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"No suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby; and it shall be lawful for the Civil Courts to make binding declarations of right without granting consequential relief."

BY

L. P. DELVES BROUGHTON,

OF LINCOLNS INN, BARRISTER.

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# DECLARATORY DECREES.

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DECLARATORY DECREES.

I.

It is said that the people of India are a very litigious people. The assertion is apparently supported by the published reports of the decisions of the various Courts, which seem to be often occupied in determining questions of very small moment.

In point of numbers, however, the civil suits that are tried in India seem to be excessively few. In the year 1867, upon the occasion of the introduction of a Stamp Act into the Legislative Council of the Viceroy, it was stated by Sir Charles Hobhouse, who had charge of the measure, that the number of suits instituted in all India during the previous year had been found to be in round numbers 800,000.

A rather larger number of suits were instituted in the County Courts in England during the same period. The number of suits that are yearly instituted in the County Courts has since that date increased in some degree, in consequence of the extension of the jurisdiction of those Courts. There has been no corresponding increase of the jurisdiction of the Courts in India; they were from the first Courts of general jurisdiction.

In India there is also a practice of splitting up a case into two or three. For example, a suit is numbered 10 of 1874. When the decree is passed, and the successful party applies for execution, his application is numbered afresh, and in like manner a new number is given to any application of a miscellaneous character during the progress of the suit, which is reckoned as a new suit. There seems to be no rule under which this is done; it is a practice which has prevailed without reference to the Code of Procedure. In the same way, cases are sometimes "struck off the file," and put on again. Whatever may be the object, the effect of this practice is to make the apparent exceed the real number of cases tried in India. It is
probable, therefore, that the number 800,000, given by Sir Charles Hobhouse, is not exceeded.

It appears, therefore, that the County Courts in England, of which there are sixty, dispose of as many cases in the course of the year as the whole of the Courts in British India, in number, I believe, considerably more than six hundred.

With regard to their duration, there is no doubt that suits are spun out to a tedious length in India. This is in a great measure to be attributed to the complicated provisions of the Procedure Code, the want of point about it, and the encouragement it gives to trifling and delay. The suit, from its very beginning, is not treated as a fair contest between the parties, in which the Court is asked to determine the issues that they raise between themselves; but the Code allows of vague allegations, and it is for the Court, not for the litigants, to decide what is the question to be tried. This is the practical application of the clauses referring to the suit in this stage. Although there is some attempt in the language of the Act to make the case take a more definite form, it hardly ever does so, and the record is generally made up in a rambling way; it is often very difficult to ascertain what is asked for by the plaintiff, and what is resisted by the defendant. There is a string of "issues" elaborately framed by the presiding Judge, not by the parties, generally ending by one comprehensive issue "is the plaintiff entitled to recover in this suit?" there is no point to which the evidence can be applied or restricted; innumerable irrelevant witnesses are called at great expense to the parties to the suit, and at intolerable inconvenience to themselves. The Courts in some parts of the country are often on the move; the Judge has a great deal of other business to attend to; the parties and their witnesses have to follow his camp until he has leisure to take up the case and dispose of it or hear a bit of the evidence; and after innumerable adjournments and interruptions, for which the Procedure Code gives the fullest facilities, the case at that stage is brought to a close by an elaborate written judgment, which gives fresh opportunities for a renewal of the discussion in an application for a review of judgment, or in a regular and then a special appeal.

I might pursue the subject further, and point out how delays occur in the execution of the decree, which is always as hotly
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contested as the suit itself; for to use the words of Sir Barnes Peacock, "when a man gets a decree, his troubles begin;" but I have said enough to account for the long duration of suits in India, and as I understand that the Code itself is about to undergo revision and to be considerably amplified, it may be that this is not an unfitting moment to call attention to these subjects.

The point, however, to which the following remarks will be directed, is not the number or duration of the suits but their quality.

The various religious and social peculiarities of the numerous races in India doubtless give occasion to litigation of a character that may excite surprise or curiosity in those accustomed to the uniform current of litigious controversy in another country; it is difficult, for example, to comprehend a suit to establish the right to be carried cross-ways along the road in a palanquin, but such a suit was entertained in India, and ultimately heard by the Judicial Committee of the Privy-Council, *Sri Sunkur Bharti Swami vs. Sidha Lingayah Charanti*, 3 Moo. I. A., 198. Various other suits of this nature will occur to any one familiar with the reports of Indian cases.

But the chief cause of litigation that may perhaps be appropriately termed trifling appears to me to be the introduction in the Code of Procedure of a clause in an English Act of Parliament, framed upon a practice that had been of gradual growth in the Court of Chancery, and its application to Courts of all grades throughout British India. I allude to the 15th clause, relating to declaratory suits, a class of suits that had in some measure been allowed to prevail in India before the passing of the Code, but which has now assumed rather formidable dimensions, partly, I think, because the assistance of the decisions of the Court of Chancery upon the corresponding clause of the Act for amending the Chancery Procedure has not uniformly been invoked.

The clause is vague, and admits of great latitude of construction; nevertheless, certain principles have been laid down with regard to it, and I propose to examine these principles and to notice how they have been applied in England and in India.

The clause in question runs as follows:—

"No suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby; and it shall be lawful
for the Civil Courts to make binding declarations of right without granting consequential relief."

This clause in the Code of Civil Procedure is taken from the English Act of 1852, for the amending of the practice of the Court of Chancery, 15 and 16. Vict., c. 86, s. 50; the very words are adopted, and it is the same as Act VI of 1854, amending the practice on the equity side of the Supreme Courts in India, s. 29.

The framers of the Code for India were appointed in England to consider the reform of judicial establishments in India, shortly after the Chancery Practice Amendment Act and the Common Law Procedure Act of 1852 had been passed. In his letter of the 30th November 1853, the Secretary of State for India, Sir Charles Wood, says to the Commissioners:—"It is obviously most desirable that a simple system of pleading and practice, uniform as far as possible throughout the whole jurisdiction, should be adopted;" and it was for the whole of British India that the Code was framed and ultimately passed. It is important to remember, when the construction of the clause is to be considered, that its framers had before them a clause in an Act of Parliament which was then already in constant use in the Court of Chancery, and upon the meaning of which there had been many decisions before the Indian Code was finally settled and became law in 1859. The clause in question was made a part of the new Code from the first, and is to be found, as applied to the proposed High Courts, at p. 12, and as applied to the Civil Courts subordinate to the High Courts, at page 17 of the first report of the Commissioners, who must have determined, therefore, to go as far as the Chancery Amendment Act had gone and no further, for the English legislature had advisedly stopped short of the Scotch declaratory action, see Sir George Turner's remarks in Lady Langdale vs. Briggs, 26 L. J., (N.S.) Ch., p. 46.

The meaning attached to the words of the English Act by the Court of Chancery would, therefore, in the absence of any constructions in India itself, be a guide to the meaning of the same provision in the Indian Act. It must not be forgotten, however, that one Act is intended for India and another for England; and the antecedent practice of the Courts themselves in which the clause is to be applied
must not be left out of sight. The clause confers no new jurisdiction, and takes away no jurisdiction that existed before it was passed.

The practice in the Courts in India before the passing of this Act was not uniform; it varied in different parts of India. In the Madras Presidency, for instance, it is said that no declaration without consequential relief could have been made before the Code of Civil Procedure became law—Nayan Manni vs. Goda Shangara, 1 Madras H. C. Rep. 225; but it will probably be thought that this statement must be taken with some reservation. No case of this nature appears to have been reported.

In the Bengal Presidency, attempts had been certainly made to obtain mere declarations in suits. Thus an attempt was made to obtain a declaration that the plaintiff was entitled to the succession to property on the death of a Hindoo widow then alive, or that she was not entitled to alienate. In this case there was no actual alienation asserted, and no allegation that the widow was about to alienate, Lalla Futteh Bahadoor Singh vs. Musst. Pranputtee Koonwur, S. D. A. Rep. (1857), p. 381. This attempt was unsuccessful, as was also a suit brought to restrain the defendant from taking possession of more than $\frac{1}{10}$ of certain talooks, the plaintiff being in possession of all they contended for, and having sustained no injury. As the plaintiff's rights had not in any way been invaded, as he had sustained no injury, actual or threatened, the injury he feared being merely prospective and contingent, the suit was dismissed, Denonath Turkosidunto vs. Prosunno Coomar Thakoor, S. D. A. Rep. (1857), p. 299. This would seem to imply that if the plaintiff had cause to anticipate an injury to his rights, he could sue, but it does not go so far as to say that he might ask for a bare declaration; he might have asked, for instance, for an injunction.

Again, in the case of Debee Churn Biswas vs. Kishen Kishwar Raee Chowdhree, S. D. A. Rep. (1847), p. 455, it was held that a suit could not be brought to obtain a declaration that a kuboolut and security bond filed in the Collector's office in a summary suit for rent under Regulation 7 of 1799 were forgeries. The result of the summary suit had been that the documents had been set aside and not acted upon.

In the case of Bhyrub Chunder Muzoomdar vs. Kishen Kaunth Acharjee, S. D. A. Rep. (1853), p. 943, the plaintiff sued to annul a
bond on the ground that it was a forgery, but it was held that the suit would not lie. No claim had been made upon the bond, and the plaintiff had received no injury. But where a deed alleged to be a forgery had been *registered*, it was held that a suit to set it aside as being a forgery would lie, *Shakir Mahomed vs. Mohesh Chunder Roy*, S. D. A. (1857), p. 208.*

* Note.—By Regulation 36 of 1793, offices for the registry of deeds were established in the various zillas in Bengal.

The registrar was authorized and required to register memorials of the following deeds:—Deeds of sale, gift or mortgage of land, houses and other real property, as well as the certificates of the discharge of mortgages. Leases and limited assignments of the same, including generally all conveyances used for the temporary transfer of real property. Wusscatnamahs or wills and written authorities from husbands to their wives to adopt sons after their (the husbands') demise. The registration of deeds of sale, gift or mortgage of certificates of the discharge of mortgages of land only was made compulsory after the 1st January 1796, and the effect of registration, on the validity of the document being proved, was to *invalidate* other deeds executed after the 1st January 1796, and whether of earlier or later date than the registered document: provided that the purchaser, donee, or mortgagee had no notice of the prior encumbrance.

In the same manner, under Regulation 17 of 1803, registered deeds of sale or gift, if authentic, had the effect of invalidating other deeds of sale or gift of the same property which were not registered, and registered mortgages received priority over unregistered mortgages: provided the purchaser, donee, or mortgagee had no notice of the prior unregistered sale, gift, or mortgage; and when the original deed was lost, a copy from the registry was made evidence on proof by the subscribing witnesses of the execution of the original.

*Act 1 of 1843* after reciting that a complicated system of law had arisen out of the construction which had been given to the provisions regarding the knowledge of parties or notice had by them in such cases, enacted that those provisions should be repealed from the 1st of May 1843, and every conveyance or other instrument affecting title to land or any interest therein authorized by the Regulations (there were similar provisions in the Madras and Bombay Codes of Regulations, see Madras Regulations XVII of 1802 and XI of 1831, and Bombay Regulation IX of 1827 and XII of 1828) should so far as regards any lands to which the same related, be *void as against any persons claiming under any subsequent conveyance or other instrument duly registered*, unless the prior conveyance or instrument should have been duly registered before the registration of the subsequent conveyance or instrument; any alleged notice or knowledge of such prior conveyance or instrument notwithstanding. This Act applied to all the three Presidencies of Bengal, Madras, and Bombay.

Some doubts appear to have arisen on the construction of this Act, and it was repealed by *Act XIX* of the same year, which enacted that from the 1st of May, then last past, every deed of sale or gift of lands, houses, or other real property, a memorial of which
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In the case of Ramdyalnarain Singh vs. Syed Joolfukeer Hossein, 7 S. D. A. Rep. (1851), p. 352, the plaintiff sued as heir of his father to set aside a sale which the father had made, and which he contended was ultra vires, the property was held under the Hindoo Law (Mithila School), and the son had not consented to the sale. The suit was brought within 12 years of the father's death, but more than 12 years from the date of the alienation, and the question was whether it was barred by the law of limitation, which would have been the case if the son had a right to sue in his father's lifetime.

has been or shall be duly registered according to law, shall, provided its authenticity be established to the satisfaction of the Court, invalidate any other deed of sale or gift of the same property which may not have been registered, and whether such second or other deed shall have been executed prior or subsequent to the registered deed, and that from the said day every deed of mortgage on lands, houses, and other real property, as well as certificates of the discharge of such incumbrances, a memorial of which has been or shall be duly registered according to law, and provided its authenticity be established to the satisfaction of the Court, shall be satisfied in preference to any other mortgage on the same property which may not have been registered, and whether such second or other mortgage shall have been executed prior or subsequent to the registered mortgage, any notice of any such unregistered deed or certificate alleged to be had by any party to such registered deed or certificate notwithstanding: Provided always that nothing in this Section contained shall be construed to extend to any deed or certificate made before the said 1st day of May, then last past. And by the 3rd Section it is enacted that no conveyance or other instrument affecting title to land, or any interest in the same, whether made before or after the said 1st day of May, other than such deeds or certificates as aforesaid, are or shall be in any respect void for want of registration, any Act, Regulation, or law to the contrary notwithstanding.

This was apparently the law in force when the case of Shakir Mahomed vs. Mohesh Chunder Roy was decided.

All the earlier Regulations and Acts relating to the registration of assurances were repealed by Act XVI of 1864, which came into operation on the 1st of January 1865 in the Presidencies of Bengal, Madras, and Bombay, but not in any other parts of India until extended thereto by an order of the Governor-General of India in Council, or by an order of the Local Government, to be notified in the Official Gazette. Section 13 of this Act enacts that no instruments of the class described in that Section shall be received in evidence in any civil proceeding in any Court, or shall be acted on by any public officer, if such instrument shall have been executed on or after the date on which the Act came into operation, and if the property to which such instrument relates shall be situate in any part of British India in which the Act is in force, unless the same shall have been registered in the manner and within the time prescribed by the Act, excepting leases executed between landlord and tenant relative to Revenue-paying land in Madras; but any such lease might be registered under a subsequent Section, the 16th, which provided for the optional registration of certain other
The Judge said: "Certainly a cause of action may have arisen at the time of these sales, that is, it is possible that a suit could have been brought by the plaintiff during his father's lifetime merely for declaring the sale invalid or void; but he could not have brought the present action, which is one for possession." And he cites a case in support of this last proposition, *Chutterdharee Lall vs. Bikoo Lall*, 6 S. documents. This Act provided for the registration on the register of the deed, &c., of any decree or order of a Civil Court affecting its validity. And it further provided for the registration of wills and for the special registration of obligations for the payment of money and for the recovery of the money by summary process on such registered documents.

Act XX of 1866 repealed Act XVI of 1864 and Act IX of 1865, which had been passed for the exemption from registration of certain documents relating to the land revenue, and amended and consolidated the law relating to registration of assurances for the whole of British India. It came into operation on the 1st of May 1866, wherever Act XVI of 1864 was in force at the time it was passed (2nd April 1866) with some exceptions, and might be extended by order of the Local Government to be notified in the Official Gazette.

This Act also provided for the compulsory registration of certain instruments, and the optional registration of others, and gave effect to registration in the following manner:

1. A registered document was declared to operate from the date of its execution.

2. Instruments duly registered and relating to any property were declared to take effect against any oral agreement or declaration relating to the same property.

3. No unregistered instrument, the registration of which was compulsory, was to be received in evidence in any civil proceeding in any Court, or acted on by any public servant, or affect any property comprised therein. And priority was given to certain registered documents, the registration of which was optional, over unregistered documents relating to the same property.

This Act provided, like the Act of 1864, for the registration of wills and also of obligations for the payment of money, and for a summary procedure for the recovery of the money secured by such last mentioned registered documents.

Finally, the earlier Acts relating to registration were repealed, and the law was consolidated by Act VIII of 1871, at present in force. This Act applies to the whole of British India, except such districts or tracts of country as the Local Government may from time to time, with the previous sanction of the Governor-General in Council, exclude from its operation. Like the two former Acts, it makes the registration of some documents compulsory, and provides for the registration of others at the option of the parties, and the same effect is given to registered documents as in the last Act, and in addition, no unregistered document, which is required to be registered, shall affect any immovable property or confer any power to adopt. Bonds and wills are among the documents, the registration of which is optional, but there is no provision for summary proceedings for the recovery of money due on registered bonds.
D. A. Rep. (1850), p. 282. That also was a suit for possession instituted by a son, during the lifetime of his father who had alienated without his consent; but it was treated in the judgment as a suit on an exclusive proprietary right, and the Court drew the distinction and referred to an earlier case, Sham Sing vs. Musst. Omraktee, 2 S. D. Select Reports, 75, where it was held that a father and son possessed an equal right in ancestral immoveable property. It was argued that the father by making the sale had divested himself by his own act of his right, and consequently, the plaintiff was the only legal claimant to the property in suit.

In the case of Baboo Juguputty Sing and others vs. Baboo Tilukdharee Sahee, 7 S. D. A. Rep. (1851), p. 131, it was stated that a claim for declaration of title could be received by the Company's Courts, and must be adjudicated upon, notwithstanding possession be with the plaintiffs. This case is badly reported, and the facts are not stated. It was probably such a suit as the last mentioned or as Hemchund Mozoomdar vs. Musst. Taramunnee, 1 S. D. A. Rep., p. 359, in which it was declared by the decree that a deed executed by the widow should not after her death operate to preclude the right of the surviving heirs, leaving it to operate during her lifetime.

In the case of Baboo Bhagwan Sing vs. Mitarjit Sing, 8 B. L. R., 383 (S.C.), 17 Suth. W. R., 169, where it was prayed that the several shares of the various members of a Hindoo family in the family property might be declared, it was said by Markby J., that such suits had frequently been entertained before the passing of the Code, and that Section 15 did not narrow the jurisdiction of the Court. The learned Judge added that there was nothing in Section 15 which prevents the Court entertaining a suit to "ascertain how the shares of a deceased person are vested, notwithstanding that no overt act which could give rise to relief in the shape of damages, or a decree for possession, has occurred."

In that case, however, as reported, it appears that the plaintiffs sued not only for a declaration of their right to a certain share in the joint property of a Hindoo family, but to set aside the sale by one of the members of the family of the property including that share; but the facts of the case are not stated in the report, and can only be gathered by inference from the judgment, which alone is printed.
I have not found any early case of this class decided in the Bombay Presidency.

The question came before the Judicial Committee of the Privy Council in the year 1845 in the case of Namboory Setapaty vs. Kanoo Colanoo Pullia, 3 Moo. I. A., 359-382 (Feb. 7), when the Committee expressly abstained from giving an opinion as to whether the Civil Courts in India have any jurisdiction to entertain a suit, not involving any civil rights, as a matter of law, and to make a declaration of the right to perform or have performed certain religious ceremonies.

This was an appeal from Madras, in the course of his judgment Lord Brougham observed:—"The plaintiffs not having alleged any case of injury done to them by the defendants upon which they were entitled to go into evidence, and not having, therefore, established any case for damages in their suit against the defendants, no question remained but of a mere declaration of a right to perform certain religious ceremonies; if the Courts below had jurisdiction to proceed to the determination of that question in this suit (upon which their Lordships guard themselves in their judgment against giving any opinion) the plaintiffs have not produced sufficient evidence to establish such a right."

II.

As the application of the principles laid down by the Court of Chancery to cases in India has been lately recognised by the Judicial Committee of the Privy Council, it becomes important to consider what those principles are; and I propose to refer to the English decisions at some length, as the reports themselves are seldom available in this country.

In the first place, it has always been held that the Court has a discretion in the matter, that it may make a declaration where it has jurisdiction, and that it may refuse to make one.

Thus, in the case of Fletcher vs. Rogers, 10 Hare, Appx. 1, xiii, the suit was an administration suit. W. Rogers, after certain directions in his will, bequeathed to his brother and his two sisters the remainder of his property as follows, "to be equally divided amongst all and each of them, if living at the time of my decease, then
amongst their surviving children.” The question was whether the estate of the testator was bequeathed to his brother and sisters absolutely or only for their lives; and it was decided that they only look life estates. It was then submitted that as the property was small and all the parties living were present in Court, the Court would make a declaration with respect to the interests of the children under s. 50 of 15 and 16 Vict., c. 86. Vice-Chancellor Wood said that he thought the statute left it to the discretion of the Court in what cases a merely declaratory decree ought to be made, and that this was a case in which the Court might make such a decree; he accordingly declared the interests of the children.

The propriety of this decision has been questioned (see the note to 15 and 16 Vict., c. 86, s. 50, Chancery Acts and Orders, by Mr. Osborne Morgan, 3rd Ed.), and it appears to be inconsistent with the case of Garlick vs. Lawson, 10 Hare, Appx. 1, p. xiv., which was decided shortly afterwards. This was a special case, in which it was stated that W. Lawson bequeathed a moiety of his residuary estate to his daughter Ann Lawson for life, and the said moiety at her death to her lawful issue, and in default of such issue, he bequeathed such moiety to the children of his daughter Jane Garlick. The other moiety was left to Jane Garlick for life, and at her death to her lawful issue. Ann Lawson was unmarried; Jane Garlick had ten children; seven of whom survived the testator. The questions were, whether the words “lawful issue” (regard being had to other parts of the will) were not to be considered as synonymous with children, and secondly, whether, as regards the moiety bequeathed to Ann Lawson, the words did not mean lawful issue of Ann Lawson living at her death. After answering the first of these questions, Vice-Chancellor Wood said, that “Sir George Turner’s Act, 13 and 14 Vict., c. 35, provides in s. 14 that it shall be lawful for the Court, on the hearing of a special case, to determine the questions raised therein, and to declare its opinion thereon, and, so far as the case should admit of the same, upon the right involved therein, without proceeding to administer any relief consequent upon such declaration; and that every such declaration of the Court contained in any such decree should have the same force and effect as such declaration would have had, and should be binding to
the same extent as such declaration would have been, if contained in a decree made in a suit between the same parties constituted by bill. Now, a declaration in the lifetime of the tenant for life with regard to the interests of parties in reversion could not have been made in a case at the time the statute passed, and therefore could not have been made on a special case. Then came the new Act (15 and 16 Vict., c. 86, s. 50), which merely said that the suit should not be open to objection on the ground that a merely declaratory decree or order was sought. It enabled the Court in its discretion where it should appear necessary for the administration of an estate or in order to the relief to which a plaintiff might be entitled, to make a decree notwithstanding it should be merely declaratory, but this was not a case in which it was necessary to do so.”

Both cases, however, show that the statute is to be construed as leaving it to the Court to decide whether it will grant or refuse a declaration—a discretion which of course must be guided by law. *R. Wilkes*, 4 Burr., 2539. See also 2 Inst., 298.

In *Greenwood vs. Sutherland*, 10 Hare, Appx. 1, xii, which was a special case on the construction of a will, Vice-Chancellor Wood made a declaration with regard to legatees before the Court, but refused to make any declaration with regard to the bequests to their children, who were to take after them. Several legacies were given to the sons and daughters of the testator, with a provision that, if any of them should die without leaving issue surviving, the legacy of the person so dying should fall into the residue; the gift of the residue was as follows, “when and as each child dies, amongst the lawful issue of my said sons and daughters, their respective executors, administrators and assignors, payable as the youngest issue of each child attains the age of twenty-one, with benefit of survivorship amongst them in case of any of their deaths during minority; and the Court was asked to declare what children, grandchildren, &c., were comprehended in the word “issue,” and what interests they took, and at what ages their interests became vested and payable.

It has been considered that the Court should not make a declaration regarding a claim that is contingent or that may never arise. Thus, in *Jackson vs. Turnley*, 1 Drew. 617 (S. C.), 22 L. J.
(N.S.) Ch., 949, where a lease for twenty-one years was granted to two persons jointly, and all the covenants were joint, not joint and several, one of the lessees died during the term, the rent was paid up to his death, but it was alleged by the lessor that the estate of the deceased lessee was liable for any breaches of covenant that might take place during the term, and that the executors ought to retain a sufficient portion of the estate to answer such liability. Upon a bill filed praying for a declaration that all liability of the deceased lessee had ceased at his death, it was held that the Court had no power under this section. Vice-Chancellor Kindersley said "I think that even if the Legislature did think that the right of making a declaratory decree should be given to the Courts of Equity as to legal rights, still it would, if it meant to give a right to make a declaration and nothing more, have expressed its intention in a very different manner. I will not suggest the expressions, but I think it would be enacted in a very different form from that which has at least left it so ambiguous. Now, what is the language of this section? for there is no preamble, and nothing else to guide us; as it is to be borne in mind that a suit might have been objected to on the ground that the party asked, and could only have, from the nature of the case, a declaration of right. This was one objection, and it might have been said by the defendant, 'you have no right to bring me here to litigate, irrespective of your having no right to a declaration of consequential relief.' Has the Legislature meant to remove both these objections, or only the first? What is the language used? "The only objection intended to be removed was this:—'Though you may have a right to sue, and bring me here in this suit, you have no right merely to ask for a declaration.' That objection the Legislature has removed; but did it also mean besides removing that, to say that anybody who had an apprehension, however well founded, that, at some day or other, and in some possible events, a claim would be made against him, may institute a suit to have his rights declared? I should not be justified in holding this by the words of the Act, or by anything that has ever been done by the Legislature." * * * "I must also observe that the language of the last branch of the clause is not unimportant: for it says afterwards, 'it shall be lawful for the Court to make binding declarations of right, without granting consequential relief.' This seems to import that it supposes a case in which the
Court was capable of granting consequential relief, if consequential relief had been asked or desired.'

Again in *Fyfe vs. Arbuthnot*, 1 DeGex and Jones, 406, a party to a deed of family arrangement covenanted that if he should at any time be entitled to property exceeding the value of £———, he would settle it upon certain trusts. Before any such property accrued or the persons entitled under the trusts were ascertained he filed a bill to have it declared that the covenant was void for uncertainty. Lord Cranworth, C., held that this could not be done. He said:—

"The plaintiff must take the deed as he executed it, and if the time should arrive when there shall be any property to which the covenant can apply, it can then be decided what is its effect. But I cannot make a declaratory order beforehand to bind the interests of unborn persons."

In *Norman vs. Johnson*, 6 Jurist. N. S., 905, however, Manners, the father of Norman's wife, had settled an annuity of £200 to his daughter, and secured it by his bond. He afterwards left his real estate to another daughter, subject to this annuity. There was evidence of waste by the other daughter, who had come into possession of the real estate, and the plaintiff filed his bill, praying that it might be declared that the real estate was liable to pay £3,000 in the event of the annuity falling into arrears. A declaration was made, although the annuity had not fallen into arrears.

In this case there was waste, and consequently the security for the payment of the annuity was diminished.

The case of *Lady Langdale vs. Briggs* before the Lords Justices is a leading case upon the subject. The judgment of Sir G. Turner, L. J., is reported in 26 L. J. (N.S.) Ch., 42. In that case Lady Langdale sued T. Briggs and T. C. Briggs for the purpose of having the trusts of the will and codicil of the late Lord Oxford administered. The testator had devised his property (subject to certain provisions for his eldest son) to T. Briggs and T. C. Briggs in trust for his daughter J. for life, and after the determination of that estate by forfeiture or otherwise during her life, in trust for her and her assigns, and to preserve contingent remainders. And after her decease to the use of her first and other sons in tail male. And then for his younger daughter F., and her sons in like manner, and then for his
second daughter C., and her sons in like manner, and so on, and the
will contained a proviso that "every person who by virtue of the
limitations hereinbefore provided or of this proviso shall become
entitled to the possession or to the receipt of the rents and profits, &c.,
and who shall then not use the surname and bear the arms of Harley,
shall and do within the space of one year next after he or she shall
so become entitled as aforesaid, &c., take, &c., the name and arms of
Harley." The testator died in 1848, and his eldest son in 1853.
Whereupon his eldest daughter J. became so entitled, and it was
contended that she had not complied with this provision. The daugh-
ter F. was a party to the suit, being one of the residuary legatees and
B. the son of the daughter C. as entitled to the first vested estate
tail was also made a defendant. And it was contended on his behalf
that the Court had authority to make a prospective declaration in his
favor under 15 and 16 Vict., c. 86, s. 50, but it was decided by Sir
G. Turner that this could not be done.

