FIRST REPORT

OF

HER MAJESTY'S COMMISSIONERS

APPOINTED TO PREPARE

A BODY OF SUBSTANTIVE LAW FOR INDIA,
&c.

Presented to both Houses of Parliament by Command of Her Majesty.

LONDON:
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COMMISSION.

VICTORIA R.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To Our right trusty and well-beloved Councillors Sir John Romilly, Knight, Master or Keeper of the Rolls of Our High Court of Chancery, Sir William Erle, Knight, Chief Justice of Our Court of Common Pleas, Sir Edward Ryan, Knight, and Robert Lowe, Vice-President of the Committee of Our Council on Education, and Our trusty and well-beloved Sir James Shaw Willes, Knight, one of the Judges of Our Court of Common Pleas, and John Macpherson Macleod, Esquire, Greeting:

Whereas Our Commissioners appointed to examine and consider the Recommendations of the Indian Law Commissioners who were employed in India, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure and Laws, as might, by or with the Sanction of the Commissioners for the Affairs of India, be referred to them, did, in their Second Report dated the Thirteenth Day of December 1855, recommend that, subject to necessary Consideration for the existing Laws and Usages of various Parts of India, "there should be prepared for India " a Body of Substantive Law, in preparing which the Law of England should be " used as a Basis, but which, once enacted, should itself be the Law of India on " the Subjects it embraced:"

And whereas We have deemed it expedient that Commissioners should be appointed for the Purposes of preparing such a Body of Law, and of considering and reporting on such other Matters in relation to the Reform of the Laws of India as might be referred to the said Commissioners by Our Secretary of State for India:

Know ye, that We, reposing great Trust and Confidence in your Zeal, Discretion, and Integrity, have authorized and appointed, and by these Presents do authorize and appoint, you the said Sir John Romilly, Sir William Erle, Sir Edward Ryan, Robert Lowe, Sir James Shaw Willes, and John Macpherson Macleod to be Our Commissioners for the Purposes aforesaid.

And We do by these Presents give and grant to you, or any Three or more of you, full Power and Authority to call before you, or any Three or more of you, such Persons in the Service of the Crown, and all such other Persons as you may judge necessary, by whom you may be informed of the Truth in the Premises, and to inquire of the Premises by all other lawful Ways and Means whatsoever.

And We do hereby give and grant unto you, or any Three or more of you, full Power and Authority to cause all or any of the Officers and Clerks in the Service of the Crown to bring and produce before you, or any Three or more
of you, all Records, Orders, Books, Papers, and other Writings in the Possession of Our Secretary of State for India.

And Our further Will and Pleasure is that you do, as soon as the same can conveniently be done (using all Diligence), certify unto Us, under the Hands and Seals of you, or any Three or more of you, what you shall have done in the Premises.

And We further will and command, that this Our Commission shall continue in full Force and Virtue, and that you Our said Commissioners, or any Three or more of you, shall and may from Time to Time proceed in the Execution thereof, and of every Matter and Thing therein contained, although the same be not continued from Time to Time by Adjournment.

And for your Assistance in the due Execution of this Our Commission We have made choice of Our trusty and well-beloved William Macpherson, Esquire, to be Secretary, and Our trusty and well-beloved Neil Benjamin Edmonstone Baillie, Esquire, to be Assistant Secretary to this Our Commission, and to attend you, whose Services and Assistance We require you to use from Time to Time as Occasion shall require.

Given at Our Court at Windsor, the Second Day of December in the Year of our Lord One thousand eight hundred and sixty-one, and in the Twenty-fifth Year of Our Reign.

By Her Majesty's Command,

(Signed) CHARLES WOOD.
REPORT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

Your Majesty having been pleased to issue a Commission authorizing and appointing us to prepare for India a body of substantive law, in preparing which the law of England should be used as a basis, but which, when once enacted, should itself become the law of India on the subjects which it embraced, and to consider and report on such other matters in relation to the reform of the laws of India as might be referred to us by Your Majesty’s Secretary of State for India; we applied ourselves to our duties without any delay.

By a letter from Your Majesty’s Secretary of State for India, we were informed that it did not appear to him necessary that we should postpone the submission of all report of our proceedings until the completion of the duty assigned to us by Your Majesty’s Commission. He requested that, unless there was any objection to such a course, the result of our labours on one branch of civil law might be reported before we entered on the consideration of another branch; as the plan of successive reports on the various departments of law would greatly facilitate the necessary measures which must be taken in India, for giving effect to our recommendations.

Finding that by various classes of persons not professing the Hindoo or the Mahomedan religion a want of substantive civil law was most complained of, and that a law to regulate the devolution of property on death was most urgently required by those classes, we have, in the first instance, directed our attention to the preparation of a law of succession and inheritance, generally applicable to all classes other than the Hindoos and Mahomedans, both of which great portions of the population have laws of their own on this subject. We have now finished that undertaking, and following the course marked out for us, we proceed to submit in this Report a draft of the rules which we have resolved to propose. We shall premise a few explanatory observations.

We have not judged it advisable that the rules for the devolution of moveable property should be (as in England) different from the rules for the devolution of immovable property. The English who possess immovable property in India, generally look upon it merely as a temporary investment, not intending to establish their families there permanently. Nor are the Armenians, the Parsees, or any of the classes to whom the new law is intended to apply, in the habit of making a distinction between the succession to moveable and to immovable property, any more than the Hindoos and Mahomedans themselves.

We propose, therefore, that the general law of India shall make no distinction in this respect, but that the devolution of property of every kind shall be governed by one system of rules.

It has been necessary for us in one or two cases to introduce provisions affecting rights as between living persons. We propose that a man shall not, through the mere operation of law, acquire by marriage any interest in his wife's property during her life, but that she shall continue to possess the same rights with reference to it as if she were unmarried, and shall have full power to dispose of her property by will.

We propose, in case of intestacy, to give a widow the same rights in respect of all the property of her husband, as a widow has in England in respect of her husband's personal property; providing at the same time that when there is a widow and no kindred of the intestate, the whole property shall belong to her, instead of one half going to her and the other half to the Crown. For this provision, if it shall be approved, Your Majesty's gracious sanction previous to enactment will be requisite.

The husband, where he survives his wife, is to have such rights in respect of her property as the wife has in respect of his property where she is the survivor.
Such powers as we propose to confer on the wife are frequently reserved to her even in England by the terms of her marriage settlement; and we believe that the introduction of the English property-law of husband and wife would not be acceptable to any of the classes for whom these rules of succession are intended.

We propose to omit the rule of the English law by which, in cases of total intestacy, anything which a child may have received from the father in his lifetime by way of advancement, is deducted from his share of his father's estate. This rule, though founded upon a desire to equalise as far as possible the benefit derived by children from their father's property, often fails to effect that object, and proves productive of considerable inconveniences. It tends to encourage minute and difficult investigations of matters of family account, and it frequently interferes with the arrangements of a father who has given property to a child by way of advancement, and yet has not seen fit to make any alteration in his testamentary dispositions; and these evils, which are often felt in England, would be still more felt in India.

We have provided that persons of either sex shall at the age of 18 be entitled to make a Will, and be of age for all purposes. This is the age at which the Courts of Wards withdraw from the management of the estates of youthful landholders.

In all that relates to the execution and revocation of Wills, we have taken as a basis the Act known as Lord Langdale's (Statute 1 Vict. c. 26.), which is already in force as to all Wills proved in the High Courts of the three Presidencies other than the Wills of Hindoos and Mahomedans. But we have modified its provisions as to execution, which we think would be likely to cause frequent intestacy.

Here, as elsewhere, we have departed from the English law where its provisions appeared to us to be objectionable in themselves, or especially inapplicable to India. Above all things we have aimed at giving effect to the plain meaning of the words of the testator, without endeavouring to do or to say for him that which he has not done or said for himself. We have accordingly discarded the rules by which the English Courts are compelled to presume, in the absence of any intimation of a contrary intention, that where a debtor bequeathes to his creditor a legacy equal to or exceeding the amount of his debt, the legacy is meant by the testator to be a satisfaction of the debt; that where a parent who is under a legal obligation to provide a portion for his child fails to do so, and afterwards bequeaths a legacy to the child, the legacy is meant to be a satisfaction or fulfilment of the obligation. We have in like manner discarded the rule of English law that where a father bequeaths a legacy to a child, and afterwards advances a portion for that child, he thereby adeems the legacy. We have endeavoured so to frame the law in this respect as to prevent the occasion from ever arising, which in England requires a nice balancing of judgment, the exercise of large discretion, the prosecution of a difficult inquiry, and the admission of parol evidence of the intentions of testators.

We have inserted provisions for defining expressions used in Wills to denote kindred and representation, and for giving the legacy absolutely to the first taker, where words are added which are (in legal phrase) words of limitation and not of purchase.

We have restricted the power of creating successive interests in property by Will by providing that interests so created shall not extend beyond the lifetime of persons living at the testator's death, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attain the age of 18, the thing bequeathed is to belong. We have provided that a bequest to a person not born at the testator's death must comprise the whole of the interest of the testator in the thing bequeathed; and that where at the time fixed for the payment of a legacy the person for whom it was intended has not come into existence, the bequest shall have no effect. We have also provided that directions to accumulate the income arising from any property shall be void.

We have likewise provided against death-bed bequests to charitable uses by persons having near relatives.

On the subject of conditions, we have deemed it right to abstain from introducing into India the very refined distinctions which the Court of Chancery has, in questions relating to personal property, borrowed from the Ecclesiastical Courts. We think that the words of the Will should be adhered to where no condition inconsistent with law or morality is sought to be imposed; that all bequests made upon illegal, immoral, or impossible conditions should be void; and that wherever the testator's wishes can be
carried into effect, if expressed in one way, they ought to be permitted to take effect, if expressed in any other way; so that whatever he can do by a limitation he ought to be allowed to do by imposing a condition. It appears also to us that whenever a condition subsequent is valid, if accompanied with a gift over, it ought to be valid without a gift over, and ought not to be treated as if it had been inserted merely to frighten the legatee by an unmeaning threat.

We do not propose to extend to India the rule which enables an executor to pay any creditor (whether himself or another person) in preference to another creditor of equal degree. We have provided that funeral and death-bed expenses and charges of probate and administration are to be first paid, then wages due to any labourer, artizan, or domestic servant employed by the deceased; and that in respect of no other debt shall a creditor be entitled to a preference, either by reason of its being secured by deed under seal or on any other account.

On the subject of domicile, we have provided that a man shall not acquire a domicile in India merely by residing there as a soldier in Her Majesty's service, or in the discharge of the duties of any public office, or in the exercise of any profession or calling. This provision is, as regards the bulk of the army, nothing more than a statement of the existing law. Its application to the Staff Corps and to the official and professional classes may perhaps be less favourable to the acquisition of an Indian domicile by those classes than the strict rules of English law, but we believe that it is the most just and suitable rule that can be laid down for India. We have, however, provided for the acquisition of an Indian domicile by persons desiring to possess it.

The rules which we have prepared are intended to apply generally to the immovable property in India of persons not professing the Hindoo or the Mahomedan religion, and to the moveable property of all persons domiciled in India and not professing the Hindoo or the Mahomedan religion. We desire, however, to point out, that one great object of the proposed code is ultimately to introduce one uniform system applicable to all classes, wherever this can be properly and safely accomplished.

We have considered certain papers which the Secretary of State for India referred to us respecting the claim of the Parsees to be allowed a separate system of inheritance for themselves. It appears to us that this claim is not borne out by the papers before us.

As property of every kind is to devolve in the same channel, we have deemed it necessary to facilitate the constitution of a general representative of the deceased, with unlimited power. We have therefore provided for the probate of Wills and the grant of letters of administration by the judge of every zillah and city Court, and by such of the judicial officers subordinate to him as he shall designate for that purpose.

Some arrangements will have to be made by local governments for the custody of declarations by persons desiring to acquire an Indian domicile, and also of the Wills of living persons who may desire to deposit their Wills, either with a view to legalize charitable bequests or for any other purpose.

Following the example set by the framers of the Indian Penal Code, we have made copious use of illustrations. All the Commissioners think that illustrations carefully framed are calculated to assist in the administration of the law, although we do not all take the same high view of the importance of illustrations which was expressed by the framers of the Penal Code. The advantages contemplated by those Commissioners from the use of illustrations were set forth and dilated on by them in their letter to the Governor-General in Council, dated the 14th of October 1837, with which they submitted their draft of the Penal Code. The observations contained in that letter appear to be so pertinent to this matter that we think it desirable to quote a portion of that part of it which relates to this subject.

"One peculiarity in the manner in which this code is framed will immediately strike your Lordship in Council. We mean the copious use of illustrations. These illustrations will, we trust, greatly facilitate the understanding of the law, and will at the same time often serve as a defence of the law. In our definitions we have repeatedly found ourselves under the necessity of sacrificing neatness and perspicuity to precision, and of using harsh expressions because we could find no other expressions which would convey our whole meaning, and no more than our whole meaning. Such definitions standing by themselves might repel and perplex the reader, and would perhaps be fully comprehended only by a few students after long application. Yet such definitions are found, and must be found, in every system of law which aims at accuracy. A legislator may, if he thinks fit, avoid such definitions, and by avoiding them he will give a smoother and more attractive appearance to his workmanship; but in that case he flinches from a duty which he ought to perform,
and which somebody must perform. If this necessary but most disagreeable work be not performed by the lawgiver once for all, it must be constantly performed in a rude and imperfect manner by every judge in the Empire. . . . . . We have, therefore, thought it right not to shrink from the task of framing these unpleasing but indispensable parts of a code. And we hope that when each of these definitions is followed by a collection of cases falling under it, and of cases which, though at first sight they appear to fall under it, do not really fall under it, the definition and the reasons which led to the adoption of it will be readily understood. . . . The definitions and enacting clauses contain the whole law. The illustrations make nothing law which would not be law without them. They only exhibit the law in full action, and show what its effects will be on the events of common life.

"Thus the code will be at once a statute book and a collection of decided cases. The decided cases in the code will differ from the decided cases in the English law books in two most important points. In the first place, our illustrations are not merely instances of the practical application of the written law to the affairs of mankind. Secondly, they are cases decided not by the judges but by the legislature, by those who make the law, and who must know more certainly than any judge can know what the law is which they mean to make."

We also wish it to be fully understood that the correctness of the decision contained in any illustration is not to be questioned in the administration of the law. The illustrations are not merely examples of the law in operation, but are the law itself showing by examples what it is. The statements that "the definitions and enacting clauses contain the whole law," and that "the illustrations make nothing law which would not be law without them," are correct if understood as merely importing that in the view of the legislature the illustrations determine nothing otherwise than what without them would have been determined by a right application of the rules to which they are annexed. As, however, much law has been made by judicial decisions, which determine questions respecting the application of written rules of law, so law may without impropriety be said to be made by the illustrations, in the numerous cases in which they determine points about which, without their guidance, there would be room for difference of opinion even among learned and able judges. It is chiefly in this way that the illustrations, while they make the definitions and rules more easy to be understood, also serve to render them more precise. The operation of judicial decisions in making law precise is a natural process, and that process is adopted and improved in the use of illustrations. The laws of England, as they exist, are to be found partly in rules and principles, some of which are contained in statutes and some in books not stamped with any legislative or even judicial authority, and partly in the reports of decisions by judicial tribunals. Law framed in the way in which we have endeavoured to frame it also consists of rules and principles combined with decided cases, but with this difference, that the decisions are not made by judges in trying cases but by the legislature itself in enacting the law, and though they are an important part of the law, settling points which without them would have been left to be determined by the judges, yet they are strictly confined to the function of guiding the judges in their future decisions, and of explaining in what manner the definitions and rules to which they are annexed are to be interpreted and applied.

Another matter of great importance is closely connected with this subject, viz., how best to prevent the law from being overlaid with an accumulating mass of comments and decisions: an evil which no mode of framing the law itself can completely exclude. On this subject also we think it useful to quote and adopt a portion of the observations contained in the letter of the authors of the Penal Code, already referred to.

"The publication of this collection of cases decided by legislative authority will, we hope, greatly limit the power which the Courts of Justice possess of putting their own sense on the laws. But we are sensible that neither this collection nor any other can be sufficiently extensive to settle every question which may be raised as to the construction of the code. Such questions will certainly arise, and, unless proper precautions be taken, the decisions on such questions will accumulate till they form a body of law of far greater bulk than that which has been adopted by the legislature. Nor is this the worst. While the judicial system of British India continues to be what it now is, these decisions will render the law not only bulky but uncertain and contradictory. . . . . . But whether the present judicial organization be retained or not, it is most desirable that measures should be taken to prevent the written law from being overlaid by an immense weight of comments and decisions. We conceive that it is proper for us, at the time at which we lay before your Lordship in Council the first part of the Indian Code, to offer such suggestions as have occurred to us on this important subject. . . . In civil suits which are actually pending we do not desire to leave to the courts the duty of deciding doubtful questions of law which have actually arisen in the course of litigation. But every case in which the construction put by a judge on any part of the code is set aside by any of those tribunals from which.
at present there is no appeal in India, and every case in which there is a difference of opinion in a court composed of several judges as to the construction of any part of the code, ought to be forthwith reported to the legislature. Every judge of every rank whose duty it is to administer the law as contained in the code should be enjoined to report to his official superiors every doubt which he may entertain as to any question of construction which may have arisen in his court. Of these doubts all which are not obviously unreasonable ought to be periodically reported by the highest judicial authorities to the legislature. All the questions thus reported to the Government might with advantage be referred for examination to the Law Commission, if that commission should be a permanent body. In some cases it will be found that the law is already sufficiently clear, and that any misconception which may have taken place is to be attributed to weakness, carelessness, wrongheadedness, or corruption on the part of an individual, and is not likely to occur again. In such cases it will be unnecessary to make any change in the code. Sometimes it will be found that a case has arisen respecting which the code is silent. In such a case it will be proper to supply the omission. Sometimes it may be found that the code is inconsistent with itself. If so the inconsistency ought to be removed. Sometimes it will be found that the words of the law are not sufficiently precise. In such a case it will be proper to substitute others. Sometimes it will be found that the language of the law, though it is as precise as the subject admits, is not so clear that a person of ordinary intelligence can see its whole meaning. In these cases it will generally be expedient to add illustrations such as may distinctly show in what sense the legislature intends the law to be understood, and may render it impossible that the same question, or any similar question, should ever again occasion difference of opinion. In this manner every successive edition of the code will solve all the important questions as to the construction of the code which have arisen since the appearance of the edition immediately preceding. Important questions, particularly questions about which courts of the highest rank have pronounced opposite decisions, ought to be settled without delay; and no point of law ought to continue to be a doubtful point more than a few years after it has been mooted in a Court of Justice. An addition of a very few pages to the code will stand in the place of several volumes of reports, and will be of far more value than such reports, inasmuch as the additions to the code will proceed from the legislature, and will be of unquestionable authority, whereas the reports would only give the opinions of the judge which other judges might venture to set aside.

"It appears to us also highly desirable that, if the code shall be adopted, all those penal laws which the Indian Legislature may from time to time find it necessary to pass should be framed in such a manner as to fit into the code. Their language ought to be that of the code. No word ought to be used in any other sense than that in which it is used in the code. The very part of the code in which the new law is to be inserted ought to be indicated. If the new law rescinds or modifies any provision of the code that provision ought to be indicated. In fact the new law ought, from the day on which it is passed, to be part of the code, and to affect all the other provisions of the code, and to be affected by them as if it were actually a clause of the original code. In the next edition of the code the new law ought to appear in its proper place."

Although the illustrations, we believe, will obviate many questions of construction, and will do much to fix the sense of the law, yet undoubtedly many cases will occur in which there will be difference of opinion among judges as to what the law is. Room will still be left for doubts as to the meaning of rules, and also as to the right application of illustrations; and cases will no doubt arise where the enacted law is silent; in all such cases the judges will be compelled to use their law-supplying power. It will consequently inevitably follow, if no measures are taken to prevent it, that the enacted law will ere long be encumbered with a mass of comments and decisions; and although the number of Chief Courts has been reduced since the letter we have quoted was written, yet such is still the judicial system of India that probably many of those decisions will be opposed to others of equal authority.

We agree with the framers of the Penal Code in thinking that, for the prevention of this great evil, the enacted law ought, at intervals of only a few years, to be revised and so amended as to make it contain as completely as possible, in the form of definitions, of rules, or of illustrations, everything which may from time to time be deemed fit to be made a part of it, leaving nothing to rest as law on the authority of previous judicial decisions. Each successive edition after such a revision should be enacted as law, and would contain, sanctioned by the legislature, all judge-made law of the preceding interval deemed worthy of being retained. On these occasions, too, the opportunity should be taken to amend the body of law under revision in every practicable way, and especially to provide such new rules of law as might be required by the rise of new interests and new circumstances in the progress of society.

We have also to suggest, for the due administration of the law under this Code if adopted, that when cases of difficulty occur no resort should be had to any other system of law for the purpose of authoritatively solving an ambiguity or supplying an omission, and that the judges must decide cases unprovided for by the Code in the manner they consider most consistent with the principles of justice, equity, and good conscience.
In one matter of detail we would suggest an important departure from the course proposed by the framers of the Penal Code. It seems to us deserving of the consideration of Your Majesty's Government, whether it would not be advisable that the reports which, according to that course, would be made to the legislature in India should not rather be made to the Government there, and be then transmitted to the Secretary of State for India, and that the new editions of bodies of law should be prepared in this country.
RULES OF SUCCESSION AND INHERITANCE.

1. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number, and words importing the male sex include the female sex.

2. The word "person" includes any Company or Association, or body of persons, whether incorporated or not.

3. Whenever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British Calendar.

4. The words "zillah judge" include judges of Cities and other officers possessing the powers of a zillah judge.

5. No person shall, by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done if unmarried.

6. The age of majority shall, in all cases, be eighteen years complete.

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

Succession to the moveable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death.

Illustrations.

(a) A, having his domicile in India, dies in France, leaving moveable property in France, moveable property in England, and property, both moveable and immovable, in India. The succession to the whole is regulated by the law of India.

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

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

9. The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled; or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.

Illustration.

At the time of the birth of A, his father was domiciled in England. A's domicile of origin is in England, whatever may be the country in which he was born.

10. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

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

12. A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

Explanation.—A man is not to be considered as having taken up his fixed habitation in India merely by reason of his residing there in Her Majesty's civil or military service, or in the exercise of any profession or calling.

Illustrations.

(a) A, whose domicile of origin is in England, proceeds to India, where he settles as a barrister or a merchant, intending to reside there during the remainder of his life. His domicile is now in India.

(b) A, whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service. A has acquired a domicile in Austria.

(c) A, whose domicile of origin is in France, comes to reside in India under an engagement with the Indian Government for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in India.

(d) A, whose domicile is in England, goes to reside in India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not by such residence acquire a domicile in India, however long the residence may last.

(e) A, having gone to reside in India under the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in India. A has acquired a domicile in India.

(f) A, whose domicile is in the French settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not by such residence acquire a domicile in British India.
(g.) A., having come to Calcutta under the circumstances stated in the last preceding illustration, continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. A. has acquired a domicile in British India.

13. Any person may acquire a domicile in India by making and depositing in some office in India (to be fixed by the Governor General in Council or the Governor in Council, as the case may be,) a declaration in writing under his hand of his desire to acquire such domicile, provided that he shall have been resident in India for one year immediately preceding the time of his making such declaration.

14. A person who is appointed by the government of one country to be its ambassador, consul, or other representative, in another country, does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with him as a servant or as part of his family.

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

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

Exception.—The domicile of a minor does not change with that of his parent, if the minor is married or holds any office or employment in the service of Her Majesty, or has set up, with the consent of the parent, in any distinct business.

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

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

Exception.—The wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent court, or if the husband is undergoing a sentence of transportation.

19. Except in the cases above provided for, a person cannot during minority acquire a new domicile.

20. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

21. If a man dies leaving moveable property in India; in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of India.

22. Kindred or consanguinity is the connexion or relation of persons descended from the same stock or common ancestor.

23. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather, and great grandfather, and so upwards in the direct ascending line; or between a man, his son, grandson, great grandson, and so downwards in the direct descending line. Every generation constitutes a degree, either ascending or descending. A man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great grandfather and great grandson in the third.

24. Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other. For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased to the common stock, and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

25. For the purpose of succession, there is no distinction between those who are related to a person deceased through his father and those who are related to him through his mother; nor between those who are related to him by the full blood, and those who are related to him by the half blood; nor between those who were actually born in his lifetime, and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.

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

The person whose relatives are to be reckoned, and his cousin german, or first cousin, are, as shown in the table, related in the fourth degree; there being one degree of ascent to the father, and another to the common ancestor the grandfather; and from him one of descent to the uncle, and another to the cousin german; making in all four degrees.

A grandson of the brother and a son of the uncle, i.e. a great nephew and a cousin german are in equal degree, being each four degrees removed.

A grandson of a cousin german is in the same degree as the grandson of a great uncle, for they are both in the sixth degree of kindred.
27. A man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

Illustrations.

(a.) A has left no will. He has died intestate in respect of the whole of his property.
(b.) A has left a will, whereby he has appointed B. his executor; but the will contains no other provisions. A has died intestate in respect of the distribution of his property.
(c.) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.
(d.) A has bequeathed 1,000l. to B., and 1,000l. to the eldest son of C., and has made no other bequest; and has died leaving the sum of 2,000l. and no other property. C. died before A. without having ever had a son. A has died intestate in respect of the distribution of 1,000l.

28. Such property devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules herein prescribed.

Explanation.—The widow is not entitled to the provision hereby made for her, if by a valid contract made before her marriage she has been excluded from her distributive share of her husband’s estate.

29. Where the intestate has left a widow; if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules herein contained. If he has left no lineal descendant, but has left persons who are of kindred to him, one half of his property shall belong to his widow and the other half shall go to those who are of kindred to him, in the order and according to the rules herein contained: If he has left none who are of kindred to him, the whole of his property shall belong to his widow.

30. Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules herein contained: And if he has left none who are of kindred to him, it shall go to the Crown.

31. The rules for the distribution of the intestate’s property (after deducting the widow’s share, if he has left a widow) amongst his lineal descendants are as follows:—

32. Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there be only one, or shall be equally divided among all his surviving children.

33. Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren, and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild, if there be only one, or shall be equally divided among all his surviving grandchildren.

Illustrations.

(a.) A has three children, and no more; John, Mary, and Henry. They all die before the father, John leaving two children, Mary three, and Henry four. Afterwards A. dies intestate, leaving those nine grandchildren and no descendant of any deceased grandchild. Each of his grandchildren shall have one-ninth.
(b.) But if Henry has died, leaving no child, then the whole is equally divided between the intestate’s five grandchildren, the children of John and Mary.
(c.) A has two children, and no more; John and Mary. John dies before his father, leaving his wife pregnant. Then A. dies, leaving Mary surviving him, and in due time a child of John is born. A’s property is to be equally divided between Mary and such posthumous child.

34. In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great grandchildren to him, or are all in a more remote degree.

35. If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him; and one of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and one of such shares shall be allotted in respect of each of such deceased lineal descendants; and the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which their parents would have been entitled to respectively if they had survived the intestate.
Illustrations.

(a) A had three children, John, Mary, and Henry. John died, leaving four children, and Mary died, leaving one, and Henry alone survived the father. On the death of A, intestate, one-third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.

(b) A left no child, but left eight grandchildren, and two children of a deceased grandchild. The property is divided into nine parts, one of which is allotted to each grandchild; and the remaining one-ninth is equally divided between the two great grandchildren.

(c) A has three children, John, Mary, and Henry. John dies leaving four children, and one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies intestate. One-third of his property is allotted to Henry; one-third to Mary's child; and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

36. Where an intestate has not left lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) are as follows:

37. If the father of the intestate be living, he shall succeed to the property.

38. If the father of the intestate is dead, but the mother of the intestate is living, and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.

Illustration.

A dies intestate, survived by his mother and two brothers of the full blood, John and Henry, and a sister Mary, who is the daughter of his mother but not of his father. The mother takes one-fourth, each brother takes one-fourth, and Mary, the sister of half blood, takes one-fourth.

39. If the father is dead, but the mother is living, and if any brother or sister, and the child or children of any deceased brother or sister are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, the children taking the share which their parents would have been entitled to, if they had survived the intestate.

Illustration.

A. the intestate leaves his mother, his brothers, John and Henry, and also one child of a deceased sister, Mary, and two children of George, a deceased brother of the half blood, who was the son of his father but not of his mother. The mother takes one-fifth, John and Henry each take one-fifth, the child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth equally between them.

40. If the father is dead, but the mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such child or children taking the share which their respective parents would have taken, if they had survived the intestate.

Illustration.

A. the intestate leaves no brother or sister, but leaves his mother and one child of a deceased sister Mary and two children of a deceased brother George. The mother takes one-third, the child of Mary takes one-third, and the children of George take one-third between them.

41. If the father is dead, but the mother is living, and there is neither brother nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

42. Where the intestate has left neither lineal descendant nor father nor mother, the property is divided equally between his brothers and sisters and the children of such of them as may have died before him, such children taking the shares which their respective parents would have taken if they had survived the intestate.

43. If the intestate left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

Illustrations.

(a) A. the intestate has left a grandfather or a grandmother, and no other relative standing in the same or a nearer degree of kindred to him. They being in the second degree will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree.

(b) A. the intestate has left a great grandfather or great grandmother, and uncles and aunts, and no other relative standing in the same or a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.
(c) A. the intestate left a great grandfather, an uncle, and a nephew, but no relative standing in a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(d) Ten children of one brother or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They shall each take one-eleventh of the property.

44. The husband surviving his wife has the same rights in respect of her property, if she die intestate, as the widow has in respect of her husband's property, if he die intestate.

45. If a person whose domicile is not in India marries in India a person whose domicile is in India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in India at the time of the marriage.

46. The property of a minor may be settled in contemplation of marriage, provided the settlement be made by the minor, with the approbation of the minor's father, or if he be dead or absent from India, with the approbation of the High Court of the Presidency, or other Court of the last resort in India, having the local jurisdiction.

47. Where a distributive share in the property of a person who has died intestate shall be claimed by a child, or any descendant of a child of such person; no money or other property which the intestate may during his life have paid, given, or settled to or for the advancement of the child by whom or by whose descendant the claim is made shall be taken into account in estimating such distributive share.

48. A Will is the legal declaration of intentions of the testator with respect to his property, which he desires to be carried into effect after his death.

49. A Will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by Will.

50. A codicil is an instrument made in relation to a Will, and explaining, altering, or adding to its dispositions. It is considered as forming an additional part of the Will.

51. Every person of the age of 18 years complete, and of sound mind, may dispose of his property by Will.

Explanation 1.—A married woman may dispose by Will of any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf, or dumb, or blind are not thereby incapacitated for making a Will if they are able to know what they do by it.

Explanation 3.—One who is ordinarily insane may make a Will during an interval in which he is of sound mind.

Explanation 4.—No person can make a Will while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

Illustrations.

(a) A. can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his Will. A. cannot make a valid Will.

(b) A. executes an instrument purporting to be his Will, but he does not understand the nature of the instrument nor the effect of its provisions. This instrument is not a valid Will.

(c) A. being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes his Will. This is a valid Will.

52. A Will or any part of a Will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Illustrations.

(a) A. falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act, and thereby induces the testator to make a Will in his A.'s favour; such Will has been obtained by fraud, and is invalid.

(b) A. by fraud and deception prevails upon the testator to bequeath a legacy to him. The bequest is void.

(c) A., being a prisoner by lawful authority, makes his Will. The Will is not invalid by reason of the imprisonment.

(d) A. threatens to shoot B., or to burn his house, or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B. in consequence makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(e) A. being of sufficient intellect, if undisturbed by the influence of others, to make a Will, yet being so much under the control of B. that he is not a free agent, makes a Will dictated by B. It appears that he would not have executed the Will but for fear of B. The Will is invalid.
(f) A. being in so feeble a state of health as to be unable to resist importunity, is pressed by B. to make a Will of a certain purport, and does so merely to purchase peace, and in submission to B. The Will is invalid.

(g) A. being in such a state of health as to be capable of exercising his own volition, B. uses urgent intercession and persuasion with him to induce him to make a Will of a certain purport, A., in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his Will in the manner recommended by B. The Will is not rendered invalid by the intercession and persuasion of B.

(h) A. with a view to obtaining a legacy from B., pays him attention and flatters him, and thereby produces in him a capricious partiality to A. B., in consequence of such attention and flattery, makes his Will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of B.

53. A father, whatever his age may be, may by Will appoint a guardian or guardians for his child during minority.

54. Every testator, not being a soldier employed in an expedition, or engaged in actual warfare, or a mariner at sea, must execute his Will according to the following rules:

First.—The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

Second.—The signature or mark of the testator or the signature of the person signing for him shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

Third.—The Will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the Will, or have seen some other person sign the Will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

55. If a testator, in a Will or Codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the Will or Codicil in which it is referred to.

56. Any soldier being employed in an expedition, or engaged in actual warfare, or any mariner being at sea, may, if he has attained the age of 18 years, dispose of his property by a Will made as is mentioned in Section 57. Such Wills are called privileged Wills.

Illustrations.

(a) A., the surgeon of a regiment is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged Will.

(b) A., is at sea in a merchant ship, of which he is the purser. He is a mariner, and being at sea can make a privileged Will.

(c) A., a soldier serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged Will.

(d) A., a mariner of a ship in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner at sea, and can make a privileged Will.

(e) A., an admiral who commands a naval force, but who lives on shore and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged Will.

(f) A., a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged Will.

57. Privileged Wills may be in writing, or may be made by word of mouth. The execution of them shall be governed by the following rules:

First.—The Will may be written wholly by the testator, with his own hand. In such case it need not be signed nor attested.

Second.—It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

Third.—If the instrument purporting to be a Will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his Will, if it be shown that it was written by the testator's directions, or that he recognized it as his Will. If it appear on the face of the instrument, that the execution of it in the manner intended by him was not completed, the instrument shall not by reason of that circumstance be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

Fourth.—If the soldier or mariner shall have written instructions for the preparation
of his Will, but shall have died before it could be prepared and executed, such instructions shall be considered to constitute his Will.

Fifth.—If the soldier or mariner shall in the presence of two witnesses have given verbal instructions for the preparation of his Will, and they shall have been reduced into writing in his lifetime, but he shall have died before the instrument could be prepared and executed, such instructions shall be considered to constitute his Will, although they may not have been reduced into writing in his presence, nor read over to him.

Sixth.—Such soldier or mariner as aforesaid may make a Will by word of mouth by declaring his intentions before two witnesses present at the same time.

Seventh.—A Will made by word of mouth shall be null at the expiration of one month after the testator shall have ceased to be entitled to make a privileged Will.

58. A Will shall not be considered as insufficiently attested by reason of any benefit thereby given, either by way of bequest or by way of appointment, to any person attesting it, or to his or her wife or husband; but the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them.

59. No person, by reason of interest or of his being an executor of a Will, is disqualified as a witness to prove the execution of the Will, or to prove the validity or invalidity thereof.

60. Every Will shall be revoked by the marriage of the maker, except a Will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not in default of such appointment pass to his or her executor, or administrator, or to the person entitled in case of intestacy.

61. No unprivileged Will or Codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another Will or Codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged Will is herein-before required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Illustrations.

(a) A has made an unprivileged Will; afterwards A makes another unprivileged Will, which purports to revoke the first. This is a revocation.

(b) A has made an unprivileged Will. Afterwards, A being entitled to make a privileged Will, makes a privileged Will, which purports to revoke his unprivileged Will. This is a revocation.

62. No obliteration, interlineation, or other alteration made in any unprivileged Will after the execution thereof shall have any effect, except so far as the words or meaning of the Will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as herein-before is required for the execution of the Will; save that the Will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the Will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the Will.

63. No unprivileged Will or Codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a Codicil executed in manner herein-before required, and showing an intention to revive the same; and when any Will or Codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.

64. A privileged Will or Codicil may be revoked by the testator, by an unprivileged Will or Codicil, or by any act expressing an intention to revoke it, and accompanied with such formalities as would be sufficient to give validity to a privileged Will, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Explanation.—In order to the revocation of a privileged Will or Codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged Will, it is not necessary that the testator shall at the time of doing that act be in a situation which entitles him to make a privileged Will.

65. It is not necessary that any technical words or terms of art shall be used in a Will, but only that the wording shall be such that the intentions of the testator can be known therefrom.
66. For the purpose of determining questions as to what person or what property is denoted by any words used in a Will, a court must inquire into every material fact relating to the persons who claim to be interested under such Will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

Illustrations.

(a) A, by his Will, bequeaths 1,000 rupees to his eldest son or to his youngest grandchild, or to his cousin Mary. A Court may make inquiry in order to ascertain to what person the description in the Will applies.

(b) A, by his Will, leaves to B. "his estate called Black Acre." It may be necessary to take evidence, in order to ascertain what is the subject matter of the bequest; that is to say, what estate of the testator's is called Black Acre.

(c) A, by his Will, leaves to B. "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

67. Where the words used in the Will to designate or describe a legatee, or a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.

A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

Illustrations.

(a) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother, named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(b) The testator bequeaths his property "to A. and B., the legitimate children of C." C has no legitimate child, but has two illegitimate children, A. and B. The bequest to A. and B. takes effect, although they are illegitimate.

(c) The testator gives his residuary estate to be divided among "his seven children," and proceeding to enumerate them, mentions six names only. This omission shall not prevent the seventh child from taking a share with the others.

(d) The testator having six grand-children, makes a bequest to "his six grand-children," and proceeding to mention them by their Christian names, mentions one twice over, omitting another altogether. The one whose name is not mentioned shall take a share with the others.

(e) The testator bequeaths "1,000 rupees to each of the three children of A." At the date of the Will, A. has four children. Each of these four children shall, if he survives the testator, receive a legacy of 1,000 rupees.

68. Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

Illustration.

The testator gives a legacy of "Five hundred" to his daughter A., and a legacy of "Five hundred rupees" to his daughter B. A. shall take a legacy of Five hundred rupees.

69. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the Will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect.

Illustrations.

(a) A bequeaths to B. "his marsh lands lying in L., and in the occupation of X." The testator had marsh lands lying in L., but had no marsh lands in the occupation of X. The words "in the "occupation of X." shall be rejected as erroneous, and the marsh lands of the testator lying in L. shall pass by the bequest.

(b) The testator bequeaths to A. "his zemindary of Rampore." He had an estate at Rampore, but it was a talook and not a zemindary. The talook passes by this bequest.

70. If the Will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

Explanations.—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under section 69 are to be considered as struck out of the Will.

Illustrations.

(a) A bequeath to B. his marsh lands lying in L., and in the occupation of X. The testator had marsh lands lying in L., some of which were in the occupation of X., and some not in the
occupation of X. The bequest shall be considered as limited to such of the testator’s marsh lands lying in L, as were in the occupation of X.

(b.) A bequeaths to B, “his marsh lands lying in L, and in the occupation of X, comprising 1,000 beggas of land.” The testator had marsh lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The measurement is wholly inapplicable to the marsh lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the Will, and such of the testator’s marsh lands lying in L, as were in the occupation of X, shall alone pass by the bequest.

71. Where the words of the Will are unambiguous, but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

Illustrations.

(a.) A man having two cousins of the name of Mary, bequeaths a sum of money to “his cousin Mary.” It appears that there are two persons, each answering the description in the Will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(b.) A, by his Will, leaves to B, “his estate called Black Acre.” It turns out that he had two estates called Black Acre. Evidence is admissible to show which estate was intended.

72. Where there is an ambiguity or deficiency on the face of the Will, no extrinsic evidence as to the intentions of the testator shall be admitted.

Illustrations.

(a.) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his Will he bequeaths 1,000 rupees to “his aunt Caroline” and 1,000 rupees to “his cousin Mary,” and afterwards bequeaths 2,000 rupees to “his before-mentioned aunt Mary.” There is no person to whom the description given in the Will can apply, and evidence is not admissible to show who was meant by “his before-mentioned aunt Mary.” The bequest is therefore void for uncertainty under s. 80.

(b.) A bequeaths 1,000 rupees to , leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(c.) A bequeaths to B, rupees or “his estate of .” Evidence is not admissible to show what sum or what estate the testator intended to insert.

73. The meaning of any clause in a Will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other; and for this purpose a Codicil is to be considered as part of the Will.

Illustrations.

(a.) The testator gives to B, a specific fund or property at the death of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B: it appearing from the bequest to B, that the testator meant to use in a restricted sense the words in which he describes what he gives to A.

(b.) Where a testator having an estate, one part of which is called Blackacre, bequeaths the whole of his estate to A, and in another part of his Will bequeaths Blackacre to B, the latter bequest is to be read as an exception out of the first, as if he had said, “I give Blackacre to B, and all the rest of my estate to A.”

74. General words may be understood in a restricted sense where it may be collected from the Will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the Will that the testator meant to use them in such wider sense.

Illustrations.

(a.) A testator gives to A, “his farm in the occupation of B,” and to C, “all his marsh lands in L.” Part of the farm in the occupation of B consists of marsh lands in L, and the testator also has other marsh lands in L. The general words, “all his marsh lands in L,” are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh lands in L.

(b.) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons, and chest of clothes, and to his friend A (a shipmate) his red box, arrack, and all things not before bequeathed. The testator’s share in a house does not pass to A under this bequest.

(c.) A, by his Will bequeathed to B, all his household furniture, plate, linen, china, books, pictures, and all other goods of whatever kind; and afterwards bequeathed to B, a specified part of his property. Under the first bequest A, is entitled only to such articles of the testator’s as are of the same nature with the articles therein enumerated.

75. Where a clause is susceptible of two meanings, according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.
76. No part of a Will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

77. If the same words occur in different parts of the same Will they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

78. The intention of the testator is not to be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

Illustration.

The testator by a Will made on his death-bed bequeathed all his property to C.D. for life, and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under s. 108, but it shall take effect so far as regards the gift to C.D.

79. Where two clauses or gifts in a Will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

Illustrations.

(a.) The testator by the first clause of his Will leaves his estate of Rammuggrur "to A.;" and by the last clause of his Will leaves it "to B. and not to A.;"—B. shall have it.

(b.) If a man at the commencement of the Will gives his house to A. and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B., the latter disposition shall prevail.

80. A Will or bequest not expressive of any definite intention is void for uncertainty.

Illustration.

If a testator says, "I bequeath goods to A.;" or "I bequeath to A.;" or "I leave to A. all the goods mentioned in a schedule," and no schedule is found; or "I bequeath 'money,' 'wheat,' 'oil,' or the like," without saying how much, this is void.

81. The description contained in a Will of property the subject of gift, shall be deemed to refer to and comprise the property answering that description at the death of the testator, unless a contrary intention appear by the Will.

82. Unless a contrary intention shall appear by the Will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by Will to any object he may think proper, and shall operate as an execution of such power; and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by Will to any object he may think proper, and shall operate as an execution of such power.

Explanation.—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

83. Where property is bequeathed to or for the benefit of such of certain objects as a specified person shall appoint, or for the benefit of certain objects in such proportions as a specified person shall appoint; and the Will does not provide for the event of no appointment being made; if the powers given by the Will be not exercised, the property belongs to all the objects of the power in equal shares.

Illustration.

(a.) A. by his Will bequeaths a fund to his wife for her life, and directs that at her death it shall be divided among his children in such proportions as she shall appoint. The widow dies without having made any appointment. The fund shall be divided equally among the children.

84. Where a bequest is made to the "heirs," or "right heirs," or "relations," or "nearest relations," or "family," or "kindred," or "nearest of kin," or "next of kin," of a particular person, without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property.

Illustrations.

(a.) A. leaves his property "to his own nearest relations." The property goes to those who would be entitled to it if A. had died intestate, leaving assets for the payment of his debts independently of such property.

(b.) A. bequeaths 10,000 rupees "for B. for his life, and after the death of B. to his own right heirs." The legacy after B.'s death belongs to those who would be entitled to it if it had formed part of A.'s unbequeathed property.
(c) A leaves his property to B; but if B dies before him, to B’s next of kin; B dies before A, the property devolves as if it had belonged to B, and he had died intestate, leaving assets for the payment of his debts independently of such property.

(d) A leaves 10,000 rupees “to B for his life, and after his decease, to the heirs of C.” The legacy goes as if it had belonged to C, and he had died intestate, leaving assets for the payment of his debts independently of the legacy.

85. Where a bequest is made to the “representatives,” or “legal representatives,” or “personal representatives,” or “executors or administrators” of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it.

Illustration.

(a) A bequest is made to the “legal representatives” of A. A has died intestate and insolvent. B is his administrator. B is entitled to receive the legacy, and shall apply it in the first place to the discharge of such part of A’s debts as may remain unpaid; if there be any surplus, B shall pay it to those persons who at A’s death would have been entitled to receive any property of A’s which might remain after payment of his debts, or to the representatives of such persons.

86. Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the Will that only a restricted interest was intended for him.

87. Where property is bequeathed to a person with a bequest in the alternative to another person or to a class of persons;—if a contrary intention does not appear by the Will, the legatee first named shall be entitled to the legacy, if he be alive at the time when it takes effect; but if he be then dead the person or class of persons named in the second branch of the alternative shall take the legacy.

Illustrations.

(a) A bequest is made to A. or to B. A survives the testator. B takes nothing.

(b) A bequest is made to A. or to B. A dies after the date of the Will, and before the testator. The legacy goes to B.

(c) A bequest is made to A. or to B. A is dead at the date of the Will. The legacy goes to B.

(d) Property is bequeathed to A. or his heirs. A survives the testator. A takes the property absolutely.

(e) Property is bequeathed to A. or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator the bequest to A’s nearest of kin takes effect.

(f) Property is bequeathed to A. for life, and after his death to B. A and B survive the testator. B dies in A’s lifetime. Upon A’s death the bequest to the heirs of B takes effect.

(g) Property is bequeathed to A. for life, and after his death to B. A dies in the testator’s lifetime. A survives the testator. Upon A’s death the bequest to the heirs of B takes effect.

88. Where property is bequeathed to a person, and words are added which describe a class of persons, but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the Will.

Illustrations.

(a) A bequest is made—

to A. and his children,
to A. and his children by his present wife,
to A. and his heirs,
to A. and the heirs of his body,
to A. and the heirs male of his body,
to A. and the heirs female of his body,
to A. and his issue,
to A. and his family,
to A. and his descendants,
to A. and his representatives,
to A. and his personal representatives,
to A., his executors and administrators.

In each of these cases A. takes the whole interest which the testator had in the property.

(b) A bequest is made to A. and his brothers. A. and his brothers are jointly entitled to the legacy.

(c) A bequest is made to A. for life, and after his death to his issue. At the death of A. the property belongs in equal shares to all persons who shall then answer the description of issue of A.

89. Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.
90. The word "children" in a Will applies only to lineal descendants in the first degree; the word "grandchildren" applies only to lineal descendants in the second degree of the person whose "children," or "grandchildren," are spoken of; the words "nephews" and "nieces" apply only to children of brothers or sisters; the words "cousins" or "first cousins," or "cousins german," apply only to children of brothers or of sisters of the father or mother of the person whose cousins, or first cousins, or cousins german, are spoken of; the words "first cousins once removed" apply only to children of cousins german, or to cousins german of a parent, of the person whose first cousins once removed are spoken of; the words "second cousins" apply only to grandchildren of brothers or of sisters of the father or mother of the person whose "second cousins" are spoken of; the words "issue" and "descendants" apply to all lineal descendants whatever of the person whose "issue" or descendants are spoken of. Words expressive of collateral relationship apply alike to relatives of full and of half blood. All words expressive of relationship apply to a child in the womb who is afterwards born alive.

91. In the absence of any intimation to the contrary in the Will, the term "child," "son," or "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or where there is no such legitimate relative, a person who has acquired, at the date of the Will, the reputation of being such relative.

Illustrations.

(a) A. having three children, B., C., and D., of whom B. and C. are legitimate, and D. is illegitimate, leaves his property to be equally divided among "his children." The property belongs to B. and C. in equal shares, to the exclusion of D.

(b) A. having a niece of illegitimate birth who has acquired the reputation of being his niece, and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

(c) A. having in his Will enumerated his children, and named as one of them B., who is illegitimate, leaves a legacy to "his said children." B. will take a share in the legacy along with the legitimate children.

(d) A. leaves a legacy to the "children of B.," B. is dead, and has left none but illegitimate children. All those who had, at the date of the Will, acquired the reputation of being the children of B. are objects of the gift.

(e) A. bequeathed a legacy to "the children of B.," B. never had any legitimate child. C. and D. had at the date of the Will acquired the reputation of being children of B. After the date of the Will, and before the death of the testator, E. and F. were born, and acquired the reputation of being children of B. Only C. and D. are objects of the bequest.

(f) A. makes a bequest in favour of his child by a certain woman, not his wife. B. had acquired at the date of the Will the reputation of being the child of A. by the woman designated. B. takes the legacy.

(g) A. makes a bequest in favour of his child to be born of a woman, who never becomes his wife. The bequest is void.

(h) A. makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is valid.

92. Where a Will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first; if there is nothing in the Will to show what he intended, the following rules shall prevail in determining the construction to be put upon the Will:

First. If the same specific thing is bequeathed twice to the same legatee in the same Will, or in the Will and again in a Codicil, he is entitled to receive that specific thing only.

Second. Where one and the same Will or one and the same Codicil purports to make in two places a bequest to the same person of the same quantity or amount of any thing, he shall be entitled to one such legacy only.

Third. Where two legacies of unequal amount are given to the same person in the same Will, or in the same Codicil, the legatee is entitled to both.

Fourth. Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a Will and the other by a Codicil, or each by a different Codicil, the legatee is entitled to both legacies.

Explanation.—In the four last rules, the word Will does not include a Codicil.

Illustrations.

(a) A. having ten shares, and no more, in the Bank of Bengal, made his Will, which contains near its commencement, the words "I bequeath my ten shares in the Bank of Bengal to B." After other bequests, the Will concludes with the words "and I bequeath my ten shares in the Bank of "living no to B." B. is entitled simply to receive A.'s ten shares in the Bank of Bengal.

(b) A. having one diamond ring, which was given him by B., bequeathed to C. the diamond ring which was given him by B. A. afterwards made a Codicil to his Will, and thereby after
giving other legacies, he bequeathed to C. the diamond ring which was given him by B. C. can claim nothing except the diamond ring which was given to A. by B.

(c.) A. by his Will bequeaths to B. the sum of 5,000 rupees, and afterwards in the same Will repeals the bequest in the same words. B. is entitled to one legacy of 5,000 rupees only.

(d.) A. by his Will bequeaths to B. the sum of 5,000 rupees, and afterwards, by the same Will, repeals the sum in 6,000 rupees. B. is entitled to 11,000 rupees.

(e.) A. by his Will bequeaths to B. 5,000 rupees, and by a Codicil to the Will he bequeaths to him 5,000 rupees. B. is entitled to receive 10,000 rupees.

(f.) A. by one Codicil to his Will bequeaths to B. 5,000 rupees, and by another Codicil, bequeaths to him 6,000 rupees. B. is entitled to receive 11,000 rupees.

(g.) A. by his Will bequeaths "500 rupees to B. because she was his nurse," and in another part of the Will bequeaths 500 rupees to B. "because she went to England with his children." B. is entitled to receive 1,000 rupees.

(h.) A. by his Will bequeaths to B. the sum of 5,000 rupees, and also, in another part of the Will, an annuity of 400 rupees. B. is entitled to both legacies.

(i.) A. by his Will bequeaths to B. the sum of 5,000 rupees, and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B. is entitled absolutely to one sum of 5,000 rupees, and takes a contingent interest in another sum of 5,000 rupees.

93. A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property.

Illustrations.

(a.) A. makes her Will, consisting of several testamentary papers, in one of which are contained the following words:—"I think there will be something left, after all funeral expenses, &c., to give to "B., now at school, towards equipping him to any profession he may hereafter be appointed to." B. is constituted residuary legatee.

(b.) A. makes his Will, with the following passage at the end of it:—"I believe there will be found "sufficient in my banker's hands to defray and discharge my debts, which I hereby desire B. to "do, and keep the residue for her own use and pleasure." B. is constituted the residuary legatee.

(c.) A. bequeaths all his property to B., except certain stocks and funds, which he bequeaths to C. B. is the residuary legatee.

94. Under a residuary bequest the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.

Illustration.

(a.) A. by his Will bequeaths certain legacies, one of which is void under section 109, and another lapsed by the death of the legatee. He bequeaths the residue of his property to B. After the date of his Will A. purchases a zamindary, which belongs to him at the time of his death. B. is entitled to the two legacies and the zamindary as part of the residue.

95. If a legacy be given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and if he dies without having received it, it shall pass to his representatives.

96. If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the Will that the testator intended that it should go to some other person. In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Illustrations.

(a.) The testator bequeaths to B. "500 rupees, which B. owes him." B. dies before the testator; the legacy lapses.

(b.) A bequest is made to A. and his children. A. dies before the testator. The legacy to A. and his children lapsed.

