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A SUPPLEMENT

TO

THE ANGLO-INDIAN CODES

1887, 1888

BY

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PREFATORY NOTE.

My edition of the Anglo-Indian Codes (vol. i. 1887, vol. ii. 1888) brings Indian legislation and Indian judicial decisions, so far as they affect the Codes, down to the end of May, 1888. The following Supplement does the like for the year ending May 31, 1889. References to about sixty recent English decisions, which may usefully be consulted by those engaged in studying or administering the Codes, will be found in their proper places.

The importance of the Indian Merchandise Marks Act, 1889, and of the Succession Certificate Act, 1889, has induced me to print these enactments at length. In future editions of my work the former will be inserted as an appendix to the Penal Code, the latter as an appendix to the Succession Act. As to the Probate and Administration Act, 1881 (The Anglo-Indian Codes, i. 317-321), there is now some hope that this useful law will be extended to the whole of British India. For at a recent meeting of the Governor General's Council, a member of the Government of India stated that the Home Department would address the Local Governments pointing out the necessity of authorising, under Act V of 1881, all District Courts to grant administration.

I have, in conclusion, to express my gratitude for information received from the India Office and from the Legislative Department of the Government of India.

W. S.

July 15, 1889.
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SUPPLEMENT.

VOLUME I.

INTRODUCTION.

P. xvi, note 1, add See L. R. 14 I. A. 96: ‘equity and good conscience, generally interpreted to mean the rules of English law if found applicable to Indian society and circumstances.’

— note 2, line 4, after 907 insert against the right to sue for oral abuse merely causing mental distress.

P. xviii, note, add Moreover, these decisions are sometimes so silent as to general principles and so conflicting with each other that they cannot be taken to represent any defined rule of the common law of India, 10 All. 439, per Mahmúd J., referring to the question whether an action will lie for slander uttered by a witness when actually under examination.

P. xx, l. 9, add a footnote As to this matter see infra, vol. i. pp. 70, 71, and vol. ii. p. 949. It has lately been said that the widest possible construction should be put upon codes of procedure as distinguished from substantive law, 15 Cal. 435, per Norris J.

THE PENAL CODE.

P. 7, insert in alphabetical order:

Merchandise Marks (IV of 1889).
Metal Tokens (I of 1889).
Reserve Forces (IV of 1888).

And dele Contagious Diseases (XIV of 1868).

P. 8, Madras Presidency, col. 2, after l. 9 insert Places of Public Resort (Mad. Act. II of 1888). In l. 11, for VIII of 1867 read III of 1888.

P. 8, Bombay Presidency, col. 1, insert Aden Port Trust (Bom.
Act V of 1888, secs. 67-75), and under 'Municipal Acts,' for III of 1872, IV of 1878, read VI of 1873, III of 1888.


P. 9, Lower Burma, insert Acting as advocate without authority. Touting (Act XI of 1889 secs. 78, 81).

P. 11, note 3, add In 12 Bom. 362, West J. defined malice as 'a conscious violation of the law to the prejudice of the plaintiff.'

P. 17, note 3, add and see 16 Cal. 206.

P. 21, l. 29, add and for the offences mentioned in sec. 9 of the Merchandise Marks Act, 1889.

P. 25, note 1, add But the Indian Judges are well aware that the three great deterrents from crime are the adequacy, the certainty, and the nature of the punishment.

P. 26, l. 9, add and see Act IV of 1889, sec. 9.

P. 28, note 2, add A Bill to prevent the disclosure of documents and information by means either of spies or of breaches of official trust is now before the House of Commons.

P. 39, note 1, add But see the recent case in 12 Mad. 72.

P. 55. As to Possession in the Common Law, see now Pollock and Wright's essay on the subject, Oxford, 1888.

P. 98, sec. 28. For the Explanation, Act I of 1889 (the Metal Tokens Act) substitutes the following:—

Explanation 1.—It is not essential to counterfeiting that the imitation should be exact.

Explanation 2.—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception, or knew it to be likely that deception would thereby be practised.\(^1\)

P. 115, note 6, add Sec. 78 would protect the governor of a gaol who keeps a prisoner in confinement under a warrant good on the face of it, see Henderson v. Preston, 21 Q. B. Div. 362.

P. 116, sec. 79. See another illustration, 12 Bom. 377.

P. 122, note 1, l. 10, add or the destruction of an unstamped

\(^1\) i.e. a person who makes one thing to resemble another shall be assumed to intend the natural consequences of his act, namely that some person should be deceived by mistaking the one for the other. Good authorities have held that this was always the law; but Expl. 2 puts the matter beyond doubt.
document purporting to be a valuable security and required by law to be stamped, 12 Mad. 149.

— note 2, add No right of private defence is conferred save as against the perpetrators of offences under the Penal Code. There is no such right as against a mere trespasser, 16 Cal. 206, at p. 218.

P. 123, sec. 99, clauses 1 and 2, see 13 Bom. 168.

P. 143, sec. 141, note 9, l. 1, after vi. insert 16 Cal. 206, at p. 219.

P. 157, sec. 176. If an executor or administrator, on being required by the Court to exhibit an inventory or account under the Indian Succession Act, 1865, sec. 277, intentionally omits to comply with the requisition, he shall be deemed guilty of an offence under the Penal Code, sec. 176. See Act VI of 1889, sec. 7, cl. (4).

P. 159, sec. 182. See 14 Cal. 314.

P. 161, sec. 186, note 4. Nor is resistance to a surveyor illegally ordered by a Collector to execute a mámlatdár's decree for possession, 13 Bom. 168.

P. 166, sec. 193. The exhibition of an intentionally false inventory or account under the Indian Succession Act, 1865, sec. 277, shall be deemed to be an offence under the Penal Code, sec. 193. See Act VI of 1889, sec. 7, cl. (4).

P. 173, sec. 210, 'after it has been satisfied;' i.e. in fact. It matters not that the satisfaction was of such a nature that it could not be recognised by the Court executing the decree, 16 Cal. 126, where the adjustment of the decree had not been certified as required by the Civil Procedure Code, sec. 258.

— note 8, add See 5 All. 598; 14 Cal. 633.

P. 181, sec. 225. Custody need only be authorised by law, 11 Mad. 441.

P. 184, sec. 230. Add a note: No piece of metal which is not coin as here defined shall be received as money by or on behalf of any railway-administration or local authority: and if any person on behalf of a railway administration or on behalf of a local authority or on behalf of the lessee of the collection of any toll or other impost leviable by a railway-administration or local authority receives as money any piece of metal which is not such coin as aforesaid, he shall be punished with fine which may extend to ten rupees, Act I of 1889, sec. 8.

P. 194, sec. 268, note 5, para. 2, l. 8, insert or the cutting up meat for a dinner in sight of some Jains whose temple was close by, 12 Bom. 437.

P. 198, note 4. Sec. 283 should be read with sec. 431. Any one sustaining special injury by reason of an obstruction to a highway
may sue for damages and any other appropriate relief; and further, under sec. 133 et seq. of the Cr. P. Code, summary proceedings may be taken by a magistrate to prevent or remove any such obstruction injurious to the public, 15 Cal. 460, at p. 467.

P. 211, sec. 304 A, note 3, l. 10. When death is caused by an act in its nature criminal this section does not apply, 12 Mad. 56.

P. 219, sec. 330, l. 8, ‘demand,’ i.e. apparently, in respect of property, 11 Mad. 257, not e.g. a demand to return to A’s house.

P. 232, sec. 372, note 5, add and 11 Mad. 393, at p. 401, where Muttusámi Ayyár J. said that the object of the prohibition was to protect the chastity of girls under sixteen years of age.

P. 245, sec. 403, note 3. The dishonest intention may be inferred from the circumstances of the case, 12 Mad. 49; and see Queen v. Proud, 31 L. J. (M. C.) 71.

P. 250, sec. 411. To constitute the offence of receiving stolen property there must be proof that some person other than the prisoner had possession of the goods before the prisoner got possession of them, 15 Cal. 511, following R. v. Cordy, 2 Russell on Crimes, 5th ed. p. 484.

P. 254, note 4, add See 12 Mad. 151.

P. 268, sec. 463. As to forging answers to University examination papers, see 12 Mad. 151.

P. 273, sec. 471. See 11 Mad. 411 (fabricating receipt as voucher to cover a contemporaneous embezzlement).

P. 275, sec. 477, note 9, add So are a promissory note, 12 Mad. 54, and an unstamped account signed by A showing indebtedness to B, 12 Mad. 148.

Pp. 275–278. For secs. 478–489 new sections have been substituted by section 3 of the following Act, which deals with three classes of offences: (1) the imitation of trade marks; (2) the application to goods of false trade descriptions, that is, of words or figures indicating that goods are something which in fact they are not; and (3) trading in falsely-marked goods:

ACT IV OF 1889.

(Received the assent of the Governor General on the 1st March, 1889.)

AN ACT TO AMEND THE LAW RELATING TO FRAUDULENT MARKS ON MERCHANDISE.

WHEREAS it is expedient to amend the law relating to fraudulent marks on merchandise; It is hereby enacted as follows:

1. (1) This Act may be called the Indian Merchandise Marks Act, 1889.
THE PENAL CODE.

(2) It extends to the whole of British India; and, subject to the provision of the last section of this Act,
(3) It shall come into force on the first day of April, 1889.

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

(1) 'trade mark' has the meaning assigned to that expression in section 478 of the Indian Penal Code as amended by this Act:
(a) 'trade description' means any description, statement, or other indication, direct or indirect,—
(b) as to the number, quantity, measure, gauge or weight of any goods, or
(c) as to the place or country in which, or the time at which, any goods were made or produced, or
(d) as to the mode of manufacturing or producing any goods, or
(e) as to the material of which any goods are composed, or
(f) as to any goods being the subject of an existing patent, privilege or copyright; and the use of any numeral, word or mark which according to the custom of the trade is commonly taken to be an indication of any of the above matters shall be deemed to be a trade description within the meaning of this Act:
(3) 'false trade description' means a trade description which is untrue in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement or otherwise, where that alteration makes the description untrue in a material respect, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Act:
(4) 'goods' means anything which is the subject of trade or manufacture: and
(5) 'name' includes any abbreviation of a name.

Amendment of the Indian Penal Code.

3. For that part of Chapter XVIII of the Indian Penal Code which relates to Trade and Property Marks, the following shall be substituted, namely:—

Of Trade, Property and other Marks.

478. A mark used for denoting that goods are the manu-
facture or merchandise\(^1\) of a particular person is called a trade mark, and for the purposes of this Code the expression ‘trade mark’ includes any trade mark which is registered in the register of trade marks kept under the Patents, Designs and Trade Marks Act, 1883\(^2\) and any trade mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs and Trade Marks Act, 1883\(^3\), are, under Order in Council, for the time being applicable.

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, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise 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, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such 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 shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

483. Whoever counterfeits any trade mark 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 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

\(^1\) This covers the case where a trade mark is applied to articles not actually manufactured by the owner of the trade mark.

\(^2\) 46 & 47 Vict. c. 57.

\(^3\) This provision now (June, 1889) extends to the following: Belgium, Brazil, France, Guatemala, Italy, Mexico, the Netherlands and the East Indian colonies of the Netherlands, Norway, Paraguay, Portugal, Servia, Spain, Sweden, Switzerland, Tunis, United States of America, Uruguay.
or at a particular time or place or that the property 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 counterfeiting a trade mark or property mark, or has in his possession a trade mark or property mark for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise 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, or exposes or has in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade mark or property mark affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves—

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and

(b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(c) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

487. Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such 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 receptacle are of a nature or quality different from the real nature or quality thereof shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

488. Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he

mark used by a public servant.
proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

489. Whoever removes, destroys, defaces or adds to 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.

Trade Descriptions

4. (1) The provisions of this Act respecting the application of a false trade description to goods or respecting goods to which a false trade description is applied, shall extend to the application to goods of any such numerals, words or marks, or arrangement or combination thereof, whether including a trade mark or not, as are or is reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are, and to goods having such numerals, words or marks, or arrangement or combination, applied thereto.

(2) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means as applied to any goods any name or initials—

(a) not being a trade mark, or part of a trade mark, and

(b) being identical with, or a colourable imitation of the name, or initials of a person carrying on business in connection with goods of the same description and not having authorised the use of such name or initials.

(3) A trade description which denotes or implies that there are contained in any goods to which it is applied more yards, feet or inches than there are contained therein standard yards, standard feet or standard inches is a false trade description.

5. (1) A person shall be deemed to apply a trade description to goods who—

1 Here the main provisions of the English Merchandise Marks Act, 1897, have been followed. But the punishment for applying false trade descriptions or dealing in falsely-marked goods has been diminished to those provided in the Penal Code for using false trade marks.

2 See sec. 2, cl. (3).

3 This includes any abbreviation of a name.
(a) applies it to the goods themselves, or
(b) applies it to any covering label\(^1\), reel or other thing in or with which the goods are sold or are exposed or had in possession for sale or any purpose of trade or manufacture, or
(c) places, encloses or annexes any goods which are sold, or are exposed or had in possession for sale or any purpose of trade or manufacture, in, with or to any covering, label, reel or other thing to which a trade description has been applied, or
(d) uses a trade description in any manner reasonably calculated to lead to the belief that the goods in connexion with which it is used are designated or described by that trade description.

(2) A trade description shall be deemed to be applied whether it is woven, impressed or otherwise worked into or annexed or affixed to the goods or any covering, label, reel or other thing.

(3) The expression ‘covering’ includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper, and the expression ‘label’ includes any band or ticket\(^2\).

6. If a person applies a false trade description to goods, he shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud \(^3\), be punished with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees, and in the case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both.

7. If a person sells, or exposes or has in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied, he shall, unless he proves—

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade description, and

(b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(c) that otherwise he had acted innocently,

be punished with imprisonment for a term which may extend to

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\(^1\) A comma seems wanting after ‘covering.”

\(^2\) Properly, ‘label’ indicates a piece of paper or other thin substance which is made to adhere to the goods to which it is applied.

\(^3\) The originator of the fraud must prove that he acted without intent to defraud. But under sec. 7 a mere dealer in falsely-marked goods need only show that he took reasonable precautions, had no ground to suspect fraud, and gave the prosecution all information in his power. Honest traders should have no difficulty in doing this.
three months or with fine which may extend to two hundred rupees, and in case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both.

**Unintentional Contravention of the Law relating to Marks and Descriptions.**

8. Where a person is accused under section 482 of the Indian Penal Code of using a false trade mark or property mark by reason of his having applied a mark to any goods, property or receptacle in the manner mentioned in section 480 or section 481 of that Code, as the case may be, or under section 6 of this Act of applying to goods any false trade description, or under section 485 of the Indian Penal Code of making any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, and proves—

(a) that in the ordinary course of his business he is employed, on behalf of other persons, to apply trade marks or property marks, or trade descriptions, or, as the case may be, to make dies, plates or other instruments for making, or being used in making, trade marks or property marks, and that in the case which is the subject of the charge he was so employed and was not interested in the goods or other thing by way of profit or commission dependent on the sale thereof, and

(b) that he took reasonable precautions against committing the offence charged, and

(c) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark or description, and

(d) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the mark or description was applied, he shall be acquitted 1.

**Forfeiture of Goods.**

9. (r) When a person is convicted under section 482 of the Indian Penal Code 2 of using a false trade mark, or under section 486 of that Code 3 of selling, or exposing or having in possession for sale or any purpose of trade or manufacture, any goods or things

1 From 50 & 51 Vic. c. 28, sec. 7, will rely on the above defence. See omitting the provision that the accused 'shall be liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he

2 Supra, p. 6.

3 Supra, p. 7.
with a counterfeit trade mark applied thereto, or under section 487 or section 488 of that Code of making, or making use of, a false mark, or under section 6 or section 7 of this Act of applying a false trade description to goods or of selling, or exposing or having in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied, or is acquitted on proof of the matter or matters specified in section 486 of the Indian Penal Code or section 7 or section 8 of this Act, the Court convicting or acquitting him may direct the forfeiture to Her Majesty of all goods and things by means of, or in relation to, which the offence has been committed or, but for such proof as aforesaid, would have been committed.

(2) When a forfeiture is directed on a conviction and an appeal lies against the conviction, an appeal shall lie against the forfeiture also.

(3) When a forfeiture is directed on an acquittal and the goods or things to which the direction relates are of value exceeding fifty rupees, an appeal against the forfeiture may be preferred, within thirty days from the date of the direction, to the Court to which in appealable cases appeals lie from sentences of the Court which directed the forfeiture.

\[ Amendment of the Sea Customs Act, 1878^1. \]

10. (1) For clause (d) of section 18 of the Sea Customs Act, 1878, the following shall be substituted, namely:

\[ (d) \] goods having applied thereto a counterfeit trade mark within the meaning of the Indian Penal Code, or a false trade description within the meaning of the Indian Merchandise Marks Act, 1889:

\[ (e) \] goods made or produced beyond the limits of the United Kingdom and British India and having applied thereto any name or trade mark being, or purporting to be, or being a colourable imitation of, the name or trade mark of any person who is a manufacturer, dealer or trader in the United Kingdom or in British India, unless—

(i) the name or trade mark is, as to every application thereof, accompanied by a definite indication of the goods having been made or produced in a place beyond the limits of the United Kingdom and British India, and

(ii) that place and the country in which it is situated are in that indication indicated in letters as large and conspicuous as any letter in the name or trade mark, and in the same language and character as the name or trade mark.

\[^1\] Act VIII of 1878.
(2) To section 18 of the Sea Customs Act, 1878, as amended by sub-section (1), the following shall be added, namely:

(f) piece-goods, such as are ordinarily sold by length or by the piece, which—

(i) have not conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece, and

(ii) have been manufactured beyond the limits of India, or,

(iii) having been manufactured within those limits, have been manufactured beyond the limits of British India in premises which, if they were in British India, would be a factory as defined in the Indian Factories Act, 1881.

11. The following shall be added after section 19 of the Sea Customs Act, 1878, namely:

'19A. (1) Before detaining any such goods as are or may be specified in or under section 18 or section 19, as the case may be, or taking any further proceedings with a view to the confiscation thereof under this Act, the Chief Customs-officer or other officer appointed by the Local Government in this behalf may require the regulations under this section, whether as to information, security, conditions or other matters, to be complied with, and may satisfy himself in accordance with those regulations that the goods are such as are prohibited to be imported.

(2) The Governor-General in Council may make regulations either general or special, respecting the detention and confiscation of goods the importation of which is prohibited, and the conditions, if any, to be fulfilled before such detention and confiscation, and may by such regulations determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section and the mode of verification of such evidence.

(3) Where there is on any goods a name which is identical with, or a colourable imitation of, the name of a place in the United Kingdom or British India, that name, unless accompanied in equally large and conspicuous letters, and in the same language and character, by the name of the country in which such place is situate, shall be treated for the purposes of sections 18 and 19 as if it were the name of a place in the United Kingdom or British India.

(4) Such regulations may apply to all goods the importation of which is prohibited by section 18 or under section 19, or different

1 Act XV of 1887.  
2 Act VIII of 1878.
regulations may be made respecting different classes of such goods or of offences in relation to such goods.

(5) The regulations may provide for the informant reimbursing any public officer and the Secretary of State for India in Council all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

(6) All regulations under this section shall be published in the Gazette of India and in the Calcutta, Fort St. George, Bombay and Burma Gazettes.

**Stamping of length of Piece-goods manufactured in British India.**

**12.** (1) Piece-goods, such as are ordinarily sold by length or by the piece, which have been manufactured in premises which are a factory as defined in the Indian Factories Act, 1881, shall not be removed from those premises without having conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece.

(2) If any person removes or attempts to remove any such piece-goods from any such premises without the length of each piece being stamped in the manner mentioned in sub-section (1), every such piece, and everything used for the packing or removal thereof, shall be forfeited to Her Majesty, and such person shall be punished with fine which may extend to one thousand rupees.

**Supplemental Provisions.**

**13.** In the case of goods brought into British India by sea, evidence of the port of shipment shall, in a prosecution for an offence against this Act or section 18 of the Sea Customs Act, 1878, as amended by this Act, be **prima facie** evidence of the place or country in which the goods were made or produced.

**14.** (1) On any such prosecution as is mentioned in the last foregoing section, or on any prosecution for an offence against any of the sections of the Indian Penal Code, as amended by this Act, which relate to trade, property and other marks, the Court may order costs to be paid to the defendant by the prosecutor, or to the Chambers of Commerce in other parts of India, and by the Bombay Mill-owners Association. But why should not the breadth as well as the length be stamped on piece-goods?

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1 This section corresponds closely with 50 & 51 Vic. sec. 16.  
2 This is a step in advance of English legislation, advocated by the Chambers of Commerce of Bengal and Madras, and approved by the Chambers of Commerce in other parts of India.
prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.  

(2) Such costs shall, on application to the Court, be recoverable as if they were a fine.

15. No such prosecution as is mentioned in the last foregoing section shall be commenced after the expiration of three years next after the commission of the offence, or one year after the first discovery thereof by the prosecutor, whichever expiration first happens.

16. (1) The Governor General in Council may, by notification in the Gazette of India and in local official Gazettes, issue instructions for observance by Criminal Courts in giving effect to any of the provisions of this Act.

(2) Instructions under sub-section (1) may provide, among other matters, for the limits of variation, as regards number, quantity, measure, gauge or weight, which are to be recognised by Criminal Courts as permissible in the case of any goods.

17. On the sale or in the contract for the sale of any goods to which a trade mark or mark or trade description has been applied, the seller shall be deemed to warrant that the mark is a genuine mark and not counterfeit or falsely used, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the seller and delivered at the time of the sale or contract to and accepted by the buyer.

18. (1) Nothing in this Act shall exempt any person from any suit or other proceeding which might, but for anything in this Act, be brought against him.

(2) Nothing in this Act shall entitle any person to refuse to make a complete discovery or to answer any question or interrogatory in any suit or other proceeding, but such discovery or answer shall not be admissible in evidence against such person in any such prosecution as is mentioned in section 14.

(3) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in British India who in good faith acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master and as to the instructions which he has received from his master.

1 From 50 & 51 Vic. c. 28, sec. 14.  
2 From 50 & 51 Vic. c. 28, sec. 15.  
3 From 50 & 51 Vic. c. 28, sec. 17.
THE SUCCESSION ACT.

Transitory Provision.

19. The prohibition of the bringing into British India of such piece-goods as are described in clause (f) of section 18 of the Sea Customs Act, 1878, as amended by this Act, shall not take effect till the first day of August, 1889, and the provisions of section 12 shall, as regards piece-goods made up in bales in a factory before the first day of April, 1889, remain in abeyance till the first day of July, 1889.

P. 283, sec. 498, line 6, 'such woman,' i.e. 'such woman whom the accused knows or has reason to believe,' etc., not 'such woman so enticed as aforesaid, 10 All. 580, per Straight J.

P. 289, sec. 500. The statements of a witness are privileged. If false, the remedy is by indictment for perjury, not by suit for defamation, 11 Mad. 477, following 11 Ben. 321 and 15 Cal. 264.

P. 290, sec. 503, note 1. See 15 Cal. 671. The threat must be communicated, or uttered with the intention of being communicated, to the person threatened, for the purpose of influencing his mind.

P. 293, note 4, add Attempt to cheat, 12 Mad. 114.

THE SUCCESSION ACT.

P. 296, l. 27, after coverture insert So a gift to a husband and wife and a third party would operate as a gift to the three as joint tenants with equal undivided shares. In England see Jupp v. Buckwell, 57 L. J. Ch. 774.

Pp. 305, l. 33 ; 315, l. 34 ; 322, l. 12, Act XXVII of 1860 is now repealed and replaced by the following Act:

ACT VII OF 1889.

(Received the assent of the Governor General on the 8th March, 1889.)

AN ACT TO FACILITATE THE COLLECTION OF DEBTS ON SUCCESSIONS AND AFFORD PROTECTION TO PARTIES PAYING DEBTS TO THE REPRESENTATIVES OF DECEASED PERSONS.

Whereas it is expedient to facilitate the collection of debts on successions and afford protection to parties paying debts to the representatives of deceased persons; It is hereby enacted as follows:

1. (1) This Act may be called the Succession Certificate Act, 1889.
It shall come into force on the first day of May, 1889; and it extends to the whole of British India (inclusive of Upper Burma except the Shan States);

But a certificate shall not be granted thereunder with respect to any debt or security to which a right can be established by probate or letters of administration under the Indian Succession Act, 1865\(^1\), or by probate of a will to which the Hindu Wills Act, 1870\(^2\), applies, or by letters of administration with a copy of such a will annexed.

The enactments specified in the first schedule are repealed to the extent mentioned in the third column thereof.

But nothing in this Act shall affect any certificate granted before the commencement of this Act under Act XXVII of 1860 or any enactment repealed by that Act.

Any enactment except this Act and section 152 of the Probate and Administration Act, 1881, or any document referring to any enactment repealed by this Act shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

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

(1) 'District Court,' subject to the other provisions of this Act and to the provisions of proviso \((b)\) to section 23 of the Panjáb Courts Act, 1884\(^3\), and of any other like enactment for the time being in force, means a Court presided over by a District Judge: and

(2) 'security' means—

\((a)\) any promissory note, debenture, stock or other security of the Government of India;

\((b)\) any bond, debenture or annuity charged by the Imperial Parliament on the revenues of India;

\((c)\) any stock or debenture of, or share in, a company or other incorporated institution;

\((d)\) any debenture or other security for money issued by, or on behalf of, a local authority;

\((e)\) any other security which the Governor General in Council may, by notification in the Gazette of India, declare to be a security for the purposes of this Act.

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1 Supra, vol. i. pp. 433, 435.
2 Supra, vol. i. p. 313.
3 'The Local Government may direct that the Divisional Court shall for any other purpose be deemed to be the District Court or principal Civil Court of original jurisdiction for any district comprised in the division.'
4. (1) No Court shall—
(a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming to be entitled to the effects of the deceased person or to any part thereof, or
(b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt,
except on the production, by the person so claiming, of—
(i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or
(ii) a certificate granted under section 36 or section 37 of the Administrator General's Act, 1874,¹ and having the debt mentioned therein, or
(iii) a certificate granted under this Act and having the debt specified therein, or
(iv) a certificate granted under Act XXVII of 1860 or an enactment repealed by that Act, or
(v) a certificate granted under the Regulation of the Bombay Code No. VIII of 1827 and, if granted after the commencement of this Act, having the debt specified therein.

(2) The word 'debt' in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

5. The District Court within the jurisdiction of which the deceased 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, may grant a certificate under this Act.

6. (1) Application for such a certificate must be made to the District Court by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure² for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:—
(a) the time of the death of the deceased;
(b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Court to which the application is made, then the property of the deceased within those limits;
(c) the family or other near relatives of the deceased and their respective residences;

¹ Supra, vol. i. p. 305.
² Supra, vol. ii. p. 495.
(d) the right in which the petitioner claims; 
(e) the absence of any impediment under section 1, sub-section (4), or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and
(f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that 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.

7. (1) If the District Court is satisfied that there is ground for entertaining the application, it shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing—

(a) to be served on any person to whom, in the opinion of the Court, special notice of the application should be given, and
(b) to be posted on some conspicuous part of the court-house and published in such other manner, if any, as the Court, subject to any rules made by the High Court, in this behalf, thinks fit,

and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

(2) When the Court decides the right thereto to belong to the applicant, it shall make an order for the grant of the certificate to him.

(3) If the Court cannot decide the right to the certificate without determining questions of law or fact which seem to it to be too intricate and difficult for determination in a summary proceeding, it may nevertheless grant a certificate to the applicant if he appears to be the person having primâ facie the best title thereto.

(4) When there are more applicants than one for a certificate

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1 whether as heir or as creditor of the deceased.
2 Under sec. 14, the application must be accompanied by the deposit of the proper amount of fee.
3 See the Penal Code, sec. 193; supra, vol. i. p. 166.
4 Supra, vol. i. p. 488.
5 such as the natural heir. This enables the Court to prevent applications for certificates being perverted into a means of obtaining decisions on intricate and difficult questions of law or fact, decisions which (see sec. 25) are not conclusive as to the rights of the parties concerned. Any risk of loss to the parties legally entitled to the assets is obviated by the provision in sec. 3, subsec. (1).
and it appears to the Court that more than one of such applicants are interested in the estate of the deceased, the Court may, in deciding to whom the certificate is to be granted, have regard to the extent of interest, and the fitness in other respects, of the applicants.

8. When the District Court grants a certificate, it shall therein specify the debts and securities set forth in the application for the certificate and may thereby empower the person to whom the certificate is granted—

(a) to receive interest or dividends on, or
(b) to negotiate or transfer, or
(c) both to receive interest or dividends on, and to negotiate or transfer,
the securities or any of them.

9. (1) The District Court shall in any case in which it proposes to proceed under section 7, sub-section (3) or sub-section (4), and may in any other case, require, as a condition precedent to the granting of a certificate, that the person to whom it proposes to make the grant shall give to the Judge of the Court, to enure for the benefit of the Judge for the time being, a bond with one or more surety or sureties, or other sufficient security, for rendering an account of debts and securities received by him and for indemnity of persons who may be entitled to the whole or any part of those debts and securities.

(2) The Court may, on application made by petition and on cause shown to its satisfaction, and upon such terms as to security, or providing that the money received be paid into court, or otherwise as the Court thinks fit, assign the bond or other security to some proper person, and that person shall thereupon be entitled to sue thereon in his own name as if it had been originally given to him instead of to the Judge of the Court, and to recover, as trustee for all persons interested, such amount as may be recoverable thereunder.

10. (1) A District Court may from time to time, on the application of the holder of a certificate under this Act, extend the certificate to any debt or security not originally specified therein, and every

1 This, coupled with sec. 14, will operate as a check on false claims; for a man will scarcely pay duty on the amount of a debt which he does not consider himself legally entitled to recover.

2 But in such case the applicant must pay three, instead of two, per cent. on the amount or value of the unspecified debt or security. (See art. 12 of the Court-Fees Act, sched. I, as amended by this Act, sec. 13). This will prevent speculation on the possibility of being able to collect debts without entering them in the original application and paying the proper fee.
such extension shall have the same effect as if the debt or security to which the certificate is extended had been originally specified therein.

(2) Upon the extension of a certificate, powers with respect to the receiving of interest or dividends on, or the negotiation or transfer of, any security to which the certificate has been extended may be conferred, and a bond or further bond or other security for the purposes mentioned in the last foregoing section may be required, in the same manner as upon the original grant of a certificate.

11. Certificates shall be granted and extensions of certificates shall be made, as nearly as circumstances admit, in the forms set forth in the second schedule.

12. Where a District Court has not conferred on the holder of a certificate any power with respect to a security specified in the certificate, or has only empowered him to receive interest or dividends on, or to negotiate or transfer, the security, the Court may, on application made by petition and on cause shown to its satisfaction, amend the certificate by conferring any of the powers mentioned in section 8, or by substituting any one for any other of those powers.

13. [Sec. 13 amends the Court Fees Act, 1870, and will be found infra.]

14. (1) Every application for a certificate or for the extension of a certificate must be accompanied by a deposit of a sum equal to the fee payable under the first schedule to the Court-fees Act, 1870\(^1\), in respect of the certificate or extension applied for.

(2) If the application is allowed, the sum deposited by the applicant shall be expended, under the direction of the Court, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.

(3) Any sum received under sub-section (1) and not expended under sub-section (2) shall be refunded to the person who deposited it.

15. A certificate under this Act shall have effect throughout the whole of British India.

16. Subject to the provisions of this Act, the certificate of the District Court shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of section 1, sub-section (4), or other defect, afford full indemnity to all such persons as regards all payments made,

\(^1\) Supra, vol. ii. pp. 1009-1042.
or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted.

17. Where a certificate in the form, as nearly as circumstances admit of the second schedule has been granted to a resident within a Foreign State by the British representative accredited to the State, or where a certificate so granted has been extended in such form by such representative, the certificate shall, when stamped in accordance with the provisions of the Court-fees Act, 1870, with respect to certificates under this Act, have the same effect in British India as a certificate granted or extended under this Act.

18. A certificate granted under this Act may be revoked for any of the following causes, namely:

(a) that the proceedings to obtain the certificate were defective in substance;

(b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case;

(c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;

(d) that the certificate has become useless and inoperative through circumstances;

(e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

19. (1) Subject to the other provisions of this Act, an appeal shall lie to the High Court from an order of a District Court granting, refusing or revoking a certificate under this Act, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Court, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted.

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure.

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1 No indemnity is afforded except in respect of debts or securities specified in the certificate, which, therefore, the debtor should always see.

2 i.e. set forth in.


4 See supra, vol. ii. p. 998.
(3) Subject to the provisions of sub-section (1) and of Chapters XLVI and XLVII of the Code of Civil Procedure as applied by section 647 of that Code, an order of a District Court under this Act shall be final.

20. Save as provided by this Act, a certificate granted thereunder in respect of any of the effects of a deceased person shall be invalid if there has been a previous grant of such a certificate or of probate or letters of administration in respect of the estate of the deceased person and if such previous grant is in force.

21. (1) A grant of probate or letters of administration under the Probate and Administration Act, 1881, in respect of an estate shall be deemed to supersede any certificate previously granted under this Act in respect of any debts or securities included in the estate.

(2) When at the time of the grant of the probate or letters any suit or other proceeding instituted by the holder of the certificate regarding any such debt or security is pending, the person to whom the grant is made shall, on applying to the Court in which the suit or proceeding is pending, be entitled to take the place of the holder of the certificate in the suit or proceeding.

22. Where a certificate under this Act has been superseded or is invalid by reason of the certificate having been revoked under section 18, or by reason of the grant of a certificate to a person named in an appellate order under section 19, or by reason of a certificate having been previously granted, or by reason of a grant of probate or letters of administration, or for any other cause, all payments made, or dealings had, as regards debts and securities specified in the superseded or invalid certificate, to or with the holder of that certificate in ignorance of its supersession or invalidity, shall be held good against claims under any other certificate or under the probate or letters of administration.

23. (1) Where a certificate has been granted under this Act or Act XXVII of 1860, or a grant of probate or letters of administration has been made, a curator appointed under Act XIX of 1841 shall not exercise any authority lawfully belonging to the holder of the certificate or to the executor or administrator:

(2) But persons who have paid debts or rents to a curator authorised by a Court to receive them shall be indemnified, and the curator shall be responsible for the payment thereof to the person who has obtained the certificate, probate or letters of administration, as the case may be.

1 An Act for the protection of moveable and immoveable property against wrongful possession in cases of successions.
24. Any probate or letters of administration granted before the first day of April, 1881, by any Supreme or High Court of Judicature, or by the Court of a Recorder in Burma, in any case in which the deceased person was not a British subject within the meaning of that expression as used in the charters of the Supreme Courts of Judicature, and in which any assets belonging to him were at the time of his death within the local limits of the jurisdiction of the Court shall, for the purpose of the recovery of debts, the protection of persons paying debts, and the negotiation or transfer of securities included in the estate of the deceased, be deemed to have and to have had the effect which a grant of probate or letters of administration has under the Indian Succession Act, 1865:

Provided that nothing in this section shall be construed to validate any disposal of property by an executor or administrator which has before the commencement of this Act been declared by any competent Court to be invalid.

25. No decision under this Act upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this Act shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto.

26. (1) The Local Government may, by notification in the official Gazette, invest any Court inferior in grade to a District Court with the functions of a District Court under this Act, and may cancel or vary any such notification.

(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court in the exercise of all the powers conferred by this Act upon the District Court, and the provisions of this Act relating to the District Court shall apply to such an inferior Court as if it were a District Court:

Provided that an appeal from any such order of an inferior Court as is mentioned in sub-section (1) of section 19 shall lie to the District Court, and not to the High Court; and that the District Court may, if it thinks fit, by its order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Court.

1 If there is any great increase in the number of applications for certificates, the Courts exercising jurisdiction with respect to them should be more accessible and less expensive than District Courts.
(3) An order of a District Court on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions of Chapters XLVI and XLVII of the Code of Civil Procedure as applied by section 647 of that Code, be final.

(4) The District Court may withdraw any proceedings under this Act from an inferior Court and may either itself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Court and having authority to dispose of the proceedings.

(5) A notification under sub-section (1) may specify any inferior Court specially, or any class of such Courts in any local area.

(6) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Court shall for the purposes of this section be deemed to be a Court inferior in grade to a District Court.

27. (1) When a certificate under this Act has been superseded or is invalid from any of the causes mentioned in section 22, the holder thereof shall, on the requisition of the Court which granted it, deliver it up to that Court.

(2) If he wilfully and without reasonable cause omits so to deliver it up, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to three months, or with both.

28. Notwithstanding anything in the Regulation of the Bombay Code No. VIII of 1827, the provisions of section 3, section 6, sub-section (1), clause (f), and sections 8, 9, 10, 11, 12, 14, 16, 18, 19, 25, 26 and 27 of this Act with respect to certificates under this Act and applications therefor, and of section 98 of the Probate and Administration Act, 1881, with respect to the exhibition of inventories and accounts by executors and administrators, shall, so far as they can be made applicable, apply, respectively, to certificates granted under that Regulation, and applications made for certificates thereunder, after the commencement of this Act, and to the exhibition of inventories and accounts by the holders of such certificates so granted.

1 Of either description as defined in the Indian Penal Code, v. supra, vol. i, p. 459.
### THE FIRST SCHEDULE.

**ENACTMENTS REPEALED.**

*(See section 2.)*

<table>
<thead>
<tr>
<th>Number and year.</th>
<th>Subject or title.</th>
<th>Extent of repeal.</th>
</tr>
</thead>
<tbody>
<tr>
<td>XXVII of 1860.</td>
<td>Collection of debts on successions.</td>
<td>So much as has not been repealed.</td>
</tr>
<tr>
<td>XIV of 1869.</td>
<td>Bombay Civil Courts Act, 1869.</td>
<td>In section 16, from and inclusive of the words and figures 'Bombay Regulation VIII of 1827' down to and inclusive of the words 'representatives of deceased persons) and'.</td>
</tr>
<tr>
<td>XV of 1874.</td>
<td>Laws Local Extent Act, 1874.</td>
<td>So much as relates to Act XXVII of 1860.</td>
</tr>
<tr>
<td>XVII of 1884.</td>
<td>Panjáh Courts Act, 1884.</td>
<td>Section 29, subsection (1), clause (a).</td>
</tr>
<tr>
<td>XII of 1887.</td>
<td>Bengal, North-Western Provinces and Assam Civil Courts Act, 1887.</td>
<td>Section 23, subsection (2), clause (c).</td>
</tr>
</tbody>
</table>

**Act of the Lieutenant-Governor of Bengal in Council.**

| VII of 1880.    | Public Demands' Recovery Act, 1880. | In section 7, clause (3), the words 'and the note to paragraph 12 of Schedule I'. |
THE SECOND SCHEDULE.

FORMS OF CERTIFICATE AND EXTENDED CERTIFICATE.

(See section 11.)

In the Court of

To A. B.

Whereas you applied on the day of  for a certificate under the Succession Certificate Act 1889, in respect of the following debts and securities, namely:

_Debs._

<table>
<thead>
<tr>
<th>Serial number</th>
<th>Name of debtor</th>
<th>Amount of debt, including interest, on date of application for certificate</th>
<th>Description and date of instrument, if any, by which the debt is secured</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</table>

_Securities._

<table>
<thead>
<tr>
<th>Serial number</th>
<th>Distinguishing number or letter of security</th>
<th>Name, title, or class of security</th>
<th>Amount or par value of security</th>
<th>Market-value of security on date of application for certificate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

This certificate is accordingly granted to you and empowers you to collect those debts [and] [to receive] [interest] [dividends] [on] [to negotiate] [to transfer] [those securities].

Dated this day of

District Judge.
In the Court of

On the application of A. B. made to me on the day of , I hereby extend this certificate to the following debts and securities, namely:

**Debts.**

<table>
<thead>
<tr>
<th>Serial number</th>
<th>Name of debtor</th>
<th>Amount of debt, including interest, on date of application for extension</th>
<th>Description and date of instrument, if any, by which the debt is secured</th>
</tr>
</thead>
<tbody>
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<td></td>
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</table>

**Securities.**

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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

This extension empowers A. B. to collect those debts [and] [to receive] [interest] [dividends] [on] [to negotiate] [to transfer] [those securities].

Dated this day of .

District Judge.
P. 310, note 3, add See 12 Mad. 126, where Muttusámi Ayyár J. held that the testamentary power had existed in Malabar at least from 1826.

— note 4, add See 4 Mad. 150: 12 Mad. 126, at p. 128.

P. 312, note 2. If illegal restrictions (such as creating a perpetuity), made by a Hindú testator on valid dispositions, are separable, they do not invalidate the dispositions, 15 Cal. 409.

P. 318, note 1, l. 13. See as to Bombay, 12 Bom. 621.

P. 319. As to sec. 16 of the Probate and Administration Act, see 12 Bom. 164. As to secs. 37 and 45, see 12 Cal. 376. Secs. 50, 76, 77 and 99 are amended by Act VI of 1889. And for secs. 90 and 98 new sections are substituted by that Act.

P. 355, note 1, add And see the Law Quarterly Review, iv. 483.

— note 4, line 4, after 88 insert Towart v. Sellars, 5 Dow. 236.