"As long"—he said—"as I have known this Court, now for no
inconsiderable period, I have always considered it settled that the
Court does not declare future rights but leaves them to be deter-
mined when they may come into possession. In all cases within
my experience where there have been tenancies for life, with re-
mainders over, the course has been to provide for the tenants for life,
reserving liberty to apply upon their deaths;" and after citing some
instances, he goes on to say—"I think the question deeply affects the
law of the Court. This Court entertains bills to perpetuate testi-
mony upon the ground that the future rights cannot be determined.
If the Court has authority to declare future rights, upon what
ground, in the case of equitable estates, are such bills hereafter to be
maintained?" * * * "I take the same view of that enactment
[15 and 16 Vict., c. 86, s. 50] as Vice-Chancellor Wood seems to
have taken of it in Garlick vs. Lawson, that it does not extend the
cases in which declarations of right may be made."

In Hitchcock vs. Sedgwick, 1 Eq. Cas. Abr., 234, referred to by Sir
G. Turner in Lady Langdale vs. Briggs, he said:—"There were two
persons, each of them pretended to be the purchaser of a reversion
after an estate for life, and one of them exhibited his bill to try his
title, and to perpetuate the testimony of his witnesses; such bill will
be dismissed, not being proper in the lifetime of the tenant for life. Such a bill would not be improper as a bill to perpetuate testimony; it could be improper only as a bill to try the rights.” Sir G. Turner further cited *Thelluson vs. Woodford*, 4 Vesey, 227, where he states that the Court declined to decide the point as to the uncertainty of the ultimate disposition, although there the Court was of opinion that if the question had been ripe for decision it admitted of an easy answer. *Wright vs. Atkyns*, 17 Vesey, 255, was also referred to. In that case the testator devised his property “to his mother and her heirs for ever, in the full confidence that after her decease she would devise the property to her family.” A bill was filed by the heir-at-law, who was also a mortgagee, praying for an account of what was due on the mortgages, and that the defendant might be decreed to pay the same, in case the Court should be of opinion that she was entitled to the fee-simple and inheritance of the estates devised; or in default of payment, or in case the Court should be of opinion that the defendant was entitled to an estate for life only, and therefore not bound to pay the plaintiff, then that the same might be raised by sale. The Master of the Rolls (Sir Wm. Grant) declared that the mother was only tenant for life, and this was confirmed by Lord Eldon, but the House of Lords reversed this decision, so far as it declared the mother to be only tenant for life, and all declarations consequent thereupon, without prejudice to any question which might thereafter arise touching the construction of the testator’s will. There was another order regarding the felling of timber made by Lord Eldon on a subsequent application, and this also was reversed by the House of Lords without prejudice to any question that might thereafter arise touching any right of the mother to make any disposition of the property in consequence of any words contained in the said will importing any restraint on her disposition thereof respectively.

These orders are stated by Sir George Turner to be of the highest authority, “not only as having been pronounced by the House of Lords, but as having emanated from Lord Ridesdale, than whom no Judge has ever existed more eminently distinguished for his knowledge of the powers and duties of Courts of Equity and the course and practice of these Courts. By the first of them Sir W. Grant’s declaration of the tenancy for life and all the
directions consequent upon it are reversed, without prejudice to any future question upon the construction of the will. By the second of them the right to the timber is declared, but without prejudice to any question as to the right to dispose of the estate: and yet in each of those suits the question was between the devisee, claiming to be entitled to dispose of the fee under the will, and the heir of the testator, disputing that claim."

In *Ferrand vs. Wilson*, 4 Hare, 344, also cited with approval by Sir G. Turner, see 26 L. J., (N.S.) Ch., 45, Sir J. Wigram held that the Court of Chancery had no jurisdiction to ascertain and declare rights before the party interested had sustained actual damage. In that case a tenant for life, purporting to execute a power which was conferred upon him by will, had exchanged certain of the devised estates for other estates; the plaintiff was denied relief on the ground that if the exchange was not warranted by the power, the devised estates did not pass by the conveyance.

"Then," he adds "in *Grove vs. Bastard*, 2 Phillips, 619, Lord Cottenham says, the Courts in this country have not the power which the Courts in Scotland have of settling such questions by declarator." That was a suit brought by the vendors of property who were trustees under a will, for specific performance of the contract to purchase, and the defence was that the will was executed under very suspicious circumstances, and might be upset afterwards. The Vice-Chancellor decreed specific performance without obliging the plaintiff to establish the will. The Lord Chancellor reversed this decision, considering that the validity of the will should be determined, if possible, between the vendors and the heirs, instead of being left to be litigated between the heir and the purchaser after the purchase-money should have been paid. The vendor was directed to file his bill against the heir to establish the will. If the heir, as soon as the bill was filed, should put in an answer abandoning his claim, the cloud on the title would be removed at once, and the question set at rest for ever. All these cases referred to by Turner L. J. in *Lady Langdale vs. Briggs* were decided upon the old practice before the Act now under discussion was passed.

In the case of *Lady Langdale vs. Briggs* the law is thus clearly laid down by the very eminent Judge who framed the earlier Act of
Parliament, the Special Case Act, 13 and 14 Vict., c. 35, which contains provisions of a character similar to those of the Chancery Practice Amendment Act, s. 50. In applying the like enactment in India and in construing its provisions, we have therefore the highest authority for saying that reference should be made to the state of the law and the practice of the Courts before the new law was enacted.

Again, a declaration as to the rights of a reversioner is usually refused during the lifetime of the tenant for life.

The case of Lady Langdale vs. Briggs, ante. p. 14, is an instance of this, as is also the case of Gosling vs. Gosling., 1 Johns., 265, which was a special case, under Sir George Turner’s Act, 13 and 14 Vict., c. 35, and the Court was asked to declare whether, according to the true construction of the will of Bennett Gosling, the gifts therein contained of the testator’s residuary personal property in favor of the sons and remoter issue male of the persons by the will made tenants for life of the lands directed to be purchased, coupled with the proviso in the codicil as to the postponement of the vesting of the first residuary personal estate, were void. Vice-Chancellor Wood observed “the question relates to the interest of persons in reversion, and does not affect the plaintiff, who is tenant for life. And the rule is now well settled, that the Court has no power, either under Sir G. Turner’s Act (13 and 14 Vict., c. 35, s. 14) or under the Chancery Amendment Act (15 and 16 Vict., c. 86, s. 50) to make a declaration in the lifetime of the tenant for life, with regard to the interests of parties entitled in reversion, unless it is necessary to do so for the administration of an estate, or in order to grant the plaintiff the relief to which he is entitled.”

Again, no declaration will be made when the plaintiff is in possession of all the rights he seeks to have declared, the declaration being asked for merely to clear a cloud which the plaintiff supposes to rest upon his title. Thus, in Rooke vs. Lord Kensington, 2 K and J. 760 (S.C.), 25 L. J. (N. S.) Ch., 795, the plaintiff alleged that he had a good legal title to property of which he was in possession, without any interruption of his enjoyment, but that the defendants set up an equitable claim which ought not to be binding on him because he acquired his legal title without notice of it, and he
prayed that it might be declared that he had not notice of the equitable claim, and that it ought not to be binding upon him. On this point Vice-Chancellor Wood said:

"This third point I may dispose of at once; for if there be any difficulty on the other part of the case, as to the jurisdiction of this Court to make a declaration in respect of the present interest of the plaintiff, I apprehend there can be no doubt whatever that there was no jurisdiction before the passing of the Chancery Jurisdiction Act; and as it appears to me there is nothing in that Act which authorises the Court to say that a party can come as plaintiff in this Court, and state that he has a good legal title to property, but that some one sets up an equity which ought not to be binding on him, because he had no notice of it, not praying any relief at all in respect of that equitable claim, the party making it not being in possession of the property, nor interfering with the plaintiff's enjoyment of it. In such a case the plaintiff simply says, I have a title which is in an unsatisfactory state, there are equitable interests outstanding, of which some one may say hereafter I had notice, and I want the Court now, although no claim has been made, to determine whether or not I had notice of those dormant equitable claims. Such a suit as that, if the Court authorised it, would be a simple suit of declarator; and whatever it may be thought hereafter by the Legislature desirable to do to empower this Court to clear titles to property, as yet there is no enactment giving this Court jurisdiction to make such a decree, which would be, in its form, a simple declaration of right. Such a jurisdiction did not exist before the late Statute, 15 and 16 Vict., c. 86. If it were necessary to cite authorities for that proposition, the case of *Grove vs. Bastard*, 2 Ph., 619 (S.C.), 2 DeGex. M and G, 6, is a very clear one, in which Lord Cottenham says that there is nothing analogous to the right to a declarator in this country; and it is not conferred by that statute, for the 50th Section, which is the only one bearing on the subject, is merely this, that "no suit in the said Court shall be open to objection on the ground that a merely declaratory decree or order is sought thereby; and it shall be lawful for the Court to make binding declarations of right without giving consequential relief." The form of that section of the statute implies that there is a consequential relief
which might be granted in each case when the right has been so declared, but that the parties are not to be compelled to ask for that relief when they may satisfy themselves by simply asking a declaration of right, and not pursuing the matter further. So Vice-Chancellor Kindersley held in the case of Jackson vs. Turnley, 1 Drew., 617; and it appears to me that is the clear interpretation of the Act. Therefore, so far as regards that part of the case which depends upon the allegation that the plaintiff has a legal title, but is embarrassed by the settlement being set up, of which he had no notice, and seeks to have a declaration that he had no notice, and therefore is not bound by it, it is clear that this Court has no jurisdiction to do what is so asked."

The Court refuses to make a declaration of right in cases where, even if relief had been asked, it could not have been granted. Thus also in the case of Webb vs. Byng, 8 DeGex M. and G., 633, where the testatrix by will left to H.W.B. the livings of Q. and C." Vice-Chancellor Wood considered that the Court had no jurisdiction to decide upon the construction of the will as to the advowsons, the disposition of them being a merely legal devise; but at the request of the parties, gave his opinion that the gift to H. W. B. was of a single presentation only, and a declaration to that effect was contained in the decree. On appeal, Knight Bruce and Turner, L. J. J., held that the Court had no jurisdiction to make such a declaration. "The devise is purely legal, and it is for the Court of law to determine the rights of the parties. The Court ought not to give an opinion which may prejudice those rights, where the parties, being infants, cannot agree to be bound by the decision."

Again, in the case of Bristow vs. Whitmore, 28 L. J. (N. S.) Ch., 801, the plaintiff was captain of a ship, and T. was sole owner. The plaintiff at the Mauritius and at the Cape entered into arrangements with the Government for the conveyance of troops to England, provisions were put on board, for which the plaintiff paid partly out of his own pocket and partly by bills drawn upon his owner T. T became bankrupt, the bills were dishonored, and the indorsees sued the plaintiff, and obtained judgment against him upon them. The Lords Commissioners of the Admiralty received notice from the assignees, and also from the mortgagees of the ship, of their claims on the freight
due for the transport of the troops, and consequently, they declined to pay the plaintiff until the rights of the different claimants had been settled by a competent tribunal. The plaintiff then sued the assignees of T. and the mortgagees, and prayed that it might be declared that he was entitled to be repaid out of the monies due from the Commissioners of the Admiralty the sums he had paid out of his own pocket, and that he might be indemnified out of the same monies against the amounts of the bills that had been dishonored, and all costs, and that such indemnity might be made available for his protection in such a manner as to the Court should seem fit. It was held by Vice-Chancellor Wood that he had no power to make such a declaration. The Court, he said, has no power "to make any declaration without something upon which the Court can act. If the Court can act on anything in the case, it may waive acting, and may make a declaration." The Commissioners of the Admiralty had, at the time this judgment was given, declined to pay the money into Court, but they afterwards did so, and the rights of the various claimants were then determined.

In Jenner vs. Jenner, L. R., 1 Eq., 361, the Court was asked to declare on the construction of a marriage settlement that a legal estate did not pass by the settlement, or if it did, that the settlement might be rectified. The Vice-Chancellor was of opinion that the estate did not pass, but declined to make a declaration. He said:—"There comes the original difficulty, whether I ought to dismiss the bill or to make a declaration as to the legal title. In Rooke vs. Lord Kensington, I dismissed the bill, and I think I must do the same here. No doubt the Act (25 and 26 Vict., c. 42, s. 1) referred to in the argument says:—That in all cases in which any relief or remedy within the jurisdiction of the Court is or shall be sought in any cause or matters, every question of law or fact, cognizable in a Court of Common Law, on the determination of which the title to such relief or remedy depends, shall be determined by the same Court, accordingly I am obliged to determine the question of law in this case; but it does not follow that, because I must determine the question, and accordingly have now determined it, for the purpose of arriving at the result whether or not a rectification of the settlement is necessary, I therefore have a right to make a declara-
tion. It is one thing to determine the legal question in order to conclude that a plaintiff has no relief in equity, and another to say the Court has power to declare a legal right. The order therefore which I must make is:—The Court being of opinion that the L. G. Estate did not pass by the indentures of 8th and 9th August 1824, let the bill be dismissed."

The case of the Trustees of the Birkenhead Docks vs. Laird, 4 DeGex. M. and G., 732, was a motion by way of appeal from a merely declaratory decree made by the Master of the Rolls. The question was as to the construction of certain private Acts of Parliament regarding the Birkenhead Floating Docks and the building of a sea-wall adjoining the river Mersey. The bill alleged that the defendants threatened to take down or lower part of the wall erected on land leased to the defendant Laird by the other defendants, and to make openings in the wall without the approval and not under the superintendence of the plaintiffs' engineer, &c., and they prayed that it might be declared that the defendants were not entitled to take down, lower, or alter the wharf-wall, unless by making an opening, &c., under such superintendence, &c., and for an injunction. The Master of the Rolls had declared as prayed, but granted no injunction or other relief. It was held on appeal that there was no jurisdiction under 15 and 16 Vict., c. 86, s. 50, to make a declaration of a mere legal right without granting any equitable relief, and finding that the case for an injunction was made out, the Court of appeal granted one.

A prayer for an injunction is a prayer for relief, Marsh vs. Keith, 1 Drewry and Smale, 349.

In Hope vs. Hope, 4 DeGex. M. & G. 328, Lord Cranworth, C., made a declaration for the information of the French tribunals (in which proceedings between the same parties were going on) that by the law of England an appeal from an order pronounced by the Lord Chancellor does not suspend its operation. His Lordship added that he would not venture to express an opinion as to what the French tribunals would do in the present instance, that would no doubt depend on their own sense of their duty, and on their own law.

In Saville vs. Bruce, 4 DeGex. M. and G., 557, Lord Scarborough devised estates in the neighbourhood of manufacturing towns in Yorkshire in street settlement, with power to grant leases for twenty-
one years, and repairing or building leases not exceeding ninety-nine years. The property could not be let to advantage unless the trustees had power to grant long leases, as for 999 years, and this could not be given them without an Act of Parliament. The bill prayed that it might be declared that it would be fit and proper and for the benefit of the plaintiff, &c., that an application should be made to Parliament to extend the powers of leasing contained in the said will, &c. The Master of the Rolls made the declaration prayed for.

In the two last cases relief was obtained although not directly from the Court.

Where the plaintiff had a present right as against the defendants, the value of which depended upon the construction of his title with reference to a future event and where it would be impossible to ascertain that value when the future event would occur, the Court made a declaration for the purpose of ascertaining the value. This was the case of *Bogg vs. The Midland Ry. Cy.*, 36. L. J. (N.S.) Ch., 440. The bill in this case prayed a declaration that, according to the true construction of a lease to her testator of the 17th August 1829, the plaintiff was entitled to have a renewed lease of the leasehold property granted to her for a term of sixty-one years from the 24th of June 1885, and that the defendants, the Midland Ry. Cy. (who had purchased the lessor's reversion), ought to pay to the plaintiff compensation calculated on the basis of her interest in the property, being for a term of eighty-two years at the time when possession was taken, instead of twenty-six years only (as offered by the defendants). The bill also prayed that the defendants might be decreed to pay to the plaintiff the further sum claimed by her for compensation beyond the amount of compensation already offered by them, or else that such further sum might be settled by arbitration under the Lands Clauses Act, 1845; and that the defendants might be decreed to take all necessary steps on their part to procure the amount of such further compensation to be settled by arbitration under the Act, and to pay to the plaintiff the amount, the plaintiff offering to take all necessary steps on her part to procure such amount to be so settled by arbitration. To this bill the Company demurred on the ground (1) that the Court had no jurisdiction to try the question of future rights, or to compel an arbitration under the provisions of the Lands Clauses Act.
(2) On the construction of the covenant, &c., the lessee had lost his right. The Vice-Chancellor after argument said, "upon the question of jurisdiction, I am of opinion that the bill is not demurrable. It is said that the Court will not entertain a bill merely seeking a declaration of future rights. But the Company cannot be allowed to take a man's property from him until the value of his interest has been ascertained; and if no special machinery under the Lands Clauses Act exists for that purpose, the Court will deal with and decide that question, Brandon vs. Brandon, 2 DeGex. and Sm. 305, Ex-parte Cooper ib. 312. The Company have, under the agreement which they have entered into, agreed that in the event of the plaintiff substantiating her right to a renewal, they will pay an additional sum, the amount to be settled by arbitration under the Lands Clauses Act. How is the plaintiff to substantiate her claim without coming here? There is no other course open to her. She cannot come at the end of fourteen years, when the Company is in possession of the property, and the line has been constructed, to ask for a renewal. The land has been taken out and out, and she wants to be paid out and out. Under these circumstances, I think I am in a position to determine what the right of the plaintiff is, notwithstanding the period for the exercise of it has not yet arrived."

In re Walker's Trusts, 16 Jurist., 1154, a petition under the Trustees' Relief Act, 10 and 11 Vict., c. 96, that certain persons named were entitled to certain shares in the trust funds, Vice-Chancellor Stewart considered that the persons in question were not so entitled, but that he had no power under that Act to make an order. But on the authority of Lynn vs. Beaver, Turner and Russell, 70, he allowed the petition to be amended, and made a declaration under 15 and 16 Vict., c. 86, s. 50. This case would probably be considered an authority for making a similar declaration in the case of a petition under Act XXVIII of 1826, the Trustees' and Mortgagees' Powers Act, Section 43, which Act applies, however, only to the High Courts at the Presidencies.

But in the case of Sharshaw vs. Gibbs, 18 Jur. 330 (and Kay 333, where the order is to be found), Vice-Chancellor Wood declined to make such a declaration, but prefaced his order with the words:—
"The court being of opinion, &c."
In the case of Byam vs. Byam, 19 Beavan, 58, articles of agreement on a marriage were construed by the Court and a declaration made to save the expense of a settlement; see also Watson vs. Marshall, 17 Beav. 365. Walker vs. Drury, ib. 482, and Wright vs. King, 18 ib. 461.

These last cases are not perhaps strong authorities, one way or the other, with regard to the principles upon which declaratory decrees should be made; they are rather cases in which the Vice-Chancellors and the Master of the Rolls declared their opinions for the satisfaction and relief of trustees and to save expense as the property was small. Such opinions, even although they may be expressed in an informal manner, would generally be as readily acted upon by the persons for whose benefit they are made as the most formal and binding decrees. Such is not the case in India. The Courts of original jurisdiction in the Mofussil seem to be regarded by the litigants as mere stepping stones to the Courts of Appeal; cases are launched and conducted in the vaguest and most informal manner, apparently rather with the object of securing a chance of a favorable decision at some stage or other of the suit than with that of having a fair contention fairly tried and determined.

III.

The principles which have guided the Court of Chancery in the application of the 50th Section of the Act for the amendment of Chancery Practice have generally been applied by the High Court in Bengal to the construction of the 15th Section of the Code of Civil Procedure, they appear to be these—

1. The antecedent practice of the Court has been a guide to the construction of this clause.

2. The Court has a discretion in the matter, to be exercised in accordance with established rules.

3. A declaration should not be made with reference to a claim that is contingent or that may never arise. A declaration may, however, be made where the plaintiff has a present right as against the defendant, the value of which depends upon the construction of his
title with reference to a future event, and where it would be impossible to ascertain that value when that event should occur.

4. A declaration as to the rights of a reversioner is usually refused, during the lifetime of the tenant for life.

5. No declaration should be made when the plaintiff is in possession of all the rights he seeks to have established, the declaration being sought merely for the purpose of removing a cloud from his title.

6. The Court refuses to make a declaration of right in cases in which even if relief had been asked it could not have been granted.

The circumstances of the case have sometimes induced the Courts in India to make declarations in suits in which the Courts of Chancery would perhaps have declined to exercise their jurisdiction. Each case must be dealt with on its own merits, but the principles themselves have been repeatedly followed.


It has always been held that the Court has a discretion and can make or refuse to make a declaration as the justice of the case may require. Baboo Motee Lall vs. Ranee, the wife of Maharaja Bhoop Sing, 2 In. Ju. (N.S.) 245, (S.C.) 4 Wym. Rep., 40, and 8 Suth. W. R., 64, Peacock C. J. and Loch J., 20th June 1867. Musst. Doolhun Jankee Koer vs. Lall Beharee Roy, 19 Suth. W. R. 32, Couch C. J. and Ainslie J., 16th Dec. 1872. Musst. Pearee Dayee vs. Musst. Hurunsee Koer, 19 Suth. W.R., 127., Couch C. J., Phear J., and Ainslie J., 5th Feb. 1873, and many other cases. The application of this principle has been approved by the

With regard to contingent rights and to the rights of persons entitled in reversion, here too, as will be seen, the principles that have guided the Court of Chancery have prevailed, but an important class of cases, in which declarations have been made although the plaintiff is a reversioner and has only a prospective right depending upon contingencies that may never come into existence, and the tenant for life is alive has arisen out of the peculiar character of the estate of a Hindoo widow.

The Hindoo widow in default of male issue succeeds to the estate of her husband as the heiress. She represents that estate fully, so long as her right to hold it continues to exist. But her dominion over it is rigorously confined within certain defined limits, beyond which she has no power to go; nor is it allowed to descend to her heirs after her death. See the judgment of Mr. Justice Dwarkanath Mitter in the case of *Kery Kolitany vs. Moneeram Kolita*, 13 B. L. R., p. 5. Although she may sell her so-called life interest, *ib. p. 8*, citing *Gobindmani Dasi vs. Shamlal Bysack*, B. L. R., Sup. Vol. 48, Peacock C. J., Raikes, Kemp, Bayley, and L. S. Jackson JJ., April 7th, 1864, yet the male heirs of her husband would have a right to take any legal steps to restrain her from wasting the purchase-money, they might have an injunction, *ib. p. 10*.

It has been held that when the estate is once vested in her it cannot be divested even in consequence of her unchastity, although unchastity unatoned before her husband's death would have prevented her from inheriting, see *Kery Kolitany vs. Moneeram Kolita*, above cited, a case decided by a Full Bench of ten Judges, April 9th, 1873, and *Párvatí Kom Dhondirám vs. Bhikú Kom Dhondirám*, 4 Bombay, H. C. Rep., 25, Westropp and Warden JJ., October 9th, 1867, and it is doubtful whether the estate would now be divested by loss of caste. *Matungani Debi vs. Joycally Debi*, 5 B. L. R., 466, Peacock C. J., and Macpherson J., March 10th, 1869. In the case of *Doe dem Saummoney Dossee vs. Nemychurn Doss*, 2 Taylor and Bell 300, it was held by Peel C. J., that Act XXI. of 1850 preserved a Hindoo widow's estate to her where it had once vested, notwithstanding her
unchastity and subsequent loss of caste, and in a note to this case the reporters observe. "In Doe dem Radamoney Raur vs. Neelmoney Doss, decided so long ago as 1792, the lessor of plaintiff, on proof of her incontinency after her husband's death, was nonsuited (Morton's Decisions). In the case of Maharanee Bussunt Coomaree vs. Maharanee Cummul Coomaree, 7 S. D. A. Rep., 144, the Sudder Court expressly held that the appellant had by reason of her elopement with a person named Dukinarunjun Mookerjje, forfeited all her legal rights according to the Hindoo shasters, and her suit was accordingly dismissed"—and they add.—"Prior therefore to the passing of Act XXI of 1850, it appears to have been clearly the law among Hindoos, that if a Hindoo widow, in the possession of land as heiress of her husband, lived incontinently, the Hindoo law disinherited her."

The case in Taylor and Bell was cited by Mitter J. in Kery Kolitany vs. Moneeram Kolita, 13 B. L. R., 24; but he does not appear to have made use of the note or referred to the cases cited there, with the exception of the case of Radamoney Raur, which is reported in S. D. A., 1858, 1891. Both cases are however referred to by Markby J. in S. M. Matangini Debi vs. S. M. Jaykali Debi, 5 B. L. R., 478, but his Lordship said that the case in 7 S. D. A. Rep. did not decide the point as far as could be gathered from the report, which is a bad one. With regard to the former case, he observes "it is said to have been held by Chambers C. J., Hyde, Jones, and Dunkin JJ., that she had by her incontinence forfeited her right to her husband's estate," which would seem to imply a doubt of the accuracy of this report also.

The widow is said to be half the body of her husband—"of him, whose wife is not deceased, half the body survives. How then should another take his property, while half his person is alive?" Vrhaspati, cited in Dāyā-bhaga, c. xi., section 1, clause 2:—She is not entitled to a mere maintenance, but to the whole estate, ib. clause 6. "The widow of a childless man, keeping unsullied her lord's bed, and persevering in religious observances, shall present his funeral oblation, and obtain his entire share." Vrhat Menu, cited ib. clause 7.—Catyayana says:—"Let the childless widow, preserving unsullied the bed of her lord, and abiding with her venerable protector, enjoy with modera-
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This right of succession in the Hindoo widow is for the benefit of the former owner. It is "grounded solely on the benefits conferred" [on the deceased], Daya-bhāga, ch. xi., s. 1, clause 33, which are described to be "offerings by a chaste widow to the manes of the deceased, worship of the gods, and particularly of Vishnu," &c., and for these purposes she is to "enjoy her husband's estate during her life, and not as with her separate property, make a gift, mortgage, or sale of it at her pleasure." But when she dies, the daughters or others who would be heirs in default of the wife take the estate, ib. clause 57, not her heirs, clause 58. The widow must use, but not waste, the property, ib. clauses 60, 61. But if she cannot otherwise subsist, she may sell or otherwise alien it, ib, clause *62. Thus, her estate is not an absolute estate for all purposes, and not merely a life estate. She takes the estate of her deceased husband for his benefit, which includes her own maintenance and the performance of her religious duties, rather than for the benefit of those who may become the heirs of her husband upon her death.

For religious or charitable purposes or those which are supposed to conduce to the spiritual welfare of her husband, she has a larger power of disposition than that which she possesses for purely worldly purposes; to support an alienation for the last she must show necessity. On the other hand, it may be taken as established that an alienation by her which would not otherwise be legitimate may become so if made with the consent of her husband's kindred. Phool Chund Lall vs. Rughoobuns Sulay, 9 Suth. W. R., 107, Peacock C. J., and Dwarkanath Mitter J., January 10th, 1868.

These restrictions upon a Hindoo widow's power of alienation are inseparable from her estate, and their existence does not depend upon that of heirs capable of taking on her death. The Collector of Masulipatam vs. Cavaly Vencata Narrainapah, 8 Moo. I. A., 553. The widow, however, completely represents the estate, so that in the case of Katama Natchiar vs. The Rajah of Shivagunga, 9 Moo. I. A., 559, it was held that in the absence of fraud or collusion, a decision against her, with regard to her deceased husband's estate, would be binding on the reversionary heirs.
The right of the reversioner after the death of the widow is merely a contingent right. If he survives the widow, he takes the property; if she survives him, it goes to the heirs of her deceased husband, then alive, not to her heirs or to those of the reversioner. The right of the reversioner is not such an interest as can be attached in execution of a decree, Bhooibun Mohun Bannerjee vs. Thacoodrass Biswas, 2 Ind. Jur. N. S., 277, Norman J., June 20th and 24th, 1867, cited in 5 B. L. R., 516. See also Ram Chandra Santra Dass vs. Dharma Narayan Chuckerbutty, 7 B. L. R., 341, Full Bench.

Before the Civil Procedure Code was passed, suits were entertained, the object of which was to set aside alienations by Hindoo widows not justified by necessity. This was done by bill *quia timet* in the case of the Supreme Courts. Thus the case of Hurry Dass Dutt vs. S. M. Uppoonnah Dossee, 6 Moo. I. A., 433, was one of a bill *quia timet* by the reversioner against a Hindoo widow, for a declaration of waste, order to pay into Court, and for an injunction. It was dismissed on the ground that the lady's rights as a Hindoo widow justified her acts, and this decision was affirmed in appeal to Her Majesty in Council. Other cases, decided in the Company's Courts, have already been cited, ante p. 5.