(c.) A legacy is given to A., and in case of his dying before the testator to B. A. dies before the testator. The legacy goes to B.

(d.) A sum of money is bequeathed to A. for life, and after his death to B. A. dies in the lifetime of the testator, B. survives the testator. The bequest to B. takes effect.

(e.) A sum of money is bequeathed to A. on his completing his eighteenth year, and in case he should die before he completes his eighteenth year to B. A. completes his eighteenth year, and dies in the lifetime of the testator. The legacy to A. lapsed and the bequest to B. does not take effect.

(f.) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy will lapse.

97. If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole.
Illustration.

The legacy is simply to A. and B. A. dies before the testator. B. takes the legacy.

98. But where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

Illustration.

A sum of money is bequeathed to A., B., and C., to be equally divided among them. A. dies before the testator. B. and C. shall only take so much as they would have had if A. had survived the testator.

99. Where the share that lapses is a part of the general residue bequeathed by the Will, that share shall go as undisposed of.

Illustration.

The testator bequeaths the residue of his estate to A., B., and C., to be equally divided between them. A. dies before the testator. His one-third of the residue goes as undisposed of.

100. Where a bequest shall have been made to any child or other lineal descendant of the testator and the legatee shall die in the lifetime of the testator, but any lineal descendant of his shall survive the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the Will.

Illustration.

A. makes his Will, by which he bequeaths a sum of money to his son B. for his own absolute use and benefit. B. dies before A., leaving a son who survives A., and having made his Will whereby he bequeaths all his property to C. The money goes to C.

101. Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.

102. Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as shall be alive at the testator's death.

Exception.

If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise, the property shall at that time go to such of them as shall be then alive, and to the representatives of any of them who have died since the death of the testator.

Illustrations.

(a) A. bequeaths 1,000 rupees to "the children of B." without saying when it is to be distributed among them. B. had died previous to the date of the Will, leaving three children, C., D., and E. E. died after the date of the Will, but before the death of A. C. and D. survive A. The legacy shall belong to C. and D. to the exclusion of the representatives of E.

(b) A. bequeaths a legacy to the children of B. At the time of the testator's death B. has no children. The bequest is void.

(c) A. makes his Will, by which he bequeaths a sum of money to his son B. for his own absolute use and benefit. B. dies before A., leaving a son who survives A., and having made his Will whereby he bequeaths all his property to C. The money goes to C.

101. Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.

102. Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as shall be alive at the testator's death.

Exception.

If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise, the property shall at that time go to such of them as shall be then alive, and to the representatives of any of them who have died since the death of the testator.

Illustrations.

(a) A. bequeaths 1,000 rupees to "the children of B." without saying when it is to be distributed among them. B. had died previous to the date of the Will, leaving three children, C., D., and E. E. died after the date of the Will, but before the death of A. C. and D. survive A. The legacy shall belong to C. and D. to the exclusion of the representatives of E.

(b) A. bequeaths a legacy to the children of B. At the time of the testator's death B. has no children. The bequest is void.

(c) A. lease for years of a house was bequeathed to A. for his life, and after his decease to the children of B. At the death of the testator B. had two children living, C. and D.; and he never had any other child. Afterwards, during the lifetime of A., C. died, leaving E. his executor. D. has survived A. D. and E. are jointly entitled to so much of the leasehold term as remains unexpired.

(d) A. makes his Will, by which he bequeaths a sum of money to his son B. for his own absolute use and benefit. B. dies before A., leaving a son who survives A., and having made his Will whereby he bequeaths all his property to C. The money goes to C.

101. Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.

102. Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as shall be alive at the testator's death.

Exception.

If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise, the property shall at that time go to such of them as shall be then alive, and to the representatives of any of them who have died since the death of the testator.
After the death of C, another child is born to B. The legacy belongs to D, E, F, and G to the exclusion of the after born child of B.

(b) A bequeaths a fund to the children of B, to be divided among them when the eldest shall attain majority. At the testator's death B had one child living named C. He afterwards had two other children, named D and E. F died, but C and D were living when C attained majority. The fund belongs to C, D, and the representatives of E, to the exclusion of any child who may be born to B after C's attaining majority.

103. Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

Exception.

If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest, or otherwise; and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or if he be dead to his representatives.

Illustrations.

(a) A bequeaths 1,000 rupees to the eldest son of B. At the death of the testator B has no son. The bequest is void.

(b) A bequeaths 1,000 rupees to B. life, and after his death to the eldest son of C. At the death of the testator C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death, the legacy goes to C's son.

(c) A bequeaths 1,000 rupees to B. life, and after his death to the eldest son of C. At the death of the testator, C had no son; afterwards, during the life of B, a son named D is born to C. D dies, then B. dies. The legacy goes to the representative of D.

(d) A bequeaths his estate of Greenacre to B. for life, and at his decease to the eldest son of C. Up to the death of B, C has had no son. The bequest is void.

(e) A bequeaths 1,000 rupees to the eldest son of C, to be paid to him after the death of B. At the death of the testator C has no son, but a son is afterwards born to him during the life of B and is alive at B's death. C's son is entitled to the 1,000 rupees.

104. Where a bequest is made to a person not in existence at the time of the testator's death, subject to a prior bequest contained in the Will, the later bequest shall be void unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Illustrations.

(a) Property is bequeathed to A. for his life, and after his death to his eldest son for life, and after the death of the latter to his eldest son. At the time of the testator's death, A. has no son. Here the bequest to A.'s eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A.'s eldest son for his life is void.

(b) A fund is bequeathed to A. for his life, and after his death to his daughters. A. survives the testator. A. has daughters some of whom were not in existence at the testator's death. The bequest to A.'s daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A.'s daughters is valid.

(c) A fund is bequeathed to A. for his life, and after his death to his daughters, with a direction that if any of them marries under the age of 18 her portion shall be settled so that it may belong to herself for life, and may be divisible among her children after her death. A. has no daughters living at the time of the testator's death; but has daughters born afterwards who survive him. Here the direction for a settlement has the effect in the case of each daughter who marries under 18, of substituting for the absolute bequest to her a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

(d) A bequeaths a sum of money to B. for life, and directs that upon the death of B. the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children after her death. B. has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B. is contained in the direction to settle the fund, and this direction amounts to a bequest, to persons not yet born, of a life interest in the fund, that is to say, of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B. is void.

105. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.
Illustrations.

(a.) A fund is bequeathed to A. for his life; and after his death to B. for his life; and after B.'s death to such of the sons of B. as shall first attain the age of 25. A. and B. survive the testator.
Here the son of B. who shall first attain the age of 25, may be a son born after the death of the testator; such son may not attain 25 until more than 18 years have elapsed from the death of the longer liver of A. and B.; and the vesting of the fund may thus be delayed beyond the lifetime of A. and B., and the minority of the sons of B. The bequest after B.'s death is void.

(b.) A fund is bequeathed to A. for his life, and after his death to B. for his life, and after B.'s death to such of B.'s sons as shall first attain the age of 25. B. dies in the life-time of the testator leaving one or more sons. In this case the sons of B. are persons living at the time of the testator's decease, and the time when either of them will attain 25 necessarily falls within his own lifetime. The bequest is valid.

(c.) A fund is bequeathed to A. for his life, and after his death to B. for his life; with a direction that after B.'s death it shall be divided amongst such of B.'s children as shall attain the age of 18, but that if no child of B. shall attain that age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest at the expiration of 18 years from the death of B., a person living at the testator's decease. All the bequests are valid.

(d.) A fund is bequeathed to trustees for the benefit of the testator's daughters, with a direction that if any of them marry under age, her share of the fund shall be settled so as to devolve after her death upon such of her children as shall attain the age of 18. Any daughter of the testator to whom the direction applies must be in existence at his decease, and any portion of the fund which may eventually be settled as directed must vest not later than 18 years from the death of the daughter whose share it was. All these provisions are valid.

106. If a bequest is made to a class of persons, with regard to some of whom it is inoperative by reason of the rules contained in the two last preceding sections or either of them, such bequest shall be wholly void.

Illustrations.

(a.) A fund is bequeathed to A. for life, and after his death to all his children who shall attain the age of 25. A. survives the testator, and has some children living at the testator's death. Each child of A.'s living at the testator's death must attain the age of 25 (if at all) within the limits allowed for a bequest. But A. may have children after the testator's decease, some of whom may not attain the age of 25 until more than 18 years have elapsed after the decease of A. The bequest to A.'s children therefore is inoperative as to any child born after the testator's death; and as it is given to all his children as a class, it is not good as to any division of that class, but is wholly void.

(b.) A fund is bequeathed to A. for his life, and after his death to B. C. D., and all other the children of A. who shall attain the age of 25. B. C. D. are children of A. living at the testator's decease. In all other respects the case is the same as that supposed in Illustration (a). The mention of B. C. and D. by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void.

107. Where a bequest is void by reason of any of the rules contained in the last three sections, any bequest contained in the same Will and intended to take effect after or upon failure of such prior bequest, is also void.

Illustrations.

(a.) A fund is bequeathed to A. for his life, and after his death to such of his sons as shall first attain the age of 25, for his life, and after the decease of such son, to B. A. and B. survive the testator. The bequest to B. is intended to take effect after the bequest to such of the sons of A. as shall first attain the age of 25, which bequest is void under s. 105. The bequest to B. is void.

(b.) A fund is bequeathed to A. for his life, and after his death to such of his sons as shall first attain the age of 25, and if no son of A. shall attain that age, to B. A. and B. survive the testator. The bequest to B. is intended to take effect upon failure of the bequest to such of A.'s sons as shall first attain the age of 25, which bequest is void under s. 105. The bequest to B. is void.

108. A direction to accumulate the income arising from any property shall be void; and the property shall be disposed of as if no accumulation had been directed.

Exception.—Where the property is immovable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death; and at the end of the year such property and income shall be disposed of respectively, as if the period during which the accumulation has been directed to be made had elapsed.

Illustrations.

(a.) The Will directs that the sum of 10,000 rupees shall be invested in government securities, and the income accumulated for 20 years, and that the principal together with the accumulations, shall
then be divided between A., B., and C. A., B., and C. are entitled to receive the sum of 10,000 rupees at the end of the year from the testator's death.

(b) The Will directs that 10,000 rupees shall be invested, and the income accumulated until A. shall marry, and shall then be paid to him. A. is entitled to receive 10,000 rupees at the end of a year from the testator's death.

(c) The Will directs that the rents of the farm of Greenacre shall be accumulated for 10 years, and that the accumulation shall be then paid to the eldest son of A. At the death of the testator A. has an eldest son living named B. B. shall receive at the end of one year from the testator's death the rents which have accrued during the year, together with any interest which may have been made by investing them.

(d) The Will directs that the rents of the farm of Greenacre shall be accumulated for 10 years, and that the accumulations shall then be paid to the eldest son of A. At the death of the testator A. has no son. The bequest is void.

(e) A. bequeaths a sum of money to B., to be paid to him when he shall attain the age of 18, and directs the interest to be accumulated till he shall arrive at that age. At A.'s death the legacy becomes vested in B.; and so much of the interest as is not required for his maintenance and education is accumulated, not by reason of the direction contained in the Will, but in consequence of B.'s minority.

109. No man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a Will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the Wills of living persons.

Illustrations.

A. having a nephew, makes a bequest by a Will not executed nor deposited as required—
For the relief of poor people;
For the maintenance of sick soldiers;
For the erection or support of a hospital;
For the education and preferment of orphans;
For the support of scholars;
For the erection or support of a school;
For the building and repairs of a bridge;
For the making of roads;
For the erection or support of a church;
For the repairs of a church;
For the benefit of ministers of religion;
For the formation or support of a public garden.
All these bequests are void.

110. Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the Will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy. And in such cases the legacy is from the testator's death said to be vested in interest.

Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that if a particular event shall happen the legacy shall go over to another person.

Illustrations.

(a) A. bequeaths to B. 100 rupees, to be paid to him at the death of C. On A.'s death the legacy becomes vested in interest in B., and if he dies before C., his representatives are entitled to the legacy.

(b) A. bequeaths to B. 100 rupees, to be paid to him upon his attaining the age of 18. On A.'s death the legacy becomes vested in interest in B.

(c) A fund is bequeathed to A. for life, and after his death to B. On the testator's death the legacy to B. becomes vested in interest in B.

(d) A fund is bequeathed to A. until B. attains the age of 18, and then to B. The legacy to B. is vested in interest from the testator's death.

(e) A. bequeaths the whole of his property to B., upon trust to pay certain debts out of the income, and then to make over the fund to C. At A.'s death the gift to C. becomes vested in interest in him.

(f) A fund is bequeathed to A., B., and C., in equal shares, to be paid to them on their attaining the age of 18 respectively, with a proviso that if all of them die under the age of 18 the legacy shall devolve upon D. On the death of the testator, the shares vest in interest in A., B., and C., subject to be divested in case A., B., and C. shall all die under 18, and upon the death of
any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

111. A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens. A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible. In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

Exception.—Where a fund is bequeathed to any person upon his attaining a particular age, and the Will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit; the bequest of the fund is not contingent.

Illustrations.

(a) A legacy is bequeathed to D. in case A., B., and C. shall all die under the age of 18. D. has a contingent interest in the legacy until A., B., and C. all die under 18, or one of them attains that age.

(b) A sum of money is bequeathed to A. "in case he shall attain the age of 18," or, "when he shall attain the age of 18." A.'s interest in the legacy is contingent until the condition shall be fulfilled by his attaining that age.

(c) An estate is bequeathed to A. for life, and after his death to B., if B. shall then be living, but if B. shall not be then living, to C. A., B., and C. survive the testator. B. and C. each take a contingent interest in the estate until the event which is to vest in one or in the other shall have happened.

(d) An estate is bequeathed as in the case last supposed. B. dies in the lifetime of A. and C. Upon the death of B., C. acquires a vested right to obtain possession of the estate upon A.'s death.

(e) A legacy is bequeathed to A. when she shall attain the age of 18, or shall marry under that age with the consent of B.; with a proviso that if she shall not attain 18, or marry under that age with B.'s consent, the legacy shall go to C. A. and C. each take a contingent interest in the legacy. A. attains the age of 18. A. becomes absolutely entitled to the legacy, although she may have married under 18 without the consent of B.

(f) An estate is bequeathed to A. until he shall marry, and after that event to B. B.'s interest in the bequest is contingent until the condition shall be fulfilled by A.'s marrying.

(g) An estate is bequeathed to A. until he shall take advantage of the Act for the Relief of Insolvent Debtors, and after that event to B. B.'s interest in the bequest is contingent until A. takes advantage of the Act.

(h) An estate is bequeathed to A. if he shall pay 500 rupees to B. A.'s interest in the bequest is contingent until he has paid 500 rupees to B.

(i) A leaves his farm of Greensacre to B., if B. shall convey his own farm of Blackacre to C. B.'s interest in the bequest is contingent until he has conveyed farm Blackacre to C.

(j) A fund is bequeathed to A. if B. shall not marry C. within five years after the testator's death. A.'s interest in the legacy is contingent, until the condition shall be fulfilled by the expiration of the five years without B.'s having married C., or by the occurrence, within that period, of an event which makes the fulfillment of the condition impossible.

(k) A fund is bequeathed to A. if B. shall not make any provision for him by Will. The legacy is contingent until B.'s death.

(l) A. bequeaths to B. 500 rupees a year upon his attaining the age of 18, and directs that the interest or a competent part thereof shall be applied for his benefit until he reaches that age. The legacy is vested.

(m) A. bequeaths to B. 500 rupees when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

112. Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

Illustration.

A fund is bequeathed to such of the children of A. as shall attain the age of 18, with a direction that while any child of A. shall be under the age of 18 the income of the share, to which it may be presumed he will be eventually entitled, shall be applied for his maintenance and education. No child of A. who is under the age of 18 has a vested interest in the bequest.

113. Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.

Illustration.

A. having shares in (X) a prosperous joint stock company, and also shares in (Y) a joint stock company which is in difficulties, and in respect of which heavy calls are expected to be made, bequeaths to B. all his shares in joint stock companies. B. refuses to accept the shares in (Y). He forfeits the shares in (X).
114. Where a Will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

Illustration.

A. having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B. the lease and a sum of money. B. refuses to accept the lease. He shall not by this refusal forfeit the money.

115. Where a legacy is given if a specified uncertain event shall happen, and no time is mentioned in the Will for the occurrence of that event, the legacy cannot take effect unless such event happens before the period when the fund bequeathed is payable or distributable.

Illustrations.

(a) A legacy is bequeathed to A., and in case of his death, to B. If A. survives the testator, the legacy to B. does not take effect.

(b) A legacy is bequeathed to A., and in case of his death without children, to B. If A. survives the testator or dies in his lifetime leaving a child, the legacy to B. does not take effect.

(c) A legacy is bequeathed to A. when and if he attains the age of 18, and in case of his death to B. A. attains the age of 18. The legacy to B. does not take effect.

(d) A legacy is bequeathed to A. for life, and after his death to B. and, “in case of B.’s death without children,” to C. The words “in case of B.’s death without children,” are to be understood as meaning “in case B. shall die without children during the lifetime of A.”

(e) A legacy is bequeathed to A. for life, and after his death to B., and “in case of B.’s death” to C. The words “in case of B.’s death” are to be considered as meaning “in case B. shall die in the lifetime of A.”

116. Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution, unless a contrary intention appear by the Will.

Illustrations.

(a) Property is bequeathed to A. and B., equally to be divided between them, or to the survivor of them. If both A. and B. survive the testator, the legacy is equally divided between them. If A. dies before the testator, and B. survives the testator, it goes to B.

(b) Property is bequeathed to A. for life and after his death to B. and C., equally to be divided between them, or to the survivor of them. B. dies during the life of A.; C. survives A. At A.’s death the legacy goes to C.

(c) Property is bequeathed to A. for life, and after his death to B. and C., or the survivor, with a direction that if B. should not survive the testator, his children are to stand in his place. C. dies during the life of the testator; B. survives the testator, but dies in the lifetime of A. The legacy goes to the representative of B.

(d) Property is bequeathed to A. for life, and after his death to B. and C., with a direction that in case either of them dies in the lifetime of A., the whole shall go to the survivor. B. dies in the lifetime of A. Afterwards C. dies in the lifetime of A. The legacy goes to the representative of C.

117. A bequest upon an impossible condition is void.

Illustrations.

(a) An estate is bequeathed to A. on condition that he shall walk one hundred miles in an hour. The bequest is void.

(b) A. bequeaths 500 rupees to B. on condition that he shall marry A.’s daughter. A.’s daughter was dead at the date of the will. The bequest is void.

118. A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void.

Illustrations.

(a) A. bequeaths 500 rupees to B., on condition that he shall kill C. The bequest is void.

(b) A. bequeaths 5,000 rupees to his niece, if she will desert her husband. The bequest is void.

119. Where a Will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

Illustrations.

(a) A legacy is bequeathed to A. on condition that he shall marry with the consent of B., C., D., and E. A. marries with the written consent of B. C. is present at the marriage. D. sends a present
to A. previous to the marriage. E. has been personally informed by A. of his intentions and has made no objection. A. has fulfilled the condition.

(b) A legacy is bequeathed to A. on condition that he shall marry with the consent of B., C., and D. A. marries with the consent of B. and C. A. has fulfilled the condition.

(c) A legacy is bequeathed to A. on condition that he shall marry with the consent of B., C., and D. A. marries in the lifetime of B., C., and D. with the consent of B. and C. only. A. has not fulfilled the condition.

(d) A legacy is bequeathed to A. on condition that he shall marry with the consent of B., C., and D. A. obtains the unconditional assent of B., C., and D. to his marriage with E. Afterwards B., C., and D. capriciously retract their consent. A. marries E. A. has fulfilled the condition.

(e) A legacy is bequeathed to A. on condition that he shall marry with the consent of B., C., and D. A. marries without the consent of B., C., and D., but obtains their consent after the marriage. A. has not fulfilled the condition.

(f) A. makes his Will, whereby he bequeaths a sum of money to B. if B. shall marry with the consent of A.'s executors. B. marries during the lifetime of A., and A. afterwards expresses his approbation of the marriage. A. dies. The bequest to B. takes effect.

(g) A legacy is bequeathed to A. if he executes a certain document within a time specified in the Will. The document is executed by A. within a reasonable time, but not within the time specified in the Will. A. has not performed the condition, and is not entitled to receive the legacy.

120. Where there is a bequest to one person and a bequest of the same thing to another, if the prior bequest shall fail; the second bequest shall take effect upon the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator.

Illustrations.

(a) A. bequeath a sum of money to his own children surviving him, and if they all die under 18 to B. A. dies without having ever had a child. The bequest to B. takes effect.

(b) A. bequeath a sum of money to B. on condition that he shall execute a certain document within three months after A.'s death, and if he should neglect to do so, to C. B. dies in the testator's lifetime. The bequest to C. takes effect.

121. Where the Will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect unless the prior bequest fails in that particular manner.

Illustration.

A. makes a bequest to his wife, but in case she should die in his lifetime, bequeaths to B. that which he had bequeathed to her. A. and his wife perish together, under circumstances which make it impossible to prove that she died before him. The bequest to B. does not take effect.

122. A bequest may be made to any person with the condition superadded that in case a specified uncertain event shall happen, the thing bequeathed shall go to another person; or that in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person. In each case the ulterior bequest is subject to the rules contained in Sections 111, 112, 113, 114, 115, 116, 117, 118, 120, 121.

Illustrations.

(a) A sum of money is bequeathed to A., to be paid to him at the age of 18, and if he shall die before he attains that age, to B. A. takes a vested interest in the legacy, subject to be devested to and go to B. in case A. shall die under 18.

(b) An estate is bequeathed to A. with a proviso that if A. shall dispute the competency of the testator to make a Will, the estate shall go to B. A. disputes the competency of the testator to make a Will. The estate goes to B.

(c) A sum of money is bequeathed to A. for life, and after his death to B., but if B. shall then be dead, leaving a son, such son is to stand in the place of B. B. takes a vested interest in the legacy, subject to be devested if he dies leaving a son in A.'s lifetime.

(d) A sum of money is bequeathed to A. and B., and if either should die during the life of C., then to the survivor living at the death of C. A. and B. die before C. The gift over cannot take effect, but the representative of A. takes one-half of the money and the representative of B. takes the other half.

(e) A. bequeath to B. the interest of a fund for life, and directs the fund to be divided, at her death, equally among her three children, or such of them as shall be living at her death. All the children of B. die in B.'s lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

123. An ulterior bequest of the kind contemplated by the last section cannot take effect, unless the condition is strictly fulfilled.

Illustrations.

(a) A legacy is bequeathed to A., with a proviso that if he marries without the consent of B., C., and D., the legacy shall go to E. D. dies. A. marries. The gift to E. does not take effect.
A legacy is bequeathed to A., with a proviso that if he marries without the consent of B., the legacy shall go to C. A. marries with the consent of B. He afterwards becomes a widow and marries again without the consent of B. The bequest to C. does not take effect.

A legacy is bequeathed to A., to be paid at 18, or marriage, with a proviso that if A. dies under 18, or marries without the consent of B., the legacy shall go to C. A. marries under 18, without the consent of B. The bequest to C. takes effect.

124. If the ulterior bequest be not valid, the original bequest is not affected by it.

Illustrations.

(a.) An estate is bequeathed to A. for his life, with a condition superadded that if he shall not on a given day walk 100 miles in an hour, the estate shall go to B. The condition being void, A. retains his estate as if no condition had been inserted in the Will.

(b.) An estate is bequeathed to A. for her life, and if she do not desert her husband, to B. A. is entitled to the estate during her life as if no condition had been inserted in the Will.

(c.) An estate is bequeathed to A. for life, and, if he marries, to the eldest son of B. for life, B., at the date of the testator's death, had not had a son. The bequest over is void under s. 96, and A. is entitled to the estate during his life.

125. A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(a.) An estate is bequeathed to A. for his life, with a proviso that in case he shall cut down a certain wood the bequest shall cease to have any effect. A. cuts down the wood; he loses his life interest in the estate.

(b.) An estate is bequeathed to A., provided that if he marries under the age of 25 without the consent of the executors named in the Will, the estate shall cease to belong to him. A. marries under 25 without the consent of the executors. The estate ceases to belong to him.

(c.) An estate is bequeathed to A., provided that if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A. does not go to England within the time prescribed. His interest in the estate ceases.

(d.) An estate is bequeathed to A., with a proviso that if she becomes a nun she shall cease to have any interest in the estate. A. becomes a nun. She loses her interest under the Will.

(e.) A fund is bequeathed to A. for life and after his death to B., if B. shall be then living, with a proviso that if B. shall become a nun, the bequest to her shall cease to have any effect. B. becomes a nun in the lifetime of A. She thereby loses her contingent interest in the fund.

126. In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest, as contemplated by s. 111.

127. Where a bequest is made with a condition superadded that unless the legatee shall perform a certain act the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect; but no time is specified for the performance of the act; if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Illustrations.

(a.) A bequest is made to A. with a proviso that unless he enters the army the legacy shall go over to B. A. takes holy orders, and thereby renders it impossible that he should fulfil the condition. B. is entitled to receive the legacy.

(b.) A bequest is made to A. with a proviso that it shall cease to have any effect if he does not marry B.'s daughter. A. marries a stranger, and thereby indefinitely postpones the fulfilment of the condition. The bequest ceases to have effect.

128. Where the Will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person or the bequest is to cease to have effect; the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

129. Where a fund is bequeathed absolutely to or for the benefit of any person, but the Will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the Will had contained no such direction.

Illustration.

A sum of money is bequeathed towards purchasing a country residence for A., or to purchase an annuity for A., or to purchase a commission in the army for A., or to place A. in any business. A. chooses to receive the legacy in money. He is entitled to do so.
130. Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted, so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him, as if the Will had contained no such direction.

Illustrations.

(a.) A. bequeaths the residue of his property to be divided equally among his daughters, and directs that the shares of the daughters shall be settled upon themselves respectively for life, and be paid to their children after their death. All the daughters die unmarried. The representatives of each daughter are entitled to her share of the residue.

(b.) A. directs his trustees to raise a sum of money for his daughter, and he then directs that they should invest the fund, and shall pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

131. Where a testator does not absolutely bequeath a fund, so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the Will, remains a part of the estate of the testator.

Illustrations.

(a.) A. directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and at his death shall divide the principal among his children; the son dies without having ever had a child. The fund, after the son's death, belongs to the estate of the testator.

(b.) A. bequeaths the residue of his estate to be divided equally among his daughters, with a direction that they are to have the interest only during their lives, and that at their decease the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

132. If a legacy is bequeathed to a person who is named an executor of the Will, he shall not take the legacy unless he proves the Will or otherwise manifests an intention to act as executor.

Illustration.

A legacy is given to A., who is named an executor. A. orders the funeral according to the directions contained in the Will, and dies a few days after the testator, without having proved the Will. A. has manifested an intention to act as executor.

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

Illustrations.

(a.) A. bequeaths to B.,
"The diamond ring presented to him by C."
"His gold chain."
"A certain bale of wool."
"A certain piece of cloth."
"All his household goods, which shall be in or about his dwelling-house in M. Street, in Calcutta, at the time of his death."
"The sum of 1,000 rupees in a certain chest."
"The debt which B. owes him."
"All his bills, bonds, and securities belonging to him, lying in his lodgings in Calcutta."
"All his furniture in his house in Calcutta."
"All his goods on board a certain ship then lying in the River Hooghly."
"2,000 rupees which he has in the hands of C."
"The money due to him on the Bond of D."
"His mortgage on the Rampore Factory."
"One-half of the money owing to him on his mortgage of Rampore Factory."
"1,000 rupees, being part of a debt due to him from C."
"His capital stock of 1,000l. in East India stock."
"His promissory notes of the Government of India, for 10,000 rupees in their 4 per cent. loans."
"All such sums of money as his executors may, after his death, receive in respect of the debt due to him from the insolvent firm of D. and Company."
"All the horses which he may have in his stable at the time of his death."
"Such of his horses as B. may select."
"All his shares in the Bank of Bengal."
"All the shares in the Bank of Bengal which he may possess at the time of his death."
"All the money which he has in the 5½ per cent. loan of the Government of India."
"All the Government securities he shall be entitled to at the time of his decease."

Each of these legacies is specific.
(6.) A having Government promissory notes for 10,000 rupees, bequeaths to his executors "Government promissory notes for 10,000 rupees in trust to sell" for the benefit of B.

The legacy is specific.

(e.) A having property at Benares, and also in other places, bequeaths to B all his property at Benares.

The legacy is specific.

(d.) A bequeaths to B,

His house in Calcutta.
His zemindary of Rampore.
His talook of Ramnuggrur.
His lease of the indigo factory of Sulkeas.
An annuity of 500 rupees out of the rents of his zemindary of W.
A directs his zemindary of X to be sold, and proceeds to be invested for the benefit of B.

Each of these bequests is specific.

(c.) A by his Will charges his zemindary of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zemindary to D. Each of these bequests is specific.

(f.) A bequeaths a sum of money, To buy a house in Calcutta for B.
To buy an estate in Zillah Fureedapore for B.
To buy a diamond ring for B.
To buy a horse for B.
To be invested in shares in the Bank of Bengal for B.
To be invested in Government securities for B.
A bequeaths to B.
"A diamond ring."
"A horse."
"Ten thousand rupees worth of Government securities."
"An annuity of 500 rupees."
"2,000 rupees, to be paid in cash."
"So much money as will produce 5,000 rupees four per cent. Government securities."

These bequests are not specific.

(g.) A having property in England and property in India, bequeaths a legacy to B., and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C., and directs that it shall be paid out of the property which he may leave in England.

No one of these legacies is specific.

134. Where a sum certain is bequeathed, the legacy is not specific merely because the stocks, funds, or securities in which it is invested are described in the Will.

Illustrations.

A bequeaths to B.
"10,000 rupees of his funded property."
"10,000 rupees of his property now invested in shares of the East India Railway Company."
"10,000 rupees, at present secured by mortgage of Rampore Factory."

No one of these legacies is specific.

135. Where a bequest is made in general terms of a certain amount of any kind of stock, the legacy is not specific merely because the testator was at the date of his Will possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Illustration.

A bequeaths to B. 5,000 rupees five per cent. Government securities. A had at the date of the Will five per cent. Government securities for 5,000 rupees.

The legacy is not specific.

136. A money legacy is not specific merely because the Will directs its payment to be postponed until some part of the property of the testator shall have been reduced to a certain form, or remitted to a certain place.

Illustration.

A bequeaths to B. 10,000 rupees, and directs that this legacy shall be paid as soon as A.'s property in India shall be realized in England.

The legacy is not specific.

137. Where a Will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed; the articles enumerated shall not be deemed to be specifically bequeathed.

138. Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.
Illustrations.

(a.) A. having a lease of a house for a term of years, 15 of which were unexpired at the time of his death, has bequeathed the lease to B. for his life, and after B.'s death to C. B. is to enjoy the property as A. left it, although if B. lives for 15 years C. can take nothing under the bequest.

(b.) A. having an annuity during the life of B., bequeaths it to C. for his life, and after C.'s death, to D. C. is to enjoy the annuity as A. left it, although if B. dies before D., C. can take nothing under the bequest.

139. Where property comprised in a bequest to two or more persons in succession, is not specifically bequeathed, it shall in the absence of any direction to the contrary be sold and the proceeds of the sale shall be invested in such securities as the High Court of the Presidency or other Court of the last resort in India having the local jurisdiction may, by any general rule to be made from time to time, authorize or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the Will.

Illustration.

A. having a lease for a term of years, bequeaths "all his property" to B. for life, and after B.'s death to C. The lease must be sold and the proceeds invested as stated in the text, and the annual income arising from the fund is to be paid to B. for life. At B.'s death the capital of the fund is to be paid to C.

140. Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this, that where specified property is given to the legatee the legacy is specific; where the legacy is directed to be paid out of specified property it is demonstrative.

Illustrations.

(a.) A. bequeaths to B. 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C. 1,000 rupees to be paid out of the debt due to him from W. The legacy to B. is specific; the legacy to C. is demonstrative.

(b.) A. bequeaths to B. ten bushels of the corn which shall grow in his field of Greensacre.

80 chests of the indigo which shall be made at his factory of Rampore.

"10,000 rupees out of his five per cent. promissory notes of the Government of India."

An annuity of 500 rupees "from his funded property."

"1,000 rupees out of the sum of 2,000 rupees due to him by C."

A. bequeaths to B. an annuity, and directs it to be paid out of the rents arising from his talook of Ramnuggur.

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

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

Each of these bequests is demonstrative.

141. Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and, so far as the residue shall be deficient, out of the general assets of the testator.

Illustration.

A. bequeaths to B. 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C. 1,000 rupees to be paid out of the debt due to him from W. The debt due to A. from W. is only 1,500 rupees; of these, 1,500 rupees belong to B., and 500 rupees are to be paid to C. C. is also to receive 500 rupees out of the general assets of the testator.

142. If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect by reason of the subject-matter having been withdrawn from the operation of the Will.

Illustrations.

(a.) A. bequeaths to B.,

"The diamond ring presented to him by C."

"His gold chain."

"A certain bale of wool."

"A certain piece of cloth."

"All his household goods which shall be in or about his dwelling-house in M. Street in "Calcutta at the time of his death."
A. in his lifetime,
Sells or gives away the ring.
Converts the chain into a cup.
Converts the wool into cloth.
Makes the cloth into a garment.
Takes another house into which he removes all his goods.
Each of these legacies is adeemed.
(b.) A bequeaths to B,
"The sum of 1,000 rupees in a certain chest."
"All the horses in his stable."
At the death of A. no money is found in the chest and no horses in the stable.
The legacies are adeemed.
(c.) A bequeaths to B. certain bales of goods. A. takes the goods with him on a voyage. The ship and goods are lost at sea, and A. is drowned.
The legacy is adeemed.

143. A demonstrative legacy is not a deemed by reason that the property on which it is charged by the will does not exist at the time of the death of the testator, or has been converted into property of a different kind; but it shall in such case be paid out of the general assets of the testator.

144. Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

Illustrations.

(a.) A bequeaths to B,
"The debt which C. owes him."
"2,000 rupees which he has in the hand of D."
"The money due to him on the bond of E."
"His mortgage on the Rampore factory."
All these debts are extinguished in A.'s lifetime, some with and some without his consent. All the legacies are adeemed.

(b.) A. bequeaths to B,
"His interest in certain policies of life assurance." A. in his lifetime receives the amount of the policies.
The legacy is adeemed.

145. The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an adeption of the legacy to the extent of the sum so received.

Illustration.
A. bequeaths to B. "the debt due to him by C." The debt amounts to 10,000 rupees. C. pays to A. 5,000 rupees, the one half of the debt. The legacy is revoked by adeption, so far as regards the 5,000 rupees received by A.

146. If a portion of an entire fund or stock be specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an adeption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Illustration.
A. bequeaths to B. one half of the sum of 10,000 rupees, due to him from W. A. in his lifetime receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W. to A. at the time of his death belong to B. under the specific bequest.

147. Where a portion of a fund is specifically bequeathed to one legatee and a legacy charged on the same fund is bequeathed to another legatee; if the testator receives a portion of that fund and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy; the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

Illustration.
A. bequeaths to B. 1,000 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C. 1,000 rupees to be paid out of the debt due to him from W. A. afterwards receives 500 rupees, part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees 1,000 rupees belong to B. and 500 rupees are to be paid to C. C. is also to receive 500 rupees out of the general assets of the testator.

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

Illustration.
A. bequeaths to B,
"His capital stock of 1,000l. in East India stock;"
"His promissory notes of the Government of India for 10,000 rupees in their 4 per cent. " loan."
A. sells the stock and the notes.
The legacies are adeemed.

149. Where stock which has been specifically bequeathed, does only in part exist at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Illustration.
A. bequeaths to B, "His 10,000 rupees in the 5½ per cent. loan of the Government of India.
A. sells one half of his 10,000 rupees in the loan in question.
One half of the legacy is adeemed.

150. A specific bequest of goods under a description connecting them with a certain place, is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

Illustration.
A. bequeaths to B. "all his household goods which shall be in or about his dwelling-house " in Calcutta at the time of his death." The goods are removed from the house to save them from fire. A. dies before they are brought back.
A. bequeaths to B. all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death. During A.'s absence upon a journey the whole of the goods are removed from the house. A. dies without having sanctioned their removal.
Neither of these legacies is adeemed.

151. The removal of the thing bequeathed from the place in which it is stated in the Will to be situated, does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

Illustrations.
A. bequeaths to B. all the bills, bonds, and other securities for money belonging to him then lying in his lodgings in Calcutta. At the time of his death these effects had been removed from his lodgings in Calcutta.
A. bequeaths to B. all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only, which he removes with himself to each house. At the time of his death, the furniture is in the house at Chinsurah.
A. bequeaths to B. all his goods on board a certain ship then lying in the river Hooghly. The goods are removed by A.'s directions to a warehouse, in which they remain at the time of A.'s death.
No one of these legacies is revoked by ademption.

152. Where the thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity which shall be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption; but if he mixes it up with the general mass of his property the legacy is adeemed.

Illustration.
A. bequeaths to B. whatever sum may be received from his claim on C. A. receives the whole of his claim on C. and sets it apart from the general mass of his property. The legacy is not adeemed.

153. Where a thing specifically bequeathed undergoes a change between the date of the Will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy shall not, by reason of such change, be taken to have been adeemed.

Illustration.
A. bequeaths to B. "all the money which he has in the 5½ per cent. loan of the Government of " India."
The securities for the 5½ per cent. loan are converted during A.'s lifetime into 5 per cent. stock.
A. bequeaths to B. the sum of 2,000l, invested in Consols in the names of trustees for A.
The sum of 2,000l. is transferred by the trustees into A.'s own name.
A. bequeaths to B. the sum of 10,000 rupees in promissory notes of the Government of India which he has power, under his marriage settlement, to dispose of by Will. Afterwards, in A.'s lifetime, the fund is converted into Consols by virtue of an authority contained in the settlement.
No one of these legacies has been adeemed.
154. Where a thing specifically bequeathed undergoes a change between the date of the Will and the testator’s death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Illustration.

A. bequeaths to B. “all his 3 per cent. Consols.” The Consols are, without A.’s knowledge, sold by his agent and the proceeds converted into East India stock. This legacy is not adeemed.

155. Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.

156. Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed.

157. Where property specifically bequeathed is subject at the death of the testator to any pledge, lien, or incumbrance, created by the testator himself or by any person under whom he claims; then, unless a contrary intention appears by the will, the legatee, if he accepts the bequest, shall accept it subject to such pledge or incumbrance and shall (as between himself and the testator’s estate) be liable to make good the amount of such pledge or incumbrance. A contrary intention shall not be inferred from any direction which the Will may contain for the payment of the testator’s debts generally.

Explanation.—A periodical payment in the nature of land revenue or in the nature of rent is not such an incumbrance as is contemplated by this section.

Illustrations.

(a.) A. bequeaths to B. the diamond ring given him by C. At A.’s death the ring is held in pawn by D., to whom it has been pledged by A. It is the duty of A.’s executors, if the state of the testator’s assets will allow them, to allow B. to redeem the ring.

(b) A. bequeaths to B. a zamindary which at A.’s death is subject to a mortgage for 10,000 rupees, and the whole of the principal sum, together with interest to the amount of 1,000 rupees, is due at A.’s death. B., if he accepts the bequest, accepts it subject to this charge, and is liable, as between himself and A.’s estate, to pay the sum of 11,000 rupees thus due.

158. Where anything is to be done to complete the title of the testator to the thing bequeathed, it is to be done at the cost of the testator’s estate.

Illustrations.

(a.) A. having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths it to B., and dies before he has paid the purchase-money. The purchase-money must be made good out of A.’s assets.

(b.) A. having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down, and the other half secured by mortgage of the land, bequeaths it to B., and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A.’s assets.

159. Where there is a bequest of any interest in immovable property, in respect of which payment in the nature of land revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them up to the day of his death.

Illustration.

A. bequeaths to B. a zamindary, in respect of which 365 rupees are payable annually by way of land revenue. A. pays his revenue at the usual time and dies 25 days after. A.’s estate shall make good 25 rupees in respect of the land revenue.

160. In the absence of any direction in the Will, where there is a specific bequest of stock in a joint stock company, if any call or other payment is due from the testator at the time of his death in respect of such stock, such call or payment shall, as between the estate of the testator and the legatee, be borne by the estate of the testator; but if any call or other payment shall after the death of the testator become due in respect of such stock, the same shall, as between the estate of the testator and the legatee, be borne by the legatee if he accept the bequest.

Illustrations.

(a.) A. bequeathed to B. his shares in a certain railway. At A.’s death there was due from him the sum of 5l. in respect of each share, being the amount of a call which had been duly made, and the sum of 5s. in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A.’s estate.
(b.) A has agreed to take 50 shares in an intended joint stock company, and has contracted to pay up 5l. in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(c.) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(d.) A bequeaths to B his shares in a joint stock company. B accepts the bequest. Afterwards the affairs of the Company are wound up and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(e.) A is the owner of ten shares in a railway company. At a meeting held during his lifetime a call is made of 3l. per share, payable by three instalments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. A's estate must pay the first instalment, and B, if he accepts the legacy, must pay the remaining instalments.

161. If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

162. If there be a bequest of something described in general terms, the executor must purchase for the legatee what will reasonably answer the description.

Illustrations.

(a.) A bequeaths to B, a pair of carriage horses, or a diamond ring. The executor must provide the legatee with such articles, if the state of the assets will allow it.

(b.) A bequeaths to B "his pair of carriage horses." A had no carriage horses at the time of his death. The legacy fails.

163. Where the interest or produce of a fund is bequeathed to any person, and the Will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.

Illustrations.

(a.) A bequeaths to B. the interest of his 5 per cent. promissory notes of the Government of India. There is no other clause in the Will affecting those securities. B is entitled to A's 5 per cent. promissory notes of the Government of India.

(b.) A bequeaths the interest of his 5½ per cent. promissory notes of the Government of India to B. for his life, and after his death to C. B. is entitled to the interest of the notes during his life, and C. is entitled to the notes upon B's death.

(c.) A bequeaths to B. the rents of his lands at X. B. is entitled to the lands.

164. Where an annuity is created by Will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the Will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Illustrations.

(a.) A bequeaths to B. 500 rupees a year. B. is entitled during his life to receive the annual sum of 500 rupees.

(b.) A bequeaths to B. the sum of 500 rupees monthly. B. is entitled during his life to receive the sum of 500 rupees every month.

(c.) A bequeaths an annuity of 500 rupees to B. for life, and on B's death to C. B. is entitled to an annuity of 500 rupees during his life. C., if he survives B., is entitled to an annuity of 500 rupees from B's death until his own death.

165. Where the Will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of an annuity for any person, the legacy vests in interest in the legatee on the death of the testator, and he is entitled at his option to have an annuity purchased for him, or to receive the money appropriated for that purpose by the Will.

Illustrations.

(a.) A. by his will directs that his executors shall out of his property purchase an annuity of 1,000 rupees for B. B. is entitled at his option to have an annuity of 1,000 rupees for his life purchased for him, or to take property sufficient for the purchase of such an annuity.

(b.) A bequeaths a fund to B. for his life, and directs that after B's death it shall be laid out in the purchase of an annuity for C. B. and C. survive the testator. C. dies in B's lifetime. On B's death the fund belongs to the representative of C.

166. Where an annuity is bequeathed but the assets of the testator are not sufficient to pay all the legacies given by the Will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the Will.
167. Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator’s estate shall be applied for that purpose.

168. Where a debtor bequeaths a legacy to his creditor, and it does not appear from the Will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.

169. Where a parent who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

Illustration.

A., by articles entered into in contemplation of his marriage with B., covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A. bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

170. No bequest shall be wholly or partially deemed by a subsequent provision made by settlement or otherwise for the legatee.

Illustrations.

(a.) A. bequeaths 20,000 rupees to his son B. He afterwards gives to B. the sum of 20,000 rupees. The legacy is not thereby deemed.

(b.) A. bequeaths 40,000 rupees to B., his orphan niece whom he had brought up from her infancy. Afterwards, on the occasion of B.’s marriage, A. settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

171. Where a man, by his Will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and in the latter case he shall give up any benefits which may have been provided for him by the Will.

172. The interest so relinquished shall devolve as if it had not been disposed of by the Will in favour of the legatee, subject nevertheless to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the Will.

173. This rule will apply whether the testator does or does not believe that which he professes to dispose of by his Will to be his own.

Illustrations.

(a.) The farm of Whiteacre was the property of C., A. bequeathed it to B., giving a legacy of 1,000 rupees to C. C. has elected to retain his farm of Whiteacre, which is worth 800 rupees. C. forfeits his legacy of 1,000 rupees, of which 800 rupees goes to B., and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(b.) A. bequeaths an estate to B. in case his elder brother (who is married and has children) shall leave no issue living at his death. A. also bequeaths to C. a jewel, which belongs to B. B. must elect to give up the jewel, or to lose the estate.

(c.) A. bequeaths to B. 1,000 rupees, and to C. an estate which will under a settlement belong to B. if his elder brother (who is married, and has children) shall leave no issue living at his death. B. must elect to give up the estate, or to lose the legacy.

(d.) A., a person of the age of 18 domiciled in India, but owning real property in England, to which C. is heir-at-law, bequeaths a legacy to C., and subject thereto devises and bequeaths to B. “All his property, whatsoever and wheresoever,” and dies under 21. The real property in England does not pass by the Will. C. may claim his legacy without giving up the real property in England.

174. A bequest for a man’s benefit is, from the purpose of election, the same thing as a bequest made to himself.

Illustration.

The farm of Whiteacre being the property of B., A. bequeathed it to C.; and bequeathed another farm called Blackacre to his own executors, with a direction that it should be sold, and the proceeds applied in payment of B.’s debts. B. must elect whether he will abide by the Will, or keep his farm of Whiteacre in opposition to it.

175. A person taking no benefit directly under the Will, but deriving a benefit under it indirectly, is not put to his election.

Illustration.

The lands of Whiteacre are settled upon C. for life, and after his death upon D., his only child A. bequeaths the lands of Whiteacre to B., and 1,000 rupees to C. C. dies intestate, shortly
after the testator, and without having made any election. D. takes out administration to C., and as administrator elects on behalf of C.'s estate to take under the Will. In that capacity he receives the legacy of 1,000 rupees, and accounts to B. for the rents of the lands of Whiteacre which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Whiteacre in opposition to the Will.

176. A person who in his individual capacity takes a benefit under the Will, may in another character elect to take in opposition to the Will.

Illustration.

The estate of Whiteacre is settled upon A. for life, and after his death upon B. A. leaves the estate of Whiteacre to D., and 2,000 rupees to B. and 1,000 rupees to C., who is B.'s only child. B. dies intestate, shortly after the testator, without having made an election. C. takes out administration to B., and as administrator elects to keep the estate of Whiteacre in opposition to the Will, and to relinquish the legacy of 2,000 rupees. C. may do this, and yet claim his legacy of 1,000 rupees under the Will.

Exception to the six last Rules.

Where a particular gift is expressed in the Will to be in lieu of some thing belonging to the legatee, which is also in terms disposed of by the Will, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the Will.

Illustration.

Under A.'s marriage settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Whiteacre during her life.

A. by his will bequeaths to his wife an annuity of 200l. during her life, in lieu of her interest in the estate of Whiteacre, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000l. The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1,000l.

177. Acceptance of a benefit given by the Will constitutes an election by the legatee to take under the Will, if he has knowledge of his right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

Illustrations.

(a.) A. is owner of an estate called Whiteacre, and has a life interest in another estate called Blackacre, to which, upon his death, his son B. will be absolutely entitled. The will of A. gives the estate of Whiteacre to B. and the estate of Blackacre to C. B., in ignorance of his own right to the estate of Blackacre, allows C. to take possession of it, and enters into possession of the estate of Whiteacre. B. has not confirmed the bequest of Blackacre to C.

(b.) B. the eldest son of A. is the possessor of an estate called Whiteacre. A. bequeaths Whiteacre to C. and to B. the residue of A.'s property. B., having been informed by A.'s executors that the residue will amount to 5,000 rupees allows C. to take possession of Whiteacre. He afterwards discovers that the residue does not amount to more than 500 rupees. B. has not confirmed the bequest of the estate of Whiteacre to C.

178. Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the Will without doing any act to express dissent.

179. Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest, in the same condition as if such act had not been done.

Illustration.

A. bequeaths to B. an estate to which C. is entitled, and to C. a coal mine. C. takes possession of the mine, and exhausts it. He has thereby confirmed the bequest of the estate to B.

180. If the legatee shall not within one year after the death of the testator signify to the testator's representatives his intention to confirm or to dissent from the Will, the representatives shall, upon the expiration of that period, require him to make his election; and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the Will.

181. In case of disability the election shall be postponed until the disability ceases, or until the election shall be made by some competent authority.

182. A man may dispose, by gift made in contemplation of death, of any property which he could dispose of by Will.
A gift is said to be made in contemplation of death where a man who is ill and
expects to die shortly of his illness, delivers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness.

Such a gift may be resumed by the giver. It does not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.

Illustrations.

(a) A being ill, and in expectation of death, delivers to B, to be retained by him in case of A's death,—
   1. A watch.
   2. A bond granted by C to A.
   3. A bank note.
   5. A bill of exchange endorsed in blank.

A dies of the illness during which he delivered these articles.
B is entitled to—
   1. The watch.
   2. The debt secured by C's bond.
   3. The bank note.
   5. The bill of exchange.
   6. The money secured by the mortgage deed.

(b) A being ill, and in expectation of death, delivers to B the key of a trunk, or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A's death,—A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents, or to A's goods of bulk in the warehouse.

(c) A being ill and in expectation of death, puts aside certain articles in separate parcels, and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels.
B and C are not entitled to the contents of the parcels.

183. Probate is the copy of a Will certified under the seal of a court of competent jurisdiction, with a grant of administration to the estate of the testator.

184. An executor is a person to whom the execution of the last Will of a deceased person is, by the testator's appointment, confided.

185. An administrator is a person appointed by competent authority to administer the estate of a deceased person when there is no executor.

186. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

187. When a Will has been proved and deposited in a court of competent jurisdiction, situated beyond the limits of the Presidency, whether in the British dominions, or in a foreign country, and a properly authenticated copy of the Will is produced, letters of administration may be granted with a copy of such copy annexed.

188. Probate can be granted only to an executor appointed by the Will.

189. The appointment may be express, or by necessary implication.

Illustrations.

(a) A wills that C be his executor if B will not; B is appointed executor by implication.

(b) A gives a legacy to B, and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(c) A appoints several persons executors of his Will and Codicils, and his nephew residuary legatee, and in another Codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my Will and Codicils, signed of different dates." The nephew is appointed an executor by implication.

190. Probate cannot be granted to any person who is under the age of 18 years, or is of unsound mind, nor to a married woman without the consent of her husband.

191. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's Will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first and then to A.

192. If a Codicil be discovered after the grant of probate, a separate probate of that Codicil may be granted to the executor, if it in no way repeals the appointment
of executors made by the Will. If different Executors are appointed by the Codicil, the probate of the Will must be revoked, and a new probate granted of the Will and the Codicil together.

193. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

194. No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction within the Presidency shall have granted probate of the Will under which the right is claimed or shall have granted letters of administration under s. 187.

195. Probate of a Will when granted establishes the Will from the death of the testator, and renders valid all intermediate acts of the executor as such.

196. Letters of administration cannot be granted to any person who is under the age of 18 years, or is of unsound mind, nor to a married woman without the consent of her husband.

197. No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.

198. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

199. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

200. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship; except that when one or more of several executors have proved a Will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

201. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate.

202. If the executor renounce, or fail to accept the executorship within the time limited for the acceptance or refusal thereof, the Will may be proved and letters of administration, with a copy of the Will annexed, may be granted to the person who would be entitled to administration in case of intestacy.

203. When the deceased has made a Will, but has not appointed an executor, or when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the Will, or when the executor dies after having proved the Will but before he has administered all the estate of the deceased; an universal or a residuary legatee may be admitted to prove the Will, and letters of administration with the Will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

204. When a residuary legatee who has a beneficial interest, survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the Will annexed, as such residuary legatee.

205. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the Will, and letters of administration may be granted to him or them accordingly.

206. Letters of administration with the Will annexed shall not be granted to any legatee other than an universal or a residuary legatee until a citation has been issued and published in the manner herein-after mentioned, calling on the next of kin to accept or refuse letters of administration.

207. When the deceased has died intestate, those who are connected with him either by marriage or by consanguinity, are entitled to obtain letters of administration of his estate and effects in the order and according to the rules herein-after stated.

208. If the deceased has left a widow, administration shall be granted to the widow unless the Court shall see cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased.
Illustrations.

(a.) The widow is a lunatic, or has committed adultery, or has been barred by her marriage settlement of all interest in her husband’s estate; there is cause for excluding her from the administration.

(b.) The widow has married again since the decease of her husband; this is not good cause for her exclusion.

