case TO THE HIGH COURT or other authority to which such
barrister, pleader, vakkil or attorney is subject in the exercise of his
profession.
151. The Court may forbid any QUESTIONS or inquiries which it regards as INDECENT or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

152. The Court shall forbid any QUESTION which appears to it to be intended TO INSULT OR ANNOY, or which, though proper in itself, appears to the Court needlessly offensive in form.

153. When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his CREDIT by injuring his character, NO EVIDENCE shall be given TO CONTRADICT him; but if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been PREVIOUSLY CONVICTED of any crime and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his IMPARTIALITY and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

(a.) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(b.) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(c.) A affirms that on a certain day he saw B at Lahore. A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(d.) A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

154. The COURT MAY in its discretion PERMIT the PERSON WHO CALLS a WITNESS TO PUT ANY QUESTIONS to him which might be put in cross-examination by the adverse party.

155. The CREDIT OF a WITNESS MAY BE IMPEACHED in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:

(1.) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2.) By proof that the witness has been bribed or has had the offer of a bribe, or has received any other inducement to give his evidence;

(3.) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;
(4.) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(a.) A sues B for the price of goods sold and delivered to B.

C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(b.) A is indicted for the murder of B.

C says that B, when dying, declared that A had given him the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

156. When a WITNESS whom it is intended to corroborate gives evidence of any relevant fact, he MAY BE QUESTIONED AS TO any other CIRCUMSTANCES which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

157. In order to corroborate the testimony of a witness, any FOREM STATEMENT made by such WITNESS relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

158. Whenever any statement, relevant under section 32 or 33, is proved, all matters may be proved, either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

159. A witness may, while under examination, REFRESH his MEMORY BY REFERRING TO any WRITING made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document: Provided the Court be satisfied that there is sufficient reason for the nonproduction of the original.
An expert may refresh his memory by reference to professional treatises.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section one hundred and fifty-nine, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

_Illustration._

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

161. Any WRITING referred to under the provisions of the two last preceding sections MUST BE PRODUCED and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

162. A WITNESS SUMMONED TO PRODUCE a DOCUMENT SHALL, if it is in his possession or power, BRING IT TO COURT, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If for such a purpose it is necessary to cause any document to be TRANSLATED, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence: and if the interpreter disobeys such direction, he shall be held to have committed an offence under section one hundred and sixty-six of the Indian Penal Code.

163. When a party calls for a document which he has given the other party notice to produce, and such DOCUMENT is PRODUCED and inspected by the party calling for its production, he is BOUND TO GIVE IT AS EVIDENCE if the party producing it requires him to do so.

164. When a party REFUSES TO PRODUCE a document which he has had notice to produce, he CANNOT AFTERWARDS USE the DOCUMENT as evidence without the consent of the other party or the order of the Court.

_Illustration._

A sues B on an agreement and gives B notice to produce it. At the trial, A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

165. The JUDGE MAY, in order to discover or to obtain proper proof of relevant facts, ASK ANY QUESTION he pleases, in any form at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and MAY ORDER the PRODUCTION OF ANY DOCUMENT or thing: and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved.
Provided also that this section shall not authorise any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections one hundred and twenty-one to one hundred and thirty-one both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under sections one hundred and forty-eight or one hundred and forty-nine; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

166. In cases tried by jury or with assessors, the JURY OR ASSESSORS MAY PUT ANY QUESTIONS to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

167. The IMPROPER ADMISSION OR REJECTION OF EVIDENCE shall not be a ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court, before which such objection is raised, that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

ACT XIX. of 1853.

26. Any person, whether a party to the suit or not, to whom a summons to attend and give evidence or produce a document shall be personally delivered, and who shall, without lawful excuse, NEGLECT OR REFUSE TO OBEY such SUMMONS, or who shall be proved to have absconded, or kept out of the way to avoid being served with such summons, and any person who, being in Court, and upon being required by the Court to give evidence, or produce a document in his possession, shall, without lawful excuse, refuse to give evidence, or sign his deposition, or to produce a document in his possession, shall, in addition to any proceedings under this Act, be liable to the party at whose request the summons shall have been issued, or at whose instance he shall be required to give evidence or produce the document, for all DAMAGES which he may sustain in consequence of such neglect or refusal, or of such absconding, or keeping out of the way as aforesaid, to be recovered in a civil action.

22 VICTORIA CAP. XX.

An Act to provide for taking evidence in suits and proceedings pending before tribunals in Her Majesty’s dominions in places out of the jurisdiction of such tribunals.

Whereas it is expedient that facilities be afforded for taking evidence in or in relation to actions, suits, and proceedings pending before
tribunals in Her Majesty's dominions in places in such dominions out of the jurisdiction of such tribunals: Be it enacted &c.

1. WHERE upon an application for this purpose it is made to appear to any Court or Judge having authority under this Act that ANY COURT or tribunal of competent jurisdiction IN HER MAJESTY'S DOMINIONS HAS duly AUTHORIZED, by commission, order, or other process, THE OBTAINING THE TESTIMONY in or in relation to any action, suit, or proceeding pending in or before such Court or tribunal OF ANY WITNESS or witnesses OUT OF THE JURISDICTION OF SUCH COURT or tribunal, and within the jurisdiction of such first-mentioned Court, or of the Court to which such Judge belongs, or of such Judge, IT SHALL BE LAWFUL FOR such COURT or Judge TO ORDER THE EXAMINATION before the person or persons appointed, and in manner and form directed by such Commission, order, or other process as aforesaid, OF SUCH WITNESS or witnesses ACCORDINGLY; and it shall be lawful for the said Court or Judge by the same order, or for such Court or Judge, or any other Judge having authority under this Act, by any subsequent order, TO COMMAND THE ATTENDANCE of any person to be named in such order for the purpose of being examined, or the production of any writings or other documents to be mentioned in such order, and TO GIVE ALL such DIRECTIONS as to the time, place, and manner of such examination, and all other matters connected therewith, as may appear reasonable and just, and any such order may be enforced and any DISOBEDIENCE thereof punished, in like manner as in case of an order made by such Court or Judge in a cause depending in such Court or before such Judge.

2. Every person examined as a witness under any such commis- sion, order, or other process as aforesaid, who shall upon such examination wilfully and corruptly give any FALSE EVIDENCE, shall be deemed and taken to be guilty of perjury.

3. Provided always, that every person whose attendance shall be so ordered shall be entitled to the like conduct money, and payment for EXPENSES and loss of time, as upon attendance at a trial.

4. Provided also, that every person examined under any such commission, order, or other process as aforesaid, shall have the like RIGHT TO REFUSE TO ANSWER QUESTIONS TENDING TO CRIMINATE himself, AND OTHER QUESTIONS which a witness in any cause pending in the Court by which, or by a Judge whereof, or before the Judge by whom the order for examination was made, would be entitled to; and that no person shall be compelled to produce under any such order as aforesaid any writing or other document that he would not be compelled to produce at a trial of such a cause.

5. Her Majesty's Superior Courts of Common Law at Westminster and in Dublin respectively, the Court of Session in Scotland, and any Supreme Court in any of Her Majesty's colonies or possessions abroad, and any Judge of any such Court, and every Judge in any such colony or possession who, by any order of Her Majesty in Council, may be appointed for this purpose, shall respectively be COURTS and Judges HAVING AUTHORITY UNDER this ACT.
6. It shall be lawful for the Lord Chancellor of Great Britain, with the assistance of two of the Judges of the Courts of Common Law at Westminster, so far as relates to England, and for the Lord Chancellor of Ireland, with the assistance of two of the Judges of the Courts of Common Law at Dublin, so far as relates to Ireland, and for two of the Judges of the Court of Session, so far as relates to Scotland, and for the chief or only Judge of the Supreme Court in any of Her Majesty's colonies or possessions abroad, so far as relates to such colony or possession, to frame such RULES and orders as shall be necessary or proper for giving effect to the provisions of this Act, and regulating the procedure under the same.

22 & 23 VICTORIA CAP. 63.

An ACT to afford facilities for the more certain ascertainment of the law administered in one part of Her Majesty's dominions when pleaded in the Courts of another part thereof.

Whereas great improvement in the administration of the law would ensue if facilities were afforded for more certainly ascertaining the law administered in one part of Her Majesty's dominions when pleaded in the Courts of another part thereof: Be it therefore enacted &c.

1. If in any action depending in any Court within Her Majesty's dominions, it shall be the opinion of such Court, that it is necessary or expedient for the proper disposal of such action to ascertain the law applicable to the facts of the case as administered in any other part of Her Majesty's dominions on any point on which the law of such other part of Her Majesty's dominions is different from that in which the Court is situate, it shall be COMPETENT TO THE COURT in which such action may depend TO DIRECT A CASE TO BE PREPARED setting forth the facts, as these may be ascertained by verdict of a jury or other mode competent, or may be agreed upon by the parties, or settled by such person or persons as may have been appointed by the Court for that purpose in the event of the parties not agreeing, AND UPON SUCH CASE BEING APPROVED of by such Court or a Judge thereof, they SHALL SETTLE THE QUESTIONS OF LAW arising out of the same on which they desire to have the opinion of another Court, AND shall PRONOUNCE AN ORDER REMITTING THE SAME, together with the case, TO THE COURT IN such OTHER PART OF HER MAJESTY'S DOMINIONS, being one of the Superior Courts thereof, whose opinion is desired upon the law administered by them as applicable to the facts set forth in such case, and DESIRING THEM TO PRONOUNCE THEIR OPINION ON THE QUESTIONS SUBMITTED to them in the terms of the Act; and it shall be competent to any of the parties to the action to present a petition to the Court whose opinion is to be obtained, praying such last-mentioned Court to hear parties or their Counsel; and to pronounce their opinion thereon in terms of this Act, or to pronounce their opinion without hearing parties or Counsel; and the Court to which such petition shall be presented shall, if they think fit, appoint an early day for hearing parties or their Counsel on such case, and shall thereafter
pronounce their opinion upon the questions of law as administered by
them which are submitted to them by the Court; and in order to their
pronouncing such opinion they shall be entitled to take such further
procedure thereupon as to them shall seem proper.

2. Upon such opinion being pronounced, a COPY thereof, certifyed
by an officer of such Court, shall be given to each of the parties
to the action by whom the same shall be required, and shall be deemed
and held to contain a correct record of such opinion.

3. It shall be competent to any of the parties to the action, after
having obtained such certified copy of such opinion, to lodge the same
with an officer of the Court in which the action may be depending, who
may have the official charge thereof, together with a notice of motion,
setting forth that the party will, on a certain day named in such notice,
move the Court to apply the opinion contained in such certified copy
thereof to the facts set forth in the case hereinbefore specified, and the
said COURT SHALL thereupon APPLY SUCH OPINION TO such
FACTS, in the same manner as if the same had been pronounced by
such Court itself upon a case reserved for opinion of the Court, or upon
special verdict of a jury; OR the said last-mentioned Court shall, if it
think fit, when the said opinion has been obtained before trial, ORDER
SUCH OPINION TO BE SUBMITTED TO the JURY with the
other facts of the case as evidence, or conclusive evidence as the Court
may think fit, of the foreign law therein stated, and the said opinion
shall be so submitted to the jury.

4. IN the event of an APPEAL to Her Majesty in Council or to
the House of Lords in any such action, IT SHALL BE COMPETENT TO bring UNDER the REVIEW of Her Majesty in Council
or of the House of Lords THE OPINION PRONOUNCED as aforesaid by any Court whose judgments are reviewable by Her Majesty
in Council or by the House of Lords, and Her Majesty in Council or
that House may respectively adopt or reject such opinion of any Court
whose judgments are respectively reviewable by them, as the same
shall appear to them to be well founded or not in law.

5. In the construction of this Act, the word "ACTION" shall
include every judicial proceeding instituted in any Court, civil, criminal,
or ecclesiastical; and the words "SUPERIOR COURTS" shall include,
in England, the Superior Courts of Law at Westminster, the Lord
Chancellor, the Lords Justices, the Master of the Rolls or any Vice-
Chancellor, the Judge of the Court of Admiralty, the Judge ordinary
of the Court for divorce and matrimonial causes, and the Judge of the
Court of probate; in Scotland, the High Court of justiciary, and the
Court of Session acting by either of its divisions; in Ireland, the Super-
ior Courts of law at Dublin, the Master of the Rolls, and the Judge of
the Admiralty Court; and in any other part of Her Majesty's domi-
nions, the Superior Courts of law or Equity therein.

24. VICTORIA. CAP. 11.

An Act to afford facilities for the better ascertainment of the law of
Foreign Countries when pleaded in Courts within Her Majesty's dominions.

Whereas an Act was passed in the twenty-second and twenty-
third years of Her Majesty's reign, intituled an Act to afford facilities for the more certain ascertaining of the law administered in one part of Her Majesty's dominions when pleaded in the Courts of another part thereof: And whereas it is expedient to afford the like facilities for the better ascertaining, in similar circumstances, of the law of any foreign country or State with the Government of which Her Majesty may be pleased to enter into a convention for the purpose of mutually ascertaining the law of such foreign country or State when pleaded in actions depending in any Courts within Her Majesty's dominions and the law as administered in any part of Her Majesty's dominions when pleaded in actions depending in the Courts of such foreign country or State: Be it therefore enacted &c.

1. If, in any action depending in any of the SUPERIOR COURTS within Her Majesty's dominions it shall be the opinion of such Court that it is necessary or expedient, for the disposal of such action, to ascertain the law applicable to the facts of the case as administered in any foreign State or country with the Government of which Her Majesty shall have entered into such convention as aforesaid, it shall be COMPETENT TO the COURT in which such action may depend TO DIRECT A CASE TO BE PREPARED setting forth the facts as these may be ascertained by verdict of jury or other mode competent, or as may be agreed upon by the parties, or settled by such person or persons as may have been appointed by the Court for that purpose in the event of the parties not agreeing; AND UPON SUCH CASE BEING APPROVED of by such Court or a Judge thereof, such Court or Judge SHALL SETTLE THE QUESTIONS OF LAW arising out of the same on which they desire to have the opinion of another Court, AND shall PRONOUNCE AN ORDER REMITTING THE same, together with the case, TO such SUPERIOR COURT IN such FOREIGN STATE or country as shall be agreed upon in said convention, whose opinion is desired upon the law administered by such foreign Court as applicable to the facts set forth in such case, AND REQUESTING THEM TO PRONOUNCE THEIR OPINION ON the QUESTIONS SUBMITTED to them; and upon such opinion being pronounced, a COPY thereof, certified by an officer of such Court, shall be deemed and held to contain a correct record of such opinion.

2. It shall be competent to any of the parties to the action, after having obtained such certified copy of such opinion, to lodge the same with the officer of the Court within Her Majesty's dominions in which the action may be depending who may have the official charge thereof, together with a notice of motion setting forth that the party will, on a certain day named in such notice, move the Court to apply the opinion contained in such certified copy thereof to the facts set forth in the case hereinbefore specified, and the said COURT SHALL thereupon, IF IT shall SEE FIT, APPLY SUCH OPINION TO such FACTS, in the same manner as if the same had been pronounced by such Court itself upon a case reserved for opinion of the Court, or upon special verdict of a jury; OR the said last-mentioned Court shall, if it think fit, when the said opinion has been obtained before trial, ORDER such OPINION TO BE SUBMITTED TO the JURY with the other facts of the case as conclusive evidence of the foreign law therein stated, and
the said opinion shall be so submitted to the jury: Provided always, that if after having obtained such certified copy the Court shall not be satisfied that the facts had been properly understood by the foreign Court to which the case was remitted, or shall on any ground whatsoever be DOUBTFUL WHETHER the OPINION SO CERTIFIED DOES CORRECTLY REPRESENT THE FOREIGN LAW as regards the facts to which it is to be applied, it shall be LAWFUL for such Court TO REMIT THE said CASE, either with or without alterations or amendments, to the same or to any other such Superior Court in such foreign State as aforesaid and so from time to time as may be necessary or expedient.

3. If, in any action depending in any Court of a foreign country or State with whose Government Her Majesty shall have entered into a convention as above set forth, such Court shall deem it expedient to ascertain the law applicable to the facts of the case as administered in any part of Her Majesty's dominions, and IF THE FOREIGN COURT in which such action may depend shall REMIT TO THE COURT IN HER MAJESTY'S DOMINIONS whose opinion is desired A CASE setting forth the facts and the questions of law arising out of the same on which they desire to have the opinion of a Court within Her Majesty's dominions, it shall be competent to any of the parties to the action to present a petition to such last-mentioned Court, whose opinion is to be obtained, praying such Court to hear parties or their Counsel, and to pronounce their opinion thereon in terms of this Act, or to pronounce their opinion without hearing parties or Counsel; and THE COURT to which such petition shall be presented shall consider the same, and, IF THEY THINK FIT, SHALL APPOINT AN EARLY DAY FOR HEARING PARTIES or their Counsel ON SUCH CASE, AND SHALL PRONOUNCE the OPINION UPON THE QUESTIONS OF LAW as administered by them which are SUBMITTED TO THEM BY THE FOREIGN COURT; and in order to their pronouncing such opinion they shall be entitled to take such further procedure thereupon as to them shall seem proper, and upon such opinion being pronounced a copy thereof, certified by an officer of such Court, shall be given to each of the parties to the action by whom the same shall be required.

4. In the construction of this Act the word "ACTION" shall include every judicial proceeding instituted in any Court, civil, criminal, or ecclesiastical; and the words "SUPERIOR COURTS" shall include, in England, the Superior Courts of Law at Westminster, the Lord Chancellor, the Lords Justices, the Master of the Rolls, or any Vice-Chancellor, the Judge of the Court of Admiralty, the Judge Ordinary of the Court for Divorce and Matrimonial causes, and the Judge of the Court of Probate; in Scotland, the High Court of Justiciary, and the Court of Session, acting by either of its divisions; in Ireland, the Superior Courts of Law at Dublin, the Master of the Rolls, and the Judge of the Admiralty Court; and in any other part of Her Majesty's dominions, the Superior Courts of Law or Equity therein; and in a foreign country or State, any Superior Court or Courts which shall be set forth in any such convention between Her Majesty and the Government of such foreign country or State.
An Act to amend the law relating to documentary evidence in certain cases.

Whereas it is expedient to amend the law relating to evidence:

Be it enacted &c.

1. This Act may be cited for all purposes as "The Documentary Evidence Act, 1868."

2. Primâ facie EVIDENCE OF any PROCLAMATION, ORDER, or REGULATION ISSUED before or after the passing of this Act BY HER MAJESTY, or BY the PRIVY COUNCIL, also of any proclamation, order, or regulation issued before or after the passing of this Act by OR under the authority of any such DEPARTMENT OF the GOVERNMENT or officer as is mentioned in the first column of the schedule hereto, may be given in all Courts of Justice, and in all legal proceedings whatsoever, IN all or any of THE MODES HEREINAFTER MENTIONED; that is to say:

(1.) By the production of A COPY of the GAZETTE purporting to contain such proclamation, order, or regulation.

(2.) By the production of A COPY OF such PROCLAMATION, order, or regulation purporting to be printed by the Government printer, or, where the question arises in a Court in any British colony or possession, of a copy purporting to be printed under the authority of the legislature of such British colony or possession.

(3.) By the production, in the case of any proclamation, order, or regulation issued by Her Majesty or by the Privy Council, of a COPY or extract purporting to be CERTIFIED TO BE TRUE by the clerk of the Privy Council, or by any one of the Lords or others of the Privy Council, and, in the case of any proclamation, order, or regulation issued by or under the authority of any of the said departments or officers, by the production of a copy or extract purporting to be certified to be true by the person or persons specified in the second column of the said schedule in connexion with such department or officer.

Any copy or extract made in pursuance of this Act may be in PRINT OR in WRITING, or partly in print and partly in writing.

NO PROOF shall be required OF the HANDWRITING or official position of any person certifying, in pursuance of this Act, to the truth of any copy of or extract from any proclamation, order, or regulation.

3. Subject to any law that may be from time to time made by the legislature of any British colony or possession, this ACT shall be IN FORCE IN EVERY such COLONY AND POSSESSION.

4. If any person commits any of the offences following, that is to say—

(1.) PRINTS any copy of any PROCLAMATION, order, or regulation, WHICH FALSELY PURPORTS TO HAVE BEEN PRINTED BY the GOVERNMENT PRINTER, or to be printed under the authority of the legislature of any British colony or possession, or tenders in evidence any copy of any proclamation, order
or regulation which falsely purports to have been printed as aforesaid, knowing that the same was not so printed; or

(2.) FORGES or tenders in evidence, knowing the same to have been forged, any CERTIFICATE by this Act authorized to be annexed to a copy of or extract from any proclamation, order, or regulation;

he shall be guilty of felony, and shall on conviction be liable to be sentenced to penal servitude for such term as is prescribed by the Penal Servitude Act, 1864, as the least term to which an offender can be sentenced to penal servitude, or to be imprisoned for any term not exceeding two years, with or without hard labour.

5. The following words shall in this Act have the MEANING hereinafter assigned to them, unless there is something in the context repugnant to such construction; (that is to say)—

"BRITISH COLONY, AND POSSESSION" shall for the purposes of this Act include the Channel Islands, the Isle of Man, and such territories as may for the time being be vested in Her Majesty by virtue of any Act of Parliament for the Government of India and all other Her Majesty's dominions.

"LEGISLATURE" shall signify any authority other than the Imperial Parliament or Her Majesty in Council competent to make laws for any colony or possession.

"PRIVY COUNCIL" shall include Her Majesty in Council and the Lords and others of Her Majesty's Privy Council, or any of them, and any Committees of the Privy Council that is not specially named in the schedule hereto.

"GOVERNMENT PRINTER" shall mean and include the printer to Her Majesty and any printer purporting to be the printer authorized to print the Statutes, Ordinances, Acts of State, or other public Acts of the legislature of any British colony or possession, or otherwise to be the Government printer of such colony or possession.

"GAZETTE" shall include the London Gazette, the Edinburgh Gazette, and the Dublin Gazette, or any of such Gazettes.

6. The provisions of this ACT shall be deemed to be IN ADDITION TO, AND NOT IN DEBATION OF, any powers of proving documents given by any existing STATUTE OR existing at COMMON LAW.

### SCHEDULE.

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<thead>
<tr>
<th>Name of Department or Officer</th>
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<tr>
<td>The Commissioners of the Treasury.</td>
<td>Any Commissioner, Secretary, or Assistant Secretary of the Treasury.</td>
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<tr>
<td>The Commissioners for executing the office of Lord High Admiral.</td>
<td>Any of the Commissioners for Executing the office of Lord High Admiral or either of the Secretaries to the said Commissioners.</td>
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<tr>
<td>Secretaries of State.</td>
<td>Any Secretary or Under-Secretary of State.</td>
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<td>Committee of Privy Council for Trade.</td>
<td>Any member of the Committee of Privy Council for Trade or any Secretary or Assistant Secretary of the said Committee.</td>
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<td>The Poor-Law Board.</td>
<td>Any Commissioner of the Poor-Law Board or any Secretary or Assistant Secretary of the said Board.</td>
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Oaths.

Act No. V. of 1840.

An Act concerning the Oaths and Declarations of Hindoos and Mahomedans.

I. Whereas obstruction to justice and other inconveniences have arisen in consequence of persons of the Hindoo or Mahomedan persuasion being compelled to swear by the water of the Ganges or upon the Koran, or according to other forms which are repugnant to their consciences or feelings;

It is hereby enacted that, except as hereinafter provided, instead of any oath or declaration now authorized or required by law, every individual of the classes aforesaid within the territories of the East India Company shall make affirmation to the following effect:

"I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth."

IV. And it is hereby provided that this Act shall not extend to any declaration made under the authority of Act No. XXI. of 1837, nor to any declaration or affirmation made in any of Her Majesty's Courts of Justice.

Act VI. of 1872.

An Act to amend the law relating to Oaths and Affirmations.

Whereas it is expedient to amend the law relating to oaths and affirmations; It is enacted as follows:

1. This Act may be called "The Oaths Act, 1872."

2. It extends to British India, applies to all oaths or affirmations taken or made by, or administered to, British subjects in Native Indian States, and it shall come into force on the passing thereof.

3. Every person who may by law be sworn or called upon to make a solemn affirmation, in any capacity whatever, may, if he objects to such oath or solemn affirmation, make in place thereof a simple affirmation to the same effect, omitting the words 'so help me God,' 'in the presence of Almighty God,' or other expressions of the same nature.

4. If any party to, or witness in, any judicial proceeding offers to give evidence on oath in any form common amongst, or held binding by,
persons of the rank or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, tender such oath to him.

If any party to any proceeding offers to be bound by any such oath as is mentioned in the first paragraph of this section, if such oath is taken by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness whether he will take the oath or not. If such party or witness accepts such oath, the Court may proceed to administer it, or if it is of such a nature that it may be more conveniently taken out of Court, the Court may issue a commission to any person to administer it, and authorize such person to take the evidence of the person to be sworn and return it to the Court.

The evidence so given shall, as against the person who offered to be bound by it, be conclusive proof of the matter stated. If the party or witness refuses to take the oath, he shall not be compelled to take it, but the Court shall record, as part of the proceedings, the nature of the oath proposed, the facts that he was asked whether he would take it, and that he refused it, together with any reason which he may assign for his refusal.

5. No omission to take any oath or to make any solemn or simple affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution, or irregularity took place.

6. Nothing in this Act shall apply to oaths or affirmations prescribed by any law which, under the provisions of the Indian Council's Act, 1861, the Governor-General in Council has not the power to repeal.

Courts.

HIGH COURTS.

24 & 25 VICTORIÆ, CAP. CIV.

An Act for establishing High Courts of Judicature in India.

Be it enacted, &c.

I. It shall be lawful for Her Majesty, by Letters Patent under the great seal of the United Kingdom, to erect and establish a High Court of Judicature at Fort William in Bengal for the Bengal division of the Presidency of Fort William aforesaid, and by like Letters Patent to erect and establish like High Courts at Madras and Bombay for those Presidencies respectively, such High Courts to be established in the said several Presidencies at such time or respective times as to Her Majesty may seem fit, and the High Court to be established under any such Letters Patent in any of the said Presidencies shall be deemed to be established
from and after the publication of such Letters Patent in the same Presidency, or such other time as in such Letters Patent may be appointed in this behalf.

II. The High Court of Judicature at Fort William in Bengal and at the Presidencies of Madras and Bombay respectively shall consist of a Chief Justice and as many JUDGES, not exceeding fifteen, as Her Majesty may from time to time think fit and appoint, who shall be selected from—

1st.—Barristers of not less than five years' standing; or

2nd.—Members of the Covenanted Civil Service of not less than ten years' standing, and who shall have served as zillah Judges, or shall have exercised the like powers as those of a zillah Judge for at least three years of that period; or

3rd.—Persons who have held judicial office not inferior to that of Principal Sudder Ameen or Judge of a Small Cause Court for a period of not less than five years; or

4th.—Persons who have been pleaders of a Sudder Court or High Court for a period of not less than ten years, if such pleaders of a Sudder Court shall have been admitted as pleaders of a High Court:

Provided that not less than one-third of the Judges of such High Courts respectively, including the Chief Justice, shall be barristers, and not less than one-third shall be members of the Covenanted Civil Service.

III. Provided always that the persons who, at the time of the establishment of such High Court in any of the said Presidencies, are Judges of the Supreme Court of Judicature and permanent Judges of the Court of Sudder Dewanny Adawlut or Sudder Adawlut of the same Presidency, shall be and become Judges of such High Court without further appointment for that purpose; and the Chief Justice of such Supreme Court shall become the Chief Justice of such High Court.

IV. All the Judges of the High Courts established under this Act shall hold their offices during Her Majesty's pleasure: Provided that it shall be lawful for any Judge of a High Court to resign such office of Judge to the Governor-General of India in Council, or Governor in Council of the Presidency in which such High Court is established.

V. The Chief Justice of any such High Court shall have rank and PRECEDENCE before the other Judges of the same Court, and such of the other Judges of such Court as on its establishment shall have been transferred thereto from the Supreme Court, shall have rank and precedence before the Judges of the High Court not transferred from the Supreme Court, and, except as aforesaid, all the Judges of each High Court shall have rank and precedence according to the seniority of their appointments, unless otherwise provided in their Patents.

VI. Any Chief Justice or Judge transferred to any High Court from the Supreme Court shall receive the like SALARY and be entitled to the like retiring pension and advantage as he would have been entitled to for and
in respect of service in the Supreme Court, if such Court had been continued, his service in the High Court being reckoned as service in the Supreme Court; and, except as aforesaid, it shall be lawful for the Secretary of State in Council of India to fix the salaries, allowances, furloughs, retiring pensions, and (where necessary) expenses for equipment and voyage of the Chief Justices and Judges of the several High Courts under this Act, and from time to time to alter the same: Provided always that such alteration shall not affect the salary of any Judge appointed prior to the date thereof.

VII. Upon the happening of a VACANCY in the office of Chief Justice, and during any absence of a Chief Justice, the Governor-General in Council or Governor in Council, as the case may be, shall appoint one of the Judges of the same High Court to perform the duties of Chief Justice of the said Court until some person has been appointed by Her Majesty to the office of Chief Justice of the same Court, and has entered on the discharge of the duties of such office, or until the Chief Justice has returned from such absence; and upon the happening of a vacancy in the office of any other Judge of any such High Court, and during any absence of any such Judge, or on the appointment of any such Judge to act as Chief Justice, it shall be lawful for the Governor-General in Council or Governor in Council, as the case may be, to appoint a person, with such qualifications as are required in persons to be appointed to the High Court, to act as a Judge of the said High Court, and the person so appointed shall be authorized to sit and to perform the duties of a Judge of the said Court until some person has been appointed by Her Majesty to the office of Judge of the same Court, and has entered on the discharge of the duties of such office, or until the absent Judge has returned from such absence, or until the Governor-General in Council or Governor in Council as aforesaid shall see cause to cancel the appointment of such acting Judge.

VIII. Upon the establishment of such High Court as aforesaid in the Presidency of Fort William in Bengal, the SUPREME COURT AND the Court of SUDDER Dewanny Adawlut and Sudder Nizamut Adawlut at Calcutta in the same Presidency shall be ABOLISHED:

And upon the establishment of such High Court in the Presidency of Madras, the Supreme Court and the Court of Sudder Adawlut and Foujdyar Adawlut in the same Presidency shall be abolished:

And upon the establishment of such High Court in the Presidency of Bombay, the Supreme Court and the Court of Sudder Dewanny Adawlut and Sudder Foujdyar Adawlut in the same Presidency shall be abolished.

And the records and documents of the several Courts so abolished in each Presidency shall become and be Records and documents of the High Court established in the same Presidency.

IX. Each of the High Courts to be established under this Act shall have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate, and matrimonial JURISDICTION, original and appellate, and all such powers and authority for and in relation to the administration of justice in the Presidency for which it is established as
Her Majesty may by such Letters Patent as aforesaid grant and direct, subject, however, to such directions and limitations as to the exercise of original civil and criminal jurisdiction beyond the limits of the Presidency towns as may be prescribed thereby; and save as by such Letters Patent may be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court to be established in each Presidency shall have and exercise all jurisdiction and every power and authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under this Act at the time of the abolition of such last-mentioned Courts.

XI. Upon the establishment of the said High Courts in the said Presidencies respectively, all provisions then in force in India of Acts of Parliament, or of any orders of Her Majesty in Council, or charters, or of any Acts of the legislature of India, which at the time or respective times of the establishment of such High Courts are respectively applicable to the Supreme Courts at Fort William in Bengal, Madras, and Bombay respectively, or to the Judges of those Courts, shall be taken to be applicable to the said High Courts, and to the Judges thereof respectively, so far as may be consistent with the provisions of this Act, and the Letters Patent to be issued in pursuance thereof, and subject to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council.

XII. From and after the abolition of the Courts abolished as aforesaid in any of the said Presidencies, the High Court of the same Presidency shall have jurisdiction over all PROCEEDINGS PENDING in such abolished Courts at the time of the abolition thereof, and such proceedings, and all previous proceedings in the said last-mentioned Courts, shall be dealt with as if the same had been had in the said High Court, save that any such proceedings may be continued, as nearly as circumstances permit, under and according to the practice of the abolished Courts respectively.

XIII. Subject to any laws or regulations which may be made by the Governor-General in Council, the High Court established in any Presidency under this Act may by its own rules provide for the exercise, by one or more Judges, or by DIVISION COURTS constituted by two or more Judges of the said High Court, 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.

XIV. The Chief Justice of each High Court shall from time to time determine what Judge in each case shall sit alone, and what Judges of the Court, whether with or without the Chief Justice, shall constitute the several division Courts as aforesaid.

XV. Each of the High Courts established under this Act shall have SUPERINTENDENCE OVER all COURTS which may be subject to its appellate jurisdiction, and shall have power to call for returns, and to direct the transfer of any suit or appeal from any such Court to any other Court of equal or superior jurisdiction, and shall have power to

Section 10 was repealed by 28 Vic., c. 15 s. 2.—See Repealing Enactments, p. 8.
make and issue general RULES for regulating the practice and proceedings of such Courts, and also to 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 also to settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of Courts, 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 used and observed in the said Courts, provided that such general rules and forms and tables be not inconsistent with the provisions of any law in force, and shall, before they are issued, have received the sanction, in the Presidency of Fort William, of the Governor-General in Council, and in Madras or Bombay of the Governor in Council of the respective Presidencies.

XVI. It shall be lawful for Her Majesty, if at any time hereafter Her Majesty see fit so to do, by Letters Patent under the great seal of the United Kingdom, to erect and establish a High Court of Judicature in and for any portion of the territories within Her Majesty’s dominions in India, not included within the limits of the local jurisdiction of another High Court, to consist of a Chief Justice and of such number of other Judges, with such qualifications as are required in persons to be appointed to the High Courts established at the Presidencies hereinbefore mentioned, as Her Majesty from time to time may think fit and appoint; and it shall be lawful for Her Majesty by such Letters Patent to confer on such Court any such jurisdiction, powers, and authority as under this Act is authorized to be conferred on, or will become vested in, the High Court to be established in any Presidency hereinbefore mentioned; and, subject to the directions of such Letters Patent, all the provisions of this Act having reference to the High Court established in any such Presidency, and to the Chief Justice and other Judges of such Court, and to the Governor-General or Governor of the Presidency in which such High Court is established, shall, as far as circumstances may permit, be applicable to the High Court established in the said territories, and to the Chief Justice and other Judges thereof, and to the person administering the government of the said territories.

XVII. It shall be lawful for Her Majesty, if Her Majesty shall so think fit, at any time within three years after the establishment of any High Court under this Act, by her Letters Patent to revoke all or such parts or provisions as Her Majesty may think fit of the Letters Patent by which such Court was established, and to grant and make such other powers and provisions as Her Majesty may think fit, and as might have been granted or made by such first Letters Patent, or without any such revocation as aforesaid, by like Letters Patent to grant and make any additional or supplementary powers and provisions which might have been granted or made in the first instance.

XIX.—The word “Barrister” in this Act shall be deemed to include Barristers of England or Ireland or members of the faculty of Advocates in Scotland; and the words “Governor-General and Governor” shall comprehend the officer administering the government.

Section 18 was repealed by 28 Vic. 15, c. 15 s. 2.—See Repealing Enactments, p. 8.
28 VICTORIA, CHAPTER XV.

An Act to extend the term for granting fresh Letters Patent for the High Courts in India, and to make further provisions respecting the territorial jurisdiction of the said Courts (7th April 1865).

Whereas it is expedient to extend the time fixed for granting fresh Letters Patent for the High Courts in India under the provisions of an Act passed in the Twenty-fourth and Twenty-fifth years of the Reign of Her present Majesty, intituled "An Act for establishing High Courts of Judicature in India," and to make further provisions than is in the said Act contained for empowering the alteration from time to time of the local limits of the said High Courts, and for the exercise, in places beyond the limits of the Presidencies or places within and for which such High Courts are established, of the jurisdiction and powers conferred by Her Majesty's Letters Patent on the said High Courts; Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, in Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The time fixed for granting fresh Letters Patent for the High Courts in India by section seventeen of the said recited Act is hereby extended to the first day of January one thousand eight hundred and sixty-six.

2. Sections ten and eighteen of the said Act of the twenty-fourth and twenty-fifth years of Her present Majesty are hereby repealed.

3. It shall be lawful for the Governor-General of India in Council by order from time to time to transfer any territory or place from the jurisdiction of the one to the jurisdiction of any other of the High Courts established, or to be established, under the said Act, and to authorize and empower any High Court to exercise all or any portion of the jurisdiction and powers conferred, or to be conferred, on it by Her Majesty's Letters Patent establishing the same or any other Letters Patent issued by Her Majesty under the provisions of the above recited Act of the twenty-fourth and twenty-fifth years of Her Majesty within any such portion of Her Majesty's dominions in India, not included within the limits of the Presidency or place or places for which such High Court was established, as the said Governor-General in Council may from time to time determine, and also to exercise any such jurisdiction in respect of Christian subjects of Her Majesty resident within the dominions of such of the Princes and States of India in alliance with Her Majesty as the said Governor-General in Council may in manner aforesaid from time to time determine, anything in the said recited Act of the twenty-fourth and twenty-fifth years of Her present Majesty notwithstanding.

4. Whenever any such order has been passed by the Governor-General in Council, he shall transmit to the Secretary of State for India an authentic copy thereof, and it shall be lawful for Her Majesty to signify, through the Secretary of State for India in Council, her disallowance of such order, and such disallowance shall make void and amend
such order from and after the day on which the Governor-General shall make known by proclamation, or by signification to his Council, that he has received the notification of such disallowance by Her Majesty. Provided always that all acts, proceedings, and judgments done, taken, or given by such High Courts, and not set aside by any competent authority before the promulgation or signification as aforesaid of such disallowance by Her Majesty, shall be deemed to be, and to have been, valid and effectual for all purposes whatever, such disallowance notwithstanding.

5. So much of this Act as relates to the jurisdiction of the High Court shall commence and come into operation as soon as the same shall have been published by the Governor-General in Council.

6. Nothing in this Act contained shall interfere with the powers of the Governor-General in Council at meetings for the purpose of making laws and regulations.

THE AMENDED LETTERS PATENT OF THE HIGH COURT.

Letters Patent for the High Court of Judicature for the Presidency of Bombay, bearing date the twenty-eighth day of December, in the twenty-ninth year of the reign of Victoria, in the year of our Lord one thousand eight hundred and sixty-five.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the faith, to all to whom these presents shall come, greeting: Whereas by an Act of Parliament passed in the twenty-fourth and twenty-fifth years of our reign, intituled "An Act for establishing High Courts of Judicature in India," it was, amongst other things, enacted that it should be lawful for Her Majesty, by Letters Patent under the great seal of the United Kingdom, to erect and establish a High Court of Judicature at Bombay for the Presidency of Bombay aforesaid, and that such High Court should consist of a Chief Justice and as many Judges, not exceeding fifteen, as Her Majesty might from time to time think fit to appoint, who should be selected from among persons qualified as in the said Act is declared: Provided always that the persons who, at the time of the establishment of such High Court, were Judges of the Supreme Court of Judicature and permanent Judges of the Court of Sudder Dewanee Adawlut or Sudder Foujdaree Adawlut of the same Presidency, should be and become Judges of such High Court without further appointment for that purpose, and the Chief Justice of such Supreme Court should become the Chief Justice of such High Court, and that, upon the establishment of such High Court as aforesaid, the Supreme Court and the Court of Sudder Dewanee Adawlut and Sudder Foujdaree Adawlut at Bombay, in the said Presidency, should be abolished.

And that the High Court of Judicature so to be established should have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate, and matrimonial jurisdiction, original and appellate, and all such powers and authority for, and in relation to, the administration of justice in the said Presidency as Her Majesty might by such Letters Patent as aforesaid grant and direct, subject, however, to such directions and
limitations as to the exercise of original civil and criminal jurisdiction beyond the limits of the Presidency town as might be prescribed thereby, and save as by such Letters Patent might be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council—the High Court so to be established should have and exercise all jurisdiction, and every power and authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under the said Act at the time of the abolition of such last-mentioned Courts: And whereas we did, upon full consideration of the premisses, think fit to erect and establish, and by our Letters Patent under the great seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the twenty-sixth day of June, in the twenty-fifth year of our reign in the year of our Lord one thousand eight hundred and sixty-two, did accordingly, for us, our heirs and successors, erect and establish at Bombay, for the Presidency of Bombay aforesaid, a High Court of Judicature, which should be called the High Court of Judicature at Bombay, and did thereby constitute the said Court to be a court of record; and whereas we did thereby appoint and ordain that the said High Court of Judicature at Bombay should, until further or other provision should be made by us, or our heirs and successors in that behalf in accordance with the recited Act, consist of a Chief Justice and six Judges, and did thereby constitute and appoint certain persons, being respectively qualified, as in the said Act is declared, to be Judges of the said High Court; and whereas, on the sixth day of July one thousand eight hundred and sixty-three, we did, in accordance with the provisions of the said recited Act, increase the number of Judges of the said Court to a Chief Justice and seven Judges, and whereas by the said recited Act it is declared lawful for Her Majesty, at any time within three years after the establishment of the said High Court, by Her Letters Patent to revoke all or such parts or provisions as Her Majesty might think fit of the Letters Patent by which such Court was established, and to grant and make such other powers and provisions as Her Majesty might think fit and as might have been granted or made by such first Letters Patent:

And whereas by the Act of the twenty-eighth year of our reign, chapter fifteen, entitled "An Act to extend the term for granting fresh Letters Patent for the High Courts in India, and to make further provision respecting the territorial jurisdiction of the said Courts," the time for issuing fresh Letters Patent has been extended to the first of January one thousand eight hundred and sixty-six:

And whereas, in order to make further provisions respecting the constitution of the said High Court and the administration of justice thereby, it is expedient that the said Letters Patent, dated the twenty-sixth of June one thousand eight hundred and sixty-two, should be revoked, and that some of the powers and provisions thereby granted and made should be granted and made with amendments and additional powers and provisions by fresh Letters Patent:

1. Now know ye that we, upon full consideration of the premisses and of our especial grace, certain knowledge, and mere motion, have thought fit to revoke, and do by these presents (from and after the date of the publication thereof as hereinafter provided and subject to the provisions thereof) revoke, our said Letters Patent of the twenty-sixth of June
one thousand eight hundred and sixty-two, except so far as the Letters Patent of the fourth year of His Majesty King George the Fourth, dated the eighth day of December one thousand eight hundred and twenty-three, establishing a Supreme Court at Bombay, were revoked or determined thereby.

2. And we do by these presents grant, direct, and ordain that, notwithstanding the revocation of the said Letters Patent of the twenty-sixth of June one thousand eight hundred and sixty-two, the High Court of Judicature, called the High Court of Judicature at Bombay, shall be and continue as from the time of the original erection and establishment there of the High Court of Judicature at Bombay for the Presidency of Bombay aforesaid, and that the said Court shall be and continue a court of record, and that all proceedings commenced in the said High Court prior to the date of the publication of these Letters Patent, shall be continued and depend in the said High Court as if they had commenced in the said High Court after the date of such publication, and that all rules and orders in force in the said High Court immediately before the date of the publication of these Letters Patent shall continue in force, except so far as the same are altered hereby until the same are altered by competent authority.

3. And we do hereby appoint and ordain that the person and persons who shall, immediately before the date of the publication of these Letters Patent, be the Chief Justice and Judges, or acting Chief Justice or Judges, if any, of the said High Court of Judicature at Bombay, shall continue to be the Chief Justice and Judges or acting Chief Justices or Judges of the said High Court until further or other provision shall be made by us or our heirs and successors in that behalf in accordance with the said recited Act for establishing High Courts of Judicature in India.

4. And we do hereby appoint and ordain that every clerk and ministerial officer of the said High Court of Judicature at Bombay, appointed by virtue of the said Letters Patent of the twenty-sixth of June one thousand eight hundred and sixty-two, shall continue to hold and enjoy his office and employment with the salary thereunto annexed until he be removed from such office and employment, and he shall be subject to the like power of removal regulations and provisions as if he were appointed by virtue of these Letters Patent.

5. And we do hereby ordain that the Chief Justice, and every Judge who shall be from time to time appointed to the said High Court of Judicature at Bombay, previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Governor in Council may commission to receive it:

"I, A. B., appointed Chief Justice (or a Judge) of the High Court of Judicature at Bombay, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge, and judgment."

6. And we do hereby grant, ordain, and appoint that the said High Court of Judicature at Bombay shall have and use, as occasion may require, a seal bearing a device and impression of our Royal Arms within an exergue or label, surrounding the same with this inscription: "The Seal of the High Court at Bombay." And we do further grant, ordain, and appoint
that the said seal shall be delivered to, and kept in the custody of, the Chief Justice, and in case of vacancy of the office of Chief Justice, or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice under the provisions of Section 7 of the said recited Act; and we do further grant, ordain, and appoint that whenever it shall happen that the office of Chief Justice or of the Judge to whom the custody of the said seal be committed shall be vacant, the said High Court shall be and is hereby authorized and empowered to demand, seize, and take the said seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her, or their possession.

7. And we do hereby further grant, ordain, and appoint that all writs, summons, precepts, rules, orders, and other mandatory process to be used, issued, or awarded by the said High Court of Judicature at Bombay, shall run and be in the name and style of us or of our heirs and successors, and shall be sealed with the seal of the said High Court.

8. And we do hereby authorize and empower the Chief Justice of the said High Court of Judicature at Bombay from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed by the Governor in Council, to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of justice and the due execution of all the powers and authorities granted and committed to the said High Court by these our Letters Patent. And we do hereby ordain that every such appointment shall be forthwith submitted to the approval of the Governor in Council, and shall be either confirmed or disallowed by the Governor in Council. And it is our further will and pleasure, and we do hereby for us, our heirs and successors, give, grant, direct, and appoint all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice shall from time to time appoint for each office and place respectively, and as the Governor in Council, subject to the control of the Governor-General in Council, shall approve of: Provided always, and it is our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court so long as they shall hold their respective offices, but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed by the Governor in Council, and to absent himself from the said limits during the term of such leave in accordance with the said rules.

ADMISSION OF ADVOCATES, VAKEELS, AND ATTORNEYS.

9. And we do hereby authorize and empower the said High Court of Judicature at Bombay to approve, admit, and enrol such and so many advocates, vakeels, and attorneys as to the said High Court shall seem meet, and such advocates, vakeels, and attorneys shall be and are hereby authorized to appear for the suitors of the said High Court, and to plead or to act or to plead and act for the said suitors according as the said High Court may by its rules and directions determine, and subject to such rules and directions.
10. And we do hereby ordain that the said High Court of Judicature at Bombay shall have power to make rules for the qualification and admission of proper persons to be advocates, vaksees, and attorneys-at-law of the said High Court, and shall be empowered to remove, or to suspend from practice on reasonable cause, the said advocates, vaksees, or attorneys-at-law, and no person whatsoever but such advocates, vaksees, or attorneys shall be allowed to act or to plead for or on behalf of any suitor in the said High Court, except that any suitor shall be allowed to appear, plead, or act on his own behalf or on behalf of a co-suitors.

CIVIL JURISDICTION OF THE HIGH COURT.

11. And we do hereby ordain that the said High Court of Judicature at Bombay shall have and exercise ordinary original civil jurisdiction within such local limits as may from time to time be declared and prescribed by any law made by the Governor in Council, and until some local limits shall be so declared and prescribed within the limits of the local jurisdiction of the said High Court of Bombay at the date of the publication of these presents, and the ordinary original civil jurisdiction of the said High Court shall not extend beyond the limits for the time being declared and prescribed as the local limits of such jurisdiction.

12. And we do further ordain that the said High Court of Judicature at Bombay, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description if, in the case of suits for land or other immoveable property, such land or property shall be situated, or if in all other cases if the cause of action shall have arisen either wholly, or in case the leave of the Court shall have been first obtained in part, within the local limits of the ordinary original jurisdiction of the said High Court; or if the defendant at the time of the commencement of the suit shall dwell or carry on business or personally work for gain within such limits, except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Bombay in which the debt, or damage, or value of property sued for does not exceed one hundred rupees.

13. And we do further ordain that the said High Court of Judicature at Bombay shall have power to remove and to try and determine, as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court, whether within or without the Presidency of Bombay, subject to its superintendence, when the said High Court shall think proper to do so either on the agreement of the parties to that effect or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court.

14. And we do further ordain that where plaintiff has several causes of action against defendant, such causes of action not being for land or other immoveable property, and the said High Court shall have original jurisdiction in respect of one of such causes of action, it shall be lawful for the said High Court to call on the defendant to show cause why the several causes of action should not be joined together in one suit, and to make such order for trial of the same as to the said High Court shall seem fit.
15. And we do further ordain that an appeal shall lie to the said High Court of Judicature at Bombay from the judgment (not being a sentence or order passed or made in any criminal trial) of one Judge of the said High Court or of one Judge of any Division Court pursuant to Section 13 of the said recited Act, and that an appeal shall also lie to the said High Court from the judgment, not being a sentence or order as aforesaid of two or more Judges of the said High Court or of such Division Court wherever such Judges are equally divided in opinion and do not amount in number to a majority of the whole of the Judges of the said High Court at the time being, but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to us, our heirs, or successors in our or their Privy Council, as hereinafter provided.

16. And we do further ordain that the said High Court of Judicature at Bombay shall be a Court of Appeal from the Civil Courts of the Presidency of Bombay and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any laws or regulations now in force.

17. And we do further ordain that the said High Court of Judicature at Bombay shall have the like power and authority, with respect to the persons and estates of infants, idiots, and lunatics within the Bombay Presidency, as that which was vested in the said High Court immediately before the publication of these presents.

18. And we do further ordain that the Court for relief of Insolvent Debtors at Bombay shall be held before one of the Judges of the said High Court of Judicature at Bombay, and the said High Court and any such Judge thereof shall have and exercise within the Presidency of Bombay such powers and authorities, with respect to original and appellate jurisdiction and otherwise, as are constituted by the laws relating to insolvent debtors in India.

LAW TO BE ADMINISTERED BY THE HIGH COURT.

19. And we do further ordain that, with respect to the law or equity to be applied to each case coming before the said High Court of Judicature at Bombay in the exercise of its ordinary original civil jurisdiction, such law or equity shall be the law or equity which would have been applied by the said High Court to such case if these Letters Patent had not issued.

20. And we do further ordain that, with respect to the law or equity and rule of good conscience to be applied to each case coming before the said High Court of Judicature at Bombay in the exercise of its extraordinary original civil jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which would have been applied to such case by any local Court having jurisdiction therein.

21. And we do further ordain that, with respect to the law or equity and rule of good conscience to be applied by the said High Court of
Judicature at Bombay to each case coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which the Court, in which the proceedings in such case were originally instituted, ought to have applied to such case.

CRIMINAL JURISDICTION.

22. And we do further ordain that the said High Court of Judicature at Bombay shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction, and also in respect of all persons beyond such limits over whom the said High Court of Judicature at Bombay shall have criminal jurisdiction at the date of the publication of these presents.

23. And we do further ordain that the said High Court of Judicature at Bombay, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law.

24. And we do further ordain that the said High Court of Judicature at Bombay shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court now subject to the superintendence of the said High Court, and shall have authority to try at its discretion any such person brought before it on charges preferred by the Advocate-General, or by any magistrate or other officer specially empowered by the Government in that behalf.

25. And we do further ordain that there shall be no appeal to the said High Court of Judicature at Bombay from any sentence or order passed or made in any criminal trial before the Court of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court; but it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

26. And we do further ordain that, on such point or points of law being so reserved as aforesaid, or on its being certified by the said Advocate-General that in his judgment there is an error in the decision of a point or points of law decided by the Court of original criminal jurisdiction, or that a point or points of law which has or have been decided by the said Court should be further considered, the said High Court shall have full power and authority to review the case or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court shall seem right.

27. And we do further ordain that the said High Court of Judicature at Bombay shall be a Court of appeal from the criminal courts of the Presidency of Bombay, and from all other Courts subject to its superintendence; and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any law now in force.

28. And we do further ordain that the said High Court of Judica-
ture at Bombay shall be a Court of reference and revision from the crimi-
nal Courts subject to its appellate jurisdiction, and shall have power to hear
and determine all such cases referred to it by the Session Judges or by
any other officers now authorised to refer cases to the said High Court,
and to revise all such cases tried by any officer or Court possessing crimi-
nal jurisdiction as are now subject to reference to, or revision by, the said
High Court.

29. And we do further ordain that the said High Court shall have
power to direct the transfer of any criminal case or appeal from any
court to any other court of equal or superior jurisdiction, and also to direct
the preliminary investigation or trial of any criminal case by any officer
or Court otherwise competent to investigate or try it, though such case
belongs in ordinary course to the jurisdiction of some other officer or Court.

CRIMINAL LAW.

30. And we do further ordain that all persons brought for trial
before the said High Court of Judicature at Bombay, either in the exer-
cise of its original jurisdiction or in the exercise of its jurisdiction as a
Court of appeal, reference, or revision, charged with any offence for which
provision is made by Act No. XLV. of 1860, called the Indian Penal Code,
or by any Act amending or excluding the said Act which may have been
passed prior to the publication of these presents, shall be liable to punish-
ment under the said Act or Acts, and not otherwise.

EXERCISE OF JURISDICTION ELSEWHERE THAN AT THE
ORDINARY PLACE OF SITTING OF THE HIGH COURT.

31. And we do further ordain that whenever it shall appear to the
Governor in Council convenient that the jurisdiction and power by these
our Letters Patent, or by the recited Act vested in the said 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 said
High Court other than the usual place of sitting of the said High Court
or at several such places by way of circuit, the proceedings in cases
before the said High Court at such place or places shall be regulated by
any law relating thereto which has been, or may be, made by competent
legislative authority for India.

ADMIRALTY AND VICE-ADMIRALTY JURISDICTION.

32. And we do further ordain that the said High Court of Judi-
cature at Bombay shall have and exercise all such civil and maritime jurisd-
diction as may now be exercised by the said High Court as a Court of
Admiralty or Vice-Admiralty; and also such jurisdiction for the trial and
adjudication of prize causes and other maritime questions arising in India
as may now be exercised by the said High Court.

33. And we do further ordain that the said High Court of Judicature
at Bombay shall have and exercise all such criminal jurisdiction as may now
be exercised by the said High Court as a Court of Admiralty or Vice-Admiralty, or otherwise in connection with marine matters or matters of prize.

TESTAMENTARY AND INTESTATE JURISDICTION.

34. And we do further ordain that the said High Court of Judicature at Bombay shall have the like power and authority as that which may now be lawfully exercised by the said High Court in relation to the granting of probates of last wills and testaments and letters of administration of the goods, chattels, credits, and all other effects whatsoever of persons dying intestate, whether within or without the Presidency of Bombay. Provided always that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India, by which power is given to any other Court to grant such probates and letters of administration.

MATRIMONIAL JURISDICTION.

35. And we do further ordain that the said High Court of Judicature at Bombay shall have jurisdiction within the Presidency of Bombay in matters matrimonial between our subjects professing the Christian religion. Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by Royal Charter within the said Presidency lawfully possessed thereof.

POWERS OF SINGLE JUDGES AND DIVISION COURTS.

36. And we do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature at Bombay, in the exercise of its original or appellate jurisdiction, may be performed by any Judge or any Division Court thereof appointed or constituted for such purpose under the provisions of the thirteenth section of the aforesaid Act of the twenty-fourth and twenty-fifth years of our reign; and if such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges should be equally divided, then the opinion of the senior Judge shall prevail.

CIVIL PROCEDURE.

37. And we do further ordain that it shall be lawful for the said High Court of Judicature at Bombay from time to time to make rules and orders, for the purpose of regulating all proceedings in civil cases which may be brought before the said High Court, including proceedings in its admiralty, vice-admiralty, testamentary, intestate, and matrimonial jurisdictions respectively. Provided always that the said High Court shall be guided in making such rules and orders as far as possible by the provisions of the Code of Civil Procedure, being an Act passed by the Governor-General in Council and being Act No. VIII. of 1859, and the provisions of any law which has been made amending or altering the same by competent legislative authority for India.
CRIMINAL PROCEDURE.

38. And we do further ordain that the proceedings in all criminal cases which shall be brought before the said High Court of Judicature at Bombay, in the exercise of its ordinary original criminal jurisdiction, and also in all other criminal cases over which the said High Court had jurisdiction immediately before the publication of these presents, shall be regulated by the procedure and practice which was in use in the said High Court immediately before such publication, subject to any law which has been or may be made in relation thereto by competent legislative authority for India, and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure prescribed by an Act passed by the Governor-General in Council and being Act No. XXV. of 1861, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid.

APPEALS TO PRIVY COUNCIL.

39. And we do further ordain that any person or persons may appeal to us, our heirs, and successors, in our or their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree, or order of the said High Court of Judicature at Bombay made on appeal, and from any final judgment, decree, or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court from which an appeal shall not lie to the said High Court under the provision contained in the fifteenth clause of these presents. Provided in either case that the sum or matter at issue is of the amount or value of not less than 10,000 rupees, or that such judgment, decree, or order shall involve, directly or indirectly, some claim, demand, or question to or respecting property amounting to, or of the value of, not less than 10,000 rupees, or from any other final judgment, decree, or order made either on appeal or otherwise as aforesaid, when the said High Court shall declare that the case is a fit one for appeal to us, our heirs, or successors, in our or their Privy Council; subject always to such rules and orders as are now in force or may from time to time be made respecting appeals to ourselves in Council from the Courts of the said Presidency, except so far as the said existing rules and orders respectively are hereby varied, and subject also to such further rules and orders as we may, with the advice of our Privy Council, hereafter make in that behalf.

40. And we further ordain that it shall be lawful for the said High Court of Judicature at Bombay at its discretion on the motion, or if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition, of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order, or sentence of the said High Court in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to us, our heirs, and successors, in our or their Privy Council, subject to the same rules, regulations, and limitations as are herein expressed respecting appeals from final judgments, decrees, orders, and sentences.
41. And we do further ordain that from any judgment, order, or sentence of the said High Court of Judicature at Bombay, made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order, or sentence to appeal to us, our heirs, or successors in Council, provided the said High Court shall declare that the case is a fit one for such appeal, and under such conditions as the said High Court may establish or require, subject always to such rules and orders as we may, with the advice of our Privy Council, hereafter make in that behalf.

42. And we do further ordain that, in all cases of appeal made from any judgment, order, sentence, or decree of the said High Court of Judicature at Bombay, to us, our heirs, or successors, in our or their Privy Council, such High Court shall certify and transmit to us, our heirs, and successors, in our or their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees, and orders had or made in such cases, appealed so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court. And that the said High Court shall also certify and transmit to us, our heirs, and successors, in our or their Privy Council, a copy of the reasons given by the Judges of such Court, or by any of such Judges, for or against the judgment or determination appealed against. And we do further ordain that the said High Court shall, in all cases of appeal to us, our heirs, or successors, conform to and execute, or cause to be executed, such judgments and orders as we, our heirs, or successors, in our or their Privy Council, shall think fit to make in the premises, in such manner as any original judgment, decree, or decretal order, or other order or rule of the said High Court, should or might have been executed.

CALLS FOR RECORDS, &c., BY THE GOVERNMENT.

43. And it is our further will and pleasure that the said High Court of Judicature at Bombay shall comply with such requisitions as may be made by the Government for records, returns, and statements in such form and manner as such Government may deem proper.

44. And we do further ordain and declare that all the provisions of these our Letters Patent are subject to the legislative powers of the Governor-General in Council, exercised at meetings for the purpose of making laws and regulations, and also of the Governor-General in cases of emergency, under the provisions of an Act of the twenty-fourth and twenty-fifth years of our reign, chapter sixty-seven, and may be in all respects amended and altered thereby.

45. And it is our further will and pleasure that these Letters Patent shall be published by the Governor in Council, and shall come into operation from and after the date of such publication, and that from and after the date on which effect shall have been given them, so much of the aforesaid Letters Patent granted by His Majesty King George the Fourth as was not revoked or determined by the said Letters Patent of the twenty-sixth of June one thousand eight hundred and sixty-two, and is consistent
with these Letters Patent, shall cease, determine, and be utterly void to all intents and purposes whatsoever.

In witness thereof we have caused these our Letters to be made Patent. Witness ourselves at Westminster, the twenty-eighth day of December in the twenty-ninth year of our reign.

By Warrant under the Queen's Sign Manual,
(Signed) C. ROMILLY,
By order of His Excellency the Governor in Council.

PRIVY COUNCIL.

It is proposed to repeal the various enactments relating to the Privy Council by a bill now under consideration. They have therefore been omitted.

SMALL CAUSE COURTS.

ACT No. XI. of 1865.

An Act to consolidate and amend the Law relating to Courts of Small Causes beyond the local limits of the ordinary Civil Jurisdiction of the High Courts of Judicature.

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:

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

Words importing 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' means a Court constituted under this Act.

And in every part of British India in which this Act operates, 'LOCAL GOVERNMENT' denotes the person authorised to administer the Executive Government in such part; and 'HIGH COURT' denotes the highest Civil Court of Appeal having jurisdiction therein.

2. 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.

3. 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.

4. Every Court of Small Causes shall use a SEAL bearing the following inscription in English and in the language of the Court—'Court of Small Causes of,'—and shall be subject to the general control and orders of the High Court.

5. Courts of Small Causes shall be held at such place or places within the local limits of their respective jurisdiction as shall from time to time be appointed by the Local Government.

6. The following are the SUITS which shall be COGNIZABLE by Courts of Small Causes, namely—claims for money due on bond or other contract, or for rent or for personal property, or for the value of such property, or for damages, when the debt, damage, or demand does not exceed in amount or value the sum of five hundred 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, unless, as regards arrears of rent for which such suit may be brought, the Judge of the Court of Small Causes shall have been expressly invested by the Local Government with jurisdiction over claims to such arrears.

7. The Local Government may extend the jurisdiction of any Court of Small Causes, in suits of the nature described in the last preceding Section and thereby made cognizable by Courts of Small Causes, to an amount not exceeding one thousand rupees.

8. 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 rest of section 2 was repealed by Act 14 of 1870.—See Repealing Enactments, p. 75.
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.

9. 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.

10. 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.

11. 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.

12. 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 Moonisiffis, or Village or District Panchayats, 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 authorised and appointed under the Rules in force in the Presidencies of Madras and Bombay respectively, for the trial of small suits in military Bazaars in Cantonments, and Stations occupied by the troops of those Presidencies respectively; or by Panchayats in regard to suits against Military persons, according to the Rules in force in the Presidency of Madras.

13. 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.

14. 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.

15. 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.

16. 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 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.

17. 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 practice 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.

18. 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.

19. 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.

20. 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 immovable property of the judgment-debtor is situate, such Court shall proceed to enforce such judgment according to its own rules and mode of procedure in like cases.

21. In suits tried under this Act, all DECISIONS and orders of the Court shall be FINAL: Provided that in any case in which a decree shall be passed ex-parte against a defendant, he may, within thirty days after any process for enforcing the decree has been executed, give notice to the Court, by which the decree was passed, of his intention to apply to the Court at its next sitting for an order to set it aside; and if, on the application being made to the Court at its next sitting, it shall be proved to the satisfaction of the Court that the summons was not duly served, or that the defendant was prevented by any sufficient cause from appearing when the suit was heard, the Court shall pass an order setting aside the decree, and shall appoint a day for proceeding with the suit, upon such terms as to costs or otherwise as shall to the Court seem proper: Provided also that it shall be competent to the Court, if it shall think fit, in any case not falling within the proviso last aforesaid, to grant a new trial, if notice of the intention to apply for the same at the next sitting of the Court be given to the Court within the period of seven days from the date of the decision, and if the same be applied for at the next sitting of the Court; but no such new trial shall be granted where the party applying for the same is the defendant or one of the defendants, unless he shall with his notice of application deposit in Court the amount for which a decree shall have been passed against him, including the costs (if any) of the opposite party.

