

Imp 119417
13.01.11

ACT XV. OF 1865.*

Parsi Marriage and Divorce Act.

RECEIVED THE G.-G.'S ASSENT ON THE 7TH APRIL 1865.

An Act to define and amend the Law relating to Marriage and Divorce among the Parsis.

WHEREAS the Parsi community has represented the necessity of defining and amending the law relating to marriage and divorce among Parsis; And whereas it is expedient that such law should be made conformable to the customs of the said community; It is enacted as follows :—

Preamble.

I.—Preliminary.

1. This Act may be cited as "The Parsi Marriage and Divorce Act, 1865."

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

Interpretation-clause.

* Act XV. of 1865 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV of 1874), to be in force in the following Scheduled Districts:—

Sindh	...	See <i>Gazette of India</i> ...	1880, Pt. I, p. 672
West Jalpaiguri	...	Ditto	... 1881, Pt. I, p. 74
The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singhbhum	...	Ditto	... 1881, Pt. I, p. 504
The scheduled portion of the Mirzápur District	...	Ditto	... 1879, Pt. I, p. 383
Jaunsar Bawar	...	Ditto	... 1879, Pt. I, p. 382
The District of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khan and Dera Gházi Khán	...	Ditto	... 1886, Pt. I, p. 48
The District of Silhat	...	Ditto	... 1879, Pt. I, p. 631
The rest of Assam (except the North Lusháí Hills)	...	Ditto	... 1897, Pt. I, p. 299

It has been extended, under the same Act, to the following Scheduled Districts :—

Kumáon and Garhwal	...	See <i>Gazette of India</i> ...	1876, Pt. I, p. 606
The North-Western Provinces Tarai	...	Ditto	... 1876, Pt. I, p. 505
British Baluchistan	...	Ditto	... 1898, Pt. II, p. 327

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, 1886, Pt. I, p. 301.

† Here certain words have been repealed by Act X of 1914.

"Priest" means a Parsi priest, and includes Dastur and Mobed :

"Marriage" means a marriage between Parsis, whether contracted before or after the commencement of this Act ; and "husband" and "wife" respectively mean a Parsi husband and a Parsi wife :

"Section" means a section of this Act :

"Chief Justice" includes Senior Judge :

"Court" means a Court constituted under this Act.

"British India" means the territories which are or shall be vested in Her Majesty or Her successors by the Statute 21 and 22 Vict., cap. 106, entitled "An Act for the better Government of India ;"

And, in any part of British India, in which this Act operates, "Local Government" means the person authorized to administer executive government in such part of India, or the chief executive officer of such part when it is under the immediate administration of the Governor-General of India in Council, and when such officer shall be authorized to exercise the powers vested by this Act in a Local Government; and

"High Court" means the highest Civil Court of appeal in such part.

II.—Of marriages between Parsis.

3. No marriage contracted after the commencement of this

Act shall be valid, if the contracting parties are related to each other in any of the degrees of consanguinity or affinity prohibited among Parsis, and set forth in a table which the Governor-General of India in Council shall, after due enquiry, publish in the *Gazette of India*,* and unless such marriage shall be solemnized according

Requisites to validity of Parsi marriages.

* The following Table was published in the *Gazette of India*,
Sep. 9, 1865, pp. 981, 982:—

TABLE.

A man shall not marry his—

- | | |
|-------------------------------------|--|
| 1. Paternal grandfather's mother. | 13. Brother's daughter or step-brother's daughter, or any direct lineal descendant of a brother or step-brother. |
| 2. Paternal grandmother's mother. | 14. Sister's daughter or step-sister's daughter, or any direct lineal descendant of a sister or step-sister. |
| 3. Maternal grandfather's mother. | 15. Daughter or step-daughter, or any direct lineal descendant of either. |
| 4. Maternal grandmother's mother. | 16. Son's daughter or step-son's daughter, or any direct lineal descendant of a son or step-son. |
| 5. Paternal grandmother. | |
| 6. Paternal grandfather's wife. | |
| 7. Maternal grandmother, | |
| 8. Maternal grandfather's wife. | |
| 9. Mother or step-mother. | |
| 10. Father's sister or step-sister. | |
| 11. Mother's sister or step-sister. | |
| 12. Sister or step-sister. | |

to the Parsi form or ceremony called "Asirvad" by a Parsi priest in the presence of two Parsi witnesses independently of such officiating priest; and unless, in the case of any Parsi who shall not have completed the age of twenty-one years, the consent of his or her father or guardian shall have been previously given to such marriage.

NOTES.

Certificates by priest—A certificate to be given by the officiating priest, under this section is not in itself one of the requisites for a valid marriage. 45B. 146.

Marriage during minority—Marriage is valid, even contracted during minority, when the marriage ceremony was performed with the formal or tacit consent of the guardians of the parties. 13B. 302.

Limitation—Limitation for suit for restitution of conjugal rights under the Act is enforceable only in the manner provided in S. 36 and such provision is in substitution of, and not in addition to the ordinary remedies provided by the Civil Procedure. 9B. H. O. R. 290.

4. No Parsi shall, after the commencement of this Act, contract any marriage in the life-time of his or her wife or husband, except after his or her lawful divorce from such wife or husband by sentence of a Court as hereinafter provided:

Re-marriage save after divorce unlawful during life-time of first wife or husband.

and every marriage contracted contrary to the provisions of this section shall be void.

5. Every Parsi who shall, after the commencement of this Act, and during the life-time of his or her wife or husband, contract any marriage without having been lawfully divorced from such wife or husband shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code for the offence of marrying again during the life-time of a husband or wife.

Punishment of bigamy.

6. Every marriage contracted after the commencement of this Act shall, immediately on the solemnization thereof, be certified by the officiating priest in the form contained in the schedule to this Act.

Certificate and registry of marriages.

- | | |
|--|--|
| 17. Wife of son or of step-son, or of any direct lineal descendant of a son or step-son. | 23. Mother of wife's maternal grandfather. |
| 18. Wife of daughter's son or of step-daughter's son, or of any direct lineal descendant of a daughter or step-daughter. | 24. Mother of wife's maternal grandmother. |
| 19. Mother of daughter's husband. | 25. Wife's paternal grandmother. |
| 20. Mother of son's wife. | 26. Wife's maternal grandmother. |
| 21. Mother of wife's paternal grandfather. | 27. Wife's mother or step-mother. |
| 22. Mother of wife's paternal grandmother. | 28. Wife's father's sister. |
| | 29. Wife's mother's sister. |
| | 30. Father's brother's wife. |
| | 31. Mother's brother's wife. |
| | 32. Brother's son's wife. |
| | 33. Sister's son's wife. |

The certificate shall be signed by the said priest, the contracting parties, or their fathers or guardians when they shall not have completed the age of twenty-one years, and two witnesses present at the marriage; and the said priest shall thereupon send such certificate, together with a fee of two rupees to be paid by the husband, to the registrar of the place at which such marriage is solemnized.

The registrar, on receipt of the certificate and fee, shall enter the certificate in a register to be kept by him for that purpose, and shall be entitled to retain the fee.

7. For the purpose of this Act a registrar shall be appointed.*

Appointment of registrar. Within the local limits of the ordinary original civil jurisdiction of a High Court, the registrar shall be appointed by the Chief Justice of such Court, and, without such limits, by the Local Government.

Every registrar so appointed may be removed by the Chief Justice or Local Government appointing him.

TABLE.

A woman shall not marry her—

- | | |
|--|--|
| 1. Paternal grandfather's father. | 18. Husband of son's daughter or of step-son's daughter, or of any direct descendant of a son or step-son, |
| 2. Paternal grandmother's father. | 19. Father of daughter's husband. |
| 3. Maternal grandfather's father. | 20. Father of son's wife. |
| 4. Maternal grandmother's father. | 21. Father of husband's paternal grandfather. |
| 5. Paternal grandfather. | 22. Father of husband's paternal grandmother. |
| 6. Paternal grandmother's husband. | 22. Father of husband's maternal grandfather. |
| 7. Maternal grandfather. | 24. Father of husband's maternal grandmother. |
| 8. Maternal grandmother's husband. | 25. Husband's paternal grandfather. |
| 9. Father or step father. | 26. Husband's maternal grandfather. |
| 10. Father's brother or step-brother. | 27. Husband's father or step-father. |
| 11. Mother's brother or step brother. | 28. Brother of husband's father. |
| 12. Brother or step-brother. | 29. Brother of husband's mother. |
| 13. Brother's son or step-brother's son, or any direct lineal descendant of a brother or step-brother. | 30. Husband's brother's son or his direct lineal descendant. |
| 14. Sister's son or step sister's son, or any direct lineal descendant of a sister or step sister. | 31. Husband's sister's son or his direct lineal descendant. |
| 15. son or step-son, or any direct lineal descendant of either | 32. Brother's daughter's husband. |
| 16. Daughter's son or step-daughter's son, or any direct lineal descendant of a daughter or step daughter. | 33. Sister's daughter's husband. |
| 17. Husband of daughter, or of any direct lineal descendant of a daughter or step-daughter. | |

Note.—In the above table the words "Brother" and "sister" denote brother and sister of the whole as well as half blood. Relationship by step means relationship by marriage.

* Certain words, which were repealed by Act XIV. of 1870, have here been omitted.

8. The register of marriages mentioned in section 6 shall, at all reasonable times, be open for inspection ; and certified extracts therefrom shall, on application, be given by the registrar on payment to him by the applicant of two rupees for each such extract.

Every such register shall be evidence of the statements therein contained.

8A* Every Registrar, except the Registrar appointed by the Chief Justice of High Court of Judicature at Bombay, shall, at such intervals as the "Local Government by which he was appointed"† from time to time directs, send, to the Registrar-General of Births, Deaths, and Marriages for the territories administered by "such Local Government" a true copy, certified by him in such form as "such Local Government" from time to time prescribes, of all certificates entered by him in the said register of marriages since the last of such intervals.

9. Any priest knowingly and wilfully solemnizing any marriage contrary to, and in violation of, section 4 shall, on conviction thereof, be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

10. Any priest neglecting to comply with any of the requisitions affecting him contained in section 6 shall, on conviction thereof, be punished for every such offence with simple imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

11. Every other person required by section 6, to subscribe or attest the said certificate, who shall, wilfully omit or neglect so to do, shall, on conviction thereof be, punished for every such offence with a fine not exceeding one hundred rupees.

12. Every person making or signing or attesting any such certificate containing a statement which is false, and which he either knows or believes to be false, or does not know to be true, shall be deemed to be guilty of the offence of forgery as defined in the Indian Penal Code, and shall be liable,

* S. 8A has been inserted by Act VI. of 1886, s. 31.

† The words within quotations have been substituted by Act 31 of 1920.

on conviction thereof, to the penalties provided in section 466 of the said Code.

13. Any Registrar failing to enter the said certificate pursuant to section 6 shall be punished with simple imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Penalty for not registering certificate-

14. Any person secreting, destroying or dishonestly or fraudulently altering, the said register in any part thereof, shall be punished with imprisonment of either description as defined in the Indian Penal Code for a term which may extend to two years, or, if he be a registrar, for a term which may extend to five years, and shall also be liable to fine which may extend to five hundred rupees.

Penalty for secreting, destroying, or altering, register,

III.—Of Parsi Matrimonial Courts.

15. For the purposes of hearing suits under this Act, a special Court shall be constituted in each of the presidency-towns of Calcutta, Madras, and Bombay, and in such other places in the territories of the several Local Governments as such Governments respectively shall think fit.