209. If the judge think proper he may associate any person or persons with the widow in the administration, who would be entitled solely to the administration if there were no widow.

210. If there be no widow, or if the Court see cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of intestate’s estate; provided that when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration.

211. Those who stand in equal degree of kindred to the deceased, are equally entitled to administration.

212. The husband, surviving his wife, has the same right of administration of her estate as the widow has in respect of the estate of her husband.

213. When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration, and willing to act, they may be granted to a creditor.

214. Where the deceased has left property in India letters of administration must be granted according to the foregoing rules, although he may have been a domiciled inhabitant of a country in which the law relating to testamentary or intestate succession differs from the law of India.

215. When the Will has been lost or mislaid since the testator’s death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the Will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it is produced.

216. When the Will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

217. When the Will is in the possession of a person residing out of the Presidency, or other division of territory containing a Court of the last resort in India, in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the Will or an authenticated copy of it is produced.

218. Where no Will of the deceased is forthcoming, but there is reason to believe that there is a Will in existence, letters of administration may be granted, limited until the Will, or an authenticated copy of it, be produced.

219. When any executor is absent from the Presidency, or other such division of territory as aforesaid, in which application is made, and there is no executor within the Presidency or division willing to act, letters of administration with the Will annexed may be granted to the attorney of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

220. When any person, to whom, if present, letters of administration with the Will annexed might be granted, is absent from the Presidency, or other such division of territory as aforesaid, letters of administration with the Will annexed may be granted to his attorney, limited as above mentioned.

221. When a person entitled to administration in case of intestacy is absent from the Presidency, and no person equally entitled is willing to act, letters of administration may be granted to the attorney of the absent person, limited as before mentioned.

222. When a minor is sole executor or sole residuary legatee, letters of administration with the Will annexed may be granted to the legal guardian of such minor or to such other person as the Court shall think fit until the minor shall have attained the full age of eighteen years, at which period and not before probate of the Will shall be granted to him.

223. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them shall attain the full age of eighteen years.

224. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates’ estates, be a lunatic, letters of administration with or without the
Will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or if there be no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the lunatic until he shall become of sound mind.

225. Pending any suit touching the validity of the Will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

226. If an executor be appointed for any limited purpose specified in the Will the probate shall be limited to that purpose, and if he should appoint an attorney to take administration on his behalf, the letters of administration with the Will annexed shall accordingly be limited.

227. If an executor appointed generally give an authority to an attorney to prove a Will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the Will annexed shall be limited accordingly.

228. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the person beneficially interested in the property, or to some other person on his behalf.

229. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other Court between the parties or any other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein and carried into complete execution.

230. If at the expiration of twelve calendar months from the date of any probate or letters of administration, the executor or administrator to whom the same has been granted, is absent from the Presidency, or other such division of territory as aforesaid, within which the Court that has granted the probate or letters of administration is situate, it shall be lawful for such Court to grant, to any person whom it may think fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the administrator, and carrying the decree which may be made therein into effect.

231. In any case in which it may appear necessary for preserving the property of a deceased person, the Zillah judge within whose district any of the property is situate, may grant to any person whom he may think fit, letters of administration limited to the collection and presentation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

232. When a person has died intestate, or leaving a Will of which there is no executor willing and competent to act, or where the executor shall, at the time of the death of such person, be resident out of the Presidency, or other such division of territory as aforesaid, and it shall appear to the Court to be necessary or convenient to appoint some person to administer the estate, or any part thereof, other than the person who under ordinary circumstances would be entitled to a grant of administration, it shall be lawful for the Judge, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered, to appoint such person as he shall think fit to be administrator, and in every such case letters of administration may be limited or not as the Judge shall think fit.

233. Whenever the nature of the case requires that an exception be made, probate of a Will, or letters of administration with the Will annexed, shall be granted, subject to such exception.

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

235. Whenever a grant, with exception, of probate or letters of administration, with or without the Will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

236. If the executor to whom probate has been granted have died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.
237. In granting letters of administration of an estate not fully administered the Court shall be guided by the same rules which apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

238. When a limited grant has expired by eflusion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

239. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

240. If, after the grant of letters of administration with the Will annexed, a Codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

241. The grant of probate or letters of administration may be revoked or annulled for just cause. Explanation. Just cause is, 1st, that the proceedings to obtain the grant were defective in substance; 2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; 3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; 4th, that the grant has become useless and inoperative through circumstances.

Illustrations.

(a) The court by which the grant was made had no jurisdiction.
(b) The grant was made without citing parties to whom it ought to have been cited.
(c) The Will of which probate was obtained, was forged or revoked.
(d) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.
(e) A has taken administration to the estate of B, as if he had died intestate, but a Will has since been discovered.
(f) Since probate was granted, a later Will has been discovered.
(g) Since probate was granted, a Codicil has been discovered, which revokes or adds to the appointment of executors under the Will.
(h) The person to whom probate or letters of administration were granted has subsequently become of unsound mind.

242. The zillah judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his zillah, and shall have power to appoint such persons holding judicial situations within his zillah as he shall think fit, to act as delegates, to grant probate and letters of administration in noncontentious cases.

243. The zillah judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him for those purposes in relation to any civil suit or proceeding depending in his Court.

244. The zillah judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person; and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined respecting the same, and such person shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions, or not bringing in such paper or writing as he would have been subject to in case he had been a party to a suit, and had made such default, and the costs of the proceeding shall be in the discretion of the judge.

245. If any person shall forge the signature of the zillah judge, or of any person whom he shall think fit to nominate as his delegate, or counterfeit the seal of the court of the zillah judge or his delegate, or knowingly use or tender in evidence any document with a false or counterfeit signature or seal of such judge or delegate, knowing the same signature or seal to be false or counterfeit, every such person shall, upon conviction, be liable to transportation for life or imprisonment either rigorous or simple for a term which may extend to 10 years, and shall also be liable to fine.

246. The practice of the Court of the zillah judge in relation to the granting of probate and letters of administration shall, except where otherwise herein-after provided, be, so far as the circumstances of the case will admit, according to the provisions of Act
No. VIII of 1859, entitled “An Act for simplifying the Procedure of the Courts of
Civil Judicature not established by Royal Charter.”

247. Until probate be granted of the Will of a deceased person, or an administrator of
his estate be constituted, the zillah judge within whose jurisdiction any part of the
property of the deceased person is situate, is authorized and required to interfere for the
protection of such property, at the instance of any person claiming to be interested
therein, and in all other cases where he considers that the property incurs any risk of loss
or damage; and for that purpose, if he shall see fit, to appoint an officer to take and
keep possession of the property.

248. Probate of the Will or letters of administration to the estate of a deceased person
may be granted by the zillah judge under the seal of his court, if it shall appear by a
petition verified as herein-after mentioned of the person applying for the same that the
testator or intestate, as the case may be, at the time of his decease, had a fixed place of
abode, or any property moveable or immovable within the jurisdiction of the judge.

249. When the application is made to the judge of a zillah in which the deceased had
no fixed abode at the time of his death, it shall be in the discretion of the judge to
refuse the application if in his judgment it could be disposed of more justly or
conveniently in another zillah, or where the application is for letters of administration,
to grant them absolutely or limited to the property within his own jurisdiction.

250. Probate or letters of administration may, upon application for that purpose, to
any judicial officer within the jurisdiction of the zillah judge, whom he may think fit to
nominate, as his delegate for granting probates and letters of administration in non-con-
tentious business, be granted by such judicial officer in any case in which there is no
contention, if it shall appear, by petition verified as herein-after mentioned, that the
testator or intestate, as the case may be, at the time of his death had a fixed place of
abode in the district subject to the jurisdiction of such judicial officer.

251. Probate or letters of administration shall have effect over all the property and
estate, moveable or immovable of the deceased, throughout the Presidency in which the
same is granted, and shall be conclusive as to the representative title against all debtors
of the deceased and all persons holding property which belonged to him, and shall afford
full indemnity to all debtors paying their debts, and all persons delivering up such
property to the person or persons in whose favour the same has been granted.

252. The application for probate or letters of administration if made and verified in
the manner herein-after mentioned shall be conclusive for the purpose of authorizing the
grant of probate or administration, and no such grant shall be impeached, by reason that
the testator or intestate had no fixed place of abode, or no property within the district at
the time of his death, unless by a proceeding to revoke the same if obtained by a fraud
upon the court.

253. Application for probate shall be made by a petition distinctly written in the
language in ordinary use in proceedings before the court in which the application is
made, with the Will annexed, and stating the time of the testator's death, that the
writing annexed is his last Will and testament, that it was duly executed and that the
petitioner is the executor therein named; and in addition to these particulars, when the
application is to the zillah judge, the petition shall further state that the deceased at
the time of his death had his fixed place of abode, or had some property moveable or
immovable situate within the jurisdiction of the judge; and, when the application is to
the district delegate, the petition shall farther state that the deceased at the time of his
decease had his fixed abode within the district of the delegate.

254. In cases wherein the Will is written in any other language than that in ordinary
use in proceedings before the court, there shall be a translation thereof annexed to the
petition by a translator of the court, if the language be one for which a translator is
appointed; or if the Will be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the
following manner:—“I (A.B.), do declare that I read and perfectly understand the
language and character of the original, and that the above is a true and accurate
translation thereof.”

255. Applications for letters of administration shall be made by petition distinctly
written as aforesaid, and stating the time and place of the deceased's death, the family or
other relatives of the deceased, and their respective residences, the right in which the
petitioner claims, that the deceased left some property within the jurisdiction of the
zillah judge or district delegate to whom the application is made, and the amount of
assets which are likely to come to the petitioner's hands; and when the application is to
the district delegate, the petition shall further state that deceased at the time of his death
had his fixed place of abode within the district.
256. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect:—

"I (A.B.), the petitioner in the above petition, do declare that what is stated therein is true to the best of my information and belief."

257. Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the Will (when procurable), in the manner or to the effect following:—

"I (C.D.), one of the witnesses to the last Will and testament of the testator mentioned in the above petition, do declare that I was present and did see the said testator affix his signature (or mark) thereto (as the case may be), (or that the said testator acknowledged the writing annexed to the above petition to be his last Will and testament in my presence)."

258. If any petition or declaration which is hereby required to be verified shall contain any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

259. In all cases it shall be lawful to the zillah judge or to his district delegate, if he shall think proper, to examine the petitioner in person, and also to require further evidence of the due execution of the Will, or the right of the petitioner to the letters of administration, as the case may be, and to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration. The citation shall be fixed up in some conspicuous part of the court house, and also in the office of the collector of the zillah, and otherwise published or made known in such manner as the judge or district delegate issuing the same may direct.

260. Caveats against the grant of probate or administration may be lodged with the zillah judge or a district delegate; and immediately on any caveat being lodged with any district delegate he shall send a copy thereof to the zillah judge; and immediately on a caveat being entered with the zillah judge, a copy thereof shall be given to the district delegate, if any, in whose district it is alleged the deceased resided at the time of his death, and to any other judge or district delegate to whom it may appear to the zillah judge expedient to transmit the same.

261. The caveat shall be to the following effect:—"Let nothing be done in the matter of estate of A.B., late of , deceased, who died on the day of , without notice to C.D. of ."

262. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the judge or officer to whom the application has been made, or notice thereof has been given of its entry with some other delegate, until after such notice to the person by whom the same has been entered as the court shall think reasonable.

263. The district officer who may be authorized by the judge to act as his delegate in non-contentious business shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

By contention is understood the appearance of any one in person or by his recognized agent, or by a pleader duly appointed to act on his behalf to oppose the proceeding.

264. In every case where there is no contention, but it appears to a district delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the district delegate may, if he thinks proper, transmit a statement of the matter in question to the zillah judge, who may direct the district delegate to proceed in the matter of the application, according to such instructions as to the judge may seem necessary, or may forbid any further proceeding by the district delegate in relation to the matters of such application, leaving the party applying for the grant in question to make application to the judge.

265. In every case in which there is contention, or the district delegate is of opinion that the probate or letters of administration should be refused in his court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the zillah judge; unless the district delegate think it necessary for the purposes of justice to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the zillah judge.
266. When it shall appear to the judge or district delegate that probate of a Will should be granted, he will grant the same under the seal of his court in manner following:—

"I, judge of the zillah of (or delegate appointed for granting probate and letters of administration in the district of ) in the zillah of , do by these presents make known unto all men that on the day of in the year the last Will and testament of late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of all and singular the property and credits of the said deceased, and in any way concerning his will, was granted to the executor in the said Will named, he having undertaken well and faithfully to administer the same, and to make a true inventory of all and singular the said property and credits, and to exhibit the same at or before the expiration of a year next ensuing, and also to render a just and true account thereof."

267. And wherever it shall appear to the zillah judge or district delegate that letters of administration to the estate of a person deceased, with or without a copy of the Will annexed, should be granted, he will grant the same under the seal of his Court in manner following:—

"I, (or I, delegate appointed for granting probates and letters of administration in the district of ) judge of the zillah of , do by these presents make known unto all men, that on the day of letters of administration (with or without the Will annexed, as the case may be) of the property and credits of late of deceased, were granted to the father (or as the case may be) of the deceased, he having undertaken well and faithfully to administer the same, and to make a true inventory of all and singular the said property and credits, and to exhibit the same in this Court at or before the expiration of one year next ensuing, and also to render a just and true account thereof."

268. Every person to whom any grant of administration shall be committed shall give bond to the judge of the zillah court to enure for the benefit of the judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the judge shall from time to time by any general or special order direct.

269. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some person, his executors or administrators, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the judge of the court, and shall be entitled to recover thereon as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

270. No probate of a Will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of 14 clear days from the day of the testator or intestate's death.

271. Every zillah judge and district delegate shall file and preserve all original Wills of which probate or letters of administration with the Will annexed may be granted by them among the records of their respective courts, until some public registry for Wills is established; subject, in the case of the district delegate, to such regulations as the zillah judge may from time to time make in relation to the due preservation thereof and the convenient inspection of the same.

272. After any grant of probate or letters of administration no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Presidency in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

273. In any case before the zillah judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the said Act VIII. of 1859, entitled "An Act for simplifying the Procedure of the "Courts of Civil Judicature not established by Royal Charter," in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

274. Where any probate or letters of administration are revoked, all payments bona fide made to any executor or administrator under such probate or administration before
the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same; and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

275. Every order made by a zillah judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court of the Presidency or other Court of the last resort in India having the local jurisdiction.

276. The High Court of the Presidency or other Court of the last resort in India having the local jurisdiction, shall have concurrent jurisdiction with the zillah judge in the exercise of all the powers hereby conferred upon the zillah judge, except that of appointing district delegates.

277. A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong.

Exceptions.

First.—Intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his funeral or for the immediate necessities of his family or property, does not make an executor of his own wrong.

Second.—Dealing in the ordinary course of business with goods of the deceased received from another, does not make an executor of his own wrong.

Illustrations.

(a.) A uses or gives away or sells some of the goods of the deceased, or takes them to satisfy his own debt or legacy, or receives payment of the debts of the deceased. He is an executor of his own wrong.

(b.) A having been appointed agent by the deceased in his lifetime to collect his debts and sell his goods, continues to do so after he has become aware of his death. He is an executor of his own wrong in respect of acts done after he has become aware of the death of the deceased.

(c.) A sues as executor of the deceased, not being such. He is an executor of his own wrong.

278. When a person has so acted as to become an executor of his own wrong he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands, after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration.

279. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and to constrain for all rents due to him at the time of his death, as the deceased had when living.

280. All demands whatsoever and all rights to prosecute or defend any action or special proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault and battery, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustrations.

(a.) A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(b.) A sues for divorce. A dies. The cause of action does not survive to his representative.

281. An executor or administrator has power to dispose of the property of the deceased, either wholly or in part, in such manner as he may think fit.

Illustrations.

(a.) The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it. The sale is valid.

(b.) The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased. The mortgage is valid.

282. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any person interested in the property sold.

283. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the Will.
Illustrations.

(a.) One of several executors has power to release a debt due to the deceased.
(b.) One has power to surrender a lease.
(c.) One has power to sell the property of the deceased, moveable or immoveable.
(d.) One has power to assent to a legacy.
(e.) One has power to endorse a promissory note payable to the deceased.
(f.) The Will appoints A., B., C., and D. to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

284. Upon the death of one or more of several executors or administrators, all the powers of the office become vested in the survivors or survivor.

Powers of Limited Administrator.

285. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.
286. An administrator during minority has all the powers of an ordinary administrator.

Powers of a Married Woman Executrix or Administratrix.

287. When probate or letters of administration have been granted to a married woman, she has all the powers of an ordinary executor or administrator.
288. It is the duty of an executor to perform the funeral of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.
289. An executor or administrator shall, within six calendar months from the grant of probate or letters of administration, exhibit in the Court by which the same may have been granted an inventory containing a full, true, and perfect estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that may have come to his hands, and the manner in which they have been applied or disposed of.
290. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.
291. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, are to be paid before all debts.
292. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.
293. Wages due for services rendered to the deceased within twelve months next preceding his death by any labourer, artizan, or domestic servant are next to be paid, and then the other debts of the deceased.
294. Save as aforesaid, no creditor is to have a right of priority over another, by reason that his debt is secured by an instrument under seal, or on any other account. But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.
295. If the domicile of the deceased was not in India, the application of his moveable property to the payment of his debts is to be regulated by the law of the country in which he was domiciled.

Illustration.

A. dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 10,000 rupees, immovable property to the value of 5,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The debts on the instruments under seal are to be paid in full out of the moveable estate, and the proceeds of the immovable estate are to be applied as far as they will extend towards the discharge of the debts not under seal. Accordingly, one half of the amount of the debts not under seal is to be paid out of the proceeds of the immovable estate.

296. No creditor who has received payment of a part of his debt by virtue of the last section shall be entitled to share in the proceeds of the immovable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

Illustration.

A. dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 5,000 rupees, and immovable property
to the value of 10,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The creditors holding instruments under seal receive half of their debts out of the proceeds of the movable estate. The proceeds of the immovable estate are to be applied in payment of the debts on instruments not under seal until one-half of such debts has been discharged. This will leave 5,000 rupees, which are to be distributed rateably amongst all the creditors without distinction in proportion to the amounts which may remain due to them.

297. Debts of every description must be paid before any legacy.

298. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

299. If the assets, after payment of debts, necessary expenses, and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions, and the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

300. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

301. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

302. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Illustration.

A. has bequeathed to B. a diamond ring, valued at 500 rupees, and to C. a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum Rs. 333 5 4 are to be paid to B., and Rs. 666 10 8 to C.

303. For the purpose of abatement, a legacy for life, a sum appropriated by the Will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

304. The assent of the executor is necessary to complete a legatee's title to his legacy.

Illustrations.

(a.) A. by his Will bequeaths to B. his Government paper, which is in deposit with the Agra Bank. The Bank has no authority to deliver the securities, nor B. a right to take possession of them, without the assent of the executor.

(b.) A. by his Will has bequeathed to C. his house in Calcutta in the tenancy of B. C. is not entitled to receive the rents without the assent of the executor.

305. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way. This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Illustrations.

(a.) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b.) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c.) A bequest is made of a fund to A. and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d.) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

306. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce and it is not performed, there is no assent.
Illustrations.

(a) A bequeaths to B his lands of Greenacre, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor asents to the bequest, on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b) The executor asents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

307. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied. Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Illustration.

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

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

Illustration.

(a) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

309. An executor is not bound to pay any legacy until the expiration of one year from the testator's death.

Illustration.

A. by his Will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

310. Where an annuity is given by the Will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

311. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator’s death; and shall, if the executor think fit, be paid when due, but the executor shall not be bound to pay it till the end of the year.

312. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made; and if the annuitant should die in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

313. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall, at the end of the year be invested in such securities as the High Court of the Presidency may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

314. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last section. The intermediate interest shall form part of the residue of the testator's estate.

315. Where an annuity is given and no fund is charged with its payment or appropriated by the Will to answer it, a Government annuity of the specified amount shall be purchased, or if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court of the Presidency or other Court of the last resort in India having the local jurisdiction, may, by any general rule to be made from time to time, authorize or direct.

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

317. Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in such securities as the High Court of the Presidency may for the time being regard as good securities, shall be converted into money and invested in such securities.
318. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

319. Such conversion and investment as are contemplated by the two last preceding sections shall be made at such times and in such manner as the executor shall in his discretion think fit; and until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of four per cent. per annum upon the market value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

320. Where by the terms of a bequest the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is under age, and there is no direction in the Will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the Zillah Judge, by whom or by whose district delegate the probate or letters of administration with the Will annexed was granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and if the legatee be a ward of the Court of Wards the legacy shall be paid into that Court to his account, and such payment into the Court of the Zillah Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid; and such money when paid in shall be laid out and invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

321. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(a.) A bequeaths his flock of sheep to B. Between the death of A. and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b.) A bequeaths his Government securities to B., but postpones the delivery of them till the death of C. The interest which falls due between the death of A. and the death of C. belongs to B., and must, unless he is a minor, be paid to him as it is received.

(c.) The testator bequeathes all his four per cent. Government promissory notes to A. when he shall attain the age of 18. A., if he attain that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A.'s attaining 18, forms part of the residue.

322. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(a.) The testator bequeathes the residue of his property to A., a minor, to be paid to him when he shall attain the age of 18. The income from the testator's death belongs to A.

(b.) The testator bequeathes the residue of his property to A. when he shall attain the age of 18. A. if he attain that age is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

323. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.

1. Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

2. Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

3. Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.
324. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator’s estate.

*Exception.*

Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the Will for maintenance.

325. The rate of interest shall be four per cent. per annum.

326. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

327. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

328. When an executor has paid a legacy under the order of a judge, he is entitled to call upon the legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

329. When an executor has voluntarily paid a legacy he cannot call upon a legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

330. When the time prescribed by the Will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has been allowed, under Section 128, for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

331. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

332. Where an executor or administrator has given such notices as would have been given by the High Court of the Presidency or other court of the last resort in India having the local jurisdiction, in an administration suit for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he shall not have had notice at the time of such distribution; but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

333. A creditor who has not received payment of his debt may within two years after the death of the testator or one year after the legacy has been paid call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator’s estate were or were not sufficient at the time of his death to pay both debts and legacies; and whether the payment of the legacy by the executor was voluntary or not.

334. If the assets were sufficient to satisfy all the legacies at the time of the testator’s death, a legatee who has not received payment of his legacy, or who has been compelled to refund under S. 332, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

335. If the assets were not sufficient to satisfy all the legacies at the time of the testator’s death, a legatee who has not received payment of his legacy, must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

336. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

*Illustration.*

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C. to refund 80 rupees, and D. to refund 130 rupees.

337. The refunding shall in all cases be without interest.

338. The surplus or residue of the deceased’s property after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the Will.
339. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(a.) He pays an unfounded claim.
(b.) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time.
(c.) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice.

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

Illustrations.

(a.) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount.
(b.) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount.

We humbly submit this our First Report to Your Majesty's Royal consideration.

JOHN ROMILLY. (L.S.)
W. ERLE. (L.S.)
EDWARD RYAN. (L.S.)
ROBERT LOWE. (L.S.)
Jª. WILLES. (L.S.)
JOHN M. MACLEOD. (L.S.)

Dated this 23rd day of June 1863.
APPENDIX.

CONTENT OF APPENDIX.

A.—Letter from the Secretary of State for India to the Commissioners
B.—Papers relating to the Condition of India in respect of Substantive Law
C.—Papers relating to the Parsees of Bombay.—Communicated to the Commissioners by the Secretary of State for India

APPENDIX A.

LETTER from the Secretary of State to the Commissioners.

India Office,
14th December 1861.

Gentlemen,

The Queen having been graciously pleased to appoint you to be Her Majesty’s Commissioners, for the purpose of preparing a body of Substantive Civil Law for India, and of considering and reporting on such other matters in relation to the reform of the laws of India, as may be referred to you by me, I have to request that you will at once address yourselves to the preparation of such a body of law on the principles laid down in the Second Report of Her Majesty’s Commissioners appointed to consider the reform of the judicial establishment, judicial procedure, and laws of India, a copy of which is herewith transmitted.

In the preparation of such a body of law as that contemplated by the former Commissioners, many important subjects of civil law will come under your consideration. It does not, however, appear to me necessary that you should postpone the submission of all report of your proceedings until the completion of the duty assigned to you by Her Majesty’s Commission. Unless there is any objection to such a course, I request that the result of your labours on one branch of civil law may be reported before you enter on the consideration of another branch, as the plan of successive reports on the various departments of law will greatly facilitate the necessary measures which must be taken in India for giving legislative effect to your recommendations.

I have, &c.

To Right Honble. Sir John Charlers Wood.
Romilly, Kt.
Right Honble. Sir Wm. Erle, Kt.
Right Honble. Sir Ed. Ryan, Kt.
Right Honble. Robert Low. C.
Sir James S. Willes, Kt.
John Macpherson Macleod, Esq.

SECOND REPORT.—Referred to in the Commission.

TO THE QUEEN’S MOST EXCELLENT MAJESTY.

We, Your Majesty’s Commissioners appointed to examine and consider the recommendations of the Indian Law Commissioners who were employed in India, and the enactments proposed by them for the reform of the judicial establishments, judicial procedure, and laws of India, and such other matters in relation to the reform of the said judicial establishments, judicial procedure, and laws as might, by or with the sanction of the Commissioners for the affairs of India, be referred to us, having applied ourselves to the duty thus assigned to us as regards judicial establishments and judicial procedure, in conjunction with the preparation, in pursuance of instructions from the Commissioners for the Affairs of India, of preliminary measures for the amalgamation of the Supreme and Sudder Courts at Calcutta, and having set forth the results in our First Report, have proceeded to examine and consider the state of the laws of India: And though it has not been possible for us to prepare a draft of such particular enactments as we would propose for the reform of those Laws, as we did in respect of the Judicial Establishments and Judicial Procedure, yet having arrived at conclusions as to what is most wanted, and seeing that the work of framing law to supply the want could not be performed before the expiration of the time within which it is required by Statute that every Report of ours shall be made, we think it our duty now to report our views on this highly important subject.

The proposed Penal Code, which was prepared by the Indian Law Commissioners in India when Mr. Macaulay was President of that body, being now under the consideration and revival of the Legislative Council of India, with a view to its being enacted; we have not collectively made it a particular subject of our examination and consideration farther than was necessary in order that we might be able to frame in such a manner as to suit it the Code of Criminal Procedure which we submitted in our First Report. But we think it right to state, that we regard those two Codes as the means of remedying the evils of the existing state of things in India with respect to Criminal Law.

It remains for us to treat of the wants of India in respect of substantive Civil Law. The Law Commissioners in India made a very elaborate Report, dated 31st October 1840, to the Governor General in Council bearing on this subject, and containing a full disquisition on the question, whether the law of England ought not, on general principles, to have been held to be the Lex Loci of the British possessions in India from the time of their acquisition, as well as a statement of the views of the Commissioners as to the legislation which was required in regard to this matter under the circumstances of the period at which they wrote. From that Report and the various papers connected with it, all of which we have carefully examined and considered, we have obtained much information. We think it unnecessary, however, now to revive the retrospective question discussed by the Commissioners in India. We regard as far more important a conclusion respecting the present state of the laws of India at which they arrived on unquestionable grounds. It is this, that beyond the limits of the capital towns of the three Presidencies, there is not in actual operation any Lex Loci, any...
APPENDIX TO FIRST REPORT OF COMMISSIONERS APPOINTED

substantive Civil Law for the various classes of persons who have not, like the main portions of the population, namely, the Hindus and Mahomedans, special laws of their own which our judicatures are required to enforce. This is a great want, which ought to be supplied. It is, however, a want which, in our opinion, is merged in another want, larger and not less urgent and best supplied by a measure adapted to meet the whole of the actual emergency.

The Supreme Courts established by Royal Charters administer, within the limits of the capitol towns, to Europeans and others not Hindus or Mahomedans, the substantive Civil Law of England, subject to certain exceptions and qualifications, which we need not particularize. That law, therefore, may correctly be regarded as within those limits an actual Lex Locii. From this arises a great difference between the state of the Courts of Justice in the Provinces and that of the Courts of Justice in the provinces. The whole difference, consequently, between the state of the law at the Capitals and the state of the law in the Provinces is very great. This is manifestly an evil of no small importance. It cannot but produce much inconvenience even now; and if it were allowed to continue after the proposed union of the Supreme Courts and the Superior Courts shall have been effected, the inconvenience, we think, would greatly increase. The anomalous state of the law, when one High Court presided over the whole administration of justice, both at the Capital and in the Provinces, would be more striking and more insufferable.

In the present state of the population in India, it is necessary to allow certain great classes of persons to have special laws, recognized and enforced by our Courts of Justice, with regard to certain kinds of transactions among themselves. But we think that it is neither necessary nor expedient that for any persons the law should vary according as they reside within or beyond the boundary of the Capital. We do not advert to these considerations, but to the means of remedying the great defects in the state of the laws in India to which we have now adverted; and we have arrived at the conclusion that what India wants is a body of substantive Civil Law, in preparing which the state of the law of England, and the character, habits, and usages of the population, would be, we are convinced, of great benefit to that country.

Being designed to be the law of India on the subjects it embraces, this body of law should govern all classes of persons in India, except in cases excluded from the operation of its rules by express provisions of law. Not only must there, however, be large exceptions in respect of amenability to this body of law, but there are important subjects of Civil Law which we think it would not be advisable that it should embrace. It would be premature to attempt now to define either the exceptions or exclusions.

We see no reason, however, why, on very many important subjects of Civil Law, it shall not be true that no one, contracts, as an example—such law cannot be prepared and enacted as will be of no less applicable to the transactions of Hindus and Mahomedans, by far the most numerous portions of the population, than to the rest of the inhabitants of India.

If on any subject embraced in the new body of law it should be deemed necessary that for a particular class of persons or for a particular district or place there should be law different from the general law, and if there shall be no particular and cogent objection to the insertion of such special law into the proposed body of law, such special law, we think, ought to be provided in that way. But it is our opinion that no portion either of the Mahomedan law or of the Hindoo law ought to be enacted as such in any form by a British Legislature. Such legislation, we think, might tend to obstruct rather than to promote the gradual progress of improvement in the state of the population. It is open to another objection too, which seems to us decisive. The Hindoo Law and the Mahomedan Law derive their authority respectively from the Hindoo and the Mahomedan religion. It follows that, as a British Legislature cannot make Mahomedan or Hindoo religion, so neither can it make Mahomedan or Hindoo law. A Code of Mahomedan law, or a digest of any part of that law, if it were enacted as such by the Legislative Council of India, would not be entitled to be regarded by Mahomedans or Hindoos as law itself, but merely as an exposition of law, which possibly might be incorrect. We think it clear that it is not advisable to make any enactment which would stand on such a footing.

We have the satisfaction of being able to state that our opinions as to the defects in the state of the substantive Civil Law in India, and the expediency of framing and enacting a body of law for India based upon English law, are very much in accordance with the views of our fellow Commissioners in India.

We take this opportunity to report that a Petition from the merchants, traders, and residents of Singapore, for the appointment of a Resident Professional Judge, having been referred to us by the Commissioners for the Affairs of India, we have carefully examined and considered that subject, and communicated our opinion thereon to the said Commissioners.

We humbly submit this our Second Report to Your Majesty's Royal consideration.

John Romilly. (t.s.)
Edward Ryan. (t.s.)
C. H. Cameron. (t.s.)
John M. Macleod. (t.s.)
T. F. Ellis. (t.s.)

Dated the 18th day of December 1855.

We dissent from the above Report for the reasons stated in our joint Minute.

John Jervis.
Robert Lowe.
INTRODUCTORY NOTE.

The inhabitants of the British territories in India may be stated generally to consist of Hindus, Mahomedans, Christians, Parsees, and Jews, and of settlers from the Customs of the Country.

The Christians may be divided into "British subjects," technically so called (that is to say, persons born in Great Britain and their legitimate descendants, not being aliens); East Indians, who are the descendants of British fathers and native mothers, and who are brought up in the religion and customs of their fathers; Armenians; Native Christians, whether converts or hereditary (of the latter there are many in the south of India); Portuguese (who have commonly resided in India for several generations); Greeks, and other foreigners.

In the presidency towns, the Supreme Courts, constituted by Royal Charter, administer English law to all classes; except that where the suitsors are Hindus or Mahomedans, questions relating to their inheritance and succession to lands, rents, or goods, and all matters of contract and dealing between party and party, are determined, in the case of Mahomedans, by the laws and usages of Mahomedans, and in the case of Hindus by the laws and usages of Hindus, and where only one of the parties is a Mahomedan or a Hindu, by the laws and usages of the defendant.*

As regards Contracts, the most fruitful source of litigation, the English law is so much in harmony with the Mahomedan and Hindu laws, that it very rarely happens in the Supreme Courts that any question arises as to the peculiar Mahomedan and Hindu law on the subject. (See infra, p. 76.)

In the Courts which were not established by Royal Charter, and which have hitherto been called the Courts of the East India Company, or the Country or Mofussil Courts, it is only in cases regarding succession, inheritance, marriage, caste, and all religious usages and institutions, that the Mahomedan law with regard to Mahomedans, and the Hindu law with regard to Hindus, are considered as affording the general rule by which judges form their decisions.

Where the suitors are Hindus or Mahomedans, but the case does not fall within the exception just stated, and in cases of every kind where the suitors are not Hindus or Mahomedans, it may be said that, with certain exceptions in favour of local usage, it is the law of all the Country Courts throughout India, that where no specific rule may exist, the judges are to decide according to justice, equity, and good conscience (p. 6).

* See Stat. 11 Geo. 3, c. 70, s. 17, and the Madras and Bombay Charters, printed in Morley's Digest, pp. 400, 623.
India, recorded a Minute in which he discusses several of the subjects mentioned in the Report, and intimates that he is not prepared to recommend on that occasion the proposed departure from the method by which England in respect of the succession to real property, although the subject is one upon which in Council he would be anxious to invite discussion (p. 64).

The disabilities and difficulties under which the Native Christians laboured, still greater and more complicated than those of the classes just mentioned, were likewise at various times brought to the notice of the Government; and a very full and elaborate petition on the subject, from certain missionaries (p. 65), was considered by the Law Commission, which had already been instructed to submit the draft of an Act, upon the principle of the first four recommendations of their Report (p. 69).

On the 22d May 1841 the Law Commissioners submitted their report, recommending that an Act should be passed with which they thought would afford a remedy for the grievances complained of by the missionaries, so far at least as such an object could be properly connected with the other purposes of the Act.

The Act so known as the Lex loci Act, will be found at p. 72, infra.

Its leading provisions (so far as concerns the present purpose) are, that the substantive law of the territories without the local jurisdiction of the Supreme Court of Calcutta should be much the same as the substantive law of England as is applicable to the people of those territories, and not inconsistent with local regulations; and that immovable property situated in those territories should be regulated by the rules which regulate personal property according to the substantive law of England.

Mr. Prinsep, a member of the Council of India, recorded (p. 69) a Minute expressing his dissent from the principle on which the propositions of the Law Commission in regard to the Lex loci of India were based; Mr. Amos likewise recorded a Minute on the subject (p. 70); and Sir Lawrence Peel and Sir Henry Seton, Judges of the Supreme Court at Calcutta, pointed out very forcibly that the system of English law is so vast, and the application of it is attended with so many difficulties to judges not previously trained to its study, that the difficulties of administering it in India without further explanation than that which was afforded by the Draft Act would be almost insurmountable; they remarked that it would be of the greatest aid to those who would have to apply its provisions if the Draft Act were accompanied by some digest or authoritative exposition of the English law as reduced; and that the aid in framing provisions in accordance with their views, as to the specification and explanation of the law to be introduced (p. 75). Sir Lawrence Peel explained in a subsequent letter that it was in his opinion essential to the success of the experiment that a digest should form part of it, and that the recommendation of the measure by Sir Henry Seton and himself proceeded on this view (p. 76).

Some of the disabilities affecting Native Christians have been removed by Act XXI. of 1850 of the Indian Legislature, which enacts that so much of any law or usage now in force within the territories subject to the Government of the East India Company as inflicts a forfeiture on the birth of a son of right or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing or having been excluded from the communion of any religion or been deprived of caste, shall cease to be of force after the 18th day of January, 1851, and that the Right of Property and the Hindu Succession Act.

It will appear by the accompanying papers that the task imposed upon the present Commission is the preparation of a body of civil law which shall meet all the legal wants of the Hindus and Mahomedans, except in matters connected with succession, inheritance, marriage, and caste, and all religious usages and institutions which meet all the legal wants (but few and partial exceptions) of the multiform inhabitants of India who are not Hindus or Mahomedans. It will also be seen, upon a perusal of the papers, that the subjects of Succession and Inheritance are those upon which the absence of a fixed and uniform law has been chiefly felt.

Extracts from Report of the Law Commissioners in India upon the Lex loci: dated October 31st, 1840.

ON THE PETITIONS OF THE EAST INDIANS AND ARMENIANS.

To the Right Honourable the Earl of Auckland, G.C.B., Governor-General of India in Council.

We have now the honour to report upon the substantive law to which we think all persons in the mofussil not subject to Hindu or Mahomedan civil law should be subject.

On the 15th November 1836 the government of Bengal sent to the Supreme Government, to be forwarded to the Law Commission, an extract from a despatch of the Honourable Court of Directors, and other papers, connected with certain complaints of the East Indians, and their petition to Parliament. Mr. Secretary Mangles, in his letter of the 17th December 1836, forwarded the same to the Law Commission, to be considered in their proper place.

Of the many subjects to which these papers relate, there are three which, as belonging to jurisprudence, the principles of which appear to be peculiarly deserving of our consideration:

1. The uncertain condition of the petitioners, as regards civil law.
2. Their subjection to Mahomedan criminal law.
3. The subjection to criminal courts constituted according to Mahomedan principles, or at any rate not constituted according to principles acceptable to Christians of British descent.

The second of these questions we consider to be disposed of, as regards the Law Commission, by the proposed penal code; and upon the third we propose to report separately. The present report will therefore treat only of the first.

In considering what ought to be done towards satisfying the claims thus put forward by the East Indians, it appeared to us that our first duty was to consider carefully what now is, or ought to be, according to recognized principles, the legal condition of these petitioners; and as no special legislative provision has been made for them, the answer to this question must necessarily be an answer to the more general and surely very important question, what is the law to which all persons in British India for whom no special provision has been made, or who are not excepted on account of special circumstances, are subject? or, in other words, what is the Lex loci of British India?

It is to be observed, that the Company's courts are, in respect of all persons not Hindus and Mahomedans, not courts of law, but mere courts of conscience.

The only laws which these courts are empowered to administer are the Acts of the Law Commission, and the Hindu law to Hindus, in suits regarding succession, inheritance, marriage, and caste, and all religious usages and institutions. Regulation IV. of 1793, Section 15. In cases, under which no special rule may exist, the judges are directed to act according to justice, equity, and good conscience. Regulation III. of 1793, Section 21. This Regulation applied only to Bengal, Behar, and Orissa, but it has been since extended to...
the other provinces of this presidency, and has been adopted in the Madras Regulations.

By Section 8, Regulation VII of 1832, it is provided that whenever two or more parties to such suit may be of different persuasions, when one party shall be of the Hindoo and the other of the Mahomedan persuasion; or where one or more of the parties to the suit shall not be either of the Mahomedan or Hindoo persuasion, the laws of Persia, ... be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled. In such cases, the defendant shall be governed by the principles of justice, equity, and good conscience; it being clearly understood, however, that this provision shall not be considered as justifying the introduction of the English or any foreign law, or the application of any of the rules of equity.

The provisions relating to this subject in the Bombay code are to be found in Regulation IV of 1827, Section 26: "The law to be observed in the trial of suits, even in cases of mixed facts and law, the Mofussil courts, from unavoidable defect of technical knowledge, must find considerable difficulty in shaping their equity according to that law. But if it is equally true that, in other respects, their difficulties, though not exactly of the same kind, must be, in some respects, much greater; for upon that ... their decisions in particular cases, they must decide difficult questions of mixed fact and law. Questions of ... that will arise upon such occasions, take up more time in the investigation, and give less satisfaction in the decision, than perhaps any others. In addition to these most difficult questions of mixed fact and law, the Mofussil courts must have also to decide frequently questions upon the conflict of laws, well known to be amongst the most puzzling which exercise the skill of jurists.

No courts can indeed altogether avoid these questions, but they must necessarily spring up in the greatest abundance in a country where there is no lex loci. Again, by far the greater number of cases in which equity in this country must follow some law, are likely to be of such in which it must follow English law, because the great mass of Indians are more likely to be more numerous in India than any other persons not Hindoos or Mahomedans.

Now, if English law is not the lex loci, it must be considered in the condition of any other foreign law, and the hands of the judge would not, according to established principles, be justified in deciding upon his own knowledge of it, but ought to require in each case that the party alleging the English law should prove by documentary evidence or by testimony that the law which he alleges it to be. This course might relieve the judge from any responsibility, but it would surely be very prejudicial to the interest of the suitors.

The Mofussil courts have had to decide some cases, though hitherto probably very few, in which they have felt that the equity they are to administer must follow some law.

The doctrine they have adopted is, that there is not a lex loci in British India, and their decisions have been to ascertain in the best manner they could what was the law of the country of the parties before them. By this doctrine and practice the remarkable state of things mentioned by Agobardus is reproduced. In this country it would be easy to assemble many more than five persons of whom no two follow the same law. But besides this necessary consequence, the doctrine and practice in question gave rise in the peculiar circumstances of British India, to many other strange difficulties and anomalies.

First, there is the singular consequence alluded to above, that the measure of bringing Frenchmen under the jurisdiction of the Supreme Court would have deprived them of French law, or at least of equity following the law. The Court, under the clause which the French nation could hardly have looked upon as a boon, and for which the French King could hardly have intended to stipulate.

Another singular consequence is produced by the limitation which this doctrine and practice receive from the principle that all British subjects (technically so called) are to have English law administered to them. We mean the consequence, that the Scotsmen alone of all the nations upon earth are not entitled to have any regard paid to the laws of their country in the adjudication of their suits by the Mofussil courts. This, however, though monstrous in theory, is no practical grievance; the anomaly is not that the Scots in India are brought under English...
law, but that people of other nations in India are not brought under it.

But the case of all persons who are cut off, by the illegitimacy of themselves or their ancestors, from all legal connexion with the country from which they sprung, is left unprovided for by the law of persons of some sorts. All such persons (and those petitioners are such), whose native and only country is British India, have certainly a right to ask, not in vain, of the legislature, that if there is a lex loci it should be declared, and that if there is not, one should be enacted.

The case of the Armenians, too, is left unprovided for by this doctrine. They are not indeed cut off by illegitimacy from the country of their natural origin. But, as the Armenians associated in a body were granted by the Governor-General in Council on the 10th September 1836, their race has "long ceased to be anywhere a nation." If they ever had any law derived from Armenia, it must apparently have been the Roman law, for their ancient law appears to have been prostrated by Justinian.

The title of the 21st Novel is, "De Armeniis ut et illi per omnia Romanorum leges sequantur."

The special object of this Novel was to substitute the barbarous and uncovenanted law, and not the Armenian, which excluded females. But it seems clear from the emperor's expressions that it was only the last step of a series of changes by which the Armenian nation had been brought under the Roman law; or perhaps a change made on account of its peculiar importance, or the peculiar reluctance of the people to adopt it, was thought to require special provision; while general words were considered sufficient to effect the desired substitution in other respects.

The law enacted in the year 536, and, excepting an edict of the preceding year, it is all we have been able to find respecting the legal history of Armenia. This edict is to the same effect as the Novel above mentioned, and shows by its preamble that the Armenian and uncovenanted law (barbarian et insolentiae legem), as the emperor calls the Armenian law of succession, had only lately been brought to his notice.

But whatever law the Armenians had at the time when they ceased to be a nation, it appears to have fallen into desuetude, and even into oblivion. In the petition above mentioned they say, amongst other things, "In the courts of the Company no settled rule of law whatever has prevailed in respect to the inheritance and succession of deceased Armenians. While some of the Company's judges follow the course of the King's court, and adopt the rules of English law, others hold themselves bound to act upon their individual notions of equity pursuant to the terms of Regulation VII of 1832, Sec. 3, and others, and if we were in the vain endeavour to discover the law of Armenia, of which there is no trace extant, and refer to Armenian ecclesiastics, whose legal knowledge, when they have any, is limited to the bare rudiments of the canon law."

The Parsees, also, are nearly in the same condition, except that in losing the memory of the laws to which they were subject when they fled from their native country, they appear in some places to have borrowed customs from the Hindus.

When these cases are considered, it will be seen that, though British India may appear, on the one hand, to have less need of a lex loci than any other country on account (as the greatest part of its population consists of two sects whose law is contained in their religion, yet, on the other hand, there is probably no country in the world which contains so many people who, if there is no law of the place, have no law whatever.

Indeed, whether we look at reasons drawn from jurisprudence, or at reasons drawn from convenience and utility, there is no doctrine more certain than this; that in every country there ought to be a law which, "per vim facti," applicable to every person in it. The number of classes which, in any particular country, shall be exempted from this law, must always depend upon the circumstances of that country; but, be these classes few or many, small or large, the necessity of a law for persons whose condition cannot be defined beforehand, or who cannot be brought by evidence within any of the defined classes, remains undeniable.

We find four cases in the Report of Cases in the Sudder Dewansty Adawlut of Calcutta, and one in those of the Sudder Dewansty Adawlut of Bombay, which will exemplify that doctrine and practice of the mofussil courts of which we have been speaking.

We shall arrange these cases, not in the order in which they occurred, but in that most convenient for our present purpose.

We must therefore, of course, have not found any case deciding upon the rights of that class to which the petitioners belong.

There are three other classes of persons in this country whose legal condition seems to us to require definition by legislative provision.

1. All foreigners, not being Hindus or Mahomedans.

2. Subjects of Her Majesty, not being British subjects in the narrow and technical sense of the term, Roman Catholics, Parsees, Jews, and Armenians, whom the Portuguese are remarkable from their numbers, the Armenians from their numbers and wealth.

3. British subjects in the narrow and technical sense of the term.

There is nothing, then, in the English substantive law which prevents it from being easily adapted to the condition of all persons in India not Hindus or Mahomedans.

This it is, which I will consider a great boon by the large and increasing class whose petition has given rise to this Report.

We learn as much respecting the Armenians from their petition, which we have already noticed; for, after setting forth the destitution of their legal condition, they add, "As Armenians have ceased to be a nation since the year of our Lord 1375, and no trace of their own law is now to be discovered, your petitioners humbly submit that the law of England is the only one that can, upon any sound principles, be permitted to prevail, and that it is moreover the law which was promised to Armenians at the time of their settlement in the country."

At the end of their petition they give a copy of an agreement between the East India Company and Cogee Phanoo Calender, an eminent Armenian merchant. This agreement is dated 22nd of June 1688, and contains what they here construe as a promise of English law. It is of course unnecessary that we should discuss either the validity or the meaning of the agreement, as it is the wishes only, and not the rights of the Armenians people, with which we are here concerned.

We have a reason to think that English law, thus adapted to the condition of British India, will be considered objectionable by the Portuguese.

We believe that in introducing it as the lex loci of this country, the Legislature will be doing more than giving it sanction to our law. It is sought to have taken place tacitly, according to the analogy of the general principles of international jurisprudence.

Lastly, we are satisfied that it is very much for the interest of the subjects of this Indian empire, that all the laws of the country should be based upon such a uniform body of substantive law as is here proposed, and that the case of those who are not British subjects, but are not Hindus or Mahomedans, may be considered, in the future, in the light of the present cases.

* With regard to the Parsees, there may be some doubt, that large portion of this race which is to be found in Guzarat and on the coast north of Bombay, and which form some distinctive community, has not been considered in the proposed Act. They are purely Asiatic people, and whatever they have of positive customs to which they are subject under the Bombay Code, consist of such of their national customs as can still be ascertained, and such as they have derived from the Hindus. It will be seen that we propose to give them, as to all others who are intersected, an opportunity of expressing their opinions upon the measure which we are recommending.

* Note, 1860.—The above has lately been made the subject of a memorial to the deputation of the Parsees commoners.
TO PREPARE A BODY OF SUBSTANTIVE LAW FOR INDIA

The law of the Moslem should be assimilated to the law of the presidencies; that is to say, (speaking generally, to be applicable; require some qualification,) should be the Hindu law for Hindus, the Mahomedan law for Mahomedans, and the English law for everybody else.

The future proceedings of our Commission in regard to substantive law can be carried to the preparation of three codes founded upon these three laws, and to the framing of provisions, as far as that can be done beforehand, for the cases in which they may come into collision.

The recommendations we have now to submit are:

1. That an Act be passed declaring and enacting that so much of the law of England as is applicable to the situation of the people, and as is not inconsistent with any Regulation of the Codes of Bengal, Madras, and Bombay, or with any Act passed by the Council of India, shall be taken to be the law of the land throughout British India, except the places subject to the jurisdiction of Her Majesty’s courts; and that all persons shall be subject to that law, except Hindoos and Mahomedans. That the British statutes passed since the 13th year of King George the First shall not be considered as part of the law; but that the Acts of the Council of India, which introduced the British statutes into India, shall be considered as part of the law, subject of course to the same limitations and exceptions as the rest of the law.

2. The general limitation comprised in the words "so much as is applicable to the situation of the people," would of itself be sufficient to exclude all that would be inconvenient in English law, and therefore to exclude English tenures, and the system of conveyancing which is founded upon them. Upon this point it may be as well to quote the words of Sir W. Blackstone, when he is speaking of an inhabited country colonized by Englishmen, which it will be recollected is the case to which we have ventured to compare that of the English in India.

Illustrating the expression, "So much as is applicable to their own situation," he says, "What shall be admitted and what rejected, at what times and under what restrictions, must, in case of dispute, be decided in the first instance by their own provincial judicature, subject to the revision and control of the King in Council." Now it would only be surprising if any court in this country were to hold that English tenures and conveyancing are applicable to the situation of the people. Nevertheless, in a matter of such vast importance, it will be the safest course to exclude English tenures and conveyancing by express words.*

3. Our second recommendation relates to a modification of English law which might be made by the courts in administering it. But there is one change which we think desirable, and which requires direct legislative sanction.

We recommend that the interest, whatever may be its extent, which any person, not being a Hindu or Mahomedan, may have in real property situate without the limits of the local jurisdiction of Her Majesty’s courts, should be administered by the executor or administrator of such person, and be distributable, according to the Statute of Distributions, in like manner as personal property.

4. Our fourth recommendation is, that all questions of marriage, divorce, and adoption of persons not Christian, should be decided according to the rules of the sect to which the parties belong.

5. Our fifth recommendation is, that a college of justice shall be erected at each presidency, consisting of the judges of the Supreme Court and of the judges of the Sudder Dewanny Adawlut, and that in all appeals from decisions in matters of feudal law under the new law, the appellate court shall consist of one judge of the Supreme Court, with or without associates.

It will be necessary that the appeals from decisions in the upper provinces in the Bengal presidency under the new law be heard at Calcutta.

Although we have endeavoured to show that, according to the analogy of the general principles of international jurisprudence, the English law became the lex loci of British India as soon as it became British, and although, if that doctrine is correct, the proposed law is in its nature declaratory, still we think it right that, under the very peculiar circumstances of the case, the proposed law should only operate upon the statute, and that its application should be made for the past. It is a very general and certainly a very useful maxim of jurisprudence, that every person must be taken to know the law of the country in which he resides. But we think that in this case it must not be relaxed, and that in all suits between persons, not being Hindus or Mahomedans, brought in respect of any transaction prior to the passing of the Act, the judge should be authorised to take into his consideration what law the parties to the transaction supposed themselves to be living under, and to decide according to equity following that law.

If the government shall think fit to adopt the principles throughout these recommendations, we should of course be ready to prepare an Act containing all the details which may appear to be necessary for carrying them into effect; but as the interests of many classes would be materially affected by such a law, we would for the present suggest only that this Report should be printed and circulate as soon as it became known, so that people might have an opportunity of considering the measure, together with the reasons on which it is rested, and of petitioning government for or against it.

Our president, Mr. Amos, though agreeing in the principal recommendations of the Commission, yet differing in his views upon some points, has thought it advisable to record his sentiments in a separate Minute, which is annexed to this Report.

We submit this our Report for the consideration of your Lordship in Council.

(Signed) A. AMOS.
C. B. CAMERON.
F. MILLETT.
D. ELIOTT.
H. BORRIDAILE.

Indian Law Commission,
31 October 1840.

MINUTE by the Honourable A. AMOS, Esq.

It appears to me that the practical questions connected with the subject of our Report are, first, whether the usage which has prevailed of administering for all persons the law or customs of the countries or sects to which they respectively belong should now be modified by legislative enactment? And, secondly, if it be expedient to modify, what kind of modification is it most expedient to introduce?