22. If, in the trial of any suit under this Act, any question of law, or usage having the force of law, or any question as to the construction of a document, which construction may affect the merits of the decision, shall arise, the Court, in suits for an amount not exceeding five hundred rupees, may, either of its own motion or on the application of any of the parties to the suit, and in suits for an amount greater than five hundred rupees, shall, draw up a statement of the case and REFER it, with the Court's own opinion, for the decision of the High Court.

23. The Court may proceed in the case notwithstanding such reference, and may pass a decree contingent upon the opinion of the High
Court on the point referred; but no execution shall be issued in any case in which a reference shall have been made until the receipt of the order of the High Court.

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

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

26. The High Court, when it has heard and considered the case, shall send a copy of its judgment, under the seal of the Court, to the Court by which the reference was made; and such Court shall, on the receipt of the copy, proceed to dispose of the case conformably to the decision of the High Court.

27. COSTS (if any) consequent ON the REFERENCE of a case for the opinion of the High Court shall be costs in the suit.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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 differ on a point of law, or usage having the force of law, or in construing a document the construction of which may affect the merits of the decision, they shall submit a case for the opinion of the High Court on the point of difference between them, in the manner prescribed in the twenty-second Section of this Act; and the provisions applicable to a reference to the High Court, contained in the twenty-second, twenty-third, twenty-fourth, twenty-fifth, and twenty-sixth Sections of this Act, shall be applicable to every reference made under this Section.

33. 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.

34. 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.

35. 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 authorised in that behalf by the Governor-General of India in Council.

36. 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 plaints presented to the Court, issue notice of suit to the defendants, receive any documents which the parties may wish to put in, and issue process for the attendance of their witnesses. He shall likewise keep lists of all causes coming on for trial, and fix such days for their being heard respectively as may seem to him fit. He may also receive notices under the twenty-first Section.

37. 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 PLAIN presented to the Court is DEFECTIVE in any of the particulars mentioned in Sections twenty-seven to thirty-two, both inclusive, of the Code of Civil Procedure, he may reject the same. But it shall be lawful for the Judge, or for any person invested with the powers of a Judge as aforesaid, to reject any plaint which may have been received by the Registrar, and to receive any plaint which may have been rejected by him: Provided that such reception or rejection (as the case may be) by the Registrar shall, in the opinion of such Judge or other person empowered as aforesaid, have been erroneous, and that an application to set the same aside shall be made at the first subsequent sitting in the said Court of Judge or other person duly empowered as aforesaid.

38. 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 there-in, and if, before the day appointed for the hearing of such suit, the defendant, or his agent duly authorised 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.

39. The Registrar, if the Judge be absent on duty and there be no person invested with the powers of a Judge as aforesaid, shall also receive
APPLICATIONS FOR the EXECUTION of decrees passed by the Judge, or other person empowered as aforesaid, of the Court of which he is the Registrar, and, subject to any orders which he may receive from the Judge or such other person, shall execute such decrees in the same manner as the Judge might execute them. No appeal shall lie from any order passed by the Registrar under this Section; but the Judge, or other person empowered as aforesaid, may, within three calendar months from the making of the order of his own motion, reverse or modify it.

40. 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.

41. 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.

42. No APPEAL shall lie from any order or decision made or passed by the Registrar in any case heard or disposed of by him; but in any case in which the Registrar shall entertain any doubt upon any question of law, or usage having the force of law, or as to the construction of a document, which construction may affect the merits of the decision, he shall be at liberty to state a case for the opinion of the Judge, or, when there is no Judge, of the person invested with the powers of a Judge as aforesaid, in like manner as the Judge may, under the twenty-second Section of this Act, state a case for the opinion of the High Court, and all the provisions herein contained relative to the stating of a case by the Judge shall apply, mutatis mutandis, to the stating of a case by the Registrar.

43. 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.

44. 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 authorised 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.
45. 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 moneys payable or paid into or out of Court, and shall enter an account of all such moneys in a book belonging to the Court to be kept by such Clerk for that purpose.

46. The High Court shall have power to make and issue general rules for regulating the practice and proceedings of Courts of Small Causes, and also to prescribe forms for every proceeding in the said Courts for which it shall think that forms should be provided, and for keeping all books, entries, and accounts to be kept by the officers, and from time to time to alter any such rule or form: Provided that such rules and forms be not inconsistent with the provisions of this Act or of any other law for the time being in force.

47. 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.

48. 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 Caftonments, 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.

49. 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.

50. 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.

51. 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

* The rest of section 47 was repealed by Act 7 of 1870.—See Repealing Enactments, p. 70.
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.*

52. 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.

53. 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.

**ACT NO. X. OF 1867.**

An Act to empower Courts of Small Causes in the Mofussil to refer for decision questions arising previous to the hearing of Suits or in the execution of Decrees or Orders.

Whereas it is expedient to enable the Courts constituted under Act XI. of 1865 (to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature) to refer, for the decision of the High Court within whose jurisdiction they may respectively be situate, questions of law, or usage having the force of law, arising previous to the hearing of suits under the said Act or in the execution of decrees or orders in such suits; It is hereby enacted as follows:

I. If at any point in the proceedings previous to the hearing of a suit under the said Act, or if in the execution of the decree or order in any such suit, any question of law, or usage having the force of law, shall arise, the Court, in suits for an amount not exceeding 500 Rupees, may, either of its own motion or on the application of any of the parties to the suit, and in the suits for an amount greater than 500 Rupees, shall, draw up a statement of the case, and refer it, with the Court's own opinion thereon, to the decision of the High Court within whose jurisdiction such Court may be situate. If the question has arisen previous to the hearing, the Court may either stay such proceedings, or proceed in the case notwithstanding such reference, and pass a decree contingent upon the

* For Principal Sudder Ameen, the words ‘Subordinate Judge’ were substituted by Act 6 of 1871.—See Repealing Enactments, p. 78.
opinion of the High Court upon the point referred. If a decree has been made, the execution of the decree shall be stayed until the receipt of the order of the High Court upon such reference. All the provisions contained in this Section shall apply, mutatis mutandis, to the stating of a case by a Registrar.

II. This Act shall be read with, and taken as part of, Act XI. of 1865; and the provisions contained in Sections 24, 25, 26, 27, and 28 of that Act shall, mutatis mutandis, apply to cases referred under this Act.
PENAL CODE.
Act No. XLV. of 1860.

Received the assent of the Governor-General on the 6th Oct., 1860.

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THE INDIAN PENAL CODE.

CHAPTER I.

Whereas it is expedient to provide a General Penal Code for British India: It is enacted as follows:

1. This Act shall be called "The Indian Penal Code," and shall take effect on and from the 1st day of May 1861 throughout the whole of the territories which are or may become vested in her Majesty by the statute 21 and 22 VICTORIA, chapter 106, entitled "An Act for the better Government of India," except the Settlement of Prince of Wales' Island, Singapore, and Malacca.
2. Every person shall be liable to punishment under this code, and not otherwise, for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said territories on or after the said 1st day of May 1861.

3. Any person liable, by any law passed by the Governor General of India in Council, to be tried for an offence committed beyond the limits of the said territories, shall be dealt with according to the provisions of this code for any act committed beyond the said territories, in the same manner as if such act had been committed within the said territories.

4. Every servant of the Queen shall be subject to punishment under this code for every act or omission contrary to the provisions thereof, of which he, whilst in such service, shall be guilty on or after the said 1st day of May 1861, within the dominions of any prince or state in alliance with the Queen, by virtue of any treaty or engagement heretofore entered into with the East India Company, or which may have been, or may hereafter be, made in the name of the Queen by any government of India.

5. Nothing in this Act is intended to repeal, vary, suspend, or affect any of the provisions of the Statute 3 and 4 William IV, Chapter 85, or of any Act of Parliament passed after that Statute in any wise affecting the East India Company, or the said territories, or the inhabitants thereof; or any of the provisions of any Act for punishing mutiny and desertion of officers and soldiers in the service of Her Majesty or of the East India Company, or of any Act for the government of the Indian Navy, or of any special or local law.

CHAPTER II.
General Explanations.

6. Throughout this code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the chapter entitled "GENERAL EXCEPTIONS," though those exceptions are not repeated in such definition, penal provision, or illustrations.

The sections in this code which contain definitions of offences do not express that a child under seven years of age cannot commit such offences but the definitions are to be understood subject to the general exception, which provides that nothing shall be an offence which is done by a child under seven years of age.

A, a police officer, without warrant, apprehends Z, who has committed murder. Here A is guilty of the offence of wrongful confinement, for he was bound by law to apprehend Z, and therefore the case falls within the general exception, which provides that "nothing is an offence which is done by a person who is bound by law to do it.

7. Every expression which is explained in any part of this code is used in every part of this code in conformity with the explanation.

8. The pronoun "he" and its derivatives are used of any person, whether male or female.

9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

2. See Act 6 of 1861.
3. See Act 1 of 49.
4. See Act 6 of 1861.
10. The word "MAN" denotes a male human being of any age; the word "WOMAN" denotes a female human being of any age.

11. The word "PERSON" includes any Company or Association, or body of persons, whether incorporated or not.

12. The word "PUBLIC" includes any class of the public or any community.

13. The word "QUEEN" denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.

14. The words "SERVANT OF THE QUEEN" denote all officers or servants continued, appointed, or employed in India, by or under the authority of the said Statute 21 and 22 Victoria, Chapter 106, entitled "An Act for the better Government of India," or by or under the authority of the Government of India, or any Government.

15. The words "BRITISH INDIA" denote the Territories which are or may become vested in Her Majesty by the said Statute 21 and 22 Victoria, Chapter 106, entitled "An Act for the better Government of India," except the Settlement of Prince of Wales' Island, Singapore, and Malacca.

16. The words "GOVERNMENT OF INDIA" denote the Governor General of India in Council, or, during the absence of the Governor General of India from his Council, the President in Council, or the Governor General of India alone, as regards the powers which may be lawfully exercised by them or him respectively.

17. The word "GOVERNMENT" denotes the person or persons authorised by law to administer Executive Government in any part of British India.

18. The word "PRESIDENCY" denotes the Territories subject to the Government of a Presidency.

19. The word "JUDGE" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations.

A Collector exercising jurisdiction in a suit under Act 10. of 1859 is a Judge.
A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.
A Member of a Panchayat which has power, under Regulation 7, 1818, of the Madras Code to try and determine suits is a Judge.
A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court is not a Judge.

20. The words "COURT OF JUSTICE" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

Illustration.
A Panchayat acting under Regulation 7, 1818 of the Madras Code having power to try and determine suits is a Court of Justice.
21. The words "PUBLIC SERVANT" denote a person falling under any of the descriptions hereinafter following, namely:—

First.—Every Covenanted Servant of the Queen.

Second.—Every Commissioned Officer in the Military or Naval Forces of the Queen, while serving under the Government of India or any Government.

Third.—Every Judge.

Fourth.—Every Officer of a Court of Justice whose duty it is, as such Officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties.

Fifth.—Every Juryman, Assessor, or Member of a Punchayet assisting a Court of Justice or public servant.

Sixth.—Every Arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority.

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement.

Eighth.—Every Officer of Government whose duty it is, as such Officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience.

Ninth.—Every Officer whose duty it is, as such Officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue process, or to investigate, or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government and every Officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty.

Tenth.—Every Officer whose duty it is, as such Officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town, or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town, or district.

Illustration.

A Municipal Commissioner is a public servant.

Explanation 1.—Persons falling under any of the above descriptions are public servants whether appointed by the Government or not.

Explanation 2.—Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the

21. See Bombay Act 2 of 1875 and Act 31 of 1867.
situation of a public servant, whatever legal defect there may be in his right to hold that situation.

22. The words "MOVEABLE PROPERTY" are intended to include corporeal property of every description, except land and things attached to the earth, or permanently fastened to anything which is attached to the earth:

23. "WRONGFUL GAIN" is gain, by unlawful means, of property to which the person gaining it is not legally entitled.

"WRONGFUL LOSS" is the loss, by unlawful means of property to which the person losing it is legally entitled.

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully.

A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

24. Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing DISHONESTLY.

25. A person is said to do a thing " FRAUDULENTLY" if he does that thing with intent to defraud, but not otherwise.

26. A person is said to have "REASON TO BELIEVE" a thing if he has sufficient cause to believe that thing, but not otherwise.

27. When property is in the POSSESSION OF a persons' WIFE, CLERK, OR SERVANT, on account of that person, it is in that person's possession within the meaning of this Code.

Explanation.—A person employed temporarily or on a particular occasion in the capacity of clerk or servant, is a clerk or servant within the meaning of this Section.

28. A person is said to "COUNTERFEIT" who causes one thing to resemble another thing, intending, by means of that resemblance, to practise deception, or knowing it to be likely that deception will thereby be practised.

Explanation.—It is not essential to counterfeiting that the imitation should be exact.

29. The word "DOCUMENT" denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1.—It is immaterial by what means or upon what substance the letters, figures, or marks are formed, or whether the evidence is intended for, or may be used in a Court of Justice or not.

Illustration.

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.
A Check upon a Banker is a document.
A Power of Attorney is a document.
A Map or Plan which is intended to be used, or which may be used as evidence is a document.

A writing containing directions or instructions is a document.
Explanation. 2.—Whatever is expressed by means of letters, figures, or marks, as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures, or marks within the meaning of this Section, although the same may not be actually expressed.

Illustration.

A writes his name on the back of a Bill of Exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is, that the Bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder," or words to that effect, had been written over the signature.

30. The words "VALUABLE SECURITY" denote a document which is, or purports to be a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration.

A writes his name on the back of a Bill of Exchange. As the effect or this endorsement is to transfer the right to the Bill to any person who may become the lawful holder of it, the endorsement is a "valuable security."

31. The words "A WILL" denote any testamentary document.

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extent also to ILLEGAL OMISSIONS.

33. The word "ACT" denotes as well a series of acts as a single act; the word "OMISSION" denotes as well a series of omissions as a single omission.

34. When a CRIMINAL ACT is DONE BY SEVERAL PERSONS, each of such persons is liable for that act in the same manner as if the act were done by him alone.

35. Whenever an A T, which is CRIMINAL ONLY BY REASON OF ITS BEING DONE WITH A CRIMINAL KNOWLEDGE or intention, is DONE BY SEVERAL PERSONS, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

36. Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an OFFENCE, it is to be understood that the causing of that effect PARTLY BY ACT AND PARTLY BY an OMISSION is the same offence.

Illustration.

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

37. When an OFFENCE is committed BY MEANS OF SEVERAL ACTS, whoever intentionally co-operates in the commission of that offence, by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Illustration.

A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison, according to the agreement, with intent to murder Z. Z dies from the effect of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder; and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.
A and B are joint JILlers, and as such have the charge of Z, a prisoner, alternately, for six hours at a time. A, and B, intending to cause Z's death, knowingly co-operate in causing that death by ill-treating each other, one of his attendants, to furnish Z with food, and supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

A, a Jailer, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food, in consequence of which Z is much reduced in strength, but the omission is not sufficient to cause his death. A is dismissed from his office, and B succeeds him, B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder; but as A did not co-operate with B, A is guilty only of an attempt to commit murder.

34. Where several PERSONS are ENGAGED or concerned in the commission of A CRIMINAL ACT they MAY BE GUILTY OF DIFFERENT OFFENCES by means of that act.

Illustration.

A attacks Z under such circumstances of grave provocation that this killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z, and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here though A and B are both engaged in causing Z's death, B is guilty of murder and A is guilty only of culpable homicide.

39. A person is said to cause an effect "VOLUNTARILY" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew, or had reason to believe he is likely to cause it.

Illustration.

A sets fire, by night, to an inhabited house in a large town for the purpose of facilitating a robbery, and thus causes the death of a person. Here, A may not have intended to cause death, and may be even sorry that death has been caused by his act, yet if he knew that he was likely to cause death, he has caused death voluntarily.

40. The word "OFFENCE" denotes a thing made punishable by this Code.

41. A "SPECIAL LAW" is a law applicable to a particular subject.

42. A "LOCAL LAW" is a law applicable to a particular part of British India.

43. The word "ILLEGAL" is applicable to everything which is an offence, or which is prohibited by law, or which furnishes ground for a civil action: and a person is said to be "LEGALLY BOUND TO DO" whatever it is illegal in him to omit.

44. The word "INJURY" denotes any harm whatever illegally caused to any person in body, mind, reputation, or property.

45. The word "LIFE" denotes the life of a human being, unless the contrary appears from the context.

46. The word "DEATH" denotes the death of a human being, unless the contrary appears from the context.

47. The word "ANIMAL" denotes any living creature other than a human being.

48. The word "VESSEL" denotes anything made for the conveyance by water of human beings, or of property.

40. See Section 1 Act 4 of 1867.
49. Wherever the word "YEAR" or the word "MONTH" is used it is to be understood that the year or the month is to be reckoned according to the British Calender.

50. The word "SECTION" denotes one of those portions of a Chapter of this Code which are distinguished by prefixed numeral figures.

51. The word "OATH" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorised by law to be made before a public servant, or to be used for the purpose of proof, whether in a Court of Justice or not.

52. Nothing is said to be done or believed in GOOD FAITH which is done or believed without due care and attention.

CHAPTER III.
Of Punishments.

53. The PUNISHMENTS to which offenders are liable under the provisions of this Code are:—

First.—Death.
Secondly.—Transportation.
Thirdly.—Penal servitude.
Forthly.—Imprisonment, which is of two descriptions, namely:—

1. Rigorous, that is, with hard labour.
2. Simple.

Fifthly.—Forfeiture of property,
Sixthly.—Fine.

54. In every case in which SENTENCE OF DEATH shall have been passed, the GOVERNMENT of India or the Government of the place within which the offender shall have been sentenced, MAY, without the consent of the offender, COMMUTE the punishment for any other punishment provided by this Code.

55. In every case in which sentence of TRANSPORTATION FOR LIFE shall have been passed, the GOVERNMENT of India or the Government of the place within which the offender shall have been sentenced MAY, without the consent of the offender, COMMUTE the punishment for imprisonment of either description for a term not exceeding fourteen years.

56. Whenever any person, being a European or American, is convicted of an offence punishable, under this Code, with transportation, the Court shall sentence the offender to PENAL SERVITUDE instead of transportation, according to the provisions of Act. XXIV. of 1855.

57. In CALCULATING FRACTIONS of terms of punishment, transportation for life shall be reckoned as equivalent to transportation for twenty years.

58. See Act 6 of 1854,
58. In every case in which a sentence of TRANSPORTATION is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the terms of his imprisonment.

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to TRANSPORTATION for a term not less than seven years, and not exceeding the terms for which, by this Code, such offender is liable to imprisonment.

60. In every case in which an offender is punishable with IMPRISONMENT which may be OF EITHER DESCRIPTION, it shall be competent to the Court which sentences such offender, to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

61. In every case in which a person is convicted of an offence for which he is liable to FORFEITURE OF all his PROPERTY, the offender shall be incapable of acquiring any property, except for the benefit of Government, until he shall have undergone the punishment awarded, or the punishment to which it shall have been commuted, or until he shall have been pardoned.

Illustration.

A, being convicted of waging war against the Government of India is liable to forfeiture of all his property. After the sentence, and whilst the same is in force, A's father dies, leaving an estate, which but for the forfeiture would become the property of A. The estate becomes the property of Government.

62. WHENEVER any person is convicted of an OFFENCE PUNISHABLE WITH DEATH, THE COURT MAY ADJUDGE THAT all his PROPERTY, movable and immovable, shall BE FORFEITED to Government, and whenever any person shall be convicted of any offence for which he shall be transported or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that the rents and profits of all his movable and immovable estate, during the period of his transportation or imprisonment, shall be forfeited to Government, subject to such provision for his family and dependents as the Government may think fit to allow during such period.

63. Where no sum is expressed to which a fine may extend, the AMOUNT OF FINE to which the offender is liable is unlimited, but shall not be excessive.

64. In every case in which an offender is sentenced to a fine, it shall be competent to the Court which sentences such offender to direct by the sentence that IN DEFAULT OF PAYMENT OF the FINE, the offender shall suffer IMPRISONMENT for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of sentence.

58. See Section 50, 51, and 52, Act 35 of 1861. (Cr. P. C.)
65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the TERM OF IMPRISONMENT which is the maximum fixed for the offence if the offence be punishable with imprisonment as well as fine.

66. The IMPRISONMENT which the Court imposes in default of payment of a fine may be OF ANY DESCRIPTION to which the offender might have been sentenced for the offence.

67. If the OFFENCE BE PUNISHABLE WITH FINE ONLY THE TERM for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

68. The IMPRISONMENT which is imposed in default of payment of a fine SHALL TERMINATE WHENEVER that FINE IS either PAID or levied by process of law.

69. IF, before the expiration of the term of imprisonment fixed in default of payment, such A PROPORTION OF THE FINE BE PAID or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid the imprisonment shall terminate.

Illustration.

A is sentenced to a fine of one hundred rupees, and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

70. The FINE, or any part thereof which remains unpaid, MAY BE LEVIED AT ANY TIME WITHIN SIX YEARS after the passing of the sentence; and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the DEATH OF THE OFFENDER does not discharge from the liability any property which would be after his death legally liable for his debts.

71. Where anything which is an OFFENCE is MADE UP OF PARTS, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences unless it be so expressly provided.

Illustrations

A gives B fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to B by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years—one for each blow. But he is liable only to one punishment for the whole beating.

65. See Section 48 Act 35 of 1861, (Cr. P. C.)
70. See Section 61, Act 35 of 1861, (Cr. P. C.) and Section 81, Act 8 of 1899, (Cr. P. C.)
71. See Section 46, Act 35 of 1861, (Cr. P. C.)
But if, while A is beating Z, Y intervenes, and A intentionally strikes Y, here, as a blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

72. In all cases in which JUDGMENT is given THAT A PERSON IS GUILTY OF ONE OF SEVERAL OFFENCES specified in the judgment, but that it is doubtful of which of these o’ences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided, if the same punishment is not provided for all.

73. Whenever any person is convicted of an offence for which, under this Code, the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in SOLITARY CONFINEMENT for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale (that is to say)—

A time not exceeding one month, if the term of imprisonment shall not exceed six months.

A time not exceeding two months, if the term of imprisonment shall exceed six months and be less than a year.

A time not exceeding three months, if the term of imprisonment shall exceed one year.

74. In executing a sentence of solitary confinement, SUCH CONFINEMENT SHALL IN NO CASE EXCEED FOURTEEN DAYS AT A TIME, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

75. Whoever, having been convicted of an o’ence punishable under Chapter XII. or Chapter XVII. of this Code, with imprisonment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of those Chapters, with imprisonment of either description for a term of three years or upwards, shall be subject for every such SUBSEQUENT OFFENCE to transportation for life, or to DOUBLE the amount of PUNISHMENT to which he would otherwise have been liable for the same, provided that he shall not in any case be liable to imprisonment for a term exceeding ten years.

CHAPTER IV.

General Exceptions.

76. Nothing is an o’ence which is done by a PERSON who is, or who, by reason of a mistake of fact and not by reason of a mistake of law, in good faith believes himself to be BOUND BY LAW to do it.

72. See Section 242 and 381 Act 26 of 1861, (Cr. P. C.)
Illustrations.

A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law, A has committed no offense.

A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and after due inquiry, believing Z, to be Y, arrests Z, A has committed no offense.

77. Nothing is an offense which is done by a JUDGE WHEN ACTING JUDICALLY in the exercise of any power which is, or which, in good faith, he believes to be given to him by law.

78. Nothing which is done in pursuance of, or which is warranted by, the JUDGMENT OR ORDER OF A COURT OF JUSTICE, if done whilst such judgment or order remains in force, is an offense, notwithstanding the Court may have had no jurisdiction to pass such judgment or order provided the person doing the act in good faith believes that the Court had such jurisdiction.

79. Nothing is an offense which is done by any PERSON who is JUSTIFIED BY LAW, or who, by reason of a mistake of fact, and not by reason of a mistake of law, in good faith believes himself to be justified by law in doing it.

Illustrations.

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offense, though it may turn out that Z was acting in self-defense.

80. Nothing is an offense which is done by ACCIDENT or misfortune and without any criminal intention or knowledge in the doing of a lawful act, in a lawful manner, by lawful means, and with proper care and caution.

Illustration.

A is at a work with a hatchet; the head flies off, and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable, and not an offense.

81. Nothing is an offense merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith, for the purpose of PREVENTING or avoiding OTHER HARM to person or property.

Explanation.—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustration.

A, the Captain of a Steam-vessel, suddenly, and without any fault or negligence on his part, finds himself in such a position that before he can stop his vessel, he must inevitably run down a boat, B, with 30 or 30 passengers on board, unless he changes the course of his vessel; and that by changing his course, he must in his risk of running down a boat, C, with only 3 passengers on board, with which he may possibly clear. Here, if A alters his course, without any intention to run down the boat C, and in good faith, for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offense, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found, as a matter of fact, that the danger which he intended to avoid was as much as to excite him in incurring the risk of running down the boat C.

A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention, in good faith, of saving human life or property. Here, if it

77. See Section 19, ante, and Act 18 of 1860, (Courts of Justice.)
78. See Section 20, ante
be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

82. Nothing is an offence which is done by a CHILD UNDER SEVEN years of age.

83. Nothing is an offence which is done by a CHILD above seven years of age and UNDER TWELVE, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of UNSOUNDNESS OF MIND, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

85. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of INTOXICATION, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law, provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

86. In cases where an act done is not an offence unless done with a particular knowledge or INTENT, a person who does the act in a state of INTOXICATION shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

87. Nothing which is not intended to cause death or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person above eighteen years of age who has given CONSENT, whether express or implied, to suffer that harm, or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Illustration.
A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which in the course of such fencing may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

88. Nothing which is not intended to cause death is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose BENEFIT it is done in good faith, AND who has given CONSENT, whether express or implied, to suffer that harm or to take the risk of that harm.

Illustration.
A, a surgeon, knowing that a particular operation is likely to cause the death of Z who suffers under a painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

89. Nothing which is done in good faith for the BENEFIT of a person under twelve years of age or of unsound mind by or by CON-
SENT, either express or implied, OF the GUARDIAN or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person: PROVIDED—

First.—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death.

Secondly.—That this exception shall not extend to the doing of any thing which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity.

Thirdly.—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity.

Fourthly.—That this exception shall not extend to the abetment of any offence to the committing of which offence, it would not extend.

Illustration.

A in good faith, for his child's benefit, without his child's consent, has his child cut for the stone, by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

90. A CONSENT is not such a consent as is intended by any section of this Code if the consent is given by a person under fear of injury or under a misconception of fact; and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or—

If the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or unless the contrary appears from the context, if the consent is given by a person who is under twelve year of age,

91. The exceptions in sections 87, 88, and 89 do not extend to ACTS WHICH ARE OFFENCES INDEPENDENTLY OF ANY HARM WHICH THEY MAY CAUSE, or be intended to cause, or be known to be likely to cause, to the person giving the consent or on whose behalf the consent is given.

Illustration.

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore it is not an offence "by reason of such harm;" and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

92. Nothing is an offence by reason of any harm which it may cause to a person for whose BENEFIT it is done in good faith, even WITHOUT that person's CONSENT, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit: PROVIDED—

First.—That this exception shall not extend to the intentional causing of death, or the attempting to cause death.
Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity.

Thirdly.—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt.

Fourthly.—That this exception shall not extend to the abstention of any offence, to the committing of which offence it would not extend.

Illustration.

Z is thrown from his horse, and is inexcusable. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z’s death, but in good faith, for Z’s benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z’s benefit. A’s ball gives Z a mortal wound. A has committed no offence.

A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child’s guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child’s benefit. A has committed no offence.

A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house-top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending in good faith, the child’s benefit. Here even if the child is killed by the fall, A has committed no offence.

Explanation.—More pecuniary benefit is not benefit within the meaning of Section 88, 89, and 92.

93. No COMMUNICATION MADE IN GOOD FAITH is an offence by reason of any harm to the person to whom it is made if it is made for the benefit of that person.

Illustration.

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient’s death.

94. Except murder and offences against the State punishable with death, nothing is an offence which is done by a PERSON who is COMPELLED to do it BY THREATS, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence, provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation.—1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits knowing their character, is not entitled to the benefit of this exception on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2.—A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law—for example, a smith, compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it—is entitled to the benefit of this exception.
95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that HARM is SO SLIGHT THAT NO PERSON of ordinary sense and temper WOULD COMPLAIN of such harm.

**Of the Right of Private Defence.**

96. Nothing is an offence which is done in the exercise of the right of PRIVATE DEFENCE.

97. EVERY PERSON HAS A RIGHT, subject to the restrictions contained in Section 99, TO DEFEND—

*First.*—His own BODY, and the body of any other person, against any offence affecting the human body.

*Secondly.*—The PROPERTY, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass, or which is an attempt to commit theft, robbery, mischief, or criminal trespass.

98. WHEN AN ACT which would otherwise be a certain offence IS NOT that OFFENCE BY REASON OF THE YOUTH, the WANT of Maturity of UNDERSTANDING, the UNSOUNDNESS OF MIND, or the INTOXICATION of the person doing that act, or by reason of any MISCONCEPTION on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

**Illustration.**

Z, under the influence of madness, attempts to kill A. Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

A enters by night a house which he is legally entitled to enter. Z, in good faith taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z which he would have if Z were not acting under that misconception.

99. *First.*—There is NO RIGHT OF PRIVATE DEFENCE AGAINST AN ACT which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be DONE, BY A PUBLIC SERVANT acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

*Second.*—There is no right of private defence AGAINST an ACT which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be DONE, BY THE DIRECTION OF A PUBLIC SERVANT acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

*Third.*—There is no right of private defence in CASES IN WHICH THERE IS TIME TO HAVE RECOURSE TO THE PROTECTION OF THE PUBLIC AUTHORITIES.

*Fourth.*—The right of private defence in NO case extends to the inflicting of MORE HARM THAN IT IS NECESSARY TO INFlict FOR THE PURPOSE OF DEFENCE.

**Explanation.** 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public ser-
vant as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts; or if he has authority in writing, unless he produces such authority, if demanded,

100. The right of PRIVATE DEFENCE OF THE BODY EXTENDS, under the restrictions mentioned in the last preceding Section, TO THE VOLUNTARY CAUSING OF DEATH or of any other harm to the assailant IF THE OFFENCE which occasions the exercise of the right BE of any of the descriptions hereinafter enumerated—

First.—Such an assault as may reasonably cause the apprehension that DEATH will otherwise be the consequence of such assault.

Secondly.—Such an assault as may reasonably cause the apprehension that GRIEVOUS HURT will otherwise be the consequence of such assault.

Thirdly.—An assault, with the intention of committing RAPE.

Fourthly.—An assault with the intention of gratifying UNNATURAL LUST.

Fifthly.—An assault with the intention of KIDNAPPING or abducting.

Sixthly.—An assault with the intention of WRONGFULLY CONFining a person under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

101. If the offence be not of any of the descriptions enumerated in the last preceding Section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in Section 99, to the voluntary causing to the assailant of any HARM OTHER THAN DEATH.

102. The right of PRIVATE DEFENCE OF THE BODY COMMENCES as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed, and it continues as long as such apprehension of danger to the body continues.

103. The right of PRIVATE DEFENCE OF PROPERTY EXTENDS, under the restrictions mentioned in Section 99, TO THE VOLUNTARY CAUSING OF DEATH or of any other harm to the wrong-doer, IF THE OFFENCE, the committing of which, or the attempting to commit which, occasions the exercise of the right, BE an offence of any of the descriptions hereinafter enumerated, namely:—

First.—ROBBERY,
Secondly.—HOUSE-BREAKING BY NIGHT.
Thirdly.—MISCHIEF BY FIRE committed on any building, tent, or vessel which building, tent, or vessel is used as a human dwelling, or as a place for the custody of property.

Fourthly.—THEFT, MISCHIEF, or HOUSE-TRESPASS, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence if such right of private defence is not exercised.

104. If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding Section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in Section 99, to the voluntary causing to the wrong-doer of any HARM OTHER THAN DEATH.

105. First.—The right of PRIVATE DEFENCE OF PROPERTY COMMENCES when a reasonable apprehension of danger to the property commences.

Second.—The right of private defence of property AGAINST THEFT CONTINUES TILL the offender has effected his retreat with the property, or the assistance of the public authorities is obtained, or the property has been recovered.

Third.—The right of private defence of property AGAINST ROBBERY continues as long as the offender continues in the commission of criminal trespass or mischief.

Fourth.—The right of private defence of property AGAINST CRIMINAL TRESPASS OR MISCHIEF continues as long as the offender continues in the commission of criminal trespass or mischief.

Fifth.—The right of private defence of property AGAINST HOUSE-BREAKING by night continues as long as the house-trespass which has been begun by such house-breaking continues.

106. If, in the exercise of the right of private defence against an assault, which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without RISK OF HARM TO AN INNOCENT PERSON, his right of private defence extends to the running of that risk.

Illustration.

A is attacked by a mob, who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if, by so firing, he harms any of the children.

CHAPTER V.

Of Abetment.

107. A PERSON ABETS the doing of a thing. WHO—

First.—INSTIGATES any person to do that thing; or—
**Act 45 of 1860.**

**Abetment.**

Secondly.—Engages with one or more other person or persons in any CONSPIRACY for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or—

Thirdly.—Intentionally AIDS, by any act or illegal omission the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z. B, knowing that fact, and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

108. A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the ABETTOR.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations.

A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

A instigates B to murder D. B, in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations.

A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act, and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, se's fire to the house in consequence of A's instigation. B has committed no offence; but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

A, intending to cause a theft to be committed, instigates B to take property belonging to
Z out of Z’s possession. A induces B to believe that the property belongs to A. B takes the property out of Z’s possession, in good faith believing it to be A’s property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration.
A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits the offence. In consequence of C’s instigation, B is liable to be punished for his offence with the punishment for murder; and as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should solicit the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration.
A concords with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A’s name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison. Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this Section, and is liable to the punishment for murder.

109. Whoever abets any offence shall if the ACT ABETTED IS COMMITTED in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the PUNISHMENT provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations
A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B’s official functions. B accepts the bribe. A has abetted the offence defined in Section 161.

A instigates B to give false evidence. B, in consequence of the instigation, commits the offence. A is guilty of abetting the offence, and is liable to the same punishment as B.

A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B, in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A’s absence, and thereby causes Z’s death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

110. Whoever abets the commission of an offence shall, if the person abetted does the act with a DIFFERENT INTENTION or knowledge FROM THAT OF THE ABETTOR, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

111. When an act is abetted and a DIFFERENT ACT is DONE the abettor is liable for the act done in the same manner and to the same extent as if he had directly abetted it, provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.
Illustrations.

A instigates a child to put poison into the food of Z. and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was, under the circumstances, a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

A instigates B to burn Z's house. B sets fire to the house, and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft, for the theft was a distinct act, and not a probable consequence of the burning.

A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

112. If the ACT for which the abettor is liable under the last preceding Section is COMMITTED IN ADDITION TO THE ACT ABETTED, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Illustration.

A instigates B to resist by force a distress made by a public servant. B in consequence resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress and the offence of voluntarily causing grievous hurt, B is liable to punishment for both those offences; and if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

113. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a DIFFERENT EFFECT FROM THAT INTENDED BY THE ABETTOR, the abettor is liable for the effect caused in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

Illustration.

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

114. Whenever any person who, if absent, would be liable to be punished as an ABETTER, is PRESENT when the act or offence for which he would be punishable in consequence of the abetment, is committed, he shall be deemed to have committed such act or offence.

115. Whoever ABETS the commission of an OFFENCE PUNISHABLE WITH DEATH or transportation for life shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Illustration.

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or transportation for life. Therefore A is liable to imprisonment for a term which may extend to seven years, and also to a fine; and
if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for
a term which may extend to fourteen years, and to fine.

116. Whoever ABETS an OFFENCE PUNISHABLE WITH
IMPRISONMENT shall, if that offence be not committed in con-
sequence of the abetment, and no express provision is made by this Code
for the punishment of such abetment, be punished with imprisonment
of any description provided for that offence for a term which may ex-
tend to one-fourth part of the longest term provided for that offence, or
with such fine as is provided for that offence, or with both; and if the
abetor or the person abetted is a public servant, whose duty it is to
prevent the commission of such offence, the abettor shall be punished
with imprisonment of any description provided for that offence, for a
term which may extend to one-half of the longest term provided for that
offence, or with such fine as is provided for the offence, or with both.

Illustrations.

A offers a bribe to B, a public servant, as a reward for showing A some favour in the
exercise of B's official functions. B refuses to accept the bribe. A is punishable under this
Section.

A instigates B to give false evidence. Here, if B does not give false evidence, A has
nevertheless committed the offence defined in this Section, and is punishable accordingly.

A, a police officer, whose duty it is to prevent robbery, abets the commission of robbery.
Here, though the robbery be not committed, A is liable to one-half of the longest term of
imprisonment provided for that offence, and also to fine.

B abets the commission of a robbery by A, a police officer, whose duty it is to prevent that
offence. Here, though the robbery be not committed, B is liable to one-half of the longest
term of imprisonment provided for the offence of robbery, and also to fine.

117. Whoever ABETS the commission of an OFFENCE BY
THE PUBLIC generally, or by any number or class of persons exceeding ten,
shall be punished with imprisonment of either description for a
term which may extend to three years, or with fine, or with both.

Illustration.

A affixes in a public place a placard, instigating a sect, consisting of more than ten mem-
bers, to meet at a certain time and place for the purpose of attacking the members of an
adverse sect while engaged in a procession. A has committed the offence defined in this
Section.

118. Whoever intending to facilitate, or knowing it to be likely
that he will thereby facilitate, the commission of an OFFENCE,
PUNISHABLE WITH DEATH or transportation for life, voluntari-
ly CONCEALS, by any act or illegal omission, the existence of a
DESIGN to COMMIT such offence, or makes any representation
which he knows to be false respecting such design shall, if that offence
be committed, be punished with imprisonment of either description for a
term which may extend to seven years; or, if the offence be not com-
mitted, with imprisonment of either description for a term which may
extend to three years, and in either case shall also be liable to fine.

Illustration.

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate
that a dacoity is about to be committed at C, a place in an opposite direction, and thereby
misaed the Magistrate with intent to facilitate the commission of the offence. The dacoity
is committed at B in pursuance of the design. A is punishable under this Section.

119. Whoever, being a public servant, intending to facilitate,
or knowing it to be likely that he will thereby facilitate, the com-
misson of an offence, the commission of which it is his duty as such
PUBLIC SERVANT to prevent, voluntarily CONCEALS, by any
act or illegal omission, the existence of a DESIGN TO COMMIT such OFFENCE, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment of any description provided for the offence for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both; or, if the offence be punishable with death or transportation for life, with imprisonment of either description for a term which may extend to ten years; or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

Illustration.

A, an Officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has, by an illegal omission, concealed the existence of B's design, and is liable to punishment according to the provision of this Section.

120 Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate the commission of an OFFENCE PUNISHABLE WITH IMPRISONMENT, voluntarily CONCEALS, by any act or illegal omission, the existence of a DESIGN TO COMMIT such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth, and if the offence be not committed, to one-eighth of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

CHAPTER VI.

Of Offences against the State.

121. Whoever WAGES WAR AGAINST the QUEEN, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or transportation for life, and shall forfeit all his property.

Illustrations.

A joins an insurrection against the Queen. A has committed the offence defined in this Section.

A, in India, abets an insurrection against the Queen’s Government of Ceylon by sending arms to the insurgents. A is guilty of abetting the waging of war against the Queen.

122. Whoever collects men, arms, or ammunition, or otherwise PREPARES £ WAGE WAR with the intention of either waging, or being prepared to wage war against the Queen, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall forfeit all his property.

123. Whoever, by any act, or by any illegal omission, CONCEALS the existence of a DESIGN TO WAGE WAR against the Queen.

Chapter VI.—See Sec. 166, Act 25 of 1861, (Cr. P. C.)
120. See Sec. 138, Act 25 of 1861, (Cr. P. C.)
intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

124. Whoever, with the intention of inducing or compelling the Governor General of India, or the Governor of any Presidency, or a Lieutenant Governor, or a Member of the Council of the Governor General of India or of the Council of any Presidency, to exercise or refrain from exercising in any manner any of the lawful powers of such Governor General, Governor, Lieutenant Governor, or Member of Council assaults or wrongfully restrains, or attempts wrongfully to restrain, or OVERAWES by means of criminal force or the show of criminal force, or attempts so to oversawe such GOVERNOR GENERAL, GOVERNOR, LIEUTENANT GOVERNOR, or MEMBER OF COUNCIL, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

125. Whoever WAGES WAR AGAINST the Government of any ASIATIC POWER IN ALLIANCE or at peace with the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with transportation for life, to which fine may be added; or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

126. Whoever COMMITS depredation, or makes preparation to commit DEPREDAITON, ON THE TERRITORIES OF any POWER IN ALLIANCE or at peace with the Queen, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used or intended to be used in committing such depredation, or acquired by such depredation.

127. Whoever RECEIVES any PROPERTY knowing the same to have been taken in the commission of any of the offences mentioned in Sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

128. Whoever, being a public servant, and having the custody of any STATE PRISONER or prisoner of war, VOLUNTARILY ALLOWS such prisoner TO ESCAPE from any place in which such prisoner is confined, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

129. Whoever being a public servant, and having the custody of any STATE PRISONER or prisoner of War, NEGLIGENTLY SUFFERS such prisoner TO ESCAPE from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonement for a term which may extend to three years, and shall also be liable to fine.

130. Whoever knowingly AIDS or assists any STATE PRISONER or prisoner of War IN ESCAPING from lawful custody, or rescues, or attempts to rescue, any such prisoner, or harbours or conceals any such
prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the re-capture of such prisoner, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A state prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in British India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

CHAPTER VII:

Of Offences relating to the Army and Navy.

131. Whoever ABETS the committing of MUTINY by an officer, soldier, or sailor in the Army or Navy of the Queen, or attempts to seduce any such officer, soldier, or sailor from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

132. Whoever ABETS the committing of MUTINY by an officer, soldier, or sailor in the Army or Navy of the Queen shall, if MUTINY be COMMITTED in consequence of that abetment, be punished with death or with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

133. Whoever ABETS AN ASSAULT by an officer, soldier, or sailor in the Army or Navy of the Queen ON any SUPERIOR OFFICER, being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

134. Whoever ABETS AN ASSAULT by an officer, soldier, or sailor in the Army or Navy of the Queen ON any SUPERIOR OFFICER, being in the execution of his office, shall, IF such assault be COMMITTED in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

135. Whoever ABETS the DESERTION of any officer, soldier, or sailor in the Army or Navy of the Queen shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

136. Whoever, except, as hereinafter excepted, knowing or having reason to believe that an officer, soldier, or sailor in the Army or Navy of the Queen has deserted, HARBOURS such OFFICER, soldier, or sailor shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Exception.—This provision does not extend to the case to which the harbour is given by a wife to her husband.

137. The MASTER or person in charge OF a MERCHANT
VESSEL ON BOARD OF WHICH any DESERTER from the Army or Navy of the Queen is CONCEALED shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

138. Whoever ABETS what he knows to be an act of INSUBORDINATION by an officer, soldier, or sailor in the Army or Navy of the Queen, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

139. No PERSON SUBJECT TO any ARTICLES OF WAR for the Army or Navy of the Queen, or for any part of such Army or Navy, is subject to punishment under this Code for any of the offences defined in this Chapter.

140. Whoever, not being a soldier in the Military or Naval Service of the Queen, WEARS any GARB, or carries any token resembling any garb or token USED BY such a SOLDIER, with the intention that it may be believed that he is such a soldier, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII.

Of Offences against the public Tranquillity.

141. An assembly of five or more persons is designated an "UNLAWFUL ASSEMBLY" if the common object of the persons composing that assembly is—

First.—To overawe, by criminal force or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant Governor, or any public servant in the exercise of the lawful power of such public servant; or—

Second.—To resist the execution of any law, or of any legal process; or,

Third.—To commit any mischief, or criminal trespass, or other offence; or—

Fourth.—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or—

Fifth.—By means of criminal force, or show of criminal force, to

139. See Article 187, Act 29 of 1861 (Army.)
Chap. VIII. See Chap. 18, Act 25 of 1861, (Cr. P. C.)
141 Third. See Sec. 1, Act 4 of 1867 (P. C. Post.)
compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled may subsequently become an unlawful assembly.

142. Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a MEMBER of an UNLAWFUL ASSEMBLY.

143. Whoever is a MEMBER OF an UNLAWFUL ASSEMBLY shall be PUNISHED with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

144. Whoever, being ARMED WITH any DEADLY WEAPON, or with any thing which, used as a weapon of offence, is likely to cause death, is a MEMBER OF an UNLAWFUL ASSEMBLY, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

145. Whoever joins or continues in an unlawful assembly knowing that such UNLAWFUL ASSEMBLY has been COMMANDED, in the manner prescribed by law, TO DISPERSE, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of RIOTING.

147. Whoever is guilty of RIOTING shall be PUNISHED with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

148. Whoever is guilty of RIOTING being ARMED WITH a DEADLY WEAPON, or with any thing which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

149. If an OFFENCE is committed by any member of an unlawful assembly IN PROSECUTION OF the COMMON OBJECT OF that ASSEMBLY, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly is guilty of that offence.

150. Whoever HIRES, or engages, or employs, or promotes, or connives at the hiring, engagement, or employment of any PERSON TO JOIN or become a member of any UNLAWFUL ASSEMBLY, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly, in pursuance of such hiring, engagement, or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

145, See Sec. 111, Act 25 of 1887 (Cr. P. C.)
151. Whoever knowingly JOINS or continues in any ASSEMBLY of five or more persons LIKELY TO CAUSE A DISTURBANCE OF the PUBLIC PEACE after such assembly has been lawfully commanded to disperse shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.—If the assembly is an unlawful assembly within the meaning of Section 141, the offender will be punishable under Sec. 145.

152. Whoever ASSAULTS, or threatens to assault, or obstructs, or attempts to obstruct, any PUBLIC SERVANT in the discharge of his duty as such public servant, in ENDEAVOURING TO DISPERSE an UNLAWFUL ASSEMBLY, or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

153. Whoever malignantly or wantonly, by doing anything which is illegal, gives PROVOCATION to any person, INTENDING or knowing it TO be likely that such provocation will CAUSE the offence of RIOTING to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

154. Whenever any unlawful assembly or riot takes place, the OWNER, or occupier OF the LAND UPON WHICH such UNLAWFUL ASSEMBLY is HELD, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police station; and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and in the event of its taking place do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

155. Whenever a RIOT is COMMITTED FOR THE BENEFIT, or on behalf OF any person who is the OWNER or occupier OF any LAND respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

151. See Sec. 111, Act 25 of 1861 (Cr. P. C.)
156. Whenever a RIOT is COMMITTED FOR THE BENEFIT, or on behalf of any person who is the OWNER or occupier of any LAND respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, THE AGENT or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

157. Whoever HARBOURS, receives, or assembles in any house or premises in his occupation or charge, or under his control, any persons, knowing that such persons have been hired, engaged, or employed, or are about to be hired, engaged, or employed to join or become MEMBERS OF AN UNLAWFUL ASSEMBLY, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

158. WHOEVER IS ENGAGED OR HIRED, or offers or attempts to be hired or engaged, TO DO or assist in doing any of the ACTS SPECIFIED in SECTION 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both and whoever, being so engaged or hired as aforesaid GOES ARMED, or engages or offers to go armed, with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

159. When two or more persons, by fighting in a public place, disturb the public peace they are said to "commit an AFFRAY."

160. Whoever COMMITS an AFFRAY shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

CHAPTER IX,

Of Offences by or relating to Public Servants.

161. Whoever, being or expecting to be a PUBLIC SERVANT, ACCEPTS or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any GRATIFICATION whatever, other than legal remuneration, as a motive or reward for doing or forbear to do, any official act, or for showing, or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering, or attempting to render, any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.
Explanations.—"Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this Section.

"Gratification." The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand but include all remuneration which he is permitted by the Government which he serves to accept.

"A motive or reward for doing." A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations.

A. a Moonziff, obtains from Z, a banker, a situation in Z's bank for A's brother as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this Section.

A, holding the office of Resident at the Court of a subsidiary power, accepts a lakh of rupees from the Minister of that power. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that power with the British Government. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that power. A has committed the offence defined in this Section.

A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this Section.

162. Whoever ACCEPTS, or obtains, or agrees to accept or attempts to obtain from any person, for himself or for any other person, any GRATIFICATION whatever, as a motive or reward FOR INDUCING BY CORRUPT or illegal MEANS, any PUBLIC SERVANT to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant Governor, or with any public servant, as such shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

163 Whoever ACCEPTS or obtains, or agrees to accept or attempts to obtain from any person, for himself or for any other person, any GRATIFICATION whatever, as a motive or reward FOR INDUCING, BY the exercise or PERSONAL INFLUENCE, any PUBLIC SERVANT to do or to forbear to do any official act, or, in the exercise of the official functions of such public servant, to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant Governor, or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.
Illustration.

164. Whoever, being a PUBLIC SERVANT, in respect of whom either of the offences defined in the last two preceding Sections is committed, ABETS the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration.

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

165. Whoever being a PUBLIC SERVANT, ACCEPTS or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any valuable THING, WITHOUT CONSIDERATION, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be, concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in, or related to the person so concerned, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Illustration.

A, a Collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty rupees a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred rupees a month. A has obtained a valuable thing from Z without adequate consideration.

A, a Judge, buys of Z, who has a cause pending in A's Court. Government Promissory Notes at a discount when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

166. Whoever, being a PUBLIC SERVANT, knowingly DISOBREYS any direction of the LAW as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this Section.

167. Whoever, being a PUBLIC SERVANT, and being, as such public servant, charged with the preparation or translation of any document, FRAMES OR TRANSLATES that DOCUMENT in a manner which he knows or believes to be INCORRECT, intending thereby to cause, or knowing it to be likely that he may thereby cause in-
jury to any person, shall be punished with imprisonment of either
description for a term which may extend to three years, or with fine, or
with both.

168. Whoever being a public servant, and being legally bound, as
such PUBLIC SERVANT, not to ENGAGE IN TRADE shall be
punished with simple imprisonment for a term which may extend to one
year, or with fine, or with both.

169. Whoever, being a PUBLIC SERVANT and being legally
bound, as such public servant, not to purchase or bid for certain pro-
erty, PURCHASES or bids for that PROPERTY either in his own
name or in the name of another, or jointly or in shares with others, shall
be punished with simple imprisonment for a term which may extend to
two years, or with fine, or with both, and the property, if purchased shall
be confiscated.

170. Whoever pretends to hold any particular office as a public
servant, knowing that he does not hold such office, or falsely PER-
SONATES any other PERSON HOLDING such OFFICE, and in
such assumed character does, or attempts to do, any act under colour of
such office, shall be punished with imprisonment of either description
for a term which may extend to two years, or with fine, or with both.

171. Whoever, not belonging to a certain class of public servants' WEARS ANY GARB, or carries any token resembling any garb or
token used by that class OF PUBLIC SERVANTS, with the intention
that it may be believed, or with the knowledge that it is likely to be
believed, that he belongs to that class of public servants, shall be punish-
ed with imprisonment of either description for a term which may extend
to three months, or with fine which may extend to two hundred rupees,
or with both.

CHAPTER X.
Of Contempts of the Lawful Authority of Public Servants.

172. Whoever ABSCONDS in order TO AVOID being served
with a SUMMONS, notice, or order proceeding from any public servant
legally competent, as such public servant, to issue such summons, notice
or order, shall be punished with simple imprisonment for a term which
may extend to one month, or with fine which may extend to five hun-
dred rupees, or with both; or if the summons, notice, or order is to at-
tend in person or by agent, or to produce a document in a Court of Jus-
tice, with simple imprisonment for a term which may extend to six
months, or with fine which may extend to one thousand rupees, or with
both.

168. See Sec. 137, of 39 G. 3 c. 52 (Government Servants.) Sec. 18 Reg. 2, of 1862
[Courts Civil, (Madras.)] Sec. 64 Reg. 2 of 1858 [Revenue Officers, Collectors (Madras.)] Act
15 of 1868 [Courts of Justice Supreme Courts (G. M. B.) Sec. 10 Act 24 of 1867 (C. C. Su-
cession, Administrator General.)

Chap. X. See Sec. 143, 145, and 156 Act 35 of 1861 (Cr. P. C.)

172. See Sec. 169, 185, and 184 Act 25 of 1861 (Cr. P. C.)
173. Whoever in any manner intentionally PREVENTS THE SERVING on himself or on any other person OF ANY SUMMONS, notice, or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice, or order, or intentionally prevents the lawful affixing to any place of any such summons, notice, or order or intentionally removes any such summons notice or order from any place to which it is lawfully affixed, or intentionally prevents the lawful making of any proclamation, under the authority of any public servant, legally competent as such public servant to direct such proclamation to be made shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or if the summons, notice, order, or proclamation is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

174. Whoever, BEING legally BOUND to attend in person or by an agent at a certain place and time, IN OBEDIENCE TO A SUMMONS, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally OMITS TO ATTEND at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or if the summons, notice, order, or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations.

A, being legally bound to appear before the Supreme Court at Calcutta, in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this Section.

A, being legally bound to appear before a Zillah Judge as a witness, in obedience to a summons issued by that Zillah Judge, intentionally omits to appear. A has committed the offence defined in this Section.

175. Whoever, being legally bound to produce or deliver up any DOCUMENT to any public servant as such, intentionally OMITS SO TO PRODUCE or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustration.

A, being legally bound to produce a document before a Zillah Court, intentionally omits to produce the same. A has committed the offence defined in this Section.

176. Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant as such, intentionally OMITS TO GIVE such NOTICE OR to furnish such IN-
FORMATION in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

177. Whoever, being legally bound to furnish information on any subject to any public servant, as such, FURNISHES, as true, INFORMATION on the subject which he knows or has reason to believe to be FALSE, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both; or if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

A, a landlord, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the District that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this Section.

A village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound under Clause 5, Section VII., Regulation III., of 1821 of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest Police Station, wilfully misinforms the police officer, that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in this Section.

178. Whoever REFUSES to bind himself by an OATH to state the truth, when required so to bind himself by a public servant, legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

179. Whoever, being legally bound to state the truth on any subject to any public servant, REFUSES TO ANSWER any question demanded of him touching that subject by such public servant, in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

180. Whoever REFUSES TO SIGN any STATEMENT made by him when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

181. Whoever, BEING legally BOUND BY an OATH to state the truth on any subject to any public servant or other person authorized by law to administer such oath, MAKES to such public servant or other person as aforesaid, touching that subject, any STATEMENT WHICH IS FALSE, and which he either knows or believes to be
false, or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

182. Whoever GIVES TO any PUBLIC SERVANT any INFORMATION which he knows or believes to be FALSE, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations.

A informs a Magistrate that Z, a police officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in his Section.

A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this Section.

183. Whoever OFFERS any RESISTANCE TO THE TAKING OF any PROPERTY BY the lawful authority of any PUBLIC SERVANT, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

184. Whoever intentionally OBSTRUCTS any SALE of property offered for sale BY the lawful authority of any PUBLIC SERVANT as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

185. Whoever, at any sale of property held by the lawful authority of a public servant as such, purchases or BIDS FOR any property on account of any PERSON, whether himself or any other, whom he knows to be UNDER A LEGAL INCAPACITY to PURCHASE that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

186. Whoever voluntarily OBSTRUCTS any PUBLIC SERVANT in the discharge of his public functions shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

187. Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally
OMITS TO GIVE such ASSISTANCE, shall 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; and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

188. Whoever, knowing that, by an ORDER PROMULGATED BY a PUBLIC SERVANT lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, DISOBREYS such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any person lawfully employed, 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; and if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce harm.

Illustration.

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this Section.

189. Whoever holds out any THREAT OF INJURY TO any PUBLIC SERVANT, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

190. Whoever holds out any THREAT of injury to any person FOR the purpose of INDUCING that PERSON TO REFRAIN or desist FROM making a legal APPLICATION, FOR PROTECTION against any injury, to any public servant legally empowered as such to give such protection or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.
CHAPTER XI.

Of False Evidence and Offences against Public Justice.

191. Whoever being legally bound by an oath, or by any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said TO GIVE FALSE EVIDENCE.

Explanation 1.—A statement is within the meaning of this Section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this Section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations.

A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B’s claim. A has given false evidence.

A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

A, knowing the general character of Z’s handwriting, states that he believes a certain signature to be the handwriting of Z, A in good faith believing it to be so. Here A’s statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named, or not.

A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not, and which he does not believe to be a true interpretation or translation. A has given false evidence.

192. Whoever causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry, or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry, or false statement, so appearing in evidence, may cause any person, who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said “TO FABRICATE FALSE EVIDENCE.”

Illustrations.

A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

A makes a false entry in his shop book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

Chap. XI. See Sec. 169, Act 25, of 1861, (Cr. P. C.), and Sec. 16, 17, 18, and 20, Act 25, of 1861 (C. P. C.).


192. See Sec. 52 ante.
A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the police are likely to search. A has fabricated false evidence.

193. Whoever intentionally GIVES FALSE EVIDENCE in any state of a judicial proceeding, or fabricates false evidence for the purpose of being used in any state of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanations 1.—A trial before a Court Martial or before a Military Court of Request is a judicial proceeding.

Explanations 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a state of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an inquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this inquiry is a state of a judicial proceeding, A has given false evidence.

Explanations 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a state of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an inquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this inquiry is a state of a judicial proceeding, A has given false evidence.

194. Whoever GIVES OR FABRICATES FALSE EVIDENCE, INTENDING thereby to cause, or knowing it to be likely that he will thereby cause any PERSON TO BE CONVICTED OF AN OFFENCE which is capital by this Code, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

195. Whoever GIVES OR FABRICATES FALSE EVIDENCE INTENDING thereby to cause, or knowing it to be likely that he will thereby cause, any PERSON TO BE CONVICTED OF AN OFFENCE which by this Code is not capital, but PUNISHABLE WITH TRANSPORTATION OR LIFE, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Illustration.

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a misdemeanor. The punishment of dacoity is transportation for life, or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to such transportation or imprisonment, with or without fine.

194 and 195 "Offence." See Sec. 2, and 7, Act 27, of 1870. (F. C. post.) and Sec. 3 Act 5, of 1867 (F. C. post.)
196. Whoever CORRUPTLY USES or attempts to use as true or genuine evidence any EVIDENCE which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

197. Whoever ISSUES or signs any CERTIFICATE required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, KNOWING or believing THAT SUCH CERTIFICATE IS FALSE in any material point, shall be punished in the same manner as if he gave false evidence.

198. Whoever CORRUPTLY USES or attempts to use any SUCH CERTIFICATE as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

199. Whoever, IN ANY DECLARATION made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, MAKES any STATEMENT WHICH IS FALSE, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

200. Whoever CORRUPTLY USES or attempts to use as true any SUCH DECLARATION, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of Sections 199 and 200.

201. Whoever, knowing or having reason to believe that an offence has been committed, CAUSES any EVIDENCE of the commission of that offence to DISAPPEAR, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine: and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine: and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine or with both.

Illustration.

A knowing that B has murdered Z, assis's B to hide the body with the intention of screening B from punishment, A is liable to imprisonment of either description for seven years, and also to fine.
202. Whoever, knowing or having reason to believe that an offence has been committed, INTENTIONALLY OMITS TO GIVE ANY INFORMATION RESPECTING that OFFENCE which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

203. Whoever, knowing or having reason to believe that an offence has been committed, GIVES any INFORMATION respecting that offence WHICH HE KNOWS or believes TO BE FALSE, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

204. Whoever secretes or DESTROYS any DOCUMENT which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

205. Whoever falsely PERSONATES another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued, or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

206. Whoever FRAUDULENTLY REMOVES, conceals, transfers, or delivers to any person any PROPERTY or any interest therein intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

207. Whoever FRAUDULENTLY ACCEPTS, receives, or claims any PROPERTY or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
208. Whoever FRAUDULENTLY CAUSES or suffers A DEGREE or order TO BE PASSED AGAINST HIM at the suit of any person for a sum not due, or for a larger sum than is due to such person, or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustration.

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently causes a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. A has committed an offence under this Section.

209. Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, MAKES in a Court of Justice any CLAIM WHICH HE KNOWS TO BE FALSE, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

210. Whoever FRAUDULENTLY OBTAINS A DEGREE or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied, or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

211. Whoever, with intent to cause injury to any person, institutes, or causes to be instituted any criminal proceeding, against that person, or FALSELY CHARGES ANY PERSON WITH having committed AN OFFENCE, knowing that there is no just or lawful ground for such proceedings or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

212. Whenever an offence has been committed, whoever HARBOURS or conceals a person whom he knows or has reason to believe to be the OFFENDER, with the intention of screening him from legal punishment, shall if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment which
may extend to one year and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-forth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Exception.—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

Illustration.

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to transportation for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

213. Whoever ACCEPTS, or attempts to obtain, or agrees to accept, any GRATIFICATION FOR himself or any other person, or any restitution of property to himself or any other person, in consideration of his CONCEALING AN OFFENCE or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine; and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-forth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

214. Whoever GIVES or causes, or offers or agrees to give or cause, any GRATIFICATION to any person, or to restore or cause the restoration of any property to any person, IN CONSIDERATION OF that PERSON'S CONCEALING AN OFFENCE, or of his screening any person from legal punishment for any offence, or on his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-forth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Exception.—The provisions of Sections 213 and 214 do not extend to any case in which the offence consists only of an act irrespective of the intention of the offender, and for which act the person injured may bring a civil action.

Illustrations.

A assaults B with intent to commit murder. Here, as the offence does not consist of the assault only, irrespective of the intention to commit murder, it does not fall within the exception, and cannot therefore be compounded.
A assaults B. Here, as the offence consists simply of the act, irrespective of the intention of the offender, and as B may have a civil action for the assault, it is within the exception, and may be compounded.

A commits the offence of bigamy. Here, as the offence is not the subject of a civil action, it cannot be compounded.

B commits the offence of adultery with a married woman. The offence may be compounded.

215. Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any moveable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

216. Whenever any person convicted of or charged with an offence being in lawful custody for that offence, escapes from such custody, or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say, if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; if the offence is punishable with transportation for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine; and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

Exception.—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

217. Whoever being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

218. Whoever, being a public servant, and being such public servant, charged with the preparation of any record or other writing, frames, that record or writing in a manner which he
knows to be INCORRECT, with intent to cause or knowing it to be likely that he will thereby cause loss or injury to the public or to any person, or with intent thereby to save or knowing it to be likely that he will thereby save any person from legal punishment, or with intent to save or knowing that he is likely thereby to save any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

219. Whoever, being a PUBLIC SERVANT, corruptly or maliciously MAKES or pronounces in any stage of a Judicial proceeding, any report, order, verdict, or DECISION which he knows to be CONTRARY TO LAW, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

220. Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously COMMITs any PERSON for trial or to confinement, or keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting CONTRARY TO LAW, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

221. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement, any PERSON CHARGed with or liable to be apprehended for an offence, intentionally OMITS TO APPREHEND such person, OR intentionally SUFFERS such person TO ESCAPE, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say:

With imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended was charged with or liable to be apprehended for an offence punishable by death; or

With imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with or liable to be apprehended for an offence punishable with transportation for life, or imprisonment for a term which may extend to ten years; or

With imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with or liable to be apprehended for an offence punishable with imprisonment for a term less than ten years.

222. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any PERSON UNDER SENTENCE of a Court of Justice for any offence, intentionally OMITS TO APPREHEND such person, OR intentionally SUFFERS such person TO ESCAPE, or intentionally aids such person in escap-
ing or attempting to escape from such confinement, shall be punished as follows, that is to say:—

With transportation for life or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death; or

With imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to transportation for life, or penal servitude for life, or to transportation or penal servitude or imprisonment for a term of ten years or upwards; or

With imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been apprehended, is subject by a sentence of a Court of Justice to imprisonment for a term not exceeding ten years.

223. Whoever, being a public servant, legally bound as such public servant to keep in confinement any person charged with or convicted of any offence, NEGLIGENTLY SUFFERS such PERSON TO ESCAPE from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

224. Whoever intentionally OFFERS any RESISTANCE or illegal obstruction TO the lawful APPREHENSION OF HIMSELF for any offence, with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—The punishment in this Section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

225. Whoever intentionally OFFERS any RESISTANCE or illegal obstruction TO the lawful APPREHENSION OF any OTHER PERSON for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

Or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with, or liable to be apprehended for an offence punishable with transportation for life, or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

225. See Sec. 9, Act 27, of 1870, (P. C. post.)
Or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is liable, under the sentence of a Court of Justice or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

226. Whoever, having been lawfully transported, RETURNS FROM such TRANSPORTATION, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

227. Whoever, having accepted any conditional remission of punishment, knowingly VIOLATES any CONDITION ON WHICH such REMISSION was GRANTED, shall be punished with the punishment to which he was originally sentenced if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

228. Whoever intentionally OFFERS any INSULT, OR causes any INTERRUPTION to any public servant, while such public servant is sitting IN any stage of a JUDICIAL PROCEEDING, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

229. Whoever, by PERSONATION or otherwise, shall intentionally cause or knowingly suffer himself to be returned, empanelled, or sworn as a JURYMAN or ASSESSOR in any case in which he knows that he is not entitled by law, to be so returned, empanelled, or sworn, or, knowing himself to have been so returned, empanelled, or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CHAPTER XII.

Of Offences relating to Coin and Government Stamps.

230. COIN is metal used as money, stamped and issued by the authority of some Government in order to be so used.
Coin stamped and issued by the authority of the Queen, or by the authority of the Government of India or of the Government of any Presidency, or of any Government in the Queen's Dominions, is the QUEEN'S COIN.

Illustrations.

Covries are not coin.
Lumps of unstamped copper, though used as money, are not coin.
Medals are not coin, inasmuch as they are not intended to be used as money.
The coin denominated as the Company's Rupee is the Queen's coin.

231. Whoever COUNTERFEITS or knowingly performs any part of the process of counterfeiting COIN, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A person commits this offence, who, intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

232. Whoever COUNTERFEITS or knowingly performs any part of the process of counterfeiting the QUEEN'S COIN, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

233. Whoever MAKES or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of, any die or INSTRUMENT, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, FOR the purpose of COUNTERFEITING COIN, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

234. Whoever MAKES or mends, or performs, any part of the process of making or mending, or buys, sells, or disposes of, any die or INSTRUMENT, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, FOR the purpose of COUNTERFEITING the QUEEN'S COIN, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

235. Whoever IS IN POSSESSION OF any INSTRUMENT or material for the purpose of using the same FOR COUNTERFEITING COIN, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the coin to be counterfeited is the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

236. Whoever, being within British India, ABETS the COUNTERFEITING of COIN OUT OF BRITISH INDIA, shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

237. Whoever IMPORTS into British India, OR EXPORTS therefrom, any COUNTERFEIT COIN, knowing or having reason to
believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

238. Whoever IMPORTS into British India, OR EXPORTS therefrom, any counterfeit coin, which he knows, or has reason to believe to be a COUNTERFEIT OF the QUEEN’S COIN, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

239. Whoever, having any COUNTERFEIT COIN which at the time when he became possessed of it he knew to be counterfeit, FRAUDULENTLY or with intent that fraud may be committed, DELIVERS the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

240. Whoever, having any COUNTERFEIT COIN which is a counterfeit OF THE QUEEN’S coin, and which at the time when he became possessed of it he knew to be a counterfeit of the Queen’s coin; FRAUDULENTLY or with intent that fraud may be committed, DELIVERS the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

241. Whoever DELIVERS to any other person AS GENUINE, or attempts to induce any other person to receive as genuine, any COUNTERFEIT COIN, which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Illustration.

A, a coiner, delivers counterfeit Company’s Rupees to his accomplice B, for the purpose of uttering them. B sells the Rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the Rupees for goods to D, who receives them not knowing them to be counterfeit. D, after receiving the Rupees, discovers that they are counterfeit, and pays them away as if they were good. Here D is punishable only under this Section, but B and C are punishable under Section 239 or 240, as the case may be.

242. Whoever, FRAUDULENTLY or with intent that fraud may be committed, IS IN POSSESSION OF COUNTERFEIT COIN having known at the time when he came possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

243. Whoever, FRAUDULENTLY or with intent that fraud may be committed, is IN POSSESSION of counterfeit coin which is a counterfeit OF THE QUEEN’S COIN, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
244. Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of CAUSING any COIN ISSUED FROM that MINT TO BE OF A DIFFERENT WEIGHT or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

245. Whoever, without lawful authority, TAKES OUT OF ANY MINT lawfully established in British India, any COINING TOOL or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

246. Whoever FRADULENTLY or dishonestly performs on any coin any operation which diminishes the weight, or ALTERS the composition of that COIN, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—A person who scoops out part of the coin, and puts anything else into the cavity, alters the composition of that coin.

247. Whoever FRADULENTLY or dishonestly performs on any of the QUEEN’S COIN any operation which diminishes the weight or ALTERS the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

248. Whoever performs on any coin any operation which ALTERS the APPEARANCE OF that COIN, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

249. Whoever performs on any of the QUEEN’S COIN any operation which ALTERS the APPEARANCE OF that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

250. Whoever, having coin in his POSSESSION, with respect to which the offence defined in SECTION 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, FRADULENTLY, or with intent that fraud may be committed, DELIVERS SUCH COIN to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

251. Whoever, having coin in his possession, with respect to which the offence defined in SECTION 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, FRADULENTLY, or with intent that fraud may be committed, DELIVERS SUCH COIN to any other person, or attempts to induce any
other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

252. Whoever FRAUDULENTLY, or with intent that fraud may be committed, is IN POSSESSION OF COIN with respect to which the offence defined in either of the SECTIONS 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

253. Whoever FRAUDULENTLY, or with intent that fraud may be committed, is IN POSSESSION OF COIN with respect to which the offence defined in either of the SECTIONS 247 or 249 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

254. Whoever DELIVERS to any other person AS GENUINE or as a COIN of a DIFFERENT description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in SECTIONS 246, 247, 248, or 249 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed or attempted to be passed.

255. Whoever COUNTERFEITS, or knowingly performs any part of the process of counterfeiting, any STAMP issued by Government for the purpose of revenue, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

256. Whoever HAS IN his POSSESSION any INSTRUMENT or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, FOR the purpose of COUNTERFEITING any STAMP issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

257. Whoever MAKES, or performs any part of the process of making, or buys, or sells, or disposes of, any INSTRUMENT for the purpose of being used, or knowing or having reason to believe that it is intended to be used, FOR the purpose of COUNTERFEITING any STAMP issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
258. Whoever Sells, or offers for sale, any stamp which he knows or has reason to believe to be a COUNTERFEIT of any STAMP issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

259. Whoever HAS IN his POSSESSION any stamp which he knows to be a COUNTERFEIT of any STAMP issued by Government for the purpose of revenue, intending to use or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

260. Whoever USES as genuine any stamp, knowing it to be a COUNTERFEIT of any STAMP issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

261. Whoever, FRAUDULENTLY or with intent to cause loss to the Government, removes or EFFACES from any substance bearing any stamp issued by Government for the purpose of revenue, any WRITING or document FOR WHICH such STAMP HAS BEEN USED, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

262. Whoever FRAUDULENTLY or with intent to cause loss to the Government, USES for any purpose a STAMP issued by Government for the purpose of revenue, which he knows to have been BEFORE USED, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

263. Whoever, FRAUDULENTLY or with intent to cause loss to Government, ERASES or removes from a stamp issued by Government for the purpose of revenue any MARK put or impressed UPON such STAMP for the purpose of denoting that the same has been used, or knowingly has in his possession, or sells, or disposes of, any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CHAPTER XIII.

Of Offences relating to Weights and Measures.

264. Whoever FRAUDULENTLY USES any INSTRUMENT FOR WEIGHING which he knows to be FALSE, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

265. Whoever FRAUDULENTLY USES any FALSE WEIGHT OR false MEASURE of length or capacity, or fraudulently uses any
weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

266. Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

267. Whoever makes, sells, disposes of, any instrument for weighing, or any weight, or any measure, of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XIV.

Of Offences affecting the Public Health, Safety, Convenience, Decency, and Morals.

268. A person is guilty of a public nuisance who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

269. Whoever, unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

270. Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

271. Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any Government, for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.
272. Whoever ADULTERATES any article of FOOD or DRINK so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

273. Whoever SELLS, or offers, or exposes for sale as food or drink any ARTICLE which has been rendered or has become noxious, or is in a state UNFIT FOR FOOD or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

274. Whoever ADULTERATES any DRUG or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for any medical purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

275. Whoever, knowing any DRUG or medical preparation to have been ADULTERATED in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, SELLS the same or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medical purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

276. Whoever knowingly SELLS, or offers, or exposes for sale, or issues from a dispensary for medicinal purposes, any DRUG or medical preparation AS A DIFFERENT DRUG or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

277. Whoever voluntarily corrupts or FOULS the WATER of any public spring or reservoir so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

278. Whoever voluntarily VITIATES the ATMOSPHERE in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood, or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

279. Whoever DRIVES any vehicle, or rides on any public way in a manner so RASH or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished,
with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

280. Whoever Navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

281. Whoever Exhibits any false light, mark, or buoy, intending, or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

282. Whoever knowingly or negligently conveys, or causes to be conveyed for hire any person by water in any vessel when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

283. Whoever by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction, or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

284. Whoever does with any poisonous substance, any act in a manner so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

285. Whoever does with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession, as is sufficient to guard against any probable danger to human life from such fire or combustible matter, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

286. Whoever does with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.
287. Whoever does with any machinery any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently OMITS to take such order with any machinery in his possession or under his care as is sufficient TO GUARD AGAINST any probable DANGER TO human LIFE FROM such MACHINERY, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

288. Whoever, in pulling down or repairing any building, knowingly or negligently OMITS to take such order with that building as is sufficient TO GUARD AGAINST any probable DANGER TO human LIFE FROM THE FALL OF that BUILDING or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

289. Whoever knowingly or negligently OMITS to take such order, with any animal in his possession, as is sufficient TO GUARD AGAINST any probable DANGER TO human LIFE, or any probable danger of grievous hurt FROM such ANIMAL, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

290. Whoever COMMITs a PUBLIC NUISANCE in any case not otherwise punishable by this Code shall be punished with fine which may extend to two hundred rupees.

291. Whoever repeats or CONTINUES a PUBLIC NUISANCE having been enjoined by any public servant, who has lawful authority to issue such injunction, not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

292. Whoever SELLs or distributes, imports or prints for sale or hire, or wilfully exhibits to public view any OBSCENE BOOK, pamphlet, paper drawing, painting representation, or figure, or attempts or offers so to do shall be punished with imprisonment of either description for a term which may extend to three months, or with fine or with both.

Exception.—This section does not extend to any representation sculptured, engraved, painted, or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

293. Whoever has in his POSSESSION any such OBSCENE BOOK or other thing as is mentioned in the last preceding section for the purpose of sale, distribution, or public exhibition, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

294. Whoever sings, recites, or utters in or near any public place any OBSCENE SONG, ballad, or words to the annoyance of others,

294. A, Section is added here by Sec. 10 Act 27 of 1870 (P. C. post.)
shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

CHAPTER XV.

Of Offences relating to Religion.

295. Whoever destroys, damages, or DEFILES any PLACE OF WORSHIP, or any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons, or with the knowledge that any class of persons is likely to consider such destruction, damage, or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

296. Whoever voluntarily causes DISTURBANCE to any assembly lawfully engaged in the performance OF RELIGIOUS WORSHIP, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

297. Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any TRESPASS IN any PLACE OF WORSHIP, OR on any place of SEPULTURE, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

298. Whoever, with the deliberate intention of WOUNDING the RELIGIOUS FEELINGS of any person utters any word, or makes any sound in the hearing of that person, or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both:

CHAPTER XVI.

Of Offences affecting the Human Body.

Of Offences affecting Life.

299. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of CULPABLE HOMICIDE.

299 Exp. 3 "Death of unborn child" This is punishable under Sec. 315 & 316, (C. P. post.)
ACT 45 OF 1860.

OFFENCES AGAINST HUMAN LIFE.

Illustrations.

(a) A lays sticks and turf over a pit with the intention, of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in, and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause, Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence. But A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl, with intent to kill and steal it, kills B, who is behind a bush. A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1.—A person who causes bodily injury to another who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although, by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child if any part of that child has been brought forth, though the child may not have breathed or been completely born.

300. Except in the cases hereinafter excepted, culpable homicide is MURDER if the act by which the death is caused is done with the intention of causing death; or—

Secondly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or—

Thirdly.—If it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or—

Fourthly.—If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations.

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient, in the ordinary course of nature, to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature, kill a person in a sound state of health. Here A, although he may intend to cause bodily injury, is not guilty of murder if he did not intend to cause death, or such bodily injury as, in the ordinary course of nature, would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.
Exception 1.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations.

(a) A under the influence of passion, excited by a provocation given by Z, intentionally kills Y, Z’s child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him but out of sight. A kills Z. Here A has not committed murder but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A’s deposition, and that A has perjured himself. A is moved to sudden passion by these words and kills Z. This is murder.

(e) A attempts to pull Z’s nose. Z in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a by-stander, intending to take advantage of B’s rage and to cause him to kill Z, puts a knife into B’s hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide but A is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender in the exercise, in good faith, of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration.

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.
Exception 4.—Culpable homicide is not murder if it is committed without premeditation: in a sudden fight, in the heat of passion, upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration.
A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death. A has therefore abetted murder.

301. If a person, by doing anything which he intends or knows to be likely to cause death, commits CULPABLE HOMICIDE by causing the death of any person whose DEATH HE NEITHER INTENDS, NOR KNOWS himself, to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

302. Whoever commits MURDER shall be punished with death, or transportation for life, and shall also be liable to fine.

303. Whoever, being UNDER SENTENCE of TRANSPORTATION for life, commits MURDER, shall be punished with death.

304. Whoever commits CULPABLE HOMICIDE not amounting to murder shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

305. If any PERSON, UNDER EIGHTEEN years of age, any INSANE person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever ABETS the commission of such SUICIDE shall be punished with death or transportation for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

306. If any person commits suicide, whoever ABETS the commission of such SUICIDE shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

307. Whoever does any ACT WITH such INTENTION or knowledge, and under such circumstances, that if he by that act caused death he would be guilty OF MURDER, shall be punished with im-

304. A Section is added here by Sec. 12, Act 27 of 1870, (P. C. post.)
307. Amended by Sec. 11, Act 27 of 1870 (P. C. post.)
prisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned.

Illustrations.

307. A shoots at Z with intention to kill him under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this Section.

308. A, with the intention of causing the death of a child of tender years, exposes it in a deserted place. A has committed the offence defined by this Section, though the death of the child does not ensue.

309. A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this Section; and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of this Section.

310. A, intending to murder Z by poison, purchases poison and mixes the same with food, which remains in A's keeping. A has not yet committed the offence defined in this Section. A places the food on Z's table, or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this Section.

308. Whoever does any ACT WITH such INTENTION or knowledge, and under such circumstances that if he by that act caused death he would be guilty OF CULPABLE HOMICIDE not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and if hurt is caused to any person by such act shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine or with both.

Illustration.

A, on grave and sudden provocation, fires a pistol at Z under such circumstances that if he thereby caused death, he would be guilty of culpable homicide not amounting to murder A has committed the offence defined in this Section.

309. Whoever ATTEMPTS to commit SUICIDE, and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, and shall also be liable to fine.

310. Whoever at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a THUG.

311. Whoever is a THUG shall be punished with transportation for life, and shall also be liable to fine.

Of the causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births.

312. Whoever voluntarily CAUSES A WOMAN with child TO MISCARRY shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and if the woman be quick with child shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A woman who causes herself to miscarry is within the meaning of this Section.
313. Whoever commits the offence defined in the last preceding Section WITHOUT THE CONSENT OF THE WOMAN, whether the woman is quick with child or not shall be punished with transportation for life, or with imprisonment of either, description for a term which may extend to ten years, and shall also be liable to fine.

314. Whoever, with INTENT to CAUSE the MISCARRIAGE of a woman with child, does any act which CAUSES the DEATH of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, and if the act is done without the consent of the woman shall be punished either with transportation for life, or with the punishment abovementioned.

Explanation.—It is not essential to this offence that the offender should know that the act is likely to cause death.

315. Whoever, before the birth of any child, does any act with the intention of thereby PREVENTING that CHILD FROM BEING BORN ALIVE, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall if such act be not caused in good faith, for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine or with both.

316. Whoever does any act under such circumstances that if he thereby caused death he would be guilty of culpable homicide, and does by such act CAUSE the DEATH OF a QUICK UNBORN CHILD, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Illustration.

A, knowing that he is likely to cause the death of a pregnant woman, does an act which if it caused the death of the woman, would amount to culpable homicide. The woman, is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this Section.

317. Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly ABANDONING such CHILD, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—This Section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

318. Whoever, by secretly burying or otherwise disposing of the dead body of a child, whether such child die before, or after, or during its birth, intentionally CONCEALS, or endeavours to conceal, the BIRTH of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

319. See Sec. 299, explanation 3. ante.
Of Hurt.

319. Whoever causes bodily pain, disease, or infirmity to any person is said TO CAUSE HURT.

320. The following kinds of HURT only are designated as "GRIEVOUS":—

First.—Emasculat ion.
Secondly.—Permanent privation of the sight of either eye.
Thirdly.—Permanent privation of the hearing of either ear.
Fourthly.—Privation of any member or joint.
Fifthly.—Destruction or permanent impairing of the powers of any member or joint.
Sixthly.—Permanent disfigurement of the head or face.
Seventhly.—Fracture or dislocation of a bone or tooth.
Eighthly.—Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "VOLUNTARILY TO CAUSE HURT."

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause, or knows himself to be likely to cause, is grievous hurt, and if the hurt which he causes is grievous hurt, is said "VOLUNTARILY TO CAUSE GRIEVOUS HURT."

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt, and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration.

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

323. Whoever, except in the case provided for by Section 334, VOLUNTARILY CAUSES HURT shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

324. Whoever, except in the case provided for by Section 334, voluntarily causes HURT BY means of any INSTRUMENT for SHOOTING, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of FIRE or any heated substance, or by means of any POISON or any corrosive substance or by means of any EXPLOSIVE SUBSTANCE, or by means of any substance which it is DELETERIOUS to the human body to inhale,
to swallow, or to receive into the blood, or by means of any ANIMAL, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

325. Whoever, except in the case provided by Section 325, voluntarily causes GRIEVOUS HURT shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

326. Whoever, except in the case provided by section 325, voluntarily causes GRIEVOUS HURT by means of any INSTRUMENT for SHOOTING, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of FIRE or any heated substance, or by means of any POISON or any corrosive substance, or by means of any EXPLOSIVE SUBSTANCE or by means of any substance which it is DELETERIOUS to the human body to inhale, to swallow, or to receive into the blood, or by means of any ANIMAL, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

327. Whoever voluntarily causes HURT FOR the purpose of EXTORTING from the sufferer, or from any person interested in the sufferer, any PROPERTY or valuable security, or of constraining the sufferer, or any person interested in such sufferer to do anything which is illegal, or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

328. Whoever ADMINISTERS to, or causes to be taken by any person any POISON or any stupifying, intoxicating, or unwholesome drug, or other thing WITH INTENT to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

329. Whoever voluntarily causes GRIEVOUS HURT for the purpose of EXTORTING from the sufferer, or from any person interested in the sufferer, any PROPERTY or valuable security, or of constraining the sufferer, or any person interested in such sufferer, to do any thing which is illegal or which may facilitate the commission of an offence shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

330. Whoever voluntarily causes HURT FOR the purpose of EXTORTING from the sufferer or from any person interested in the sufferer, any CONFESSION or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer, or any person interested in the sufferer, to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with
imprisonment of either description for a term which may extend to
seven years, and shall also be liable to fine.

Illustrations.

(a) A, a police officer, tortures Z in order to induce Z to confess that he committed a
crime. A is guilty of an offence under this Section.

(b) A, a police officer, tortures B to induce him to point out where certain stolen pro-

perty is deposited. A is guilty of an offence under this Section.

(c) A, a revenue officer, tortures Z in order to compel him to pay certain arrears of re-

venue due from Z. A is guilty of an offence under this Section.

(d) A, a schoolmaster, tortures a riot in order to compel him to pay his rent. A is guilty
of an offence under this Section.

331. Whoever voluntarily causes GRIEVOUS HURT for the

purpose of EXTORTING from the sufferer, or from any person inter-

ested in the sufferer, any CONFESSION, or any information which

may lead to the detection of an offence or misconduct, or for the pur-

pose of constraining the sufferer, or any person interested in the suffer-

er, to restore or to cause the restoration of any property or valuable

security, or to satisfy any claim or demand, or to give information

which may lead to the restoration of any property or valuable security,

shall be punished with imprisonment of either description for a term

which may extend to ten years, and shall also be liable to fine.

332. Whoever voluntarily causes HURT to any person being a

public servant, in the discharge of his duty as such public servant, or

WITH INTENT TO PREVENT or deter that person or any other

PUBLIC SERVANT FROM DISCHARGING HIS DUTY as such

public servant, or in consequence of anything done or attempted to be

done by that person in the lawful discharge of his duty as such public

servant, shall be punished with imprisonment of either description for

a term which may extend to three years, or with fine, or with both.

333. Whoever voluntarily causes GRIEVOUS HURT to any

person being a public servant, in the discharge of his duty as such

public servant, or WITH INTENT TO PREVENT or deter that per-

son or any other PUBLIC SERVANT FROM DISCHARGING HIS

DUTY as such public servant, or in consequence of any thing done or

attempted to be done by that person in the lawful discharge of his duty

as such public servant, shall be punished with imprisonment of either

description for a term which may extend to ten years, and shall also be

liable to fine.

334. Whoever voluntarily causes HURT ON grave and sudden

PROVOCATION, if he neither intends nor knows himself to be likely

to cause hurt to any person other than the person who gave the provo-
cation, shall be punished with imprisonment of either description for a
term which may extend to one month, or with fine which may extend
to five hundred rupees, or with both.

335. Whoever causes GRIEVOUS HURT ON grave and sudden

PROVOCATION, if he neither intends nor knows himself to be likely
to cause grievous hurt to any person other than the person who gave
the provocation, shall be punished with imprisonment of either descrip-
tion for a term which may extend to four years, or with fine which may
extend to two thousand rupees, or with both.
Explanations.—The last two Sections are subject to the same provisions as exception I, Section 300.

336. Whoever does any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

337. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

338. Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Wrongful Restraint and wrongful Confinement.

339. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said "wrongfully to restrain" that person.

Exception.—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct is not an offence within the meaning of this Section.

Illustration.

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits is said "wrongfully to confine" that person.

Illustrations.

(a) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(b) A places men with fire-arms at the outlets of a building and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

341. Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

342. Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

343. Whoever wrongfully confines any person for three days or more shall be punished with imprisonment of either:
description for a term which may extend to two years, or with fine, or
with both.

344. Whoever WRONGFULLY CONFINES any person FOR
TEN DAYS or more shall be punished with imprisonment of either
description for a term which may extend to three years, and shall also
be liable to fine.

345. Whoever keeps any person in WRONGFUL CONFIN-
MENT, KNOWING that A WRIT FOR the LIBERATION of that
person HAS BEEN DULY ISSUED, shall be punished with im-
prisonment of either description for a term which may extend to two years
in addition to any term of imprisonment to which he may be liable
under any other Section of this Code.

346. Whoever WRONGFULLY CONFINES any person in such
manner as to indicate an INTENTION THAT the CONFINEMENT
of such person MAY NOT BE KNOWN to any person interested in the
person so confined or to any public servant, or that the place of such
confinement may not be known to or discovered by any such person or
public servant as hereinbefore mentioned, shall be punished with
imprisonment of either description for a term which may extend to two
years, in addition to any other punishment to which he may be liable
for such wrongful confinement.

347. Whoever WRONGFULLY CONFINES any person FOR
the purpose of EXTORTING from the person confined, or from any
person interested in the person confined, any PROPERTY or valuable
security OR of CONSTRAINING the person confined, or any person
interested in such person, TO DO ANYTHING ILLEGAL, OR TO
GIVE any INFORMATION which may facilitate the commission of
an offence, shall be punished with imprisonment of either description for
a term which may extend to three years, and shall also be liable to fine.

348. Whoever WRONGFULLY CONFINES any person FOR
the purpose of EXTORTING from the person confined, or any person
interested in the person confined, any CONFESSION or any informa-
tion which may lead to the detection of an offence or misconduct, or for
the purpose of constraining the person confined or any person interest-
ed in the person confined to restore or to cause the restoration of any
property or valuable security, or to satisfy any claim or demand, or to
give information which may lead to the restoration of any property or
valuable security, shall be punished with imprisonment of either de-
scription for a term which may extend to three years, and shall also be
liable to fine.

Of Criminal Force and Assault.

349. A person is said to use FORCE to another if he causes mo-
tion, change of motion, or cessation of motion, to that other, or if he
cause to any substance such motion, or change of motion, or cessation
of motion as brings that substance into contact with any part of that
other's body or with anything which that other is wearing or carrying
or with anything so situated that such contact affects that other's sense
of feeling; provided that the person causing the motion, or change of

347 & 348. "Offence" Sec Sec. 2, Act 27 of 1870. (P. C. post.)
motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion or to cease to move.

350. Whoever intentionally uses force to any person with that person's consent, in order to the committing of any offence, or intending, by the use of such force, to cause, or knowing it to be likely that by the use of such force he will cause injury, fear, or annoyance to the person to whom the force is used, is said to use CRIMINAL FORCE to that other.

Illustrations.

(a) T is sitting in a moored boat on a river. A unfastens the moorings and thus intentionally causes the boat to drift down the stream. Here, A intentionally causes motion to T, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to T; and if he has done so without T's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear, or annoyance to T, A has used criminal force to T.

(b) T is riding in a chariot. A lashes T's horses, and thereby causes them to quicken their pace. Here A has caused cessation of motion to T by inducing the animals to change their motion; A has therefore used force to T; and if A has done this without T's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy T, A has committed criminal force to T.

(c) T is riding in a palanquin. A, intending to rob T, seizes the pole, and stops the palanquin. Here A has caused cessation of motion to T, and he has done this by his own bodily power. A has therefore used force to T; and as A has acted thus intentionally without T's consent, in order to the commission of an offence, A has used criminal force to T.

(d) A intentionally pushes against T in the street. Here A has, by his own bodily power, moved his own person so as to bring it into contact with T. He has therefore intentionally used force to T; and if he has done so without T's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy T, he has used criminal force to T.

(e) A throws a stone intending or knowing it to be likely that the stone will be thus brought into contact with T, or with T's clothes, or with something carried by T, or that it will strike water, and dash up the water against T's clothes, or something carried by T. Here if the throwing of the stone produce the effect of causing any substance to come into contact with T, or T's clothes, A has used force to T; and if he did so without T's consent, intending thereby to injure, frighten, or annoy T, he has used criminal force to T.

(f) A intentionally pulls up a woman's veil. Here A intentionally uses force to her; and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy her, he has used criminal force to her.

(g) T is bathing. A pours into the bath water which he knows to be boiling. Here A, intentionally, by his own bodily power, causes such motion in the boiling water as brings that water into contact with T, or with other water so situated that such contact must affect T's sense of feeling. A has therefore intentionally used force to T; and if he has done this without T's consent, intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to T, A has used criminal force to T.

(h) A incites a dog to spring upon T without T's consent. Here, if A intends to cause injury, fear, or annoyance to T, he uses criminal force to T.

351. Whoever makes any gesture, or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an ASSAULT.
Explanation. — More words do not amount to an assault. But the words which a person uses may give to his gesture or preparation such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

(a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(c) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

352. Whoever ASSAULTS or USES CRIMINAL FORCE to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation. — Grave and sudden provocation will not mitigate the punishment for an offence under this Section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence; or—

If the provocation is given by anything done in obedience to the law or by a public servant in the lawful exercise of the powers of such public servant; or—

If the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence is a question of fact.

353. Whoever ASSAULTS or uses criminal force to any person being a public servant in the execution of his duty as such PUBLIC SERVANT, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done, or attempted to be done by such person, in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

354. Whoever ASSAULTS or uses criminal force to any WOMAN intending to outrage, or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

355. Whoever ASSAULTS or uses criminal force to any person, intending thereby TO DISHONOUR that person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

354. The offender is also liable to whipping in addition on a second conviction See Sec. 4, Act 6. of 1864. (P. C. post.)
356. Whoever ASSAULTS or uses criminal force to any person, IN ATTEMPTING to commit THEFT on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

357. Whoever ASSAULTS or uses criminal force to any person, IN ATTEMPTING WRONGFULLY TO CONFINE that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

358. Whoever ASSAULTS or uses criminal force to any person ON grave and sudden PROVOCATION given by that person shall 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.

Explanation.—The last Section is subject to the same explanation as Section 352.

Of Kidnapping, Abduction, Slavery, & Forced Labour.

359. KIDNAPPING is of two kinds—kidnapping from British India, and kidnapping from lawful guardianship.

360. Whoever conveys any person beyond the limits of British India without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to KIDNAP that person FROM BRITISH INDIA.

361. Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind without the consent of such guardian, is said to KIDNAP such minor or person FROM LAWFUL GUARDIANSHIP.

Explanation.—The words "lawful guardian" in this Section include any person lawfully entrusted with the care or custody of such minor or other person.

Explanation.—This Section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

362. Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to ABDUCT that person.

363. Whoever KIDNAPS any person from British India or from lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

364. Whoever KIDNAPS or abducts any person in order that such person may be MURDERED, or may be so disposed of as to be put in danger of being murdered, shall be punished with transportation
for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

365. Whoever KIDNAPS or abducts any person with intent to cause that person to be secretly and WRONGFULLY CONFINED shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

366. Whoever KIDNAPS or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled to MARRY any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

367. Whoever KIDNAPS or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to GRIEVOUS HURT, or SLAVERY, or to the UNNATURAL LUST of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

368. Whoever, knowing that any PERSON has been KIDNAPED or has been abducted, wrongfully CONCEALS or keeps such person in confinement shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

369. Whoever KIDNAPS or abducts any CHILD UNDER the age of TEN years with the intention of TAKING DISHONESTLY any moveable PROPERTY from the person of such child shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

370. Whoever IMPORTS, exports, removes, buys, sells, or disposes of any person as a SLAVE, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

371. Whoever HABITUALLY IMPORTS, exports, removes, buys, sells, traffics, or deals in SLAVES, shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

372. Whoever Sells, lets to hire, or otherwise disposes of any MINOR under the age of sixteen years, with intent that such minor shall be employed or used FOR the purpose of PROSTITUTION, or for any unlawful and immoral purpose or knowing it to be likely that such minor will be employed or used for any such purpose shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

373. Whoever BUYS, hires, or otherwise obtains possession of any MINOR under the age of sixteen years with intent that such minor
shall be employed or used for the purpose of PROSTITUTION, or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

374. Whoever unlawfully COMPELS any person TO LABOUR against the will of that person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Of Rape.

375. A man is said to commit "RAPE" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:

First.—Against her will.
Secondly.—Without her consent.
Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.
Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
Fifthly.—With or without her consent, when she is under ten years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his wife, the wife not being under ten years of age, is not rape.

376. Whoever COMMITs RAPE shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Of Unnatural Offences.

377. Whoever voluntarily has CARNAL INTERCOURSE AGAINST the order of NATURE with any man, woman, or animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this Section.

CHAPTER XVII.

Of Offences against property.

Of Theft.

378. Whoever, intending to take dishonestly any movable property out of the possession of any person without that person’s consent, moves that property in order to such taking, is said to commit THEFT.

378 & 377. The offender is also liable to whipping in addition on a second conviction.

See Sec. 4, Act 6 of 1894.

Chap. 17. See Sec. 75 ante.
Explanation 1.—A thing so long as it is attached to the earth, not being movable property, is not the subject of theft, but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which effects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person who by any means causes an animal to move is said to move that animal, and to move everything which in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be expressed or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations.

(a) A cuts down a tree on T's ground with the intention of dishonestly taking the tree out of T's possession without T's consent. Here, as soon as A has severed the tree in order to such taking he has committed theft.

(b) A puts a bait for dogs in his pocket, and thus induces T's dog to follow it. Here, if A's intention be dishonestly to take the dog out of T's possession without T's consent, A has committed theft as soon as T's dog has begun to follow A.

(c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d) A being T's servant, and entrusted by T with the care of T's plate, dishonestly runs away with the plate without T's consent. A has committed theft.

(e) T going on a journey, entrusts his plate to A, the keeper of a warehouse, till T shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in T's possession. It could not therefore be taken out of T's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f) A finds a ring belonging to T on a table in the house which T occupies. Here the ring is in T's possession, and if A dishonestly removes it, A commits theft.

(g) A finds a ring lying on the high-road not in the possession of any person. A by taking it commits no theft, though he may commit criminal misappropriation of property.

(h) A sees a ring belonging to T lying on a table in T's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by T, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(i) A delivers his watch to T, a jeweller, to be regulated. T carries it to his shop. A not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of T's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(j) If A owes money to T for repairing the watch, and if T retains the watch lawfully as a security for the debt and A takes the watch out of T's possession with the intention of depriving T of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(k) Again, if A having paid what he had borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(l) A takes an article belonging to T out of T's possession without T's consent, with the intention of keeping it until he obtains money from T as a reward for its restoration. Here A takes dishonestly. A has therefore committed theft.

(m) A being on friendly terms with T, goes into T's library in T's absence and takes away a book without T's express consent for the purpose merely of reading it and with the in-
tention of returning it. Here it is probable that A may have conceived that he had T's implied consent to use T's book. If this was A's impression A has not committed theft.

(s) A asks charity from T's wife. She gives A money, food, and clothes which A knows to belong to T, her husband. Here it is probable that A may conceive that T's wife is authorized to give away alms. If this was A's impression A has not committed theft.

(e) A is the paramour of T's wife. She gives A valuable property which A knows to belong to her husband T, and to be such property as she has not authority from T to give. If A takes the property dishonestly, he commits theft.

(p) A in good faith believing property belonging to T, to be A's own property, takes that property out of B's possession. Here as A does not take dishonestly, he does not commit theft.

379. Whoever COMMITS THEFT shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

380. Whoever commits THEFT IN any BUILDING tent, or vessel, which building, tent, or vessel is used as a human dwelling, or for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

381. Whoever, being a clerk or SERVANT, or being employed in the capacity of a clerk or servant, COMMITS THEFT in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

382. Whoever commits THEFT, having made PREPARATION for causing DEATH, or hurt, or restraint or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustration.

(a) A commits theft on property in T's possession, and while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting T in case T should resist. A has committed the offence defined in this Section.

(b) A picks T's pocket, having posted several of his companions near him, in order that they may restrain T, if T should perceive what is passing, and should resist, or should attempt to apprehend A. A has committed the offence defined in this Section.

Of Extortion.

383. Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security commits "EXTORTION."

Illustrations.

(a) A threatens to publish a defamatory libel concerning T unless T gives him money. He thus induces T to give him money. A has committed extortion.

(b) A threatens T that he will keep T's child in wrongful confinement unless T will sign and deliver to A a promissory note, binding T to pay certain money to A. T signs and delivers the note. A has committed extortion.

379 to 382. The offender is also liable to whipping See Sec. 2 & 3 Act 6, of 1864.
(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B and thereby induces Z to sign and deliver the bond. A has committed extortion.

(J) A by putting Z in fear of grievous hurt dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to Z. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

334. Whoever COMMITS EXTORTION shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

335. Whoever, IN ORDER TO the committing of EXTORTION, puts any person in fear, or attempts to put any person in FEAR OF ANY INJURY, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

336. Whoever commits EXTORTION BY putting any person in FEAR OF DEATH OR OF GRIEVOUS HURT to that person or to any other shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

337. Whoever, IN ORDER TO the committing of EXTORTION puts or attempts to put any person in FEAR OF DEATH OR OF GRIEVOUS HURT to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

338. Whoever commits EXTORTION BY putting any person in FEAR of any ACCUSATION against that person or any other of having committed or attempted to commit any offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if the offence be one punishable under Section 377, may be punished with transportation for life.

339. Whoever, IN ORDER TO the committing of EXTORTION, puts or attempts to put, any person in FEAR OF AN ACCUSATION against that person, or any other, of having committed or attempted to commit an offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if the offence be punishable under Section 377, may be punished with transportation for life.

Of Robbery and Dacoity.

3390. In all ROBBERY there is either theft or extortion.

THEFT is "ROBBERY" if, in order to the committing of the theft, or in committing the theft, or carrying away or attempting to carry away, property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death, or hurt, or wrongful restraint, or fear of instant death, or of instant hurt, or of instant wrongful restraint.

388 & 389 "Offence" See Sec. 2, Act 27 of 1870, (P. C. post.)
The offender is also liable to whipping Sec. 2, and 3, Act 6 of 1884 (P. C. post.)
EXTORTION is "ROBBERY" if the offender, at the time of committing the extortion, is in the presence of the person put in fear and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person, and by so putting in fear induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations.

(a) A holds T down and fraudulently takes T's money and jewels from T's clothes without T's consent. Here A has committed theft and in order to the committing of that theft has voluntarily caused wrongful restraint to T. A has therefore committed robbery.

(b) A meets T on the high road, shows a pistol, and demands T's purse. T, in consequence, surrenders his purse. Here A has extorted the purse from T by putting him in fear of instant hurt and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c) A meets T and T's child on the high-road. A takes the child, and threatens to strike it down a precipice unless T delivers his purse. T, in consequence, delivers his purse. Here A has extorted the purse from T by causing T to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on T.

(d) A obtains property from T by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such; but it is not robbery unless T is put in fear of the instant death of his child.

391. When five or more persons jointly commit, or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting, or aiding is said to commit "DAICOITY."

392. Whoever COMMITS ROBBERY shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if the robbery be committed on the highway, between sunset and sunrise, the imprisonment may be extended to fourteen years.

393. Whoever ATTEMPTS to commit ROBBERY shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

394. If any person, in committing or in attempting to commit ROBBERY, voluntarily causes HURT, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with transportation for life or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

395. Whoever COMMITS DACOITY shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

396. If any one of five or more persons who, are conjointly committing dacoity, commits MURDER IN so committing DACOITY.

390 to 394. The offender is also liable to whipping in addition on a second conviction. See Sec. 4, Act 6, of 1864, (F. C. post.)
every one of those persons shall be punished with death, or transporta-
tion for life or rigorous imprisonment for a term which may extend to
ten years and shall also be liable to fine.

397. If, at the time of COMMITTING ROBBERY or dacoity, the offender uses any DEADLY WEAPON, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person the imprisonment with which such offender shall be punished shall not be less than seven years.

398. If at the time of ATTEMPTING to commit ROBBERY or dacoity, the offender is armed with any DEADLY WEAPON, the imprisonmen with which such offender shall be punished shall not be less than seven years.

399. Whoever makes any PREPARATION FOR committing DACOITY shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

400. Whoever, at any time after the passing of this Act shall be-
long to any wandering or other GANG of persons ASSOCIATED FOR the purpose of habitually committing DACOITY shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine.

401. Whoever, at any time after the passing of this Act, shall be-
long to a wandering or other GANG of persons ASSOCIATED FOR the purpose of habitually committing THEFT or ROBBERY and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonmen for a term which may extend to seven years, and shall also be liable to fine.

402. Whoever, at any time after the passing of this Act, shall be one of five or more persons ASSEMBLED FOR the purpose of committing DACOITY, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Of Criminal Misappropriation of Property.

403. Whoever DISHONESTLY MISAPPROPRIATES or converts to his own use any moveable property shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations,

(a) A takes property belonging to T out of T's possession in good faith, believing at the time when he takes it that the property belongs to himself. A is not guilty of theft. But if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this Section.

(b) A, being on friendly terms with T, goes into T's library in T's absence, and takes away a book without T's express consent. Here, if A was under the impression that he had T's implied consent to take the book for the purpose of reading it, A has not committed theft. But if A afterwards sells the book for his own benefit, he is guilty of an offence under this Section.

(c) A and B being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But if A sells the horse, and appropriates the whole proceeds to his own use, he is guilty of an offence under this Section.

Explanation. 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this Section.
A finds a Government promissory note belonging to T, bearing a blank endorsement. A, knowing that the note belongs to T, pledges it with a banker as a security for a loan intending at a future time to restore it to T. A has committed an offence under this Section.

Explanation 2.—A person who finds property, not in the possession of any other person and takes such property for the purpose of possessing it for, or of restoring it to the owner, does not take or misuse property dishonestly and is not guilty of an offence; but he is guilty of the offence above defined if he appropriates it to his own use when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means, or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or, in good faith, believe that the real owner cannot be found.

Illustrations.

(a) A finds a rupee on the high-road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this Section.

(b) A finds a letter on the high-road containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this Section.

(c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this Section.

(d) A sees T drop his purse with money in it. A picks up the purse with the intention of restoring it to T but afterwards appropriates it to his own use. A has committed an offence under this Section.

(e) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to T and appropriates it to his own use. A is guilty of an offence under this Section.

(f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this Section.

404. Whoever DISHONESTLY MISAPPROPRIATES or converts to his own use property, knowing that such PROPERTY was in the possession OF a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration.

T dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this Section.

Of Criminal Breach of Trust.

405. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or con-
verts to his own use that property, or dishonestly uses or disposes of
that property in violation of any direction of law prescribing the mode
in which such trust is to be discharged, or of any legal contract, ex-
press or implied, which he has made touching the discharge of such
trust, or with liberty suffers any other person so to do, commits "CRIMI-
NAL BREACH OF TRUST."

Illustrations.

(a) A being executor to the will of a deceased person, dishonestly disobeys the law which
directs him to divide the effects according to the will, and appropriates them to his own use.
A has committed criminal breach of trust.

(b) A is a warehouse-keeper. T, going on a journey, entrusts his furniture to A, under
a contract that it shall be returned on payment of a stipulated sum for warehouse room. A
dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Calcutta, is agent for T, residing at Delhi. There is an express or
implied contract between A and T that all sums remitted by T to A shall be invested by A
according to T's direction. T remits a lakh of rupees to A, with directions to A to invest the
same in Company's paper. A dishonestly disobeys the directions, and employs the money in
his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly, but in good faith believing that it
will be more for T's advantage to hold shares in the Bank of Bengal, disobeys T's directions,
and buys shares in the Bank of Bengal for T, instead of buying Company's paper, here, though
T should suffer loss, and should be entitled to bring a civil action against A on account of
that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, an revenue officer, is entrusted with public money, and is either directed by law, or
bound by a contract, express or implied, with the Government, to pay into a certain treasury
all the public money which he holds. A dishonestly appropriates the money. A has com-
mitted criminal breach of trust.

(f) A, a carrier, is entrusted by T with property to be carried by land or by water. A
dishonestly misappropriates the property. A has committed criminal breach of trust.

406. Whoever COMMITS CRIMINAL BREACH OF TRUST
shall be punished with imprisonment of either description for a term
which may extend to three years, or with fine, or with both.

407. Whoever, being entrusted with property as a CARRIER,
wharfinger, or warehouse-keeper, commits CRIMINAL BREACH of
TRUST in respect of such property, shall be punished with imprisonment
of either description for a term which may extend to seven years,
and shall also be liable to fine.

408. Whoever, being a clerk or SERVANT, or employed as a clerk
or servant, and being in any manner entrusted in such capacity with
property or with any dominion over property, commits CRIMINAL
BREACH OF TRUST in respect of that property, shall be punished
with imprisonment of either description for a term which may extend
to seven years, and shall also be liable to fine.

409. Whoever, being in any manner entrusted with property, or
with any dominion over property, in his capacity of a PUBLIC SER-
VANT, or in the way of his business as a banker, merchant, factor,
broker, attorney, or agent, commits CRIMINAL BREACH of
TRUST in respect of that property, shall be punished with transportation
for life, or with imprisonment of either description for a term
which may extend to ten years, and shall also be liable to fine.

Of the Receiving of Stolen Property.

410. Property, the possession whereof has been transferred by theft
or by extortion, or by robbery, and property which has been criminally
misappropriated, or in respect of which the offence of criminal breach of trust has been committed, is designated as "STOLEN PROPERTY." But if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

411. Whoever DISHONESTLY RECEIVES or retains any STOLEN PROPERTY, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

412. Whoever DISHONESTLY RECEIVES or retains any stolen PROPERTY the possession whereof he knows or has reason to believe to have been TRANSFERRED BY the commission of DACOITY or dishonestly receives from a person whom he knows or has reason to believe to belong to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transportation for life or with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine.

413. Whoever HABITUALLY RECEIVES or deals in property which he knows or has reason to believe to be STOLEN PROPERTY shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

414. Whoever voluntarily ASSISTS IN CONCEALING or disposing of or making away with property which he knows or has reason to believe to be STOLEN PROPERTY shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

Of Cheating.

415. Whoever by deceiving any person fraudulently or dishonestly induces the person so deceived to deliver any property to any person or to consent that any person shall retain any property or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body mind, reputation, or property, is said to "CHEAT."

Explanation.—A dishonest concealment of facts is a deception within the meaning of this Section.

Illustrations.

(a) A, by falsely pretending to be in the Civil Service intentionally deceives T, and thus dishonestly induces T to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives T into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces T to buy and pay for the article. A cheats.

(c) A, by exhibiting to T a false sample of an article, intentionally deceives T into believing that the article corresponds with the sample, and thereby dishonestly induces T to buy and pay for the article. A cheats.

411 to 413. The offender is also liable to whipping see Sec. 2 and 3 Act 6 of 1864.
(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives T, and thereby dishonestly induces T to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives T, and thereby dishonestly induces T to lend money. A cheats.

(f) A intentionally deceives T into a belief that A means to repay any money that T may lend to him, and thereby dishonestly induces T to lend him money, A not intending to repay it. A cheats.

(g) A intentionally deceives T into a belief that A means to deliver to T a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces T to advance money upon the faith of such delivery. A cheats. But if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract, and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives T into a belief that A has performed A’s part of a contract made with T, which he has not performed, and thereby dishonestly induces T to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to T without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from T. A cheats.

416. A person is said to “CHEAT BY PERSONATION” if he cheats by pretending to be some other person or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations.

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

417. Whoever CHEATS shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both.

418. Whoever CHEATS with the knowledge that he is likely thereby to cause wrongful loss to a PERSON whose interest in the transaction to which the cheating relates HE WAS BOUND, either by law or by a legal contract, TO PROTECT, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

419. Whoever CHEATS BY PERSONATION shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

420. Whoever CHEATS AND thereby dishonestly INDUCES the person deceived TO DELIVER any PROPERTY to any person, or to make, alter, or destroy the whole or any part of a valuable security or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
Of Fraudulent Deeds and Dispositions of Property.

421. Whoever DISHONESTLY or fraudulently REMOVES, conceals, or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any PROPERTY INTENDING thereby TO PREVENT, or knowing it to be likely that he will thereby prevent the DISTRIBUTION of that property, according to law, AMONG his CREDITORS or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

422. Whoever DISHONESTLY or fraudulently PREVENTS any DEBT or demand due to himself or to any other person FROM BEING MADE AVAILABLE according to law FOR PAYMENT of his debts, or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.

423. Whoever DISHONESTLY or fraudulently signs, EXECUTES, or becomes a party to any DEED or instrument which purports to transfer or subject to any charge any property or any interest therein, and WHICH CONTAINS any FALSE statement relating to the CONSIDERATION for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

424. Whoever DISHONESTLY or fraudulently CONCEALS or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Of Mischief.

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public, or to any person, causes the destruction of any property, or any such change in any property, or in the situation thereof, as destroys or diminishes its value or utility, or affects it injuriously, commits "MISCHIEF,"

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intend to cause, or knows that he is likely to cause wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations.

(a) A voluntarily burns a valuable security belonging to T, intending to cause wrongful loss to T. A has committed mischief.

(b) A introduces water into an ice-house belonging to T, and thus causes the ice to melt, intending wrongful loss to T. A has committed mischief.

(c) A voluntarily throws into a river a ring belonging to T with the intention of thereby causing wrongful loss to T. A has committed mischief.
A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to T, destroys those effects, with the intention of thereby preventing them from obtaining satisfaction of the debt, and of thus causing damage to T. A has committed mischief.

7. A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

8. A causes a ship to be cast away, intending thereby to cause damage to T, who has lent money on bottomry on the ship. A has committed mischief.

9. A, having joint property with T in a horse, shoots the horse intending thereby to cause wrongful loss to T. A has committed mischief.

10. A causes cattle to enter upon a field belonging to T, intending to cause and knowing that he is likely to cause damage to T's crop. A has committed mischief.

226. Whoever COMMITTS MISCHIEF shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

227. Whoever COMMITTS MISCHIEF and thereby causes loss or damage to the amount of FIFTY RUPEES or upwards shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

228. Whoever commits MISCHIEF by killing, poisoning, maiming, or rendering useless any ANIMAL or animals OF THE VALUE OF TEN RUPEES or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

229. Whoever commits MISCHIEF by killing, poisoning, maiming, or rendering useless any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof, or any other ANIMAL OF THE VALUE OF FIFTY RUPEES or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

300. Whoever commits MISCHIEF by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of WATER for agricultural purposes, or for food or drink for human beings, or for animals which are property, or for cleanliness, or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

431. Whoever commits MISCHIEF by doing any act which renders, or which he knows to be likely to render, any PUBLIC ROAD, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling, or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

432. Whoever commits MISCHIEF by doing any act which causes, or which he knows to be likely to cause, an inundation or an obstruction to any PUBLIC DRAINAGE attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

433. Whoever commits MISCHIEF BY DESTROYING or moving any LIGHT-HOUSE or other light used as a sea-mark, or any sea-mark, or buoy, or other thing placed as a guide for navigators,
or by any act which renders any such light-house, sea-mark, buoy, or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine or with both.

434. Whoever commits MISCHIEF BY DESTROYING or moving any LAND-MARK fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

435. Whoever commits MISCHIEF BY FIRE or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, DAMAGE to any property to the amount of ONE HUNDRED RUPEES or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

436. Whoever commits MISCHIEF BY FIRE or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship, or as a HUMAN DWELLING, or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

437. Whoever commits MISCHIEF TO any decked vessel or any VESSEL of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

438. Whoever commits or attempts to commit, by FIRE or any explosive substance such mischief as is described in the last PRECEDING SECTION shall be punished with transportation for life, or with imprisonment off either description for a term which may extend to ten years, and shall also be liable to fine.

439. Whoever intentionally RUNS any VESSEL AGROUND or ashore, intending TO COMMIT THEFT of any property contained therein, or to dishonestly misappropriate any property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

440. Whoever commits MISCHIEF having made PREPARATION FOR causing to any person DEATH or HURT, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Of Criminal Trespass.

441. Whoever enters into or upon property in the possession of another with intent to commit an offence, or to intimidate, insult, or
annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult, or annoy any such person, or with intent to commit an offence, is said to commit CRIMINAL TRESPASS.

442. Whoever commits criminal trespass by entering into or remaining in any building, tent, or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "HOUSE-TRESPASS."

Explanation.—The introduction of any part of the criminal trespasser's body in entering is sufficient to constitute house-trespass.

443. Whoever commits house-trespass, having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent, or vessel which is the subject of the trespass, is said to commit "LURKING HOUSE-TRESPASS."

444. Whoever commits lurking house-trespass after sunset and before sunrise is said to commit "LURKING HOUSE TRESPASS BY NIGHT."

445. A person is said to commit "HOUSE BREAKING who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:—

First.—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly.—If he enters or quits through any passage not intended by any person other than himself or an abettor of the offence for human entrance, or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass or in order to the quitting of the house after a house-trespass.

Fifthly.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation.—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this Section.

--- 443 to 446. For whipping See Sec. 2 and 3 Act 6 of 1864, (P. C. post.)
Illustrations.

(a) A commits house-trespass by making a hole through the wall of T's house, and putting his hand through the aperture. This is house-breaking.

(b) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(c) A commits house-trespass by entering T's house through a window. This is house-breaking.

(d) A commits house-trespass by entering T's house through the door, having opened a door which was fastened. This is house-breaking.

(e) A commits house-trespass by entering T's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(f) A finds the key of T's house-door, which T had lost, and commits house-trespass by entering T's house having opened the door with that key. This is house-breaking.

(g) T is standing in his door-way. A forces a passage by knocking T down, and commits house-trespass by entering the house. This is house-breaking.

(h) T, the door-keeper of Y, is standing in Y's door-way. A commits house-trespass by entering the house, having deterred T from opposing him by threatening to beat him. This is house-breaking.

446. Whoever commits house-breaking after sunset and before sunrise is said to commit "HOUSE-BREAKING BY NIGHT."

447. Whoever COMMITS CRIMINAL TRESPASS shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

448. Whoever COMMITS HOUSE-TRESPASS shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

449. Whoever COMMITS HOUSE-TRESPASS in order to the committing of any OFFENCE PUNISHABLE WITH DEATH shall be punished with transportation for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

450. Whoever COMMITS HOUSE-TRESPASS in order to the committing of any OFFENCE PUNISHABLE WITH TRANSPORTATION FOR LIFE shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

451. Whoever COMMITS HOUSE-TRESPASS in order to the committing of any OFFENCE PUNISHABLE WITH IMPRISONMENT shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

452. Whoever COMMITS HOUSE-TRESPASS having made PREPARATION FOR causing HURT to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

453. Whoever COMMITS LURKING HOUSE-TRESPASS OR HOUSE-BREAKING shall be punished with imprisonment of either
description for a term which may extend to two years, and shall also be liable to fine.

454. Whoever **COMMITS LURKING HOUSE-TRESPASS, OR HOUSE-BREAKING** in order to the committing of any OFFENCE PUNISHABLE WITH IMPRISONMENT, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

455. Whoever **COMMITS LURKING HOUSE-TRESPASS or HOUSE-BREAKING**, having made PREPARATION FOR causing HURT to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

456. Whoever **COMMITS LURKING HOUSE-TRESPASS BY NIGHT, or HOUSE-BREAKING BY NIGHT**, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

457. Whoever **COMMITS LURKING HOUSE-TRESPASS BY NIGHT, or HOUSE-BREAKING BY NIGHT**, in order to the committing of any OFFENCE PUNISHABLE WITH IMPRISONMENT shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

458. Whoever **COMMITS LURKING HOUSE-TRESPASS BY NIGHT, or HOUSE-BREAKING BY NIGHT, having made PREPARATION FOR causing HURT to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

459. Whoever, whilst committing **LURKING HOUSE-TRESPASS or HOUSE-BREAKING**, causes GRIEVOUS HURT to any person, or attempts to cause death or grievous hurt to any person, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

460. If at the time of the committing of **LURKING HOUSE-TRESPASS BY NIGHT, or HOUSE-BREAKING BY NIGHT**, any person guilty of such offence shall voluntarily cause or attempt to cause DEATH OR GRIEVOUS HURT to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
461. Whoever dishonestly, or with intent to commit mischief, BREAKS OPEN or unfastens any CLOSED RECEPTACLE which contains, or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

462. Whoever being ENTRUSTED WITH any CLOSED RECEPTACLE which contains, or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, BREAKS OPEN or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CHAPTER XVIII.

Of Offences relating to Documents and to Trade or Property-Marks.

463. Whoever makes any false document, or part of a document, with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to enter into any express or implied contract, or with intent to commit fraud, or that fraud may be committed, commits FRAUD.

464. A person is said to MAKE A FALSE DOCUMENT—

First.—Who dishonestly or fraudulently makes, signs, seals, or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed by, or by the authority of a person, by whom or by whose authority he knew that it was not made, signed, sealed, or executed, at a time at which he knows that it was not made, signed, sealed, or executed; or—

Secondly.—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or—

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person, by reason of unsoundness of mind or intoxication, cannot, or that by reason of deception practised upon him he does not, know the contents of the document or the nature of the alteration.

Illustrations.

(a) A has a letter of credit upon B for Rupees 10,000 written by T. A in order to defraud B, adds a cypher to the 10,000, and makes the sum 100,000 intending that it may be believed by B that T so wrote the letter. A has committed forgery.

(b) A, without T’s authority, affixes T’s seal to a document purporting to be a conveyance of an estate from T to A, with the intention of selling the estate to B, and thereby obtaining from B the purchase money. A has committed forgery.

Chap. 19. As to the sanction required in certain cases for prosecution under Sec. 460, 471, 473, and 478 See Criminal procedure Code.

463 Document defined in Sec. 29, ibid.
A person commits forgery in the following situations:

(d) A person who, without B's authority, fills up a cheque signed by B, paying the sum of ten thousand rupees. A commits forgery.

(e) A person who, without B's authority, fills up a cheque signed by A, paying the sum of twenty thousand rupees for the purpose of making certain payments. B commits forgery.

(f) A person who, by writing on a bill of exchange in the name of B, intending to defraud T, engages to accept a bill of exchange for an amount of ten thousand rupees. T's signature is forged. A commits forgery.

(1) A person who, by writing on a cheque in the name of B, intending to defraud T, makes a false statement of identity. A commits forgery.

Explanation 1.—A man's signature of his own name may amount to forgery.

Illustrations.

(a) A person who, without B's authority, signs his own name to a bill of exchange, intending to defraud T, commits forgery.

(b) A person who, without B's authority, signs his name to a bill of exchange, intending to defraud T, commits forgery.

(c) A person who, without B's authority, signs his name to a bill of exchange, intending to defraud T, commits forgery.

(d) A person who, without B's authority, signs his name to a bill of exchange, intending to defraud T, commits forgery.

Explanation 2.—The making of a false document in the name of a fictitious person, intending to defraud T, commits forgery.
Illustration.

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

465. Whoever COMMITS FORGERY shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

466. Whoever FORGES a document purporting to be a RECORD or proceeding OF or in a COURT of Justice, OR a REGISTER of Birth, Baptism, Marriage, or Burial, or a Register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceeding therein, or to confess judgment or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

467. Whoever FORGES a document which purports to be a VALUABLE SECURITY, or a will, or an authority to adopt a son or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal interest, or dividends thereof or to receive or deliver any money, moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

468. Whoever COMMITS FORGERY intending that the document forged shall be used FOR the purpose of CHEATING shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

469. Whoever COMMITS FORGERY intending that the document forged shall harm the REPUTATION of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

470. A false document made wholly or in part by forgery is designated "a FORGED DOCUMENT."

471. Whoever fraudulently or dishonestly USES as genuine any document which he knows or has reason to believe to be a FORGED DOCUMENT shall be punished in the same manner as if he had forged such document.

472. Whoever makes or COUNTERFEITS any SEAL, plate, or other instrument for making an impression, intending that the same shall be used FOR THE PURPOSE OF committing any FORGERY which would be punishable UNDER SECTION 467; or with such intent has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with transportation for life, or

466 to 469. The offender is also liable to whipping in addition on a second conviction See Sec 4, Act 5 of 1864, (P. C. post.)
with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

473. Whoever makes or COUNTERFEITS any SEAL, plate, or other instrument for making an impression, intending that the same shall be used FOR THE PURPOSE OF committing any FORGERY which would be punishable under any Section of this Chapter OTHER THAN SECTION 467; or with such intent has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

474. Whoever HAS in his POSSESSION any DOCUMENT, knowing the same to be FORGED, and INTENDING that the same shall fraudulently or dishonestly BE USED AS GENUINE, shall, if the document is one of the description mentioned in Section 467, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in Section 467, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

475. Whoever COUNTERFEITS upon, or in the substance of any material, any device or MARK used FOR the purpose of AUTHENTICATING any DOCUMENT described in Section 467, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

476. Whoever COUNTERFEITS upon or in the substance of any material any device or MARK used FOR the purpose of AUTHENTICATING any DOCUMENTS described in Section 467, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

477. Whoever FRAUDULENTLY or dishonestly, or with intent to cause damage or injury to the public or to any person, CANCELS, destroys, or defaces, or attempts to cancel, destroy, or deface, or secretes, or attempts to secrete any document which is or purports to be a will or an authority to adopt a son, or any VALUABLE SECURITY, or commits mischief in respect to such document, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
Of Trade and Property Marks.

478. A mark used for denoting that goods have been made or manufactured by a particular person or at a particular time or place, or that they are of a particular quality, is called a "TRADE-MARK."

479. A mark used for denoting that moveable property belongs to a particular person is called a "PROPERTY-MARK."

480. Whoever marks any goods, or any case, package, or other receptacle containing goods, or uses any case, package, or other receptacle with any mark thereon, with the intention of causing it to be believed that the goods so marked, or any goods contained in any such case, package, or receptacle so marked, were made or manufactured by any person by whom they were not made or manufactured, or that they were made or manufactured at any time or place at which they were not made or manufactured, or that they are of a particular quality of which they are not, is said TO USE A FALSE TRADE MARK.

481. Whoever marks any moveable property or goods, or any case, package, or other receptacle containing moveable property or goods, or uses any case, package, or other receptacle having any mark thereon, with the intention of causing it to be believed that the property or goods so marked, or any property or goods contained in any such case, package, or other receptacle so marked, belong to a person to whom they do not belong is said to USE A FALSE PROPERTY-MARK.