Constitution of special Courts under Act.

16. The Court so constituted in each of the presidency-town shall be entitled the Parsi Chief Matrimonial Court of Calcutta, Madras, or Bombay, as the case may be.

Parsi Chief Matrimonial Courts.

The local limits of the jurisdiction of a Parsi Chief Matrimonial Court shall be coterminous with the local limits of the ordinary original civil jurisdiction of the High Court.

The Chief Justice of the High Court or such other Judge of the same Court as the Chief Justice shall from time to time appoint shall be the Judge of such Matrimonial Court, and, in the trial of cases under this Act, he shall be aided by eleven delegates.

17. Every Court so constituted at a place other than a presidency-town shall be entitled the Parsi District Matrimonial Court of such place.

Parsi District Matrimonial Courts.

Subject to the provision contained in the next following section, the local limits of the jurisdiction of such Court shall be coterminous with the limits of the district in which it is held.

The Judge of the principal Court of original civil jurisdiction at such place shall be the Judge of such Matrimonial Court, and, in the trial of cases under this Act, he shall be aided by seven delegates.

NOTES.

Delegates—A delegate under this Act is in a similar position to a junior and cannot be challenged in appeal. 43 Ind. Cas. 71.

18. The Local Government may from time to time alter the local limits of the jurisdiction of any Parsi District Matrimonial Court, and may include within such limits any number of districts under its government.

Power to alter territorial jurisdiction of District Courts.

19. Any district, which the Local Government, on account of the fewness of the Parsi inhabitants, shall deem it inexpedient to include within the jurisdiction of any District Matrimonial Court, shall be included within the jurisdiction of the Parsi Chief Matrimonial Court for the territories under such Local Government where there is such Court.

Certain districts within jurisdiction of Chief Matrimonial Court.

20. A seal shall be made for every Court constituted under this Act, and all decrees and orders and copies of decrees and orders of such Court shall be sealed with such seal, which shall be kept in the custody of the presiding Judge.

Court-seal.

21. The Local Governments shall, in the presidency-towns and districts subject to their respective governments, respectively appoint persons to be delegates to aid in the adjudication of cases arising under this Act.

Appointment of delegates.

The persons so appointed shall be Parsis: their names shall be published in the official Gazette; and their number shall, within the local limits of the ordinary original civil jurisdiction of a High Court, be not more than thirty, and in districts beyond such limits not more than twenty.

22. The appointment of a delegate shall be for life.

Power to appoint new delegates.

But whenever a delegate shall die, or be desirous of relinquishing his office, or refuse or become incapable or unfit to act, or be convicted of an offence under the Indian Penal Code or other law for the time being in force, then and so often the Local Government may appoint any other person being a Parsi to be a delegate in his stead; and the name of the person to appointed shall be published in the official Gazette.

23. All delegates appointed under this Act shall be considered to be public servants within the meaning of the Indian Penal Code,

Delegates deemed public servants.

24. The delegates selected under sections 15 and 17 to aid in the adjudication of suits under this Act shall be taken under the orders of the presiding Judge of the Court in due rotation from the delegates appointed by the Local Government under section 21.

25. All advocates, vakils, and attorneys-at-law entitled to Practitioners in Matrimonial Courts. practise in a High Court shall be entitled to practise in any of the Courts constituted under this Act; and all vakils entitled to practise in a District Court shall be entitled to practise in any District Matrimonial Court constituted under this Act.

26. All suits instituted under this Act shall be brought in the Court within the limits of whose jurisdiction the defendant resides at the time of the institution of the suit.

When the defendant shall at such time have left British India, such suit shall be brought in the Court at the place where the plaintiff and defendant last resided together.

IV.—Of Matrimonial Suits.

(a) For a Decree of Nullity.

27. If a Parsi at the time of his or her marriage was a lunatic or of habitually unsound mind, such marriage may, at the instance of his or her wife or husband, be declared null and void upon proof that the lunacy or habitual unsoundness of mind existed at the time of the marriage, and still continues:

Provided that no suit shall be brought under this section if the plaintiff shall at the time of the marriage have known that the respondent was a lunatic or of habitually unsound mind.

28. In any case in which consummation of the marriage is from natural causes impossible, such marriage may, at the instance of either party thereto, be declared to be null and void.

(b) For a Decree of Dissolution in Case of Absence.

29. If a husband or wife shall have been continually absent from his or her wife or husband for the space of seven years, and shall not have been heard of as being alive within that time by those persons who would naturally have heard of him or her had he or she been alive, the marriage of such husband or wife may, at the instance of either party thereto, dissolved.

(c) *For Divorce or Judicial Separation.*

30. Any husband may sue that his marriage may be dissolved, and a divorce granted, on the ground that his wife has, since the celebration thereof, been guilty of adultery ;

On ground of wife's
adultery

and any wife may sue that her marriage may be dissolved, and a divorce granted, on the ground that, since the celebration thereof, her husband has been guilty of adultery with a married, or fornication with an unmarried woman, not being a prostitute, or of bigamy coupled with adultery, or of adultery coupled with cruelty, or of adultery coupled with wilful desertion for two years or upwards, or of rape, or of an unnatural offence :

On ground of husband's
adultery, &c.

In every such suit for divorce on the ground of adultery the plaintiff shall, unless the Court shall otherwise order, make the person with whom the adultery is alleged to have been committed a co-defendant, and in any such suit by the husband the Court may order the adulterer to pay the whole or any part of the costs of the proceedings.

NOTES.

Bigamy coupled with adultery—A second marriage contracted during the life time of his wife, but before the Act came into operation does not amount to "bigamy coupled with adultery" nor to adultery coupled with desertion within the meaning of this section—§ B. H. C. B. A. C. 113.

31. If a husband treat his wife with such cruelty or personal violence as to render it in the judgment of the Court improper to compel her to live with him, or if his conduct afford her reasonable grounds for apprehending danger to life or serious personal injury, or if a prostitute be openly brought into, or allowed to remain, in the place of abode of a wife by her own husband, she shall be entitled to demand a judicial separation.

32. In a suit for divorce or judicial separation under this Act, if the Court be satisfied of the truth of the allegations contained in the plaint, and

that the offence therein set forth has not been condoned, and
that the husband and wife are not colluding together, and
that the plaintiff has not connived at, or been accessory to, the said offence, and
that there has been no unnecessary or improper delay in instituting the suit, and

that there is no other legal ground why relief should not be granted,

then, and in such case, but not otherwise, the Court shall decree a divorce or judicial separation accordingly.

NOTES

Adultery of petitioner—Adultery of petitioner is a legal ground under this section on which the court can refuse the petition for divorce.—10 Bom. L. R 1019.

Cost of wife—The common law of England applies to Parsis who inhabit the town and Island of Bombay. The wife is entitled to pledge her husband's credit and defend herself at his cost in an action against her irrespective of the fact whether she is successful or not.—13 Bom. L. R 920.

33. In any suit under this Act for divorce or judicial separation, if the wife shall not have an independent income sufficient for her support and the necessary expenses of the suit, the Court, on the application of the wife, may order the husband to pay her, monthly or weekly during the suit, such sum, not exceeding one-fifth of the husband's net income, as the Court, considering the circumstances of the parties, shall think reasonable.

Alimony pendente lite.

NOTES.

During the suit—includes the period up to the making of a final or absolute decree. 17B. 146.

34. The Court may, if it shall think fit, on any decree for divorce or judicial separation, order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum, or such monthly or periodical payments of money for a term not exceeding her life, as, having regard to her own property (if any,) her husband's ability, and the conduct of the parties, shall be deemed just, and for that purpose may require a proper instrument to be executed by all necessary parties, and suspend the pronouncing of its decree until such instrument shall have been duly executed.

In case any such order shall not be obeyed by her husband, he shall be liable to damages at her suit, and further to be sued by any person supplying her with necessaries during the time of such disobedience, for the price or value of such necessaries.

NOTES.

Court—The High Court in its original aide has no jurisdiction in a suit between Parsi husband and a Parsi wife to make an order for permanent alimony unaccompanied by any order for judicial separation, which lies within the jurisdiction of the Parsi Chief Matrimonial Court at Bombay. 38B. 615—13 Bom. L. R 911.

As to what question should be referred to the jury Vide. 1894 P. J. 109.

35. In all cases in which the Court shall make any decree or order for alimony, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court may seem expedient, and may from time to time appoint a new trustee, if for any reason it shall appear to the Court expedient so to do.

Payment of alimony to wife or her trustee.

NOTES.

Where the wife is granted permanent alimony and the husband's estate is charged with such alimony, she is entitled at the death of her husband, to receive permanent alimony out of the estate of the deceased and also to her distribution share out of the remaining estate of the deceased. 24B. 465.

(d.) For Restitution of Conjugal Rights.

36. Where a husband shall have deserted, or without lawful cause ceased to cohabit with, his wife, or where a wife shall have deserted, or without lawful cause ceased to cohabit with, her husband, the party so deserted, or with whom cohabitation shall have so ceased, may sue for the restitution of his or her conjugal rights, and the Court, if satisfied of the truth of the allegations contained in the plaint, and that there is no just ground why relief should not be granted, may proceed to decree such restitution of conjugal rights accordingly.

Suit for restitution of conjugal rights.

If such decree shall not be obeyed by the party against whom it is passed, he or she shall be liable to be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

NOTES

Previous contract may be a bar, 23B. 279. How the decree is enforceable vide 9B, H C. R 290.

37. Notwithstanding anything hereinbefore contained, no suit shall be brought in any Court to enforce any marriage between Parsis, or any contract connected with, or arising out of, any such marriage, if, at the date of the institution of the suit, the husband shall not have completed the age of sixteen years, or the wife shall not have completed the age of fourteen years.

No suit to enforce marriage or contract arising out of marriage when husband under 16, or wife under 14, years.

38. In every suit preferred under this Act the case shall be tried with closed doors should such be the wish of either of the parties.

Suits with closed doors.

39. [*Stamps on plaints and petitions.*] Repealed by Act VII. of 1870.

40. The provisions of the Code of Civil Procedure* shall, so far as the same may be applicable, apply to suits instituted under this Act.

Civil Procedure Code- applied.

41. In suits under this Act all questions of law and procedure shall be determined by the presiding Judge ; but the decision on the facts shall be the decision of the majority of the delegates before whom the case is tried.

Determination of questions of law, procedure, and fact.

42. An appeal shall lie to the High Court from the decision of any Court established under this Act, whether a Chief Matrimonial Court or a District Matrimonial Court, on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits, and on no other ground :

Appeal to High Court.

Provided that such appeal be instituted within three calendar months after the decision appealed from shall have been pronounced.

43. When the time hereby limited for appealing against any decree dissolving a marriage shall have expired, and no appeal shall have been presented against such decree, or

Liberty to parties to marry again.

when any such appeal shall have been dismissed, or when in the result of any appeal any marriage shall be declared to be dissolved, but not sooner, it shall be lawful for the respective parties thereto to marry again as if the prior marriage had been dissolved by death.

V.—*Of the Children of the Parties.*

44. In any suit under this Act for obtaining a judicial separation or a decree of nullity of marriage, or for dissolving a marriage, the Court may from time to time pass such interim orders, and make such provision in the final decree, as it may deem just and proper, with respect to the custody, maintenance, and education of the children under the age of sixteen years, the marriage of whose parents is the subject of such suit,

Custody of children *pendente lite*.