There appear to be the strongest reasons for an extensive modification of the existing law. In many instances great perplexity and uncertainty has prevailed in ascertaining the description of law or customs by which a case is to be governed; in others, sometimes a separate, and sometimes a superadded difficulty has arisen in endeavouring to discover what the governing law or customs prescribe.

A great improvement in the administration of the justice of the country must necessarily take place, in proportion as we remove doubts with regard to the species of law by which a judge shall be guided, and as we make the ordinances of that law accessible and intelligible to him. According to the present usage, judicial inquiries have frequently to be made concerning the species of law which is to be administered in the various classes of cases, in the same manner as the law of Portugal. And the species of law which is to be administered being ascertained, the judge is frequently obliged to investigate the obscure and doubtful cus-
toms of Armenians and of Indian Portuguese, and it is occasionally necessary to refer, for the decision of matters originating and terminating in India, to the systems of law prevalent in France, Holland, America, China, and every part of the world. Hence has arisen a variable and unsatisfactory state of law, and great injustice with regard to persons connected with property belonging to large classes of individuals, many of whom are in the possession of great wealth.

An important objection may be made to any change in the mode of settling the systems of the law of the country or sect to which each individual belongs, in cases where particular classes may have cherished a reasonable confidence of being governed by a law or customs to which they are attached, which law or customs, however traditional, by which, on grounds of justice or policy, it would be inexpedient to interfere. The validity of this objection will be universally recognized in the cases of Mahomedans, Hindoos, Jews, and perhaps of Parsees, though it is to be urged that the exemptions and different classes may, at a future period, be unite, to a considerable extent, in one general system of law for all the inhabitants of India. But I apprehend it is obvious that the objection does not apply to East Indians, Armenians, Parsees, and others in which the European or Asiatic, preserving, however, the lex domicilii in those cases in which it is preserved by the English law to foreigners in England. And while particular classes are threatened with a loss of the character which they now possess, I conceive that not only all objection is removed, but a strong additional reason for modifying the present usage of courts is presented.

Secondly. If the usage of the courts is to be modified, it may be expedient to modify the English law, even further than would be proper if British subjects were alone concerned. Essential to the complete and secure enjoyment of property by a highly civilized people, that I should not feel disposed to recommend the dispensing with them generally, though particular exceptions may be very proper, and the free use of the most simple kind of conveyancing by the most irresponsible people. So far as I am aware, the position of the present occasion to alter the English law for the presidency towns, I think the department from the law of the presidencies, in regard to British subjects having property in the mofussil, must be inexpedient and disregard the necessity for it is not of a very cogent nature.

With regard to the succession to real property according to the statute of distributions, it is a question requiring much deliberation, both as to the probability of a law leading to a more complete and secure partition of property, and as to the consequences of such partition with reference to the circumstances of India. Moreover, it is to be considered that the proposed rule would have the effect of establishing a different law of succession for British subjects in the mofussil from that which obtains in the presidency towns and in England. Under all circumstances, I do not feel prepared to recommend this departure from the law prevalent in the presidency towns, though the succession to real property in the mofussil is a subject upon which in Council I should be anxious to invite discussion.

As to the establishment of a court of justice composed of the judges of the Supreme and Subadar Courts, it may be expected that under the proposed law appeals will sometimes involve points which only an English lawyer would be competent to decide, and sometimes points upon which it would be desirable that both Your Majesty's and Sudder judges should unite in a decision; but, judging from the experience
of what has occurred since the passing of Act No. XI. of 1856, it is probable that for some years the number of appeals of this nature will be small. A temporary expedient might be resorted to, by enabling the courts of the mofussil to state questions of English law distinct from matters of fact for the opinion of a judge of the Subordinate Court, before whose decision the parties might be at liberty to argue the points. Ultimately, I think a court of the nature proposed in the Report will be found to be a useful if not a necessary measure. It may also deserve consideration whether such a court should not merge in an appellate court having jurisdiction over all the tribunals of India.

These being my views on the subject of the recommendations contained in the Report (which I hope will be found to differ but slightly from the views of my predecessor on the subject), I beg leave to make the following observations, with the greatest deference, that I do not attach much importance to the consideration of the questions, what ought to have been the lex loci after the conquest of India by the British arms; or what, according to general law, it ought to be now; provided the usage which has prevailed were superseded, and nothing were set up in its place. I am happy to find that such a very able and learned argument can be adduced to show that something very similar to what is expedient now ought to have been the lex loci at the time when the government of India first came into existence; but I do not feel prepared to give a confident assent to the conclusion at which the argument arrives. Neither, if I thought it material, do I believe that I could add to the weight of the argument a view of the lex loci, as applicable to the peculiar circumstances of India, which I should deem wholly satisfactory. I am glad to think that the intracies of that question throw no practical difficulty in the way of the proposed arrangements.

(Signed) A. AMOS.

APPLICATION OF MISSIONARIES TO REMEDY THE DISABILITIES OF NATIVE CHRISTIANS.

To the Right Hon. the Governor-General of India in Council.

The undersigned Missionaries beg permission to state—

1. THAT your memorialists are deeply interested in the welfare of their Indian fellow-subjects, and especially of one class of them, already numerous, daily increasing, and likely (as it is hoped and expected) to embrace eventually the great body of the people.

2. That the class of men referred to is that important and influential one which consists of those who, through the natural and inevitable operation of the education and other measures which are being pursued by government, public societies, and private individuals, have been driven to repudiate the irrational rites and forms of idolatry and superstition; as also of those who, besides abandoning the hereditary creed of their fathers, have been led, by the light of Divine knowledge brought home to their understandings and hearts, openly to profess the Christian faith, and become members of the Christian church.

The whole of this class, in all accounts with others, not of the Hindu or Mahomedan persuasion, such as East Indians, Greeks, Jews, Parsees, and Armenians, at present labour under sundry legal disabilities of a specific character, and are also left, in reference to many questions of a personal nature, in a state of uncertainty; and without any laws to guide and direct them.

4. That among the grievances more immediately referred to, and loudly and very generally complained of, may be specified the following:

1st. The effects of the coercion, and it may be cruel, to which the religious bigotry of parents and guardians may subject those under legal age, who, as the result of enlightened conviction, arising from improved education, and other means, are impelled to renounce their ancestral religious opinions, and adopt others instead.

2d. The loss or total forfeiture of lands, goods, and other property to which such conscientious renunciation may (in certain circumstances and particular localities) render them liable.

3d. The defects of the laws relative to marriages and rights of inheritance of all classes of persons who are, or may be of purely British, Hindu, or Mahomedan descent.

5. That the classes of our Indian fellow-subjects now mentioned, are already much oppressed under the foregoing and other similar grievances, and are likely to be yet more oppressed, and that therefore speedy relief and adequate remedy is anxiously desired and earnestly prayed for.

6. That as a full enumeration of particulars would prove of too great length for insertion in the body of this memorial, a statement* of the more prominent facts, natural principles, legal enactments, and remedial suggestions, will be found in the documents appended.

7. That should your Lordship in Council be too deeply occupied with other national affairs to allow the present subject to engage your personal attention, your Lordship is respectfully and humbly requested to refer this memorial, with the appended documents, to the Law Commissioners, with a recommendation that they take the same into consideration, and prepare without delay the drafts of general and comprehensive laws, by which the grievances to which attention has now been directed may be removed, and appropriate remedies applied.

8. That as the names of some of your Lordship's predecessors are destined to go down to posterity enshrined in the heartfelt homage of tens of thousands of the native inhabitants of Her Britannic Majesty's Indian empire, who, in consequence of the peaceful and patriotic reform of abuses, have been delivered from the tyranny of many prescriptive usages, and the arbitrary action of many despotic laws, your memorialists earnestly hope that your Lordship will be privileged to carry away from the scene of real and some similar civic trophies; and, not content with the crown of conquest, will be led by an overruling Providence to seek a more true and lasting fame in the redress of oppressive grievances, the amelioration of barbarous and inhuman laws, and the establishment of laws which, in the hands of the law-giver, may be the promoters of true and lasting happiness to the subjects of Her Britannic Majesty.

(Signed) G. W. CAMPBELL.

London Missionary Society.

ALEXANDER DUFF,
Church of Scotland Miss.

And others.

Such was the statement prepared and authenticated 10 years ago. Of several copies were forwarded to leading individuals and public bodies who were memorialized on the subject. A partial agitation was in consequence commenced. The Court of Directors and other public bodies were memorialized on the subject. What share of influence, direct or indirect, may have been exerted by the Calcutta statement, it is impossible to ascertain. No doubt it was a matter of some consideration. The satisfactory result was, that early in 1852 the Court of Directors did send a despatch to the Governor-General in Council, to institute inquiry and speedily enact some adequate legislative remedy. In conformity with the declared sentiments and express request of the Honourable Court, the Indian government lost no time in giving the matter a full and impartial consideration. The above interesting issue soon appeared. Among the Regulations of 1832, 16th October, was promulgated the following:

Clause 8. Such part of Clause 2, Section 3, Regulation VIII. 1292, enacted for the province of Benares, which declares that, in causes in which the plaintiff shall be of a

* The statement is a very elaborate document on various points of Indian law and order. The following page contains all that is necessary for the purposes of the Commission.

† Note, Le 1881.
different religious persuasion from the defendant, the decision is to be regulated by the law of the religion of the latter, excepting when Europeans or other persons, not belonging to the Mohammedan communion, shall be defendants to which case the law of the plaintiff is to be made the rule of decision in all actions or suits of a civil nature, is liable to a fine and imprisonment. See also Section 11 Regulation IV. 1798, and the corresponding enactment contained in Clause 1, Section 16, Regulation III. 1803, shall be the rule of guidance in all suits relating to succession, adoptions, or conversions of religious usages and institutions, which may arise between persons professing the Hindu and Muhammadan persuasions respectively.

"Clause 9. It is hereby declared, however, that the above rules are intended, and shall be held to apply to such persons only as shall be deemed professors of those religions at the time of the application of the law of the respective sects were designed for the protection of the rights of such persons, not for the deprivation of the rights of others. Wherever, therefore, suits of any civil suit, the mode of such suits may be of different persuasions; when one party shall be of the Hindu and the other of the Muhammadan persuasion, when or where one or more of the parties to the suit shall be of the Mohammedan persuasion, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which they would be entitled. In all such cases the decision shall be governed by the principles of justice, equity, and good conscience, and a suit for any such case shall not be considered as justifying the introduction of the English or any foreign law, or the application to such cases of any rules not sanctioned by those principles."

The Muhammadan law has hitherto been held at the time as an invaluable boon, being an important modification of the ancient barbarous law. Still difficult and discouraging instances of a spiriting nature, of a fostering the subject, their portentous shadows over the first timid motions of weak and irresolute minds. In order, therefore, to ascertain the present realities of the case, viewed as a whole, without the confusion of queries having great or seemingly great interest, but by competent judges answers, in substance, as follows:

1. Does a Hindu or Muhammadan, by renouncing his ancestral faith, lose his right to ancestral property?—Jirs. By Regulation VII. of 1832, sections 8 and 9 (quoted above) he shall lose no civil rights or in a Hindu or by a Muhammadan. In other words, if resident anywhere in the mufassal or provinces, a native, being amenable to the mufassal courts only, which are limited by Act of Parliament to be of the State by those of the Governor-General in Council, may avail himself of the Regulation which declares that the laws and usages of parties to that faith, when and where he may operate to deprive him of any property to which, but for the operation of such laws, he would have been entitled." On the contrary, any native resident in Calcutta, being subject to the jurisdiction in which it is governed by the Hindu and Muhammadan laws, would forfeit all right to property by loss of caste, which is essentially involved in a renunciation of that faith, but he might, if the property be actually vested in the native at the time of his losing caste, by apostasy or otherwise, the case is declared to be doubtful.

2d. Does he lose his right to personal or chattel property?—By mufassal law, no; by Supreme Court law, yes.

3d. Does he lose his right to his share of family property, inherited by himself (either in conjunction with the other family members or as manager of their affairs) previous to his repudiation of the Hindu or Muhammadan faith? By mufassal law, no; by Supreme Court law, yes.

4th. Would ancestral or acquired property be still inalienable or capable of sale by mufassal law, irrespective of all conditions?—No. If certain conditions were attached to the sale of property which the inheritor or holder refuses to perform, he might thus forfeit it, even by mufassal law.

"The discussion on those who are neither British-born subjects, Hindus, nor Muhammadans?—East Indians, Parsees, Armenians, Jews, Greeks, and others make sad complaints of the discrepancy between Supreme Court law, which regards the religious rights of inheritance. In Calcutta, the Supreme Court obliges them (not being Muhammadans nor Gentoo), to conformed to the English law in this respect. In other cases, the judges acknowledge they have no law at all to guide them. In some districts the case will be decided by Hindu law. In others, by the inheritance laws of the parent nation to which the civil parties respectively belong, and in others, by the English or common law (that of the Pandects), according to the varying sentiments or caprice of the acting judge.

From these replies it is evident that the state of the law relative to personal and real estate, in the case of a change of religious sentiments, more especially when that change involves an adjudication of error and superstition, should entail a forfeiture of that property which belongs to a man of natural right, it be enacted, that one general and all-comprehending law be framed in the spirit of the eighth and ninth clauses of Regulation VII. of 1832, or agreeably to the tenor of the admirable resolution of one of the most learned and respected of our Indian judges, Sir Hyde East, who, in his examination before Parliament, previous to the last renewal of the charter, stated that "the consideration of Government that their protecting hand should be so far extended as to make provision that no native of India should be permitted, for personal benefit, on account of his profession of any particular faith or doctrine, which he would be entitled to and claimed by any law of title, grant, inheritance, or succession established in that, which was binding on the seised or possessed, or on those from or through whom they claimed." Thirdly, that in the event of conditions being attached to the property connected with superstitious or idolatrous usages, conditions the imposition of which may be pronounced unwarrantable, as being opposed to and therefore excluded by the higher principles of natural justice, and revealed law—conditions, the performance of which may be adjudged intolerable, as being subversive of the dictates of reason and true conscience—the law of the country shall be empowered, in accordance with the spirit of British law and the practice of the High Court of Chancery, to review, over-rule, modify, or abate these oppressive conditions altogether, or otherwise adjudicate, for the relief of the party concerned, agreeably to the first principles of natural equity and the suggestions of a good conscience.

The perusal of a legislative body embodying these or similar recommendations would do much towards remedying the present unsatisfactory state of the law of inheritance and sustainability. The reasons urged in the "Statement of 1830," there is another, arising out of the present movements of Government itself, and the sanctioned operations of societies and individuals, which laggardly, or at least in this respect, is governed by the Hindu and Muhammadan laws, would forfeit all right to property by loss of caste, which is essentially involved in a renunciation of that faith, but he might, if the property be actually vested in the native at the time of his losing caste, by apostasy or otherwise, the case is declared to be doubtful.

2d. Does he lose his right to personal or chattel property?—By mufassal law, no; by Supreme Court law, yes.

3d. Does he lose his right to his share of family property, inherited by himself (either in conjunction with the other family members or as manager of their affairs) previous to his repudiation of the Hindu or Muhammadan faith? By mufassal law, no; by Supreme Court law, yes.

4th. Would ancestral or acquired property be still inalienable or capable of sale by mufassal law, irrespective of all conditions?—No. If certain conditions were attached to the sale of property which the inheritor or holder refuses to perform, he might thus forfeit it, even by mufassal law.
testimony to be conclusive as to the operative power of a superior English education in overturning the superstitions and idle fancies of India: for so, must we perceive, and so, must the Government co-extensive with the wants and exigencies of the entire body of the people? An awakening and enlightening knowledge is communicated which sweeps away the base materialism of idolatrous and evil-minded men, and Mark, then, the concomitance of the spirit of the age in the circumstances which give rise to violence to his reason, his conscience, and his publicly avowed sentiments; in a word, he must act part of a wicked and disastrous hypocrisies. If, then, the Law, he has moral fortitude enough to resist any temptation and suffer any loss rather than submit to the sacrifice of reason, conscience, and character, he must, while the Law remains unaltered, and his non-fulfilment of the duties of the idolatrous conditions, forfeit all right to property; in a word, as the acquired possession of superior intelligence were the fruit of his own exertion, and the result of systematic honesty, he must eventually call forth the contemplation and indignation of an enlightened community, what may we expect to be the operation of the present law as it affects the future spread of sound knowledge and intelligence among the natives? What can we expect, except that the spread of both will be vast and indefinitely retarded? What a solemn mockery to be, on the one hand, holding out all manner of encouragements, as the shape of salaries to qualified teachers, and stipends and scholarships to promising students, to stimulate the cultivation of scientific knowledge and intelligence; and on the other, by a continuance of the present law, holding out positive discouragements of a nature too small to mislead the total success. In the progress of the century, lies the strength of these discouragements. Superior intelligence, if accomplished by a good conscience, may become penal, by being attended with the deprivation of all one’s possessions, and that too in such trying circumstances as to lend to censure, and that the immediate punishment of death might often be more tolerable. Surely that man is the greatest of all who does not act in this the surest check to all inquiry, and the most powerful restraint on every desire to acquire or cultivate any knowledge which must, without a violation of conscience, issue in the possession of the good. The total loss of that intellect take far too firm a hold of the heart of man to admit of a different inference being drawn; yes, such is the strength of the idea of impenetrable power that every one of this world take all the powers and faculties of his soul, that man is not only apt to become insensible to the glories of an eternal state, but to account of them with positive dissatisfaction, and is too often willing to forgo the anticipated enjoyment of God’s favour, and brave the terrors of God’s wrath, rather than be induced on any account to withdraw the strength of his affections from his present possessions.

If such be the power of opposition which the enjoyment of the good things of this life ever presents to the ready reception of all truth, as opposed to error, prejudice, self-seeking, or sinful compromise, even in circumstances the most favourable, when no demand is made but the reasonable and salutary demand, not exclusively to direct towards them the affections of the heart, but transfer these to a far more glorious and enduring inheritance, who can estimate the conceptions of a mind, which, touched in all his powers by an almost superhuman arsace, must present to the very first proposal, as well as to the incontinent desire, practically to make the acquisition of improved spiritual knowledge, any scheme of unbinding principle, whether human or divine, the embarrassment and tenure of which may involve recovers the total forfeiture of all that the soul naturally must value? Accepting to intend to such extent as shall not restar, till the lapse of time and experience have sufficiently illustrated the awful nature of the dilemma, is altogether im- powerable, yes, very powerable, to perceive how inevitable is the certainty of its existence, since the slightest consideration will suffice to show that the supposition of its non-existence would imply that the usual processes of nature are reversed and the constitution of a man unhinged; that actions the most prejudicial to every worldly interest are conducted, without and on the other, to expose its fairest fruit to the consuming blast of moral pains and penalties; let it no longer, in point of apparent irreversibility and inconsistency in its manifested conduct, provoke a comparison with the procedure of the man who, with the simplest proffers of recompense and reward to all that may strive to raise the most luxuriant produce from an impoverished soil, and who, in order to promote the interference of an armed force, against every attempt to sow the seed, or, if already somehow or other deposited, would by the visitation of flaming fire to blast and devour prevent the fruit of the good. Let the supreme Government of these realms prove faithful to the God of Providence, by dealing out perfect righteousness and justice to the weak and oppressed in a way so marvellously and unprecedented, been constituted the protector and the guardian, and the God of Providence will smile protectively upon its efforts, and reward the administration a source and surety of abounding prosperity to itself, a guarantee of brightening hope to the millions of the present generation, a fount of reversionary bliss to future ages, and a visible example of the nation’s admiration. Let the continued waving of the British sceptre as the surest pledge of the continued enjoyment of their dearest rights and noblest privileges.

V.—Propositions regarding Marriage and Divorce, chiefly as they affect Native Converts to Christianity.

On the importance of the institution of marriage to the peace and well-being of society it were idle to dilate. The regulations of the period and the Contemporaneous and Contemporary of the Marriage and Divorce law, with the wreck and ruin of the fall. Scarcely any tribe, however barbarous, has been known wholly to disregard it. And in the progression of Christian civilization, it has ever been found at once a cause and a consequence of advancing civilization.

It cannot therefore be without the deepest injury to any community, should any of its clauses be found to exist therein, whose intermarriages, and all the grave and momentous interests which these involve, are wholly unprovided for, and, consequently, the entire absence of the law. But such is the state of things in India. For British-born subjects, Muhammadans and Hindus, laws have been framed and promulgated. But for individuals of other races, whether free or not, no legislation of the least and constantly increasing body of natives who have re- nounced their ancestral faith, no laws whatsoever have been enacted by any civilized nation. And

The deplorable consequences of this absence of all law on a subject so intimately interwoven with the best interests of man has long been since generally felt, the threat of native improvement, and by none more so than by the Christian missionaries of all denominations. In Calcutta, in particular, these have heretofore united for the purpose of endeavouring to secure some commencement record for the great and the growing evil. In January 1835, after repeated discussions, they published the result of their deliberations in the form of six propositions, accompanied by brief but able explanatory notes by the acting secretary, the Rev. W. S. Mackey.

No authoritative measure having yet been founded on these or any other propositions, the subject, in so far as it concerns the case of converts to the Christian faith, has again been taken up by the missionary conference; and, after reiterated discussions, the conference has been arrived at the standing committee for its final and digested report. Accordingly, the chairman of that committee begs leave now to report as follows:

I. The Bible being the true standard of morals to a Christian government and its Christian subjects, it ought to be consulted in everything which it contains on the subject. Geographical sets of moral and religious duties ought to be determined evidently contrary to its general principles.

Note.—This, with a slight alteration, is the second of the original propositions already referred to; and is too self-evident to require any comment.

II. It is in accordance with the spirit of the Bible, and the practice of the Protestant Church, to consider the State
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as the proper fountain of legislation in all civil questions affecting marriage and divorce.

This is to state the original propositions which the former secretaries pronounced "nearly a truism." "No marriage or divorce," continues he, "is legal, unless it be according to the law; and whatever the laws enact, or even require by the divine authority; but then there are practical definitions of marriage and divorce. It may define wrongly, and place them on other than a scriptural foundation; but so it may not even admit of the idea of marriage or divorce.

Under these circumstances, the duty of the Christian is plain. He needs not to seek for such marriage or divorce as the law sanctions, for he already finds the same in nature and the Book. If the law refuses what the Bible allows, he must submit to its ordinance (Romans xiii. 18).

The duty of the minister is a little more complicated. Though he may be called to loosen the marriage tie, more than the Bible sanctions, it is plain enough that it has no power to force him to use improperly the authority it gives to live together and be called and be Christ's. Thus the minister is under two duties in certain cases to refuse both marriage and divorce. But it seems impossible to deny the validity of either, when sanctioned by the great and unchangeable authority of Scripture: otherwise, as Christians are commanded to marry only in the Lord, we would be unmarriedly the whole world. The law, for instance, might allow the marriage of two persons living together, and thus create a marriage relation; but, however much it lamented this, no Christian minister would feel himself at liberty to remarry one or both of them to another person, so long as the other was still alive, and the legal union dissolved. If the contracting parties were Christians, and aware of their guilt, it would be a case for church discipline; but in other cases requiring no church action, the law itself had no authority to call the offenders should be excused. To conclude, marriage and divorce are to be held legal and valid, when recognized in any way by the law, and by the minister, and as perhaps in as many cases of which the Christian allows the legal right, he denies the moral right: it is his duty to suffer them, but not to form or share in them by his testimony; to recognize them, and search the Scriptures, that he may be enabled to choose his own path aright.

III. A mere contract, oral or written, between the parents of the child, is not in any way a marriage, but is legally in vellium, without the actual celebration of the marriage ceremony, not being regarded by the nations themselves as of the essence and validity of marriage. In fact, a man, however much the Christian or the Church or the Christian church or the state may have recognized marriage, he remains free to choose his own path of marriage or of remaining single.

Note.—It is found on inquiry that such contracts are occasionally entered into; but that they are not held by the contracting parties themselves to be of the essence or validity of actual marriage. Either parent may rescind from his promise, only the party so resorting is liable to reproach or dishonor.

IV. When the marriage ceremony, authorized by Hindu and Muhammadan law and custom, is formally celebrated between the parties, and the same is declared by reason and Scripture to regard that marriage as civil and legally valid, and, consequently, its obligations as mutually binding.

V. It is not to be ever to be borne in mind that marriage is a contract, both civil and religious. As its essence seems to consist in the union of a man and woman, who are pledged to love and cherish one another, it may vary infinitely with the manner, customs, and sentiments of different nations in different ages. In every country, whether civilised or barbarous, there is some act, form, or ceremony which is generally held to constitute marriage and to legitimate the children. When the question therefore is raised, whether we, as Christians, are called upon to regard those marriages as valid, whether a Hindu, for instance, will be called upon by the tribes or nations to whom the married persons belonged at the time when the matrimonial alliance was contracted, and whether a Hindu marriage ceremony is valid? it is humbly submitted that we are so called upon. The very expression of the Apostle, "unbelieving wife, unbelieving husband," i.e. heathen wife, heathen husband, of necessity implies that heathen marriage is legitimate, just as a married woman, while in their heathen state, because so constituted and accounted by their own customs and laws. So our Saviour, when he says, "What God hath joined together, let not man put asunder," seems to imply that those were "joined together by an ordinance of God," or lawfully married, or were so united and regarded by the laws and customs of the land. His words militate against the theory that the parties had then become believers in Christ.

VIII. Renunciation of Hinduism or Muhammadanism being regarded by Hindu and Muhammadan law and usage as tantamount to civil or legal death, the non-renouncing party is at liberty to treat the other as repudiated or divorced; but the Christian convert is at liberty to treat himself or herself of the Hindu or Muhammadan law, and regard his or her voluntary renunciation of ancestral faith as of itself releasing him or her from the obligations of the previous contract, as if at rendering him or her free at once to contract another.

Note.—The law of the unbelieving party may entitle it to regard the other as ipso facto civilly dead, or legal repudiated. A change of religious opinion for the better part of the Christian law, dissolve any previously contracted bonds or obligations. Should the unbelieving party, therefore, not avail itself of the conceded right or permission of its own law, but still think it good or well (aewas), i.e., content, willing to live with the believing party, and discharge, as before, the duties of husband or wife, it is concluded that the latter is husband or wife; he has the obligation to treat the unbelieving party as husband or wife, precisely as if no change of religious sentiment had taken place (see 12. 13. 14. 15. 16. 17. vi. 10, 11). Whether the Hindu or Muhammadan law declare a renunciation of Hinduism or Muhammadanism to be ipso facto a death of the person, or not, it is the doctrine of the Christian untenable which denies the validity of any such ground. Accordingly, if the unbelieving party be willing to abide by the religiously formed, legal bond, the believer has no option, no alternative, as in that case there is neither nor can be any dissolution of the original marriage. But if, in consequence of the permission and sanction of the Hindu or Muhammadan law, the unbelieving party, i.e. separate himself or herself, in other words, finally and formally cast off, repudiate, or divorce the believing party, the latter not being alive in the case, the unbelieving party, as above discussed, must be accounted as freed by the willful and deliberate act of the former from the ties and obligations of the previous marriage, and, consequently, at liberty to contract another (see Cor. vii. 15). From the present constitution of Hindu society, however, and the entire want of any legislative enactment on the subject, it is often impossible for the real living husband or wife to know whether the other is party, particularly if that party be the wife. She may be herself in close confinement in her father's house, or in that of some other relatives, her husband, having become an out-caste, may be positively debarred all access to her. How then is he to discover her own mind, her own unconstrained wishes, concerning the continuance of her conjugal alliance with himself? And should she, whether she is obstinately bent and determined to avail herself of her own law, and so to disown and repudiate him for ever? Or, whether bound natural affection towards him, or for any other cause, is she willing to forego the right and privilege conceded by her own law, and consequently willing still to live with him in conjugal union? Home authority, or plan or method by which these important points can be legally ascertained without doing unnecessary violence to natural feeling or national custom seems imperatively demanded alike by the conditions of private and social well-being, and the pressing exigency of circumstances.

VII. It is therefore humbly suggested, that in order to ascertain the true sentiments and wishes of such a Hindu or Muhammadan, not a magistrate be authorized, on petition of the believing party, to have the former (being at least 14 years of age in the case of a man, and 12 for a female), brought before him, in open court, or in his own private audience, or in other convenient place, there to be questioned in the presence or hearing of the petitioning party and friends, as to his or her own wishes respecting their conjugal alliance, considered the husband, or wife, of the latter; that, if the unbelieving party be found willing thus to live with the other, he or she be at once proscribed, and both, the husband, wife, and immediate steps be taken to ensure the consummation of such voluntarily expressed wish; but that, in the event of a positive refusal, the part of the unbelieving, at the first examination, the same may be remanded to the second. If the slave, or, a-twentieth, during which there may be ample scope for reflection on the one hand and conciliation on the other, be again brought before the magistrate, and similarly in-
TO PREPARE A BODY OF SUBSTANTIVE LAW FOR INDIA.

The coercion of the laws is felt by persons under the age of majority. The executive authority are unequally subjected to the influence of their passions. The laws of the land are so worded as to favor the man of wealth. The position of women is often disregarded. The position of the Hindu is equal to that of the English. The position of the Muslim is inferior to that of the English.

Para. 4. The duties of the laws relative to the recognition of persons and the rights of property.

The loss or total forfeiture of property to which a person is entitled by law shall be recognized as a duty of the laws. The loss or total forfeiture of property to which a person is entitled by law shall be recognized as a duty of the laws.

The Draft Act in all the territories under the government of the East India Company, excepting the places within the local limits of the jurisdiction of Her Majesty's Supreme Court; if similar provisions are enacted for those courts, the measure will be complete.

The possible grievances set forth under the first head will be prevented in some degree if the provisions in sections XI. and XII. are made the general law, as sons or daughters, under the circumstances supposed, will be secured in their right to maintenance from their fathers; and if they are at an age at which, by the law of England, they would be considered competent to exercise a discretion in the matter of their religion, they will be entitled under the lex loci to claim such protection as the law of England affords against any coercion or oppression used to deter them from following their new religion.

In framing the code of substantive law, it will be an object to define the relative rights and duties of parents and children. At present the Law Commissioners are not prepared to offer any specific suggestions on the subject, and it does not appear to them that at present there is an urgent occasion for special legislation upon it.

APPLICATION OF MISSIONARIES TO REMEDY THE DISABILITIES OF NATIVE CHRISTIANS.

From J. C. C. Sutherland, Esq., Secretary to the Indian Law Commissioners, to T. H. Maddock, Esq., Secretary to the Government of India, Legislative Department.

SIR,

I am directed by the Indian Law Commissioners to acknowledge the receipt of your letter under date of 10th ultimo, and of the memorial therewith transmitted, which are requested to take into consideration in connection with the subject of the lex loci of India.

The memorial refers more particularly to the situation of natives who have abandoned the religious creed of their fathers, many of whom, it is stated, have become members of the Christian Church. This two-fold class, it is represented, “at present labour ‘under sundry legal disabilities of a specific character, and are held in reference to many other moments, tos civil concerns and relationships, without any "laws to guide and direct them."

3. On a reference to the draft of an Act for declaring the lex loci of the territories subject to the government of the East India Company without the local jurisdiction of Her Majesty's Supreme Courts, which has been prepared by the Law Commissioners under the instructions conveyed in your letter dated 11th January, the Governor-General in Council will perceive that persons in the circumstances stated are recognized as subject to the lex loci, and that a general provision has been made to guard persons in such circumstances from any loss or forfeiture of rights in consequence of their renunciation of the religion of their fathers.

4. In Note (i) appended to the Draft Act, the Commissioners have expressed their opinion that the law to be administered by Her Majesty's Courts should be modified so as to afford the same protection to persons in similar circumstances within their jurisdiction respectively.

5. The grievances complained of in the memorial are reduced to three heads. Those that fall under the general clause, as approved by the general lex loci to persons in the circumstances stated, by which questions relative to marriages contracted subsequently to their change of religion, and rights of inheritance depending on such marriages, and rights of inheritance generally to property possessed by such persons under titles not depending on Hindu or Mahomedian law, will be determined.

6. The grievances stated under the second head will be prevented by the provisions in section XII.
APPENDIX TO FIRST REPORT OF COMMISSIONERS APPOINTED

Constantinople, that foreigners, denizen Zimees (i.e., submitting enemies), and licensed residents of all kinds, if not Mahomedan or of the religion of the country, shall bring with them for all domestic transactions their own customs and laws, including their own rites of marriage and rules of inheritance.

The object of the draft was to create a new class of rights and obligations, by lowering the existing barriers. It is in consequence of this, that the government is of the opinion that in order to lower the barriers, it would be necessary to adopt a new draft, which should allow a new practice to grow silently up to this point, have only recognized and acted upon the law they found in force, that is, the law applied to Europeans when they were mere licensed settlers and traders residing under suffering in the ports and cities of India.

The law of England, which is much less liberal on this point, is based on principles that can never, I conceive, be extended to Asiatics, and its origin will be recorded in the history of its constitution. Therefore, to recommend to the Home Authorities the adoption of such a law as recommended by the Law Commission, which, beginning with a declaration that it has hitherto been doubtful what was the law of England in this respect, and then proceeds to demonstrate that the practice has grown up, proceeds broadly to lay down that henceforward all foreigners, Asiatic as well as European, shall in all matters of inheritance be dealt with according to the laws of their own country, and thereupon by the removal of the distinctions between real and personal estate.

But though I disapprove of the basis of this law, as it is now drafted, I am fully sensible of the dis-advantages that will arise from uncertainty, and of the necessity of prescribing the rules of practice which shall hereafter be, more especially in cases where no special law is alleged and established as that recognized by the family of the deceased. Although, therefore, I would not hastily abrogate the recognized and well-understood principle which allows to foreign settlers the privilege of handing down their property to their posterity according to the law of their nation and sect, I should have no objection to allowing to English law to prevail as a substitute. I have it to be the law of distribution whenever another special law is not pleaded and put in evidence.

This will allow Armenians and Christians of the half race, and any other class that pleases, to take the beneficence of English law, and so do the Greeks and other European foreigners, unless these latter lay claim to their own law, which assuredly they have as much right to as to their estates in the interior, some of which are very ancient, as we Englishmen have to the estates our ancestors acquired at the same early period.

I object to the terms of sections X, XI, and XII. of the Law Commissioners' draft of law.

In section X. it is provided that the Act is not to apply to any Hindu or Mahomedan in India in the estates and property of such, "unless such Hindu or Mahomedan shall have renounced his religion," implying that upon renunciation his estate is to be administered according to English law.

Section XI. provides that no one by renouncing is to acquire or deprive others of any rights of property.

Such a law as this would, as it seems to me, leave things in a strange confusion. A, a Hindu, has turned Christian. His wife is still Hindu, or may be. Is his Christian law binding on him? If he is to go by English law, and he may will it away to the prejudice of both widow and brothers. If he die intestate, the administration is still to be taken out by the widow, being a Hindu, as head of a Christian and Mahomedan family, who will have no power to receive a strange law of which they are quite ignorant.

I would leave out both these sections, if the Act were ever passed, as imperfect and impossible of application, because it cannot be calculated to do the act by excising apprehension that they are preparatory to an attempt to produce extensively the status for which the Government thus deems it necessary to legislate.

I have no objection to section XII. standing, provided the words "abrogation" be changed for "shall not be enforced by any British court."

We cannot pretend to abrogate what is matter of religious belief, and supposed to have revelation for its origin.

I would here remark, that if whatever calls itself Hindu or Moslemian is to be left in statu so far as concerns the law of inheritance, &c., very little will accomplish the question of the origin of the lex foci, for the special customs of Gossains, Jains, and all the various heterodox castes and races of India come within the word Hindu, and the law of inheritance to them is not the law of Mesto, nor the Metzehuara and Mahomeus, but their own special customs, as proved in evidence.

In like manner there are many varieties of Mahomedan law, and the Sheeas, Malikees, and others claim always and have been allowed to have their estates descend and be administered according to their special doctrines.

Even supposing, therefore, the Draft of Act proposed by the Law Commissioners to be made law, the courts administering it will have to take evidence in the same uncertainty as to what law is to be applied to the particular Hindu and Mahomedan estate before them, as they are now under the universally recognized principle of Asia, which respects the laws and customs of the settler of whatever race and religion, modified by the removal of the claims of inheritance to his estate to be preferred and decree of distribution to be made under that law.

In order to make their law more complete, the Law Commissioners might, as it strikes me, to have laid down in respect to Mahomets what the English law of Uboon Hunge and his school should be the substantive law for Mahomedans, unless the fact of a difference of sect and other special known law be established in respect to the deceased.

And so in respect to Hindus the law of Menu, with specification of the tract in which the Mitholo varieties are to be the rule. This principle in respect to these two great classes would be quite consistent with English law, as with the future of a Mahomet, the English law should be the rule, when other special law of the deceased might not be pleaded and proved.

We are not going to pass this law at present, or I should deem it necessary to go more in detail into this subject.

I cannot, however, let it be sent home to be submitted eventually to Parliament without some protest against the principle which has been adopted in its preparation, as it takes the whole law of the recognized practice of Asia in respect to the estates of aliens, which I regard as a substantive law already established for them, and acted upon as such in all the courts of India.

(Signed) H. T. PRINSEP.

MINUTE by the Honourable A. AMOS, dated the 2nd May 1842; and Note by the Honourable the President, dated 7th July 1842.

I do not think it necessary, for the purpose of legislation, to come to a decision whether we are satisfied with the theory of the Law Commission, that British law is the lex foci of India, or with that of Mr. Prinsep in favour of a custom of Asia. Whatever we determine before us a practice pretty clearly established, at least for the mofussil courts, which is consonant to the alleged lex Asiaica. That practice is attended with great uncertainty and inconvenience, especially where a preliminary examination in British courts is to decide the law of the individual must be deemed to be a question not depending on domicile, but involving inquiries of pedigree and legitimacy, besides many points of law which are mixed up with it.

The inconveniences of the existing practice being manifest, it becomes a subject of consideration how far it is expedient to remedy them by the introduction of the British law. Such a measure would remedy the anomalies which attend the present system; but unless the British law be introduced
with exceptions and qualifications it would entail far greater evils than those which it would remedy.

The Law Commission have accordingly admitted that in no case can the whole code of English law be made applicable to any class of persons in the most extensive provisions of that code must be excepted. Again, upon certain matters which have, in some measure, a religious aspect, such as marriage, the Law Commission do not propose to interfere. They think it would be imprudent also to interfere with Mahomedans and Hindoos, whether orthodoxo or heterodoxo.

Discussions on the subject have taken place in Council. I collected that it was the general opinion that in the cases of East Indians and descendants of Portuguese, which difficulties arise in determining what is the law of the individual, the proposed Act drafted by the Law Commission would be highly beneficial. With regard to Armenians the difficulty is of another kind; viz., assuming that the law of the individual is that of Armenian customs, what are those customs? As the Armenians appear to be desirous of being relieved from the uncertainties attending their own customs, I did not collect that (if their wishes were clearly ascertained) there would be any objection to allowing the Council to extend the Act to this class of persons.

As regards all other European foreigners, I think there are many reasons for including them, and I do not see that they can complain of being subject to the same or any more erroneous law if they went to England or another English colony, especially after becoming domiciled. This indeed is agreeable to the general custom of Europe, especially as regards the transmission of immovable property.

The other classes of persons in India, permanently or transiently residing there, who are neither of European origin, nor Armenians, Mahomedans, or Hindoos, even in the most extensive application of the two latter appellations, I do not suppose that we should be desirous of interfering with the usages of the Parsees, unless at their own desire; but, independently of this sect, I doubt whether it would be expedient to make further exceptions. However, as much difference of opinion prevails on this subject, I think the consideration of these cases may well be postponed so as not to impede the attainment of great benefits by extensive classes of the community, who in various cases do not know what law they are subject to, and in others, or some times, are said to be governed by laws the provisions of which no one can define with accuracy.

There is no doubt much difficulty and delicacy in the question, where Hindoos or Mahomedans turn Christians; but I think the provisions of the Act will be so modified as to be applicable, and not being subject to British law, but that this shall not prejudice any vested rights in other Hindoos or Mahomedans.

(Signed) A. AMOS.

LEX ECOCI.


Law under Consideration. Law Commissioners' Lex Lex Ecoci. Lex Ecoci, as the Draft Act, declaring to what extent the existing laws pertaining to law persons in the Mohommedan, subject to Hindoo or Mahomedan, shall be subject. The case of the native converts to Christianity also provided for.

31. On the 22nd of May 1841 the Law Commissioners replied to the recommendations of the Act to the solicitors (as reported in par. 84 of our despatch, No. 23, dated 29th November 1841) on a Memorial from certain Missionaries at Calcutta, representing the legal grievances under which native converts to Christianity laboured.

32. On the same date the Commissioners submitted the draft of an Act for declaring the lex feci of the territories subject to the Government of the East India Company without the local jurisdiction of Her Majesty's Supreme Courts. This draft was prepared under the instructions from this Government, reported to your Honourable Court in our Special Letter, No. 2, of 1841, dated the 1st of February.

33. The Memorial of the Missionaries referred to the situation of persons who profess the Mohammedan creed of their fathers, many of whom have become members of the Christian Church. The Commissioners observed, that in the Draft Act, persons in the circumstances stated were recognized as subject to the lex feci, and that all general provisions had been made to guard persons in such circumstances from any loss or forfeiture of rights, in consequence of their renunciation of the religion of their fathers.

34. The Commissioners were of opinion that the provisions of the Act would afford a remedy for the particular grievances complained of, so far as such an object could be properly connected with the other purposes of the Act.

35. Upon the Draft Act of the Law Commissioners, your Honourable Court in its Minutes recorded by our colleagues, Messrs. Prinsep & Amos, dated respectively the 29th April and 2nd May.

36. Mr. Prinsep recorded his particular objections to the terms of Sections X., XI., and XII. of the Law Commissioners' Draft Act, and his objection to the adoption of the Draft itself, proceeding as it did on the assumption that it has hitherto been doubtful what was the law of India in respect to foreigners, and that in consequence of such doubts an action in the courts of the English East India Company. Upon this assumption the Draft proceeded to lay down, that herefore forall foreigners, Asiatic as well as European, shall, in all matters of inheritance, be dealt with according to the law of England. The Draft was limited only by the law of the distinctions between real and personal estate.

37. But though disapproving of the basis of the law as it was drafted by the Law Commissioners, Mr. Prinsep was fully sensible of the disadvantage that arises from too uncertainty, and of the necessity of prescribing what the law and practice shall hereafter be, more especially in cases where no special law is alleged and established as that recognized by the family of the deceased. Although, therefore, Mr. Prinsep would not hastily arrogate the recognized and well-understood principle which allows to foreign settlers the privilege of handing down their property to their posterity according to the law of their nation and sect, yet he objected to the sweeping character of the English law a preference as should leave it to be the law of distribution, whenever another special law was not pleaded and put in evidence.

38. Mr. Amos explained the grounds on which the Law Commissioners hold to be that he understood the general opinion of the Supreme Council to be, that in the cases of East Indians and descendants of Portuguese, in which much difficulty existed as to determining what was the law of the individual, the proposed Act of the Law Commissioners would be highly beneficial. With regard to Armenians, the difficulty was of another kind; viz., assuming that the law of the individual is that of Armenian customs, what those customs are? As the Armenians appeared to be desirous of being relieved from the uncertainty attending their own customs, Mr. Amos did not collect that (if their wishes were truly ascertained) there would be any reluctance on the part of the Council to extending the Act.

39. As regards all other European foreigners, Mr. Amos thought there were many reasons for including them, and he did not see that they could complain of being subjected to the same law by which they would be bound in any other English colony, especially after becoming domiciled. This, indeed, was agreeable to the general custom of Europe, especially as regarded the transmission of immovable property.

40. But there were other classes of persons in India, permanently or transiently residing in it, who
were neither of European origin nor Armenians, Mahomedans or Hindoos, even in the most extensive application of the two latter appellations. Mr. Amos did not suppose that we should be desirous of interfering with the usages of the Parsees, unless at their own desire; but, independently of this class, he doubted whether it would be expedient to make further exceptions. As, however, much difference of opinion existed on the subject, Mr. Amos advised that the consideration of these cases might be postponed, so as not to impede the attainment of great benefits by extensive classes of the community, who in various cases did not know to what law they were subject, and in others, and sometimes in the same cases, were said to be governed by local laws, the provisions of which no one could define with accuracy.

41. Mr. Amos was aware that much difficulty beset the question, where Hindoos or Mahomedans became Christian; but he was of opinion that the principle in such cases ought to be, that the parties may become subject to British law, but that this should not prejudice any vested rights in other Hindoos or Mahomedans.

42. Our President looked upon the whole question as one of great difficulty and delicacy; and as it bore on the interests of many classes of persons, he thought it would be dangerous to legislate until opinions were less divided. In conformity, therefore, with his suggestion, we have requested the several subjects to be tried by the Judges of their own courts, to their own opinion, as well as the opinion of the Judges of the Sudder Courts, and of other officers of judgment and experience in the several Presidencies on the Law Commissioners’ Report and Draft of Act.

**DRAFT of an ACT for declaring the Lex Loci of the TERRITORIES subject to the GOVERNMENT of the EAST INDIA COMPANY without the JURISDICTION of HER MAJESTY'S SUPREME COURTS.**

**FORT WILLIAM, HOME DEPARTMENT, LEGISLATIVE, the 25th January 1845.**

This Draft having been sent up by the Law Commission, with explanatory notes, is now published with those notes, by order of the Right Honourable the Governor-General in Council.

Act No.— of 1845.

WHEREAS it is doubtful what is now the substantive (a) law of the place (b) in the territories subject to the government of the East India Company without the local jurisdiction of Her Majesty’s Supreme Courts at Calcutta, Madras, and Bombay;

(1) A practice has grown up in the courts of the East India Company of administering to every person, not being a Hindu or Mahomedan, in all cases not specially provided for, the substantive law of the country of such person, or of the country of the ancestors of such person, whenever such substantive law is not inconsistent with equity and good conscience:

And whereas it is lawful for aliens to hold lands in the said territories, and there is a great and increasing number of aliens in the said territories:

And whereas, also, the diversity of laws, which the said courts of the East India Company, according to the said practice, may have to administer, is likely to occasion great and increasing inconvenience and difficulty:

And whereas, also, there is in the said territories a great and increasing number of persons, whose legal connexion with their country or with the country of their ancestors, is broken by illegitimacy, and it is doubtful whether the said practice is applicable to such persons:

And whereas, also, the said courts of the East India Company will, in the application of the said practice, have frequently to inquire questions of pedigree before they can decide what law they are to administer:

And whereas, also, there is in the said territories a large number of Armenians, and it is doubtful what is the Armenian law:

And whereas, also, the English substantive law is the law of the place (b) in such parts of the territories subject to the government of the East India Company as are within the local jurisdiction of Her Majesty’s Supreme Courts aforesaid; and it is expedient that the law of the place in the territories subject to the government of the East India Company, within and without such local jurisdictions, should, as nearly as circumstances will permit, be the same throughout:

And whereas, also, there is a large and increasing number of British subjects in the territories subject to the government of the East India Company, and it is lawful for British subjects to hold lands in the said territories, or within the local jurisdiction of Her Majesty’s Supreme Courts aforesaid; and the Courts of the East India Company now administer English substantive law to such British subjects, whenever such substantive law is not inconsistent with equity and good conscience, and it is expedient that they should continue to do so:

I. It is hereby enacted, That from and after the day of In the year 1845, the substantive law of the place in the territories subject to the government of the East India Company, within the local jurisdiction of Her Majesty’s Supreme Courts aforesaid, shall be so much of the substantive law of England as is applicable to the situation of the people of the said territories in their own courts, and in all cases with any regulation of the codes of Bengal, Madras, or Bombay, or with any Act passed by the Council of India, or with this Act.

II. Provided, and it is hereby enacted, That nothing in this Act contained shall apply, so far as regards marriage, divorce, or adoption, to any person professing any religion other than the Christian religion.

III. Provided also, and it is hereby enacted, That nothing in this Act contained shall be so construed as to prevent any court from deciding any case according to any law or usage immemorially observed by any race or people not known to have been ever seated in any other country than the said territories, or from deciding according to any good and lawful custom.

IV. And whereas, also, it is held by Her Majesty’s Supreme Courts at Calcutta, Madras, and Bombay, that (c) no Act of Parliament which has been passed since the thirteenth year of His Majesty King George the First extended to India, unless there be in such Act a special provision to that effect; and it is expedient, as aforesaid, that the substantive law of the place in the said territories, within and without the local jurisdiction of the last-mentioned courts, should be, as nearly as circumstances will permit, the same throughout; it is therefore enacted, That no Act of Parliament passed since the thirteenth year of King George the First shall be held to be extended to any place in India by virtue of this Act, unless there be in such Act of Parliament a special provision for extending it to India.

V. And whereas no Court of the East India Company is, in respect of the administration of English law, a court of, or as distinguished from, a court of equity and good conscience; and doubts might arise in what way such courts ought to adjudicate the legal rights of the persons subject to the substantive law of the place enacted by this Act; and to modify such legal rights, whenever equity and good conscience require; (d)

It is hereby enacted, That the said courts of the East India Company shall adjudicate such legal rights, and modify the same, whenever equity and good conscience require; and in the same way in which the said courts of the East India Company now adjudicate and modify the legal rights of British subjects.

VI. And whereas it is not expedient that the distinctions (c) known in English substantive law between real property and personal property should subsist in the territories subject to the government of the East India Company without the local jurisdiction of Her Majesty’s Supreme Courts aforesaid;
TO PREPARE A BODY OF SUBSTANTIVE LAW FOR INDIA. 73

It is hereby enacted, That all immovable property situate within the territories subject to the Government of the East India Company, and without the limits of the said Supreme Courts, and every interest in immovable property so situate, shall be regulated by the rules which regulate personal property according to the substantive law of England, and shall be adjudicated upon accordingly in all courts within the said territories, whether established by royal charter or otherwise.

VII. Provided, and it is hereby enacted, That nothing in this Act contained shall be construed to affect the distinction (f) recognized by the law of England, as by the law of other civilized nations, according to which succession to immovable property of a person deceased follows the law of the place where such property is situate, while succession to movable property of a person deceased follows the law of the domicile of such person.

VIII. And whereas it is probable that a High Court of Appeal will be established at Calcutta, or at each of the three Presidencies, which will supersede all the courts of justice in the provinces of the said Supreme Courts and Sudder Courts now correct the decisions and control the proceedings of the inferior Courts; but it is uncertain how much time may elapse before such High Court of Appeal can be established: It is therefore, resolved, That until the establishment thereof, in all cases to be decided under this Act, an appeal shall lie from the decision of any of the Courts of the East India Company to the Supreme Court of Fort William, or Fort St. George, or Bombay, according as the suit may have been commenced in the provinces subordinate to either of the said Presidencies; and such Court shall have the same powers, as to suspending or allowing execution of the judgment or decree appealed against, and as to taking security for the performance of decree or judgment of the said Courts of the East India Company, as the Sudder Courts have in other cases of appeal from the said Courts of the East India Company, and shall also make rules of practice for the conduct of the said appeals in all other respects, conforming in substance and effect as nearly as possible to the course of procedure of the said Sudder Courts.

IX. And it is hereby enacted, That in every suit brought in any Court of the East India Company, wherein the matter out of which the cause of action arose shall have had place before the said day of 1845, the decision shall be according to the law or laws under which the parties shall appear to have submitted themselves to be living, or according to equity and good conscience, following such law or laws.

X. And it is hereby enacted, That nothing hereinbefore contained shall apply to any Hindoo or Mahomedan, or to any property of any Hindoo or Mahomedan, (g) unless such Hindoo or Mahomedan shall have renounced either of those religions and shall not have adopted the other of those religions. (h)

XI. Provided always, That no Hindoo or Mahomedan shall be deemed to have renounced either of those religions, or to hold any property of either of those religions, in consequence of anything in this Act contained, by renouncing the Hindoo or Mahomedan religion, lose any rights or property, or deprive any person of any rights or property.

XII. And it is hereby enacted, That so much of the Hindu law and Mahomedan law as relates to the succession of rights or property upon any party renouncing or who has been excluded from the communion of either of those religions shall cease to be enforced as law in the territories subject to the Government of the East India Company.

XIII. Provided always, and it is hereby enacted, That in any case falling within the provisions of Section XII. it shall appear to the Court that the application of any of those provisions would outrage the religious feelings of any party against whom the Court is called upon to apply them, the Court shall state the facts of the case, and submit the statement for the decision of the Court of Appeal, who shall decide whether the provisions shall be applied or not, and with what modifications, and whether any and what compensation shall be given to any party for the loss which such party may sustain in case the said Court of Appeal should decide that the said provisions should not be applied.

XIV. And it is hereby enacted, That nothing in this Act contained shall apply to the Court of the Recorder of Prince of (i) Wales Island, Singapore, and Malacca. (k)

NOTES TO THE DRAFT ACT.
(a) Substantive Law.
For two reasons we think it right to explain the sense in which we have used this term:
First, Because, though the expression has been used in treaties of jurisprudence and in official reports, it has not, we believe, been here used in legislation.
Second, Because we believe the expression has been used, or at least understood, in a sense different from that which it is intended to bear in this Act.