P. 358, sec. 50, l. 14, 'in the presence of,' 16 Cal. 19 (par-danashin).

P. 362, note 2, add Sec. 54, so far as it avoids gifts to attesting witnesses, must be construed fairly, Re Barber, 31 Ch. D. 665. Where an attorney attests a will authorising him to charge profi-
costs, see ibid., and Re Pooley, 40 Ch. D. 1.

P. 363, note 4, add And see Jones v. Harding, 58 L. T. R. 60,

where also the Court recognised the doctrine that a will or codicil in the testator's possession and not forthcoming at his death is presumed to have been destroyed animo revocandi.

P. 445, sec. 234. The following clause has been added by Act VI of 1889, sec. 2:—

'5th, that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XXXIV of this Act or has exhibited under that Part an inventory or account which is untrue in a material respect.'

P. 450, sec. 244. For the words 'and that the petitioner is the executor therein named,' Act VI of 1889, sec. 3 substitutes the following:—

'the amount of assets which are likely to come to the petitioner's hands, and

'that the petitioner is the executor named in the will,'

P. 454, sec. 254. For the last forty-two words of this section, Act VI of 1889, sec. 4 substitutes the following:—

'he having undertaken to administer the same, and to make a full and true inventory of the said property and credits and
exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.'

P. 455, sec. 255. For the last forty-five words of this section, Act VI of 1889, sec. 5 substitutes the following:—

'he having undertaken to administer the same, and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.'

— sec. 256. For the words 'Every person to whom any grant of administration shall be committed,' Act VI of 1889, sec. 6 substitutes the words 'Every person to whom any grant of letters of administration is committed.'

P. 463, sec. 277. For section 277, Act VI of 1889, sec. 7, substitutes the following:—

'277. (1) An executor or administrator shall, within six months Inventory and account. from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court 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 to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the grant or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

'(2) The High Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

'(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code.
'(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code.'

P. 463, sec. 277 A. In this section, for the words 'it is sought to obtain a grant' the words 'a grant has been made,' and for the words and figures 'the person applying for administration after the first day of April, 1875,' the word 'administrator' has been substituted by Act VI of 1889, sec. 8.

P. 465, sec. 283. In this section, for the words 'the country in which he was domiciled,' Act VI of 1889, sec. 9 substitutes the words 'British India' and repeals the illustration. Note 3 should therefore now be cancelled. The section as altered agrees with In re Klebe, L. R. 28 Ch. Div. 175, dissenting from Wilson v. Lady Dun-sany, 18 Beav. 293, the source of the section as it formerly stood.


P. 484. The following section was added by Act VI of 1889, sec. 10:

'333. (1) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

'(2) If such person wilfully and without reasonable cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment of either description for a term which may extend to three months, or with both.'

THE GENERAL CLAUSES ACT.

P. 489, sec. 3, clause (1), line 2. Act I of 1887, sec. 9 inserts the words 'wholly or partially' before 'repealed,' and declares that they shall be deemed to have been there from the commencement of Act I of 1868.

P. 490, note 2. In 16 Cal. 267, a Full Bench has lately held that 'proceedings' did not include proceedings in execution after decree.

THE CONTRACT ACT.

P. 494, note 6, add For the latest 'implied contract' invented by English Courts, see Crampton v. Ridley & Co., 20 Q. B. D. 48, where A. L. Smith J. thought that when A and B appointed C and D arbitrators, there was an implied promise by the former jointly to pay the latter reasonable remuneration for their services.

P. 498, l. 15. See cases on the assignability of choses in action collected in 13 Bom. 44.

P. 503, l. 17, add Fire-policies also often contain a clause empowering the office to determine the policy by notice, refunding a rateable proportion of the premium. That such a clause is valid, see Sun Fire Office v. Hart, 14 App. Cas. 98.


— l. 35, after risks insert In the absence of special stipulations the contract is presumed to be governed by the law of the flag, Lloyd v. Guibert, L. R., 1 Q. B. 115; Re Missouri Steam Ship Co., 58 L. T. R. 377.

P. 518, note 3, add In England, and probably in India, a stipulation in a bill of lading exempting the shipowner from liability for loss or damage arising from the negligence of the master and crew is valid, Re Missouri Steam Ship Co., 58 L. T. R. 377.


P. 524, note 3, l. 2, insert Bhugwandass v. Netherlands India Sea and Fire Insurance Co., L. R. 16 I. A. 60 ("open cover").

P. 525, note 4, add As to the duty of persons effecting insurances to disclose all material facts, see Blackburn v. Vigers, 17 Q. B. D. 553.

P. 530, note 1, add English decisions, which would doubtless be followed in India, establish that maritime liens exist in the cases of seamen's wages, master's wages and disbursements, salvage, bottomry, and damage by collision.

P. 532, note 1. As to evidence of ratification from lapse of time without making objection, see L. R., 15 I. A. 220, at p. 225.

P. 533, note 3, add Wilson v. Glossop, 19 Q. B. D. 379 (necessaries supplied to an adulteress turned out of her husband's house).


P. 549, note 1, add A contract made by telegraph is completed at the place whence the telegram accepting an order is despatched, Cowan v. O'Connor, 20 Q. B. D. 640.
P. 553, sec. 11, note 1, l. 8, after C. J. insert and in 13 Bom. 50 it has been expressly held that a money-bond may be executed to a minor and may be sued upon.

P. 554, sec. 16, note 4, add another illustration in 10 All. 535. When a gift is alleged to have been made owing to undue influence, the questions are, (1) was it a thing which a rightminded person might be expected to do? (2) was it an improvident act? (3) was it a matter requiring a legal adviser? (4) did the intention of making it originate with the donor? 15 Cal. 684: S. C. L. R. 15 I. A. 81.

P. 557, sec. 19, Exception, note 1, add But where a vendor has been guilty of fraud by actively concealing a material fact, and the purchaser was thereby induced to purchase, the fact that he might with ordinary diligence have discovered the truth affords no answer to a suit to recover the purchase-money. Such a case does not fall within the Exception, 11 Mad. 419, at pp. 435 and 439.

P. 559, sec. 23, note 2, l. 15, after 398 insert to a partnership contrary to an ābhārī license for breach of which the licensee was liable to a statutory penalty, 12 Bom. 422.

— sec. 23, note 2, l. 18, insert to the sublease of a license to manufacture and sell country liquor, such sublease being in contravention of the terms of the license, 10 All. 577.

— sec. 23, note 4, l. 20, after 1056 insert 13 Bom. 126, 131.

P. 560, sec. 23, notes; col. 1, l. 5, after chap. 8 insert and in Bombay, 13 Bom. 42.

— sec. 23, note, col. 1, l. 10, after 1 insert 12 Mad. 118. In cases of champerty the question in India is whether the transaction is bonā fide for the acquisition of an interest in the subject of litigation, or 'got up for the purpose merely of spoil, or of litigation, disturbing the peace of families, and carried on from a corrupt or other improper motive,' 12 Bom. 559, citing I. R. 1 I. A. 265. As to gambling in litigation and unconscionable bargains, see 11 All. 118 at p. 125: 11 All. 128.

— sec. 23, note, col. 1, l. 10, see 11 All. 57.

P. 566, sec. 30, note 4, add 12 Bom. 585.

P. 582, sec. 63, l. 3. As to extending the time stipulated for, &c., see 12 Bom. 658.

P. 583, sec. 65. See 11 All. 47, at p. 56: S. C. L. R. 15 I. A. 211

P. 585, note 2, add In the case of a lunatic, 'necessaries' covered the costs of his medical examination for the inquisition, Brockwell v. Bullock, 22 Q. B. Div. 567.
— sec. 69, note 6, add 11 Mad. 452, where the Court agreed with the minority in 14 Cal. 809.

P. 586, sec. 72, note 6, ‘coercion,’ add see 15 Cal. 656, following a decision of the Judicial Committee in 7 Cal. 648 (S. C. L. R. 8 I. A. 93). It seems that where A the purchaser of a mauza pays money into court to prevent the execution of B’s decree by attaching the mauza, the payment is not voluntary, and A may recover the money from B.

Sec. 72 is not exhaustive. It does not, for instance, include (and of course it does preclude) such suits as are provided for by the Limitation Act, art. 62, where e.g. money is paid by compulsion of law.

P. 592, sec. 74, note 2, 1, 6, add 10 Cal. 305 : 11 Mad. 294.

— sec. 74. For cases in which stipulations were held to amount to penalties, see 12 Bom. 555 : 14 Cal. 248 : 12 Mad. 161.

P. 594, secs. 77, 78. The illustration to sec. 78 shows that ‘price’ means money, 11 Mad. 467.


P. 607. Another implied warranty has been established by the Indian Merchandise Marks Act, 1889, sec. 17.

P. 609, sec. 118, add 11 Mad. 459. at p. 468, where the transaction was held to be an agreement for exchange.

P. 614, sec. 131, note. This section does not affect the liability of the estate of the son of a deceased Hindu on a surety bond executed by the father, 11 Mad. 373.

— sec. 131, note 1, 1, 4, after 462 insert 10 All. 531.

P. 622, sec. 151. See 11 Mad. 466.

P. 644, sec. 232. But see Cooke v. Eshelby, 12 App. Ca. 271, as to when a buyer can set off against an undisclosed principal a debt due from the agent.


THE NEGOTIABLE INSTRUMENTS ACT.

P. 690, sec. 48, 1, 4, note. A promissory note payable to order cannot be negotiated by mere execution of a deed of assignment, 11 Mad. 290.
THE TRANSFER OF PROPERTY ACT.

P. 727, note, add In Hext v. Gill, 7 Ch. 699, at p. 712, 'minerals' was defined as 'every substance which can be got from underneath the surface of the earth for the purpose of profit.' But now as to clay, see Lord Provost of Glasgow v. Faris, 13 App. Cas. 657.

P. 737, Gifts, insert after paragraph 1, The chapter should have contained some rules as to incomplete gifts (as e.g. when a Government promissory note is delivered without endorsement) and when the Court will perfect the gift. See 12 Bom. 573.

— before line 3 from bottom insert, As to setting aside gifts when undue influence has been exercised by the donee, see Allcard v. Skinner, 36 Ch. Div. 145.

P. 749, para. (g). See the Indian Pensions Act, XXIII of 1871, secs. 11, 12, and Lucas v. Harris, 18 Q. B. D. 127.

P. 750, note 3, add When the land is bounded by a road or river, the transfer is presumed to pass the soil of the road or the bed of the river, ad medium filum, Micklethwait v. Newlay Bridge Co., 33 Ch. Div. 133.

P. 766, sec. 52. Purchaser pendente lite bound by execution sale, L. R. 15 I. A. 97.

— sec. 52. A suit becomes 'contentious' within the meaning of this section when the summons is served, 15 Cal. 647; when the filing of the plaint is brought to the notice of the defendant, 12 Mad. 180.

P. 767, sec. 53. That the principle of 13 Eliz. applies to the Bombay mufassal, see 13 Bom. 297, at p. 300.

P. 771, sec. 55, note 1, l. 3, after 102 insert 11 Mad. 263.


P. 776, sec. 60, note 6, l. 7, insert In 11 Mad. 403 it was held that the breach of a condition in the mortgage-deed that on default of payment on a certain date the mortgage should be deemed an absolute sale did not amount to an extinguishment of the right by act of parties.

P. 781, sec. 67, note 3, add Where the deposit is made without the mortgagee's knowledge, he is not thereby deprived of his right to foreclosure or sale, 11 Mad. 371.

An usufructuary mortgagee is not entitled, in the absence of a contract to that effect, to sue for a sale of the mortgaged property, 12 Mad. 109. The decision in 11 Mad. 88, cited supra, vol. ii. p. 1167, is clearly wrong.
— sec. 68. There is no rule in India that a mortgagee who has foreclosed, by suing the mortgagor on his personal covenant reopens the foreclosure.

P. 782, sec. 68, has of course no reference to cases where, after a suit has been brought and a decree obtained, the mortgagee seeks to sell any property in satisfaction of his decree, 15 Cal. 492, at p. 496.

— secs. 68 and 100. Section 100 does not make sec. 68 applicable to a person having a 'charge,' 15 Cal. 492.

P. 783, sec. 69, para. (1), l. 2. The proviso as to notice is not a condition which either suspends or defeats the power to sell, but only a direction in regard to its exercise, neglect of which affords a ground for compensation to the person (if any) damnified by the sale, 11 Mad. 201, at p. 203.

P. 784, sec. 72, only reproduces the doctrines which the courts of justice in India have uniformly adopted, per Mahmúd J., 10 All. 611.

P. 785, sec. 73, add to note 6, Section 73 does not deprive the mortgagee of his lien on the mortgaged property, 15 Cal. 552-553.

P. 792, sec. 87, para. (2), l. 5. Without such order the right to redeem is not taken away, 16 Cal. 246.

Pp. 792, 793, secs. 88, 89, 90. A mortgagee with a decree for sale of mortgaged property cannot treat it as one for money and then ask for attachment of the other property of his mortgagor, 10 All. 632.

P. 798, l. 5, 'mortgagor,' i.e. secs. 60-66.

P. 801, sec. 10, clause (c), l. 4. This, like the English covenant for quiet possession, is in the nature of a covenant for title and does not cover noise and other nuisances. See Jenkins v. Jackson, 40 Ch. Div. 71.

P. 803, clause (m), l. 4, 'wear and tear.' See Crawford v. Newton, 36 W. R. 54.

P. 806, note 7, add No forfeiture can be made unless every condition precedent has been strictly and literally complied with, Jackson v. Northampton Street Tramways, 55 L. T. R. 91.

P. 812, sec. 129, note 3, l. 3, after 1112 insert 15 Cal. 684 (doctrine of mushāda).

— sec. 129, note 3, l. 5, after 1146 insert 13 Bom. 156.

— sec. 129, note 3, l. 6, Muhammadan gifts in the N. W. Provinces, see 11 All. 1.

SUPPLEMENT TO THE ANGLO-INDIAN CODES.

P. 814, sec. 135. This section 'does not apply where the money is recovered by suit after a contest as to the liability of the defendant.' We think, however, that if the money paid by the plaintiff for the claim, with interest and expenses, were paid into court immediately on the suit being brought, that would be a payment within the meaning of the section, and would release the defendant from further liability,' 15 Cal. 436 (following 13 Cal. 145).

— sec. 136. The purchase by a pleader of the right to elephants caught in pits in the vendor's land does not come within this section, 11 Mad. 445.

— sec. 136, 'falling under the jurisdiction,' i.e. actually falling, not potentially, 11 Mad. 498, following 11 Mad. 61.

THE TRUSTS ACT.

P. 823, note 1, l. 5, after note insert As to Muhammadans, see 11 Mad. 283 (suit by one trustee of a mosque for a declaration of his title as against his cotrustee).

P. 840, note 5, add And see Re Diggles, 39 Ch. Div. 253.

P. 841, note 4, add It has, however, been held that the Secretary of State for India in Council and the Governor General in Council are incapable of being trustees, Kinlock v. Secretary of State for India in Council, 15 Ch. Div. 9, per James L.J.


P. 846, sec. 17, note 2, add See 11 Mad. 360, per Kernan J., as to the duty of trustees as between tenant for life and remainderman in case of expenditure for the improvement of the trust estate.

P. 850, sec. 26, clause (b). See as to the right to contribution from a co-trustee, Bacon v. Camphausen, 58 L. T. R. 851.

P. 854, sec. 34, note 4, l. 1, add as to which see 7 Bom. 384; 12 Bom. 638.

P. 863, sec. 61, l. 5, 'proper indemnity.' See Tudball v. Medlicott, 36 W. R. 886.

THE EASEMENTS ACT.


P. 904, note 3. Two English decisions on the expression 'actually enjoyed' in the corresponding section of the Prescription
Act (2 & 3 Wm. IV; c. 71, sec. 3) may be referred to: Cooper v. Straker, 40 Ch. D. 21 (discontinuous user), and Courtauld v. Legh, L. R. 4 Ex. 126 (uninhabited house).

P. 907, sec. 18, note 4, l. 7, insert 10 All. 359; and in the Panjáb, the Panjáb Record cited, 10 All. 381; and in the Lower Provinces of Bengal, 5 Suth. Civ. R. 208: 5 Ben. 676, at p. 681: 18 Suth. Civ. R. 14.

P. 925, sec. 58. As to the English law on this subject, and as to the corresponding duty on the part of the licensee, see Corby v. Hill, 4 C. B., N.S. 556, at p. 567, per Willes J.: see also Hounsell v. Smyth, 7 C. B., N.S. 731.

P. 929, note 4, add See Litt. secs. 486, 487.

THE SPECIFIC RELIEF ACT.

P. 938, after 1. 25 add Under Bom. Act III of 1876, sec. 4, cl. 2, a Māmlatdār's Court may grant injunctions in the cases where an interruption of physical possession or enjoyment of lands, crops, trees, fisheries, or the use of water or ways.


P. 973, sec. 31, l. 10. If nothing remains to be done under an agreement there is no ground for rectifying it, Caird v. Moss, 33 Ch. Div. 22.

P. 975, sec. 35, note 6, add Another illustration is suggested by Ladywell Mining Co. v. Brookes, 35 Ch. Div. 400: A buys a mine for rs. 50,000. He then forms a company of which he becomes a director, and resells the mine to the company for rs. 200,000 without disclosing the fact of the property being his. The company is entitled to rescind the contract.

As to setting aside sales for unfairness, see Fry v. Lane, 40 Ch. Div. 312.

P. 976, sec. 38, note 2, add The Specific Relief Act gives no express power to indemnify the plaintiff in a successful suit for rescission against any obligations imposed on him under the contract. See in England, Newbigging v. Adam, 34 Ch. Div. 582.

— sec. 39. 'It is not because a man conveys property to which he is not entitled that the conveyance is absolutely void or ought to be cancelled or retained by the Court,' 15 Cal. 421.

P. 978, sec. 42, note 1. As to suits to stay a partition directed by the Collector under Ben. Act VIII of 1876, on the ground that a private partition has already been come to, see 16 Cal. 117.
P. 978, sec. 42, proviso, l. 2, 'being able,' i.e. at the commencement of the suit, 12 Mad. 136.
— sec. 42, illustration (a). As to the class of rights here referred to, see 15 Cal. 460, at pp. 464, 465.

P. 984, note 3, add 13 Bom. 252, at p. 259.

P. 986, sec. 54, illustration (p). The owner of land may sue for a declaration of right under sec. 42 against any one who has formally claimed to use the land as a public road and therefore endangered the title of the owner. Though such a declaration would not be conclusive against a stranger, it would be admissible against a stranger under sec. 42 of the Evidence Act, 15 Cal. 460, at pp. 467, 468.


P. 988, note 1, add The jurisdiction ought only to be exercised in the clearest cases, Law Quarterly Review, iv. 483. As to injunctions against threats of legal proceedings by patentees, see Challender v. Royle, 36 Ch. Div. 425.

VOLUME II.

THE CODE OF CRIMINAL PROCEDURE.

P. 11, note 2, add 15 Cal. 527: followed in 12 Mad. 88.

P. 15, after l. 18, insert Act XIV of 1887, sec. 40 (Indian Marine), Act IV of 1889, sec. 15 (Merchandise Marks), and after l. 24 insert Act IV of 1889, sec. 15 (Merchandise Marks).

P. 60, sec. 1, cl. (a), see 15 Cal. 606.
— cl. (e) is repealed by Act V of 1889, sec. 4. Note (e) should therefore be cancelled.

P. 62, sec. 4, cl. (i), l. 1, 'proceedings,' i.e. the special proceedings contemplated by Chap. xxxiii, not proceedings in which European British subjects waive their right under that chapter, 12 Bom. 561.
— sec. 4, yadast amounting to a 'complaint,' though the complainant was not examined on oath, 11 Mad. 443.

P. 74, sec. 35. The rules for assessing punishment are contained in this section, and in the Penal Code, secs. 71, 72; 12 Mad. 39, per Muttusami Ayyár J.

P. 77, sec. 45. For this section, in Lower Burma, a section is
substituted by sec. 5 of Act III of 1889 (To provide a Village-system and amend the law relating to Rural Police in Lower Burma).

— sec. 45, note 4. In this section land does not include 'house,' 12 Mad. 92.


P. 82, sec. 59, par. 2, 'make over.' This is sufficiently complied with if the private arrester sends the offender in custody of a servant, 11 Mad. 480.

P. 94, sec. 98. To this section the Metal Tokens Act (I of) 1889, adds the following:

'The provisions of this section with respect to—

(a) counterfeit coin,
(b) coin suspected to be counterfeit, and
(c) instruments or materials for counterfeiting coin,
shall, so far as they can be made applicable, apply, respectively, to—

(a) pieces of metal made in contravention of the Metal Tokens Act, 1889, or brought into British India in contravention of any notification for the time being in force under section 19 of the Sea Customs Act, 1878;

(b) pieces of metal suspected to have been so made or to have been so brought into British India, or to be intended to be issued in contravention of the former of these Acts, and

(c) instruments or materials for making pieces of metal in contravention of that Act.'

P. 107. Sec. 133 et seq. probably give a remedy for preventing infringement of a right of way belonging to a portion of the public, e.g. the inhabitants of a certain village, no less than in the case of a public way in the full sense of the term, 15 Cal. 460, at p. 466.

— sec. 133, note 1, l. 5, insert The magistrate must enquire into the bona fides of a claim of title to a way, and when he decides that the claim is made mala fide, should state his reasons, which will be subject to revision by the High Court, 15 Cal. 564, at p. 571. In the Bombay Presidency the soil of public roads is vested in the Secretary of State, Bom. Act V of 1879, sec. 37, a provision which might usefully be extended to the rest of British India.

P. 108, sec. 134. The terms of this section are directory, not imperative, 16 Cal. 9.

1 Act VIII of 1878.
P. 109, sec. 139. The order absolute does not preclude a civil Court from enquiring into the question of title, 15 Cal. 460, at p. 470, and cases there cited.

Pp. 109, 110, secs. 140, 142. 'Suit,' i.e. suit for damages, 15 Cal. 460, at p. 469.

P. 111, sec. 143, note 1, and P. 112, sec. 144, note 1, add Such orders are excepted from the section (435) conferring powers of revision.

— sec. 144, note 5, l. 2, insert But see 16 Cal. 80.

P. 112, sec. 145. Dispute as to right to collect rents, 11 Cal. 413, followed in 15 Cal. 527.

— sec. 145, note 6, add but has been followed in Madras, 12 Mad. 88.

P. 113, sec. 147. Where the dispute was between two kazis as to the right to perform a religious ceremony in a particular mosque, see 11 Mad. 323.

— notes, col. 1, l. 2, after 521 insert and see 16 Cal. 281.

P. 115, note 1, add As to offences generally, see the Police Act, V of 1861, sec. 23.

— sec. 152, l. 3. As to private property, see Act V of 1861, sec. 23.

P. 119, sec. 164. This does not apply to statements taken in the course of a police investigation made in Calcutta, 15 Cal. 595, at p. 606.

— sec. 164, note 5, add See sec. 364, and consider 15 Cal. 607.

Pp. 124, 125. Secs. 174, 175, 176 are modified in their application to the town of Madras by Act V of 1889, sec. 4.

P. 130, sec. 188, para. 3, see 13 Bom. 147, where the offence was committed in Portuguese territory.

P. 133, sec. 195, note 3. The sanction does not lapse by the death of the grantee, 12 Mad. 47.

— sec. 195, cl. (b), 'such Court.' Notwithstanding sec. 1, cl. (c), this includes a Village Munsif in Madras trying a cause, 11 Mad. 375.

P. 134, sec. 195, note 2, add. Though a superior Court can revoke a sanction granted by a subordinate Court, no power is given to it to set aside a complaint duly made by a subordinate Court, 13 Bom. 109, at p. 112.

— sec. 195, note 3. The rule does not apply to a sanction, 7 All. 871.

— sec. 195, note 4, l. 4, after 314 insert In the N. W. Provinces
(notwithstanding the Rent Act of 1881) the Court of the District Judge may be taken to be for the purpose of this section the Court to which appeals from the decisions of the Collector ordinarily lie, 10 All. 582.

P. 166, sec. 289, para. 3, l. 5, 'record a finding;' i.e. If at a certain stage of a sessions trial the Court is satisfied that there is not upon the record any evidence which, even if it were perfectly true, would amount to legal proof of the offence charged against the accused, then the Court has power, without consulting the assessors, to record a finding of not guilty. But the Sessions Judge, acting with the aid of assessors, has no such power, because only he considers the evidence unsatisfactory, untrustworthy, or inconclusive, 10 All. 414, at p. 417, per Tyrrell J.

P. 167, sec. 292, note 2, l. 4, *after 245 insert* But in 11 Mad. 339, where documentary evidence was put in by the accused during the case for the Crown and before examination of the accused, it was held that the Crown had the right of reply.


P. 182, sec. 337, par. 2, 'Every person accepting,' &c. This means that, for all purposes (subject to failure to satisfy the conditions of pardon as provided for by sec. 339), such person ceases to be triable for the offence or offences under inquiry, or (with reference to sec. 339) for any other offence of which he appears to have been guilty in connexion with the same matter, while making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence, 11 All. 79, at p. 89, per Straight J.

P. 197. Sentences of death passed by the Recorder of Rangoon on European British subjects are submitted for confirmation to the High Court at Fort William, Act XI of 1889, sec. 45.

P. 203, sec. 399. Wherever the Reformatory Schools Act, V of 1876, is in force, this section is repealed so far as it enables magistrates not of the first class to send male youthful offenders to reformatory schools, 12 Mad. 94.

--- *add to note 3*, Act V of 1876 was extended to the Madras Presidency in August 1887.

P. 207, sec. 404, note 2, cl. 1, l. 9, *after 230 insert* followed in 15 Cal. 712, and in 11 Mad. 359.

--- cl. 2, l. 4, *insert* As to the principles on which the High Court will grant leave to appeal, see 10 Bom. H. C. 75, per Westropp J., and 15 Cal. 608, note (1).
P. 207, add to this note: See L. R. 10 I. A. 171, and Riel's Case, L. R. 10 App. Ca. 675. In the latter case (from Canada) the Judicial Committee said that no leave to appeal in criminal cases would be given except where some clear departure from the requirements of justice is alleged to have taken place.


P. 216, sec. 437. It is expedient, but not necessary, that notice should be given to the accused before an order under this section can be passed, 15 Cal. 608.

P. 217, sec. 439, note 10, add 8 Bom. 197; but see 10 Cal. 1047: 12 Bom. 390.

P. 223, sec. 453, note 1. This section and sec. 454 should have been placed at the beginning of ch. xxxiii.

P. 224, sec. 454, note 1, l. 2, after 'procedure' insert 12 Bom. 561.

P. 235, sec. 487, l. 4, 'shall try any person.' These words include the hearing of an appeal, 16 Cal. 121.

— l. 7, 'judicial proceeding.' See sec. 4, cl. (d).

— sec. 488, note 7. The Magistrate of the first class must himself make the enquiry, 11 Mad. 199.

P. 240, sec. 494, last word. He cannot be discharged, 12 Mad. 35.

P. 243, sec. 503, note 1, l. 6, after 92 insert 15 Cal. 775.

P. 253, sec. 526 A, note 1. See 15 Cal. 459, 460. When the Court orders prisoners to be discharged on bail it may call for a report from the police as to the sufficiency of the bail; but the duty of deciding as to its sufficiency or otherwise is with the Court itself, and not with the police, 15 Cal. 457.

— sec. 527. For the purposes of this section the Court of the Recorder of Rangoon shall be deemed to be a High Court, Act XI of 1889, sec. 48.

P. 256, sec. 533, note 1: i.e. if the Court finds that the Magistrate has not done all his duty, the Court may then take evidence to show that the prisoner has done all that was necessary for him on his part to do. No evidence need be taken to prove that the Magistrate has done his duty, 15 Cal. 601.

P. 375, antepenultimate line. By notification in the North-Western Provinces and Oudh Gazette, Dec. 13, 1884, Part I, p. 598, the Local Government directed that from the commencement of 1885 in the Allahabad, Benares and Lucknow Districts, when the accused has been committed to the Court of Session by a magistrate exercising jurisdiction in the District, the following offences should be tried by jury:

ii. Rape, sec. 376.

iii. Theft, secs. 379-382.


v. Criminal misappropriation, secs. 403, 404.

vi. Receiving stolen property, secs. 411-414.


ix. Offences relating to marriage, secs. 493-498.

x. Abetments of and attempts to commit any of the above-mentioned offences, chaps. v. and xxiii.

P. 376, penultimate line. By notification in the North-Western Provinces and Oudh Gazette, Dec. 13, 1884, Part I, p. 598, the Local Government cancelled the notification here referred to, and directed that in trials by jury before Courts of Session in the N. W. Provinces and Oudh the jury should consist of five persons.

P. 377, l. 1. By notification in the Panjáb Gazette, Feb. 8, 1883, Part I, p. 53, the Local Government modified the notification here referred to, and directed that in trials by jury before Courts of Session the jury should consist of nine persons in the Districts of Delhi, Simla, Lahore, Rawalpindi and Peshawar; of five persons in the Districts of Ambála, Jalandhar, Amritsar, Sialkot, Ferozpur and Multán; and of three persons in all other Districts of the Panjáb.

— l. 7. By notification in the Central Provinces Gazette, Jan. 2, 1873, Part I. A, p. 18, the Local Government directed that juries, in trials by jury before the Court of Session, should consist of five persons in the Districts of Nágpur, Jabalpur, Ságar, Raipur and Hoshangábád, and of three persons in all other Districts of the Central Provinces.

— By notification in the Burma Gazette, Feb. 5, 1876, Part II, p. 17, the Local Government directed that in all trials by jury before the Court of the Recorder of Rangoon and the Judge of the town of Moulmein the jury should consist of five persons.

THE CODE OF CIVIL PROCEDURE.

P. 393, l. 3, to Courts add note: See the notes to the Duchess of Kingston’s Case, 2 Smith’s L. C. 812, 830.

P. 404, § 2, add But the Court should not raise an important issue (e.g. as to whether a certain deed was signed under pressure) which has not been raised by the parties themselves, 10 All. 627.

P. 425, l. 2, after (sec. 433) insert This is the only express provision in the Code as to suits against aliens. Such suits, it has been held, do not lie where the cause of action has arisen, and the alien resides, outside the jurisdiction, even though he carries on business in British India through an agent, 12 Bom. 507.

P. 467, note 2, l. 14, after 273 insert an order refusing to stay execution, 12 Bom. 279.

P. 471, note 2. Madras Reg. 4 of 1816 is now repealed and replaced by Mad. Act of 1889 (to consolidate and amend the law relating to the Courts of Village Munsifs in the Presidency of Fort St. George).

P. 473, sec. 11. A suit to establish a right to an hereditary office, such office being a trust for performance of particular duties in a temple, lies though the right bring no profit to those claiming it, 11 Mad. 450, affirming 15 Cal. 159.

Suit for injunction to prevent defendant from interfering with plaintiff's hereditary right to present a certain person in a certain temple with water and a golden crown, 11 Mad. 450.

P. 474, sec. 11, note 1, add It is an established principle that when by an Act of the legislature powers are given to any person for a public purpose from which an individual may receive injury, if the mode of redress is pointed out by the Statute, the jurisdiction of the ordinary Courts is ousted, and in case of injury, the party cannot proceed by action, 12 Mad. 105 (Madras Forest Act, 1882): 7 Cal. 388 (Land Acquisition Act, X of 1870): 13 Bom. 83 (Bombay Hereditary Offices Act, Bom. Act III of 1874, secs. 18, 25).

Pp. 474–476, sec. 13. This section only reproduces in a codified form the law of estoppel by record, which is set out at length in the Duchess of Kingston's case and the notes thereon in Smith's Leading Cases, vol. ii. p. 812, at p. 830 (9th ed.), 12 Bom. 463.


— sec. 13, decision as to validity of Hindú will, 16 Cal. 103: S. C. L. R. 15 I. A. 159.

— sec. 13, l. 3, 'same parties,' 11 Mad. 204, where the issue was decided in a former suit, in which the parties were rival defendants claiming under different titles.

— sec. 13. As to the effect of a judgment that a will has been revoked to 'bar, between the parties, any claim founded solely on the will, see 15 Cal. 808.
— note 4, l. 6, after 83 insert 13 Bom. 224, at p. 228.
— note 6, col. 2, l. 2, after 136 insert But in order to see what was in issue in a suit, or what has been heard and decided, the judgment must be looked at, 16 Cal. 183, S. C. L. R. 15 I.A. 193.
P. 476, sec. 13, note 1. In 12 Bom. 465 Scott J. thought that Expl. III referred to the case where several heads of relief independent of each other are claimed, put in issue, and duly controverted, and one of them is neither granted nor refused: otherwise the principle that an estoppel must be certain (see Comyn's Digest, 'Estoppel') would be violated.

— sec. 13, dismissal of rent-suit involving title, barred subsequent suit, 15 Cal. 756.
— Explanation IV, see 11 All. 148, at p. 159.
— Explanation V, l. 2, ‘in common,’ see 10 All. 411.
— Explanation V, note 4, l. 1, after 223 insert 11 Mad. 191.
— Explanation VI, see 13 Bom. 224, where it was held that Court of ‘competent jurisdiction’ includes a foreign competent Court.

P. 484, note 7, add In England it seems that one of several contractors has a right to have his co-contractors joined as defendants in an action against him, Pilley v. Robinson, 20 Q. B. Div. 155.
P. 490, sec. 43, cl. 2, note 3. But a right which a litigant possesses without knowing or ever having known that he possesses it, can hardly be regarded as a ‘portion of his claim’ within the meaning of Act VIII of 1859, sec. 7 = sec. 43 of the Code of 1882.
— note 4, add to para. 2. A lessor may sue his lessee for mesne profits and not for the land, and may afterwards sue for the land, 11 Mad. 210, or he may sue for the land and afterwards for the mesne profits, 9 Cal. 283.
P. 494, sec. 50, cl. (d). Thus when fraud is charged against the defendant the plaintiff must set forth the particulars of the fraud which he alleges, 15 Cal. 533, S. C. L. R. 15 I. A. 119, following Wallingford v. Mutual Society, 5 App. Ca. 697, per Lord Selborne.
P. 497, sec. 54, note 4, l. 3, after 192 insert Notwithstanding sec. 12 of the Court Fees Act, an appeal lies in every case falling under sec. 54 of the Code, 11 All. 91.
— add to the note, 11 All. 187, at p. 189.
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Pp. 497–8, sec. 57. This only prescribes the procedure to be followed on the presentation of plaints and before issue of summons. It does not bind an appellate court, 11 Mad. 482.

P. 509, sec. 102. Dismissal of a suit under this section is not intended to operate in favour of the defendant as res judicata. Read with sec. 103, it imposes a certain disability upon the plaintiff, and precludes him from bringing a fresh suit in respect of the same cause of action, 16 Cal. 98, at pp. 101, 102.

P. 510, sec. 103, l. 4, 'sufficient cause.' See an illustration, 13 Bom. 12.

— note 2, add See 15 Cal. 422, where the circumstances were identical, though different relief was claimed. See also L. R. 15 I. A. 156, where the suit, being founded on a different and subsequent cause of action, was not barred by section 103.

P. 535, sec. 179, note 2, add A preliminary issue (such as whether the plaintiff is not, by reason of certain proceedings, debarred from bringing the suit) is analogous to a demurrer, and in such case the defendant begins, 12 Bom. 454, at p. 459.

P. 547, sec. 223 (c), extends rather than limits the power of a Court to execute its own decrees, 15 Cal. 667.

P. 550, sec. 230, note 3, add There is no exception of cases arising under sec. 490; see 12 Bom. 400, at p. 406.

— sec. 240, cl. (b), note 9, add 16 Cal. 16, following 4 All. 155.

P. 551, sec. 232, l. 4. This discretion must be exercised reasonably. The mere existence of a cross claim by the judgment-debtor against the decree-holder [leg. the assignor of the decree] is no reason for refusing issue of execution on the application of the assignee, 15 Cal. 446, at pp. 448, 449.

P. 552, sec. 234, note 5, l. 2, after 255 insert 6 Mad. 180: 12 Mad. 90.

P. 553, para. 1, sec. 234. Two kinds of property may be attached: first, property of the ancestor found in the hands of the heir, and, secondly, property of the heir, from whatever source derived, to the extent to which he has wasted the assets descended to him without satisfying the debts of the deceased, 16 Cal. 1, at p. 5, per Wilson J.

P. 556, sec. 243, l. 2, 'such Court,' see 10 All. 389.

— sec. 244. As to the questions contemplated by this section, see 11 Mad. 413: see also 13 Bom. 34.

— cl. (c), 'or their representatives,' see 16 Cal. 1.
— note 11, add 10 All. 570 (legality and effect of purchase by judgment-debtors of right of some of the decree-holders in the property to which the decree relates).

— note 13, l. 4, insert the assignee of a preëmptor, 10 All. 354.

P. 557, sec. 244, cl. (c), note 1, l. 3, insert 12 Bom. 449.

P. 561, sec. 253. This section does not apply to a surety on behalf of an appellant for the costs of an appeal, 15 Cal. 497, dissenting from 2 All. 604.

— l. 2, 'in an original suit.' The Bombay High Court think that these words may be treated as superfluous, 12 Bom. 411.

P. 562, sec. 257. This section does not apply to costs awarded on applications or under orders which are not decrees within the definition in sec. 2; 12 Mad. 120, at p. 123.

— sec. 257 A, para. 1, l. 3, 'sanction,' see 12 Bom. 499; 13 Bom. 54.

— note 5, l. 4, see 13 Bom. 54.

P. 563, sec. 258. See 11 Mad. 469, where there was no certified adjustment of the decree.

— note 6. The High Court of Madras agrees with the High Courts at Calcutta and Allahabad, see 8 Mad. 277, and 12 Mad. 61.

— note 7, l. 5, add 12 Mad. 61.

P. 564, sec. 259, add to note 1, 11 Mad. 327.

P. 567, sec. 265; see 15 Cal. 198. The meaning of this section is that where a revenue-paying estate has to be partitioned into several revenue-paying estates, that partition must be carried out by the Collector, because the revenue is affected, and it is for the Collector to say how much revenue shall be assessed upon each portion of the estate, so that there may be a proper security for that revenue, 16 Cal. 203, at p. 205.

P. 567, sec. 265, note 3, l. 1, after 539 insert 12 Bom. 371.

— sec. 266, l. 8, 'immoveable.' This includes standing crops, 11 Mad. 193.

P. 568, sec. 266, cl. (c), note 4, l. 3, after '531' insert but see 12 Bom. 363, where the occupant was a bhâgdâr.

— cl. (f), note 7, l. 1, after 395 insert 12 Bom. 366 (jotishi vritti).

P. 569, sec. 266, cl. (k), 'expectancy,' see 10 All. 462, at p. 465.

P. 574, sec. 274, note 3. As to proclamations when the property is broken up into lots, see 12 Bom. 368,
P. 575, sec. 276, note 4, add followed in 15 Cal. 771.

P. 576, sec. 280, note 3, add 15 Cal. 521, at 526, where the Judicial Committee seemed to think that the extent to which the investigation should be carried depended on the circumstances of each case.

— secs. 280, 281. These sections lay down the principles upon which the Court is to decide whether or not the property is liable to attachment, 15 Cal. 443.

— sec. 283, l. 2, 'passed,' see 15 Cal. 674. 'The right which he claims to the property' means 'the right which is claimed in that proceeding in respect of the property,' ibid. 679.

— sec. 283, note 5, l. 2, after 659 insert As to the essential conditions precedent to a suit under sec. 289, see 10 All. 479 and see 11 All. 74.

— note 6, add 'When the judgment-debtor claims the property which is the subject of the attachment, either on his own account as his own property, under whatever right, or as the representative of third parties, in which representative capacity he has been sued, the question is properly one between the parties to the suit under sec. 244. But where the judgment-debtor raises the claim or objection on behalf of third parties who are not represented before the Court, the order made must be regarded as an order under sec. 280, and the only mode in which that order can be contested is a regular suit as provided by sec. 283,' 15 Cal. 442.

P. 577, sec. 286, note 6. The sale of moveable property should ordinarily be held at some place within the jurisdiction of the Court directing it, 13 Bom. 22, at p. 25.

P. 580, sec. 294, l. 2. As to permitting a mortgagee to bid, see 16 Cal. 132, at p. 137. On purchasing he does not stand in a fiduciary position towards his mortgagor, ibid. p. 136.

P. 582, sec. 295, note 1, l. 1, after 472 insert 13 Bom. 171, and after 321 insert 11 Mad. 356.

— note 5, l. 1, after 42 insert followed in 13 Bom. 154.

P. 586, sec. 306, last line, 'forthwith.' The sale is not to be adjourned, 16 Cal. 33, at p. 38.

P. 587, sec. 311, note 1, add overruled by 15 Cal. 488, where held that a person claiming by title paramount to the judgment-debtor is not within the meaning of 'any person,' as his title is not affected by the sale.

— note 3, add 16 Cal. 33, dissenting from 5 All. 316.

— note 4, add But in 10 All. 506, at p. 514, Mahmud J. thought
that the words 'material irregularity in publishing or conducting' should be liberally construed, and held that they covered absence of attachment at time of sale.


P. 588, sec. 315, note 8, add 11 Mad. 269.

P. 589, sec. 316, note 3, add as to third parties, see 15 Cal. 552.

— sec. 317, note 6, add Where the purchaser acknowledges that his purchase was benâmī, and does some act indicating intention to waive his right, see 11 Mad. 234.