* See Act V of 1908 n. 157.

and may, after the final decree, upon application by petition for this purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance, and education of such children as might have been made by such final decree, or by interim orders in case the suit for obtaining such decree were still pending.

45. In any case in which the Court shall pronounce a decree of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife is entitled to any property, either in possession or reversion, the Court may order such settlement as it shall think reasonable to be made of such property or any part thereof for the benefit of the children of the marriage or any of them.

VI.—Of the Mode of enforcing Penalties under this Act.

46. All offences under this Act may be tried by any officer exercising the powers of a Magistrate, unless the period of imprisonment to which the offender is liable shall exceed that which such officer is competent to award under the law for the time being in force in the place in which he is employed.

When the period of imprisonment provided by this Act exceeds the period that may be awarded by such officer, the offender shall be committed for trial before the Court of Session.

47. If any offence, which by this Act is declared to be punishable with fine, or with fine and imprisonment not exceeding six months, shall be committed by any person within the local limits of the ordinary original civil jurisdiction of the High Court, such offence shall be punishable upon summary conviction by any presidency Magistrate* of the place at which such Court is held.

48. All fines imposed under the authority of this Act may, in case of nonpayment thereof, be levied by distress and sale of the offender's moveable property by warrant under the hand of the officer imposing the fine.

* See Act V. of 1898, s 3.

49. In case any such fine shall not be forthwith paid, such officer may order the offender to be arrested and kept in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

Procedure until return made to distress-warrant.

50. If upon the return of the warrant it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid or,

Imprisonment if no sufficient distress.

in case it shall appear to the satisfaction of such officer, by the confession of the offender or otherwise, that he has not sufficient moveable property whereupon such fine could be levied if a warrant of distress were issued,

any such officer may, by warrant under his hand, commit the offender to prison for any term not exceeding two calendar months when the amount of fine shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount of fine.

VII.—Miscellaneous.

51. Subject to the provisions contained or referred to in this Act, the High Court shall make such rules and regulations concerning the practice and procedure of the Parsi Chief and District Matrimonial Courts in the Presidency or Government in which such High Court shall be established as it may from time to time consider expedient, and shall have full power from time to time to revoke or alter the same.

All such rules, revocations, and alterations shall be published in the official Gazette.

52. The Governor-General of India in Council may invest the chief executive officer of any part of British India under the immediate administration of the Government of India with the powers vested by this Act in a Local Government.

Power to invest chief executive officer with powers of Local Government.

58. [Commencement and extent of Act.] Repealed by Act
(XII of 1876).

SCHEDULE.

(See section 6.)

	Date and place of marriage.
	Names of the husband and wife.
	Condition at the time of marriage.
	Rank or profession.
	Age.
	Residence.
	Names of the fathers or guardians.
	Rank or profession.
	Signature of the officiating priest.
	Signatures of the witnesses.
	Signature of father or guardian when husband or wife is an infant.

ACT XXI OF 1865.

The Parsi Intestate Succession Act. 1865.*

RECEIVED THE G.G.'S ASSENT ON THE 10TH APRIL 1865.

An Act to define and amend the Law relating to Intestate Succession among the Parsis.

WHEREAS it is expedient to define and amend the law relating to intestate succession among the Parsis ;
 Preamble. It is enacted as follows :—

NOTES.

Before the coming into operation of the Parsi Succession Act, 1865, the law governing Parsees in the mofussil was the ascertain usage of the community, modified by the rules of equity and good conscience. 30B. 359=7 Bom. L. R. 988.

1. Where a Parsi dies leaving a widow and children, the property of which he shall have died intestate shall be divided among the widow and children, so that the share of each son shall be double the share of the widow, and that her share shall be double the share of each daughter.

* This title has been given by the Indian Short Titles Act (XIV of 1897). Act XXI of 1865 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV of 1874), s. 3.

It has been declared under the Scheduled Districts Act (XIV of 1874), to be in force in the following Scheduled Districts—

Sind	See Gazette of India ...	1880, Pt. I., p. 672
West Jalpsiguri	Ditto ...	1881, Pt. I., p. 74
The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum	Ditto ...	1881, Pt. I., p. 504.
Kumaon and Garhwal	Ditto ...	1876 Pt. I., p. 605.
The scheduled portion of the Mirzapur district	Ditto ...	1879, Pt. I., p. 383.
Jaunsar Bawar	Ditto ...	1879, Pt. I., p. 382.
The Districts of Hazara Peshwar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan	Ditto ...	1886, Pt. I., p. 48.
Ajmere and Merwara... ..	Ditto ...	1878, Pt. I., p. 380.
The District of Silhat	Ditto ...	1879, Pt. I., p. 631.
The rest of Assam (except the North Lushai Hills	Ditto ...	1897, Pt. I., p. 299.

It has been extended, under the same Act to the Scheduled District of the North-Western Provinces Tarai.—See *Gazette of India*, 1876, Pt. I., p. 505.

It has been declared under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, 1886, Pt. I., p. 301.

- 2.** Where a female Parsi dies leaving a widower and children, the property of which she shall have died intestate shall be divided among the widower and such children, so that his share shall be double the share of each of the children.
- Division of property among widower and children.

NOTES.

Where a Parsi female died intestate and possessed of estate real and personal her whole estate on her death, rests in her husband and children in the shares defined by S. 2 of the Parsi Succession Act, 1865—5 Bom. L. R. 252,

- 3.** When a Parsi dies leaving children, but no widow, the property of which he shall have died intestate shall be divided amongst the children, so that the share of each son shall be four times the share of each daughter.
- Division of property amongst children of male intestate leaving no widow.

- 4.** When a female Parsi dies leaving children, but no widower the property of which she shall have died intestate shall be divided amongst the children in equal shares.
- Division amongst children of female intestate leaving no widower.

- 5.** If any child of a Parsi intestate shall have died in his or her life-time, the widow or widower and issue of such child shall take the share which such child would have taken if living at the intestate's death in such manner as if such deceased child had died immediately after the intestate's death.
- Division of predeceased child's share among widow or widower and issue of such child.

NOTES.

Widower.—The word "widower" in this section signifies a widower relatively to the deceased wife only, and without consideration of the fact or possibility of the widower remarrying, 11 B. 1.

Widow and issue.—It is not a condition precedent to the application of S. 5 that the predeceased son of an intestate Parsi shall have left an widow and issue. 1 B. 506.

- 6.** Where a Parsi dies leaving a widow or widower, but without leaving any lineal descendants, his or her father and mother, if both are living, or one of them if the other is dead, shall take one moiety of the property as to which he or she shall have died intestate, and the widow or widower shall take the other moiety.
- Division of property when intestate leaves widow or widower but no lineal descendants.

Where both the father and the mother of the intestate survive him or her, the father's share shall be double the share of the mother.

Where neither the father nor the mother of the intestate survive him or her, the intestate's relatives on the father's side, in the order specified in the first schedule hereto annexed, shall take the moiety which the father and the mother would have taken if they had survived the intestate.

The next-of-kin standing first in the same schedule shall be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity.

If there be no relatives on the father's side, the intestate's widow or widower shall take the whole.

7. When a Parsi dies leaving neither lineal descendants nor a widow or widower, his or her next-of-kin, in the order set forth in the second schedule hereto annexed, shall be entitled to succeed to the whole of the property as to which he or she shall have died intestate.

The next-of-kin standing first in the same schedule shall be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity.

NOTES.

Distribution.—In distributing the estate among "brother" etc., sister and the lineal descendants of such of them as shall have predeceased the intestate the primary division must be her stirpes, 22 B. 909.

8. The following portions of the Indian Succession Act, 1865, shall not apply to Parsis, (that is to say), the whole of Part III, the whole of Part IV, excepting section 25, the whole of Part V; and section 43.

Exemption of Parsis from parts of Indian Succession Act, 1865.

NOTES.

This section should be so construed so as to preserve the English rule as to advancement contained in the statute of Distribution. in force for the Parsi community, 2 B. 75,

THE FIRST SCHEDULE.

(1.) Brothers and sisters, and the children or lineal descendants of such of them as shall have predeceased the intestate.

(2.) Grandfather and Grandmother.

(3.) Grandfather's sons and daughters, and the lineal descendants of such of them as shall have predeceased the intestate.

(4.) Great-grandfather and great-grandmother.

(5.) Great-grandfather's son and daughters, and the lineal descendants of such of them as shall have predeceased the intestate.

THE SECOND SCHEDULE.

- (1.) Father and mother.
 - (2.) Brothers and sisters, and the lineal descendants of such of them as shall have predeceased the intestate.
 - (3.) Paternal grandfather, and paternal grand mother.
 - (4.) Children of the paternal grandfather, and the lineal descendants of such of them as shall have predeceased the intestate.
 - (5.) Paternal grandfather's father and mother.
 - (6.) Paternal grandfather's father's children and the lineal descendants of such of them as shall have predeceased the intestate.
 - (7.) Brothers and sisters by the mother's side, and the lineal descendants of such of them as shall have predeceased the intestate.
 - (8.) Maternal grandfather and maternal grandmother.
 - (9.) Children of the maternal grandfather, and the lineal descendants of such of them as shall have predeceased the intestate.
 - (10.) Son's widow, if she have not re-married at or before the death of the intestate.
 - (11.) Brother's widow, if she have not remarried at or before the death of the intestate.
 - (12.) Paternal grandfather's son's widow, if she have not remarried at or before the death of the intestate.
 - (13.) Maternal grandfather's son's widow, if she have not re-married at or before the death of the intestate.
 - (14.) Widowers of the intestate's deceased daughters, if they have not re-married at or before the death of the intestate.
 - (15.) Maternal grandfather's father and mother.
 - (16.) Children of the maternal grandfather's father, and the lineal descendants of such of them as shall have predeceased the intestate.
 - (17.) Paternal grandfather's father and mother.
 - (18.) Children of the paternal grandmother's father, and the lineal descendants of such of them as shall have predeceased the intestate.
-

ACT XXI. OF 1866.

RECEIVED THE G.-G.'S ASSENT ON THE 2ND APRIL 1866.

An Act to legalize, under certain circumstances, the dissolution of marriages of Native Converts to Christianity.

WHEREAS it is expedient to legalize, under certain circumstances, the dissolution of marriages of Native Converts to Christianity deserted or repudiated, on religious grounds, by their wives or husbands; it is enacted as follows:—

Preamble.

Short title.

1. This Act may be cited as "The Native Converts' Marriage Dissolution Act, 1866."

2. [*Commencement of Act.*] *Repealed by Act XVI. of 1874.*

Interpretation-clause.

2. In this Act—

"Native husband" shall mean a married man domiciled in British India, who shall have completed the age of sixteen years, and shall not be a Christian, a Muhammadan, nor a Jew:

* Act XXI. of 1866 has been declared to be in force in the whole of British India, except the Scheduled Districts.—See Act XV. of 1874, s. 3.

It has been declared in force in the Santhal Parganas by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1899, s. 3; and in the Arakau Hill District by Reg. IX. of 1874, s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874,) to be in force in the following Scheduled Districts:—

Sindh	See <i>Gazette of India</i> ...	1880, Pt. I., p. 672.
West Jalpaiguri	Ditto ...	1881, Pt. I., p. 74.
The District of Darjiling ...	Ditto ...	1886, Pt. I., p. 500.
The Districts of Hazaribagh, Lohardanga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum	Ditto ...	1881, Pt. I., p. 504.
The Porahat Estate in the Singbhum District	Ditto ...	1897, Pt. I., p. 1059.
The scheduled portion of the Mirzapur District	Ditto ...	1879, Pt. I., p. 383.
Jaunsar Bawar	Ditto ...	1879, Pt. I., p. 382.
The District of Hazara, Peshwar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan	Ditto ...	1886, Pt. I., p. 48.
The District of Silhat	Ditto ...	1879, Pt. I., p. 631.
The District of Lohaul	Ditto ...	1886, Pt. I., p. 301.
The rest of Assam (except the North Lushai Hills)	Ditto ...	1897, Pt. I., p. 299.