It has been used or understood, we believe, as if it included the definitions of crimes; as if there were substantive criminal law, and substantive civil law; as if the only subject matter of the whole system was excluded by it, were ex parte rules of pleading, evidence, and procedure. When the expression is used in this sense, the rules of criminal pleading, evidence, and procedure are considered as adjectival to the penal code, and substantive offenses are being considered not as adjectival to the civil code, but as substantive.

In this Act we intend the term to include only the definitions of rights and obligations; and we consider the definitions of civil injuries and the definitions of crimes as parts of adjectival law. This, we think, is clearly the correct import of the expression. The definitions of civil injuries and of crimes are evident only necessary for preventing infractions of rights and obligations.

If we suppose every member of the community to have sufficient motives, independently of legal proceedings, to respect the rights and properties of his neighbour and his other obligations, there would be no use in defining civil injuries or crimes; that is to say, definitions of civil injuries and of crimes are of no use, except as adjectival to definitions of rights and obligations.

We have also the authority of the Fourth Report of the English Commissioners of Criminal Law for this use of the expression.

"It is, in the first place, material (they say) to advert generally to the relation which the criminal branch of the law bears to the civil branch of the law. Every system of criminal law consists necessarily of two distinct parts, which may be distinguished as substantive and adjectival laws. The former comprehends the definition of civil rights and obligations; while it is the function of the latter to prevent the occurrence of certain grave infractions of such rights and obligations. And one mode of prevention, namely, the infliction of punishment, which is meted out to the culprit by the Court or by the penal authority, either others from offending, constitutes the great principle on which the law respecting crimes and punishments is founded," p. 6.

(b) Law of the Place.

Lex loci. The Hindu law and the Mahomedan law are properly the laws of persons belonging to the Hindoo and Mahomedan religions; they cannot, therefore, be considered as the laws in the sense in which English law is a part of the substantive law of the Presidencies, although they are the laws of a vast majority of the inhabitants.

(c) Application of Statutes to India.

We wrote to the Judges of the Supreme Courts of Madras and Bombay to ascertain if this proposition is correct as to their Courts, and have been favoured with early answers. The answer of Sir Robert Cowen and Sir Edward Gambier shows that it is correct as regards the Supreme Court of Madras. By Sir Henry Roper's answer, it seems that the question has never been decided at Bombay. From the evidence given by Mr. John Hope, however, both the Judicial Committee of the House of Lords, 1830, it appears that the 13th year of King George the First has been considered at Bombay also. It is, therefore, at which English law was introduced by the establishment of the Mayor's Court.

We observe also, in the Reports of Cases decided by the Sudder Dewanny Adwut of Bombay, Vol. I., p. 333, that a case is cited in the Act as correct as regards the Supreme Court of Madras. By Sir Henry Roper's answer, it seems that the question has never been decided at Bombay. From the evidence given by Mr. John Hope, however, both the Judicial Committee of the House of Lords, 1830, it appears that the 13th year of King George the First has been considered at Bombay also. It is, therefore, at which English law was introduced by the establishment of the Mayor's Court.
APPENDIX TO FIRST REPORT OF COMMISSIONERS APPOINTED

(d) Equity and Good Conscience.

The Mofussil Courts, as regards English law, are not Courts of Equity, but Courts of Equity. They now administer to British subjects the same system which is administered by English Courts of Equity. See the case of Hoo v. Peter Margin, Reports of the Sudder Dacca Adwars, Vol. iv. p. 243.

But one very remarkable difference in their circumstances causes an equally remarkable difference in the mode in which they administer that system. The Mofussil Courts administer English equity in a country in which there are no courts of English law. This is a vast advantage. A very great portion of the business of English courts of equity consists of attempts (not always, though generally effectual) to prevent or remedy the mischievous effects of proceedings in courts of law. Where there are no such courts, this is a matter of course no existence of such courts. The Mofussil Courts have nothing to do but to administer equity, following law of course, but unembarrassed by the co-existence of courts of law and equity. Again, as every English subject is seeking equity, he is obliged, according to the well-known rule, to do equity as the price of obtaining it.

The effect of this Act will not be to introduce any new system into the Mofussil courts, but merely to extend to all persons who are not Hindus or Mahomedans that system which is already administered to British subjects.

(e) Distinction between Real and Personal Property.

This, in the early stages of English law, would have been a very important change. But now neither man may by law dispose of his real property by will as he pleases. And by Mr. Ferguson’s Act the real estates of British subjects are circumscribed in all kinds. Practically, therefore, this change will not be a great one, especially when we take into account the circumstance that all the Mofussil courts are courts of equity, in which kind of business the distinctions between real and personal property are not looked upon with favour.

We apprehend that the law of primogeniture, as it now exists in England, has not much direct influence, because the greater part of landed property is either in settlement or passes by will. It is probable, however, that the original law of primogeniture, excluding as it did any vestige of primogeniture, with its effect upon wills and settlements, is beneficial or not, is a question too wide to be discussed in this note. Nor is it necessary for our purpose because the feeling does not exist with regard to the real property of Englishmen in India, and assuredly could not be created in such circumstances of equity, permitting the remnant of the ancient English law of primogeniture to continue in existence. The existence of that remnant, therefore, surely holds out no prospect of advantage equivalent to that of having one simple and uniform law of succession for all kinds of property.

There is one distinction between moveable and immovable property, of which we believe is in principle observed in the Mofussil, and which we think ought to have the sanction of law. We mean the distinction introduced into English law by the Statute of Frauds, which makes writing and signatures necessary to a conveyance of property. But we think a provision to this effect will more properly form the subject of a separate Act than of an exception to this section.

(f) Distinction between Moveable and Immovable Property.

It cannot be denied that, by the recognition of this distinction, the difficult question of domicile will frequently arise for decision in the Mofussil courts, and also that those courts will frequently have to inquire into the law of the domicile of each person in respect of succession to moveable property. These difficulties, however, cannot be removed without making British India an exception in this respect to other British possessions, and perhaps to the whole civilized world; and even if we thought it advisable to propose the abolition of the distinction, we should doubt whether any Legislature, except the Imperial Parliament, could, with perfect propriety, alter a part of the law which rests on the footing of a general common law from the necessity of applying any other law than that of the place.

(g) Difference between the Law administered to Hindus and Mahomedans in the Presidencies and in the Mofussil.

The right of Hindus and Mahomedans to have Hindus and Mahomedans as administrators to their laws is not limited to the Presidencies and in the Mofussil; but the limitation is not the same in the two cases. Neither is the law administered to these two classes in cases where they are not entitled to their own laws, the same (practically at least) in the Presidencies and in the Mofussil.

When we are making the three codes of substantive law, which appear to be required by the three great classes, for which the population of this Indian Empire consists, viz., Hindus, Mahomedans, and persons who are neither Hindoo nor Mahomedan, it is to be hoped that we may find it possible to give to the two former classes the same law, in the cases in which Hindoo and Mahomedan law are not now specially reserved to them, or may not continue to be specially reserved to them, as that to the class of persons which is subject to both in the Presidencies. It is also to be hoped, or rather it is not to be doubted, that we shall be able to provide that the administration of each of these substantive laws shall be the same respectively in the Presidencies and in the Mofussil.

This Act, however, is intended for the last class only, and any provisions affecting the other two would be out of place in it.

(b) Consequences of Persons changing their Law.

According to the view expressed in Note (b), these persons no longer professing the Hindu and Mahomedan religions, the Hindoo and Mahomedan laws will not be applicable to them respectively. They will become properly subject to the les loci. It is necessary, however, to provide against any loss of rights to them, or to any other persons through them, by this change of law. This is done by Section XI.

But besides the change from Hindoo and Mahomedan law to the les loci, which owes its origin to this Act, there is a loss of rights consequent upon renunciation of the Hindoo and Mahomedan religions, by the operation of the two systems Mahomedan, it is to be hoped that we may find it possible to give to the two former classes the same law, in the cases in which Hindoo and Mahomedan law are not now specially reserved to them, or may not continue to be specially reserved to them, as that to the class of persons which is subject to both in the Presidencies. It is also to be hoped, or rather it is not to be doubted, that we shall be able to provide that the administration of each of these substantive laws shall be the same respectively in the Presidencies and in the Mofussil.

Section XI. of the Bengal Code, was enacted. Section XII. of this Act will make the uniform law on this point through the territories under the government of the East India Company, except within the limits of the local jurisdiction of Her Majesty’s Supreme Courts. We think it ought to be the same with respect to these cases, but to make it so does not fall within the scope of this Act.

(i) Settlements in the Straits of Malacca.

The whole of the settlements in the Straits being subject to the law which is administered by the Recorder’s Court, there is no room for the application of this Act to those settlements.


We at first thought of extending, by a general provision in this Act, all the Acts of the Council of India which have extended the provisions of Acts of Parliament to India, to the provinces of India, or to any persons in India. But having looked through those Acts, we believe it will be a more expedient course to make separate and special provision for that purpose.

The sort of case which Section XIII. is intended to meet may be thus exemplified: A married Hindoo man renounces his religion, and takes the religion of the les loci; according to that law he might sue for a restitution of conjugal rights if his wife refused to cohabit with him; but according to Hindoo law the wife would have a right to separate herself from a husband who had become out of her, and to have her maintenance out of his property.

This right of the husband, and this right of the wife, are inconsistent with each other, and each of them calls for special provision. To avoid outrage to the religious feelings of the wife, her right to separate herself ought to prevail. But it is very difficult to foresee all the cases which may arise in the special provision when a man passes from the Hindoo or Mahomedan law to the les loci, and to make such special provision beforehand as shall meet the exigency. A discretion is therefore left to the Court of Appeal in those cases to decide
To Prepare a Body of Substantive Law for India.

according to what may appear to be the merit of each individual case.

This is a very anomalous provision, but it is a provision intended for a very anomalous state of things.

From the Honourable Sir Lawrence Peel, Knight, Chief Justice of the Honourable Sir W. Seton, Knight, Puisne Judge of the Supreme Court at Calcutta, to the Right Honourable Sir H. Hardinge, K.C.B., Governor-General of India, in Council, dated 25 March 1845.

Right Honourable and Honourable Sirs,

We have the honour to acknowledge the receipt of your letter to the Judges of the Supreme Court at this Presidency of the 1st March 1845, requesting their opinion on the provisions of a Draft Act for establishing a lex loci, which is now under the consideration of the Legislative Council of British India.

We think the object of the Act unexceptionable; but some of its provisions appear to us to be open to objection, and others to be inadequate to the attainment of the proposed object.

An expression "substantive law" has not been hitherto used in Statutes or Acts, as it is used by the framers of the Act in a sense which all who have adopted it do not give to it—and as the terms substantive and substantive law are not of themselves indicative of their proper meaning, we think it desirable that some definition should be given in the Act itself of the meaning of the expression "substantive law." The notes of the Law Commissioners would not be authority to which a court would be bound to defer; but the main defect, as it appears to us, in the enactment by which that which is called "substantive law" is to be introduced, is its want of precision as to the extent to which the law of England is to be introduced. It is, perhaps, a necessary result from the usual modes by which the laws of a State are introduced at once into its dependencies, that the courts of justice must decide on the admission or rejection of parts of such laws; such quasi legislative powers in courts of justice is, however, an evil which should not be introduced needlessly. From the number and constitution of the courts to which this power would be entrusted, its exercise would be likely to be more than commonly objectionable; the system of English law is so vast, and the application of it is attended with so many difficulties, that to judges not previously trained to its study, the difficulties in this country would be almost insurmountable, since they would have to administer a law with which they were unacquainted, and that dependence on the assistance of a bar or other professional agents, or of officers possessing the knowledge in which the judges were deficient; they would therefore be under disadvantages to which no magistrate or body of magistrates' deputes in the country are exposed; and it must be remembered that they would often have to decide cases of difficulty and complexity. It would be a laborious task, but it would not be imitable, and the portion of the English law of England intended to be introduced; and the difficulty would be less as the Statute law, from the records of it being collected and accessible. It would be of the greatest aid to these judges to apply its provisions if the Draft Act were accompanied by some digest or authoritative exposition of the law to be introduced.

With respect to the fourth section, we beg further to suggest, that it would be advisable to extend to India the same provisions as those which are enacted in England and that the Statutes to be extended might be named in a Schedule to the Act, and that it would be a favourable opportunity for making this extension to the Presidency towns as well as to other parts of British India.

It appears to us that the fifth clause would introduce much uncertainty. What is the way in which the courts of the East India Company now adjudicate and modify "the legal rights of British subjects?" Is there an uniform rule of decision in such cases observed by all courts of the East India Company in the Mofussil? The Law Commissioners refer to the case of Hoo v. Peter Marquis, Reports of Indian Tribunals, Dewanny Adawlut, vol. 4, p. 243, as proving that the courts in the Mofussil now administer to English subjects the same system of equity which is administered by English courts of equity. This case appears to us not to establish that position; the case itself abounds with errors; the decision is as little authorized by English equity as by English law. Had it proceeded on the opinion quoted in the case of the Advocate-General of that day, it would have been apparent to the Court meant to decide on the erroneous rules which they were erroneously informed would have been applied by an English court of equity deciding in the same case; but as that opinion was not pursued, the case cannot be cited to prove that the courts of the East India Company in the Mofussil now apply English equity in any case.

The introduction of the words "good conscience" would be likely to give rise to misconception and error if the object be merely to introduce the system of equity observed in English courts of equity. In equity, or any other system that is governed by precedents and fixed rules, it cannot be said of every claim or defence which a party is permitted to establish, that it is a conscientious one; particular injustice must result from granting one set of rules and the lesser evil is tolerated that the graver one of uncertain laws may be avoided.

With respect to the sixth clause, we think that if the distinction known in English substantive law between real and personal property is not introduced in the Mofussil, they should be abolished throughout India in all cases where they now prevail; otherwise, as the Act would introduce a lex loci rei sitae, lands of the same owner, if dying intestate, would pass one mode in the Mofussil and in another mode within the Presidency towns. We think that there is no sufficient reason for maintaining these distinctions in any part of the country; particularly after the Act called Ferguson's Act has already gone so far in abolishing them; at the same time, it would be proper to consider whether the wife's interest in her landed estate should not be preserved on the same footing as if it were real estate.

The Act is defective, in our opinion, in not stating how the representative on the death of an owner intestate is to be ascertained; as the English law would be introduced, property would devolve on a personal representative, either executor or administrator, and in cases of death by the party would not have the appointment of an administrator, it would not be certain in whom the property would vest.

To simplify titles, and facilitate transfers of property, it is essential that representation should be kept up.

It appears to us that the provisions of the twelfth section, relative to forfeitures to be enforced under the sanction of the appellate court, are objectionable.

The intention of the Act, we believe, is that the religious feelings of any party would not be outraged by enforcing the provisions of the law, would be one upon which it would be difficult satisfactorily to adjudicate. The party who would be next in succession to the party abandoning religion, his religious feelings would not have been outraged by enacting that a change of faith should work no forfeiture. What better means than those which the Court below had would the appellate tribunal possess of forming a judgment on the question of the sincerity of the party's professions? Is such a question fit to be entertained at all?

We beg to offer our aid to the Government and to the Law Commissioners in framing provisions in accordance with our views as to the specification and explanation of the law to be introduced.

We have, &c.

(Signed) LAWRENCE PEEL.
H. W. SETON.

Court House, 25 March 1845.
To the Honourable Sir Lawrence Peel, &c. &c. &c.

My dear Sir Lawrence,

I should be much obliged to you, in reference to our conversation of yesterday, if you will give me the advantage of your opinion as to what may be expected to be the practical working of the "Lectus Loci" Act, assuming that a digest of English law, suited to the condition of India, were prepared and promulgated in addition to the existing Regulation.

If the effect of introducing such a digest in the Mofussil would be to render the administration of justice more complicated, difficult, and uncertain than it is at present under the Regulation law, such a result would be a most serious and fatal defect in the proposal.

On the other hand, assuming that the subject will be less vague and more precise on many important points than the existing Regulations, nevertheless, if the improvement is inevitably to be attended with the risk of our Provincial Courts being overlaid by the technicalities and special pleadings of our Courts in England, that result would be a fatal objection to the improvement sought to be obtained.

But if, on the contrary, the administration of the digest law can be rendered so little liable to this objection as the existing Regulation law (which I understand will be the case), the fears of those who apprehend that the Mofussil Courts will become the sources of vexatious litigation are groundless.

There are various other considerations connected with the practical working of the proposed law so familiar to you, who have so long and so ably practised in and presided over our Indian Courts of Law, that I should infinitely prefer, if you will permit me, at once to request you to give me your view of what will be the effects (beneficial or otherwise) of the proposed Act, not losing sight of the instruments which we shall have in the provinces to carry such a law into daily operation, and assuming that the people to whom the law is to be applied should remain, as much as possible, and adhere, to the same footing as at present.

I assure you, as well as my colleagues are very thankful for the aid you are at all times so ready to afford.

Believe me, &c.

(Signed) H. Hardinge.

Calcutta, 15 July 1845.

(My dear Sir Henry,

The questions which your letter proposes to me I am enabled to answer without delay, because I have previously given the subject a full and anxious consideration. The "Lectus Loci" Act, if accompanied by a digest of such parts of the English law as it was deemed expedient to introduce into the Mofussil, would introduce no difficulties, subtleties, or technicalities whatever. It is, in my opinion, indispensable to the success of this experiment that a digest should form a part of it, which might readily be enacted.

Sir Henry Seton's and my recommendation of the measure proceeded on this view. I need only refer you, on this point, to our letter to Government. This, Mr. Cameron assured me, would be consented to, but he was desirous that the actual enactment of the Act should not be postponed, although he declared that its operation should be suspended until after the completion of such a digest. Some misconception appears to prevail in some quarters on this subject.

The law proposed to be introduced is not the whole body of the English law, but a certain written and digested portion thereof, suitable to the condition of those to whom it is to be applied. The subject will be best explained by showing negatively what would not be introduced. The process, the forms of special pleading, the rules of evidence, the mode of trial, the process to execution, some of these it would be inadmissible. A suit in the Mofussil under the "Lectus Loci" Act, if enacted, would, for any thing that that law proposes to the contrary, proceed in precisely the same course in which any other suit proceeds. The mere difference would be, that instead of negative evidence as to the law of foreigners of all nations from doubtful sources, the judges would look to a written digest of the law for a rule to govern their decisions in the cases to which the Act would extend. The only part of the English law (and in the term "substantive law" as applied by the Law Commissioners) in which any degree of subtlety or technicality is to be found is that of real property, which is certainly an abstract and intricate branch of the law in France; that, however, is not to be introduced; and I am quite at a loss to understand how technicality or subtlety can be imputed to the body of the English law which this Act, as I now explain it, would introduce. I am sure that instances of recommending the rejection of the Regulations and taking this course should most earnestly have recommended its rejection, if I had thought it open to this objection. I may observe, in addition, that the English law as to contracts, the most fruitful source of litigation, is so much in harmony with the Mahomedan and Hindoo laws as to contracts, that any question arises on the law peculiar to those people in actions on contract. The Regulations make no provisions on the subject now under consideration. The English law would not displace Regulation law, but, as I have observed, would displace personal laws of all people. Of course the personal laws of Hindoo and Mahomedan laws are to be held inviolate, but there is no rational ground for maintaining personal laws in other cases. Is a magistrate in the Mofussil likely to have less difficulty in adjudging a question between Frenchmen upon the code of France, than upon the English digest? Will be know more of the laws of Portuguese, Armenians, Jews, &c. than of the laws contained in a plain written digest of the English law? Without going so far in praise of the English law as some have gone, I can say, with truth, that I think it an excellent system of laws, and that it should be of inestimable benefit to enact for the general mass of people in the same empire, save those for whom necessity required peculiar laws to be retained, one and the same body of laws. This could not be done by a code enacting a mere body of laws, for it would not do to supersede English law in an English dependency, closely connected in commercial relations with the parent state; and a code or a digest embodying the main principles of the English law differs only in name. I have, therefore, no hesitation in saying, that I most fully concur in the general recommendation of the Law Commissioners on this subject, qualified as I have above explained, and that I think the views of technicalities or subtleties wholly groundless. I should not have thought my opinion would influence many, but as you think so, it is both my duty and my wish to give you my assistance in this as well as in all other matters on which you may do me the favour to consult me.

I have, &c.

(Signed) Lawrence Peel.

* Note.—The sense requires the insertion of the word not.
APPENDIX C.

PAPERS relating to the Parsees of Bombay.


Mr. LeGeyt said, he held in his hand a document of great interest and importance. It was a Petition from the Parsee community of Bombay to this Council, praying for the enactment of a code of laws by which their right in matters of inheritance and succession, the rights of married women, the rights and relations of parent and child, guardian and ward, might be authoritatively settled.

The petitioners had set forth, at some length, the history of this movement in their tribe. They showed that they had been residents in India since A.D. 727, and although they had adopted the language, and in many respects the habits of the country, they had with menagerie and jealous preserved the ancient customs and usages of their own people as handed down to them in their own writings and traditions. Unlike the Hindoos and Mahomedans, these customs had never been passed into a code of laws. The comparatively limited number of Parsee community and their patriarchal institution of the Punjachet, by which all domestic regulations were regulated for many centuries, rendered legislation unnecessary. It was not until the middle of the eighteenth century that any material interruption to this happy state of things appeared to have been experienced. In 1777 an appeal was made to the Government of Bombay to strengthen the power of the Punjachet, which had begun to be disregarded. Partial remedies were effected, but things seemed to have gone on from bad to worse, and several spasmodic and ineffectual attempts to uphold the Punjachet were made from time to time. In the meanwhile disputes on inheritance, on marriage, and on succession were taken into the Supreme Court and decided, in the absence of any special law, according to the principles of English law. This was objected to by the petitioners. He (Mr. LeGeyt) would read that part of the petition which objected to this:

"Your petitioners need hardly suggest to your Honourable Council that the laws which are in force in England, upon the subjects above particularly mentioned, although they are productive of happiness and security to the English people, are but ill adapted to the wants and requirements of the Parsees, who entirely differ in manners, customs, and usages from those for whose benefit and protection such laws were framed. The application of English law in such cases has frequently, although in the present state of things unavoidably, been productive of much hardship to individuals, and of great dissatisfaction among the Parsee community in general. Furthermore, it has been decided on the 17th July 1856, by the highest Court of India, namely, by the Right Honourable the Judicial Committee of the Privy Council, in England, in the case of Pecooziba Ardsree Curnetee Daddy, that in matters affecting marriage and conjugal rights, the Supreme Court in Bombay does not possess any power to exercise jurisdiction over your petitioners and their co-religionists, and consequently in all cases relating to marriage, divorce, and the restitution of conjugal rights, the Parsees are destitute of any remedy whatever which can be legally enforced. The Parsees consequently feel that they, as a race, are debarred from the secure enjoyment of the laws, usages, and customs pertaining to them, and which they apprehend it was intended by the Legislature should be even guaranteed to them in like manner as the laws, usages, and customs of the Mahomedans and Gentoo were recognized as rights to be enjoyed by those races respectively."

The petitioners traced out all that had been done by themselves and by the Government to obtain redress, and that the only successful result of their endeavours had as yet been the passing in 1857 of Act IX. of 1827, which declared that the immovable property of a Parsee dying without a will should be dealt with in the same manner as chattels, and by which all attempt to enforce the English law of primogeniture was defeated.

In 1855 an important meeting of the community was held. He would read from the petition as to what had been done on that occasion:

"That on the 20th August 1855, a public meeting of the Parsees of Bombay was held, at Scett Cowasjee Byramjee's Fire Temple, which was attended by the heads of the Parsee community, as well as by a great number of respectable and influential gentlemen, at which the following resolutions were unanimously agreed to:

"That this meeting is deeply impressed with the necessity of procuring for the Parsee community the enactment of laws adapted to that tribe, such as may be recognized, obeyed, and enforced by the local authorities and Courts of Justice.

"That a managing committee, composed of the following gentlemen, be appointed to prepare a draft of a code of laws adapted to the Parsee nation, to petition the Legislative Council of India for the enactment of such laws, and to manage and conduct all affairs relating thereto, and that the committee be empowered to add to their number and to appoint their secretary. A copy of the minutes of the proceedings of the said meeting is hereewith annexed.

"That your petitioners represent the managing committee above referred to, and which comprises the heads of all influential Parsee families, as well as other gentlemen representing the different classes of the Parsee community in Bombay.

"That during the period of four years and upwards, which has elapsed since the appointment of your petitioners as members of such committee, your petitioners have been constantly engaged in the performance of the duty entrusted to them by their community."

Again, in paragraph 5, the petitioners state:

"That by means of such inquiries and researches your petitioners became possessed of sufficient information to enable them to frame the draft of a code of laws on the above-mentioned subjects, applicable to their co-religionists. Each section of such code was fully and patiently discussed at the meetings of the above-mentioned committee, and due publicity was given to all such proceedings by the publication thereof, from time to time, in the Guzarat News paper.

"The draft code of laws, applicable under the before-mentioned points to the Parsee community, has now been settled, and is hereunto appended; and your petitioners humbly pray your Honourable Council to pass the same into law."

He (Mr. LeGeyt) would not take up the time of the Council by reading the whole of the petition and the details which were given to illustrate its prayer. He did not desire, if there was not yet sufficiently matured to justify the Council in bringing in a Bill passed in conformity with the prayer. He entirely concurred in the justice and necessity of the measures. But there was a point which should, he thought, not be lost sight of, and that was the question of union and integration. It was very important that, in a movement of this kind, there should be unanimity among the people
who were affected by the proposed law. He would read one more paragraph of the petition:

"It had been the earnest hope of your petitioners to have been able to propose one uniform code of laws, which should be applicable to Parsees residing in all parts of India, but some of their co-religionists, residing at Surat and elsewhere, respectively object to allow the wives and daughters to a minority portion of the property left by an intestate Parsee, deceased, and would only allow them a bare maintenance. These Parsees also deny the right of a person absolutely to disinherit his male heirs; but neither of these objects at all arise from such powers of inheritance and disinheriting being opposed to the ancient laws and customs of the Parsees. The opposition really arises from the fact that the Parsees in the interior have in certain matters adopted the Hindu, and to them perniciously adhere, and not having as yet fully experienced the benefits of a liberal education, they persist in their views, though prejudiced and narrow. The Parsees of Bombay who, even numerically speaking, far exceed those of the Mofussil, do not admit the validity of the objections just mentioned, and, therefore, following the precedent of the Parsee's Real Property Act, No. IX. of 1837, they have proposed that the following Act, suitably to the jurisdiction of Her Majesty's Supreme Courts in India, leaving it to the wisdom of your Honourable Council to extend its provisions to the Parsees in the Mofussil."

It was true the petitioners only demanded legislation for that section of the community who were "agreed, and it was also true that that section formed a large majority of the numbers and wealth and intelligence of the tribe; but it was tolerably evident that the chief obstacle to the passing of a law, such as was now prayed for, had hitherto been the want of unanimity of a people who professed to be governed by the same laws and to derive them from the same source. The petitioners declared their researches had satisfied them that their usages, and that the laws they now asked were in conformity with the ancient usages of their race. Still as there was a difference of opinion, he thought a further inquiry was desirable. The introduction of a special law for a Parsee residing within the limits of the Supreme Court of a presidency town differing materially from the law by which a Parsee residing on the other side of the boundary was governed, should be avoided. If it were found that the law asked for was not injurious to the Parsee, it became of course just to allow the Parsees to judge of their own usages, and to be relieved as to the ancient usage of the tribe, and the contrary could not be shown by the objectors, and if it be ascertained that the objectors were really the innovators, and had adopted the principles of Hindu law, then he thought the voice of the majority should be respected, and the law prayed for might be passed under that view of the case. His intention was to move that the petition be referred to a Select Committee, with instructions to institute such inquiries as might be necessary to satisfy them whether the subject was one which required legislation, and whether the legislation proposed by the petition and the questions in the Honourable Council, and in order that the inquiry might be effectual, that the committee be authorized to issue commissions for the purpose of taking evidence, and that the Commissioners be authorized to take such evidence in the manner provided by Act VIII. 1839, for the taking of evidence by Commissioners. He would move that the Select Committee consist of Sir James Outram, Sir Bartle Frere, Sir Charles Jackson, and the mover, with instruction to report within three months from that date.

The motion was put and agreed to.

To the Honourable the Legislative Council of India.

The humble Petition of the undersigned members of the Managing Committee appointed at the public meeting of the Parsee Inhabitants of Bombay, held on the 20th August 1855, at Bombay, to prepare a code of laws adapted to the Parsee nation, and to petition the Legislative Council of India for the enactment of such laws.

Sworn,

That on the 20th August 1855, a public meeting of the Parsee of Bombay was held at Sett Cowajee's Fire Temple, which was attended by the heads of the Parsee community, as well as by a great number of respectable and influential gentlemen, at which the following resolutions were unanimously agreed to:

First. "That this meeting is deeply impressed with the necessity of procuring for the Parsee community the enactment of laws adapted to that tribe, such as may be recognized, obeyed, and enforced by the local authorities and Courts of Justice.

Second. "That a managing committee, composed of the following gentlemen, be appointed to prepare and cause to be submitted to the Legislative Council of India, a code of laws for the Parsee nation, to petition the Legislative Council of India for the enactment of such laws, and to manage and conduct all affairs relating thereto; and that the committee be empowered to add to their number and to appoint other secretaries as may be necessary for the performance of their duties.

A copy of the minutes of the proceedings of the said meeting is hereunto annexed, for the information of your Honourable Council.

1. That your petitioners represent the managing committee of the Parsee community of Bombay, and which comprises the heads of all the influential Parsee families as well as other gentlemen, representing the different classes of the Parsee community in Bombay.

2. That during the period of four years and upwards, which has elapsed since the appointment of your petitioners, as members of such committee, your petitioners have been constantly engaged in the performance of the duty entrusted to them by their community.

3. That the subjects to which your petitioners have, for the present, directed their special attention as needing formal legislation by your Honourable Council for the benefit of the Parsee community, have been,—

First. The Laws of Inheritance, Succession, and Administration.

Second. The rights of Married Women.

Third. The rights and relation between Parent and Child.

Fourth. The rights and relation between Guardian and Ward.

And with a view to carrying out the trust confided to them on these points most fully and effectually, your petitioners have thereon instituted the most searching inquiries, have collected information from the most authentic sources, including the ancient and modern records of the Parsees, and have carefully inquired into and considered the present and past usages of the Parsee communities established in different parts of Western India.

5. That by means of such inquiries and researches your petitioners became possessed of sufficient information to enable them to frame the draft of a code of laws, on the above-mentioned subjects, applicable to their co-religionists. Each section of such code was fully and patiently discussed at the meetings of the before-mentioned committee, and due publicity was given to all such proceedings by the publication thereof from time to time in the Gujarati newspapers.

6. The draft code of laws, applicable upon the before-mentioned points to the Parsee community, has now been settled, and is hereunto appended; and your petitioners humbly pray your Honourable Council to pass the same into law. And your petitioners take
TO PREPARE A BODY OF SUBSTANTIVE LAW FOR INDIA.

ease to add a brief statement of facts which may serve to show to your Honourable Council,—First, the circumstances that the present preparation of such draft code, and this petition for its being passed into substantive law, have become necessary; and, Secondly, that the present is no novel scheme or arbitrary innovation, but rather the result of the experience of years, and that it is based upon the views and recommendations of some of the most eminent judicial and civil authorities existent in times past in the Presidency of Bombay.

When forced to abandon their original country, Persia, by the tyranny and persecution of Mahomedan conquerors, settled in India in the seventh century of the Christian era. Although they have adopted in some degree the language and usages of the countries with whom they have intermingled, they have still ever formed a distinct race, professing the ancient religion of Zoroaster, and observing such social customs, usages, rules, and regulations as have come down from their ancestors to the present generation. In contract and dealing between two party and party shall be determined, in the case of the Mahomedans by the laws and usages of the Mahomedans, and where the parties are Gentoo, by the laws and usages of the Gentoo, or by such other laws as shall be determined by the judgment of the court.

The language of the charter establishing the Supreme Court in Bombay is identical with that used for a similar object in Madras, and although the Parsees in Bombay and those in Madras are at present divided in religion, customs, and usages from either Mahomedans or Gentoo, no provision applicable to them is contained in the charter, inasmuch as the Bombay charter was copied from the Madras. Contrary to that, the Madras Court has never been, and are now comparatively unknown or very scanty in numbers in Madras; whereas they have ever since the 7th century been very numerous in Western India, and there are at present upwards of one hundred thousand followers of the religion of Zoroaster, as shown by the last census, who are subject to the Supreme Court of Bombay, besides many others professing the same faith who reside in the Mofussil. Under these circumstances, as the laws and usages of the Mahomedans or Gentoo cannot be applied by the Supreme Courts to suits between Parsees, the Judges of the Supreme Court in Bombay have felt themselves bound, in the absence of a fixed and recognized Parsee code of laws regarding inheritance and succession, marriage, divorce, and other analogous matters, to apply the laws of England to all suits which may be instituted before them between members of the Parsee community and that of the Parsee community.

Your petitioners need hardly suggest to your Honourable Council that the laws which are in force in England upon subjects above particularly mentioned, although not productive of happiness and security to the English people, are not adapted to the wants and requirements of the Parsees, who entirely differ in manners, customs, and usages from those for whose benefit and protection such laws were framed. They do not possess any power to exercise jurisdiction over your petitioners and their co-religionists, and consequently in all cases relating to marriage, divorce, and the restitution of conjugal rights, the Parsees are destitute of a code adapted to their wants and requirements. The Parsees consequently feel that they, as a race, are debarred from the secular enjoyment of the law, usages, and customs pertaining to them, and which they apprehend it was intended by the Legislature should be adapted to the manner in which the Parsees may be subject to the laws, usages, and customs of the Mahomedans and Gentoo were recognized as rights to be enjoyed by those races respectively.

Having thus endeavored to lay before your Honourable Council a concise statement of the causes from which their present application has become a matter of vital necessity to the Parsee community, your petitioners most respectfully take leave to add as a brief statement, that in July 1856 by the highest Court of Indian appeal, namely, by the Right Honourable the Judicial Committee of the Privy Council in England, in the case of Peerzadee versus Ardaseer Cursetjee Dady, that in matters affecting marriage, divorce, and conjugal rights, and in cases of succession, the Parsees are not possessed of any law or code adapted to their wants and requirements. Deemed to be impossible by the prior efforts at legislation which have been made in respect of these important matters.

As early as the year 1827, Harry Borradalle, Esq., the then Registrar of the Sudder Adawlut, and afterwards the chief of the staff of the Madras Government, addressed by order of the Government of Bombay a Gujarati letter to the heads of the Parsee community, in which he stated that: "It is the opinion of Government that you should assemble and consult together, and with your occupation, the law and usages let the laws, and make such rules and orders for the conduct of the same, and frame such process for the execution of their judgments as shall be most consonant to the religion and manners of the said natives, and to the said laws and usages respectively, and the easy attainment of the ends of justice."

10. Your petitioners need hardly suggest to your Honourable Council that the laws which are in force in England upon subjects above particularly mentioned, although not productive of happiness and security to the English people, are not adapted to the wants and requirements of the Parsees, who entirely differ in manners, customs, and usages from those for whose benefit and protection such laws were framed. They do not possess any power to exercise jurisdiction over your petitioners and their co-religionists, and consequently in all cases relating to marriage, divorce, and the restitution of conjugal rights, the Parsees are destitute of a code adapted to their wants and requirements. The Parsees consequently feel that they, as a race, are debarred from the secular enjoyment of the law, usages, and customs pertaining to them, and which they apprehend it was intended by the Legislature should be adapted to the manner in which the Parsees may be subject to the laws, usages, and customs of the Mahomedans and Gentoo were recognized as rights to be enjoyed by those races respectively.

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9. The language of the charter establishing the Supreme Court in Bombay is identical with that used for a similar object in Madras, and although the Parsees in Bombay and those in Madras are at present divided in religion, customs, and usages from either Mahomedans or Gentoo, no provision applicable to them is contained in the charter, inasmuch as the Bombay charter was copied from the Madras. Contrary to that, the Madras Court has never been, and are now comparatively unknown or very scanty in numbers in Madras; whereas they have ever since the 7th century been very numerous in Western India, and there are at present upwards of one hundred thousand followers of the religion of Zoroaster, as shown by the last census, who are subject to the Supreme Court of Bombay, besides many others professing the same faith who reside in the Mofussil. Under these circumstances, as the laws and usages of the Mahomedans or Gentoo cannot be applied by the Supreme Courts to suits between Parsees, the Judges of the Supreme Court in Bombay have felt themselves bound, in the absence of a fixed and recognized Parsee code of laws regarding inheritance and succession, marriage, divorce, and other analogous matters, to apply the laws of England to all suits which may be instituted before them between members of the Parsee community and that of the Parsee community.

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Inheritance between persons of those classes respectively, that neither of these laws can be applied to Parses inhabitants of Bombay and that the English is the only other law which we are authorized to administer. We think it most important that the law of succession to property among Parses should, as easily as possible, be settled by an Act.

14. While the members of the Parsee community were comparatively few in number and poor in means, they were naturally content to refer the disputes which might arise upon the subjects above referred to, to the Panchayet, or elders of their tribe. But when the Supreme Court in Bombay was established, as the Parsees increased and progressed in numbers, in commercial transactions, in wealth, and in education, they became familiar with the English courts, and felt the necessity of having a court available to them in such cases as involved their property, and more liable to be made parties to causes relating to inheritance and to property instituted therein. It was, therefore, in 1838 that the Parsee community of Bombay transmitted through the agency of a petition to your Honourable Council for an enactment, defining and regulating the rights of inheritance amongst the Parsees. Owing to some delay, the petition had been given up as lost, but which has now been transpired, your Honourable Council did not then take up this important subject, and so the matter has, up to the present time, remained.

15. The condition of the law relating to Parsees, however, the year 1843 the attention of the eminent (then) Puise Justice of Bombay, Sir Erksine Perry, who in a letter dated the 21st August in that year, and addressed to one of your petitioners, Bomanji Hormusjee, Esquire, says as follows:—

"I have very often been impressed with the necessity of enacting for the Parses, that I had determined to draw up a report on which legislation is required, and discussing the different provisions which it might be expedient to adopt." and again, "The main object in introducing new laws undoubtedly would be to take care that the provisions should be satisfactory to the reason, the feelings, and (when possible) even to the prejudices of the community.

16. That the legislation for which your petitioners now pray is neither extreme nor unprecedented, will be sufficiently apparent, when the proceedings of your Honourable Council in the year 1832, as recalled to mind, with respect to the English law of primogeniture, which was attempted to be applied to families of the Parsee religion. In the year 1835 a Parsee instituted a suit in the Supreme Court at Bombay, the Parsee being subject to the jurisdiction of the Supreme Court of India, the right, as eldest son, to inherit the whole of the landed property left by his father, who had died intestate. This proceeding caused much sensation and apprehension amongst the Parsees of Bombay, who immediately petitioned the Legislative Council through the Bombay Government, praying for an Act which should debar the eldest son amongst Parsees from inheriting the whole of an intestate deceased father's real estate: this petition had its origin with your Honourable Council; and on the 13th May 1837, your Honourable Council passed an Act (No. IX. of 1837) declaring that "all immovable property situate within the jurisdiction of any of the Courts of Justice of His Excellency the Governor-General, as well, as regards the transmission of such property on the death and intestacy of any Parsee having a beneficial interest in the same, or by the last will of any such Parsee, be taken to be and to have always been of the nature of chattels real, and not of freehold." By this timely and beneficent interference of your Honourable Council, the apprehended disturbance of ancient laws, usages, and customs, by the introduction and application of an English law of inheritance among the Parsees subject to the jurisdiction of the Supreme Court of India, was altogether removed.

17. Your petitioners have now stated the grounds upon which they have been put in motion by the rest of the Zoroastrian community in Bombay, and the reasons which have mainly prompted them in drawing up the code of laws now humbly submitted for enactment, and hereunto appended, and they desire to add one or two explanatory observations upon some of the provisions that are contained.

18. Under section XII, a married Parsee woman is empowered to take, hold, and enjoy property to her own separate use, and without the intervention of trustees, and under section XIII, she is enabled to dispose of the property in her own name, will, just as if she were a Jume sole. These provisions are founded on, and in accordance with the immemorial usages and customs of your petitioners and their co-religionists. The English principle that property may be disposed of in such manner as the mind of the husband and wife may have existed among the Parsees; and the application or rather introduction of it among them by decrees of the Supreme Court, although as before shown, under the existing state of the law inevitable, has been productive of much misery and dissatisfaction. Married women have, in many instances, been impoverished, and in some cases ruined, by their husbands taking from them the property which had been inherited by them, or which they had purchased or received as a gift from their own and separate use. This power of separate acquisition and enjoyment of property by married women is in fact only analogous to the principle recognized by the Hindoo law with regard to the stridhala of husband and wife, which is contained in the Charters before mentioned is fully protected.

19. Under section XIII, in cases of intestacy, the distribution of the estate of the male deceased is proposed to be carried out as follows:—

First. To the widow half a share.

Second. To the sons one share each.

Third. To the daughters one quarter share each.

The difference between the scale of distribution thus proposed and that sanctioned by the English law arises, not only from the former being consistent with the immemorial customs as well as the feelings of the Parsees, but also from the fact of the sons in Parsee families being subject to certain duties and obligations. Real and personal property were placed upon the same footing by the Act of 1837, and are alike divisible among female as well as male heirs; and on the death of the male Parsee his sons stand as members of the family as heads of the family, and consider themselves under a moral obligation to support the relatives and dependants of that family, to defray the expenses of marriages, of performing funeral and religious ceremonies, and in keeping up and maintaining the rank, position, and responsibility of their father's family—duties and liabilities from which the female members of the family are wholly exempt. For this reason Parsee testators invariably bequeath a much larger portion of inheritance to their male than to their female heirs, a fact which is evidenced by the disposition of property contained in the numerous Parsee wills proved and registered in Her Majesty's Supreme Court of Bombay.

20. By section VI, the right of succession is secured to the heirs of any child who shall have died in the lifetime of the intestate. This provision has been inserted as being consonant with the usages and customs of the Parsees, and giving the force of law to what had hitherto been, the sanction of immemorial practice.

21. Your petitioners have already stated that the Right Honourable the Judicial Committee of the Privy Council have decided that in all matters connected with marriage, divorce, and widows' re-marriage, the Parsees are possessed of no legal remedy whatever; and to meet this want, it is proposed by section XVIII. of the annexed draft code, that a proper tribunal, to be styled the Parsee Panchayet, consisting of twelve persons to be elected from among and by the Parsees...
of Bombay every five years, shall have power to take judicial cognizance of such matters, that the decision of such legally constituted body shall be final, and that the Supreme Court at Bombay shall be empowered to give effect to such decisions as may be expedient. Of these bodies, the first by far the most important, that in matters of the nature now particularly under notice, many Parsee families would be utterly unable to meet and sustain the heavy expenses which would be incurred by the institution and prosecution of such suits upon the Ecclesiastical Courts of the Supreme Court; in the second place there is an almost insurmountable feeling among Parsees against dragging the private quarrels and disturbances in families into public notice. Regarding the advisability of empowering a legally constituted Panchayet to decide cases arising out of the marriage state, the Honourable Sir J. W. Audry, late one of the Judges of the Supreme Court at Bombay, addressed the following observations, in a letter dated 25th April 1837, to one of your petitioners, Bommanjee Hormusjee, Esquire — "I quite concur in your wish that the Panchayet may be "placed upon a footing which will enable that body "still to command the respect of your nation, and "that it should be invested with some definite au- "thority in the disposal of matrimonial questions. "I hope that it will be empowered to decide, in such "matters as the Civil Courts can recognize, the "validity of all marriages celebrated between Parsees; "and I do not think that there are any "uses of Parsees, and should have the force of "law, would, I think, be desirable. It is with a "view of carrying this expression of opinion by the "eminent Judge just quoted into practice, that this "section XIX of the proposed code has been framed; and "having regard to the facts just stated, your petitioners trust that the proposal may be favourably entertained by your Honourable Council; and with regard to the "mode of electing the tribunal proposed in section XX of the same code, I am very ready to submit to the Bombay Government for their sanction the necessary rules for regulating the same, as well as for the guidance of the proposed body."

22. It had been the earnest hope of your petitioners to have been able to propose one uniform code of laws, which should be applicable to Parsees residing in all parts of India; but some of their co-religionists, residing at Surat and elsewhere, resolutely object to allow the widow and daughters to inherit any part of the male property left in intestate Parsee deceased, and would only allow them a bare maintenance. These Parsees also deny the right of a person absolutely to disinherit his male heirs; but no objections are raised against the exclusion of such powers of inheritance and disinheriting being opposed to the ancient laws and customs of the Parsees. The opposition really arises from the fact that the Parsees in the interior have, in certain matters, adopted the usages and customs of the Hindoos, and to them pertinaciously adhere; and not having as yet fully experienced the benefits of a liberal education, they persist in their views, though prejudiced and narrow. The Parsees of Bombay, who even numerically are the principal class of Parsees in the Mofussil, do not admit the validity of the objections just mentioned; and, therefore, following the precedent of the Parsee Real Property Act, No. IX. of 1837, they have proposed and now solicit your Honourable Council, in full accord with sound principles of legislation, so as to affect Parsees residing within and subject to the jurisdictions of Her Majesty's Supreme Courts in India, leaving it to the wisdom of your Honourable Council to extend its provisions to the Parsees of the Mofussil, should it be deemed expedient.

23. Your petitioners, in Submitting the annexed draft code of laws affecting Parsees to the considera- tion of your Honourable Council, would call in aid to their petition, were it necessary, the large usage of the Imperial Legislature set forth in the Act of Par- liament 3 & 4 Will. IV. c. 85. s. 53., passed upon 28th August 1833 (since continued or re-enacted by the 16 & 17 Vict. c. 95. s. 88.), which, while originally constituting "The Indian Law Commission," declared that it is expedient that, subject "to such "special arrangements as local circumstances may "require, a general system of judicial establish- "ments "and policies of legislation, that in "well Europeans as natives, may be subject, should "be established in the said territories at an early "period, and that such laws as may be applicable in "common to all classes of the inhabitants of the said "territories, due regard being had "to the "feelings, and peculiar usages of the people, should "be enacted, and that all laws and customs having "the force of law within the same territories should "be ascertained and consolidated, and, as occasion "require, amended;" and furthermore, that to the Commissioners so appointed, it was directed that in their labours due regard should be had to the "distinction of castes, difference of religion, and the "manners and opinions prevailing among different "races and in different parts of the said territories."

By the same Act the powers of legislation for the other Presidencies in the matter of such laws and regulations as to the Governors of those Presidencies it may seem expedient to propose, are committed to the Governor-General in Council; your Honourable petitioners respectfully solicit the favorable attention of your Honourable Council to their present application.

24. In conclusion, your petitioners most sincerely trust that your Honourable Council will see that the usages and laws may appear objectionable to your Honourable Council as in any way tending to militate against public policy, or to interfere with the public interests. Your petitioners, in the preparation of their draft code, have simply sought to obtain the authority of legislative enactment to enforce the observance of the time-honoured customs, ancient laws, and immemorial usages of their country. Your petitioners venture to assure your Honourable Council that the peace, prosperity, and happiness of the Parsees depend upon their being assured of the safeguard of laws suited to the peculiarities of their tribe and religion; and they humbly trust that the same protection and privileges which have always been secured in express terms to their fellow-countrymen, the Hindus and Gentooos, may, in respect to the matters affected by the present code of laws, be also guaranteed by the authority of your Honourable Council to the Parsees. Your petitioners therefore humbly entreat that your Honourable Council will be pleased to pass into law the accompanying draft code, and thereby to secure the property and future welfare of a tribe, who, as a people, yield to none in fidelity and attachment to the British Crown.

And your petitioners, as in duty bound, will ever pray.

ONE HUNDRED AND SEVENTEEN SIGNATURES.
Bombay, 1st March 1860.

DRAFT CODE.

WHEREAS doubts have arisen as to the laws to be administered with regard to the succession and inheritance to property left in intestacy, and whereas it is expedient that a settled law on the subject should prevail within the respective jurisdictions of Her Majesty's Supreme Courts in India, having reference to, and incorporating as far as is consistent with sound principles of legislation, the codes and customs which hitherto have prevailed among the Parsees: Be it enacted as follows:—

I. That from and after the passing of this Act, every Parsee who shall have attained the age of twenty-one shall be entitled to pass into law any property of which he or she may die possessed, to such person or persons as he or she thinks fit, and that for this purpose a married woman with regard to her own property hereover acquired shall be treated and considered as a free agent.

II. Such will in order to be valid must be in writing and executed in the manner herein-after men-
tioned, (that is to say) it shall be signed by the testator or testatrix or by some other person in his or her presence, and by his or her direction, and such signature shall be made or acknowledged by the testator or testatrix as the signature to his or her will or as a certificate of the presence of two or more witnesses present at the same time, and such witnesses shall subscribe the will in the presence of the testator or testatrix, but no form of attestation shall be necessary. And the signature of the testator or testatrix shall be sufficient if affixed at or after or beside or opposite the end of the will, so that it shall be apparent on the face of the will that the testator or testatrix intended to give effect by such his or her signature to the writing signed as his or her will. Any attesting witness whose signature is juxtaposed therewith shall not thereby become a party to the will, nor shall he, she or it be thereby required to attest the will, and shall not therefore be incompetent, but the legacy shall be void.

III. That after the payment of debts, funeral expenses, and just expenses of every sort, the clear residue of the property of every Parsess dying intestate shall be distributed in manner following, (that is to say,) if he be a male, his property shall be divided into such number of shares as shall admit of its distribution in the following proportions:

To the widow half a share.
To the sons one share each.
To the daughters one-quarter share each.

IV. If the intestate be a female, in the following proportions:

To her husband one share.
To her sons and daughters half a share each.

V. If the intestate shall die without leaving a widow or widower, the property shall be divided amongst the children in the proportions mentioned in the foregoing sections.

VI. If any child of the intestate shall have died in his or her lifetime, the widow or widower and children, or if there be no widow or widower or children then the grandchildren of such child, shall take the share to which such child would have been entitled had he or she survived the intestate, subject to the rules and in the proportions specified in the foregoing sections.

VII. If the intestate die leaving a widow or widower, but without leaving any lineal descendants, his or her father and mother if both are living, or either of them if the other is dead, shall take one moiety of the property, and the said intestate's widow or widower shall take the other moiety. Where both father and mother are alive, the mother shall take half the share of the father. Where neither father or mother are alive, the said intestate's relatives on the father's side in the order in the table specified below or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.

Table.

1. Brothers and sisters, and the children or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
2. Grandfather and grandmother.
3. Grandfather's sons and daughters, and the children or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
4. Grandfather's father and mother.
5. Grandfather's sons and daughters, and the children or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
6. If the intestate be a married female—
1. Husband.
2. Sons according to seniority.
3. Daughters according to seniority.
4. Sons' sons according to their fathers' seniority and their age.
5. Sons' daughters according to their fathers' seniority and their age.

VIII. If the intestate dies leaving neither lineal descendants, nor widow or widower, his or her next of kin in the order set forth in the following table shall be entitled to succeed the whole of his or her property. The next of kin standing first in the table shall always be preferred to those standing second, the second to the third, and so on in succession, subject to the condition that each female shall receive half the portion of each male standing in same degree of propinquity.

1. Father and mother.
2. Brothers and sisters, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
3. Paternal grandfather and paternal grandmother.
4. Children of the paternal grandfather, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
5. Paternal grandfather's father and mother.
6. Paternal grandfather's father's children, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
7. Brothers and sisters by the mother's side, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
8. Maternal grandfather and maternal grandmother.
9. Children of maternal grandfather, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father's or mother's share respectively.
10. Son's widow.
14. Husband of the intestate's deceased daughters.
15. Maternal grandfather's father and mother.
16. Children of the maternal grandfather's father, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father's or mother's share respectively.
17. Maternal grandmother's father and mother.
18. Children of the paternal grandmother's father, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father's or mother's share respectively.

IX. If a person die intestate, letters of administration of the property of the intestate shall be granted to the under-mentioned relatives successively in the following order:—If any of such relatives refuse to take out letters of administration, or if they be not of a legal age or be otherwise disqualified, letters of administration shall be granted to the person standing next in order. And if there shall be no person standing in such a degree of relationship to the intestate, then to such other fit and proper person as to the Court shall seem meet.

If the intestate be a male—
1. Widow and eldest son jointly. If the eldest son decline or be disqualified, the second son, and so on in succession.
2. If the intestate be a married female—
1. Husband.
2. Sons according to seniority.
3. Daughters according to seniority.
4. Sons' sons according to their fathers' seniority and their age.
5. Sons' daughters according to their fathers' seniority and their age.
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7. Daughters' sons according to their mothers' seniority and their age.
8. Daughters' daughters according to their mother's seniority and their age.
9. Father.
10. Mother.
11. Brothers according to their age.
12. Sisters according to their age.
13. Paternal uncles according to their age.