P. 590, sec. 320 et seq., note 4, add The object is to give the Collector, speaking generally, a free hand to deal with the property in the best interests of the parties concerned. But he must carry out the decree subject to the discretion given to him by sec. 321 and subject to the provisions contained in secs. 322 B, 322 C, and 322 D. He has no power to decide that the property directed by the decree to be sold was not the property of the judgment-debtor, 11 All. 94, per Edge C.J.

P. 599, sec. 332, note 8, see 13 Bom. 213.

P. 605, chap. xx. Nothing in this chapter applies to any Court having jurisdiction in Rangoon or Maulmain, Act XI of 1889, sec. 52.

P. 605, sec. 344, note 4, add and the Judicial Commissioner in Chutiā Nagpur, 16 Cal. 13, following 6 Mad. 430 and 8 Bom. 196.

P. 607, sec. 351, cl. (c), note 6, ‘unfair preference,’ add 12 Bom. 424.

P. 612, sec. 360, note 1, add and 11 Mad. 301.

P. 613, note 4. A sues B for breach of promise of marriage and A dies (Chamberlain v. Williamson, 2 M. & S. 408), or B dies (Finlay v. Chirney, 20 Q. B. D. 494). The right to sue does not survive.

P. 618, note 3. See correction in 11 All. 193.

P. 630, sec. 407, notes, col. 1, l. 7, after 661 add 10 All. 467.

P. 633, sec. 424, note 3, add Nor where the Collector merely acts as guardian of an infant defendant, 11 Mad. 317.

P. 639, sec. 442, note 8, add The Courts, as a rule, only strike the plaint off the file, where it appears, on the face of the plaint, that it was filed by a person who was a minor, or when it is proved that it was filed with the knowledge that the plaintiff was a minor and with the intention of deceiving the Court and
evading payment of costs in case the plaintiff failed in the claim, 13 Bom. 7, at p. 11.

Neither sec. 441 nor sec. 442 gives any authority to a Court to make a minor’s estate liable for costs, 13 Bom. 234.


— note 4, l. 3, after sanctioned insert It would be wrong if a next friend could, to save his own costs, surrender the minor’s right to appeal, Rhodes v. Swithenbank, 22 Q. B. Div. 577.

P. 643, sec. 458, note 2, l. 1, after 391 insert 12 Bom. 553.


P. 653, sec. 490. This section does not by implication confer upon a decree-holder who has attached before judgment the right to come in under sec. 295 and share in the distribution of the property which he has attached. It merely takes away the necessity for a reattachment. The attachment before judgment enures and becomes an attachment in execution, 12 Bom. 400, at p. 405.

P. 658, sec. 503, clause (d), line 4. The receiver may prove a debt against a bankrupt’s estate, Armstrong v. Armstrong, L. R. 12 Eq. 614.

— sec. 503, note 2, add and see 15 Cal. 818.

P. 659, note 1, add He is accountable only to the Court and is not in a fiduciary relation to the persons interested in the property, see Re Irish, 40 Ch. Div. 49, where the Court refused to restrain a receiver who had been managing a business under direction of the Court from soliciting orders from the present customers.

P. 661, note 9, add As to interfering with an arbitrator while the arbitration is proceeding, see Kirk v. E. & W. India Dock Co., 55 L. T. R. 245.

— sec. 509, clause (c). As to the mode of appointing an umpire, see Pescod v. Pescod, 58 L. T. R. 76.

P. 664, sec. 521, cl. (c) and penultimate line, ‘made’ does not include ‘filed,’ 13 Bom. 119.

— note 5, add So are absenting oneself from a meeting where witnesses are examined by the other arbitrators, and examining witnesses in the absence of one of the arbitrators, 12 Mad. 113.
P. 671, sec. 539, note 3, add 11 All. 18, at p. 22, per Straight J. As to the interest necessary to support a suit under this section, see 12 Mad. 157.

P. 674, sec. 544, add to note 3: It applies only to appeals by parties arrayed on the same side of a litigation in the original Court, and against whom judgment on a common ground has been passed, and only some of them appeal from such judgment, 11 All. 35, at p. 39, per Mahmud J.

P. 675, sec. 545, note 5, add An order by a District Judge refusing to stay execution is a 'decree,' and therefore appealable, 12 Bom. 279.

P. 677, sec. 549, note 1, l. 5. This power ceases on the expiration of the term mentioned in the original order, 11 Mad. 190.

P. 680, sec. 562, para. 1, see 10 All. 289.

P. 682, sec. 568, note 5, add As to the circumstances under which an Appellate Court will not admit additional evidence to be produced under this section, see 15 Cal. 765.

P. 687, sec. 583, l. 2, 'restitution of mesne profits,' see 11 Mad. 261.

— sec. 583, note 2, add As to proceeding against a person who has become a surety under sec. 546 for the fulfilment of the decree on appeal, see 12 Bom. 411.

P. 688, sec. 586. Second appeal, 11 All. 13. As to 'cognisable in Courts of Small Causes,' see 12 Mad. 139.

— note 2, l. 8, after 18 insert But see 12 Mad. 116.

P. 689, sec. 588, cl. (8). Where an application under sec. 311 to set aside an execution-sale was dismissed for default, there is no appeal against an order refusing to restore the application to the file, 11 Mad. 319, following 10 Bom. 433.

P. 693, para. 3, l. 1 (sec. 596), 'affirms,' see 16 Cal. 287.

P. 701, sec. 620. As to the costs of a reference, see 15 Cal. 507.

— sec. 622. In 15 Cal. 449 (following 11 Cal. 67), Petheram C.J. said that 'the meaning of this section is that, whenever a Court has jurisdiction to decide a question, whether it is a question of law or a question of fact, its decision on that question is not revisable by this Court. Unless it is a matter in which there is an appeal, its decision on that matter is final, and that decision cannot be reviewed by this Court because it is wrong either on the question of law or the question of fact.'
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P. 701, sec. 622, l. 6, 'material irregularity,' see illustrations in 11 Mad. 303 and 322.

— sec. 622, note 3, add 11 Mad. 220.

P. 702, sec. 622, note 1, add to para. 12 Bom. 617, where the subordinate Judge had determined an issue which did not really arise in the case, and based his decision on that determination.

P. 705, sec. 629, l. 2. As to the meaning of 'final,' see 15 Cal. 432, following Ben. F.B. 367, where Peacock C.J. said that the words 'shall be final' in sec. 378 of the Code of 1859 were used with reference to appeal, 'that is to say, that no appeal shall lie from an order of rejection, upon the ground that a review ought to have been admitted, or vice versa.'

P. 711, sec. 647, note 4, col. 2, l. 3, after 416 insert cases decided by a District Judge under the Land Acquisition Act, 16 Cal. 31.


THE EVIDENCE ACT.

P. 828, l. 19, after 718 insert see Reg. v. Gloster, 16 Cox, C. C. 471.

P. 831, l. 8, after legitimacy insert of a child born in wedlock.

P. 832, sec. 12. Whether it may be proved against him in a civil suit for defamation seems doubtful; see 10 All. 425, where the judges differed.

P. 835, note 4, add A recent case on rebuttable presumptions will be found in L. R. 16 I. A. 6, where the Judicial Committee held that where a tenancy was originally granted for a particular purpose (e.g. keeping a stud of horses), and the purpose failed, there was a presumption that the tenancy ceased.

P. 841, note 1, add As to corroborating retracted confessions, see 12 Mad. 123.

P. 862, l. 1, sec. 13, cl. (a), 'asserted.' See 12 Mad. 9.

— notes, col. 1, l. 9, add The most satisfactory evidence of an enforcement of a custom is a final decree based on the custom, 10 All. 585, following 1 All. 440.

P. 867, sec. 16, illus. (b). See 15 Cal. 681 (service of notice to quit by registered letter).

P. 871, sec. 25, note 3, add See 15 Cal. 589.
— sec. 26, 'unless it be made in the immediate presence of a Magistrate,' see 15 Cal. 607.

— sec. 27. As to the test of the admissibility of information received from an accused person in the custody of a police officer, see 12 Mad. 153.


— add to note 1: A declaration under the Specific Relief Act, sec. 42, though not conclusive against a stranger, would be admissible against him; and if the suit were fairly and properly conducted, the decision would be practically conclusive in any subsequent proceeding, 15 Cal. 468, per Wilson J.

P. 882, sec. 45, note 7, add 15 Cal. 589.

P. 903, sec. 92, ll. 5, 6, 'between the parties to any such instrument.' This means between the party (or parties) on one side and the party (or parties) on the other, not between the parties on one side only.

— sec. 92, note 2, l. 1, after 333 insert 12 Bom. 335.

— sec. 92, notes, col. 2, l. 15, after 159 insert 5 Mad. 6, at p. 8: or that A really bought certain property for himself though the sale-deed recited that he had bought it benami for B, 11 Mad. 213.

P. 904, sec. 92, prov. 1, note 4, add but see 12 Bom. 585.

P. 905, sec. 92, prov. 5. In the case of trade-contracts such usage usually exists, 11 Mad. 462.

P. 913, sec. 114, illus. (e), note 9, add On the other hand, where it is proved that an execution-sale took place and possession was given, the Court should presume, after long lapse of time and possession by a mortgagee of the purchaser, that the sale was duly made, 11 Mad. 296.

P. 917, sec. 118. In determining the question of competency, an Indian Court has not to enquire into the witness's religious belief, or as to his knowledge of the consequences of falsehood in this world or the next, 11 All. 183, per Straight J.

P. 919, note 4, add The Court itself should prevent State secrets from being disclosed, Hennessy v. Wright, 21 Q. B. D. 509, at p. 515.

P. 922, sec. 132, note 7, add followed in 12 Bom. 440.

P. 929, note 1, add It is otherwise when B is asked whether she had connexion on other occasions with A, Reg. v. Riley, 18 Q. B. D. 481.
THE OATHS ACT.

P. 938, sec. 6. See 10 All. 207. Having regard to the language of the Oaths Act, neither a Judge nor a Magistrate has any option, when once he has elected to take the statements of a person as evidence, but to administer either an oath or an affirmation, as the case may require, 11 All. 185.

P. 939, sec. 13, note 3, l. 2, after 294 insert dissentiente Jackson J., and see 10 All. 207 contra.

THE LIMITATION ACT.

P. 957, preamble, l. 2, 'suits.' This does not include claims under a penal enactment such as Act XIII of 1859, sec. 2; see 11 Mad. 332.

The Limitation Act has been expressly declared to apply, (a) to suits and applications under the Madras Village Courts Act, provided that no such suit or application shall be entertained after three years from the time when the right to sue or apply first accrued (Mad. Act I of 1889, sec. 20), and (b) to appeals to the Courts of Commissioners in Burma (Act XI of 1889, sec. 18).

— note 1, l. 8, after 375), insert under the Criminal Procedure Code, sec. 195; 10 All. 350.

P. 959, sec. 3, l. 7, 'derives his liability to be sued,' see 13 Bom. 160, at p. 165.

P. 960, sec. 4, l. 2, 'appeal presented,' i.e. in manner prescribed by sec. 541 of the Code of Civil Procedure, 16 Cal. 250.

P. 961, sec. 5, note 9, l. 2, after 260 insert nor is presenting an appeal within the prescribed period to a wrong Court, 10 All. 524, at p. 529: 10 All. 587.

P. 962, sec. 5, notes, col. 1, l. 1, after 446 insert nor, of course, is mere ignorance of the law, 12 Bom. 320.

— sec. 6, note 1, add 12 Mad. 1.

P. 964, sec. 10, ll. 4, 5, 'assigns for valuable consideration,' such as e.g. an auction-purchaser at a sale in execution of a decree, 15 Cal. 703.

— sec. 10, note 6, col. 1, l. 5, insert a dharmakarta is a trustee, 11 Mad. 274; following 6 Mad. 54.

— note 6, col. 2, l. 2, after 455 insert 16 Cal. 161.

P. 966, sec. 14, l. 2, 'suit,' not appeal or application (p. 960).

P. 967, l. 4, sec. 14, 'other cause of a like nature,' 10 All. 587,
at p. 598. To note 4 add or preferring an appeal to a wrong Court by mistake of law, 10 All. 587.

— sec. 14, note 4. Where the plaintiff himself withdraws the suit as being defective for want of parties, with liberty to bring a fresh suit, see 12 Bom. 625, at p. 633.

P. 970, sec. 20, l. 2, 'prescribed period,' i.e. 'prescribed by the Act,' 11 Mad. 218. Each payment of interest gives a fresh starting-point, ibid., and 6 Cal. 340: 11 Bom. 282.

P. 971, sec. 21, note 6, l. 4, after 'so' insert 10 Bom. 358: 10 All. 418.

P. 978, art. 11, note 2. See 13 Bom. 72.

— art. 11, col. 2. The policy of the Act is to secure the speedy settlement of questions of title raised at execution-sales, and for that reason a year is fixed as the time within which the suit must be brought, L. R. 15 I. A. 123, at p. 127.

— art. 12, cl. (e), note 6, prefix 13 Bom. 221.

P. 980, art. 29, prefix to note 4, 11 Mad. 345, at p. 355.

P. 981, art. 32, note 8, l. 3, after occupying-tenant insert on land let to be used as arable; and after 8 All. 446 insert 10 All. 634.

P. 982, art. 49, col. 3, 'wrongfully taken,' see 11 Mad. 333.

P. 988, art. 60, 'deposited,' see 16 Cal. 25.

— art. 62, note 7, l. 1, after 'applies' insert 'whenever the defendant has received money which in justice and equity belongs to the plaintiff under circumstances which render a receipt of it a receipt by the defendant to the use of the plaintiff (Bullen & Leake, third edition, 44). It applies, therefore'; and add to note, 15 Cal. 656.

P. 988, art. 95, see 12 Mad. 168.

— note 3, prefix 13 Bom. 221.

— art. 97, see 11 All. 47, at p. 57: S. C. L. R. 15 I. A. 211, at p. 219.

P. 990, art. 113, 11 All. 27.

P. 991, art. 120, suit by zamindár for removal of trees illegally planted in waste land of his village, 10 All. 634.

P. 992, art. 127, note 8, l. 1, after 109 insert 11 Mad. 380, at p. 392.

P. 993, art. 132, note 6, l. 5, after 389 insert 15 Cal. 542.

P. 994, art. 134, note 1, l. 3, after 475 insert 12 Bom. 352.

— art. 138, note 6, add 12 Bom. 678, at p. 681.

P. 995, art. 141. This article applies not to a suit by an heir at law as such, but to a suit by a Hindú or Muhammadau who, prior
to the date of the death of the female, occupied the position of a remainderman, reversioner, or devisee, and on her death sues in that character, 10 All. 343, at p. 346.

P. 995, art. 142, note 5. As to the burden of proving possession, see L. R. 16 I. A. 23.

— art. 144, note 8, l. 2, after 86 insert 10 All. 485: 13 Bom. 160.

P. 996, notes, col. 1, l. 18, after 210 insert That adverse possession against a Hindú widow for more than twelve years bars a subsequently adopted son, see 13 Bom. 160.

P. 996, notes, col. 1, last line, after tenant insert 12 Bom. 322 (occupation by one of two persons holding land for same deity).

P. 997, art. 147, note 4, add In 13 Bom. 90 the Court dissented from 14 Cal. 731 and followed 6 All. 551.

P. 998 et seq. For the purposes of the Limitation Act appeals and applications to the Special Court in Lower Burma shall be deemed to be, respectively, appeals and applications to a High Court under the Code of Criminal Procedure, 1882, or under the Code of Civil Procedure, as the case may be. Act XI of 1889, sec. 71.

P. 998, art. 156, note 4, add An appeal to the High Court at Bombay from certain orders of the Chief Judge of the Bombay Small Cause Court and of the Presidency Magistrates in Bombay, shall for the purpose of art. 156 be deemed to be an appeal under the Civil Procedure Code in a case not provided for by No. 151 and No. 153. See Act XII of 1888, sec. 5.

An advocate whose license is suspended or withdrawn by the Recorder of Rangoon may appeal to the High Court at Fort William, and for the purposes of the Limitation Act the appeal shall be deemed to be an appeal under the Code of Civil Procedure, Act XI of 1889, sec. 74.

P. 1001, art. 178, note 4, col. 2, l. 4, after 371 insert 10 All. 350.

P. 1002, art. 179, note 1. The first three lines should be, 'i.e. where a memorandum of appeal from the decree or order of which execution is sought has been presented in Court, 2 All. 273: 5 All. 236: 16 Cal. 250. But where there has been'

— art. 179, note 5, l. 1, after 34 insert 12 Bom. 427.

P. 1003, art. 179, cl. 4, notes, col. 1, l. 28, add Nor is an application by a decree-holder for a copy of a decree with intent to apply for execution, 11 Mad. 336. The true meaning of 'step in aid of execution' is step which must be taken before execution can be had, 11 Mad. 336, at p. 339.
— note i, l. i, after 348 insert 13 Bom. 237.

P. 1004, art. 179, cl. 6, notes, col. 1, l. 3, add and see 2 All. 443: 5 Cal. 97: 7 Cal. 56. But if the right to enforce payment of the whole sum due upon default in paying an instalment has been waived by subsequent payment and receipt of the overdue instalment, the parties are remitted to the same position as they would have been in if no default had occurred, 15 Cal. 505.

---

**THE COURT-FEES ACT.**

P. 1018. For the purposes of the Court-Fees Act, the Special Court in Lower Burma shall be deemed to be a High Court in the exercise of its jurisdiction as a Court of Appeal or as a Court of Reference, as the case may be, Act XI of 1889, sec. 71.

P. 1021, sec. 19, cl. viii. For the words and figures ‘and certificate mentioned in the First Schedule to this Act annexed, No. 12,’ Act VII of 1889, sec. 13, subsec. 2 substitutes the words and figures ‘and save as regards debts and securities, a certificate under Bombay Regulation viii of 1827.’

P. 1025, secs. 19 G and 19 H. Any penalty or forfeiture under either of these sections may, on the certificate of the Chief Controlling Revenue Authority, be recovered from the executor or administrator as if it were an arrear of land revenue by any Collector in any part of British India. But the Chief Controlling Revenue Authority may remit the whole or any part of any such penalty or forfeiture, or any part of any further penalty payable under sec. 19 E (p. 1024), Act VI of 1889, sec. 20.

P. 1032. In the first schedule after No. 13, the Lower Burma Courts Act (XI of 1889), sec. 84, inserts the following:

<table>
<thead>
<tr>
<th>Number.</th>
<th>Proper Fee.</th>
</tr>
</thead>
<tbody>
<tr>
<td>14. Application to the Court of the Recorder of Rangoon for the exercise of the revisional jurisdiction of a High Court over the Court of Small Causes of Rangoon under section 622 of the Code of Civil Procedure or section 25 of the Provincial Small Cause Courts Act, 1887.</td>
<td>When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees.</td>
</tr>
<tr>
<td></td>
<td>Two rupees.</td>
</tr>
<tr>
<td></td>
<td>The fee leviable on a memorandum of appeal.</td>
</tr>
</tbody>
</table>
P. 1033, articles 11 and 12. For these, Act VII of 1889, sec. 13, substitutes the following:—

<table>
<thead>
<tr>
<th>Number.</th>
<th>Proper fee.</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;11. Probate of a will or letters of administration with or without will annexed. If the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees.</td>
<td>Two per centum on such amount or value: provided that when, after the grant of a certificate under the Succession Certificate Act, 1889, or any enactment repealed by that Act, or under the Regulation of the Bombay Code No. VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.</td>
</tr>
<tr>
<td>&quot;12. Certificate under the Succession Certificate Act, 1889. In any case.</td>
<td>Two per centum on the amount or value of any debt or security specified in the certificate under section 8 of the Act, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.</td>
</tr>
</tbody>
</table>

Note.—(1) The amount of a debt is its amount, including interest, on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.

(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and, where such a power has been so conferred whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of, the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.

"12A. Certificate under the Regulation of the Bombay Code No. VIII of 1827. |

P. 1039, Sched. II, art. 6. For this article, Act VI of 1889, sec. 18, subsec. 2, substitutes the following: 'Bailbond or other instrument of obligation given in pursuance of an order made by
a Court or Magistrate under any section of the Code of Criminal Procedure, 1882, or the Code of Civil Procedure.'

This was suggested by the decision of the High Court at Allahabad, 11 All. 16.

P. 1040, art. 16. Repealed by Act VI of 1889, sec. 18, subsec. 1.

P. 1041, art. 17, cl. vi. Suit to remove the kāraṇavan of a Malabar tarawāḍ, 11 Mad. 266.

THE SUITS VALUATION ACT.

P. 1044, secs. 5 and 9. The Court of the Recorder of Rangoon shall for the purposes of the Suits Valuation Act, 1887, be deemed to be a High Court, Act XI of 1889, sec. 44.

THE STAMP ACT.

P. 1052, sec. 3, cl. (10), 'duly stamped,' note 1, l. 1, after 532 insert 11 Mad. 377.

— sec. 3, cl. (13), 'specified property,' note 6, l. 1, after 39 insert 216.

P. 1053, sec. 3, cl. (17), 'writing,' note 4, add 11 Mad. 329.

P. 1054, sec. 6, l. 2, 'several instruments employed for completing the transaction.' See 13 Bom. 281, at p. 284.

P. 1064, sec. 34, l. 3, 'acted upon,' 12 Bom. 446 (admission of secondary evidence of unstamped note).

P. 1078, Sched. I, art. 2. In this article, after 'Administration-bond,' Act VI of 1889, sec. 18, subsec. 3, inserts the following: 'including a bond given under sec. 256 of the Indian Succession Act, 1865, sec. 6 of the Government Savings Banks Act, 1873, sec. 78 of the Probate and Administration Act, 1881, or sec. 9 or sec. 10 of the Succession Certificate Act, 1889.'

P. 1079, Sched. I, art. 5, cl. (c), note 1, after 478 insert 13 Bom. 87.

P. 1081, Sched. I, art. 13. In this article, after the words 'this Act,' Act VI of 1889, sec. 18, subsec. 4, adds the words 'or by the Court Fees Act, 1870.'

P. 1086, Sched. I, art. 36, note 1, add 12 Mad. 89.

— art. 38. See 13 Bom. 280 and 281.

THE REGISTRATION ACT.

P. 1006, last line, add The Act provides for the registration of documents, not for the registration of title; and perhaps at
present the greatest benefit which it confers is, in supplying proof that a given document was in existence at a certain time and was not fabricated afterwards.


P. 1113, sec. 28, note 1. The decision was reversed by the Judicial Committee, L. R. 16 I. A. 12: S. C. 11 All. 136.

P. 1120, sec. 50, l. 3, 'duly registered,' i. e. under Act III of 1877, not under any prior Act, 13 Bom. 229.

— note 4, para. 4, add And Bom. 571, Sargent C.J. said that sec. 50 of the Registration Act of 1877 'has taken away the preference given to an unregistered document accompanied by possession (where registration was optional) as against a registered document.'

P. 1129, sec. 76. No period is prescribed within which the order of refusal must be made; but such order must obviously be made 'at some time after the expiration of the time allowed for admitting the document, except in cases where there has been an express refusal,' 16 Cal. 189, at p. 193, per Petheram C. J.

P. 1131, sec. 82, note 4, l. 4, after 566 insert 11 Mad. 500.

ADDENDA.

(Anglo-Indian Codes, vol. ii. pp. 1159–1174.)

P. 1165, l. 24, add As to the construction of statutory provisions forbidding members of a public body to be concerned in contracts with the body, see Nutton v. Wilson, 22 Q. B. Div. 744.

INDEX TO VOL. I.

Insert the following in alphabetical order:—

Anticipation, restraint upon, 751, 861.
Application of payment, 581.
Intention, criminal, 116.
Lien re vested, 604.

Lunatic, contract by, 553; liability of, for necessaries, 585.
Restraint upon anticipation, 751, 861.
Volenti non fit iniuria, 14, u. 2.

INDEX TO VOL. II.

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Conclusive order, 576 (sec. 283).
Costs in the case, 701.
Final decision, 490; decree or order, 705; disposal, 501; stay of proceedings, 480.
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promise, 619; of orders in appeals against orders, 690; of orders re-

jecting applications for review, 705.
Public ways, rivers, channels, 107.
Reasonable suspicion, 80.
River, public, 107.
Way, public, 107.
CORRIGENDA.

VOL. I.

P. 17, l. 8, before is insert it.

P. 34, l. 18, for 498 read 494.

P. 42, 1. 4 from bottom, for or read of.

P. 315, l. 15, for 103 and 182 read and 103.

P. 433, note 2, last line but one, after does insert not.

P. 427, sec. 2. l. 1, after Acts dele 1.

P. 502, II. 5, 6, for But . . . Act read And in India the Contract Act, sec. 63, renders consideration unnecessary in all cases of waiver, whether before or after breach.

P. 531, l. 1, dele make the bailment.

P. 953, note 1, for 989 read § 80.

P. 999, col. 1, Coercion, l. 2, for content read consent.

VOL. II.

P. 11, l. 15, for and read It was proposed also to extend it to cases.

— II. 17, 18, for is intended to meet read would have met.

— I. 38, for section read chapter.

P. 124, note 1, for sec. 6 read sec. 7.

P. 203, note 1, for sec. 11 read sec. 10.

P. 235, l. 15, omit ', and transfer note 3 to the end of note 4.

P. 274, sec. 153, col. 3, for shall not arrest without warrant read Ditto.

— sec 154, col. 3, for Ditto read Shall not arrest without warrant.

P. 325, col. 5, for Not bailable read Bailable.

P. 376, l. 14, read Champáran.

P. 473, notes, col. 1, third line from bottom, for officer read office.

P. 474, note 1, l. 1, for barred read or by necessary implication.

P. 828, note 3 should be note 2; and for 1865 read 1855.

P. 836, l. 6 from bottom, for was read has.

P. 837, l. 6 from bottom, for prosecuted read prevented.

P. 888, note 3, l. 2, for (k) read (k).

P. 871, note 10, for ‘act’ read ‘some act performed by,’ and in the text transfer 10 to ‘from.’

P. 913, last line of text, for regularly read regularly.

P. 916, sec. 116, marginal note, for or read of.

P. 944, l. 9, for declaration read statement.

P. 1005, col. 3, l. 10, for realising read releasing.

P. 1185, col. 2, art. ‘compensation,’ l. 12, for inquiry read injury.

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A SECOND SUPPLEMENT

TO

THE ANGLO-INDIAN CODES

BY

WHITLEY STOKES, D.C.L.

OF THE INNER TEMPLE, BARRISTER-AT-LAW
MEMBER OF THE INSTITUTE OF FRANCE
AND FORMERLY LAW-MEMBER OF THE COUNCIL OF THE
GOVERNOR-GENERAL OF INDIA

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1891
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The first Supplement to my edition of the Anglo-Indian Codes brings Indian legislation and judicial decisions, so far as they affect the Codes, down to the end of May, 1889. This, the second Supplement, does the like for the two years ending on May 31, 1891, and in accordance with a suggestion of Mr. R. J. Crosthwaite, late Judicial Commissioner of the Central Provinces, I have taken the opportunity to add considerably to my notes on the Transfer of Property Act. References to some recent English decisions likely to be useful to those engaged in studying or administering the Codes will be found in their proper places.

After an interval of eight years the official pendulum in India appears to be swinging in favour of the resumption of codification. Thus the Probate and Administration Act (V of 1881), which till 1889 applied only to Bengal, the Panjáb, Assam, Burma and the Andamans, has now been extended to the rest of British India, with the unimportant exceptions of Upper Burma and British Baluchistán. The Act codifying the law of guardian and ward (XIII of 1874), which till 1890 applied only to European British minors in the Panjáb and the Chief Commissionerships, has been repealed and re-enacted, with many additions and some improvements, by Act VIII of 1890, which applies to all wards throughout the Indian empire. The Easements Act (V of 1882), which when passed applied only to the Presidency of Madras, the Central Provinces and Coorg, has lately been extended, at the request of the local Governments and High Courts, to the Presidency of Bombay and to the North-western Provinces and Oudh. And though

1 In moving for leave to introduce a Bill to effect this extension, the law-member (Sir Andrew Scoble) observed that I was fully entitled to say (Anglo-Indian Codes, i. 888) 'It has worked well during the last eight
the Transfer of Property Act has not yet been extended in its entirety to the Presidency of Bombay, the Panjāb and Burma, its most useful provisions were in 1889 applied to the cantonments in those territories. Moreover the Government of India has announced its intention to codify the law relating to insolvency, and to consolidate the Acts that deal with merchant shipping and with Christian marriage.

There is some hope, therefore, that the most serious defect in the Indian Statute-book—the absence of a code of the law relating to torts or actionable wrongs—will soon be supplied, especially as the late Sir Henry Maine was strongly in favour of the enactment of such a code, and the Government of India has possessed for the last five years a bill on the subject, which was drawn by the skilful hand of Sir Frederick Pollock. Next to a codified law of torts, the most pressing need is perhaps a code of the law relating to alluvion and diluvion. The recent decision of the Madras High Court, that in the absence of a local usage or statutory enactment to the contrary, the English law relating to alluvion applies to British India, practically amounts to telling the Munsifs and other Native judges, wherever the Bengal Regulation XI of 1825 is not in force, to refer either to English decisions, which are inaccessible except in the Presidency Towns, or to the Institutes of Justinian from which the English decisions on the subject have been drawn. Another recent ruling—that of the Bombay High Court, reported in 14 Bom. 213—proves the desirability of extending the Easements Act to the Lower Provinces, Ajmer, the Panjāb, Assam and Burma. For if that ruling be right, in those territories there is now no power of acquiring a right of pasturage or other easement against the Government except under ‘the general law of prescription.’ What that law is in the Indian mufassal no one can say with certainty.

years among the forty millions to whom it applies, and has falsified the prediction that it would give rise to litigation.’

1 The bill is printed in the second edition of his work on Torts, pp. 520-583. The sections (71-73) relating to measure of damages appear to require elaboration, and definitions of ‘harm,’ ‘offence,’ ‘ordinary right’ are needed. But with these exceptions, the bill seems to me fit to become law at once.

2 See the decisions reported in 6 Suth. W. R. 82, 83; 9 ib. 91; 10 ib. 452; 11 ib. 236, 522; 16 ib. 199; 3 Beng. O. C. 18, at pp. 43, 44; 6 Cal.
With regard to the Codes in force throughout British India, the Penal Code and the Succession Act have recently been amended. But though the number of Acts amending the former Code now amounts to twelve\(^1\), much more should be done in this direction. Thus sections 81 and 86 of the Penal Code are mere conundrums, and should be redrawn. So sections 299 and 300 should be altered so as to make the distinction between culpable homicide and murder clear to persons of ordinary capacity. The Succession Act, the Hindu Wills Act, the Probate and Administration Act, the District Delegates Act, 1881, the Succession Certificate Act, 1889, and the Bombay Regulation VIII of 1827 might be consolidated with great advantage—the 541 sections of which these six enactments now consist being easily reducible to (say) 360. The defects in the Contract Act become more and more evident under the disintegrating influence of the four streams of judicial decisions which flow from Calcutta, Madras, Bombay and Allahabad. It has been in force for nearly twenty years, and the time has come for revising it. Meanwhile the chapter relating to partnership might be usefully replaced by a law modelled on the English Act 53 & 54 Vic. c. 39, a very successful piece of codification. The Negotiable Instruments Act has worked so well that, notwithstanding the desirability of having the law on such a subject verbally identical in England and in India, I should be sorry to see it replaced by a copy of 45 & 46 Vic. c. 61. The Criminal Procedure Code should be made to provide for the pleas of pardon, limitation, want of jurisdiction, previous acquittal, and previous conviction; and some rule should be laid down as to the evidence of approvers. In the Code of Civil Procedure the subject of suits on foreign judgments should be dealt with at greater length, and the rules as to interrogatories recently laid down by Wilson J.\(^2\) should be embodied in the law. The list of appealable orders appears to require some extension, and section

---

1 Namely, XXVII of 1870, XIX of 1873, X of 1879, s. 15, XII of 1881, s. 2, X of 1886, ss. 21-24 (1), XIV of 1887, s. 79: XVIII of 1887, s. 18 (2), I of 1889, s. 9, IV of 1889, s. 3, IX of 1890, s. 149, and X of 1891, s. 1.

2 See infra, pp. 71-72.
539 should be altered so as to preclude the question raised in 14 Mad. 186. The most flagrant defect in the Evidence Act has been removed by Act III of 1891; but many other flaws in the former law still require amendment. The cases mentioned infra, pp. 92, 95, shew that the Limitation Act needs alteration in its schedule, articles 34, 35, 91 and 179.

The law relating to the small but important subject of Court-fees is now contained in ten Acts and a lengthy notification. These enactments should certainly be consolidated.

As to the Codes which are not yet in force throughout British India, recent decisions and criticism suggest that the Transfer of Property Act should expressly declare that the remedy of a mortgagee by deposit of title-deeds is foreclosure or sale, and that in the same Act the wording of sections 6, 50, 78, 94, 119, and 131 should be amended. There would then seem to be no reason for not extending this useful law in its entirety to the Presidency of Bombay, the Panjáb and Burma. The further extension of the Easements Act has already been recommended. The Trusts Act, 1882, judging from the Indian law-reports, has worked smoothly. But it should be revised with reference to the (English) Trustee Act, 1888, and then extended to the Lower Provinces, the Presidency of Bombay, Ajmer and Burma, in which territories it is not yet in force.

In conclusion, I have to acknowledge with gratitude the information, bills, statements, acts and reports, which I have received during the last two years from the India Office and from the Legislative Department of the Government of India. From two of these documents almost all my notes on the Guardians and Wards Act have been taken.

September 11, 1891.

W. S.

1 See infra, p. 84.
2 See Anglo-Indian Codes, ii. 833-838.
3 Namely, the principal Act (VII of 1870), the amending Acts XX of 1870, XV of 1872, XIII of 1875, &.
4 See infra, pp. 99-107.
SECOND SUPPLEMENT.

VOLUME I.

GENERAL INTRODUCTION.

P. xx, l. 9, note. As to construing a codifying statute Lord Herschell has lately given the following canon which is respectfully commended to the judges who have to interpret the Anglo-Indian codes: 'I think the proper course is, in the first instance, to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view.... I am, of course, far from asserting that resort may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the code. If, for example, a provision be of doubtful import, such resort would be perfectly legitimate.... The Bills of Exchange Act 1882 [45 & 46 Vic. c. 61] was certainly not intended to be merely a code of the existing law. It is not open to question that it was intended to alter, and did alter it in certain respects. And I do not think that it is to be presumed that any particular provision was intended to be a statement of the existing law, rather than a substituted enactment,' Bank of England v. Vagliano Brothers, 1891 A. C. 144, 145.

As to the construction of general words such as 'take such measures as may be deemed necessary,' see 14 Bom. 180. That the Crown is not affected by an Act unless specially named in it, see 1 Bom. 9: 14 Bom. 213. That, except in two cases, Acts are prospective, not retrospective, in their operation, see 14 Bom. 516. The two cases referred to are (1) where an Act is expressly declared to be retrospective, and (2) where it only affects the procedure of the Court. A third case is mentioned in Reg. v.
Birwhistle, 58 L. J. M. C. 159, viz. where the Act is intended to remedy an existing evil, and in order to do so gives to the parties injured a new remedy.

P. xxii, note 2, add The Calcutta High Court has lately referred, for the purpose of construing sections of Acts, to the reports of a Select Committee and of the Indian Law Commissioners: see 14 Cal. 721, at pp. 728, 729; 17 Cal. 852.

— note 4, add As to preambles see also 11 All. 262.

TEXT-BOOKS.


THE PENAL CODE.

P. 6, note 1, add As to the application of the Code to offences committed on the high seas, see 37 & 38 Vic. c. 27 (which alters the ruling in 7 Bom. H. C. Cr. Ca. 89, at p. 128) and 14 Bom. 227.

— note 2, add The expression 'any criminal matter of a political character' in Act XXI of 1879, sec. 19 will probably be construed as the similar expression 'offence of a political character' has been construed in the Castioni case, [1891] 1 Q. B. 149, i.e. an offence incidental to and forming part of political disturbances.

P. 7, col. 1, Factories, add amended by Act XI of 1891; after Criminal Tribes &c. insert Cruelty to Animals, XI of 1890; after Fugitive Offenders insert Guardians and Wards (VII of 1890, secs. 44, 45); for Cantonments (III of 1880) read Cantonments (XIII of 1889, c. 3).

— col. 2, line 3, add II of 1891 and insert in alphabetical order: Official Secrets (XV of 1889); Merchandise Marks Act (IV of 1889), sec. 22;

Railways, for IV of 1879, IV of 1883 read IX of 1890, c. 9.

P. 9, (g) Central Provinces, col. 2, Municipalities, for XI of 1873 read XVIII of 1889.

P. 10, col. 2, after line 4, insert Touting (XI of 1889, sec. 81).

P. 12, l. 28, after 81 insert read by the light of the illustrations.

— l. 31, after caused insert But, as Sir F. Pollock remarks (Torts, 2nd ed., p. 540), 'the text of the section would cover acts done to avoid harm to the agent's own person or property.'

— note 2, add As to the effect of illustrations see also 7 Cal. 132, at p. 135, and 1 All. 487, at p. 495.

P. 17, note 2, for sec. 250 read sec. 560 (Act IV of 1891).
P. 28, ll. 13-16. But now see Act XV of 1889 (to prevent the disclosure of official documents and information).

P. 34, ll. 10-12. As to cruelty to animals see now Act XI of 1890.

P. 91, sec. 1. Act XII of 1891 expressly repeals the last eleven words.

— As to the Laccadive Islands, see 13 Mad. 353.

P. 94, sec. 15. Act XII of 1891 repeals the last eleven words.

P. 96, at the end of note 3. As to railway servants, see now Act IX of 1890, sec. 137.

P. 111, sec. 71, note 5. Straight J.'s view, as expressed in 6 All. 124, has been followed by the Calcutta High Court, 16 Cal. 442, overruling 11 Cal. 349.

P. 117, secs. 82, 83. The Indian Railways Act, IX of 1890, sec. 130, provides specially against the commission by children of acts endangering the safety of persons travelling by railway.

— sec. 84. In England, the present test of lunacy is stated to be: 'Was the person whose act is in question able to understand its nature, and to pass a fairly rational judgment on its consequences to himself and others; and was he a free agent so far as that act was concerned?' Law Quarterly Review, vi. 319.

As to unsoundness of mind produced by smoking ganja, see 14 Bom. 564. As to irritability caused by fever, 10 Bom. 512, and see 12 Mad. 459.

P. 121, sec. 94. This is the only law which allows the doer of a crime to plead necessity as a defence; and to support such plea there must be a reasonable fear, at the very time, of instant death, 14 Bom. 131, and see 10 Suth. Cr. R. 48. Therefore witnesses who, in order to avoid pecuniary injury or personal molestation, offer or give bribes to a public servant are abettors of the offence of taking an illegal gratification, and their evidence should be treated as that of accomplices, 14 Bom. 115.

P. 122, sec. 97, note 2. As to obstructing an illegal distress, see 8 Mad. H. C. Appendix xi; but see 13 Mad. 148.

P. 123, sec. 99, cl. Third. This clause must be read with the first clause of sec. 105, see 14 Bom. 441.

P. 125, sec. 105, cl. 1. This must be read with sec. 99, cl. 3. Before the 'apprehension' commences the owner of the property is not called upon to apply for protection to the public authorities (sec. 99, cl. 3). The apprehension which justifies such application ought to be based on some definite information as to the time and place of the danger actually threatened, 14 Bom. 441.
P. 127. As to abetment in British India of the commission out of British India of acts which, if committed in British India, would be offences against the law of trademarks, see Act IX of 1891, sec. 4.

P. 136, sec. 121 A. Chapters IV (General Exceptions), V (Abetment), and XXIII (Attempts) apply to offences punishable under this section (Act XXVII of 1870, sec. 13), and no charge of an offence punishable under this section shall be entertained by any court unless the prosecution be instituted by order of, or under authority from, the Local Government, Act XXVII of 1870, sec. 14.

P. 137, sec. 124 A. Chapters IV (General Exceptions) and V (Abetments) apply to offences punishable under this section, Act XXVII of 1870, sec. 13, and no charge of an offence punishable under this section shall be entertained by any court unless the prosecution be instituted by order of, or under authority from, the Local Government, Act XXVII of 1870, sec. 14.

P. 143, sec. 141, note 9, add 14 Mad. 126, where Muttusvámi Ayyar J. held (1) that an assembly not unlawful at first becomes unlawful after it has been ordered to disperse and fails to disperse, and (2) that the words in sec. 141, clause (4) 'to enforce any right or supposed right' shews that it is immaterial whether the act which one seeks to prevent by the use of criminal force or show of criminal force is legal or illegal.

P. 149, note 1. As to railway-servants see now the Indian Railways Act, IX of 1890, sec. 137.

P. 153, sec. 168, is applied to members, officers and servants of committees under the Central Provinces Municipal Act, XVIII of 1889, sec. 138.

P. 156, sec. 174, see an illustration, 12 Mad. 297.

P. 159, sec. 182, note 5. So where in a petition of appeal from a conviction, the appellant makes a false statement, and verifies the petition or affirmation, he does not commit an offence against sec. 181 or 182, see 12 Mad. 451.