It has been extended, under the same Act, to the following Scheduled Districts:—

Kumaon and Garhwal	See <i>Gazette of India</i> ...	1876, Pt. I., p. 606.
The North-Western Provinces		
Tarai	Ditto ...	1876, Pt. I., p. 606.

1865 : Act XXI.] DISSOLUTION OF N. CONVERTS' MARRIAGES. 741

“Native wife” shall mean a married woman domiciled in British India, who shall have completed the age of thirteen years, and shall not be a Christian, a Muhammadan, nor a Jewess:

“Native law” shall mean any law, or custom having the force of law, of any persons domiciled in British India other than Christians, Muhammadans, and Jews:

“Month” and “years” shall respectively mean month and year according to the British calendar:

“High Court” shall mean the highest Civil Court of appeal in any place to which this Act extends. †

4. If a Native husband change his religion for Christianity, and if in consequence of such change his Native wife, for the space of six continuous months, desert or repudiate him, he may sue her for conjugal society.

When convert deserted by his wife may sue for conjugal society;

5. If a Native wife change her religion for Christianity, and if in consequence of such change her Native husband, for the space of six continuous months, desert or repudiate her, she may sue him for conjugal society.

When convert deserted by her husband may sue.

6. If the respondent, at the time of commencement of such suit, reside within the local limits of the ordinary original civil jurisdiction of any of the High Courts of judicature, the suit shall be commenced in such Court; otherwise it shall be commenced in the principal Civil Court of original jurisdiction of the district in which the defendant shall reside at the commencement of the suit.

Court in which suit shall be brought.

7. The suit shall be commenced by a petition in the form in the first schedule to this Act, or as near thereto as the circumstances of the case will allow.

Suit to be commenced by verified petition.

The statements made in the petition shall be verified by the petitioner in the manner required by law for the verification of plaints; and the petition* may be amended by permission of the Court.

† Here certain words, which were repealed by Act X. of 1914 have been omitted.

* Certain words regarding Court-fee, which were repealed by Act VII. of 1870, have been omitted. For Court-fee, see now Act VII. of 1870, Schedule II., No. 14.

742 DISSOLUTION OF N. CONVERTS' MARRIAGES. [1865 : Act XXI.]

8. A copy of the petition shall be served upon the respondent, and the Court shall thereupon issue a citation under the seal of the Court and signed by the Judge.

On service of petition.
citation to respondent.

9. In ordinary cases the citation shall be in the form in the second schedule to this Act, or as near thereto as the circumstances of the case will allow.

Form of citation.

But where the respondent is exempt by law from personal appearance in Court, or where the Judge shall so direct, the citation shall be in the form in the third schedule to this Act, or as near thereto as the circumstances of the case will allow.

10. A copy of the citation sealed with the seal of the Court shall be served on the respondent; and the provisions of the Code of Civil Procedure† as to the service and endorsement of summonses shall apply, *mutatis mutandis*, to citations under this Act.

Service of citation.

11. If the respondent shall not obey such citation, and comply with every other requirement made upon her or him under the provisions of this Act, she or he shall be liable to punishment under section 174 of the Indian Penal Code.‡

Penalty on respondent
not obeying citation.

12. On the day fixed in the citation the petitioner shall appear in Court, and the following points shall be proved:—

Points to be proved on appearance of petitioner.

- (1.) The identity of the parties;
- (2.) The marriage between the petitioner and the respondent;
- (3.) That the male party to the suit has completed the age of sixteen years, and that the female party to the suit has completed the age of thirteen years;
- (4.) The desertion or repudiation of the petitioner by the respondent;
- (5.) That such desertion or repudiation was in consequence of the petitioner's change of religion;
- (6.) And that such desertion or repudiation had continued for the six months immediately before the commencement of the suit.

13. The respondent, if such points be proved to the satisfaction of the Judge, shall thereupon be asked whether she or he refuses to cohabit with the petitioner, and, if so, what is the ground of such refusal.

First interrogation of respondent.

† See Act V. of 1908, s. 157.

‡ See *supra*.

In ordinary cases such interrogation and every other interrogation prescribed by this Act shall be made by the Judge; but when the respondent is exempt by law from personal appearance in Court, or when the judge shall, in his discretion, excuse the respondent from such appearance, the interrogations shall be made by Commissioners acting under such commission as hereinafter mentioned.

14. Every interrogation mentioned in this Act and made by the Judge, may, at the discretion of the Judge, take place in open Court or in his private room.

Interrogations by Judge may be public or private.

If any such interrogation take place in open Court, the Judge may, so long as it shall continue, exclude from the Court all such persons as he shall think fit to exclude.

15. If the respondent be a female, and in answer to the interrogatories of the Judge or Commissioners, as the case may be, shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner, he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall make an order adjourning the case for a year, and directing that, in the interim, the parties shall, at such place and time as he shall deem convenient, have an interview of such length as the Judge shall direct, and in the persence of such person or persons (who may be a female or females) as the Judge shall select, with the view of ascertaining whether or not the respondent freely and voluntarily persists in such refusal.

Procedure when female respondent refuses to cohabit with petitioner.

Adjournment for a year.

Interview.

16. At the expiration of such adjournment the petitioner shall again appear in Court, and shall prove that the said desertion or repudiation had continued up to the time last herein-before referred to; and if the points mentioned in the twelfth and this section of this Act shall be proved to the satisfaction of the Judge, and if the respondent, on being interrogated by the Judge or Commissioners, as the case may be again refuse to cohabit with the petitioner, the respondent shall be taken to have finally deserted or repudiated the petitioner, and the Judge shall, by a decree under his hand, and sealed with the seal of his Court, declare that the marriage between the parties is dissolved.

Procedure on expiration of adjournment.

Interrogation of respondent.

Decree.

744 DISSOLUTION OF N. CONVERTS' MARRIAGES. [1866: Act XXI.]

17. If the respondent be a male, and in answer to the interrogatories of the Judge or Commissioner's as the case may be shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall adjourn the case for a year.

Decree in case of male respondent refusing to cohabit on ground of petitioner's change of religion.

At the expiration of such adjournment, the petitioner shall again appear in Court; and if the respondent on being interrogated by the Judge or Commissioners, as the case may be, again refuse to cohabit with the petitioners, the Judge shall thereupon pass such a decree as last aforesaid.

Provided that, if the petitioner shall so desire (but not otherwise), the proceedings in the suit shall, *mutatis mutandis*, be the same as in the case of a female respondent.

Previso.

18. Notwithstanding anything hereinbefore contained, if it shall appear at any stage of the suit that both or either of the parties had not attained puberty at the date of their marriage, and that such marriage has not been consummated; and if, in answer to the interrogatories made pursuant to the thirteenth section of this Act, the respondent shall refuse to cohabit with the petitioner, and allege, as the ground for such refusal, that the petitioner has changed his or her religion, the Judge shall thereupon pass such a decree as last aforesaid.

Decree if respondent so refuse in case of unconsummated marriage, either party being impubes at time of marriage.

19. When any decree dissolving a marriage shall have been passed under the provisions of this Act, it shall be as lawful for the respective parties thereto to marry again as if the prior marriage had been dissolved by death, and the issue of any such remarriage shall be legitimate, any Native law to the contrary notwithstanding:

Liberty to parties to marry again.

Provided always that no minister of religion shall be compelled to solemnize the marriage of any person whose former marriage may have been dissolved under this Act, or shall be liable to any suit or penalty for refusing to solemnize the marriage of any such person.

20. In suit instituted under this Act, the Judge shall order a commission to issue to such persons, whether males or females or both, as he shall think fit, for the examination on interrogatories or otherwise of any persons so exempt as aforesaid.

The provisions of the Code of Civil Procedure shall, so far as practicable, apply to commission issued under this section.

21. At any stage of a suit instituted under this Act, cohabitation as man and wife shall be sufficient presumptive evidence of the marriage of the parties, and proof of the respondent's refusal or voluntary neglect to cohabit with the petitioner, after his or her change of religion and after knowledge thereof by the respondent, shall be sufficient evidence of the respondent's desertion or repudiation of the petitioner, and shall also be sufficient evidence that such desertion or repudiation was in consequence of the petitioner's change of religion, unless some other sufficient cause for such desertion or repudiation be proved by the respondent.

22. The provisions of the Code of Civil procedure as to the summoning and examination of witnesses shall apply in suits instituted under this Act.

23. If at any stage of the suit it be proved that the male party to the suit is or was at the institution thereof under the age of sixteen years, or that the female party to the suit is or was at the same time under the age of thirteen years, or that the petitioner and the respondent are cohabiting as man and wife, or if the Court is satisfied by the evidence adduced that the respondent is ready and willing so to cohabit with the petitioner, the Court shall pass a decree dismissing the suit, and stating the ground of such dismissal.

24. If at any time within twelve months after a decree dismissing the suit upon any of the grounds mentioned in the last preceding section, the respondent again desert or repudiate the petitioner upon the ground of his or her change of religion, the suit may be revived by summoning the respondent; and upon proof of the former decree and of such renewed repudiation or desertion, the suit shall recommence at the stage at which it had arrived immediately before the passing of such decree; and, after the proofs, interrogations, interview, and adjournment which may then be requisite

746 DISSOLUTION OF N. CONVERTS' MARRIAGES. [1865 ; Act XXI.

under the provisions herein before contained, the Judge shall pass decree of the nature mentioned in the sixteenth section of this Act.

25. If at any stage of the suit it be proved that the respondent has deserted or repudiated the petitioner solely or partly in consequence of the petitioner's cruelty or adultery, the Court shall pass a decree dismissing the suit, and stating the ground of such dismissal. A suit dismissed under this section shall not be revived.

26. If the petitioner, being a male, has at the time of the institution of the suit two or more wives, he shall make them all respondents; and if at any stage of the suit it be proved that he is cohabiting with one of such wives as man and wife, or that any one of such wives is ready and willing so to cohabit with him, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

The provisions as to revival contained in the twenty-fourth section of this Act shall apply, *mutatis mutandis*, to a suit dismissed under this section.

27. A dissolution of marriage under the provisions of this Act shall not operate to deprive the respondent's children (if any) by the petitioner of their status as legitimate children, or of any right or interest which they would have had, according to the Native law applicable to them, by way of maintenance, inheritance, or otherwise, in case the marriage had not been so dissolved as aforesaid.

28. If a suit be commenced under the provisions of this Act and it appear to the Court that the wife has not sufficient separate property to enable her to maintain herself suitably to her station in life and to prosecute or defend the suit, the Court may, pending the suit, order the husband to furnish the wife with sufficient funds to enable her to prosecute or defend the suit, and also for her maintenance pending the suit.

If the suit be brought by a husband against a wife, the Court may, by the decree, order the husband to make such allowance to his wife for her maintenance during the remainder of her life as the Court shall think just, and having regard to the condition and station in life of the parties.

Any allowance so ordered shall cease from the time of any subsequent marriage of the wife.