482. Whoever, USES ANY FALSE TRADE-MARK OR any FALSE PROPERTY MARK with intent to deceive or injure any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

483. Whoever, with intent to cause damage or injury to the public or to any person, knowingly COUNTERFEITS any TRADE or PROPERTY MARK used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

484. Whoever, with intent to cause damage or injury to the public or to any person, knowingly COUNTERFEITS any property-mark used by a public servant, or any MARK USED BY A PUBLIC SERVANT to denote that any property has been manufactured by a particular person, or at a particular time or place, or that the same is of a particular quality, or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

485. Whoever MAKES or has in his possession any die, plate, or other INSTRUMENT FOR the purpose of making or COUNTERFEITING any public or private property or trade MARK, with intent to use the same for the purpose of counterfeiting such mark, or has in his possession any such property or trade mark with intent that the same shall be used for the purpose of denoting that any goods or merchandise were made or manufactured by any particular person or firm by whom they were not made, or at a time or place at which they were not made, or
that they are of a particular quality of which they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

486. Whoever SELLS any GOODS WITH A COUNTERFEIT property or trade MARK, whether public or private, affixed to or impressed upon the same or upon any case, wrapper, or receptacle in which such goods are packed or contained, knowing that such mark is forged or counterfeit, or that the same has been affixed to or impressed upon any goods or merchandises not manufactured or made by the person, or at the time or place indicated by such mark, or that they are not of the quality indicated by such mark, with intent to deceive, injure, or damage any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

487. Whoever FRAUDULENTLY MAKES any FALSE MARK UPON any package or RECEPTACLE containing goods, with intent to cause any public servant or any other person to believe that such package or receptacle contains goods which it does not contain or that it does not contain goods which it does contain or that the goods contained in such package or receptacle are of a nature or quality different from the real nature or quality thereof, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

488. Whoever FRAUDULENTLY MAKES USE OF any SUCH FALSE MARK with the intent last aforesaid, knowing such mark to be false, shall be punished in the manner mentioned in the last preceding Section.

489. Whoever REMOVES, destroys, or defaces any PROPERTY-MARK, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XIX.

Of the Criminal Breach of Contracts of Service.

490. Whoever being BOUND by a lawful contract TO RENDER his personal SERVICE in conveying or conducting any person or any property from one place to another place, or to act as servant to any person DURING A VOYAGE or JOURNEY, or to guard any person or property during a voyage or journey, voluntarily OMITS so to do except in the case of illness or ill-treatment, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

Illustrations.

(a) A, a palanquin bearer, being bound by legal contract to carry T from one place to another, runs away in the middle of the stage. A has committed the offence defined in this section.
(b) A, a cooly, being bound by lawful contract to carry T's baggage from one place to another, throws the baggage away. A has committed the offence defined in this section.

(c) A, a proprietor of bullocks, being bound by legal contract to convey goods on his bullocks from one place to another, illegally omits to do so. A has committed the offence defined in this section.

(d) A, by unlawful means, compels B, a cooly, to carry his baggage. B, in the course of the journey, puts down the baggage and runs away. Here, as B was not lawfully bound to carry the baggage, he has not committed any offence.

Explanation.—It is not necessary to this offence that the contract should be made with the person for whom the service is to be performed. It is sufficient if the contract is legally made with any person, either expressly or impliedly, by the person who is to perform the service.

Illustration.

A contracts with a Dak Company to drive his carriage for a month. B employs the dak company to convey him on a journey, and during the month the company supplies B with a carriage which is driven by A. A, in the course of the journey, voluntarily leaves the carriage. Here, although A did not contract with B, A is guilty of an offence under this section.

491. Whoever being BOUND by a lawful contract TO ATTEND on or to supply the wants of any PERSON who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is HELPLESS or incapable of providing for his own safety, or of supplying his own wants, voluntarily OMITS so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

492. Whoever being BOUND by lawful contract in writing to work for another person as an artificer, workman, or labourer, for a period not more than three years, at any place within British India to which, by virtue of the contract, he has been or is to be CONVEYED at the EXPENSE of such other, voluntarily DESERTS the SERVICE of that other during the continuance of his contract, or without reasonable cause refuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall be punished with imprisonment of either description for a term not exceeding one month, or with fine not exceeding double the amount of such expense, or with both, unless the employer has ill-treated him or neglected to perform the contract on his part.

CHAPTER XX
Of Offences relating to Marriage.

493. Every man who BY DECEIT CAUSES any WOMAN who is not lawfully married to him to believe that she is lawfully married to him, and TO COHABIT or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

494. Whoever HAVING A HUSBAND OR WIFE LIVING, MARRIES in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
Exception.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction; nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time; provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

495. Whoever commits the offence defined in the last preceding section having CONCEALED from the person with whom the subsequent marriage is contracted the fact of the FORMER MARRIAGE shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

496. Whoever DISHONESTLY or with a fraudulent intention goes through the CEREMONY OF BEING MARRIED, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

497. Whoever has sexual intercourse with a person who is, and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of ADULTERY, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

498. Whoever takes or ENTICES AWAY any WOMAN who is and whom he knows or has reason to believe to be the WIFE of any other man from that man, or from any person having the care of her on behalf of that man, WITH INTENT that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CHAPTER XXI.

Of Defamation.

499. Whoever, by words either spoken or intended to be read, or by signs, or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person is said, except in the cases hereinafter excepted, TO DEFAME that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person if the imputation would harm the reputation of

497 & 498. The charge must be brought by the husband. See Criminal Procedure Code.
499. In good faith, defined by Sec. 52, ante.
that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative, or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation unless that imputation, directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations.

(a) A says—"T is an honest man, he never stole B's watch," intending to cause it to be believed that T did steal B's watch. This is defamation unless it fall within one of the exceptions.

(b) A is asked who stole B's watch. A points to T, intending to cause it to be believed that T stole B's watch. This is defamation unless it fall within one of the exceptions.

(c) A draws a picture of T running away with B's watch, intending it to be believed that T stole B's watch. This is defamation unless it fall within one of the exceptions.

First Exception.—It is not defamation to impute anything which is true concerning any person if it be for the PUBLIC GOOD that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.—It is not defamation to express in good faith any opinion whatsoever respecting the CONDUCT OF A PUBLIO SERVANT in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception.—It is not defamation to express in good faith any opinion whatsoever respecting the CONDUCT of any person TOUCHING any PUBLIC QUESTION, and respecting his character so far as his character appears in that conduct, and no further.

Illustrations.

It is not defamation in A to express in good faith any opinion whatever respecting T's conduct in petitioning Government on a public question; in signing a requisition for a meeting on a public question; in procuring or attending at such a meeting; in forming or joining any society which invites the public support; in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception.—It is not defamation to publish a substantially true REPORT of the proceedings of a COURT OF JUSTICE or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other Officer holding an inquiry in open Court preliminary to a trial in a Court of Justice is a Court within the meaning of the above section.

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the MERITS OF any CASE CIVIL OR CRIMINAL which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness, or agent in any such
case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

_Illustration._

(a) A says, "I think T's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects T's character as it appears in T's conduct as a witness, and no further.

(b) But if A says, "I do not believe what T asserted at that trial, because I know him to be a man without veracity," A is not within this exception, inasmuch as the opinion which he expresses of T's character is an opinion not founded on T's conduct as a witness.

_Sixth Exception._—It is not defamation to express in good faith any opinion respecting the MERITS of any PERFORMANCE which its author has SUBMITTED TO the judgment of THE PUBLIC, or respecting the character of the author so far as his character appears in such performance, and no further.

_Explanation._—A performance may be submitted to the judgment of the public expressly, or by acts on the part of the author which imply such submission to the judgment of the public.

_Illustrations._

(a) A person who publishes a book submits that book to the judgment of the public.

(b) A person who makes a speech in public submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage submits his acting or singing to the judgment of the public.

(d) A says of a book published by T, "T's book is foolish: T must be a weak man. T's book is indecent. T must be a man of impure mind." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses of T respects T's character only so far as it appears in T's book, and no further.

(e) But if A says "I am not surprised that T's book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception, inasmuch as the opinion which he expresses of T's character is an opinion not founded on T's book.

_Seventh Exception._—It is not defamation in a PERSON HAVING over another any AUTHORITY, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any CENSURE on the conduct of that other in matters to which such lawful authority relates.

_Illustration._

A Judge censuring in good faith the conduct of a witness or of an Officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier are within this exception.

_Eighth Exception._—It is not defamation to prefer in good faith an ACCUSATION against any person TO any of those who have LAWFUL AUTHORITY over that person with respect to the subject—matter of accusation.

_Illustration._

If A in good faith accuses T before a Magistrate; if A in good faith complains of the conduct of T, a servant, to T's master; if A in good faith complains of the conduct of T, a child to T's father—A is within this exception.

_Ninth Exception._—It is not defamation to make an imputation on the character of another, provided that the IMPUTATION be made in good faith FOR the PROTECTION OF the INTERESTS of the person making it, or of any other person, or for the public good.
Illustrations.

(a) A shopkeeper says to B, who manages his business, "Sell nothing to T unless he pays you ready money, for I have no opinion of his honesty." A is within the exception if he has made this imputation on T in good faith for the protection of his own interest.

(b) A, a Magistrate, in making a report to his superior officer casts an imputation on the character of T. Here, if the imputation is made in good faith and for the public good, A is within the exception.

Tenth Exception.—It is not defamation to convey a CAUTION in good faith to one person against another, provided that such caution be intended FOR THE GOOD OF THE PERSON TO WHOM IT IS CONVEYED, or of some person in whom that person is interested, or for the public good.

500. Whoever DEFAMES another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

501. Whoever PRINTS or engraves any matter knowing or having good reason to believe that such MATTER is DEFAMATORY of any person shall be punished with simple imprisonment for a term which may extend to two years or with fine, or with both.

502. Whoever SELLS or offers for sale any printed or engraved substance containing DEFAMATORY MATTER knowing that it contains such matter shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

CHAPTER XXII.

Of Criminal Intimidation, Insult, and Annoyance.

503. Whoever threatens another with any injury to his person, reputation, or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat, commits CRIMINAL INTIMIDATION.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested is within this Section.

Illustration.

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

504. Whoever intentionally INSULTS, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the PUBLIC PEACE, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

505. Whoever CIRCULATES or publishes any STATEMENT, rumour, or report which he knows to be FALSE, WITH INTENT TO CAUSE any officer, soldier, or sailor in the Army or Navy of the Queen to MUTINY; OR with intent to cause fear or alarm to the public, and
thereby to induce any person to commit an OFFENCE AGAINST THE STATE or against the public tranquillity, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

506. Whoever COMMITs the offence of CRIMINAL INTIMIDATION shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if the THREAT be TO CAUSE DEATH or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or transportation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

507. Whoever COMMITs the offence of CRIMINAL INTIMIDATION BY an ANONYMOUS COMMUNICATION, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

508. Whoever voluntarily CAUSES or attempts to cause any PERSON TO DO ANY THING which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, BY INDUCING or attempting to induce that PERSON TO BELIEVE that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of DIVINE DISPLEASURE if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both.

Illustrations.

(a) A sits dhuna at T’s door with the intention of causing it to be believed that by so sitting he renders T an object of Divine displeasure. A has committed the offence defined in this section.

(b) A threatens T that unless T performs a certain act, A will kill one of A’s own children under such circumstances that the killing would be believed to render T an object of Divine displeasure. A has committed the offence defined in this Section.

509. Whoever, intending to INSULT the MODESTY OF any WOMAN, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

510. Whoever in a state of INTOXICATION, appears in any public place, or in any place, which it is a trespass in him to enter, and there conducts himself in such a manner as to CAUSE ANNOYANCE to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.
CHAPTER XXIII.

Of Attempts to Commit Offences.

511. Whoever ATTEMPTS TO COMMIT an OFFENCE punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence for a term of transportation or imprisonment which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations,

(a) A makes an attempt to steal some jewels by breaking open a box, and finds after opening the box that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this Section.

(b) A makes an attempt to pick the pocket of T by thrusting his hand into T's pocket. A fails in the attempt in consequence of T having nothing in his pocket. A is guilty under this Section.
MISCELLANEOUS PENAL ACTS,
In Chronological Order.

ACT No. XXVIII. of 1838,

It is hereby enacted, that where any person or persons shall be convicted at any Sessions of Oyer and Terminer or Gaol Delivery, that shall be holden for any of the Presidencies of Fort William, Fort St. George, the Presidency or Island of Bombay, or for Prince of Wales' Island, Singapore, or Malacca, of the crime of PERJURY, it shall be lawful for the Court, before which any person shall be so convicted, to order and adjudge such person to be transported to such place as the Court shall direct for life or for any term of years, or to be imprisoned for any term not exceeding four years with or without hard labour and with solitary confinement for such portion or portions of the said term as such Court shall think fit, not exceeding one month at a time or three months within the period of one year: Provided, that it shall not be lawful for any such Court to order the transportation of any person, being a native of the East Indies and not born of European parents, to the Eastern Coast of New South Wales or any of the Islands adjacent thereto.

ACT No. XXXI. of 1838,

30. And it is hereby enacted, that every sum of MONEY which shall be forfeited for the amount of any injury done (such amount in each case to be assessed by the convivial Magistrate or Justice of the Peace) shall be PAID TO the PARTY AGGRIEVED, if known, except when such party shall have been examined in proof of the offence, and that in every case of a summary conviction under this Act, when the sum which shall be forfeited for the amount of the injury done, or which shall be imposed as a penalty by the Magistrate or Justice of the Peace shall not be paid, either immediately after the conviction or within such period as the Magistrate or Justice of the Peace shall at the time of conviction appoint, it shall be lawful for the convicting Magistrate or Justice of the Peace to commit the offender to the Common Gaol or House of Correction to be imprisoned only, or to be imprisoned with

Act 28 of 1838. The whole Act was repealed except as to the Straits Settlements by Act 8 of 1888 See Repealing enactments.

Act 31 of 1838. Amended by Act 28 of 1847. The whole Act except Sections 30 and 31 was repealed by Act 5 of 1868, See Repealing enactments.

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hard labour according to the discretion of the Magistrate or Justice of the Peace for any term not exceeding two calendar months, where the amount of the sum forfeited, or of the penalty imposed, or of both (as the case may be) together with the costs shall not exceed Fifty Rupees, and for any term not exceeding four calendar months when the amount with costs shall not exceed One Hundred Rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid upon payment of the amount and costs.

31. Provided always, that where SEVERAL PERSONS shall join in the commission of the SAME OFFENCE, and shall, upon conviction thereof, each be adjudged to forfeit a sum equivalent to the amount of the injury done, in every such case no further sum shall be paid to the party aggrieved than that which shall be forfeited by one of such offenders only.

ACT No. X. of 1839.

1. It is hereby enacted, that whoever, within the Settlements of Prince of Wales Island, Singapore or Malacca, WAGES WAR against the Government of any Power in alliance or at peace with the Government of the Territories of the East India Company, or attempts to wage such war, or by instigation, conspiracy, or aid, knowingly abets the waging of such war, or makes, or by instigation, conspiracy, or aid in supplying or selling arms, equipments, or otherwise, knowingly abets the making of any preparation to commit depredations on the Territories of any such Power, shall be guilty of felony, and be liable to transportation for any term not exceeding fourteen years, or to imprisonment with or without hard labour for any term not exceeding ten years.

2. And it is hereby enacted, that whoever, within the Settlements aforesaid shall RECEIVE any PROPERTY, such person knowing the same to have been TAKEN from the Territories of any Power in alliance, or at peace with the Government of the Territories of the East India Company, IN the prosecution of such WAR or depredation as aforesaid, shall be guilty of felony, and be liable to transportation for any term not exceeding fourteen years, or to imprisonment with or without hard labour for any term not exceeding ten years.

ACT No. XXIV. of 1855.

An Act 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.

Whereas, by reason of the difficulty of providing a place to which Europeans or Americans can, with safety to their health, be sent for the purpose of undergoing sentences of transportation or of imprisonment for long terms, it has become expedient to substitute other punishment for that of Transportation, and to amend the law relating to the removal of European and American Convicts for the purpose of imprisonment: It is enacted as follows:
1. After the commencement of this Act, NO EUROPEAN or American shall be liable to be sentenced or ordered, by any Court within the territories in the possession and under the Government of the [East India Company] TO BE TRANSPORTED.

2. Any person who, but for the passing of this Act, would, by any law now in force, or which may hereafter be in force, in any part of the said territories, be liable to be sentenced or ordered by any such Court to be transported, shall, if a European or American, be liable to be sentenced or ordered to be kept in PENAL SERVITUDE for such term as hereinafter mentioned.

The terms of penal servitude to be awarded by any sentence or order, instead of the term of transportation to which any such offender would, but for the passing of this Act, be liable, shall be as follows (that is to say)—

Instead of transportation for seven years, or for a term not exceeding seven years, penal servitude for the term of four years.

Instead of any term of transportation exceeding seven years and not exceeding ten years, penal servitude for any term not less than four and not exceeding six years.

Instead of any term of transportation exceeding ten years and not exceeding fifteen years, penal servitude for any term not less than six and not exceeding eight years.

Instead of any term of transportation exceeding fifteen years, penal servitude for any term not less than six and not exceeding ten years.

Instead of transportation for the term of life, penal servitude for the term of life, and in every case where, at the discretion of the Court, one of any two or more of the terms of transportation hereinbefore mentioned might have been awarded, the Court shall have the like discretion to award one of the two or more terms of penal servitude hereinbefore mentioned in relation to such terms of transportation.

3. Provided always that nothing herein contained shall interfere with or affect the authority or DISCRETION OF any COURT in respect of any punishment which such Court may now award or pass on any offender other than transportation; but where such other punishment may be awarded at the discretion of the Court instead of transportation or in addition thereto, the same may be awarded instead of, or (as the case may be) in addition to the punishment substituted for transportation by this Act.

4. If any offender sentenced by any Court within the said territories to the PUNISHMENT OF DEATH shall have MERCY EXTENDED to him UPON CONDITION of his being kept in PENAL SERVITUDE FOR life, or for any term of years, all the provisions of this Act shall be applicable to such offender in the same manner as if he had been lawfully sentenced under this Act to the term of penal servitude specified in the condition.

Sec. 5, 6, 7, 9, 10, 11 & 12. Repealed by Act 5 of 1871, See Repealing enactments.
MISCELLANEOUS PENAL ACTS.

3. The person or persons for the time being administering the Executive Government of the Presidency or place in which any European or American convict is imprisoned, under a sentence or order of imprisonment, for a term exceeding one year, whether with or without hard labour, may with the consent of the Governor-General of India in Council, order the REMOVAL OF such PRISONER from the prison or place in which he is confined to any other public prison or place of confinement within any part of the said territories; and such order shall be a sufficient authority for imprisoning the convict during the remainder of the term mentioned in the sentence, or any part of such term, in the jail to which the prisoner is removed.

13. NOTHING in this Act is intended to ALTER or AFFECT the provisions of the 12 and 13 Victoria, Chapter 43, or ANY ACT OF PARLIAMENT passed in the United Kingdom of Great Britain and Ireland since the 28th of August 1833, or which may hereafter be passed.

14. Any sentence or order upon any person describing him as a EUROPEAN or AMERICAN shall be deemed, for the purposes of this Act, to be conclusive of the fact that such person is a European or American within the meaning of this Act.

15. The word "EUROPEAN" as used in this Act shall be understood to include any person usually designated a European British subject. Words in the singular number or the masculine gender shall be understood to include several persons as well as one person, and females as well as males, unless there be something in the context repugnant to such construction.

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ACT No. XIII of 1859:

An Act to Provide for the Punishment of Breaches of Contract by Artificers, Workmen, and Labourers in certain cases.

Whereas much loss and inconvenience are sustained by manufacturers, tradesmen, and others in the several Presidency Towns of Calcutta, Madras, and Bombay, and in other places, from fraudulent breach of contract on the part of Artificers, Workmen, and Labourers who have received money in advance on account of work which they have contracted to perform; and whereas the remedy by suit in the Civil Courts for the recovery of damages is wholly insufficient, and it is just and proper that persons guilty of such fraudulent breach of contract should be subject to punishment; It is enacted as follows:

1. When any Artificer, Workman, or Labourer shall have received from any Master or Employer resident or carrying on business in any Presidency Town, or in any station of the Settlement of Prince of Wales' Island, Singapore, and Malacca, or from any person acting on behalf of such Master or Employer, an ADVANCE of money on account of any work which he shall have contracted to perform, or to get performed by any other Artificers, Workmen, or Labourers, if such ARTIFICER, Workman, or Labourer, shall WILFULLY and without lawful or reasonable excuse NEGLECT or refuse TO PERFORM or get

Sec. 8. Repealed by Sec. 2, Act 12 of 1857, whenever that Act is introduced.
Sec. 16. Repealed by Act 14 of 1870, See Repealing enactments.
performed such WORK according to the terms of his contract, such Master or Employer or any such person as aforesaid may complain to a Magistrate of Police, and the Magistrate shall thereupon issue a summons or a warrant, as he shall think proper, for bringing before him such Artificer, Workman, or Labourier, and shall hear and determine the case.

2. If it shall be proved to the satisfaction of the Magistrate that such Artificer, Workman, or Labourier, has received money in advance from the complainant on account of any work, and has wilfully and without lawful or reasonable excuse neglected or refused to perform or get performed the same according to the terms of his contract, the MAGISTRATE SHALL, at the option of the complainant, either ORDER such Artificer, Workman, or Labourier TO REPAY the money advanced or such part thereof as may seem to the Magistrate just and proper, OR order him TO PERFORM or get performed such WORK, according to the terms of his contract; and if such Artificer, Workman, or Labourier shall fail to comply with the said order, the Magistrate may sentence him to be imprisoned with hard labour for a term not exceeding Three Months, or if the order be for the repayment of a sum of money, for a term not exceeding Three Months, or, until such sum of moneny shall be sooner repaid; provided that no such order for the repayment of any money shall, while the same remains unsatisfied, deprive the complainant of any Civil remedy by action or otherwise which he might have had but for this Act.

3. When the MAGISTRATE shall order any Artificer, Workmen or Labourer to perform or get performed any work according to the terms of his contract, he MAY ALSO, at the request of the complainant, REQUIRE such Artificer, Workman, or Labourer to enter into a recognisance with sufficient SECURITY for the due performance of the order, and, in default of his entering into such recognisance or furnishing such security to the satisfaction of the Magistrate, may sentence him to be imprisoned with hard labour for a period not exceeding Three Months.

4. The word "CONTRACT," as used in this Act, shall extend to all contracts and agreements whether by deed, or written, or verbal, and whether such contract be for a term certain, or for specified work, or otherwise.

5. This ACT MAY BE EXTENDED by the Governor General of India in Council, or by the Executive Government of any Presidency or place, to any place within the limits of their respective jurisdictions. In the event of this Act being so extended, the powers hereby vested in a Magistrate of Police shall be exercised by such Officer or Officers as shall be specially appointed by Government to exercise such powers.

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ACT No. VI. of 1884.

An Act to authorize the punishment of whipping in certain cases.

Whereas it is expedient that in certain cases offenders should be liable, under the provisions of the Indian Penal Code, to the punishment of whipping; It is enacted as follows:—
I. In addition to the punishments described in Section 53 of the Indian Penal Code, offenders are also liable to whipping under the provisions of the said Code.

II. Whoever commits any of the following offences may be punished with WHIPPING IN LIEU OF any PUNISHMENT to which he may for such offence be liable under the Indian Penal Code, that is to say:

1. Theft, as defined in Section 378 of the said Code.
2. Theft in a building, tent, or vessel, as defined in Section 330 of the said Code.
3. Theft by a clerk or servant, as defined in Section 381 of the said Code.
4. Theft after preparation for causing death or hurt, as defined in Section 332 of the said Code.
5. Extortion by threat, as defined in Section 383 of the said Code.
6. Putting a person in fear of accusation in order to commit extortion, as defined in Section 389 of the said Code.
7. Dishonestly receiving stolen property, as defined in Section 411 of the said Code.
8. Dishonestly receiving property stolen in the commission of a Dacoity, as defined in Section 412 of the said Code.
9. Lurking house-trespass, or house-breaking as defined in Sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this Section.
10. Lurking house-trespass by night, house-breaking by night, as defined in Sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this Section.

III. Whoever, having been previously convicted of any one of the offences specified in the last preceding Section, shall again be convicted of the same offence, may be punished with WHIPPING IN LIEU OF OR IN ADDITION TO any other PUNISHMENT to which he may for such offence be liable under the Indian Penal Code.

IV. Whoever having been previously convicted of any one of the following offences, shall be again convicted of the same offence, may be punished with WHIPPING IN ADDITION to any other PUNISHMENT to which he may be liable under the Indian Penal Code, that is to say:

1. Giving or fabricating false evidence in such manner as to be punishable under Section 193 of the Indian Penal Code.
2. Giving or fabricating false evidence with intent to procure conviction of a capital offence, as defined in Section 194 of the said Code.
3. Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment, as defined in Section 195 of the said Code.
4. Falsely charging any person with having committed an unnatural offence as defined in Sections 211 and 377 of the said Code.

5. Assaulting or using criminal force to any woman with intent to outrage her modesty, as defined in Section 354 of the said Code.

6. Rape, as defined in Section 375 of the said Code.

7. Unnatural offences, as defined in Section 377 of the said Code.

8. Robbery or Dacoity, as defined in Sections 390 and 391 of the said Code.

9. Attempting to commit Robbery, as defined in Section 393 of the said Code.

10. Voluntarily causing hurt in committing robbery, as defined in Section 394 of the said Code.

11. Habitually receiving or dealing in stolen property, as defined in Section 413 of the said Code.

12. Forgery, as defined in Section 463 of the said Code.

13. Forgery of a document, as defined in Section 466 of the said Code.

14. Forgery of a document, as defined in Section 467 of the said Code.

15. Forgery for the purpose of cheating, as defined in Section 468 of the said Code.

16. Forgery for the purpose of harming the reputation of any person, as defined in Section 469 of the said Code.

17. Lurking house-trespass or house-breaking, as defined in Sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this Section.

18. Lurking house-trespass by night or house-breaking by night, as defined in Sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this Section.

V. Any JUVENILE OFFENDER who commits any offence which is not by the Indian Penal Code punishable with death, may, whether for a first or any other offence, be punished with whipping in lieu of any other punishment to which he may for such offence be liable under the said Code.

VI. Whenever any local Government shall by notification in the Official Gazette have declared the provisions of this Section to be in force in any FRONTIER DISTRICT or any WILD TRACT of country within the jurisdiction of such local Government, any person who shall in such district or tract of country after such notification as aforesaid commit any of the offences specified in Section IV of this Act, may be punished with whipping in lieu of any other punishment to which he may be liable under the Indian Penal Code.
VII. NO FEMALE shall be punished with whipping, nor shall any person who may be sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years, be punished with whipping.

VIII. No sentence of whipping shall be passed by any Officer inferior to a SUBORDINATE MAGISTRATE of the FIRST CLASS, unless he shall have been expressly empowered by the local Government to pass sentences of whipping.

IX. When the punishment of whipping is awarded in addition to imprisonment, by a Court whose sentence is open to revision by a superior Court, the WHIPPING shall NOT be inflicted UNTIL FIFTEEN DAYS FROM the date of such SENTENCE, OR if an appeal be made within that time, UNTIL the SENTENCE IS CONFIRMED by the superior Court; but the whipping shall be inflicted immediately on the expiry of the fifteen days, or in case of an appeal immediately on the receipt of the order of the Court confirming the sentence if such order shall not be received within the fifteen days.

X. In the case of an adult, the punishment of whipping shall be inflicted with such instrument in such MODE and on such part of the person as the local Government shall direct, and in the case of a juvenile offender, it shall be inflicted in the way of school discipline with a light rattan. In no case, if the cat of nine tails be the instrument employed, shall the punishment of whipping exceed one hundred and fifty lashes, or if the rattan be employed shall the punishment exceed thirty stripes. The punishment shall be inflicted in the presence of a Justice of the Peace, or of an Officer authorized to exercise any of the powers of a Magistrate, and also, unless the Court which passed the sentence shall otherwise order, in the presence of a Medical Officer.

XI. No sentence of whipping shall be carried into execution unless a Medical Officer, if present, certifies, or unless it appears to the Justice of the Peace or other Officers present, that the OFFENDER is IN A FIT STATE OF HEALTH to undergo the punishment; and if during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the Officer present, that the offender is not in a fit state of health to undergo the remainder of the punishment, execution shall be stayed. No sentence of whipping shall be executed by instalments.

XII. In any case in which, under the last preceding Section of this Act, NO PART of a sentence OF WHIPPING is CARRIED IN EXECUTION, the offender shall be kept in custody till the Court which passed the sentence can revise it, and the said Court may, at its discretion, either order the discharge of the offender, or sentence him in lieu of whipping to imprisonment for any period, which may be in addition to any other punishment to which he may have been sentenced for the same offence; provided that the whole period of imprisonment shall not exceed that to which the offender is liable under the provisions of the Indian Penal Code, or that which the said Court is competent to award.
GOVERNMENT DEPARTMENTAL NOTICE.

Judicial Department.

It is hereby notified for general information that the Honourable the Governor in Council has been pleased, under the provisions of Section 10 of Act 5 of 1864, to direct—

1. That in the Territories under the Government of Bombay the Cat-of-nine-tails shall be the instrument with which the punishment of whipping shall be inflicted in the case of an adult.

2. That the Cats employed shall be of a uniform pattern, and of the size and description used in the Army, and shall be prepared in the Grand Arsenal.

3. That each Session Judge and District Magistrate shall indorse on the Military Department for the number of Cats he may require, which shall be furnished according to the standard pattern.

4. That the punishment shall be inflicted on the bare back across the shoulders.

5. That if the punishment to be inflicted exceed fifteen lashes, a European Medical Officer shall if possible be present; if not possible, a Native Medical Officer.

The Honourable the Governor in Council has also been pleased to direct.

1. That no sentence of whipping passed for a first offence, and that no sentence of whipping passed on a juvenile offender, under Section 5 of Act 5 of 1864, shall be carried into execution in public without the previously obtained assent of the Magistrate of the District, or of the Session Judge within whose jurisdiction the offender was sentenced.

2. That no sentence of whipping passed under Sections 3 and 4 of Act 5, of 1864 shall be carried into execution except in public.

Bombay Castle, 23rd November 1864.

ACT No. V of 1867.

An Act to extend the Indian Penal Code to the Straits' Settlement.

Whereas it is expedient to extend, with certain modifications, the provisions of the Indian Penal Code to the Settlement of Prince of Wales' Island, Singapore, and Malacca; It is hereby enacted as follows:—

1. From and after such day as the Governor of the said Settlement shall appoint in this behalf, the provisions of the Indian PENAL CODE SHALL, with the modifications herein after mentioned, apply to and TAKE EFFECT THROUGHOUT the said SETTLEMENT; and in construing the said Code, two Rupees shall be deemed equivalent to one Dollar.

2. In applying the said provisions to the said Settlement, Sections 187, 194, 195, 203, 211, 213, 214, 216, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389, and 445, of the said Code shall be construed as if the word 'OFFENCE' denoted anything made punishable by the said Code, or by any special or local law as therein defined; and Sections 141, 176, 177, 201, 202, 212, 216 and 441, of the said Code shall be construed in the same way when the thing made punishable by the special or local law is punishable by such law with imprisonment for six months or upwards, whether with or without fine.

3. SECTIONS 322 AND 323 of the said Code shall be CONSTRUED AS IF after the word 'offence' the following words were inserted; (that is to say), 'or lawfully committed to custody,' and Section
222 of the said Code shall also be construed as if the following words were added to the same Section; (that is to say), 'or if the person was lawfully committed to custody.'

4. This Act to be read with and taken as part of the Indian Penal Code.

Act No. 8 of 1870.

An Act for the prevention of the murder of Female Infants.

 Whereas the MURDER OF FEMALE INFANTS is believed to be commonly committed in certain parts of British India; and whereas it is necessary to make better provision for the prevention of the said offence; It is hereby enacted as follows:—

1. If it shall appear to the Local Government that the said offence is commonly committed in any District, or by any class, or family, or persons residing therein, the Local Government may, with the previous sanction of the Governor General of India in Council declare, by NOTIFICATION published in the official Gazette, and such other manner as the Local Government shall direct, that measures for the prevention of such offence shall be taken under this Act, in such District, or in respect of such class, or family, or persons.

The notification shall define the limits of such district, or shall specify the class, or family, or persons to whom such notification is to be deemed to apply.

2. When such notification shall have been published as aforesaid, it shall be lawful for the Local Government, subject to the provisions of section three, from time to time to make RULES consistent with this Act, for all or any of the following purposes:—

(1.) For making and maintaining registers of births, marriages, and deaths occurring in such district, or in or among the class, family, or persons to whom such notification has been made applicable; and for making, from time to time, a census of such persons, or of any other persons residing within such district.

(2.) For the entertainment of any police force in excess of the ordinary fixed establishment of police, or for the entertainment of any officers or servants for the purpose of preventing or detecting the murder of female infants in such district, or in or among such class, family, or persons, or for carrying out any of the provisions of this Act.

(3.) For prescribing how and by whom information shall be given to the proper officers of all births, marriages, and deaths occurring or about to occur in such district, or in or among such class, family, or persons.

(4.) For the regulation and limitation of expenses incurred by any person to whom such notification applies on account of the celebration of marriage or of any ceremony or custom connected therewith.
(5.) For regulating the manner in which all or any of the expenses incurred in carrying into effect rules made under this section shall be recovered from all or any of the inhabitants of such district, or from the persons to whom such notification is applicable.

(6.) For defining the duties of any officer or servant appointed to carry out any rule made under this section.

3. NO RULE or alteration made under section two SHALL TAKE EFFECT UNTIL it shall have been CONFIRMED by the Governor General of India in Council and published in the Gazette of India and also in the local Gazette.

Copies of every such rule shall be affixed in such places, and shall be distributed in such manner as the Local Government may direct.

4. Whoever DISOBREYS any such RULE shall, on conviction before any officer exercising the powers of a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

5. NOTHING IN this ACT, or in any rule made and published as aforesaid, SHALL PREVENT any PERSON from BEING PROSECUTED and punished UNDER any OTHER LAW for any offence punishable under this Act: Provided that no person shall be punished twice for the same offence.

6. If it appears to the Magistrate of the District that any person to whom the notification mentioned in section one applies, neglects to make proper provision for the MAINTENANCE OF any FEMALE CHILD for whose maintenance he is legally responsible, and that the life or health of such child is thereby endangered, such Magistrate may in his discretion place the child under such supervision as he may think proper, and shall, if necessary, remove the child from the custody of such person.

The Magistrate of the District may order him to make a monthly allowance for the maintenance of the child at such monthly rate not exceeding fifty rupees as to such Magistrate shall seem reasonable, and if such person wilfully neglects to comply with such order, such Magistrate may, for every breach of the order, by warrant direct the amount due to be levied in manner provided by section sixty-one of the Code of Criminal Procedure.

Nothing in this section shall affect the powers of Magistrates under section three hundred and sixteen of the same Code.

7. This ACT SHALL, in the first instance EXTEND only to the North-Western Provinces, to the Panjab, and to Oudh; but the Governor General of India in Council may by order extend it to any part of the territories (other than Oudh) under the immediate administration of the Government of India: and the Governor of Madras in Council, the Governor of Bombay in Council, and the Lieutenant Governor of Bengal, may severally by order extend it to any part of the territories under their respective governments.

Every order under this section made by the Governor General of India in Council shall be published in the Gazette of India. Every
other order made under this section shall be published in the local official Gazette.

ACT No. XXVII of 1870.

An Act to amend the Indian Penal Code.

For the purpose of amending the Indian Penal Code; it is hereby enacted as follows:

1. For section thirty-four of the said Code, the following section shall be substituted:—

"34. When a criminal ACT is done BY SEVERAL PERSONS in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone"

2. For section forty of the said Code, the following section shall be substituted:—

"40. Except in the chapter and sections mentioned in clauses two and three of this section, the word 'OFFENCE denotes a thing made punishable by this Code.

"In chapter IV and in the following Sections, namely, Sections 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 227, 228, 229, 330, 331, 347, 348, 388, 389 and 445, the word 'offence' denotes a thing punishable under this Code, or under any special or local law as hereinafter defined:

"And in Sections 141, 176, 177, 201, 202, 212, 216 and 441 the word 'offence' has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine."

3. SECTION FIFTY-SIX of the said Code shall be read as if the following PROVISO were ADDED thereto:—

"Provided that, where an EUROPEAN or AMERICAN offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life."

4. After Section one hundred and twenty-one of the said Code, the following section shall be inserted:—

"121 A. Whoever within or without British India CONSPIRES to COMMIT any of the OFFENCES PUNISHABLE BY SECTION ONE HUNDRED AND TWENTY-ONE, or to deprive the Queen of the sovereignty of British India or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years.
"Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof."

5. After section one hundred and twenty-four of the said Code, the following section shall be inserted:—

"124A. Whoever by words, either spoken or intended to be read, or by signs, or by visible representation, or otherwise, EXCITES or attempts to excite feelings of DISAFFECTION to the Government established by law in British India, shall be punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

"Explanation.—Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause."

6. SECTION ONE HUNDRED AND THIRTY-ONE of the said Code shall be read as if the following EXPLANATION were ADDED thereto:—

"Explanation.—In this section the words 'OFFICER' and 'SOLDIER' include any person subject to the Articles of War for the better government of Her Majesty's Army, or to the Articles of War contained in Act No. 5 of 1869."

7. Sections one hundred and ninety-four and one hundred and ninety-five of the said Code shall be read as if, after the words 'by this Code,' the words 'or the law of England' were inserted.

8. Sections TWO HUNDRED AND TWENTY-TWO and TWO HUNDRED AND TWENTY-THREE of the said Code shall be construed as if, after the word 'offence,' the following words were inserted (that is to say), "or lawfully committed to custody;"

and section two hundred and twenty-two of the said Code shall be construed as if the following words were added thereto (that is to say), "or if the person was lawfully committed to custody."

9. After section two hundred and twenty-five of the said Code, the following section shall be inserted:—

"225A. Whoever ESCAPES or attempts to escape from any custody in which he is lawfully detained for failing, under the Code of Criminal Procedure, to furnish security for good behaviour, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

10. After section two hundred and ninety-four, and before chapter 15 of the Indian Penal Code, the following section shall be inserted:—
"294 A. Whoever keeps any office or place for the purpose of drawing any LOTTERY not authorised by Government, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

"And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees."

11. Section three hundred and seven of the said Code shall be read as if the following clause were added thereto:

"When any PERSON offending under this Section is UNDER sentence of TRANSPORTATION FOR LIFE, he may, if hurt is caused, be punished with death."

12. After section three hundred and four of the same Code, the following section shall be inserted:

"304 A. Whoever CAUSES the DEATH of any person by doing any rash or negligent ACT NOT AMOUNTING to CULPABLE HOMICIDE, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

13. The following chapters of the same Code, namely, 4 (General Exceptions), 5 (Of Abetment), and 23 (Of Attempts to commit offences) shall apply to offences punishable under the said sections 121A, 294A and 304A, and the said chapters 4 and 5 shall apply to offences punishable under the said sections 124A and 225A.

14. No charge of an offence punishable under any of the said Sections 121A, 124A and 294A shall be entertained by any Court unless the PROSECUTION be instituted BY order of, or under authority from, the LOCAL GOVERNMENT.

15. Nothing contained in this Act shall be taken to affect any of the provisions of any SPECIAL or LOCAL LAW.

17. The enactments mentioned in the second schedule hereto annexed are repealed to the extent specified therein.

SCHEDULE.

<table>
<thead>
<tr>
<th>Number and year.</th>
<th>Extent of Repeal.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statute 9 Geo. 4, Cap. 74.</td>
<td>The whole Act, except Sections 1 to 10 (inclusive), 12, 14, 15, 21, 23, to 29 (inclusive), 36, 37, 51, 52, 56 and 110.</td>
</tr>
<tr>
<td>Act 5 of 1844</td>
<td>The whole.</td>
</tr>
<tr>
<td>Act 4 of 1867</td>
<td>The whole.</td>
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</tbody>
</table>

Section 16 provides a Schedule which shall form part of the Schedule of the Code of Criminal Procedure, it is therefore inserted therein in the present compilation.
THE CODE OF CRIMINAL PROCEDURE.

ACT No. X. of 1872,
An Act for regulating the Procedure of the Courts of Criminal Judicature.

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II. Constitution and Powers of the Criminal Courts 5.
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IV. Of Proceedings to Compel Appearance 139.
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VI. Appeal, Reference, and Revision 266.
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X. Charge Judgment, and Sentence 384.
XI. Preventive Jurisdiction of Magistrates 460.
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Whereas it is expedient to consolidate and amend the law regulating the Procedure of Courts of Criminal Judicature, other than the High Courts in Presidency towns in the exercise of their original criminal jurisdiction, and the Courts of Police Magistrates in such towns; It is hereby enacted as follows:

PART I.
CHAPTER I.

Preliminary, Repeal, Local Extent and Definitions.
1. This Act may be called "The Code of Criminal Procedure."

It extends to the whole of British India, but shall not, except as hereinafter provided, affect the procedure of the High Courts or Police Magistrates in the Presidency towns;

And it shall come into force on the first day of September 1872.
2. The enactments, mentioned in the first schedule hereto annexed, are repealed to the extent specified in the third column of the said schedule.

Wherever a special form of procedure is prescribed by any law, not expressly repealed in the first schedule to this Act, it shall not be deemed to have been impliedly repealed by reason of its being inconsistent with the provisions of this Code.

In every Act passed before this Act, in which reference is made to the Code of Criminal Procedure, such reference shall be taken to be made to this Act.

In every Act, passed before this Act, the expressions 'officer exercising the powers of a Magistrate,' "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall, respectively, be deemed to mean "Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class," as defined in this Act.

The references made in the enactments specified in column one of the fifth schedule hereto to the sections of the former Code of Criminal Procedure specified in column two of the said schedule, shall be deemed to be made to the sections of this Code directed in the third column of the said schedule to be substituted for the said sections in column two.

Notifications published and orders made under any section of any Act hereby repealed, shall be deemed to have been published and made under the corresponding section of this Act.

3. CASES PENDING in any Criminal Court when this Act comes into force shall be decided as far as may be according to the procedure provided in this Act.

4. In this Act the following words and expressions have the following meanings unless a different intention appears from the context:—

"SPECIAL LAW" means a law applicable to a particular subject.

"LOCAL LAW" means a law applicable to a particular part of British India.

"INVESTIGATION" includes all the proceedings by the Police, authorized by this Act, for the collection of evidence.

"INQUIRY" includes any inquiry which may be conducted by a Magistrate or Court under this Act.

"INQUIRED INTO" means and includes every proceeding preliminary to trial.

"TRIAL" means the proceedings taken in Court after a charge has been drawn up and includes the punishment of the offender.

It includes the proceedings under Chapters 16 and 18 from the time when the accused appears in Court.

"JUDICIAL PROCEEDING" means any proceeding in the course of which evidence is or may be taken, or in which any judgment, sentence or final order is passed on recorded evidence,
"WRITTEN" includes "printed," "lithographed," "photographed," and "engraved."

"CRIMINAL COURT" means and includes every Judge or Magistrate, or body of Judges or Magistrates inquiring into or trying any criminal case or engaged in any judicial proceeding.

"PROVINCE" means the territories under the Government or Administration of any Local Government.

"PRESIDENCY TOWN" means the local limits of the ordinary original civil jurisdiction of the High Courts of Calcutta, Madras or Bombay.

"HIGH COURT" means, in reference to proceedings against European British subjects, or persons jointly charged with European British subjects, the High Court of Calcutta, Madras, Bombay, the High Court for the North-Western Provinces, and the Chief Court of the Panjab.

In other cases "High Court" means the highest Court of criminal appeal or revision in any province.

"SESSION CASE" means and includes all cases specified in column 7 of the fourth schedule to this Act as cases triable by a Court of Session and all cases which Magistrates commit to a Court of Session although they might have tried them themselves.

In the case of offences created by special and local laws, "Session case" means cases which are triable by the Court of Session or which the Magistrate commits to the Court of Session, though he might have tried them himself.

"MAGISTRATE'S CASE" means and includes all cases specified in column 7 of the fourth schedule to this Act as cases triable by Magistrates and all cases which Magistrates try themselves, although they might have committed them for trial to a Court of Session.

"COGNIZABLE OFFENCE OR CASE" means an offence for or a case in which a Police officer may, by any law in force for the time being, arrest without warrant.

"NON-COGNIZABLE OFFENCE OR CASE" means an offence for or a case in which a Police officer may not arrest without warrant.

"SUMMONS CASE" means an offence of the class described in section one hundred and forty-eight.

"WARRANT CASE" means an offence of the class described in section one hundred and forty-nine.

"BAILABLE OFFENCE OR CASE" means an offence for or a case in which bail may be taken under the fourth schedule to this Act, or by any other law in force for the time being.

"NON-BAILABLE OFFENCE OR CASE" means an offence for or a case in which bail may not be taken under the fourth schedule to this Act, or by any law in force for the time being.
PART II.

Constitution and Powers of the Criminal Courts.

CHAPTER II.

Of Criminal Courts:

5. Besides the High Courts, there shall be four grades of Criminal Courts in British India—

1.—The Court of the Magistrate of the 3rd class.
2.—The Court of the Magistrate of the 2nd class.
3.—The Court of the Magistrate of the 1st class.
4.—The Court of Session.

6. All inquiries by Magistrates shall be held according to the provisions hereinafter contained.

7. All criminal trials in British India shall be held before the Courts specified in the fourth schedule to this Act, or before the Court specified in any law by which the offence is created, according to the provisions hereinafter contained.

8. Offences punishable under any LAW, OTHER THAN the Indian PENAL CODE, containing no distinct provision as to the Court or Officer before which or before whom they are to be tried, may be inquired into and tried, according to the provisions hereinafter contained, by the Criminal Courts appointed under this Act. But no such Court shall award any sentence in excess of its powers.

A Magistrate of the third class shall not try any such offence unless it is punishable with less than one year's imprisonment, nor shall a Magistrate of the second class try any such offence unless it is punishable with less than three year's imprisonment.

9. All JUDGES of Criminal Courts, other than the High Courts, and Magistrates shall be APPOINTED and may be removed BY the LOCAL GOVERNMENT; but such officers as are now appointed or removed by the Government of India shall continue to be so appointed or removed.

10. All existing Judges and Magistrates shall be deemed to have been appointed under this Act.

11. Offences committed by EUROPEAN BRITISH SUBJECTS shall be inquired into and tried according to the provisions of Chapter 7, and not otherwise; but the other provisions of this Act shall apply to all persons without distinction of race unless a contrary intention is expressed.

CHAPTER III:

Of Courts of Session.

12. Every province shall be divided into SESSIONS DIVISIONS.

13. The Local Government shall have POWER TO ALTER, from time to time, the number or extent of such divisions,
14. The existing local jurisdictions of Courts of Session shall be Sessions Divisions, unless and until they are so altered.

15. There shall be a Court of Session in every Sessions Division.

It shall have power to try any offence and to pass upon any offender any sentence authorized by law, subject to the provisions of this Act.

16. There shall be a SESSIONS JUDGE for every Sessions Division. The Sessions Judge shall exercise all the powers of the Court of Session in his Sessions Division.

17. The Local Government may appoint ADDITIONAL SESSIONS JUDGES or JOINT SESSIONS JUDGES who shall exercise all the powers of a Court of Session in one or more Sessions Divisions in which they may be directed to act, but shall try such cases only as the Local Government directs them to try, or as the Sessions Judge of the Division makes over to them for trial.

18. The Local Government may also appoint ASSISTANT SESSIONS JUDGES who shall exercise all the powers of a Court of Session in the Sessions Division to which they may be attached, except the power of hearing appeals, and of passing sentences of death, or transportation, or imprisonment for more than seven years; but they shall try those cases only which the Sessions Judge of the Sessions Division makes over to them either by general orders or by a special order.

Any sentence of more than three years’ imprisonment passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge. The Sessions Judge may either confirm, modify or annul such sentence of the Assistant Sessions Judge.

CHAPTER IV.

Of Magistrates and their Powers.

19. Magistrates shall be either—

Magistrates of the 1st class,
Magistrates of the 2nd class, or
Magistrates of the 3rd class.

20. The powers of Magistrates in respect to the trial of offences and to passing sentences on persons convicted of them are as follows—

MAGISTRATES of the FIRST CLASS may pass the following sentences:

Imprisonment not exceeding the term of two years (including such solitary confinement as is authorized by law);

Fine to the extent of one thousand rupees;

Whipping.

MAGISTRATES of the SECOND CLASS may pass the following sentences:

Imprisonment not exceeding six months (including such solitary confinement as is authorized by law);
Fine not exceeding two hundred rupees;
Whipping.

Magistrates of the THIRD CLASS may pass the following sentences:

Imprisonment not exceeding one month;
Fine not exceeding fifty rupees.

A Magistrate of the third class may not pass a sentence of solitary confinement, or of whipping.

Any Magistrate may pass any lawful sentence, combining any of the sentences which he is authorized by law to pass.

Explanation. A Magistrate may award imprisonment in default of payment of fine in addition to the full term of imprisonment which, under this section, he is competent to award.

21. In addition to the powers given in section twenty, the following powers are conferred, as hereinafter provided, upon Magistrates by this Act:

(1.) Power to make over cases to a Subordinate Magistrate. [s. 44]
(2.) Power to pass a sentence on proceedings recorded by a Subordinate Magistrate. [s. 46]
(3.) Power to withdraw cases and to try or refer them for trial. [s. 47]
(4.) Power to withdraw or refer appeals from convictions by Magistrates of the 2nd and 3rd classes. [s. 47]
(5.) Power to arrest an accused person found in Court. [s. 104.]
(6.) Power to order the Police to investigate an offence. s. 110.
(7.) Power to record confessions or statements during a Police investigation. [s. 122]
(8.) Power to authorize detention of a person during a Police investigation. [s. 124.]
(9.) Power to hold an inquest. [s. 135.]
(10.) Power to entertain complaints and receive Police reports. [s. 141.]
(11.) Power to entertain cases without complaint. [s. 142.]
(12.) Power to commit for trial. (s. 143.)
(13.) Power to issue process for person within jurisdiction who has committed an offence outside Magistrate’s local jurisdiction. s. 157.
(14.) Power to direct warrant to landholder. s. 162.
(15.) Power to arrest offender in presence of Magistrate. s. 166.
(16.) Power to endorse warrant, or to order the removal of an accused person arrested under a warrant. ss. 168 and 170.
(17.) Power to issue proclamation in cases judicially before him ss, 171 and 353.
(18.) Power to attach and sell property in cases judicially before him. ss. 172 and 334.

(19.) Power to try summarily. s. 222.

(20.) Power to hear appeals from convictions by Magistrates of the 2nd and 3rd classes. s. 266.

(21.) Power to call for proceedings. ss. 295 and 296.

(22.) Power to quash convictions in certain cases. s. 338.

(23.) Power to issue a search-warrant for letter in Post Office. s. 369.

(24.) Power to endorse a search-warrant and order delivery of thing found. ss. 372, 373 and 376.

(25.) Power to issue search-warrant otherwise than in the course of an inquiry. s. 377.

(26.) Power to revise bail orders, s. 398.

(27.) Power to sell perishable property of a suspicious character. s. 415.

(28.) Power to sell suspicious or stolen property. s. 417.

(29.) Power to demand security to keep the peace. s. 491.

(30.) Power to discharge recognizances to keep the peace. s. 500.

(31.) Power to demand security for good behaviour. ss. 504 and 505.

(32.) Power to discharge person bound to be of good behaviour. s. 511.

(33.) Power to issue order to prevent obstruction, &c. s. 518.

(34.) Power to issue order prohibiting repetition of nuisance. s. 519.

(35.) Power to make orders, &c., in local nuisance cases. s. 521.

(36.) Power to make orders, &c., in possession cases. s. 530.

(37.) Power to make orders of maintenance. s. 536.

22. MAGISTRATES of ALL CLASSES shall, as such, have the following powers:

(1.) Power to arrest an accused person found in Court. s. 104.

(2.) Power to record confessions or statements during a Police investigation. s. 122.

(3.) Power to authorise detention of a person during a Police investigation. s. 124.

(4.) Power to arrest offender in the presence of Magistrate. s. 166.

(5.) Power to endorse warrant, or to order the removal of an accused person arrested under a warrant. ss. 168 and 170.

(6.) Power to issue proclamation in cases judicially before him. ss. 171 and 333.
(7.) Power to attach and sell property in cases judicially before him. ss. 172 and 354.

(8.) Power to endorse a search-warrant and order delivery of thing found. ss. 372, 373 and 376.

(9.) Power to sell perishable property of a suspicious character s. 415,

23. In addition to the powers mentioned in section twenty-two a Magistrate of the 3RD CLASS may be invested with the following powers:

(a.) By the Local Government

(1.) Power to hold inquests. s. 135.

(2.) Power to entertain complaints of offences in cases in which he has jurisdiction to try or to commit for trial. s. 141.

(3.) Power to commit for trial. s. 143.

(4.) Power to issue order to prevent obstruction, &c. s. 518.

(5.) Power to issue order prohibiting repetition of nuisance. s. 519.

(b.) By the Magistrate of the District

(1.) Power to hold inquests. s. 135.

(2.) Power to entertain complaints of offences in cases in which he has jurisdiction to try or to commit for trial. s. 141.

(3.) Power to issue order to prevent obstruction, &c. s. 518.

(4.) Power to issue order prohibiting repetition of nuisance. s. 519.

24. Magistrates of the SECOND CLASS shall, as such, in addition to the powers mentioned in section twenty-two, have the following power:—

(1.) Power to order the Police to investigate an offence in which the Magistrate has jurisdiction to try or to commit for trial. s. 110.

25. In addition to the powers given and referred to in section twenty-four, a Magistrate of the SECOND CLASS may be invested with the following powers:—

a. By the Local Government—

(1.) Power to hold inquests. s. 135.

(2.) Power to entertain complaints and receive Police reports in cases in which he has jurisdiction to try or to commit for trial. s. 141.

(3.) Power to entertain without complaint cases which he has jurisdiction to try or to commit for trial. s. 142.

(4.) Power to commit for trial. s. 143.

(5.) Power to issue order to prevent obstruction, &c. s. 518.

(6.) Power to issue order prohibiting repetition of nuisance. s. 519.
b. By the Magistrate of the District—

(1.) Power to hold inquests. s. 135.
(2.) Power to entertain complaints and receive Police reports in cases in which he has jurisdiction to try or to commit for trial. s. 141.
(3.) Power to issue order to prevent obstruction, &c. s. 518.
(4.) Power to issue order prohibiting repetition of nuisance. s. 519.

26. Magistrates of the FIRST CLASS shall, as such, in addition to the powers mentioned in sections twenty-two and twenty-four, have the following powers:

(1.) Power to commit for trial. s. 143,
(2.) Power to issue search-warrant otherwise than in the course of an inquiry, s. 377,
(3.) Power to demand security to keep the peace, s. 491.
(4.) Power to demand security for good behaviour. ss. 504 and 505.
(5.) Power to make order, &c., in possession cases. s. 530.
(6.) Power to make orders of maintenance. s. 536.

27. In addition to the powers given and referred to in section twenty-six, a Magistrate of the FIRST CLASS may be invested with the following powers:

a. By the Local Government.

(1.) Power to make over cases taken up on complaint, &c., to a Subordinate Magistrate. s. 44.
(2.) Power to hold inquests. s. 135.
(3.) Power to entertain complaints of offences, and receive Police reports. s. 141.
(4.) Power to entertain cases without complaint. s. 142.
(5.) Power to issue process for person within jurisdiction who has committed an offence outside Magistrate’s local jurisdiction. s. 157.
(6.) Power to try summarily. s. 222.
(7.) Power to hear appeals from convictions by Magistrates of the 2nd and 3rd classes. s. 266.
(8.) Power to sell suspicious or stolen property. s. 417.
(9.) Power to issue order to prevent obstruction. &c. s. 518.
(10.) Power to issue order prohibiting repetition of nuisance. s. 519.
(11.) Power to make orders, &c., in local nuisance cases. s. 521.

b. By the Magistrate of the District—

(1.) Power to hold inquests. s. 135.
(2.) Power to entertain complaints of offences, and receive Police report. (s. 141.)

(3.) Power to issue order to prevent obstruction, &c. (s. 518.)

(4.) Power to issue order prohibiting repetition of nuisance. (s. 519.)

28. Magistrates who, under the provisions of section forty, are MAGISTRATES OF DIVISIONS of Districts shall, as such, have all the powers given to Magistrates of the first class, and referred to in section twenty-six, and, in addition, shall have the following powers:

(1.) Power to make over cases to a Subordinate Magistrate. (s. 44.)

(2.) Power to pass sentence on proceedings recorded by a Subordinate Magistrate. (s. 46.)

(3.) Power to withdraw cases, but not appeals, and to try or refer them for trial. (s. 47.)

(4.) Power to hold inquests. (s. 135.)

(5.) Power to entertain complaints of offences, and receive Police reports. (s. 141.)

(6.) Power to entertain cases without complaint. [s. 142.]

(7.) Power to issue process for person within jurisdiction who has committed an offence outside Magistrate's local jurisdiction. (s. 157.)

(8.) Power to sell suspicious or stolen property. (s. 417.)

(9.) Power to issue order to prevent obstruction, &c. (s. 518.)

(10.) Power to issue order prohibiting repetition of nuisance. (s. 519.)

(11.) Power to make orders in local nuisance cases. (s. 521.)

Provided that, if a Magistrate of a Division of a District exercise the powers of a Magistrate of the second class, he shall not have power to demand security to be of good behaviour.

29. In addition to the POWERS given and referred to in section twenty-eight, the Local Government may confer on a Magistrate of a Division of a District, exercising the powers of a Magistrate of the first class, the following powers:

(1.) Power to try summarily. (s. 222.)

(2.) Power to hear appeals from convictions by Magistrates of the 2nd and 3rd classes. (s. 286.)

30. MAGISTRATES OF DISTRICTS may, as such, exercise all the powers mentioned in section twenty-one.

31. All other powers given by this Act or by any other law in force may be exercised by the officers or Courts to whom or to which they are given.

32. If any Magistrate, not being empowered by law in that behalf, does any one of the following things:
(1.) If he makes over a case, taken up on complaint &c., to another Magistrate,

(2.) If he withdraws a case and tries it himself, or refers a case for trial,

(3.) If he orders the Police to investigate an offence,

(4.) If he holds an inquest,

(5.) If he entertains a complaint or receives a Police report,

(6.) If he issues process for the apprehension of a person within his local jurisdiction who has committed an offence outside his local jurisdiction,

(7.) If he issues a search-warrant otherwise than in the course of an inquiry,

his proceedings shall not be set aside on the ground that he was not so empowered.

33. If any MAGISTRATE NOT being EMPOWERED by law, COMMIITS an accused person to take his trial before a Court of Session or High Court, the Court to which the commitment was made, after perusal of the proceedings, accept the commitment if it considers that the accused person has not been prejudiced, unless the accused person has objected to the jurisdiction of the committing Magistrate during the inquiry and before the order of commitment.

If such Court considers that the accused person was prejudiced, or if he objected to the jurisdiction of the committing Magistrate during the inquiry, and before the order of commitment, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

34. If any MAGISTRATE NOT being EMPOWERED by law in that behalf, DOES any of the FOLLOWING THINGS, his proceedings shall be void; that is to say:—

(1.) If he passes a sentence on proceedings recorded by another Magistrate,

(2.) If he entertains a case without complaint,

(3.) If he attaches and sells property under section 172,

(4.) If he tries an offender summarily,

(5.) If he decides an appeal,

(6.) If he calls for proceedings,

(7.) If he issues a search-warrant for a letter in the Post Office,

(8.) If he revokes a bail order,

(9.) If he sells suspicious or stolen property under section 417,

(10.) If he demands security to keep the peace,

(11.) If he discharges recognizances to keep the peace,

(12.) If he demands security for good behaviour,

(13.) If he discharges a person lawfully bound to be of good behaviour,

(14.) If he makes an order in a local nuisance case,

(15.) If he issues an order to prevent an obstruction,
(16.) If he prohibits the repetition of a nuisance;
(17.) If he makes an order in a possession case, or
(18.) If he makes an order for maintenance.

The Magistrate of the District.

35. In every district there shall be a Magistrate of the first class appointed by the Local Government who shall be called the MAGISTRATE OF THE DISTRICT and shall exercise throughout his district all the powers of a Magistrate.

36. In the territories subject to the Lieutenant-Governor of the PANJAB and in the territories administered by the Chief Commissioners of OUDH, the CENTRAL PROVINCES and British BURMA, in COORG, and in those parts of the other provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may invest the Deputy Commissioner, or other chief officer charged with the executive administration of the district in criminal matters, with power to try as a Magistrate all offences not punishable with death, and to pass sentence of imprisonment for a term not exceeding seven years, including such solitary confinement as is authorized by law, or of fine or of flogging, or any combination of these punishments authorized by law; but any sentence of upwards of three years' imprisonment passed by any such officer shall be subject to the confirmation of the Sessions Judge to whom such Deputy Commissioner is subordinate. Such Session Judge may either confirm, modify or annul any sentence referred for confirmation.

Subordinate Magistrates.

37. The Local Government may appoint as many other persons besides the Magistrate of the District, as it thinks fit, to be MAGISTRATES OF THE FIRST, SECOND OR THIRD CLASS in the District.

All such Magistrates shall be subordinate to the Magistrate of the District, but neither the Magistrate of the District nor the Subordinate Magistrates shall be subordinate to the Sessions Judge except to the extent and in the manner provided by this Act.

The Local Government shall not have power to direct that any Magistrate may try any offence which Magistrates of his class are not authorized to try, or pass any sentence which Magistrates of his class are not authorized to pass by section twenty.

38. The Local Government may, by notification in the official Gazette, prescribe the LOCAL LIMITS of the jurisdiction of a Magistrate of the District and may by such notification from time to time alter such local limits.

39. The Local Government may divide any district into DIVISIONS, and from time to time alter their limits. All existing divisions of districts which are now usually put under the charge of a Magistrate shall be divisions until their limits are so altered.

40. The Local Government may place any MAGISTRATE of the 1st or 2nd class IN CHARGE OF a DIVISION of a district.
Such Magistrate shall be called a Magistrate of a Division of a District and shall exercise the powers conferred on him under this Act or under any law for the time being in force, subject to the control of the Magistrate of the District.

The Local Government may, if it thinks fit, delegate its powers under this section to the Magistrate of the District.

41. Every Magistrate in a Division of a District shall be SUBORDINATE to the Magistrate of the Division of the District, subject, however, to the general control of the Magistrate of the District.

42. The Local Government may confer upon any person all or any of the powers of a Magistrate of the 1st, 2nd, or 3rd class, in respect to particular offences or to a particular class or particular classes of offences or in regard to offences generally, in any part of a district or in any one or more districts, subject to such Local Government.

Such Magistrates shall be called "SPECIAL MAGISTRATES."

43. In conferring powers under this Act the Local Government may empower persons specially by name, or classes of officers generally by their official titles.

44. The MAGISTRATE OF the DISTRICT or any Magistrate of a division of a District, may MAKE OVER any criminal CASE taken up by him on suspicion, or brought before him on complaint, or on report by the Police, for inquiry or trial to any Magistrate subordinate to him, to be dealt with to the extent of the powers with which the Subordinate Magistrate may have been invested under the provisions hereinafter contained.

The Magistrate making the reference may, if the case was brought forward on complaint, before such reference, examine the complainant as prescribed in this Act; but if he does not do so, the Magistrate to whom the case is referred shall proceed as if the complaint had been made to him.

The order of reference shall be recorded in a proceeding, and, if the case has been brought forward on the report of a Police officer, shall be recorded on such report; and all processes issued for causing the attendance of the accused person or the witnesses shall direct them to attend before the Magistrate to whom the case has been referred.

The Magistrate making the reference may, if he thinks proper, retransfer to his own file the case referred under paragraph one of this section, and when he has done so, and not before, may proceed therein.