X. If the testator or testatrix at his or her death has not appointed an executor of his or her last will and testament, or if the person so appointed refuses to act, in either of which cases administration shall be granted to the person mentioned in section IX; provided always those persons who take the largest interest under the will shall have a preferential right to make out the settlement.

XI. A Parses shall be deemed to have attained his or her majority at the age of twenty-one years.

And whereas doubts have arisen as to the rights of married women over property possessed by or given or transferred to or vested in their respectively by their marriage—

XII. Be it enacted, that all property of whatever kind soever which shall be given, granted, conveyed, or bequeathed to, or which shall in any way be acquired by any woman, whether married or single, shall not be vested in the name of such property shall be dispensed as it should be expressed by the writing, deed, or will granting, conveying, assigning, or bequeathing the same, be and be taken to be her sole and separate property, and she shall have and enjoin to the same absolute control over the disposal and use thereof notwithstanding any marriage which she may contract, and may enter into any contracts relating to the disposition and use thereof, and give as effectual acquittances and receipts in respect thereof, and suit and be sued in any action or suit in respect thereof touching the same, as if she were a feme sole.

XIII. That the husband shall not be held liable for any debt contracted by his wife, unless contracted by his express or implied authority. Provided that nothing herein contained shall be construed to exempt the husband from his liability to provide for his wife suitable maintenance and necessaries if he compel her by his conduct or otherwise to live separate.

And whereas it is desirable to have the law and define the rights and the relative positions of parent and children and guardian and ward—

XIV. Be it further enacted, that the father shall be entitled to the custody of his legitimate children and the personal custody of the child shall belong to the mother until the child shall have attained the age of twenty-one years, provided he be not, by lunacy, difference of religion, or other just cause, disqualified for the due discharge of his duties and the exercise of his rights towards such child. And he may appoint one or more guardians by will duly executed. And upon his death, in the absence of any such appointment, the mother, or in case of her death or disqualification, the other relatives of the child in the order mentioned in section XVII, shall be appointed guardian, and shall possess all the rights and privileges of the father, except as herein-after is provided.

XV. Where any dispute shall arise between the father and mother of any child under the age of six years, the personal custody of the child shall belong to the mother until the child shall have attained its full age of six years.

XVI. Upon the death or disqualification of the father as aforesaid, the mother shall be entitled to the custody and guardianship of the child.

XVII. Upon the death or disqualification as aforesaid of the father and mother and the non-appointment of any testamentary guardian, the under-mentioned surviving relatives, according to the following order, shall be entitled to the custody and guardianship of the person and property of the child, provided they are not, by lunacy, difference of religion, or other just cause, disqualified for so acting—

1. Grandfather, paternal.
2. Brothers in the order of seniority.
3. Uncle by the father's side, in the order of seniority.
4. Grandmother, paternal.
5. Sisters in the order of seniority.
6. Sons of the uncle by the father's side in the order of seniority.
7. Grandfather, maternal.
8. Grandmother, maternal.
9. Uncles by the mother's side in the order of seniority.
10. Father's sisters in the order of seniority.
11. Mother's sisters in the order of seniority.
12. Any other relative or suitable person who may be desirous of being appointed.

XVIII. That no person shall acquire any right of inheritance under any of the foregoing sections where such right is claimed by reason of marriage. Provided that a marriage contracted in the lifetime of a first wife or husband, unless such first marriage shall have been declared to be dissolved, and a divorce granted after due investigation by a Panchayat of twelve Parses, shall be regular and properly executed for that purpose every five years by the voice of the Parsi community of the town and island of Bombay, or by a majority of the said Panchayet, for some just cause in that behalf, of which just cause the said Panchayet shall be the sole judge and the only named.

XIX. Wherever the term "Parsee" or "Parses" occurs in this Act, it shall mean a person or persons believing in and professing the religion of Zoroastri or Zarathush.

XX. In construing this Act, the relationship, if not otherwise expressed, is to be traced through the male line only, and brethren of the half-blood by the mother's side are not in any case to be entitled to succeed unless expressly so named.

XXI. That this Act shall take effect only as regards Parseses resident within and subject to jurisdiction of Her Majesty's Supreme Courts of Judicature in India.

MINUTES OF PROCEEDINGS of a Public Meeting of the Parses Inhabitants of Bombay, held on the 20th August 1855, at Satt Cowasjee Byramjioe's Fire Temple, for the purpose of considering and adopting measures for procuring the enactment of laws adapted to the Parseses.

In pursuance of advertisements which appeared in all the Guzerati journals, and hand-bills extensively circulated among the Parseses of Bombay, a public meeting of the members of this community was held on Monday, the 20th instant, at half-past three o'clock p.m., at Satt Cowasjee Byramjioe's Fire Temple. There were present, besides the heads of the Parsi community, a great number of the most respectable and influential gentlemen. The whole assemblage numbered upwards of two thousand persons.

On the motion of Froujeiee Nusrewanjee, Esq., seconded by Bomanjee Hormusjee, Esq., Nowrojee Jamsetjee, Esq., was voted into the chair.

The proceedings were opened by the chairman calling on Mr. Nowrojee Furdoojoo to read the advertisement convening the meeting.

Mr. Nowrojee Furdoojoo then read a letter from Sir Jamsetjee Jeejibhoy, Knight, to the address of the chairman, a translation of which is as follows:—

To the Chairman of the Meeting held for the purpose of considering the best means for procuring a legislative enactment for the Zoroastrians.

Sir,
I REGRET very much that in consequence of infirmity and the delicate state of my health, I shall not be able to attend the meeting which has been convened this day.
I would, however, take this opportunity publicly to declare my opinion that the object for which this meeting has been convened, namely, that of soliciting
APPENDIX TO FIRST REPORT OF COMMISSIONERS APPOINTED

the Legislative Council of India to pass a suitable enactment for determining and regulating the laws of all Zoroastrians, is excellent and laudable, and I hope through the grace of the Almighty, that all the Zoroastrians who have assembled in meeting this day will be unanimous, and will use their best endeavours to accomplish this good and noble object. Further, I congratulate the Government on the fact that the resolutions which you may adopt on this subject will command my approbation and sympathy.

Your obedient servant,
JAMSEJEEBHOY

20th August 1855.

Mr. Nowrojee Furundoojee then gave the following explanation of the object of the meeting:—

Gentlemen,—I take leave, at the request of the chairman, to make a few observations regarding the object of convening this meeting.

At the time when India became subject to the beneficent and constitutional sway of the British, the Government gave a pledge and guarantee to the people of this extensive country, that all civil cases in which Hindu and Mahomedan law would be decided according to Hindu and Mahomedan law, and that the enjoyment of those rights and privileges which they had possessed from their ancestors would be secured to all Englishmen. From that time the country came into the hands of the English, about two centuries ago, to the present moment, the British Government have performed their promise; and the customs and usages of the Hindus and Mahomedans have been preserved by the English, affecting their civil rights, and in consequence they have been able to enjoy the benefit of such rights. But it is to be regretted that members of the Zoroastrian community who live in this country under the British, are not respected by the administration of justice, the same privilege with respect to their ancestral customs and usages. The British authorities and the Courts of Justice have not hitherto recognized any of our laws. It is our bounden duty to protest against this, that from time to time arise from the want of such fixed laws, applicable to our people, as would be recognized and enforced by British authorities and Judges, and from the application of English law in the adjudication of civil cases among Zoroastrians are concerned. It appears from an English pamphlet relating to Parsee laws, published in 1843, that during the years 1836–37 and 1838, most of the leading members of the four Parsee communities were parties concerned in cases of inheritance, and in the application of their own laws and customs, as seemed to them necessary. All cases involving questions of inheritance, conjugal rights, and disputes among the Parsees are decided by the Supreme Court according to English law, and not according to the customs or laws of the Parsees, because of the evils and disadvantages from which we suffer. In 1835 a Parsee filed a suit in the Supreme Court here, claiming as eldest son the whole of the landed property of his father, who died intestate. This step created a great sensation among the Parsees, who petitioned the Legislative Council through the Bombay Government, praying for an Act for the Parsee community for preventing the eldest son from inheriting the whole of his father’s freehold estate, and declaring such property to be equally divided among all the heirs of Parsees. The Legislative Council at once acceded to this prayer and in the month of May 1837 an Act was passed to that effect.

M. Borradaile, on behalf of the Government, had also pointed out to the Parsee community of Surat, regarding their laws of inheritance, but that body not having replied to them, the leading members of the Parsee Punchayet of Bombay published those questions in pamphlet form in the year 1832, and solicited answers from the Parsee community; but this invitation was likewise unsuccessful. In 1836, however, the members of the Parsee Punchayet and other Zoroastrians having framed answers to those questions, brought them in 1839 to the local Government to the Legislative Council, with a petition praying for an enactment for regulating the laws of inheritance among the Parsees according to their ancestral customs; but owing to several causes, the object was not gained. In 1841, Mr. Borradaile again applied to, but owing to want of unanimity among our community, and other obstacles, the matter was neglected and allowed to drop. The Judges of the Supreme Court have held that the Parsees are not entitled to any of the same privileges which are accorded to our countrymen, the Parsees, the propriety and advisability of procuring an enactment on the subject of their laws of inheritance, marriage, and divorce, which enactment would obviate the difficulties now experienced by Parsees and others that come up before the Courts, and involving such questions, and would promote peace and happiness, and secure to the Parsees the observance of their ancient customs and usages. Sir Erskine Perry, our late Chief Justice, and well-wisher of the Parsees, wrote to the Governor involving such questions, this policy might be expedient to adopt. It is well known to all that this intelligent, experienced, and clever gentleman repeatedly expressed his earnest desire and willingness to assist us in procuring laws for our guidance.

Now, it is the duty of the Parsees to make a combined effort, with a view to procure the enactment of such laws adapting them toParsee laws, and arrangements and adopt such measures as will ensure the fulfillment of their object. Their exertions will not remain unappreciated, and they shall have the proud satisfaction of seeing their labours, though Divine favors, fulfill the expectations in the administration of justice, the same privilege with respect to their ancestral customs and usages. The British authorities and the Courts of Justice have not hitherto recognized any of our laws. It is our bounden duty to protest against this, that from time to time arise from the want of such fixed laws, applicable to our people, as would be recognized and enforced by British authorities and Judges, and from the application of English law in the adjudication of civil cases among Zoroastrians are concerned. It appears from an English pamphlet relating to Parsee laws, published in 1843, that during the years 1836–37 and 1838, most of the leading members of the four Parsee communities were parties concerned in cases of inheritance, and in the application of their own laws and customs, as seemed to them necessary. All cases involving questions of inheritance, conjugal rights, and disputes among the Parsees are decided by the Supreme Court according to English law, and not according to the customs or laws of the Parsees, because of the evils and disadvantages from which we suffer. In 1835 a Parsee filed a suit in the Supreme Court here, claiming as eldest son the whole of the landed property of his father, who died intestate. This step created a great sensation among the Parsees, who petitioned the Legislative Council through the Bombay Government, praying for an Act for the Parsee community for preventing the eldest son from inheriting the whole of his father’s freehold estate, and declaring such property to be equally divided among all the heirs of Parsees. The Legislative Council at once acceded to this prayer and in the month of May 1837 an Act was passed to that effect.

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cept; but, on inquiry, it appears that amongst your books there is no such work. From mature consideration, and an attentive observance of your present manners and customs, it appears that some of your usages are founded on the laws recorded in your books, while a great many are based on your ancient immemorial customs as prevailed amongst your ancestors, while some of your tribe at present follow no laws and act in any way they please. At present there is no record of your ancient usages. It is therefore the opinion of Government that you should assemble and consult together, and, with your unanimous consent, commit these laws and customs to writing; and after holding mature deliberations, adopt a code of laws for your government and guidance; otherwise there will be no end to disputes and litigation amongst the body of your nation. To this end, by the order of Government, prepared and transmitted to you a series of questions on the subject of your laws, which you are desired to take into your serious consideration, and after deliberating on the subject, forward explicit answers to them, such as you all unanimously do and approve.

"Third. After unanimously adopting such laws in the manner aforesaid, should it be thought necessary to amend, alter, erase, or add any clauses therein, you are at liberty to do so with the unanimous consent of all the members of your nation. Government will not object to your so doing. It is therefore advisable that you should desire the welfare and prosperity of your tribe and of your posterity; and after deliberating on this important subject, you should, with one voice frame answers to the questions herewith forwarded to you for your attentive consideration, and return the same to Government. All cases, actions, and suits will be decided by Government functionaries in conformity to the laws approved, agreed upon, and transmitted by the unanimous consent of your nation."

It is the duty of our countrymen, the Parsees, to adopt the important and salutary recommendation contained in the letter of Mr. Borradale I have just quoted, to secure the welfare and prosperity of our tribe, to prepare a draft of suitable and appropriate laws, and to adopt measures for the purpose of procuring their enactment from the Legislative Council of India. If such laws are passed, all disputes and differences between members of our community will be decided according to the customs and usages of our ancestors, and not in accordance to English laws and usages. Thus the peace and prosperity of our people will be enhanced, and the rich and the poor will derive the same benefit, namely, that of a fixed and uniform code of laws; all of us will succeed in obtaining substantial justice in conformity to our immemorial usages; and disputes and quarrels which frequently take place amongst us between mother and child, brother and sister, husband and wife, will greatly diminish; and every one will know exactly what his rights are, and act on such knowledge. If the leading and other members of our community unite, cooperate, and zealously exert themselves in the noble cause of procuring a legislative enactment adapted to our nation, this object will, through the grace of God, be accomplished.

The following resolutions were then proposed and adopted:—

I. Proposed by Bomanjee Hormusjee, Esquire, seconded by Cursetjee Jamsetjee, Esquire, and carried unanimously.

Resolved,—That this meeting is deeply impressed with the necessity of procuring for the Parsee community the enactment of laws adapted to that tribe, such as may be recognized, obeyed, and enforced by the local authorities and by Courts of Justice.

II. Proposed by Djinjebhoy Framjee, Esquire, seconded by Cursetjee Nasrwanjee Camajee, Esquire, and carried unanimously.

Resolved,—That a managing committee, composed of the following gentlemen, be ap-

pointed to prepare a draft of a code of laws, addressed to the Parsee nation, to petition the Legislative Council of India for the enactment of such laws, and to manage and conduct all affairs relating thereto, and that the committee be empowered to add to their number, and to appoint their secretary.

MANAGING COMMITTEE.


Mr. Byramjee Cursetjee contended that the educated and other classes were not fully represented in the managing committee. He therefore proposed that the following gentlemen be added to the committee:—


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APPENDIX TO FIRST REPORT OF COMMISSIONER APPOINTED

Mr. Byramjee's proposition was seconded by Mr. Jehangoorjee Bajoorjee, who recommended that Mr. Byramjee's name be added to the committee.

Mr. Nowrojee Doriabjee proposed that Manockjee Cawrejee, Esquire, be also elected a member of the committee.

All these propositions being put to the vote were carried unanimously.

III. Proposed by Byramjee Jeechibhoy, Esquire, seconded by Sorabjee Jeechibhoy, Esquire, and carried unanimously.

That the trustees of the General Charity Fund of the Parsee community be requested to defray the expenses of employing legal assistance, and of the establishment which may be required by the managing committee, and other contingent charges.

Mr. Cooverjee Rustunjee Mody, in his address, exhorted his countrymen to give to the proposed undertaking all the assistance and co-operation in their power.

Mr. Dossabhai Framjee expatiated on the advantages of holding public meetings as often as public exigencies and the interest of the community require, with the view of representing to Government the wants and grievances of the people, and promoting their welfare.

IV. Proposed by Framjee Nusservanjee, Esquire, seconded by Manockjee Nusservanjee, Esquire, and carried unanimously.

That the thanks of the meeting be voted to the chairman for his able conduct in the chair.

The meeting then separated at about a quarter to five o'clock.

Nowrojee Jamsetjee Wadia, Chairman.

EXTRACT FROM THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL ON THE 20TH JUNE 1860.

The clerk also presented a petition from Modbee Roostunjee Khorshedjee and others, of Surat, concerning the petition of the Parsees of Bombay, submitting the draft of a code of law for the Parsee community.

Sir Bartle Frere moved that the petition be printed. Agreed to.

TO THE HONORABLE THE LEGISLATIVE COUNCIL OF INDIA.

The humble petition of Modbee Roostunjee Khorshedjee and the principal members of the Parsee community of Surat.

HUMBLY SHOWTTH.

That, we, your petitioners, have learned from the public papers that a petition was presented to your Honorable Board, dated 1st March 1860, from certain Parsees of Bombay, praying for the enactment of a code of laws for the Parsee community in accordance with a draft submitted by them, in relation to which we deem it incumbent on us to inform you of the following circumstances.

Having read the code proposed by the said Parsees of Bombay, we are of the opinion that your Honorable Council that the propositions embodied therein are for the most part at variance both with the principles of our sacred religious authorities and with the customs prevailing among the Parsees at large.

Moreover, we deem it a duty, however disagreeable, to protest against the assumption on the part of the Bombay Parsees of the right to petition your Honorable Council for a law of their own dictation for the Parsee community, and we respectfully beg your favorable consideration of the protest against the same which we feel constrained thus to make.

We have only further to add, that some Parsees of Bombay had appointed a committee to frame a law for the Parsees in accordance with their religious principles and customs. But the said committee completely failed in their undertaking, as was seen from a printed pamphlet of a draft code of laws for the Parsee community at large, sent to us, requesting us to state our views on the subject in question, to which we replied on the 19th January 1849, exposing the inconsistency of their position, and also published a pamphlet and circulated it among the Parsees of Bombay and other places, containing a full refutation and exposing the fallacy of the arguments which they had adduced in support of their startling propositions, a copy of which we beg leave to forward to your Honorable Council.

In conclusion, we beg to inform your Honorable Board that we intend to take an early opportunity of still further exposing the unsound views and fallacious reasoning of the Parsees of Bombay, and to solicit the favour of forwarding the considerations on the positions embodied in their pamphlet, and refraining from coming to any resolution on the subject, until your Honorable Body has been put in possession of the views, not only of the Parsees of Surat, but of all other places in the Mofussil who have the misfortune to differ in opinion from their brethren of Bombay.

And your petitioners, as in duty bound, shall ever pray.

Surat, 13th May 1860.

TWENTY-TWO SIGNATURES.

From the Clerk of the Legislative Council of India to the Secretary to the Government of India, Home Department, No. 377, dated the 18th May 1860.

Sir,

On the 31st March last a Select Committee of the Legislative Council was appointed to take into consideration a petition from the Parsees of Bombay, forwarding a draft code of laws adapted to the Parsee community, and to report whether legislation on the subject was necessary, with instructions, if the Committee found further inquiry necessary, to move the Governor-General in Council to obtain from the Bombay Government such further information as was calculated to elucidate the subject.

2. The question being one on which a considerable difference of opinion prevails, the Committee are anxious, before making their report, to have before them in as intelligible a shape as possible an expression of the general feelings and wishes of the Parsee community with respect to the several matters embraced in the draft code, namely succession, inheritance, marriage, and divorce.

3. The Committee are further desirous of obtaining the opinion of the Parsee community on each section of the draft code.

4. I am accordingly directed by the Select Committee to forward the accompanying copies of the petition and its enclosures, and to request that the Honorable the President in Council will be pleased to transmit them to the Government of Bombay with a view to their distribution at all those places in that Presidency where Parsees reside, for the purpose of eliciting the considered opinion of the Parsees.

5. The Committee suggest that a certain time, say two months, be fixed for the reception of replies to the present reference, it being made known at the same time that those Parsees from whom no information is received within that time shall be held to have no objections to offer to the proposed code.

I have the honor to be, &c.

M. Wylie,
Clerk of the Legislative Council.

Office Memorandum, Home Department, No. 1417, dated Fort William, the 1st August 1860.

With reference to a letter from the Clerk of the Legislative Council, No. 377, dated the 18th May last, the undersigned has the honor to transmit to Mr. Wylie a letter from the Acting Chief Secretary.
to the Government of Bombay, No. 56, dated 20th ultimo.

H. C. BOWEN,
Under-Sec. to the Govt. of India.

From the Acting Chief Secretary to the Government of Bombay, to the Under-Secretary to the Government of India, Home Department, No. 56, dated the 20th July 1860.

Sir,

Referring to your letter No. 1088, of the 19th of May last, on the subject of the proposed draft code of laws for the Parsee community, I am directed by the Honorable the Governor in Council to forward, for the consideration of the Government of India, the accompanying copy of a letter from the Acting 1st Assistant Magistrate in charge, Surat, No. 344, of the 28th ultimo, and of its enclosure, being a petition from the Parsees of Surat praying for an extended period of six months to enable them to prepare a statement in opposition to the code referred to.

2. In submitting this communication, I am desired to state that his Excellency would recommend that the period for considering the petition of the Parsees of Bombay, for the draft code to be enlarged, as it is very probable, in addition to the reasons stated by the Parsees of Surat, that translations of the papers will have to be made for the benefit of the Parsees of the Mofussil, an application to that effect having already been received from the Magistrate of Thanah.

3. The subject is one of grave importance to the Parsee community, and two months hardly constitute a sufficient period for the consideration of the draft code.

I have the honor to be, &c.

H. L. ANDERSON,
Acting Chief Secy. to Govt. of Bombay.

From the Acting 1st Assistant Magistrate in charge, Surat, to the Acting Chief Secretary to the Government of Bombay, No. 344, dated the 29th June 1860.

Sir,

With reference to your letter, No. 2076, dated 18th instant, and acompañying copy of a petition, &c. from the Parsees of Bombay, I have the honor to report that, in accordance with your directions, I explained the purport of the communication to the Parsees of Surat, and invited their opinions on the subject matter of the petition.

2. In reply I have received a petition from them, which I have the honor to forward with the favorable consideration of Government, praying that an extended period of six months may be granted them to prepare a statement in refutation of the proposed code of laws, which meets with their entire disapprobation.

3. The Mody Rustonjee Khursetjee, whose signature stands first on the accompanying petition, claims to be by hereditary descent the chief of the entire Parsee community, and, as far as I can learn, his claims to this position are recognized and acknowledged by the Parsees of Surat, who form a considerable and influential body. They appear to be, if I may so express myself, the Tories of their sect, and are exceedingly jealous of the innovating Parsee liberal of Bombay. While such a want of unanimity prevails, it is manifestly impossible that the proposed code could be presented to the Legislative Council.

I am, therefore, respectfully of opinion that the Supreme Government should be solicited to grant the extended period asked for.

I have the honor to be, &c.

H. B. LINDSAY,
Acting 1st Assistant Magistrate in charge, Surat.

From Mody Rustonjee Khursetjee and the Principal Members of the Parsee Community of Surat to the 1st Assistant Magistrate of Surat in charge, dated the 27th June 1860.

Sir,

In acknowledging the receipt of your letter, No. 327, of the 18th instant, accompanied by a draft of a code of laws for the whole of the Parsee community, and inviting our opinion on the subject within a very short period of six weeks, the task being a difficult one, as may be inferred from the number of years (about five years) spent by the Parsees of Bombay on its preparation, we are quite unable to refute the arguments therein contained with conclusive reasonings borrowed from old works on the subject, and to consult the Parsees of New scarce, Balsar, and other places, who were too much pre-occupied or too indifferent to make their opinions regarding the merits of our code, and to deliberate upon the matter with their co-religionists here.

It is, therefore, our earnest desire that the period allowed be extended to six months, to enable us to make out a draft containing the refutations and the opinions of Parsees living in several other quarters. This extension is now necessary, as, in consequence of the roads being impassable at this season of the year, the district Parsees will not be able to come to Surat until after the close of the rainy weather.

Will you then be good enough to forward this letter to Government, recommending it to request the Legislative Council of India by telegram to comply with our wishes. By your doing so we shall not be denied the consolation of having done our best to get a set of rules of such a nature as to remove the injuries tend to the Parsees, and the satisfaction of freeing ourselves as well as our posterity from the miseries which are sure to be our lot if the rules proposed be sanctioned.

We have the honor to be, &c.

Mody Rustonjee Khursetjee, and others.

From the Clerk of the Legislative Council to the Secretary to the Government of Bombay, No. 464, dated the 7th September 1860.

Sir,

With reference to your letter, No. 56 of 1860, dated 20th July 1860, to the Government of India, I am directed by the Select Committee of the Legislative Council on the draft code of laws for the Parsee community, to state that the Committee will not report until six months from the 1st of this month, so as to afford time for the deliberate expression of the sentiments of the whole of that community in India on the subject.

I have the honor to be, &c.

M. Wylie,
Clerk of the Council.

No. 465.

Copy forwarded to the Home Department with reference to Under-Secretary Lord Ulick Brown's Office Memorandum, No. 1417, dated 1st ultimo.

M. Wylie,
Clerk of the Council.

Extract from the Proceedings of the Legislative Council on the 8th September 1860.

Sir Bartle Frere moved, That Mr. Erskine be added to the Select Committee on the petition from the Parsees of Bombay, with the draft of a code of laws adapted to the Parsee community.

Agreed to.

Extract from the Proceedings of the Legislative Council on the 6th April 1861.

The Clerk reported to the Council that he had received a communication from the Home Department, forwarding a communication from the Government of Bombay, and the correspondence received L 4
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terewith on the subject of the proposed draft code of laws for the Parsee community.

Mr. Erlaine moved, That the communication be referred to the Select Committee on the subject.

Agreed to.

From the Chief Secretary to the Government of Bombay to the Secretary to the Government of India, Home Department, No. 19, dated the 22nd March 1861.

SIR,

With reference to my letter No. 56, dated 20th July last, I am directed by the Honorable the Governor in Council to transmit the accompanying copies of the correspondence, as per annexed list, on the subject of the proposed draft code of laws for the Parsee community.

I have the honor to be, &c.

H. L. ANDERSON,
Chief Secretary to Government of Bombay.

ACCOMPANIEMENTS TO THE LETTER FROM THE CHIEF SECRETARY TO THE GOVERNMENT OF BOMBAY TO THE SECRETARY TO THE GOVERNMENT OF INDIA, HOME DEPARTMENT, NO. 19, DATED 22ND MARCH 1861.

1. Petition of the Legislative Council of India, from Mookerjee Ramajayee Khoorshedjee and other Members of the Parsee community of Surat, dated 6th August 1860, with enclosures.

2. Translation of a Petition by the Parsee community of Ahmedabad to certain clauses of the Draft Code, dated — August 1860, with enclosure.


4. Translation of a Petition by the Parsee community of Surat, against the Draft Code, dated — August 1860, with enclosure.

5. Petition from certain Parsee inhabitants of Surat, to the Magistrate of Surat, dated 11th August 1860.

6. Petition from certain Parsee inhabitants of Talooka Moreh, dated 21st August 1860.

7. Petition from the Parsee inhabitants of Tennah, dated 20th September 1860.

8. Translation of a Petition from the Parsee community of Baroda, to the Legislative Council of India, dated 15th August 1860.


TO THE HONORABLE THE LEGISLATIVE COUNCIL OF INDIA.

The humble Petition of Moodoo Roostumjee Khoorshedjee and other members of the Parsee community of Surat.

RESPECTFULLY SHOWN.

That the Parsees of Bombay forwarded a draft of a code of laws for the Parsee community to your Honorable Council on the 1st March 1860, with a petition that it be passed into a law. This draft was sent to your petitioners by the First Assistant Magistrate in charge at Surat, with his letter dated the 18th June 1860, requesting them to submit their opinion on the merits of the draft within the short period allowed. The draft was examined several times by the petitioners and their community, who stated their objections against several sections of the code. Their opinions have been concurred in by their co-religionists of Surat, rich and poor, who were called together by a formal invitation on 24th July 1860. Your petitioners trust that your Honorable Council will be pleased to take into your consideration the following circumstances, together with their opinion, which they have taken the liberty to set forth hereafter.

First, Though the Parsee community of Surat is the oldest in India, yet some of the Parsees of Bombay formed a committee about five years ago, and called it the committee for the preparation of a code of laws for the whole of the Parsees. This name your petitioners have not since the time of its delegation to the Parsees of Bombay the power to which they lay claim.

Second. Several of the articles of the proposed code having appeared to the Parsees of Surat and Broach, the most thickly inhabited by Parsees, and the neighbouring cities, inconsistent with their religion, and contrary to their established customs and usages, and a code of laws having been framed by order of the Parsees of Bombay, they requested the Legislative Council of India, and that body be requested to enact it, so as to affect Parsees living within and subject to the jurisdiction of Her Majesty's Supreme Court in India.

In the face of the above resolution, the Parsees of Bombay have expressed a desire, in paragraph 22nd of their petition of 1st March 1860, to make their code applicable to the Parsees of Surat, &c., and used words which are as contrary to the rules of politeness as they are untrue.

Third. These Parsees of Bombay state in paragraph 6th of their petition, that the present law is no novel system of arbitrary innovation, and not the result of the experience of years. To your petitioners beg to reply that in their humble opinion the Bombay Parsees have grievously erred in the matter of several of the articles, while in others they have inserted matter of their own which best suited their fancy. As an instance to the point, your petitioners beg to represent to your Honorable Council that their religion, and their long-established custom, sanction the adoption of a son, in the case of a man dying without a son, from the nearest relation. A provision which has been entirely overlooked by them in their draft, in which the right of an adopted son to inheritance is transferred to others, in the respective order of consanguinity to the deceased.

Again, the above-distributed among the widow and the daughters in the draft is less than what they are at present entitled to by virtue of the laws administered in Her Majesty's Supreme Court, to whose jurisdiction the Parsees are subject, and by whose decisions they are guided in matters pertaining to rights of inheritance, &c. This fact clearly shows that the new proposal is an innovation of their own, and is quite arbitrary.

Fourth. The Parsees of Bombay, in paragraph 9th of their application, state that the whole population of the Parsees of Bombay amount to nearly one hundred thousand. In this calculation they have either committed an error, or have stated what is inconsistent with fact, with a view to show to your Honorable Council that the proposed code has been approved of by such a large number as the above. Your petitioners beg to state in the first place, that the number of Parsees in Bombay is not so large as they have represented it. They are, besides, distributed among the Parsees in the Mofussil. Secondly, that the Parsees of Bombay are not the old residents of the place, but have settled there from Surat, Broach, Nowasree, and the villages in their vicinities, to earn their livelihood. Thirdly, your petitioners are not at all confident of the fact that the proposed code has met with the approval of the whole of the Zoroastrians of Bombay.

Fifth. The Parsees of Bombay state in paragraph 12 of their petition that, as early as the year 1827, Harry Boroomeee, Esquire, then Registrar of the Sudder Adawlut, and afterwards a member of the Indian Law Commission, addressed, by order of the Government of Bombay, a Gooratee letter to the heads of the Parsee community, and therein proposed several questions, &c. With regard to this communication, your petitioners beg to observe that, as far as your petitioners are informed, it was not
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of Bombay have framed a draft of code of laws, and sent it with their application of 1st March 1860 to the Honorable the Legislative Council of India, to get it passed into law; that you have received a letter from the 1st Assistant Magistrate of the Surat Zillah, dated the 18th June 1860, the object of which is to make you acquainted with the contents of the draft code, and that you have also been requested therein to consult the Parsee community of Nowasree on the subject; and that you are accordingly acquainted with the whole of the contents of the Magistrate's letter, of which you have sent us a copy. In reply to your letter we state that we have examined the draft prepared by the Parsees of Bombay, and our community are not to exceed the shape of "feme sole."
II. Such will, in order to be valid, must be in writing, and executed in the manner herein-after mentioned, (that is to say,) it shall be signed by the testator or testatrix, or by some other person in his or her presence, and by his or her direction, and such signature shall be made or acknowledged by the testator or testatrix as the signature to his or her will or codicil, in the presence of two or more witnesses present at the same time, and such witnesses shall subscribe the will in the presence of the testator or testatrix, but no form of attestation shall be necessary. And the signature of the testator or testatrix shall be sufficient, if affixed at, or after, or beside, or opposite, the end of the will, so that it shall be apparent on the face of the will that the testator or testatrix intended to give effect by such his or her signature to the writing signed as his or her will. Any attesting witness, to whom a legacy shall be given by such will, shall not therefore be incompetent, but the legacy shall be void.

III. That after the payments of debts, funeral expenses, and just expenses of every sort, the clear residue of the property of every Parsee dying intestate shall be distributed in manner following, that is to say, if he be a male, his property shall be divided into such number of shares as shall admit of its distribution in the following proportions—

To the widow half a share.
To the sons one share each.
To the daughters one-quarter share each.

III. We do not consent to this section, as from time immemorial our daughters and widows have never, according to our customs, been entitled to inherit or share property. We beg to offer below some brief remarks on this point.

1. Daughters are provided for in the lifetime of their father as follows—If the father be rich, he gives to his daughters some property proportioned to his means during his lifetime. If the father shall not have given any, the brothers, according to their circumstances, make some provision for their sisters and defray their necessary expenses. If the deceased (father) shall not have given his daughters away in marriage, his sons are obliged, according to their means, to defray the expenses of their marriages and other necessary expenditures. This existing custom is not at all bad, for what the daughters obtain, without experiencing any difficulty or incurring any obligations, is sufficient for them.

2. Among us the funeral expenses of a father or mother dying in a state of poverty, as well as the obligation of supporting the parents, devolve on the sons only, and not on the daughters.

3. Among us, daughters live with their husbands, and widows re-marry, and the obligation of performing the necessary religious ceremonies for a deceased person and his ancestors, is entirely imposed on the sons.

4. So long as a widow remains unmarried, she is provided, according to the position and means of her (deceased) husband, with food, clothes, a house to live in, and money to defray all necessary expenses; she also retains in her possession the ornaments which may have been made (for her) by her husband, as well as all other things which may have been presented (to her) by him.

5. According to the injunctions of our religion, it is indispensably necessary when a person dies without a son, though he may have daughters, that a pahuk (or adopted son) or dhurampootar (or foster son) should be taken as a son. This custom has been established in several cases in the Courts of Law, and the right of heirship has been awarded to adopted sons in preference to the widows and the daughters of the deceased. These decisions have been confirmed by Her Majesty the Queen in Council.

6. From time immemorial, widows and daughters among us have never inherited property. As an instance corroborative of this statement, it may be added that according to the custom prevailing among us from a remote period, sons have been sued in every Zillah for the debts and other obligations of the deceased (father), notwithstanding the existence of his widow and daughters, who are not liable to be sued (in this respect). Decisions have been passed by all the Zillah Courts and the Sudder Adawlut in
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accordance with this custom, and they are forthcoming on the records of the respective Courts.

From all these circumstances, it is evident that from ancient times widows and daughters among us have not been held to possess rights of heirship to the estate of the deceased.

7. Widows and daughters, as above shown, are not entitled to inheritance, hence the tables appended to sections VII. and VIII. showing their respective claims and those of the (other) persons mentioned in those two sections have not been properly framed.

We therefore beg to subjoin tables in accordance with our religion and usages as regards both men and women, and they should be adopted.

Table of the Rights of Men.

(1.) Sons, and if one of them be dead, his son.

(2.) Sons of sons and their lineal (male) descendants.

(3.) Adopted son according to the condition of adoption.

(4.) If the adopted son be of the family, and has been unconditionally adopted, he becomes heir to the deceased. But if any daughters of the deceased be alive, they, or any daughters left by the son of the deceased, are entitled in all to a moiety of the property of the deceased, and the adopted son herein alluded to receives the other share.

(5.) Father.

(6.) Brother.

(7.) Sons of brothers.

(8.) Grandfather (paternal).

(9.) Sons of grandfather (paternal).

(10.) Grandsons or great grandsons of grandfather (paternal).

(11.) Great grandfather (paternal).

(12.) Sons of great grandfather (paternal).

Table of the Rights of Women.

(1.) Daughters, and if any one of them be dead, her daughters.

(2.) Grand-daughters (daughter's daughters).

(3.) Sons of daughters.

(4.) Sons.

(5.) Mother.

(6.) Father.

(7.) Sisters.

(8.) Daughters of sisters.

(9.) Sons of sisters.

IV. We do not consent to this distribution. If the husband be alive, he is only entitled to the ornaments forming the dower of the wife, but he cannot inherit any other property which she may have possessed beside the dower. The daughters are entitled to it even though there be sons. If the husband be dead, the whole of the property of the woman, including her dower, descends to her daughters.

V. We do not consent to this section. Our opinion on this point is that children include both the sons and daughters of the deceased. We are therefore obliged to make a distinction, that if the deceased be a male, his daughters cannot, as is shown in the above sections, inherit his property, and that if the deceased be a female, her sons, if there be daughters, cannot inherit her property.

VI. This section is not right in our opinion. Our view respecting it is that if the deceased child be a male, his sons, or if they be not in existence, his son's sons, should inherit his estate, as shown in the preceding section. If the deceased child be a female, her daughters, or if they do not exist, her daughter's daughters, should inherit her property.

VII. We do not approve this section; for the effect of sections VII. and VIII. will evidently be to break the link of lineal descent among Parsies, which is wholly inconsistent with our usages and religion, inasmuch as if any one among us has left no son, it is absolutely necessary to adopt one after his death. This has been established in the Courts of Law, as stated in section III. Again, the order of succession laid down in the draft code is not just, and therefore...
the father's side, in the order in the table specified below, shall take the moiety which the father and mother would have taken if alive. The next of kin standing first in the table shall be preferred to those standing second, the second to the third, and so on in succession, subject to the condition that the property shall be so distributed, so that each female shall receive half the portion of each male, standing in the same degree of propinquity. If there be no relatives on the father's side, the widow or widower shall take the whole.

Table.
1. Brothers and sisters, and the children or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
2. Grandfather and grandmother.
3. Grandfather's sons and daughters, and the children or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
4. Grandfather's father and mother.
5. Grandfather's sons and daughters, and the children or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.

VIII. If the intestate die, leaving neither lineal descendants nor widow nor widower, his or her next of kin, in the order set forth in the following table, shall be entitled to succeed to the whole of his or her property. The next of kin standing first in the table shall always be preferred to those standing second, the second to the third, and so on in succession, subject to the condition that each female shall receive half the portion of each male standing in the same degree of propinquity.

Table.
1. Father and mother.
2. Brothers and sisters, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father's or mother's share respectively.
3. Paternal grandfather and paternal grandmother.
4. Children of the paternal grandfather, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
5. Paternal grandfather's father and mother.
6. Paternal grandfather's father's children, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
7. Brothers and sisters by the mother's side, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
8. Maternal grandfather and maternal grandmother.
9. Children of the maternal grandfather, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
10. Son's widow.
14. Husbands of the intestate's deceased daughters.
15. Maternal grandfather's father and mother.
16. Children of the maternal grandfather's father, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
17. Paternal grandmother's father and mother.

VIII. A reply to this section is embodied in that of the preceding section VII.
18. Children of the paternal grandmother's father, and the issue or linear descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father and mother's share respectively.

IX. If a person die intestate, letters of administration of the property of the intestate shall be granted to the nearest relatives successively in the following order. If any of such relatives refuse to take out letters of administration, or if they be not of a legal age, or be otherwise disqualified, letters of administration shall be granted to the person standing next in order, and if there shall be no person standing in such a degree of relationship to the intestate, then to such other fit and proper person as to the Court shall seem meet.

If the intestate be a male,—
1. Widowed and eldest son jointly. If the eldest son decline, or be disqualified, the second son, and so on in succession.
2. Husband.
3. Sons according to seniority. If there be no widow or widower or sons,—
4. Son's sons according to their father's seniority, and their age.
5. Daughters according to their age.
6. Son's daughters according to their father's seniority, and their age.
7. Daughter's sons according to their mother's seniority, and their age.
8. Daughter's daughters ditto.
9. Father.
10. Mother.
11. Brothers according to their age.
12. Sisters ditto do. do.
13. Paternal uncles do. do.

X. If a testator or testatrix, at his or her death, has not appointed an executor of his or her last will and testament, or if the person so appointed refuse to act, in either of these cases administration shall be granted to the persons mentioned in section IX.; provided always those persons who take the largest interest under the will shall have a preferential right to take out letters of administration.

XI. A Parsee shall be deemed to have attained his or her majority at the age of twenty-one years.

XII. Be it enacted, that all property of whatever kind which shall be given, granted, conveyed, or bequeathed to, or shall in any way be acquired by any woman, whether married or single, shall, unless the same shall be otherwise expressed by the writing, deed, or will granting, conveying, assigning, or bequeathing the same, be and be taken to be her sole and separate property, and she shall have and exercise the same absolute control over the disposal and use thereof, notwithstanding any marriage which she may contract, and may enter into any contracts relating to the disposition and use thereof, and give as effectual acquittances and receipts in respect thereto, and sue and be sued in any action or suit in respect thereof touching the same, as if she were a feme sole.

XIII. That a husband shall not be held liable for any debt contracted by his wife, unless contracted by his express or implied authority; provided that nothing herein contained shall be construed to exempt the husband from his liability to provide for his wife suitable maintenance and necessities, if he compel her by his conduct or otherwise to live separate.

And whereas it is desirable to ascertain the law and define the rights and the relative positions of parent and children and guardian and ward,—

XIV. Be it further enacted, that the father shall be entitled to the custody of his legitimate children, and the guardianship of their estates, until they attain

IX. We are not willing to abide this section.
1. In clause 1 the widow is associated with the eldest son, but it is not customary among us to give letters of administration of the property of the deceased to his widow when there is a son of competent age in existence, nor is it just to do so. In general women are weak-minded, and therefore they cannot be allowed to interfere in such affairs while the sons are in existence.

If the sons be of proper age, the eldest of them may administer to the estate with the concurrence of the others, and in the absence of unsanity, those who are of proper age can take the administration into their hands on their own behalf and as guardians of their minor brothers. But if the brothers of proper age injure the rights of their minor brothers, the widow is empowered to dispossess the former of the management of the affairs of the minors, and take the same into her own hands.

2. In clause 2 the words "husband of the deceased" are properly used.

3. In clause 3 the words "sons of the deceased according to seniority" are properly used.

4. In clause 4 the words "son's sons" are properly used; but after "daughters" in clause 5, "son's daughters" in clause 6, "daughter's sons" in clause 7, "daughter's daughters" in clause 8, the insertion of the father's right as ninth in the order of succession is not proper. We have therefore framed an amended table of succession as follows:—

   (1.) Sons of the deceased.
   (2.) Sons of sons.
   (3.) Father.
   (4.) Brothers.
   (5.) Sons of brothers.
   (6.) Sons of the sons of brothers.

Section 2 is objectionable, but the order of succession shown therein is not right. That shown in our reply to section IX. is a proper one.

XI. Section XI. of the draft code is unobjectionable.

XII. A reply to section XII. of the draft code is given at length in section I. Therefore we object to this section (XII.)

XIII. The only amendment to be made in this section is, that a written authority on the part of the husband is necessary to constitute permission for his wife to contract debts. If the husband has kept his separate property, he can claim from him an allowance for her food and clothing, but her creditors can have no claim on him. If, however, the wife live separately from her husband of her own accord, she cannot demand her maintenance money from him.

XIV. Section XIV. of the draft code is unobjectionable.
the age of twenty-one years, provided he be not, by
lunacy, difference of religion, or other just cause,
disqualified for the due discharge of his duties, and
the exercise of his rights towards such child. And
he may appoint one or more guardians by will duly
executed; and upon his death, in the absence of any
such appointment, the mother, or in case of her death
or disqualification, the other relatives of the child, in
the order mentioned in section XVII., shall be ap-
pointed guardian, and shall possess all the rights and
privileges of the father, except as herein-after is
provided.

XV. Where any dispute shall arise between the
father and mother of any child under the age of six
years, the person in custody of the child shall belong
to the mother until the child shall have attained its
full age of six years.

XVI. Upon the death or disqualification of the
father as aforesaid, the mother shall be entitled to the
custody and guardianship of the child.

XVII. Upon the death or disqualification as afo-
resaid of the father and mother, and the non-appoint-
ment of any testamentary guardian, the under-men-
tioned surviving relatives, according to the following
order, shall be entitled to the custody and guardian-
ship of the person and property of the child, provided
they are not, by lunacy, difference of religion, or
other just cause, disqualified for so acting:
1. Grandfather, paternal.
2. Brothers in the order of seniority.
3. Uncles by the father's side in the order of
seniority.
4. Grandmother, paternal.
5. Sisters in the order of seniority.
6. Sons of the uncle by the father's side in the
order of seniority.
7. Grandfather, maternal.
8. Grandmother, maternal.
9. Uncles by the mother's side in the order of
seniority.
10. Father's sisters in the order of seniority.
11. Mother's sisters in the order of seniority.
12. Any other relative or suitable person who may
be desirous of being appointed.

XVIII. That no person shall acquire any right of
inheritance under any of the foregoing sections where
such right is claimed by reason of or under a second
marriage contracted in the lifetime of a first wife or
husband, unless such first marriage shall have been
declared to be dissolved, and a divorce granted after due
investigation by a Punchayet of twelve Parsees, to be
regularly and properly elected for that purpose every
five years by the voice of the Parsee community of
the town and island of Bombay, or by a majority of
the said Punchayet, for some just cause in that behalf,
of which just cause the said Punchayet shall be the
sole arbiter.

XIX. Wherever the term "Parsee" or "Parsees"
occurs in this Act, it shall mean a person or persons
believing in and professing the religion of Zoroast,
or Zoroaster.

XX. In construing this Act, the relationship, if
not otherwise expressed, is to be traced through the
male line only, and brethren of the half-blood by the
mother's side are not in any case to be entitled to
succeed unless expressly named.

XXI. That this Act is to have effect only as
regards Parsees resident within and subject to the
jurisdictions of Her Majesty's Supreme Courts of Ju-
dicature in India.

Even if the jurisdiction of the Supreme Court be hereafter extended to this Zillah, we shall refuse to
recognize the draft code on account of the objections shown above.

VENAYAK WASSOODEW,
Oriental Translator to Govt.
To Prepare a Body of Substantive Law for India.

TRANSLATION of a Guzerathee Pamphlet submitted by the Parsee community of Poona, dated the 9th, and received and ordered to be translated on the 17th August 1860.

A Pamphlet presented to the Magistrate of Poona on behalf of the Parsee community of that place, in consequence of a notice issued by that officer inviting suggestions on a draft Act prepared by the Parsee community of Bombay, and submitted to the Government of Calcutta, containing the provisions of the Parsee law, and containing suggestions for the modification of some of its sections.

The committee constituted in Bombay for the purpose of getting laws passed for the Parsee community having in the main adjusted all differences and other matters connected therewith, for the purpose of getting it authoritatively passed by the Legislative Council of India, the Magistrate of the Poona Zillah issued a notification on the 20th June 1860, stating the just objects of every kind, the knowledge and opinions of the Parsee community of this place in respect of it, and inviting suggestions for any modifications and alterations in the aforesaid (draft) Act. The provisions of the draft Act were therefore beg, with due regard to the doctrines of the religion and the secular usages of the Parsee community of this place, and the following representations have been made to us for the purpose of getting laws passed for the Parsee community of the Poona Zillah, namely:

Section III. provides that,—

"That if a female dies intestate, her property shall be divided in the following proportions:

"To the husband of the deceased one-half share."

"To the sons and daughters of the deceased one-half share each."
APPENDIX TO FIRST REPORT OF COMMISSIONERS APPOINTED

The foregoing section is all right, but the right of arbitrating in matters of the above-mentioned description properly belongs to the Parsee community of the place where they shall have arisen, as for instance, if the matter shall have arisen in Poona, the elders of the Poona community have the right of arbitrating on it, and the community of Bombay should not have any authority or voice whatever in matters affecting us, the Poona community.

Section XXI. provides that,—

"This Act is to be construed only as regards Parsees resident within and subject to the jurisdictions of Her Majesty's Supreme Courts of Judicature in India."

The above section is all right, but should the law administered in Her Majesty's Supreme Court of Judicature be ever made applicable to the Poona residing in our, that is to say, the Poona Zillah, all those sections from the beginning to the end of the draft Act prepared by the Parsee community of Bombay, to which we have objected as above, are to be considered as Protest meeting with the revival of us the undersigned Parsee community of the city and cantonment of Poona.

The remaining sections which have not been objected to, are all right.

YATATEK WASOODREW,
Oriental Translator to Government.

OBJECTIONS of certain of theParsee community of Ahmedabad to certain clauses of a draft code to be drawn up by the Parsee community of Bombay.

Agreedly to the Memorandum No. 569 of 1860, dated 21st June 1860, of the 1st Assistant Magistrate in charge, to Munjchee Salarjum, the head of the Parsee community in Ahmedabad, accompanied with a letter No. 2077, dated 13th June 1860, of H. L. Anderson, Esq, Secretary to Government of Bombay, and a letter No. 746, dated 22nd July 1860, of Mr. Ulick Brown, Under Secretary to the Government of India, a meeting of the Parsees in Ahmedabad was called on the 15th July 1860, in the Fire Temple.

On the opinion of the members of this assembly being solicited in concurrence with the High Court relating to matters of inheritance, succession, &c., submitted by the Parsees of Bombay, a great number negatived the following clauses, their reasons being set forth in the following manner:

Clause 1. That it is not proper that any man or woman, putting aside his or her true heir without cause, should be allowed to make a will in favour of a stranger.

Clause 2. We do not object to the form pointed out for drawing up wills, but it must not be understood that in this we consent to give the power of making a will in the manner laid down in clause 1.

Clause 3. At present after the death of her husband a woman receives maintenance. This is sufficient. There is no advantage to be gained by making her a sharer by inheritance in the property of her husband, and there is no necessity why she should receive such share. We have given it as our opinion on the 1st clause that the woman should be one of the wife or widow to will away property to any other than the true heir, and therefore there would be no advantage in giving her a share by inheritance, because in the end her share would go to her heirs. Therefore the ancient custom of giving maintenance to a widow is to be preferred. The widow is the only person why daughters should not be allowed to inherit is that, if according to this section they were allowed to inherit, endless quarrels would ensue. But if the father and mother in their lifetime (as at present the case) choose to give their daughters anything, that of course is proper enough.

Clause 4. The jewels which any woman may possess are, generally speaking, the property of her husband, and she is supported by him, or her sons. In case of the demise of the former she should be supported by the latter. Again, as we have settled that daughters are not to inherit a share of the father's
estate, in like manner they should be shut out from inheriting shares of the mother's property. The property of a deceased wife should not go to any one but her husband, because on the death of the husband it must eventually reach the sons.

Clause 8. This clause has reference to clauses 3 and 4, and we have negative them. Therefore, the property should only descend to the sons.

We have settled above that daughters cannot inherit, and, therefore, if a daughter die during the lifetime of her parents, how can her husband claim a share which was not due to her?

As we have stated as our opinion that widows should not inherit, if a son who is before his parents, his widow cannot of course claim a share in her father-in-law's property, but is only entitled to her own maintenance.

Clause 9. In the case of a woman's dead husband who leave without male children, the duty of supporting her falls upon the husband's parents and brother, and this being the case, her property should go to them also.

If a man die without male issue his estate should go to his parents, or in default of his brothers, or if there be none, his nearest relative should take it.

We agree to this clause only on the understanding that, if the person inheriting property be incapable of keeping possession of that estate, we have no objection to proceeding as laid down in this section till such time as the said person becomes capable of so doing.

Clause 12. We agree to this clause, with the stipulation that we object to the following part of it,

Statement of the names of the Parsees assembled at their Fire Temple on the 15th July 1860, for the purpose of giving their opinions on the Draft Code submitted by the Parsees of Bombay to the Legislative Council.

The Meeting lasted from 4½ past 10 A.M. till 6 P.M.

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T. M. Mason, 3rd Assistant Magistrate.
(Ture translation.)
A. Roxas, Collector.
Ahmedabad, August 1860.

EXPLANATION.—A. Affirmative, or in favour of the code.
N. Negative, or against the code.

The result of the above statement shows a majority of 28 against 14 in favour of the code.

Muncherjee Sorabjee.
A FREE TRANSLATION into English of a Gooruzstar Statement containing the Objections taken by the Parsee Community at Broach to the Draft Code prepared by the Parsees of Bombay.

TO THE HONORABLE THE LEGISLATIVE COUNCIL OF INDIA.

The humble petition of the Parsees of Broach—

HUMBLY SHOWN,

That the Acting Magistrate of Broach forwarded to your petitioners through Azum Kavuniie Eduljee Moonsif, on the 21st June last, the communications noted in the margin, and called upon your petitioners to express their feelings and opinions on the draft code prepared by the Parsees of Bombay. Agreeably to this request your petitioners respectfully take the liberty to forward the accompanying statement containing the several objections your petitioners have to the code in question. In the opinion of your petitioners the provisions of section 100 of the said code are most objectionable. In accordance with the immemorial and time-honoured customs among your petitioners, the property of a Parsee dying intestate devolves on his sons, his daughters and widow being provided with suitable maintenance. It is in about eight centuries since your petitioners' ancestors first settled in Broach, and during the whole of this period never have the widows and daughters of deceased intestate Parsees been allowed to share the deceased's property with their sons and brothers.