29. No appeal shall lie against any order or decree made or passed by any Court in any suit instituted under this Act ; but if, at any stage of the suit, the respondent shall allege by way of defence that the marriage between the parties has been dissolved by the conversion of the petitioner, and that consequently the petitioner is not a Native husband or a Native wife (as the case may be) within the meaning of this Act, the Judge, if he shall entertain any doubt as to the validity of such defence, shall, either of his own motion, or on the application of the respondent, state the case, and submit it with his own opinion thereon for the decision of the High Court.

No appeal under Act ; but Judge may state case raising question whether conversion has dissolved marriage.

30. Every such case shall concisely set forth such facts and documents as may be necessary to enable the High Court to decide the questions raised thereby, and the suit shall be stayed until the judgment of such Court shall have been received as hereinafter provided.

Case to state necessary facts and documents and suit to be stayed.

31. Every such case shall be decided by at least three Judges of the High Court, if such Court be the High Court at any of the presidency-towns ; and the petitioner and respondent may appear and be heard in the High Court in person or by advocate or vakil.

Case to be decided by three Judges.

32. If the High Court shall not be satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the High Court may refer the case back to the Judge by whom it was stated, to make such additions thereto or alterations therein as the High Court may direct in that behalf.

High Court may refer case to Judge for additions or alterations.

33. It shall be lawful for the High Court, upon the hearing of any such case, to decide the questions raised thereby, and to deliver its judgment thereon containing the grounds on which such decision is founded ;

High Court may decide question raised, and Judge shall dispose of case accordingly.

and it shall send to the Judge by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the registrar, and the Judge shall, on receiving the same, dispose of the case conformably to such judgment.

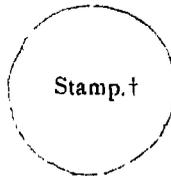
34. Nothing contained in this Act shall be taken to render invalid any marriage of a Native convert to Roman Catholicism if celebrated in accordance with the rules, rites, ceremonies, and customs of the Roman Catholic Church.

Saving of Roman Catholic marriages.

35. This Act shall extend to all the territories that are or shall become vested in Her Majesty or Her successors by the Statute 21 and 22 Vict., cap. 106, entitled, "An Act for the better Government of India."*

THE FIRST SCHEDULE.

FORM OF PETITION.



To the Judge of the Civil Court of
The day of 18 .
The petition of A. B. of

Sheweth—

1. That your petitioner was born on or about the day of 18 .
2. That your petitioner was on the day of in the year 18 lawfully married to C. D. at
- 3 That the said C. D. is now of the age of years or thereabouts.
4. That after his said marriage, your petitioner lived and cohabited with his said wife at aforesaid until the day of 18 .
5. That previous to the day of 18 your petitioner changed his religion for Christianity, and that on such day he was baptized and became a member of the Church of
6. That on the day of 18 [at least six months prior to the date of the petition], the said C. D. deserted your petitioner, and has not since resumed cohabitation with him.
7. That such desertion was in consequence of your petitioner's said change of religion.
8. That there is no collusion nor connivance between your petitioner and the said C. D.

Your petitioner therefore prays that your Honour will order the said C. D. to live and cohabit with your petitioner, or declare that your petitioner's marriage is dissolved.

A. B.

Form of verification.

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

* The remainder of this section was repealed by the Repealing Act (XVI of 1874).

† Certain words, repealed by Act XII. of 1891, Sch. 1., have been omitted.

THE SECOND SCHEDULE.

FORM OF CITATION IN ORDINARY CASES.

To C D. of

Whereas A. B. of , claiming to have been lawfully married to you the said C. D., has filed his [or her] petition against you in the Civil Court of , alleging that you the said C. D. have deserted him [or her] for six months in consequence of his [or her] having changed his [or her] religion for Christianity, and praying that, unless you consent to live and cohabit with him [or her], it may be declared that his [or her] marriage is dissolved; Now this is to command you that, at the expiration of days [at least one month] from the date of the service of this on you, you do appear in the said Court then and there to make answer to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you.

And take notice that in default of your so appearing, you will be liable to punishment under section 174 of the Indian Penal Code.

Dated the day of 18

(Signed) H. F.

Judge of the Civil Court of

Indorsement to be made after service.

This citation was duly served by G. H. on the within-named C. D. of at on the day of 18

(signed)..... G. H.

THE THIRD SCHEDULE.

FORM OF CITATION IN CASE OF RESPONDENT EXEMPT FROM APPEARANCE IN COURT

To C. D. of

Whereas A. B. of , claiming to have been lawfully married to you the said C. D., has filed his [or her] petition against you in the Civil Court of , alleging that you the said C. D. have deserted him [or her] for six months in consequence of his [or her] having changed his [or her] religion for Christianity, and praying that, unless you consent to cohabit with him [or her], it may be declared that his [or her] marriage is dissolved; Now this is to command you that, at the expiration of days [at least one month] from the service of this on you, you do hold yourself in readiness to answer and do answer such interrogatories as may be put to you by commissioners duly authorized in that behalf under a commission issued by this court. in reference to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you.

And take notice that in default of your so holding yourself in readiness and answering such interrogatories, you will be liable to punishment under section 174 of the Indian Penal Code.

Dated the day of 18

(Signed) E. F.,

Judge of the Civil Court of

Indorsement to be made after service.

This citation was duly served by G. H. on the within-named C. D. of at on the day of 18

(Signed) G. H.

ACT XXIII OF 1866.

RECEIVED THE G.-G'S ASSENT ON THE 17TH MAY 1866.

An Act to correct two clerical errors in the Letters Patent for the High Court of Judicature for the Presidency of Bombay.

WHEREAS the twenty-second section of the Letters Patent for the High Court of Judicature for the Presidency of Bombay, dated the 28th December 1865, is as follows; "And we do further ordain that the said High Court of Judicature at Bombay shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction, and also in respect of all *such* persons beyond such limits over whom the said High Court of Judicature at *Fort William in Bengal* shall have criminal jurisdiction at the date of the publication of these presents;" And whereas it is expedient to correct the two clerical errors in such section which are hereinbefore indicated by italics; It is hereby enacted as follows:—

Clause substituted for section 22 of revised Letters Patent of Bombay High Court.

1. In lieu of the said recited section, the following shall be substituted:—

"And we do further ordain that the said High Court of Judicature at Bombay shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction, and also in respect of all persons beyond such limits over whom the said High Court of Judicature at Bombay shall have criminal jurisdiction at the date of the publication of these presents."

ACT XXV OF 1866,

The Unclaimed Deposits Act 1866.*

RECEIVED THE G.-G.'S ASSENT ON THE 11TH JULY 1866.

An Act to transfer to the Government of India certain securities and moneys deposited in the High Courts of judicature at Fort William, Madras, and Bombay.

WHEREAS it is expedient that certain securities and sums of money deposited in the High Courts of Judicature at Fort William, Madras, and

* The portions of this act which referred to the administrator-General of Bengal (which were repealed by Acts XXIV. of 1876, and XII. 1878), and those which referred to the Supreme Court of the Straits Settlement (which were repealed by Acts XVI of 1874 and XII of 1876), have been omitted.

Bombay in the course of suits in the said Courts,† and † appearing to have been in such deposit for a period of twenty years or upwards, without any claim thereto having been made and allowed during that period, should be transferred and paid to the Government of India for the general purposes of government :

NOTES.

Application by a judgment creditor for payment of money already realised in execution for him cannot be barred except under this Act—10 C. W. N. 354 (F. B.)

1. All securities and sums of money deposited in the said High Courts, or any of them, in the course of suits in any of the said Courts,† and † appearing to have been in such deposit for a period of twenty years or upwards, without any claim thereto having been made and allowed during that period, shall be transferred and paid to the Government of India for the general purposes of government.

Moneys deposited in High Courts and unclaimed for twenty years transferred to Government.

2. [*Proceeds of estates administered under order of Supreme Courts of Straits Settlements or in charge of Administrator General of Bengal*] Repealed by Act XVI of 1874.

3. Nothing in this Act shall authorize any transfer or payment of any such securities, sums of money, or proceeds as aforesaid pending any suit already instituted or which shall here-after be instituted in respect thereof.

Transfer not made pending suits.

4. If any claim shall hereafter be made to any part of the securities, moneys, or proceeds which shall be transferred and paid to the Government of India under the provisions of this Act, and if such claim shall in the case of securities and moneys transferred and paid under the first section of this Act, be established to the satisfaction of the High Court from which the transfer shall have been made, the Government of India shall pay to the claimant the amount of the principal so transferred and paid as aforesaid, or so much thereof as shall appear to be due to the claimant.‡

† Here certain words, repealed by Act XII of 1891, Sch. I, have been omitted.

‡ As to the costs of petitions under this section, see Act V of 1870.

ACT XXVI OF 1866.

The oudh sub-settlement Act 1866.

RECEIVED THE G.-G'S ASSENT ON THE 12th OCTOBER 1866.

An Act to legalize the rules made by the Chief Commissioner of Oudh for the better determination of certain claims of subordinate proprietors in that Province.

WHEREAS rule have been made by the Chief Commissioner of Oudh for the better determination of certain claims by persons possessed of subordinate rights of property in the territories subject to his administration; and where as it is expedient that such rules should have the force of law; It is hereby enacted as follows :—

1. The rules for determining the conditions under which persons possessed of subordinate rights of property in talquas in the territories subject to the administration of the chief Commissioner of Oudh shall be entitled to obtain a sub-settlement of lands, villages, or sub-divisions there of, which they held under taluqdars on or before the thirteenth day of February 1856, and for determining the amounts payable to the taluqdar by such subordinate proprietors, which rules were made by the said Chief commissioner, sanctioned by the Governor-General of India in Council, and published in the *Gazette of India* for September 1st, 1866, and which are re-published in the schedule to this Act, are hereby declared to have the force of law.

2. [*Repeal of inconsistent enactments.*] Repealed by Act XIV. of 1870.

3. This Act may be called "The Oudh Sub-settlement Act, 1866."

SCHEDULE

Rules regarding Sub-settlements and other subordinate Rights of Property in Oudh.

1. The extension of the term of limitation for the hearing of claims to under-proprietary rights in land makes of itself no alteration in the principles hitherto observed in the recognition of a right to sub-settlement.

2. When no rights are proved to have been exercised or enjoyed by an under-proprietor during the period of limitation, beyond the possession of certain lands as *sir* or *nahar*, no sub-settlement can be made; but the claimant will be entitled, in accordance with the rules contained in the circular

orders which have hitherto been in force in Oudh upon this subject, to the recognition of a proprietary right in such lands. To entitle a claimant to obtain a sub-settlement, he must show that he possesses an under-proprietary right in the lands of which the sub-settlement is claimed, and that such right has been kept alive, over the whole area claimed, within the period of limitation. He must also show that he, either by himself or by some other person or persons from whom he has inherited, has by virtue of his under-proprietary right, and not merely through privilege granted on account of service, or by favour of the taluqdar, held such lands under contract (*pakka*) with some degree of continuousness since the village came into the taluqa.