45. If, in the course of a proceeding before a Magistrate, the evidence appears to him to warrant a presumption that the accused person has been guilty of an offence which such MAGISTRATE is NOT COMPETENT TO TRY,

or for which he is not competent to commit the accused person for trial,

he shall stay proceedings and submit the case to any Magistrate to whom he is subordinate, or to such other Magistrate, having jurisdiction, as the Magistrate of the District directs.
The Magistrate to whom the case is submitted shall either try the case himself; or refer it to any officer, subordinate to him, having jurisdiction; or he may commit the accused person for trial.

In any such case, such Magistrate or other officer as aforesaid shall examine the parties and witnesses, and shall proceed in all respects as if no proceedings had been held in any other Court;

But any statement or confession duly made by an accused person in the course of the proceedings before the Magistrate, before whom the case was originally brought, shall be admissible as evidence in all subsequent proceedings.

46. Whenever a Magistrate of the 2nd or 3rd class, having jurisdiction, finds an accused person guilty, and considers that he ought to receive a MORE SEVERE PUNISHMENT than such Magistrate is competent to adjudge, he may record the finding and, if sentence has not been passed, may submit his proceedings, and forward the accused person to the Magistrate of the District, or to the Magistrate of the Division of the District, to whom he is subordinate.

The Magistrate, to whom the proceedings are submitted, may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case and may summon any further witnesses and take their evidence; and shall pass such judgment, sentence or order in the case as he deems proper, and as is according to law: Provided that he shall not exceed the powers ordinarily exercisable by him under section twenty of this Act.

The Magistrate who originally dealt with the case may, if he is empowered to hold inquiries into cases triable by the Court of Session and to commit persons to take their trial before such Court instead of submitting his proceedings to another Magistrate, commit the accused person for trial before the Court of Session instead of finding him guilty.

47. MAGISTRATES OF DISTRICTS and Magistrates of Divisions of Districts MAY respectively WITHDRAW any criminal CASE from any Magistrate subordinate to them, and may inquire into or try the case themselves, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

Magistrates of Districts may withdraw any criminal appeal from any Subordinate Magistrate who has been authorized to hear appeals from the convictions of Magistrates of the 2nd and 3rd classes, and may refer criminal appeals to any competent Magistrate subordinate to them.

48. The Local Government may authorize the Magistrate of the District to withdraw from the Magistrates subordinate to him, whether in charge of divisions of districts or not either such classes of cases as he thinks proper, or particular classes of cases.

49. The Magistrate of the District under the general or special orders of the Local Government, may authorize any Magistrate subordinate to him to entertain complaints arising within certain local limits, and may from time to time vary such orders: Provided that no such Magistrate shall be authorized to entertain any complaint of any offence which he is not competent to try or commit for trial.
Magistrates' Benches.

50. The Local Government may direct any two or more Magistrates to sit together as a BENCH, and may invest such bench with the powers of a Magistrate of the 1st, 2nd or 3rd class, and direct it to try such cases or such classes of cases only and within such limits as it thinks fit.

51. In the absence of any special direction as to the POWERS OF any such BENCH, it shall have the powers of a Magistrate of the highest class to which any one of its members belongs, and who is present taking part in the proceedings.

52. The Magistrate of the District may, subject to the general orders of the Local Government, make RULES FOR the GUIDANCE of Magistrates' benches in his district.

Such rules shall not be inconsistent with the provisions of this act and may deal with the following subjects:—

The classes of cases to be tried.
The times and places of sitting.
The constitution of the bench for conducting trials.
The mode of settling differences of opinion which may arise between the Magistrates in Session.

53. The Magistrate of the District may subject to the like orders, VARY or annul, from time to time, any RULES made by himself or by his predecessor under the last preceding section.

Continuance and Alteration of Powers.

54. The Local GOVERNMENT MAY VARY OR CANCEL any POWERS with which any person may have been invested under this Act or any enactment hereby repealed.

55. When, in consequence of the office of a Magistrate of the District becoming vacant, any officer succeeds temporarily to the CHIEF EXECUTIVE ADMINISTRATION of the District in criminal matters, such officer shall pending the orders of the Local Government, exercise all the ordinary powers and perform all the duties of the Magistrate of the District.

56. Whenever any person holding an office in the service of Government, who has been invested with any powers, under this Act or any enactment hereby repealed, in any district, is TRANSFERRED TO an equal or higher OFFICE OF THE SAME NATURE within another district, he shall, unless the Local Government otherwise directs, continue to exercise the same powers in the district to which he is so transferred.

CHAPTER V.
Of Public Prosecutors.

57. The Local Government may, if it thinks proper, appoint officers to be called PUBLIC PROSECUTORS.
58. Public prosecutors may be appointed either for a particular case, or for particular classes of cases, or for all cases throughout the whole or any part of any province.

59. Any Court inquiring into or trying any case may permit any person to conduct the case as prosecutor; but no person shall be entitled to do so without such permission. Any person permitted to prosecute may conduct the prosecution personally or by counsel.

60. The public prosecutor MAY APPEAR and plead WITHOUT any WRITTEN AUTHORITY before all Courts in which any case under his charge is under inquiry, trial, or appeal; and if any private person instructs any barrister, attorney, pleader, or vakil to prosecute any person in any case under the charge of the public prosecutor, the public prosecutor shall have the management of the case and such other person shall act under his directions.

61. The public prosecutor MAY, with the consent of the Court, WITHDRAW any CHARGE against any person in any case of which he is in charge; and upon such withdrawal, if it is made whilst the case is under inquiry, the accused person shall be discharged. If it is made when he is under trial, the accused person shall be acquitted.

62. If an APPEAL is brought in any case in which any person, prosecuted by the public prosecutor, has been convicted, notice of such appeal and a copy of the grounds of appeal shall be given to such public prosecutor by the Appellate Court, and the Court shall also give him due notice of the time and place at which such appeal is to be heard.

CHAPTER VI.
The Place of Inquiry and Trial.

63. Every offence shall be inquired into, and, if tried by a Magistrate, shall be tried in the DISTRICT IN WHICH it was COMMITTED. If tried by a Court of Session it shall be tried by that Court of Session to which the Magistrate commits.

Magistrates shall ordinarily commit to the Court of Session for the Sessions Division, in which the district to which they are appointed is situated; but the Local Government may direct that any cases or class of cases committed in any district may be tried in any Sessions Division.

Explanation.—Offences created by local and special laws may be inquired into and tried in any place where the inquiry or trial might be held under the provisions of those laws or of this Code.

64. Whenever it appears to the High Court that such order will promote the ends of justice, or tend to the general convenience of the parties or witnesses, it may direct the TRANSFER OF any particular criminal CASE, or appeal, or class of cases or appeals from a Criminal Court, subordinate to its authority, to any other such Criminal Court of equal or superior jurisdiction,

or may order that any offence shall be inquired into or tried in any district or division of a district, other than that in which the offence has
been committed, or that it shall be tried before itself. If the High Court withdraws any case from any other Court for trial before itself, it shall observe the same procedure which that Court would have observed if the case had not been so withdrawn.

Provided that the orders issued under this section shall not be repugnant to orders issued by the Local Government under the last preceding section.

63. When a person is accused of the commission of any offence by reason of anything which has been done, or of anything which has been omitted to be done, and of any consequence which has ensued, such offence may be inquired into or tried in any DISTRICT IN WHICH any such THING has been DONE, or omitted to be done, OR any such CONSEQUENCE has ENSUED.

Illustrations.

(a) A is wounded in the district of X and dies in district Z. The offence of the culpable homicide of A may be inquired into and tried either in X or Z.

(b) A is wounded in the district of X and is, during twenty days, unable to follow his ordinary pursuits in the district Y, where he is being treated. The offence of causing grievous hurt to A may be inquired into and tried either in X or Y.

(c) A is put in fear of injury in district X, and is thereby induced, in the district of Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into and tried either in district X or district Y.

66. When an act is an offence by reason of its relation to any other act which is also an offence, a charge of the first mentioned offence, may be inquired into and tried either in the DISTRICT IN WHICH it happened or in the district in which the OFFENCE, WITH WHICH IT WAS SO CONNECTED, HAPPENED.

Illustrations.

(a) A charge of abetment may be inquired into and tried either in the district in which the abetment was committed, or in the district in which the offence abetted was committed.

(b) A charge of receiving or retaining stolen goods may be inquired into and tried either in the district in which the goods were stolen, or in any district in which any of them were at any time dishonestly received or retained.

(c) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into and tried in the district in which the wrongful concealing or in the district in which the kidnapping took place.

(d) A, B, C and others combine together to abet the waging of war against the Queen. Any of the conspirators may be tried in any district in which acts were done by any one of the persons with whom he or they conspired in pursuance of the original concerted plan and with reference to the common object.

67. When it is uncertain in which of SEVERAL DISTRICTS an offence was committed; or where an offence is committed partly in one district and partly in another; or

where the offence is a continuing one and continues to be committed in more districts than one; or where it consists of SEVERAL ACTS done in different districts,

it may be inquired into and tried in any one of any of such districts.

Illustrations.

(a) An offence committed on a journey or voyage may be inquired into and tried in any district through which the person by whom the offence was committed, or the person against whom, or the thing in respect of which, the offence was committed passed in the course of that journey or voyage.

(b) A offence committed near the boundary between two districts may be inquired into and tried in either.
(c) An charge of being a thug or of having belonged to a gang of dacoits may be inquired into and tried wherever the person charged happens to be when the charge is made.

(d) A charge of having escaped from custody may be inquired into and tried wherever the person charged happens to be when the charge is made.

(e) A charge of criminal misappropriation or of criminal breach of trust may be inquired into and tried either in the district in which the property, which is the subject of the offence, was received, or in the district or districts in which the whole or any part of it has been misappropriated, or where the offence of criminal breach of trust has been wholly or partly committed.

(f) A steals a buffalo from B in district W, and personally or by his agents conveys the buffalo through districts X and Y into district Z. This is a continuing offence, and A may be tried either in W, X, Y or Z.

68. The offence of murder as a THUG, DACOITY, or dacoity with murder may be inquired into and tried wherever the person accused may happen to be when arrested, or in any other district in which he might be tried under any other provision of this Code, or any other law relating to the trial of such offence.

69. Whenever any doubt arises as to the district in which any offence should be inquired into or tried, the HIGH COURT, within whose jurisdiction the offender is apprehended, MAY DECIDE in which district the offence shall be inquired into or tried.

70. No sentence or order of any Criminal Court shall be liable to be set aside merely on the ground that the investigation, inquiry or trial was held in a WRONG DISTRICT or Sessions division, unless it is proved or appears that the accused person was actually prejudiced in his defence, or the prosecutor in his prosecution, by such error, in either of which cases a new trial may be ordered.

CHAPTER VII.

Of Criminal Jurisdiction over European British Subjects.

71. The expression "EUROPEAN BRITISH SUBJECTS" means in this Act—

(1) All subjects of Her Majesty born, naturalized, or domiciled in the United Kingdom of Great Britain and Ireland or in any of the European, American, or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal.

(2) The children and grandchildren of any such person by legitimate descent.

72. No Magistrate, or Justice of the Peace, or Sessions Judge shall have JURISDICTION to inquire into a complaint or try a charge against a European British subject unless he is himself a European British subject.

No Magistrate shall have such jurisdiction unless he is a Magistrate of the 1st class and a Justice of the Peace.

No Justice of the Peace shall have such jurisdiction unless he is a Magistrate of the 1st class.
73. Any Magistrate who is authorized by law to ENTERTAIN COMPLAINTS, MAY entertain against European British subjects such complaints as he is authorized to entertain in the case of other persons.

If he issues any process for the purpose of compelling the appearance of a European British subject accused of an offence, such process must be returnable before a Magistrate competent to inquire into or try the case.

74. Any competent Magistrate may INQUIRE INTO COMPLAINTS of any offence made against a European British subject.

If the offence complained of is a Magistrate's case and can, in the opinion of such Magistrate be adequately punished by him, he shall proceed as is hereinafter in this Code directed, according to the nature of the offence; and, on conviction, may pass on such European British subject any SENTENCE warranted by law, not exceeding three months imprisonment, or fine, up to one thousand rupees, or both.

75. When the offence complained of cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused person ought to be committed, commit him to the Court of Session.

When the offence complained of is punishable with death or transportation for life, the commitment shall be to the HIGH COURT.

76. SESSIONS JUDGES or Additional Sessions Judges, and, when specially empowered in that behalf by the Local Government, Assistant Sessions Judges who are European British subjects and who have been Assistant Sessions Judges for not less than three years, may pass on European British subjects any sentence, warranted by law, not exceeding one year's imprisonment, or fine, or both.

If at any stage of the proceedings, the Sessions Judge thinks the offence cannot be adequately punished by such a sentence, he shall record his opinion to that effect and transfer the case to the High Court. The Sessions Judge may either himself bind over, or direct the committing Magistrate to bind over the complainant and witnesses to appear before such High Court.

77. If the SESSIONS JUDGE of the Sessions division, within which the offence is ordinarily triable, is NOT A EUROPEAN British subject, the case shall be reported, by the committing Magistrate, for the orders of the High Court.

78. TRIALS of European British subjects before the Court of Session shall be conducted according to the provisions of chapter XIX.

In trials with assessors not less than half the number of ASSESORS, and in trials by jury not less than half the number of jurors shall be European British subjects.

79. Any European British subject who is convicted by a competent Magistrate of any offence, may APPEAL either to the Court of Session or to the High Court.
80. Any European British subject who is convicted of any offence by any Court of Session, may appeal to the High Court.

81. Any European British subject who is detained in custody by any person, and who considers such detention unlawful, may apply to the High Court, which would have jurisdiction over him in respect of any offence committed by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an ORDER directing the person detaining him TO BRING him BEFORE the said HIGH COURT to abide such further order as may be made by it. The High Court, if it thinks fit, may, before issuing such order, inquire on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application; or it may issue the order in the first instance, and when the person applying for it is brought before it, it may make such further order in the case as it thinks fit after such inquiry as it thinks necessary.

The High Courts may issue such orders throughout the territories over which they have jurisdiction and over such other places as the Governor General in Council may direct.

82. Neither the High Courts nor any Judge of such High Courts shall issue any WRIT of habeas corpus, mainprise, de homine replegiando, nor any other writ of the like nature beyond the Presidency towns.

83. When any person claims to be dealt with as a European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial; and such MAGISTRATE SHALL ON SUCH statement DECIDE WHETHER he is or is not a EUROPEAN British subject, and shall deal with him accordingly; and if any such person is dissatisfied with such decision, the burden of proving that it was wrong shall be upon him. If the Magistrate decide that the accused person is not a European British subject, the trial shall proceed, but such decision shall form a ground of appeal.

84. If a European British subject does not claim to be dealt with as such before the Magistrate, before whom he is tried or committed, he shall be held to have WAIVED his PRIVILEGE as such European British subject.

If the Magistrate has reason to believe that any person brought before him is a European British subject, it is his duty to ask him whether he is one or not.

85. If a person, who is not a European British subject, is dealt with as such and does not object, the proceedings shall be valid.

86. All High Courts shall deal with PROCEEDINGS against European British subjects outside of the Presidency towns in the manner in which they are empowered by this Act or by any other law in force for the time being to deal with the proceedings of Magistrates outside the Presidency towns; and not according to the law of England relating to the dealings of the superior Courts in England with the proceedings of Justices of the Peace in England.

The High Courts shall have the same powers with respect to the inquiries and charges against European British subjects as Courts of
Session have with respect to inquiries and charges against other persons.

87. All Magistrates and Courts of Session, proceeding against European British subjects under this chapter, shall proceed under the provisions of this Act and not according to the law of England relating to Justices of the Peace; and all the provisions of this Act, not inconsistent with the provisions of this chapter, shall apply to such proceedings.

88. European British subjects sentenced to imprisonment shall be confined in such places as the Local Government may either specially or generally appoint.

PART III.
Of the Police.

CHAPTER VIII.
Offences of which information must be given to the Police, and duty of the Public.

89. Every person aware of the commission of any offence made punishable under sections 121, 121 A, 122, 123, 124, 124 A, 125, 126, 130, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 435, 436, 449, 450, 456, 457, 458, 459, or 460 of the Indian Penal Code, shall in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information of the same to the nearest Police officer or Magistrate.

90. Every Village Headman, Village Watchman, owner or occupier of land or the agent of any such owner or occupier, and every Native officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, is bound forthwith to communicate to the nearest Magistrate, or to the officer in charge of the nearest Police-station, any information which he may obtain respecting—

(a) the residence of any notorious receiver or vendor of stolen property at the village of which he is headman or watchman, or in which he owns or occupies land, or collects rent or revenue, as the case may be;

(b) the resort to any place within the limits of such village of any person or persons known or reasonably suspected of being a thug or robber;

(c) the commission or intention to commit suicide or other non-bailable offence at or near such village;

(d) the occurrence of any sudden or unnatural death.

91. EVERY PERSON is BOUND TO ASSIST a MAGISTRATE or Police officer demanding his aid in the prevention of a breach of the peace,

or in the suppression of a riot or an affray,

or in the taking of any other person whom such Magistrate or Police officer is authorized to arrest.
CHAPTER IX.

Of Arrest without Warrant.

92. A Police officer may, without orders from a Magistrate and without a warrant, arrest,—

Firstly.—Any person who in the sight of such Police officer commits a cognizable offence.

Secondly.—Any person against whom a reasonable suspicion exists of his having been concerned in any such offence.

Thirdly.—Any person against whom a hue and cry has been raised of his having been concerned in any such offence.

Fourthly.—Any person who has been proclaimed either under this Act, or in a District or Police Gazette or notification.

Fifthly.—Any person found with property in his possession which may reasonably be suspected to be stolen property.

Sixthly.—Any person who obstructs a Police officer while in the execution of his duty, or who escapes from lawful custody, and

Seventhly.—Any person reasonably suspected of being a deserter from Her Majesty’s Army or Her Majesty’s Indian Army.

93. Any person known to have committed or suspected of having committed an offence for which a Police officer is not authorized to arrest without a warrant and who REFUSES on demand of a Police officer TO GIVE his NAME and residence,

or gives a name or residence which there is reason to believe to be false,

may be detained by such Police officer for the purpose of ascertaining the name or residence of such person; and shall, within twenty-four hours, be forwarded to the Magistrate having jurisdiction; unless before that time his true name and residence are ascertained, in which case such person shall be forthwith released.

94. An officer in charge of a Police-station may, without orders from a Magistrate and without a warrant, arrest or cause to be arrested any person found LURKING within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

or any person who is a REPUTED ROBBER, housebreaker, thief, receiver of stolen property knowing it to be stolen,

or who is of NOTORIOUSLY BAD LIVELIHOOD.

95. Every Police officer shall prevent, and may interpose for the purpose of PREVENTING, the commission of any cognizable OFFENCE.

96. Every Police officer receiving information of a DESIGN TO COMMIT any such OFFENCE, shall communicate such information to the Police officer to whom he is subordinate, and to any officer whom it may concern to prevent or take cognizance of the commission of any such offence.
97. A Police officer, knowing of a design to commit any such offence, may ARREST, without orders from a magistrate and without a warrant, the PERSON so DESIGNING, if the commission of the offence cannot be otherwise prevented.

98. A Police officer may, of his own authority, interpose for the prevention of any INJURY attempted to be committed in his view TO any PUBLIC PROPERTY moveable or immovable,

or to prevent the removal or injury of any public land-mark, or buoy or other mark used for navigation. If necessary such Police officer may detain the person doing such injury according to the provision of section ninety-three.

99. If there is reason to believe that any person, liable to arrest under this chapter without a warrant, of whom a Police officer is in search, has entered into or is within any house or place, it shall be the duty of the person, residing in or in charge of such HOUSE or place on the demand of such Police officer, to allow INGRESS thereto, and all reasonable facilities, for a search therein.

100. If ingress to such house or place cannot be obtained under section ninety-nine, the Police officer, authorized to make the arrest, shall take such precautions as may be necessary to prevent the escape of the person to be arrested and send immediate information to any Magistrate having jurisdiction.

If a warrant cannot be obtained without affording such person an opportunity of escape and there is no person authorized to enter without a warrant on the spot, the Police officer may make an entry into such house or place and search therein.

101. A Police officer making an arrest under this chapter shall, without unnecessary delay, take or SEND the PERSON arrested BEFORE the MAGISTRATE having jurisdiction in the case, or before the officer in charge of a Police-station.

102. WHEN any OFFICER in charge of a Police-station REQUIRES any officer SUBORDINATE to him TO ARREST without a warrant (otherwise than in his presence) any person who may lawfully be arrested by such officer without a warrant, he shall deliver to the Police officer, required to make the arrest, an order in writing, specifying the person to be arrested, and the offence for which the arrest is to be made.

The provisions of sections 91 and 126 to 182 (both inclusive) shall apply to every order in writing issued under this section.

103. For the purpose of arresting any person accused of a cognizable offence, a Police officer may pursue any such person into the limits of the local JURISDICTION of ANOTHER Police OFFICER, whether subordinate to the same Magistrate as himself, or to the Magistrate of any other District, and whether such place be in the same Province or not.

104. Any PERSON attending a Criminal Court, although not upon an arrest or summons on a complaint made, MAY BE DETAINED BY such COURT for the purpose of examination, for any offence
which from the evidence he may appear to have committed, and may be proceeded against as though he had been arrested or summoned on a complaint made.

When the detention takes place in the course of an inquiry under chapter 15, or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh and the witnesses reheard.

Of Arrest by Private Persons.

105. Any PRIVATE PERSON MAY ARREST any person who, in his view, commits a non-bailable and cognizable offence.

106. The MASTER or mate OF a British merchant SHIP may, either with or without the assistance of the Police, who are bound to aid if so required by such master or mate, arrest seamen or apprentices duly engaged, under the Statute 17 & 18 Vic. Cap. 104, or other law for the time being in force relating to merchant shipping, who refuse to join or desert from the vessel in which they contracted to serve.

Such arrest shall be made only at the request and on the responsibility of such master or mate, and he shall be required by the Police to accompany the arrested person should he be apprehended, before the Magistrate having jurisdiction; and it shall be the duty of such master or mate to obey such requisition.

107. A private person making an arrest under this chapter SHALL forthwith MAKE OVER the person arrested TO a POLICE OFFICER; and, in the absence of a Police officer, shall take such person to the nearest Police-station. The Police shall deal with such person according to the provisions of section 92 or 93 as the case may be, and shall not arrest or detain him unless he appears to be liable to arrest or detention under the section applicable.

108. When any OFFENCE is committed IN THE PRESENCE OF a MAGISTRATE, he may order any person to arrest the offender and may thereupon commit him to custody, or, if the offence is bailable, may admit him to bail.

CHAPTER X.

Powers of the Police to investigate.

109. An officer in charge of a Police-station may without order of a Magistrate, investigate any OFFENCE COGNIZABLE by the Police.

110. A Police officer may not, without the order of a Magistrate of the first or second class, investigate an OFFENCE NOT COGNIZABLE by the Police.

A Magistrate of the first or second class may, as provided in sections twenty-four and twenty-six, order the Police to investigate; and, on receipt of an order to investigate a non-cognizable case, a Police officer may exercise the same powers in respect of the investigation as in a cognizable case.
111. Nothing in section one hundred and ten shall be held to interfere with the exercise of any powers vested in a Police officer by any SPECIAL or LOCAL LAW, or with the performance of any duty which is imposed upon a Police officer by any such special or local law.

112. Every COMPLAINT, preferred to an officer in charge of a Police-station, shall be REDUCED INTO WRITING, and shall be signed, sealed, or marked by the person making it; and the substance thereof shall be entered in a book to be kept by such officer in the form prescribed by the Local Government.

113. If a COMPLAINT is preferred to an officer in charge of a Police-station of the commission within his local jurisdiction OF AN OFFENCE which is NOT COGNIZABLE by the Police, the Police officer shall enter the substance of it in the station diary, and shall refer the complainant to the Magistrate.

114. If, from information or otherwise, an officer in charge of a Police-station has reason to suspect the commission, within his local jurisdiction, of an offence cognizable by the Police, he shall send immediate INTIMATION to the MAGISTRATE having jurisdiction, and shall PROCEED IN PERSON OR shall DEPUTE one of his subordinate officers to proceed to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and apprehension of the offender.

Police officers shall investigate offences committed within the local limits of their jurisdiction; but they may investigate offences committed outside of those limits in which a Magistrate might, under the provisions of chapter VI, inquire into an offence not committed within his district.

No such proceeding shall, at any stage, be called in question on the ground that such offence was not committed within such officer’s local jurisdiction.

115. Such Magistrate, on receiving intimation of the commission of any such offence, may at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a PRELIMINARY INQUIRY into or otherwise to dispose of such case in the manner provided in this Act.

116. Provided that, when any complaint is made against any person by name and the case is not of a serious nature, the officer in charge of a Police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot, unless such LOCAL INVESTIGATION appears to be necessary.

117. Provided that, if it appear to the officer in charge of a Police-station that there is NO SUFFICIENT GROUND for entering on an INVESTIGATION, or that the immediate apprehension of the accused is not necessary for the ends of justice, he shall not proceed in the case, but shall report the substance of the complaint or information for the orders of the Magistrate having jurisdiction.

Such report shall be submitted through such superior officer of Police as the Local Government shall, by general or special order, in that behalf appoint. Such superior officer may give such instructions to the officer in charge of the Police-station as he deems fit, and shall after recording such instructions on such report, transmit the papers without delay to the Magistrate having jurisdiction.
118. An OFFICER in charge of a Police-station or other officer making an investigation MAY, by an order in writing, REQUIRE the ATTENDANCE before himself of any person, being within the limits of his own or any adjoining station, who, from the statement of the complainant or otherwise, appears to be acquainted with the circumstances of any case which such officer is investigating; and such person shall attend as required and shall answer all questions relating to such case put to him by such officer:

Provided that no person shall be bound to answer any questions tending to criminate himself.

119. An officer in charge of a Police-station, or other Police officer making an investigation, MAY EXAMINE ORALLY any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Such person shall be bound to answer all questions relating to such case put to him by such officer other than questions criminating himself.

No statement so reduced into writing shall be signed by the person making it, nor shall it be treated as part of the record or used as evidence.

120. No Police officer or other person shall offer any INDUCEMENT to an accused person by threat or promise or otherwise TO MAKE any disclosure or CONFESSION, whether such person is under arrest or not.

But no Police officer or other person shall prevent the person arrested by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will.

121. No Police officer shall record any statement or any admission or CONFESSION of guilt, which may be made before him by a person accused of any offence.

Provided that nothing in this section shall preclude a Police officer from reducing any such statement or admission or confession into writing for his own information or guidance, or from giving evidence of any dying declaration.

122. Any MAGISTRATE MAY RECORD any statement made to him by any person, or any CONFESSION made to him by any person accused of an offence by any Police officer or other person. Such statements shall be recorded in the manner hereinafter prescribed for recording evidence and such confession shall be taken in the manner provided in sections 345 and 346, and shall, when recorded, be forwarded to the Magistrate by whom the case is inquired into or tried. No Magistrate shall record any such confession unless, upon inquiry, he has reason to believe that it was made voluntarily, and he shall make a memorandum at the foot of any such confession to the following effect:—

"I believe that this confession was voluntarily made."

(Signed) A. B.,

Magistrate.
123. If the person arrested appear from the information obtained to have committed the offence charged and the offence is not bailable, the officer in charge of the Police station shall FORWARD him under custody TO THE MAGISTRATE having jurisdiction, and shall bind over the complainants, if any, and so many of the persons who appear to be acquainted with the circumstances of the case as may be necessary, to appear on a fixed day before such Magistrate, and to remain in attendance till otherwise directed.

When any subordinate Police officer has made any investigation under this chapter, he shall, if so required by the officer in charge of the Police-station, submit a report of such investigation to him; or he may do so without such requisition; and the officer in charge of the Police-station shall then proceed as if he had made the investigation himself.

124. No Police officer shall detain an accused person in custody for a longer period than, under all the circumstances of the case, is reasonable; and such period shall not, in the absence of the special order of a Magistrate, whether having jurisdiction to inquire into or try the case or not, exceed TWENTY-FOUR HOURS, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

If the investigation has not been completed within 24 hours and no such special order has been passed, and if there are grounds for believing that the accusation is well founded, the officer in charge of the Police-station shall forward the accused person to the Magistrate having jurisdiction, with a statement of the offence for which he has been arrested.

A Magistrate authorizing detention under this section shall record his reasons for so doing.

If such order be given by a Magistrate other than the Magistrate of the District or of a division of a District, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is subordinate.

125. If it appears to the officer in charge of the Police-station that there is NOT SUFFICIENT EVIDENCE or reasonable ground of suspicion to justify the transmission of an accused person to the Magistrate, such officer shall release the accused person on bail, or on his own recognizance, to appear when required, and shall submit a report of the case for the orders of the Magistrate having jurisdiction. Such report shall be submitted through the superior officer of Police, mentioned in Section 117, who may, pending the orders of the Magistrate, give instructions as to the conduct of the investigation.

126. A Police officer, making an investigation under this chapter, shall day by day enter his proceedings in the investigation in a DIARY, setting forth the time at which the complaint or other information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained by his investigation.

Any Criminal Court may send for the Police diaries of a case under inquiry or trial in such Court, and may use such diaries to aid it in
such inquiry or trial. Neither the prisoner nor his agents shall be entitled to call for them, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the Police officer, who made them, to refresh his memory, or if the Court uses them for the purpose of contradicting such Police officer, the provisions of the law relating to documents used for such purposes shall apply to them.

127. The investigation shall be completed without unnecessary delay, and, as soon as it is completed, the Police officer making the same shall forward to the Magistrate having jurisdiction a REPORT in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the complaint, and the names of the persons who appear to be acquainted with the circumstances of the case, and shall also send to such Magistrate any weapon or article which it may be necessary to produce before him.

The Police officer shall state whether the accused person has been forwarded in custody, or has been released on bail or on his own recognizance.

If the accused person be detained in custody, the Police officer shall state the fact and the causes of his detention.

128. A person accused of any non-bailable offence shall not be admitted to BAIL, if there appear reasonable ground for believing that he has been guilty of the offence imputed to him.

But a person accused of any bailable offence shall be admitted to bail, if sufficient bail be tendered for his appearance before the Magistrate having jurisdiction in respect of the offence.

129. The BAIL to be taken under section one hundred and twenty-eight shall NOT be EXCESSIVE; and the surety or sureties shall bind himself or themselves under a specific penalty to produce the accused person before the Magistrate on or before a fixed day, and from day to day, until otherwise directed, to answer the complaint.

130. Every complaint and other person acquainted with the facts and circumstances of the case, whose attendance before the Magistrate having jurisdiction is deemed necessary by the Police officer making the investigation, shall execute a RECOGNIZANCE in the Form (F) given in the second schedule hereto, or to the like effect, FOR APPEARANCE before the Magistrate having jurisdiction in respect of the offence on a fixed day.

If the Court of the Magistrate of the District or of a Magistrate of a division of a District be inserted in the bond, it shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided notice be given to such complainant or witness.

Such day shall be the day wherein the accused person is to appear if he has been admitted to bail or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the recognizance is executed shall after delivering to the complainant or one of the witnesses a duplicate thereof, send it with his report to the Magistrate having jurisdiction.
No Police officer shall, except as provided in the next following section, accompany the complainant or witnesses on his or their way to the Court of the Magistrate.

131. A Police officer shall NOT SUBJECT any complainant or WITNESS TO RESTRAINT or unnecessary inconvenience, nor require him to give any security for his appearance other than his own recognizance.

But if any complainant or witness refuses to attend, or to execute the recognizance directed in section one hundred and thirty, the officer in charge of a Police-station may forward him under custody to the Magistrate having jurisdiction, who may detain him in custody until he executes such recognizance, or until the hearing is completed.

132. Officers in charge of Police-stations shall REPORT to the Magistrate of the District, or the Magistrate of the division of a District, the cases OF ALL PERSONS APPREHENDED within the limits of their respective stations, or detained under section ninety-three, whether such persons have been admitted to bail or otherwise, under whatever law such persons may have been arrested.

No person who has been apprehended by a Police officer shall be discharged, except on bail or on his recognizance, or under the special order of a Magistrate.

133. The officer in charge of a Police-station, on receiving notice or information of the UNNATURAL or SUDDEN DEATH of any person, shall immediately give intimation thereof to the nearest Magistrate duly authorized, and shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation and report the apparent cause of death, describing any mark of violence which may be found on the body, and stating in what manner or by what weapon or instrument such mark appears to have been inflicted.

The report shall be signed by such Police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the Magistrate of the District or to the Magistrate of the division of a District.

When there is any doubt regarding the cause of death, the Police officer shall forward the body, with a view to its being examined, to the nearest Civil Surgeon or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of putrefaction on the road.

In the Presidencies of Madras and Bombay, the Head of the village may also in like manner make the investigation and report to the nearest Magistrate duly authorized.

134. An OFFICER in charge of a Police-station MAY, by an order in writing SUMMON two or more persons as aforesaid for the purpose of the investigation, and any other person who appears to be acquainted with the facts of the case. Any person so summoned shall be bound to attend and to answer all questions (other than questions which would criminate him.)
If the facts do not disclose a cognizable offence to which section one hundred and twenty seven is applicable, such persons shall not be required by the Police officer to attend and Magistrate's Court.

135. The nearest MAGISTRATE, duly authorized MAY HOLD an INQUIRY into the cause of any such death either instead of or in addition to the investigation held by the Police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence, although no specific charge has been made against any person. The Magistrate holding such an inquiry shall record the evidence taken upon it in any of the manners herein-after prescribed, according to the circumstances of the case.

136. The powers to be exercised by an officer in charge of a Police-station under this chapter shall be exercised, in the event of his ABSENCE FROM the STATION-HOUSE or of his illness, by the Police officer next in rank present at the Police-station, above the rank of a constable.

137. OFFICERS of Police SUPERIOR IN RANK to officers in charge of a Police station may exercise the same powers throughout their local jurisdictions as may be exercised by officers in charge of Police-stations within the limits of such stations.

138. For the purposes of this Act, an ASSISTANT DISTRICT SUPERINTENDENT of Police may exercise any of the powers of a District Superintendent of Police, subject to the control of such District Superintendent of Police; or, in the absence of the District Superintendent of Police and the Assistant District Superintendent, the senior officer of Police on the spot may be directed by the Magistrate of the District to exercise the powers of a District Superintendent of Police.

PART IV.
Of Proceedings to compel Appearance.

CHAPTER XI.
Of Complaints to a Magistrate.

139. Proceedings to compel the appearance before a Magistrate of persons accused or suspected of offences, who have not been arrested without warrant, may be by SUMMONS OR by WARRANT.

140. A SUMMONS or a warrant may be issued—

(a) Upon a report by the police under chapter X; but if the person complained of is already in custody, no complaint, summons or warrant is necessary.

(b) Upon information or report by a Police officer as to a non-cognizable offence. Such information or report shall be regarded as a complaint.
(e) Upon a complaint by a private person. Any person acquainted with the facts of a case may make a complaint.

(d) Upon suspicion entertained by a Magistrate that an offence has been committed.

141. The Magistrate of the District,

any Magistrate of a division of a District, or

any Magistrate duly empowered in that behalf, in any case which he is competent to try or to commit for trial,

may ENTERTAIN a COMPLAINT of an offence, whether preferred directly by the complainant, or on report of a Police officer, and may issue process in the manner hereinafter prescribed to compel the appearance of persons accused of such offences.

Any Magistrate to whom any CASE is duly REFERRED, by any Magistrate duly empowered to make such reference may dispose of such case.

A complaint or a Police report gives jurisdiction to a competent Magistrate to inquire into or try any offence covered by the facts complained of or reported, and also to try or commit for trial any person who, at the time when the complaint or report is made, or subsequently, appears to have committed the offence disclosed.

142. The Magistrate of the District

any Magistrate of a division of a District,

or any Magistrate duly empowered in that behalf,

in any case in which he is competent to try or to commit for trial.

may, WITHOUT any COMPLAINT, take cognizance of any offence which he suspects to have been committed, and may issue process in the manner hereinafter prescribed to compel the appearance before him of persons whom he suspects to have committed any such offence.

Nothing in this or in the last preceding section shall be held to authorize a Magistrate to take cognizance of a case without complaint, when the offence falls under Chapters 19, 20, or 21 of the Indian Penal Code; nor to entertain a complaint, or to take cognizance without complaint, of an offence without sanction, where such offence, by any law in force, may not be entertained without sanction.

143. The Magistrate of the District,

any Magistrate of a division of a District,

any Magistrate of the 1st class, or,

any Magistrate duly empowered in that behalf,

MAY COMMIT any person to the Court of Session for any offence triable by such Court.

144. When, in order to the issuing of a summons or a warrant against any person for any offence, a complaint is made to a Magistrate, such Magistrate, of he is competent to receive such complaint, shall EXAMINE THE COMPLAINANT.
The examination shall be reduced into writing in a summary manner and signed by the complainant, and also by the Magistrate.

Where the complaint has been made by petition, and the Magistrate neglects to examine the complainant, the trial of the person accused shall not be set aside on this ground.

145. If the MAGISTRATE be NOT COMPETENT to receive the complaint, he shall refer the complainant to a Magistrate having jurisdiction.

146. If the Magistrate sees cause to distrust the truth of a complaint he may postpone the issuing of process for compelling the attendance of the person complained against, and MAY DIRECT a PREVIOUS INQUIRY or investigation to be made into the truth of the complaint, either by means of any officer subordinate to such Magistrate or of a local Police officer or in such other mode as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

If such inquiry or investigation is made by means of some person other than an officer exercising any of the powers of a Magistrate or a Police officer, such person shall exercise all the powers conferred by this Act on an officer in charge of a Police-station, except that he shall have no power to make an arrest.

147. The Magistrate before whom such complaint is duly made may, if, after examining the complainant, there is in his judgment no sufficient ground for proceeding, DISMISS the COMPLAINT.

The dismissal of a complaint shall not prevent subsequent proceedings.

If it appears to such Magistrate that there is sufficient ground for proceeding, he shall, if the case appears to be a summons case, ISSUE his SUMMONS, OR, if the case appears to be a warrant case, his WARRANT, for causing the accused person to appear before himself or some other Magistrate having jurisdiction.

148. When a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed, or is suspected of having committed, any offence triable by such Magistrate and punishable with fine only, or with imprisonment for a period not exceeding six months, or with both, the Magistrate may issue his SUMMONS directed to such person requiring him to appear at a certain time and place before such Magistrate to answer to the complaint.

If the Magistrate believes that the accused person is about to abscond, he may, instead of issuing a summons, issue a warrant in the first instance for the arrest of such person.

149. When a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed, or is suspected of having committed, any offence triable by such Magistrate and punishable with imprisonment for a period exceeding six months,
or when a complaint is made before any Magistrate empowered to commit persons for trial before the Court of Session, that any person has committed, or is suspected of having committed, any offence triable exclusively by the Court of Session, or which, in the opinion of such Magistrate, ought to be tried by the Court of Session,

such Magistrate may issue his WARRANT to arrest such person, or, if he thinks fit, his summons requiring him to appear to answer such complaint.

150. If the person served with a summons does not appear before the Magistrate at the time mentioned in such summons, and the Magistrate is satisfied that such summons was duly served in what the Magistrate deems a reasonable time before the time therein appoint- ed or appearing to the same,

or if it appears to the Magistrate that, after due diligence the summons could not be served according to the provisions of this Act,

the Magistrate may issue his WARRANT to apprehend the accused person.

151. In cases, of whatever nature, in which the Magistrate thinks fit to issue a summons, he may, if he sees sufficient cause, dispense with the PERSONAL ATTENDANCE of the ACCUSED person and permit him to appear by an AGENT duly authorized to act in his behalf.

But it shall be in the discretion of such Magistrate at any stage of the proceedings to direct the personal attendance of the accused person.

CHAPTER XII.

Of the Summons.

152.—Every summons issued by a Magistrate to an accused person shall be in writing, in duplicate, and shall be signed and sealed by such Magistrate, and shall be in the FORM (A) given in the second schedule to this Act, or to the like effect.

153. A summons shall ordinarily be SERVED THROUGH a POLICE officer; but the Magistrate issuing the summons may, if he see fit, direct it to be served by any other person.

154. The summons shall be served ON the ACCUSED PERSONALLY, in any district where he may be, by exhibiting one of the copies and delivering or tendering the other copy to him; or, in case the accused person cannot be found, the copy may be left for him with some ADULT MEMBER OF his FAMILY residing with him, and the person summoned, or the person with whom the copy is left shall sign a receipt therefore.

155. When the accused person cannot be found, and there is no adult male member of his family on whom the service can be made,
the serving officer shall FIX A COPY of the summons ON some conspicuous part of the HOUSE in which the accused person ordi-
narily resides.

156. A Magistrate may, notwithstanding the issue of such sum-
mons, either before the appearance of the accused person, as required
by such summons, or after default made by him so to appear, issue a
WARRANT of arrest against such person,

157. The Magistrate of the District, a Magistrate of a division of
a District, or a Magistrate of the first class duly authorized in that
behalf and having local jurisdiction in such district or division of a
district, may issue a summons or warrant for the apprehension of any
person within such District or division of a District, in respect of any
OFFENCE known or suspected to have been COMMITTED by such
person IN a DIFFERENT DISTRICT or division of a District, or
on the high seas, or in a foreign country, and for which, if committed
within the local jurisdiction of such Magistrate, he might issue a sum-
mons or warrant.

158. The PROVISIONS relating to a summons, its issue and
service, contained in this chapter, shall be APPLICABLE TO EVERY
SUMMONS issued under this Act, except a summons to serve as a
juror or assessor;

Provided that, when the person summoned is in the SERVICE OF
GOVERNMENT or of any RAILWAY COMPANY, the Court or
Magistrate issuing the summons may send the summons to the HEAD
OF THE OFFICE in which the person summoned is employed: and
such head shall thereupon cause the summons to be served on the per-
son named therein.

CHAPTER XIII.

On the Warrant.

159. Every warrant issued by a Magistrate shall be in writing,
and shall be signed and sealed by such Magistrate, and shall be in the
FORM (B) given in the second schedule to this Act, or to the like
effect.

The warrant issued under this chapter REMAINS IN FORCE
UNTIL the person arrested is brought into the PRESENCE of the
MAGISTRATE who issued it and so long as he remains before such
Magistrate. If the person arrested is to be remanded to CUSTODY,
an order must be made under section one hundred and ninety-four,
or a warrant issued under section three hundred and three.

160. It shall be in the DISCRETION of a Magistrate, in issuing a
warrant for the arrest of any person, to direct by endorsement on the
warrant that, if such person be willing and ready to give BAIL in a
sum to be fixed by the Magistrate, for his appearance before the Magis-
trate on a specified day, [which sum and day shall be named in such
endorsement] to answer the complaint, the officer to whom the warrant is directed shall accept such bail, and shall release from custody the person complained against.

If bail is given, the officer shall forward the bail-bond to the Magistrate.

161. A warrant shall ordinarily be DIRECTED TO a POLICE officer, but the Magistrate issuing a warrant may, if immediate execution be necessary, and no Police officer be immediately available, direct it to any other person.

162. The Magistrate of the District MAY DIRECT a warrant or warrants TO LANDHOLDERS, farmers or managers of land for the arrest of any escaped convict, proclaimed offender, or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Such landholder or other person shall acknowledge the receipt of the warrant and shall be bound to execute it, should the person, for whose arrest it was issued, enter on or be in his estate, farm or land under his charge.

Should the person against whom such warrant is issued be arrested, he shall be made over to the nearest Police officer with the warrant, and such Police officer shall cause such accused person to be carried before the Magistrate having jurisdiction, unless bail may be and is taken under section one hundred and sixty.

163. When a warrant is DIRECTED TO a PERSON OTHER THAN a POLICE officer, any other person may aid in executing such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

164. A warrant may be DIRECTED TO SEVERAL PERSONS, and, when so directed, may be executed by ALL, or by ANY ONE or more of such persons.

165. A warrant directed to a Police officer may also be executed by any other Police officer whose name is endorsed upon the warrant by the officer to whom the warrant is directed or endorsed.

166. The MAGISTRATE, by whom a warrant of arrest is issued, MAY ATTEND PERSONALLY for the purpose of seeing that the warrant is duly executed.

Any MAGISTRATE may also at any time direct the ARREST in his PRESENCE of any person for whose arrest he is competent to issue a warrant.

167. A warrant, issued by a Magistrate, SHALL ORDINARILY BE EXECUTED IN the DISTRICT in which it was issued.

But if the person, against whom the warrant is issued, escapes, goes into, or is in any place out of the district in which the warrant was issued, the warrant may be executed in such place.

168. A Magistrate may direct a warrant to be executed OUTSIDE his local JURISDICTION, either after endorsement by a Magistrate within whose local jurisdiction it is to be executed, or without such endorsement.
If the warrant is to be so endorsed, it may be sent by post to the Magistrate within whose local jurisdiction it is to be executed and by whom it is to be endorsed.

If the warrant is not to be endorsed, it shall be entrusted to a Police officer, to be taken either to a Magistrate or to a Police officer, not below the rank of an officer in charge of a station, in whose local jurisdiction the warrant is to be executed.

169. If a warrant is executed, whether with or without endorsement, outside the district in which it was issued, the person arrested shall, unless the Magistrate, who issued the warrant, be within twenty miles or be nearer than the Magistrate in whose local jurisdiction the arrest was made, or unless bail be taken under section one hundred and sixty, be CARRIED BEFORE the MAGISTRATE IN WHOSE local JURISDICTION the arrest was made.

170. A Magistrate or Police officer, to whom a warrant is directed for execution, shall execute the same or cause it to be executed, and any MAGISTRATE, BEFORE WHOM a PERSON is BROUGHT under the provisions of section one hundred and sixty-nine, shall, if the person arrested appears to be the person intended by the Magistrate who issued the warrant, direct his removal in custody to the Magistrate who issued the warrant.

or, if the offence be bailable, and the person arrested be ready and willing to give bail, shall take bail for his appearance before the Magistrate who issued the warrant, and the recognizance or bailbond shall be forwarded to such Magistrate.

In this section the word Magistrate includes a Commissioner of Police and a Magistrate of Police in the Presidency towns.

171. If any person accused of an offence, not coming within section one hundred and forty-eight, absconds or conceals himself, so that, upon a warrant issued against him he cannot be found, the Magistrate having jurisdiction shall, if he thinks, whether after taking evidence or not, such person absconds or conceals himself for the purpose of avoiding the service of the warrant, issue a written PROCLAMATION requiring him to appear to answer the complaint within a fixed period of not less than thirty days.

Such proclamation shall be publicly read in some conspicuous place of the town or village in which the accused person usually resides, and shall be affixed on some conspicuous part of his ordinary place of abode or on some conspicuous place of such town or village.

A copy of the proclamation shall also be affixed on some conspicuous part of such Magistrate's Court-house.

A statement by the Magistrate to the effect that the proclamation was duly made shall be conclusive evidence of the due compliance with the law.

172. Such Magistrate may order the ATTACHMENT OF any PROPERTY, moveable or immoveable, or both belonging to the person so ABSCONDING or CONCEALING himself.
Such order shall authorize the attachment of any property within the jurisdiction of the Magistrate of the District in whose district it is made, and it shall authorize the attachment of any property without the jurisdiction of the Magistrate of the District, when endorsed by the Magistrate of the District in which such property is situated.

The attachment under this section shall, if the property ordered to be attached be land paying revenue to Government, be made through the Collector of the District in which the land is situated and, in all other cases, by seizure under the order of the Magistrate having jurisdiction; or by the appointment of a manager and receiver; or by an order prohibiting the payment of rent to the absent person; as such Magistrate deems proper.

If the absent person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government, but shall not be sold until the expiration of six months, unless it is of a perishable nature, or such Magistrate considers that the sale would be for the benefit of the owner.

173. When any person, whose property has come under the disposal of Government under section one hundred and seventy two, appears, or is found within two years after the attachment of the property, and proves to the satisfaction of the Court or Session or High Court trying him for the offence of which he was accused or, if he is not tried in, or committed for trial for that offence to either of those Courts, to the satisfaction of the Magistrate of the District, that he did not abscond or conceal himself for the purpose of evading justice, such PROPERTY, or, if the same has been sold, the proceeds thereof, shall be RESTORED to him.

174. On the arrest of a person for whose apprehension a warrant has been issued under the provisions of Section one hundred and fifty-seven, in respect of an OFFENCE known or suspected to have been COMMITTED IN ANOTHER DISTRICT or division of a District, the Magistrate who issued the warrant shall, unless he is authorized to complete the inquiry himself, send the person arrested to the Magistrate within the limits of whose jurisdiction the offence is known or suspected to have been committed, or shall take bail for his appearance before such Magistrate, if the offence, of which such person is suspected, is bailable.

When the Magistrate, who issued the warrant, cannot satisfy himself as to the Magistrate to whom the person arrested should be sent, the case shall be reported for the orders of the High Court.

175. If the arrest was made under a warrant issued under section one hundred and fifty-seven by a Magistrate other than the Magistrate of the District, such Magistrate shall send the person arrested to the Magistrate of the District, unless the Magistrate, in whose jurisdiction the offence is suspected to have been committed, issues his warrant for the arrest of such person; in which case the person arrested shall be delivered to the Police officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

If the offence, of which the person arrested is suspected, has been committed in the jurisdiction of another Subordinate Court of the same
District, the Magistrate who issued the warrant under section 157 shall send the person arrested to the Magistrate of the division of the district in which the offence was committed.

176. A Police officer or other person, executing a warrant of arrest shall NOTIFY the SUBSTANCE OF the WARRANT to the person to be arrested, and, if required to do so shall show the warrant to such person.

177. In making an arrest, the Police officer, or other person executing the warrant shall actually TOUCH or confine THE BODY of the person to be arrested, unless there be a submission to the custody by word or action.

178. If a person, against whom a warrant of arrest is issued, FORCIBLY RESISTS the endeavour to arrest him the police officer or other person executing the warrant may use all means necessary to effect the arrest.

179. If there is reason to believe that any person, against whom a warrant has been issued, has entered into, or is within, any HOUSE or place, it shall be the duty of any person residing or in charge of such house or place on the demand of the Police officer or other person executing the warrant, to allow such Police officer or other person free ingress thereto, and to afford all reasonable facilities for a search therein.

180. The Police officer or other person authorized by warrant to arrest a person, MAY BREAK OPEN any outer or inner DOOR or window of any house or place, whether that of the person accused or of any other person, in order to execute such warrant, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

181. If information be received that a person, accused of any offence for which a warrant may issue, is concealed in an APARTMENT in the actual occupancy OF A WOMAN, who according to the customs of the country does not appear in public, the Police officer or other person employed to execute the warrant shall take such precautions as may be necessary to prevent the escape of the accused person.

If the accused person does not deliver himself up, the Police officer or other person authorized to execute the warrant may notify his authority and purpose, and demand admittance.

If after such notification and demand he cannot otherwise obtain admittance, he shall give notice to any woman as aforesaid in such apartment, not being a person against whom a warrant has been issued that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and execute the warrant.

182. The person arrested shall not be subjected to more RESTRAINT than is necessary to prevent his escape.

183. The officer or other person executing the warrant shall, without unnecessary delay, bring the person arrested before the Magistrate before whom he is required by this Act to produce him.
184. No Police officer or other person shall offer to the person arrested any INDUCEMENT, by threat or promise or otherwise, TO MAKE any DISCLOSURE.

But no Police or other person shall prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will.

185. The provisions relating to a warrant and its execution contained in this chapter, shall be applicable to every warrant of arrest issued under this Act.

PART V.
Of Inquiries and Trials.

CHAPTER XIV.
Preliminary.

186. Every person charged before any Criminal Court with an offence may of right be defended by any BARRISTER or attorney of a High Court, or by any pleader duly qualified under the provisions of Act No. 20 of 1865, or any other law in force for the time being relating to pleaders.

Any such person may, with the permission of the Court (but not otherwise), employ any mukhtiar or other person, not being a barrister, attorney, or pleader, to assist him in his defence.

If an ACCUSED person, though not insane, CANNOT BE MADE TO UNDERSTAND the PROCEEDINGS, the Court may proceed with the inquiry or trial; and if such inquiry results in a committal, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court, with a report of the circumstances of the case, and the High Court shall pass thereon such order as to it seems fit.

187. The place in which the Court of a Magistrate is held for the trial of any offence, or for the purpose of conducting an inquiry into any case triable by a Court of Session or High Court, and also every Court of Session and every High Court shall be deemed an OPEN and public COURT, to which the public generally may have access, so far as the same can conveniently contain them.

But the Magistrate or presiding Judge may, if he thinks fit, order that, during the inquiry into or trial of any particular case, no person shall have access to, or be, or remain in, the room or building used by the Court without the consent or permission of the Court.

188. In the case of OFFENCES which may lawfully be COMPOUNDED, injured persons may compound the offence out of Court, or in Court with the permission of the Court.

Such withdrawal from the prosecution shall have the effect of an acquittal of the accused person.
CHAPTER XV.
Of Inquiry into Cases triable by the Court of Session or High Court.

189. The following procedure shall be adopted in inquiries before Magistrates in cases triable by a Court of Session or High Court.

190. When the accused person appears or is brought before the Magistrate, or, if his personal attendance is dispensed with, when the Magistrate thinks fit, the Magistrate shall take the EVIDENCE of the complainant and of such persons as are stated to have any knowledge of the facts which form the subject-matter of the accusation and the attendant circumstances.

191. The complainant and the WITNESSES for the prosecution shall be examined IN THE PRESENCE OF the ACCUSED person, or of his agent, when his personal attendance is dispensed with and he appears by agent.

The ACCUSED PERSON or his agent shall be permitted to examine and re-examine his own witnesses and to CROSS-EXAMINE the complainant and his witnesses.

192. The MAGISTRATE MAY, at any stage of the proceedings, summon and EXAMINE ANY PERSON whose evidence he considers essential to the inquiry, and re-call and re-examine any person already examined.

193. The Magistrate may, from time to time, at any stage of the inquiry and without previously warning the ACCUSED person, EXAMINE him, and put such questions to him as he considers necessary.

The accused person shall not render himself liable to punishment for refusal to answer such questions, or for giving false answers to them, but the Magistrate shall draw such inference as may to him seem just, from such refusal.

Explanation.—The answers given by an accused person may be put in evidence against him, not only in the case under inquiry, but also in trials for any other offences which his replies may tend to show he has committed.

194. If, from the absence of a witness or from any other reasonable cause, it becomes necessary or advisable to defer the examination, of witnesses, the Magistrate may, by a written order, from time to time ADJOURN the inquiry, AND REMAND the accused person for such time as is deemed reasonable, not exceeding FIFTEEN days:

Instead of detaining the accused person in custody during the period for which he is so remanded, the Magistrate may release him upon his entering into a recognizance, with or without surety or sureties, at the discretion of such Magistrate, conditioned for his appearance before such Magistrate, at the time and place appointed for the continuance of such examination.

Explanation.—After commencing the inquiry, if sufficient evidence has been obtained to raise a suspicion that the person accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable ground for a remand.
195. When a Magistrate finds that there are not sufficient grounds for committing the accused person to take his trial before the Court of Session or High Court, or for remanding him, he shall DISCHARGE him, unless it appears to the Magistrate that such person should be put on his trial before himself, in which case he shall proceed under chapter XVI, XVII or XVIII of this Act.

Explanation I.—The absence of the complainant, except when the offence may lawfully be compounded, shall not be deemed sufficient ground for a discharge, if there appear other evidence of a nature rendering a trial desirable.

Explanation II.—A discharge is not equivalent to an acquittal, and does not bar the revival of a prosecution for the same offence.

Explanation III.—An order of discharge cannot be made until the evidence of the witnesses named for the prosecution has been taken.

196. When evidence has been given before a Magistrate which appears to justify him in sending the accused person to take his trial for an offence which is triable exclusively by the Court of Session or High Court, or which, in the opinion of the Magistrate, is one which ought to be tried by such Court, the accused person shall be SENT FOR TRIAL by such Magistrate before the Court of Session or High Court, as the case may be.

197. If such accused person (not being a European British subject)

is accused of having committed an offence conjointly with a European British subject who is about to be committed for trial, or to be tried, before the HIGH COURT on a similar charge,

he shall commit such accused person to take his trial before such High Court and not before a Court of Session; and such High Court shall have jurisdiction to try such person.

Explanation.—A commitment once made by a competent Magistrate can be quashed by the High Court only, and only on a point of law.

This explanation applies also to section one hundred and ninety-six.

198. —When the Magistrate determines to send the accused person before the Court of Session or High Court for trial, he shall, after the evidence has been recorded, make a written instrument under his hand and seal, declaring what offence the accused person is charged, and shall direct him to be tried by such Court on such charge. He shall also record his REASONS FOR COMMITTING such accused person.

A copy of such instrument shall be forwarded with the record of the original inquiry to the Court of Session before which the accused person is to be tried; and a copy shall also be sent to the public prosecutor or other officer appointed to conduct the prosecution.

Any weapon or other article of Property necessary to produce in evidence shall also be transmitted to the Court of Session.
When a commitment is made to the High Court, such instrument, record, and such weapon or other article shall be forwarded to the Clerk of the Crown or other officer appointed by the Court; and if any part of such record is not in English, a translation thereof in English shall be forwarded therewith.

199. As soon as the CHARGE, on which the accused person is to be tried, has been prepared, it shall be READ and EXPLAINED to him; and a copy or translation thereof shall be furnished to him, if he so require.

200. The ACCUSED PERSON shall be required at once to GIVE in, orally or in writing, A LIST OF WITNESSES, whom he wishes to be summoned to give evidence on his trial before the Court of Session or High Court.

The Magistrate may, if he thinks proper, summon the persons so named to attend and give evidence at the inquiry; and if he does so, the commitment shall not be considered to have been made until such evidence has been taken.

It shall be in the discretion of the Magistrate, subject to the provisions of section three hundred and fifty-nine, to allow the accused person to give in any FURTHER LIST of witnesses at a subsequent time.

201. When the enquiry is concluded, the accused person shall, if he demands them at a reasonable time before the trial, be furnished with COPIES OF THE DEPOSITIONS. Such copies shall be made at his expense, unless the Magistrate sees fit to give them free of cost.

202. When the accused person is committed to take his trial before the Court of Session or High Court, the Magistrate shall issue an order to the PUBLIC PROSECUTOR, Government Pleader or other person appointed by the Government to conduct prosecutions before the Court of Session or High Court, notifying such commitment, and stating the offence in the same form as the charge.

Nothing in this section shall preclude the Magistrate of the District in a case committed to the Court of Session, if he thinks fit, from appointing a person other than such Government Pleader or person to conduct the prosecution.

CHAPTER XVI.

Of the trial of summons cases by Magistrate.

203. The following procedure shall be observed in the trial of SUMMON CASES.

NO FORMAL CHARGE need at any time be made against the accused person, and neither the complaint nor the summons shall be regarded otherwise than as notice to the accused person of the facts to be inquired into. The Magistrate may convict the accused person of any offence (coming under this chapter) which, from the facts proved, he appears to have committed, whatever may be the nature of the complaint or summons.
No defect in the complaint or summons shall affect the validity of the proceedings, unless it appears that the accused person was actually misled by such defect, and in considering whether or not he was so misled the Court shall have regard to the manner in which the accused person conducted his defence.

204. If upon the day appointed, the accused person appears voluntarily in obedience to the summons in that behalf served upon him, or is brought before the Magistrate by virtue of a warrant or otherwise, it shall be at the discretion of the Magistrate to admit him to BAIL, or allow him to be at large upon his personal recognizance, as the Magistrate directs.

If the accused person cannot give bail, when required to do so, he shall be committed to custody.

205. If upon the day appointed for the appearance of the accused person, or any day subsequent thereto on which the case may be called on, the COMPLAINANT DOES NOT APPEAR, the Magistrate shall dismiss the complaint, unless for some reason he thinks proper to adjourn the hearing of the same to some other day. Such adjournment shall be made upon such terms as the Magistrate thinks fit.

206. On the appearance of both parties, on the day fixed for the trial, the SUBSTANCE OF the COMPLAINT SHALL BE STATED to the accused person, and he shall be asked if he has any cause to show why he should not be convicted.

If the accused person ADMIT THE TRUTH of the complaint, his admission shall be recorded, and if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly of such offence (coming under this chapter) as he may appear to have committed.

207. If the accused person DOES NOT ADMIT the truth of the complaint, the Magistrate shall proceed to hear the complainant and such witnesses as he produces in support of his complaint, and also to hear the accused person and such witnesses as he produces in his defence.

208. Before or during the hearing of any complaint, the Magistrate may, in order to secure the attendance of witnesses or for any other reason, ADJOURN the hearing of the same to a day to be then appointed and stated in the presence and hearing of the party or parties.

If on the day to which such hearing or such further hearing has been so adjourned, the accused person does NOT APPEAR the Magistrate may issue his WARRANT for the arrest of such person.

If the COMPLAINANT DOES NOT APPEAR the Magistrate may DISMISS the complaint.

209. A Magistrate may dismiss the COMPLAINT as FRIVOLOUS OR VEXATIOUS, and may, in his discretion, by his order of dismissal, award that the complainant shall pay to the accused person such COMPENSATION, not exceeding Rs. 50 as to such Magistrate seems just and reasonable.
In such cases, if more persons than one are accused in the complaint, the Magistrate may in like manner award compensation not exceeding fifty rupees to each of them.

The sum so awarded shall be recoverable by distress and sale of the moveable property belonging to the complainant, which may be found within the jurisdiction of the Magistrate of the District; and such order shall authorize the distress and sale of any moveable property belonging to the complainant without the jurisdiction of the Magistrate of the District, when the order has been endorsed by the Magistrate of the District in which such property is situated, and, if the sum awarded cannot be realized by means of such distress, by imprisonment of the complainant in the civil jail, for any time not exceeding thirty days, unless such sum is sooner paid.

210. If a complainant, at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to WITHDRAW his COMPLAINT, the Magistrate may permit him to withdraw it.

A complaint withdrawn under this section shall not again be entertained.

211. If the Magistrate, in any case tried under this chapter, finds the accused person not guilty, he shall record a judgment of ACQUITTAL.

If the accused person is convicted, the Magistrate shall pass sentence upon him according to law.

When the personal attendance of the accused person during the trial has been dispensed with, the sentence of the Magistrate, if the sentence be for fine only, may be pronounced in the presence of such accused person's agent, if he has been permitted to appear by agent; or the accused person may be required to attend to hear such sentence.

212. The DISMISSAL OF a COMPLAINT under this chapter shall operate in like manner as the ACQUITTAL of the accused person.

No complaint shall be dismissed under the provisions of this chapter except in so far as it refers to a summons case.

CHAPTER XVII.

Of the trial of warrant cases by Magistrates.

213. The following procedure shall be observed by Magistrates in the trial of WARRANT CASES,

214. The provisions one hundred and ninety to one hundred and ninety-four (both inclusive) shall apply to trials conducted under this chapter.

215. When the evidence of the complainant and of the witnesses for the prosecution, and such examination of the accused person as the Magistrate considers necessary, have been taken, the Magistrate, if he finds that no offence has been proved against the accused person, shall DISCHARGE him.
Explanation 1.—The absence of the complainant, except where the offence may be lawfully compounded, shall not be deemed sufficient ground for a discharge, if their appears other evidence sufficient to substantiate the offence.