The ground upon which suits have been allowed, the object of which has been to obtain a declaration that the alienation by the widow is inoperative as against the heir who will take after her death, is stated by Mr. Justice Phear in a recent case to be lost the evidence should be lost by lapse of time; as, for instance, where the plaintiff has to prove that the purpose for which the alienation was made was not one of those which justify it. In such a case the Court allows a person who has an interest in the inheritance to sue merely on the prospect of future mischief, and to ask that the legality or illegality of the threatening act may be decided at a time when all the necessary materials are at hand, and can be availed of by both parties. But where this reason does not exist, there will be no declaration. Thus, in the case before him, one D., a Hindoo, died possessed of property, and leaving a widow and two daughters, R. and P., and a grandson, the son of his daughter R. The widow succeeded to the estate of a Hindoo widow, and she executed an *ikrarnamah* in favor of the grandson, declaring him to be the heir of her late
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husband, and her own heir, and making over all the property to him. She however stated that she retained possession during her lifetime. Some proceedings seem to have been taken on this document with a view to get the name of the grandson substituted for that of D. in the Collector's books. Afterwards, the other daughter P. gave birth to a son, the plaintiff in the suit, and three days afterwards she died. The plaintiff on coming of age instituted the suit, to have it declared that the ikrarnamah was void as against him, and to have it cancelled, and for a declaration that he was entitled by right of inheritance to a moiety of D.'s estate after the death of the widow.

It was held that the declaration could not be made because the validity of the deed might be tried at any time. Behary Lall Mohurwar vs. Madho Lall Shir Gyawal, 13 B. L. R., 222. Phear and Morris JJ., April 18th, 1874.

In the case of Pranputty Koer vs. Lalla Futteh Bahadoor, 2 Hay's Rep. (1863), p. 608, Peacock C. J., and L. S. Jackson J., 23rd March, the plaintiff sued to have his title declared and also his right to possession after the defendant, a Hindoo widow having the estate of a widow. He had attempted to get a declaration in the Company's Courts before this Code had been enacted, but had failed on the ground that under the law then in force a purely declaratory suit of such a nature could not be heard; the case is reported in S. D. A. Rep., 1856, p. 494; he now sued again, contending that the 15th section of the Procedure Code enabled the Court to grant his prayer, but it was held by Peacock C. J., and L. S. Jackson J., that the section gave the Court no such power. The Chief Justice observed:—"It seems to us that a person cannot sue for a declaration of his right unless he has an existing right. A mere contingent right which may never have existence is not sufficient to ground an action under the section referred to. Now, what in the present case is the right on which the present suit is based? Accepting his statement as correct, he is the person to whom, if he survives the defendant Pranputtee, the estates now enjoyed by her will descend as heir to her son, provided that the plaintiff be not in the meantime disqualified to inherit according to Hindoo law, and that the estate be not in the meantime alienated by the mother under some legal necessity."
This is plainly not an existing right, but a right in posse, the accruing of which depends on contingencies, the occurrence or non-occurrence of which it is impossible to foresee. And who are the persons to be bound by the decision? If the plaintiff should die in the lifetime of the mother, even his own son will not be bound, because that son will come in, not as heir of the plaintiff, but as heir of the last male proprietor; and similarly, on the other side, the mother and her daughter and the daughter's son, now in existence, might be bound, because they are parties to the suit, but if that son die before his grandmother, his son will not be bound, nor if the daughter leave other sons will they be bound. It is evident that the plaintiff in this case has no actual existing right, which he now seeks to maintain, and also that the decree, if given, can be only binding on parties between whom the question to be decided may never practically arise. The plaintiff indeed would have a right to sue, and restrain the widow from waste, but his right to do this arises less from the necessity of protecting his own interests than from the function vested by the Hindoo law in the next male heir of a person whose estate descends to a female, namely, that of protecting the estate. And it is obvious that if heirs in expectancy were debarred from suing to prevent waste until the succession had actually accrued, the waste would, in most cases, be past remedy, and the estate be irretrievably impaired. But in this instance, the plaintiff's ground of action was no waste, either committed or threatened. It was the alleged publication by the defendant Pranputty of a warasutnama and of petitions in which her daughter Brijnundun was described as next heir, because the son Ishuree Nundun, although he survived his father, was treated as not having succeeded by reason of his death during early infancy. Now, this act of Pranputtee's was not one which injured the estate of the plaintiff, no legal force or validity attached to it, nor was the question of Ishuree Nundun's succession one which called for immediate adjudication. This was not a case of setting up a suppositious heir or a false document; it was simply one of applying the Hindoo law, and the issue, whether an only son, an infant who had survived his father, but had died at three years of age, could inherit his father's estate or not, could be tried as well twenty years hence as now. We have had it urged upon us by the learned counsel for the
respondent, that a Hindoo male heir, while a widow is in possession, has a right which is something more than possible, is actually incoherent, inasmuch as he may sanction the alienations of the widow, and may indeed take the estate by her gift or cession; and we have been referred to the case of S. M. Judomonee Debray vs. Sarodaprosuno, 1 Boulnois, 20. But that decision goes no further than to determine that the consent of the next heir, then in being, may give validity to the act of the widow, and does not recognise in him any independent right of his own. And the case which has been cited from the same work at p. 137, Rajcoomaree Dassee vs. Nobocoomar Mullick, is, we think, an authority in support of an opinion against making declarations of right which cannot be conclusive. We do not mean to say that the plaintiff, if he had alleged that the widow claimed as heir to her husband, and not as heir to her son, and had set up a false state of facts, which rendered it important to the interests of the heirs of the son that the question should be tried whilst the facts were fresh in the memory of the witnesses, might not have maintained a suit to obtain a declaration that the widow took as heir to her son and not as heir to her husband, and that upon the widow’s death, the heirs of the son would be entitled to inherit. But that is not what the plaintiff asks for. He seeks for a declaration of his own rights before he has acquired them; he seeks to set aside a document which has no legal force or effect, and to restrain the widow from injuring the estate without showing any ground for the injunction. Suppose A died without issue, leaving a widow, a brother and the son of a deceased son of a brother. Could the brother maintain a suit to obtain a declaration, that upon the death of the widow he would be entitled to possession of A’s estate as heir to the property? It is clear that the Court could not make any such declaration of right; for the brother might die during the lifetime of the widow, and, if he should have a son, the son of the deceased brother would be entitled to inherit as well as his own son. For the reasons above given, we think that the suit cannot be maintained."

In Baboo Jodoo Nundun Pershad Sing vs. Mussamut Nundo Kooer, 1 Suth. W. R., 219, Nov. 25th, 1864, it was stated by Kemp and Glover JJ., that a suit for a declaratory decree under Section
15 of the Code was premature on the part of the plaintiff, the reversioner, during the lifetime of the widow, as the plaintiff's title was contingent on the death of the widow. This case is not very well reported, and it is not clear under what circumstances it arose, or what the Court was asked to declare.

In a later case, decided by a Full Bench of the High Court at Calcutta, the suit was at the instance of the reversioner during the lifetime of a Hindoo widow in possession of an estate, the object was to declare that a conveyance by her was invalid, inasmuch as it was made without legal necessity, and therefore not a binding conveyance, and it was held that the suit would lie. *Gobindmonee Dossee vs. Sham Lall Byssack*, decided on 7th April 1864. In that case, which is reported in the B. L. R. Supplemental Volume, Full Bench Division, p. 48, (S. C.) Suth. F. B. Rulings, 165, Sir Barnes Peacock C. J., delivered the judgment of the Court, and after referring to several cases and opinions upon the peculiar quality of the estate of a Hindoo widow, said:—"Upon the whole, after considering all the cases upon the subject, we are of opinion that a conveyance by a Hindoo widow, for other than allowable causes, of property which has descended to her from her husband, is not an act of waste which destroys the widow's estate and vests the property in the reversionary heirs, and that the conveyance is binding during the widow's life. The reversionary heirs are not, after her death, bound by the conveyance: but they are not entitled, during her lifetime, to recover the property, either for their own use or for the use of the widow, or to compel the restoration of it to her. If the widow in any case be imposed upon and induced to execute a conveyance by fraud, the conveyance will, in such a case, as in all other cases of fraud, be void. It has been urged that the reversionary heirs may be prejudiced if they cannot sue for the property during the widow's life, for after her death it may be difficult to procure the necessary evidence to show that the conveyance was executed for causes not allowable; and that, in the case of moveable property, such as money or valuable securities, irreparable injury may be done to the reversionary heirs by the grantees making away with the property during the widow's life; or in the case of immoveable property, by committing waste.
But our decision will not preclude the reversionary heirs, even during the lifetime of the widow, from commencing a suit to declare that the conveyance was executed for causes not allowable, and is, therefore, not binding beyond the widow's life. Nor will it deprive the reversionary heirs, during the life of the widow, of their remedy against the grantee to prevent waste or destruction of the property, whether moveable or immovable, in the event of their making out a sufficient case to justify the interference of the Court."


This last case was distinguished from the case of Pranputty Koer; as in that case there had been no alienation by the widow but a simple declaration made by her in a warasatnama, which of course was no evidence against the reversioner and could not bind him.

Markby J., in the case of Rani Brohmo Moyee vs. Raja Annund Lall Roy, 13 B. L. R., 226, note, (S. C.) 19 Suth. W. R., 419, Markby and Birch JJ., April 17th, 1873, objected to a statement in Kanikha-persad Roy vs. Seemati Jagodumba Dasi, 5 B. L. R., 508, see p. 519, that the law, allowing such a suit, is settled, which statement is attributed to him in the report, and cites another case, Nobin Chunder Chuckerbutty vs. Gurupersad Dass, which points to the opposite conclusion, B. L. R., Sup. Vol., 1008. That case was decided on April 17th, 1868, by a Full Bench, consisting of Peacock C. J., Seton-Karr, L. S. Jackson, Phear, and Macpherson JJ., on a reference from Mitter J. The question was whether, if a Hindoo dies leaving a female as his heir-at-law, the reversionary heirs have a fresh cause of action in regard to the estate of the ancestor at the time of the death of the female heir, or whether they are barred by limitation if the female
heir would have been barred. Sir Barnes Peacock, who also spoke for Mr. Justice Seton-Karr, after referring to the case of *Doe d. Colly Doss Bose vs. Debnarain Koberauj*, Fulton, 329, decided by Sir John Grant in the Supreme Court, October 30th, 1843, and in which his Lordship did not think that the grounds of the decision were very clearly expressed, cited that of *Goluck Maney Dabee vs. Diggumber Dey*, 2 Boulnois, 193, where Sir Lawrence Peel says "it has been invariably considered for many years that the widow (speaking of the widow succeeding as heir) fully represents the estate; and it is also the settled law that adverse possession which bars her, bars the heir also after her, which would not be the case if she were a mere tenant for life as known to the English Law." His Lordship also cited the *Shivagunga* case, 9 Moo. I. A., 539, as deciding that, in the absence of fraud or collusion, a decision against the widow, with regard to her deceased husband's estate, would be binding upon the reversionary heirs, and the case of *The Collector of Masulipatam vs. Cavaly Vencata Narrainapah*, 8 ib., 550, where it was said that comparing a Hindoo widow to a tenant for life was calculated to mislead, and he went on to examine the nature of the estate of the Hindoo widow by reference to the Dáya-bhága, to Menu, and to Mr. Colebrooke's Hindoo law, and concluded that the reversionary heir, who was bound by a decision against a widow respecting the subject matter of the inheritance, is also barred by limitation, if, without fraud or collusion, the widow is barred. But he added "the reversionary heirs have a right, although they may never succeed to the estate, to prevent the widow from committing waste; and I have no doubt that if a proper case were made out, reversionary heirs would have a sufficient interest, as well as creditors of the ancestor, by suit against the widow and the adverse holder, to have the estate reduced into possession, so as to prevent their rights from becoming barred by limitation." Mr. Justice L. S. Jackson, Mr. Justice Phear, and Mr. Justice Macpherson delivered separate judgments, but did not differ from the conclusion arrived at by the Chief Justice (see also *post. p. 40*).

The result appears to be that, although a declaration can be made at the suit of the reversioners, where the evidence is in danger of being lost by lapse of time, and alienations can be set aside during the lifetime of the widow, except so far as they affect her own so-
The right to sue to have it declared that an alleged adoption is invalid seems to stand much upon the same ground as the right to ask for a declaration that a transfer by the widow, made without legal necessity, is not binding beyond her lifetime.

The case of *Brojo Kishoree Dassee vs. Sreenath Bose*, 9 Suth. W. R., 463, Peacock C. J., and Hobhouse J., 14th April 1868, was a suit to have an adoption declared invalid; the suit was brought however by one who although a member of the family was not the next heir; the next heirs had expressed their consent to the suit, but it was held that no declaration could be made at the suit of the plaintiff, who was in the position of a stranger. Peacock C. J., in delivering judgment, referred to the case of *Cazee Muzhur Hossain vs. Dino Bundo Sen*, 1 Bourke's Reports, p. 8, where Mr. Justice Phear had held that a declaration will not be made at the instance of a stranger, and the Chief Justice added:—"It might be very reasonable, at the instance of a presumptive heir whose estate would not accrue until the death of the widow, to try whether an adoption made by the widow was valid or not, and, upon proof of the invalidity of the adoption, to declare that it was invalid. In such a case, if the reversionary heirs should be compelled to wait until the death of the widow, before they could get the question tried as to the validity of the adoption, they might have to wait until after all the witnesses who could prove its invalidity were dead, for the widow might outlive all the witnesses. Such a suit might, we apprehend, be maintained by the presumptive reversionary heirs for the benefit of the persons whether themselves or others who might be the heirs of the husband at the time of the widow's death, in the same way as the presumptive reversionary heirs may sue to restrain a widow from committing waste, although if the widow should survive them, they would sustain no injury by the waste. It is unnecessary for the Court now to determine whether, if in such a case the defendant should succeed in establishing the validity of the adoption, the decree would not be binding upon the persons who might eventually succeed upon the death of the widow, in the same manner as a decree against the widow respecting the rights of her husband in an estate is binding upon the reversionary heirs. It has been decided that such a decree is binding upon the reversionary heirs in *Ranee Surno Moyee's case*, 2 Suth. W. R., page 13. This of
course is on the assumption that the suit is honestly brought and conducted."

Where, however, the widow, after adopting the child, remained herself in possession, although she assumed the position of guardian to the infant, it was thought that such a suit was premature, Ranee Bromo Moyee vs. Rajah Anund Lall Roy, 13 B. L. R., 225, note (S. C.) 19 Suth. W. R., 419, Markby and Birch JJ., April 17th, 1873.

The result of these decisions also seems to be, that where the evidence is likely to be lost by delay, a suit may be brought to obtain a declaration that an adoption of a son by a Hindoo widow is invalid, that the reversioner may sue with this object, but that he cannot recover possession of the property in such a case during the widow's lifetime. Thus, in the case of Srinath Gangopadhyia vs. Maheschandra Roy, 4 Bengal L. R. (F. B.), 3, the suit was brought to set aside an adoption made by the widow of Sadasib Roy as invalid, wanting the consent of the husband, and to recover certain landed property. The plaintiff stated that the cause of action arose on the death of the widow, and brought his suit five years after that event occurred. The question was whether he was barred by the Act of Limitation, the adoption having taken place 37 years before the death of the widow, and the adopted son having been then put into possession by the widow. It was held by a Full Bench that in this case the cause of action had accrued on the widow's death. Peacock C. J. said:—"In coming to this conclusion, I do not mean to say that a reversionary heir might not have a cause of action during the widow's life to set aside an invalid adoption, but that would be in the nature of a declaratory suit."

The point regarding the law of limitation was decided in accordance with the judgment of a Full Bench in the case of Nobin Chunder Chuckerbutty vs. Issur Chunder Chuckerbutty, 9 Suth. W. R., 505, Peacock C. J., Seton-Karr, L. S. Jackson, Phear, and Macpherson JJ., April 29th, 1868. In that case R., a Hindoo, died, leaving two sons, two daughters, and a widow. The two sons died without issue in the lifetime of the widow, and on their death their respective estates descended to the widow as heir. The two daughters each had a son or sons, who upon the death of the widow succeeded to the estate of
their uncles. After the death of the sons of R., however, a stranger had entered on the property, and the widow never took possession. The widow died, and the question was whether the sons of the daughters could sue the stranger to obtain possession; if their cause of action arose on the death of the widow, they could do so, otherwise they were barred by the Limitation Act. It was held that the suit was barred, on the ground that the cause of action accrued to the widow. Had she sued, the reversionary heir would, on the authority of the Shiva Gunga case (ante, p. 29), have been bound by the decision in the suit (see also ante pp. 35 and 36). In the case of an improper alienation by the widow on the other hand, she has no cause of action against the purchaser, he would have a right to possession during her lifetime, and the reversioner would be able to count from her death in a suit to eject the purchaser. See also Rajkishor Dutt Roy vs. Girish Chandra Roy, 4 B. L. R., A. C., 136, Phear and Mitter JJ., February 14th, 1870; Haradun Naug vs. Issur Chunder Bose, 6 Suth. W. R., 222, Bayley and Shumboonath Pundit JJ., September 11th, 1866.

The reversionary heir might sue the widow and the adverse holder to have the estate reduced into possession, so as to prevent their rights from becoming barred by limitation, per Peacock C. J. in 9 Suth. W. R., 508. A suit of this nature was Radha Mohan Dhar vs. Ram Das Dey, 3 B. L. R., 362, Bayley and Hobhouse JJ., August 11th, 1869. There on the death of a Hindoo his widow took his property for the estate of a Hindoo widow, until A. claimed it as his own. She thereupon gave it up to A., who had threatened her with legal proceedings. It was held that the reversioners could sue to have it declared that the property was part of the estate of the deceased husband, and that point having been found in the affirmative, the Court of Appeal ordered a decree to be passed, and directed the Court below to appoint a manager, to collect the assets of the estate, to account for them to the Court, and the Court was directed to hold them in such a secure way as might be legal and proper for the ultimate benefit of the heirs of the estate succeeding on the death of the widow.

But the plaintiff must show some right to possession on the adoption being declared invalid; thus the case of Ranee Rajessoree Koonwar vs. Maharanee Indurjeet Koonwar, 6 Suth. W. R., 1, Pea-
cock C. J., Bayley and E. Jackson JJ., June 12th, 1866, was a suit brought to recover possession with mesne profits of certain zemindaries and other property, and for setting aside a deed of adoption alleged to be forged, and which would stand in the way of plaintiff’s claims to part of the property. The plaintiff failed to make out her right to possession and mesne profits, but contended that she could abandon that part of the case and maintain that part which asked for a declaration that the adoption was invalid. But it was held that she could not do this, she would not be entitled to possession whether the adoption was valid or invalid, and see also Brojo Kishoree Dassee vs. Sreenath Bose, 9 Suth. W. R., 463, Peacock C. J., and Hobhouse J., April 14th, 1863.

In Sreenarain Mitter vs. S. M. Kissen Soondery Dassee, 11 B. L. R., 190, the Judicial Committee of the Privy Council held, reversing the decision of the High Court at Fort William, reported at page 279 of Vol. 2 of the same reports, that a declaratory decree could not be made in a suit brought by the widow of a Hindoo to cancel certain documents made by herself and by the father of a boy purporting to take and give him in adoption. This case stands of course upon a different footing from a suit by the reversioner; it is reported under the name of Nogendo Chunder Mitter vs. S. M. Kissen Soondery Dassee, in 19 Suth. W. R., 133, Nogendo Chunder Mitter being the child who was adopted. It is stated in the judgment of the Judicial Committee in both reports that the child was no party to the suit. The name of the case is perhaps wrongly given, and it is a point of some importance, for the fact of Nogendo Chunder’s not being a party was one of the grounds on which the Committee thought that the declaration should not be made. There were other grounds, however, on which, in the exercise of its discretion, the Court was held to be free to refuse to interfere. The Committee observe “it is not a matter of absolute right to obtain a declaratory decree. It is discretionary with the Court to grant it or not, and in every case the Court must exercise a sound judgment as to whether it is reasonable or not under all the circumstances of the case to grant the relief prayed for. There is so much more danger in India than here (in England) of harassing and vexatious litigation, that the Courts in India ought to be most careful that mere declaratory suits be not converted into
a new and mischievous source of litigation.” In this case the principle of the decisions of the Court of Chancery upon the 15th and 16th Vict., c. 86, s. 50, adopted in Rooke vs. Lord Kensington, 2 K. and J., 753, namely, that the plaintiff was not entitled to a declaration unless he would be entitled to consequential relief, if he asked for it, was held to apply to the 15th Section of the Code of Civil Procedure, and it was added that if the Court below exercises its discretion the Court of Appeal should not on light grounds interfere with its exercise. This case therefore shows that there were weighty grounds on which the decision of the Court below ought to be reversed, and those grounds are expressed in the passage which has been quoted.

The Limitation Act, IX of 1871, follows the same principles. Thus, the period of limitation begins to run from the date of alienation when the suit is brought during the lifetime of a Hindoo widow by a Hindoo entitled to possession of land on her death to have the alienation made by the widow declared to be void except for her life, Schedule 2, No. 124, and see Bishonath Surmah vs. S. M. Slushee Mookhee, 20 Suth. W. R., 1, L. S. Jackson and Dwarka Nath Mitter JJ., April 24th, 1873. The time begins to run when the widow dies, when the suit is brought by a Hindoo entitled to immoveable property on the death of a Hindoo widow, ib., No. 142, and from the date of the adoption (or at the option of the plaintiff, the date of the death of the adoptive father) where the suit is to set aside an adoption, ib., No. 129, thus recognizing a suit barely to set aside the sale or the adoption, which would result in a declaration, and for the time, no more.

A son of a Hindoo, subject to the Mitackshera Law, acquires, on his birth, a vested interest in the ancestral property. Mitackshera, c. 1, s. 1, paras. 3, 23, 24, 27, although the father may alienate the property in a season of distress, for the sake of the family and especially for pious purposes, ib., s. 28. It was thought by Sir Thomas Strange, vol. I, Hindoo Law, p. 179, that a son could not compel his father to divide the property, although in a later passage, p. 184, he states that in the provinces dependent on the Government of Madras, and elsewhere in the peninsula, the right of the son to exact partition of ancestral property, independent of the will of the father, appears authorized,
but not without the existence of circumstances to warrant the measure, such as the father having become superannuated, and the mother past childbearing, the sisters also married, the father entering into religion, or his degradation from caste.

His son, Mr. Justice Strange, says, in his Manual of Hindoo Law, Section 238, that "sons may, at their will, and irrespective of all circumstances, compel their father to divide with them the ancestral property; and he cites the following passages from the Mitackshera as his authorities, c. 1, s. 5, para. 8:—"Thus, while the mother is capable of bearing more sons, and the father retains his worldly affections and does not desire partition, a distribution of the grand-father's estate does nevertheless take place by the will of the son." And para. 11:—"Menu likewise shows that the father, however reluctant, must divide with his sons, at their pleasure, the effects acquired by the paternal grand-father, &c." The reference in Colebrooke's translation of the Mitackshera, Calcutta, 1810, is to Menu, chapter 9, v. 209, "and if a son, by his own efforts, recover a debt or property unjustly detained, which could not be recovered before by his father, he shall not, unless by his free will, put it into parcenary with his brethren, since in fact it was acquired by himself," which is rather an exception to the rule than an authority in support of it. The proposition is moreover directly contradicted in v. 104 of the same chapter of Menu, "after the death of the father and the mother, the brothers, being assembled, may divide among themselves the paternal and maternal estate; but they have no power over it, while their parents live, unless the father choose to distribute it." These references are from Sir Wm. Jones' translation, and the italics indicate the gloss of Cullüca. The authority of the Mitackshera, however, now prevails, and the right of a son to a partition against the will of the father has been established by judicial decision. Nágalinga Mudah vs. Subbiramaniya Mudah, 1 Madras H. C. Rep., 77. Scotland C. J., and Bittleston J., November 24th, 1862. It has also been held that the son has a right to sue to have a will made by the father to his prejudice set aside, Sudanund Mohapattur vs. Bonomallee & others, Marshall, 317, Campbell and Shumoonath Pundit JJ., February 28th, 1863, a case governed by the Mitackshara Law. This suit was brought and decided during the lifetime of the father. After his death and
the death of Bonomallee, who was another son, the plaintiff brought another suit for the property against the widow of the deceased father. This suit ultimately went up on appeal to the Judicial Committee, and their Lordships expressly recognized the right of the plaintiff to sue to cancel the will, which had been published and filed in the Collector's Court, and to set aside an adoption, the suit being brought by the son in the father's lifetime, Soorjomonee Dabee vs. Suddanund Mohapatter, 12 B. L. R., 304, see p. 311, where the Judicial Committee refer with approval to the decision of Steer and Morgan JJ., in the case of Kanth Narain Singh vs. Prem Lall Paurey, 3 Suth. W. R., 102, June 22nd, 1865. In the opinion of the Judicial Committee, the Court had power to substitute, with the consent of the parties, such a declaration for the relief specifically asked for, viz., the cancellation of the will.

The cause of action in a suit to set aside the alienation by the father was held to accrue when the alienation was complete and possession was taken, Aghori Ramasary Sing vs. Cochrane, 5 B. L. R., Apx. 14, Norman and Dwarkanath Mitter JJ., April 20th, 1870; Raja Ram Tewari vs. Latchman Persaud, 8 Suth. W. R., 15, Peacock C. J., Trevor, Loch, L. S. Jackson, and Macpherson JJ., June 7th, 1867, and see the Limitation Act, IX of 1871, Schedule 2, No. 125.

Again, it has been held that a declaratory decree should not be made when the plaintiff is in possession of all the rights that he seeks to establish, Bachun Ali vs. Dewan Ali., 11 Suth. W.R., 376., Bayley and Hobhouse JJ., 16th April 1869.

In Gopee Lall vs. Mohunt Bhugwan Doss, 12 Suth. W. R., 7, Kemp and Glover JJ., 2nd June 1869, a younger brother sued for a declaration that he was joint proprietor of family property; the property was registered in the Collectorate (for revenue purposes) in the name of the eldest brother:—the plaintiff had only lately attained majority, and the property was apparently joint family property. The claim was rejected, and the declaration refused on the ground that the plaintiff might have applied to the Collector for a separate revenue assessment.

In this case the fact of the elder brother being registered as proprietor was not inconsistent with the rights of the younger.
In Foolbashee Kowar vs. Arjun Sahoo, 12 Suth. W. R., 134, Kemp and Glover JJ., 7th July 1869, the plaintiff was the holder of an estate called Sheopore. The defendant was the holder of a quarter share in a neighbouring estate called on the Collector's rent-roll Buhurampore Zumeen Goburdhunpore alias Sheopore. The defendant applied for a butwarrah (partition) of his share in the latter mouzah. This application was not opposed by the other co-sharers of that mouzah, and the Collector ordered the butwarrah to be made. On this the plaintiff, apparently apprehensive that the land belonging to his estate of Sheopore would be incorporated by the butwarrah proceedings with the lands of the defendant's mouzah, applied to the Collector to have it declared that Sheopore had nothing to do with the defendant's mouzah, and the Collector made an order to that effect, which was subsequently affirmed by the higher revenue authorities. The plaintiff, not satisfied with this, sued in the Civil Court for a declaration of his right to Sheopore, stating certain boundaries, and for a declaration that the defendant had a quarter share in the other mouzah within certain boundaries. It was held that no such declarations could be made.

In the case of Sheik Jan Ali vs. Khonkar Abdur Kuhma, 6, Bengal L. R., 154 (S. C.), 14 Suth. W. R., 420, December 7th, 1870, Bayley and Paul JJ., the plaintiff stated that he was in possession of certain lands by virtue of his purchase from the defendant No. 2; that he under-let the lands to defendants Nos. 1 and 3, and received kabooliats from them; that the rents having fallen into arrears, he attached the crops raised on the lands; that the tenants disputed the attachment, and it was ordered to be taken off; that subsequently the tenants brought an action against their landlord, the plaintiff, for an alleged illegal distress, and they recovered damages against him; that in the last proceeding the defendant No. 4 presented a petition in which he stated that he was the owner of the lands, the crops whereof had been attached, and this objection of ownership affected the plaintiff's title by throwing a cloud over it, and thereupon the plaintiff became entitled to sue in the Civil Court for the declaration of his title and confirmation of his possession. The plaintiff obtained a decree, declaring his ownership and possession in both the Lower Courts. From this decree the defendant appealed
Specially to the High Court, on the ground, amongst others, that the plaintiff did not disclose any cause of action, and this objection was allowed. Mr. Justice Paul stated in delivering judgment:—"If bare allegation of ownership were sufficient for the purposes of such a suit, then immediately on a demand being made by A. upon B. for the delivery to him as owner of the possession of property then in the occupation of B., B. would be entitled to come into a Court and have his rights declared, and possession confirmed against A. It is quite clear that such a suit in anticipation of a threatened ejectment will not lie;" and he quotes a decision of the Judicial Committee of the Privy Council as showing the principle which enables parties to sue to have their proprietary rights declared, on the ground that their title has been affected prejudicially by the acts of others; and he says:—"There must exist in the case something either in the nature of an invasion of some right or in the shape of an impediment or obstacle in the way of full enjoyment of proprietary right to found a claim to a declaratory relief; but a mere allegation or a mere threat without action taken or founded upon it will not be sufficient to enable a party to sue for a declaration of his right and title." He further referred to the case of Colvin, Cowie & Co. vs. Elias, 2 Bengal L. R., A. C., 212, January 13th, 1869. Mr. Justice Bayley agreed with Mr. Justice Paul in admitting the objection taken on special appeal.