3. The words "some degree of continuousness", will be interpreted as follows:—

If the village was included the taluqa before the thirteenth February 1836, the lease must have been held for not less than twelve years between that date and the annexation of the Province. If the village was included in the taluqa after the thirteenth February 1836, but before the thirteenth February 1844 the lease must have been held for not less than one year more than half the period between the time in which the village was so included and the annexation of the Province. Further, the lease must, in all cases, have been held for not less than seven years during the term of limitation, unless the village was included for the first time in the taluqa after the thirteenth February 1844, in which case the lease must have been held for not less than one year more than half of the period between the time in which the village was so included and the annexation of the Province: Provided that, if for any reason, the taluqdar was, for any period, dispossessed of the village, and the under-proprietor was dispossessed from the lease during the same period, the term of such dispossession shall not be reckoned against the under-proprietor: Provided also, that nothing in this rule will apply to any village which was included for the first time in the taluqa after the thirteenth February 1844, and in which the under-proprietor has held no lease for any period under the taluqdar.

4. If an under-proprietor, who is entitled to a sub-settlement, can show by documentary evidence that he had entered into an agreement with the taluqdar that he should hold, in perpetuity, the lease of the lands to the sub-settlement of which he is entitled, at a uniform (*istimrari*) rate of payment and that such agreement has been acted on within the period of limitation, he will not be liable to payment at an increased rate during the currency of the present or revised settlement. If, in consequence of any future re-adjustment of the Government demand, the former proportion between the respective shares of the profits derived from the land by the under-proprietor and the taluqdar should be altered, the amount payable by the under-proprietor to the taluqdar will be liable to re-adjustment, so that the proportion between their respective shares of the profits may remain unaltered.

5. If an under-proprietor, entitled to sub-settlement, can show by documentary evidence that he had entered into an agreement with the taluqdar that he should hold the lease of the lands to the sub-settlement of which he is entitled, on payment of the Government demand imposed before the annexation of the province on such lands, with the addition only of certain dues to the taluqdar, or other charges, and such agreement has been acted upon within the period of limitation, such under-proprietor will in future be liable only for the payment to the taluqdar of the Government demand for the time being, with the addition of ten per cent. in lieu of taluqdari dues and other charges.

6. If an under-proprietor, entitled to sub-settlement, has held the lease of the lands to the sub-settlement of which he is entitled under an agreement that he shall pay to the taluqdar a certain share or proportion of the profits or produce of such lands, and such agreement has been acted upon within the term of limitation, the under-proprietor will in future continue to be liable for the payment to the taluqdar of such share or proportion.

7. In all cases in which an under-proprietor is entitled to a sub-settlement other than those described in rules 4 to 6, the amount payable by the under-proprietor to the taluqdar will be determined according to the following principles :—

1st.—The payments made by the under-proprietor to the taluqdar before annexation will form the standard by which the present payments are to be regulated;

2nd.—In no case can the amount payable by the under-proprietor to the taluqdar, during the currency of the settlement, exceed the gross rental of the village, less ten per cent. in *sir* or *nankar* land;

3rd.—In no case the amount payable during the currency of the settlement, by the under proprietor to the taluqdar, be less than the amount of the revised Government demand, with the addition of ten per cent. ;

4th.—If the gross rental of the village before annexation and at the present time be approximately the same, the under proprietor will pay to the taluqdar the same amount which he paid before annexation;

5th.—If the present gross rental of the village exceed or fall short of the former gross rental, the payment of the under-proprietor to the taluqdar will be adjusted according to the following rule, namely, as the former gross rental is to the former payment of the under-proprietor, so is the present gross rental to the present payment of the under proprietor;

6th.—In determining the amount payable by the under-proprietor to the taluqdar under the two last preceding rules, the former gross rental and the former payment of the under-proprietor will be held to be the average amount of the gross rental, and the average amount of the former payments of the under-proprietor for the twelve years preceding annexation, or for such portion of that time as the under-proprietor held a lease of the village from the taluqdar, or for such portion of that time as the necessary information may be obtained.

8. In any case in which the clear share of the profit to which the under-proprietor is entitled under the rules contained in the last preceding paragraph does not exceed twelve per cent. of the gross rental, no sub-settlement shall be made. In this case, the under-proprietor will retain all *sir* and *nankar* land to which his right is established. If the profits derived from such land be less than one-tenth of the whole rental of the land to the sub-settlement of which the right was established, the taluqdar shall increase the amount of such land so that the total profit to the under-proprietor shall not fall below one-tenth of the gross rental. The under-proprietor will possess, in the whole of such lands, a transferable and heritable right of property.

9. In any case in which an under-proprietor is entitled to a sub-settlement under the preceding rules, and in which the share of the gross rental which such under proprietor is entitled to receive exceeds twelve per cent., but falls short of twenty-five per cent., such share will be increased so that it shall not be less than twenty-five per cent. of the gross rental. The cost of such increase will be borne half by the Government and half by the taluqdar. In this case, the cesses on account of roads, schools, &c., amounting to two and a half per cent. on the Government demand, will be payable by the taluqdar, while the village-expenses, including the allowances to the *patwari* and *chaukidar*, will be payable by the under-proprietor.

10. When a former proprietor, who is not entitled to a sub-settlement, has retained within the period of limitation, either by himself or by some other person or persons from whom he has inherited possession of land which by virtue of his proprietary right he held as *sir* or *nankar* when he was in proprietary possession, he will be deemed, in respect of such land, to be an

under-proprietor, and will possess a heritable and transferable right of property therein, subject to the payment of such amount as may be due by him to the superior proprietor.

11. If, in any case, the founder of a purwa or hamlet, who is unable to establish a right to sub-settlement, can show that, in consideration of having founded such purwa or hamlet, he has held therein, within the period of limitation, possession of *sir* or *nankar* land, he will be recognized as an under-proprietor in such land, subject to the payment of such amount as may be due by him to the taluqdar. The amount of such payment will be determined according to the rules for determining the amount of the payments due by other under-proprietors on their *sir* or *nankar* lands.

12. Claims to proprietary and under-proprietary rights in jagirs will be treated according to the same rules which are applicable to similar claims in taluqas.

13. Cases in which claims to under-proprietary right have been disposed of otherwise than in accordance with these rules will be open to revision, but this rule will not apply to cases disposed of by arbitration or by agreement of the parties.

SIMLA :
The 20th August 1866. }

J. STRACHEY,
Chief Commissioner of Oudh.

ACT XXVII. OF 1866.*

The Indian Trustees Act, 1866.

RECEIVED THE G. G.'S ASSENT ON THE 24TH OCTOBER 1866.

An Act to consolidate and amend the law relating to the conveyance and transfer of property in British India vested in Mortgagees and Trustees, in cases to which English law is applicable.

WHEREAS it is expedient to consolidate and amend the laws relating to the conveyance and transfer of moveable and immoveable property in British India vested in mortgagees and trustees, in cases to which English law is applicable ; It is hereby enacted as follows :—

Preamble.

NOTES.

This Act applies to a trust in which the trustees and the cestui que trustent are all Hindus, in so far as the trust is not inconsistent with Hindu Law—32 C. 143.

1. [*Repealed by Act XIV. of 1870.*]

* Act XXVII of 1866 applies only to the Lower Provinces, the North-Western Provinces, the Presidencies of Madras and Bombay, and the Panjab. It is mainly founded on 13 and 14 Vict., c 60, and 15 and 16 Vict., c 55.

It has been declared to be in force by the Scheduled Districts Act (XIV of 1874) in the Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum. See *Gazette of India*, 1881, Pt. I, p. 504.

Interpretation-clause.

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

“Immoveable property” shall extend to and include messuages, tenements, and hereditaments, corporeal and incorporeal, of every tenure or description, whatever may be the estate or interest therein :

“Stock” shall mean any fund, annuity, or security transferable in books kept by any company or society established or to be established, or transferable by deed alone, or by deed accompanied by other formalities, and any share* or interest therein. It shall also include shares in ships registered under the Merchant Shipping Act, 1854, or at any port in British India : †

“Hold” and “Holding” shall be applicable to any vested estate, whether for life or of a greater or less description, in possession, futurity, or expectancy in any immoveable property :

“Contingent right,” as applied to immoveable property, shall mean a contingent or executory interest, or possibility coupled with an interest whether the object of the gift or limitation of such interest or possibility be or be not ascertained ; also a right of entry, whether immediate or future, and whether vested or contingent :

“Convey” and “Conveyance,” applied to any person, shall mean the execution by such person of every necessary or suitable assurance for conveying or disposing to another immoveable property which such person holds, or in which he is entitled to a contingent right, either for the whole estate of the person conveying or disposing or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance, including the acts to be performed by married women and tenants-in-tail in accordance with the provisions of Act XXXI. of 1854 (*to simplify the modes of conveying land in cases to which the English law is applicable*) :

“Transfer” shall mean the execution and performance of every deed and act by which a person entitled to stock or Government securities can transfer such stock or Government securities from himself to another :

* *Re Angelo*, 5 DeG. & S. 27B.

† 18 & 19 Vict. c. 91, s. 10

“High Court” shall mean every Court now or hereafter established under the Statute 24 & 25 Vict. cap. 104, and also * *the Chief Court of Lower Burma* † or such one or more Judges of the said Courts respectively as shall be appointed by the Chief Justice or the senior Judge, ‡ as the case may be, to entertain applications and make orders under this Act :

“Trust” shall not mean the duties incident to an estate conveyed by way of mortgage : but, with this exception, the words “Trust” and “Trustee” shall extend to and include implied and constructive trusts, and shall extend to and include cases where the trustee has some beneficial estate or interest in the subject of the trust, and shall extend to and include the duties incident to the office of executor or administrator of a deceased person :

“Lunatic” shall mean any person who shall have been found by due course of law to be of unsound mind and incapable of managing his affairs :

“Person of unsound mind” shall mean any person not a minor who, not having been found to be a lunatic, shall be incapable from infirmity of mind to manage his own affairs:

In the case of a will made or an intestacy occurring before the first day of January 1866, § “Heir” shall mean the person claiming an interest in the immoveable property of a deceased person under the laws concerning descent applicable to such property : and “Devisee” shall, in addition to its ordinary signification, mean the heir of a devisee and the devisee of an heir, and generally any person claiming an interest in the immoveable property of a deceased person, not as heir of such deceased person, but by a title dependent solely upon the operation of the laws concerning devise and descent.

In the case of a will made or an intestacy occurring on or after the first day of January 1866, § “Heir” shall mean any person claiming an interest in the immoveable property of a deceased person under the rules for the distribution of an intestate’s estate ; and “Devisee” shall mean any person taking immoveable property under a bequest, and any person, other than an executor or administrator, claiming an interest in immoveable property, not as entitled thereto under the said rules, but by a title dependent solely upon the operation of the laws concerning intestate and testamentary succession.

* Here certain words repealed by Act 18 of 1919 have been omitted.

† The words in italics have been inserted by Act VI of 1900.

‡ See Act No. IV. of 1866, s. 3.

§ The day on which Indian Succession Act (X. of 1865) came into force.

"Mortgage" shall be applicable to every estate or interest in immoveable or moveable property which would in the High Court be deemed merely a security for money.

"Person" shall include any company or association, or body of persons whether incorporated or not : *

3. The powers and authorities given by this Act to the High Court shall and may be exercised only in cases to which English law is applicable, and may be exercised with respect to property within the local limits of the extraordinary original civil jurisdiction of the said Courts respectively.

NOTES

Extent—The High Court may exercise the summary powers conferred upon it by the Trustees Act (XXVII of 1866) in the case of Hindu Trust. This section which provides that the power and authority given by the Act to the High Court shall be exercised only in cases in which English law is applicable, cannot be intended to limit the operation of the Act only to cases to which, in their whole extent, the law prevailing in England applies without qualification or reserve, as this would virtually exclude the Act in any case in which an Act of the Indian Legislature has any bearing—5 B. 154.