Explanation 2.—A discharge is not equivalent to an acquittal and does not bar the revival of a prosecution for the same offence.

Explanation 3.—An order of discharge cannot be passed until the evidence of the witnesses named for the prosecution has been taken.

216. If the Magistrate finds that an offence is apparently proved against the accused person, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall prepare in writing a CHARGE against the accused person.

Explanation 1.—The omission to prepare a charge shall not invalidate the trial, if, in the opinion of the Court of appeal or revision, no failure of justice has been occasioned thereby.

Explanation 2.—If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to prepare a charge it shall order the trial to be recommenced from the point at which the charge should have been drawn up.

217. The charge shall then be read and explained to the accused person, and he SHALL BE ASKED WHETHER HE IS GUILTY or has any defence to make.

218. If the accused person have any DEFENCE to make to the charge, he shall be called upon to enter upon the same, and to produce his witnesses if in attendance, and shall be allowed to recall and cross-examine the witnesses for the prosecution.

If the accused person puts in any written statement, the Magistrate may file it with the record, but shall not be bound to do so.

219. The Magistrate shall, subject to the provisions of section three hundred and sixty-two, summon and witness and examine any EVIDENCE that may be offered IN BEHALF OF the ACCUSED person, to answer or disprove the evidence against him, and may for this purpose, at his discretion, adjourn the trial from time to time, as may be necessary.

220. If the Magistrate finds the accused person not guilty, he shall record judgment of ACQUITTAL.

If the accused person is convicted, the Magistrate shall pass sentence upon him according to law.

Explanation.—If a charge is drawn up, the prisoner must either be acquitted or convicted. If no charge is drawn up, there can be no judgment of acquittal or conviction, except in the case provided for in Explanation 1 to section two hundred and sixteen.

221. In any trial before a Magistrate, in which it may appear at any stage of the proceedings that from any cause the case is one which the MAGISTRATE is NOT COMPETENT to try, or one which, in the opinion of such Magistrate, ought to be tried by the Court of Session or High Court, the Magistrate shall STOP FURTHER
PROCEEDINGS under this chapter, and shall, when he either cannot or ought not to make the accused person over to an officer empowered under section thirty-six, commit the prisoner under the provisions hereinbefore contained. If such Magistrate is not empowered to commit he shall proceed under section forty-five.

CHAPTER XVIII.

Of Summary Trials.

222. The Magistrate of the District may try the FOLLOWING OFFENCES in a SUMMARY WAY, and, on conviction of the offender, may pass such sentence as may be lawfully inflicted under Section 20 of this Code:—

(1). Offences referred to in Section 148 of this Code.

(2). Offences relating to weights and measures under sections 264, 265, and 266 of the Indian Penal Code.

(3). Hurt, under section 323 of the Indian Penal Code.

(4). Theft, under section 379 of the Indian Penal Code, where the value of the property stolen does not exceed fifty rupees.

(5). Theft under section 380 of the Indian Penal Code, where the value of the property stolen does not exceed fifty rupees.

(6). Theft, under section 381 of the Indian Penal Code, where the value of the property stolen does not exceed fifty rupees.

(7). Receiving stolen property, under section 411 of the Indian Penal Code.

(8). Mischief, under section 427 of the Indian Penal Code.

(9). House-trespass, under section 448 of the Indian Penal Code.

(10). Criminal intimidation, under sections 504 and 506 of the Indian Penal Code.

(11). Abetment of, or attempt to commit, when such attempt is an offence, any of the foregoing offences.

223. The Local Government may invest any Magistrate of the 1st class with POWER TO TRY SUMMARILY all or any of the offences mentioned in section 222.

224. The Local Government may invest any BENCH OF MAGISTRATES invested with the powers of a Magistrate of the 1st class, with power to try summarily all or any of the offence mentioned in section 222.

225. The Local Government may invest any BENCH OF MAGISTRATES invested with the powers of a Magistrate of the 2ND OR 3RD CLASS with power to try summarily all or any of the following offences:—

Offences coming within sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426, 417, of the Indian Penal
Code: any offences against Municipal Acts, and the Conservancy Clause of Police Acts punishable with fine or with imprisonment not exceeding one month.

220. In trials under this chapter the provisions of this Code in regard to summons cases shall be followed in respect of summons cases, and the PROCEDURE for warrant cases in respect of warrant cases, with the exceptions hereinafter provided.

227. In case where no appeal lies, the Magistrate or Bench of Magistrates NEED NOT RECORD the EVIDENCE of the witnesses nor the reasons for passing the Judgment, nor draw up a formal change but he or they shall enter in a register, to be kept for the purpose, the following particular:

(a) The serial number;
(b) The date of the commission of the offence;
(c) The date of the report or complaint;
(d) The name of the complainant;
(e) The name, parentage and residence of the accused person;
(f) The offence complained of or proved;
(g) The prisoner’s plea;
(h) The finding, and, in the case of conviction, a brief statement of the reasons therefor;
(i) The sentence; and
(j) The date on which the proceedings terminated.

228. If a Magistrate or Bench of Magistrates, acting under section 222, 223 or 224, passes a sentence of more than three months’ imprisonment, or of fine exceeding 200 rupees;

or if a Bench of Magistrates, acting under section 225, convicts any person,

such Magistrate or Bench of Magistrates shall, before passing sentence, RECORD a JUDGMENT embodying the substance of the evidence on which the conviction was had, and also the particulars mentioned in section 227.

Such judgment shall be the only record in cases coming within this section.

229. Records made under section 227 and judgments recorded under section 228 shall be written by the presiding officer, either in ENGLISH OR in the LANGUAGE OF the DISTRICT in which the trial was held, or, by direction of the Court to which such presiding officer is immediately subordinate, in the language of the presiding officer.

230. The Local Government may authorize any Bench of Magistrates, empowered to try offences summarily, to prepare the aforesaid record or judgment by means of an OFFICER of such COURT, and the record or judgment so prepared shall be signed by each member of such Bench present conducting the proceedings.
CHAPTER XIX.

Trial by Court of Session.

231. No Court of Session shall take COGNIZANCE OF any OFFENCE, as a Court of original criminal jurisdiction, unless the accused person has been committed by a Magistrate duly empowered in that behalf, except in the cases referred to in section 472.

232. All trials before the Court of Session shall be either by JURY, or conducted with the aid of two or more ASSESSORS.

233. The Local Government may order that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by JURY, in any District, and such Local Government may from time to time revoke or alter such order.

Orders passed under this section shall be published in the official Gazette, and in such other manner as the Local Government from time to time directs.

Explanation.—If an offence triable with assessors is tried by a jury, the trial shall not on that ground merely be invalid. If an offence triable by a jury is tried with assessors, the trial shall not on that ground merely be invalid, unless objection be taken before the Court records its finding.

234. Criminal trials before the Court of Session in which a EUROPEAN (not being a European British subject) OR an AMERICAN, is the accused person, or one of the accused persons, SHALL be by JURY.

In such case the jury, if such European or American desire it, shall consist of at least one-half of Europeans, whether European British subjects or not, or Americans, if such a jury can be procured.

Provided that, in any District in which the Local Government has not ordered that all trials before the Court of Session, or trials for all offences of the class within which the trial about to take place falls, shall be by jury, such European or American may elect to be tried without jury.

235. In every trial before a Court of Session, the prosecution shall be conducted by the PUBLIC PROSECUTOR, Government Pleader, or by some other officer especially empowered by the Magistrate of the District in that behalf.

236. In trials by jury before the Court of Session, the JURY shall consist of such UNEVEN NUMBER, NOT being LESS THAN THREE nor MORE THAN NINE, as the Local Government, by any general order applicable to any particular District or to any particular classes of offences in that District, directs.

237. When the Court is ready to commence the trial, the accused person shall be brought before it, and the charge shall be read and explained to him, and he SHALL BE ASKED WHETHER HE is GUILTY of the offence charged, or claims to be tried.

If the accused person pleads guilty, the plea shall be recorded, and he may be convicted thereon,
238. If the accused person REFUSES TO, or does not PLEAD, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed, and to try the case.

239. When the trial is to be with ASSESSORS, the assessors shall be CHOSEN, as the Judge thinks fit, from the persons summoned to act as assessors.

240. When the trial is to be by jury, the JURY shall be CHOSEN BY LOT from the persons summoned to act as jurors.

241. In a trial by jury before the Court of Session of a person not being a EUROPEAN OR an AMERICAN, at least one-half of the jury, shall, if the accused person desire it, consist of persons who are neither Europeans nor Americans.

242. In any case before the Court of Session, in which a EUROPEAN or AMERICAN is charged JOINTLY with a person of any OTHER race, such other person shall, if he desire it, be tried separately if the European or American claims to be tried by a jury consisting of at least one-half of Europeans and Americans.

243. As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused person shall be asked if he objects to be tried by such juror.

OBJECTION may then be made to such JUROR by the accused person or by the Public Prosecutor, Government Pleader, or other person appointed to conduct the prosecution, and the grounds of objection shall be stated.

Any objection made to a juror shall be decided by the Court, and the decision of the Court shall be final.

If an objection be allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons; or, if there be no such juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury, provided no objection to such juror or other person be made and allowed.

244. Any objection taken to a juror on any of the following GROUNDS, if made ext to the satisfaction of the Court, shall be allowed:

1. any ground of disqualification within section four hundred and five;
2. standing in the relation of husband, master or servant, landlord or tenant, to the person alleged to be injured or attempted to be injured by the offence charged, or to the person on whose complaint the prosecution was instituted, or to the person accused;
3. being in the employment of any of such persons;
4. being plaintiff or defendant against any of such persons in any civil suit;
5. having complained against, or having been accused by, any of such persons in any criminal prosecution;

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any circumstance which, in the judgment of the Court, is likely to cause prejudice against, or favour to, any of such persons, or which renders such person improper as a juror.

245. The Judge shall not allow any person to serve on the jury, unless such person UNDERSTANDS the LANGUAGE in which the evidence is given or interpreted.

246. When the jury has been completed, they shall appoint one of their number to be FOREMAN.

It shall be the duty of the foreman to preside in the debates of the jury, to deliver the verdict of the jury, and to ask any information from the Court that may be required by the jury.

If a majority of the jury do not agree in the appointment of a foreman, he shall be named by the Court.

247. The WITNESS shall then be examined, cross-examined and re-examined according to the law for the time being relating to the examination of witnesses.

248. The EXAMINATION of the ACCUSED person before the committing Magistrate shall be given in evidence at the trial.

249. When a witness is produced before the Court of Session, or High Court, the EVIDENCE given by him BEFORE the COMMITTING MAGISTRATE may be referred to by the Court if it was duly taken in the presence of the accused person, and the Court may, if it think fit, ground its judgment thereon, although the witnesses may at the trial make statements inconsistent therewith.

Explanation.—This section shall not authorize the Court to refer to the record of the evidence given by a witness who is absent, except in the cases in which such evidence may be referred to under the Indian Evidence Act or other law in force for the time being upon the subject of evidence.

250. The Court MAY, from time to time, at any stage of the trial, EXAMINE THE ACCUSED person, AND SHALL QUESTION HIM generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence.

251. When the examination of the witnesses for the prosecution and the examination of the accused person is concluded, the accused person shall be asked whether he means to call witnesses. If he says that he does not, the prosecutor may sum up his case. The Court may then, if it thinks that there are NO GROUNDS FOR PROCEEDING, in a case tried by a jury, instruct the jury to return a verdict of acquittal.

If the Court considers that there are GROUNDS FOR PROCEEDING, it shall call on the accused person to state his grounds of defence and produce his witnesses.

The accused person or his Counsel or authorized Agent may then state the case for the defence, and may examine the witnesses, if any, produced for the defence, and at the conclusion of such examination may sum up his case.
252. If any evidence is adduced on behalf of the accused person, the officer conducting the prosecution shall be entitled to reply.

253. Whenever, in the opinion of the Court, it is proper and convenient that the jury or assessors should view the place, in which the offence charged is said to have been committed, or any other place in which any other transaction material to the inquiry in the trial took place, an order shall be made to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place which shall be shown to them by a person appointed by the Court.

Such officer shall not suffer any other person to speak to, or hold any communication with any of the jury or assessors; and they shall, when the view is finished, be immediately conducted back into Court.

254. If, in the course of a trial by jury at any time prior to the finding, any juror, from any sufficient cause, is prevented from attending through the trial, or if any juror absent himself, and if it is not possible to enforce his attendance,

a new juror shall be added, or the jury shall be discharged, and a new jury empanelled, and in either case the trial shall commence anew.

255. When the case for the defence and the prosecutor's reply, if any, are concluded, the Court shall proceed—

in case tried with assessors, to ask the assessors their opinion, and shall record it;

in cases tried by jury, to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

A statement of the Judge's direction to the jury shall form part of the record.

256. It is the DUTY OF the Judge to decide all questions of law and especially all questions as to the relevancy of facts which it is proposed to prove; the admissibility of evidence or the propriety of questions asked by parties or their agents which may arise in the course of the trial; and, in his discretion, to prevent the production of inadmissible evidence whether it is or is not objected to by the parties;

to decide upon the meaning and construction of all documents given in evidence at the trial;

to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

to decide whether any question which arises is for himself or for the jury; and upon this point his decision shall be final.

The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact relevant to the proceeding.

Illustrations.

(a.) It is proposed to prove a statement made by a person not called as a witness under circumstances which render evidence of his statement admissible.
It is for the Judge and not for the jury to decide whether the existence of those circumstances has been proved.

(1.) It is proposed to give secondary evidence of a document, the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

257. If is the DUTY OF the JURY—

(1) TO DECIDE WHICH VIEW OF THE FACTS IS TRUE, and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned;

(2) to determine the meaning of all technical terms and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;

(3) to decide all questions declared by the Indian Penal Code, or any other law to be questions of fact;

(4) to decide whether general indefinite expressions do or do not apply to particular cases unless such expressions refer to legal procedure or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(a.) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong and whether they do or do not agree with it.

(b.) The question is whether a person entertained a reasonable belief on a particular point. Whether work was done with reasonable skill, or due diligence.

Each of these is a question for the jury.

258. If a JURYMAN or assessor is personally acquainted with any relevant fact it is his duty to inform the Judge that such is the case, whereupon he MAY BE EXAMINED, cross-examined and re-examined in the same manner as any other witness.

259. If, in the course of a trial with the aid of assessors, at any time prior to the finding, any ASSESSOR is, from any sufficient cause, PREVENTED FROM ATTENDING through the trial, the trial, shall proceed with the aid of the other assessor or assessors.

260. If a TRIAL is ADJOURNED, the jury or assessors shall be required to attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

261. In cases tried with assessors, the Court shall proceed to pass judgment of acquittal or conviction, having considered the OPINIONS OF ASSESSORS, but not being bound to conform to them. If the accused person is convicted, the Court shall proceed to pass sentence on him according to law.

262. The OPINION of each ASSESSOR shall be GIVEN ORALLY and shall be recorded in writing by the Court; but the decision is vested exclusively in the Judge.

263. In cases tried by jury the jury may retire to consider their VERDICT. It shall be the duty of an officer of the Court not to suffer
any person to speak to or hold any communication with any member of such jury. When the jury have considered their verdict, the foreman shall inform the Court what is their verdict, or what is the verdict of a majority.

The jury shall return a verdict on all the charges on which the accused is tried, and the Court may ask them such questions as are necessary to ascertain what their verdict is. Such questions and the answers to them shall be recorded.

If the jury are not unanimous, the Judges may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

If the Court does not think it necessary to dissent from the verdict of a majority of the jurors, it shall give judgment accordingly. If the accused person is acquitted, the Court shall record judgment of acquittal. If the accused person is convicted, the Court shall proceed to pass sentence on him according to law.

If the Court disagrees with the verdict of the jurors or of a majority of such jurors, and considers it necessary for the ends of justice to do so, it may submit the case to the High Court, and may either remand the prisoner to custody or admit him to bail.

The High Court shall deal with the case so submitted as with an appeal, but it may convict the accused person on the facts, and if it does so, shall pass such sentence as might have been passed by the Court of Session.

264. The Court may in its discretion, POSTPONE the hearing of the case and may, from time to time, adjourn the trial, if it considers that such ADJOURNMENT is proper and will promote the ends of justice,

265. The same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as to the Court seems fit.

PART. VI.

Appeal. Reference, and Revision.

CHAPTER XX.

Appeals.

266. Any person convicted on a TRIAL held BY any MAGISTRATE of the 2ND OR 3RD CLASS, or any person sentenced by a competent Magistrate of the 2nd class under section 46 may appeal to the MAGISTRATE OF THE DISTRICT, or to a Magistrate of the 1st class who has been empowered by the Local Government to hear such appeals.
267. Any person required by a Magistrate of the 1st Class to give Security for Good Behaviour, under section 504 or section 505, may appeal to the Magistrate of the District.

268. Any person convicted by any Civil, Criminal, or Revenue Court, under Chapter XXXII of this Act, may appeal to the Court of which decrees or orders made in such Court are ordinarily appealable, whatever may be the amount of the sentence passed, subject to the rules provided in sections 273, 277, 278, 280, 281 and 282.

An appeal from such conviction by a small Cause Court may be made to the Court of Session within whose Sessions Division such Court is situate.

269. Any person convicted on a trial held by the Magistrate of the District or other Magistrate of the 1st Class or any person sentenced under section 46 by a competent Magistrate of the 1st Class, may appeal to the Court of Session.

The appellant shall in every case give notice of appeal to the Magistrate of the District, who shall, if necessary, instruct the Public Prosecutor, Government Pleader or other officer empowered by Government or by the Magistrate of the District to prosecute the case.

270. Any person, convicted on a trial held by any officer invested with the power described in Section 36, may appeal to the High Court, if it appear from the sentence awarded that such officer was in such trial exercising such special powers. No appeal in such case shall lie to the Court of Session.

Any person convicted by an Assistant Sessions Judge may appeal to the Sessions Judge if the sentence appealed against does not exceed three years' imprisonment.

A sentence of an Assistant Sessions Judge confirmed, under section 18, by the Sessions Judge may be appealed to the High Court.

271. Any person convicted on a trial held by a Session Judge may appeal to the HIGH COURT.

The appeal may be on a matter of fact as well as on a matter of law.

If the conviction was in a trial by jury, the appeal shall be admissible on a matter of law only.

If such person be sentenced to death, the Sessions Court shall inquire whether he wishes to appeal, and if he signifies his intention to appeal, the Court shall inform him that his appeal must be made within seven days, and shall delay the transmission of the reference, herein-after required, for a reasonable time, not exceeding seven days, to allow of the appeal and reference being made at the same time.

When it appears that the execution of the sentence should not be delayed, the Sessions Court may record its reasons and forward the reference at once.

In no case requiring confirmation shall the High Court grant a longer delay than is herein allowed for the presentation of an appeal.

Where the reasons given by the Sessions Court for forwarding the reference at once are sufficient, the High Court shall decide the case in the absence of an appeal.
When, under the provisions of the law in force, judgments or orders made or passed by the High Court are made or passed either in appeal, reference or revision, by a Court consisting of more than one Judge, any difference of opinion shall be settled by adding, when the High Court is composed of more than two Judges and the Court is equally divided, one or more Judges, and in such event the judgment or order shall follow the opinion of the majority of the Judges.

272. The Local Government may direct an appeal by the Public Prosecutor or other officer, specially or generally appointed in this behalf, from an original or appellate judgment of ACQUITTAL; but in no other case shall there be an appeal from a judgment of acquittal passed in any Criminal Court.

Such appeal shall lie to the High Court, and the rules of limitation shall not apply to appeals presented under this section.

The High Court may in any case so appealed direct a new trial by another Court, or may pass such judgment, sentence or order as may be warranted by law.

273. There shall be NO APPEAL in cases in which a Court of Session, or the Magistrate of a District or other Magistrate of the 1st class, passes a sentence of imprisonment not exceeding one month only, or of whipping only.

There shall be no appeal from a sentence of imprisonment passed by such Court or officer in default of payment of fine when no substantive sentence of imprisonment has been passed.

Where an accused person has been convicted on his own plea, whether on a trial with assessors or by jury, there is no appeal, except as to the extent or legality of the sentence.

274. There shall be NO APPEAL IN CASES TRIED SUMMARILY in which a Magistrate of the District, or a Magistrate or Bench of Magistrates invested with the power of of a Magistrate of the 1st class, empowered to act under section 222, 223 or 224, passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding 200 rupees only, or of whipping only.

An appeal may be brought against any sentence referred to in section 273 or 274, by which any two or more of the punishments therein mentioned are combined, but not against a sentence in which imprisonment is awarded in default of payment of fine and in addition thereto.

Nor against any sentence which would not otherwise be liable to appeal because the person convicted is ordered to find security to keep the peace.

The provision of THIS and the last proceeding SECTION shall NOT APPLY to appeals from orders passed on EUROPEAN BRITISH SUBJECTS under section 74 or 76.

275. Every petition of appeal shall be accompanied by a COPY OF the JUDGMENT or order appealed against.

276. A copy of the judgment or other order passed by any Criminal Court, and, in cases tried by jury, of the Judge's charge to the jury,
shall be furnished without delay on the application of any person affected by such sentence or order.

Such copy shall be made at the expense of the person applying for it, unless he is in jail, or unless the Court, for some special reason, sees fit to grant such copy free of expense.

277. If the PARTY appealing be IN JAIL, he shall be at liberty to present his petition of appeal and the copy of the judgment or order appealed against to the Magistrate or other officer in charge of the jail, who shall thereupon forward the petition to the proper appellate authority.

278. The Appellate Court shall fix a reasonable time within which the appellant or his counsel or authorized agent may appear, and it MAY REJECT THE APPEAL if, on a perusal of the petition of appeal and the copy of the judgment or order appealed against, and after hearing the appellant or his counsel or authorized agent, if he appears, it considers that there is no sufficient ground for questioning the correctness of the decision or for interfering with the sentence or order appealed against.

Before rejecting the appeal, the Court may call for and peruse all or any part of the proceedings of the lower Court, but shall not be bound to do so.

279. If the Appellate Court decide to hear the appeal, it shall cause NOTICE TO be given to the APPELLANT, AND, if the appeal be to the Session or High Court, shall also give notice to the MAGISTRATE OF THE DISTRICT, who shall inform, if necessary, the Public Prosecutor, Government Pleader or other officer empowered by Government on that behalf, of the day on which such appeal will be heard.

280. The APPELLATE COURT, after perusing the proceedings of the lower Court, and after hearing the appellant, his counsel or agent, if they appear, and the Public Prosecutor, Government Pleader or other officer empowered by Government or by the Magistrate of the District in that behalf, if he appears, MAY ALTER OR REVERSE the finding and sentence or order of such Court, and may, if it see reason to do so, ENHANCE any PUNISHMENT that has been awarded:

Provided that, if the appeal is from the sentence of a Magistrate of any class, the Appellate Court shall not inflict a greater punishment than might have been inflicted by a Magistrate of the first class.

281. In any case, in which an appeal is allowed, the Appellate Court may, pending the appeal, order that the SENTENCE be SUSPENDED, and if the appellant be in confinement for an offence which is bailable, may order that he be released on bail.

The period during which the sentence is suspended shall be omitted in reckoning the completion of the punishment.

282. In any case, in which an appeal has been allowed, the Appellate Court, if it thinks FURTHER INQUIRY or additional evidence upon any point bearing upon the guilt or innocence of the appellant to be necessary, may either make such further inquiry and take such additional evidence itself or may direct such inquiry to be made and additional evidence to be taken.
If the Appellate Court takes further evidence and passes judgment and sentence, no fresh right of appeal arises in respect of such sentence.

When the evidence has not been taken before itself, the result of the further inquiry and the additional evidence shall be certified to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

Unless the Appellate Court otherwise directs, the presence of the appellant may be dispensed with when the further inquiry is made or evidence taken.

The provisions of this Act relating to summoning and enforcing the attendance of witnesses and their examination shall, so far as may be, apply to witnesses examined under this section.

283. NO FINDING OR SENTENCE PASSED BY A COURT of competent jurisdiction SHALL BE REVERSED or ALTERED on appeal on account of any error or defect, either in the charge or in the proceedings on or before trial, or on account of the improper admission or rejection of any evidence, or by any misdirection in any charge to a jury, UNLESS SUCH ERROR or defect HAS OCCASIONED A FAILURE OF JUSTICE, either by affecting the due conduct of the prosecution, or by prejudicing the prisoner in his defence.

No irregularity in the proceedings up to trial is a sufficient ground for reversing any judgment, sentence or order made or passed in a trial properly held.

In case the accused person has been sentenced to a larger amount of punishment than could have been awarded for the offence, which, in the judgment of the Appellate Court, is proved by the evidence, the Appellate Court may reduce the punishment within the limits prescribed by the Indian Penal Code or any law for the time being in force for such offence.

284. When any Court has convicted a person of an OFFENCE NOT TRIABLE by such Court, the Appellate Court shall annul the conviction and sentence of such Court, and direct the trial of the case by a Court of competent jurisdiction.

285. JUDGMENTS, sentences and orders passed by an Appellate Court upon APPEAL shall be FINAL, except in the cases provided for in sections 272 and 297.

286. NO APPEAL shall lie from any judgment, sentence or order of a Criminal Court, EXCEPT IN the CASES PROVIDED for by this Act or by any law for the time being in force.

Illustrations.

(a) There is no appeal against an order refusing to grant compensation, or to grant an enhanced award.

(b) There is no appeal against an order of a competent Magistrate dismissing a complaint.

(c) There is no appeal against an order requiring a person to furnish security to keep the peace.

(d) There is no appeal against an order requiring a person to furnish security to be of good behaviour, when such order is passed by the Magistrate of the District.

(e) There is no appeal against an order passed under chapter 39; nor against a report by a jury under that chapter.
CHAPTER XXI.

Reference.

287. If the Court of Session pass SENTENCE OF DEATH, the proceedings shall be referred to the High Court, and the sentence shall not be executed without its CONFIRMATION by the High Court.

If the accused person is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall, in its judgment, state the reason why sentence of death was not passed.

288. In any case so referred, whether tried with assessors or by jury, the High Court may either CONFIRM the sentence, OR PASS any OTHER SENTENCE warranted by law, OR may ANNUL the conviction and order a new trial on the same or an amended charge, or may acquit the accused person.

289. If the High Court think FURTHER INQUIRY or additional evidence upon any point bearing upon the guilt or innocence of the accused person to be necessary, it may direct such inquiry to be made, or such additional evidence to be taken.

Unless the Court of Reference otherwise directs, the presence of the convicted person may be dispensed with when the further inquiry is made or evidence taken, and neither under this section nor under section 282 is such inquiry to be made or evidence taken in the presence of jurors or assessors.

The result of the further inquiry and the additional evidence shall be certified to the High Court, and the High Court shall thereupon proceed to pass judgment of acquittal, or to confirm the sentence, or to pass such sentence as it thinks fit.

290. In every case so referred to the High Court, THE CONFIRMATION OF THE SENTENCE, or any new sentence, or order passed by the High Court, shall, when such High Court consists of two or more Judges, be DETERMINED and signed BY at least TWO JUDGES of such Court.

291. When a High Court of reference, revision, or appeal, consists of A SINGLE JUDGE, such Judge shall have all the powers conferred upon two or more Judges of the High Court by this chapter.
CHAPTER XXII.

Superintendence and Revision.

292. The High Court may make and issue general RULES—

for keeping all books, entries and accounts to be kept in all Criminal Courts subordinate to it, and

for the preparation and transmission of any calendars or statements to be prepared and submitted by such Courts;

and may also frame forms (when not prescribed by this Act) for every proceeding in the said Courts for which it thinks that a form should be provided,

and from time to time may alter any such rule or form:

and, with the concurrence of the local Government may make and issue general rules for regulating the practice and proceedings of all Criminal Courts subordinate to it, and, with the like sanction, may alter any such rule;

and a High Court not established by Royal Charter may, with the concurrence of the local Government, make and issue rules for regulating the practice and proceedings of that Court, and, with the like sanction, may alter any such rule:

Provided that such rules and forms be not inconsistent with the provisions of this Act, or of any other law in force for the time being.

All rules framed by the Court and all repeals and alterations thereof under this section, shall be published in the official Gazette.

293. All Subordinate Courts shall send to the High Court such periodical statements, or CALENDARS, of trials held by such Courts as the High Court prescribes, exhibiting the offences charged, the offences of which the accused persons are convicted, and the sentences or orders passed upon them.

294. The HIGH COURT MAY CALL FOR and examine the RECORD of any case tried by any Subordinate Court for the purpose of satisfying itself as to the legality or propriety of any sentence or order passed, and to the regularity of the proceedings of such Court.

295. Any COURT OF SESSION or MAGISTRATE of the District MAY, at all times, CALL FOR and examine the RECORD of any Court subordinate to such Court or Magistrate, for the purpose of satisfying itself or himself as to the legality of any sentence or order passed and as to the regularity of the proceedings of such Subordinate Court.

For the purposes of this section, every Magistrate in a Sessions Division shall be deemed to be SUBORDINATE to the Sessions Judge of the Division.

296. If the Court of Session or Magistrate of the District is of opinion that the judgment or order is contrary to law, or that the punishment is too severe or is inadequate, such Court or Magistrate may REPORT the proceedings FOR the ORDERS OF the HIGH COURT.
Provided that in session cases if a Court of Session or Magistrate of the District considers that a complaint has been improperly dismissed or that an accused person has been improperly discharged by a Subordinate Court, such Court or Magistrate may direct the accused person to be committed for trial.

297. If, in any case either called for by itself or reported for orders, or which comes to its knowledge, it appears to the High Court that there has been a MATERIAL ERROR in any judicial proceeding of any Court subordinate to it, it shall pass such judgment, sentence or order thereon as it thinks fit.

If it considers that an accused person has been IMPROPERLY DISCHARGED, it may order him to be tried, or to be committed for trial;

If it considers that the CHARGE has been INCONVENIENTLY FRAMED, and that the facts of the case show that the prisoner ought to have been convicted of an offence other than that of which he was convicted, it shall pass sentence for the offence of which he ought to have been convicted;

Provided that if the ERROR IN THE CHARGE appears materially to have misled and prejudiced the accused person in his defence, the High Court shall annul the conviction and remand the case to the Court below with an amended charge, the Court below shall thereupon proceed as if it had itself amended such charge.

If the High Court considers that any person convicted by a Magistrate has committed an OFFENCE NOT TRIABLE by such Magistrate, it may annul the trial and order a new trial before a competent Court.

If it considers that the SENTENCE passed on the accused person is one which CANNOT LEGALLY BE PASSED for the offence of which the accused person has been convicted, or might have been legally convicted upon the facts of the case, it shall annul such sentence and pass a sentence in accordance with law.

If it considers that the sentence passed is too severe, it may pass any lesser sentence warranted by law; if it considers that the sentence is inadequate, it may pass a proper sentence.

The High Court may, whenever it thinks fit, order that the SENTENCE, in any case coming before it as a Court of Revision, be SUSPENDED; and that any person imprisoned under such sentence be released on bail, if the offence for which such person has been imprisoned be bailable.

Except as provided in sections 328 and 398, no Court other than the High Court, shall alter any sentence or order of any Subordinate Court except upon appeal by the parties concerned.

No person has any RIGHT TO BE HEARD before any High Court, in the exercise of its powers of revision, either personally or by agent, but the High Court may, if it thinks fit, hear such person either personally or by agent.

298. The High Court, the Court of Session or the Magistrate of the District may order any subordinate Court to inquire into any COMPLAINT which has been DISMISSED under section 147.
299. When a case is revised by the High Court under this chapter, it shall CERTIFY ITS DECISION or order to the Court in which the conviction was had or by which the order was passed; or if the conviction or order was passed by a Magistrate other than the Magistrate of the District, to the Magistrate of the District.

The Court or Magistrate to which the High Court certifies its order shall thereupon make such orders as are conformable to the decision of the High Court, and, if necessary, the record shall be amended in accordance therewith.

In cases revised by the High Court under this chapter, the High Court shall not alter or reverse the sentence or order of the Court below, except as herein provided, nor shall it reverse or set aside the verdict of a jury, unless it is of opinion that the jury was misdirected by the Judge. In that case it may set aside the verdict and direct a new trial, if it think fit to do so.

300. The provisions of section 283 shall apply to revision orders under this chapter.

PART VII.
Execution,

CHAPTER XXIII.

301. In CASES REFERRED by the Court of Session for the confirmation of a sentence of death by the High Court, the proper officer of the High Court shall without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order under the seal of the High Court, and attested with his official signature, to the Court of Session.

Such Court shall, if the sentence be confirmed or commuted, issue a warrant to the officer in charge of the jail in which the prisoner is confined, to cause the sentence or order to be carried into execution; or, in the case of any other orders, shall cause such orders to be carried into effect.

302. In CASES TRIED BY the COURT OF SESSION, the Court shall forward a copy of its finding and sentence to the Magistrate of the District in which the trial was held.

If the accused person is sentenced to transportation, imprisonment or whipping, the Court shall forthwith forward him, with a warrant for the execution of the sentence, to the officer in charge of the jail of the district in which the trial was held.

The warrant shall state the offence of which the accused person has been convicted and the period during which he is to be transported or imprisoned and the nature of the imprisonment or other punishment.

In CASES TRIED BY any COURT INFERIOR TO a COURT OF SESSION, the Court passing the sentence shall forthwith forward.
the accused person with a similar warrant for the execution of the sentence, to the officer in charge of the jail of the district in which the trial was held.

303. Every WARRANT for the commitment of a person to custody shall be in writing and signed and sealed by the Judge or Magistrate who issues it, and shall be directed to some jailor or other officer or person having authority to receive and keep prisoners, and shall be in the Form (C or D as the case may be) given in the second schedule to this Act, or to the like effect.

304. The WARRANT of commitment shall be LODGED WITH the JAILOR, if he be in the jail; and if he be not in the jail with his deputy.

If the jailor has no deputy, the warrant may be lodged with any officer of the jail then being in the jail.

305. Upon the receipt of a warrant under section 301 or 302, the officer in charge of the jail shall cause the sentence to be executed, and shall return the warrant, when the sentence has been fully executed, to the Court from which it issued with an endorsement under his signature, certifying the manner in which the sentence has been executed.

306. If a WOMAN sentenced to death be found to be PREGNANT, the High Court shall order the execution of the sentence to be postponed, and may commute the sentence.

307. Whenever an offender is sentenced to pay a FINE, the Court which sentences him, may issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, whether or not the offence be punishable with fine only and whether or not the sentence direct that, in default of payment of the fine, the offender shall suffer imprisonment.

Such warrant may be executed within the jurisdiction of the Court that issued it, and it shall authorize the distress and sale of any moveable property belonging to the offender without the jurisdiction of the said Court, when endorsed by the Magistrate of the District in which such property is situated.

This section shall not apply to cases in which any special procedure is laid down by any special or local law, in force for the time being, for the recovery of any fine, but shall apply to cases in which no such procedure is laid down, and to all fines not levied when this Act comes into force, but which might have been levied under this section if it had been in force when they were imposed.

The warrant may be issued either by the Judge or Magistrate who passes the sentence or by his successor in office.

308. Whenever a Criminal Court imposes a fine under any law in force for the time being, or confirms in appeal or revision a sentence of such fine, or a sentence of which such fine forms a part, the Court may order the whole or any part of the FINE to be paid IN COMPENSATION.
(1) for expenses properly incurred in the prosecution,

(2) for the offence complained of, where such offence can, in the opinion of the Court, be compensated by money.

Such payment shall be made, as the Court thinks fit, to or for the benefit of the complainant, or the person injured, or both.

If the fine be awarded by a Court whose decision is subject to appeal or revision, the amount awarded shall not be paid until the period prescribed for presentation of the appeal has elapsed, or, if an appeal be presented, till after the decision of the appeal.

In any subsequent civil proceedings relating to the same matter, the Court shall take into account any sum which may have been awarded under this section.

309. In every case punishable, under any law in force for the time being, with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, the Criminal Courts shall be guided by the provisions of sections 64 and 65 of the Indian Penal Code in awarding the period of IMPRISONMENT IN DEFAULT of payment of the fine:

Provided that, in no case decided by a Magistrate, where imprisonment shall have been awarded as part of the substantive sentence, shall the period of imprisonment, awarded in default of payment of the fine, exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

When a person is sentenced to fine only, the Magistrate may award such term of imprisonment in default of payment of fine as is allowed by law, provided the amount does not exceed the Magistrate's power under this Act.

310. When the punishment of WHIPPING is awarded in addition to imprisonment, by a Court whose sentence is open to revision by a superior Court, the whipping shall not be inflicted until fifteen days from the date of such sentence, or, if an appeal be made within that time, until the sentence is confirmed by the superior Court; but the whipping shall be inflicted immediately on the expiry of the fifteen days, or, in case of an appeal, immediately on the receipt of the order of the Appellate Court confirming the sentence.

311. In the case of persons of or over sixteen years of age, the punishment of whipping shall be inflicted with such instrument, in such MODE and on such part of the person as the Local Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in the way of school discipline with a light rattan.

In no case, if the cat-of-nine-tails be the instrument employed, shall the punishment of whipping exceed 150 lashes, or if the rattan be employed, shall the punishment exceed thirty stripes.

The punishment shall be inflicted in the presence of a Magistrate, and also, unless the Court which passed the sentence otherwise orders, in the presence of a Medical Officer.
312. No sentence of WHIPPING shall be carried into execution unless a Medical Officer, if present, certifies, or, if there is not a Medical Officer present, unless it appears to the Magistrate present, that the offender is, in a FIT STATE OF HEALTH to undergo the punishment.

If during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the Magistrate present, that the offender is not in a fit state of health to undergo the remainder of the punishment, the whipping shall be finally stopped.

No sentence of whipping shall be executed by INSTALMENTS.

313. In any case in which, under section 312, a sentence of whipping is, wholly or partially, prevented from being carried into execution, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either order the discharge of such offender, or SENTENCE him, IN LIEU OF WHIPPING, or in lieu of so much of the sentence of whipping as was not carried out, to IMPRISONMENT for any period, which may be in addition to any other punishment to which he may have been sentenced for the same offence:

Provided that the whole period of imprisonment to which such offender is sentenced shall not exceed that to which he is liable by law, or that which the said Court is competent to award.

314. When a PERSON is CONVICTED AT ONE TRIAL OF TWO OR MORE OFFENCES punishable under the same or different sections of any law for the time being in force, the Court may sentence him, for the offences of which he has been convicted, to the several penalties prescribed by such enactment or enactments, which such Court is competent to inflict; such penalties, when consisting of imprisonment or transportation, to commence the one after the expiration of the other.

It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence to send the offender for trial before a higher Court.

Provided that in no case shall such person be sentenced to imprisonment for a longer period than 14 years:

Provided also that, if the case be tried by a Magistrate, (other than a Magistrate acting under section 36) the punishment shall not in the aggregate exceed twice the amount of punishment which he is by his ordinary jurisdiction competent to inflict.

315. Whoever, having been convicted of an offence punishable under chapter 12 or chapter 17 of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall ordinarily, if the Magistrate considers him an HABITUAL OFFENDER, be committed to the Court of Session:

Provided that, in districts in which the Magistrate of the District has been invested with powers under section 36, the accused person may be placed on his trial before such Magistrate of the District.
316. When sentence is passed on an ESCAPED CONVICT for such escape or for any other offence, the Court may direct the sentence to take effect immediately, or after such convict has suffered imprisonment or transportation, as the case may be, for a further period equal to that which remained unexpired of his former sentence at the time of his escape.

317. When sentence is passed on a PERSON ALREADY UNDER SENTENCE of imprisonment or transportation, and the sentence is for imprisonment or transportation, the Court shall direct that such imprisonment or transportation shall commence at the expiration of the imprisonment or transportation to which such person has been previously sentenced,

or, if he is undergoing a sentence of imprisonment, and the sentence, on such subsequent conviction, be for transportation, the Court may direct that the sentence shall commence immediately, or at the expiration of the imprisonment to which such person has been previously sentenced:

Provided that nothing in this section shall be held to excuse such person from any part of the punishment to which he is liable upon such former or subsequent conviction.

318. When any person, under the age of sixteen years, is sentenced, by any Criminal Court to imprisonment for any offence, such Court may direct that the offender, instead of being imprisoned in the criminal jail, shall be confined in any REFORMATORY established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Government prescribes with regard to the discipline and training of persons confined therein.

All persons confined under this section shall be subject to the rules so prescribed by Government.

319. The Governor General of India in Council may, from time to time, appoint a place or places within British India to which persons sentenced to TRANSPORTATION shall be sent: the Local Government, or some officer duly authorized by such Government, shall give orders for the removal of such persons to the place or places so appointed; and no sentence of transportation shall specify the place to which the person sentenced is to be transported.

320. When sentence is passed on a person already undergoing transportation under a sentence previously passed for another offence, it shall not be necessary for the Local Government to order his removal from the place in which he is so undergoing transportation.

321. When any person is SENTENCED TO DEATH, the sentence shall direct that he be hanged by the neck till he is dead.

322. When any person has been sentenced to punishment for an offence, the Governor General of India in Council, or the Local Government, may, at any time, without conditions, or upon any conditions which the person sentenced accepts, REMIT the whole or any part of the PUNISHMENT to which he has been sentenced.
If the person, to whom a pardon has been given, fails to fulfil the conditions prescribed by the Governor General of India in Council, or the Local Government, the Governor General of India in Council or the Local Government, as the case may be, may WITHDRAW such PARDON, whereupon such person shall be remanded to undergo the unexpired portion of his sentence.

The Governor General of India in Council, or the Local Government, may also, without the consent of the person sentenced, in substitution for the sentence passed according to law, COMMUTE any one of the following SENTENCES for any other mentioned after it—

death, transportation, penal servitude, imprisonment.

PART. VIII.
Evidence.

CHAPTER XXIV.

Special Rules of Evidence in Criminal Cases.

323. The examination of a CIVIL SURGEON or other medical witness, taken and duly attested by a Magistrate, may be given in evidence in any criminal trial although the person examined is not called as a witness.

The Court may summon such Civil Surgeon or other medical witness, if it sees sufficient cause for doing so.

324. If an accused person admits the commission of an offence before a Court competent to try him for such offence, such Court may convict him on his own ADMISSION.

325. Any document purporting to be a REPORT FROM the CHEMICAL EXAMINER or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report, in the course of any criminal trial, or in any preliminary inquiry relating thereto, may, if it bears his signature, be used as evidence in any criminal trial,

The Court may presume that the signature of any such document is genuine and that the person signing it held the office which he professed to hold at the time when he signed it.

326. Where a PREVIOUS CONVICTION or acquittal is to be proved against an accused person, application shall be made to the officer in whose custody the records of such trial may be. It shall not be necessary to produce the record of the conviction or acquittal of such accused person, or a copy thereof, but an extract may be produced in proof of such conviction or acquittal if certified under the hand of the Clerk of the Court or other officer having the custody of the records of the Court in which such conviction or acquittal was had, or by the Deputy of such Clerk or officer, to be a copy of the charge, finding and sentence, as the case may be.
327. If an accused person abscond, and after due pursuit cannot be arrested, any Court, competent to try or to commit such accused person for trial for the offence complained of, MAY, IN his ABSENCE, RECORD the STATEMENTS of the persons acquainted with the facts; and such depositions may, on the arrest of such person, be put in on his trial for such offence, if it is not practicable to procure the attendance of such witnesses.

328. Whenever any Magistrate, after having heard part of the evidence in a case, ceases to exercise jurisdiction in such case and is succeeded by another Magistrate who has and who exercises jurisdiction in such case, such last-named Magistrate may decide the case on the EVIDENCE PARTLY RECORDED by his PREDECESSOR and partly recorded by himself, or he may re-summon the witnesses and commence afresh:

Provided that the accused person may, when the second Magistrate commences his proceedings, demand that the witness shall be re-summoned and re-heard, in which case the trial shall be commenced a fresh.

Provided also that any Court of Appeal or revision, before which the case may be brought,

or, in cases tried by Magistrates subordinate to the Magistrate of the District, the Magistrate of the District, without appeal,

may set aside any conviction, passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or Magistrate is of opinion that the accused person has been materially prejudiced thereby: and may order a new trial.

329. Whenever, from any cause, a Magistrate making an inquiry, under chapter 15 of this Act, is unable to complete the proceedings himself, any other Magistrate having jurisdiction to inquire or to commit, may complete the case and proceed as if he had recorded all the evidence himself.

330. Whenever it appears that the attendance of a witness cannot be procured without an amount of delay, expense or inconvenience which under the circumstances of the case would be unreasonable, it shall be competent to a Court of Session or to a High Court to dispense with the personal attendance of such witness.

Such Court of Session or High Court may direct a COMMISSION to the Magistrate of the District, or to a Magistrate of the 1st class, in whose jurisdiction such witness may be. The Magistrate to whom the commission is directed shall proceed to the place where such witness is, or shall summon such witness before himself. Such Magistrate shall take the evidence of such witness in the same manner, and shall have for this purpose and may exercise the same powers, as in trials of warrant cases.

The prosecutor and the accused person may forward interrogatories to which the officer to whom the commission is directed shall cause a return to be made, or the prosecutor may appear personally before the Magistrate to whom the commission is directed, or the prosecutor or accused person may so appear by authorized agent.
Whenever, in the course of a trial before a Magistrate, it shall appear that a commission ought to be issued for the examination of a witness whose evidence is necessary in such trial, such Magistrate shall apply to the Court of Session, to which he is subordinate, stating the reasons for the application; and such Court may either issue a commission in the manner hereinbefore provided, or may reject the application.

CHAPTER XXV.

Evidence how taken.

331. In all Criminal Courts, complainants and witnesses shall be examined upon OATH OR AFFIRMATION, or otherwise according to the provisions of the law for the time being in force in relation to the examination of witnesses.

332. In inquiries and trials (other than summary trials) under this Act, the EVIDENCE of the witnesses SHALL BE RECORDED by the Magistrate or Sessions Judge as the case may be, IN THE FOLLOWING MANNER.

333. In SUMMONS CASES tried before Magistrates, and in cases of the kind referred to in section 222 when tried by a Magistrate of the 1st or 2nd class, otherwise than at a summary trial, the Magistrate shall make a memorandum of the substance of the evidence of each witness, as the examination of the witness proceeds.

Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record.

334. In ALL OTHER CASES before Magistrates and in all proceedings before Courts of Session, the evidence of each witness shall be taken down in writing in the language in ordinary use in the district in which the Court is held, by or in the presence and hearing and under the personal direction and superintendence of the Magistrate or Sessions Judge, and shall be signed by the Magistrate or Sessions Judge.

When the evidence of a witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand; and an authenticated translation of the same, in the language in ordinary use in the district in which the Court is held, shall form part of the record.

If the accused person be a European British subject or be familiar with the English language, no translation shall be necessary.

In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each wit-
ness proceeds, make a memorandum of the substance of what such wit-
ness deposes and such memorandum shall be written and signed by the
Magistrate or Sessions Judge, with his own hand, and shall form part
of the record.

If the Magistrate or Sessions Judge is prevented from making a
memorandum as above required, he shall record the reason of his in-
ability to do so,

335. The Local Government may direct that in any district or
part of a district, or in proceedings before any Court of Session, or
before any Magistrate or class of Magistrates, the EVIDENCE of com-
plainants or witnesses shall be TAKEN DOWN BY THE SES-
SIONS JUDGE OR MAGISTRATE WITH HIS OWN HAND
in the vernacular language of the Sessions Judge or Magistrate, unless
the Session Judge or Magistrate be prevented by any sufficient reason
from taking down the evidence of any complainant or witness, in which
case he shall record the reason of his inability to do so, and shall cause
the evidence to be taken down in writing from his dictation in open
Court.

The evidence so taken down shall be signed by the Sessions Judge
or Magistrate, and shall form part of the record:

Provided that, if the vernacular language of the Sessions Judge or
Magistrate be not English or the language in ordinary use in the dis-
trict in which the Court is held, the Local Government may direct him
to take down the evidence in the English language, or in the language
in ordinary use in the district in which the Court is held, instead of his
own vernacular.

336. In cases of the kind referred to in section 333, tried before
Magistrates, the Magistrate may if he thinks fit, take down the evi-
dence of any witness in the manner provided in section 334, or if,
within the jurisdiction of such Magistrate, the Local Government has
made the order referred to in section 335, in the manner provided in
section 335.

337. The Local Government may determine what, for the pur-
poses of this Act, shall be held to be the LANGUAGE IN ORDI-
NARY USE in any district in which a Court is held.

338. The evidence taken under section 334 shall not ordinarily be
taken down in the form of question and answer, but in the FORM OF
A NARRATIVE.

It shall be in the discretion of the Magistrate or Sessions Judge to
take down, or cause to be taken down, any particular question and
answer, if there appears any special reason for so doing, or if any per-
son who is a prosecutor or a person accused, or his Counsel or agent,
requires it.

339. As the evidence of each witness, taken under section 334,
is completed, it shall be READ OVER TO the WITNESS in the
presence of the accused person, if in attendance, or of his agent, when
his personal attendance is dispensed with and he appears by agent,
and shall, if necessary, be corrected.
If the witness deny the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

If the evidence be taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his evidence as taken down to be interpreted to him in the language in which it was given, or in a language which he understands.

340. In all cases whatever, when the evidence is given in a LANGUAGE NOT UNDERSTOOD BY the ACCUSED person, it shall be interpreted to him in open Court in a language understood by him, where he is present in person.

If he appears by agent, and the evidence is given in a language other than the language in ordinary use in the district in which the Court is held, it shall be interpreted to such agent in that language.

In cases in which documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

341. Every Sessions Judge or Magistrate recording the evidence of a witness shall record such remarks as he thinks material respecting the DEMEANOUR OF such WITNESS whilst under examination.

Of the Examination of accused Persons.

342. In all inquiries and trials a Criminal Court may from time to time and at any stage of the proceedings, put any QUESTIONS TO the ACCUSED person which such Court may think proper.

344. Except as is provided in section 347, no influence, by means of any promise or threat or otherwise, shall be used to the accused person to INDUCE him TO DISCLOSE or withhold any matter within his knowledge.

343. The accused person shall not be liable to any punishment for refusing to answer, or for answering falsely questions, asked under section 342, but the Court shall draw such inferences as seems just from such refusal.

345. NO OATH OR AFFIRMATION shall be administered TO the ACCUSED person.

346. Whenever an accused person is examined the whole of such examination, including EVERY QUESTION put to him and EVERY ANSWER given by him, shall be recorded in full, and he shall be at liberty to explain or add to his answers.

When the whole is made conformable to what he declares is the truth, the examination shall be attested by the signature of the Magistrate or Sessions Judge, who shall certify under his own hand that it was taken in his presence and in his hearing, and contains accurately the whole of the statement made by the accused person.
In cases in which the examination of the accused person is not recorded by the Magistrate or Sessions Judge himself, he shall be bound as the examination proceeds, to make a memorandum thereof in the vernacular of the district, or in English, if he is sufficiently acquainted with that language; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall be annexed to the record. If the Magistrate or Sessions Judge is precluded from making a memorandum as above required, he shall record the reason of his inability to do so.

The accused person shall sign or attest by his mark such record.

If the examination be taken in the course of a preliminary inquiry and the Court of Session find that the provisions of this section have not been fully complied with, it shall take evidence that the prisoner duly made the statement recorded: Provided that if the error does not prejudice the prisoner, it shall not be deemed to affect the admissibility of the statement so recorded.

347. The Magistrate of the District, any Magistrate of the 1st class inquiring into the case, or with the sanction of the Magistrate of the District, any Magistrate duly empowered to commit to the Court of Session, may, after recording his reason for so doing, TENDER a PARDON to any one or more of the persons supposed to have been directly or indirectly concerned in or privy to any offence specified in column seven of the fourth schedule hereto annexed as triable exclusively by the Court of Session, on condition of his or their making a full, true and fair disclosure of the whole of the circumstances, within his or their knowledge, relative to the crime committed, and every other person concerned in the perpetration thereof.

Any person accepting a tender of pardon under this section shall be examined as a witness in the case under the rules applicable to the examination of witnesses.

Such person, if not on bail, shall be detained in custody pending the termination of the trial.

A Magistrate, having tendered a pardon under this section and examined the accused person, is precluded from trying the case himself.

348. The High Court as a Court of revision, and the Court of Session after committal but before the commencement of a trial, may, with the view of obtaining on the trial the evidence of any person or persons supposed to have been directly or indirectly concerned in or privy to any such offence, INSTRUCT the committing MAGISTRATE TO TENDER a PARDON on the same condition to such person or persons.

The Court of Session, in like manner and on the same condition, may, at any time before judgment is passed, with the view of obtaining on the trial the evidence of any person or persons supposed to have been directly or indirectly concerned in or privy to any such offence, tender a pardon to such person or persons.

349. When a pardon has been tendered under section 347, or section 348, if it appears to the Magistrate before the trial, or to the Court of Session before judgment has been passed, or to the High
Court as a Court of reference or revision, that any person, who has accepted such offer of pardon, has not conformed to the conditions under which the pardon was tendered, either by wilfully concealing anything essential, or by giving false evidence, such Magistrate or Court may commit or direct the commitment of such person for trial for the offence in respect of which the pardon was so tendered.

The statement made by a person under pardon, which PARDON has been WITHDRAWN under this section, may be put in evidence against him.

CHAPTER XXVI.

Of Securing the Attendance of Witnesses.

350. The following procedure shall be pursued in order to obtain the ATTENDANCE OF WITNESSES before a Magistrate or Criminal Court.

351. Any Court or Magistrate may at any stage of any proceeding inquiry or trial SUMMON, in the manner provided by Chapter 12, any witness, or examine any person in attendance though not summoned as a witness, and it shall be its or his duty to do so if the evidence of such person appears essential to the just decision of the case.

352. If a Court or Magistrate has reason to believe that any witness, whose attendance is required, will not attend to give evidence without being compelled to do so, it or he may, instead of issuing a summons, issue a WARRANT of arrest in the first instance.

353. If such warrant cannot be executed and the Court or Magistrate considers that the witness absconds or conceals himself for the purpose of avoiding the service thereof, it or he may issue a PROCLAMATION, requiring the attendance of such witness to give evidence at a time and place to be named therein, to be affixed on some conspicuous part of such witness' ordinary place of abode.

If the witness does not attend at the time and place named in such proclamation, the Court or Magistrate may order the ATTACHMENT of any movable property belonging to such witness to such amount as seems reasonable, not being in excess of the amount of costs of attachment and of any fine to which the witness may be liable under the provisions of the following section.

Such order shall authorize the attachment of any movable property within the jurisdiction of the Court or Magistrate by whom it was made; and it shall authorize the attachment of any movable property without the jurisdiction of the said Court or Magistrate, when endorsed by the Magistrate of the District in which such property is situated.

354. If the witness appears and satisfies such Court or Magistrate that he did not abscond or conceal himself for the purpose of avoiding the execution of the warrant, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court or Magistrate shall direct that the PROPERTY be RELEASED FROM ATTACHMENT, and shall make such order in regard to the costs of the attachment as to such Court or Magistrate seems fit.
If such witness does not appear, or appearing, fails to satisfy the Court or Magistrate that he did not abscond or conceal himself for the purpose of avoiding the execution of the warrant, and that he had not such notice of the proclamation as aforesaid, the Court or Magistrate may order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of any fine which may be imposed upon such witness under the provisions of section 172 of the Indian Penal Code.

If the witness pays to such Court or Magistrate the costs and fine as aforesaid, his property shall be released from attachment.

355. If any PERSON SUMMONED to give evidence NEGLECTS or refuses TO APPEAR at the time and place appointed by the summons, and no reasonable excuse is offered for such neglect or refusal, the Court or Magistrate, upon proof of the summons having been duly served, may issue a warrant under his hand and seal, to bring such person before him to testify as aforesaid.

356. If any PERSON summoned or brought before a Magistrate REFUSES TO ANSWER such questions as are put to him, without offering any reasonable excuse for such refusal, such Magistrate may, by warrant under his hand and seal, commit him to custody for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer; after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of sections 435 or 436.

Inquiries.

357. In INQUIRIES PRELIMINARY TO COMMITMENT to a Court of Session or High Court, the Magistrate shall procure the attendance of the witnesses for the prosecution as in cases usually tried upon warrant; and it shall be in his discretion to summon any witness offered on behalf of the accused person to answer or disprove the evidence against him. If the Magistrate refuses to summon a witness so offered he shall record his reasons for such refusal.

The Magistrate may summon and examine SUPPLEMENTARY WITNESSES after commitment and before the commencement of the trial, and bind them over to appear and give evidence. Such examination shall, if possible, be taken in the presence of the accused person, and, in every case, a copy of the examination of such witnesses shall be given him free of cost.

358. In such inquiries, when the person accused is to be committed for trial and has given in the list of witnesses mentioned in section 200, the MAGISTRATE SHALL SUMMON the WITNESSES to appear before the Court before which the accused person is to be tried.

359. If the Magistrate thinks that any WITNESS is INCLUDED in the list FOR the PURPOSE OF VEXATION OR DELAY or of defeating the ends of justice, he may require the accused person to satisfy him that there are reasonable grounds for believing that such witness is material.
If the Magistrate be not so satisfied, he shall not be bound to summon the witness; but, in doubtful cases, he may summon such witness, if such a sum is deposited with the Magistrate as he thinks necessary to defray the expense of obtaining the attendance of the witness.

360. Prosecutors and witnesses for the prosecution and defence, whose attendance is necessary before the Court of Session or High Court, shall execute before the Magistrate RECOGNISANCES, in the Form (F) given in the second schedule to this Act, or to the like effect, to be in attendance when called upon at the Court of Session or High Court, to prosecute or to give evidence as the case may be.

If any prosecutor or witness refuses to attend before the Court of Session or High Court, or to execute the recognizance above directed, the Magistrate may detain him in custody, until he executes such recognizance, or until the time when his attendance at the Court of Session or High Court is required, when the Magistrate shall send him under custody to the Court of Session or High Court.

**Summons Cases.**

361. In summons cases, the Magistrate may summon any person who appears to him likely to give material evidence on behalf of the complainant or the accused.

Ordinarily it shall be the duty of the complainant and accused, in non-cognizable cases, to produce their own witnesses.

In such cases it shall be in the discretion of the Magistrate to summon any witnesses named by the complainant or the accused; and he may require, in such cases, a deposit of the expenses of a witness before summoning him.

**Warrant Cases.**

362. In warrant cases, the Magistrate shall ascertain from the complainant, or otherwise, the names of any persons who may be acquainted with the facts and circumstances of the case, and who are likely to give evidence for the prosecution, and shall summon such of them to give evidence before him as he thinks necessary.

The Magistrate shall also, subject to the provisions of section 359, summon any witness and examine any evidence that may be offered in behalf of the accused person to answer or disprove the evidence against him, and may for that purpose, at his discretion, adjourn the trial from time to time. If the Magistrate refuse to summon a witness named by the accused person, he shall record his reasons for such refusal, and the accused person shall be entitled to appeal to the Court of Session against such refusal.

**Sessions Trials.**

363. The accused person shall be allowed to examine any WITNESS NOT PREVIOUSLY NAMED by him, if such witness be in attendance; but he shall not, except as provided in section 448, be entitled of RIGHT TO HAVE any WITNESS SUMMONED other than the witnesses named in the list delivered to the Magistrate by whom he was committed or held to bail for trial.
364. If a witness before a Court of Session REFUSES TO ANSWER any question which is put to him, and does not offer any just excuse for such refusal, the Court may commit him to custody for such reasonable time as it deems proper, unless in the meantime he consents to be examined and to answer.

In the event of such witness persisting in his refusal, he may be dealt with according to the provisions of section 435 or 436.

Of Securing Documentary Evidence.

365. Whenever an officer in charge of a Police-station or any Court considers that the production of any document is necessary or desirable for the purposes of any investigation or judicial proceeding, such officer or Court may issue a SUMMONS TO the PARTY, IN WHOSE KEEPING such document is believed to be, requiring him to attend and produce such document at the time and place stated in the summons.

366. If there appears reason to believe that the person, to whom the summons is addressed, will not produce it as directed in the summons, such officer or Court may issue a SEARCH-WARRANT FOR the DOCUMENT in the first instance.

367. Any Court may, if it thinks fit, IMPOUND any DOCUMENT produced before it, or may, at the conclusion of the proceedings, order such document to be returned to the person who produced it.

CHAPTER XXVII.

Of Search-Warrants.

368. When a Magistrate considers that the production of anything is essential to the conduct of an inquiry into an offence known or suspected to have been committed, or to the discovery of the offender,

or when he considers that such inquiry or discovery will be furthered by the search or inspection of any house or place,

he may grant his SEARCH-WARRANT; and the officer charged with the execution of such warrant may search or inspect any house or place within the jurisdiction of the Magistrate of the District.

The Magistrate, issuing such warrant, may, if he see fit, specify in his warrant the house or place, or part thereof, to which only the search or inspection shall extend; and the officer, charged with the execution of such warrant, shall then search or inspect only the house, place, or part so specified.

369. The last preceding section shall not authorize any Magistrate other than the Magistrate of the District, to grant a SEARCH-WARRANT FOR a LETTER IN the custody of the POSTAL DEPARTMENT;

but if any such letter is wanted for the purpose of any criminal proceeding, any Magistrate or District Superintendent of Police may give notice to the Postal authorities to cause search to be made for
and to detain any such letter, pending the orders of the Magistrate of the District; and the Magistrate of the District may, if he thinks fit direct the Postal authorities to deliver up any such letter.

370. A search-warrant SHALL ORDINARILY be DIRECTED TO a POLICE officer; but the Magistrate issuing the warrant may after recording his reasons, if immediate search is necessary and no Police officer be immediately available, direct it to any other person.

371. A search-warrant directed or endorsed to a Police officer may, if he is not able to proceed in person, be executed by any other Police officer.

In such case the name of such Police officer shall be endorsed upon the warrant by the officer to whom it is directed or endorsed.

372. When it is necessary for a SEARCH-WARRANT to be executed OUT OF the DISTRICT in which it was issued, any Magistrate, within whose local jurisdiction the warrant is to be executed, shall endorse his name thereon.

Such ENDORSEMENT shall be sufficient authority for the Police officer charged with the execution of the warrant to execute the same within the said jurisdiction.

Or the search-warrant may be directed to the Magistrate, within whose local jurisdiction the search is to be made; and he shall thereupon endorse his name on such warrant and enforce its execution in the same manner as if it had been issued by himself.

373. Whenever there is reason to believe that the delay, occasioned by obtaining the endorsement of the Magistrate in whose District the warrant is to be executed, will prevent the discovery of the thing for which search is to be made, the Police officer charged with the execution of the warrant may execute the same in any place beyond the district in which it was issued WITHOUT the ENDORSEMENT of the Magistrate in whose local jurisdiction that place is situate.

If the thing, for which search is made, is found in such place, it shall, when the place where the thing is found is nearer to the Magistrate having jurisdiction in such place than to the Magistrate who issued the warrant, be immediately taken before the Magistrate in whose local jurisdiction it is found; and unless there be good cause to the contrary, such Magistrate shall make an order authorizing it to be taken to the Magistrate who issued the warrant.

If the thing be not found after such search, the Police officer making the same shall, in addition to the return made to the Magistrate who issued the warrant, report the fact to the Magistrate in whose local jurisdiction the search was made.

374. If the thing searched for be found within a PRESIDENCY TOWN, it shall be taken to the Commissioner of Police or to a Police Magistrate; and such Commissioner or Magistrate shall act in the manner prescribed in section 373.