P. 160, sec. 182. To constitute an offence under the latter part of this section ('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'), it is not necessary to shew that the act done could be 'to the injury or annoyance of any person,' 13 Bom. 506. The decisions in 14 Cal. 314, and 6 All. 97, so far as they conflict with this Bombay ruling, seem clearly wrong.
P. 162, sec. 188. The accused cannot go behind the order and shew that it ought not to have been made, as the property was not 'in his possession or under his management,' 12 Mad. 475.

P. 166, sec. 193. Whoever, for the purpose of procuring a marriage or license of marriage, intentionally makes a false oath or declaration, or signs a false notice or certificate, shall be deemed to have committed the offence punishable under this section, Act II of 1891, sec. 5.

In expl. 1 delete the words 'or before a Military Court of Request,' (Act XIII of 1889, sec. 2).

P. 167, sec. 194, l. 4, and in p. 168, l. 2, for the words 'by this Code or the law of England,' Act IX of 1890, sec. 149, substitutes the words 'by the law of British India or England.'

P. 174, sec. 211. The latter part of the section applies to cases in which complaint has been made to the police of an offence falling within the description given, and into which the police are authorised to enquire, 17 Cal. 574.

P. 182, secs. 225 A and 225 B. Chapters IV (General Exceptions) and V (Abetment) apply to offences punishable under this section, Act XXVII of 1870, sec. 13, as amended by the Repealing and Amending Act, 1891.

P. 193. As to fines under chap. XIII in cantonments, see Act XIII of 1889, sec. 21, cl. (1) (a).

P. 194, sec. 269. As to carrying in a ship passengers who had been exposed to infection by smallpox, see 14 Bom. 147.

— As to fines under chap. XIV in cantonments, see Act XIII of 1889, sec. 21, cl. (1) (a).

P. 195, sec. 273. This requires the mens rea. Should not the person who sells noxious food or drink do so at his peril? Consider Pain v. Boughtwood, 24 Q. B. Div. 353.

P. 201, add to note 7, and see Act XXVII of 1870, sec. 14.

— sec. 294 A. Chapters IV (General Exceptions), V (Abetment), and XXIII (Attempts) apply to offences punishable under this section. See Act XXVII of 1870, sec. 13.

P. 202, sec. 295. That here 'object' does not include a living animal, see 17 Cal. 852.

P. 211, sec. 304 A. Chaps. IV (General Exceptions), V (Abetment), and XXIII (Attempts) apply to offences punishable under this section, Act XXVII of 1870, sec. 13.

P. 212, sec. 307. See an illustration, 15 Bom. 194.

— Illustration (c), last line: after 'of' Act XII of 1891 inserts 'the first paragraph of.'
P. 221, sec. 338. This section applies to a case where a fully developed adult man causes the death of his child-wife, (aetat. 11½ years), by having sexual intercourse with her, 18 Cal. 49. Semble he might have been convicted of an offence under sec. 304 A.

P. 222, sec. 340. Malice is not an essential element in the offence defined by this section, 13 Bom. 376.

P. 229, sec. 361. The husband of a Hindú girl of fifteen is her lawful guardian, and if the girl’s father takes her away without her husband’s consent he is guilty of kidnapping from lawful guardianship, 17 Cal. 298.

P. 232, secs. 372 and 373 do not cease to be applicable because the minor concerned is of the bhogam or dancing-girl caste, 12 Mad. 273, 276, per Muttusvámi Ayyar J.

P. 233, sec. 375, in the clause marked Fifthly, for ‘ten’ Act X of 1891, sec. 1, substitutes ‘twelve.’

P. 235. As to the removal and exclusion from cantonments of persons convicted of offences against chap. XVII, see Act XIII of 1889, sec. 26, cl. (23).

— sec. 378. That a bull dedicated and set at large at the śrāddha of a Hindú is not ‘moveable property,’ see 17 Cal. 852.

P. 245, sec. 403. That a bull dedicated and set at large at a Hindú’s śrāddha is not ‘moveable property,’ see 17 Cal. 852.

P. 250, sec. 410, line 3, Act XII of 1891 repeals the word ‘the.’

P. 252, sec. 415. Two judges of the Calcutta High Court have ruled that the damage or harm must be the necessary consequence of the act done by reason of the deceit practised, or must be necessarily likely to follow therefrom, 17 Cal. 606. Hence (the same judges decided) A may with impunity pretend to be B, and thus deceive the Registrar of Muhammadan marriages, under Ben. Act I of 1876, and induce him to register a fictitious deed of divorce between B and C. This decision will probably not be followed. As such registrations are optional, the Registrar would suffer both in reputation and in pocket.

P. 256, sec. 425. That a bull dedicated and set at large at a Hindú’s śrāddha is not ‘property,’ see 17 Cal. 852.

P. 261, sec. 441, l. 2. As to presuming the intent here mentioned, see 16 Cal. 657.

P. 271, sec. 464, ill. (k). This illustration shews that the mere fabrication of a false certificate of character raises the presumption
of fraud. It applies to sec. 471 as well as to sec. 464, 13 Bom. 516–517, per West and Nanabhāi, JJ.

P. 271, sec. 464, expl. 2. An intention to defraud is an essential ingredient; but it is sufficient to shew that there was an intention to defraud generally, 13 Mad. 27, at p. 31.

P. 274, sec. 475, As to the mode of framing a charge under this section, see 15 Bom. 189 at p. 194.

P. 281, sec. 494. A Hindú wife who becomes a Muhammadan and then marries a Muhammadan, leaving her Hindú husband, may be convicted under this section, as a mere apostasy does not nullify a Hindú marriage, 18 Cal. 264.

P. 293, sec. 511. A man may be guilty of an attempt to cheat, although the person he attempts to cheat is forewarned, and is therefore not cheated, 16 Cal. 310, following Reg. v. Hensler, 11 Cox C. C. 570.

— ill. (b). This is contrary to Reg. v. Collins, 9 Cox C. C. 497, as to which see Queen v. Brown, 24 Q. B. Div. 357, at p. 359.

THE SUCCESSION ACT.

P. 304, l. 29, after degree insert—a right at variance with the principle ‘equality is equity.’

P. 314, sec. 3, note 2. That a Hindú in Bengal may dispose of his property by will so as to deprive his widow of her share on partition, but not so as to deprive her of her right to maintenance, see 17 Cal. 886.

P. 315, sec. 6, l. 1. The words ‘and parts’ are repealed by Act XII of 1891.

P. 318, l. 21. Another effect of omitting sec. 187 of the Succession Act from the Probate and Administration Act is that, although a Court may grant probate or letters of administration in respect of a Hindú’s will antecedent to 1st Sept., 1870, still executors or persons claiming letters of administration need not obtain such probate or letters before they can establish their right in respect to any of the deceased’s property, 17 Cal. 272.

— note 1. Notifications under the Probate and Administration Act, sec. 2, were issued in 1889 by the following Local Governments:—

Central Provinces, Central Provinces Gazette, 18 April, 1889, Part II, p. 91.

Ajmer and Merwára, Gazette of India, 5 October, 1889, Part II, p. 534.

Coorg, Coorg District Gazette, 1 July, 1889, Part I, p. 50.

The result is that Act V of 1881 is now in force throughout the whole of British India, except apparently Upper Burma and British Baluchistán.

P. 320. An appeal lies to the High Court from the order of a District Judge admitting a person as a caveator under sec. 69 of the Probate and Administration Act, 17 Cal. 48.

P. 321. After sec. 145 of the Probate and Administration Act, 1881, the following was inserted by Act II of 1890, sec. 16:

145 A. Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death, and there have been a grant of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country, the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 139 and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.'

P. 338, sec. 3. In the definition of 'British India,' Act XII of 1891 repeals the last twelve words.

P. 382, sec. 96. See a case under this section, 16 Cal. 549.

P. 389, sec. 104, note 2, add The Indian Act, for example, makes no exception in favour of provisions for payment of debts or for raising portions for children.

P. 390, sec. 105. The Indian Legislature deliberately abstained from extending this section (the policy of which is questionable) to the wills of Hindús, Jainas, Sikhs, and Buddhists.

As to transfers inter vivos to religious or charitable uses, see the Transfer of Property Act, sec. 17.

1 *Sic.* Read 'there has or have.'
THE SUCCESSION ACT.

P. 392, sec. 107, Exception: see Pearson v. Dolman, L. R. 3 Eq. at p. 321.

P. 393, sec. 107, ill. (g). But see the Transfer of Property Act, sec. 12.

P. 427, sec. 167, note 2, add In 14 Bom. 438 the doctrine of election was applied to the will of a Hindú widow in the Mufassal, purporting to devise immoveable property inherited from her husband.


P. 432, note 1, col. 2, after d. m. c. insert See as to the deposit-note Re Dillon, 44 Ch. Div. 76, where the note was marked 'not transferable,' and was indorsed with a cheque to bearer to be signed by the depositor on payment, which cheque the donor had not signed.

P. 445, sec. 234 (=Probate and Administration Act, sec. 50), As to 'just cause,' see 18 Cal. 45.

P. 449, sec. 242, line 3, Act XII of 1891 adds 'or are.'

P. 452, sec. 250. That persons merely disputing the testator's right to deal with certain property as his own, are not entitled to come in and oppose the grant of probate, see 17 Cal. 48, a decision on the corresponding section (69) of Act V of 1881.

P. 458, sec. 265, note 18. As to the application to Hindús of the principle on which executorship de son tort is founded, see also 17 Cal. 620, at p. 630.

P. 480. After sec. 326 the following was inserted by Act II of 1890, sec. 9: '326 A. Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death, and there have been a grant of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country, the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 320 and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in

1 Sic.
the country of domicile, the surplus or residue to him for distribution to those persons.'

THE GENERAL CLAUSES ACTS.

P. 486. The provisions of the General Clauses Acts, 1868 and 1887, shall, so far as they can be made applicable, apply to all rules made under the Cantonments Act, 1889, by the Governor-General in Council, Act XIII of 1889, sec. 3, cl. (2).

P. 488, sec. 21, clause 8. The last twelve words are repealed by Act XII of 1891.

P. 490, sec. 6, 'proceedings commenced,' see 11 All. 349, at pp. 359, 360.

The following Act is here printed as it amends the General Clauses Act, 1868, and applies to the Guardians and Wards Act, infra.

ACT I OF 1887.

Passed by the Governor General of India in Council.

(Received the assent of the Governor General on the 14th January, 1887.)

AN ACT FOR FURTHER SHORTENING THE LANGUAGE USED IN ACTS OF THE GOVERNOR GENERAL IN COUNCIL, AND FOR OTHER PURPOSES.

Whereas it is expedient further to shorten the language used in Acts made by the Governor General in Council, and to make certain further provisions relating to those Acts and to Regulations under the Statute 33 Victoria, ch. 3, sec. 1; It is hereby enacted as follows:

1. (1) This Act may be called the General Clauses Act, 1887; and

(2) It shall come into force at once.

PART I.

ADDITIONAL CLAUSES.

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

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

(1) 'abet,' with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code:
(2) 'Chapter,' 'Part' and 'Schedule' shall denote, respectively, a Chapter and Part of, and Schedule to, the Act in which the word occurs:

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

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

(5) 'financial year' shall mean the year commencing on the first day of April:

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

(7) 'ship' shall include every description of vessel used in navigation not exclusively propelled by oars:

(8) 'master,' used with reference to a ship, shall mean any person (except a pilot or harbour-master) having for the time being control or charge of the ship:

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

(10) 'public nuisance' shall have the meaning assigned to that expression in sec. 268 of the Indian Penal Code:

(11) 'registered' shall mean registered under the law for the time being in force for the registration of documents:

(12) 'sign' with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include 'mark,' with its grammatical variations and cognate expressions:

(13) 'value,' used with reference to a suit, shall mean the amount or value of the subject-matter of the suit: and

(14) 'write,' with its grammatical variations and cognate expressions, shall include 'print' and 'lithograph,' with their grammatical variations and cognate expressions.

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

5. Any power conferred on the Governor General in Council or on a Local Government by an Act to which this Part applies may be exercised from time to time as occasion requires.

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

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

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

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

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

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

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

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1 This enables the executive authorities, in the interval between the passing of an Act and its coming into force, to make preparations for bringing the Act into force as soon as it is legally possible to do so.

2 The English rule that a power given to the Crown by statute having been once exercised is exhausted had been applied by Indian Courts to powers conferred by the Indian Legislature on the Governor-General in Council and on the Local Governments.
THE CONTRACT ACT.

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

(3) This section does not apply to any act or proceeding to XV of 1877. Provisions as to offences under more than one enactment.

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

PART II.
Supplemental Provisions.

9. The words 'wholly or partially' shall be inserted before the word 'repealed' in clause (1) of sec. 3 of the General Clauses Act, 1868, and shall be deemed to have been there from the commencement of that Act.

10. The provisions of this Act and of the General Clauses Act, 1868, shall, so far as they can be made applicable, apply to all Regulations which may receive the assent of the Governor General under the Statute 33 Victoria, ch. 3, sec. 1, after the commencement of this Act.

The provisions of sec. 7 of the General Clauses Act, 1887, apply to the Central Provinces Tenancy Act, 1883, as amended by Act XVII of 1889: see the last mentioned Act, sec. 18.

THE CONTRACT ACT.

P. 498. As to the non-assignability of contracts entered into with reference to the personal position, circumstances and qualifications of one party, see 17 Cal. 115, at p. 121.

— 1. 15, 'permitting the assignee to sue in his own name.' The decision contra, reported in 7 Cal. 594, seems wrong. See 1 Mad. H. C. 139, 140, 150; 4 Mad. H. C. 176; 1 All. 732.

— note 1, add As to 'hard' or 'unconscionable' bargains, see also L. R. 12 I. A. 215; 11 All. 57; 11 All. 118; 11 All. 128.

1 Taken from the English Municipal Corporations Act, 1882 (45 & 46 Vic. c. 50), sec. 230.
P. 514, note 5, add The innkeeper's lien affects the goods brought by the guest even though in fact they belong to a third party, see Gordon v. Silber, 25 Q. B. D. 491.

P. 515, l. 9. As to the divisibility of special contracts under Act III of 1865, see 17 Cal. 39, where '1885' is a misprint for 1865.

— ll. 10, 11: As to the responsibility of Railway Administrations as carriers, see now the Indian Railways Act, IX of 1890, chap. vii.

— l. 23, add and the Indian Railways Act, 1890, IX of 1890, secs. 59, 107, and 142.

— l. 26. As to the lien of a Railway-administration for rates, terminals, and other charges, see Act IX of 1890, sec. 55.

— last line, after 144 insert 13 Bom. 392.

P. 516, l. 2, add As to construing the contract evidenced by a bill of lading, see also 13 Bom. 571.

P. 517, l. 12. As to the capacity of minors to enter into a voidable contract, see and consider 18 Cal. 259.

P. 518, l. 16. The Indian Courts will doubtless follow the Judicial Committee (Bank of N. S. Wales v. Owston, 4 App. Ca. 270) and the Court of Appeal (Abrahams v. Deakin, 1891, 1 Q. B. 516) in holding that a master is not liable in respect of the acts of a servant which are neither authorized by the master nor for the master's benefit.

P. 523, l. 15, add As to construing contracts in restraint of trade see Mills v. Dunham, 1891, 1 Ch. 576 C. A., per Lindley L.J.

P. 524, note 4, add As to an 'open cover' (proposal to issue a marine policy) see 16 Cal. 564, where the plaintiff was a Hindu.

P. 528, note 1. As to the rights of the promisor in a contract of indemnity, see now 14 Bom. 299, at p. 303.

P. 533, l. 20, add There is, in other words, an obligation analogous to contract, creating a debt from X's estate; see Re Rhodes, 44 Ch. Div. 94.

P. 546, note 1. As to the evidence necessary to establish a trade-custom, see 16 Cal. 702. As to dāmdūpat, see 15 Bom. 84.

P. 549, sec. 5. As to the care required in spelling out a contract from informal correspondence, see Hussey v. Horne-Payne, 4 App. Ca. 311, 316, 323.

P. 552, sec. 11, note 3. For the second and third sentences the following should be substituted: As to persons domiciled in British India see Act IX of 1875, amended by Act VIII of 1890, sec. 52,
which declares that minority lasts until the completion of the eighteenth year, except in the case of—

(1) a minor of whose person or property, or both, a guardian (other than a guardian for a suit) has been or shall be appointed or declared by a Court before the minor has attained the age of eighteen years: and

(2) a minor of whose property the superintendence has been or shall be assumed by a Court of Wards before the minor has attained that age.

In each of these cases majority is not attained until the completion of the twenty-first year. See as to Act IX of 1875, 3 Mad. 11: 1 Cal. 388, and 3 All. 598.

P. 553, sec. 11, note 1. The Calcutta High Court holds that a contract entered into by a minor is, not void, but merely voidable at the option of the minor, 18 Cal. 259, following 11 Cal. 552. These decisions are questionable. Secs. 10 and 11 of the Contract Act certainly seem to show that majority is one of the elements of competency to contract. For minor partners special provisions are made by secs. 247, 248.

— note 1, l. 6, after 473 insert Notwithstanding Act III of 1874, sec. 8, in India a married woman's capacity to contract does not, as it is held to do in England, Stoddon v. Lee, 1891, 1 Q. B. (C. A.) 661, depend on her possession of separate property.

— sec. 12, par. 2. So in England, see Banks v. Goodfellow, L. R. 5 Q. B. 549.

P. 556, sec. 18. When A stated to B that a certain ship was not more than 2800 tonnage register, and B therefore chartered the ship for a voyage from Bombay to certain European ports, and the ship turned out to be of the registered tonnage of 3045 tons, B was held entitled to treat the charterparty as void, 14 Bom. 241.

— sec. 19, note 4. 'Where one party induces the other to contract on the faith of representations made to him, any one of which is untrue, the whole contract is, in a Court of Equity, considered as having been obtained fraudulently,' 17 Cal. 291, at p. 297, per Sir R. Couch.

P. 559, sec. 23, note 1, add An agreement in Calcutta for the sale of fermented liquor, by a person who had not obtained a license under the local Excise Act (Beng. Act VII of 1878), is void, 16 Cal. 436.

— sec. 23, note 4. As to marriage-brokage agreements between Hindús, see now 13 Bom. 126 and 13 Mad. 83.

P. 560, note 3, col. 1. As to maintenance and champerty, see also 11 All. 57 and 11 All. 118.
P. 562, sec. 25, cl. (1), l. 2. For 'assurances' Act XII of 1891 substitutes 'documents.'

— sec. 25, cl. (3), note 8. That 'debt' here includes 'judgment debt,' see also 14 Bom. 390.

P. 564, sec. 27. This section 'does away with the distinction observed in English cases following upon Mitchel v. Reynolds, 1 Sm. L. C. 406, between partial and total restraint of trade, and makes all contracts falling within the terms of the section void, unless they fall within the exceptions,' 13 Mad. 473.

— see. 27, note 1. A contract under which goods were bought at a certain rate for one market containing a stipulation that if the goods went to another market a higher rate should be paid for them, is, of course, not in restraint of trade, 17 Cal. 320.

P. 566, sec. 30, note 1, line 2, after 51 insert 13 Bom. 681.

P. 573, l. 2, after 'one' Act XII of 1891 inserts 'or more.'

— sec. 43, note 2, add A judgment recovered against any one of several joint debtors merges the remedy for the joint debt, and is a bar to an action against a co-debtor upon the joint liability. Similarly, in a matter of tort-feasance a judgment against one of several wrong-doers is a bar to an action on the same matter against the others, 14 Bom. 408, at p. 416, following 3 Cal. 353 and King v. Heare, 13 M. & W. 494.

P. 574, sec. 45. It has always been held in Calcutta, since this section came into force, that in suits by surviving partners the representatives of a deceased partner must be joined as co-plaintiffs, 18 Cal. 86, dissenting from 9 All. 486.

P. 579, sec. 56, para. 3, see an illustration, 17 Cal. 432.

P. 583, l. 1, for 'compensation' Act XII of 1891 substitutes 'composition.'

P. 586, sec. 70, l. 1, 'lawfully.' This word shews that the Legislature contemplated cases in which A held such a relation to B as to create or justify the inference that by some act done by A for B, A was entitled to look for compensation for it to B, 11 All. 234 at p. 243.

P. 592, sec. 74, note 2. For a case in which a higher rate of interest was held not to be a penalty, see 14 Bom. 200.

— When in default of repayment at due date of a loan with interest at the rate of 2½ per cent., interest was to be paid at the rate of 37 per cent., to be calculated from the commencement of the loan, the higher rate was held a penalty, 14 Bom. 274.

— As to recovering penalties due under bonds executed in
compliance with any rule under the Indian Forest Act, 1878, or
the Burma Forest Act, 1881, see Act V of 1891, secs. 14, 22.

P. 601, sec. 93. The demand must be made by the buyer, or
by some one on his behalf, not by a person claiming as beneficial
owner, 15 Bom. 1, at pp. 6–7.

— sec. 94. As to the mode of delivery where goods are shipped
on board a foreign ship for delivery in the foreign country to which
the ship belongs, see The Stettin, 14 P. D. 142.

P. 604, sec. 103. A railway receipt has been held by the
Bombay High Court (14 Bom. 57) not to be an ‘instrument of
title’ within the meaning of this section. The English Factors'
Act of 1877, sec. 5, has not been extended to India.

P. 608, sec. 114. The illustration is from Jones v. Bright,
5 Bing. 533. So if C orders ‘coatings’ of D, a woollen
manufacturer, and D supplies the cloth, there is an implied
warranty that the cloth is fit for coats, Drummond v. Van Ingen,
12 App. Cas. 284.

— sec. 115. Another illustration is furnished by Jones v.
Padgett, 24 Q. B. D. 650:

D a cloth merchant and tailor, writes to C, a cloth manufacturer—send me a
bale of indigo blue cloth. C sends the cloth according to order. There is an
implied warranty by C that it is the article known as indigo blue cloth, but
none that it is fit for liveries, though this is one of the ordinary uses of such
cloth.

P. 611, sec. 125. As to the rights of the promisor, see 14 Bom.
299, at p. 303.

P. 615, sec. 134, note 3, add In a suit against the principal
debtor and his surety, the omission of the creditor to effect service
of summons on the principal debtor does not discharge the surety,
14 Bom. 267.

P. 616, sec. 137, note 2, add See now 11 All. 310, dissenting
from 5 Bom. 647 and 12 Cal. 330.

P. 617, sec. 141. When a surety has guaranteed a portion of a
due debt his right to the benefit of the creditor’s securities arises,
not when he pays the portion for which he is liable, but when the
whole of the debt is paid off, 15 Bom. 48.

P. 622, secs. 151, 152. As to the responsibility of a railway-
administration as a carrier of animals or goods, see Act IX of
1890, secs. 72, 73, 74, 75.

P. 624, sec. 160, note 3. Sec. 160 must also be read with the
Evidence Act, sec. 117, expl. 2 (ius tertii), and with the Civil
Procedure Code, sec. 470 (interpleader). Compare the English
law as stated in Rogers, Sons & Co. v. Lambert & Co., 1891, 1 Q. B. 318 (C. A.), per Lindley J.

P. 632, sec. 196. Of course the principal can only ratify an act which he might himself lawfully have done. A company, therefore, cannot ratify an act done on its behalf before incorporation, Sully's case, 54 L. T. R. N. S. 777. And the act ratified must not be in itself a nullity. Hence if an agent enter into an illegal agreement on behalf of his principal there can be no ratification.

P. 639, sec. 216. So where an agent gets a secret commission on goods ordered by him on behalf of his principal, the commission is money had and received to the principal's use, and the principal may sue therefor (Lister v. Stubbs, 62 L. T. R. 654), subject to the rule of the Limitation Act, art. 62.

P. 640, sec. 221, ll. 4, 5. Loans made by the secretaries and treasurers of a company, on behalf of the company generally and for the purposes of the whole concern, are not 'disbursements and services' within the meaning of this section, 13 Bom. 314, at p. 322.

P. 643, sec. 230, cl. (2), 17 Cal. 454, which agrees with Fleet v. Murton, L. R. 7 Q. B. 126.

P. 644, sec. 231. This section embodies the English law as settled in the case of Culder v. Dobell, L. R. 6 C. P. 486.

P. 649, sec. 251, note 4, add With the Exception compare the English Partnership Act, 1890 (53 & 54 Vic. c. 39), sec. 8.


P. 655, sec. 262. Sir Frederick Pollock (Digest of the Law of Partnership, 5th ed. 141) says that 'this section is general in its terms and not confined to the administration of partners' estates by the Court. It seems intended to cover the doctrine of partners' lien, which is separately dealt with in the Partnership Act, 1890, sec. 39.'

— sec. 263. Compare sec. 38 of the Partnership Act, 1890.

THE NEGOTIABLE INSTRUMENTS ACT.

P. 674, sec. 2 is repealed by Act XII of 1891.

P. 695, sec. 66. The holder's failure to present the note at maturity does not, apparently, discharge the maker, 13 Mad. 172.

P. 721. This schedule is repealed by Act XII of 1891.

THE TRANSFER OF PROPERTY ACT.

P. 727, l. 18, 'Mortmain Act,' 9 Geo. II, c. 36, now repealed and re-enacted without material alteration by 51 & 52 Vic. c. 42.

P. 732, l. 12, *add* The Act is silent as to the remedy of a mortgagee by deposit. The Bombay High Court, 14 Bom. 269, has held that it is foreclosure or sale. The other High Courts will probably follow the English decisions, before 1882¹, that it is foreclosure, not sale, see Backhouse *v.* Charlton, 8 Ch. D. 444.

P. 733, l. 31, *add* Its principle is that a person having two funds to satisfy his demand shall not, by his election, disappoint a person who has only one fund, Aldrich *v.* Cooper, 8 Ves. 382, and see 12 Mad. 259.

P. 746, sec. 2, cl. (c). See 16 Cal. 693, at p. 701, per Lord Hobhouse.

P. 747, sec. 2, last par. 'to affect any rule of Hindú ... law,' i.e. to affect it *in malam partem*. Sec. 38 (which is part of chap. II) applies to Hindús, so far as it is consistent with Hindú law.

P. 748, sec. 5, l. 3, *As* to the words 'in future,' see 2 Bom. 353.

— sec. 6. That non-existent property, such as indigo-crops that may be grown in the future on certain land, is not within the purview of the Act, see 13 Cal. 262.

— cl. (d), note 7. *As* to lands in Bengal held on ghatwáli tenure, see 9 Cal. 187: 6 Moo. I. A. 101.

P. 749, sec. 6, cl. (g). No distinction is made between pensions for past services and pensions for supporting the grantee in the performance of future services. As to the English law see Davis *v.* Duke of Marlborough, 1 Swanst. 74, and as to pensions of military officers, the Army Act, 44 & 45 Vic. c. 58, sec. 141.

— sec. 6, cl. (h), note 3, *add res extra commercium* such as heirlooms.

— (2) 'for an illegal purpose².' Hence it would seem that where *A* purports to transfer a property to *B* for an illegal purpose *B* takes nothing. But can *A*, a *particeps criminis*, recover the property, whether the purpose is or is not carried out? As to

¹ For the present English law on the subject, see the Conveyancing Act, 1881, sec. 25, and Oldham *v.* Stringer, 23 W.R. 251.

² The words seem suggested by Taylor *v.* Bowers, 1 Q. B. Div. 291, 300.
the law in England, see Symes v. Hughes, L. R. 9 Eq. 475; Kearley v. Thomson, 24, Q. B. Div. 742, and Ayerst v. Jenkins, L. R. 16 Eq. 275: as to the former law in India, 2 All. 433: 6 All. 313: 3 Mad. 215. The Transfer of Property Act is here inconsistent with the Trusts Act, sec. 84, which was passed and came into force before the former Act. As to illegal conditions precedent, see infra, sec. 25.

P. 749, sec. 6, cl. (h), (3), see for example infra, sec. 136.
— cl. (h), note 4. That by Hindú law there may be a gift, but not a sale, or a partition, of an idol, see 17 Cal. 559.
— cl. (i). That a right of occupancy cannot be transferred, see L. R. 18 I. A. 27, at p. 30.

P. 750, sec. 8, l. 4, 'legal incidents,' see also secs. 55 (2) and (3), 65 and 108 (c).
— When the property transferred is a goodwill, the right to use the transferor's name, so long and so far only as he is not by such user exposed to any liability, is a 'legal incident;' Thynne v. Shove, 45 Ch. D. 577.

As to the right of pre-emption, see 5 All. 324.
— last clause. As to interest see sec. 36.
— note 5, add as to growing crops, 13 Mad. 15.
— sec. 9, note 7, for sec. 59 read secs. 54, 59, 107, 118, 122, and 132.
— sec. 10. This section would invalidate a condition purporting to deprive a joint tenant of the right of partition; see 1 Cal. 104: 6 Cal. 106: 4 Mad. H. C. 345: 7 Bom. 538.

As to when it would apply to an involuntary alienation, see 7 Bom. 256, 262, and 6 Mad. 159.

P. 751, sec. 10, note 1. Hence a condition in a lease that the lessee would not transfer in writing the land comprised in the lease, and that, if he did so, the transfer was to be of no effect, is void, no right of re-entry being reserved to the lessor, 17 Cal. 826.
— sec. 10. That a clause in restraint of anticipation will operate during any marriage, unless it is expressly restricted to a particular marriage, see Hawkes v. Hubback, L. R. 11 Eq. 5.
— sec. 11, para. 2. See sec. 40. That such a restriction will not be enforced when the character of the property so changes that the restriction is absurd, see Duke of Bedford v. Trustees of the British Museum, 2 M. & K. 552.

P. 752, sec. 13, 'subject to a prior interest created by the same transfer.' This is required because property must be vested in
a living person (see the definition of 'transfer,' sec. 5). The prior interest may be either limited in time or defeasible upon condition. See the illustrations to secs. 13 and 30. As to the vesting of the ulterior interest, see sec. 20. When the ulterior disposition is not valid, see sec. 30.

P. 752, sec. 14, 'which is to take effect,' i.e. which by the terms of the transfer may take effect. The possible, not the actual, event must be regarded, see Act X of 1865, sec. 101, ill. (a).

As to covenants void for remoteness, see 16 Cal. 71.

'minority,' see Act XI of 1875 as amended by Act VIII of 1890, sec. 52.

— sec. 17, 'for the benefit of the public,' i.e. for the benefit of the community or any considerable section thereof, see the illustrations to Act IX of 1865, sec. 105: see also 4 Mad. H. C. 44 (keeping a choultry in repair), 8 Bom. 432 (supporting a Jain temple and making gifts to poor persons). But such gifts as those in Yeap Cheah Neo v. Ong Cheng Neo, L. R. 6 P. C. 381, and in 6 Bom. 42, 11 Bom. 441 and 14 Ben. 442, would not fall within this section.

P. 753, sec. 19, l. 4, 'an event which must happen,' e.g. the death of a certain person.

— sec. 20. This section, like secs. 13 and 14, deals with interests created in favour of unborn persons. It is placed after sec. 19 because it contains the expression 'vested interest.'

P. 754, sec. 21, note 1, add The affirmative condition precedent is illustrated infra in sec. 26, ill. (a): the negative condition precedent in sec. 27, ill. (a).

— sec. 22, note 2, add see 4 Cal. 304.

— sec. 25, 'An interest . . . fails,' i.e. nothing vests in the transferee.

P. 755, sec. 26. This section expresses the rule that conditions precedent should be construed favourably, while sec. 29 expresses the rule that conditions subsequent intended to defeat vested interests should be construed strictly.

Another illustration to sec. 26 would be this: A transfers rs. 5000 to B on condition that he shall marry with C's consent in writing. B marries with C's oral consent. B is deemed to have fulfilled the condition. See notes to Scott v. Tyler, i W. & T. L. C. 6th ed. pp. 198-199.

P. 757, sec. 32. See sec. 25 supra.

— sec. 33, note 3, add cf. the Contract Act, sec. 34. As remarked by Messrs. Shephard and Brown (T. of P. Act, 2nd ed. pp. 84, 85), sec. 33 provides for the case where the fulfilment of
a condition precedent is prevented by the person interested in its performance, while sec. 34 provides for the case where the fulfilment of a condition, whether precedent or subsequent, is prevented by the person interested in its non-performance. See Edwards v. Aberayron Mutual Insurance Society, 1 Q. B. D. 580.

P. 758, sec. 35. As to the application of the doctrine of election to transactions inter vivos, see Codrington v. Lindsay, L. R. 8 Ch. App. 578.

par. 1, 'confers any benefit.' This would probably include the creation of a trust for the payment of the debts of the owner of the property. See the Succession Act, sec. 170.

P. 759. As to the revocation of an election made under a mistake, see Kidney v. Cousemaker, 12 Ves. 136: Worthington v. Wiginton, 20 Beav. 67.

P. 760, sec. 36. This section corresponds with the English Apportionment Act, 33 & 34 Vic. c. 35. As to rents see also the Transfer of Property Act, secs. 8, cl. 2, and 109.

— sec. 37. There is no provision for cases when the apportionment of the obligation is desirable in the interest of the persons liable, jointly and severally.

— sec. 37, note 1, add see the rule laid down by the High Court at Calcutta in 5 Cal. 902, and see 5 Cal. 941.

P. 761, sec. 38. 'Any person,' e.g. executor, administrator, Hindú widow, trustee, mortgagee with power of sale.

'reasonable care,' see sec. 3.

— sec. 39. As to the effect of a decree charging certain property with maintenance, see 2 Bom. p. 524.

As to 'a provision for . . . marriage,' see 12 Bom. H. C. p. 77.

P. 762, sec. 40. This section also applies to such a case as the following:—

A contracts to sell part of Sultanpur to B, and B covenants that he will not use the part so purchased in any but a particular way; B transfers the part to C with notice of the covenant. A may enforce the covenant against C.

As to the rights inter se of purchasers where A sells Sultanpur in lots, subject to a condition that each of the purchasers shall covenant with A that he will not use his lot in any but a particular way, see 6 Bom. 528, at p. 533, and Nottingham Patent Brick &c. Co. v. Butler, 16 Q. B. D. 778, at p. 784.

— sec. 41, 'the ostensible owner.' This includes a benámídár. See also 16 Cal. 137: 16 Cal. 148.

Notwithstanding the Evidence Act, sec. 92, the Indian Courts have ruled that they may admit evidence of the conduct of the parties
to shew that a transaction on the face of the instrument a sale was in fact a mortgage. But this ruling does not apply as against 'an innocent purchaser without notice of the existence of the mortgage, who merely buys from a person who was in possession of the title-deeds and was the ostensible owner of the property,' 9 Cal. 898.

P. 763, sec. 42. This, like sec. 346 of the New York Draft Civil Code, is taken from 27 Eliz. c. 4, sec. 5.
— sec. 43. Compare the Specific Relief Act, sec. 18 (a), and see 4 Bom. 34.

'erroneously.' This would include 'fraudulently.'

'immoveable property.' There is no title by estoppel as to moveables.

That section 43 does not apply where the transfer is compulsory, as in the case of an execution-sale, see 4 Cal. 677, at p. 682.

P. 764, sec. 44. This section does not enable a purchaser from a member of an undivided Hindú family of that member's share in a specific portion of the ancestral family property to enforce a partition of that portion alone and obtain an allotment of his vendor's share in that portion, 13 Mad. 275. The course to be taken by such purchasers is pointed out in 11 Bom. H. C. 72.
— sec. 44, last para. Suggested by the judgment of Westropp C.J. in 5 Bom. 504.
— sec. 45. The courts will probably hold that the joint-transferees take as tenants in common, and not as joint-tenants with a consequent right of survivorship. But it is a pity that sec. 45 did not say so.
— sec. 46. English cases illustrating the rule expressed by this section are Rede v. Oakes, 32 Beav. 555, and Clark v. Seymour, 7 Sim. 67.

P. 765, sec. 48, note 1, add where a later usufructuary mortgage had to give way to an earlier. As to loss of priority through fraud, misrepresentation or neglect see sec. 78. That a mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, does not thereby acquire any priority in respect of his original security, see sec. 80.
— sec. 49. Where a mortgagor insures after the mortgage, the mortgagee, in the absence of an assignment or special contract, is not entitled to the benefit of the policy, Lees v. Whiteley, L. R. 2 Eq. 143.
— note 1, add see also Rayner v. Preston, 18 Ch. D. 1, at p. 13, per James L.J.
P. 766, sec. 50. This section probably applies only to cases where there has been a transfer. Consider the illustration and also the fact that the section occurs in a chapter purporting to deal only with transfers of property by act of parties. Compare with the illustration sec. 131.

— sec. 51. The transferee need not shew that the evictor, when the improvement was made, knew that the property belonged to him and not to the transferee. Otherwise in England, Ramsden v. Dyson, L. R. 1 H. L. 129, at p. 141.

— sec. 51, para. 3, 'when under the circumstances aforesaid,' i.e. when the transferee believes in good faith that he is absolutely entitled to the property on which he makes improvements or plants crops, 2 Bom. 670.

— sec. 51, note 3, add Ben. F. B. 595: 14 Ben. 201. As to buildings erected by tenants in Calcutta or other large towns, see 1 All. 82: 5 Cal. 688 and 8 Cal. 582.

— sec. 52, ll. 3, 4. A suit ceases to be 'contentious' when the parties compromise and a consent-decree is passed accordingly, see 12 Mad. 439, following 8 Ben. 474, 489.

— sec. 52, ll. 4, 5, 'right to immoveable property:' not merely to money secured upon land, Worsley v. Earl of Scarborough, 3 Atk. 392.

— sec. 52. The section assumes that the Court in which the suit or proceeding is being prosecuted has jurisdiction to entertain it: see 1 All. 588.

— sec. 52. That a purchaser liti pendenti is not bound by the possibility of an appeal or by a consent-decree, see 18 Cal. 188, at p. 195, following 8 Ben. 474, and 8 Cal. 79.

P. 767, sec. 53. See 13 Bom. 434.

— sec. 53, para. 2, 'may be presumed.' The presumption is not conclusive. Hence when a transferee for consideration has notice of a prior gratuitous transfer the Indian Courts will not, it is hoped, hold that he has been defrauded by such transfer. In England, however, see Buckle v. Mitchell, 18 Ves. 100.

— para. 3. As to the corresponding words of 13 Eliz. c. 5 ('upon good consideration and bona fide'), see Halifax J. S. Banking Co. v. Gledhill, 1891, 1 Ch. 31.

P. 768, sec. 54, cl. 1, 'a price,' i.e. money.

When the price is inadequate see the Contract Act, sec. 25, expl. 2, and the Specific Relief Act, sec. 28, cl. (a). Where the price is unpaid, see sec. 55, cl. (4), (b), 2 Bom. 547: 3 All. 77: 8 All. 641: 11 All. 244.
P. 768, sec. 54, paras. 2 and 3. The ownership passes to the buyer
in the cases mentioned in para. 2, on the due execution and registration of the conveyance;
in the cases mentioned in para. 3, either on the due execution and registration of the conveyance or on delivery of the property.
— para. 4, 'in possession of the property,' i.e. in such relation to the property and its actual occupants (if any) as the seller occupies, 9 Mad. 267. 'Possession' here means such possession as the nature of the property admits, see sec. 55, cl. (f).
— para. 6, note 5, add the buyer may, however, enforce his right by a suit for specific performance; and see sec. 40, para. 2, and the Trusts Act, sec. 91.
— sec. 54, para. 2: 'other intangible thing.' This includes an equity of redemption; but see 10 All. 20.
— paras. 2 and 3 extend to every cantonment in British India, Act XIII of 1889, sec. 32, cl. (1).
— para. 3 is not exhaustive or imperative in requiring that the transfer of immovable property sold and of small value should be made only by a registered instrument or by delivery, 16 Cal. 622, dissenting from some obiter dicta of Garth C.J. in 8 Cal. 612.
— sec. 54, note 5. As to the distinction between a contract of sale and a contract to sell, see 11 All. 244, at p. 250, per Mahmud J.

P. 769, sec. 55, cl. (1) (a). See the Contract Act, sec. 17, and 11 Mad. 419. When the defect is not substantial, see the Specific Relief Act, secs. 14–17.
— cl. (2), see 4 All. 357, and compare the English statutory covenant for title, 44 & 45 Vic. c. 41, sec. 7.
It was thought unnecessary to provide for covenants for quiet enjoyment and further assurance.
As to acts amounting to a waiver of the implied covenant for title, see 13 Mad. 158.

P. 770, sec. 55, (2), last para. Compare sec. 65 last para. and sec. 108, cl. (c).
— sec. 55, cl. (3), 'documents of title.' This would include counterpart leases and even (it has been held in Bombay) village account books, 11 Bom. 485.
— sec. 55, cl. (4) (a). That rents are apportionable, see sec. 36.

P. 771, sec. 55 (4), (b), note 1. As to the lien of a third person advancing the purchase-money see Dryden v. Frost, 3 My. & Cr. 673; Neesom v. Clarkson, 4 Ha. 97.
P. 771, sec. 55, cl. (5), (c). This is inconsistent with the Specific Relief Act, sec. 13, ill. a, according to which the buyer bears any loss arising from destruction &c. after the date of the contract.

— sec. 55, cl. (6), (b). The buyer is entitled to this charge although he may have taken distinct security for the money advanced, and he does not lose it by taking additional security.

— note 1, add As to enforcing the vendor's lien, see sec. 100.