The case decided by the Judicial Committee of the Privy Council, and on which Mr. Justice Paul laid particular stress, was the case of Maharajah Rajundur Kishwar Sing vs. Sheopursun Misser, 10 Moore's Ind. App., 438. In this case the plaintiff sued for rent of certain mouzahs, held of him by the defendant under a pottah and kabooleat, the defendant denied the kabooleat, and set up another title, a Bhakee Birt tenure, which the plaintiff sought to set aside. The plaintiff alleged, to use the words of Lord Chelmsford in giving judgment, "that the plaintiff sues not summarily, but in due form, for possession of certain mouzahs which it describes by names and boundaries, which it alleges to be his hereditary property; and also to recover certain arrears of rent, * * * * by the annulment of a summary award of the Deputy Collector of the district of Chumparun, dated the 29th of May 1854, and by the cancellation
of a letter affirming the Bhakee Birt tenure, dated the 17th of the month of Assin 1232;" and he adds:—"This specification of the causes of suit is accompanied with statements of the falseness of the claim to the Bhakee Birt tenure, of the danger which the plaintiff apprehends to his proprietary title from the summary decision above mentioned, that its annulment is impossible without a regular suit, and he concludes the paragraph by stating that he sues, therefore, for the reversal of the summary award, the confirmation of his proprietary interest and possession, and the refutation of the allegations of the defendant respecting the Bhakee Birt tenure."

His Lordship then goes on to show what right the plaintiff sought to establish. "In this suit the plaintiff's title is one; it is his proprietary right as zemindar. We must look to the plaintiff's admitted title as zemindar and to the interference with such title by an established tenure of this kind to learn what is meant by the term 'possession'. The mouzahs are part of the plaintiff's zemindary; the plaintiff is the assessed proprietor under the decennial settlement. The defendant claims that which would, if established, be a dependent tenure, the zemindar being his immediate superior in the holding. * * * * If this tenure be not interposed between the zemindar and the cultivators, the ordinary relation between him and them exist, but if it be interposed, the zemindar's general proprietary title to the collections is gone, and in lieu of it he is simply entitled to some jumma from the mesne proprietors. It is obvious, then, that the assertion of such a title is a serious prejudice to a zemindar, and may materially interfere with his successful management of his zemindary. Such an intermediate tenure cuts off the possession, that is, the zemindar's title to the rents and profits immediately derived from the cultivators. In this sense, the term 'possession' is used in this plaint. Now, this injury, supposing the claim to the Bhakee Birt tenure to be groundless, is not the less a wrong requiring a remedy when it is put forward by one in possession, under a title to an inferior right derived from the zemindar, as, for instance, by a farmer of a portion of the zemindary. * * * * If the Bhakee Birt tenure be valid, the plaintiff has no title to possession in the sense in which he uses that term. He might have a right to rent for a time on the footing of a
contract, or estoppel even from a Birt tenant, if the latter accepted a lease, but that would rest on special grounds, and would not flow from his general proprietary title. Until this claim to a Birt tenure, therefore, be removed, the plaintiff cannot have the 'possession' which he seeks, since in some way or other the defendant stands between the plaintiff as owner of the primâ facie proprietary right and the cultivators. Had the defendant admitted the tenancy under the kabooleat, the plaintiff's title to the rent would have been established; but that admission, unless qualified, would also have removed those impediments to the plaintiff's proprietary title which he desires to have removed; but as the defendant repudiates that tenancy altogether, he, at least, when the plaintiff fails to prove it, cannot urge it against the plaintiff's title. This lease being removed (the plaintiff having failed to prove it), what bar is there to the assertion of the proprietary right to the collections, unless the Birt tenure interpose one? On that bar the defendant does rely, and unless it be removed, the plaintiff can scarcely expect to lease or otherwise manage his zemindary with effect. It is an impediment in the way of his possession, which the suit is instituted to remove."

It has been held that a declaration will not be made where there is no contest between the parties to the suit, no hostile act, and where no consequential relief could be given even if it were asked for. Thus where in 1863 a plaintiff brought a suit to have it declared that he was the owner of a house which had been sold by A. (having no title) to B., it was held by Levinge J., and E. Jackson J., that such a suit would not lie, Shah Lotfoolah vs. Gowhuroonissa, 2 Hay, 489, 23rd April.

In the case of Cazee Muzlur Hassan vs. Dinobundo Sen, 1 Bourke's Reports, Calcutta, O. C. J., p. 8, tried by Phear J., January 10th, 1865, the plaintiff alleged that he was a member of the family of one Mahomed Bela Khan, who had dedicated certain property in Calcutta to religious purposes, and he sought to have it declared subject to the religious trust (wukf), and to have a proper person appointed to act as Mutiwalli to carry out the religious purposes of the trust and to be put in possession of the land with that object. It was held that he had no right to come forward as a relator for this purpose, and that
Act VIII of 1859, Section 15, did not assist him. “Binding declarations” under that Section are not declarations binding against all the world, but must be held so merely relatively to all the parties before the Court; and on the authority of Lady Langdale vs. Briggs, 8 DeGex. M. and G., 391, it was held that the Section did not enable the Court to make a bare declaration of trust.

But in the case of Gunga Govind Singh vs. Joy Gopal Panda, 10 Suth. W.R., 105, Kemp and E. Jackson JJ., 3rd July 1868, where the plaintiff was out of possession and sued for possession of land that he claimed as debuttur (rent-free for the support of a temple or idol), which the defendant claimed as his own, and it was proved that the land was debuttur land, and that the plaintiff as one of four brothers was entitled to a fourth of it, the Court gave the plaintiff a decree for a fourth of the land, and also made a declaration that the whole was debuttur land.

In another instance the plaintiff had in 1862 blank endorsed and deposited Government paper for over 700,000 Rupees with the defendant, the bullion keeper of the Calcutta Mint, as security for the due fulfilment by his brother Aushotosh Ghose, another defendant, of his duties as a bullion superintendent, and the defendant without the plaintiff’s knowledge or consent transferred it to the Master of the Mint on behalf of the Secretary of State as security for the due fulfilment of his own duties. All the papers, with the exception of two for 2,500 Rupees, which had been returned to the plaintiff, remained with the Master of the Mint at the time of the suit. There were several decrees passed in suits against Juddoonath Sen, and the plaintiff, fearing that the judgment-creditors would attach the notes, brought a suit to obtain a declaration that the property was his, subject to the right, if any, of the Secretary of State. Phear J., dismissed the suit as against the Secretary of State, who was made a party defendant, not as regards the defendant Judoonath; he held that by endorsing over the paper he committed a breach of trust, and determined the bailment, and whatever lien he had over the paper as against the plaintiff; and he made a declaration that the paper was the property of the plaintiff, freed from any lien Judoonath might have had over it. His Lordship, in passing judgment, said:—“I act on the principle with regard to declaratory suits followed by the
Relief must be possible.

Courts of Chancery in England, namely, that a party is not entitled to ask for a declaration of right except as against some one in some degree hostile in respect of that right. * * * The Secretary of State has every right to say, 'I know nothing of your rights, and I shall deal with the paper as I am entitled. You have no right to bring me into Court, and bind me down by a declaration against any future dealing with the paper,'” Promothonaouth Ghose vs. Jodoonauth Sen and others, 1 In. Ju. N. S., 203, 16th March 1866.

Where a decree was made in favor of the plaintiff in a suit, Hemchunder Mookerjee vs. Meer Ali, 18th June 1865, under which there was an attachment of the ship Ali Akbar Shaw, on the 18th August, and a sale in execution to the present plaintiff on the 23rd September of the right, title, and interest of Meer Ali. The vessel was registered at the time of sale in the name of Syed Akbar, who had mortgaged her on the 4th July to Gopeenauth Dhoabay. The plaintiff alleged that Syed Akbar held benamee for Meer Ali, and he sought a discovery as to the bona fides of these transactions, for a declaration that he, as purchaser, was entitled to the right, title, and interest of Meer Ali, or if there was any valid charge or lien on the property, that he was entitled to redeem. Phear J., said,—“The plaintiff must come into Court with some definite complaint against the defendant, which is such as admits of specific relief being afforded by the Court with regard to it. He cannot, irrespective of all behaviour on the part of the person whom he makes defendant, bring that person into Court merely for the purposes of getting the Court to clear up difficulties, whether of fact or law, which may have arisen between himself and the defendant. In short, the plaintiff must generally allege and rely upon some cause of action against the defendant, and the section in no degree affects the principle. Of course, I except the class of cases in which the Court gives its aid towards the fulfilment of trusts, and to which the present suit does not in any way belong.” His Lordship therefore held that the suit as one for a mere declaration could not succeed, but taking the evidence with the plaint he treated it, to avoid future litigation, as if the plaintiff had asked that the mortgage should be set aside. Lalla Bhugwan Doss vs. Syed Akbar, 1 In. Ju. N. S., 390, July 27th, 1866, and in Kenaram
relief must be possible.

Chuckerbutty vs. Dinanath Panda, 9 Suth. W. R., 325, Bayley and Phear JJ., February 25th, 1868, the same rule was laid down, viz., that the section gives the Court power to make mere declarations of right without anything more, only in those cases where the facts proved before it are such that it would have been able to give consequential relief had the plaintiff asked for it. See also Shib Jaton Roy vs. Panchanan Bose, 3 B. L. R., Appendix, 55, Loch and Mitter JJ., May 10th, 1869.

In the case of Rajbunsee Lall vs. Judoobuns Suhaye, 9 Suth. W.R., 285, Peacock C. J., and Seton-Karr J., 17th February 1868, the reversionary heirs asked for a declaration that property standing in the name of the defendant had been purchased by the ancestor in his name benamee, but the Court refused to make any declaration. The suit was brought merely for a declaration of right and not for relief. The plaintiff appears to have urged that as it was probable that evidence of the benamee transaction would be lost by lapse of time, he was entitled to a declaration; but the Chief Justice observed that if persons choose to purchase property in the names of others benamee, they ought at least to retain sufficient evidence in their own hands to prove that they did so; and there is no reason why the time of the Court should be occupied for the benefit either of such purchaser or their heirs in making declaratory decrees in their favour. It would be sufficient for the Court to decide what were the real transactions between the parties when the plaintiff seeks for relief.

Rani Anand Kumari vs. The Government, 9 B. L. R., 16, note. (S. C.), 11 Suth. W. R., 180, L. S. Jackson and Markby J.J., March 1st, 1869, was a suit brought by the Government of India, the object of which was to have it declared that the Government had a right to reinstate a ghatwal for the time being in his tenure, which had been taken possession of by the defendants by setting aside a putni tenure created, as it was alleged, fraudulently by the zemindar. It was contended that neither the Government nor any private person had a right to reinstate another in possession, and that if any person is entitled to possession he must himself sue in the Civil Court. It was held that the Court had no power to make the required declaration. The decision in the case of Bristove vs. Whitmore, 28 L. J., (N.S.) Ch., 801, was acted upon.
In Ramsaran Misser vs. Rakhal Das Dutt, 11 Suth. W. R., 412, L. S. Jackson and Markby JJ., April 30th, 1869, a Hindoo plaintiff prayed for a declaration that his wife had never been married to the defendant, who spread a report that he had married her before the plaintiff, whereby the plaintiff lost caste. It was held that the Court had no jurisdiction to make the decree, as there was no property in dispute.

But in the later case of Aunjona Dasi vs. Pralhad Chandra Ghose, 6 B. L. R., 243, December 6th, 1870, the suit was brought by the mother to obtain a declaration that the marriage of her youngest daughter, Karpoora, with the defendant was invalid. The defendant was the husband of the plaintiff's elder daughter, and the plaintiff alleged that she went with Karpoora to the house of the defendant to see his wife, and that when they were in the house, Karpoora was forcibly carried off to the house of Tara Chand, and there married to Prahlad. The defence was that the suit was not of a nature cognizable by the Civil Court, and that the plaintiff had given her consent to the marriage, and the case of Ramsaran Mitter vs. Rakhal Das Dutt was relied on. The senior Judge, Glover J., whose opinion prevailed, was of opinion that the suit did not lie, but Mitter J., was of a different opinion, and in support of his view cited Regulation III of 1793, section 8, which defined the jurisdiction of the Civil Courts at that period in these terms:—"The Zillah and City Courts are empowered to take cognizance of all suits and complaints respecting the succession or right to real or personal property, land, rents, revenue, debts, accounts, contracts, partnerships, marriages, caste, claims to damages for injuries, and generally of all suits and complaints of a Civil nature, &c., &c., and he was of opinion that the power of the Civil Courts in this respect were not taken away because the Regulation had been repealed by Act X of 1861. That Act VIII of 1859, section 1:—"The Civil Courts shall take cognizance of all suits of a civil nature, with the exception of suits of which their cognizance is barred by any Act of Parliament, &c.," was sufficiently comprehensive to include such a suit. The plaintiff appealed under clause 15 of the Letters Patent of 1865 (High Court, Calcutta), and the appeal was heard by Norman Offg. C. J., Loch and Ainslie JJ., who agreed with Mitter J.; Norman Offg. C. J., who
delivered the judgment of the Court of Appeal, cited several cases that had been decided in Bombay on questions of marriage, not cases, however, in which mere declarations had been asked, Kaseram Kriperam vs. Umbarum Hurree Chund, 1 Borr. Rep., 387; Kasee Dhoollab vs. Ruttun Baee, ib., 410, which were suits for divorce, and Nundlall Bhugwan Dass vs. Tarpeedass and Prubhoo Dass, in which the Sudder Court at Bombay held that a marriage contract to be valid must, both by the rules of caste and by the laws of the shaster, be made with the consent of the parents on both sides; and a passage from a judgment of Dr. Lushington in the case of Ardaseer Cursetjee vs. Perozeboy, 6 Moo. I. A., 348 (before the Judicial Committee of the Privy Council), in which the learned Judge said that the Supreme Courts on the Civil side might afford such remedies as were customary among the people, and as appeared to have been contemplated by the marriage contract. That suit was for restitution of conjugal rights; it was brought by a Parsee, in the Supreme Court, on its Ecclesiastical side, and it was decided that the Court had no jurisdiction, if it had made a decree, it would have had no means of enforcing it, except according to the principles governing the matrimonial law in Doctors Commons, which, in such a case, were incompatible with the laws and customs of the Parsees.

Norman Offg. C. J., went on to say that suits relating to marriage deal with that which in the eye of the law must be treated as a civil contract, and with civil rights arising out of that contract, and that as suits for relief against contracts procured by force or fraud were ordinarily cognizable by the Civil Courts, the Court had jurisdiction, that consequential relief might be granted, the alleged husband might be restrained from enforcing his claim to the custody or possession of the person of the alleged wife, and, consequently, that a declaration might be made.

There can be no decree declaring a Christian marriage invalid under this section. A suit for such a declaration must be brought under the Indian Divorce Act, and on the grounds prescribed by that Act, Gasper (or Gonsalves) vs. Gonsalves, 13 B. L. R., 109, Pontifex J., March 5th and 21st, 1874. Suits for divorce have frequently been heard and determined with reference to native litigants in British Burmah.
The Marriage Act of 1872, Act No. 3, provides a form of marriage in cases in which the parties are neither Christians, Jews, Hindus, Mahumtedans, Parsis, Buddhists, Sikhs, or Jains, and by section 7 it is provided that any person objecting to the marriage may file a suit in any Civil Court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree, declaring that such marriage would contravene the conditions prescribed in clauses 1, 2, 3, or 4 of section 2. The officer before whom such suit is filed is to give the person presenting it a certificate; if this certificate is lodged with the Marriage Registrar within a specified period, the marriage is not to be solemnized until the hearing of the suit or appeal has taken place and the objection overruled.

Sudharam Patar vs. Sudharam, 3 B. L. R., A. C., 91, Bayley and Markby JJ., 8th May 1869, was a suit for a declaration that the plaintiff had a right to be member of a somaj or society; it was held that the suit would not lie, as not being cognizable by a Civil Court; the exclusion of the plaintiff did not deprive him of caste or affect his right of property.

In the case of Gossain Doss Ghose vs. Gooroo Doss Chuckerbulty, 16 Suth. W. R., 198, it was held by Kemp and Glover JJ., 4th August 1871, that a suit would not lie for a declaration of a right to receive, at the hands of the Poorohit of the village idol at certain festivals, certain marks of recognition and honor. The ground of this decision was that it was not shown that the plaintiff’s caste had been affected.

The great importance which is attached to documents which have been put forward in public dealings with the officers of Government, has led the Courts to make declarations in cases where these proceedings have been taken: but where the document has been merely executed between strangers and nothing further has been done upon it, the declaration has generally been refused.

When a suit was brought for a declaration that a recital in a bond made by a Hindoo widow was untrue, the bond recited that it was given for money borrowed to pay for the husband’s shradh, the declaration was refused. If the bond had not contained any such recital, a suit could not have been brought for a declaration that the money was borrowed for the purposes of the widow, and not for any
purposes binding upon the husband's estate or upon the heirs of the husband; the recital of the fact that the money was borrowed for the husband's 'shradh' would be no evidence of the fact in a suit against the heirs of the husband, or in a suit to charge the estate, *Sunkur Lall vs. Juddooobs Suhye*, 9 Suth. W.R., 285, Peacock C.J., and Seton-Karr J., 17th February 1868.

In the case of *Oomur Sulima Bebee vs. Luckkee Prea Dabee*, 7 B. L.R., 617, note (S.C.), 10 Suth. W. R., 47, Kemp and E. Jackson JJ., June 11th, 1868, a suit was brought by a guardian on behalf of a minor having a farming lease which had nine years to run. The object of the suit was to obtain a decree declaring that certain pottahs put forward by the defendants were forged and calculated to injure the future interests of the minor. The plaintiff's lessor had brought a suit to enhance the rent of the defendants' tenure, and the defendants pleaded an 'istumraree mokurruree' (i.e., perpetual, at a fixed rent) holding, and filed their pottahs to support their claim to protection from enhancement. It was alleged that the plaintiff's lessor colluded with the defendants, admitted the pottahs, and allowed the suits for enhancement to be compromised. It was held that the suit would not lie. The minor was not injured by the pottahs being put forward.

In *Woodoy Chunday Mundul vs. Ahmedoollah*, 12 Suth. W. R., 1454, reported as *Udai Chandra Mandal vs. Ahmedulla*, 7 B. L. R., 616, note, Bayley and Hobhouse JJ., 6th December 1869, the plaintiff sued to have his right to possession of certain talooks declared, and to set aside some pottahs as fraudulent. It appears that the plaintiff was in undisturbed possession, that the defendants had executed these pottahs creating the relation of landlord and tenant between themselves, and one sued the other for arrears of rent and got a decree, which was never executed. It was decided that the plaintiff had no cause of action, no right to come into Court, and ask for a declaratory decree.

In *Aratoonnissa vs. Akram Ali*, 14 Suth. W. R., 454, Glover and Ainslie JJ., 13th December 1870, which was a suit for confirmation of possession by declaring spurious a certain 'hibbanamah' set up by defendant, Aratoonnissa, it was admitted that the plaintiff was in the possession of the property as heir to his father:
no objection seems to have been raised, and the declaration was made, but it does not appear from the report what the defendant had done with the document to "set it up." These must have been more than the mere execution, for in its judgment the Court says the property would have become the property of the defendant if the document was not set aside.

In Aboo Taleh vs. Abdool Nabee, 20 Suth. W. R., 414, before Kemp J., 4th September 1872, the case was thus, A. sued B., and subsequently withdrew his suit. A. sued B. again to have it declared that a document filed by B. as evidence in the former suit was spurious. It was merely held that in the latter suit the onus of proof lay on A., but the Court seems to recognize the fitness of such a suit.

In Musst. Suraj Bansi Kunwar vs. Mahipat Sing., 7 B. L. R., 669, Bayley and Ainslie JJ., 6th June 1871, A. brought a suit against C. and D., alleging that he was heir expectant on the death of B., a Hindoo widow. Both A. and B. were in possession. The plaintiff sought to have a conveyance of the property made by C. in D's favor set aside, as against his own interests. No charge of waste or any other injury was made, and it was alleged that C. was never the owner of the property, and never had any right to convey it. It was held, following the decision in Nabin Chandra Chuckerbutty vs. Isvar Chandra Chuckerbutty, case No 480 of 1867, April 29th, 1868, and Mussamut Pranputty Koer vs. Lalla Futteh Bahadoor Singh, 2 Hay's Rep., 608, that the suit would not lie. "The mere execution of a deed or the registration of it as between strangers without any ulterior act directed against the plaintiff or his possession, or against the widow and her possession, can in no way give the plaintiff a cause of action at this stage."

In Raghubar Chowdhy vs. Bhaikdhari Sing, 3 B. L. R., Appx. 48, (S. C.) ; 11 Suth. W. R., 455, Norman and E. Jackson JJ., 7th May 1869, the defendant had set up a lease, which was found to be fictitious, and on the strength of it had intervened in a suit between the plaintiff and a ryot. It was considered that the plaintiff had a right to come in and seek for a declaration that the instrument was fictitious, and to obtain an injunction to restrain the defendant from setting it up.
In the case of Annund Mohun Mullick vs. Indro Monee Choudhain and others, 16 Suth. W. R., 214, Norman and Mitter JJ., 22nd August 1871, the plaintiff alleged that his father made a will in 1261 (B. S.), whereby he left his property to his widow for life, and after her death to his heirs conformably to the terms of the will. That the widow set up two later wills, under which she obtained a certificate (under Act XXVII of 1860) to collect debts due to the deceased. These wills purported to take away the rights of the plaintiff in the property. It was held that the plaintiff could sue to have the later wills declared void.

Again, in Beejoyanth Chatterjee vs. Luckhee Monee Dabee, 12 Suth. W. R., 248 (S. C.), 5 B. L. R., 514, note, Markby J., 29th July 1869, says of Section 15 of Act VIII of 1859 that, generally speaking, no declaration of right can be made, unless the plaintiff can show that there was some relief which the Court could have given; and see also Bhawabal Sing vs. Maharajah Rajendra Pratap Sahoy Bahadur, 5 B. L. R., 328 (S. C.), 12 Suth. W. R., 157, where Bayley and Markby JJ., recognised the rule as established by the Court, that no declaratory suit could be maintained, unless some act has been done which would entitle the plaintiff to relief, if asked for.

A plaintiff brought a suit for a declaration of his right as heir to a child who had disappeared for some time, alleging waste by the persons in possession, and stating that he apprehended that if the infant did not return in 12 years, he, the plaintiff, would be barred by limitation. The Court decided that such a declaration could not be made, Gurudas Nag vs. Mutilal Nag, 6 B. L. R., Appx. 16, Kemp and Paul JJ., 15th December 1870. The proper course would have been for the plaintiff to apply to the Court for the appointment of a guardian under Act XL of 1858, Section 4, who could then have instituted a suit for damages. The plaintiff seems to have had that provision before him, but he did not act upon it. It has been held that no one can succeed as heir to a Hindoo who has disappeared until 12 years, which is the same period as in suits for land under the Limitation Act, have elapsed, Jamnajay Mazundar vs. Keshab Lal Ghose, 2 B. L. R., A. C., 134, Bayley and Macpherson JJ., December 21st, 1868.

sued the heir of her husband for her dower, Rs. 40,000 and proved that her husband had agreed to give it, but failed to prove that the heir had got any of the husband's estate. As her suit then failed, she asked the Court of Appeal to make a declaration of her right to her dower. This was refused. Phear J.:—"We are also very strongly of opinion that a Civil Court ought not to make a declaration of right in favor of a party on the state of facts which are not sufficient to enable it to grant substantial relief, supposing that the Court thought fit to do so. And we think that this view accords with some of the decisions which have been lately passed by the Privy Council;' and further on:—"The property must either be in the hands of the plaintiff herself, or of a third party. In either case, it seems to us that a suit even for a declaration of right alone is premature."

But where there has been some substantial interference by the defendant with the plaintiff's rights, the Court will make a decree.

Thus, the case of Nobokishore Dey vs. Ramkissen Mohurir, 9 Suth. W. R., 131, 17th January 1868, Peacock C. J., and Mitter J., was a suit for a declaration of plaintiff's right to lands on the ground that J. held the lands as part of the plaintiff's talook P., and as his ryot, but that the defendants had taken possession of the lands from J., on the claim that they belonged to talook T., and that the ryot J. was acting in collusion with the defendants in allowing them to take possession of the lands as talook T. The plaintiff failed to prove his allegation; Peacock C. J., thought that had it been proved the Court would have probably made the declaration asked for.

In S. M. Nistarini Dasi vs. Makan Lall Dutt, 9 B. L. R., 11 (S.C.), 17 Suth. W. R., 482, Couch C. J., and Macpherson J., April 3rd, 1872, on appeal from the decision of Markby J., the plaintiff, a Hindoo widow, entitled to maintenance out of an estate, alleged that the owner was making away with the estate, and asked that her right to maintenance and to be provided with sufficient funds to defray the expenses which would be incurred by her on the marriage of her daughter might be declared, and that C., to whom the owner had mortgaged the property, might be declared mortgagee subject to her right, for an account and injunction, and further and other relief as might be necessary. Markby J., considered
that the declaration could not be made, but was of opinion that the rule which excludes suits for a mere declaration of right is not quite so strict in India as in England, and that by the practice of the Courts, at any rate in the Mofussil, suits are admitted in certain exceptional cases for a declaration of right, although no actual relief has been asked for or could be granted; probably because in these particular cases there is manifest convenience in having the right ascertained, and there is no other way of raising the question.

The plaintiff appealed against the decision of Markby J., and the Judges in the Court of Appeal, Couch C. J., and Macpherson J., although they agreed that a general declaration could not be made, held that the plaintiff might be afforded such relief as she was entitled to, under the prayer for general relief, and that the amount of the widow's maintenance might be ascertained. Phear J., before whom the case came on an application for security for costs, had taken the same view as the Court of Appeal.

There are cases no doubt which arise in the Courts in India depending on peculiar circumstances or laws to which the English decisions are not wholly applicable; but as it has been said in the Judicial Committee of the Privy Council (see 11 B. L. R., 190), "there is so much more danger in India than in England of harassing and vexatious litigation, that the Courts in India ought to be most careful that mere declaratory suits be not converted into a new and mischievous source of litigation."

In some cases it has been thought that the registration of a document relating to property gives the plaintiff in possession of the property a right to ask for a declaratory decree. There are two ways in which a document may be registered, in one case the person who executes it may take it to the Registrar and have it entered in his books and acknowledge its execution in the manner already referred to ante, p. 6, note. The object of this registration is to establish the execution of the deed by the persons who purport to have signed it. The Registrar has no power to enter into any question of title, and the mere registration decides nothing as to the title of the property dealt with or supposed to be dealt with by the document. No notice is given to the person in possession, and no one is called before the Registrar except the persons who have signed the paper.
In the case of *Ram Chandra Paul vs. Becharam Day*, 8 B. L. R., Appx. 28, note, Phear and Hobhouse JJ., 28th August 1868, a document had been registered, and it was held that the plaintiff could not complain of the registration until some further wrongful act against him had been done.

Loch and Mookerjee JJ., however, held, 8th May 1871, in *Prasanna Kumar Sandyal vs. Mathurnath Banerjee*, 8 B. L. R., Appx. 26, that the Court had jurisdiction to try the genuineness of a registered document, and that the registration of a document the execution of which was obtained by improper means, affecting the property of the person executing it is a good cause of action on which to ask for a declaratory decree. In that case the plaintiff was the defendants' landlord, and had obtained a decree for rent at Rs. 66 per annum; the defendants had then put forward and obtained the registration of a document which limited the rent to Rs. 33. And it was considered that the circumstances of the case warranted a declaration. Until the deed was set aside the plaintiff was precluded from suing for his rents at the higher and as he contended the proper rate, and there was a question of fraud and duress. The Court recognizing the principle that no decree of this nature could be made where no consequential relief was sought, or where none could be granted, distinguished the case from that of *Rameshchandra Paul vs. Becharam Dey*, and made the declaration. Mookerjee J., had previously decided with Macpherson J., in *Fakir Ghand vs. Thakur Sing*, 7 B. L. R., 614, 20th April 1870 (S. C.), 15 Suth. W. R., 421, that such a suit would lie. In that case the allegation was that a mortgage deed that had been registered was a forgery, and it was held that under the circumstances there had been a cloud thrown upon the title of the plaintiff, and he could sue.