4. When any lunatic or person of unsound mind shall hold any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order that such property be vested in such person or persons in such manner and for such estate as the said Court shall direct : and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a conveyance of the property in the same manner for the same estate. †

5. When any lunatic or person of unsound mind shall be entitled to any contingent right in any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order wholly releasing such property from such contingent right or disposing of the same to such person or persons as the said High Court shall direct ; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a deed so releasing or disposing of the contingent right. ‡

* Here certain words repealed by Act X of 1919 have been omitted.

† Compare 13 & 14 Vict., c. 60, s. 3.

‡ Compare 13 & 14 Vict., c. 60, s. 4.

6. When any lunatic or person of unsound mind shall be solely entitled to any stock or Government securities, or to anything in action upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order vesting in any person or persons the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest, in respect thereof.

High Court may transfer stock or Government securities of lunatic trustees and mortgagees.

and when any person or persons shall be entitled jointly with any lunatic or person of unsound mind to any stock or Government securities, or thing in action, upon any trust or by way of mortgage, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any other person or persons the said High Court may appoint.*

7. When any stock or Government securities shall be standing in the name of any deceased person whose executor or administrator is a lunatic or person of unsound mind, or when anything in action shall be vested in any lunatic or person of unsound mind as the executor or administrator of a deceased person, it shall be lawful for the High Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof in any person or persons the said Court may appoint.†

Power to transfer stock or Government securities of deceased persons.

8. Whenever any minor ‡ shall hold any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order vesting such property in such person or persons in such manner and for such estate as the said court shall direct ; and the order shall have the same effect as if the minor trustee or mortgagee had attained his majority, and had duly executed a conveyance of the property in the same manner for the same estate §

High Court may convey estates of minor trustees and mortgagees.

* Compare 13 & 14 Vict., c. 60, s. 5.

† Compare 13 & 14 Vict., c. 60, s. 6.

‡ See Act IX of 1865.

§ Compare 13 & 14 Vict., c. 60, s. 7.

9. When any minor shall be entitled to any contingent right in any immovable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; and the order shall have the same effect as if the minor had attained his majority, and had duly executed a deed so releasing or disposing of the contingent right.

10. When any person solely holding any immovable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order vesting such property in such person or persons, in such manner and for such estate as the said Court shall direct, and the order shall have the same effect as if the trustee had duly executed a conveyance of the property in the same manner and for the same estate.*

11. When any person or persons shall hold any immovable property in trust jointly with a person not within the jurisdiction of the High Court, or who cannot be found, it shall be lawful for the said Court to make an order vesting the property in the person or persons so jointly holding, or in such last-mentioned person or persons together with any other person or persons, in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance of the property in same manner for the same estate.†

12. When any person solely entitled to a contingent right in any immovable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; and the order shall have the same effect as if the trustee had duly executed a conveyance so releasing or disposing of the contingent right.‡

* Compare 13 & 14 Vict., c. 60, s. 9.

† Compare 13 & 14 Vict., c. 60, s. 10.

‡ Compare 13 & 14 Vict., c. 60, s. 11.

13. When any person jointly entitled with any other person

High Court may make order where persons jointly entitled with others out of jurisdiction to contingent right in immoveable property.

or persons to a contingent right in any immoveable property upon any trust shall be out of the jurisdiction of the High Court or cannot be found, it shall be lawful for the said Court to make an order disposing of the contingent right of the person out of the jurisdiction, or who cannot be found, to the person or persons so jointly entitled as aforesaid, or to such last-mentioned person or persons together with any other person or persons; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance so releasing or disposing of the contingent right.*

14. Where there shall have been two or more persons jointly

When uncertain which of several trustees survived.

holding any immoveable property upon any trust, and it shall be uncertain which of such trustees was the survivor, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the survivor of such trustees had duly executed a conveyance of the property in same manner for the same estate.†

15. Where any one or more person or persons shall have held

When uncertain whether last trustee living or dead.

any immoveable property upon any trust, and it shall not be known, as to the trustee last known to have held such property, whether he be living or dead, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate, as the said Court shall direct; and the order shall have the same effect as if the last trustee had duly executed a conveyance of the property in the same manner for the same estate.‡

16. When any person holding any immoveable property upon

When trustee dies without heir.

any trust shall have died intestate as to such property without an heir, or shall have died, and it shall not be known who is his heir or devisee, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate, as the said Court shall direct; and the order shall have the same effect as if the heir or devisee of such trustee had duly executed a

* Compare 13 & 14 Vict., c. 60, s. 12.

† Compare 13 & 14 Vict., c. 60, s. 13.

‡ Compare 13 & 14 Vict., c. 60, s. 14.

conveyance of the property in the same manner for the same estate.*

17. When any immoveable property is subject to a contingent right in an unborn person, or class of unborn persons, who, upon coming into existence, would in respect thereof hold such property upon any trust, it shall be lawful for the High Court to make an order which shall wholly release and discharge such property from such contingent right, in such unborn person or class of unborn persons, or to make an order which shall vest in any person or persons of the estate or estates which such unborn person or class of unborn persons would, upon coming into existence, hold in such property.†

18. In every case where any person holds or shall hold jointly or solely any immoveable property, or is or shall be entitled to a contingent right therein upon any trust, and a demand shall have been made upon such trustee by a person entitled to require a conveyance of such property, or a duly authorized agent of such last-mentioned person, requiring such trustee to convey the same, or to release such contingent right, it shall be lawful for the High Court, if the said Court shall be satisfied that such trustee has wilfully refused or neglected to convey the said property for the space of twenty-eight days after such demand, to make an order vesting such property in such person or persons, in such manner and for such estate as the Court will direct, or releasing such contingent right in such manner as the Court shall direct; and the said order shall have the same effect as if the trustee had duly executed a conveyance of the property, or a release of such right, in the same manner and for the same estate.‡

19. When any person to whom any immoveable property has been conveyed by way of mortgage shall have died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of such mortgage shall have been paid to a person entitled to receive the same, or such last-mentioned person shall consent to an order for the reconveyance or vesting of such property, then in any of the following cases it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate as the said Court shall direct, that is to say,—

* Compare 13 & 14 Vict., c. 60, s. 15.

† Compare 13 & 14 Vict., c. 60, s. 16.

‡ Compare 15 & 16 Vict., c. 55, s. 2.

when an heir or devisee of such mortgagee shall be out of the jurisdiction of the High Court, or cannot be found :

when an heir or devisee of such mortgagee shall, upon a demand by a person entitled to require a conveyance of such property, or a duly-authorized agent of such last mentioned person, have stated in writing that he will not convey the same, or shall not convey the same for the space of twenty-eight days next after a proper deed for conveying such property shall have been tendered to him by a person entitled as aforesaid, or a duly-authorized agent of such last-mentioned person :

when it shall be uncertain which of several devisees of such mortgagee was the survivor :

when it shall be uncertain as to the survivor of several devisees of such mortgagee or as to the heir of such mortgagee, whether he be living or dead :

when such mortgagee shall have died intestate as to such property and without an heir, or shall have died, and it shall not be known who is his heir or devisee :

and the order of the said High Court made in any one of the foregoing cases shall have the same effect as if the heir or devisee, or surviving devisee, as the case may be, had duly executed a conveyance of the property in the same manner and for the same estate.*

20. In every case where the High Court shall, under the provisions of this Act, be enabled to make an order having the effect of a conveyance of any immoveable property, or having the effect of a release or disposition of the contingent right of any person or persons, born or unborn, it shall also be lawful for the High Court, should it be deemed more convenient to make an order appointing a person to convey such property, or release or dispose of such contingent right ;

and the conveyance, or release or disposition of the person so appointed, shall, when in conformity with the terms of the order by which he is appointed, have the same effect, in conveying the property, or releasing or disposing of the contingent right, as an order of the High Court would in the particular case have had under the provisions of this Act.

In every case where the High Court shall, under the provisions of this Act, be enabled to make an order vesting in any person or persons the right to transfer any stock transferable in the books

* Compare 13 & 14 Vict., c. 60, s. 19.

of any company or society established or to be established, it shall also be lawful for the High Court, if it be deemed more convenient to make an order directing the secretary or any officer of such company or society at once to transfer, or join in transferring, the stock to the person or persons to be named in the order :

and this Act shall be a full and complete indemnity and discharge to all companies or societies and their officers and servants for all acts done or permitted to be done pursuant thereto.*

NOTES.

As to appointment of persons to convey property on behalf of persons out of the jurisdiction and under disabilities—Vide. 7 C. 32.

21. When any person or persons shall be jointly entitled with any person out of the jurisdiction of the High Court, or who cannot be found, or concerning whom it shall be uncertain whether he be living or dead, to any stock or Government securities or thing in action upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for or recover such thing in action or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any person or persons the said Court may appoint.

When trustees of stock or Government securities joined with trustees out of jurisdiction.

When any sole trustee of any stock, Government securities, or thing in action shall be out of the jurisdiction of the said Court, or cannot be found, or it shall be uncertain whether he be living or dead, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in any person or persons the said Court may appoint.†

22. Where any sole trustee of any stock, Government securities, or thing in action, shall neglect or refuse to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for or recover such thing in action, or any interest in respect thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person absolutely entitled thereto, it shall be lawful

When trustee of stock, &c., refuses to transfer.

* Compare 13 & 14 Vict., c. 60, s. 20.

† Compare 13 & 14 Vict., c. 60, s. 22.

for the High Court to make an order vesting the sole right to transfer such stock or Government securities, or to receive the dividends interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in such person or persons as the said Court may appoint.*

23. Where any one of the trustees of any stock, Government securities, or thing in action, shall neglect or refuse to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof or to sue for or recover such thing in action according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by such person, it shall be lawful for the High Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, in the other trustee or trustees of the said stock, Government securities, or thing in action, or in any person or persons whom the said Court may appoint jointly with such other trustee or trustees.†

24. When any stock or Government securities shall be standing in the sole name of a deceased person, and his executor or administrator shall be out of the jurisdiction of the High Court, or cannot be found, or it shall be uncertain whether such executor or administrator be living or dead, or such executor or administrator shall neglect or refuse to transfer such stock or Government securities, or receive the dividends, interest, or income thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person entitled as aforesaid, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, in any person or persons whom the said Court may appoint.‡

25. Where any order shall have been made under this Act vesting the right to any stock or Government securities in any person or persons appointed by the High Court, such legal right shall vest accordingly, and thereupon the person or persons so appointed are hereby authorized and empowered to execute all

* Compare 13 & 14 Vict., c. 60, s. 23.

† Compare 13 & 14 Vict., c. 60, s. 24.

‡ Compare 13 & 14 Vict., c. 60, s. 25.

deeds and powers-of-attorney, and to perform all acts relating to the transfer of such stock and Government securities into his or their own name or names or otherwise, or relating to the receipt of the dividends, interest, or income thereof, to the extent and in conformity with the terms of such order.

All companies and associations whatever, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as such companies, association, or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made, and shall be equally indemnified in complying with the requisition of such person or persons so appointed as they would have been indemnified in complying with the requisition of the person in whose place such appointment shall have been made.