P. 772, sec. 55, cl. 6, (b). As to the costs of the suit for specific performance, see also the Specific Relief Act, sec. 18 (d).

— sec. 55, (6), (b). As to a sub-purchaser's lien on the interest acquired by the vendee by part-payment of the purchase-money, see Aberaman Ironworks v. Wickens, L. R. 4 Ch. App. 101.

— sec. 56. It is immaterial whether or not the buyer has notice of the charge.

— note 4, add 7 All. 711.

— sec. 57, (a) 'incumbrance.' This would include a mortgage, a trust for securing money, a lien, and a charge. See the definition in 44 & 45 Vic. c. 41, sec. 2 (vii).

'any party to the sale.' When the sale is in execution of a decree this would probably mean any party to the suit.

— sec. 57 (a), note 5, col. 2, l. 8, after section insert where the incumbrance was an annuity.

— sec. 58 (a), 'specific immoveable property;' see 9 All. 158.

P. 774. As to sales with conditional right of repurchase, see 14 Mad. 170.

— sec. 58, cl. (a), note 2, add Other instances of transactions held not to be mortgages will be found in 10 Cal. 30: 7 Mad. H. C. 6: 11 Bom. 462.

— sec. 58, cl. (b). The 'right to cause the mortgaged property to be sold' is not a right to sell without the intervention of the Court, sec per Mahmud J. 13 All. 28, dissenting from 10 Mad. 509, per Muttusvámi Ayyar J., 10 Bom. 519, per Birdwood and Jardine JJ., and 7 All. 258, per Petheram C.J.; and consider secs. 67 and 69.

P. 775, sec. 58 (c), note 1, add That a conveyance with right of repurchase is not necessarily a mortgage, see L. R. 17 I. A. 98, approving Alderson v. White, 2 De G. & J. 105.

— sec. 59, with respect to the transfer of property by registered instrument, extends to every cantonnement in British India, Act XIII of 1889, sec. 32, cl. (1).

— sec. 59, par. 3, 'documents of title,' not necessarily all such documents, Fisher on Mortgages, p. 52.

— sec. 59, last clause. A mortgage in Bombay by deposit of documents of title to land in the mufassal was upheld in 14 Bom. 269. All the parties were Parsees.

P. 776. As to redemption by one of several co-mortgagors, see sec. 95 infra and 11 All. 423, at p. 435.

— sec. 60. The mortgagor’s right on redeeming to get back his title-deeds is provided for by sec. 92.

— sec. 60, note 2, add As to tender to an agent or a person incompetent to contract, see secs. 102, 103. That tender may be waived, see The Norway, Browning & Lush., 396, 409: Kerford v. Mondel, 28 L. J. Ex. 303.

— sec. 60, note 2, add If the mortgagee refuses to accept a proper tender of the mortgage-money the mortgagor may recover the mortgage-deed; otherwise in England, Bank of N. S. Wales v. O’Connor, 38 W. R. 465.

— sec. 60, par. 4. The object, of course, is to give the mortgagee an opportunity of finding another investment for his money.

— sec. 60, note 6, l. 7, insert For other cases shewing that the right to redeem cannot be restricted, see 1 Mad. H. C. 81: 9 Bom. 236 note, explained in 12 Bom. 234: 9 Bom. 524. As to postponing the exercise of the right, see 3 Mad. 230: 4 All. 85.

P. 777, sec. 60, last para. This applies only to parties who stand to each other in the relation of mortgagor and mortgagee, 14 Mad. 73.

— sec. 60, note 1, l. 6, after 489 insert 12 Cal. 422, and add to the note: As to the charge to which one of several mortgagors who redeems is entitled, see sec. 95 infra, see also the Contract Act, sec. 69.

— sec. 62, note 4, for right to redeem read rights, and add to which sec. 62 is supplemental.

P. 778, sec. 63. As to the liability of a mortgagee who by availing himself of his position as such gains an advantage in derogation of the rights of the mortgagor, see the Indian Trusts Act, sec. 90.

P. 779, sec. 64. Compare the Indian Trusts Act, sec. 90.

— sec. 65. That a contract to pay interest post diem should not be implied, see 11 All. 416, at p. 419.

— sec. 65, cl. (b), ‘enable him to defend,’ i.e. supply him with
all information and evidence in the mortgagor’s possession or power.

P. 779, sec. 65, cl. (c), ‘public charges.’ This includes the Government revenue, see sec. 76, cl. (c).

P. 780, sec. 65, last clause. Taken from 44 & 45 Vic. c. 41, sec. 7, (f) (6).

— sec. 66. Compare the Easements Act, sec. 10, and with the explanation, compare the Trusts Act, sec. 20, cl. (e).

— sec. 66. If the mortgagee proves that the security is insufficient, the Court will grant an injunction to prevent waste by the mortgagor, Farrant v. Lovel, 3 Atk. 723, and other cases cited in Coote on Mortgages, 5th ed. 770: Specific Relief Act, sec. 54.

— sec. 67. This section was intended to deal, and, it is submitted, does clearly deal, with the remedies of all kinds of mortgagees, save the usufructuary, who realises his right, not by foreclosure or sale, but by possession and enjoyment of profits: see, however, 14 Cal. 730, 737.

P. 781, sec. 67, cl. (a). As to a usufructuary mortgagee’s inability to sue either for foreclosure or for sale, see 11 All. 367.

— sec. 67, cl. (b), note 4, add 5 Ben. 450. The rights of all parties are best worked out by a decree for sale.

— sec. 67, cl. (d). Compare sec. 60, last clause.

— sec. 68, cl. (b), ‘default of the mortgagor,’ see sec. 65, cl. (a), (b), and (c). For an instance see 13 Mad. 192.

— sec. 68, cl. (c), ‘without disturbance,’ whether lawful or unlawful, see sec. 65 (b).

P. 782, sec. 68. As to the destruction of mortgaged property by vis major (asmáni sultáni) in Bombay, see 14 Bom. 28.

— sec. 68. When mortgaged property is sold under the Land Acquisition Act, it is not ‘destroyed’ within the meaning of this section, and the mortgagee cannot sue the mortgagor for the mortgage-money. The only effect of the sale is to change the nature of the security, 13 Mad. 321.

— sec. 69, cl. (1). When the equity of redemption has been transferred, and the mortgagee is aware of the transfer, he should also give notice to the transferee, see Hoole v. Smith, 17 Ch. D. 434.

— sec. 69, note 3, add But its exercise may under certain circumstances be restrained by the Court, see Hickson v. Darlow, 23 Ch. D. 690.

P. 783, sec. 69, note 1, prefix From 44 & 45 Vic. c. 41, sec. 20.
P. 783, sec. 69, note 1, add As to the liability of a first mortgagee to a second mortgagee when the former on a sale misdescribes the property and thus reduces the purchase-money, see Tomlin v. Luce, 41 Ch. D. 573.

— sec. 69, (2), 'in arrear': see Cockburn v. Edwards, 18 Ch. D. 449.

P. 784, sec. 70, 'a contract to the contrary,' see 2 All. 787.

— sec. 71, note 4, add see above, p. 779, sec. 64, note 1. So if the mortgagor buys the reversion, the estate so acquired becomes subject to the mortgage. See Fisher, § 462.

— sec. 72, cl. (a), note 6. That a mortgagee will be allowed the salary of an agent to manage the property, see 1 S. D. A. (N. W. P.) 447, cited by Shephard and Brown, T. of P. Act, p. 281.

— sec. 72, cl. (b), note 7, add The mortgagor has no right to a lien, as against the mortgagee, in respect of expenditure to preserve the property from destruction, see FALCKE v. SCOTTISH IMPERIAL INSURANCE COMPANY, 34 Ch. Div. p. 243.

P. 785, sec. 72. As to the application of the money received under the policy, see sec. 76, cl. (f).

— sec. 73, note 6, add 6 Cal. 142: 15 Cal. 546.

— sec. 74, 'tender such amount.' The subsequent mortgagee may also pay it into court, under sec. 83.

P. 786, sec. 76. As to the time within which a mufassal mortgagee must bring his suit for possession, see the Limitation Act, art. 135.

— sec. 76, cl. (a), note 3, add Trusts Act, sec. 15.

P. 787, sec. 76, cl. (c), note 7, after undertenures, insert As to the mortgagee's charge on the surplus proceeds of sale, see sec. 73. As to his personal remedy, see sec. 68.

— sec. 76, cl. (h), note 10, add For the limitation of the mortgagor's suit for the surplus, see the Limitation Act, art. 105.

— sec. 78. The words 'Notwithstanding anything contained in sec. 48' should be prefixed to this section.

For illustrations of the 'gross neglect' mentioned in this section, see 12 Mad. 424, 429: 13 Mad. 383.

— sec. 79. This is founded on sec. 29 of a draft prepared in England by the Indian Law Commissioners, and sent out to India in 1879 with their sixth report. It deviates intentionally from the English law as laid down in Hopkinson v. Rolt, 9 H. L. Ca. 514 and other cases.

P. 789, sec. 81. See an illustration, 12 Mad. 255.
P. 790, sec. 82. The intention is, not that the mortgagee's lien should be split, but simply to determine the liabilities of the purchasers inter se, 18 Cal. 320, 321.

— sec. 83. See 16 Cal. 307. This section simply provides a mode whereby a mortgage may be satisfied through the Court. The petition filed under sec. 83, and the order made upon that petition, cannot be treated as proceedings in a regular suit, 13 Mad. 316, at p. 318.

— sec. 83. The deposit must be unconditional, 14 Mad. 49.

— 83, para. 1, last line, 'the amount remaining due on the mortgage.' That this does not include mesne profits to which the mortgagee is entitled owing to his having been wrongfully kept out of possession, see 3 All. 653.

— sec. 83. Where a mortgagee has a lien on the mortgaged property for money paid in respect of Government revenue, he loses this lien by accepting the money paid into court under this section, and relinquishing possession of the property, 13 All. 195.


P. 791, sec. 84, para. 1. See 8 All. 502. As to 'reasonable notice,' see sec. 60, para. 4.

— sec. 85. Where there is a person interested who cannot be ascertained, the Court makes a decree for redemption subject to his rights, Hall v. Heward, 32 Ch. D. 430.

— sec. 86, l. 3, 'and interest.' Where the mortgage does not provide for interest the mortgagee is not entitled to it, 10 All. 85, at p. 90. Where the mortgage provides for interest, see 9 Cal. 309.

P. 792, sec. 87. Where the time appointed for payment of the mortgage-money expires on a holiday, the mortgagee seems to be entitled to make the deposit on the first day that the Court re-opens, see 5 Cal. 906: 8 Cal. 528.

— proviso, 'good cause.' That an appeal has been presented is not ground for enlisting the time, see 13 Bom. 106.

para. 4, add note Otherwise in the case of a decree for sale, see sec. 90.

P. 793, sec. 89. The order for sale need not take the form of a decree, 18 Cal. 139, at p. 142. The application for the order is a proceeding in execution and subject to the rules of procedure governing such matters, 13 All. 278.

— As to sale, see the Civil Procedure Code, secs. 286–295, 304–327.

— sec. 90, l. 2: 'the amount due for the time being on the
mortgage.' This probably includes the costs, if any, awarded to the plaintiff. Otherwise the term 'mortgage-money' would have been used; and cf. secs. 86, 92 and 94.

P. 793, sec. 90, note 3, l. 2, after balance insert 16 Cal. 423:

11 All. 486.

P. 794, sec. 91. A joint mortgagor need not obtain partition before suing for redemption. He is entitled to redeem the whole (10 Bom. 648), even though the mortgagee has himself bought part of the equity of redemption, 15 Bom. 24, dissenting from 6 Mad. 61.

— sec. 91, note 7, add Messrs. Shephard and Brown remark that the Crown, in cases where the right of redemption has escheated, and the official assignee under the insolvency-law, might be added to the list given in this section.

— sec. 92, l. 4. 'Mortgage-money' includes the interest due (sec. 58), and no limit to the payment of interest is fixed, 14 Bom. 113; at p. 115.

P. 795, sec. 92, para. 3. Except in case of an English mortgage, the form of decree should have provided, as an alternative to the retransfer, the execution of the acknowledgment mentioned in sec. 60.

— sec. 93, cl. 2, 'unless the mortgage is . . . usufructuary.' Hence where a usufructuary mortgagor sues the mortgagee for possession on the ground that the mortgage-money had been paid out of the usufruct, and is ordered to pay something because the mortgage-money had not been so paid, the decree against the mortgagor for non-payment has not the effect of foreclosing him for all time from redeeming, 11 All. 386.

P. 796, sec. 93. Sections 92 and 93 must be read together, and the proviso of sec. 93 has no application when the mortgagee does not apply for a foreclosure, or when the original decree does not contain the order mentioned in the last clause of sec. 92, 13 Mad. 267, dissenting from 16 Cal. 246.

— sec. 94, l. 2. By a misprint or clerical error, the words 'foreclosure or' have been omitted after the words 'of a.' See sec. 87, par. 1.

— sec. 94, note 1, add or has refused to accept a proper tender under sec. 74.

P. 796, sec. 95, note 2, add On the other hand, his co-mortgagors may recover their shares from him on paying their proportion of the mortgage-debt and of the expenses incurred in the redemption, 11 All. 423, at p. 428. See the Contract Act, sec. 69.

P. 797, sec. 99. See an illustration, 12 Mad. 325.
P. 797, sec. 97, last para. The words 'or to affect any right of the Government' should be added. Compare the Civil Procedure Code, sec. 295.

— sec. 98. This section is intended principally for the strange forms of mortgage in Malabar. See e.g. 1 Mad. 57.

— sec. 99, note 2, add But see 14 Mad. 74.

P. 798, l. 1, sec. 100, 'act of parties,' e.g. by settlement or will, 'operation of law,' see sec. 55 (4) (b), sec 73 and sec. 95, 'made security,' i.e. immediately on execution, 14 Cal. 687.

— l. 11, 'the charge of a trustee,' &c., see the Trusts Act, sec. 32. Other cases illustrating this section, 2 All. 162; 9 All. 158.


— sec. 102, l. 2, 'under this chapter'; see secs. 60, 69 (1) and 74.


P. 800, sec. 105, l. 3, 'in perpetuity.' As to permanent or perpetual (istivārāt) leases, see 13 Ben. 124: 4 Cal. 781: 5 Cal. 543.

P. 801, sec. 106, note 1, add 15 Cal. 681.

— sec. 107, l. 2, 'exceeding one year,' see 8 All. 405. For instances of leases held to be for terms not exceeding one year, see 3 Bom. 21 and 8 All. 198.

— sec. 107, with respect to the transfer of property by registered instrument, extends to every cantonment in British India, Act XIII of 1889, sec. 32, cl. (1).

— sec. 108, cl. (a), note 5, add Compare the Contract Act, secs. 114 and 150.

— sec. 108, cl. (b), note 6, add and the lessor cannot sue for rent, 3 Ben. App. 119: see also 2 Mad. H. C. 315.

— sec. 108, cl. (c), 'if the latter pays the rent,' &c. This is a condition precedent.

'without interruption.' The Courts will probably hold that these words mean 'without a substantial interference with the lessee's enjoyment,' and that they do not include the wrongful act of a stranger.

— sec. 108. As to the liability of a lessor who stands by while the lessee makes improvements, see 12 Mad. 320, following Ramsden v. Dyson, L. R. 1 H. L. 129; and see as to acquiescence, De Busche v. Alt, 8 Ch. D. 286.

P. 802, sec. 108, cl. (d), note 2, add That in the absence of a local usage or statutory enactment to the contrary, the English law relating to alluvion applies to British India, see 13 Mad. 369. As to this law, see Schutles' Essay on Aquatic Rights, London, 1811.
THE TRANSFER OF PROPERTY ACT.

P. 802, sec. 108, cl. (g), note 6, prefix Contract Act, sec. 69.
— sec. 108, cl. (i), 'except the fault of the lessee.' These words probably include a surrender of the lessee's interest.
— sec. 108, cl. (i), note 9, add A mortgagee in possession is not entitled to emblements, 13 Mad. 15.

P. 803, sec. 108, cl. (j), note 1, l. 8, insert As to conditions restraining a lessee from transferring his interest see sec. 10 and sec. 111 (J), (i). As to conditions making his interest cease, see sec. 12.
— sec. 108, cl. (i), 'at the proper time and place,' see Contract Act, secs. 46-50.

P. 804, sec. 108, cl. (o), note 4, add see also 9 Cal. 609 (planting mangoes on an agricultural holding), 4 All. 174 (planting trees), and 10 Mad. 351 (making excavations).
— sec. 108, cl. (g). Where the tenant's own land is confounded with the leasehold, see 6 Mad. 263.

P. 806, sec. 111, cl. (e), 'his interest,' i.e. his interest in every part of the property.
— sec. 111, cl. (g), note 8, add But see 13 Cal. 248, dissenting from 8 Bom. 228.

As to denial of the lessor's title by one of several lessees, see 10 Cal. 41.
— sec. 111, cl. (h), 'duly given': see sec. 106.
— A notice to quit served on the tenant's agent is 'duly given,' though the agent does not communicate it to his principal, Tankham v. Nicholson, L. R. 5 H. L. 561.
— sec. 111, cl. (h), note 9, add As to notice to quit by one of several coparceners or tenants in common, see 7 Cal. 414: 12 Bom. H. C. 85, but see 11 Bom. 644.
— sec. 112, line 2, 'due since the forfeiture,' see 14 Cal. 176.

P. 807, sec. 114, note 6, l. 2, after 70: insert 13 Bom. 323.
— sec. 115. On the same principle where the mortgagor of a lease surrenders the lease the surrender does not prejudice the mortgage, see Fisher, 4th ed. 296.
— That an execution-sale of the lessee's holding does not affect an underlease, see 14 Bom. 384.

P. 808, sec. 115, note 1, add 9 Cal. 671, and see 5 Mad. H. C. 120.
— sec. 116, ll. 5, 6, 'the lease is... renewed,' upon the conditions contained in the expired lease, so far as they are consistent with a tenancy from year to year or from month to month, see 3 Bom. H. C. (A. C. J.) 27.
P. 808, sec. 117, see 12 Mad. 355.

P. 809, sec. 119, 'the party deprived,' &c.: this probably includes any person claiming under him: cf. the Contract Act, sec. 109, 'is entitled at his option to compensation,' &c. The limitation for a suit to enforce this right is six years from the time when the right accrued. See the Limitation Act, art. 120.

P. 810, sec. 122, note 1, add As to gifts by a client to his pleader or attorney, see Tyars v. Alsop, 61 L. T. R. 8.

— sec. 122, note 3, add See too 9 Ben. 377; at p. 397.

— sec. 123, with respect to the transfer of property by registered instrument, extends to every cantonment in British India, Act XIII of 1889, sec. 32, cl. (1).

— sec. 123, par. 2. The Act is silent as to the effect of a transaction whereby A purports to give B, without instrument and without delivery, moveable property capable of delivery. Apparently it would only amount to a license to B to take possession of the property, revocable until (but not after) B takes such possession. See Cochrane v. Moore, 25 Q. B. Div. 57, and Law Quarterly Review, vi. 446.

P. 811, sec. 125, note 1, add As to a gift to two donees jointly, of whom one is capable of taking and the other not, see L. R. 16 I. A. 44, at p. 47 (S. C. 16 Cal. 677).


— sec. 127, note 4. As to a Hindú widow's gift to two donees, one of whom could not take, see 16 Cal. 677, S. C. L. R. 16 I. A. 44, following Humphrey v. Tayler, Ambl. 138. Muhammadan gifts of mushaa, 11 All. 460, in Bombay, 13 Bom. 352. As to hiba-bil-iwaz (gift for exchange) in the N. W. Provinces, see 11 All. 1.

P. 813, sec. 130, note 2, add for assigning which provision is made in the Civil Procedure Code, sec. 232: nor the right of a purchaser of land under an instrument executed by a vendor not in possession, 13 Cal. 297, followed in 11 Mad. 445. But 'debt' would include money due, but not payable till some future day: see 3 Mad. H. C. 311.

— sec. 131. This section was intended to invalidate a transfer of a debt made without notice to, or knowledge by, the debtor, and, so far, to alter the law. However, the Calcutta High Court has held (12 Cal. 510) that, where no such notice has been given, the transferee may sue the debtor and that the institution of the suit is sufficient notice to him. This decision, which, it is submitted, ignores sec. 132 and is in the teeth of section 131, has been
followed by the High Courts of Madras (10 Mad. 289) and Allahabad (10 All. 20). Its object, of course, is to avoid a change in the law. But for such an object, as Lord Herschell said in Bank of England v. Vagliano Brothers, [1891], A. C. 140, judges are not at liberty 'to add to the words of the statute and to insert a limitation which is not to be found in it as indicated by it.'

P. 813, sec. 131, l. 2, 'moveable property.' As to transfers of beneficial interests in immoveable property, see 12 Bom. 33 (equity of redemption).

— sec. 131, l. 5, 'party to . . . such transfer,' see 9 All. 249, a case of novation.

— sec. 131, note 3, add A clear notice of the assignment of shares in a public company should be given to the office of the company, Ex p. Carbis, 4 Dec. & C. 354.

— sec. 132. Where a suit is dismissed for want of this notice to the defendant, and the plaintiff then gives the notice, he may sue again, the claim not being res judicata, 12 Mad. 500.

P. 814, sec. 133, note 1. That the transfer of debts is governed by the law of the debtor's domicil, is contrary to the rule laid down by Phillimore, Internat. Law, 2nd. ed. iv. 586. 'Debts . . . are universally treated by jurists as attached to the person of the creditor, and governed by the law of his domicil.' Compare the Negotiable Instruments Act, secs. 134, 135.

— sec. 135. In a suit against a debtor by an assignee for value of the debt, this section precludes the plaintiff from recovering more than the price paid by him for the assignment, with interest thereon, and the incidental expenses of the sale, 13 Mad. 225, following 9 All. 476, dissenting from 13 Cal. 145, and overruling 10 Mad. 289; see also 11 Mad. 56.

— sec. 135, par. 1. See 13 All. 102, following 9 All. 476, and dissenting from 13 Cal. 145 and 15 Cal. 436.

— sec. 135, cl. (c). Then the claim merges, and of course para. 1 has no application.

— sec. 135, cl. (d), 'judgment . . . affirming the claim,' see 13 Mad. 516.

— sec. 136, 'falling under the jurisdiction of.' This should be altered into 'which is, or is about to be, litigated in.'

THE TRUSTS ACT.

P. 823, l. 6. As to the vesting and administration of property held in trust for charitable purposes, see now the Charitable Endowments Act, VI of 1890.
P. 840, sec. 6. For a case of the creation of a parol trust by a Hindú, see 17 Cal. 620, where A handed to B the key of A's place of business, requesting B to take charge of A's goods and outstandings, to pay thereout A's debts (specifying them), and to apply the residue for A's family.


P. 847, sec. 20, cl. (c). The trustees generally employ a valuer. The Indian Act is silent as to his duties and qualification, and as to how far the trustees may safely act on his report. See the (English) Trustee Act, 1888, sec. 4.

P. 851, sec. 28, 'becomes vested in another person,' as for instance, by transfer under sec. 58.

When there are several trustees, if one has notice of the vesting all would be liable, see Meux v. Bell, 1 Hare 73.

P. 855, sec. 36. The second paragraph is repealed by Act XII of 1891.

—sec. 36, note 1, add probably also insuring against loss by fire any portion of the trust property. Compare the Transfer of Property Act, sec. 72, and Act XXVIII of 1866, sec. 17. In England see the Trustee Act, 1888, sec. 7.

—sec. 38. As to conditions of sale note two English decisions. The vendor must not require the purchaser to assume what the former knows to be false (Re Banister, 12 Ch. Div. 131), and conditions cannot be used to make a purchaser go without a title at all (Saeby v. Thomas, 63 L. T. R. 695).

—As to depreciatory conditions, see the (English) Trustee Act, 1888, sec. 3.


P. 862, sec. 58, note 2, add As to the effect of not giving the trustee notice of the transfer, see sec. 28.

P. 865, sec. 64, cl. (a). Compare the Transfer of Property Act, sec. 41, and see 1 Bom. 269 and Pilcher v. Rawlins, L. R. 7 Ch. App. 259.

P. 866, sec. 67. Compare the Partnership Act, 1890 (53 & 54 Vic. c. 39), sec. 13.

—sec. 68. As to the measure of the liability in England of a beneficiary who joins in a breach of trust, see Sawyer v. Sawyer, 28 Ch. Div. 595, at p. 601, and the Trustee Act, 1888, sec. 6. In India the guilty beneficiary's interest may be impounded without the order of the Court.

P. 873, sec. 83. Cooke v. Smith, 38 W. R. 641, where a debtor
executed a creditors' deed and there was a surplus after the payment of debts, furnishes another instance of the resulting trusts dealt with by this section.

P. 876, sec. 90, note 1, prefix Cf. the Transfer of Property Act, sec. 63, cl. 2.

P. 878. In the schedule the figures 39 are repealed by Act XII of 1891.

THE EASEMENTS ACT.

P. 879, l. 2 and 3, for Presidency of Madras, Coorg and the Central Provinces, read Presidencies of Madras and Bombay, the North Western Provinces, Oudh, the Central Provinces and Coorg.

P. 892, sec. 1, para. 2. It has since been extended, by Act VIII of 1891, to the territories respectively administered by the Governor of Bombay in Council and the Lieutenant-Governor of the North Western Provinces and Chief Commissioner of Oudh.

P. 901, sec. 13, cl. (e) and (f), see an illustration, 14 Bom. 452.

P. 903, sec. 14, l. 1, before 'right,' Act XII of 1891 inserts 'a.'

P. 924, sec. 52, note 2, add The chief distinction between a lease and a license is that a lessee has exclusive enjoyment of the property during the term of his lease, whereas a licensee has only permission to do acts on the property which would otherwise be unlawful. See also secs. 56 and 60, and sec. 64, note 2.

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**THE SCHEDULE.—Enactments repealed.**

**ACT NO. VIII OF 1890.**

(Received the assent of the Governor General on the 21st March, 1890).

**AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO GUARDIAN AND WARD.**

**WHEREAS** it is expedient to consolidate and amend the law relating to guardian and ward; It is hereby enacted as follows:—

**CHAPTER I.**

**PRELIMINARY.**

1. (1) This Act may be called the Guardians and Wards Act, Title, extent and commencement.

(2) It extends to the whole of British India, inclusive of Upper Burmah and British Baluchistan; and

(3) It shall come into force on the first day of July, 1890.

2. (1) On and from that day the enactments mentioned in the Repeal schedule shall be repealed to the extent specified in the third column thereof.

(2) But all proceedings had, certificates granted, allowances assigned, obligations imposed, and applications, appointments, orders and rules made under any of those enactments, shall, so far
as may be, be deemed to have been respectively had, granted, assigned, imposed and made under this Act, and

(3) Any enactment or document referring to any of those enactments shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

3. This Act shall be read subject to every enactment heretofore or hereafter passed relating to any Court of Wards by the Governor General in Council or by a Governor or Lieutenant-Governor in Council; and nothing in this Act shall be construed to affect, or in any way derogate from, the jurisdiction or authority of any Court of Wards, or to take away any power possessed by any High Court established under the Statute 24 & 25 Victoria, Chapter 104 (an Act for establishing High Courts of Judicature in India).

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

(1) 'minor' means a person who, under the provisions of the Indian Majority Act, 1875, is to be deemed not to have attained his majority:

(2) 'guardian' means a person having the care of the person of a minor or of his property, or of both his person and property:

(3) 'ward' means a minor for whose person or property, or both, there is a guardian:

(4) 'District Court' has the meaning assigned to that expression in the Code of Civil Procedure, and includes a High Court in the exercise of its ordinary original civil jurisdiction:

1 Hence no fees will be payable in respect of the appointment of guardians. This is one of the inducements to de facto guardians to subject themselves to the Act. Others are that a de facto guardian, acting without appointment by the Court, will incur the risk of being superseded on an application by the Collector (sec. 8): appointed guardians may be properly remunerated for their care and pains in the execution of their duties (sec. 22): testamentary and appointed guardians will have the powers possessed by executors and administrators, respectively, under the Probate and Administrative Act, 1881, and will be in a position to pass secure titles (secs. 28 and 29): appointed guardians may protect themselves by applying for, and acting upon, the direction of the Court (sec. 33): the submission of accounts by them is no longer to be obligatory, but to be left to the discretion of the Court under the rules of the High Court (secs. 34 and 50 (1) (d)): joint guardians may come to the Court for the settlement of their differences (sec. 43); and lastly, certain privileges are conferred on appointed guardians by the amendments which the Act makes of the Civil Procedure Code, c. xxxi.

2 as amended by the present Act, sec. 52; see note 3 to the Indian Contract Act, sec. 11, Anglo-Indian Codes, vol. i. p. 552.

3 The Act therefore relates to guardians generally, except when it relates to particular classes of guardians.
(5) 'the Court' means the District Court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a guardian; and, where a guardian has been appointed or declared in pursuance of any such application, it means the Court which appointed or declared the guardian, or, in any matter relating to the person of the ward, the District Court having jurisdiction in the place where the ward for the time being ordinarily resides:

(6) 'Collector' means the chief officer in charge of the revenue-administration of a district, and includes any officer whom the Local Government, by notification in the official Gazette, may, by name or in virtue of his office, appoint to be a Collector in any local area, or with respect to any class of persons, for all or any of the purposes of this Act:

(7) 'European British subject' means an European British X of 1882. subject as defined in the Code of Criminal Procedure, 1882, and includes any Christian of European descent: and

(8) 'prescribed' means prescribed by rules made by the High Court under this Act.

CHAPTER II.

APPOINTMENT AND DECLARATION OF GUARDIANS.

5. (1) Where a minor is an European British subject, a guardian or guardians of his person or property, or both, may be appointed by will or other instrument to take effect on the death of the person appointing,—

(a) by the father of the minor, or,
(b) if the father is dead or incapable of acting, by the mother.

(2) Where guardians have been appointed under sub-section (1) by both parents, they shall act jointly.

6. In the case of a minor who is not an European British subject, Saving of nothing in this Act shall be construed to take away or derogate from any power to appoint a guardian of his person or property, or other cases, both, which is valid by the law to which the minor is subject.

7. (1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made—

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1 Here the Act follows Act XIII of 1874, which in recognising in certain circumstances the right of a mother to appoint a guardian, was based on the New York Civil Code. Compare the Succession Act, sec. 47.

2 Here as regards E. B. subjects, guardianship.

3 Here as regards the provisions of the English Guardianship of Infants Act, 1886 (49 & 50 Vic. c. 27).

4 See sec. 4, cl. (5).
(a) appointing a guardian of his person or property, or both, or
(b) declaring a person to be such a guardian,
the Court may make an order accordingly.

(2) An order under this section shall imply the removal of any
guardian who has not been appointed by will or other instrument
or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instru-
ment or appointed or declared by the Court, an order under this
section appointing or declaring another person to be guardian in
his stead shall not be made until the powers of the guardian
appointed or declared as aforesaid have ceased under the provisions
of this Act.

8. An order shall not be made under the last foregoing section
except on the application of—
(a) the person desirous of being, or claiming to be, the guardian
of the minor, or
(b) any relative or friend of the minor, or
(c) the Collector\(^1\) of the district or other local area within which
the minor ordinarily resides or in which he has property, or
(d) the Collector\(^1\) having authority with respect to the class to
which the minor belongs.

9. (1) If the application is with respect to the guardianship of
the person of the minor, it shall be made to the District Court\(^2\)
having jurisdiction in the place where the minor ordinarily resides\(^3\).

(2) If the application is with respect to the guardianship of the
property of the minor, it may be made either to the District Court
having jurisdiction in the place where the minor ordinarily resides
or to a District Court having jurisdiction in a place where he has
property.

(3) If an application with respect to the guardianship of the
property of a minor is made to a District Court other than that
having jurisdiction in the place where the minor ordinarily resides,
the Court may return the application if in its opinion the applica-
tion would be disposed of more justly or conveniently by any other
District Court having jurisdiction.

10. (1) If the application is not made by the Collector\(^1\), it shall
be by petition signed and verified in manner prescribed by the Code

\(^1\) See sec. 4, cl. (5).
\(^2\) See sec. 4, cl. (4).
\(^3\) This is the Court which can most effectively discharge the duties inci-
dent to the appointment of a guardian to the person.

The High Court and District
Court have concurrent jurisdiction;
see the definition of District Court,
supra, sec. 4.
of Civil Procedure for the signing and verification of a plaint, and Form of stating, so far as can be ascertained,—

(a) the name, sex, religion, date of birth and ordinary residence of the minor;
(b) where the minor is a female, whether she is married, and, if so, the name and age of her husband;
(c) the nature, situation and approximate value of the property, if any, of the minor;
(d) the name and residence of the person having the custody or possession of the person or property of the minor;
(e) what near relations the minor has, and where they reside;
(f) whether a guardian of the person or property, or both, of the minor has been appointed by any person entitled or claiming to be entitled by the law to which the minor is subject to make such an appointment.

(g) whether an application has at any time been made to the Court or to any other Court with respect to the guardianship of the person or property, or both, of the minor, and, if so, when, to what Court, and with what result;

(h) whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property, or of both;

(i) where the application is to appoint a guardian, the qualifications of the proposed guardian;

(j) where the application is to declare a person to be a guardian, the grounds on which that person claims;

(k) the causes which have led to the making of the application; and

(l) such other particulars, if any, as may be prescribed or as the nature of the application renders it necessary to state.

(2) If the application is made by the Collector, it shall be by letter addressed to the Court and forwarded by post or in such other manner as may be found convenient, and shall state as far as possible the particulars mentioned in sub-section (1).

(3) The application must be accompanied by a declaration of the willingness of the proposed guardian to act, and the declaration must be signed by him and attested by at least two witnesses.

1 See the form prescribed by the High Court, Calcutta Gazette, 1891, Part I, p. 308.
2 Perhaps the Indian Courts will understand this untechnical phrase to mean the relatives, if any, who would be entitled if the minor died. Compare Devisme v. Mellish, 5 Ves. 529; but consider the phrase, 'nearness of kin,' sec. 17, cl. (2), to which 'near relations' seems to refer.
11. (1) If the Court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for the hearing—

(a) to be served in the manner directed in the Code of Civil Procedure on—

(i) the parents of the minor if they are residing in British India,

(ii) the person, if any, named in the petition or letter as having the custody or possession of the person or property of the minor,

(iii) the person proposed in the application or letter to be appointed or declared guardian, unless that person is himself the applicant, and

(iv) any other person to whom, in the opinion of the Court, special notice of the application should be given; and

(b) to be posted on some conspicuous part of the court-house, and of the residence of the minor, and otherwise published in such manner as the Court, subject to any rules made by the High Court under this Act ¹, thinks fit.

(2) The Local Government may, by general or special order, require that, when any part of the property described in a petition under section 10, sub-section (1), is land of which a Court of Wards could assume the superintendence, the Court shall also cause a notice as aforesaid to be served on the Collector in whose district the minor ordinarily resides, and on every Collector in whose district any portion of the land is situate, and the Collector may cause the notice to be published in any manner he deems fit ².

(3) No charge shall be made by the Court or the Collector for the service or publication of any notice served or published under sub-section (2).

12. (1) The Court may direct that the person, if any, having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

(2) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section ³ (1) for her pro-

¹ Sec. 50.
² This subsection follows an order made by the High Court for the N.W. Provinces.
³ See the General Clauses Act, 1887, sec. 3, cl. (3).
duction shall require her to be produced in accordance with the customs and manners of the country.

(3) Nothing in this section shall authorise—

(a) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or

(b) any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property.

13. On the day fixed for the hearing of the application, or as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of or in opposition to the application.

14. (1) If proceedings for the appointment or declaration of a guardian of a minor are taken in more Courts than one, each of those Courts shall, on being apprised of the proceedings in the other Court or Courts, stay the proceedings before itself.

(2) If the Courts are both or all subordinate to the same High Court, they shall report the case to the High Court, and the High Court shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

(3) In any other case in which proceedings are stayed under sub-section 1 (1), the Courts shall report the case through the Local Government to the Governor General in Council, and the Governor General in Council shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

15. (1) If the law to which the minor is subject admits of his having two or more joint guardians of his person or property, or both, the Court may, if it thinks fit, appoint or declare them.

(2) On the death of a father, being an European British subject, who has, by will or other instrument to take effect on his death, appointed a guardian of his minor child, the Court may appoint the mother to be guardian of the child jointly with the guardian appointed by the father.

(3) On the death of a mother, being an European British subject, who during the incapacity of the father of her minor child

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1 See the General Clauses Act, 1887, sec. 3, cl. (3).
2 See sec. 4, cl. (7).
has, by will or other instrument to take effect on her death, appointed a guardian of the child, the Court may, if the father becomes capable of acting, appoint him to be sole guardian of the child or guardian of the child jointly with the guardian, appointed by the mother, as it thinks fit.

(4) Separate guardians may be appointed or declared of the person and of the property of a minor.

(5) If a minor has several properties, the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties.

16. If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place where the property is situate shall, on production of a certified copy of the order appointing or declaring the guardian, accept him as duly appointed or declared and give effect to the order.

17. (1) In appointing or declaring the guardian of a minor the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

(4) As between parents who are European British subjects adversely claiming the guardianship of the person, neither parent is entitled to it as of right, but, other things being equal, if the minor is a male of tender years or a female, the minor should be

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1 Here as regards E. B. subjects the Act follows the provisions of the Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27), sec. 1.

2 There is nothing to prohibit the appointment of a male as the guardian of the person of a female. See as to the former law 10 Cal. 15; 11 Cal. 574, and Amir Ali's Personal Law of Muhammadans, pp. 213-214. Nor does the Act prohibit the appointment as guardian of the person of a minor of his legal heir or the person next in succession to his property.

3 i.e. connexions arising from transactions with the minor or his property.

4 i.e. old enough to form a rational judgment as to the effect of appointing one proposed guardian rather than another.
given to the mother, and if the minor is a male of an age to require education and preparation for labour and business, then to the father.

(5) The Court shall not appoint or declare any person \(^1\) to be a guardian against his will.

18. Where a Collector is appointed or declared by the Court in virtue of his office to be guardian of the person or property, or both, of a minor, the order appointing or declaring him shall be deemed to authorise and require the person for the time being holding the office to act as guardian of the minor with respect to his person or property, or both, as the case may be.

19. Nothing in this chapter shall authorise the Court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a Court of Wards, or to appoint or declare a guardian of the person—

(a) of a minor who is a married female and whose husband is not, in the opinion of the Court, unfit to be guardian of her person, or,

(b) subject to the provisions of this Act with respect to European British subjects \(^2\), of a minor whose father is living and is not, in the opinion of the Court, unfit to be guardian of the person of the minor, or

(c) of a minor whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor.

CHAPTER III.

DUTIES, RIGHTS AND LIABILITIES OF GUARDIANS.

General.

20. (1) A guardian stands in a fiduciary relation to his ward, and, save as provided by the will or other instrument, if any, by which he was appointed, or by this Act, he must not make any profit out of his office.

(2) The fiduciary relation of a guardian to his ward extends to and affects purchases by the guardian of the property of the ward, and by the ward of the property of the guardian, immediately or soon after the ward has ceased to be a minor, and generally all

\(^1\) including a Collector as defined by sec. 4, cl. (6).

\(^2\) See secs. 4, cl. (7), 5, 15, clauses (2) and (3), and 16, cl. (4).
transactions between them while the influence of the guardian still lasts or is recent.\(^1\)

21. A minor is incompetent to act as guardian of any minor except his own wife or child or, where he is the managing member of an undivided Hindu family, the wife or child of another minor member of that family.

22. (1) A guardian appointed or declared by the Court shall be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties.

(2) When an officer of the Government, as such officer, is so appointed or declared to be guardian, such fees shall be paid to the Government out of the property of the ward as the Local Government, by general or special order, directs.\(^2\)

23. A Collector appointed or declared by the Court to be guardian of the person or property, or both, of a minor shall, in all matters connected with the guardianship of his ward, be subject to the control of the Local Government or of such authority as that Government, by notification in the official Gazette, appoints in this behalf.\(^3\)

**Guardian of the Person.**

24. A guardian of the person of a ward is charged with the custody of the ward, and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.

25. (1) If a ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return, and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian.

(2) For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the first class by section 100 of the Code of Criminal Procedure, 1882.

(3) The residence of a ward against the will of his guardian

\(^1\) This section is based on the fact that guardianship is a trust, and that the relationship between guardian and ward is one *uberrima fidei*, not only while it lasts, but even after it has ceased to exist.

\(^2\) When a Collector is appointed guardian, fees will be chargeable for

\(^3\) This section will be read under sec. 3 as subject to such enactments as sec. 193 of the North-Western Provinces Land Revenue Act, 1873.
with a person who is not his guardian does not of itself terminate the guardianship.

26. (1) A guardian of the person appointed or declared by the Removal Court, unless he is the Collector 1 or is a guardian appointed by will or other instrument, shall not, without the leave of the Court, remove the ward from the limits of its jurisdiction except for such purposes as may be prescribed.

(2) The leave granted by the Court under subsection (1) may be special or general, and may be defined by the order granting it.

Guardian of Property.

27. A guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own, and, subject to the provisions of this Chapter, he may do all acts which are reasonable and proper for the realisation, protection or benefit of the property.