Mr. Justice Macpherson, in giving judgment in that case, observed that the decision did not conflict with the general principles of most of the cases which were relied upon by the counsel who argued against the decree, and certainly not with the judgment, upon which he relied much, of Mr. Justice Bayley and Mr. Justice Paul, "*Sheik Jan Ali vs. Khonkar Abdur Kuhna*, where Mr. Justice Paul distinctly expresses his opinion that such a suit, as the present suit, would lie, if the deed, which is sought to be set aside, manifest-
ly and unquestionably does throw a cloud over the title of the plaintiff."

Another way of registering a document is where the defendant has gone with it to the Collector of Revenue, and has induced him wrongly to register his name in the revenue records as proprietor of the land of the plaintiff, and such a proceeding has been held to be an act hostile to the plaintiff, entitling him to consequential relief, and to a declaration.

This was done in the case of Wise vs. Latthoo Khan, 16 Suth. W. R., 50, L. S. Jackson and Macpherson JJ. By the Act VI of 1862 of the Bengal Council, Section 10, it is enacted that the Collector "shall proceed to ascertain, determine, and record the tenures and under-tenures, the rates of rent payable, and the persons by whom respectively the rents are payable," &c. "The decision of the Collector on all matters enquired into and determined by him under this Section shall be final, unless the same shall be reversed on appeal therefrom to the Civil Court." Although it is not intended by this that the Collector shall have power in this proceeding for the measurement of the lands, to determine summarily the character of any holding in the estate, but that he shall be merely empowered to enquire how any portion of the land was held, by whom held, and what rent was then payable in respect of such land, it might be proper for the Collector to record that particular tenants have claimed to hold as mokurrureedars, but he would not be competent to determine whether they were so or no. It was held that the Civil Court would have jurisdiction in such a case as this to determine a title on which a cloud had been raised by the proceedings of the Collector, and to try whether the defendant had a valid mokurruree or not.

The rights of the original owner of a mehal were sold and purchased by N. B. alleged that he had purchased the rights of the original owner from A., who held benamee for him, and he applied to the Collector to register his name as owner of the mehal, which the Collector did. It was held that N. was entitled to a decree declaring that he had purchased the rights of the original owner, and to have his name registered in the books of the Collector, Newaz Mahomed vs. Bhagoo Shikdar, 8 Suth. W. R., 190, L. S. Jackson and Hobhouse JJ., 16th July 1867.
So in the case of Sreekant Shaha vs. Kaltoo Doss, 10 Suth. W. R., 135, Macpherson and Bayley JJ., 9th July 1868, the plaintiff obtained a decree declaring him to be mowrosee jotedar of certain land. The pottah was one which gave the plaintiff a right to collect certain fixed rents from the jotedars (the defendants in the suit), who were in actual possession of the land and had a right of occupancy. The decree declared him to be entitled to have his name put on the Collector's register as such. The defendants had some of them disputed the plaintiff's rights, and applied to have their own name registered as jotedars, and their applications had been granted. Some of the defendants, it appears, did not dispute his title.

Deepto Debia vs. Gobindo Deb, 16 Suth. W. R., 42, 9th June 1871, E. Jackson and O. C. Mookerjee JJ., was a suit brought by a Hindoo lady, a widow, for a declaration of her title to land of which she was in possession. The defendant had procured his name to be registered in the Collectorate as joint proprietor with the plaintiff. The first Court made the declaration. The Court of first appeal reversed the decision on the ground that the suit was barred by limitation; and secondly, that the defendant had rights upon the merits of the case, but the High Court on special appeal restored the decision of the Court of first instance.

So also in Ram Lochun Chuckerbutty vs. Ram Soonder Chuckerbutty, 20 Suth. W. R., 104, Couch C. J., and Glover J., 29th May 1873, the plaintiff being in possession of land sued to have a declaration of title to half of it, and "for releasing the plaintiff from liability under the spurious kubooleat which had been set up by the defendant, and for confirmation of proprietary right. It was observed "the defendant had in the Revenue Court set up a kubooleat as given to him by the first plaintiff, and had succeeded in obtaining a decision of that Court in his favor. Seeing the use which is made in this country of decisions of Revenue Courts and Magistrates, the plaintiffs may have reasonably felt some apprehension if this decision in favor of the kubooleat remained unquestioned." In this case it seems that the Moonsiff had made a decree in the plaintiff's favor, declaring them the owners of the land, and that the title was in them. The Subordinate Judge, on appeal, was of opinion that one of the plaintiff's instruments by which they derived title of
gift was not proved, and reversed the Moonsiff's decree. But he found that the plaintiff had been in possession more than 12 years (which, see XI, Moo. I. A., 362, confers a title). The High Court on special appeal reversed the decision of the Subordinate Judge.

Again, in Ablak Ram vs. Mohendro Pershad Tewaree, 20 Suth. W. R., 365, Glover and Morris JJ., 19th August 1873, a declaratory suit by one in possession, the defendant having caused his name to be entered on the Collector's register was held to lie. Glover J.:

"It seems to me that this was a most decided injury done or attempted to be done to the plaintiff's rights over the land, and gave plaintiff a very sufficient cause of action. It cast a slur upon his title, and lessened the value of his property if he had wanted to sell it. No purchaser would have come to terms with a seller whose land was not only claimed by another but which actually stood in that person's name in the Collector's landholders' register."

The Legislature has lately recognized suits of this nature for a mere declaration of right. Thus Act XXIII of 1871, the Punjab Land Revenue Act, by Section 20, enacts that any person who considers that he is aggrieved as to any right of which he is in possession, by any entry made in a record of rights, may, after such record of rights has been sanctioned, bring a suit in a Civil Court for a declaration that such entry is incorrect, and that a different entry ought to have been made. The Government and every person interested in such entry shall be made defendants in every such suit. A decree obtained in such suit shall be of the same effect as if the entry which it declares to be correct had been made originally in the record of rights (that is to say shall be presumed to be true, s. 16).

In like manner, where a defendant has induced the Collector of Revenue to make a record of wrong boundaries in his maps, it is now held that a suit will lie for a declaration that the boundaries are wrongly laid down. It seems, however, to have been doubted at one time whether such a declaration could be made. Thus in Baboo Motee Lall vs. Ranee, the wife of Maharajah Bhoop Sing, 8 Suth. W. R., 64, a suit was brought for confirmation of possession by a declaration of right and determination of boundaries, and to set aside certain maps
and proceedings of the revenue authorities. The plaintiff was in possession of the lands in respect of which the suit was brought. The Court (Peacock C. J., and Loch J., 20th June 1867), following the English cases, held that it was a matter in its discretion to make a declaratory decree or not. And it was considered that under the circumstances of the case no such decree ought to be made. It did not appear that the person on the other side of the boundary line disputed that the line was erroneously laid down, but whether he did or not, the Court did not think that the plaintiff ought to have a declaratory decree, he might have set the matter right by taking proper proceedings before the revenue authorities.

In later cases, however, such declarations have been made. Thus in the case of Promothonath Roy vs. Poorno Chunder Banerjee, 11 Suth. W. R., 543, Bayley and Hobhouse JJ., 27th May 1869, it was alleged that the defendant had collusively caused the plaintiff's land to be surveyed, and that a certain demarkation had been made by the survey authorities in fraud of the plaintiff, and that there was an attempt made to bind the plaintiff to this by fraudulently inserting his father's name in the proceedings. It was held that a suit would lie for a declaration of title although the plaintiff was in possession.

Again, in Sheeb Jattun Roy vs. Punchanun Bose, 3 B. L. R., Appx. 55 (S. C), 11 Suth. W. R., 466, decided by Loch and D. Mitter JJ., where the plaintiff sued for a declaration of title to certain lands which he alleged had been erroneously surveyed as part of the defendant's village, and where the defendant denied the plaintiff's right to and possession of the lands, it was held that the plaintiff was entitled to the declaration. The case of Baboo Motee Lall vs. Ranee was relied on as against the plaintiff, but the Court drew a distinction between the two cases, as here the defendant had actually contested the case. It was considered that the plaintiff might have a declaration, although he might have avoided all litigation by an application to the survey authorities to rectify the map.

Again, in Puree Jan Khatoon vs. Bykunt Chunder Chucker-butty, 9 Suth. W. R., 380, Kemp and E. Jackson JJ., 25th
March 1868, the plaintiff alleged that the defendant had caused his land to be marked out in his absence, taking a portion which belonged to him within the new boundary, and proceeded against the plaintiff's tenants in a suit for rent, and in proceedings to enforce a measurement under Act VI of 1862 of the Bengal Council. These were, in the opinion of the Court (Kemp and L. S. Jackson JJ.), hostile acts which gave the plaintiff a right to ask for a declaration under Section 15 of Act 8 of 1859, although he remained in possession. The Court, however, referred with approval to a former order of Trevor and Glover J.J., in the same case, remanding the case for re-trial, where they said:—"The Court will not be put in motion under Section 15 unless some injury appears so probable as to lead to the conclusion that, unless stayed by the declaratory decree, the inchoate or threatened injury may be completely perpetrated;" and two decisions, one in case No. 1164 of 1857, dated February 25th, 1868, and not reported, decided by Bayley J., and Phear J., who refused to make a declaration in the absence of any overt act of hostility or attempt to take possession from the plaintiff, and added "that a plaintiff who seeks relief under Section 15 must make out to the satisfaction of the Court some act done by the defendants which is hostile to and invades his rights, and which would justify an injunction or a decree for damages or a decree for delivery of possession, or some other decretal order being passed against the defendants if the Court had so thought fit to exercise its discretion." The case of Baboo Motee Lal vs. The Ranee of Maharaja Bhoop Sing, &c., 8 Suth. W. R., 64, Peacock C. J., and Loch J., 20th June 1867, was also relied on as an authority for this and for the other proposition, that it is discretionary with the Courts to grant or to refuse a declaratory decree.

In the case of the Government vs. Rajah Rajkissen Sing, 9 Suth. W. R., 426, March 13th, 1868, where the Government had wrongfully drawn a boundary line, cutting off a portion of the estate as settled, and had forbidden the plaintiff the enjoyment of zemindary rights in the portion beyond, it was held by Peacock C. J., L. S. Jackson J., and Phear J., that this constitutes a cause of action upon which the plaintiff can ask for a declaration under Section 15, because it constitutes a cause of action upon which
he could have come to a Civil Court for relief independently of that section; and Sir B. Peacock, who delivered the judgment of the Court in the case of Baboo Mottee Lall vs. Maharajah Bhoop Sing, appears to have afterwards made declaratory decree in a similar case. The case itself is not, I believe, reported, but parts of the judgment and the decree are quoted by Couch C.J., in the case of Roja Rajkrishna Sing Bahadoor vs. Collector of Mymensing, 19 Suth. W. R., 232, 24th February 1873, Couch C. J., Kemp and Pontifex JJ. The appellant in this case applied to the Court in Mymensing that the terms of the decree which had been made by Peacock C. J., might be proclaimed on the spot, and that the line delineated in a survey map might be erased from it. The plaint appears to have been framed for the recovery of lands, and the Lower Court and a Division Bench of the High Court had allowed the claim and declared the plaintiff entitled to the lands. On a further hearing before the Chief Justice (and apparently a Full Bench), this decree was modified according to the following opinion of the Court. Sir B. Peacock C.J.:—"It appears to us that the appeal must be allowed, and the decisions of the Lower Court and of the Division Bench of this Court be reversed so far as they declare that the plaintiff is entitled to the lands specified in the plaint, and that we must merely declare that the boundary line laid down in the survey map as the boundary line of his permanently-settled estate is not the true boundary line." And the decree was as follows:—"It is hereby declared that the boundary line laid down in the survey map as the boundary line of the said plaintiff's permanently-settled estate is not the true boundary line, and that the said plaintiff is not bound by the said survey map, or by the order of the Collector of the 15th April 1859, and the subsequent proceedings therein."

The decision in the case before Couch C. J., Kemp and Pontifex JJ., was that the plaintiff could not have his decree proclaimed or the boundary line altered, as the decree did not provide for it, and that was the only point before the Court.

Again in the case of Bromo Moyee Debia Chowdhry vs. Komodinee Kant Banerjee Chowdhry, 17 Suth. W. R., 466, before Kemp and Glover JJ., March 2nd, 1872, the plaintiff alleged that the
defendant had collusively with one B. obtained a thakbust survey of certain land, in which a part of his, the plaintiff's, land had been set down as the defendant's. The latter had also sued (the report does not say who was the defendant in this suit) to obtain an order that a building on the land in question should be demolished, and it was held that the plaintiff as proof of this had established a case for a declaratory decree.

In like manner a declaration may be made that a plaintiff has a right to a settlement. In the year 1835, certain land held by the zemindars of Roghoorampore was resumed by the Government as not comprised within the limits of their permanently-settled estate; the land being, in fact, a recent alluvial formation. Afterwards, the land remained under khas collection until 1842, when a temporary settlement was made with persons who had no previous interest in the property. Subsequent temporary settlements of a similar character were made until the year 1867, when a permanent settlement was made with the defendant in the present suit, who was the owner of a half share in the zemindaree. The plaintiff sued to have it declared that he is the owner of the other half share in the zemindaree, and it was held that he was entitled to a declaration to that effect. It was stated by Markby J., that "without going minutely through the language of the regulation, I think it quite clear that it has been the invariable practice in this country to allow a person who alleges that he is entitled to a permanent settlement to come into the Civil Court to obtain a declaration of that right." Kristo Chunder Sandyal vs. Kashee Kishore Roy Chowdry, 17 Suth. W. R., 145, Bayley and Markby JJ., 19th January 1872. In this case the defendant had put himself forward as the owner of certain rights as the actual proprietor, and got the settlement made in his favor, Section 25 of Reg. VIII of 1793; he was therefore to be considered, Section 11, ib., as the rightful possessor until a better title is established against him in due course of law. The Government should be made a party to such a suit; although the Revenue authorities settle with the person ostensibly in possession for the purpose of the collection of the Government Revenue, but they have no means of dealing with the question of title, Mahomed Israile vs. Wise, 13 B. L. R., 118, Full
Suit regarding butwarrahs—Act X Cases.

Bench, March 16th, 1874; see also Gunga Gobind Mundul vs. The Collector of the 24-Pergunnahs, 11 Moo., I.A., 358.

A butwarrah proceeding, or proceeding for the partition of a joint estate, which is made by the Collector who fixes the amount of the revenue payable by each part of the estate into which the whole is divided under the provisions of Regulation XIX of 1814, may be final for fiscal purposes, but it does not bar the right of a third party to sue to have them set aside. And if the Collector in the course of those proceedings has declared A. entitled to a specified share in the estate, to which, as against the plaintiff, he was not entitled, and then proceeded to divide that share for him, this is a substantial injury to the plaintiff’s title, and he can sue to have the proceedings declared invalid and set aside, Spencer vs. Puhul Chowdhry, 6 B. I.R., 658, Bayley and Mitter JJ., May 2nd, 1871. Sheo Pershad Sookool vs. Shunkur Sahoy, 16 Suth. W. R., 190, Kemp and Glover JJ., 28th July 1871.

But in Sheo Lall Chowdhry vs. Chunder Benode Oopadhya, 9 Suth. W. R., 586, Kemp and E. Jackson JJ., 20th May 1868, where the suit was brought to obtain a declaration that two pottahs and a chittah put forward in the course of a butwarrah proceeding were forgeries, it was considered that the suit was premature, as no injury was done to the plaintiff by the documents being put forward. It appeared to the Court to be a suit brought to get rid before-hand of the evidence upon which the defendant would mainly rely upon in a suit for enhancement, which could only be brought under Act X of 1859. And the case was contrasted with the decision in the case of Khobirooddeen vs. Kishen Dhun Chuckerbutty, 3 Suth. W.R., 209, Seton-Karr and E. Jackson JJ., August 18th, 1865, where the pottah had been publicly put forward in a Court of Justice, and the suit was held to lie.

In the case of Bhyro Singh vs. Oodeo Kurn Singh, 12 Suth. W. R., 285, Glover and Mitter JJ., 6th August 1869, the plaintiff sued for confirmation of possession and for declaration of his title to certain land, alleging, as a cause of action, that a slur had been cast upon his title by the decision of the Collector in a suit brought by the defendant under clause 6, Section 23 of Act X of 1859, in which
the defendant was declared to have been illegally ejected by the zemindars. In that suit the defendant got a decree on the strength of a pottah said to have been given to him by the plaintiff's vendor. The 6th clause of Section 23 of Act X of 1859 enacts that "all suits to recover the occupancy or possession of any land, farm, or tenure, from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same, shall be cognizable by the Collectors of land revenue," &c. It was held that as this clause referred only to possessory actions against the person entitled to receive the rent, and not to suits in which the question of title is determined (Gooro Dass Roy vs. Ramnarain Mitter, 7 Suth. W. R., 186), the Collector's judgment upon the genuineness of the pottah could not be pleaded as an estoppel in the suit. So that the suit was apparently considered unobjectionable.

Proceedings by way of purchase or claim in respect of property the subject of a civil suit or taken in execution of a decree also sometimes afford grounds for declaratory actions. Thus the case of Mussamut Gosmiah vs. Taffuzzul Hossein, 4 Bengal L. R., Appx. 32, decided by Macpherson and E. Jackson JJ., January 21st, 1870, was a suit in which the plaintiff asked merely for a declaration that she was the real purchaser of certain property, and the plaintiff stated that, although the plaintiff had paid the earnest money, the defendant had fraudulently caused his name to be inserted in the certificate of sale. The defence was that the suit would not lie under Section 260 of Act VIII of 1859, which recognizes only the ostensible purchaser at a sale of immoveable property in execution of a decree, the objection was allowed by the Moonsiff, but this decision was reversed by the Court of appeal, which remanded the case for re-trial, indicating thereby that the suit was not objectionable on the ground that it asked only for a declaration.

Section 246 of the Code of Civil Procedure is a provision for the investigation of claims preferred to or objections offered to the sale of property attached, as not liable to be sold in execution of decrees. If it appears that the property was not, at the time of the attachment, in the possession of the person against whom the execution is sought or of some one in trust for him, or in the occupancy
of ryots paying rent to him, or that if it was in his possession it was so, not on his own account, but on account of another person, the property is to be released from attachment, otherwise the claim is to be disallowed. The question of title is not investigated in this proceeding, but the person against whom the order is made may afterwards bring a suit to establish his title. In the case of Gabind Prasad Tewari vs. Uday Chand Rana, 6 B. L. R., 320, Markby and Mitter JJ., 12th July 1870, certain property was attached in execution of a decree, and A. preferred a claim to it under this section, alleging that the property had been mortgaged to him by the judgment-debtor. His claim was allowed in so far that an order was made for the sale of the property subject to his mortgage. B. afterwards claimed the property as his absolute estate, and his claim was allowed, and the property released from attachment. A. was not a party to these proceedings. It was held that A. could file his suit for a declaration of his title as mortgagee. This case was distinguished from the case of Kenaram Chuckerbutty vs. Dinonath Panda, 9 Suth. W. R., 325, Bayley and Phear JJ., February 25th, 1868, and it was said that the decree could be made because the plaintiff had had his market spoiled, although there was no absolute injury. This case does not seem to accord with the case of Colvin, Covie and Co. vs. Elias, 2 B. L. R., A.C., 212 (S.C.), 11 Suth. W. R., 40, L. S. Jackson and Hobhouse JJ., January 13th, 1869. In this instance the suit was brought for the establishment of a putnee right, that is for a declaration of the plaintiff's putnee right in the property sued for, by setting aside an order admitting a claim, which was a claim preferred and disposed of by the Court under Section 246 of the Code of Civil Procedure, in execution of a decree obtained by the Bank. The Bank had taken a mortgage from C. of a putnee talook obtained by C. from the defendant E., and had obtained decrees, one for rent and the other for the money advanced upon mortgage. In execution of the decree for rent, the property in question, a house in one of the villages comprised in the putnee, was put up for sale and described as the lakheraj property of the judgment-debtor; the defendant claimed it as her lakheraj; she did not however deny that the judgment-debtor had putnee rights, and her claim was allowed under section 246. The
plaintiffs then sued within one year as prescribed by that section for a declaration of their title as mortgagees of the putnee; they alleged that the house in question was comprised in the putnee, and asked for a reversal of the order under section 246. It was held that no hostile act had been done by the defendant to justify the suit; the defendant had never by any act of hers impugned or disturbed the title which the plaintiffs were setting up in the present suit. All that she did was to oppose and dispute the allegation on the part of the plaintiff that they were entitled to sell this property by reason of its being the lakeraj or rent-free property of the judgment-debtor, and it might very well be that if the plaintiffs had sought to sell the property as being comprised within the putnee lease the defendant would not have opposed that application.

A plaintiff alleged that he was owner in possession of an 8-anna share in a specified mouzah, and that his enjoyment was menaced by reason of the defendant having attached it and caused it to be sold, and then himself purchased it in execution of a decree held by him against a third person, and he prayed for a declaration of his right of ownership and possession. The plaintiff set out his title which was derived from one Shahamut Ali Khan, deceased, who had mortgaged it to Opadhya in 1810 and 1813. Shahamut afterwards sold the property to his two eldest sons; he had a third son. There was a fresh mortgage by the two sons in 1820, and in 1830 Opadhya foreclosed and got his final decree for foreclosure in 1831. The plaintiff bought from Opadhya's widow. The defendant did not deny all this, but stated that he became the purchaser of a decree passed in 1836 against the heirs of Shahamut, and in execution of that decree caused the rights of Shahamut's third son to be attached and sold, and he contended that the third son had a share subject to the mortgages of 1810 and 1813. He alleged fraud between the father and the two eldest sons. The plaintiff had preferred a claim under Section 246 of the Code, but it had been disallowed, whereupon the present suit was brought. The Court below appears to have made a declaration in favor of the plaintiff, and the defendant appealed against this decision. The High Court on appeal, after pointing out that the whole of the proceedings in the matter of the sale in execution were misconceived,
decided to deal with the case as if the defendants were in the position of a plaintiff seeking to establish a right to follow the assets of Shahamut into the hands of the plaintiff, and as there was no ground for finding in his favor on that point, they dismissed his appeal, Shurfun Bebee vs. The Collector of Sarun, 10 Suth. W. R., 199, Phear and Hobhouse JJ., July 24th, 1868.

The orders of Courts of Criminal jurisdiction cannot however be dealt with or declared illegal or erroneous by the Civil Courts, when they are made in criminal proceedings or even in matters partly of a civil nature, as, for example, orders for the abatement of nuisances. Thus in the case of Madhab Chandra Guho vs. Kamala Kant Chuckerbutty, 6 B. L. R., 643, Macpherson and Mookerjee JJ., March 21st, 1871, an unsuccessful attempt was made to obtain a declaration that the plaintiff was entitled to build a bridge, which the Magistrate in regular proceedings, under the Criminal Procedure Code, has ordered to be pulled down as an obstruction. The prosecutor in the case was made defendant. The suit was dismissed on the ground that no civil suit will lie to reverse the orders of a Criminal Court.

But in the case of Meghraj Singh vs. Rashdharee Singh, 17 Suth. W. R., 281, where a Magistrate had made an order under Section 321 of the Criminal Procedure Code (Act XXV of 1861), by which the defendant in the present suit was confirmed in possession of a certain drain pipe for drawing of water from a reservoir, the plaintiff sued to have the order, which although still subsisting had never been acted upon, set aside. It was found by the Court of first instance that the drain pipe was not there [at the time of suit?] It was held by the Court of Appeal that the plaintiff was entitled to a declaratory decree, and to have the Magistrate’s order set aside. Another case, Undhoob Narain vs. Chutter Dharee Singh, 9 Suth. W. R., 480, Phear and Hobhouse JJ., was referred to as an authority that a suit for possession was not barred under clause 7, Section 1, of Act XIV of 1859, by the lapse of more than three years from the date of the Magistrate’s order, the order having been made under Section 318 of the Code of Criminal Procedure.

These two last were cases in which orders had been made under
Chapter 22 of Act XXV of 1861, corresponding to Chapter 40 of the Code of Criminal Procedure as re-enacted in 1872, and giving the Magistrate power to make orders regarding the possession of land when there is a dispute regarding it or regarding boundaries, &c., calculated to induce a breach of the peace. The Magistrate acts under these provisions in a summary way and merely for that purpose; he has no jurisdiction to try a question of title, which must be enquired into by the Civil Court. These cases therefore do not in any way conflict with the case of Madhub Chandra Guho vs. Kamala Kant Chucker-butty, 6 B. L. R., 643, where the Magistrate ordered the demolition of the bridge under Chapter 20 of the Code of Criminal Procedure (Act XXV of 1861), which relates to the removal of public nuisances, and thus it will be found that a period of limitation is fixed by the present Limitation Act, IX of 1871, Schedule 2, No. 46; three years are allowed from the date of the order under Act XXV of 1861, c. 22, to recover the property comprised in such order.

In Sheik Torab Ally vs. Sheik Mahomed Tukkee, 19 Suth. W. R. (P. C.), p. 1, the plaintiff, who was in possession, sued for relief from injury and for confirmation of possession of certain land, and he stated that some of the defendants had taken proceedings under Act IV of 1840 (for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession). The Magistrate interfered under that Act; he had no jurisdiction to try the question of title, but only to decide who was the person in possession. He decided in favor of the plaintiff, but his decision was reversed by the Sessions Judge, and the cause of action was alleged by the plaintiff to have arisen when the Judge's order was passed. The plaintiff in the present suit asked that he should be maintained in possession, and that the Court should declare affirmatively that his possession was accompanied by title. The counsel for the respondents took the objection that the plaintiff being in possession was not entitled to a declaratory decree, and he relied upon Rooke vs. Lord Kensington, 2 K. & J., 761; but it was assumed in the judgment of the Committee that the suit was unobjectionable on this ground, and the case was decided on the failure of the proofs adduced by the plaintiff, not upon the question of jurisdiction.
Suits to declare a right to enhanced rents.

There is, in the Bengal Presidency, another class of suits in which a decree which is merely declaratory could, before the Civil Procedure Code was passed, and now can, be made, namely, suits for a declaration that the plaintiff has a right to enhance his tenants' rents. Regulation V. of 1812, Section 9, provided that "no cultivator or tenant of land shall be liable to pay an enhanced rent, though subject to enhancement under subsisting regulations, unless written engagements for such enhanced rents have been entered into by the parties, or a formal notice has been served on such cultivator or tenant at the season of cultivation, viz., on or before the month of Jeyt, notifying the specific rent, under the landholders' right of enhancing it, to which he will be subject for the ensuing Fasuly, or for the current Bengal year." This enactment was repealed by section 1 of Act X of 1859, an Act which applied to the whole of the Presidency of Bengal, which enacts that "no under-tenant or ryot, who holds or cultivates land without a written engagement or under a written engagement, not specifying the period of such engagement, or whose engagement has expired, or has become cancelled in consequence of the sale for arrears of rent or revenue of the tenure or estate in which the land held cultivated by him is situate, and has not been renewed, shall be liable to pay any higher rent for such land than the rent payable for the previous years, unless a written notice shall have been served on such under-tenant or ryot, in or before the month of Cheit, specifying the rent to which he will be subject for the ensuing year, and the ground on which an enhancement is claimed."

Act X. of 1859 has been repealed, so far as it extended to the provinces subject to the Lieutenant-Governor of Lower Bengal, by Act VIII. of 1869 of the Bengal Legislature, which however contains the same provision in section 14; but the notice is to be served in districts or parts of districts where the Fasli year prevails, in or before the month of Jeyt, and in districts or parts of districts in which the Bengalee year prevails, in or before the month of Poos.

When the Regulation above quoted was in force, a suit was brought for enhancement of rent after notice, the Moonsiff gave a decree, fixing the rate of the enhanced rent, and the case was appealed to the Principal Sudder Ameen, who decided that the notice had not been
served, but he fixed the rate of the rent. It was contended by the defendant that as the plaintiff had failed to prove the service of notice, the Principal Sudder Ameen could not award the enhanced rent; but the plaintiff urged that he was entitled to a declaratory decree declaring his right to enhance the rent. It was held by the Court (Peacock C. J., Norman, Steer, Kemp, and Seton-Karr JJ.) that such a decree could be made, Hurydhur Mookerjee vs. Gomanee Kazee, Marshall, 523, (S. C.) B. L. R., Supplemental Volume, p. 15 (1st June 1863). It was said in this case that the parties should not be held too strictly to their pleadings under the Code of Civil Procedure, and when a plaintiff asks for that to which he is not entitled, there is no good reason why the Court, in refusing the relief prayed for, should not give that to which they see he is fairly entitled upon the evidence and the finding of the issues raised in the suit. This decision was approved by the Judicial Committee of the Privy Council in Nufferchunder Paul Chowdhry vs. Poulson, 12 B. L. R., 53 (S. C.), 19 Suth. W. R., 175, January 24th, 1874.