That while the code was under preparation, the managing committee of the Parsee inhabitants of Bombay sent to your petitioners a set of questions on inheritance, divorce, &c., to which your petitioners returned answers in conformity with the immemorial customs and usages that prevailed in their community; but your petitioners are grieved to find that their answers have not been taken into consideration, and that the said committee, as the provisions of the code are in many respects quite opposed to the customs and usages that obtain among your petitioners. It is only about a hundred years since Parsees have first settled in Bombay. The forefathers of the Parsees now residing in Bombay, if not they themselves, were all inhabitants of the several towns in Gooruzstar, such as Surat, Broach, Nowasaree, &c., and consequently the customs and usages which prevail among the Parsees in Gooruzstar, and in most cases are still, observed in Bombay. Latterly, when the English law was made applicable to the Parsees in Bombay, in cases of inheritance, divorce, &c., by the Judges of the Supreme Court, they the Bombay Parsees found the same very oppressive, and were in consequence compelled to frame the code; but your petitioners do not at all suffer from any such inconvenience, disadvantages, or evils, as similar cases among the Parsees community at Broach are decided in the Civil Courts in accordance with its immemorial customs and long established usages. The Parsees of Bombay will, in case the draft code is passed into law, be benefited in some respects, but should the code in question be made applicable by your Honourable Council to your petitioners, they, your petitioners, will in lieu of deriving any benefit, suffer much from it.

Your petitioners therefore most humbly and respectfully pray that they, your petitioners, be exempted from the code in question.

And your petitioners, as in duty bound, shall over pray.

SIGNED BY ABOUT 250 PARSEES.
X. The objections taken to section IX. are also applicable to this section.

XI. Not objectionable.

XII. The property acquired by a woman from her husband, and other "Sasarees" relatives, should not be considered as her own, and therefore cannot be disposed of by her in any way she chooses.

XIII. A woman should not, in our opinion, be allowed the liberty of contracting debts, even with her husband's consent. She must, according to our holy religion, be in submission to her husband. If a woman lives separate from her husband without his consent, she has no right to demand alimony from him; but if the husband does not call her to his house (without any valid cause) he should be compelled to supply her with maintenance.

XIV. Not objectionable.

XV. In case the mother becomes a convert to any other religion, or becomes insane, the custody of the child should belong to the father, even when the child is under six years of age.

XVI. and XVII. Not objectionable.

XVIII. There should be different Punchayets at the several stations where Parses reside independent of that at Bombay.

XIX. and XX. Not objectionable.

XXI. In case the jurisdiction of the Supreme Court at Bombay be extended to the Mofussil, the code, if passed into law, should not be made applicable to the Parses residing therein.

TO H. B. LINDSEY, Esquire, Collector and Magistrate of Surat—

The Petition of Furdoonjee Jamsetjee and others of Surat—

HUMBLY SHOWETH,

That your petitioners, in common with the rest of their co-religionists are deeply interested in the matter of a code of laws of inheritance, &c., forwarded by the Parses of Bombay to the Honorable the Legislative Council of India with a petition for its enactment.

2. That your petitioners, having carefully read and considered the said code, are of opinion that it will be of considerable benefit to the community to which your petitioners belong.

3. That your petitioners have perused with deep regret copy of a petition from Modee Rustomjee Khurshedjee and 21 other Parses of this town, dated "the 29th of the Ist of the month of the Tisri" of the year 1818, forward by the Parses of Bombay to the Honorable the Legislative Council, in which it is stated that the code proposed by the Parses of Bombay is "for the most part at variance both with the principles of our sacred religious authorities and with the customs prevailing among the Parses at large."

This objection, your petitioners are informed, has been urged against that portion of the code more than any other in which the widows and daughters of a Parsi dying intestate are declared entitled to a share in the property left by the deceased; but your petitioners apprehend that in reply to inquiries recently instituted by the Bombay Government at the instance of the supreme authorities, the same objection will be taken by the said Modee Rustomjee Khurshedjee and other Parses of Surat who coincide in his views.

4. That your petitioners, although forming a small minority in this city, are nevertheless desirous of recording their protest against the unreasonable opposition made by their fellow citizens in the matter of the above-mentioned draft code.

5. That your petitioners deny that the draft code in question is at variance with the "principles of our sacred religion." With a view to prove that the female members of the family of a deceased Parsi are not disinherited to inherit his property, your petitioners take the liberty of annexing a passage, in the original Persian, from a book called the Ravart of Dustoor Darab Hormazdari, of which the following is a translation:—

"On the departure of the father or mother from this world to the invisible (that is to say, the other) world leaving sons and daughters, each of the sons, born in wedlock, shall be entitled to one share, and each of the daughters to half a share, and if any son be blind or lame, or be suffering from such other disability in consequence of which he might be unable to provide for himself, he shall have two shares; and if the mother (of the children) be alive she shall be entitled to one share."

6. That there are several other books, relating to the Parsee religion, in which rules of inheritance, similar to the above, are prescribed; but your petitioners have selected the above-mentioned Ravart of Dustoor Darab Hormazdari, a work which has often been cited as authority by the said Modee Rustomjee Khurshedjee in reply to certain questions propounded to him and other members of the Honorable the Parsi community of Surat by the Courts of this Zillah with regard to the ancient customs and usages of the Parses.

7. That in further corroboration of the fact that the ancient customs and usages of the Parses did not preclude females from inheriting property, your petitioners beg also to append transcript of a letter in Gooratce, addressed to the Court of Adawlut by Modee Khurshedjee Dossabhooy, the father of the said Modee Rustomjee Khurshedjee, to the Parses of Surat, in the 21st September 1818, in reply to a question put to them on the subject of the rights of females to inheritance. In this letter Modee Khurshedjee Dossabhooy and other Parses have made the following express admission:

"In reply to the questions whether the daughters are not entitled to inherit any share of the property left by their father, the answer is that originally the daughters were entitled to a small share, until the arrival of our nation in Hindostan the daughters' shares have been disallowed, and now too the daughters are not entitled to any share."

8. That your petitioners trust that the above-quoted passages will be deemed conclusive as far as they relate to the ancient laws and usages of the Parses, which did not exclude the rights of females to inherit property left by Parses dying intestate.

9. That your petitioners cannot admit the justice and propriety of the above-mentioned views entertained by a majority of the Parses of Surat, who, having departed from their ancient usages regarding inheritance, wish perniciously to adhere to modern usages, by which widows and daughters are precluded from inheriting any portion of the property left by their husbands or fathers, and are allowed bare maintenance only. They cannot approve of the customs by which, on the death of a Parsi not leaving a son, the whole of his property is carried off by his brother or brother's son, to the exclusion of his widow and daughters.

10. That entertaining these sentiments, your petitioners view with pleasure the draft code prepared and submitted to the Legislative Council of India, the foregoing expression of the sentiments entertained by your petitioners regarding the proposed legislation.

And your petitioners, as in duty bound, shall ever pray.

FURDOONJEE JAMSETJEE,

Surat, 11th August 1860.

and others.
APPENDIX TO FIRST REPORT OF COMMISSIONERS APPOINTED

Persian Department, No. 8, dated the 5th January 1861.

SUBSTANCE of a petition from Patell Ruttunjee Bheemjeebhaee and other Parsee inhabitants of Pergunnah and Talooka Sunjan, Zillah Tanna, to his Excellency the Governor in Council, dated 31st August, received on the 29th September, and ordered to be translated on the 30th November 1860.

The Bombay Zoroastrians had a pamphlet about laws to be procured for the Zoroastrian community lithographed. It was received in Pergunnah from Government, accompanied with an order from the Collector of Tannah; Government had a message sent to us calling upon us to represent to it direct any objection we might have against the pamphlet. We therefore beg to state that there is a very great difference between our manners and customs and those of the Parsees of Bombay. We do not wish to write at length on this subject. With our petition, dated 29th May 1862, we submitted to Government (for transmission to the Legislative Council) a pamphlet about the customs as observed by our ancestors agreeably to our religion. We adhere to the same (pamphlet). We beg that the aforesaid petition and pamphlet be passed upon. We obtest oursefles from giving trouble to Government frequently. A copy of the pamphlet alluded to is herewith forwarded. It is a correct draft of our laws. We are willing to conduct ourselves in accordance with it. We beg that this draft may be sent to the Legislative Council and passed into law. We do not agree to the pamphlet sent to us by the Bombay (Parsee) gentlemen through Government.

VENATEK WASSOODEW, Oriental Translator to Government.

Persian Department, No. 9, dated 5th January 1861.

SUBSTANCE of a petition from Eduljee Cowasjee Guzdar and other Zoroastrian Parsee inhabitants of Tannah, to his Excellency the Governor in Council, dated 20th September, received on the 1st October, and ordered to be translated on the 30th November 1860.

The committee formed in Bombay for obtaining laws for the Zoroastrian community prepared a draft code, relating to inheritance, succession, and other matters connected therewith, and forwarded it to CALCUTTA for the purpose of getting it passed into law by the Honorable the Legislative Council of India. The Magistrate of Tannah sent us, through the Manadalee of the Salsette Talooka pamphlets of the aforesaid code, at the same time intimating to us that Government wished to know the views of the Zoroastrians of Tannah on the subject, and therefore calling upon us to state whether, in our opinion, any alterations were required to be made in the prepared draft code. In reply, we beg to state that as the code in question is inconsistent with the doctrines of our religion and with the ancient customs which have prevailed among us for the last twelve hundred years, we cannot give our consent to it.

In section XXI. of the draft code the Bombay (Parsee) gentlemen pray that that enactment may be made applicable only to those Parsees who are resident within the jurisdiction of Her Majesty's Supreme Courts in India. We most respectfully request that we may not be subjected to the code even if Government passes it for those Zoroastrians who reside within the jurisdiction of the above-named Courts, and if the Zillah tribunals are hereafter placed under them.

VENATEK WASSOODEW, Oriental Translator to Government.

N.B.—A similar petition, dated 27th September 1860, has been received from Dustoor Rustumjee Byramjee and other Zoroastrian Parsees of Kullian, Zillah Tanna.

Ditto, ditto, of the 2nd October 1860, has been received from Hormuzez Bumunjee and other Zoroastrian Parsees of Bhavnagee, Zillah Tanna.

Ditto, ditto, of the 30th September 1860.

Ditto, ditto, from Hirjee Bheemjee and other Zoroastrian Parsees of Tarapoer, Zillah Tanna.

VENATEK WASSOODEW, Oriental Translator to Government.

Persian Department, No. 7, dated 5th January 1861.

TRANSLATION of a Guzerattie petition submitted by Molee Temoorjee Rustumjee and other Members of the Parsee community at Baroda, to the Legislative Council of India, dated 20th June 1860, and ordered to be translated on the 31st August 1860.

Some of the Parsees of Bombay prepared a draft code of laws of inheritance, succession, &c., and petitioned your Honorable Council into law; whereupon your Honorable Council determined to ascertain whether the Parsees in the Zillahs (including ourselves) agreed to the aforesaid draft, and what their opinion was on the subject. Accordingly, Major WALKER, the Resident at Baroda, wrote to us on the 20th June 1860, and made over to us the pamphlet of the aforesaid draft code, requiring us to submit within two months our written answer or opinion on the subject.

1. In reply, we beg to state that we have examined the draft code in question, but we do not agree to it at all, because it is opposed to the customs which have prevailed among us from the time of our ancestors. Moreover, it is not founded on our sacred book called the Zendavesta. Again, the views set forth therein are not compatible with the present condition and the sentiments of our people. The passing of the draft into law will therefore be highly prejudicial to our interests. Propriety requires that not only ourselves, but also people of our caste residing in the island of Bombay, should not be subjected to this injurious and oppressive draft code. We beg to subjoin a brief statement of our reasons.

2. About two years ago some of the Parsees of Bombay, under an impression that they were the head men of the Parsee inhabitants of all the Zillahs in India, appointed a committee, and gave it the name of a committee for procuring a code of laws for the "Parsee community." The committee prepared drafts of arbitrary laws, and had pamphlets thereof, printed. In the first place they had no right whatever to obtain a code of laws for the whole Parsee community. Secondly, the drafts prepared by them were so unreasonable that their adoption would not have failed to cause serious loss to our nation. Consequently, the said pamphlets were disapproved by the Parsees of Broach, Surat, Nowsear, and other places in the Mofussil. The Parsee community at Surat had pamphlets containing detailed refutations of the drafts in question printed and forwarded to all the Zoroastrians. The Bombay committee thereupon abstained from their intention of submitting the whole Parsee community to the laws framed by them, but without consulting the people of their own caste, and coming to some agreement with them, they obtained the opinion of English lawyers, and resolved on the 12th January 1859 to apply to your Honorable Council for the draft code. For the Parsees residing in the island of Bombay, forwarding a copy of this resolution to the Parsee community of Surat. On taking these circumstances into consideration, your Honorable Council will be satisfied that, from the first, no Zillah community has agreed to this code of laws.

3. We are sorry to state, that although the Bombay committee of their own accord passed the above resolution, yet in paragraph 22 of their petition dated 1st March 1860, they have recommended that we,
To Prepare a Body of Substantive Law for India.

4. The Bombay Parsees propose that widows and daughters should be allowed to inherit property, but this practice has not obtained among them ancient times. Our sacred book called the Zendavesta also does not contain such a provision. The code proposed by the Parsees of Bombay is founded on mere caprice. If we consent to that law, and acting in opposition to a rule which is agreed upon in our feelings and compatible with our present condition, make the daughters and the widows of the deceased his heirs while his sons are living, the measure will inflict much injury upon our people, and produce family dissensions among them. The permission to allow widows and daughters to inherit property, instead of benefiting them and the sons of the deceased parties, will entail a loss upon them. It has been customary among us from ancient times, for the sons in most places to be in embarrassed circumstances, to support the latter's widow, that is, his own mother, in the same manner as her husband would have done, and on her death to defray her funeral charges, &c. He also secures himself by his will for his wife's marriage, gets them married, and incurs expense on their account on other occasions. But if shares are given them from the deceased's property, the son will be freed from his obligations, and the widow and daughters ruined. If in consequence the son's wife not agreeing with each other, or of some other reason, the former prefers against her son a claim for subsistence money, to enable her either to live separately from her daughter-in-law, or manage her affairs separately, though living with her, the Civil Courts pass decrees awarding her claim. The widow accordingly gets food, clothing, &c. This statement is borne out by those Courts' records. After obtaining her share, what right will a poor widow have to sue her son for his share of his deceased father's property, and on what ground will the trying authority award her claim? Also, what an objectionable and arbitrary settlement for widows and daughters have the Bombay Parsees embodied in their draft code! The Parsees residing in most places should be in a fortunate state to inherit the property of their deceased sons. But the Bombay Parsees have made no mention whatever in their draft code of such a foster son. On the contrary, they have provided for granting to the other relations in succession of the deceased the inheritance to which he is entitled. From this it is quite evident that the injunction of our religion, for giving a son to succeed a deceased party, will be violated.

5. Section VIII. of the draft code specifies in tables the order in which the succession of a person who has not issue should succeed to the deceased's property. In the first place, the tables are not right, the names of those persons who have a prior claim to succession being written after those of others. The true heir has the best claim to his deceased father's property, and the rights belonging to him will be obtained by others. What a hardship is this! Secondly, From ancient times it has been usual among the Parsees, in accordance with the ordinances of their religion, for a son to be given to succeed a man who has died without leaving one. But the Bombay Parsees have made no mention whatever in their draft code of such a foster son. On the contrary, they have provided for granting to the other relations in succession of the deceased the inheritance to which he is entitled. From this it is quite evident that the injunction of our religion, for giving a son to succeed a deceased party, will be violated.

6. We confidently state that the draft code has been framed by the Bombay Parsees according to their own fancy. We do not think that all the members of the Bombay Parsee community agree to it. The majority of them are dissatisfied with the proposed injurious enactment. This will become manifest to an Honorable Council on the institution of an inquiry. Should few persons have agreed to it, they may have done so under an impression that they are at liberty to make a will (and dispose of their property?). But it is not the custom here for all people to make wills.

7. The Bombay committee have in their draft code given equal liberty to men and women to make wills. But this is not proper. For it is not competent to a woman to bequeath by will, according to her own fancy, the whole of the property possessed by her. She cannot transfer by will to any one, according to her fancy, the jewels forming her dowry and other property received by her from her husband during his lifetime. The owner of this property is her husband. After her death, he cannot get another wife in the absence of jewels to be presented in the shape of a dowry. If, therefore, a woman is enabled to bequeath by will the jewels, &c. received from her husband, the latter after her death will remain without a second wife, and his family will in consequence become extinct.

8. The Bombay committee have provided in their draft code for only two things. First, The proposed code is not made applicable at all to the party making a will. It is (in my) at liberty to bequeath whatever he likes to another, and a daughter is no less bequeathable to them even a rea. Secondly, With a view to destroy the name and character of a Parsee who has died intestate, the proposed code has been made applicable to him, whereby his claims are granted to his widow and daughters though his sons are in existence. This code is opposed to the customs which have prevailed among us from ancient times, and to our religion, and is also oppressive.

For instance, in cases of the death of a mother and sisters, defrays all kinds of expenses, such as those on account of deaths, marriages, and other occurrences, and bears the burden of the deceased's liabilities, while his widow and daughters and other relations in succession are declared entitled to inherit his property. What an injustice is this? The deceased's creditors sue his son for the money due to them, and this although his widow and daughters are living. It is evident from the records of the Civil Courts that accounts which have been paid even by Her Majesty the Queen's Privy Council. The Bombay committee has, nevertheless, proposed to allow widows and daughters to inherit property. What a pitiful circumstance is this?

9. The division of the property among his widow and daughters will leave very little fortune to the son of a wealthy Parsee. This circumstance will lead successively to the discovery of the extent of his wealth, the diminution of his credit, the stoppage of his earnings, and the extinction of his family. This practice is in direct contradiction with the distinction of his father's name. There is no doubt whatever about this. When we think of the proposed draft code, we find it calculated to do various mischiefs. What! are the jewels, &c. received by a widow from her husband, and the property received by the daughters from their father, and after his death from their brother (and this without any trouble), insufficient, that they (the widow and daughters) should be declared entitled to inheritance, thereby making strangers and sons-in-law wealthy, and reducing the sons who are the rightful heirs of the deceased to beggary? This is altogether unreasonable.

10. The Bombay committee have in their draft code declared widows and daughters to be the heirs of deceased parties. This is not proper. This declaration would have been justifiable if the widow, the daughters, and other relations of a deceased individual had not (hitherto) been allowed to inherit his property, though it had been incumbent upon them to pay accoutrements and certain fixed money, and to yield the pecuniary claims against him (in case he left behind him debts instead of property), and also to bear the charges of their own subsistence, and defray every kind of expense, as on account of marriages, &c. &c. The rule on this subject, which has existed from ancient times, is much better and more advantageous than the one now proposed. It is intended to involve the whole Parsee community in misery, and inflicts loss upon them by the substitution of the one for the other rule.
11. Should your Honorable Council think of passing the proposed code exclusively for the Parsees of Bombay, we would, with your permission, represent that if different laws are enacted for the Parsees living under one act the same Government, namely, the British, the measure will occasion much loss (via the people), and serious inconvenience to the dispensers of justice. We, the residents in the Zillahs, will also suffer a loss. We, and the Bombay Parsees, profess the same religion. The sons of the majority of the Parsees in the Zillahs live at Bombay, and the parents of those sons reside at Surat, Brouch, and other places. Several persons live in Bombay, while their wives reside in the Zillahs. Intermarriages take place between them (that is, the Parsees in Bombay and those in the interior). In this way, we, the inhabitants of the Mofussil, will be subjected to loss, even if the proposed code is passed exclusively for the Parsees of Bombay.

12. We now beg to make our last representation. Most of the sections of the draft code are opposed to our ancient customs. It does not appear to have been based on our sacred book called the Zendavesta. There are various objections existing against each of the sections. If their references are written in detail, this representation will extend to a great length. We therefore beg only to state that we do not agree to the proposed draft code.

13. In paragraph 22 of their representation, the Parsees of Bombay have made use of mean and unworthy words towards those who are of the same caste with themselves. From this it is proved that if the writers themselves had been good and respectable men, they would never have resorted to such expressions. Probably the signatures of other excellent and respectable people were obtained through a fraud. Those people had subsequently to repent much in consequence.

We, the Parsee community of Baroda, do not therefore agree to the proposed draft code.

VENAYAK WASSODEW, Oriental Translator to Government.

FROM the Managing Committee of the Parsee Community of Bombay, to the Governor and President in Council of Bombay, dated 9th March 1861.

HONOURABLE SIR,

In March last, the managing committee, appointed at a public meeting of the Parsee inhabitants of Bombay, to represent the feels of the Parsee nation, and to petition the Legislative Council of India for the enactment of such laws, had the honor to forward to that Honorable Body a draft code of laws, accompanied with a petition, setting forth at considerable length the disabilities under which the Parsees are labouring for want of a recognized code of laws adapted to their nation, and soliciting the Legislature to enact the said draft code, and thereby remove the disabilities complained of.

On the presentation of the said code with the draft code on the 31st March last, the Legislative Council directed the institution of certain inquiries through Government, with the view to elicit "an expression of the general feelings and wishes of the Parsee community with respect to the several matters embraced in the draft code."

3. On the 13th of June last, in conformity to the wishes of that Honorable Council, the Government of India, in the medium of the Collectors and Magistrates, invited the opinions of the Parsees inhabiting the different Zillahs of the Presidency, and likewise placed the resolution of the Honorable the Legislative Council in the editor's room, from which it was published in the public newspapers of Bombay. The time allowed to the Parsee community to express their views and opinions was subsequently extended by the Legislative Council for six months from the 1st of September last, "so as to afford time for the deliberate expression of the sentiments of the whole of the Parsee community in India on the subject in question."

4. The managing committee have received the following communications from the Parsee Community of Surat, dated 8th August 1865, with enclosure.

Ditto, do. 15th August 1865, with enclosure.

Ditto, do. 31st August 1865, with enclosure.

Ditto, do. 5th September 1865, with enclosure.

Ditto, do. 12th September 1865, with enclosure.

Ditto, do. 19th September 1865, with enclosure.

Ditto, do. 26th September 1865, with enclosure.

Ditto, do. 9th October 1865, with enclosure.

Ditto, do. 15th October 1865, with enclosure.

Ditto, do. 20th October 1865, with enclosure.

Ditto, do. 24th October 1865, with enclosure.

Ditto, do. 29th October 1865, with enclosure.

Alludes to Mr. Chief Secretary Anderson's communication of the 10th January 1865, by which they were desired to submit to the Government of this country their observations on the information of the Honorable the Legislative Council of India, such remarks as they might have to offer upon the documents therewith transmitted, and which contained the entire body of the results obtained by Government from the inquiries so instituted down to the last-mentioned date. The dates of the documents in question are noted in the margin.

5. In compliance with that invitation the managing committee have the honor to submit herewith an extract from a document which, after an attentive and mature consideration, occur to them upon the perusal of these documents.

6. And first they would most earnestly direct the attention of Government and of the Legislative Council to the important changes and amendments which have taken place in the apparent difficulties opposed by objectors to the adoption of this great measure—a measure which, in policy, humanity, and justice, must in some shape be adopted, and cannot brook a prolonged postponement; inasmuch as without it the Parsee people, and particularly that most important portion of it which is subject to the jurisdiction of Her Majesty's Court of Judicature at Bombay, and from its wealth, refinement, and intelligence, is at once the most in need of wholesome law and discipline, and the most sensible of that need, must, in fact, remain as now, deprived of those great benefits which other communities under British rule enjoy, in having the rights and duties of person, of family, and of race, well defined and secured by just and equal laws.

7. For what is the situation from which the Parsee community seeks relief at the hands of the Legislature?

8. With the solitary exception introduced in their favour, and they thankfully acknowledge, by Act IX. of 1837, which prevented a renewal of the English doctrine of primogeniture (a doctrine opposed to all the ideas and opinions of Parsees) being asserted by a Parsee claimant of a Parsee inheritance, the extent of that situation may be thus summarily and briefly stated.

9. For want of defined and recognized laws, our disposing power by testament is even now a question left undecided by the highest Court of appeal; the temporal rights and incidents derived from marriage, may, the very nature of the marriage contract itself, left wholly unascertained; re-marriages are without necessity; the tie of consanguinity is never released; morality infringed; successes are become uncertain, and the female sex amongst us is denied the certain protection and recognition which it enjoys amongst other nations.

10. Our opponents tacitly confess, that with the exception of Section III., which concedes to females the right of inheritance to their male kinsfolk, and a few other provisions of minor importance, the residue of our proposal is unpalatable, and, if adopted, will be productive of the good we seek to achieve.

11. The committee of management cannot suppose that it will have escaped the attention of Government how effectually the argument (hinted and suggested,
indeed, but not stated in a tangible way) that in the judgment of the objectors, religion and liberty of conscience are paramount in their objectivity lying acquisitive in, is answered by themselves. If the restoration of the female sex to their heritable rights, for which the intervention of the Legislature is sought, be repugnant to the Parsee religion and conscience, their objection is incontestable and compromised, because lying at the very root of the matter. And yet we find that the difference between ourselves and them consists but in the degree at which the heritable character of the Parsee woman is to attach. There is not that absolute and unqualified right of succession to their female relatives; may, the objectors of Surat, Broach, and Poonah do not refuse to recognize in such cases a superior capacity over male offspring and even over parients, and they will even allow, they say, a female successor to be traced through a father; and those of Broach, at least, going farther still, confess with seeming approbation, that in their view, "if a father is inclined to bequeath a portion of his property to his daughters, he can "escape making a will."

By all this, they say, the most sensitive conscience will receive no wound whatever, nor will religion be invaded; but to allow the same female heirs, or any female successor, a paternal inheritance, even although every male line shall be exhausted, is to dishonour religion itself.

12. The committee of management rejoice at being unable to discover amongst the documents before them, any of those objections, indeed any objection whatsoever, has emanated from a single member of the Parsee community residing within the island of Bombay, a community which in numbers, intelligence, and wealth constitutes a majority of the Parsee Inhabitants of our island.

13. The committee now proceed to discuss more at large the objections which the proposed code of laws has encountered in the Mofussil.

14. Their object in so doing, they wish it to be observed, is to afford to the Legislature the means of determining (first) that the objections raised are not of sufficient weight to induce the Council to refrain from bestowing upon the entire community the so much desired means of present relief and future elevation; and (secondly) that, should it be unhappily found, which we cannot think, that a general measure is, for any reason, at present inexpedient, at least to the great Parsee population of the island (the Memons) particular care and desire of as many years may be conceded, even although many of their brethren of some parts of the Mofussil of this presidency should be still left, for a season, to their own inclinations, and the Hindoo customs of the Parsees on the contrary.

15. But we should be wanting to all our obligations, were we not also to point out in the same connexion a singular inconsistency, which goes to the whole of this last remaining objection. Those who raise it desire that they may be left alone, as they now conceive themselves to be, and not be subjected to laws whereby married females may make wills of their separate estates, and widows, daughters, and sisters may inherit. For this, they say, they are content to continue as they are, without alteration, all the proposed blessings of a defined code and body of sure and ascertained laws, which would render unnecessary the periodical litigation amongst Parsees of the present day, to settle disputes, ascertain primary rights of man, such as continually occur in the Supreme Court and the Sudder Addawat, and, in cases like those celebrated ones which are referred to in the margin of paragraph 9 of this letter, not unfrequently that their way into the Privy Council and receive a cautious and sometimes doubting adjudication before that eminent tribunal, which, owing to its great experience and learning, well appreciates the injurious consequences of deciding too finally upon matters so important, as arise out of the usage of the objectors; nor feels itself at the best to be but imperfectly informed. But are these objectors sure that, when they have made the sacrifice, they will have obtained what they seek? On the contrary, do they not know that the tendency of judicial decisions in India is to apply to them and their heritable rights, if possible, the provisions of English law? It is true that they are denied, by reason of its supposed unsuitability, many of its benefits. But are they not as from the earliest time subjected, by the same interpreters of that law, to many of its burthens? And even now, and without the presence of a living and speaking code to regulate the application in due, conformity to Parsee wants, it is not notoriety that in absolute justice we have no such law of our own, the English doctrines applicable to married women and their separate property; of next of kin and statutory distributions; of testamentary appointments and dispositions by married women; and the like, (though more objectionable, on account of the uncertainty of their application, than the provisions now recommended)—are continually being applied to Parsees? Surely it is a situation not worth contending for, and this at such a cost.

16. For, it cannot be too often repeated that our brethren have no alternative, in the present order of things, but between the local customs of the Hindoo law on the one part, and the English statutes on the other. With the single exception of the Primogeniture Abolition Act, already noticed, neither the British Parliament nor the Indian Council has hitherto done anything to relieve our body of the many perplexing discriminations and incongruities which stand. The laws of husband and wife, as administered on the Plea and Equity sides of that Supreme Court, which has been solemnly determined to possess no means of enforcing, protecting, or even of giving recognition to our marriage contracts and conjugal rights, apart from property, are yet applied to us. Our Punchayets have no power. Hindoo usages will not avail us here, even if honor and conscience permitted us to invoke them; and the English law is powerless in matters of that kind, if it would even accommodate itself to our burthens or to accompany them with its benefits.

17. Whether this state of things be, in part at least, attributable to the too narrow language of the legislative Acts and Rules Charters, with which classified all non-European people within India as Mahomedans and Gentooos, or to the too narrow construction which the Courts at an early period (unlike those of the present day when dealing with the Khojas and the Parsees) place upon the terms of the oath necessary to inquire. Both causes have, no doubt, contributed to it; but even if it has been determined that the laws and customs of the Parsees ought to be observed towards and by Parsees, still there would have been no end to the difficulties from the situation then, as now, subsisting. We mean the desuetude into which the whole body of our ancient Persian laws and customs in general, and more specially those of succession, held for a long period fallen, and the general adoption of the habits of Hindoos, and the prejudices of Guzerat in their place; these were misconceptions which nothing but legislation such as we now invoke could remove.

18. This letter leads us at once to the prevailing error, which lies at the base of every one of the objections with which the managing committee are called upon to deal. The mistake of their authors lies in their assuming, without any proof or argument, that all Parsee women, in preference to the provisions now proposed for adoption, are the old usages of Persia, the country to which our ancestors originally belonged, and from which about twelve hundred years ago they came, as emigrants, to settle in western India. The truth is, that they are no such thing; they are Hindoo usages adopted by the Parsees long after their landing in Guzerat. This will the more plainly appear when we come, as we now do, to deal with the very first foundations of the objections which the committee feels itself at the best to be but imperfectly informed. But are...
convenience in presenting our comments thereon, and
their clearer appreciation by the Government of
Bombay and the Indian Legislature.
19. All but one, and we shall presently refer to
that one, of the documents before us concur in the
great error of supposing that the most ancient and unwise
usage, which degrades our females from their national
inheritances, is one of Persian mould. Now, it so
happens (and there are to be found on the face of the
petitions against this measure clear traces of the
tradition which we are trying to extirpate) that not only is
this not so, but we are able to appeal to our history
in India to show at what time, and wherefore, this
merely Indian usage came to be adopted amongst us.

20. The result of the inquiries instituted on this
subject by the managing committee enables them con-
fidently to state that, not for the purpose of gratifying
their male heirs at the expense of their female heirs, but
solely to protect the latter against certain hardships and evils under the native rulers, from which
their females were then suffering, our ancestors, the
Parses of Guzerat, found themselves in a manner
compelled, a few centuries ago, to make that great
innovation on their usages in regard to inheritance which is now put forward as though it were itself
an ancient Persian usage, and not a Guzeratee novelty. Hindu objects of those Parses, it appears,
had largely availed themselves of the Hindoo law of
the land, by which all heirs, male and female,
might be compelled to satisfy the debts due by their
parents and forefathers. The defenceless position of Parses of Guzerat was exposed to this singular
manner to their rapacity; they demanded of these the full
payment of all debts said to be due from their
husbands, fathers, or brothers, and this even in the
absence of disputant. In default of payment, they were
subjected to great indignity and intolerable oppression,
and threatened with the disgrace of imprisonment in
gao in execution of judgments, which it was not
difficult for the creditors to obtain against these
strangers, whose very tribunals had no existence in country
they possessed. These proceedings naturally created a
great and wide-spread alarm amongst the Parses of
those days, zealous for the happiness and honour of
their women, and sensible of the precariousness of
their position in Guzerat, making open resistance
impossible. To avert the danger, they determined to
put an end to all opportunity for it; they adopted
the usage in question, and thereby excluded their females
from the inheritance, the managing committee
see nothing in that borrowed usage of
Guzerat, and its obsolete cause, which should inclined the
Legislature to disappoint their desire.

21. Untenable as we have shown the objection to
be, its authors are not agreed amongst themselves as
to the extent to which they mean to press it, or their
modes of stating it. The papers received by the
Local Government from the various bodies of Parses
residing in the Mofussil, disclose a very wide difference
of opinion regarding the right of inheritance to the
property by a female of a Parsi female died intestate. A
large majority of the Parses of Surat not only admit the
claims of her daughters to succeed, but are of
opinion that the whole of the intestate's estate
descends to her female offspring to the exclusion of
her husband and her sons, the husband being, in
their opinion, entitled only to the jewel ornaments
presented to her by her parents on her marriage.
The Parses of Broach are of opinion that out of the
property left by a married female, that portion which
was acquired through her husband or his relatives should be separated and should descend to her
husband, and the rest of her estate should be given to
her sons and daughters in equal proportions. The
Parses of Ahmedabad do not admit the right of the
intestate's male and female children, if the husband
shall have survived her, but in case of his pre-decease,
her sons and daughters shall, they say, inherit her
property in equal shares. A majority of the Parses of
Ahmedabad declare that "the property of a de-
cceased wife should not go to any one but her husband," and
that, if he be dead, her daughters should be shut out
from inheriting his property. Thus, with the
exception of a small number of the Parses of Ahmed-
dabad, a large majority of the Parses of the Mofussil
are willing to accord to the daughters a right of inher-
heritance to property left by married Parsi women
equal in extent to the shares awarded to the sons, and,
in the case of Surat, such property to descend
to the daughters, to the exclusion of the sons. After
a careful examination of these conflicting views and
opinions of the Mofussil Parses, your Honorable Board and
the Legislative Council will, the managing
committee trust, hold that the scale of distribution
proposed in section IV. of the draft code is more
uniform, just, and reasonable.

22. With regard to the right of inheritance to the
property left by male Parses dying intestate, the
inhabitants of the Mofussil are, for the most part,
unanimous in the exception of the claims of
the daughters of the Parses of Surat, Ahmedabad, and Poona, who
justly recognize and cordially approve the right
of inheritance proposed to be accorded to widows and
daughters, they object to that part of the draft code which
sanctions the claims of Parsi females. Their objections have already been anticipated in the
managing committee's petition to the Legislative
Council, dated 1st March last, which contained the
following remarks:

"It hath been the earnest hope of your petitioners
..."
their necessary expenses." They are married at the expense of their father or brothers. Both before and after marriage, they have no claim on their father's estate, except for maintenance during maidenhood and widowhood.

24. This ground will, the managing committee submit, be held to be unfounded and untenable. The daughters are not so amply provided for by the intestate as an amount spent on the education, maintenance, marriage, dowry, &c., of the daughter is, in most cases, much less than that laid out on the son. The wants of Parsee females are not so few and limited as represented by the Mofussil. Obligations compared with those of the males are, it is true, few and limited; but they have, nevertheless, indefeasible natural rights and claims to participate with their brothers in the enjoyment of the estate left by their common parent. These rights and claims they do not and cannot forfeit by entering the marriage state. It is not just towards the weaker sex, in either the single or widowed state, in the judgment of the committee, after a father's or husband's death, to leave them wholly dependent upon the bounty of their male relatives.

25. The second ground on which the Mofussil Parsee justifies the exclusion of females from inheriting the property is this: Unlike his sons, the widow and daughters are not under any obligation to keep up and maintain at a heavy cost the reputation and position of his house or family, nor to provide for and support his household and dependents. They do not defray the expenses of performing funeral and other religious ceremonies.

26. This is the only ground that possesses any weight. The above argument does not apply to the widow with so much force as it does to the daughters; because the widow is not the intestate. She is not wholly exempt from the obligations just referred to. A reference to the 19th paragraph of the managing committee's petition to the Legislative Council will show that in framing section III of the draft code, they had not overlooked, but had given due weight and consideration to, the reasons just referred to, and that this was the main ground that had induced the committee to reduce the share of the widow to one-half of the daughters and one-fourth of the share proposed to be allotted to the son of a male Parsee dying intestate. The committee distinctly assigned the following reasons for their limitation of the shares allotted to females in the distribution of the intestate's property:

"On the death of a Parsee his sons consider themselves under a moral obligation to support the relatives and dependants of that family, to defray the expenses of marriages, of performing funeral and religious ceremonies, and to keep up and maintain the rank, position, and respectability of their father's family—duties and liabilities from which the female members of the family are wholly exempt."

27. The exemption of the daughters from the duties and obligations just alluded to would be and is a good ground for giving the sons or heads of Parsee families a larger share of inheritance; but it would not and cannot justify the total exclusion of the daughters, as advocated by the Mofussil. A negation of the natural rights of female offspring would, the committee humbly submit, be a gross and flagrant violation of the fundamental principles of justice, and they believe that it will be so regarded by the Legislative Council.

28. The third and last ground on which a majority of the Mofussil Parsees seek to disinherit females is, that it is contrary to the injunctions of the Parsee religion the property of the intestate is to pass to the widows and daughters to inherit any property. This, the managing committee take leave to deny in toto. They are able to make good their denial, not only by the pregnant silence of the "Zend Avasta," so vaguely mentioned (but without reference) by some of the authors of the objection now in hand, but also by the following facts and proofs, which will, they trust, be held to be sufficient and conclusive. Neither the Zend Avasta nor any Sacred Book or authority recognized by Parsees, contains any statement in support of the doctrine that females are not entitled to inherit.

29. Before preparing the draft code, the managing committee transmitted several queries to the Dustoors of the Parsee High Priests of Poona and other places, requesting them to favor the committee with detailed replies, describing the rights of inheritance of Parsee males and females, and the law of husband and wife, marriage, &c.

To these queries the managing committee received replies from the undermentioned Dustoors or High Priests:

First. Dustoors Peshotanjee Byromjee Sanjana, High Priest of the "Atesh Behram," or Fire Temple, erected in Bombay by the late Hormuzjee Bomanjee Wadia, Esquire.


Third. Dustoors Munchejee Eduljee, a member of the family of Jamasp Asa, late Dustoors of Nowsare.

Fourth. Dustoors Cowanjee Dorabjee, a member of the family of Meherjee Rama, late Dustoors or High Priests of Nowsarree.

Fifth. Dustoors Naserwanjee Jamasjee, High Priest of Parsees residing in the Deccan.

Sixth. Dustoors Hosanjee Jamasjee, brother of the last-mentioned Dustoors.

30. All the replies of the religious of the religion of Zoroaster distinctly and unanimously declare, in communications addressed to the managing committee, that according to religious injunctions and ancient usages and customs, the widows and daughters as well as the sons are entitled to inherit portions of the property left by Parsees dying intestate. In support of this flat they cite extracts from the under-mentioned works in the Pehli and Persian languages:

31. First. Dadastani Deenoo, a Pehli work reputed to be composed by Dustoors Munchejee, more than twelve hundred years ago, in the time of the Sassanian Kings of Persia.

Pehli Rayat.

Third. Dadastani Deenoo or Ravan of Dustoors Durab Hormiz Diar, a Persian work often quoted by the Modees and other members of the Parsee community of Surat as an authority on the subject of Parsee laws and usages, and referred to in the petition of Fardoonjee Jamasjee and several other Parsee inhabitants of Surat, addressed to H. B. Lindsay, Esquire, Collector and Magistrate of Surat, dated 11th August 1860.

32. In one of the papers received by Government, containing the views and sentiments of the Parsees of Poona on the subject of the proposed code, the managing committee find the following important declaration in regard to section III of the code, which entitles the widow and daughters as well as the son to inheritance:

"The provision contained in the above section is proper. As to the share awarded to the daughter, it is proper according to religious injunctions, but according to Parsee customs and usages it appears highly objectionable."

If the share proposed to be awarded to the daughters be right according to religious injunctions, it cannot be held to be objectionable according to secular customs and usages.

33. The managing committee can vouch for the under-mentioned fact represented to this Government in the petition of Fardoonjee Jamasjee and several other Parsee inhabitants of Poona, already referred to. After expressing their approval of the proposed draft code, they say:

"That in further corroboration of the fact that the ancient customs and usages of the Parsees did not preclude females from inheriting property, your petitioners beg also to append transcript of a letter in
Addressed to the Court of Adawlat by Modoe Khoorshejdee Dassab hoy, the father of the said Modoe Rastomjee, and other Parsees inhabitants of Surat, on the 21st September 1918, in reply to a question put to them on the subject of the rights and liberties of the females to inheritance. This letter Modoe Khoorshejdee Dassab hoy and other Parsees have made the following important admission:—

"To set the mind at rest, and obviate the doubt whether the daughters are or are not entitled to inherit any share of the property left by their father, the answer is, that originally the daughters were entitled to a small share, but since the arrival of our nation in Hindostan the daughters' shares have been divided, and now too the daughters are not entitled to any share."

33. The managing committee have obtained from the records of Parsees of Surat a true copy of the above-quoted letter of the late Modoe Khoorshejdee Dassab hoy and other members of the Parsee community of that place, which contains the important admission above quoted, that daughters of Parsees were in ancient times entitled to share in the property of their fathers.

34. In reference to the objection of the Parsees of Gujerat to allow widows to inherit any portion of the property left by their husbands, the managing committee beg to invite attention to the fact that the Parsees of the Deccan have no objections to, and have adopted in practice, the provisions of section 111 of the draft code, which concedes to the widow the share allotted to the son. In Parsee families the position of the widow is not much inferior to that of her sons, by whose side she is represented in the draft code, and consulted on all matters relating to the family. She should not, therefore, be degraded and deprived of the small share of inheritance conceded to her in the draft code, nor made an object dependent on the caprice of her sons, or, in fact, of the sons, the brothers, nephews, or cousins of her husband, as recommended by a majority of the Parsees of Gujerat in opposition to the views and sentiments of the Parsees of Bombay and the Deccan.

35. From the real nature and character of the objections taken by the Mofussil Parsees in regard to section XII of the draft code, which empowers a married lady to hold and enjoy her own separate property as if she were unmarried, the managing committee are of the opinion that it arises from misapprehension. The Mofussil Parsees object to this provision, under the idea that jewel ornaments presented to a married female on and after her marriage, by her husband or his parents and relatives, are inquired for and to be claimed by the husband, under the proposed code, which she can enjoy and dispose of according to her will and pleasure, without any control being exercised over it by her husband. This idea is an erroneous one. The jewel ornaments above referred to are not intended to be included in the wife's sole and separate property, for which provision is made in section XII. The jewel ornaments in question are in the nature of jewels or dowry, subject to the joint control of the husband and wife, but not forming any portion of the wife's sole and separate property, nor subject to debts contracted by the husband without the written authority or permission of his wife. On the death of the husband or wife, the latter's jewels and ornaments should, the managing committee are of opinion, go to the survivor. With a view to remove all doubt or difficulty in this matter, the managing committee propose the insertion of the under-mentioned proviso in section XII, to make the above important and other words "Any woman, whether married or single":—

"Excepting only the toys, jewels, ornaments, or paraphernalia given to the wife by her husband or his relatives, in contemplation of and during her marriage, which shall not be seized to the husband in case of her death."

This amendment would fully meet the objections offered by the Parsees of Guzerat to portions of section I. and XII. of the proposed code under the misapprehension just pointed out. The managing committee may therefore safely assume that, with the exception of the Parsees of Poona, the inhabitants of all places in the Mofussil, as well as the presidency, have no objection to, and are in favour of, that portion of the draft code which acknowledges and concedes the right of a married woman to hold and dispose of her own separate property. The Parsees of Poona in the present state of the matter, take the view that "according to the doctrines of the (Parsee) religion, a woman cannot make a will according to her own pleasure, while her husband, being (legally) competent, is alive, except with his consent."

The opinion is totally unfounded. As far as the expostutions communicated to the managing committee by the Dusturos, or High Priests, named in the 29th paragraph of this letter.

36. It has been urged in several portions from the Zillahs as regards inheritance be entirely overlooked, in their draft code, the injunctions contained in the religious books of the Parsees as regards adoption. In answer to this, the committee have to observe that there is nothing in the draft code prepared by the committee calculated to prevent a Parsee from adopting a son during his lifetime, and bequeathing to him the whole or a portion of his property by a written instrument, or by his will. As any other course would lead to frequent litigation among Parsee families, as regards the right of adoption, the committee are entirely silent in respect to the persons authorized to nominate and appoint an adopted son, and of the amount of inheritance to which he is entitled on the death of his father or other relative, the committee have considered it advisable for the interests of their nation to leave this subject untouched in their draft code. With regard to the practice now prevailing in Bombay, and other places inhabited by Parsees, the committee in a state that the event of a Parsee dying without male issue, one of his nearest male relations, or some other person, is nominated an adopted son as a matter of religious ceremony, but such person is not considered to stand in the place of a lawful son as regards inheritance in the event of the death of a Parsee. In answer to this, the committee have to observe that there is nothing in the draft code to prevent or prevent a Parsee from adopting a son during his lifetime, and bequeathing to him the whole or a portion of his property by a written instrument, or by his will. 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As any other course would lead to frequent litigation among Parsee families, as regards the right of adoption, the committee are entirely silent in respect to the persons authorized to nominate and appoint an adopted son, and of the amount of inheritance to which he is entitled on the death of his father or other relative, the committee have considered it advisable for the interests of their nation to leave this subject untouched in their draft code. With regard to the practice now prevailing in Bombay, and other places inhabited by Parsees, the committee in a state that the event of a Parsee dying without male issue, one of his nearest male relations, or some other person, is nominated an adopted son as a matter of religious ceremony, but such person is not considered to stand in the place of a lawful son as regards inheritance in the event of the death of a Parsee. In answer to this, the committee have to observe that there is nothing in the draft code to prevent or prevent a Parsee from adopting a son during his lifetime, and bequeathing to him the whole or a portion of his property by a written instrument, or by his will. As any other course would lead to frequent litigation among Parsee families, as regards the right of adoption, the committee are entirely silent in respect to the persons authorized to nominate and appoint an adopted son, and of the amount of inheritance to which he is entitled on the death of his father or other relative, the committee have considered it advisable for the interests of their nation to leave this subject untouched in their draft code.
in the Mofussil, as your Excellency in Council and the Legislative Council are no doubt aware. In conclusion, the managing committee trust, that if, on account of the objections urged against the draft code, or for any other reason, it be deemed advisable to recommend the Legislative Council to refrain from making the proposed code applicable to Parsees residing in the Mofussil, still the managing committee solicit the powerful intervention of your Excellency in Council with that Honorable Body for the purpose of urging it to enact the code for the benefit at least of the Parsees residing within the jurisdiction of Her Majesty's Supreme Court, who have no objections to the measure, and who confess the unspeakable disadvantage of being without laws.

40. In the presence of such an evil as this there are few considerations so weighty as to keep their ground against the demand for a remedy; and of those which our opponents have suggested none appear to us to be of such importance as to induce the Legislative Council to reject the petition of an enlightened minority.

41. Therefore, on behalf of the Parsees of the island of Bombay, as represented by their managing committee, unanimously elected by them and unani mously in charge of this great question, as well as of those Parsees at Surat whose petition in our support is before your Excellency, as also of other brethren scattered over the rest of the Mofussil of this presidency, the managing committee have now the honor, in conclusion, of this maturely considered exposition of their views, to submit the same to your Excellency in Council, with the request that it may be transmitted to the Honorable the Legislative Council of India, and in the assumed hope that it will be accompanied with the powerful recommendation of Government.

I have the honor to be, &c.,

FRAMJE NASSERVANJEE,
Chairman of the Managing Committee.
Bombay, 9th March 1861.

EXTRACT from the PROCEEDINGS of the LEGISLATIVE COUNCIL on the 13th April 1861.

The clerk presented a petition from the Parsee inhabitants of Calcutta in favour of the passing of the draft code of laws sent up by the Parsee inhabitants of Bombay.

Mr. Erokine moved, that the petition be referred to the Select Committee on the question to which it related.

Agreed to.

TO THE HONORABLE THE LEGISLATIVE COUNCIL OF INDIA.

The humble petition of the Parsee inhabitants of Calcutta—

SHOWETH,

That your petitioners have carefully examined the draft code of the laws of inheritance, succession, and other matters, prepared and transmitted to your Honourable Council in March 1859, by the managing committee appointed at a public meeting of the Parsee inhabitants of Bombay, held at Bombay on the 20th August 1853, to prepare a code of laws adapted to the Parsee nation, and to petition the Legislative Council for the enactment of such laws.

That your petitioners beg to express to your Honourable Council their general approval of the draft code in question, and their entire concurrence in the views and sentiments expressed in the petition which accompanied that document.

That your petitioners are fully impressed with the belief that the grievances complained of by their fellow-countrymen and co-religionists in their petition to your Honourable Council are such as require an immediate remedy, and that a refusal on the part of your Honourable Council to concede a body of defined laws adapted to the Parsee nation will entail consequences highly prejudicial to the well-being of a rising community like the Parsees, who are devoted in their loyalty and attachment to the British Crown. The English law, which is totally unsuited to the present condition of the Parsees, is applied to them by the British tribunals in Her Majesty's Supreme Court, and the British tribunals in the Mofussil decide their cases chiefly according to Hindoo usages and customs, which too are different from those of the ancient Persians. On the important subject of conjugal rights the Parsees of Bombay are without a legal remedy, the Judicial Committee of the Privy Council having decided that Her Majesty's Supreme Court does not possess any jurisdiction on the Ecclesiastical side over Parsees. The marriage tie is thus rendered insecure, and your petitioners regret to learn from their friends and relatives in Bombay, that many Parsees, taking undue advantage of such a state of things, discard their lawful wives without grounds, and contract illegal marriages with impunity. If your Honourable Council does not interpose your authority with a view to provide an efficient check for such a growing evil, and remedy the other grievances from which the Parsees have so long been suffering for want of a code of laws, the Parsee community will, your petitioners apprehend, suffer grievous wrongs and irreparable injuries.

It has given your petitioners great pain to find that several Parsee communities residing in the interior of the Bombay Presidency are without a code of laws, and that the Parsee community of Surat is of the same condition. This has been a bar to the enactment of the proposed code of laws. Having carefully examined the grounds of their objections, as promulgated in Goorjee's pamphlet published by the Parsees of Surat in 1859, and referred to in paragraph 4 of the petition presented to your Honourable Council by Mody Rustomjee Khoorshedjee and several other members of the Parsee community of Surat, dated 15th May 1860, your petitioners can confidently declare that those objections are unsound and unfounded. Your petitioners therefore most earnestly trust that your Honourable Council will attach no weight to the objections urged by prejudiced men residing in the interior, who, being accustomed to Hindoo usages, are unwilling to discard them, who object to allow their females to inherit any property whatever, and refuse to adopt a code of laws founded on ancient Persian usages and framed on just and liberal principles, recognizing as it does the natural and inalienable rights of Parsee females to inherit the property left by their fathers, husbands, or other relatives.

That your petitioners beg to assure your Honourable Council that there is not a truth whatever in the allegation (put forth by Mody Rustomjee Khoorshedjee and other Parsee inhabitants of Surat in their petition to your Honourable Council) that the propositions embodied in the draft code framed and transmitted to your Honourable Council by the Parsees of Bombay are for the most part at variance with the principles of our sacred religious authorities. That as your petitioners have been informed that the above allegation has been successfully refuted and disproved by the representatives of the Parsee community of Bombay, they will not trouble your Honourable Council with any refutation thereof.

Under the above-mentioned circumstances your petitioners humbly solicit your Honourable Council to introduce, as soon as practicable, and pass the proposed code of laws for the benefit of the community to which your petitioners belong, and thereby remove the disabilities complained of in the petition of the Parsees of Bombay.

And your petitioners, as in duty bound, shall ever pray.

MANOJREE RUSTOMJEE,
And 55 other Signatures.
Extract from the Proceedings of the Legislative Council on the 18th May 1891.

The clerk presented a petition from certain Parsee inhabitants of Bombay, praying that the draft code of law be sent up by the Parsees of Bombay be not adopted.

Also a petition of Ferozebik, wife of Ardaserre Cursetjee, and daughter of the late Franniee Cowasjee, for the passage of an Act granting to the Supreme Court power to exercise penal jurisdiction over the Parsees in matrimonial and other cases.

Mr. Erskine moved, that these petitions be referred to the Select Committee on the subject to which they related.

Agreed to.

To the Honorable the Legislative Council of India, Calcutta.