28. Where a guardian has been appointed by will or other instrument, his power to mortgage or charge, or transfer by sale, gift, exchange or otherwise, immoveable property belonging to his ward is subject to any restriction which may be imposed by the instrument, unless he has under this Act been declared guardian and the Court which made the declaration permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

29. Where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission 3 of the Court,—

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immoveable property of his ward, or

(b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor 4.

30. A disposal of immoveable property by a guardian in contravention of either of the two last foregoing sections is voidable at the instance of any other person affected thereby.

31. (1) Permission to the guardian to do any of the acts mentioned

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1 See sec. 4, cl. (6).
2 Compare the Indian Trusts Act, 1882, sec. 15.
3 As to this see infra, sec. 31.
4 Suggested by sec. 18 of Act XL of 1858, and Act XX of 1864.
in section 29 shall not be granted by the Court except in case of necessity or for an evident advantage to the ward.

(2) The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission; and it shall be recorded, dated and signed by the Judge of the Court with his own hand, or, when from any cause he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation and be dated and signed by him ¹.

(3) The Court may in its discretion attach to the permission the following among other conditions, namely:—

(a) that a sale shall not be completed without the sanction of the Court;

(b) that a sale shall be made to the highest bidder by public auction, before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court, subject to any rules made under this Act ² by the High Court, directs;

(c) that a lease shall not be made in consideration of a premium, or shall be made for such term of years and subject to such rents and covenants as the Court directs;

(d) that the whole or any part of the proceeds of the act permitted shall be paid into Court by the guardian, to be disbursed therefrom or to be invested by the Court on prescribed ³ securities or to be otherwise disposed of as the Court directs.

(4) Before granting permission to a guardian to do an act mentioned in section 29, the Court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in its opinion, receive notice thereof, and shall hear and record the statement of any person who appears in opposition to the application.

32. Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Collector, the Court may, from time to time, by order, define, restrict or extend his powers with respect to the property of the ward in such manner and to such extent as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject.

¹ Suggested by 5 Cal. 363, and 6 Cal. 161.

² Sec. 50.

³ See sec. 1, cl. (8).
33. (1) A guardian appointed or declared by the Court may apply by petition to the Court which appointed or declared him for its opinion, advice or direction on any present question respecting the management or administration of the property of his ward.

(2) If the Court considers the question to be proper for summary disposal, it shall cause a copy of the petition to be served on, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(3) The guardian stating in good faith the facts in the petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have performed his duty as guardian in the subject-matter of the application.

34. Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Collector, he shall,—

(a) if so required by the Court, give a bond, as nearly as may be in the prescribed form, to the Judge of the Court to ensure for the benefit of the Judge for the time being, with or without securities, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward;

(b) if so required by the Court, deliver to the Court, within six months from the date of his appointment or declaration by the Court, or within such other time as the Court directs, a statement of the immovable property belonging to the ward, of the money and other moveable property which he has received on behalf of the ward up to the date of delivering the statement, and of the debts due on that date to or from the ward;

(c) if so required by the Court, exhibit his accounts in the Court at such times and in such form as the Court from time to time directs;

(d) if so required by the Court, pay into the Court at such time as the Court directs any balance due from him on those accounts, or so much thereof as the Court directs; and

(e) apply for the maintenance, education and advancement of the ward and of such persons as are dependent on him, and for the celebration of ceremonies to which the ward or any of those persons may be a party, such portion of the income of the property of the ward as the Court from time to time directs, and, if the Court directs, the whole or any part of that property.

1 See sec. 1, cl. (8), and Calcutta Gazette, 1891, Part I, p. 308.

2 Suggested by the case reported at 5 All. 248.
35. Where a guardian appointed or declared by the Court has
given a bond duly to account for what he may receive in respect
of the property of his ward, the Court may, on application made
by petition and on being satisfied that the engagement of the bond
has not been kept, and upon such terms as to security, or providing
that any money received be paid into the Court, or otherwise as
the Court thinks fit, assign the bond to some proper person, who
shall thereupon be entitled to sue on the bond in his own name as
if the bond had been originally given to him instead of to the
Judge of the Court, and shall be entitled to recover thereon, as
trustee for the ward, in respect of any breach thereof.

36. (1) Where a guardian appointed or declared by the Court
has not given a bond as aforesaid, any person, with the leave of the
Court, may, as next friend, at any time during the continuance of
the minority of the ward, and upon such terms as aforesaid, institute
a suit against the guardian, or, in case of his death, against
his representative, for an account of what the guardian has received
in respect of the property of the ward, and may recover in the suit,
as trustee for the ward, such amount as may be found to be payable
by the guardian or his representative, as the case may be.

(2) The provisions of sub-section (1) shall, so far as they relate to
a suit against a guardian, be subject to the provisions of section
440 of the Code of Civil Procedure as amended by this Act.

37. Nothing in either of the two last foregoing sections shall be
construed to deprive a ward or his representative of any remedy
against his guardian, or the representative of the guardian, which,
not being expressly provided in either of those sections, any other
beneficiary or his representative would have against his trustee or
the representative of the trustee.

Termination of Guardianship.

38. On the death of one of two or more joint guardians, the
guardianship continues to the survivor or survivors until a further
appointment is made by the Court.

39. The Court may, on the application of any person interested,
or of its own motion, remove a guardian appointed or declared by

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1 Suggested by the case reported at 5 All. 248.
2 Civil Procedure Code, sec. 440.
3 i.e. the time during which the ward remains a 'minor' as defined, supra, sec. 4, cl. (1).
4 The rule contained in this section follows from guardianship being a trust. Though the right of survivorship is not acknowledged in England in the case of guardians appointed by the Court, yet in practice the survivor or survivors will be re-elected without a reference.
the Court, or a guardian appointed by will or other instrument \(^1\), for Removal of any of the following causes, namely:—

\((a)\) for abuse \(^2\) of his trust;

\((b)\) for continued failure to perform the duties of his trust;

\((c)\) for incapacity to perform the duties of his trust;

\((d)\) for ill-treatment, or neglect to take proper care, of his ward;

\((e)\) for contumacious disregard of any provision of this Act or of any order of the Court;

\((f)\) for conviction of an offence implying, in the opinion of the Court, a defect of character which unfits him to be the guardian of his ward;

\((g)\) for having an interest adverse to the faithful performance of his duties;

\((h)\) for ceasing to reside within the local limits of the jurisdiction of the Court;

\((i)\) in the case of a guardian of the property, for bankruptcy or insolvency;

\((j)\) by reason of the guardianship of the guardian ceasing, or being liable to cease, under the law to which the minor is subject:

Provided that a guardian appointed by will or other instrument, whether he has been declared under this Act or not, shall not be removed—

\((a)\) for the cause mentioned in clause \((g)\) unless the adverse interest accrued after the death of the person who appointed him, or it is shown that that person made and maintained the appointment in ignorance of the existence of the adverse interest, or

\((b)\) for the cause mentioned in clause \((h)\) unless such guardian has taken up such a residence as, in the opinion of the Court, renders it impracticable for him to discharge the functions of guardian.

40. \((1)\) If a guardian appointed or declared by the Court Descharge desires to resign his office, he may apply to the Court to be dis-

\((2)\) If the Court finds that there is sufficient reason for the application, it shall discharge him, and, if the guardian making the application is the Collector and the Local Government approves of his applying to be discharged, the Court shall in any case discharge him.

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\(^1\) The Act follows the English Guardianship of Infants Act, 1886, sec. 6, in making a testamentary guardian removable on the same ground as a guardian appointed by the Court.

\(^2\) i.e. misuse, ill-use. Clause \((a)\) would cover any breach of any duty imposed on the guardian as a quasi-trustee.
Cessation of authority of guardian.

41. (1) The powers of a guardian of the person cease—
(a) by his death, removal or discharge;
(b) by the Court of Wards assuming superintendence of the person of the ward;
(c) by the ward ceasing to be a minor;
(d) in the case of a female ward, by her marriage to a husband who is not unfit to be guardian of her person or, if the guardian was appointed or declared by the Court, by her marriage to a husband who is not, in the opinion of the Court, so unfit; or,
(e) in the case of a ward whose father was unfit to be guardian of the person of the ward, by the father ceasing to be so or, if the father was deemed by the Court to be so unfit, by his ceasing to be so in the opinion of the Court.

(2) The powers of a guardian of the property cease—
(a) by his death, removal or discharge;
(b) by the Court of Wards assuming superintendence of the property of the ward; or
(c) by the ward ceasing to be a minor.

(3) When for any cause the powers of a guardian cease, the Court may require him or, if he is dead, his representative to deliver as it directs any property in his possession or control belonging to the ward or any accounts in his possession or control relating to any past or present property of the ward.

(4) When he has delivered the property or accounts as required by the Court, the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered.

42. When a guardian appointed or declared by the Court is discharged, or, under the law to which the ward is subject, ceases to be entitled to act, or when any such guardian or a guardian appointed by will or other instrument is removed or dies, the Court, of its own motion or on application under Chapter II, may, if the ward is still a minor, appoint or declare another guardian of his person or property, or both, as the case may be.

1 See the Contract Act, sec. 17.
2 See sec. 4, cl. (1).
CHAPTER IV.

SUPPLEMENTAL PROVISIONS.

43. (1) The Court may, on the application of any person interested or of its own motion, make an order regulating the conduct or proceedings of any guardian appointed or declared by the Court.

(2) Where there are more guardians than one of a ward and they are unable to agree upon a question affecting his welfare, any of them may apply to the Court for its direction, and the Court may make such order respecting the matter in difference as it thinks fit.

(3) Except where it appears that the object of making an order under sub-section (1) or sub-section (2) would be defeated by the delay, the Court shall, before making the order, direct notice of the application therefor or of the intention of the Court to make it, as the case may be, to be given, in a case under sub-section (1), to the guardian or, in a case under sub-section (2), to the guardian who has not made the application.

(4) In case of disobedience to an order made under sub-section (1) or sub-section (2), the order may be enforced in the same manner as an injunction granted under section 492 or section 493 of the Code of Civil Procedure in a case under sub-section (1), as if the XIV of ward were the plaintiff and the guardian were the defendant or, in 1882, a case under sub-section (2), as if the guardian who made the application were the plaintiff and the other guardian were the defendant.

(5) Except in a case under sub-section (2), nothing in this section shall apply to a Collector who is, as such, a guardian.

44. If, for the purpose or with the effect of preventing the Court from exercising its authority with respect to a ward, a guardian appointed or declared by the Court removes the ward from the limits of the jurisdiction of the Court in contravention of the provisions of section 26, he shall be liable, by order of the Court, to fine not exceeding one thousand rupees, or to imprisonment in the civil jail for a term which may extend to six months.

45. (1) In the following cases, namely—

(a) if a person having the custody of a minor fails to produce him or cause him to be produced in compliance with a direction under section 12, sub-section (1), or to do his utmost to compel the minor to return to the custody of his guardian in obedience to an order under section 25, sub-section (1), or

1 In providing for the settlement of differences between joint guardians the Act follows the English Guardianship of Infants Act, 1886, sec. 3, cl. (3).
(b) if a guardian appointed or declared by the Court fails to deliver to the Court, within the time allowed by or under clause (b) of section 34, a statement required under that clause, or to exhibit accounts in compliance with a requisition under clause (c) of that section, or to pay into the Court the balance due from him on those accounts in compliance with a requisition under clause (d) of that section, or

c) if a person who has ceased to be a guardian, or the representative of such a person, fails to deliver any property or accounts in compliance with a requisition under section 41, sub-section (3), the person, guardian, or representative, as the case may be, shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and in case of recusancy to further fine not exceeding ten rupees for each day after the first during which the default continues, and not exceeding five hundred rupees in the aggregate, and to detention in the civil jail\(^1\) until he undertakes to produce the minor or cause him to be produced, or to compel his return, or to deliver the statement, or to exhibit the accounts, or to pay the balance, or to deliver the property or accounts, as the case may be.

(2) If a person who has been released from detention on giving an undertaking under sub-section (1) fails to carry out the undertaking within the time allowed by the Court, the Court may cause him to be arrested and re-committed to the civil jail.

40. (1) The Court may call upon the Collector, or, upon any Court subordinate to the Court, for a report on any matter arising in any proceeding under this Act and treat the report as evidence.

(2) For the purpose of preparing the report the Collector or the Judge of the subordinate Court, as the case may be, shall make such inquiry as he deems necessary, and may for the purposes of the inquiry exercise any power of compelling the attendance of a witness to give evidence or produce a document which is conferred on a Court by the Code of Civil Procedure.

47. An appeal shall lie to the High Court from an order made by a District Court,—

(a) under section 7, appointing or declaring or refusing to appoint or declare a guardian; or,

(b) under section 9, sub-section (3), returning an application; or,

(c) under section 25, making or refusing to make an order for the return of a ward to the custody of his guardian; or,

(d) under section 26, refusing leave for the removal of a ward

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\(^1\) As to the costs of maintaining him in the civil jail, see sec. 49.
from the limits of the jurisdiction of the Court, or imposing conditions with respect thereto; or,

(e) under section 28 or section 29, refusing permission to a guardian to do an act referred to in the section; or,

(f) under section 32, defining, restricting or extending the powers of a guardian; or,

(g) under section 39, removing a guardian; or,

(h) under section 40, refusing to discharge a guardian; or,

(i) under section 43, regulating the conduct or proceedings of a guardian or settling a matter in difference between joint guardians, or enforcing the order; or,

(j) under section 44 or section 45, imposing a penalty.\(^1\)

48. Save as provided by the last foregoing section and by Finality section 622 of the Code of Civil Procedure, an order made under this Act shall be final, and shall not be liable to be contested by suit or otherwise.

49. The costs of any proceeding under this Act, including the costs of maintaining a guardian or other person in the civil jail, shall, subject to any rules made by the High Court under this Act, be in the discretion of the Court in which the proceeding is had.

50. (1) In addition to any other power to make rules conferred express or impliedly by this Act, the High Court may from time to time make rules consistent with this Act—

(a) as to matters respecting which, and the time at which, report should be called for from Collectors and subordinate Courts;

(b) as to the allowances to be granted to, and the security to be required from, guardians, and the cases in which such allowances should be granted;

(c) as to the procedure to be followed with respect to applications of guardians for permission to do acts referred to in sections 28 and 29;

(d) as to the circumstances in which such requisitions as are mentioned in clauses (a), (b), (c) and (d) of section 34 should be made;

(e) as to the preservation of statements and accounts delivered and exhibited by guardians;

(f) as to the inspection of those statements and accounts by persons interested;

\(^1\) This specification of appealable orders is suggested by the cases reported at 15 Suth. W. R. 492, and 22 Suth. W. R. 479.
(g) as to the custody of money, and securities for money, belonging to wards;

(h) as to the securities on which money belonging to wards may be invested;

(i) as to the education of wards for whom guardians, not being Collectors, have been appointed or declared by the Court; and,

(j) generally, for the guidance of the Courts in carrying out the purposes of this Act.

(2) Rules under clauses (a) and (i) of sub-section (1) shall not have effect until they have been approved by the Local Government, nor shall any rule under this section have effect until it has been published in the official Gazette.

51. A guardian appointed by, or holding a certificate of administration from, a Civil Court under any enactment repealed by this Act shall, save as may be prescribed, be subject to the provisions of this Act, and of the rules made under it, as if he had been appointed or declared by the Court under Chapter II.

52. In section 3 of the Indian Majority Act, 1875, for the words ‘every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards,’ the following shall be substituted, namely,—

‘every minor of whose person or property, or both, a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure, has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age.’

53. Chapter XXXI of the Code of Civil Procedure shall be amended as follows, namely:

[For the amendments effected by this section, see below.]
THE GUARDIANS AND WARDS ACT, 1890.

59

THE SCHEDULE.

ENACTMENTS REPEALED.

*(See Section 2.)*

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<th>Number and year</th>
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<td>Minors (Madras)</td>
<td>The whole.</td>
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<tr>
<td>XL of 1858</td>
<td>Minors (Bengal)</td>
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<td>IX of 1861</td>
<td>Minors</td>
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<td>XIII of 1879</td>
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<td>XVII of 1885</td>
<td>Central Provinces Government Wards Act, 1885.</td>
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<td>XII of 1887</td>
<td>Bengal, North-Western Provinces and Assam Civil Courts Act, 1887.</td>
<td>Clause (b) of section 23, sub-section (2).</td>
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<tr>
<td>XI of 1889</td>
<td>Lower Burma Courts Act, 1889.</td>
<td>The words 'to be and' in section 99, sub-section (1), and section 102, so far as it relates to Act XIII of 1874.</td>
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THE SPECIFIC RELIEF ACT.

P. 945, sec. 2 is repealed by Act XII of 1891.

P. 947, sec. 4, cl. (c). See 13 Mad. 324, at pp. 331, 334.
— sec. 4, cl. (c). In 14 Mad. 55 the High Court of Madras, following 12 Mad. 505, held that 'a document which, for want of registration, is not admissible as creating an interest in land, is admissible for the purpose of obtaining specific performance of the contract.'

P. 949, sec. 9. It is now held by the Calcutta High Court that the remedy under this section bars a suit for ejectment founded on mere previous possession, 17 Cal. 256, at p. 259.

— Subject to the provisions of this section, a rightful owner dispossessing another without his consent otherwise than by due course of law is not a trespasser, and he may rely for support of his possession on the title vested in him, 15 Bom. 238.

— 'Immovable property' here includes an exclusive right of fishing, 12 Bom. 221, and a right of ferry, 13 Mad. 54. But the Calcutta High Court holds that a suit for the possession of a right to fish for a certain part of the year in a Khal, the soil of which belongs to another, does not come within this section, 18 Cal. 80.

— sec. 9, ll. 3, 4. The words 'instituted within six months from the date of the dispossession' are repealed by Act XII of 1891.

P. 953, sec. 13, ill. (a). This is not consistent with the Transfer of Property Act, sec. 55, cl. (5) (c).

P. 956, sec. 18, cl. (d). See the Transfer of Property Act, sec. 55, cl. 6 (b).

P. 960, ill. (b). That contracts of personal service should not be specifically performed, see De Francesco v. Barnum, 45 Ch. Div.

P. 966, sec. 23, cl. (h). This does not apply to contracts to take shares, 13 Bom. 415, at p. 423.

P. 967, sec. 25. As to the effect, in a contract for the purchase of immoveable property, of words such as ‘Subject to the approval of an attorney,’ see 17 Cal. 925, per Pigot J.

P. 970, sec. 27, cl. (b), note 2, line 6, after 538 insert 4 Bom. 126: 9 Mad. 119: 13 Mad. 321, at p. 330.
— sec. 27, cl. (e). This does not apply to contracts to take shares, 13 Bom. 415, at p. 423.

P. 972, sec. 28, note 8. A contract may be specifically enforced against a party thereto, though its terms are to be ascertained by what passed while he was disabled from contracting, 17 Cal. 223.

P. 976, sec. 39. For an instance of a bare possibility not entitling the plaintiff to maintain a suit under this section, see 13 Mad. 549.
— note 4, insert *Bingham v. Bingham*, 1 Ves. Sen. 126 (mistake common to both parties, and entire failure of consideration).

P. 978, sec. 42. A suit will not lie to obtain a declaration that a decree of a subordinate Court was passed fraudulently. The plaintiff’s proper remedy is to obtain an injunction to restrain the decree holder from executing the decree, 14 Mad. 167.
— sec. 42. In every case under this section ‘the Court must exercise a sound judgment, as to whether it is reasonable or not, under the circumstances of the case, to grant the relief prayed for,’ 11 Ben. 171, at p. 190; 17 Cal. 933, at p. 936.
— sec. 42. ‘The intervention of two life-estates does not alter the nature of the reversionary interest which sec. 42 was intended to protect,’ 13 Mad. 195, at p. 197, following 10 Mad. 1, at p. 9, and L. R. 9 I. A. 53.
— sec. 42, proviso. Where an objection founded on this proviso has not been taken in the lower Courts, see 14 Mad. 46, following 13 Bom. 548. See also 14 Bom. 395.
— sec. 42, note 3, add See also 11 All. 253.

P. 983, sec. 54. Suits instituted under this section are not affected by the Central Provinces Municipal Act, XVIII of 1889, sec. 27.

P. 984, sec. 54, cl. (c). In determining whether pecuniary compensation is sufficient in any particular case, the rule is that damages should be given where the injury is not so serious that the property might not still remain the plaintiff's and be as sub-
stantially useful to him as before, 13 Bom. 674, at pp. 676–677, following Holland v. Worley, L. R. 26 Ch. D. 578, 587.

P. 987, sec. 54, ill. (v). For a case in which a perpetual injunction was granted restraining the printing or sale of a piracy of a selection of poems by deceased authors, see 17 Cal. 951.

— sec. 55. An action will not lie for damages for non-compliance with a mandatory injunction: the plaintiff has his remedy in execution, 13 All. 98.

P. 988, sec. 55, ill. (e), note 1, add As to when malice is presumed, see 12 Mad. 374, at p. 378.

P. 990, sec. 57, ill. (d). But the negative clauses in an apprenticeship-deed will not be enforced by injunction, De Francesco v. Barnum, 43 Ch. D. 165, 45 Ch. D. 430.


— sec. 57, note 5, add See 14 Mad. 18.

P. 991. The schedule is repealed by Act XII of 1891.

THE CODE OF CRIMINAL PROCEDURE.

Vol. II, p. 16, after l. 9 insert XI of 1890, sec. 9 (Prevention of cruelty to animals).

P. 20. As to compounding offences under the Forest Act, see Act V of 1890, sec. 20.

P. 36, l. 39, for ‘and limitation’ read ‘pardon and limitation, and the consequences of not specifically pleading them.’

P. 59, sec. 2, note 4, add As to the Agency tracts of Vizagapatam and Ganjam, see 14 Mad. 121. As to the Laccadive Islands, 13 Mad. 353.

P. 60, sec. 1, cl. (b) is repealed by Act XIII of 1889, sec. 2; dele note 4.

P. 62, cl. (d), note 2, add But it includes a proceeding under the Reformatory Schools Act, V of 1876, sec. 8.

P. 66, sec. 12. The Cantonment Magistrate shall be a Magistrate appointed by the Local Government under this section, and as such, subordinate to the District Magistrate, or to the District Magistrate and the Subdivisional Magistrate, as the case may be, under sec. 17. (Act XIII of 1889, sec. 7.)

P. 74, sec. 35, ‘distinct offences.’ See an illustration, 11 All. 393.
P. 93. The provisions of the Code relating to searches apply, so far as they can be made applicable, to searches under the Prevention of Cruelty to Animals Act, XI of 1890, sec. 8.

— sec. 96. In issuing warrants under this section the Court may act upon information which it considers credible, provided there is a complaint before it, and the complainant is duly examined. The Court need not wait until a preliminary enquiry is held and all the witnesses for the prosecution are examined and cross-examined, 13 Mad. 18.

P. 95, sec. 100. The power conferred by this section on a magistrate of the first class may be exercised by the District Court for the purpose of arresting a ward who leaves or is removed from the custody of a guardian of his person, Act VIII of 1890, sec. 25, cl. (2).

P. 107, sec. 133. As to the mode of serving notice of orders under this section, see 12 Mad. 475, at p. 477.

— As to the application of secs. 133-142 to proceedings under the Central Provinces Municipal Act for sanitary and other purposes, see Act XVIII of 1889, sec. 86, cl. (2).

— note 3, add So where a bond fide question as to the way being public is raised, 17 Cal. 562, following 15 Cal. 564.

P. 109, sec. 136. To ensure the public safety, the conditional orders which magistrates are authorized to pass under chapter X should become final without needless delay. Hence the stringency of this section, 12 Mad. 475, 478.

P. 111, sec. 144. The magistrate’s power under this section is confined to the direction to a particular person to abstain from acts of a certain character, or to the public generally to abstain from similar acts when frequenting a particular place. A proclamation forbidding the inhabitants of a certain town to hold caste-feasts is not authorised by the section, 14 Bom. 165.

P. 112, sec. 145, note 6, line 4, after 413 insert 16 Cal. 513.

P. 113, sec. 145, note 2, ‘then in such possession.’ See 15 Bom. 152.

— sec. 147. Where the matters in dispute are not adjudicable by a civil court—such, e.g. as trivial questions of dignity or privilege—the magistrate should not make an order under this section; but when he apprehends a breach of the peace, he should act under the provisions of chap. viii of the Code, 14 Bom. 25.

P. 118, sec. 161, see 16 Cal. 349.

P. 119, sec. 164. Statements recorded under this section are
not a portion of the police-diaries mentioned in sec. 172, and the accused when on his trial may call for them, and cross-examine thereon the witnesses for the prosecution, 16 Cal. 610.

P. 128, sec. 182. - The expression 'local area' here means a local area in which the Code is in force, 16 Cal. 667.

P. 130, sec. 188, first proviso. The certificate of the Political Agent (if there be one) is an indispensable preliminary requisite to the institution of proceedings under this section, and its absence cannot be cured under sec. 532, or by an ex post facto certificate, 13 Mad. 423, following 5 Mad. 23.

P. 131, sec. 191, l. 2, between 'District Magistrate' and 'Subdivisional,' Act XII of 1891 inserts 'or.'

P. 133, sec. 195. The 'Court' in this section, whose previous sanction is required, includes a tribunal empowered to deal with a particular matter and authorised to receive evidence bearing on that matter in order to enable it to arrive at a determination, 17 Cal. 872, at p. 875. It therefore includes a Collector acting under secs. 69, 70 of the Bengal Tenancy Act, ibid.

— When a subordinate Court grants a sanction under this section, it should frame the record so as to enable the High Court to satisfy itself whether the sanction has been properly granted or not, 16 Cal. 661.

— cl. (c). The granting, under this clause, of a sanction to a private person does not debar a civil Court from proceeding under sec. 478, 13 Bom. 384.

— note 6. As to whether a Sub-Registrar is a 'Court,' 12 Bom. 36 conflicts with 10 Mad. 154, and see 11 Mad. 3: 12 Mad. 201.

P. 134, sec. 196. A prosecution for an offence against the Indian Official Secrets Act, 1889, shall not be instituted except by or with the consent of the Local Government or of the Governor-General in Council, Act XV of 1889, sec. 5.

Pp. 136–137, secs. 200–203. Under these sections a magistrate must dismiss a complaint in three cases: (1) if he, upon the statement of the complainant (i.e. the complaint) finds that no offence has been committed; (2) if he distrusts the truth of the statement; and (3) if after further enquiry, he holds that there is not sufficient ground for enquiry, 13 Bom. 600, at p. 603, following 14 Cal. 141.

P. 137, sec. 203, note 5, add In exercising that discretion the magistrate ought not to allow himself to be influenced by considerations (such as the complainant's motive) outside the facts adduced by the complainant in support of his complaint, 13 Bom. 590, at pp. 597, 598.
P. 138, sec. 206, l. 2. After 'Subdivisional Magistrate,' Act XII of 1891 inserts 'or.'

P. 152, sec. 243. It is extremely improper for the magistrate, in disposing of the case, to rely in any way on statements made to him out of court, 14 Bom. 572; and yet this elementary rule is not contained in the Evidence Act.

P. 154, sec. 248. This applies only to a summons-case, 13 Bom. 600, 603.

Pp. 154, 155. Sec. 250 is repealed by Act IV of 1891, sec. 1. See infra p. 70 for the new section (561) substituted for sec. 250.

P. 157, sec. 260. That for the purposes of this section the offence is not necessarily determined by the complaint, see 16 Cal. 715, at p. 722.

P. 158, sec. 260. Offences punishable under sec. 2 of Act XIII of 1859 (to provide for the punishment of breaches of contract of artificers, workmen, and labourers in certain cases) are triable under this section, 11 All. 262.

P. 167, sec. 292. Where during the cross-examination of the witnesses for the prosecution, and before the accused is asked under sec. 289 whether he means to adduce evidence, he puts in documentary evidence on his behalf, this does not entitle the prosecutor to reply, 17 Cal. 930, following 14 Cal. 245, but dissenting from 11 Mad. 339.

—— note 2, l. 4, after 245 insert 14 Bom. 436.

P. 168, sec. 297, note 2. Omission to caution the jury not to accept an approver's evidence unless it is corroborated amounts to a misdirection, 12 Mad. 196.

P. 172, sec. 307. The Sessions Judge should exercise his power to refer whenever he thinks that the verdict is not supported by the evidence. 'It is the only way in which the miscarriage of justice by a perverse verdict of a jury, which is of too frequent occurrence, can be remedied by the High Court,' 13 Mad. 343. But see 14 Mad. 36, where the Sessions Judge disagreed with the verdict, but did not refer the case to the High Court, there being some credible evidence against the accused.

P. 174. To sec. 310, Act III of 1891, sec. 9, adds the following:

'Notwithstanding anything in this section, evidence of the previous conviction may be given at the trial for the subsequent offence, if the fact of the previous conviction is relevant under the provisions of the Indian Evidence Act, 1872.'

—— Section 311 is repealed by Act XII of 1899.

P. 182, sec. 337, second clause. The words 'Every person
accepting a tender under this section shall be examined as a witness in the case,' mean that for all purposes (subject to failure to satisfy the conditions of his pardon as provided for by sec. 339) such person ceases to be triable for the offence or offences under enquiry or (looking again to sec. 339) for 'any other offence of which he appears to have been guilty in connexion with the same matter,' while 'making a full and true disclosure of the whole of the circumstances within his knowledge relative' to the offences directly under inquiry, 11 All. 79, at p. 89, per Straight J.

P. 193, sec. 364. The provisions of this section read with sec. 164 are imperative as to the language in which a confession is to be recorded, and sec. 533 does not contemplate or provide for any non-compliance with the law in this respect, 17 Cal. 862, at p. 870.

P. 194, sec. 367, l. 5, 'the reasons for the decision,' see 15 Bom. 11, 12.

P. 195, sec. 369. As to the High Court's power under its Letters Patent to review cases and alter sentences, see 17 Cal. 642.

P. 202, sec. 395, l. 7. In this section 'imprisonment' means a substantive sentence of imprisonment, and not imprisonment for default in paying a fine, 11 All. 308.

P. 209, sec. 411. No combination of the sentences of imprisonment and fine can give an appeal under this section, 16 Cal. 799, 801.

P. 210, sec. 417, note 2, add. Except as regards limitation, the procedure on appeals from acquittal, and the principles on which they are decided, are the same as the procedure and principles applicable to appeals from conviction, 17 Cal. 485.

P. 211, sec. 423, l. 4, 'if he appears,' i.e. if either the appellant or his pleader appears, 13 All. 171, dissentiente Mahmud J.

— sec. 423. The Appellate Court cannot order under this section a security-bond to be taken, 16 Cal. 779.

P. 215, sec. 435, l. 4, 'any proceeding.' This includes proceedings under the Reformatory Schools Act, V of 1876, sec. 8: see 14 Bom. 381.

P. 216, sec. 436, see 18 Cal. 75.

P. 217, sec. 438, note 2, add. 18 Cal. 186.

— sec. 439. That the High Court, in the exercise of its revisional jurisdiction, will on very exceptional grounds (8 Bom. 197) interfere with the lower Courts' findings of facts, see 14 Bom. 331.
It refuses to interfere where the relief sought might be got from a lower Court of concurrent revisional jurisdiction, 14 Bom. 331, at p. 342, following 14 Cal. 887.

P. 217, sec. 439, note 7, see also 16 Cal. 730, at p. 739.

— sec. 439, note 10, add As Scott J. observed in a recent case (14 Bom. 115, at p. 118), 'to justify the interference of the Court in revision, it must be shewn first that the Judge below has committed some error in law; and, secondly, that the accused has been materially prejudiced by that error' (5 Bom. H. C. Cr. 85).

The High Court may also exercise its revisional power, even as regards findings of fact, in cases where the lower Court has totally misconceived the evidence and come to an obviously wrong conclusion' (8 Bom. 197: 11 Bom. H. C. 125: 4 Bom. H. C. Cr. 25).

'But it is only very extreme cases which justify such an interference with the appreciation of fact by the lower Court which heard the evidence, and the appellate Court which reconsidered its value. The words "material error" cannot be held to include error in the appreciation of evidence,' (2 Mad. 38). 'There must be a material error in law' (1 All. 139).

P. 223, sec. 452. 'The procedure on the trial shall be the same,' etc. This does not give the person not being an E. B. subject the right of appeal to the High Court under sec. 408, cl. (b): see 14 Bom. 160.

P. 231, sec. 476. This regulates the procedure when the accused is charged under sec. 175 of the Penal Code, 13 Mad. 24. As to the evidence which a Court ought to have before it when making an order under section 476, see 16 Cal. 730, at p. 740.

— The High Court has no power on appeal to set aside a complaint duly made by a subordinate Court under this section, 13 Mad. 144.

P. 232, sec. 480. The procedure prescribed by this section should be strictly followed, 11 All. 361.

P. 235, sec. 487, note 2, add 16 Cal. 766.

— sec. 488, 'any person having sufficient means:' this includes a Hindu not divided from his father, 13 Mad. 17.

— Bastardy proceedings under this section are in the nature of 'civil proceedings' within the meaning of sec. 120 of the Evidence Act, and the person sought to be charged is a competent witness in his own behalf, 16 Cal. 781.

P. 236, sec. 488, proviso. The word 'cruelty' here is not necessarily limited to personal violence, 11 All. 480, following
P. 238, sec. 491. An appeal lies (under cl. 15 of the Letters Patent of 1865) from an order discharging a rule obtained under this section, 14 Bom. 555.

P. 240, sec. 495. The manager of a railway administered by the Government as a Native State, and the Agent in India of a railway administered by a railway company, may by instrument in writing, authorize any railway servant or other person to act for and represent him in any criminal court, and notwithstanding this section, a person authorised by a Manager or Agent to conduct prosecutions on behalf of a railway-administration, may conduct such prosecutions without the Magistrate's permission, Act IX of 1890, sec. 145.

— The provisions of chap. xxxix apply, so far as may be, to bail given under the Indian Railways Act, IX of 1890, sec. 132.

P. 245, sec. 509. The Court cannot presume under the Evidence Act, sec. 80 or sec. 114, ill. (e), that the depositions of medical witnesses were taken and attested as required by sec. 509. To make such depositions admissible, the due taking and attesting must either appear from the magistrate’s record or be proved by witnesses, 18 Cal. 129.

P. 246. The provisions of chap. xlii apply, so far as may be, to bonds executed under the Indian Railways Act, 1890, sec. 132.

P. 248. The restoration of things seized under the Cantonment Act, sec. 15, and not confiscated under that section, is subject to the provisions of chap. xliii of the Code. See Act XIII of 1889, sec. 15.

P. 251, sec. 526, see 18 Cal. 247.

P. 253, sec. 527. For the purposes of this section the Court of the Recorder of Rangoon shall be deemed a High Court, Act XI of 1889, sec. 48.

P. 255, sec. 530, cl. (p), note 1. As to the duty of the trying Magistrate, when the evidence discloses a circumstance of aggravation, such as the use of a dangerous weapon, which makes the offence cognizable by a higher Court, see 13 Bom. 502, at p. 505.

— sec. 531. ‘Sessions Division, District, Sub-division or other local area,’ mean a Division etc. in which the Code is in force, 16 Cal. 667, 676.
THE CODE OF CRIMINAL PROCEDURE. 69

P. 256, sec. 533. This section does not authorize the Court to proceed as if there had been no recorded confession, or to treat such confession as non-existent: it clearly means that the evidence which is to be taken shall be evidence that the accused duly made the particular confession which was recorded and tendered, 17 Cal. 862, at p. 868.

P. 256, sec. 537. See an illustration, 11 All. 361.

P. 259, sec. 545. As to fines under the Cantonment Act, see Act XIII of 1889, sec. 21.

— sec. 545, note 4, l. 7, after 39 insert nor to his widow, 12 Mad. 352.

P. 260, sec. 549, lines 2 and 8, the figures 1881 are repealed by Act XII of 1891.

P. 261, sec. 551, l. 4. The words 'unlawful purpose' do not 'include purposes which, although not unlawful in themselves, might become so when entertained towards a child in opposition to the wishes of its guardian,' 16 Cal. 487, at p. 502. They simply mean the purpose of committing any of the offences against females mentioned in the Penal Code (secs. 366, 373, 375, 493, 497, 498).

— In sec. 552, par. 2, omit the words 'or complained against,' which are repealed by Act IV of 1891, sec. 3, and cancel note 3.

P. 262, sec. 555, l. 4, 'personally interested,' see 14 Bom. 572.

P. 263, sec. 555, expl. See the Central Provinces Municipal Act, XVIII of 1889, sec. 144, and the Cantonments Act, XIII of 1889, sec. 29.

— sec. 558 is repealed by Act XII of 1891.

— After sec. 559, Act IV of 1891, sec. 2 adds the following:—

560. (1) If, in any case instituted by complaint as defined in Frivolous or vexa-
nations in this Code, or upon information given to a police-officer or to a Magistrate, a person is accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is tried discharges or acquits the accused and is satisfied that the accusation against him was frivolous or vexatious, the Magistrate may, in his discretion, by his order of discharge or acquittal, direct the person upon whose complaint or information the accusation was made to pay to the accused, or to each of the accused where there are more than one, such compensation, not exceeding fifty rupees, as the Magistrate thinks fit:
Provided that, before making any such direction, the Magistrate shall—

(a) record and consider any objection which the complainant or informant may urge against the making of the direction, and,

(b) if the Magistrate directs any compensation to be paid, state in writing, in his order of discharge or acquittal, his reasons for awarding the compensation.

(2) Compensation of which a Magistrate has ordered payment under sub-section (1) shall be recoverable as if it were a fine:

Provided that, if it cannot be recovered, the imprisonment to be awarded shall be simple, and for such term, not exceeding thirty days, as the Magistrate directs.

(3) A complainant or informant who has been ordered under sub-section (1) by a Magistrate of the second or third class to pay compensation to an accused person may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(4) Where an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (3), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any compensation paid or recovered under this section.'

P. 263, after sec. 560, Act X of 1891 adds the following:—

'561. (1) Notwithstanding anything in this Code, no Magistrate except a Chief Presidency Magistrate or District Magistrate shall—

(a) take cognizance of the offence of rape where the sexual intercourse was by a man with his wife, or

(b) commit the man for trial for the offence:

(2) And, notwithstanding anything in this Code, if a Chief Presidency Magistrate or District Magistrate deems it necessary to direct an investigation by a Police-officer with respect to such an offence as is referred to in subsection (1) of this section, no Police-officer of a rank below that of Police Inspector shall be employed either to make, or to take part in, the investigation.'

P. 316. For the entry respecting sec. 376 of the Indian Penal Code, Act X of 1891 substitutes the following:—
**THE CODE OF CIVIL PROCEDURE**.

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P. 342, after l. 5, Act XII of 1891 inserts the following: '**(1 A)** Power to arrest, or direct the arrest, and to commit to custody a person committing an offence in his presence,' sec. 64.

**THE CODE OF CIVIL PROCEDURE**.

P. 390, note 8. The Indian Railways Act, IX of 1890, sec. 15, cl. (5), bars suits to recover compensation for trees felled, etc. under that section.

P. 391, note 9, add No suit will lie for costs incurred in defending a criminal prosecution except in the form of damages in a suit for malicious prosecution, 14 Bom. 100.

P. 393, l. 24, add i.e. a suit to enforce the right acquired by the plaintiff under the judgment.

— note 4. As to the necessity, in a suit on a foreign judgment, of proving actual notice to the defendant in the original suit, see 13 Mad. 496.

P. 401, note 2, add A suit will not lie for discovery only in aid of proceedings in a foreign Court, *Dreyfus v. Peruvian Guano Co.*, 41 Ch. Div. 151.

P. 402, l. 20, add Interrogatories in India should not be framed to anticipate or supply defects of pleading, or to ascertain the case of the other side. When the pleading of either party is too vague the Court may (sec. 112) call for a further written statement, or it may (sec. 146) frame and record issues till the case raised on each side is ascertained with sufficient clearness. A plaintiff may interrogate with a view to obtain information or admissions in
support of his own case, provided that he has already determined on that case and committed himself thereto. He cannot put fishing questions in order to try whether he can discover any flaw in the defendant's case or suggest any answer to it, 17 Cal. 840, at pp. 847, 848, per Wilson J.

P. 416, l. 32, add But instead of having proved a benefit to the judgment-debtor they have, in the opinion of an able and experienced judge (11 All. 100), 'tended to increase litigation, on the one hand, and to prevent the decree-holder from obtaining the fruits of his decree, on the other.'

P. 429, l. 22, after 'proceedings' insert the first three of which are

P. 431, l. 37, to 'inherited' add the following note: see 1 Cal. 303: 1 Mad. H. C. 429.

P. 432, l. 6, add This includes the removal of a trustee who has been guilty of a breach of trust.

P. 436, cl. (c). The rule is similarly stated in 12 Mad. 512, at p. 515; and see 17 Cal. 882, where the Judicial Committee obviously thought that the mere fact that a part of the evidence in the suit had not been considered by the lower Court would not prevent the ordinary rule from applying when both Courts have arrived at the same result,

P. 469, sec. 2, note 1. That an official trustee is a 'public officer,' see 12 Mad. 250.

P. 471, sec. 6, cl. (a) is repealed by Act XIII of 1889, sec. 2.
— cl. (d). For 'Maulmain, Akyab or Bassein,' Act XII of 1891 substitutes 'or Maulmain.'