The case in Marshall was decided after the Code of Civil Procedure was passed. In the course of his judgment, Sir B. Peacock, however, referred to several other instances of similar decisions by the late Company’s Courts, the first of these cases was reported in the S. D. A. Rep. for 1847, p. 196, Gholam Ruhman vs. Rajah Radha Kaunth. There the plaintiff sued the defendant to enhance his rent. The defendant pleaded a tenure at a fixed rate, but failed to prove it, and the Moonsiff decreed for the plaintiff. His decision was affirmed by the Principal Sudder Ameen, and the defendant appealed specially to the Sudder Dewanny Adawlut. It appeared that the plaintiff had omitted to give the notice to the defendant required by Regulation V of 1812, Section 9, consequently under Section 10 it was improper for the Court to award payment of a greater rent than the defendants were bound to pay under their previous engagements. The Sudder Court, therefore, reversed the decision of the Courts below so far as they awarded payment of the enhanced rents, but upheld them to the extent of declaring the right of the plaintiff to levy rents from the defendants for the lands held by him at the purgunnah rates. This decision is further explained by Mr. Scone in S. D. A. Rep., 1858, p. 1002, where he says that two other cases
were disposed of in the same way; in one case the jumma had been raised from rupees 11 to rupees 45, and in the second, from rupees 43 to rupees 73; in each case the higher jumma stood, and only the payment of arrears was disallowed in consequence of the absence of notice of enhancement required by the Regulation. Again, in an anonymous case, S. D. A. Rep., 1848, p. 812, which was a suit for enhancement, it was alleged that the prescribed notice had been given; but the Principal Sudder Ameen dismissed the whole case on appeal, on the ground that notice was not proved, and it was held, on further appeal to the Sudder Court, that he was wrong in dismissing the entire plaint on this ground. “The plaintiff is entitled to a declaration of his right to assess without service of notice, though he cannot claim rent at the enhanced rate, until he has gone through the form prescribed by law. This has been repeatedly held by this Court.”

_Kasslesurree Dabea vs. Chunderkaunth Muzoomdar_, S. D. A. Rep., 1858, 318, was a suit brought after notice to re-assess the land, on the ground that the defendants had previously paid rent at variable rates; it was stated in the judgment to be a suit laid “not for the enforcement of payment, but simply to re-assess the land in the occupancy of the tenants’ dependants; and we do not doubt in conformity with other decisions, that even without notice a suit to determine plaintiff’s right to enhance without carrying liability to pay arrears at the enhanced rate may be entertained.”

_Ranee Mahamya Dassea vs. Neelmonee Joogee_, S. D. A. Rep. for 1858, p. 1800, was another case in which the right to enhance was declared, although the service of notice under Section 9 of Regulation V of 1812 had not been shown. In the case of _Joykissen Mookerjea vs. Sheikh Cazee Golam Sufder_, S. D. A. Rep. for 1857, p. 1001, a case of a similar kind, it was decided that even after a decree establishing a right to enhance the landlord must give a notice under Section 9 of Regulation V of 1812 of his intention to enhance the next rent, and this rule was followed in _Woomachurn Bose vs. Poreshmonoo Dasee_, S. D. A. Rep. for 1859, p. 833.

These cases have been followed in _Ishur Chunder Mundul vs. Sham Chunder Dass_, Suth. Reports from January 3rd to July 1864, p. 312, where the Court referred to _Poulson vs. Muddhoosoodun Paul_
Suits to declare a right to enhanced rents.

Chowdry, 12th February 1863, and Joykissen Mookerjee vs. Sheikh Kazee Golam Sufidar, 13th May 1858. There appears to have been a like practice in the North-Western Provinces (S. D. Rep., Agra, 1852, p. 311).

In Boydonath vs. Ramjoy Dey, 9 Suth. W. R., 292, Peacock C. J., and Dwarkanath Mitter J., February 19th, 1868, ont he other hand, the Court refused to make a declaratory decree that the defendant was holding at a certain rate of rent before any rent was in arrears; such a decree would not compel the defendant to pay the rent when it became due: at least the payment could not be enforced by executing that decree, and it would be necessary to have a fresh suit to compel him to pay rent at the rate at which he was by the former decree declared to be holding.

A landlord had sued his tenant to obtain and had obtained a decree of the Court declaring that he had a right to enhance his rents. He afterwards, and more than 3 years after the rent had accrued, sued for arrears at the enhanced rates; he was within the time prescribed by the law of limitation if he might count from the date of the declaratory decree, but this, it was held, he could not do, and his suit was dismissed. (The Court here overruled a case, Joymonee Dossee vs. Hurronauth Roy, 2 Suth. W. R., Act X cases, p. 51, decided by Norman and Shumboonath Pundit JJ., 9th February 1865.) The Chief Justice gives in this case a description of this double form of suit, namely, to establish a right to enhance the rent and for the enhanced rent. "If a doubt existed whether the defendant held under a tenure liable to enhancement of rent or not it might be well to settle the question once for all by a declaratory suit. But there would be no decree in that suit binding the tenant to pay, or the landlord to receive, a particular rate for ever, whatever might be the rates for adjoining lands or the value of the produce or productive powers of the land in time to come. Parties are often, I regret to say, put to much unnecessary expense and delay by these declaratory suits. There was no necessity in this case to bring a suit for a declaration of a right to enhance, at least the arrears claimed might have been sued for without such a suit or a decree pronounced on it." The non-payment of rent was the cause of action, Doyamoyee Chowdrainee vs. Bholanath Ghose, Bengal L. R.,
Suits regarding the flow of water.

Full Bench Decisions, 592, September 12th, 1866. This case throws a doubt upon the correctness of the principle on which the class of cases has been decided, and as the plaintiff could complete his cause of action by giving a proper notice, it does not seem to rest upon a very sure foundation.

A Judge cannot give a declaratory decree under Act X of 1859 in a suit for enhancement brought under that Act. If the facts proved show that there was no right to enhance, or that the notice was not properly served, the suit should be dismissed altogether. *Narakant Mazumdar vs. Raja Baradakant Roy*, 3 B. L. R., Appx. 31, Loch and Mitter JJ., 28th April 1869. In this case the decision in *Goomani Kazi vs. Harrihar Mookerjee* was relied on by the plaintiff. But it was stated that that suit was brought before Act X of 1859 came into operation, and the Civil Court had then jurisdiction under Act VIII of 1859, s. 15, but that the jurisdiction of the Revenue Courts was strictly limited by Act X of 1859, which contained no similar provision. In Lower Bengal the jurisdiction of the Revenue Courts in rent suits is now taken away, Act VIII of 1869 (B. C.), ss. 33 and 34, and they are tried by the Civil Courts, whose proceedings are to be regulated by the Code of Civil Procedure.

A suit will lie at the instance of a plaintiff to establish his right to a reasonable flow of water for irrigation, which right, it is alleged, had been interfered with by a bund which had been heightened by the defendants, and where although no substantial damage had been sustained by the plaintiff, the flow of water had been stopped. *Wuzeerooddeen vs. Sheobund Lall*, 11 Suth. W. R., 255, Kemp and Glover JJ., 31st March 1869. In this case, however, although the Court expresses an opinion that a declaration could be made, more had been asked for, and more had been given by the decree, for the defendant was directed to lower the embankment.

*Jardowan vs. Hurbuns Narain Singh*, ib., 254, was a similar case, Kemp and Glover JJ., 18th March 1869. There also the Court had directed the bund to be erected and again demolished, and so on, to suit the convenience of both plaintiff and defendant.

A suit for a declaration of a right of way by a public road will not lie, where there is no allegation of special injury or inconvenience
to the plaintiff, *Ramtarak Karati vs. Dinanath Mandal*, 7 B. L. R., 184, Kemp and Glover JJ., 12th May 1872. See also *Baroda Prasad Mostafi vs. Gora Chand Mostafi*, 3 ib., A. C., 295, Peacock C. J., and Mitter J., 13th July 1869; *Pyari Lall vs. Rooke*, ib., 305, L. S. Jackson and Markby JJ., July 23rd, 1869; *Hira Chand Banerjee vs. Shama Charan Chatterjee*, ib., 351, Kemp and Markby JJ., August 4th, 1869.

When some hostile act of the defendant is the ground of a suit in which the plaintiff prays for a mere declaration the act must have been antecedent to the filing of the plaint, the answer of the defendant, although it may be a hostile act, will not give the plaintiff a cause of action. *Colvin, Cowie & Co. vs. Elias*, 2 B. L. R., A. C., 212 (S. C.), 11 Suth. W. R., 40, L. S. Jackson and Hobhouse JJ., January 13th, 1869, following the decision in *Kenaram Chuckerbutty vs. Dinonath Panda*, 9 Suth. W. R., 325, Bayley and Phear JJ., February 25th, 1868, on the same point.

A declaration should not be made of a right which, pending the suit, had ceased to exist. The Court could not say that the plaintiff in such a case is entitled at the time of making the decree, and it would be useless to declare that at the time the suit commenced he was entitled, but that that title had ceased to exist. *Nobokishore Dey vs. Ramkishen Mohurir*, 9 Suth. W. R., 131, Peacock C. J., and Dwarkanath Mitter J., January 17th, 1868.

A plaintiff asked for the establishment of two rights, it appeared that he was only entitled to one of them. It would seem that in such a case a declaration might be inserted in the decree which would bar the plaintiff’s right to that which he had failed to establish, and would give him a decree for that which he had established, *Dhunput Singh vs. Narain Pershad Singh*, 20 Suth. W. R., 94, Couch C. J., and Glover J., 26th May 1873.

A declaration of right is binding between the parties in subsequent litigation, even although execution may not have been had, and may not be possible upon the original declaratory decree. *Ramsoondaree Debia Chowdhraim vs. Ram Pershad Sadhoo*, 8 Suth. W. R., 288, L. S. Jackson and Hobhouse JJ., August 2nd, 1867.

But a suit will not lie for the purpose of declaring the rights of persons not parties to it, *Mongula Dossee vs. Sharoda Dossee*, 20 Suth. W. R., 48, Markby and Birch JJ., 7th May 1873. This was a suit
to set aside "the allegation of Mongula Dassee that her son Shushee Bhoosun had been adopted by the husband of Mongula Dossee, and had therefore inherited his property." And see Cazee Muzhur Hossain vs. Dinobundo Sen, 1 Bourke's Reports, Calcutta, O. C. J., p. 8.

IV.

In the Madras Presidency it has been stated that the 15th Section of the Code ought not to be held applicable or the reverse according as the 50th Section of the Chancery Amendment Act had been applied or not by the Court of Chancery, but that although the words were similar the sections must be viewed with reference to the system of procedure to which it belongs, Tirumálathammál vs. Venkatárá Manaíyan, 2. Mad. H. C. Rep., 378, Frere and Innes JJ., April 24th, 1865. This was a suit for a declaration of the plaintiff's right to the reversion of certain lands and a house, and it was held that such a suit would lie. The Court referred to the judgment in Lady Langdale vs. Briggs as showing that an action of this kind would, in England, be unnecessary, because under the English Chancery system there could be a suit to perpetuate testimony, whereas in India evidence could not be taken until after a suit has been actually instituted. The Court however at the same time adhered to its former opinion expressed in special appeal No. 1 of 1865, that "the section seemed to contemplate those cases alone in which there was some wrong or inconvenience calling for relief, and in which the Court would be capable of granting relief were it sought for, and that that case being one in which there was nothing to remedy was not a case calling for a declaratory decree." Here the case was different; to admit it and grant a declaratory decree would save the plaintiff from the risk he was otherwise exposed to of losing evidence of his title, and would invalidate as against the plaintiff the alienations made by the tenant for life. It was a case in which, therefore, although the decree was merely declaratory of the reversionary title, it carried with it a partial remedy, and the above objection could not be fairly taken. Before the enactment of the Code of Civil Procedure, it has been said as before stated (p. 5) that no law existed sanctioning suits for mere declaration of title without prayer for consequential relief.
Strange J., in Náryan Manni vs. Góda Shángara, 1 Mad. H. C. Rep., 252, Strange and Holloway JJ., March 12th, 1863. The ground upon which declarations have since then been made and upheld by the High Court in Madras appears to be some hostile act by which the right of the plaintiff has been invaded, or the danger of the loss of testimony by lapse of time. Thus, as an instance of the latter class, a Hindoo widow who had alienated the property she held as a Hindoo widow was sued by a member of the family, who claimed to recover the land she had sold. The Court below held that the widow had a right to the land for the estate of a Hindoo widow, but that the alienation was improper, and ordered the vendee to re-transfer the property to her, and declared that the plaintiff would be entitled after her death. The High Court on appeal reversed the order for re-transfer, but confirmed the declaration. Periya Gaundan vs. Tirumala Gaundan, 1 Mad. H. C. Rep., 206, Frere and Holloway JJ., February 12th, 1863.

The case No. 1 of 1865 was Pudagalingam Pillay vs. Shanmugham Pillay, 2 Mad. H. C. Rep., 333, Frere and Innes JJ., February 25th, 1865. In that case a person in possession of land sought a declaration of title, and it was held, on the authority of Jackson vs. Turnley, 1 Drew, 617, that, as he was in possession of all his alleged rights, he was not in a position to bring an action. There three of the defendants had taken from two other defendants agreements to pay rents.

In the case of Bhagavatamma vs. Pamparma Gaud, 2 Mad. H. C. Rep., p. 393, also a decree for the plaintiff in a suit for the recovery of lands which had been alienated by a Hindoo widow had been made by the Lower Court, but it was modified by the High Court on appeal, to the extent of holding the alienation good during the lifetime of the widow, Frere & Innes JJ., 18th May 1865.

In Shunguny Menon vs. Kalampully Valia Nair, 6 Mad. H. C. Rep., 117, Holloway Offg. C. J., and Innes J., February 14th, 1871, the plaintiff sued three persons whom he alleged were his tenants on kanom (mortgage), and a fourth as representative of a rival jenmi (owner) to obtain a declaration of his title as jenmi.
He had previously sued the first three to establish the relation of jenmi and kanomkar and to recover the land. He had failed in this suit, and the decree dismissing his claim was upheld in appeal. It was held by Holloway Offg. C. J., and Innes J., 14th February 1871, that no declaration ought to be made. The former learned Judge in giving judgment said that "the device of suits for declaration is usually resorted to for the purpose of cutting off an opponent from legal defences which would bar the claimant if the suit were brought for the relief actually wanted. This is a case of the employment of the device to get back land by some subsequent crooked and not legal process after failure to recover by proper legal means."

In the case of Rassonada Rayar vs. Stharama Pillai, 2 Mad. H. C. Rep., 171, Scotland C. J., and Holloway J., April 11th, 1864, appear to have decided that a declaration could be made at the suit of a plaintiff who was in possession and who merely asked that his title should be declared. The suit was dismissed, but on the ground that the onus probandi lay on the plaintiff, and that he had not proved his title, which the defendant had denied.

In the case also of Káliappa Kaundan vs. Vayapuri Kaundan, 2 Mad. H. C. Rep., 442, where the plaintiff's rights had been infringed, but no damages had been sustained, the plaintiff was held entitled to a decree that his rights had been infringed, Frere and Holloway J.J., 28th October 1865.

Karyan vs. Peria Sidden and others, 6 Madras H. C. Rep., 307, Scotland C. J., and Innes J., 4th August 1871, was a suit to obtain a declaration of the plaintiff's title to a divided share of certain ancestral property, on the ground that one of the defendants and the husband of another, who were representatives of the brothers of the plaintiff's father, had refused to be parties to the registering of certain ancestral property in the plaintiff's name, and had executed a deed of sale of it to another defendant and registered him as the purchaser. The Appellate Court, Scotland C. J., and Innes J., observed that the Civil Judge had acted upon a former decision of the Madras High Court (2 Madras H. C. R., 333), which proceeded upon the principle of English Procedure, that to maintain a suit for a declaration of
title, the suit must be such as consequential relief could be granted in. But that subsequent decisions have shown that principle to be inapplicable to suits under Section 15 of the Code of Civil Procedure. They added:—"What we consider to be the sound principle recognized by the recent decisions is, that to maintain a suit for a declaration of title, some adverse act, intended and calculated to be prejudicial to the title which the plaintiff seeks a declaration of, must appear to have been done by the defendant. The mere denial of the title, or doing an act which causes annoyance, but cannot imperil the plaintiff's title nor have any serious effect upon the quiet enjoyment of proprietary rights, is not sufficient to support such a suit." And applying that principle to the case before them, they thought that the plaintiff was entitled to bring the suit.

In Strimuttu Muttu Vizia Ragunáda Rani Kolundapuri Náchiar and others vs. Dorasenga Tévar, 6 Madras H. C. Rep., p. 310, Scotland C. J., and Holloway J., 27th October 1871, the plaintiff as the eldest surviving male representative of the istimrár zemindar of Shivagunga sought for a declaratory decree establishing his right to succeed to the said zemindari as next heir upon the death of the first defendant; and there was a separate claim for maintenance. It appears that the first defendant, favoring the second defendant's title, and concerting with him in opposition to the plaintiff, had employed an agent and executed a power of attorney to him for the purpose of assisting the second defendant to possess himself of the zemindari and withhold possession after her death. It was considered by Scotland C. J., and Holloway J., that the decree could be made under the circumstances. The Chief Justice observed that it had been decided that the rule of the Equity Courts in England is not applicable to suits in India, and that it was settled that a suit praying nothing more than a declaration was maintainable under the 15th section of the Code of Civil Procedure, although no consequential relief could be granted upon the declaration, if a good ground for seeking the protection of such a suit is shown to exist; and he summed up the effect of the decisions as follows:—

1. That a suit, for a declaration of title without any consequential relief will not lie upon the mere ground of denial or slander of a person's title or the apprehension of a hostile claim at some future time.
2. To support such a suit there must appear to have been some act done which had worked, or was likely to cause injury or serious prejudice to the plaintiff’s alleged title.

Mr. Justice Holloway said—"When once the doctrine of the English Courts as to declaratory decrees is abandoned, I can scarcely conceive a case more fit for one than the present. The title is likely to become obscured by lapse of time, the point of law is a doubtful one, there was no admission as to the pedigree until the case was about to be tried."

In Bombay, the general result of the later cases since has been that the Courts have followed the decisions of the English Court of Chancery upon the construction of the 50th section of 15 & 16 Vict., c. 86. In an early case, Práňshankar vs. Pránnáth Málánand, 1 Bombay H. C. Rep., 12, Forbes and Tucker JJ., July 21st, 1863, a declaration seems to have been made where no relief could have been granted even if it had been prayed for. In that case there was a prayer for an injunction and for a declaration that the plaintiffs had a right to the office of pujáris in a Hindoo temple and to the receipts of the temple. The Munsiff granted the injunction. The Judge of Surat on appeal reversed his decision, and held that the plaintiffs were not entitled to a declaratory decree, but if they were prevented from performing the duties or receiving the proceeds of the office in question, they might sue for damages. This decision was reversed on special appeal.

But in the case of Balárá Kom Basangoulá vs. Shidgoudavelal Kadapa, 7 Bom. H. C. Rep. (Ap.), 99, Gibbs J., 27th July 1870, cited and approved the expression of Mr. Justice Pbear in Chew vs. Chew. "The parties must be at arms length; there must be a contest between them." In the principal case the plaintiff sued to obtain a declaration of her right to the enjoyment of certain honorary privileges as second in rank of the patils of the village, alleging that she was obstructed by the defendant, which allegation she failed to prove; the decree of the Munsiff declaring her rights was reversed.

Again in Yesaji Apáji Patil vs. Yesaji Mahloji, 8 Bombay H. C. Rep. (Ap.), 35, Gibbs and Kemball JJ., March 29th, 1871, the plaintiff sued to have it declared that he was vadil or elder in the
patilki watan of Tanah to the defendant. The suit was brought, it seems, with a view to the plaintiff being elected to the office of patil by the other sharers or by the Collector under Act XI of 1843, an Act for regulating the service of hereditary offices under the Presidency of Bombay; and it was said that, if a declaratory decree were given stating that the plaintiff was vadil, no consequential relief could follow, as whether he be vadil or not he would be just as eligible and no more so for the office of patil, if the sharers, or, in their default, the Collector, choose to select him. If the question had been whether the plaintiff was a sharer or no, the decree might have been given, as in the event of his proving himself to be a sharer consequential relief might have been afforded him if the Collector or his co-sharers ignored his rights; the suit was therefore dismissed.

The appointment of the vadil rests with the shares in the watan, and if they do not appoint within a reasonable time, the Collector or other officer under Act XI of 1843, section 4, must appoint, Abaji bin Sankroji Bhosle vs. Niloji bin Baloji Bhosle, 2 Bom. H. C. Rep., 363 (2nd Ed., 342), Westrop and Tucker JJ., February, 8th, 1864.

In Beattie and others vs. Jetha Dungarsi, 5 Bom. H. C. Rep., O. J., 152, before Westropp J., August 30th, 1868, B. mortgaged to the defendant 4 houses at Malabar Hill to secure repayment of 200,000 rupees, and at the same time handed him the title deeds which comprised the mortgaged property and also of other adjoining immoveable property; the defendant afterwards by private arrangement made a deed of assignment of all his estate to the plaintiffs for the benefit of his creditors. The plaintiffs proceeded to realize the estate, and applied to the defendant to permit the sale of the immoveable property including the mortgaged premises comprised in the said title deeds, promising to pay to him the proceeds of the mortgaged premises. This the defendant refused to allow, claiming a lien on the whole of the immoveable property. The plaintiffs prayed for a declaration that the immoveable property comprised in the title deeds deposited by B., with the exception of the mortgaged premises, was vested in the plaintiffs, and for such further and other relief as might seem just. Westropp J., declined to make the decree, resting his refusal on the authority of the English cases, Jackson vs. Turnley;
Bombay Cases—Execution.

Rooke vs. Lord Kensington; Grove vs. Bastard; Turner vs. Blamire; Trustees of the Birkenhead Docks vs. The Birkenhead Dock Co.; Gosling vs. Gosling; Webb vs. Byng; Bristowe vs. Whitmore, and on many cases decided in Calcutta on the same authorities, saying that no foundation has been laid upon which, if the Court were so minded, it could decree consequential relief, or any ground upon which an injunction could be granted.

In Babaji Jivaji vs. Bhagirthibai, 6 Bom. H. C. Rep. (Ap.), 70, Warden and Gibbs JJ., March 24th, 1869, the plaintiff alleged that he had entered into an arrangement with the defendant and her husband, who was his kinsman, and who was dead, that he was to maintain the defendant after her husband’s death and to become her heir after her death, but that in violation of the arrangement she was about to adopt a son, and he prayed for an injunction to restrain the adoption and for a declaration to be proclaimed the heir after her death, both of which were refused. This was confirmed on appeal. The right of the plaintiff was merely a contingent right, and it might be defeated if the adoption were made.

The question whether execution can be had when the decree is merely declaratory must depend upon the circumstances of the case. Generally speaking, there can perhaps be no actual execution. In the case of Muniyan vs. Periya Kulaadhi Ammai, 1 Mad. H. C. Rep., p. 184, it was said that the decree amounted to a binding declaration of the title decided upon, and no more, as between the immediate parties to the suit, and did not in any case entitle the party obtaining it to execution for the delivery over of the property in question. In that case the suit was brought to establish the right of the plaintiff to one-fourth of a karai of lands as being her property, and she asked that a pottah might be issued in her name, and the pottah that had been issued in the names of the defendants cancelled. The defendants were her mother and her sister, and they claimed the land. The district Munsiff decided in favor of the plaintiff, and ordered that the pottah should be issued in her name. The Civil Judge on appeal reversed this decision, in so far as it directed the new pottah to be issued, on the ground that the issue of the pottah was a matter within discretion of the revenue authorities, and they were not parties to the suit; and this view of the case was confirmed by the High Court (Scotland
C. J., and Holloway J.) in special appeal: but the court took exception to this passage in the judgment of the Civil Judge, "if she (the plaintiff) is not in possession, then the decree would be executory, and she may enforce execution of it," saying that, although there was nothing in the case (notwithstanding that the question of disputed possession was not clearly dealt with) to lead them to the conclusion that any right to the land by mere possession had been acquired, still cases might easily be supposed in which declaratory decrees as regards title might be obtained collusively, without regard being had to valid legal rights acquired by long possession; and that to allow possession in such cases to be obtained by means of execution upon a mere declaratory decree would be to permit parties in possession to be improperly deprived of their legal possessory right by the process of the Court, no such execution could properly be obtained upon a declaratory decree.

Again in the case of Ramsoondaree Dabia Chowdhraim vs. Ram Pershad Sadhoo, 8 Suth. W. R., 288, August 2nd, 1867, L. S. Jackson and Hobhouse JJ., thought that no execution could be had on a declaratory decree.

In the case of Dinobandhu Chowdhry vs. Rajmohini Chowdhraim, 8 B. L. R., Appx. 32 (S. C.), 16 Suth. W. R., 213, before Kemp J., August 21st, 1871, a case in which a person in possession asked for a decree confirming his possession and declaring the validity of a will, the point that came up for decision was the sufficiency of the stamp. Kemp J. is reported to have said that this was a case in which the plaintiff gets a decree, an application to execute the decree in the form of retaining the plaintiff in possession may be made and process in execution taken out. The words of the Stamp Act are "Plaint, &c., to obtain a declaratory decree where no consequential relief is prayed. Proper fee ten rupees;" it was held that the suit in question did contemplate consequential relief. There was a prayer that a summary order might be set aside, a will declared genuine, and the plaintiff retained in possession of property.

Where the suit was for "confirmation of possession after declaration of title," the prayer for "confirmation of possession" was considered to be a prayer for relief that the suit was not a mere suit for a declaration, and that the full stamp was payable, Bohuroo-
nissa Bibee vs. Kureemoonissa Khatoon, 19 Suth. W. R., 17, Kemp and Glover JJ., 14th December 1872. Again in the case of Joynarain Giree vs. Grish Chunder Mytee, 21 Suth. W. R., 438, Couch C. J., and Ainslie J., August 14th, 1874, it was held that a plaint praying "for confirmation of possession by declaring proprietary right to the properties, real and personal, as per schedule, and for setting aside a forged and invalid will’ required a full stamp, and was not merely a suit for a declaratory decree, this case was decided on the authority of Thakoor Deen Tewarry vs. Nawab Syed Ali Hussain Khan, 13 B. L. R., 427, P. C. (S.C.), 21 Suth. W. R., 340. In that case a suit was brought for confirmation of possession after reversal of certain summary proceedings, and after setting aside certain documents, which were alleged in the plaint to be fraudulent and fabricated. The Principal Sudder Ameen on the evidence found that the plaintiff had been in possession and gave a decree confirming the possession of the plaintiffs and setting aside the documents. The High Court on appeal found that the plaintiffs had failed to prove possession and agreed with the lower court as to the invalidity of the deeds. They reversed the decree of the Principal Sudder Ameen so far as it confirmed the plaintiff’s possession, but confirmed it to the extent of declaring that the plaintiffs were the rightful owners of the property. From this decision the defendant appealed to Her Majesty in Council, and the Judicial Committee were of opinion that the court of appeal had wrongly concluded that they could declare the title to the estate, but could not give substantial relief. Their Lordship however agreed with the substance of the decisions of both of the Courts below; the question was as to the validity of the deeds, and the High Court had treated the case as an action of ejectment. They agreed with the High Court in thinking that possession was not proved, and modified its decision by striking out so much of the decree as pur- ported to confirm the decision of the Principal Sudder Ameen, and which was as follows, “and that so much of the decree of the said Court as declares that the said plaintiffs are the rightful owners of the property be confirmed,” and ordered, that in lieu thereof so much of the last named decree as ordered the deed of sale and the mukhtar- nama to be cancelled be set aside.