The humble petition of the undersigned Parsee inhabitants of Bombay—

Showeth,

First. That your petitioners beg to bring to your notice that all the laws of inheritance, succession, and other matters contained in the existing code "are put up by the Parsee inhabitants of Bombay, held on the 20th August 1855, were not framed out and transmitted to your Honorable Council, as it is said they have been framed, made by the unanimous consent of your petitioners and their co-religionists; and therefore your petitioners and most of their co-religionists do not agree upon and approve thereof.

Second. Your petitioners further beg to bring to your notice that the said "draft code" was not read and made known by the said managing committee to your petitioners and most of their co-religionists prior to the day (1st March 1860) when it was sent to your Honourable Council, with a petition from the said managing committee requesting the enactment of the said "draft code."

Third. Your petitioners in objecting to the enactment of the said "draft code," make the following observations:—That all the sections of the "draft code," except the 18th, are in every respect related to Act IX. of 1837, in the matter of intestacy, and the subject of the 18th section is about granting a divorce, and makes the Parsee law sole action for the same, which is quite contrary to the religion of the Parsees, because in the Parsee religion no husband or wife is allowed to be separated from each other, nor a husband or a wife is allowed to go through the form and ceremony of a second marriage whether the husband or wife by the first marriage is living; and the marriage, if once contracted by going through the requisite ceremonies, is never dissolved. The reason thereof is, that when a husband dies the name of the first wife is taken in the ceremonies that are performed for the dead, with the name of the deceased husband, without which no ceremonies of any sort could be performed; and in the like manner the name of the husband of the first marriage is taken in the ceremonies when the wife of the first marriage dies; and, moreover, bigamy is strictly prohibited among the Parsees in their religion, (but under certain peculiar circumstances, such as the barrenness of the living wife, or her immoral conduct, if it be proved and all the other conditions for the clearance of such evidence, to the satisfaction of legal authorities, the Parsees at present have for some years past made it a practice of marrying a second wife while the first one is living. The law against bigamy was over strictly adhered to by the ancient followers of Zurriatu, and by his descendants in India, up to the beginning of the nineteenth century of the Christian era, when it was found that the Parsees were infringing the law, and that many an innocent and unoffending wife was forsaken by a vicious husband on trivial grounds, and a new wife taken with impunity. The evil complained of engaged the attention of the Panchayat at the time, and they resolved by every means in their power to arrest its progress among their countrymen. A public meeting of the Parsee inhabitants of Bombay was convened by order of the Panchayat, in the Fire Temple of Dady Sett, where, among other matters relating to the "body," certain rules strictly prohibiting bigamy were adopted with the consent of the assembly. These rules were passed in 1818, and the Panchayat was the Court of Justice, and its decisions, being invariably given after great care and deliberation, were never disputed by the contending parties. Any one refusing to obey the decision of that tribunal was excommunicated from the caste, and his co-religionists held no further intercourse with him. He was not invited to their feasts, religious ceremonies, funerals, processions, or marriage festivals. He could not attend the Fire Temple, nor, if he died in this state of disgrace, could he receive the rites of a "Parsie burial." Priests were prohibited from performing any religious ceremonies in his family. In fact, all intercourse between the party excommunicated and his countrymen was entirely stopped. So great was, therefore, the penalty of excommunication, that the Parsees seldom failed to bow to the decision of the Panchayat at the time. So long as the Panchayat was the law, as against bigamy was strictly adhered to. Of late, however, a new spirit has sprung up from the parity and the caste, and all sympathy for rendering justice to the aggrieved, and bringing the offender to punishment. Each man, therefore, claims a right of acting as he may think fit, and very often in defiance of the decisions of the flexible Panchayat, and, wilfully or not, both by the spirit and the letter of our laws and usages, practise bigamy, as well as polygamy, while the higher orders of Parsees are led to practise "bigamy," by the partiality of the Panchayat, the lower orders see that the Panchayat has no power to punish them, and while the Parsee is not; and therefore do not respect the authority of the Panchayat or its decisions. The Panchayat did not however seem to feel the humiliation position in which it was placed, but continuing only to assume from the name of a Panchayat, but fruitlessly attempted to carry on the functions of that body. For the last fifteen or twenty years the body known among the Parsees as the Panchayat has not possessed the slightest influence or weight of any kind, and many of the higher orders of Parsees have adopted some signs of vitality, but never in the right direction. Its orders, if it ever have issued any, are unheeded or disobeyed. Excommunication from caste, a sentence which the Parsees of old so greatly dreaded, is now almost unknown among the Parsees at present, as the party excommunicated is sure to possess the sympathy and intercourse of his friends, in the teeth of the order of the Panchayat. It must not be imagined that this state of feeling arises from a riotous community. The decisions of the Panchayat, while they are neither consistent nor impartial, are not in accordance with justice, and the consequence is, that the body is as destitute of moral weight as of legal power. When a friend or relative of any member of the Panchayat, or indeed, any person of wealth or influence, commits an offense against his caste people, he is not only screened, but justified. While if the offender be a poor man, the Panchayat at once appears as the clear and unimpaired representative of the Parsees, and characterized its rule of old to make him an example to others. Common sense suggests that a body professing to do justice, with one law for the rich and another for the poor, would be more directly and respect whatever. Its shameless partiality some time since drew forth from one of its oldest and most respectable members an ugly exposure of the sets of his colleagues perfectly fatal to their respectability. This member was the late Franniee Cowasjee, Esquire, a name still revered by the whole Parsee community. The Panchayat was thus virtually extinguished, and the late Sir
Jamsjetee Jejeebooy publicly acknowledged this fifteen years since in a book called Kholasay Panchayet, edited by himself. The Panchayet is now powerless either for good or evil, and performs no other functions than those of trustees to certain charitable funds. The word Panchayet, therefore, now applied to the body, is a misnomer.

For instance, when Ardaseer Carisse Jady, a member of one of the respectable families, ventured to marry a second wife without any just cause, while his first wife (daughter of Framjee Cowasjee, Esquire,) was living, Framjee Cowasjee, Esquire, wrote to several members of the Panchayet separately, (amongst whom were Jamsjetee Jejeebooy, Mrwrojee Jamsjetee Wadia, Bomanjee Hormusjee Wadia, and Jejeebooy Dadshobooy,) requesting them to adopt immediate measures to prevent the party from doing so, for which the Panchayet never came forward, and the party then had an opportunity to put his designs into execution. Upon which, Framjee Cowasjee, Esquire, addressed a minute to the members of the Panchayet, fully exposing the extent to which corruptions had reached the Panchayet community, and the utter apathy and carelessness with which the Panchayet overlooked the unhappy state of things. A short abstract of the late Framjee’s minute, forwarded to Sir J. Cursetjee, of it, was published in an English newspaper some years ago, which runs as follows:

“I have resolved,” says the late Framjee, “that I shall not hereafter join with you in transacting any of our affairs. Individually calling them selves Zoroastrians have now become so reckless that they look upon ‘bigamy’ and other monstrous sins as anything but sinful. I can cite numberless instances of persons in this place who have not only deserted their lawful wives and, in most cases, joined in marriage with others in defiance of the rules of our country, as also of many who are recklessly living, and spending their existence in idleness and women, to whom you, who sit yourselves members of the Panchayet, will not only take no notice of these affairs, but allow such sinful persons to participate in all rights of Zoroastrianism. You will not bring such offenders to punishment, but, on the contrary, sometimes think very lightly of their offences. It cannot be said that you are not cognizant of this growing evil, and if you do not discharge your trust faithfully, what answer will you give to your Maker on the day of Judgment?”

Fifth. The shameless partiality of the Panchayet, and its being powerless either for good or evil, has given rise to the practice of bigamy as well as polygamy. Few instances of this are sufficient to prove the above facts. When Wadia Ardarsee Hormusjee, notwithstanding his first wife was alive, married a second without the least reason to be dissatisfied with his first wife, and without also having met with any objection from the Panchayet, his example was followed by Ardaseer Carisse Jady, a member of the managing committee. Again, Sarabjee Eduljee Sylwed Ramjinnu, an inhabitant of Surat, ill-treating his first wife Nawagabe Dossahbooy Jungul Wala, obliged him to flee from him, and married a second wife, Daubiae Nesseranee Samilnoors, on whom he had around two children, one of whom is a girl, who is at present with him, and the other died while an infant. Sarabjee, after combating with his second wife of nearly seven years, obliged her also to live separate from him, having a slight quarrel with her, and in May 1860, married a third wife Dossabooe, (the daughter of Carisse Enoo.) Sarabjee, his deceased wife, Nawagabe, was for many years in Surat, and the second wife, Daubiae, is at Bombay this day.

Sixth. Your petitioners further beg to state that there is no law of tulkoo or divorce among the Parsees; that a marriage is solemnized upon the subject; and as the word tulkoo or divorce is used in the petition by the managing committee, your petitioners humbly request your Honorablae Council will inquire of the managing committee to establish by such religious books wherein could be found any written law granting a divorce. The word “tulkoo” used by the managing committee is not a Zem, or Phelie, or Persian original word. The word “tulkoo” is borrowed from the Arabic language, from which it is derived, and is used in the Mahommedan religious books of the Parsees wherein is allowed polygamy. The managing committee in the 18th section now states a second marriage is permitted, but your petitioners do not see why the managing committee should not leave the matrimonial cases to be decided by the Government functionaries. The managing committee has shown in the 18th paragraph of their petition that in the case of a Parsee servess and Ardasee Carisse Jady, it has been decided by the highest Court of Indian appeal, viz., by the Right Honorable the Judicial Committee of the Privy Council in England, on the 17th July 1856, that in matters affecting marriage and conjugal rights the Supreme Court in Bombay do not possess any power to exercise jurisdiction over your petitioners and their co-religionists, and consequently in all cases must refer to marriage, restitutions of wages, rights, &c. the Parsees are destitute of any remedy whatever which can be legally enforced. But the managing committee, as your petitioners think intentionally, stated so; only the Judicial Committee will not concur in the said statement. Individually calling themselves Ecclesiastical side of the Supreme Court; while it is of opinion that the Civil Courts in India can bind their administration of justice to the laws of the various sects who seek their aid. In all cases the Judicial Committee of the Judicial Committee, that such remedies we conceive that the Supreme Court on the Civil side might administer, or at least remedies as nearly approaching to those based upon the same law. In suits instituted on the Civil side, the peculiar difficulties which belong to the exercise of the ecclesiastical jurisdiction in some matrimonial cases would not arise. Proceedings might be conducted on the Civil side with such adaptation to the circumstances of the case as justice might require, though on the Ecclesiastical side such modification would be wholly irreconcilable with ecclesiastical law. Besides the above-quoted paragraphs from the judgment against the Judicial Committee of the Supreme Court on the Civil side to administer justice in matrimonial cases, the following paragraph of the same will show that the Sudder Adawlut of Bombay may also administer justice in such cases. We have been led to make these observations merely by general considerations, but more particularly by the case of Mubvurvanee Nusservanjee Appelant vs. Awanbaic his wife Respondent, reported 2 Barodaale, p. 303. That shows that the Sudder Adawlut of Bombay will take cognisance of matrimonial suits between Parsees, and will afford them such relief as is due regard to their own laws and custom will allow. Now from the above-quoted paragraphs of the Judicial Committee of your Honorayble Council we very respectfully remark that the managing committee has thought falsely, and that too, purposely, because if the managing committee would not show such falseness, we believe the honorable Council would not pass the “draft code” into law.

Seventh. Your petitioners also beg to refer your Honourable Council to an extract from the 21st paragraph of the petition of the managing committee, in which it is stated that the “living in the case “that in cases of marriage, restitution of conjugal “rights, and other matters, many Parsee families “would be utterly unable to meet and sustain the “heavv expenses which would be incurred by the “institutions of your Honorayble Council on the “subject; and as the word tulkoo or divorce is used in the petition by the managing committee, your petitioners humbly request your Honorayble Council will inquire of the managing committee to establish by such religious books wherein could be found any written law granting a divorce. The word “tulkoo” used by the managing committee is not a Zem, or Phelie, or Persian original word. The word “tulkoo” is borrowed from the Arabic language, from which it is derived, and is used in the Mahommedan religious books of the Parsees wherein is allowed polygamy. The managing committee in the 18th section now states a second marriage is permitted, but your petitioners do not see why the managing committee should not leave the matrimonial cases to be decided by the Government functionaries. The managing committee has shown in the 18th paragraph of their petition that in the case of a Parsee servess and Ardaseer Carisse Jady, it has been decided by the highest Court of Indian appeal, viz., by the Right Honorable the Judicial Committee of the Privy Council in England, on the 17th July 1856, that in matters affecting marriage and conjugal rights the Supreme Court in Bombay do not possess any power to exercise jurisdiction over your petitioners and their co-religionists, and consequently in all cases must refer to marriage, restitutions of wages, rights, &c. the Parsees are destitute of any remedy whatever which can be legally enforced. But the managing committee, as your petitioners think intentionally, stated so; only the Judicial Committee will not concur in the said statement. Individually calling themselves Ecclesiastical side of the Supreme Court; while it is of opinion that the Civil Courts in India can bind their administration of justice to the laws of the various sects who seek their aid. In all cases the Judicial Committee of the Judicial Committee, that such remedies we conceive that the Supreme Court on the Civil side might administer, or at least remedies as nearly approaching to those based upon the same law. In suits instituted on the Civil side, the peculiar difficulties which belong to the exercise of the ecclesiastical jurisdiction in some matrimonial cases would not arise. Proceedings might be conducted on the Civil side with such adaptation to the circumstances of the case as justice might require, though on the Ecclesiastical side such modification would be wholly irreconcilable with ecclesiastical law. Besides the above-quoted paragraphs from the judgment against the Judicial Committee of the Supreme Court on the Civil side to administer justice in matrimonial cases, the following paragraph of the same will show that the Sudder Adawlut of Bombay may also administer justice in such cases. We have been led to make these observations merely by general considerations, but more particularly by the case of Mubvurvanee Nusservanjee Appelant vs. Awanbaic his wife Respondent, reported 2 Barodaale, p. 303. That shows that the Sudder Adawlut of Bombay will take cognisance of matrimonial suits between Parsees, and will afford them such relief as is due regard to their own laws and custom will allow. Now from the above-quoted paragraphs of the Judicial Committee of your Honorayble Council we very respectfully remark that the managing committee has thought falsely, and that too, purposely, because if the managing committee would not show such falseness, we believe the honorable Council would not pass the “draft code” into law.

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APPENDIX TO FIRST REPORT OF COMMISSIONERS APPOINTED

"feeling among Parsees against dragging private
querels and disturbances in families into public
notice."

Eighth. Now your petitioners have only to remark,
in referring to the above extract, that the managing
committee is quite wrong in this point, because those
who are rich and influential are able to meet
the heavy expenses which would be incurred by
the institution and prosecution of such suits as are men-
tioned above upon the Ecclesiastical side of the Su-
preme Court, while those who are poor paupers get
solicitors and barristers from the Government to
institute and prosecute their cases for them without
charging them any money for the expenses; and
there is no kind of feeling among Parsees to drag
private quarrels and disturbances into public notice,
as it is said to be by the managing committee, and
upon the whole the Parsees are able to drag their
cases before the Court.

Ninth. Since the time when India became subject to
the constitutional sway of the British power, the
Parsees are generally governed by the English laws,
from which they have not in the least suffered any
injury to their rights and privileges; and therefore
your petitioners request that the English laws may be
made applicable to them, and that those that are
framed out by the managing committee of a few
influential members of the Parsee community. Your
petitioners and their co-religionists should be very
unfortunate if ever they were to be deprived of the
privileges and enjoyments they undergo through the
transformation of the English laws. As British subjects
the English laws should be made applicable to them, which
they so much honour, and cordially agree in the decisions
that are made and judgments given by the legal
authorities.

Tenth. Your petitioners further beg to state that
all the sections contained in the draft code were not
made out of their usages and customs, as is said to
have happened in any other code, but best suited to the
wants and requirements of your petitioners and their
co-religionists, although they greatly differ in manners,
customs, and usages from the English people. The
"English laws" are best suited to the present civil-
lized state of the Parsees, as well as to the wants and
requirements of the Parsee community than if the laws of
the draft code be passed and made applicable to them.

Twelfth. In conclusion, your petitioners beg and
hope that this their petition will have a due weight before
your Honorable Council, and that, after a due
consideration, your Honorable Council will be pleased
to annul the laws of the draft code, the favor of
which will be duly appreciated by your petitioners
and their co-religionists for ever.

Thirteenth. The signatures of both males and
females have been taken, as the subject of this petition
is productive of much good to both sexes.

We beg to remain, etc.,
PENITZER TRAMDEE COWASJEE,
and 338 other Signatures.
Bombay, 28th February 1861.

EXTRACT FROM THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL ON THE 3RD AUGUST 1861.

Sir Bartle Frere presented a report of the Select Committee on the petition from the Parsees of Bom-

bay, with the draft of a code of laws adapted to the
Parsee community.

TO THE HONORABLE THE LEGISLATIVE COUNCIL.

We, the undersigned members of the Select Com-
mittee appointed to take into consideration a pe-
tition from the Parsees of Bombay, forwarding a draft
code of laws applicable to Parsee Municipal Corpora-
tions, subject to any disparity, succession, and
other matters among Parsees, have the honor to report that we have carefully concerned ourselves with the draft code, and also the other papers subjoined in the margin.

In none of the papers which have been received by
us do we find any expression of opinion by the Judges of the Sudder Court or of the Supreme Court in Bombay, or by the Government of India, or of its local officers, as to the fitness or sufficiency of the project of law which has thus been submitted on behalf of the Parsee community. It does not appear that the opinions of the local authorities were invited in the reference on this subject furnished by this Committee, and we do not feel that we can make final recommendations on so important a question with confidence, or even with propriety, until the deliberate judgment of those authorities shall have been announced and considered.

The hope is more than once expressed in these papers that, even if the Council should not be prepared at once to give to this draft code the force of law throughout the whole empire, they may at least consent to enact it for the limited province of jurisdiction of the Supreme Court. We cannot, however, recommend the enactment of such important provisions of substantive civil law for any one section of the Parsee race of community exclusively.

We feel constrained also to notice that the draft code in its present shape is silent on some important questions with respect to which the petitioners believe that the existing law is most defective. It is proposed, for instance, in Section XVII of the draft code, to recognize a novel procedure, in cases relating to marriage and divorce. But no attempt is made to declare the substantive law which it is proposed in this way to apply.

We are of opinion, finally, that before we could recommend that any special body of laws should be enacted for a separate race or community of persons like the Parsees—scattered over different parts of India, and not known to possess any uniform common law, or definite rules, either religious or social, universally recognized as authoritative for the regulation of their private rights—it would be necessary to ascertain whether a majority of that enlightened community might not prefer that many of their civil affairs should be regulated by the principles of English law or of laws founded in substance on the a principles of jurisprudence recognized in English, but adapted in form to the state of society in this country. It is stated that a commission of learned gentlemen is to be employed in England to prepare on these principles a civil code for India. As regards inheritance, the English law of " Chattels real " has for a quarter of a century governed the transmission by will, and in case of intestacy, of all property of Parsees within the limits of the Supreme Court. And evidence is not before us to show that any evil, or what kind or extent of evil, has resulted from that state of the law.

Further inquiry may lead to the conclusion that special legislation is required on some or all of the points embraced in the draft code, and on other points to which it does not allude; and may show likewise
that this legislation should not follow the analogies of English law, but that it should be based on prevailing usages and traditions. We consider, however, that a deliberate and mature inquiry should be made on the spot into these points. It need not occupy any considerable time. A commission (in which the Supreme and Sudder Courts as well as the Parsee community might be represented), if assembled in Bombay, might receive the evidence of deputations from the Parsee communities in all the other towns from which petitions regarding this code have been received, or might hear the arguments of counsel on behalf of such communities, and might consult all the authorities written or oral, to which reference has been or might be made; recording afterwards a definite judgment in respect to each point separately; and specifying what appeared in each instance to be the prevailing usage, tradition, or wish of the majority of the entire Parsee community as made known to them. With the report of a Commission of this kind before them, the Council would be in a better position to deal with this important question.

We beg leave, therefore, to suggest that the Governor of Bombay be requested to appoint a Commission to make a preliminary inquiry, on the principles above explained, into the usages recognized as laws by the Parsee community in India, and the necessity of special legislation in connection with them.


The 3rd August 1861.

Extrait from the Proceedings of the Legislative Council on the 10th August 1861.

Sir Bartle Frere moved, that the report of the Select Committee on the petition of the Parsees of Bombay, with the draft of a code of laws adapted to the Parsee community, be adopted.

Agreed to.

No. 131.

FORT WILLIAM, LEGISLATIVE COUNCIL OFFICE, the 10th October 1861.

Office Memorandum.

In compliance with the request contained in Mr. Officiating Under-Secretary of the Parsee's Office, Memorandum No. 1840, dated the 4th instant, the Clerk of the Legislative Council has the honor to forward, for transmission to the Secretary of State, prepared (as nearly as possible) in chronological order, three copies of the paper noted in the margin, being all of the procedure of the Council relative to the enactment of a code of laws for the Parsee community in India, with the exception of the petition from Poerugboye, dated the 16th February last, which is referred to in the extract from the proceedings of the Council on the 15th May last. This is a lengthy document, and was not printed for the reason which now leads to its exclusion from this collection of papers; namely, because it relates to a case of alleged individual hardship or injustice, and abounds in decisions on individuals which may be considered libellous, and ought not therefore to be needlessly published.

Attention is also called to the fact, that paragraph 5 of the petition from the Parsee inhabitants of Bombay, dated 2nd March last, should not be made public, in so far as it mentions the names of individuals, and contains statements regarding them.

D. Sutherland,

For Clerk of the Council.

Leg. 4th July 1836.—No. 999 of 1836.

From the Acting Secretary to the Government of Bombay to the Secretary to the Government of India in the Legislative Department, dated 6th June 1836.

Sir,

I am directed by the Right Honorable the Governor in Council to transmit to you the accompanying original Petition from the Parsee inhabitants of Bombay to the address of the Right Honorable the Governor-General and Legislative Council of India, together with copy of a letter to the Acting Advocate-General, and of that officer's reply on the subject.

The Governor in Council is sensible of the uncertainty in which these documents leave the whole subject as it stands, both as to the present legal position of the Parsee race, and as to what change may be expedient, and would not have forwarded the above documents without further inquiry, were it not that this Government is ignorant of the progress being made at Calcutta towards the establishment of a general code of laws, and fearful of any reference on this subject being too late; further, that this Government deem it their duty to call the attention of the Supreme Government to this subject as to the Parsee petition.

3. Unprepared as this Government is to offer any satisfactory information or specific suggestion, nevertheless should it be the desire of the Government of India, the Governor in Council is ready to proceed immediately to further inquiries, either through the medium of a Committee or otherwise, to endeavour to ascertain accurately the actual position of the Parsee race at Bombay in point of law, and to consider what legislative measures might properly be adopted in respect to that state, and to report on these points for the information of His Lordship in Council. Should it be the wish of the Government of India that this Government should take these steps, the Governor in Council requests to be favoured with any particular points on which the Government of India would wish for information.

4. Independent of the general claim which all persons resident under the British Government are entitled to prefer to the Legislature for justice and protection, the Parsees, as a most valuable portion of the people of the island of Bombay, have, in the opinion of this Government, every right to the utmost consideration in the institution of any general code of laws for the Hindoo British Empire. The Governor in Council, therefore, warmly seconds the request of the petitioners so far as respects the general objects of their petition.

I have, &c.

(Signed). E. H. Townsend, Acting Secretary to Government.

Bombay Castle, 6th June 1836.

Leg. 4th July 1836.

To the Honorable the Governor-General and Legislative Council of India, &c., &c., &c., Calcutta.

The Humble Petition of the undersigned principal Parsee Inhabitants of Bombay, and Subjects of His Britannic Majesty, dated 20th November 1835,

Most respectfully sheweth,

That the Parsees, from the time of the arrival of their ancestors in India, have been a distinct race,
and although they may have adopted in some degree the dress and usages of the natives of India, with whom they have intermarried, they have, as far as circumstances have permitted, observed the forms of worship which were preserved by their ancestors, and such customs and regulations as have come down by tradition to the living generation. They are at the present time as distinct from Hindoos, Mahomedans, and Parsees, as all the Parsees who first found their way to India.

2. Your petitioners further have to state that, not having had any regular code of law which had prevailed in ancient times for their guidance respecting the duties which, after a person's death, had to be performed to the person of their religion, the Parsees have generally divided the property immovable and movable of a deceased person, who has died without making a will, according to certain usages which have prevailed amongst the most wealthy and respectable families, and in some instances corresponding with the mode of distribution or division which has obtained amongst the Hindoos in this part of India.

3. The usages have so long been submitted to, and have been followed in so many instances from generation to generation, that they have by many persons been considered to have the force of law.

4. It has also been the custom of the Parsees for many years past to possess in full and in the Guzerattee languages, and when the wills have been made by a person of sound mind, and free from fraud, their validity has always been admitted, although not formally prepared or witnessed according to the rules said to exist in England, when the wills of landed property are executed.

5. Such wills, from the time of the establishment of the Mayor's Court at Bombay, have been proved, and no instance has been noticed by the petitioners in which the will of a Parsee dividing landed property has been set aside because it was not executed in the presence of three witnesses.

6. Until a very recent period no questions have been raised respecting the rights of Parsees to devise their landed property by wills such as have been described, or to divide houses, oants, lands, and pieces of ground between the widow and children of Parsees who have not left wills according to the usual mode of disposing of their estates; and no distinction has existed from the nature of immovable and moveable property; for as with Hindoos and Mahomedans, both kinds have been valued and disposed of alike.

7. This was the state of things when the petitioners humbly petitioned that the Recorder's Court was established, and when for the first time it was declared at Bombay that in all actions and suits against the inhabitants of Bombay, their inheritance and succession to lands, rents, and goods, and all contracts and dealings between party and party, should be determined, in the case of Mahomedans and in the case of Gentooos, by the laws and usages of the defendant.

8. The Parsees were, at that period, as distinct from all classes who were then governed by English laws as either Mahomedans or Gentooos, but they appear to have been left unnoticed by the Legislature, no doubt because the charter of the Court at Bombay was made like the charter of the Courts at Madras and Calcutta, where few Parsees resided.

9. The inconvenience, however, was not felt while Parsees agreed among themselves and kept themselves and their family disputes and differences from being taken into the Recorder's and Supreme Court; but persons who are interested in promoting litigation have of late prevailed on Parsees to institute suits and actions against each other, with the contention that as Parsees are neither Hindoos nor Mahomedans, the inheritance and succession to lands, rents, and goods should be determined according to English law; that land, therefore, which is four feet by four feet that the eldest son, as heir-at-law, is entitled to inherit houses and land to the exclusion of his brothers, and that all wills not executed according to English law are null and void.

10. If the Supreme Court should determine in favour of the claims last entertained, the greatest ruin and mischief would be occasioned. The present title to two-thirds of the lands on the island of Bombay would be disturbed. Parsees who now hold possession of valuable property, either in virtue of arrangements with their fathers, or through their own exertions, would be cut off by descent from them, and persons who have purchased from younger sons of Parsees, may all be involved in litigation, and ruinous consequences must ensue.

11. Your petitioners, therefore, most respectfully solicit that your attention may be directed to the above circumstances, and also to the necessity of your Legislative Council, to pass a regulation confirming and making valid all that has been done respecting the partition in the sale and purchase of landed properties, of whatever value, where fraud has prevailed; and further declaring that all persons lawfully claiming under them who have been in the undisturbed possession of lands, houses, oants, or other immovable property within the island of Bombay during the period of 25 years now last past, in virtue of any will, or of any partition or division, or other family arrangement, or of any arbitration or award acquiesced in or carried into effect, or of any agreement lawfully entered into, shall be guaranteed in the possession of such property and no person shall be dispossessed thereof by any action, suit, or other proceedings.

12. That this is the object of your petitioners; but they submit to the wisdom of the Legislative Council as to the best mode of preventing legal rights which may seek to disturb just and honest transactions which have been entered into by Parsees, and by other persons who have purchased property from them, the belief that such transactions were lawful and according to the usages which had long prevailed among Parsees at Bombay.

13. That if this application cannot be complied with on the representation of your petitioners, they entreat the Legislative Council that they will, with the least practicable delay, cause inquiry to be made at Bombay respecting the usages and customs that have hitherto prevailed among the Parsees at Bombay in respect of the making of wills and the partition of property, to the end that some legislative provisions may be made to confirm all that has been done in virtue of such wills, and in conformity with such usages and customs and without fraud, and to protect those who may now be in the quiet possession of immovable property from future litigation.

14. Should your Honorable Government, in its wisdom, deem it expedient to consult the Honorable the Judges of His Majesty's Supreme Court of Bombay on this most important subject, we feel convinced their Lordships will bestow every consideration upon it, and suggest what they may deem necessary and expedient for the fulfilment of the urgent request we have thus most respectfully submitted to your consideration.

And your petitioners, &c. &c.

Signed by 125 Persons.

Leg. 4th July 1836.—No. 647 of 1836.

From J. P. WILLOUGHBY, Esq., Secretary to the Government of Bombay, to the Acting Advocate General of Bombay, dated 26th April 1836.
opinion that some such law as is proposed in the 11th paragraph of the petition would be advisable.

I have the honor to be, &c.

(Signed) J. P. WILLOUGHBY,
Bombay Castle, Secretary to Government,
26th April 1836.

No. 20 of 1836.

From H. ROPER, Esq., Acting Advocate-General of Bombay, to J. P. WILLOUGHBY, Esq., Secretary to Government of Bombay, dated 11th May 1836.

Sir,

I had the honor to receive your letter dated the 26th ultimo, respecting a petition addressed to the Governor-General by the principal Parsis inhabitants of Bombay.

The 2nd paragraph of the petition implies that Parsis in India have not any laws peculiar to themselves, and as to the usages according to which the petitioners say the property of deceased Parsis has generally been divided, such usages are merely described as having usually prevailed amongst the most wealthy and respectable families, and corresponding in some instances with the mode of distribution which has obtained amongst Hindus.

This statement in the 2nd paragraph of the petition is somewhat inconsistent, as well with a note, I presume by Mr. Borradaile, in the 1st volume, 2nd page, of the "Civil Code" Civil Code published by the Court of Sudur Udalut for the Presidency of Bombay "between the years 1800 and 1824," as also with a minute made by Mr. Sutherland, when Second Judge of the Court of Sudur Udal at Surat, which minute will be found in the 2nd volume of the above-mentioned reports, pages 391 and 392.

According to Mr. Sutherland's minute, the Parsis, on their landing in India, entered into a compact with the Hindoo ruler of Sunjum, whereby they bound themselves to an observance of the customs of the Hindoos, to theextent that, even in matters connected with the Hindoo religion, as adoption, marriage, &c., the ceremonies of the two people are the same, any material difference between them regarding matters of faith and religious worship only, not law. Mr. Borradaile, in his note, says that the rules which the Parsis, in their engagement with the Hindoo chief of Sunjum, bound themselves to obey, form, together with the laws of the country, which they insensibly picked up, a body of rules differing in few respects from that custom of the country, founded on Hindoo law, which regulates the whole of a Hindoo life, that even in matters connected with religion, as adoption, marriage, &c., the ceremonies of the Hindoos are nearly the same as those performed by the Parsis, that in little else but their faith will the Parses be found to differ from Hindoos, and that Parses may safely be pronounced to have no law.

Mr. Borradaile's note does not go so far as Mr. Sutherland's minute in asserting conformity between Indian Parses and Hindoos in matters of law; and the 2nd paragraph of the petition above-mentioned does not even go so far as Mr. Borradaile's note in asserting such conformity. Indeed, without an accurate knowledge of the materials from which the note and minute respectively were framed, it is difficult to conclude whether either the note or the minute can be depended on. Probably Mr. Borradaile's note was in some degree founded on Mr. Sutherland's minute. The latter was made in 1822, and Mr. Borradaile published his reports in 1823. On Sunday, the 19th of February 1832, at Bombay, I asked Mr. Sutherland where he got the matter which that minute contained. He replied, "I collected it from different Parses."

The statement in the minute, that even in matters connected with the Hindu religion, as adoption, marriage, &c., the ceremonies of the two people are the same, throws some doubts, I think, upon the value of the information given to Mr. Sutherland. Mr. Borradaile, in his note, indeed makes a similar statement. That note, as already observed, was probably founded on Mr. Sutherland's minute, but unless the minute nor the note expressly declares whether adoption is, or originally was, a religious rite or ceremony amongst Parses. In the report to which Mr. Borradaile's note is appended there is, indeed, the following passage:—"Appellants on this point produced the written opinions of the Priest of Oodec "and Nowasaree, and extracts from their books of law, which went to prove that a person cannot "enter heaven across the bridge of Chunwud un "less he leave a son, real or adopted, behind him. "That to oppose or interfere with the rights of an "adopted son is consequently a heinous sin, &c." According to Mr. Sutherland's minute and Mr. Borradaile's note, it appears that if any such exist, must have been framed after the arrival of the Parses in India. The Judge who tried the cause did not see the books themselves, but only alleged extracts. Considering the circumstances under which these written opinions were produced, and those alleged extracts from law books were produced, there is room to doubt whether such opinions and alleged extracts did not impose on the credulity of the Judge, who implicitly relied on them. I have generally understood that opinions or any writing opinions to any amount can be obtained to support the different sides of a case, and it seems the only safe course is to examine the authorities upon which such opinions are professedly given.

The passage from the report above quoted would, however, place adoption amongst Parses on a foundation totally independent of what occurred between the Parses and the Hindu chief of Sunjum, for it represents it as an original religious rite amongst Parses, and not the adoption son with the certain civil privileges, whereas neither Mr. Sutherland nor Mr. Borradaile expressly speaks of adoption as an original religious rite amongst Parses. According as they have been influenced by their interests, I have known several laws made by Parses insist upon, and several deny, the existence of adoption in their community. Hyde, in his "Historia Religiosioris Veteran Persarum," pages 409, 410, &c., speaks of the bridge Chunwud, or rather Taneer, or Tachnara, or Tchirnara, which mentions adoption as a right or ceremony used amongst Parses, and I suspect the adoption in use amongst them is a custom insensibly picked up in their intercourse with the Hindoos. That Indian Parses have long used adoption as one of their religious ceremonies, entitling the party adopted to certain civil benefits, is, however, apparent. On the 13th of February 1833 a cause came on before the Privy Council in which Hamace, widow of Dassahboy, was appellant, and Panjaehbey Dossahboy was respondent, and by the decision in that case I understand the right of adoption amongst Parses was recognized. The Privy Council appear to have assumed such right of adoption in like manner as it has been assumed in the native courts in this country, but it is difficult to say upon what grounds such assumption was originally made, or how the native courts became entitled to administer any peculiar Parses law. The Supreme Courts are not entitled to do so. Besides that system of law which the Hindoo Chief of Sunjum.

It is highly improbable so extensive a compact was formed, though, no doubt, opinions, and alleged extracts from books, or books of alleged authority,
to a transaction, I imagine the operation of the proposed statute would be very limited indeed.

I have, &c.

(Signed) H. ROPE.

Acting Advocate-General.

Bombay, 11th May 1836.

(True抄本.)

(Signed) E. H. TOWNSEND,

Acting Secretary to Government.

Leg. 4th July 1836.—No. 189.

From the SECRETARY to the GOVERNMENT OF INDIA, the Legislative Department, to the SECRETARY to the INDIAN LAW COMMISSIONERS, dated 4th July 1836.

SIR,

I am desired by the Right Honorable the Governor-General of India in Council to forward to you, for the consideration of the Law Commissioners, the accompanying copies of a letter to my address from the Acting Secretary to the Government of Bombay, dated the 6th ultimo, and of its enclosures, on the subject of the laws and usages of the Parsee community.

2. The Commissioners, after taking those documents into their consideration, are requested to state their opinion as to whether it is advisable and expedient to frame any distinct legislative enactment with regard to this class of the Indian community, and, in the event of their being of opinion that such course is advisable, either to submit to Government a draft of the provisions which, in the judgment of the Commissioners, should be enacted, or to state generally of what those provisions should consist, should the preparation of them be delayed.

I have, &c.

(Signed) W. H. MACNAUGHTEN,

Secretary to the Government of India.

Council Chamber, 4th July 1836.

Leg. 30th January 1837.—No. 39.

From F. MILLETT, Esq., SECRETARY to the INDIAN LAW COMMISSION, to W. H. MACNAUGHTEN, Esquire, SECRETARY to the GOVERNMENT OF INDIA, dated 16th December 1836.

SIR,

I am directed by the Indian Law Commissioners to acknowledge the receipt of your letter No. 189, dated the 4th July last, forwarding copies of a letter from the Acting Secretary to the Government of Bombay, dated the 6th June 1836, and of its enclosure, on the subject of the laws and usages of the Parsee community, and requiring the Commissioners to state their opinion as to the expediency of framing a distinct legislative enactment with regard to this class of the Indian community; and, in the event of their deeming that course advisable, to submit a draft or the substance of such provisions as they would recommend.

2. In reply I am desired to transmit to you, for the purpose of being laid before the Right Honorable the Governor-General of India in Council, the accompanying draft of an Act which it is, in the judgment of the Commissioners, advisable to pass without delay. The objects of it are to quiet the possession of estates already acquired by Parsees in the way of inheritance, which might hitherto have been judicially applied to the case of such estates, or in pursuance of usages or family partitions acted on or acquiesced in by the parties who were concerned; and to fix the law by which the succession to the estates of Parsees, either by inheritance or testamentary disposition, is to be regulated in future.

3. The Commissioners consider it as ascertained that, generally speaking, the Parsees in their own usages recognize no distinction between movable
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and immovable property in respect of distribution by inheritance or disposal by will. It is mainly on this similarity of practice in regard to the two descriptions of property that the Act now submitted has been framed. But the Commissioners have deemed it right, in consideration of the existing state of the law on this subject, to provide that possession heretofore obtained according to the rules which regulate the transmission of freehold property shall not be liable to be disturbed.

4. In conclusion, I am desired to express the regret of the Commissioners that their reply to this and other important references still before them has been so long delayed. The Right Honorable the Governor-General in Council is aware that this has been in a great measure occasioned by the illness of the members of the Commission. Other causes, however, have contributed to the delay. Their Report in this particular case has been retarded by a correspondence, in part official and in part in a private form, in which they have been engaged with the Judges of the Supreme Court at Bombay on the subject of it. A copy of the official part of that correspondence is herewith submitted.

I have, &c.

(Signed) F. Millett, Secretary.

Indian Law Commission,
16th December 1836.

Leg. 30th January 1837.

DRAFT OF PROPOSED ACT.

I. It is hereby enacted, that from the date of the present Act all immovable property situate within the jurisdiction of any of the Courts established by His Majesty's Charter, as far as regards the transmission of such property on the death and intestacy of any Parsie having a beneficial interest in the same, or by the last will of any such Parsie, be taken to be and to have been of the nature of chattels real and not of freehold.

II. Provided always, that in any suit at law or in equity which shall be brought for the recovery of such immovable property as is aforesaid, no advantage shall be taken of any defect of title arising out of the transmission of such property upon the death and intestacy of any Parsie having a beneficial interest in the same, or by the last will of any such Parsie, if such transmission took place before the day of , and if such transmission were either according to the rules which regulate the transmission of freehold property, or else took place with the acquiescence of all persons to whom any interest in that property would, according to the rules which regulate the transmission of chattels real, have accrued upon the death of such Parsie.

(Signed) F. Millett, Secretary.

Leg. 30th January 1837.—No. 8.


HONORABLE SIRS,

We have been favoured with the perusal of a letter addressed by the Honorable Sir Herbert Compton to Mr. Anderson on the subject of the defective state of the law as respects immovable property possessed by the Parsie inhabitants of the Island of Bombay.

2. The information thus conveyed to us has impressed us with a sense of the necessity of providing by a legislative enactment for the security of the rights of that numerous and opulent class of the community. We should therefore be glad to be furnished officially with all the information which it may be in your power to communicate, and which may be necessary to enable us to prepare for submission to the Right Honorable the Governor-General in Council a draft of a law, of which the object will be to quiet the possession of title which has hitherto prevailed among them, and to make suitable provisions for the future.

We have the honor to be, &c.

(Signed) T. B. Macaulay.

C. H. Cameron.

Indian Law Commission,
22nd April 1836.

(Signed) J. M. Macleod.

G. W. Anderson.

(The true copy.)

(Signed) F. Millett, Secretary.


HONORABLE SIR AND SIRS,

1. We have the honor to acknowledge the receipt of your letter of the 22nd of April last, on the subject of the defective state of the law as respects immovable property possessed by the Parsie inhabitants of the Island of Bombay, a subject which had been privately submitted to Mr. Anderson by a letter from Sir H. Compton; and requesting us to furnish you officially with all the information which it may be in our power to communicate, to enable you to prepare for submission to the Right Honorable the Governor-General in Council a draft of a law, of which the objects will be to quiet the possession of estates acquired by Parsis, according to the customs which have hitherto prevailed among them, and to make suitable provisions for the future.

2. You must be aware that by the Charter of the Supreme Court we are bound to administer Hindoo and Mahomedan law in matters of contract and inheritance between persons of these classes respectively, that neither of these laws can be applied to the Parsie inhabitants of Bombay, and that the English is the only other law which we are authorized to administer.

3. Cases, however, have occurred, as stated in the letter to Mr. Anderson, which you have perused, touching the title to land at Bombay, in which it has been contended that the law of England must be strictly applied to Parsis in the same manner as if they were British-born subjects.

We have not been compelled to pronounce any decision, whether the law of primogeniture and the provisions of the Statute of Frauds touching wills of land do or do not apply to Parsis, and on the other hand we have not in any manner recognized the usages of Parsis at Bombay.

4. Indeed, in our judicial capacity, we have scarcely had any experience of Parsis usages. Since we have been at Bombay there has hardly been a serious attempt to adduce any usages which could be contended to have the force of law. We may add our belief, founded on extrajudicial information, derived from what we consider the best sources of information attainable at Bombay, that the Parsis here cannot establish any usages which are tenable, or that can be sustained by books of an authentic character.

5. With respect to the first part of your communication touching quieting possession, we feel considerable difficulty in recommending any specific enactment, but we submit the following observations to your consideration.

6. We cannot recommend an enactment that the usages of Parsi should have the force of law, because, for the reasons which we submit, we strongly apprehend few, if any, of them, will be found to have that consistency which will enable a Court of English law to administer justice according to them, obliged as such a Court is to act on the strict rule, without any discretion, and no less obliged to reject altogether
any alleged rule which is not immemorial, universal, and compulsory. We began the argument on the premise that it would have depended for their sanction upon, and to have fluctuated with, the fluctuating moral influence of their clergy, their punchcarts, and other respected or otherwise powerful bodies or individuals. We have found the papers in one case where, in a family bearing the surname of Ghose, during the time of our predecessors in the Recorder's Court, it was attempted to prove a custom of posthumous legitimation of an illegitimate child. It is the only case of the kind to which we have referred, and is chiefly remarkable for the number of appeals to the King in Council to which it gave rise, and for the extreme inconclusiveness of the evidence, depending on a total confusion between what is permitted and what is enjoined by law amongst a people whose peculiar law, if any exists, is purely religious, and without civil power to back it, such confusion is to be expected. We therefore think that to enact that the usages of the Parsis should have the force of law, would probably shake more titles than it would quiet; would lead to much experimental litigation, and perjury or loose testimony; and that fair and bona fide claims under it would generally be disappointed.

7. We think it most important that the law of succession to property among Parsis should, as early as possible, be settled by an authoritative person, as that, probably, cannot be immediately completed, and as it is a matter of hourly urgency that bona fide titles should not be shaken by the application of the Statute of Frauds or the law of primogeniture, we think it best to recommend a strong measure indeed, but conformable with the existing practice of taking probate of wills of land, and dividing land on intestacy, viz., that of declaring that all the immovable properties of deceased Parsis are to be deemed for the purpose of transmission in the nature of chattels real, and not of freehold.

8. The principle is that of Mr. Ferguson's Act, 9 Geo. 4. c. 33, but carried out to its fullest extent; we have no reason to apprehend that any injustice will result from it, and we think it better to adopt the existing law of personal succession in toto than to leave it open to judicial construction how much should be adopted.

9. This will have the advantage of making the testamentary law uniform as to all kinds of property, and will be of much benefit to all who have any connection with the Parsees. It is not easy to suggest the raising of new experimental questions in the place of those which may be settled by it.

10. Should this recommendation be adopted, perhaps it may be expedient that a proviso should be added that possession after a certain period of acquiescence should be disturbed by reason of such a fact. For though we do not believe there will be found one bona fide case of exclusive inheritance by an eldest son, and few, if any, of wills considered invalid for want of attestatia, most family partitions must have involved some principles of compromise, which it might be attempted (and the attempt, even if unsuccessful, might be mischievous) to rip open.

11. A sketch of an enactment, with a proviso, will support any view this letter; they were framed chiefly because, unless we had seen how the idea on the subject could be realized, we could not have recommended the measure with any confidence, and are submitted to the Commissioners, because, on it depending, that they might be able to judge, they will more readily judge of its advantages or defects.

12. In the proviso which has been thus sketched, it may be remarked that coverture has been omitted among Parsees. The reason of this is that the provision has been intentionally, Parsi women are almost married under age, so that, except in the case of widows, such a disability would annul the proviso as to all female claims, and on these we apprehend that the most vexatious questions are likely to be raised, as their shares are less definite than those of brothers, and less reducible to the analogy of English law.

13. We do not think that this omission will work injustice, for, in fact, Parsee married women are accustomed to the possession of property, and are not wanting in vigilance to guard it; their husbands also will have a further interest in asserting the claim, and in the few cases in which it may happen that a husband has an adverse interest, and that therefore the right is not asserted in time, there probably would be relief in equity.

14. If the Parsees have been represented to him that there, according to the practice which has hitherto prevailed, and by them transmitted to others, can be quieted, a vast advantage will be obtained, and much litigation may be averted. On this part of the subject we can address you with confidence; but to enable the Legislative Council to make suitable provisions for the future, we must confess that we are not at present possessed of sufficient information to enable us to submit to you any opinion or recommendation satisfactory to ourselves.

15. We have already stated that, as far as we can form a correct opinion, the rules or practices of Parsis at Bombay, in respect of inheritance, are not immemorial, universal, or compulsory; and we have reason to believe that if the most intelligent and influential Parsis at Bombay should be invited to communicate to you their own wishes respecting the inheritance and distribution of property, very few would be found to accord in any principle, or to suggest another that you might be disposed to recommend to the Legislative Council. We believe that in many instances of partition and division of the estate of Parsis who have died intestate at Bombay, the parties interested have been governed in a great degree by the usages of the Hindus, and on some cases they have been guided by our Statute of Distributions. Different modes of division and partition have prevailed, as we have been informed, in different families, and sometimes in different branches of the same family.

16. We have been informed that it will be difficult to learn anything on this subject from any books which the Parsis consider authentic. We understand that they chiefly relate to the ceremonies of religion and marriage.

17. The Chief Justice having caused inquiry to be made from European gentlemen at Bombay who have had access to the best and most impartial sources of information, we have represented that there is but one book of authority in existence, which is alleged to be a fragment of the writing of Zoroaster, and that it does not contain any law respecting inheritance.

18. It has also been stated that although there are several books in possession of the Dustooors or Gueba Priests at Yazd and at Bombay, some of which have existed, as is believed, two or three centuries, yet that they have all been compiled or written in India, and that they afford but slight, if any, reason to conclude that the precepts or ordinances contained in these books were written before the emigration of the Parsis at Gauzerut. These books are called Rowayts, and contain religious ordinances founded on tradition and customary usages.

19. The Chief Justice has been assured by a gentleman who is conversant with the languages in which these books are written, Persian and Guzeratit, "that the Parsis have no municipal laws or " civil institutions at all; that the " laws and customs of the people of the country in " which they have resided." Another gentleman of acknowledged Oriental erudition has stated "that the " traditions of the Parsis are their guide, and are " founded partly on the Hindoo or the Mahomedan " law."
TO PREPARE A BODY OF SUBSTANTIVE LAW FOR INDIA.

cultures which are likely to arise if the inheritance and succession to lands, rents, and goods of Parsis should be regulated by their usages. The knowledge and experience of Mr. Ainsworth, who is acquainted with Parsis and with their habits, manners, and characters, both at this presidency and elsewhere, will enable him to correct or confirm what has been thus submitted.

20. We shall be glad to render any further assistance in our power, if we can in any manner facilitate the accomplishment of the important objects now in contemplation, but we are not aware of anything which it is material to add at present, beyond the following two points; first, that, unless requisite in order to assimilate the law applicable to Parsis everywhere in India, we think, as regards the Parsis in Bombay itself, it will not be necessary or expedient to treat adoption as a mode of constituting the 

*Acres fictas.* They have not been in the habit of relying on it at Bombay (probably from conforming themselves to the law of England), and are much in the habit of making wills, whereby the same object is attained without requiring a court composed of persons of different manners and religion to scrutinize the due performance of a religious and domestic rite.

Secondly, that while we recommend an act confinatory of existing untested wills, we see no reason why the Parsis of the presidency should not be included in any prospective provision as to the authentification of wills which the Legislative Council may consider generally expedient. The Parsis are quite sufficiently intelligent and accessible to information of public acts affecting them, and as regards attestation in particular, it is conformable to their habits of business.

We have the honor to be, &c.

(Signed) H. A. D. Compton, C.J.
J. W. Awdry, Enquire Judge.

(True copy.)

(Signed) F. Millett, Secretary.

Whereas from the incompatibility of the law of primogeniture, and of various provisions of the law relating to wills of real estates, with the usages of the Parsees residing within [the town and island of Bombay, or the jurisdiction of the King’s Courts in India]; doubts have arisen which have tended greatly to the inconvenience of property.

Be it enacted and declared that all immovable property situate within [the town and island of Bombay, or the jurisdiction of the King’s Courts in India], shall, as far as regards its transmission by the last will and testament, or on the intestacy of any Parsi having a beneficial interest therein, be deemed and taken to be of the nature of chattels real, and not of freehold.

Provided always, that no person or representative of any person who shall have acquired for the space of years, to be reckoned from any time when he was of full age, of sound mind, and resident within [the town and island of Bombay, or the jurisdiction of the King’s Courts in India]; in the peaceable possession of any such property, by any person claiming adversely to him, shall sue or avail himself of the suit of any other person to disturb such possession by virtue of anything herein contained.

(True copy.)

(Signed) F. Millett, Secretary.

Leg. Department, the 30th January 1837.

RESOLUTION and DRAFT of ACT.

It has been brought to the notice of the Governor-General in Council that landed property of great value within the jurisdiction of the King’s Courts is now held by Parsees, to whom it has descended in conformity with Parsi usages, but not in conformity with the English law of inheritance.

2. The national usages of the Parsees are not, like the Hindoo and Mahomedan rules of inheritance, marriage, and succession, recognized by law. Nevertheless it appears to his Lordship in Council that Parsees who are in possession of land which they have inherited according to their national usages, and with the acquiescence of all interested parties, ought not to be disturbed in that possession. This appears to his Lordship in Council to be one of those cases in which the strict enforcement of the law would defeat the end for which laws are made, would render property insecure, and would shake the confidence of the people in the institutions under which they live.

His Lordship in Council is disposed to enact that real property within the jurisdiction of the King’s Courts shall, as regards its transmission by the will of a Parsi testator, or on the death of a Parsi intestate, be taken to be and have always been of the nature of chattels real.

The enactment will be restricted by two provisions. One of those provisions secures in their possession all who hold such property by what has hitherto been a strictly legal title. The other is intended to give legal validity to those family arrangements which Parsees have hitherto made according to their national customs, in cases in which no objection has been made to those arrangements.

In order that time may be given to Parsees who reside at a distance from Calcutta to express their wishes, his Lordship in Council has determined to leave a longer interval than ordinary between the first publication and the final re-consideration of the Act which has been prepared on this subject.

The following draft of that Act is herewith published for general information:

Act No. of 1837.

I. It is hereby enacted that from the day of all immovable property situate within the jurisdiction of any of the Courts established by His Majesty’s Charter shall, as far as regards the transmission of such property on the death and intestacy of any Parsi having a beneficial interest in the same, or by the last will of any such Parsi, be taken to be and have always been of the nature of chattels real, and not of freehold.

II. Provided always, that in any suit at law or in equity which shall be brought for the recovery of such immovable property as is aforesaid, no advantage shall be taken of any defect of title arising out of the transmission of such property upon the death and intestacy of any Parsi having a beneficial interest in the same, or by the last will of any such Parsi, if such transmission took place before the said day of , and if such transmission were either according to the rules which regulate the transmission of freehold property, or else took place with the acquiescence of all persons to whom any interest in that property would, according to the rules which regulate the transmission of chattels real, have accrued upon the death of such Parsi.

Ordered, that the said draft be re-considered at the first meeting of the Legislative Council of India after the 9th day of May next.

(Signed) H. H. Macnaughten, Secretary to the Government of India.

NOTE.—Act No. IX. of 1837 passed.
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