— sec. 6. That the word 'suits' in the last clause of this section includes proceedings in execution, see 16 Cal. 457, 465.

P. 473, sec. 11, 'suits of a civil nature.' This includes a suit by a Brahman (who had married a widow) against the committee of a temple for excluding him from the inner shrine, 13 Mad. 293.

— sec. 11. That a suit for an office (as distinguished from a mere dignity) will lie, even though the office be a religious one, to which no fixed fees are attached, see 13 Bom. 429.

— sec. 11, note 1, l. 11 insert suit to declare the plaintiffs' right to officiate in alternate years, as priests in a temple, and receive the offerings to the idol, 13 Bom. 548 (following 1 Bom. H. C. 12).

— note 1, col. 2, l. 4, add for obstructing a highway unless special damage is proved, 14 Mad. 177, at p. 180, following 9 Mad. 463 and 2 Bom. 457.
P. 474, sec. 11, expl., note 2. Goats offered out of the funds of a temple, and sacrificed monthly in the temple, are 'property,' 17 Cal. 906.

— sec. 12, note 4, add As the relief claimed in the two suits must be the same, the pendency of a suit regarding rent or other demand for one year does not bar a suit between the same parties in which the same demand is made for a subsequent year, 11 All. 148.

— sec. 13. Though the decision of a Revenue Court is no bar to a suit brought in the regular Courts, the doctrine of res judicata is applicable to Revenue Courts, see 13 Mad. 287.

A decision is res judicata though it wrongly dismisses the plaintiff's whole claim, instead of granting him relief in respect of a fractional interest to which he was entitled, 11 All. 187.

P. 475, sec. 13. That a decree in a suit by a karnam as such binds his successor, see 12 Mad. 235.

— sec. 13, note 3, add But when the judgment of a Court of first instance upon a particular issue is appealed against, that judgment ceases to be res judicata and becomes res sub judice, 6 Bom. 110, and see 11 All. 148, 161.

— sec. 13, note 6, col. 2, l. 3, after dismissed insert as premature, 12 Mad. 500, or

— sec. 13, note 6, col. 2, l. 6, 'finally decided.' The dismissal of a suit on the plaintiff's failure to pay a fee for the appointment of a commissioner to value the land in dispute is not res judicata, 13 Mad. 510.

— sec. 13, expl. I. 'The mere statement of an alleged rate of rent in the plaint in a rent-suit in which an ex parte decree is made is not a statement as to which it must be held that an issue . . . was raised between the parties so that the defendant is concluded upon it by such decree,' 16 Cal. 300, at p. 306.

— sec. 13, expl. II. See an illustration in 13 Bom. 567 (mortgagee neglecting to have a provision for sale inserted in the decree in the redemption-suit). See also 14 Bom. 31: 16 Cal. 682.

P. 476, sec. 13, expl. IV, note 3. When the previous suit is in the nature of a small cause suit in which there is no right of second appeal, the decision in that suit cannot operate as res judicata, 15 Bom. 104.

P. 477, sec. 15. This section does not preclude a subordinate Judge from trying a suit within the jurisdiction of the Munsif's Court, 17 Cal. 155.

— sec. 15. 'Court of the lowest grade.' This refers only to
Courts to which the Code is applicable. Hence in Madras the Small Cause Courts have concurrent jurisdiction with Courts of Village Munsifs (see sec. 6, cl. c) to hear suits which are cognizable by the latter, 13 Mad. 145.

P. 478, sec. 16, note 3, add The High Courts have all the powers of a Court of Equity in England for enforcing their decrees in personam. They can, therefore, decree specific performance of contracts relating to land situate outside their original jurisdiction and realize mortgage-debts by sale of such land, 14 Bom. 353, dissenting from 5 Cal. 82.

P. 479, sec. 17. As to the meaning of 'carry on business' and 'personally work for gain,' see 14 Bom. 541, at p. 547 et seq., 553; 554.

P. 482, sec. 25. This section applies only to suits pending in subordinate Courts. A District Judge, therefore, having once transferred a suit to his own Court, has no power to re-transfer it, 13 Bom. 654.

— sec. 25. The provision as to notice is merely matter of procedure. When an order under this section is made without the requisite notice, the defect may be cured by waiver, 13 Mad. 211.

P. 484, sec. 29, note 7, add and see 16 Cal. 804, where drawer, acceptor and endorser were co-defendants.

P. 485, sec. 30. This requires the Court to exercise a judicial discretion in permitting some definite person or persons to sue or be sued on behalf of all the persons interested. The notice of the institution of the suit should include notice of the names of the person or persons so permitted, 17 Cal. 910, 911.

— sec. 30, note 1, line 6, add 11 All. 18.

— sec. 31, see 14 Mad. 103.

P. 486, sec. 32. A person may be added as defendant though no relief had been prayed against him, 13 Mad. 32.

P. 490, sec. 43. See illustrations, 10 Mad. 347: 12 Mad. 285.

— sec. 43. Under this section the plaintiff is only bound to include the whole of the claim which he is entitled to make in respect of the cause of action, 4 Mad. 308, at p. 310. Hence failure in a suit of simple ejectment does not bar a suit to redeem (11 Bom. H. C. Rep. 224, at p. 230), and, conversely, failure in a suit to redeem does not bar a suit to eject, 13 Bom. 326.

— sec. 43, para. 2. See 14 Mad. 23.

P. 492, sec. 45, para. 1. See an illustration, 12 Mad. 234.

— sec. 45, note 3, add see also 11 All. 33.
P. 495, sec. 51, note 2, col. 2, l. 2, after 100 insert But there is no rule that a person named as a co-plaintiff is not to be treated as a plaintiff unless he signs and verifies the plaint, 17 Cal. 580.

P. 496, sec. 53, note 9, l. 5, add or a suit for a declaration that a decree was passed fraudulently into a suit for an injunction to restrain the decree-holder from executing the decree, 14 Mad. 167, 168.

P. 497, sec. 54. Notwithstanding the Court Fees Act (sec. 12), there is an appeal in every case falling within sec. 54, 11 All. 91, and see 6 Cal. 249.

— sec. 54, cl. (b), note 2, add 13 Bom. 517.


P. 511, sec. 111. As to cross-demands arising out of a transaction connected with the suit, but not amounting to a set-off, see 16 Cal. 711.

P. 512, sec. 111, last paragraph, note 5, add A written statement containing a claim of set-off is chargeable with the court-fee which would be payable on a plaint of that nature, 13 Bom. 672, following 8 All. 396.

P. 516, sec. 121. In England it has been held that an infant, whether plaintiff or defendant, cannot be compelled to answer interrogatories, Mayor v. Collins, 24 Q. B. D. 361. It is to be hoped that the Indian judges will not follow this decision.

P. 519, sec. 129. As to the conclusiveness of affidavits of documents, see Morris v. Edwards, 15 App. Cas. 309.

P. 526, sec. 149, note 3, add The Court's power to frame additional issues is co-extensive with its power to amend plaints, and is subject to the same restrictions, 13 Bom. 664.

P. 529, sec. 159. Under this section a party to the suit is entitled, as of right, to summonses to witnesses any time before the day fixed for the disposal of the suit, 15 Bom. 86.

P. 541, sec. 206. A decree in a suit on a bill of exchange against drawer, acceptor and endorser cannot direct that execution shall not issue against the endorser until the plaintiff has exhausted his remedy against the drawer and acceptor, 16 Cal. 804.

— sec. 206, note 7. The amended decree must be taken as in force from the date of the original decree, 14 Mad. 150, at p. 152; but see sec. 32.

P. 542, sec. 209. A plaintiff seeking to redeem a mortgage prior to the suit must pay the interest at the rate agreed on in the
mortgage. Sec. 209 gives no authority to reduce the interest to the court-rate, 18 Cal. 164, at p. 180.

P. 542, sec. 209, note 4, add But see 3 Mad. 125: 12 Mad. 485 (dissenting from 12 Cal. 569) and 3 All. 107.

P. 543, sec. 211, note 6, add Section 211 is permissive, not obligatory. As to the separate suit for mesne profits from date of suit to delivery of possession, see sec. 244 infra, and 17 Cal. 968.

P. 544, sec. 214. As to pre-emption decrees, see 13 All. 189, 191.

P. 547, sec. 223, par. 2, ‘another Court,’ i.e. another Court having jurisdiction and competent to execute that decree, having regard to the amount or value of the subject-matter of its ordinary jurisdiction, 16 Cal. 465, dissenting from 7 Mad. 397.

— sec. 223, note 3, add It is clear that a Court has no jurisdiction, in execution of a decree, to sell property which, at the date of the order of sale, was outside the local limits of its jurisdiction, 17 Cal. 699, following 12 Cal. 225. (S.C.L.R. 12 I.A. 215).

P. 548, sec. 223, note 2, add But the Calcutta High Court dissents from this decision, holding that a Civil Court cannot execute a decree sent to it for that purpose under sec. 223, when that decree has been passed in a suit the value or amount of the subject-matter of which exceeds the pecuniary limits of its ordinary jurisdiction, 16 Cal. 457 and 465, and see 12 Bom. 155.

P. 549, sec. 224, cl. (c), 1. i, ‘order,’ i.e. subsisting order, 13 Bom. 371.

— sec. 226. Where a Court makes an order for execution of a decree and transmits the decree for execution to another Court, the latter Court has no power to determine whether execution is barred by limitation, 15 Bom. 28, and see 8 Cal. 51. (S.C.L.R. 8 I.A. 123). Otherwise where the transmitting Court has made no order for execution but has merely sent the decree and the certificate of non-satisfaction, 15 Bom. 28: 5 Cal. 897.

P. 550, sec. 230. An application to the Court which passed a decree for a certificate to enable the decree to be executed in another Court is not an application for execution within the meaning of this section, 16 Cal. 744.

— note 6. The ‘granting’ of an application under sec. 230 includes the issue of process for execution, 16 Cal. 744.

P. 551, sec. 231. As to joint decree-holders, see 13 Mad. 347.

— sec. 232. This section applies to the transfer of a portion, as well as to that of the whole, of a decree, 17 Cal. 341.
P. 551, sec. 232. There is no appeal from an order rejecting an application under this section, 11 Cal. 150: 12 Mad. 511.

— sec. 232, l. 2. A transfer 'by operation of law' includes a succession, 16 Cal. 347.

P. 552, sec. 234, note 5, l. 5, after 479 insert But not a Hindú son in whom ancestral property has vested by survivorship upon the death of his father the judgment-debtor, 13 Mad. 265.

P. 554, sec. 237, note 6, add If the application omits such a description, it is an application within the meaning of sec. 230, but it is one which cannot be carried out without amendment, and no such amendment can be made after the application has been admitted and registered under sec. 245, 17 Cal. 631, overruling in this respect 14 Cal. 124.

P. 556, sec. 244. This section 'must be taken to relate to decrees which are still subsisting in force, and which have not been superseded in appeal, and to be no bar to the institution of a suit for restitution after the decree has been reversed,' 13 Mad. 437, at p. 441, following 10 Moo. I.A. 203.

— sec. 244, cl. (c). The question whether the legal representative of the judgment-debtor has or has had assets comes within this clause, 17 Cal. 711, at p. 714, following 16 Cal. 1.

— cl. (c). This includes a question whether certain property is liable to be sold in execution of the decree, 16 Cal. 603.

— cl. (c). When circumstances affecting the validity of a sale have been brought about by the fraud of one of the parties to a suit, and give rise to a question between those parties such as, apart from fraud, would be within the provisions of sec. 244, a suit will not lie to impeach the validity of the sale on the ground of such fraud, 17 Cal. 769, Ghose J. dissenting.

— note 13, add That a purchaser at an execution-sale is not a 'representative' of the judgment-debtor, see 16 Cal. 355.

P. 558, sec. 246. As to setting-off one decree against the unexecuted portion of another decree which has been assigned, see 16 Cal. 619.

P. 561, sec. 253. This rule applies not only to decrees of Courts of first instance but also to decrees in appeal. See sec. 583 infra, 12 Bom. 411, and 13 Mad. 1.

P. 562, sec. 257A. This applies only to agreements between the parties to the suit or decree, 13 Bom. 671. The judgment-debts are those which are still enforceable, not those which are barred by limitation, 14 Bom. 390.
P. 562, sec. 257 A, note 5, add And see 16 Cal. 504: 12 Mad. 61: and 7 All. 124.

P. 563, sec. 258. *Semble* an appeal lies against an order dismissing an application under this section that the adjustment of a decree be recorded as certified, 14 Mad. 99.

P. 564, sec. 260, note 1, col. 2, l. 9, *after* 149 insert followed in 17 Cal. 670.

P. 565, sec. 261, 1. i, "conveyance," i.e. such an instrument as may be necessary to transfer the judgment-debtor's interest, if any: see 16 Cal. 330.

P. 567, sec. 265. The Collector acting under this section is merely a ministerial officer of the Court, and cannot, directly or indirectly, contravene its command, 11 Bom. 662: 12 Bom. 376: 14 Bom. 450.

— sec. 266, 1. 8, "saleable property." This includes an unascertained interest in a partnership, 13 Mad. 447, dissenting from 5 Ben. 382 and 14 Cal. 384.

P. 568, sec. 266, 1. 3. That letters in the post-office are held by the postmaster on behalf of the addressee, see 13 Mad. 242, at p. 247.

The Railway Act, IX of 1890, sec. 136, exempts from execution the rolling-stock, machinery, plant, tools, fittings, materials or effects, used or provided by a railway administration for the purpose of the traffic on its railway or of its stations or workshops, unless with the previous sanction of the Governor General in Council.

P. 569, sec. 266, cl. (g), As to 'political pensions' see 18 Cal. 216, at p. 223: L. R. 17 I. A. 181, following L. R. 16 I. A. 175. Clause (g) was not meant to cover pensions payable by foreign States when remitted for payment to their pensioners in India, L. R. 17 I. A. 186.

— sec. 266, cl. (h). The percentage received by a *khot* for collecting the assessment on *dhāra* lands is not 'salary,' nor is the *khot* a 'public officer,' 13 Bom. 673.

— cl. (h), 'expectancy,' see 18 Cal. 164, at p. 177, S. C. L. R. 17 I. A. 201.

— cl. (i). For 'Native,' Act XII of 1891 substitutes 'Indian.'

P. 570, sec. 268, cl. (a). This does not mean that while a debt is under attachment the person to whom the debt was originally owing is barred from bringing a suit in respect of it. What clause (a) prohibits is the recovery of the debt and the payment of it by the debtor to the creditor, 13 All. 76.
P. 573, sec. 272, note 1, add That letters in the post-office addressed to a judgment-debtor may be attached on the application of the decree-holder, see 13 Mad. 242.

P. 575, sec. 278. This section must be read with sec. 281. As to the duty of the Court under sec. 278, see 18 Cal. 290, at p. 295.

P. 576, sec. 281. As to the effect of an order under this section, see 17 Cal. 290, at p. 295.

— sec. 283. See 11 All. 74. As to the court-fee payable on the plaint and memorandum of appeal under this section, praying (a) for a declaration of right to certain property, and (b) that the said property may be released from attachment in execution of a decree, see 11 All. 365.

— sec. 283. ‘The party against whom an order ... is passed,’ see 13 Mad. 366, 368.

— sec. 283, l. 5. The conclusiveness exists only as to the particular property in dispute, 14 Bom. 209, at p. 212.

— sec. 283, note 6, add 17 Cal. 262.

P. 577, sec. 287. The proclamation of the time and place of sale and the holding of the sale at such time and place are conditions precedent to the sale being a sale under the Code, 16 Cal. 794, at p. 798.

P. 580, sec. 293. An order made under this section is appealable, 16 Cal. 535. It is an order on one of the questions contemplated by sec. 244, cl. (c), and such orders are ‘decrees’ within the definition of ‘decree’ in sec. 2.

— sec. 293, note 2, add 5 Bom. 575: 12 Mad. 454.

P. 581, sec. 295, ‘Whenever assets are realized,’ i. e. so realized as to be available for distribution among the decree-holders, 18 Cal. 242, at p. 245.

P. 586, sec. 306, note 2, add Until the whole purchase-money has been paid in, neither the decree-holder nor any other attaching creditor has any interest in this deposit, 18 Cal. 242, at p. 246.

P. 587, sec. 311, ‘material irregularity’ includes ‘illegality,’ 11 All. 333.

— sec. 311, note 5. Disparaging remarks made by the bystanders or by purchasers other than the decree-holder are not ‘a material irregularity,’ 17 Cal. 152.

— sec. 312, note 8. For the second sentence read An appeal now lies from such order under Act VII of 1888, sec. 55, cl. (2): 16 Cal. 429.

P. 589, sec. 316, note 2. The application for the certificate
may be oral, and if it is in writing, it need not be stamped, 13 Bom. 670.

P. 591, sec. 321, note 2, add A civil court cannot entertain an application to set aside, on the ground of material irregularity within the meaning of sec. 311, a sale held by the Collector under sec. 321, 11 All. 94, following 5 All. 314, and distinguishing 9 All. 43.

P. 599, sec. 331. The investigation of claims under this section is not limited to the fact of possession. Any question of title arising between the contending parties in connexion with their right of possession may be finally decided in such investigation as in an ordinary action of ejectment, 14 Bom. 627, at p. 632.

— sec. 331, last paragraph. As to the Court to which an appeal lies from an order under this section, see 13 Mad. 520.

— sec. 332. See an illustration, 12 Mad. 211.

P. 600, sec. 334, see 13 Mad. 504, at p. 507.

P. 604, sec. 342, note 4, add The Court cannot fix any period for the imprisonment of a judgment-debtor under this section, 13 Mad. 141.

P. 605, sec. 344. That the surety for a judgment-debtor is released when the latter applies under this section, see 13 All. 100 following 15 Cal. 171.

P. 608, sec. 352. As to the case where a creditor omits to come in and prove his debt, see 16 Cal. 592, at p. 595.


P. 615, sec. 367. See 15 Bom. 145.

P. 616, sec. 368. For an illustration of 'sufficient cause,' see 11 All. 408.

P. 618, sec. 373, see an illustration, 15 Bom. 160.

— note 4, para. 1, add and so 18 Cal. 322, dissenting from 8 All. 82.

P. 619, sec. 375, note 2, add In execution-proceedings 'suit' is = 'execution of decree,' 11 All. 228, at p. 232.

P. 621, sec. 380, note 5, add A bond given under the orders of a Court as security by one party for the costs of another is subject to an ad valorem stamp under the Stamp Act, sch. I, art. 13, and a court-fee of eight annas under the Court-fees Act, sch. II, art. 6, 11 All. 16.
P. 627, note 1, add As to the costs of a commission to take evidence in England, see 15 Bom. 209.

P. 631, sec. 411. See 14 Mad. 163.
— sec. 412. This section does not apply when the pauper compromises with the defendants, and asks that the suit be dismissed, 15 Bom. 77.

P. 633, sec. 424. To entitle the Collector to notice under this section there must be a distinct act by him which is complained of, 13 Bom. 343, following 11 Mad. 317 and 7 Cal. 499.
— As to notice to public officers, see also 14 Bom. 395.

P. 637, sec. 434 (now 239 b). The Court has a judicial discretion as to whether it will put in force the provisions of this section. Decrees falling under it are still foreign judgments, 15 Bom. 216.

P. 638, sec. 437. See 13 Mad. 197, at p. 206.

P. 639. To sec. 440, the Guardians and Wards Act, VIII of 1890, sec. 53, adds the following:—

‘If a minor has a guardian appointed or declared by an authority competent in this behalf, a suit shall not be instituted on behalf of the minor by any person other than such guardian except with the leave of the Court granted after notice to such guardian and after hearing any objections which he may desire to make with respect to the institution of the suit, and the Court shall not grant such leave unless it is of opinion that it is for the welfare of the minor that the person proposing to institute the suit in the name of the minor should be permitted to do so.’

— sec. 441. See 16 Cal. 771 (application by next friend for transfer of suit when no guardian ad litem has been appointed).

P. 640, sec. 443. The second paragraph is repealed by Act VIII of 1890, sec. 2, and sec. 53 of that Act adds the following:—

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

— sec. 445. That a married woman may act as next friend, see 17 Cal. 488, overruling 11 Cal. 733.
— sec. 446. To this section Act VIII of 1890 adds the following clause:—

‘If the next friend is not a guardian appointed or declared by
an authority competent in this behalf, and an application is made
by a guardian so appointed or declared who desires to be himself
appointed in the place of the next friend, the Court shall remove
the next friend unless it considers, for reasons to be recorded by
it, that the guardian ought not to be appointed the next friend of
the minor.'

P. 643, sec. 461. For this section Act VIII of 1890 substitutes
the following:—

461. (1) A next friend or guardian for the suit shall not, with-
out the leave of the Court, receive any money or other moveable
property on behalf of a minor, either—
(a) by way of compromise before decree or order, or
(b) under a decree or order in favour of the minor.
(2) Where the next friend or guardian for the suit has not been
appointed or declared by competent authority to be guardian of
the property of the minor, or having been so appointed or declared,
is under any disability known to the Court to receive the money
or other moveable property, the Court shall, if it grants him leave
to receive the property, require such security and give such direc-
tions as will, in its opinion, sufficiently protect the property from
waste and ensure its proper application."

— sec. 462. As to the consent of the guardian of a minor de-
fendant to accept the plaintiff's oath, see 12 Mad. 483.

— sec. 462, note 5, add 12 Mad. 503.

P. 644, sec. 463, note 1, add See also 13 Bom. 656.

— For sec. 464, Act VIII of 1890 substitutes the following:—

464. Nothing in this chapter applies to a Sovereign Prince or
ruling Chief suing or being sued in the name of his State, or being
sued by direction of the Governor-General in Council, or a Local
Government, in the name of an agent or in any other name, or
shall be construed to affect, or in any way derogate from, the pro-
visions of any local law for the time being in force relating to
suits by or against minors or by or against lunatics or other persons
of unsound mind.

P. 645, sec. 468, line 1. The words 'an officer or' are repealed
by Act XIII of 1889, sec. 2.

— sec. 469 is repealed by Act XIII of 1889, sec. 2. Rules as
to service of summonses, etc. in cantonments are made by the
Governor-General in Council under sec. 26, cl. (29) of the same
Act.

P. 651, sec. 483, last par. Hence it follows that the illegal
attachment of the defendant's property is the direct act of the
plaintiff, for which he becomes immediately responsible in law, 17 Cal. 436, at p. 443. Otherwise in England, Walker v. Olding, 1 H. & C. 621.

P. 652, l. 6. For 'seem' Act XII of 1891 substitutes 'same.'

P. 653, sec. 491: see an illustration, 15 Bom. 160.

P. 654, sec. 493. See a case in which the Madras High Court granted an injunction to restrain the defendant from breaking a contract for personal service, which extended over more than three years, and which provided a penalty for non-performance, 14 Mad. 18.

P. 655, sec. 494. Orders under this section are not appealable, 12 Mad. 186.

P. 658, sec. 503. A receiver can be appointed upon an interlocutory application in a suit for foreclosure or sale of mortgaged property, 14 Bom. 431.

—The Code is silent as to the removal of receivers once appointed. This is 'entirely a matter of discretion with the Court,' 13 Mad. 390, at p. 394, per Sir Barnes Peacock.

—sec. 503, l. 3. In a suit for partition of a joint-estate, the words 'property . . . the subject of a suit' mean the whole joint-estate, and in clause (d), 'the owner' means the whole body of persons to whom the joint-estate belongs, 17 Cal. 614.

—sec. 503, note 2, for Mere refusal . . . Otherwise read Refusal to make such order is appealable, 10 Mad. 179 (overruling 6 Mad. 356): 17 Cal. 680.


—sec. 508. This section is not merely directory, it is mandatory and imperative, L. R. 18 I.A. 57, per Lord Morris.

P. 661, sec. 510, note 6, l. 3, insert 18 Cal. 324.

P. 662, sec. 514. When once the award is made and delivered, the power of the Court under sec. 514 is spent, L. R. 18 I.A. 55, at p. 58, approving 8 All. 548.

P. 663, sec. 516, note 4, add As to the jurisdiction of the Court to compel the arbitrators to give up exhibits and return records, see 17 Cal. 832.

P. 666, sec. 523, note 1, add But where the submission has been revoked on good grounds, such as long and unreasonable delay, the Court cannot order it to be filed, 17 Cal. 200.

—sec. 525. When the award is lost, a Court acting under this
section cannot take secondary evidence of its provisions and pass a
decree accordingly, 12 Mad. 331.

P. 666, sec. 525, note 5, *add* The Court before entertaining an
application under this section should satisfy itself that it has juris-
diction, and for that purpose take evidence as to the value of the
property, 16 Cal. 482, at p. 486.

P. 671, sec. 539. This section does not apply to a suit brought
by the trustees of a religious endowment to eject persons in wrong-
ful possession of the trust property, 15 Bom. 148.

—sec. 539, l. 2, ‘public charitable or religious purposes,’ see
14 Mad. 1.

P. 672, sec. 539. Under the clause providing for ‘further or
other relief,’ a suit lies to remove a trustee for breach of trust, 14
Mad. 356, dissentiente Mutusvámi Ayyar. As to the words ‘such
further or other relief, etc.,’ see also 11 All. 18, at p. 25.

—sec. 539, the last paragraph is repealed by Act XII of 1891.

P. 674, sec. 542, note 3, *add* Where an objection to the juris-
diction was not taken in the Court below, but was apparent on the
face of the plaint, the High Court considered it, 13 Mad. 25.

P. 675, sec. 544, note 3, *add* 11 All. 35, at p. 39, per Mah-
mud J.

P. 676, sec. 549. See 13 Bom. 458, at p. 461.

P. 677, sec. 549. That the Court has discretion to enlarge the
time allowed for finding security, or to accept another security in
lieu of that rejected, see 17 Cal. 1, per Lord Watson.

—sec. 549, note 1, l. 5, *after* 164 insert 17 Cal. 516. Such
power may be exercised after, as well as before, the time first fixed
has expired, 17 Cal. 512, (S. C. L. R. 17 I. A. 1), per Sir R. Couch,
overruling in this respect 1 All. 687.

P. 679, sec. 559. The power given by this section to make a
person a respondent is not affected by the Limitation Act, 13 All.
78, at p. 83, following 9 Cal. 355.

P. 680, sec. 562, l. 2, ‘disposed of the suit,’ i.e., the entire suit,
not merely a portion of it, 11 All. 488.

P. 681, sec. 563. That the High Court can go into the merits
on an appeal from a remand-order, see 3 All. 675: 5 Cal. 144:


—sec. 578, ll. 5, 6, ‘not affecting ... the jurisdiction of the
Court,’ i.e. not affecting the competency of the Court to try, 17
Cal. 155, at p. 159.
P. 685, sec. 578. As to illegal orders of remand, see 14 Bom. 232.
— sec. 579. That the decree of the Appellate Court supersedes the decree of the First Court even when the appellate decree merely affirms the original decree, see 11 All. 267, dissentientie Mahmud J.

P. 687, sec. 583. Hence, and with reference to sec. 253, when security has been given, under sec. 546, on behalf of the respondent, and the appeal has been successful, the decree of the Appellate Court can be enforced against the sureties in execution-proceedings, 13 Mad. 1, following 12 Bom. 411.
— sec. 583. That this procedure is not confined to cases where the restitution desired is provided for by the decree itself, see 13 Bom. 485.
— sec. 584, cl. (c). As to omission to examine some of the plaintiff's witnesses, see 13 Bom. 336.
— sec. 584, cl. (c), note 6. The decisions of the High Courts in 7 All. 649 and 9 Cal. 309 are now overruled by the decision of the Judicial Committee in 18 Cal. 23 (S. C. L. R. 17 I. A. 122). Note 6 should, therefore, be cancelled, and the following substituted therefor: 'Nothing can be clearer than the declaration in the Civil Procedure Code that no second appeal will lie except on the grounds specified in sec. 584. No Court in India or elsewhere has power to add to or enlarge those grounds... It is enough in the present case to say that an erroneous finding of fact is a different thing from an error or defect in procedure, and that there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be,' 18 Cal. 23, at p. 30, following 14 Cal. 740 and 17 Cal. 291.
— sec. 584, cl. (c), note 6, add 17 Cal. 875 (a finding without any evidence to support it).

P. 688, sec. 586, note 2, l. 2, after 100 insert 11 All. 13.
— sec. 588, cl. (2). This includes an order making a plaintiff defendant, or a defendant plaintiff, 12 Mad. 489.

P. 689, sec. 588, cl. (16), note 3, add 16 Cal. 429.
P. 690, sec. 588, cl. (24), note 1, add and see 17 Cal. 682.
— sec. 588, cl. (28), note 2, add The High Court is not restricted to the consideration of the form of the order; but may examine it on its merits, 17 Cal. 168, at p. 170; and see 5 Cal. 144, 3 All. 675.
— sec. 592. That no appeal lies from an order rejecting an application to appeal as a pauper, see 11 All. 375, at p. 377.
P. 692, sec. 595, cl. (a), ‘final decree,’ see 13 Mad. 349. See also 15 Bom. 155 (S. C. L. R. 18 l. A. 6), where the Judicial Committee held that it included a decree which, though not declaring in terms the liability of the defendant, directed accounts to be taken which he contended ought not to be taken at all.

— sec. 595, cl. (c), see 14 Bom. 428.

P. 694, sec. 602, note 4. No appeal lies from an order refusing to extend the term within which an appellant is required to give security for the respondent’s costs and directing the appeal to be struck off by reason of such security not having been given within the prescribed time, 18 Cal. 182.

P. 701, sec. 622. See an illustration, 12 Mad. 341.

— sec. 622, l. 6, ‘material irregularity,’ see an illustration, 13 Bom. 642.

— sec. 622. That the Collector may under this section move the High Court to direct a lower Court to make an order for payment of court-fees, see 6 Bom. 590: 15 Bom. 77.

— sec. 622, note 3, add It will be remembered that the consent of the parties cannot give a Court jurisdiction where none is given by law, 13 Bom. 650.

— sec. 622. The High Court cannot interfere under this section with an order, under the Bengal Tenancy Act, 1885, of a Special Judge regarding the settlement of rents, 16 Cal. 596.

— sec. 622, note 6, see 16 Cal. 749.

P. 703, sec. 623, ‘new and important matter,’ see an illustration, 13 Bom. 330.

— sec. 623, note 5, add 11 All. 176, at p. 182.

P. 704, sec. 624. Absence of the decree-holder, when an execution-proceeding was struck off, or want of notice to him of the day fixed for the hearing of the darbhast, is no ground for a review by another judge, 14 Bom. 101. See also 13 Mad. 178, at p. 187.

— sec. 624, note 5, add 12 Mad. 509.

P. 705, sec. 627, ‘attached to the Court,’ see 16 Cal. 788, at p. 792.

— sec. 629. The list of grounds in clauses (a), (b), (c) is exhaustive, 16 Cal. 793.

— sec. 629. No second appeal lies to the High Court under sec. 584 from an order dismissing an appeal under sec. 629, from an order granting an application for review, 11 All. 383.

— sec. 629. See 13 Bom. 496, at pp. 499, 500, where Sargent C. J. thought that sec. 622 would apply to an order by the Appellate Court.
P. 709, secs. 640, 641. As to granting commissions to examine Parsi widows, see 14 Bom. 584.

P. 710, sec. 642, note 2, add 13 Mad. 150.

THE EVIDENCE ACT.

P. 822. To Census, etc. add XVII of 1890, sec. 12, and after 'married women' insert Merchandise Marks Acts (IV of 1889, sec. 13, and IX of 1891, sec. 4).

P. 823, after line 4, insert Railway Act (IX of 1890, secs. 37, 76, 82, cl. (2), 142).

P. 835, note 1. As to material alterations of documents sued on, see 12 Mad. 239, following 9 Mad. 399. See also 7 Cal. 616: 7 Bom. 418: 3 Mad. H. C. 247.

P. 836, after para. f, insert the following: ff. The presumption that a zamindári granted in 1803 is partible, L. R. 18 I. A. 45.

— add (f) the presumption that when two persons or families have jointly managed a temple for more than forty years, they have a joint right of management, 14 Mad. 153, at p. 162.

P. 856, sec. 8, expl. 1, note 4, add sec. 8, so far as it admits a statement as included in the word 'conduct,' must be read in connexion with secs. 25 and 26, and cannot admit a statement, as part of the evidence, which would be shut out by those sections, 14 Bom. 260, at p. 263, following 11 Bom. H. C. 242, at p. 246.

P. 863. For the explanation to sec. 14, Act III of 1891, sec. 1, substitutes the following:—

'Explanation 1.—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

'Explanation 2.—But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.'

For Illustration (b) to the same section, Act III of 1891, sec. 1, substitutes the following:

'(b) A is accused of fraudulently delivering to another person 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.'
‘The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant.’

P. 866, sec. 15, l. 2. After ‘intentional,’ Act III of 1891, sec. 2, inserts the words ‘or done with a particular knowledge or intention.’

P. 871, sec. 26. To this section Act III of 1891, sec. 3, adds the following:

‘Explanation.—In this section “Magistrate” does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or in Burma or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882.’

— sec. 27. See an illustration, 14 Bom. 260.

P. 872, sec. 30. The confessions mentioned in this section may be ‘taken into consideration’ against the accused; but they are not evidence as defined by sec. 3, and they cannot, therefore, alone form the basis of a conviction, 15 Bom. 66.

— sec. 30. In this section, immediately before the illustrations, Act III of 1891 inserts the following:

‘Explanation.—“Offence” as used in this section, includes the abetment of, or attempt to commit, the offence.’

P. 873, sec. 31. As to the non-conclusiveness of admissions, see an illustration, 14 Bom. 312.

P. 875, sec. 32, cl. 6, note 2. As to the exclusion of horoscopes, see also 17 Cal. 849.

P. 878, sec. 35. Notwithstanding this section, entries made by census-officers in discharge of their duty as such are not admissible in civil proceedings or proceedings under the Crim. Proc. Code, c. xii or c. xxxvi, Act XVII of 1890, sec. 12.

— sec. 35, note 3, add A certificate of guardianship under Act XL of 1858 is no evidence of minority under this section, 17 Cal. 849.

P. 882, to sec. 43, Act III of 1891 adds the following illustrations:

‘(e) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

‘(f) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue.’

— sec. 44, l. 4. The words ‘not competent’ refer to a Court acting without jurisdiction, 12 Mad. 228.
THE EVIDENCE ACT. 89

P. 886. For sec. 54, Act III of 1891 substitutes the following:—

'54. In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.'

'Explanation 1.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

'Explanation 2.—A previous conviction is relevant as evidence of bad character.'

—sec. 55. In the explanation, after the word 'but,' Act III of 1891, sec. 7, inserts the words 'except as provided in sec. 54.'

P. 892, sec. 65, clauses (a) and (c), see 16 Cal. 753, at p. 756.

P. 899, sec. 83, tajbast maps, note 2, l. 2, after 519 insert—see, however, 18 Cal. 224 at p. 230 (S. C. L. R. 17 I. A. 145).

P. 900, sec. 86, l. 6. For 'resident in' Act III of 1891, sec. 8, substitutes the words 'in or for.'

To the same section 86, Act III of 1891, sec. 8, adds the following:

'An officer who with respect to any territory or place not forming part of Her Majesty's dominions, is a Political Agent therefor, as defined in section 3 of the Foreign Jurisdiction and Extradition Act, 1879, and section 190 of the Code of Criminal Procedure, 1882, shall, for the purposes of this section, be deemed to be a representative of the Government of India in and for the country comprising that territory or place.'

P. 903, sec. 92. See an illustration, 17 Cal. 173.

P. 904, sec. 92. As to the admission of collateral evidence to shew that an apparent sale was a mortgage, see 13 Mad. 494.

—sec. 92, proviso (4). See an illustration, 14 Bom. 472.

P. 912, sec. 110, note 2, l. 3, after 140 insert 11 All. 438, at pp. 452, 455.

P. 913, sec. 114. As to presuming malice, see 12 Mad. 374, at p. 378.

—sec. 114, ill. (8). The presumption allowed by this illustration has become a rule of practice of almost universal application, 14 Bom. 119.

P. 914, sec. 114, note 5, line 7, after 633 insert the presumption, in odium spoliatoris, against a mortgagee who fails to keep proper accounts, see 12 Moo. I. A. 157, at p. 198; S. C. 2 Ben. 44, at p. 58.

1 of the accused person?
P. 915, sec. 115. See an illustration, 14 Bom. 558.

P. 916, sec. 116. See 12 Mad. 422. As to the estoppel of a person colluding with a tenant, see 13 Mad. 335, citing Doe d. Bullen v. Mills, 2 A. & E. 17.

A person taking a lease from one of several co-sharers cannot dispute his lessor's exclusive title to receive the rent or sue in ejectment, 13 Bom. 323.

P. 917, sec. 118. As to the duty of the Court in determining questions of competency, see 11 All. 183.

P. 918, sec. 120. Bastardy proceedings under the Criminal Procedure Code, chap. 36, are in the nature of civil proceedings under this section, 16 Cal. 781.

P. 920, sec. 126, proviso (1). When the privileged character of the occasion is once established, the burden of proof is not on the defendant to prove his good faith, but on the plaintiff to disprove it, Jenoure v. Delmege, 1891, P. C. 73.

P. 923, sec. 136. Questions as to admissibility should be decided as they arise, and not reserved until judgment in the case is given, 17 Cal. 173, at pp. 186, 195.

P. 930, sec. 155, cl. (3), 'liable to be contradicted,' i.e. relevant to the issue, 17 Cal. 344.

THE OATHS ACT.

P. 937, sec. 5. This leaves a judge or magistrate no option as to administering an oath or affirmation to the person whose statements he has elected to take as evidence, 11 All. 183.

P. 938, sec. 9. It seems that no one but the party himself can make such an offer as is contemplated by this section, 14 Bom. 455, at p. 458.

A minor party may be bound by his guardian's consent that an issue should be determined by the plaintiff's oath, 12 Mad. 483.

Pp. 938–939, secs. 8–11 do not apply to criminal proceedings, 13 Bom. 389.

THE LIMITATION ACT.

P. 958, sec. 2. The first paragraph, the word 'but' in the second paragraph, and the whole of the third paragraph are repealed by Act XII of 1891.
P. 958, sec. 5, par. 2. An order for admission of an appeal under this section made before issue of notice to the respondent is an *ex parte* order, and cannot bind him, 14 Bom. 594.

— sec. 5, par. 2, 'sufficient cause.' That this may include a mistake in law, see 13 Cal. 266 and 13 Mad. 269, dissenting from 10 All. 524. The question in each case is whether under its special circumstances the appellant or applicant 'acted under an honest, though mistaken, belief formed with due care and attention,' 13 Mad. 271. See illustrations of 'sufficient cause,' 14 Mad. 81 and 14 Bom. 365.

— sec. 5, note 3, *add* That secs. 5-25 apply to suits for which periods of limitation are prescribed other than those mentioned in the second schedule, see also 10 Mad. 210, and 12 Mad. 467.

P. 962, sec. 6, note 1, *add* 17 Cal. 263.

— sec. 7, para. 1. This corresponds with the proviso in 3 & 4 Wm. IV, c. 42, s. 4, under which it has been held that the disability of one of two co-heirs cannot operate to save the statute in favour of the other who was capable of instituting a suit, 13 Mad. 236, at pp. 240-241.

P. 964, sec. 10. This section was held to apply in 14 Mad. 61, following 11 Mad. 274 and 17 Cal. 620.

That this section does not apply to executors in whom is vested a residue with regard to which no trust is declared and no direction to distribute given, see 14 Bom. 476.


— note 4, 'cause of a like nature.' See 13 Mad. 451, following 10 Cal. 86.

— expl. 1. See an illustration, 12 Mad. 434, 438.

— sec. 15, 'stayed by injunction or order.' This does not refer to an order of attachment under sec. 268 of the Civil Procedure Code, 13 All. 76.

P. 969, sec. 18. The 'knowledge' required by this section is not mere suspicion. It must be knowledge of such a character as will enable the person defrauded to seek his remedy in Court, 14 Bom. 408, at p. 414, following 6 All. 406.

P. 970, sec. 20. *B*, a native banker, enters in his books in *A*'s presence interest on a sum lodged by *A* with *B* in the ordinary way of business. This is not a payment of interest within the meaning of cl. 1, 13 Bom. 338.

'agent duly authorized.' This does not require the agent to be authorized in writing, and he may by implication be 'duly authorized,' 17 Cal. 944, at p. 951.
P. 973, sec. 26. This section does not apply to the Crown, 14 Bom. 213, at p. 220. But see the Easements Act, sec. 15, last clause. Owing to the non-extension of the Easements Act to the Lower Provinces, Assam, Ajmer, the Panjab, and Burma, in those territories a right to pasturage or other easement can be acquired against the Government only under 'the general law of prescription,' L. R. 7 I. A. 240: 6 Cal. 812. What that law is in India outside the Presidency Towns no one can say with certainty.

P. 975, sec. 28. That this section does not apply to the case of defendants who rely on an actual possession which has never been disturbed, see 14 Bom. 222, at p. 227.

— note 1, col. 2, as to acquisitive prescription, see also 3 All. 435.

P. 976. The first schedule is repealed by Act XII of 1891.

P. 977, art. 10, note 6, line 4, after 415 insert And see 5 All. 187: 7 All. 167: 8 All. 54: 13 All. 146.

P. 978, art. 11. See 13 Mad. 366.

— art. 11, note 1, add See 12 Mad. 294.