The decisions of the Court of Chancery upon the provisions of
the English statute have been accepted by the Judicial Committee of the Privy Council as explanatory of this section of the Code, so far as they decide that the Court must see that the declaration of right may be the foundation of some relief to be got somewhere. Thus in the case of *Sadut Ali vs. Kajeh Abdool Gunny*, 11 B. L. R. (P. C.), 203, see p. 227 (S. C.), 19 Suth. W. R., 171, the Judicial Committee was of opinion that the condition was sufficiently answered in the case before them. There the plaintiff sued for a declaration that he had zemindari rights in a certain estate; his object was to take certain proceedings as zemindar in a Revenue Court to enhance the rent of the ryots. It was said that if the High Court has exercised its discretion in a matter wherein the law gives it a discretion, the Judicial Committee would not upon light grounds interfere with the exercise of that discretion * * * . That it must be assumed that there must be cases in which a merely declaratory decree may be made without granting any consequential relief, or in which the party does not actually seek for consequential relief in the particular suit, otherwise the 15th section of the Code of Civil Procedure would have no operation at all * * * . That what the Judicial Committee understood to have been decided in India on this article of the Code, and in the Court of Chancery upon the analogous provision of the English Statute, is that the Court must see that the declaration of right may be the foundation of relief to be got somewhere. And they were of opinion that that condition was sufficiently answered in the present case, even if it be assumed that no other consequential relief was in the mind of the party, or was sought by him, than the right to try his claim to enhance in the other forum, in which he is now compelled by statute to bring an enhancement suit. It was a necessary preliminary to such a suit that he should establish his right to a share in the zemindary title.

In the case of *Nogendo* Chunder Mittro vs. S. M. Kissen Soondery Dossee, 19 Suth. W. R., 133, the plaintiff, the widow of Dwarkanath Ghose, who had died childless, sued the defendant for

* There seems to be a mistake in the report here; the child was no party to the suit, see page 139, in the judgment of P. C., and this is important, as it was on that ground, among others, that the Committee thought it advisable to refuse to make a declaration.

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himself and as guardian to his minor son, to set aside two deeds relating to the adoption of the minor, the one a deed by which the defendant agreed to give, and the other a deed in which she, the plaintiff, agreed to take, the boy in adoption. The Court of first instance declared the deeds null and void. The defendant appealed to the Judge, and afterwards preferred special appeal to the High Court, and ultimately appealed to the Privy Council, and the Judicial Committee observed: *— "If a decree be made declaring that the deeds are invalid, a suit may still be brought by the infant to try his title to the estates, and in that suit the evidence may have to be weighed by the High Court, and afterwards by the Judicial Committee of the Privy Council.

"It would be very unsatisfactory if the deeds should be declared void in the present suit, and the adoption should afterwards be upheld in a suit by the infant against the widow, or any other child, who, upon the faith of a declaratory decree in this suit, may be given to the plaintiff in adoption and adopted by her. "And again the child is no party to the present suit, and any declaration made in it with regard to the validity or invalidity of the deeds will not be binding upon him if a suit be hereafter brought on his behalf against the present plaintiff respecting the estate of her deceased husband; nor would it be binding in any suit between the child and the reversionary heirs of the deceased husband after the death of the plaintiff, or between the child and any other child who, upon the faith of a declaratory decree in the suit, may hereafter be given in adoption or adopted by the widows, or between the child and his natural brothers or any other person who may hereafter claim to exclude him from the heritage of his natural father’s property upon the ground that he has been adopted into another family. It appears to their Lordships that, under these circumstances, it would not be exercising a sound discretion, even if it could be done, to order the deeds to be cancelled or set aside or to declare them void. The defendant takes no interest under the deed of adoption. A declaration binding upon him only and not upon the child would

* It was considered that whatever might be the value of the deeds, the fact of adoption did not depend upon them, but might be proved by other evidence.
be worse than useless, for it would not protect the plaintiff, or any child whom she may adopt, from any claims on behalf of the defendant’s son to the estates, and it might induce some other person to give his son to the plaintiff in adoption and also induce the plaintiff to adopt another child when the declaration in the decree could not be of any possible use to them.” The High Court in their judgment had said:— “There was no adoption.* * * But the deeds are capable of being at any time used by the defendant or his son to prove that there was an adoption. Under such circumstances, it is clear that the plaintiff has a right to come to the Court to ask relief and pray to have the deeds declared void. We interfere for the protection of her right to her husband’s property, over which these deeds would cast a cloud, which it is necessary for the plaintiff’s security to remove.”

The Judicial Committee upon this make the following remarks:— “It has been held that under the 15th and 16th Vict., c. 85, s. 50, a declaratory decree cannot be made unless the plaintiff would be entitled to consequential relief if he asked for it, Rooke vs. Lord Kensington, 2 K. and J., 756. The 15th section of Act VIII of 1859 is in similar terms. The plaintiff upon the facts found is not entitled to any relief against the defendant.”
AN ACT

TO

AMEND AND DEFINE THE LAW

OF

INTESTATE AND TESTAMENTARY SUCCESSION IN BRITISH INDIA.

No. X. of 1865.

LONDON:
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PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.

1865.
INTESTATE AND TESTAMENTARY SUCCESSION (BRITISH INDIA) ACT, 1865.

The following Act of the Governor-General of India in Council received the assent of his Excellency the Governor-General on the 16th March 1865, and is hereby promulgated for general information:

Act No. X. of 1865.

An Act to amend and define the Law of Intestate and Testamentary Succession in British India.

Whereas it is expedient to amend and define the rules of law applicable to Intestate and Testamentary Succession in British India; It is enacted as follows:

PART I.

Preliminary.

1. This Act may be cited as "The Indian Succession Act, 1865."

2. Except as provided by this Act or by any other law for the time being in force, the rules herein contained shall constitute the law of British India applicable to all cases of Intestate or Testamentary Succession.

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

Words importing the singular number include the plural; words "Number." importing the plural number include the singular; and words "Gender." importing the male sex include females.

"Person" includes any Company or Association, or body of "Person." persons, whether incorporated or not.

"Year." and "month." respectively mean a year and month "Year." "Month." reckoned according to the British Calendar.

"Immoveable property." includes land, incorporeal tenements and things attached to the earth, or permanently fastened to anything which is attached to the earth.

"Moveable property." means property of every description except immoveable property.

"Province." includes any division of British India having a "Province." Court of the last resort.

L.—301.
"British India." "British India" means the territories which are or may become vested in Her Majesty or Her successors by the Statute 21 and 22 Vic. Cap. 106., other than the Settlement of Prince of Wales' Island, Singapore, and Malacca.

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

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

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

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

"Probate." "Probate" means the copy of a Will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator.

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

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

And in every part of British India to which this Act shall extend, "Local Government" shall mean the person authorized by law to administer Executive Government in such part; and "High Court" shall mean the highest Civil Court of Appeal therein.

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

Part II.

Of Domicile.

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

Illustrations.

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

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

7. The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled: or, if he is a posthumous child, in the country in which his father was domiciled at the 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.

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

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

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

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

Illustrations.

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

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

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

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

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

(f) A, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not by such residence acquire a domicile in British India.
(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.

11. Any person may acquire a domicile in British India by making and depositing in some Office in British India (to be fixed by the Local Government), a declaration in writing under his hand of his desire to acquire such domicile, provided that he shall have been resident in British India for one year immediately preceding the time of his making such declaration.

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

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

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

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

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

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

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

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

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

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

Of Consanguinity.

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

21. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather, and great-grandfather, and so upwards in the direct ascending line; or between a man, his son, grandson, 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.

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

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

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

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

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

A grandson of a cousin-german is in the same degree as the grandson of a great uncle, for they are both in the sixth degree of kindred.
TABLE OF CONSANGUINITY.

The Person whose Relatives are to be reckoned.

<table>
<thead>
<tr>
<th>Level</th>
<th>Relative</th>
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<tbody>
<tr>
<td>1</td>
<td>Son</td>
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<td>2</td>
<td>Great Grandson</td>
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<tr>
<td>3</td>
<td>Nephew</td>
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<td>4</td>
<td>Cousin German</td>
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<td>5</td>
<td>Second Cousin</td>
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<td>6</td>
<td>Son of the Cousin German</td>
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<td>7</td>
<td>Great Great Uncle</td>
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<tr>
<td>8</td>
<td>Great Great Grandfather</td>
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<td>9</td>
<td>Great Grandfather</td>
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<tr>
<td>10</td>
<td>Father</td>
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<tr>
<td>11</td>
<td>Uncle</td>
</tr>
<tr>
<td>12</td>
<td>Great Uncle</td>
</tr>
<tr>
<td>13</td>
<td>Great Uncle's Son</td>
</tr>
<tr>
<td>14</td>
<td>Cousin German</td>
</tr>
<tr>
<td>15</td>
<td>Brother</td>
</tr>
<tr>
<td>16</td>
<td>Son of the Cousin German</td>
</tr>
<tr>
<td>17</td>
<td>Great Grandfather's Father</td>
</tr>
</tbody>
</table>

The diagram illustrates the relationships between various relatives, with each level indicating the degree of kinship.
PART IV.

Of Intestacy.

25. 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.

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

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

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

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

PART V.

Of the Distribution of an Intestate’s Property.

(a) Where he has left lineal descendants.

29. The rules for the distribution of the intestate’s property (after deducting the widow’s share, if he has left a widow) amongst his lineal descendants are as follows:—
30. Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there be only one, or shall be equally divided among all his surviving children.

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

Illustrations.

(a) A has three children, and no more; John, Mary, and Henry. They all die before the father, John leaving two children, Mary three, and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any deceased grandchild. Each of his grandchildren shall have one-ninth.

(b) But if Henry has died, leaving no child, then the whole is equally divided between the intestate's five grandchildren, the children of John and Mary.

(c) A has two children, and no more; John and Mary. John dies before his father, leaving his wife pregnant. Then A dies, leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and such posthumous child.

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

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

Illustrations.

(a) A had three children, John, Mary, and Henry; John died, leaving four children, and Mary died, leaving one, and Henry alone survived the father. On the death of A intestate, one-third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.
(b) A left no child, but left eight grandchildren, and two children of a deceased grandchild. The property is divided into nine parts, one of which is allotted to each grandchild; and the remaining one-ninth is equally divided between the two great-grandchildren.

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

(b) Where the Intestate has left no lineal descendants.

34. Where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) are as follows:—

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

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

Illustration.

A 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.

37. If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister, and the child or children of any brother or sister who may have died in the intestate's lifetime are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Illustration.

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

38. If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the share which their respective parents would have taken if living at the intestate's death.
Illustration.

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

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

40. Where the intestate has left neither lineal descendant nor father nor mother, the property is divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the share which their respective parents would have taken if living at the intestate's death.

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

Illustrations.

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

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

(c) A, the intestate, left a great-grandfather, an uncle, and a nephew, but no relative standing in a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

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

42. 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.

Part VI.

Of the Effect of Marriage and Marriage Settlements on Property.

43. The husband surviving his wife has the same rights in respect of her property, if she die intestate, as the widow has in respect of her husband's property, if he die intestate.
44. If a person whose domicile is not in British India marries in British India a person whose domicile is in British India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage.

45. The property of a minor may be settled in contemplation of marriage, provided the settlement be made by the minor with the approbation of the minor's father, or if he be dead or absent from British India, with the approbation of the High Court.

PART VII.

Of Wills and Codicils.

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

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

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

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

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

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 kin to him, or in whose favour it would be proper that he should make his Will. A cannot make a valid Will.

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

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

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

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

Illustrations.

(a) A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act, and thereby induces the testator to make a Will in his, A's favour. Such Will has been obtained by fraud, and is invalid.
(b) A, by fraud and deception, prevails upon the testator to bequeath a legacy to him. The bequest is void.

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

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

(e) A, being of sufficient intellect, if undisturbed by the influence of others, to make a Will, yet being so much under the control of B that he is not a free agent, makes a Will dictated by B. It appears that he would not have executed the Will but for fear of B. The Will is invalid.

(f) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a Will of a certain purport, and does so merely to purchase peace, and in submission to B. The Will is invalid.

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

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

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

PART VIII.

Of the Execution of unprivileged Wills.

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

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

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

Third.—The Will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the Will, or have seen some other person sign the Will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.
51. If a testator, in a Will or Codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the Will or Codicil in which it is referred to.

**PART IX.**

**Of privileged Wills.**

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

**Illustrations.**

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

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

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

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

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

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

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

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

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

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

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

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

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

PART X.

Of the Attestation, Revocation, Alteration, and Revival of Wills.

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

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

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

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

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

57. No unprivileged Will or Codicil, nor any part 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.

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

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

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

60. No unprivileged Will or Codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a Codicil executed in manner 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 by the Will or Codicil.

Part XI.

Of the Construction of Wills.

61. It is not necessary that any technical words or terms of Wording of Will. art shall be used in a Will, but only that the wording shall be such that the intentions of the testator can be known therefrom.

62. For the purpose of determining questions as to what person or what property is denoted by any words used in a Will, the inquiries to determine questions as to object or subject of Will.
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.

63. 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) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

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

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

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

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

64. 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.

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

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

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

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

Explanation.—In judging whether a case falls within the meaning of this Section, any words which would be liable to rejection under the sixty-fifth Section are to be considered as struck out of the Will.

Illustrations.

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

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

67. Where the words of the Will are unambiguous, but it is found by extrinsic evidence that they admit of applications, only one 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 Sultánpur Khurd." It turns out that he had two estates called Sultánpur Khurd. Evidence is admissible to show which estate was intended.

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

Illustrations.

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

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

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

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

Illustrations.

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

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

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

Illustrations.

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

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

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

71. Where a clause is susceptible of two meanings, according
to one of which it has some effect, and according to the other it
can have none, the former is to be preferred.

72. No part of a Will is to be rejected as destitute of meaning
if it is possible to put a reasonable construction upon it.
73. If the same words occur in different parts of the same Will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

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

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

75. Where two clauses or gifts in a Will are irreconcileable, 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 Rāmnagar "to A," and by the last clause of his Will leaves it "to B and not to A." B shall have it.

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

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

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

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

78. 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.

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

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

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

Illustrations.

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

(b) A bequeaths 10,000 rupees "to B for his life, and after the death of B, to his own right heirs." The legacy after B's death belongs to those who would be entitled to it if it had formed part of A's unequainted property.

(c) A leaves his property to B; but if B dies before him, to B's next of kin: B dies before A; the property devolves as if it had belonged to B, and he had died intestate leaving assets for the payment of his debts independently of such property.

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

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

Illustration.

(a) 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.

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

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

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

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

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

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

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

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

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

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

Illustrations.

(a) A bequest is made—
   to A and his children,
   to A and his children by his present wife,
   to A and his heirs,
   to A and the heirs of his body,
   to A and the heirs male of his body,
   to A and the heirs female of his body,
   to A and his issue,
   to A and his family,
   to A and his descendants,
   to A and his representatives,
   to A and his personal representatives,
   to A, his executors and administrators.

In each of 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.  

85. Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

86. The word "children" in a Will applies only to lineal descendants in the first degree; the word "grandchildren" applies only to lineal descendants in the second degree of the person whose "children," or "grandchildren," are spoken of; the words "nephews" and "nieces" apply only to children of brothers or sisters; the words "cousins," or "first cousins," or "cousins-
german" apply only to children of brothers or of sisters of the father or mother of the person whose "cousins," or "first cousins," or "cousins-german," are spoken of; the words "first cousins once removed" apply only to children of cousins-german, or to cousins-german of a parent of the person whose "first-cousins once removed" are spoken of; the words "second cousins" apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose "second cousins" are spoken of; the words "issue" and "descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of. Words expressive of collateral relationship apply alike to relatives of full and of half blood. All words expressive of relationship apply to a child in the womb who is afterwards born alive.

87. 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 the child to be born of a woman, who never becomes his wife. The bequest is void.

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

88. Where a Will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first; if there is nothing in the Will to show what he intended, the following rules shall prevail in determining the construction to be put upon the Will:—
First.—If the same specific thing is bequeathed twice to the same legatee in the same Will, or in the Will and again in a Codicil, he is entitled to receive that specific thing only.

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

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

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

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

Illustrations.

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

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

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

(d) A, by his Will, bequeaths to B the sum of 5,000 rupees, and afterwards, by the same Will, bequeaths to B the sum of 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.

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

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

Constitution of residuary legatee.
“left, after all funeral expenses, &c., to give to A 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.

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

Illustration.

A by his Will bequeaths certain legacies, one of which is void under the hundred and fifth Section, and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his Will, A purchases a zamindari, which belongs to him at the time of his death. B is entitled to the two legacies and the zamindari as part of the residue.

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

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

Illustrations.

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

(b) A bequest is made to A and his children. A dies before the testator or happens to be dead when the Will is made. The legacy to A and his children lapses.

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

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

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

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

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

Illustration.

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

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

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

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

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

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

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

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

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

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

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

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

(c) A lease for years of a house was bequeathed to A for his life, and after
his decease to the children of B. At the death of the testator, B had two
children living, C and D; and he never had any other child. Afterwards,
during the lifetime of A, C died, leaving E his executor. D has survived A.
D and E are jointly entitled to so much of the leasehold term as remains
unexpired.
(d) A sum of money was bequeathed to A for her life, and after her decease to the children of B. At the death of the testator, B had two children living, C and D, and after that event, two children, E and F, were born to B. C and E died in the lifetime of A, C having made a Will, E having made no Will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E, and one to F.

(e) A bequeathes one-third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living, C and D, and after that event another sister E was born. C died during the life of B; D and E have survived B. One-third of A’s lands belongs to D, E, and the representatives of C, in equal shares.

(f) A bequeaths 1,000 rupees to B for life, and after his death equally among the children of C. Up to the death of B, C had not had any child. The bequest after the death of B is void.

(g) A bequeaths 1,000 rupees to “all the children born or to be born” of B, to be divided among them at the death of C. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the lifetime of C, two other children, F and G, are born to B. After the death of C, another child is born to B. The legacy belongs to D, E, F, and G, to the exclusion of the after-born child of B.

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

PART XII.

Of void Bequests.

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

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 bequeathes 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 bequeathes 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B’s death, the legacy goes to C’s son.

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

(d) A bequeathes his estate of Grencacre to B for life, and at his decease to the eldest son of C. Up to the death of B, C has had no son. The bequest to C’s eldest son is void.
(e) A bequeaths 1,000 rupees to the eldest son of C, to be paid to him after
the death of B. At the death of the testator, C has no son, but a son is after-
wards born to him during the lifetime of B and is alive at B's death. C's son is
entitled to the 1,000 rupees.

100. Where a bequest is made to a person not in existence
at the time of the testator’s death, subject to a prior bequest con-
tained 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 com-
prises the whole interest that remains to the testator in the thing bequeathed.
The bequest to A’s daughters is valid.

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

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

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

Illustrations.

(a) A fund is bequeathed to A for his life; and after his death to B for his
life; and after B’s death to such of the sons of B as shall first attain the age
of 25. A and B survive the testator. Here the son of B who shall first attain
the age of 25 may be a son born after the death of the testator; such son may
not attain 25 until more than 18 years have elapsed from the death of the
longer liver of A and B; and the vesting of the fund may thus be delayed
beyond the lifetime of A and B, and the minority of the sons of B. The
bequest after B’s death is void.
(b) A fund is bequeathed to A for his life, and after his death to B for his life, and after B’s death to such of B’s sons as shall first attain the age of 25. B dies in the lifetime of the testator, leaving one or more sons. In this case the sons of B are persons living at the time of the testator’s decease, and the time when either of them will attain 25 necessarily falls within his own lifetime. The bequest is valid.

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

(d) A fund is bequeathed to trustees for the benefit of the testator’s daughters, with a direction that if any of them marry under age, her share of the fund shall be settled so as to devolve after her death upon such of her children as shall attain the age of 18. Any daughter of the testator to whom the direction applies must 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.

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

Illustrations.

(a) A fund is bequeathed to A for life, and after his death to all his children who shall attain the age of 25. A survives the testator, and has some children living at the testator’s death. Each child of A’s living at the testator’s death must attain the age of 25 (if at all) within the limits allowed for a bequest. But A may have children after the testator’s decease, some of whom may not attain the age of 25 until more than 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.

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

Illustrations.

(a) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, for his life, and after the decease of such son, to B. A and B survive the testator. The bequest to B is intended to take effect after the bequest to such of the sons of A as shall first attain the age of 25, which bequest is void under Section 101. The bequest to B is void.

(b) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, and if no son of A shall attain that age, to B. A and B survive the testator. The bequest to B is intended to take effect upon failure of the bequest to such of A’s sons as shall first attain the age of 25, which bequest is void under Section 101. The bequest to B is void.
104. A direction to accumulate the income arising from any property shall be void; and the property shall be disposed of as if no accumulation had been directed.

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

**Illustrations.**

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

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

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

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

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

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

**Illustration.**

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

All these bequests are void.
PART XIII.

Of the Vesting of Legacies.

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

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

Illustrations.

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

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

(c) A fund 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 devested in case A, B, and C shall all die under 18, and upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Illustration.

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

Of Onerous Bequests.

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

Illustration.

A having shares in (X), a prosperous joint stock company, and also shares in (Y), a joint stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint stock companies. B refuses to accept the shares in (Y). He forfeits the shares in (X).

110. Where a Will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

Illustration.

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

PART XV.

Of Contingent Bequests.

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

Illustrations.

(a) A legacy is bequeathed to A, and in case of his death, to B. If A survives the testator, the legacy to 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.”

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

Illustrations.

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

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

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

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

PART XVI.

Of Conditional Bequests.

113. A bequest upon an impossible condition is void.

Illustrations.

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

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

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

Illustrations.

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

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

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

Illustrations.

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

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

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

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

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

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

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

Illustrations.

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

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

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

Illustration.

A makes a bequest to his wife, but in case she 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.

118. A bequest may be made to any person with the condition superadded that in case a specified uncertain event shall happen, the thing bequeathed shall go to another person; or, that in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person. In each case the ulterior bequest is subject to the rules contained in Sections 107, 108, 109, 110, 111, 112, 113, 114, 116, 117.

Illustrations.

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

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

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

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

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

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

Illustrations.

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

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

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

120. 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 Section 92, and A is entitled to the estate during his life.

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

Illustrations.

(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.

122. In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by the one hundred and seventh Section.

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

Illustrations.

(a) A bequest is made to A with a proviso that unless he enters the army the legacy shall go 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.

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

PART XVII.

Of Bequests with Directions as to Application or Enjoyment.

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

Illustration.

A sum of money is bequeathed towards purchasing a country residence for A, or to purchase an annuity for A, or to purchase a commission in the army for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

126. Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoy-
ment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him, as if the Will had contained no such direction.

Illustrations.

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

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

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

Illustrations.

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

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

PART XVIII.
Of Bequests to an Executor.

128. 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.

PART XIX.
Of Specific Legacies.

129. 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 dwellinghouse in M. Street, in Calcutta, at the time of his death."
"The sum of 1,000 rupees in a certain chest."
"The debt which B owes him."
"All his bills, bonds, and securities belonging to him lying in his lodgings in Calcutta."
"All his furniture in his house in Calcutta."
"All his goods on board a certain ship then lying in the River Hooghly."
"2,000 rupees which he has in the hands of C."
"The money due to him on the bond of D."
"His mortgage on the Rampore Factory."
"One-half of the money owing to him on his mortgage of Rampore Factory."
"1,000 rupees, being part of a debt due to him from C."
"His capital stock of 1,000 lacs in East India Stock."
"His promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan."
"All such sums of money as his executors may, after his death, receive in respect of the debt due from him to the insolvent firm of D and Company."
"All the wine which he may have in his cellar at the time of his death."
"Such of his horses as B may select."
"All his shares in the Bank of Bengal."
"All the shares in the Bank of Bengal which he may possess at the time of his death."
"All the money which he has in the 5½ per cent. loan of the Government of India."
"All the Government securities he shall be entitled to at the time of his decease."

Each of these legacies is specific.

(b) A having Government promissory notes for 10,000 rupees, bequeaths to his executors "Government promissory notes for 10,000 rupees in trust to sell" for the benefit of B.

The legacy is specific.

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

The legacy is specific.

(d) A bequeaths to B—
- His house in Calcutta.
- His zamindari of Rampore.
- His taluk of Ramnagar.
- His lease of the Indigo factory of Sulkea.
- An annuity of 500 rupees out of the rents of his zamindari of W.

A directs his zamindari of X to be sold, and the proceeds to be invested for the benefit of B.

Each of these bequests is specific.

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

(f) A bequeaths a sum of money to buy a house in Calcutta for B.
- To buy an estate in Zillah Fureedpore for B.
- To buy a diamond ring for B.
- To buy a horse for B.
- To be invested in shares in the Bank of Bengal for B.
- To be invested in Government securities for B.

A bequeaths to B—
- "A diamond ring."
- "A horse."
10,000 rupees worth of Government securities."
"An annuity of 500 rupees."
"2,000 rupees, to be paid in cash."
"So much money as will produce 5,000 rupees 4 per cent. Government securities."

These bequests are not specific.

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

No one of these legacies is specific.

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

Illustration.

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

No one of these legacies is specific.

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

Illustration.

A bequeaths to B 5,000 rupees 5 per cent. Government securities. A had at the date of the Will 5 per cent. Government securities for 5,000 rupees. The legacy is not specific.

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

Illustration.

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

The legacy is not specific.

133. 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.

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

Illustrations.

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

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

Illustration.

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

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

PART XX.

Of Demonstrative Legacies.

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

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

Illustrations.

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

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

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

"10,000 rupees out of his 5 per cent. promissory notes of the Government of India."

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

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

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

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

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

Each of these bequests is demonstrative.

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

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

PART XXI.
Of Ademption of Legacies.

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

Illustrations.

(a) A 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 C, and A is drowned.
The legacy is adeemed.

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

141. Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.
(a) A bequeaths to B—

"The debt which C owes him."
"2,000 rupees which he has in the hands of D."
"The money due to him on the bond of E."
"His mortgage on the Rampore Factory."

All these debts are extinguished in A's lifetime, some with and some without his consent.

All the legacies are adeemed.

(b) A bequeaths to B—

"His interest in certain policies of life assurance."

A in his lifetime receives the amount of the policies. The legacy is adeemed.

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

Illustration.

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

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

Illustration.

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

144. Where a portion of a fund is specifically bequeathed to one legatee, and a legacy 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.

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

Illustration.

A bequeaths to B—

"His capital stock of 1,000l. 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.
146. Where stock which has been specifically bequeathed does only in part exist at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Illustration.

A bequeaths to B—

"His 10,000 rupees in the 5\% per cent. loan of the Government of India."

A sells one-half of his 10,000 rupees in the loan in question.

One-half of the legacy is adeemed.

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

Illustrations.

A 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.

148. The removal of the thing bequeathed from the place in which it is stated in the Will to be situated does not constitute an adeemption 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.

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

Illustration.

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his property.

The legacy is not adeemed.

150. Where a thing specifically bequeathed undergoes a change between the date of the Will and the testator's death, and the change takes place by operation of law, or in the course of execu-
tion of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

Illustrations.

A bequeaths to B "all the money which he has in the 5½ per cent. loan of the Government of India."

The securities for the 5½ per cent. loan are converted during A’s lifetime into 5 per cent. stock.

A bequeaths to B the sum of 2,000, invested in Consols in the names of trustees for A.

The sum of 2,000, 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.

151. Where a thing specifically bequeathed undergoes a change between the date of the Will and the testator’s death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Illustration.

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

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

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

Part XXII.

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

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

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

Illustrations.

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

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

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

Illustrations.

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

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

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

Illustration.

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

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

Illustrations.

(a) A bequeathed to B his shares in a certain railway. At A's death there was due from him the sum of 51. 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 51. 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.

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**PART XXIII.**

*Of Bequests of Things described in general Terms.*

158. If there be a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

*Illustrations.*

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

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

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**PART XXIV.**

*Of Bequests of the Interest or Produce of a Fund.*

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

*Illustrations.*

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

(b) A bequeaths the interest of his 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.

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**PART XXV.**

*Of Bequests of Annuities.*

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

*Illustrations.*

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

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

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

Illustrations.

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

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

162. Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the Will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the Will.

163. Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator’s estate shall be applied for that purpose.

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PART XXVI.

Of Legacies to Creditors and Portioners.

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

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

Illustration.

A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters of the intended 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.

I.—301.
166. No bequest shall be wholly or partially addeemed 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 addeemed.

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

PART XXVII.

Of Election.

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

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

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

Illustrations.

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

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

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

(d) A, a person of the age of 18 domiciled in British India, 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.

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

Illustration.

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

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

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

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

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

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

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

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

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

Illustrations.

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

(b) B, the eldest son of A, is the possessor of an estate called Sultanpur. A bequeaths Sultanpur 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 Sultanpur. He afterwards discovers that the residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultanpur to C.

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

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

*Illustration.*

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

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

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

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**PART XXVIII.**

*Of Gifts in Contemplation of Death.*

**178.** A man may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by Will. A gift is said to be made in contemplation of death where a man who is ill and expects to die shortly of his illness, delivers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness. Such a gift may be resumed by the giver. It does not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.