375. Whenever it appears necessary, a Magistrate may, by his warrant, order SEARCH to be made in a place OUT OF his JURISDICTION, and may direct that the warrant be executed either after or
without obtaining the endorsement of the Magistrate within whose jurisdiction the search is to be made.

When a Magistrate issues a warrant under this section, he shall inform the Magistrate within whose local jurisdiction the house or place to be searched is situate, or if the house or place be situate within a Presidency town he shall inform the Commissioner of Police, of the issue of such warrant.

376. A Magistrate issuing a search-warrant to be executed in any house or place out of the jurisdiction of the Magistrate of the District, or out of his own division, may direct the warrant to any Magistrate within whose local jurisdiction such house or place is situate, and MAY SEND the same BY POST.

On receipt of such warrant by the Magistrate to whom it is directed, he shall endorse his name thereon and enforce its execution in the same manner as if it had been originally issued by himself.

If the warrant is to be executed within a PRESIDENCY TOWN it shall be addressed to the Commissioner of Police or to a Police Magistrate.

In such case any property found on search made may be dealt with as provided in sections 373 and 374.

377. If the Magistrate of the District, or a Magistrate of a division of a District, or a Magistrate of the 1st class, upon information and after such inquiry as he thinks necessary, has reason to believe that any HOUSE or place is USED as a place FOR the DEPOSIT OR SALE OF STOLEN PROPERTY,

or for the deposit or sale or manufacture of forged documents, or counterfeit Government stamps, or counterfeit coin, or instruments or materials for counterfeiting coin or for forging,

or that any forged documents, or counterfeit stamps, or false seals, or counterfeit coin, or instruments or materials used for counterfeiting coin, or for forging, are kept or deposited in any house or place,

he may by his warrant authorize any Police officer above the rank of a constable to enter, with such assistance as may be required, and by force, if necessary, any such house or place, and to search all such parts of the same as are specified in the warrant, and to seize and take possession of any property, documents, stamps, seals, or coins, therein found, which he reasonably suspects to be stolen, forged, false, or counterfeit, and also of any such instruments and materials as aforesaid.

378. The MAGISTRATE, by whom a search-warrant is issued, MAY ATTEND PERSONALLY for the purpose of seeing that the warrant is duly executed.

The Magistrate may also direct a search to be made in his presence, of any house or place for the search of which he is competent to issue a search-warrant.

379. Whenever an officer in charge of a Police-station, or a POLICE OFFICER making an investigation, considers that the production of anything is necessary to the conduct of an investigation into
any offence which he is authorized to investigate, he MAY SEARCH or cause search to be made for the same, in any house or place within the limits of the station of which he is in charge or to which he is attached.

In such case, the officer in charge of the Police-station or Police officer making investigation shall, if practicable, conduct the search in person.

If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, the officer in charge of the Police-station, or Police officer making investigation, may require any officer subordinate to him to make the search; and he shall deliver to such subordinate officer an order in writing, specifying the property for which search is to be made and the house or place to be searched, and such subordinate officer may thereupon search for such property in such house or place.

The provisions of sections 382 to 385 (both inclusive), relating to search-warrants, shall be applicable to a search, made, under this section, by or under the direction of an officer in charge of a Police-station or by a Police officer making an investigation.

380. An officer in charge of a Police-station MAY REQUIRE an OFFICER IN CHARGE OF ANOTHER POLICE-STATION, whether subordinate to the same Magistrate as himself or to a Magistrate of another District, TO CAUSE a SEARCH to be made in any house or place in any case in which the former officer might cause such search to be made within the limits of his own station.

Such officer, on being so required, shall proceed according to the provisions of section 379, and shall forward the thing found, if any, to the officer at whose request the search was made.

381. An officer in charge of a Police-station may, without a warrant, enter any shop or premises within the limits of such station for the purpose of INSPECTING or searching for any WEIGHTS or MEASURES or instruments for weighing used or kept therein, whenever he has reason to believe that there are in such shop or premises any weights, measures, or instruments for weighing which are false.

If such officer finds in such shop or premises any weights, measures, or instruments that are false, he may seize the same, and shall forthwith give information of such seizure to the Magistrate having jurisdiction.

382. Whenever any house or place liable to search or inspection, under this chapter, is closed, any PERSON residing in or being IN CHARGE OF such HOUSE or place SHALL, on demand of the officer or other person executing the warrant, ALLOW such officer or other person FREE INGRESS thereto, and afford all reasonable facilities for a search therein.

383. A Police officer, or other person authorized by a warrant to search any house or place, MAY BREAK OPEN any outer or inner DOOR or WINDOW of such house or place, in order to execute the warrant, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.
384. If the place ordered to be searched is an APARTMENT IN the actual OCCUPANCY OF A WOMAN, who, according to the customs of the country, does not appear in public, the officer or other person charged with the execution of the warrant shall give notice to such woman in such apartment, not being a woman against whom a warrant of arrest has been issued, that she is at liberty to withdraw.

After giving such notice and allowing a reasonable time for such woman to withdraw, and affording her every reasonable facility for withdrawing, such officer or person may enter such apartment for the purpose of completing the search, using at the same time every precaution consistent with these provisions for preventing the clandestine removal of property.

385. Before conducting a search under this chapter, the officer conducting it shall call upon two or more RESPECTABLE INHABITANTS of the place in which the house or place to be searched is situate, TO ATTEND AND WITNESS the SEARCH.

The search shall be made in their presence, but they shall not be required to attend the Court of the Magistrate as witnesses, unless specially summoned by him.

The occupant of the house or place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search.

386. Whenever it is necessary to cause a WOMAN to be SEARCHED, the search shall be conducted with strict regard to the habits and customs of the country.

387. Whenever a PERSON is ARRESTED by the Police under a warrant which does not provide for the taking of bail,

or under a warrant which provides for the taking of bail, but the arrested person cannot furnish bail,

or is arrested without warrant and is not admitted to bail,

it shall be the DUTY of the arresting officer TO SEARCH such person and to place in safe custody all articles, other than necessary articles of apparel, found on such person.

A list of such articles shall be forwarded with the daily diary or with the final report in the case.

PART IX.

Procedure Incidental to Inquiry and Trial.

CHAPTER XXVIII.

Bail.

388. When any person appears or is brought before a Magistrate accused of any BAILABLE OFFENCE, he shall be admitted to bail.
389. When any person, accused of any NON-BAILABLE OFFENCE, appears or is brought before a Magistrate, such person shall not be admitted to bail, if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

If the evidence, given in support of the accusation, is, in the opinion of the Magistrate, not such as to raise a strong presumption of the guilt of the accused person,

or if such evidence is adduced on behalf of the accused person as, in the opinion of the Magistrate, weakens the presumption of his guilt, but there appears to the Magistrate in either of such cases to be sufficient ground for further inquiry into his guilt,

the accused person shall be admitted to bail pending such inquiry.

390. The COURT OF SESSION MAY in any case, whether there be an appeal on conviction or not, DIRECT that an accused person shall be admitted to BAIL, or that the bail required by a Magistrate be reduced.

391. When a Magistrate admits to bail any person accused or suspected of any offence, a RECOGNIZANCE, in such sum of money as the Magistrate thinks sufficient, shall be entered into by the person so accused and one or more sureties, conditioned that such person shall attend at the time and place mentioned in the recognizance, and shall continue to attend until otherwise directed by the Court, and, if required, shall appear when called upon at the Court of Session or other Court, as the case may be, to answer the charge.

392. If through mistake or fraud INSUFFICIENT BAIL has been taken, or if the sureties become afterwards insufficient, the accused person may be ordered by the Magistrate to give sufficient bail, or to find sufficient sureties, and, in default, may be committed to prison.

393. If the accused person cannot find sureties when called upon, he shall be admitted to BAIL upon finding the same AT ANY TIME afterward BEFORE CONVICTION.

394. After the recognizances have been duly entered into, the Magistrate, in case the accused person has appeared voluntarily, or is in the custody of some officer, shall thereupon release him; and in case he is in some prison or other place of confinement, shall issue a warrant of release to the jailor or other person having him in his custody, and such jailor or other person shall thereupon release him.

395. Any one or more of the SURETIES for an accused person MAY, at any time, APPLY TO the Magistrate to BE DISCHARGED from their engagements.

On such an application being made, the Magistrate shall issue his warrant of arrest, directing that such person be brought before him.

On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the recognizances of the sureties to be discharged, and shall call upon such person to find other sureties, and, in default, may order him to be committed to prison.
396. Whenever, by reason of default of appearance of the person executing the personal recognizance, the Magistrate is of opinion that PROCEEDINGS should be had TO COMPEL PAYMENT OF the PENALTY mentioned IN the RECOGNIZANCE, he shall proceed to enforce the penalty by issuing a warrant for the attachment and sale of the moveable property belonging to such person, which may be found within the jurisdiction of the Magistrate of the District. Such warrant may be executed within the jurisdiction of the Magistrate of the District, and it shall authorize the distress and sale of any moveable property belonging to the accused person without the jurisdiction of the said Magistrate, when endorsed by the Magistrate of the District in which such moveable property is situated.

397. Whenever, by reason of default of appearance by the person bailed, the Magistrate is of opinion that PROCEEDINGS should be had TO COMPEL PAYMENT OF the PENALTY mentioned IN the RECOGNIZANCE OF the SURETY or sureties, he shall give notice to the surety or sureties to pay the same, or to show cause why it should not be paid.

If such penalty be not paid and if no sufficient cause for its non-payment be shown, the Magistrate shall proceed to recover the penalty from such surety or sureties by issuing a warrant for the attachment and sale of any moveable property belonging to him or them, which may be found within the jurisdiction of the Magistrate of the District. Such warrant may be executed within the jurisdiction of the Magistrate of the District; and it shall authorize the distress and sale of any moveable property belonging to the surety or sureties without the jurisdiction of the said Magistrate when endorsed by the Magistrate of the District in which such moveable property is situated.

If such penalty be not paid and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the Magistrate, in the Civil jail, during a period not exceeding six months.

398. The powers given by sections 396 and 397 may be exercised by every Criminal Court in every case in which a personal recognizance or bail has been given for the appearance of a party or witness, if default is made by the non-appearance of such party or witness before such Court according to the conditions of such recognizance or bail:

Provided that the Magistrate or Court MAY, at his or its discretion, REMIT any PORTION OF the PENALTY mentioned in the recognizance of the accused person or of the surety or sureties, and enforce payment in part only:

All orders passed by any Magistrate, other than the Magistrate of the District, under this section or section 396 or 397, shall be APPEALABLE to the Magistrate of the District, or, if not so appealed, may be revised by him.

A High Court or a Court of Session may direct any Magistrate to levy the amount due on a forfeited bail-bond executed in respect of attendance before such High Court or Court of Session.
399. When any person is required by any officer or Criminal Court to give bail, except in cases coming under chapter 38, such officer or Court may permit such person to DEPOSIT a sum of money or Government promissory notes to such amount as it may fix IN LIEN OF such BAIL.

CHAPTER XXIX.
Formation of Lists of Jurors and Assessors and their Attendance.

400. The Sessions Judge and the Collector of the District, or such other officer as the Local Government from time to time appoints in this behalf, shall prepare and make out in alphabetical order a LIST of persons residing within ten miles from the place where trials before the Court of Session are held, or within such other distance as the Local Government thinks fit to direct, who are, in the judgment of the Sessions Judge and Collector or other officer as aforesaid, qualified from their education and character to serve as jurors or as assessors, respectively.

The list shall contain the name, place of abode, and quality or business of every such person; and if the person is a European or an American, the list shall mention the race to which he belongs.

401. COPIES OF SUCH LIST SHALL BE STUCK UP in the office of the Collector or other officer as aforesaid and in the Court-houses of the Magistrate of the District and of the Chief Civil Court, and in some conspicuous place in the town or towns near or in the vicinity of which the persons named in the list reside.

To every such copy shall be subjoined a notice, stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid at the Sessions Court-house, and at a time to be mentioned in the notice.

402. For the hearing of such objections the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, REVISE THE LIST and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may avail himself of the exemption from service given by section 406 and insert the name of any person omitted from the list whom they deem qualified for such service.

In the event of a difference of opinion between the Collector or other officer as aforesaid and the Sessions Judge, the name of the proposed Juror or Assessor shall be omitted from the list.

A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid and sent to the Court of Session.
Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

403. The list so prepared and revised shall be AGAIN REVIS.
ED ONCE IN EVERY YEAR.

The list so revised shall be deemed a new list and shall be sub-
ject to all the rules herein before contained as to the list originally
prepared.

404. All male PERSONS between the ages of 21 and 60, resident
within the local limits of the jurisdiction of the Court of Session, ex-
cept those hereinafter mentioned, shall be deemed CAPABLE of serv-
ing as jurors and assessors, and shall be liable to be summoned ac-
cordingly.

405. The following PERSONS are INCAPABLE of serving as
jurors or as assessors, namely:—

Persons who hold any office in or under the said Court.

Persons executing any duties of Police or entrusted with any Police
functions.

Persons who have been convicted of any offence against the State
or of any fraudulent or other offence which in the judgment of the
Sessions Judge and Collector, renders them unfit to serve on the
jury.

Persons afflicted with any infirmity of body or mind sufficient to
incapacitate them from serving.

Persons who, by habit or religious vows, have relinquished all care
of worldly affairs.

406. The following PERSONS are EXEMPT from the liability to
serve as jurors or as assessors, namely:—

All officers in civil employ superior in rank to a Magistrate of the
district.

Judges and other Judicial officers.

Commissioners and Collectors of Revenue or Customs.

All persons engaged in the Preventive Service in the Customs
Department.

All persons engaged in the collection of the revenue whom the
Collector thinks fit to exempt on the ground of official duty.

Chaplains and others employed in religious offices.

All persons in the Military Service, except when, by any law in
force for the time being, such persons are specially made liable to
serve.

Surgeons and others who openly and constantly practise in the
profession of physic.

Persons employed in the Post Office and Electric Telegraph De-
partments.

Persons actually officiating as priests in their respective religions.
All persons exempted by the local Government: and persons exempted by Government from personal appearance in Court under the provisions of the Code of Civil Procedure, section 22.

The exemption from service given by this section is a right of which each person exempted may avail himself or not.

Nothing contained in this section shall be construed to disqualify any such person, if he is willing to serve as a juror or as an assessor.

The Sessions Judge may issue a summons to any exempted person to serve as an assessor or juror on the trial of a European British subject.

407. The Court of Session shall ordinarily, three days at least before the time fixed for the holding of sessions, send a precept to a Magistrate directing him to summon as many persons, named in the said revised list, as seem to the Court to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any case about to be tried at such sessions.

The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them; the names so drawn shall be specified in the precept to the Magistrate.

408. When a trial is to be held in which the accused person or one of the accused persons is entitled to be tried by a jury constituted under the provisions of section 234, the Court of Session shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner hereinafter prescribed, as many EUROPEAN AND AMERICAN JURORS as are required for the trial, if there be so many on the jury-list of the District, in which the trial is to be held.

The Court shall also at the same time in like manner cause to be summoned the same number of other persons named in the revised list unless such number of such other persons shall have been already summoned for jury trials at that session.

From the whole number of persons returned the jurors who are to constitute the jury shall be taken by lot in the manner prescribed in section 240 until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as possible has been obtained.

If a jury containing the requisite number of Europeans and Americans is not obtained, the accused person may elect to be tried by the Judge with the aid of assessors; otherwise he shall be tried by the jury obtained by the means aforesaid.

409. Every SUMMONS TO a JUROR OR ASSESSOR shall be in writing, and shall require his attendance as a juror or assessor at a time and place to be therein specified.

The summons or a copy thereof shall be served on every juror or assessor personally.
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If the juror or assessor summoned be absent from his usual place of abode, the summons may be left for him there with some adult male member of his household residing with him.

410. The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 407, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive, or whenever it is found to be necessary.

411. If any person summoned to serve as a JUROR or ASSESSOR be IN THE SERVICE OF GOVERNMENT or of a Railway Company, the summons shall be sent to him through the head officer of the office in which he is employed; and the Court may excuse the attendance of such person if it appear, on the representation of such head officer, that the person summoned cannot serve as a juror or assessor without inconvenience to the public service.

412. The Court of Session may EXCUSE any juror or assessor FROM ATTENDANCE for reasonable cause.

413. At each session the Court shall cause to be made a LIST of the names OF THOSE WHO SERVE as jurors or assessors at such session.

Such list shall be kept with the revised list of the jurors and assessors prepared under section 402.

A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

414. Any person summoned to attend as a JUROR OR as an ASSESSOR who, without lawful excuse, FAILS TO ATTEND as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court after being ordered to attend, shall be liable by order of the Court of Session to a fine not exceeding 100 rupees.

Such fine shall be levied by the Magistrate of the District by attachment and sale of any moveable property belonging to such juror or assessor within the jurisdiction of the Sessions Court making the order.

In default of recovery of the fine by such attachment and sale, such juror or assessor may be imprisoned in the civil jail for the space of fifteen days, if the fine be not sooner paid.

CHAPTER XXX.

Miscellaneous Provisions.

415. The seizure by any Police officer of PROPERTY alleged or SUSPECTED TO HAVE BEEN STOLEN, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall thereupon make such order respecting the custody and production of such property as he thinks proper.
If such property is of a perishable nature, or if it appears to the Magistrate that its sale would be for the benefit of the owner, such Magistrate may at any time direct it to be sold, and shall hold the proceeds of such sale in trust for the owner, subject to the provisions contained in sections 461 and 471.

416. When the OWNER of any such property is UNKNOWN, the Magistrate may detain it, or the proceeds thereof, if sold, and, in case of such detention, shall issue a proclamation, specifying the articles of which such property consists or consisted, and requiring any person, who may have a claim thereto or to the proceeds thereof, to appear before him and establish his claim within six months from the date of such proclamation.

417. If NO PERSON within such period ESTABLISHES HIS CLAIM to such property or proceeds, and if the person, in whose possession such property was found, is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Magistrate of the District, or a Magistrate of a Division of a District, or, if duly authorized, a Magistrate of the 1st class; or, if it has been already sold by the Magistrate, the proceeds thereof shall be at the disposal of the Government.

An APPEAL shall be allowed, to the Court to which appeals against sentences would lie, in the case of every order passed under this section.

418. When the trial in any Criminal Court is concluded, the Court may make such order as appears right for the DISPOSAL OF any PROPERTY, PRODUCED before it, regarding which any offence appears to have been committed.

419. Any Court of appeal, reference or revision may direct any such order passed by a Court subordinate thereto to be stayed, and may modify, alter or annul it.

420. The ORDER, passed by any Court under section 481 and 491 MAY BE IN THE FORM OF A REFERENCE of the property to the Magistrate of the District, or to a Magistrate of a Division of a District, who shall in such cases deal with it as if the property had been seized by the Police and the seizure had been reported to him in the manner hereinbefore mentioned.

421. Subject to any rules that may be passed by the Local Government, with the previous sanction of the Governor General of India in Council, the Criminal Courts may order payment on the part of Government of the reasonable EXPENSES OF any COMPLAINANT OR WITNESS attending for the purpose of any trial before such Court under this Act.

422. When the services of an INTERPRETER are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.
CHAPTER XXXI.

Lunatics.

423. When any person charged with an offence before a Magistrate, competent to try the case, appears to such Magistrate to be of unsound mind and INCAPABLE OF MAKING a DEFENCE, such Magistrate shall institute an inquiry to ascertain the fact of such unsoundness of mind, and shall cause the accused person to be examined by the Civil Surgeon of the District, or some other medical officer, and thereupon shall examine such Civil Surgeon or other medical officer, as a witness, and shall reduce the examination into writing.

If such Magistrate is of opinion that the accused person is of unsound mind, he shall stay further proceedings in the case.

424. When, from the evidence given before a Magistrate, there appears to be sufficient ground for believing that the accused person committed an act which, if he had been of sound mind, would have been an offence triable exclusively by the Court of Session, and that he was at the time when the act was committed, by reason of unsoundness of mind, INCAPABLE OF KNOWING THE NATURE OF THE ACT charged, or that he was doing what was wrong or contrary to law, such accused person shall, if he appears to be sane at the time of inquiry, be sent for trial by the Magistrate before the Court of Session:

If such accused person is a European British subject, the Magistrate shall follow the procedure prescribed in Chapter 7.

If an accused person appear to be insane at the time of inquiry, the Magistrate shall act in the manner provided in the last preceding section.

425. If any person, committed for trial BEFORE a COURT OF SESSION, shall at his trial appear to the Court to be of unsound mind and INCAPABLE OF MAKING HIS DEFENCE, the Court shall in the first instance try the fact of such unsoundness of mind, and if satisfied of the fact, shall give a special judgment that the accused person is of unsound mind and incapable of making his defence; and thereupon the trial shall be postponed.

426. Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court of Session, as the case may be, IF the OFFENCE of which such person is accused be BAILABLE, may release such person on sufficient security being given that he shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, and for his appearance when required.

If the offence be NOT BAILABLE, or if the required bail be not given, the accused person shall be kept in safe custody in such place as the Local Government to which the case shall be reported shall direct.

427. Whenever an inquiry or trial is postponed under section 423 or section 425, the Magistrate or Court of Session, as the case may be, may, at any time, RESUME the inquiry or TRIAL, and require the
accused person, if detained in custody, to be brought before such Magistrate or Court; or, if the accused person has been released on security, may require his appearance.

The surety of such person shall be bound, at any time, to produce him to any officer whom the Magistrate or Court of Session appoints to inspect him; and the certificate of such officer shall have the same effect as the certificate of an Inspector General of Prisons or the Visitors of Lunatic Asylums, granted under section 432.

428. If, when the accused person appears or is again brought before the Magistrate or the Court of Session, as the case may be, it appears to such Magistrate or Court that the ACCUSED PERSON is IN A FIT STATE OF MIND to make his defence, the INQUIRY SHALL PROCEED, or the accused person shall be put on his trial, as the case may require.

If it appears that the accused person is still of unsound mind, and incapable of making his defence, the Magistrate or Court of Session shall again act according to the provisions of section 423, or section 425.

429. Whenever any PERSON is ACQUITTED upon the ground that, at the time at which he is charged with having committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act charged or that he was doing what was wrong or contrary to law, the FINDING shall state specially whether such person committed the act or not.

430. Whenever such finding states that the accused person committed the act charged, the Magistrate or Court of Session, before whom the trial was held, shall, if the act charged would, but for the incapacity found, have amounted to an offence, order such PERSON TO BE KEPT IN SAFE CUSTODY, in such place and manner as to the Magistrate or Court of Session seems fit, and shall report the case for the order of the Local Government.

The Local Government may order such person to be kept in safe custody in a Lunatic Asylum or other suitable place of safe custody.

431. When any person is confined under the provisions of section 426 or section 430, the INSPECTOR GENERAL OF PRISONS, if such person is confined in a jail, or the VISITORS OF the LUNATIC ASYLUMS or any two of them, if he is confined in a Lunatic Asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector General or by two of such Visitors shall make a special report to the Local Government as to the state of mind of such person.

432. If such person is confined under section 426, and such Inspector General or Visitors as aforesaid shall CERTIFY THAT, in his or their opinion, such PERSON IS CAPABLE OF MAKING HIS DEFENCE, he shall be taken before the Magistrate or Court of Session, as the case may be, at such time as such Magistrate or Court of Session appoints; and such Magistrate or Court shall deal with such person under the provisions of section 428; and the certificate of such Inspector General or Visitors as aforesaid shall be receivable as evidence.
433. If such person is confined under the provisions of section 430, and such Inspector General or Visitors as aforesaid CERTIFY THAT in his or their judgment, he MAY BE DISCHARGED without danger of his doing injury to himself or to any other person, the Local Government may thereupon either order him to be discharged; or to be detained in custody; or to be transferred to a public Lunatic Asylum, if he has not been already sent to such an Asylum; and may appoint a commission, consisting of a judicial officer not below the grade of a Sessions Judge, and two medical officers, whereof the chief medical officer attached to the Lunatic Asylum shall be one.

The said commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government who may order his discharge, or detention as to it may seem fit.

434. Whenever any RELATIVE OR FRIEND OF any PERSON DETAINED under the provisions of section 430 is desirous that he shall be delivered over to his care and custody the Local Government upon the application of such relative or friend and on his giving security to the satisfaction of such Government that the person detained shall be prevented from doing injury to himself or to any other person may make an order that such person may be delivered to such relative or friend.

Whenever such person is so delivered over, it shall be upon condition that he shall be subject to the inspection of such officer as the Local Government appoints, and at such times as such Government directs.

The provisions of Sections 431 and 433 shall apply to persons detained under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be dealt with as a certificate of the Inspector General of Prisons, or the Visitors of Lunatic Asylums under the said sections.

CHAPTER XXXII.
Contempts of Court.

435. When any such OFFENCE as is described in sections 175, 178, 179, 180, or 228 of the Indian Penal Code is COMMITTED IN the view or presence of any Civil, Criminal, or Revenue COURT, the Court may cause the offender, whether he be a European British subject or not, to be detained in custody; and, at any time before the rising of the Court on the same day, may take cognizance of the offence; and adjudge the offender to punishment by FINE NOT EXCEEDING TWO HUNDRED RUPEES, and in default of payment, by imprisonment in the civil jail for a period not exceeding one month, unless such fine be sooner paid.
In every such case the Court shall record the facts constituting the offence, with any statement the offender may make, as well as the finding and sentence.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which such public servant was sitting, and the nature of the interruption or insult offered.

436. If the Court, in any case, considers that a person, accused of any such offence, should be imprisoned otherwise than in default of payment of fine, or that a FINE EXCEEDING TWO HUNDRED RUPEES should be imposed upon him, such Court, after recording the facts constituting the offence, and the statement of the accused person as before provided, SHALL FORWARD THE CASE TO a MAGISTRATE, or, if the accused person be a European British subject, to a Magistrate of the first class who is a Justice of the Peace and a European British subject; and shall cause bail to be taken for the appearance of such accused person before such Magistrate, or, if sufficient bail be not tendered, shall cause such person to be forwarded under custody to such Magistrate.

If the case be forwarded to a Magistrate, he shall proceed to try the accused person in the manner provided by this Act for trials before a Magistrate; and such Magistrate may adjudge the offender to punishment, as provided in the section of the Indian Penal Code under which he is charged.

If, in the case of a EUROPEAN BRITISH SUBJECT, the Magistrate to whom he is forwarded considers the offence to require a more severe punishment than he is competent to award under Chapter 7 of this Act, he may commit the offender to the Sessions Court.

In no case tried under this section shall any Magistrate adjudge imprisonment or a fine exceeding 200 rupees for any contumacy committed in his own presence against his own Court.

437. When any Court has adjuged an offender to punishment, or forwarded him to a Magistrate for trial for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may discharge the offender, or remit the punishment, on his SUBMISSION to the order or requisition of such Court, OR on APOLOGY being made to its satisfaction.

When any such offence as is described in Chapter 10 of the Indian Penal Code, (except sections 175, 178, 179, 180, and 228,) is committed in contempt of the lawful authority of any Civil, Criminal, or Revenue Court by a EUROPEAN BRITISH SUBJECT, such offence shall be cognizable only by a Magistrate of the 1st class who is a Justice of the Peace and a European British subject; and such Magistrate may deal with the offender on conviction in the same manner as is provided in that behalf in section 74.

If such Magistrate considers the offence to require a more severe punishment than he is competent to award under the said section, he may commit the offender to the Sessions Court.
PART X.
Charge, Judgment, and Sentence.

CHAPTER XXXIII.
Of the Charge.

Form of Charges.

439. The charge shall state the offence with which the accused person is charged.

If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

If the law which creates the offences does not give it any specific name, so much of the definition of the offence must be stated as to give the prisoner notice of the matter with which he is charged.

The Act and section or sections of the Act against which the offence is said to have been committed must be referred to in the charge.

The fact that the charge is made shall be equivalent to a statement that every legal condition, necessary by law to constitute the offence charged, was fulfilled in the particular case.

The charge may be written either in English or in the LANGUAGE of the district. If not written in a language understood by the prisoner, it must be read to him in a language which he understands.

If the accused person has been previously convicted of any offence and if it is intended to prove such PREVIOUS CONVICTION for the purpose of affecting the punishment which is to be awarded, the fact of the previous conviction must be stated in the charge. If it is omitted, it may be added at any time before sentence is passed, but not afterwards.

Illustrations.

(a). A is charged with the murder of B.

This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall within any of the general exceptions of the Penal Code; that it did not fall within any of the five exceptions to section 300, or that if it did fall within exception 1, one or other of the three provisions to that exception applied to it.

(b). A is charged under section 326 of the Indian Penal Code with voluntarily causing grievous hurt to B, by means of an instrument for shooting: this is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

(c). A is accused of murder, cheating, theft, and extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion or adultery, or criminal intimidation, or that he used a false property mark, without reference to the definitions of those crimes contained in the Penal Code; but the sections under which the offence is punishable must in each instance, be referred to on the charge.

(d). A is charged under section 181 of the Indian Penal Code with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.
440. The charge shall contain such PARTICULARS AS TO the TIME and PLACE of the alleged offence and the person against whom it was committed, as are reasonably sufficient to give notice to the accused person of the matter with which he is charged.

441. When the nature of the case is such that the particulars mentioned in sections 439 and 440 do not give sufficient notice to the accused person of the matter with which he is charged, the charge shall also contain such PARTICULARS OF THE MANNER IN WHICH the alleged offence was COMMITED as will be sufficient for that purpose.

Illustrations.

(a.) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(b.) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(c.) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(d.) A is accused of obstructing B, a public servant, in discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(e.) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(f.) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

442. The charge may be in the FORM given in the third schedule to this Act or to the like effect.

443. No ERROR either in the way in which the offence is stated or in the particulars required to be stated in section 441, and no OMISSION to state the offence, or to state those particulars, shall be regarded at any stage of the case as material, unless the person accused was in fact misled by such error or omission.

Illustrations.

(a.) A is charged under section 242 of the Indian Penal Code with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit." The word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(b.) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(c.) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was in this case a material error.

(d.) A is charged with the murder of Khuda Baksh on the 21st January. In fact the murdered Person's name was Haidar Baksh and the date of the murder was the 20th January. A was never charged with any murder but one and had heard the inquiry before the Magistrate which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(e.) A was charged with murdering Haidar Baksh on the 20th January and Khuda Baksh (who tried to arrest him for that murder) on the 21st January. When charged for the murder of Haidar Baksh he was tried for the murder of Khuda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.
Any ACCUSED person MAY APPLY to the Court by which he is tried FOR an AMENDMENT of the charge made against him; and in considering whether any error in a charge did in fact mislead the accused person the Court shall take into account the fact that he did or did not make such an application.

445. Any COURT MAY, either upon the application of the accused person, or upon its own motion, AMEND or alter any charge at any stage of the proceedings before judgment is signed, or, in cases of trials before a Court of Session, before the verdict of the jury is delivered or the opinion of the assessors is expressed. Such amendment shall be read and explained to the accused person.

446. If a prisoner is committed to the Court of Session, either without any charge at all, or upon a charge which the Court, upon reference to the proceedings before the committing Magistrate, considers improper, the COURT OF SESSION MAY DRAW UP a CHARGE for any offence, which it considers to be proved by the evidence taken before the committing Magistrate. A copy of such charge shall be given to the accused person.

447. If the amendment or alteration is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused person in his defence, it shall be at the discretion of the Court, after making such amendment or alteration, to proceed with the trial as if the amended charge had been the original charge.

448. If the amendment or alteration is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused person in his defence, the Court may either direct a NEW TRIAL, OR SUSPEND the TRIAL for such period as may be necessary to enable the accused person to make his defence to the amended or altered charge; and, after hearing his defence, the Court may further adjourn the trial, to admit of the appearance of any witness, whose evidence the Court may consider to be material to the case or whom the accused person may wish to be summoned in his defence.

449. In all cases of amendment or alteration of a charge, the prosecutor and accused person shall be ALLOWED TO RECALL and examine any WITNESS who may have been examined.

450. IF the offence stated in the new charge be one for which PREVIOUS SANCTION is NECESSARY, the case shall not be proceeded with until such sanction is obtained; unless sanction has been already obtained for a prosecution on the same facts as those on which the new charge was based.

451. If any Appellate Court, or the High Court in the exercise of its powers of revision, is of opinion that any PERSON, CONVICTED of an offence, was in fact MISLED in his defence BY an ERROR IN THE CHARGE, it shall direct a new trial to be had upon a charge amended in whatever manner it thinks proper.

If such Court is of opinion that the facts of the case are such that no valid charge could be preferred against the person accused in respect of the facts proved, it shall quash the conviction.
Illustration.

A is convicted of an offence under Section 198 of the Indian Penal Code upon a charge which omits to state that A knew that he was directed to abstain from a certain act by an order promulgated by a public servant lawfully empowered to promulgate such order. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

Joinder of Charges.

452. There must be a SEPARATE CHARGE FOR EVERY DISTINCT OFFENCE of which any person is accused, and every such charge must be tried separately except in the cases hereinafter excepted.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and the causing grievous hurt.

453. When a person is accused of more OFFENCES than one OF THE SAME KIND COMMITTED WITHIN ONE YEAR of each other, he may be charged and tried at the same time for any number of them not exceeding three.

Explanation.—Offences are said to be of the same kind under this section if they fall within the provisions of section 455.

454. I.—If in one set of facts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried for every such offence at the same time.

II.—If a single act falls within two separate definitions of any law in force for the time being, by which offences are defined or punished, the person who does it may be charged with each of the offences so committed, but he must not receive a more severe punishment than could be awarded, by the Court which tries him, for either.

III.—If several facts of which one or more than one would by itself constitute an offence form, when combined, an offence under the provisions of any law, in force for the time being, by which offences are defined or punished, a person who does them may be charged with every offence which he may have committed, but he must not receive for such offences, collectively, a punishment more severe than that which might have been awarded, by the Court, trying him, for any one of such offences, or for the offence formed by their combination.

Illustrations.

To paragraph I.

(a) A rescues B, a person in lawful custody, and causes grievous hurt to C, a constable in whose custody B was. A may be separately charged, convicted of and punished, for offences under Sections 226 and 333, Indian Penal Code.

(b) A has in his possession several counterfeit seals with the intention of committing several forgeries. A may be separately charged with, convicted of and punished for the possession of each seal for a distinct forgery, under Section 473, the Penal Code.

(c) A, with intent to cause injury to B, institutes proceedings against him knowing there is no just or lawful ground for such proceedings. A also falsely charges B with having committed an offence. A may be separately charged with, convicted of and punished for two offences under Section 211, Indian Penal Code.
(d) A, with intent to injure B, brings a false charge against him of having committed an offence. On the trial, A gives false evidence against B. A may be separately charged with, convicted of, and punished for offences under Sections 211 and 194, or 195, Indian Penal Code.

(e) A, knowing that B, a female minor, has been kidnapped, wrongfully confines her and detains her as a slave. A may be separately charged with, convicted of, and punished for offences under Sections 363 (read with 367) and 370, Indian Penal Code.

(f) A, with six others, commits the offences of rioting, grievous hurt and of assaulting a public servant engaged in suppressing a riot. A may be separately charged with, convicted of, and punished for offences under Sections 147, 325 and 152, Indian Penal Code.

(g) A criminally intimidates B, C and D at the same time. A may be separately charged with, convicted of, and punished for each of the three offences under Section 506, Indian Penal Code.

(h) A intentionally causes the death of three persons by upsetting a boat. A may be separately charged with, convicted of, and punished for three offences under Section 302, Indian Penal Code.

To paragraph II.

(i) A commits mischief by cutting down a tree in a Government forest. The tree overhangs the bank of a river and falls into the stream. A commits theft by having severed the tree and by floating it down the river to his village, where he sells it. A may be separately charged with, and convicted of, offences under Sections 426 and 379, Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under Section 379 only.

(j) A wrongfully strikes B with a cane. A may be separately charged with and convicted of offences under Sections 322 and 323 of the Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under Section 323 only.

(k) A wrongfully kills a buffalo worth sixty rupees, belonging to B, and then takes away the carcass in a manner amounting to theft. A may be separately charged with and convicted of offences under Sections 429 and 379, Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under Section 429 only.

(l) Several stolen sacks of corn are made over to A and B, who know they are stolen property. A and B thereupon assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with and convicted of offences under Sections 411 and 414, Indian Penal Code; but the Court which tries them may not inflict a severer sentence than if it had convicted them under one of those Sections only.

(m) A uses a forged document in evidence in order to convict B a public servant, of an offence under Section 167. A may be separately charged with and convicted of offences under Sections 471 (read with 406) and 196 of the Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under one of those Sections only.

To paragraph III.

(n) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with and convicted of, and punished for, offences under Sections 454 and 497, Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under Section 497 only.

(o) A robs B, and, in doing so, voluntarily causes hurt to him. A may be separately charged with and convicted of offences under Sections 323, 392 and 394 of the Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under Section 392 or 394 only.

(p) A entices B, the wife of C, away, and then commits adultery with her. A may be separately charged with and convicted of offences under Sections 488 and 497, Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under Section 497 only.

455. If a single act or set of acts is of such a nature that it is DOUBTFUL WHICH OF SEVERAL OFFENCES the facts which can be proved will constitute, the accused person may be charged with having committed any such offence; and any number of such charges may be tried at once, or he may be charged in the alternative with having committed some one of the said offences.
Illustration.

A is accused of an act which may amount to either theft, receiving stolen property, criminal breach of trust, or cheating. He may be charged separately with theft, criminal breach of trust, and cheating, or he may be charged with having committed either theft or criminal breach of trust or cheating.

456. If in the case mentioned in the last section, one charge only is brought against an accused person, and it appears in evidence that he committed a different offence, for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustration.

A is charged with theft. It appears that he committed criminal breach of trust or receiving stolen goods. He may be convicted of criminal breach of trust or receiving stolen goods, though he was not charged with it.

457. When a person is charged with an offence, and PART OF THE CHARGE is NOT PROVED, but the part which is proved amounts to a different offence, he may be convicted of the offence, which he is proved to have committed, though he was not charged with it.

Illustrations.

(a). A is charged under section 407, Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(b). A is charged with murder. A may be convicted of culpable homicide or of causing death by negligence.

458. When more PERSONS THAN ONE are accused of the same offence, or of different offences, committed in the same transaction, or when one person is accused of committing any offence and another of abetment of or attempt to commit such offence, they MAY BE CHARGED and tried TOGETHER or separately, as the Court thinks proper, and the provisions hereinbefore contained shall apply to all such charges.

Illustrations.

(a). A and B are accused of the same murder. A and B may be charged and tried together for the murder.

(b). A and B are accused of a robbery in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging both of them with the robbery, and A alone with the murder.

(c). A and B are both charged with a theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge, charging both with the one theft, and B alone with the two other thefts.

459. In trials before a Court of Session or High Court, when more charges than one are preferred against the same person, and when a CONVICTION has been HAD ON ONE or more of them, the Government Pleader or other officer conducting the prosecution may, with the consent of the Court, WITHDRAW, or the Court of its own accord may suspend, the inquiry into the REMAINING CHARGE or charges.

Previous Acquittals or Convictions.

460. A person who has once been tried for an offence and convicted or acquitted of such offence, shall, while such conviction or acquittal remains in force, NOT be LIABLE TO BE TRIED AGAIN
on the same facts for the same offence, nor for any other offence, for
which a different charge from the one made against him might have
been made under section 455, or for which he might have been con-
victed under section 456.

A person, convicted or acquitted of any offence, may be afterwards
tried for any offence, for which a separate charge might have been
made against him on the former trial under section 454, paragraph 1.

A person acquitted or convicted of any offence in respect of any act
causing consequences which, together with such act, constituted a dif-
ferent offence from that for which such person was acquitted or con-
victed, may be afterwards tried for such last-mentioned offence, if the
consequences had not happened, or were not known to the Court to
have happened, at the time when he was acquitted or convicted.

A person acquitted or convicted of any offence in respect of any
facts may, notwithstanding such acquittal or conviction, be subse-
quently charged with and tried for any other offence which he may
have committed in respect of the same facts if the Court by which he
was first tried was not competent to try the offence with which he is
subsequently charged.

Illustrations.

(a) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards
be charged upon the same facts either with theft as a servant, with theft simply, or with
criminal breach of trust.

(b) A is tried upon a charge of murder and acquitted. There is no charge of robbery;
but it appears from the facts that A committed robbery at the time when the murder was
committed; he may afterwards be charged with and tried for robbery.

(c) A is tried for an assault and convicted. The person afterwards dies. A may be tried
again for culpable homicide.

(d) A is tried under Section 320 of the Indian Penal Code, for malignantly doing an act
likely to spread the infection of a disease dangerous to life and is acquitted. The act so
done afterwards causes a person permanently to lose his eyesight. A may be charged under
section 323 with voluntarily causing grievous hurt to that person.

(e) A is charged before the Court of Session and convicted of the culpable homicide
of B. A may not afterwards be tried for the murder of B on the same facts.

(f) A is charged by a Magistrate of the first class with, and convicted by him of, volun-
tarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous
hurt to B on the same facts, unless the case comes within paragraph 3.

(g) A is charged by a Magistrate of the 2nd class with, and convicted by him of, theft
of property from the person of B. A may be subsequently charged with and tried for robb-
er on the same facts.

(h) A, B and C are charged by a Magistrate of the 1st class with, and convicted by him
of, robbing D. A, B and C may afterwards be charged with and tried for dacoity on the
same facts.

CHAPTER XXXIV.
Of the Judgment, Order, and Sentence.

461. When the trial in any Criminal Court is concluded, the Court,
in passing JUDGMENT, if the accused person be convicted, SHALL
distinctly SPECIFY THE OFFENCE of which, and the section of
the Indian Penal Code or other law under which, he is convicted;
or IF it be DOUBTFUL under WHICH OF TWO SECTIONS,
or under which of two parts of the same section such offence falls, the
Court shall distinctly express the same, and pass judgment in the alter-
native, according to section 72 of the said Code.
462. In TRIALS WITH ASSESSORS, when the exhibits have been perused, the witnesses examined, and the parties heard in person or by their respective pleaders, the Court shall pronounce its judgment. The judgment shall be pronounced in open Court either immediately or on some future day of which due notice shall be given to the parties or their pleaders.

463. The judgment or final order shall be written by the presiding officer of the Court in English or the LANGUAGE of the district.

If the language of the Judge be not English the Judgment shall not be written in English unless the Judge be sufficiently conversant with the English language to be able to write a clear and intelligible decision in that language.

464. The JUDGMENT OR final order SHALL CONTAIN the point or points for determination, the finding thereupon, and the reasons for the finding, and shall be dated and signed by the Judge in open Court at the time of pronouncing it. When a judgment or final order has been so signed, it cannot be altered or reviewed by the Court which gives such judgment or order. It shall specify the offence of which the accused person is convicted, and the punishment to which he is sentenced; or, if it be a finding of acquittal, it shall direct that he be set at liberty.

The judgment or order shall be explained to the accused person, or persons affected by it; and a copy shall be given him in his own language as soon as possible.

The original shall be filed with the record of proceedings, and a TRANSLATION thereof, where the original is recorded in a different language from that in ordinary use in the district, shall be incorporated in the record of the case.

In trials by Jury the Court need not state its reasons for its judgment, but shall record the heads of the charge to the Jury.

If the Judge differ from the Jury and determine to submit the case to the High Court, he shall record the grounds of his opinion.

Nothing herein contained shall prevent any Court from recalling any order other than a final order.

No error or defect in any judgment shall invalidate the proceedings.

CHAPTER XXXV.

Prosecutions in certain Cases.

465. A complaint of an OFFENCE punishable UNDER CHAPTER VI of the Indian Penal Code, except section 127, or punishable under section 294 A of the said Code, shall not be entertained by any Court, unless the prosecution be instituted by order of, or under authority from, the Governor General of India in Council, or the Local Government or some officer empowered by the Governor General in Council to order or authorize such prosecution, or unless instituted by the Advocate General.
466. A complaint of an OFFENCE COMMITTED BY a PUBLIC SERVANT in his capacity as such public servant, of which any Judge or any public servant not removable from his office without the sanction of the Government is accused as such Judge or public servant, shall not be entertained against such Judge or public servant, except with the sanction or under the direction of the Local Government, or of some officer empowered by the Local Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power so to sanction or direct such prosecution the Local Government shall not think fit to limit or reserve.

No such Judge or public servant shall be prosecuted for any act purporting to be done by him in the discharge of his duty unless with the sanction of Government.

The sanction must be given before the commencement of the proceedings.

The Local Government may limit the person by whom, and the manner in which, the prosecution is to be conducted, and may specify the Court before which the trial is to be held.

467. A complaint of any OFFENCE described IN CHAPTER X of the Indian Penal Code, not falling within section 435 or 436 of this act shall not be entertained in any Criminal Court except with the sanction or on the complaint of the public servant concerned, or of his official superior.

The prohibition contained in this section shall not apply to the offences described in sections 189 and 190 of the Indian Penal Code.

468. A complaint of an OFFENCE AGAINST PUBLIC JUSTICE, described in sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, or 228, of the Indian Penal Code, when such offence is committed before or against a Civil or Criminal Court, shall not be entertained in the Criminal Courts, except with the sanction of the Court before or against which the offence was committed, or of some other Court to which such Court is subordinate.

469. A complaint of an OFFENCE RELATING TO DOCUMENTS described in sections 463, 471, 475, or 476, of the Indian Penal Code, when the document has been given in evidence in any proceedings in any Civil or Criminal Court, shall not be entertained against a party to such proceedings, except with the sanction of the Court in which the document was given in evidence, or of some other Court to which such Court is subordinate.

470. The SANCTION referred to in sections 467, 468, and 469, may be expressed in general terms, and need not name the accused person.

Such sanction may be given at any time and a sanction under any one of the three last preceding sections shall be deemed sufficient authority for the Court to amend the charge to one of an offence coming within either of the two remaining sections, if the facts disclosed such offence.

Explanation.—In cases under this chapter, the report or application of the public servant or Court shall be deemed sufficient complaint.
471. When any Court, Civil or Criminal, is of opinion that there is sufficient ground for inquiring into any charge mentioned in sections 467, 468 and 469, such COURT, after making such preliminary inquiry as may be necessary, MAY either COMMIT THE CASE ITSELF, or may SEND the case for inquiry TO any MAGISTRATE having power to try or commit for trial the accused person for the offence charged.

Such Magistrate shall thereupon proceed according to law; and the Court may send the accused person in custody or take sufficient bail for his appearance before such Magistrate; and may bind over any person to appear and give evidence on such trial or inquiry.

The Magistrate receiving the case may, if he is authorized to make transfers of cases, transfer the inquiry to some other competent Magistrate instead of completing the inquiry himself.

472. A COURT OF SESSION may charge a person for any such offence committed before it or under its own cognizance, if the offence be triable by the Court of Session exclusively, and MAY commit or hold to bail and TRY such person UPON ITS OWN CHARGE.

In such case the Court of Session shall have the same power of summoning, and causing the attendance at the trial of any witnesses for the prosecution or for the defence, as is vested in a Magistrate by this Act.

Such Court may direct the Magistrate to cause the attendance of such witnesses on the trial.

473. Except as provided in sections 435, 436 and 472, no Court shall try any person for an offence committed in CONTEMPT of its own authority.

474. In any case triable by the Court of Session exclusively, any CIVIL COURT, before which such offence was committed, MAY, instead of sending the case for inquiry to a Magistrate, COMPLETE the INQUIRY itself, and commit or hold to bail the accused person to take his trial before the Court of Session.

For the purposes of an inquiry under this section, the Civil Court may exercise all the powers of a Magistrate; and its proceedings in such inquiry shall be deemed to have been held by a Magistrate.

If a Civil Court sends a case for inquiry and commitment to a Magistrate he is bound to receive and dispose of it; but if a Civil Court makes a commitment it shall complete the inquiry itself.

475. When any such commitment is made by order of a Civil Court, the Court shall frame a charge in the manner hereinbefore provided, and shall send the same with the order of commitment and the record of the case to the Magistrate of the District or other Magistrate of the 1st class; and such Magistrate shall bring the case before the Court of Session, together with the witnesses for the prosecution and defence,

476. Whenever any COURT of Session or Civil Court commits or holds to bail any person for trial under sections 472, 474, or 475, it may also bind over any person to give evidence, and for that purpose MAY EXERCISE all the POWERS OF a MAGISTRATE.
477. If any such OFFENCE, triable by the Court of Session exclusively, be COMMITTED BEFORE A MAGISTRATE NOT EMPOWERED TO COMMIT for trial before a Court of Session, he shall send the case to a Magistrate competent to make such commitment, who shall proceed to pass such order in the case as he thinks fit.

478. A complaint of an offence under section 497 of the Indian Penal Code shall not be instituted except by the husband of the woman, or by any person under whose care she was living at the time when the ADULTERY was committed.

479. A complaint of an offence under SECTION FOUR HUNDRED AND NINETY-EIGHT of the Indian Penal Code shall not be instituted except by the husband of the woman or by the person having care of such woman on behalf of her husband.

PART XI.
Preventive Jurisdiction of Magistrates.

CHAPTER XXXVI.
Of the Dispersion of Unlawful Assemblies.

480. Any MAGISTRATE or officer in charge of a Police-station MAY COMMAND any unlawful ASSEMBLY or any assembly of five or more persons, likely to cause a disturbance of the public peace, TO DISPERSE; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

481. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a Police-station MAY PROCEED to DISPERSE such assembly BY FORCE, and may require the assistance of any person, other than any European or Native Troops of Her Majesty acting as such, for the purpose of dispersing it, and arresting the persons who form part of it.

482. If an unlawful assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank, who is present, MAY CAUSE IT TO BE DISPERSED BY MILITARY FORCE.

483. No Magistrate shall be held to commit any offence by ordering the dispersion by Military Force of any assembly, the dispersion of which he regards, on reasonable grounds and in good faith, as necessary to the public security.

484. When a Magistrate determines to disperse an assembly by Military Force, he may require any OFFICER IN COMMAND of any of Her Majesty's Troops, whether European or Native, to disperse such assembly by such force; and it shall be the duty of every such officer TO OBEY every such REQUISITION in such manner as in his discre-
tion appears proper; but in doing so he shall use as little force and do as little injury to person and property as is consistent with dispersing the assembly and arresting and detaining such person as he may be directed by the Magistrate to arrest and detain, or as it may be necessary to arrest and detain for the purpose of dispersing the assembly.

485. No officer, obeying any such requisition, shall be held to have committed any offence by any act done by him in good faith in order to comply with it.

No inferior officer or private soldier shall be held to have committed any offence by any act done for the dispersion of any such assembly in obedience to any order, which he was bound by the mutiny Act or by the Indian Articles of war to obey.

487. When the Public security is manifestly endangered by an unlawful assembly and when no Magistrate can be communicated with any COMMISSIONED OFFICER of Her Majesty's European or Native Forces MAY DISPERSE any such ASSEMBLY by military force; and in doing so, HE SHALL HAVE the SAME PROTECTION AS A MAGISTRATE and all officers and soldiers acting under his orders shall have the protection mentioned in section 486; but as soon as such Commissioned Officer can communicate with any Magistrate, it is his duty to do so.

488. NO PROSECUTION against any Magistrate, officer or soldier for any act done under the provisions contained in sections 481, 482, 484 and 487 shall be instituted in any Criminal Court EXCEPT WITH the SANCTION OF the GOVERNMENT of India, or the Government of Madras or Bombay.

CHAPTER XXXVII.

Of Security for keeping the Peace.

489. Whenever a person, accused of rioting, assault, or other breach of the peace, or with abetting the same, or with assembling armed men or taking other unlawful measures with the evident intention of committing the same, is convicted of such offence before a Court of Session, or Magistrate of a division of a District, or Magistrate of the 1st class,

and the Court or Magistrate, by which or by whom such person is convicted, or the Court or Magistrate, by which or by whom the final sentence or order in the case is passed, is of opinion that it is just and necessary to require such person to give a personal RECOGNIZANCE FOR KEEPING THE PEACE,

such Court or Magistrate may, in addition to any other order passed in the case, direct that the person so convicted be required to execute a formal engagement, in a sum proportionate to his condition in life and the circumstances of the case, for keeping the peace during such period as it may appear proper to fix in each instance, not exceeding one year if the sentence or order be passed by a Magistrate, or three years if the sentence or final order be passed by a Court of Session, with a provision that if the same be not given the person required
to enter into the engagement shall be kept in simple imprisonment for any time not exceeding one year, if the order be passed by a Magistrate or three years if the order be passed by the High Court or by a Court of Session unless, within such period such person execute such formal engagement as aforesaid.

If the accused person be sentenced to imprisonment, the period, for which he may be required to execute a recognizance, and the imprisonment in default of executing such recognizance shall commence when he is released on the expiration of his sentence.

When any accused person is convicted of any offence specified in this section by a Magistrate neither in charge of a division of a District nor of the 1st class, such Magistrate, if he considers it just and necessary to require a personal recognizance for keeping the peace from the person so convicted, shall report the case to the Magistrate of the District, the Magistrate of the division of the District or to a Magistrate of the first class to whom such Magistrate is subordinate; and the Magistrate to whom the case is so reported, shall deal with the case as if the conviction had been before himself.

In any case where the order is not made at the time of signing, or by the Court which signs the judgment, the convict must be produced before the Magistrate who adds the order to enter into a personal recognizance to the original sentence.

490. Whenever it appears necessary to require SECURITY FOR KEEPING THE PEACE, in addition to the personal recognizance of the party so convicted, the Court or Magistrate, empowered to require a personal recognizance, may require security in addition thereto, and may fix the amount of the security-bond to be executed by the surety or sureties; with a provision that, if the same be not given, the party required to find the security shall be kept in simple imprisonment for any time not exceeding one year if the order be passed by the Magistrate of the District, Magistrate of a Division of a district, or by a 1st Class Magistrate, or three years if the order be passed by the High Court or by a Court of Session.

491. Whenever a Magistrate of a division of a District, or a Magistrate of the 1st class, receives information that any person is likely to commit a breach of the peace, or to do any act that may probably occasion a breach of the peace, he may summon such person to attend at a time and place mentioned in the SUMMONS, TO SHOW CAUSE WHY HE SHOULD NOT be required to ENTER INTO A BOND TO KEEP THE PEACE, with or without sureties, as such Magistrate thinks fit.

Explanation 1.—A summons, calling on a person to show cause why he should not be bound over to keep the peace, may be issued on any report or other information which appears credible and which the Magistrate believes; but the Magistrate cannot bind over a person until he has adjudicated on evidence before him.

Explanation 2.—A Magistrate may recall a summons issued under this section if he thinks proper.
492. Such SUMMONS SHALL SET FORTH the substance of the report or information on which it is issued, the amount of the bond, and the term for which it is to be in force, and, if security is called for the number of sureties required, and the amount in which they are to be bound respectively; and the time and place at which the person summoned is required to attend.

Explanation.—When the parties are present in Court no summons is necessary, but the person to whom a summons would have been issued must have an opportunity to show cause why he should not be bound.

493. The bond shall be in the FORM (E) given in the second schedule, or to the like effect; and its penalty shall be fixed with a due regard to the circumstances of the case and the means of the party.

The amount in which the sureties shall be bound shall not exceed the penalty named in the bond.

494. IF the PERSON summoned DOES NOT ATTEND at the time and place named in the summons on the day appointed, such Magistrate, if satisfied that the summons has been duly served, may issue a WARRANT for his arrest:

Provided that, whenever it appears to such Magistrate, upon the report of a Police officer or upon other credible information (the substance of which report or information shall be recorded), that there is just reason to fear the commission of a breach of the peace, which may probably be prevented by the immediate arrest of any person, the Magistrate may at any time issue a warrant for his arrest.

495. The MAGISTRATE MAY, if he sees sufficient cause, DISPENSE WITH the PERSONAL ATTENDANCE of the person informed against, under section 491, and may permit him to appear and enter into the required security or show cause against such requisition, by an agent duly authorized to act in his behalf.

496. If on the appearance of such person informed against, or of his agent, if he is permitted to appear by agent, the Magistrate is not satisfied that there is occasion to bind such person to keep the peace, the Magistrate shall direct his DISCHARGE.

497. If the Magistrate is satisfied that it is necessary for the preservation of the peace to take a bond from such person with or without security, he shall make an order accordingly; and if such PERSON FAILS TO COMPLY WITH the ORDER, the Magistrate may order him to be kept in simple imprisonment until he furnish the same.

498. The PERIOD for which the Magistrate may bind a person to keep the peace with or without security, SHALL NOT EXCEED ONE YEAR.

When a person is imprisoned under section 497, he shall not be detained by authority of the Magistrate beyond the term of one year, and shall be released whenever, within that term, he complies with the order.
499. Whenever it appears to the Magistrate that it is necessary for the preservation of the peace to bind a person BEYOND the term of ONE YEAR, he may, before the expiration of the first year, record his opinion to that effect and the grounds thereof, and may refer the case for the orders of the Court of Session.

Such Court, after examining the proceedings of the Magistrate, and making such further inquiry as it thinks necessary, may, if it see cause, authorize the Magistrate to extend the term for a further period not exceeding one year.

If such person fails to give a bond, with security if required, for his keeping the peace for such further period as the Magistrate under the orders of the Court of Session directs, he may be kept in simple imprisonment for such further period, or until, within that period, he gives such bond.

Explanation.—When the subject of dispute, or ground for apprehension, is the same as that on which the first order was passed, the Magistrate must proceed under this section if the first bond is still in force, and not under section 491.

500. The Magistrate of the District may, if he see sufficient cause, DISCHARGE any RECOGNIZANCE and surety for keeping the peace taken by him, or by any Magistrate subordinate to him, or by his predecessor under the preceding sections, and may order the release of the person confined for default in entering into such recognizance or giving such security.

501. A SURETY for the peaceable conduct of another person MAY at any time APPLY to the Magistrate TO BE RELIEVED from his engagement as surety.

On such application being made, the Magistrate shall issue his summons or warrant in order that the person, for whom such surety is bound, may appear or be brought before him.

On the appearance of the person to such warrant or on his voluntary surrender, the Magistrate shall direct the engagement of the surety to be cancelled, and shall call upon such person to give fresh security, and in default thereof shall order him to be kept in simple imprisonment.

502. Whenever it is proved before the Magistrate that any recognizance or other BOND taken under this chapter has been FORFEITED, he shall record the grounds of such proof, and shall call upon the person, bound by such recognizance or bond, to pay the penalty thereof, or to show cause why it should not be paid.

If sufficient cause be not shown and the penalty be not paid, the Magistrate shall proceed to recover the same by issuing a warrant for the attachment and sale of any of the moveable property belonging to the person bound by such recognizance or bond.

Such warrant may be executed within the jurisdiction of the Magistrate of the District in which it is issued; and it shall authorize the distress and sale of any moveable property belonging to the person bound without the jurisdiction of the Magistrate of the District in which such property is situated.
If such penalty be not paid and cannot be recovered by such attachment and sale, such person shall be liable to imprisonment by order of the Magistrate in the civil jail for a period not exceeding six months.

The penalty shall not be enforced until the person bound has had an opportunity of showing cause and until the breach of the conditions has been proved.

The commission, or attempt to commit or abetment of any offence whatever and wherever it may be committed is a breach of the bond.

Proceedings under this Chapter may be taken either in the district in which the breach of the peace is apprehended, or where an offence has been committed in breach of the bond, or in any district where the person it is desired to bind may be.

503. Whenever it is proved before the Magistrate that any BOND WITH a SURETY has been FORFEITED, the Magistrate may at his discretion give notice to the surety to pay the penalty, to which he has thereby become liable, or to show cause why it should not be paid.

If no sufficient cause is shown, and such penalty is not paid, the Magistrate may proceed to recover payment of the penalty from such surety in the same manner as from the principal party.

CHAPTER XXXVIII.
Of Security for good Behaviour.

504. Whenever it appears to the Magistrate of the District, or to a Magistrate of the 1st class, that any person is lurking within his jurisdiction, or that there is within his jurisdiction a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself, such Magistrate may require such SECURITY FOR such person's GOOD BEHAVIOUR FOR a period not exceeding SIX MONTHS as to him may appear good and sufficient.

If in any case under this or the two following sections the person to be bound is under sentence for an offence, he must be brought up on or after the expiration of his sentence for the purpose of being bound.

If a Sessions Judge, or Magistrate of the second or third class, considers, from evidence taken in any proceedings before him, that any person should be required to enter into a bond to be of good behaviour, he may send such person in custody to a competent Magistrate.

A Magistrate in charge of a Division of a District, exercising the powers of a Magistrate of the second class, may make any inquiry necessary under this chapter, and may submit his proceedings to the Magistrate of the District who may pass such order on them, either directing the person whose character was inquired into to furnish security or not, as he thinks fit.

505. Whenever it appears to such Magistrate from the evidence as to general character, adduced before him, that any person is by repute a robber, house-breaker, or thief,
or a receiver of stolen property, knowing the same to have been stolen,

or of notoriously bad livelihood, or is a dangerous character,

such Magistrate may require similar SECURITY FOR the GOOD BEHAVIOUR of such person FOR a period not exceeding ONE YEAR.

506. Whenever it appears to such Magistrate from the evidence as to general character adduced before him, that any person is by habit a robber, house-breaker, or thief,

or a receiver of stolen property, knowing the same to have been stolen,

or of a character so desperate and dangerous as to render his release, without security, at the expiration of the limited period of one year, hazardous to the community,

he shall record his opinion to that effect, with an order specifying the amount of security which should, in his judgment, be required from such person, as well as the number, character, and class of sureties, and the period, NOT EXCEEDING THREE YEARS, for which the sureties should be responsible for such person's good behaviour, and if such person does not comply with the order, the Magistrate shall issue a warrant directing his detention pending the orders of the Court of Session.

507. If a person required to furnish security, under the provisions of the last preceding section, does not furnish the same, or offers sureties whom the Magistrate sees fit to reject, the PROCEEDINGS shall be LAID, as soon as conveniently may be, before the Court of Session.

Such Court, after examining such proceedings and requiring any further information or evidence which it thinks necessary, may pass orders on the case, either confirming, modifying or annulling the orders of such Magistrate as it thinks proper.

508. If the Court of Session does not think it safe to direct the immediate discharge of such person, it shall fix a period for his detention, not exceeding three years, in the event of his not giving the security required from him.

509. Whenever security for good behaviour is required by the Court of Session or by a Magistrate, the amount, the security, the number and description of sureties, and the period of time for which the sureties are to be responsible for the good conduct of the person required to furnish security, shall be stated in the order.

The security-bond shall be in the Form (G) given in the second schedule, or to the like effect.

510. In the event of any person, required to give security under the provisions of this chapter, FAILING TO FURNISH the SECURITY so required, he shall be committed to prison until he furnish the same.
Provided that no such person shall be kept in prison for a longer period than that for which the security has been required from him.

Imprisonment under this section may be rigorous or simple, as the Court or Magistrate in each case directs.

511. The Magistrate of the District may at any time, exercise his DISCRETION IN RELEASING, without reference to any other authority, any PRISONER CONFINED UNDER REQUISITION OF SECURITY for good behaviour, whether BY HIS OWN ORDER, or that of his predecessor in office, or by the order of any officer subordinate to him, provided he is of opinion that such person can be released without hazard to the community.

512. Whenever the Magistrate of the District is of opinion, that any PERSON CONFINED under requisition of security for good behaviour BY ORDER OF A COURT OF SESSION, can be safely released without such security, such Magistrate shall make an immediate report of the case for the orders of such Court of Session.