P. 981, arts. 34, 35. See 13 All. 127, where Straight and Mahmud J.J. ruled that these articles did not apply to suits between Hindús for the restitution of conjugal rights. The limitation applicable to such suits is, according to those learned judges, that prescribed by art. 120 read with sec. 23.

P. 982, art. 44. See 14 Bom. 279.

P. 983, art. 59. This article, and not art. 60, applies to a case in which a person lodges money, in the ordinary course of business, with a native banker, 13 Bom. 338.

— art. 62. This article applies to a suit by a principal for commission secretly obtained by his agent on goods ordered by the latter on behalf of the former, see Metropolitan Bank v. Heiron, 5 Ex. Div. 319.

It applies to a suit for the surplus proceeds, in the Collector's hands, of a sale for arrears of Government revenue, 18 Cal. 234, at p. 241.

It applies to a claim by a co-sharer for arrears of an annual allowance received by the defendant from Government, 15 Bom. 135.

P. 985, art. 75, note 8. As to waiver by acceptance of an overdue instalment, see also 12 Mad. 192.

P. 987, art. 91, col. 3, 'known to him,' or the person through whom he claims, see 11 All. 456.

— art. 91, note 8, add 14 Mad. 26.

P. 988, art. 97. A debt retained in part-payment of purchase-
money is in effect, and as between vendor and purchaser, a payment of that part, 11 All. 47, at p. 57, per Lord Hobhouse.

P. 989, art. 105, note 3, add See the Transfer of Property Act, sec. 76, cl. (b).

P. 990, art. 113, note 5, after 175 insert 11 All. 27, at p. 31.

P. 991, art. 116. This applies to a suit by a mortgagor to recover money due on a registered mortgage-deed, together with damages for non-payment. In the absence of any specific provision to the contrary, the time runs from the date of executing the deed, 13 All. 200.

— art. 116, note 1, l. 7, after 255 insert 11 All. 416.

— art. 120. See illustrations, 14 Bom. 512: 13 Mad. 437: 13 Mad. 445.

P. 992, art. 123, note 3, l. 6, after 81 insert followed in 14 Bom. 236, at p. 240. And the representation must be lawful, not, e.g., that of an executor de son tort, 12 Mad. 487.

— art. 127. This applies to suits by a Muhammadan as well as to suits by a Hindu, 14 Bom. 70, to enforce his right to share in (but not to a right to a share of) the property of a joint family, 13 All. 282, dissenting from 14 Bom. 70, as to the right to sue for a share.

P. 993, art. 130. See an illustration, 16 Cal. 449.

— art. 131. A suit by a co-sharer to establish his title to a share in an annual allowance received by the defendant from Government falls under this article, 15 Bom. 135.

P. 994, art. 134, note 1, add It applies to purchases at Court-sales, 12 Mad. 316.

— arts. 136, 137. These articles apply to suits brought by a purchaser against a third person in possession of the land. Limitation runs in favour of such possessor against the purchaser in the same way as it would against the owner with whose rights the purchaser is clothed, 15 Bom. 261.

P. 995, art. 141. When a stranger dispossesses a Hindu widow by an act of trespass and remains in possession for twelve years, his possession is adverse as well against the reversioner as against the widow (Ben. Supp. 1008: 15 Ben. 10). But where the defendant's possession originates in an invalid alienation by the widow, the alienee is entitled to continue in possession during the widow's life, and the reversioner's estate becomes an estate vested in possession on her death only, and from that date only the period of limitation would run against him (5 Mad. H. C. 428: 13 Mad. 512, at p. 515).
P. 995, art. 141. See an illustration, 14 Bom. 482.
— art. 142. See 17 Cal. 137.
— As to the effect of what is called 'symbolical possession' (i.e. where delivery is made under sec. 319 of the Civil Procedure Code), see 5 Cal. 584, and 16 Cal. 530, overruling 10 Cal. 402.
— art. 142, note 5, add As to the burden of proving possession within the twelve years, see 16 Cal. 473.
— articles 142 and 144. In cases falling under the former article the plaintiff must, at the outset, shew possession within twelve years and cannot rest merely on a proof of title. In cases falling under art. 144 the plaintiff may rest content with proof of title only in the first instance, and the burden lies on the defendant to shew that he has had a possession inconsistent with the title of the plaintiff for more than twelve years before suit, 14 Bom. 458, at p. 462.
— art. 144. For purposes of limitation, the possession of one Hindú coparcener is the possession of all; but of course this does not apply as between the purchaser from one of the coparceners and the other members of the family, 12 Mad. 292, following 11 Cal. 683.
— Under this article it is not for the plaintiff to prove that he has been in possession within twelve years before suit; but it is for the defendant to shew that he has held adversely to the plaintiff for twelve years, 13 Bom. 424.
— art. 144, see an illustration, 14 Mad. 96.
— art. 144. The right to the possession and management of saranjām villages is an 'interest' in immoveable property, 15 Bom. 247.
— art. 144, note 9. That a person entering into possession as mortgagee cannot afterwards set up an adverse possession as owner so as to defeat the plaintiff's right to redeem, see 14 Bom. 279, following 3 Mad. H. C. 137.
— As to adverse possession of an equity of redemption, see 14 Bom. 176, at p. 180.

P. 996, art. 145. This does not apply where the property is the proceeds of a sale for arrears of Government revenue in the hands of the Collector, 18 Cal. 234, at p. 241.
— art. 147. A 'debt-bond' held a mortgage within this article, 14 Bom. 577.
— In 14 Bom. 377, at p. 380, Jardine J., held that art. 147 applied to a 'simple mortgage' as defined in the Transfer of Property Act. The limitation for the personal remedy against the mortgagor is three
years, ibid., following 7 All. 502 (S. C. L. R. 12 I. A. 12), which overruled 6 Bom. 719. In Bombay this article is held to include a bond by which the property mentioned therein is declared to be a security for a loan, 15 Bom. 183.

P. 996, art. 147. 'Mortgagee.' The Bombay High Court (dissenting from the Calcutta High Court, 14 Cal. 733) holds that this includes an equitable mortgagee by deposit of title-deeds, 14 Bom. 269.

P. 997, art. 148. Where one co-mortgagor redeems and obtains possession, this article applies to a suit by the other co-mortgagors against the redeeming mortgagor for redemption of their shares. The starting-point of the period of limitation is the date of the original mortgage, not that of the redemption, 11 All. 423, at p. 436.

Pp. 998, 999. For the purposes of the Limitation Act, appeals and applications to the Special Court in Burma shall be deemed to be, respectively, appeals and applications to the High Court under the Code of Criminal Procedure, 1882, or under the Code of Civil Procedure, as the case may be, Act XI of 1889, sec. 71, cl. (2).

P. 1001, art. 178, see 13 Bom. 404, and 11 All. 372.

P. 1002, no. 179, cl. 1, note 1, line 3, after But insert Where the appeal is only against a portion of the decree, see 14 Cal. 26, and 12 Mad. 479.

— art. 179, cl. (2). Where the appeal is made by only one of the parties entitled to appeal, see 16 Cal. 598.

— art. 179, cl. 2. In 13 All. 1 a majority of the High Court held that this clause applies only to those cases in which the parties to the execution proceedings were parties to the appeal, or to that class of cases to which the Civil Procedure Code, sec. 544, applies. But two of the judges (following 8 All. 573) held that it applies without any exceptions to decrees from which an appeal had been lodged by any of the parties to the litigation in the original suit.

— art. 179, cl. 4. The application here contemplated is one within the terms of sec. 235 of the Civil Procedure Code, i.e. an application setting the Court in motion to execute a decree in any manner set out in the last column of the form prescribed, 17 Cal. 53.

— art. 179, cl. 4, note 5, add 16 Cal. 354.

— art. 179, cl. 4, note 7, add to the list of 'the steps in aid,' Application by a decree-holder for leave to bid at the sale in execution of his decree, 13 All. 211. Application for partial execution of decree, though not in accordance with law, 15 Bom. 242, and see 13 All. 89.
P. 1002, art. 179, cl. 4, note 7, add nor is appearing to oppose an application made by the judgment-debtor to set aside a sale in execution of the decree, 16 Cal. 747: nor is an application to a magistrate for interference in order to maintain the public peace, 12 Mad. 356, at p. 364: nor is an application under the Civil Procedure Code, sec. 206, to bring a decree into conformity with the judgment, 13 All. 124, see also 17 Cal. 268.

P. 1005, art. 180. Where a decree is transferred to the High Court for execution, the period of limitation applicable depends on the character of the Court which passed the decree, 17 Cal. 491.

— note 3. The decision in 6 Cal. 504 is doubted in 17 Cal. 491, at p. 497.

— art. 180, note 1. The expression 'ordinary jurisdiction' embraces all such as is exercised in the ordinary course of law and without any special step being necessary to assume it: it is opposed to extraordinary jurisdiction, which the Court may assume at its discretion upon special occasions and by special orders, per Lord Hobhouse, 13 Bom. 520, at p. 533. This affirms West J.'s judgment in 11 Bom. 138.

INTRODUCTION TO THE FIRST APPENDIX.

P. 1006, l. 17, after 98 insert and that it must be construed according to the same principles of construction as the Stamp Act in England and the earlier Stamp Acts in India.

THE COURT FEES ACT.

P. 1013, l. 2, omit 16, which number is repealed by Act XII of 1891.

Pp. 1014–1022. Court-fees in suits instituted in the Colonial Court of Admiralty at Rangoon, Aden or Karachi shall, unless the jurisdiction of the Court is to be exercised in any matter relating to the slave-trade, be leviable in accordance with the provisions of chapter III of the Court Fees Act, 1870. See Act XVI of 1891, sec. 4.

P. 1014, sec. 7, cl. iv, note 5, add See, however, 17 Cal. 683, where the High Court, referring to Act VII of 1887, secs. 7, 8 and 11, thought that the Legislature did not intend to permit the

1 Thus, in determining whether a document is sufficiently stamped to be admissible in evidence, the Court must look at the document itself as it stands, and not at any collateral circumstances which may be shown in evidence, 16 Cal. 432, following 5 Ben. 103, at p. 105.
plaintiff to choose his court by assigning an arbitrary value to the subject-matter of his suit.

P. 1015, lines 2, 3, 4. The passage beginning with 'the provisions,' and ending with 'substituted,' is repealed by Act XII of 1891.

P. 1016, sec. 7, cl. ix, see 13 All. 94.
— cl. (e). That 'garden' means a garden in the English sense, and does not ordinarily include parambas in Malabar, see 12 Mad. 301.

P. 1018, sec. 10, cl. iii is repealed by Act XII of 1891.
— sec. 12, note 7, add And see 11 All. 91.
— This section does not apply unless the question is merely one of amount or arithmetical valuation, 14 Mad. 169, following 9 Mad. 208 and 6 Cal. 249.

P. 1020, sec. 17. This applies only to a case of cumulative relief sought by the plaintiff. Where he sues, in the alternative, for one of two reliefs, the larger of the two reliefs sought determines the amount of the stamp, 15 Bom. 82, following 6 Bom. 302.

P. 1021, sec. 19, cl. ii is repealed by Act XII of 1891.
— dele cl. iv, which is repealed by Act XIII of 1889, sec. 2.

P. 1023, sec. 19 c, l. 1. The word 'such' is repealed by Act XII of 1891. Cancel note 3.

P. 1025, sec. 19 g, l. 6. Cancel the words 'after the first day of April, 1875, or,' which are repealed by Act. XII of 1891.
— sec. 20, cl. i. Here the word 'processes' does not include commissions issued to ámins to hold local investigations, 17 Cal. 281.

P. 1026, sec. 24 is repealed by Act XII of 1891.

Pp. 1028–1029, sec. 32 is repealed by Act XII of 1891.

P. 1029. For sec. 34, the Repealing and Amending Act, XII of 1891, substitutes the following:—

'34. (1) The Local Government may from time to time make rules for regulating the sale of stamps to be used under this Act, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

(2) All such rules shall be published in the Local Official Gazette and shall therefore have the force of law.

(3) Any person, appointed to sell stamps, who disobeys any rule made under this section, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or
with fine which may extend to five hundred rupees, or with both.

P. 1029, sec. 35, note 2. The notifications here referred to are superseded by the following:

NOTIFICATION REDUCING AND REMITTING COURT-FEES.

No. 4650, dated the 10th September, 1889 [Gazette of India, 1889, Part I, p. 506.]

Under section 35 of the Court-fees Act, VII of 1870, and in supersession of all previous notifications under that section, it is hereby notified that, in exercise of the power to 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 the said Act, the Governor General in Council has been pleased to make the reductions and remissions hereinafter set forth, namely:

A.—General for the whole of British India.

(1) to remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use, and on applications for renewal of stamped paper which has become spoiled or unfit for use;

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government;

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded. on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded;

(4) to remit the fees chargeable on—

(a) copies of village settlement-records furnished to landholders
and cultivators during the currency or at the termination of settlement-operations;

(5) lists of fields extracted from village settlement-records for the purpose of being filed with petitions of plaint in Settlement Courts:

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement-records (other than lists of fields) extracted as aforesaid, which may be filed in any Court or office;

(5) to declare that the fee chargeable on a plaint filed in a suit for possession of immovable property under section 9 of the Specific Relief Act, I of 1877, shall be one-half of the amount prescribed in the scale of fees for plaints mentioned in article 1 of the First Schedule;

(6) to direct that the fee chargeable on appeals from orders under section 244 of the Code of Civil Procedure, Act XIV of 1882, shall be limited to the amounts chargeable under article 11 of the Second Schedule;

(7) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants;

(8) to remit the fee payable under article 1, clause (c), of the Second Schedule on an application or petition presented to a Chief Commissioner, when the application or petition is accompanied by a petition to the Government of India and contains merely a request that that petition may be forwarded to the Government of India;

(9) to remit the fees chargeable under articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or Offices for the private use of persons applying for them:

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer;

(10) to remit the fees chargeable, under paragraph 4 of clause (a) and paragraph 2 of clause (b) of article 1 of the Second Schedule, on applications for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 25 in amount:

Provided that the application is made within three months of

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1 Clause (5) is superseded by the amendment made in Article 2 of Schedule I of the Court-fees Act, 1870, by Act XII of 1891, Schedule II.
the date on which the deposit first became payable to the party making the application;

(11) to remit, with reference to clause xi of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land;

(12) to remit the fees chargeable on applications for loans under the Land Improvement Loans Act, XIX of 1883, or the Agriculturists' Loans Act, XII of 1884;

(13) to remit the fee chargeable on an application made by a person to the Collector under the second paragraph of section 39 of the Indian Stamp Act, I of 1879, for the return to that person, or to the Registration-officer who impounded it, of a document impounded and sent to the Collector by a Registration-officer;

(14) to remit the fee chargeable on an application made for transfer of a stock-note from one circle to another under paragraph 6 of Resolution No. 2566, dated the 20th August, 1885;

(15) to remit the fees chargeable on the following documents, namely

(a) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1882, or of a translation thereof, when the copy is given to an accused person;

(b) copy of the evidence of supplementary witnesses after commitment, when the copy is given under section 219 of the said Code to an accused person;

(c) copy or translation of a judgment in a case other than a summons case, and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person;

(d) copy or translation of a judgment in a summons-case, when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail;

(e) copy of an order of maintenance, when the copy is given under section 490 of the said Code to a person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid;

(f) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the
THE COURT-FEES ACT. 101

preceding sub-clauses without the payment of a fee, but is a copy which, on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment;

(g) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court;

(h) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings;

(i) copies of judgments or depositions required by officers of the Police Department in the course of their duties;

(16) to direct that the fee chargeable—

(a) on an application to a Collector, or to any officer or person discharging all or any of the functions of a Collector, with respect either to liability to assessment or to the amount of an assessment under Act II of 1886 (an Act for imposing a tax on income derived from sources other than agriculture), and

(b) on a copy of an order passed under section 26 of the same Act,

shall be limited to one anna;

(17) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office;

(18) to direct that, when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector’s register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that part shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share;

(19) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification;
B.—Special for the Presidency of Fort St. George only.

(20) to direct that the fees chargeable on the following documents filed in claims preferred under Madras Regulation VI of 1831 (Hereditary Offices) shall be limited to the amounts specified against each, namely:

plaint or petition for execution—eight annas;
memorandum of appeal—two rupees;

(21) to remit the fees chargeable on copies of judgments or decisions passed on claims preferred under Madras Regulation VI of 1831 (Hereditary Offices);

(22) to remit the fees chargeable under the First Schedule on plaintiffs in summary suits brought before Collectors under Madras Act VIII of 1865 (An Act to consolidate and improve the laws which define the process to be taken for the recovery of rent);

(23) to reduce the fees chargeable in suits by Government raiyats, for the recovery of land sold for arrears of revenue, to the amount which would be chargeable if the value of the subject-matter were only the rent of the land payable for the year next before the date of presentation of the plaint;

C.—Special for the Bombay Presidency only.

(24) to remit the fees chargeable under the Second Schedule on agreements required by rule 75 of the rules made by the Governor of Bombay in Council under clause (i) of section 214 of the Bombay Land-revenue Code (Bombay Act V of 1879);

(25) to direct that the fee chargeable on a plaint presented under the Mâmulâtârûs' Courts Act (Bombay Act III of 1876) shall not exceed eight annas¹;

(26) to reduce to a uniform rate of four annas per copy the fee chargeable under article 7 of the First Schedule on copies of decrees or orders having the force of a decree issued by Mâmulâtârûs under the Mâmulâtârûs' Courts Act (Bombay Act III of 1876);

(27) to remit the fees chargeable under article 1 of the Second Schedule on all applications made to a Collector or other Revenue-officer, or to the Chief Controlling Revenue-authority, by any of the undermentioned political pensioners, being the eldest sons or representatives of the ex-Amirs of Sind and Sirdars of note:

¹ Clause (25) is superseded by the amendment made in Article 4 of Schedule II of the Court-fees Act by Act XII of 1891, Schedule II.
<table>
<thead>
<tr>
<th>District</th>
<th>Number and Names of Pensioners</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>3. His Highness Mir Fateh Khan, son of Mir Sher Muhammad Khan, Talpur.</td>
</tr>
<tr>
<td>Hyderabad</td>
<td>1. Mir Imam Baksh Khan, son of Mir Muhammad Hasan Khan.</td>
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<td></td>
<td>2. Mir Walidad Khan, son of Mir Muhammad Hasan Khan.</td>
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<td></td>
<td>4. Mir Fazl Hasan Khan, son of Mir Sohrab Khan.</td>
</tr>
<tr>
<td></td>
<td>5. 3rd Dehra of the late Mir Muhammad Hasan Khan.</td>
</tr>
<tr>
<td></td>
<td>6. 1st Dehra of the late Mir Sohrab Khan.</td>
</tr>
<tr>
<td></td>
<td>7. 2nd Dehra of the late Mir Sohrab Khan.</td>
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<tr>
<td></td>
<td>13. Chand Bibi, 3rd Dehra of the late Mir Nasir Khan.</td>
</tr>
<tr>
<td></td>
<td>15. Mir Mubarak Khan, walad Mir Wali Muhammad Khan.</td>
</tr>
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<td></td>
<td>17. Mir Khan Muhammad Khan, walad Mir Wali Muhammad Khan.</td>
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<td></td>
<td>18. Mir Yar Muhammad Khan, walad Mir Wali Muhammad Khan.</td>
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<td></td>
<td>22. Mir Gulam Murtaza Khan, walad Mir Chakar Khan.</td>
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<td></td>
<td>23. Chief Dehra of the late Mir Ali Muhammad Khan.</td>
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<tr>
<td></td>
<td>24. 2nd Dehra of the late Mir Ali Muhammad Khan.</td>
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</tbody>
</table>

(28) to remit the fees chargeable on plaints under section 16 of the Dekkhan Agriculturists' Relief Act, XVII of 1879, except in the district of Satara, where the said fees shall be reduced to one-half;

(29) to remit the fees chargeable in respect of the documents specified in the First or Second Schedule in the case of suits for the redemption of mortgaged property when the plaintiff or, where there are several plaintiffs, any one of the plaintiffs is an agriculturist, and when such suits are instituted within the districts of the Bombay Presidency in which the Dekkhan Agriculturists' Relief
Act, XVII of 1879, is in force, except in the district of Satara, where the said fees shall be reduced to one-half;

(30) to remit the fees chargeable in respect of powers-of-attorney furnished to relatives, servants or dependents under section 68 of the Dekkhan Agriculturists' Relief Act, XVII of 1879;

(31) to remit the fees chargeable in respect of the documents specified in the First or Second Schedule in the case of suits instituted before village-munsifs under Chapter V of the Dekkhan Agriculturists' Relief Act, XVII of 1879;

(32) to remit the fees chargeable in respect of the documents specified in the First or Second Schedule in the case of suits instituted before village-munsifs under Chapter V of the Dekkhan Agriculturists' Relief Act, XVII of 1879;

(33) to remit the fees chargeable in respect of proceedings in matters relating to insolvency under chapter IV of the Dekkhan Agriculturists' Relief Act, XVII of 1879;

(34) to reduce to one-half the fees chargeable in the case of suits to which Chapter II of the Dekkhan Agriculturists' Relief Act, XVII of 1879, applies, except suits of the description mentioned in section 3, clause (w) or clause (x), of that Act, to which an agriculturist is not a party:

Provided that, when the reduced fee amounts to a fraction of an anna, the fee chargeable shall be one anna;

(35) to remit the fees chargeable on copies of documents furnished by a Court of Session or the High Court in the Presidency of Bombay, or by the Sadr Court in Sind, to a pleader appointed by the Court to defend a person accused of murder;

D.—Special for Bengal only.

(36) to remit in the Hill Tracts of Chittagong all the fees mentioned in the First and Second Schedules;

(37) to declare that the proper fee to be charged upon an application to deposit in any Court rent, not exceeding the sum of fifteen rupees, shall be as follows:

<table>
<thead>
<tr>
<th>Proper Fee</th>
<th>If the amount deposited does not exceed Rs. 2-8</th>
<th>If the amount deposited exceeds Rs. 2-8 but does not exceed Rs. 5</th>
<th>If the amount deposited exceeds Rs. 5 but does not exceed Rs. 10</th>
<th>If the amount deposited exceeds Rs. 10 but does not exceed Rs. 15</th>
</tr>
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<tbody>
<tr>
<td>one anna</td>
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<td></td>
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<tr>
<td>two annas</td>
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<tr>
<td>four annas</td>
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<td></td>
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<tr>
<td>six annas</td>
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</table>

Provided that no fee shall be chargeable on an application to deposit rent in respect of which a fee is chargeable under any rule
framed under sub-section (2) of section 61 of the Bengal Tenancy Act, VIII of 1885.

**E.—Special for the North-Western Provinces only.**

(38) To reduce to eight annas the fee chargeable on a copy of any number of entries in a settlement-record relating to any one village in Kumaon or Garhwal;

(39) to remit the fees chargeable on all documents filed, exhibited or recorded in, or received or furnished by, the Court of the Special Judge appointed under the Jhánsí Encumbered Estates Act, XVI of 1882;

(40) to remit the fees chargeable on all documents connected with the proceedings in the Court of the Commissioner under the Jhánsí Encumbered Estates Act, XVI of 1882, except on memoranda of appeal and on applications for revision of any decision or order of the Special Judge under Chapter VI of the said Act;

(41) to direct that the fee chargeable on any appeal against a decision of the Special Judge under Chapter VI of the Jhánsí Encumbered Estates Act, XVI of 1882, shall not exceed eight annas;

**F.—Special for the Panjáb only.**

(42) to remit the fees chargeable on copies of orders or proceedings under section 37 of the Panjáb Land-revenue Act, XVII of 1887, made or recorded by Collectors or other Revenue-officers engaged in revising a record-of-rights under a notification published in accordance with section 32 of the said Act;

Provided that the copy is furnished for the purpose of being filed with an application or petition to a Collector or other Revenue-officer engaged as aforesaid in revising a record-of-rights, or to the Commissioner of the division, or to the Financial Commissioner, Panjáb, 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 revision;

(43) to remit the fees chargeable on applications under section 97 of the Panjáb Land-revenue Act, XVII of 1887, made by village-officers in accordance with the provisions of rule 83 of the rules under that Act published with the Notification of the Panjáb Government, No. 76, dated the 1st March, 1888;
G.—Special for Lower Burma only.

(44) to remit the fees chargeable on the following documents furnished to cultivators, namely:
certified copies of maps showing the holdings of cultivators, or of extracts from the settlement or supplementary survey registers connected therewith;

(45) to remit the fees chargeable on applications for advances under rule 146 of the rules framed under the Burma Land and Revenue Act, II of 1876;

II.—Special for Upper Burma only.

(46) to remit the fees chargeable on plaints, applications, petitions and copies which are filed, exhibited or recorded in the Court of a Circle Officer, or in any Court presided over by a Thugyi or Myothugyi, or which are received or furnished by a Thugyi or Myothugyi:

for the purposes of this clause the expression 'Thugyi or Myothugyi' includes any person, however designated, who in any part of Upper Burma occupies a position similar to that which is held in other parts by a Thugyi or Myothugyi;

I.—Special for the Central Provinces only.

(47) to direct that the fee chargeable on a petition of objection to assessment under Act XIV of 1867 (An Act to provide for the assessment of the Pandhari-tax in certain parts of the Central Provinces) shall, whatever may be the amount of the assessment to which the petition relates, be limited to one anna;

K.—Special for the Bombay Presidency, Bengal, the North-Western Provinces and Oudh, the Panjáb, Lower Burma, the Central Provinces, Ajmer and Coorg.

(48) to direct that, whenever, upon payment of the full fee, a certificate of administration has been granted under Act 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) or Act XX of 1864 (An Act for making better provision for the care of the persons and property of Minors in the Presidency of Bombay), and a fresh certificate is for any reason subsequently granted in respect of the same estate, no fee shall be chargeable upon the fresh certificate so granted 1.

1 Clause K (48) is obsolete, as Acts XL of 1858 and XX of 1864 were repealed by Act VIII of 1890.
THE STAMP ACT.

P. 1030, art. 2. For 'Act No. XIV of 1859' (to provide for the limitation of suits), Act XII of 1891 substitutes 'Specific Relief Act, 1877, sec. 9.'

P. 1031, art. 4, note 4, add See also 11 All. 176, at p. 179.

P. 1037. In para. 4, dele the words 'or to any cantonment Magistrate sitting as a Court of Civil Judicature under Act No. III of 1859,' which are repealed by Act XIII of 1889, sec. 2; dele note 3.

P. 1039, art. 4. For 'Bombay Act No. V of 1864 (to give Māmālatdārs' Courts jurisdiction in certain cases to maintain existing possession, or to restore possession to any party dispossessed otherwise than by course of law),' Act XII of 1891 substitutes 'the Māmālatdārs' Courts Act, 1876.'

— Articles 8 and 9 are repealed by Act XII of 1891.

P. 1041, Sched. II, art. 17, cl. 3, note 3, add 'For the purpose of jurisdiction the value of a suit for a mere declaratory decree must be taken to be what it would be if the suit were one for possession of the property regarding which the plaintiff seeks to have his title declared,' 12 Mad. 223, at p. 225.

THE SUITS VALUATION ACT.

For the purposes of this Act the Court of the Recorder of Rangoon shall be deemed to be a High Court, Act XI of 1889, sec. 44.

P. 1044, sec. 9. In Bengal no rules have been made under this section, and consequently suits for restitution of conjugal rights are unprovided for, and in such a suit no appeal lies as of right to the Queen in Council, 18 Cal. 378.

— sec. 10 is repealed by Act XII of 1891.

P. 1045, sec. 11. See an illustration, 14 Mad. 183.

THE STAMP ACT.

P. 1050. Section 2 down to the word 'But,' is repealed by Act XII of 1891.

P. 1051, sec. 3, cl. 4, (b), see an illustration in 14 Bom. 511.

— sec. 3, cl. (4), note 3, add 13 Mad. 147.

— cl. (7), 1. 4, after the words 'the North-Western Provinces, Act XX of 1890, sec. 38, inserts the words 'and the Chief Commissioner of Oudh.'
P. 1052, sec. 3, cl. (10), 'duly stamped,' see 18 Cal. 39.
— art. (11), 'co-owners' here includes persons purporting to be co-owners, 12 Mad. 198.

P. 1056, sec. 11. As to the mode of cancellation, see 14 Bom. 102, at p. iii.

P. 1064, sec. 34, par. 1, note 2, add This provision imposes on the Court the duty of seeing in every case whether an instrument presented to it is stamped in accordance with the law in force when such instrument was executed or first executed, 13 Bom. 484.

— Proviso, cl. (3). If the Appellate Court considers the document to be insufficiently stamped, it can only proceed under sec. 50, see 13 Bom. 493.

P. 1065, sec. 34, Proviso, cl. (3), note 1, add 13 Bom. 449.

P. 1074, sec. 61. Intention to evade payment is not an essential ingredient of the offence described in this section, 12 Mad. 231, 234, where '60' is misprinted for '61.'

— l. 5, 'duly stamped': see sec. 3, cl. (10) and 18 Cal. 39.

P. 1076, sec. 67. A cheque is clearly a bill of exchange within the meaning of this section: see, however, 16 Cal. 435, per Wilson J.

P. 1078, Sched. I, art. 5. 'Agreement or memorandum of an agreement' means one document forming the record of the agreement and from which its terms can be collected. As to the admission of unstamped letters as evidence of an agreement relating to the sale of shares, see 13 Mad. 255, at p. 263.

Document whereby the executant purported to sell his right etc. in certain receipts for shares, and to execute in future a pakka document of sale thereof held to come within art. 5; see 14 Bom. 316.

P. 1079, art. 5, cl. (6), l. 10, for 'right,' Act XII of 1891 substitutes 'rights.'

P. 1080, art. 11. A letter sent by A to B requesting B to send him a certain sum and promising that the same will be repaid with interest on a certain day, is a mere proposal under the Contract Act, sec. 4, not a promissory note within the meaning of art. 11, 13 Bom. 669.

P. 1089, art. 46. See Sched. II, cl. 2, and 14 Bom. 102, at p. 110.

P. 1095, art. 2, clauses (b) and (c) are repealed by Act XII of 1891.
P. 1096, art. 10, and art. 11, cl. (b), are repealed by Act XII of 1891.

— art. 12. Instruments executed under any order of the Recorder of Rangoon in the exercise of his insolvency-jurisdiction are exempted from stamp duty, Act XI of 1889, sec. 50, cl. (7).

— art. 13, cl. (b), 'cultivator,' see 15 Bom. 73.

— art. 13, cl. (b), l. 3, before 'annual' Act XII of 1891 inserts 'average.'

P. 1098. This schedule is repealed by Act XII of 1891.

THE REGISTRATION ACT.

P. 1103. To sec. 1, Act XII of 1891 adds the following:—
'The Local Government may, with the previous sanction of the Governor-General in Council, cancel any order excluding districts or tracts of country from the operation of this Act.'

P. 1104, sec. 3, 'immovable property' does not include a decree for sale of hypothecated land, 13 All. 89.

P. 1106, sec. 9, dele the second paragraph, which is repealed by Act XIII of 1889, sec. 2.

P. 1108, sec. 17, cl. (d). A lease for one year containing an option of renewal for a further period of one year is not a lease 'for any term exceeding one year,' 17 Cal. 548, following Hand v. Hall, L. R. 2 Ex. D. 355, and dissenting from 13 Cal. 113.

P. 1109, sec. 17, cl. (d), note 15. A lease 'reserving a yearly rent' is 'one which on the proper construction of it would create a tenancy from year to year.' This, we presume, was the opinion of the Allahabad Court in Khuda Baksh v. Sheo Din (8 All. 405), 14 Bom. 319.


P. 1113, sec. 28, note 1. The decision of the Judicial Committee reversing that in 7 All. 590 is reported in 11 All. 136.

P. 1119, Part X. 'Of the effects of registration and non-registration.' The mere registration of a document is not in itself sufficient proof of its execution, 17 Cal. 903, dissenting from 14 Cal. 176, at p. 180.

— Part X. That mere registration does not amount to notice to subsequent purchasers, see 13 Mad. 383, dissenting from 6 Bom. 168.
P. 1119, sec. 48, note 5, add Where a mortgagee in possession under a registered instrument agrees orally with the mortgagor to buy the mortgaged property, there has been a 'delivery of possession' within the meaning of this section, 13 Mad. 324.

— sec. 48, note 5, add The holder of a registered instrument does not by virtue of sec. 48 take priority against a mortgage by deposit of title-deeds (Transfer of Property Act, sec. 59, last para.), see 11 Cal. 158.

P. 1120, sec. 49. Where a sale-deed is allowed to remain unregistered through no fault of the vendee, the High Court of Madras, following 5 Mad. H. C. 123, held that he might give secondary evidence of its contents, 14 Mad. 55, sed qu.

— sec. 49, l. 6, 'registered,' i.e. endorsed with the certificate mentioned in sec. 60, see 11 All. 319.

— sec. 49, note 2, line 2, after 182 insert 13 Mad. 308:

— note 2, add And the High Courts at Calcutta and Madras have held that an unregistered document affecting immovable property may be used for the purpose of obtaining specific performance of an agreement relating to such property, 10 Cal. 315: 12 Mad. 505.

— sec. 50, 'not being a decree or order,' i.e. one made prior to the execution and registration of the registered document, 13 All. 288.

P. 1129, sec. 77, note 3, l. 3. A suit lies under this section even when the registration of the document is not compulsory, 16 Cal. 509.

P. 1132, sec. 83, last para. For the words 'if for offences committed outside' to the end, Act XII of 1891 substitutes 'in the manner provided by the law for the time being in force for the recovery of fines imposed by the Criminal Courts.'

— sec. 84. The last clause is expressly repealed by Act XII of 1891.

P. 1133, sec. 89. The following paragraph is added by Act XII of 1891:

'Every Revenue-officer granting a certificate of sale to the purchaser of immovable property sold by public auction shall send a copy of the certificate to the registering officer, within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situate, and such officer shall file the copy in his Book No. 1.'
THE DEBTORS ACT.

P. 1139, sec. 5, 'suit for money' is wider than 'suit for debts,' 17 Cal. 610. This section is not imperative on the Court, which has a discretion as to making the order, ibid.
— sec. 9 is repealed by Act XII of 1891.

THE CIVIL PROCEDURE CODE AMENDMENT ACT.

P. 1142, sec. 4 is repealed by Act XII of 1891.
— sec. 5, 'shall not be precluded from enquiry into the merits.' This seems to have been suggested by Abouloff v. Oppenheimer, 10 Q.B. Div. 295, followed in Vadala v. Lawes, 25 Q. B. Div. 310.

As to the foreign judgments contemplated by this section, the Courts will, it is hoped, be guided by the following rules, which (substituting 'British India' and 'British Indian' for 'England' and 'English') are taken from Prof. Dicey's paper on Private International Law in the Law Quarterly Review for April, 1891:

'I. British Indian Courts will not enforce any right acquired under the law of a foreign country unless it has been duly acquired.

II. British Indian Courts will not enforce a right otherwise duly acquired under the law of a foreign country when the enforcement of such right

(1) is inconsistent (a) with the moral rules upheld by British Indian law, or (b) with the policy of British Indian law, or (c) with the maintenance of British Indian political institutions, or (d) with the provisions of any statute of the Imperial Parliament intended to have extra-territorial operation;

(2) involves the recognition, as regards transactions taking place in British India, of any penal [privative?] status arising under foreign law, or of any institution or status unknown to British Indian law;

(3) involves interference with the authority of a foreign sovereign within the State whereof he is sovereign.'

Pp. 1147, 1149, 1153, secs. 25, 29, and 41 are repealed by Act XII of 1891.

P. 1154, sec. 48. The right conferred on a respondent by sec. 561 of the Code, as amended by Act VII of 1888, sec. 48, is an absolute right, and the hearing of the appeal cannot be advanced so as to defeat this provision, 13 Mad. 492.
— sec. 48, note 1, add 14 Bom. 111.
P. 1154, sec. 49, subsec. (1) is repealed by Act XII of 1891, and in subsec. (2) for 'the same section' Act XII of 1891 substitutes 'section 562.'

P. 1155, sec. 50, sec. 52, subsec. (1) and secs. 56 and 57 are repealed by Act XII of 1891, and in subsec. (2) for 'the same section' Act XII of 1891 substitutes section 566.

P. 1156, sec. 646 B. See 13 Mad. 344.

— sec. 646 B, cl. 1. That the word 'shall' in this clause is directory, not imperative, see 11 All. 304, per Straight J.

P. 1158, line 5. The words the Code of Civil Procedure are repealed by Act XII of 1891.

FIRST SUPPLEMENT.

THE INDIAN MERCHANDISE MARKS ACT, 1889.

P. 5. In sec. 1, cl. (2) the words 'subject to the provision of the last section of this Act' are repealed by Act IX of 1891.

P. 14, after sec. 18 the following has been inserted by Act IX of 1891:

'19. For the purposes of sec. 12 of this Act, and clause (f) of sec. 18 of the Sea Customs Act, 1878, as amended by this Act, the Governor General in Council may, by notification in the Gazette of India, declare what classes of goods are included in the expression "piece-goods, such as are ordinarily sold by length or by the piece."

'20. (1) The Governor General in Council may make rules, for the purposes of this Act, to provide, with respect to any goods which purport or are alleged to be of uniform number, quantity, measure, gauge or weight, for the number of samples to be selected and tested and for the selection of the samples.

'(2) With respect to any goods for the selection and testing of samples of which provision is not made in any rules for the time being in force under sub-section (1), the Court or officer of customs, as the case may be, having occasion to ascertain the number, quantity, measure, gauge or weight of the goods shall, by order in writing, determine the number of samples to be selected and tested and the manner in which the samples are to be selected.

'(3) The average of the results of the testing in pursuance of rules under sub-section (1) or of an order under sub-section (2) shall be prima facie evidence of the number, quantity, measure, gauge or weight, as the case may be, of the goods.
THE SUCCESSION CERTIFICATE ACT. 113

'(4) If a person having any claim to, or in relation to, any goods of which samples have been selected and tested in pursuance of rules under sub-section (1) or of an order under sub-section (2) desires that any further samples of the goods be selected and tested, they shall, on his written application and on the payment in advance by him to the Court or officer of customs, as the case may be, of such sums for defraying the cost of the further selection and testing as the Court or officer may from time to time require, be selected and tested to such extent as may be permitted by rules to be made by the Governor General in Council in this behalf or as, in the case of goods with respect to which provision is not made in such rules, the Court or officer of customs may determine in the circumstances to be reasonable, the samples being selected in manner prescribed under sub-section (1), or in sub-section (2), as the case may be.

'(5) The average of the results of the testing referred to in sub-section (3) and of the further testing under sub-section (4) shall be conclusive proof of the number, quantity, measure, gauge or weight, as the case may be, of the goods.

'(6) Rules under this section shall be made after previous publication.

'21. An officer of the Government whose duty it is to take part in the enforcement of this Act shall not be compelled in any Court to say whence he got any information as to the commission of any offence against this Act.

'22. If any person, being within British India, abets the com- mission, without British India, of any act which, if committed in British India, would under this Act, or under any section of that part of Chapter XVIII of the Indian Penal Code which relates to trade, property and other marks, be an offence, he may be tried for such abetment in any place in British India in which he may be found, and be punished therefore with the punishment to which he would be liable if he had himself committed in that place the act which he abetted.'

P. 15, sec. 19 and the words Transitory Provision are repealed by Act IX of 1891.

THE SUCCESSION CERTIFICATE ACT, 1889.

P. 17, sec. 4, subsec. (1), cl. (a), 'against a debtor.' A decree would be 'against a debtor' when passed, although he consented to it, 15 Bom. 105.
P. 17, sec. 4, subsec. 1, cl. (b). This clause does not apply to pending applications or proceedings in execution of a decree made before and pending on 1st May, 1889. The application therein mentioned means one made after that date, and the proceeding of the Court in execution must be an initial one under that application, 15 Bom. 79.

— sec. 4, cl. (b). This clause is not confined to the execution of decrees passed after Act VII of 1889 came into force (i.e. on 1st May, 1889), 15 Bom. 265, where there were no proceedings pending, and the application for execution was regarded as an initial one.

P. 21, sec. 19, cl. (i). An order granting a certificate of succession conditionally on the applicant's furnishing security is not within this section, and is, therefore, not appealable, 13 All. 214.
ADDENDA.

Vol. I.

P. 91, note 2, prefix The Penal Code has been supplemented in the Assam Hill Districts by Reg. III of 1875: in Upper Burma by Act XX of 1886, sec. 7 (c); and in the Panjáb Frontier Districts and Baluchistán by Reg. IV of 1887, secs. 8, 14, 15, 31, 32.

P. 95, note 1, add In the North-Western Provinces, sec. 19, illustration (a) shall be read as if for ‘Act X of 1859,’ the words and figures ‘the North-Western Provinces Rent Act, 1881,’ were substituted, Act XII of 1881, sec. 2.

CORRIGENDA.

Vol. I.

P. 718, note 1, l. 3, for indorsee read indorser.

P. 811, note 4, for 66 read 109.

P. 812, note 1, for 100 read 110.

Vol. II.

P. 556, note 13, last line, dele 21 Cal. 151.

P. 676, note 5, l. 4, for 2: 417 All. read 241: 7 All.