*Illustrations.*

(a) A being ill, and in expectation of death, delivers to B, to be retained by him in case of A’s death—

A watch.
A bond granted by C to A.
A bank note.
A promissory note of the Government of India endorsed in blank.
A bill of exchange endorsed in blank.
Certain mortgage deeds.

A dies of the illness during which he delivered these articles.

B is entitled to—

The watch.
The debt secured by C's bond.
The bank note.
The promissory note of the Government of India.
The bill of exchange.
The money secured by the mortgage 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 sets aside the parcels. B and C are not entitled to the contents of the parcels.

PART XXIX.

Of Grant of Probate and Letters of Administration.

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

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

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

182. The appointment may be express or by necessary implication.

Illustrations.

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

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

(c) A appoints several persons executors of his Will and 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.

183. Probate cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

184. When several executors are appointed, probate may be granted to them all simultaneously or at different times.
A is an executor of B's Will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first and then to A.

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

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

187. No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction within the Province shall have granted probate of the Will under which the right is claimed, or shall have granted letters of administration under the one hundred and eighth section.

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

189. Letters of administration cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

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

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

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

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

194. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the Will appointing him executor.
195. If the executor renounce, or fail to accept the executorship within the time limited for the acceptance or refusal thereof, the Will may be proved and letters of administration, with a copy of the Will annexed, may be granted to the person who would be entitled to administration in case of intestacy.

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

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

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

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

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

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

Illustrations.

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

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

202. If the Judge think proper, he may associate any person or persons with the widow in the administration, who would be entitled solely to the administration if there were no widow.
203. If there be no widow, or if the Court see cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate’s estate; provided that when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration.

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

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

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

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

**Part XXX.**

*Of Limited Grants.*

(a.) Grants limited in Duration.

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

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

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

211. Where no Will of the deceased is forthcoming, but there is reason to believe that there is a Will in existence, letters of administration may be granted, limited until the Will, or an authenticated copy of it, be produced.
(b) Grants for the Use and Benefit of Others having Right.

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

213. When any person to whom, if present, letters of administration, with the Will annexed, might be granted, is absent from the Province, letters of administration, with the Will annexed, may be granted to his attorney, limited as above mentioned.

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

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

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

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

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

(c) For Special Purposes.

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

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

221. Where a person dies, leaving property of which he was the sole 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.

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

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

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

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

(d) Grants with Exception.

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

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

(e) Grants of the Rest.

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

(f) Grants of Effects unadministered.

229. If the executor to whom probate has been granted have died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

230. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

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

(g) Alteration in Grants.

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

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

234. The grant of probate or letters of administration may be revoked or annulled for just cause.

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

Illustrations.

(a) The Court by which the grant was made had no jurisdiction.

(b) The grant was made without citing parties who ought to have been cited.

(c) The Will of which probate was obtained was forged or revoked.

(d) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(e) A has taken administration to the estate of B as if he had died intestate, but a Will has since been discovered.

(f) Since probate was granted, a later Will has been discovered.

(g) Since probate was granted, a Codicil has been discovered, which revokes or adds to the appointment of executors under the Will.

(h) The person to whom probate was or letters of administration were granted has subsequently become of unsound mind.

Part XXXI.

Of the Practice in granting and revoking Probates and Letters of Administration.

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

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

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

238. The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, except as herein-after otherwise provided, be regulated so far as the circumstances of the case will admit by the Code of Civil Procedure.

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

240. Probate of the Will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it shall appear by a petition verified as 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.

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

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

243. The application for probate or letters of administration, if made and verified in the manner 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 grant if obtained by a fraud upon the Court.

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

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

246. Applications for letters of administration shall be made by petition distinctly written as aforesaid, and stating the time and place of the deceased's death, the family or other relatives of the deceased, and their respective residences, the right in which the petitioner claims, that the deceased left some property within the jurisdiction of the District Judge to whom the application is made, and the amount of assets which are likely to come to the petitioner's hands.

247. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect:—

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

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

"I (C D), one of the witnesses to the last Will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (or mark) thereto (as the case may be), (or that the said testator acknowledged the writing annexed to the above petition to be his last Will and testament in my presence)."
249. If any petition or declaration which is hereby required to be verified shall contain any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

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

251. Caveats against the grant of probate or administration may be lodged with the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to any other Judge to whom it may appear to the District Judge expedient to transmit the same.

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

253. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge to whom the application has been made, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

254. When it shall appear to the Judge that probate of a Will should be granted, he will grant the same under the seal of his Court in manner following:—

"I, Judge of the District of hereby make known that on the day of in the year the last Will of late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his Will, was granted to the executor in the said Will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of a year next ensuing, and also to render a true account thereof."

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

"I, __________, Judge of the District of __________, hereby make known that on the __________ day of __________, letters of administration (with or without the Will annexed, as the case may be) of __________, late of __________, deceased, were granted to __________, the father (or as the case may be) of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of one year next ensuing, and also to render a true account thereof."

256. Every person to whom any grant of administration shall be committed shall give a bond to the Judge of the District Court to 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.

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

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

259. Every District Judge shall file and preserve all original Wills of which probate or letters of administration with the Will annexed may be granted by him among the records of his Court, until some public registry for Wills is established; and the Local Government shall make regulations for the preservation and inspection of the Wills so filed as aforesaid.

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

261. In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code
of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

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

263. Every order made by a District Judge by virtue of the powers hereby conferred upon him, shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

264. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

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**PART XXXII.**

*Of Executors of their own Wrong.*

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

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

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

*Illustrations.*

(a) A 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.

266. When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the

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Pay•ment to executor or administrator before probate or letters of administration revoked.

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

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

Concurrent jurisdiction of High Court.

Executor of his own wrong.

Liability of an executor of his own wrong.

L.—301.
extent of the assets which may have come to his hands, after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration.

PART XXXIII.
Of the Powers of an Executor or Administrator.

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

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

Illustrations.

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

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

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

Illustrations.

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

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

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

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

Illustrations.

(a) One of the 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 immovable.
(d) One has the power to assent to a legacy.
(e) One has power to endorse a promissory note payable to the deceased.
(f) The Will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

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

273. The administrator of effects unadministered has, with respect to such effects, the same power as the original executor or administrator.

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

275. When probate or letters of administration have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

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**PART XXXIV.**

*Of the Duties of an Executor or Administrator.*

276. It is the duty of the executor to perform the funeral of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

277. An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same may have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that may have come to his hands, and the manner in which they have been applied or disposed of.

278. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

279. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

280. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

281. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan,
282. Save as aforesaid, no creditor is to have a right of priority over another, by reason that his debt is secured by an instrument under seal, or on any other account. But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

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

Illustration.

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

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

Illustration.

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

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

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

287. If the assets, after payment of debts, necessary expenses, and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions, and the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.
288. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

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

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

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

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

**PART XXXV.**

Of the Executor's Assent to a Legacy.

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

Illustrations.

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

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

293. The assent of the executor to a specific bequest shall be sufficient to vest 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.

(e) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

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

Illustrations.

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

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

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

Illustration.

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

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

Illustrations.

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

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

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

Illustration.

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

PART XXXVI.

Of the Payment and Apportionment of Annuities.

298. Where an annuity is given by the Will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.
299. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator’s death; and shall, if the executor think fit, be paid when due, but the executor shall not be bound to pay it till the end of the year.

300. Where there is a direction that the first payment of an annuity shall be made within one 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.

PART XXXVII.

Of the Investment of Funds to provide for Legacies.

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

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

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

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

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

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

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

PART XXXVIII.

Of the Produce and Interest of Legacies.

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

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

Illustrations.

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

(b) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.
(c) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator’s death and A’s completing 18, forms part of the residue.

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

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

*Illustrations.*

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

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

311. 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.

312. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator’s estate.

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

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

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

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

Of the Refunding of Legacies.

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

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

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

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

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

321. A creditor who has not received payment of his 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.

322. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding Section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.
323. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but if the executor is insolvent or not liable pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

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

Illustration.
A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

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

326. The surplus or residue of the deceased's property after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the Will.

PART XL.

Of the Liability of an Executor or Administrator for Devastation.

327. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

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

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

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

Miscellaneous.

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

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

331. The provisions of this Act shall not apply to Intestate or Testamentary succession to the property of any Hindu, Muhammadan, or Buddhist; nor shall they apply to any Will made, or any intestacy occurring before the first day of January 1866. The fourth Section shall not apply to any marriage contracted before the same day.

332. The Governor-General of India in Council shall from time to time have power, by an order, either retrospectively from the passing of this Act, or prospectively, to exempt from the operation of the whole or any part of this Act the members of any race, sect, or tribe in British India or any part of such race, sect, or tribe, to whom he may consider it impossible or inexpedient to apply the provisions of this Act, or of the part of the Act mentioned in the Order. The Governor-General of India in Council shall also have power from time to time to revoke such order, but not so that the revocation shall have any retrospective effect. All orders and revocations made under this Section shall be published in the Gazette of India.
### SCHEDULE.

#### STAMPS.

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<td>Rs. 10 0 0</td>
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<tr>
<td>Ditto where the value of the estate is less than Rs. 500</td>
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Translations by the Court translator or by Order of the Court, per folio of ninety words - Rs. 2 0 0

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**Whitley Stokes,**  
*Offg. Asst. Secy. to the Govt. of India,*  
*Home Dept. (Legislative.)*
LONDON:
Printed by GEORGE E. EYRE and WILLIAM SPOTTISWOODE,
Printers to the Queen’s most Excellent Majesty.
LETTERS PATENT

FOR

The High Court of Indicature

AT

FORT WILLIAM IN BENGAL.

LONDON:
PRINTED BY HARRISON & SONS, ST. MARTIN'S LANE.
1866.
Sudder Dewanny Adawlut or Sudder Adawlut of the same Presidency, should be and become Judges of such High Court without further appointment for that purpose, and the Chief Justice of such Supreme Court should become the Chief Justice of such High Court, and that upon the establishment of such High Court as aforesaid, the Supreme Court and the Court of Sudder Dewanny Adawlut and Sudder Nizamut Adawlut at Calcutta in the said Presidency, should be abolished:

And that the High Court of Judicature so to be established should have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate, and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of justice in the said Presidency, as Her Majesty might by such Letters Patent as aforesaid grant and direct, subject, however, to such directions and limitations, as to the exercise of original civil and criminal jurisdiction beyond the limits of the Presidency town, as might be prescribed thereby; and save as by such Letters Patent might be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor General of India in Council, the High Court so to be established should have and exercise all jurisdiction, and every power and authority whatsoever, in any manner vested in any of the Courts in the same Presidency abolished under the said Act at the time of the abolition of such last-mentioned Courts:

And whereas We did, upon full consideration of the premises, think fit to erect and establish, and by Our Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the Fourteenth day of May, in the Twenty-fifth Year of Our Reign, in the Year of our Lord
One thousand eight hundred and sixty-two, did accordingly, for Us, Our heirs and successors, erect and establish at Fort William in Bengal, for the Bengal Division of the Presidency of Fort William aforesaid, a High Court of Judicature, which should be called the High Court of Judicature at Fort William in Bengal, and did thereby constitute the said Court to be a Court of Record; and whereas We did thereby appoint and ordain, that the said High Court of Judicature at Fort William in Bengal should, until further or other provision should be made by Us or Our heirs and successors in that behalf, in accordance with the recited Act, consist of a Chief Justice and thirteen Judges, and did thereby, in addition to the persons who at the time of the establishment of the said High Court were Judges of the Supreme Court of Judicature, and permanent Judges of the Court of Sudder Dewanny Adawlut, in the said Presidency respectively, constitute and appoint certain other persons, being respectively qualified as in the said Act is declared, to be Judges of the said High Court:

And whereas on the Thirtieth day of January, One thousand eight hundred and sixty-three, We did, in the manner in the said recited Act provided, direct and ordain that the said High Court should consist of a Chief Justice and fourteen Judges:

And whereas by the said recited Act it is declared s. 17. lawful for Her Majesty, at any time within three years after the establishment of the said High Court, by Her Letters Patent, to revoke all or such parts or provisions as Her Majesty might think fit of the Letters Patent by which such Court was established, and to grant and make such other powers and provisions as Her Majesty might think fit, and as might have been granted or made by such first Letters Patent:
And whereas by the Act of the Twenty-eighth of Our Reign, chapter fifteen, entitled "An Act to extend the Term for granting fresh Letters Patent for the High Courts in India," and to make further Provision respecting the territorial Jurisdiction of the said Courts, the time for issuing fresh Letters Patent has been extended to the First of January, One thousand eight hundred and sixty-six:

And whereas, in order to make further provision respecting the constitution of the said High Court, and the administration of justice thereby, it is expedient that the said Letters Patent, dated the Fourteenth of May, One thousand eight hundred and sixty-two, should be revoked, and that some of the powers and provisions thereby granted and made should be granted and made with amendments and additional powers and provisions by fresh Letters Patent:

1. Now know ye that We, upon full consideration of the premises, and of Our especial grace, certain knowledge, and mere motion, have thought fit to revoke, and do by these presents (from and after the date of the publication thereof, as hereinafter provided, and subject to the provisions thereof) revoke Our said Letters Patent of the Fourteenth of May, One thousand eight hundred and sixty-two, except so far as the Letters Patent of the Fourteenth Year of His Majesty King George the Third dated the Twenty-sixth of March, One thousand seven hundred and seventy-four, establishing a Supreme Court of Judicature at Fort William in Bengal, were revoked or determined thereby.

2. And We do by these presents grant, direct, and ordain that, notwithstanding the revocation of the said Letters Patent of the Fourteenth of May, One thou-
and eight hundred and sixty-two, the High Court of Judicature called the High Court of Judicature at Fort William in Bengal shall be and continue, as from the time of the original erection and establishment thereof, the High Court of Judicature at Fort William in Bengal for the Bengal Division of the Presidency of Fort William aforesaid; and that the said Court shall be and continue a Court of Record, and that all proceedings commenced in the said High Court prior to the date of the publication of these Letters Patent shall be continued and depend in the said High Court as if they had commenced in the said High Court after the date of such publication, and that all rules and orders in force in the said High Court immediately before the date of the publication of these Letters Patent shall continue in force, except so far as the same are altered hereby, until the same are altered by competent authority.

3. And We do hereby appoint and ordain that the person and persons who shall immediately before the date of the publication of these Letters Patent be the Chief Justice and Judges, or acting Chief Justice or Judges, if any, of the said High Court of Judicature at Fort William in Bengal, shall continue to be the Chief Justice and Judges, or acting Chief Justice or Judges, of the said High Court, until further or other provision shall be made by Us or Our heirs and successors in that behalf, in accordance with the said recited Act for establishing High Courts of Judicature in India.

4. And We do hereby appoint and ordain that every clerk and ministerial officer of the said High Court of Judicature at Fort William in Bengal, appointed by virtue of the said Letters Patent of the Fourteenth of May, One thousand eight hundred and sixty-two, shall con-
tinue to hold and enjoy his office and employment, with the salary thereunto annexed, until he be removed from such office and employment; and he shall be subject to the like power of removal, regulations, and provisions as if he were appointed by virtue of these Letters Patent.

5. And We do hereby ordain that the Chief Justice and every Judge who shall be from time to time appointed to the said High Court of Judicature at Fort William in Bengal, previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Governor General in Council may commission to receive it:

"I, A.B., appointed Chief Justice [or a Judge] of the High Court of Judicature at Fort William in Bengal, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge, and judgment."

6. And We do hereby grant, ordain, and appoint that the said High Court of Judicature at Fort William in Bengal shall have and use, as occasion may require, a seal bearing a device and impression of Our Royal Arms, within an exergue or label surrounding the same, with this inscription, "The Seal of the High Court at Fort William in Bengal." And We do further grant, ordain, and appoint that the said seal shall be delivered to and kept in the custody of the Chief Justice, and in case of vacancy of the office of Chief Justice, or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice, under the provisions of section 7 of the said recited Act; and We do further grant, ordain, and
appoint that, whensoever it shall happen that the office of Chief Justice or of the Judge to whom the custody of the said seal be committed shall be vacant, the said High Court shall be and is hereby authorised and empowered to demand, seize, and take the said seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her, or their possession.

7. And We do hereby further grant, ordain, and appoint that all writs, summons, precepts, rules, orders, and other mandatory process to be used, issued, or awarded by the said High Court of Judicature at Fort William in Bengal shall run and be in the name and style of Us, or of Our heirs and successors, and shall be sealed with the seal of the said High Court.

8. And We do hereby authorise and empower the Chief Justice of the said High Court of Judicature at Fort William in Bengal from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed by the Governor General in Council, to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of justice, and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent. And We do hereby ordain that every such appointment shall be forthwith submitted to the approval of the Governor General in Council, and shall be either confirmed or disallowed by the Governor-General in Council. And it is Our further will and pleasure, and We do hereby, for Us, Our heirs and successors, give, grant, direct, and appoint that all and every the officers and clerks to be appointed as afore-
said shall have and receive respectively such reasonable salaries as the Chief Justice shall, from time to time, appoint for each office and place respectively, and as the Governor General in Council, shall approve of: Provided always, and it is Our will and pleasure that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court, so long as they shall hold their respective offices; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed by the Governor General in Council, and to absent himself from the said limits during the term of such leave, in accordance with the said Rules.

Admission of Advocates, Vakeels, and Attorneys.

9. And We do hereby authorise and empower the said High Court of Judicature at Fort William in Bengal to approve, admit, and enrol such and so many Advocates, Vakeels, and Attorneys, as to the said High Court shall seem meet; and such Advocates, Vakeels, and Attorneys shall be and are hereby authorised to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may by its rules and directions determine, and subject to such rules and directions.

10. And We do hereby ordain that the said High Court of Judicature at Fort William in Bengal shall have power to make rules for the qualification and admission of proper persons to be Advocates, Vakeels, and Attorneys-at-law of the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause, the said Advocates, Vakeels, or Attorneys-at-law; and no person whatsoever but such Advocates,
Vakeels, or Attorneys shall be allowed to act or to plead for, or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed to appear, plead, or act on his own behalf, or on behalf of a co-suitor.

Civil Jurisdiction of the High Court.

11. And We do hereby ordain that the said High Court of Judicature at Fort William in Bengal shall have and exercise ordinary original civil jurisdiction within such local limits as may from time to time be declared and prescribed by any law made by competent legislative authority for India, and until some local limits shall be so declared and prescribed, within the limits declared and prescribed by the proclamation fixing the limits of Calcutta issued by the Governor General in Council, on the Tenth day of September, in the year of our Lord, One Thousand seven hundred and ninety-four, and the ordinary original civil jurisdiction of the said High Court shall not extend beyond the limits for the time being declared and prescribed as the local limits of such jurisdiction.

12. And We do further ordain that the said High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other immoveable property, such land or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court, or if the Defendant at the time of the commencement of the suit shall dwell or carry on
business, or personally work for gain within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Calcutta, in which the debt or damage, or value of the property sued for, does not exceed One hundred rupees.

13. And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall have power to remove, and to try and determine, as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court, whether within or without the Bengal Division of the Presidency of Fort William, subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court.

14. And We do further ordain that where Plaintiff has several causes of action against Defendant, such causes of action not being for land or other immoveable property, and the said High Court shall have original jurisdiction in respect of one of such causes of action, it shall be lawful for the said High Court to call on the Defendant to show cause why the several causes of action should not be joined together in one suit, and to make such order for trial of the same as to the said High Court shall seem fit.

15. And We do further ordain that an appeal shall lie to the said High Court of Judicature at Fort William in Bengal from the judgment (not being a sentence or order passed or made in any criminal trial) of one Judge of the said High Court, or of one Judge of any Division
Court, pursuant to section 13 of the said recited Act; and that an appeal shall also lie to the said High Court from the judgment, not being a sentence or order as aforesaid, of two or more Judges of the said High Court, or of such Division Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the said High Court at the time being; but that the right of appeal from other judgments of Judges of the said High Court, or of such Division Court shall be to Us, Our heirs or successors, in Our or their Privy Council, as hereinafter provided.

16. And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall be a Court of Appeal from the Civil Courts of the Bengal Division of the Presidency of Fort William, and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any laws or regulations now in force.

17. And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall have the like power and authority with respect to the persons and estates of infants, idiots, and lunatics within the Bengal Division of the Presidency of Fort William as that which was vested in the said High Court immediately before the publication of these presents.

18. And We do further ordain that the Court for relief of insolvent debtors at Calcutta shall be held before one of the Judges of the said High Court of Judicature at Fort William in Bengal, and the said High Court, and any such Judge thereof, shall have and
exercise, within the Bengal Division of the Presidency of Fort William, such powers and authorities with respect to original and appellate jurisdiction and otherwise as are constituted by the laws relating to insolvent debtors in India.

*Law to be administered by the High Court at Fort William in Bengal.*

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

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

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

22. And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction; and also in respect of all such persons both within the limits of the Bengal Division of the Presidency of Fort William, and beyond such limits, and not within the limits of the criminal jurisdiction of any other High Court or Court established by competent legislative authority for India, as the said High Court of Judicature at Fort William in Bengal shall have criminal jurisdiction over at the date of the publication of these presents.

23. And We do further ordain that the said High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law.

24. And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court now subject to the superintendence of the said High Court, and shall have authority to try at its discretion any such persons brought before it on charges preferred by the Advocate General, or by any magistrate or other officer specially empowered by the Government in that behalf.

25. And We do further ordain that there shall be no appeal to the said High Court of Judicature at Fort William in Bengal from any sentence or order passed or made in any criminal trial before the Courts of original criminal
jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

26. And We do further ordain that, on such point or points of law being so reserved as aforesaid, or on its being certified by the said Advocate General that, in his judgment, there is an error in the decision of a point or points of law decided by the Court of original criminal jurisdiction, or that a point or points of law which has or have been decided by the said Court should be further considered, the said High Court shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court shall seem right.

27. And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall be a Court of Appeal from the Criminal Courts of the Bengal Division of the Presidency of Fort William and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any law now in force.

28. And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall be a Court of Reference and Revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the session Judges, or by any other officers now authorised
to refer cases to the said High Court, and to revise all such cases tried by any officer or court possessing criminal jurisdiction, as are now subject to reference to or revision by the said High Court.

29. And We do further ordain that the said High Court shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or court.

Criminal Law.

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

Exercise of Jurisdiction elsewhere than at the ordinary place of sitting of the High Court.

31. And We do further ordain that whenever it shall appear to the Governor General in Council convenient that the jurisdiction and power by these Our Letters Patent, or by the recited Act, vested in the said High
Court of Judicature at Fort William in Bengal should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the said High Court, other than the usual place of sitting of the said High Court, or at several such places by way of circuit, the proceedings in cases before the said High Court at such place or places, shall be regulated by any law relating thereto, which has been or may be made by competent legislative authority for India.

**Admiralty and Vice-Admiralty Jurisdiction.**

32. And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall have and exercise all such civil and maritime jurisdiction as may now be exercised by the said High Court as a Court of Admiralty, or of Vice-Admiralty, and also such jurisdiction for the trial and adjudication of prize causes and other maritime questions arising in India as may now be exercised by the said High Court.

**Criminal.**

33. And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall have and exercise all such criminal jurisdiction as may now be exercised by the said High Court as a Court of Admiralty, or of Vice-Admiralty, or otherwise in connection with marine matters, or matters of prize.

**Testamentary and Intestate Jurisdiction.**

34. And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall have the like power and authority as that which may now be lawfully exercised by the said High Court, except within the limits of the jurisdiction for that purpose of any other High Court established by Her
Majesty’s Letters Patent, in relation to the granting of probates of last wills and testaments, and letters of administration of the goods, chattels, credits, and all other effects whatsoever of persons dying intestate, whether within or without the said Bengal Division, subject to the orders of the Governor General in Council as to the period when the said High Court shall cease to exercise testamentary and intestate jurisdiction in any place or places beyond the limits of the provinces or places for which it was established: Provided always, that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India, by which power is given to any other Court to grant such probates and letters of administration.

Matrimonial Jurisdiction.

35. And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall have jurisdiction, within the Bengal Division of the Presidency of Fort William in matters matrimonial between Our subjects professing the Christian religion: Provided always, that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by Royal Charter within the said Presidency lawfully possessed thereof.

Powers of Single Judges and Division Courts.

36. And We do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature at Fort William in Bengal, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division
Court thereof, appointed or constituted for such purpose, under the provisions of the Thirteenth Section of the aforesaid Act of the Twenty-fourth and Twenty-fifth Years of Our Reign; and if such Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges should be equally divided, then the opinion of the senior Judge shall prevail.

_Civil Procedure._

37. And We do further ordain that it shall be lawful for the said High Court of Judicature at Fort William in Bengal from time to time to make rules and orders for the purpose of regulating all proceedings in civil cases which may be brought before the said High Court, including proceedings in its Admiralty, Vice-Admiralty, testamentary, intestate, and matrimonial jurisdiction respectively: Provided always, that the said High Court shall be guided in making such rules and orders as far as possible by the provisions of the Code of Civil Procedure, being an Act passed by the Governor General in Council, and being Act No. VIII. of 1859, and the provisions of any law which has been made, amending or altering the same, by competent legislative authority for India.

_Criminal Procedure._

38. And We do further ordain that the proceedings in all criminal cases which shall be brought before the said High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original criminal jurisdiction, and also in all other criminal cases over which the said
High Court had jurisdiction immediately before the publication of these presents, shall be regulated by the procedure and practice which was in use in the said High Court immediately before such publication, subject to any law which has been or may be made in relation thereto by competent legislative authority for India; and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure prescribed by an Act passed by the Governor General in Council, and being Act No. XXV. of 1861, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid.

**Appeals to Privy Council.**

39. And We do further ordain that any person or persons may appeal to Us, Our heirs and successors, in Our or their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree, or order of the said High Court of Judicature at Fort William in Bengal made on appeal, and from any final judgment, decree, or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court, from which an appeal shall not lie to the said High Court under the provision contained in the 15th clause of these presents: Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees, or that such judgment, decree, or order shall involve, directly or indirectly, some claim, demand, or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgment, decree, or order made either on appeal or otherwise as aforesaid, when the said High Court shall declare that
the case is a fit one for appeal to Us, Our heirs or successors, in Our or their Privy Council. Subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the said Presidency; except so far as the said existing rules and orders respectively are hereby varied, and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

40. And We do further ordain that it shall be lawful for the said High Court of Judicature at Fort William in Bengal, at its discretion, on the motion, or if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order, or sentence of the said High Court, in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs and successors, in Our or their Privy Council, subject to the same rules, regulations, and limitations as are herein expressed respecting appeals from final judgments, decrees, orders, and sentences.

41. And We do further ordain that from any judgment, order, or sentence of the said High Court of Judicature at Fort William in Bengal, made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order, or sentence to appeal to Us, Our
heirs or successors, in Council, provided the said High Court shall declare that the case is a fit one for such appeal, and under such conditions as the said High Court may establish or require, subject always to such rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

42. And We do further ordain that, in all cases of appeal made from any judgment, order, sentence, or decree of the said High Court of Judicature at Fort William in Bengal, to Us, Our heirs or successors, in Our or their Privy Council, such High Court shall certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees, and orders had or made, in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court. And that the said High Court shall also certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a copy of the reasons given by the Judges of such Court, or by any of such Judges, for or against the judgment or determination appealed against. And We do further ordain that the said High Court shall, in all cases of appeal to Us, Our heirs or successors, conform to and execute, or cause to be executed, such judgments and orders as We, Our heirs or successors, in Our or their Privy Council, shall think fit to make in the premises, in such manner as any original judgment, decree, or decretal orders, or other order or rule of the said High Court, should or might have been executed.

Calls for Records, &c., by the Government.

43. And it is Our further will and pleasure that the said High Court of Judicature at Fort William in Bengal
shall comply with such requisitions as may be made by the Government for records, returns and statements, in such form and manner as such Government may deem proper.

44. And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor General in Council, exercised at meetings for the purpose of making laws and regulations, and also of the Governor General in cases of emergency under the provisions of an Act of the Twenty-fourth and Twenty-fifth years of Our Reign, chapter Sixty-seven, and may be in all respects amended and altered thereby.

45. And it is Our further will and pleasure that these Letters Patent should be published by the Governor in Council, and shall come into operation from and after the date of such publication; and that from and after the date on which effect shall have been given to them, so much of the aforesaid Letters Patent granted by His Majesty King George the Third as was not revoked or determined by the said Letters Patent of the Fourteenth of May, One thousand eight hundred and sixty-two, and is inconsistent with these Letters Patent, shall cease, determine, and be utterly void, to all intents and purposes whatsoever.