513. A SURETY for the good behaviour of a person MAY at any time APPLY to a competent Magistrate TO BE RELIEVED from his engagement as such surety.

On such application being made, such Magistrate shall issue his summons or warrant in order that such person may appear or be brought before him.

On the appearance of such person "pursuant to such summons or warrant, or on his voluntary surrender, such Magistrate shall direct the engagement of the surety to be cancelled, and shall call upon the person so appearing or surrendering to give fresh security, and, in default thereof, shall commit him to custody.

514. Whenever a competent Magistrate is of opinion that, by reason of an offence, proved to have been committed by a person, for whose good behaviour security has been given, subsequent to his having given such security, PROCEEDINGS should be had UPON the BOND EXECUTED BY the SURETY, such Magistrate shall give notice to the surety to pay the penalty, or to show cause why it should not be paid.

If such penalty be not paid and no sufficient cause for non-payment be shown, such Magistrate shall proceed to recover the penalty from such surety by issuing a warrant for the attachment and sale of any moveable property belonging to him. Such warrant may be executed within the jurisdiction of the Magistrate of the District in which it is issued; and it shall authorize the distress and sale of any moveable property, belonging to such surety, without the jurisdiction of the said Magistrate, when endorsed by the Magistrate of the District in which such property is situated.

If such penalty be not paid, and cannot be recovered by such attachment and sale the surety shall be liable to imprisonment by order of such Magistrate in the civil jail for a period not exceeding six months.

515. The provisions of sections 492 and 494, relating to the issue of SUMMONS and WARRANT of arrest for securing the personal st-
tendance of the party informed against, when such party is not in custody shall apply to proceedings taken under this chapter against persons required to give security for their good behaviour.

Proceedings may be taken under this chapter, against persons amenable to its provisions, in any district where they may be.

Any EVIDENCE, taken under Chapter 37 or this chapter, shall be taken as in cases usually heard by a Magistrate upon summons.

Any PREVIOUS CONVICTION against the person to be bound may be proved on proceedings held under this chapter.

516. A Magistrate may refuse to accept any surety offered under this chapter on the ground that such SURETY is an UNFIT PERSON.

517. The provisions of this chapter shall not apply to EUROPEAN BRITISH SUBJECTS.

CHAPTER XXXIX.
Local Nuisances.

518. A Magistrate of the District, or a Magistrate of a division of a District, or any Magistrate specially empowered, may by a written order, direct any person to abstain from a certain act or to take certain order with certain property in his possession, or under his management, whenever such Magistrate considers that such direction is likely to prevent, or tends to prevent,

obstruction, annoyance or injury, or risk of obstruction annoyance or injury to any persons lawfully employed,

or danger to human life, health, or safety,

or a riot or an affray.

Explanation I.—This section is intended to provide for cases where a speedy remedy is desirable and where the delay, which would be occasioned by a resort to the procedure contained in section 521 and the next following sections would, in the opinion of the Magistrate, occasion a greater evil than that suffered by the person upon whom the order was made, or would defeat the intention of this chapter.

Explanation II.—An order may, in cases of emergency or in cases where the circumstances do not admit of the serving of notice, be passed ex parte, and may in all cases be made upon such information as satisfies the Magistrate.

Explanation III.—An order may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

Explanation IV.—Any Magistrate may recall or alter any order made under this section by himself or by his predecessor in the same office.
519. A Magistrate of the District, or a Magistrate of a division of a District, or any Magistrate, specially empowered, MAY ENJOIN any person NOT TO REPEAT or continue a PUBLIC NUISANCE, as defined in section 268 of the Indian Penal Code or under any Local or special Law.

520. Orders made under sections 518 and 519 are not judicial proceedings.

521. Whenever a Magistrate of the District or a Magistrate of a division of a District, or, when empowered by the Local Government in this behalf a Magistrate of the 1st class, considers that any unlawful obstruction or nuisance should be removed from any thoroughfare or public place,

or that any trade or occupation, by reason of its being injurious to the health or comfort of the community, should be suppressed or should be removed to a different place,

or that the construction of any building or the disposal of any combustible substance as likely to occasion conflagration, should be prevented,

or that any building is in such a state of weakness that it is likely to fall, and thereby cause injury to persons passing by, and that its removal in consequence is necessary,

or that any tank or well adjacent to any public thoroughfare should be fenced in such a manner as to prevent danger arising to the public,—

such Magistrate may issue an order to the person causing such obstruction or nuisance, or carrying on such trade or occupation, or being the owner or in possession of, or having control over, such building, substance, tank, or well as aforesaid, calling on him, within a time to be fixed in the order,

1. to remove such obstruction or nuisance,
2. or to suppress or remove such trade or occupation,
3. or to stop the construction of such building,
4. or to remove it,
5. or to alter the disposal of such substance,
6. or to fence such tank or well, as the case may be,
7. or to appear before himself or some other Magistrate of the 1st or 2nd class within the time mentioned in the order, and show cause why such order should not be enforced.

The issue of an order under this section shall be a judicial proceeding, whether or not evidence is taken therein.

Such order may be issued on a report or other information which the Magistrate believes, and shall direct the person to whom it is addressed either to obey it or to show cause why it should not be obeyed. The order shall not be made absolute, except as is hereinafter provided, until opportunity has been given to the person affected to show cause.
Explanation.—A “public place” includes property belonging to the State, camping grounds, and grounds left unoccupied for sanitary and recreational purposes.

522. The ORDER mentioned in section 521 shall if practicable, be SERVED PERSONALLY on the person to whom it is issued.

But if personal service is found to be impracticable, such order shall be notified by proclamation, and a written notice thereof shall be stuck up at such place or places as may be best adapted for conveying the information to such person.

523. The person, to whom such order is issued, shall be bound, within the time specified in the order, to obey the same; or to appear before the Magistrate, before whom he was required by the order to appear and show cause as aforesaid; or he may apply to such Magistrate for an order for a JURY to be appointed to try whether such order is reasonable and Proper.

On receiving such application, such Magistrate shall forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant.

The EXECUTION of the order SHALL BE SUSPENDED PENDING such INQUIRY, and the Magistrate who issued the order or before whom the applicant appears shall be guided by the decision of the jury, which shall be according to the opinion of the majority.

If the applicant by neglect or otherwise prevents or if the does not claim the appointment of a jury, or if from any cause the jury so appointed do not decide and report within a reasonable time, the Magistrate may pass such order as he thinks proper, which order shall be carried out in the manner hereinafter provided.

The time within which the report is to be made shall be fixed by the Magistrate in the order for the appointment of the jury, and may from time to time be extended by him. When the jury have made their report, the order of the Magistrate must be founded thereon, except in cases falling under section 528.

524. Such MAGISTRATE MAY SUMMON so many JURORS as may be necessary, and such persons shall be bound to attend and make their inquiry and report.

Any juror failing to attend or neglecting his duty as a juror shall be liable to be dealt with under section 174 of the Indian Penal Code.

525. If the person, to whom the order, mentioned in section 521, in issued, appears to show cause against the same, as hereafter provided, the Magistrate shall take evidence in the matter, but if he does not appear or does not obey the order,

or apply for the jury within the time specified in such order,

he shall be liable to the penalty prescribed in that behalf in section 188, of the Indian Penal Code;

and the Magistrate, who issued such order, may proceed to carry
it into execution at the expense of such person, and may realize such
expenses, either by the sale of any building, goods, or other property
removed by his order, or by the distress and sale of such moveable pro-
erty of such person within or without his jurisdiction. If such pro-
erty is without his jurisdiction, the order shall authorize its attach-
ment and sale when endorsed by the Magistrate in whose jurisdiction
the goods are attached.

No suit shall lie in respect of anything necessarily or reasonably
done in carrying out the provisions of this section.

526. IF, in a case referred to a jury, the JURY FIND that the
ORDER of the Magistrate is REASONABLE AND PROPER, as ori-
ginally made, or subject to a modification which the Magistrate accepts,
the Magistrate, who issued the order, or before whom cause was shown,
shall give notice of such finding to the person to whom the order was
issued, and shall add to such notice an order to obey the aforesaid
order, within a time to be fixed in the notice, and an intimation that,
in case of disobedience, such person will be liable to the penalty pro-
vided by section 188 of the Indian Penal Code.

If such latter order is not obeyed, the Magistrate may proceed as
in section 525.

527. If the person, to whom the order of the Magistrate, under
section 421, is issued, appears and shows cause against it so as to satisfy
the Magistrate who issued it that it is not reasonable and proper, no
further proceedings shall be taken in the case.

528. If the Magistrate who issued the order considers that imme-
diate measures are necessary to be taken to prevent IMMINENT
DANGER or injury of a serious kind TO the PUBLIC, he may issue
such an injunction to the person, to whom the order under section 521
was issued, as is required to obviate or prevent such danger or injury,
whether a jury is to be, or has been appointed or not.

In default of such person forthwith taking all necessary measures
ordered to be taken by such injunction, the Magistrate may himself use
or cause to be used such means as may be necessary to obviate such
danger or to prevent such injury.

No suit shall lie in respect of anything necessarily or reasonably
done for that purpose.

529. Nothing in this chapter shall interfere with the provisions of
section 48 of Act No. XXIV of 1859 (for the better regulation of the
police within the territories subject to the Presidency of Fort St. George),
or of section 34 of Act No. V of 1861 (for the regulation of Police), or
of section 16 of Act No. VIII of 1867 (for the regulation of the District
Police in the Presidency of Bombay), of the Governor of Bombay in
Council.

CHAPTER XL
Possession.

530. Whenever the Magistrate of the District, or a Magistrate of
a division of a District or Magistrate of the first class, is satisfied that a
DISPUTE, LIKELY TO INDUCE A BREACH OF THE PEACE,
exists CONCERNING any LAND or the boundaries of any land, or
concerning any houses, water, fisheries, crops or other produce of land,
within the limits of his jurisdiction,

such Magistrate shall record a proceeding stating the grounds of
his being so satisfied, and shall call on all parties concerned in such
dispute to attend his Court in person, or by agent, within a time to be
fixed by such Magistrate, and to give in a written statement of their
respective claims, as respects the fact of actual possession of the sub-
ject of dispute.

Such Magistrate shall, without reference to the merits of the claims
of any party to a right of possession, proceed to inquire and decide
which party is in possession of the subject of dispute.

After satisfying himself upon that point, he shall issue an order
declaring the party or parties to be entitled to retain possession until
ousted by due course of law, and forbidding all disturbance of posses-
sion until such time.

Explanation.—Such Magistrate may satisfy himself of the existence
of a dispute likely to induce a breach of the peace from a report or
other information; but the question of possession must be decided on
evidence taken before him.

531. If such Magistrate decides that NEITHER OF THE PAR-
TIES IS IN POSSESSION, or is unable to satisfy himself as to
which person is in possession of the subject of dispute, he may attach
it, until a competent Civil Court shall have determined the rights of
the parties, or who ought to be in possession.

532. If a DISPUTE arise CONCERNING the right of USE OF
any LAND OR WATER, or any right of way, such Magistrate, within
whose jurisdiction the subject of dispute lies, may inquire into the mat-
ter; and if it appears to him that the subject of dispute is open to the
use of the public, or of any person or of any class of persons, such Ma-
gistrate may order that possession thereof shall not be taken or retain-
ed by any one to the exclusion of the public, or of such person, or of
such class of persons, as the case may be, until the person claiming
such possession shall obtain the decision of a competent Civil Court,
adjudging him to be entitled to such exclusive possession.

Provided that such Magistrate shall not pass any such order, if the
matter be such that the right of use is capable of being exercised at all
times of the year, unless such right has been ordinarily exercised within
three months from the date of the institution of the inquiry; or, in
cases where the right of use exists at particular seasons, unless such
right has been exercised during the last of such seasons before the
complaint.

533. Whenever a LOCAL INQUIRY is necessary for the pur-
poses of this chapter, any Magistrate of the first class may depute any
Magistrate subordinate to him to make the inquiry, and may furnish
him with such instructions, consistent with the law for the time being
in force, as may seem necessary for his guidance, and may declare by
whom the whole or any part of the necessary expenses of the inquiry shall be paid.

534. Whenever, in any Criminal Court, a person is convicted of an offence attended with criminal force, and it appears to such Court that by such CRIMINAL FORCE ANY PERSON has been DIS-POSSESSED OF any IMMOVEABLE PROPERTY, the Court may order such person to be restored to possession.

No such order shall prejudice any right over such immoveable property which any person may be able to show in a civil suit.

535. Nothing in this chapter shall affect the powers of a COLLECTOR, or a person exercising the powers of a Collector or of a Revenue Court.

CHAPTER XLI.

Of the Maintenance of Wives and Families.

536. If any person, having sufficient means, neglects or refuses to maintain his wife, or legitimate or illegitimate child unable to maintain himself, the Magistrate of the District, or a Magistrate of a Division of a District or a Magistrate of the first class may, upon due proof thereof by evidence, order such person to make a monthly allowance for the MAINTENANCE of his wife or such child at such monthly rate, not exceeding fifty rupees in the whole, as to such Magistrate seems reasonable.

Such allowance shall be payable from the date of the order.

If such person willfully neglects to comply with this order, such Magistrate may, for every breach of the order, by warrant, direct the AMOUNT due to be LEVIED IN THE MANNER PROVIDED FOR LEVYING FINES; and may order such person to be imprisoned with or without hard labor for any term not exceeding one month for each month's allowance remaining unpaid:

Provided that, if such person offers to maintain his wife on condition of her living with him, and his wife refuses to live with him, such Magistrate may consider any grounds of refusal stated by such wife; and make the order allowed by this section notwithstanding such offer, if he is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

No wife shall be entitled to receive an allowance from her husband under this section, if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by consent.

537. On the application of any person receiving or ordered to pay a monthly allowance under the provisions of section 535, and on proof of a change in the circumstances of such person, his wife, or child, the Magistrate may make such ALTERATION IN the ALLOWANCE ordered as he deems fit, provided the total sum of rupees fifty a month be not exceeded.
PART XII.
Miscellaneous Provisions.

CHAPTER XLII.
Miscellaneous.

539. The procedure prescribed by this Act shall be followed, so far as it can be, in all MISCELLANEOUS CRIMINAL CASES and proceedings which are instituted in any Court.

540. Nothing in this Act shall be held to alter or affect the jurisdiction or procedure of the Magistrates or Commissioners of Police, or the Police in the PRESIDENCY TOWNS except so far as this Act expressly provides for the same.

541. Nothing in this Act shall be held to alter or affect—

(a) the jurisdiction, or procedure of landholders specially empowered according to law in the Presidency of Bombay,

(b) The jurisdiction or procedure of the heads of villages in the Presidency of Fort Saint George,

(c) the jurisdiction, or procedure of village Police officers in the Presidency of Bombay.

(d) the jurisdiction or procedure of any officer duly authorized and appointed under the laws in force in the Presidencies of Fort Saint George and Bombay respectively, for trial of petty offences in military bazars at cantonments and stations occupied by the troops of those Presidencies respectively.

SCHEDULE I.

For this schedule see "Repealing Enactments."

SCHEDULE II.
Forms of Summons, Warrants, Bonds, and Recognizances.

FORM OF SUMMONS (Section 159).

To A. B., of

Whereas your attendance is necessary to answer to a complaint of (state shortly the offence complained of) : You are hereby required to appear in person or by authorized agent, as the case may be, before the [Magistrate] of on the day of Herein fail not.

Dated the day of

(Signature and Seal.)
B

Form of Warrant (Section 156).

To [name and designation of the person or persons who are to execute the warrant].

Whereas is accused of the offence of [state the offence]: You are hereby directed to apprehend the said and produce him before me. Herein fail not.

(Signature and Seal.)

This warrant may be endorsed as follows:—

If the said shall give bail, himself in the sum of with one surety in the sum of (or two sureties each in the sum of ) to appear before me on the day of he may be released.

(Signature.)

Dated

C

Form of Warrant of Commitment for Intermediate Custody (Sections 196, 197 and 303).

To [Jailer of].

Whereas is charged with [state the offence in respect of which the prisoner is charged] and has been committed to take his trial before the Court of at You are hereby required to receive the said into your custody and to produce him before the said Court when so required.

(Signature)

(Office and powers.)

Dated

D

Form of Warrant of Commitment (Section 303).

To [Jailer of].

Whereas is convicted before me [name and official designation] of the offence of [mention the offence quoting Act and section] and sentenced to [state the punishment fully and distinctly mentioning its nature and extent]; You are hereby required to receive the said into your custody in the said jail of together with this warrant, and there carry the aforesaid sentence into execution according to law.

(Signature.)

Dated the day of

E

Form of Bond to Keep the Peace (Section 498).

Whereas I inhabitant of have been called upon to enter into a bond to keep the peace for the term of , I hereby bind myself not to commit a breach of the peace or do any act that may probably occasion a breach of the peace during the said term: and in case of my making default therein I bind myself to forfeit to Her Majesty the sum of rupees.

(Signature.)

Dated

Form of Security to be Subjoined to the Bond of the Principal.

I hereby declare myself surety for the above said that he shall not commit a breach of the peace or do any act that may probably occasion a breach of the peace during the said term; and in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the sum of rupees.

(Signature.)

Dated
Act 10 of 1872. 

Charges. 

F

Form of Recognizance to Prosecute or Give Evidence (Sections 190 and 380).

I of do hereby bind myself to appear at in the Court of at o'clock on the day of next and there to prosecute (or as the case may be, to prosecute and give evidence, or to give evidence) in the matter of a charge of against one A. B., and to attend at the said Court from day to day or as I may be otherwise directed by the presiding officer; and in case of my making default herein, I bind myself to forfeit to Her Majesty the sum of rupees.

Dated ________________________________

(Signature.)

---

G

Form of Bond for Good Behaviour (Section 509).

Whereas I inhabitant of have been called to enter into a bond to be of good behaviour to Her Majesty the Queen and to all her subjects, for the term of during the said term, and in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of rupees.

Dated ________________________________

(Signature.)

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Form of Security to be Subjoined to the Bond of the Principal.

I hereby declare myself surety for the above said that he shall be of good behaviour to Her Majesty and to all her subjects during the said term; and in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the sum of rupees.

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Schedule III.

Charges.

(1.)—Charges with one head.

(a.) I hereby charge you as follows:

(b.) That you, on or about the day of at , waged war against the Queen, and thereby committed an offence punishable under Section 151 of the Indian Penal Code, and within the cognizance of the Court of Session.

(c.) And I hereby direct that you be tried by the said Court on the said charge.

[Signature and Seal of the Magistrate.]

['To be substituted for (b).']

(2.) That you, on or about the day of at , with the intention of inducing the Honorable A. B., Member of the Council of the Governor General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under Section 124 of the Indian Penal Code, and within the cognizance of the Court of Session.

(3.) That you, being a public servant in the Department, directly accepted from a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under Section 161 of the Indian Penal Code, and within the cognizance of the Court of Session.

(4.) That you, on or about the day of at , committed culpable homicide not amounting to murder, causing the death of , and thereby committed an offence punishable under Section 304 of the Indian Penal Code, and within the cognizance of the Court of Session.

(5.) That you, on or about the day of at , voluntarily caused grievous hurt to , and thereby committed an offence punishable under Section 323 of the Indian Penal Code, and within the cognizance of the Court of Session.
(7.) That you, on or about the day of , at , committed robbery, an offence punishable under Section 392 of the Indian Penal Code, and within the cognizance of the Court of Session.

(8.) That you, on or about the day of , at , committed dacoity, an offence punishable under Section 396 of the Indian Penal Code, and within the cognizance of the Court of Session.

(9.) That you, on or about the day of did (or committed to do as the case may be) such conduct being contrary to the provisions of Act Section , and was known by you to be prejudicial to and thereby committed an offence punishable under Section 166 of the Indian Penal Code and within the cognizance of the Court of Session.

(10.) That you, on or about the day of in the course of the trial of before stated in evidence that " which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under Section 193 of the Indian Penal Code and within the cognizance of the Court of Session.

In cases tried by the Magistrates substitute "within my cognizance" for "within the cognizance of the Court of Session." In (c) omit " by the said Court."

(II.)—CHARGES WITH TWO OR MORE HEADS.

(a.) I ['name and office of Magistrate, &c.,'] hereby charge you ['name of accused person'] as follows:

(b.) First.—That you, on or about the day of , at , knowing a coin to be counterfeited, delivered the same to another person, by name , as genuine, and thereby committed an offence punishable under Section 241 of the Indian Penal Code, and within the cognizance of the Court of Session.

Secondly.—That you, on or about the day of , at , knowing a coin to be counterfeited, attempted to induce another person, by name , to receive it as genuine, and thereby committed an offence punishable under Section 243 of the Indian Penal Code, and within the the cognizance of the Court of Session.

(c.) and I hereby direct that you be tried by the said Court on the said charge.

[Signature and Seal of the Magistrate.]
SCHEDULE IV.

Explanatory Notes.—1st.—The entries in the 2nd and 6th columns of the schedule, headed respectively "Offence" and "Punishment under the Indian Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code; or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the 1st column.

2nd.—The term "Whether bailable or not," in column 5, is to be taken in connection with the provisions of Section 388 and 389, of the Code.

3rd.—Offences may be tried by a Court superior to the Court specifically mentioned in column 7. For example, a Court of Session may try an offence entered in column 7 as triable by a Magistrate.

4th.—The words "any Magistrate," as used in column 7, shall include any Magistrate of the 1st or 2nd or 3rd class.

5th.—In the territories in British India to which the General Regulations of Bengal, Madras and Bombay do not extend, the powers given by this Act shall be exercised by such officers as the Local Government of those territories respectively shall appoint.

6th.—The last part of the schedule headed "Offences against other Laws," shall not be taken to alter or affect any special provision contained in such laws regarding the procedure to be followed in the case of offences made punishable thereby.

7th.—Column 4 is meant to indicate to Magistrates the manner in which the discretion vested in them by sections 149, 149 and 150 is commonly to be used, but it is not to affect the definition of summons cases and warrant cases given in section 4.

Column 3.

THE POLICE MAY ARREST WITHOUT WARRANT in the following cases, In all other cases they shall not arrest without warrant.

Chap. V. Abetment.—If arrest for the offence abetted may be made without warrant.

Chap. VII. Army and Navy.—131, 132, 133, 134, 135, 136, 138 140.

Chap. VIII. Public Tranquillity.—143, 144, 145, 147, 148, 149 (if arrest may be made without warrant for the offence committed) 150, 151, 152, 153, 157, 158.

Chap. IX. Public Servants.—170, 171.

Chap. XI. False Evidence &c.—212, 216, 224, 225, 225 A, 226.

Chap. XII. Coin and Stamps.—The whole.


Chap. XV. Religion.—295, 296, 297.


Chap. XVIII. Forcery &c.—467 cl. 2, 471 cl. 2.
CHAP. XXIII. ATTEMPTS.—If the offence attempted is one for which the police may arrest without warrant.

OFFENCES AGAINST OTHER LAWS.—If punishable with death transportation or imprisonment for 3 years and upwards.

Column 4.

A SUMMONS shall ordinarily issue in the first instance in the following cases. In all other cases a warrant shall ordinarily issue.

CHAP. V. ABETMENT.—If a summons may issue for the offence abetted.

CHAP. VII. ARMY AND NAVY.—137, 140.

CHAP. VIII. PUBLIC TRANQUILLITY.—143, 149 (if a summons may issue for the offence committed), 150 (according to the offence committed by the person hired engaged or employed) 151, 153 cl. 2. 154, 155, 156, 157, 158 cl. 1, 160.


CHAP. X. CONTEMPTS.—172, 173, 174, 175, 176, 177, 178, 179, 180, 182 183, 184, 185, 186, 187, 188, 189, 190.

CHAP. XI. FALSE EVIDENCE &C.—202, 217, 223, 227, 228, 229.

CHAP. XIII. WEIGHTS AND MEASURES.—The whole.


CHAP. XV. RELIGION.—The whole.


CHAP. XXIII. ATTEMPTS.—According to the offence attempted.

OFFENCES AGAINST OTHER LAWS.—If punishable with imprisonment for less than 3 years, or with fine only.

Column 5.

The following offences are BAILABLE. All others are not baila.

CHAP. V. ABETMENT.—109, 110, 111, 113, 114, 116, 117, 119 clauses 1 and 3, and 120, if the offence abetted is bailable.

CHAP. VI. STATE OFFENCES.—129.

CHAP. VII. ARMY & NAVY.—135, 136, 137, 138, 140.
ACT 10 OF 1872.

SCHEDULES.

CHAP. VIII. Public Tranquility.—143, 144, 145, 147, 148, 149, (if the offence committed is bailable) 150, (if the offence is bailable) 151, 152, 153, 154, 155, 156, 157, 158, 160.

CHAP. IX. Public Servants.—The whole.

CHAP. X. Contempt.—The whole.

CHAP. XI. False Evidence &c.—193, 196, (if the offence of giving such evidence is bailable) 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222 Cl. 3, 223, 224, 225 Cl. 1, 225 A, 226, 229.

CHAP. XII. Coin and Stamps.—255, 256, 257, 258, 259, 260, 261, 262, 263.

CHAP. XIII. Weights and Measures.—The whole.

CHAP. XIV. Public Health &c.—The whole.

CHAP. XV. Religion.—The whole.


CHAP. XVIII. Forgery &c.—463, 469, 471 Cl. 1, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492.

CHAP. XX. Marriage.—494, 497, 498.

CHAP. XXI. Defamation.—The whole.

CHAP. XXII. Intimidation &c.—504, 506, 507, 508, 509, 510.

CHAP. XXIII. Attempts.—If the offence attempted is bailable.

Offences against other laws.—If punishable with imprisonment for less than 3 years or with fine only.

Column 7.

By what Court triable.

I.—By any Magistrate.

CHAP. V. Abetment.—If offence abetted is triable.

CHAP. VII. Army and Navy.—140.

CHAP. VIII. Public Tranquility.—143, 144, 145, 147, 149 (if the offence committed is triable,) 150 (do.) 151, 153, 160.

CHAP. IX. Public Servants.—170, 171.

CHAP. X. Contempts.—172, 174, 175 (if committed in his Court, subject to the provisions of chapter 32 of this Code), 178 (do.), 179 do. 16
180 do. 201 (if the offence is triable), 212 cl. 3 do. 213 cl. 3 do. 214 cl. 3 do., 216, cl. 3 do., 227 do., 228 (if committed in his Court, subject to the provisions of chapter 32 of this Code).

Chap. XIV. Public Health &c.;—277, 278, 279, 285, 286, 289, 290, 294 A.

Chap. XVI. Human body.—323, 334, 336, 341, 352, 356, 357, 358, 374.

Chap. XVII. Property.—379, 380, 403, 426, 447, 448, 451 cl. 1.

Chap. XXII. Intimidation &c.—504, 510.

Chap. XXIII. Attempts.—If the offence attempted is triable.

Offences Against other Laws.—According to the provisions of Section 8 of this Code.

II.—By Magistrates of the 2nd Class.

Chap. V. Abetment.—If the offence abetted is triable.

Chap. VII. Army and Navy.—135, 136, 137, 138.

Chap. VIII. Public Tranquillity.—154, 155, 156, 157, 158.

Chap. IX. Public Servants.—165, 166.

Chap. X. Contempts.—173, 175, 176, 177, 178, 179, 180, 182, 183, 184, 185, 186, 187, 188, 189, 190.

Chap. XI. False Evidence &c.;—201 cl. 3 (if the offence is triable) 202, 203, 206, 207, 212 cl. 3 (if offence triable) 213 cl. 3 do., 214 cl. 3 do., 216 cl. 3, 217, 221 cl. 3, 223, 224, 225 cl. 1, 225 A, 227, (if original offence triable) 228, (if offence committed in Court).

Chap. XII. Coin and Stamps.—241, 254, 262.

Chap. XIII. Weights and Measures.—The whole.


Chap. XV. Religion.—The whole.


Chap. XVIII. Forgery &c.;—482, 483, 486, 487, 488, 489.

Chap. XIX. Breach of Contracts &c.—The whole.

Chap. XX. Marriage.—498.

Chap. XXII. Intimidation.—505, 506 Cl. 1, 508.

Chap. XXIII. Attempts.—If the offence attempted is triable.

Offences Against other Laws.—According to the provisions of Section 8 of this Code.
III.—MAGISTRATES OF THE 1st CLASS.

CHAP. V. ABETMENT.—If the offence abetted is triable.

CHAP. VI. STATE OFFENCES.—129.

CHAP. VII. ARMY AND NAVY.—133.

CHAP. VIII. PUBLIC TRANQUILITY.—148, 149 (if offence triable), 150 (Do.), 152.

CHAP. IX. PUBLIC SERVANTS.—161, 162, 163, 164, 167, 168, 169.

CHAP. X. CONTEMPTS.—181.

CHAP. XI. FALSE EVIDENCE.—193, 196, 197, 198, 199, 200, 201 Clauses 2 and 3, 204, 205, 206, 208, 209, 210, 211 Cl. 1, 212, 213 Clauses 2 and 3, 214 Clauses 2 and 3, 215, 216, 221 Cl. 2, 222 Cl. 3, 225 Cl. 2, 227 (if original offence triable), 228 (if committed in Court), 229.


CHAP. XVII. PROPERTY.—392, 393, 394, 407, 409, 420, 455, 458.

CHAP XVIII. FORGERY &C.—484, 485.

CHAP. XXI. DEFAMATION.—The whole.

CHAP. XXII. INTIMIDATION.—506 cl. 2, 507, 509.

CHAP. XXIII. ATTEMPTS.—If the offence attempted is triable.

OFFENCES AGAINST OTHER LAWS:—According to the Provisions of section 8 of this Code.

IV.—BY THE COURT OF SESSION.

CHAP. V ABETMENT.—If the offence abetted is triable.

CHAP. VI. STATE OFFENCES.—121, 121 A, 122, 123, 124, 124 A, 125, 126, 127, 128, 130.

CHAP. VII. ARMY AND NAVY.—131, 132, 134.

CHAP. VIII. PUBLIC TRANQUILITY.—149 (If offence triable).

CHAP. X. CONTEMPTS.—175 (if committed in Court), 178 (Do.), 179, (Do.), 180 (Do.).

CHAP. XI. FALSE EVIDENCE &C.—194, 195, 201 cl. 1, 211 cl. 2, 213 cl. 1, 214 cl. 1, 218, 219, 220, 221 cl. 1, 222 cl. 1, 225 Clauses 3, 4 and 5, 226, 227 (If original offence triable), 228 (if committed in Court).

CHAP. XII. COIN AND STAMPS.—231, 232, 234, 235 Cl. 2, 236, 238, 244, 245, 255, 236, 257, 258.

CHAP. XIV. PUBLIC HEALTH.—281.


CHAP. XVIII. Forgery &c.—465, 466, 467, 468, 469, 471, 472, 473, 474, 475, 476, 477.

CHAP. XX. Marriage.—493, 494, 495, 496, 497.

CHAP. XXIII. Attempts.—If the offence attempted is triable.

Offences Against other Laws.—According to the provisions of section 8 of this Code.
MISCELLANEOUS ACTS RELATING TO CRIMINAL PROCEDURE.

33 & 34 VICTORIA CAP. 52.

An Act for amending the Law relating to the Extradition of Criminals.

Whereas it is expedient to amend the law relating to the surrender to Foreign States of persons accused or convicted of the commission of certain crimes within the jurisdiction of such States, and to the trial of criminals surrendered by Foreign States to this country. Be it enacted,

Preliminary.

1. This Act may be cited as "The Extradition Act, 1870."

2. Where an arrangement has been made with any Foreign State with respect to the surrender to such State of any fugitive criminals HER MAJESTY MAY, by order in Council, DIRECT THAT THIS ACT SHALL APPLY in the case of such Foreign State.

Her Majesty may, by the same or any subsequent order, limit the operation of the order, and restrict the same to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the order and render the operation thereof subject to such conditions, exceptions and qualifications as may be deemed expedient.

Every such order shall recite or embody the terms of the arrangement, and shall not remain in force for any longer period than the arrangement.

Every such order shall be laid before both Houses of Parliament within six weeks after it is made, or, if Parliament be not then sitting, within six weeks after the then next meeting of Parliament, and shall also be published in the London Gazette.

3. The following RESTRICTIONS shall be observed WITH RESPECT TO the SURRENDER OF fugitive CRIMINALS:

(1) A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove to the satisfaction of the police magistrate or the court before whom he is brought on habeas corpus, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character:
(2) A fugitive criminal shall not be surrendered to a Foreign State unless provision is made by the law of that state, or by arrangement, that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to Her Majesty's dominions, be detained or tried in that Foreign State for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded:

(3) A fugitive criminal who has been accused of some offence within English jurisdiction, not being the offence for which his surrender is asked, or is undergoing sentence under any conviction in the United Kingdom, shall not be surrendered until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise.

(4) A fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

4. An Order in Council for applying this Act in the case of any Foreign State shall not be made unless the arrangement—

(1) provides for the determination of it by either party to it after the expiration of a notice not exceeding one year; and,

(2) is in conformity with the provisions of this Act, and in particular with the restrictions on the surrender of fugitive criminals contained in this Act.

5. When an ORDER applying this Act in the case of any Foreign State has been PUBLISHED IN THE LONDON GAZETTE, this Act (after the date specified in the order or if no date is specified, after the date of the publication,) shall, so long as the order remains in force, be subject to the limitations, restrictions, conditions, exceptions, and qualifications, if any, contained in the order and apply in the case of such Foreign State. An Order in Council shall be conclusive evidence that the arrangement therein referred to complies with the requirements of this Act, and this Act applies in the case of the Foreign State mentioned in the order, and the validity of such order shall not be questioned in any legal proceedings whatever.

6. Where this Act applies in the case of any Foreign State, every FUGITIVE CRIMINAL of that State who is in or suspected of being in any part of Her Majesty's dominions, or that part which is specified in the order applying this Act (as the case may be), shall be LIABLE TO BE APPEHENDED AND SURRENDERED in manner provided by this Act, whether the crime in respect of which the surrender is sought was committed before or after the date of the order, and whether there is or is not any concurrent jurisdiction in any Court of Her Majesty's dominions over that crime.

7. A REQUISITION FOR the SURRENDER of a fugitive criminal of any Foreign State, who is in or suspected of being in the United Kingdom, shall be made to a Secretary of State by some person recognized by the Secretary of State as a diplomatic representative of that Foreign State. A Secretary of State may, by order under his hand and seal, signify to a police magistrate that such requisition has been made, and require him to issue his warrant for the apprehension of the fugitive criminal.
If the Secretary of State is of opinion that the OFFENCE is one
OF a POLITICAL CHARACTER, he may, if he think fit, refuse to
send any such order, and may also at any time order a fugitive crimi-
nal accused or convicted of such offence to be discharged from custody.

8. A WARRANT FOR the APPREHENSION of a fugitive
criminal, whether accused or convicted of crime, who is in or suspected
of being in the United Kingdom, MAY BE ISSUED—

(1) by a police magistrate on the receipt of the said order of the
Secretary of State, and on such evidence as would in his opinion
justify the issue of the warrant if the crime had been committed or
the criminal convicted in England; and

(2) by a police magistrate or any justice of the peace in any part of
the United Kingdom, on such information or complaint and such
evidence or after such proceedings as would in the opinion of the
person issuing the warrant justify the issue of a warrant if the
crime had been committed or the criminal convicted in that part
of the United Kingdom in which he exercises jurisdiction.

Any person issuing a warrant under this section without an order
from a Secretary of State shall forthwith send a REPORT of the fact
of such issue, together with the evidence and information or complaint,
or certified copies thereof, TO a SECRETARY OF STATE, who
may if he think fit order the warrant to be cancelled, and the person
who has been apprehended on the warrant to be discharged.

A fugitive criminal, when apprehended on a warrant issued with-
out the order of a Secretary of State, shall be brought before some per-
son having power to issue a warrant under this section, who shall by
warrant order him to be brought and the prisoner shall accordingly be
brought before a police magistrate.

A fugitive criminal apprehended on a warrant issued without the
order of a Secretary of State shall be discharged by the police magis-
trate, unless the police magistrate, within such reasonable time as, with
reference to the circumstances of the case, he may fix, receives from a
Secretary of State an order signifying that a requisition has been made
for the surrender of such criminal.

9. When a fugitive criminal is brought before the police magis-
trate, the POLICE MAGISTRATE SHALL HEAR THE CASE in
the same manner, and have the same jurisdiction and powers, as near
as may be, as if the prisoner were brought before him charged with an
indictable offence committed in England.

The police magistrate shall receive any evidence which may be
tendered to show that the crime of which the prisoner is accused or
alleged to have been convicted is an offence of a political character or
is not an extradition crime.

10. In the case of a fugitive criminal accused of an extradition
crime, if the foreign warrant authorizing the arrest of such criminal is
duly authenticated, and such evidence is produced as (subject to the
provisions of this Act) would, according to the law of England, justify
the committal for trial of the prisoner if the crime of which he is ac-
cused had been committed in England, the police magistrate shall com-
mit him to prison, but otherwise shall order him to be discharged.
In the case of a fugitive criminal alleged to have been convicted of an extradition crime, if such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, prove that the prisoner was convicted of such crime, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged.

If he commits such criminal to prison, he shall commit him to the Middlesex House of Detention, or to some other prison in Middlesex, there to await the warrant of a Secretary of State for his surrender, and shall forthwith send to a Secretary of State a certificate of the committal, and such report upon the case as he may think fit.

11. If the police magistrate commits a fugitive criminal to prison, he shall inform such criminal that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of habeas corpus.

Upon the expiration of the said fifteen days, or, if a writ of habeas corpus is issued, after the decision of the court upon the return to the writ, as the case may be, or after such further period as may be allowed in either case by a Secretary of State, it shall be lawful for a Secretary of State, by warrant under his hand and seal, to order the fugitive criminal (if not delivered on the decision of the Court) to be surrendered to such person as may in his opinion be duly authorized to receive the fugitive criminal by the Foreign State from which the requisition for the surrender proceeded, and such fugitive criminal shall be surrendered accordingly.

It shall be lawful for any person to whom such warrant is directed and for the person so authorized as aforesaid to receive, hold in custody, and convey within the jurisdiction of such Foreign State the criminal mentioned in the warrant; and if the criminal escapes out of any custody to which he may be delivered on or in pursuance of such warrant, it shall be lawful to retake him in the same manner as any person accused of any crime against the laws of that part of Her Majesty's dominions to which he escapes may be retaken upon an escape.

12. If the fugitive CRIMINAL who has been committed to prison is NOT SURRENDERED and conveyed out of the United Kingdom WITHIN TWO MONTHS AFTER such COMMITTAL, or, if a writ of habeas corpus is issued, after the decision of the Court, upon the return to the writ, it shall be lawful for any judge of one of Her Majesty's superior Courts at Westminster, upon application made to him by or on behalf of the criminal, and upon proof that reasonable notice of the intention to make such application has been given to a Secretary of State, to order the criminal to be discharged out of custody, unless sufficient cause is shown to the contrary.

13. The WARRANT of the police magistrate issued in pursuance of this Act MAY BE EXECUTED IN ANY PART of the UNITED KINGDOM in the same manner as if the same had been originally issued or subsequently indorsed by a justice of the peace having jurisdiction in the place where the same is executed.

14. Depositions or statements on oath, taken in a Foreign State and copies of such original depositions or statements, and foreign cer-
tificates of or judicial documents stating the fact of conviction, may, if duly authenticated, be received in EVIDENCE in proceedings under this Act.

15. Foreign warrants and depositions or statements on oath, and copies thereof, and certificates of or judicial documents stating the fact of a conviction shall be deemed DULY AUTHENTICATED for the purposes of this Act if authenticated in manner provided for the time being by law or authenticated as follows:

(1.) If the warrant purports to be signed by a judge, magistrate, or officer of the Foreign State where the same was issued;

(2.) If the depositions or statements or the copies thereof purport to be certified under the hand of a judge, magistrate, or officer of the Foreign State where the same were taken to be the original depositions or statements or to be true copies thereof, as the case may require; and

(3.) If the certificate of or judicial document stating the fact of conviction purports to be certified by a judge, magistrate, or officer of the Foreign State where the conviction took place; and if in every case the warrants, depositions, statements, copies, certificates, and judicial documents (as the case may be) are authenticated by the oath of some witness or by being sealed with the official seal of the minister of justice, or some other minister of State: And all Courts of justice, justices, and magistrates shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof.

Crimes committed at sea.

16. Where the CRIME in respect of which the surrender of a fugitive criminal is sought was committed on board any vessel ON THE HIGH SEAS which comes into any port of the United Kingdom, the following provisions shall have effect:

(1.) This Act shall be construed as if any stipendiary magistrate in England or Ireland, and any sheriff or sheriff substitute in Scotland, were substituted for the police magistrate throughout this Act, except the part relating to the execution of the warrant of the police magistrate;

(2.) The criminal may be committed to any prison to which the person committing him has power to commit persons accused of the like crime;

(3.) If the fugitive criminal is apprehended on a warrant issued without the order of a Secretary of State, he shall be brought before the stipendiary magistrate, sheriff, or sheriff substitute who issued the warrant, or who has jurisdiction in the port where the vessel lies, or in the place nearest to that port.

Fugitive Criminals in British Possessions.

17. This ACT, when applied by Order in Council, SHALL, unless it is otherwise provided by such order, EXTEND TO EVERY BRITISH POSSESSION in the same manner as if throughout this Act
the British possession were substituted for the United Kingdom or England, as the case may require, but WITH the FOLLOWING MODIFICATIONS; namely,

(1.) The REQUISITION for the surrender of a fugitive criminal who is in or suspected of being in a British possession may be made TO the GOVERNOR of that British possession by any person recognized by that Governor as a consul general, consul, or vice-consul, or (if the fugitive criminal has escaped from a colony or dependency of the Foreign State on behalf of which the requisition is made) as the Governor of such colony or dependency:

(2.) NO WARRANT OF A SECRETARY OF STATE shall be required, and all powers vested in or acts authorized or required to be done under this Act by the police magistrate and the Secretary of State, or either of them, in relation to the surrender of a fugitive criminal, may be done by the Governor of the British possession a/one:

(3.) ANY PRISON in the British possession may be substituted for a prison in Middlesex:

(4.) A Judge of ANY COURT EXERCISING in the British possession the LIKE POWERS AS the Court of QUEEN'S BENCH exercises in England MAY EXERCISE the POWER of DISCHARGING a criminal when not conveyed within two months out of such British possession.

18. IF BY ANY LAW or ordinance, MADE before or after the passing of this Act BY the LEGISLATURE OF any BRITISH possession, PROVISION IS MADE FOR carrying into effect within such possession the SURRENDER OF fugitive CRIMINALS who are in or suspected of being in such British possession, Her Majesty may, by the Order in Council applying this Act in the case of any Foreign State, or by any subsequent order, either

suspend the operation within any such British possession of this Act, or of any part thereof, so far as it relates to such Foreign State, and so long as such law or ordinance continues in force there, and no longer;

or direct that such law or ordinance, or any part thereof, shall have effect in such British possession, with or without modifications and alterations, as if it were part of this Act.

General Provisions.

19. Where, in pursuance of any arrangement with a Foreign State, any PERSON accused or convicted of any crime which, if committed in England, would be one of the crimes described in the first schedule to this Act is SURRENDERED BY that FOREIGN STATE such person shall not, until he has been restored or had an opportunity of returning to such Foreign State, be triable or tried for any offence committed prior to the surrender in any part of Her Majesty's dominions other than such of the said crimes as may be proved by the facts on which the surrender is grounded.
20. The FORMS set forth in the second schedule to this Act, or forms as near thereto as circumstances admit, may be used in all matters to which such forms refer, and in the case of a British possession may be so used, mutatis mutandis, and when used shall be deemed to be valid and sufficient in law.

21. HER MAJESTY MAY, by Order in Council, REVOKE OR ALTER subject to the restrictions of this Act, any ORDER IN COUNCIL made in pursuance of this Act, and all the provisions of this Act with respect to the original order shall (so far as applicable) apply, mutatis mutandis, to any such new order.

22. This Act (except so far as relates to the execution of warrants in the Channel Islands) shall extend to the CHANNEL ISLANDS and ISLE OF MAN in the same manner as if they were part of the United Kingdom; and the royal courts of the Channel Islands are hereby respectively authorized and require to register this Act.

23. Nothing in this Act shall affect the lawful powers of Her Majesty or of the Governor General of India in Council to make treaties for the extradition of criminals with INDIAN NATIVE STATES or with other Asiatic States conterminous with British India, or to carry into execution the provisions of any such treaties made either before or after the passing of this Act.

24. The TESTIMONY of any WITNESS MAY BE OBTAINED IN RELATION to any CRIMINAL MATTER PENDING in any COURT or tribunal in a FOREIGN STATE in like manner as it may be obtained in relation to any civil matter under the Act of the session of the nineteenth and twentieth years of the reign of Her present Majesty, chapter 113, intitled "An Act to provide for taking evidence in Her Majesty's Dominions in relation to civil and commercial matters pending before foreign tribunals," and all the provisions of that Act shall be construed as if the term civil matter included a criminal matter, and the term cause included a proceeding against a criminal: Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

25. For the purposes of this Act, every colony, dependency, and constituent part of a FOREIGN STATE, and every vessel of that State, shall (except where expressly mentioned as distinct in this Act) be deemed to be within the jurisdiction of and to be part of such Foreign State.

26. In this Act unless the context otherwise requires,—

The term "BRITISH POSSESSION" means any colony, plantation, island, territory or settlement within Her Majesty's Dominions, and not within the United Kingdom, the Channel Islands, and Isle of Man; and all colonies, plantations, islands, territories, and settlements under one legislature, as hereinafter defined, are deemed to be one British possession:

The term "LEGISLATURE" means any person or persons who can exercise legislative authority in a British possession, and where there are local legislatures as well as a Central legislature, means the central legislature only:
The term "GOVERNOR" means any person or persons administering the Government of a British possession, and includes the Governor of any part of India:

The term "EXTRADITION CRIME" means a crime which, if committed in England or within English jurisdiction, would be one of the crimes described in the first schedule to this Act:

The terms "CONVICTION" and "CONVICTED" do not include or refer to a conviction which under foreign law is a conviction for contumacy, but the term "accused person" includes a person so convicted for contumacy:

The term "FUGITIVE CRIMINAL" means any person accused or convicted of an extradition crime committed within the jurisdiction of any Foreign State who is in or is suspected of being in some part of Her Majesty's dominions; and the term "fugitive criminal of a Foreign State" means a fugitive criminal accused or convicted of an extradition crime committed within the jurisdiction of that State:

The term "SECRETARY OF STATE" means one of Her Majesty's Principal Secretaries of State.

The term "POLICE MAGISTRATE" means a chief magistrate of the metropolitan police courts, or one of the other magistrates of the metropolitan police court in Bow street:

The term "JUSTICE OF THE PEACE" includes in Scotland any sheriff, sheriffs substitute, or magistrate:

The term "WARRANT" in the case of any Foreign State, includes any judicial document authorizing the arrest of a person accused or convicted of crime.

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SCHEDULES.

FIRST SCHEDULE.

LIST OF CRIMES.

The following list of crimes is to be construed according to the law existing in England, or in a British possession (as the case may be), at the date of the alleged crime, whether by common law or by statute made before or after the passing of this Act:

Murder, and attempt and conspiracy to murder.

Manslaughter.

Counterfeiting and altering money and uttering counterfeit or altered money.

Forgery, counterfeiting, and altering, and uttering what is forged or counterfeited or altered.

Embasslement and larceny.

Obtaining money or goods by false pretences.

Crimes by bankrupts against bankruptcy law.

Fraud by a bailee, banker, agent, factor, trustee, or director, or member, or public officer of any company made criminal by any Act for the time being in force.

Rape.

Abduction.

Child-stealing.

Burglary and house-breaking.

Arson.

Robbery with violence.
Threats by letter or otherwise with intent to extort.

Piracy by law of nations.

Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.

Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

SECOND SCHEDULE.

FORM OF ORDER OF SECRETARY OF STATE TO THE POLICE MAGISTRATE.

To the Chief magistrate of metropolitan police courts or other magistrate of the metropolitan police court in Bow Street [or the stipendiary magistrate at ].

Whereas, in pursuance of an arrangement with , referred to in an Order of Her Majesty in Council dated the day of , requisition has been made to me, one of Her Majesty's Principal Secretaries of State, by , the diplomatic representative, of , for the surrender of , late of , accused [or convicted] of the commission of the crime of within the jurisdiction of .

Now I hereby, by this my order under my hand and seal, signify to you that such requisition has been made, and require you to issue your warrant for the apprehension of such fugitive, provided that the conditions of The Extradition Act, 1870, relating to the issue of such warrant, are in your judgment complied with.

Given under the hand and seal of the undersigned, one of Her Majesty's Principal Secretaries of State, this day of 18.

FORM OF WARRANT OF APPREHENSION BY ORDER OF SECRETARY STATE.

To all and each of the constables of the metropolitan police force [or of the county or borough of ].

Whereas the Right Honourable , one of her Majesty's Principal Secretaries of State, by order under my hand and seal, hath signified to me that requisition hath been duly made to him for the surrender of , late of , accused [or convicted] of the commission of the crime of within the jurisdiction of .

This is therefore to command you in Her Majesty's name forthwith to apprehend the said pursuant to the Extradition Act, 1870, wherever he may be found in the United Kingdom or late of Man, and bring him before me or some other ["magistrate sitting in this Court], to show cause why he should not be surrendered in pursuance of the said Extradition Act, for which this shall be your warrant.

Given under my hand and seal at ["Bow Street, one of the police courts of the metropolitan this day of 18.]

J. P.

*Note—Alters as required.

FORM OF WARRANT OF APPREHENSION WITHOUT ORDER OF SECRETARY STATE.

To all and each of the constables of the metropolitan police force [or of the county or borough of ].

Whereas it has been shown to the undersigned, one of Her Majesty's justices of the peace in and for the metropolitan police district [or the said county or borough of ] that , late of , accused [or convicted] of the commission of the crime of within the jurisdiction of .

This is therefore to command you in Her Majesty's name forthwith to apprehend the said and to bring him before me or some other magistrate sitting at this court [or one of Her Majesty's justices of the peace in and for the county or borough of to be further dealt with according to law, for which this shall be your warrant.

Given under my hand and seal at Bow Street, one of the police courts of the metropolitan, [or in the county or borough aforesaid] this day of 18 .

J. P.

FORM OF WARRANT FOR BRINGING PRISONER BEFORE THE POLICE MAGISTRATE.

To the constable of the police force of and to all other police officers in the said county [or borough] of .

Whereas , late of , accused [or alleged to be convicted of] the commission of the crime of within the jurisdiction of has been apprehended and brought before the undersigned, one of Her Majesty's justices of the peace in and for the said county [or borough of .

And whereas by the Extradition Act 1870, he is required to be brought before the chief magistrate of the metropolitan police court, or one of the police magistrates of the metropolitan sitting at Bow Street, within the metropolitan police district [or the stipendiary magistrate for .

This is therefore to command you the said constable, in Her
Majesty's name forthwith to take and convey the said to the metropolitan police district and there carry him before the said chief magistrate or one of the police magistrates of the metropolis sitting at Bow Street within the said district to show why he should not be surrendered in pursuance of the Extradition Act, 1870, and otherwise to be dealt with in accordance with law, for which this shall be your warrant.

Given under my hand and seal at in the county or borough aforesaid this day of 18.

J. P.

FORM OF WARRANT OF COMMITTAL.

To one of the constables of the metropolitan police force of the police force of the county or borough of , and to the keeper of the constabulary.

Be it remembered, that on this day of in the year of our Lord late of is brought before me the chief Magistrate of the metropolitan police court [or one of the police Magistrates of the metropolis] sitting at the Police Court in Bow Street within the metropolitan police district, [or a stipendiary Magistrate for ] to show cause why he should not be surrendered in pursuance of The Extradition Act, 1870, on the ground of his being accused [or convicted] of the commission of the crime of within the jurisdiction of , and forasmuch as no sufficient cause has been shown to me why he should not be surrendered in pursuance of the said Act.

This is therefore to command you the said constable, in Her Majesty's name forthwith to convey and deliver the body of the said into the custody of the said keeper of the at , and you the said keeper, to receive the said into your custody, and him there safely to keep until he is henceforth delivered pursuant to the provisions of the said Extradition Act, for which this shall be your warrant.

Given under my hand and seal at Bow Street, one of the Police Courts of the metropolis at this day of 18.

J. P.

FORM OF WARRANT OF SECRETARY OF STATE FOR SURRENDER OF FUGITIVE.

To the keeper of and to

Whereas late of accused [or convicted] of the commission of the crime of was delivered into the custody of you the keeper of by warrant dated pursuant to The Extradition Act, 1870:

Now I do hereby, in pursuance of the said Act, order you the said keeper to deliver the body of the said into the custody of the said , and I command you, the said to receive the said into your custody, and to convey him within the jurisdiction of the said , and there place him in the custody of any person or persons appointed by the said to receive him, for which this shall be your warrant.

Given under the hand and seal of the undersigned, one of Her Majesty's Principal Secretaries of State, this day of 18.

ACT No. 11 of 1872.

An Act to provide for the trial of offences committed in places beyond British India and for the Extradition of Criminals.

Whereas by treaty, capitulation, agreement, grant, usage, sufferance and other lawful means the Governor General of India in Council has power and jurisdiction within divers places beyond the limits of British India; and whereas such power and jurisdiction have from time to time been delegated to Political Agents and others acting under the authority of the Governor General in Council; and whereas doubts have arisen how far the exercise of such power and jurisdiction, and the delegation thereof, are controlled by and dependant on the laws of British India; and whereas it is expedient to remove such doubts, and to consolidate and amend the law relating to the exercise and delegation of such power and jurisdiction, and to offences committed by British subjects beyond the limits of British India, and to the extradition of criminals; It is enacted as follows:
1. This Act may be called "The Foreign Jurisdiction and Extradition Act, 1872": It EXTENDS TO the whole of British India; to all Native Indian subjects of Her Majesty without and beyond the Indian territories under the dominion of Her Majesty; and to all European British subjects within the dominions of Princes and States in India in alliance with Her Majesty; and it shall come into force on the passing thereof.

2. See "Repealing Enactments."

3. In this Act the expression 'POLITICAL AGENT' means and includes—

(1) the principal officer representing the British Indian Government in any territory or place beyond the limits of British India;

(2) any officer in British India appointed by the Governor General in Council or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under this Act for any place not forming part of British India;

'NATIVE STATE' means, in reference to Native Indian subjects of Her Majesty, all places without and beyond the Indian territories under the dominion of Her Majesty; and,

in reference to European British subjects, the dominions of Princes and States in India in alliance with Her Majesty.

Powers of British Officers in places beyond British India.

4. The GOVERNOR GENERAL in Council MAY EXERCISE any POWER or jurisdiction, which the Governor General in Council now has, or may at any time hereafter have, within any country or place BEYOND the limits of BRITISH INDIA; and may delegate the same, to any servant of the British Indian Government, in such manner and to such extent as to the Governor General in Council from time to time seems fit.

5. A NOTIFICATION in the Gazette of India of the exercise by the Governor General in Council of any such power or jurisdiction, and of the delegation thereof by him to any person or class of persons, and of the rules of procedure or other conditions to which such persons are to conform, and of the local area within which their powers are to be exercised, shall be conclusive proof in any Court of the truth of the matters stated in the notification.

6. The Governor General in Council MAY APPOINT any European British subject, either by name or by virtue of his office, in any such country or place, to be a JUSTICE OF THE PEACE; and every such Justice of the Peace shall have all the powers conferred on Magistrates of the first class, who are Justices of the Peace and European British subjects, by any law for the time being in force in British India relating to Criminal Procedure. The Governor General in Coun-
cil may direct to what Court, having jurisdiction over European British subjects, any such Justice of the Peace is to commit for trial.

7. All Political Agents and all Justices of the Peace, heretofore appointed by the Governor General in Council or the Governor in Council of the Presidency of Fort St. George or Bombay, in any such country or place as aforesaid, shall be deemed to be and to have been appointed, and to have had jurisdiction, under the provisions of this Act.

8. The LAW RELATING TO OFFENCES AND to CRIMINAL PROCEDURE, for the time being in force in British India SHALL, subject as to Procedure to such modifications as the Governor General in Council from time to time directs, EXTEND TO ALL BRITISH SUBJECTS, European and Native, IN NATIVE STATES.

Inquiries in British India into Crimes Committed by British Subjects in places beyond British India.

9. All British subjects, European and Native, in British India, may be dealt with, in respect of OFFENCES COMMITTED by them IN any NATIVE STATE, as if such offences had been committed in any place, within British India, in which any such subjects may be or may be found:

Provided that no charge as to any such offence shall be inquired into in British India, unless the POLITICAL AGENT, if there be such, for the territory, in which the offence is said to have been committed, CERTIFIES THAT, in his opinion, the CHARGE is one which OUGHT TO BE ENQUIRED INTO IN BRITISH INDIA:

Provided also that any proceedings taken against any person under this section, which would be a bar to subsequent proceedings against such person for the same offence, if such offence had been committed in British India, shall be a bar against further proceedings against him, under this Act, in respect of the same offence in any Native State.

10. Whenever any such offence as is referred to in section nine is being inquired into or tried, the Local Government may, if it thinks fit, direct that COPIES OF DEPOSITIONS made or exhibits produced before the Political Agent or a Judicial Officer in the State, in which such offence is alleged to have been committed, shall be received as evidence by the Court holding such inquiry or trial, in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

Extradition.

11. When an offence has been committed, or is supposed to have been committed, in any State against the law of such State by a PERSON NOT being a EUROPEAN BRITISH SUBJECT, and such person ESCAPES INTO, or is in BRITISH INDIA, the Political Agent for such State may issue a warrant for his arrest and delivery at a place in such State, and to a person to be named in the warrant,
If such Political Agent thinks that the offence is one which ought to be enquired into in such State,

and if the act, said to have been done, would, if done in British India, have constituted an offence against any of the sections of the Indian Penal Code mentioned in the second schedule hereto, or under any other section of the said Code or any other law, which may, from time to time, be specified by the Governor General in Council by a notification in the Gazette.

12. Such WARRANT may be DIRECTED to the Magistrate of any District, in which the accused person is believed to be; AND shall be EXECUTED in the manner provided by the law for the time being in force with reference to the execution of warrants; and the accused person, when arrested, shall be forwarded to the place and delivered to the officer named in the warrant.

13. Such POLITICAL AGENT MAY either DISPOSE OF THE CASE himself, or may give over the person so forwarded, whether he be a Native Indian subject of Her Majesty or not, to be tried by the ordinary Courts of the State in which the offence was committed, if he is generally or specially directed to do so by the Governor General in Council, or by the Governors in Council of the Presidency of Fort St. George or Bombay respectively.

14. Whenever a REQUISITION is made TO the GOVERNOR GENERAL in Council or any Local Government by, or by the authority of the persons for the time being administering the Executive Government of any part of the dominions of Her Majesty, or the territory of any Foreign Prince or State, that any person accused of having committed an offence in such dominions or territory, should be given up, the Governor General in Council or such Local Government, as the case may be, may issue an order to any Magistrate, who would have had jurisdiction to inquire into the offence, if it had been committed within his local jurisdiction, directing him to inquire into the truth of such accusation.

The Magistrate so directed shall issue a summons or warrant for the arrest of such person, according as the offence named appears to be one for which a summons or warrant would ordinarily issue; and shall inquire into the truth of such accusation; and shall report thereon to the Government by which he was directed to hold the said inquiry. If, upon receipt of such report, such Government is of opinion that the accused person ought to be given up to the persons making such requisition, it may issue a warrant for the custody and removal of such accused person and for his delivery at a place and to a person to be named in the warrant.

The provisions of section 10 shall apply to inquiries held under this section.

This section shall not affect the provisions of any law or treaty, for the time being in force, as to the extradition of offenders; but the procedure provided by any such law or treaty shall be followed in every case to which it applies.
15. The Governor General in Council may make, and may from time to time alter, RULES to provide for—

(1) the confinement, diet and prison discipline of British subjects, European or Native, imprisoned by Political Agents under this Act;

(2) the removal of accused persons under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant, as entitled to receive them;

(3) and generally to carry out the purposes of this Act.

SCHEDULE II.

Sections of the Indian Penal Code referred to in Section 11.

Sections 230 to 283, both inclusive; sections 299 to 304, both inclusive; sections 307, 310 and 311; sections 312 to 317, both inclusive; sections 323 to 333, both inclusive; sections 347 and 348; sections 360 to 373, both inclusive; sections 375 to 377, both inclusive; sections 378 to 414, both inclusive; sections 435 to 440, both inclusive; sections 443 to 446, both inclusive; sections 464 to 468, both inclusive; sections 471 to 477, both inclusive.
APPENDIX.

The following Acts were passed while this work was going through the press. They have been inserted here to bring the law up to the 1st January 1873.

ACT No. XVII. of 1872.

An Act for postponing the day on which the Code of Criminal Procedure is to come into force.

Whereas the Code of Criminal Procedure (Act No. X. of 1872), section 1, enacts that the said Code shall come into force on the first day of September 1872; And whereas it is expedient to postpone the day on which such Code shall come into force; It is hereby enacted as follows:—

1. The said Act No. X. of 1872 shall come into force, not on the first day of September 1872, but on the first day of January 1873.

ACT No. XVIII. of 1872.

An Act to amend the Indian Evidence Act, 1872. (Passed 29th August.)

Whereas it is expedient to amend the Indian Evidence Act, 1872; It is hereby enacted as follows:—

1. This Act may be called “The Indian Evidence Act Amendment Act;”
   And it shall come into force on the passing thereof.

2. In section 32 of the Indian Evidence Act, 1872, clauses [5] and [6], after the word “relationship,” the words “by blood, marriage, or adoption” shall be inserted.

3. In section 41 of the same Act, lines 17, 20, and 23, after the word “judgment,” the words “order or decree” shall be inserted.
4. In section 45 of the same Act, line 5, after the word "art," the words "or in questions as to identity of hand-writing" shall be inserted.

5. In section 57 of the same Act, paragraph [13], after the words "road," the words "on land or at sea" shall be inserted.

6. In section 66 of the same Act, line 5, after the word "is," the words "or to his attorney or pleader" shall be inserted.

7. In section 91 of the same Act, exception [2], for the words "under the Indian Succession Act," the words "admitted to probate in British India" shall be substituted.

8. In section 92 of the same Act, proviso [1], for the words "want of failure," the words "want or failure" shall be substituted.

9. In section 108 of the same Act, line 1, for the word "when," the words "Provided that when" shall be substituted; and in the last line, for the word "on," the words "shifted to" shall be substituted.

10. In section 126 of the same Act, line 22, and in section 128 of the same Act, line 6, after the word "barrister," the word "pleader" shall be inserted.

In section 126 of the same Act, line 15, for the word "criminal," the word "illegal" shall be substituted.

11. In section 55 of the same Act, paragraph [2], for the word "had," the word "accepted" shall be substituted.

12. Nothing in the Indian Evidence Act, 1872, shall be deemed to affect Act No. XV. of 1852 (to amend the Law of Evidence), section 12.

Act No. XIX. of 1872.

An Act to amend the definition of “Coin” contained in the Indian Penal Code.

Whereas it is expedient to amend the definition of “coin” contained in the Indian Penal Code, section 230; It is hereby enacted as follows:—

1. For the first paragraph of the said section the following shall be substituted:—

“230. Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.”