After notice in writing of any such order of the High Court concerning any stock or Government securities shall have been given, it shall not be lawful for any company or association, or any person having received such notice, to act upon the requisition of the person in whose place an appointment shall have been made, in any matter relating to the transfer of such stock or Government securities, or the payment of the dividends, interest, or income thereof*

26. Where any order shall have been made under this Act by the High Court, vesting the legal right to sue for or recover any thing in action, or any interest in respect thereof, in any person or persons, such legal right shall vest accordingly; and thereupon it shall be lawful for the person or persons so appointed to carry on, commence, and prosecute, in his or their own name or names, any suit or other proceeding for the recovery of such thing in action, in the same manner in all respects as the person in whose place an appointment shall have been made could have sued for or recovered such thing in action.†

27. Where any person shall neglect or refuse to transfer any stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for or recover anything in action, or any interest in respect thereof, for the space of twenty-eight days next after an

On neglect to transfer stock, &c., for twenty-eight days, order made vesting right to transfer in such person as Court appoints.

* Compare 13 & 14 Vict., 60, s. 26.

† Compare 13 & 14 Vict., c. 60, s. 27.

order of the High Court for that purpose shall have been served upon him, it shall be lawful for the said Court to make an order vesting all the right of such person to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in such person or persons as the said Court appoint.*

28. When any stock or Government securities shall be standing in the sole name of a deceased person, and his executor or administrator shall refuse or neglect to transfer such stock or Government securities, or receive the dividends, interest, or income thereof for the space of twenty-eight days next after an order of the High Court for that purpose shall have been served upon him, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, in any person or persons whom the said Court may appoint.†

29. When any order being or purporting to be under this Act shall be made by the High Court, vesting the right to any stock or Government securities, or vesting the right to transfer any stock or Government securities, or vesting the right to call for the transfer of any stock or Government securities, in any person or persons, in every such case the legal right to transfer such stock or Government securities shall vest accordingly ;

and the person or persons so appointed shall be authorized and empowered to execute all deeds and powers-of-attorney, and to perform all acts relating to the transfer of such stock or Government securities into his or their own name or names or otherwise, to the extent and in conformity with the terms of the order.

All companies and associations, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as such companies, associations, or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made.‡

* Compare 15 & 16 Vict., c. 55, s. 4.

† Compare 15 & 16 Vict., c. 55, s. 5.

‡ Compare 15 & 16 Vict., c. 55, s. 6.

30. When any minor shall be solely entitled to any stock or Government securities upon any trust, it shall be lawful for the High Court to make an order vesting in any person or persons the right to transfer such stock or Government securities, or to receive the dividends, interest, income thereof.

Power to make order for transfer or receipt of dividends of stock, &c., in name of minor trustee.

When any minor shall be entitled jointly with any other person or persons to any stock or government securities upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof either in the person or persons jointly entitled with the minor, or in him or them together with any other person or persons the said Court may appoint.*

31. When a decree or order shall have been made by the High Court directing the sale of any immoveable property for the payment of the debts of a deceased person, every persons holding such property, or entitled to a contingent right therein, as heir, or under the will of such deceased debtor, shall be deemed so to hold or be entitled (as the case may be) upon a trust within the meaning of this Act.

When decree made for sale of immoveable property for payment of debts.

and the High Court is hereby empowered to make an order wholly discharging the contingent right, under the will of such deceased debtor, of any unborn person.†

32. When any decree or order shall have been made by the High Court, whether before or after the passing of this Act, directing the sale of any immoveable property for any purpose whatever, every person holding such property, or entitled to a contingent right therein, being a party to the suit or proceeding in which such decree or order shall have been made, and bound thereby, or being otherwise bound by such decree or order, shall be deemed so to hold or be entitled (as the case may be) upon a trust within the meaning of this Act.

Holding immoveable property, the sale of which has been ordered by High Court.

In every such case, it shall be lawful for the High Court, if the said Court shall think it expedient for the purpose of carrying such sale into effect, to make an order vesting such property or any part thereof, for such estate as the Court

Order for vesting estate in lieu of conveyance by party to suit in order to carry out sale.

* Compare 15 & 16 Vict., c. 55, s. 3.

† Compare 13 & 14 Vict., c. 60, s. 29.

S. 31 is repealed in places to which the Transfer of Property Act, 1882, extends or is extended.—

See Act IV. of 1882, s. 2.

shall think fit, either in any purchaser or in such other person as the Court shall direct.

Every such order shall have the same effect as if the person so holding or entitled had been free from all disability, and had duly executed all proper conveyances and assignments of such property for such estate.*

Effect of order,

33. Where any decree or order shall be made by the High Court for the specific performance of a contract concerning any immoveable property, or for the partition or exchange of any immoveable property, or generally when any decree shall be made for the conveyance of any immoveable property, either in cases arising out of the doctrine of election or otherwise, it shall be lawful for the said Court to declare that any of the parties to the said suit wherein such decree is made are trustees of such property, or any part thereof, within the meaning of this Act, or to declare concerning the interests of unborn persons who might claim under any party to the said suit, or under the will or voluntary settlement of any person deceased who was during his life-time a party to the contract or transactions concerning which such decree is made, that such interests of unborn persons are the interests of persons who, upon coming into existence, would be trustees within the meaning of this Act.

Thereupon it shall be lawful for the High Court to make such order or orders as to the estates, rights, and interests of such persons, born or unborn, as the said Court might, under the provisions of this Act, make concerning the estates, rights, and interests of trustees born or unborn. †

34. It shall be lawful for the High Court to make declarations and give directions concerning the manner in which the right to any stock, Government securities, or thing in action vested under the provisions of this Act shall be exercised, and thereupon the person or persons in whom such right shall be vested shall be compellable to obey such directions and declarations by the same process as that by which other orders under this Act are enforced. ‡

35. In all Cases in which it shall be expedient to appoint a new trustee or new trustees, and it shall be found inexpedient, difficult, or impracticable so to do without the assistance of the

Power to Court to make order appointing new trustees.

* Compare 15 & 16 Vict., c. 55, s. 1.

† Compare 13 & 14 Vict., c. 60, s. 30.

‡ Compare 13 & 14 Vict., c. 60, s. 31.

High Court, it shall be lawful for the said Court to make an order appointing a new trustee or new trustees, whether there be any existing trustee or trustees or not at the time of making such order, and if there be such trustee or trustees, either in substitution for, or in addition to, him or them.*

The person or persons who, upon the making of such order, shall be trustee or trustees shall have the same rights and powers as he or they would have had if appointed by decree in a suit duly instituted.†

NOTES

Note—The Courts in this country ought to refuse jurisdiction under this section on a mere application alleging misconduct or any other cause when the trustees whom it is sought to remove are willing to act and refer the applicant to suit—6 N. W. P. 54.

36. It shall be lawful for the High Court, upon making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order to direct that any immoveable property subject to the trust shall vest in the person or persons who, upon the appointment, shall be the trustee or trustees, for such estate as the Court shall direct.

Such order shall have the same effect as if the person or persons, who, before such order, was or were the trustee or trustees (if any), had duly executed all proper conveyances of such property for such estate.

37. It shall be lawful for the High Court, upon making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order, to vest the right to call for a transfer of any stock or government securities subject to the trust, or to receive the dividends, interest, or income thereof, or to sue for or recover any thing in action subject to the trust, or any interest in respect thereof, in the person or persons who, upon the appointment, shall be the trustee or trustees.‡

38. Any such appointment by the High Court of new trustees, and any such conveyance or transfer as aforesaid, shall operate no further or otherwise as a discharge to any former or continuing trustee, than an appointment of new trustees under any power for that purpose contained in any instrument would have done.§

* Compare 13 & 14 Vict., c. 60, s. 32.

† Compare 13 & 14 Vict., c. 60, s. 33.

‡ Compare 13 & 14 Vict., c. 60, s. 34.

§ Compare 13 & 14 Vict., c. 60, s. 36.

39. An order under any of the hereinbefore contained provisions, for the appointment of a new trustee or trustees or concerning any immoveable property, stock, or Government securities, or thing in action subject to a trust, may be made upon the application of any person beneficially interested in such immoveable property, stock, Government securities, or thing in action, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof; and an order under any of the provisions hereinbefore contained, concerning any immoveable property, stock, Government securities, or thing in action subject to a mortgage, may be made on the application of any person beneficially interested in the moneys secured by such mortgage.*

40. When any person shall deem himself entitled to an order under any of the provisions hereinbefore contained, it shall be lawful for him to present a petition to the High Court for such order as he may deem himself entitled to, and he may give evidence by affidavit or otherwise in support of such petition before the said Court, and may serve such person or persons with notice of such petition as he may deem entitled to service thereof.†

41. Upon the hearing of any such petition, it shall be lawful for the said High Court, should it be deemed necessary, to direct a reference to one of the Judges of the Court to inquire into any facts which require such an investigation, or it shall be lawful for the said Court to direct such petition to stand over, to enable the petitioner to adduce evidence or further evidence before the Court, or to enable notice or any further notice of such petition to be served upon any person or persons. ‡

42. Upon the hearing of any such petition, it shall be lawful for the High Court to dismiss such petition with or without costs, or to make an order thereupon in conformity with the provisions of this Act. §

43. Whenssoever in any cause or matter, either by the evidence adduced therein, or by the admissions of the parties, or by report of one of the Judges of the Court, the facts necessary for an order under this Act shall appear to the High Court to be sufficiently proved, it shall be lawful for the said Court, either upon the

* Compare 13 & 14 Vict., c. 60, s. 37.

† Compare 13 & 14 Vict., c. 60, s. 40.

‡ Compare 13 & 14 Vict., c. 60, s. 41.

§ Compare 13 & 14 Vict., c. 60, s. 42.

hearing of the said cause or of any petition or application in the said cause or matter, to make such order under this Act *

44. Whenever any order shall be made under this Act by the High Court for the purpose of conveying any immoveable property, or for the purpose of releasing or disposing of any contingent right, and such order shall be founded on an allegation of the personal incapacity of a trustee or mortgagee or an allegation that a trustee or the heir or devisee of a mortgagee is out of the jurisdiction of the High Court, or cannot be found, or that it is uncertain which of several trustees, or which of several devisees of a mortgagee, was the survivor, or whether the last trustee, or the heir, or last surviving devisee of a mortgagee, be living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir, or has died, and it is not known who is his heir or devisee, then in any of such cases the fact that the High Court has made an order upon such an allegation shall be conclusive evidence of the matter so alleged in any Court of Civil Judicature upon any question as to the legal validity of the order :

Orders by High Court founded on certain allegations conclusive evidence of matter contained therein.

Provided always that nothing herein contained shall prevent the High Court directing a re-conveyance of any immoveable property conveyed or assigned by any order under this Act, or a re-disposition of any contingent right conveyed or disposed of by such order ; and it shall be lawful for the said Court to direct any of the parties to any suit concerning such property or contingent right, to pay any costs occasioned by the order under this Act, when the same shall appear to have been improperly obtained.†

45. It shall be lawful for the High Court to exercise the powers herein conferred for the purpose of vesting any immoveable property, stock, Government securities, or thing in action in the trustee or trustees of any charity or society, over which charity or society the High Court would have jurisdiction upon suit duly instituted, whether such trustee or trustees shall have been duly appointed by any power contained in any deed or instrument, or by the decree of the said Court, or by order made upon a petition of the said Court.‡

* Compare 13 & 14 Vict, c. 69, s. 43.

† Compare 13 & 14 Vict., c. 60, s. 44.

‡ Compare 13 & 14 Vict., c. 60, s. 45.

46. Where any minor or person of unsound mind shall be entitled to any money payable in discharge of any immoveable property, stock, Government securities, or thing in action conveyed or transferred under his Act, it shall be lawful for the person by whom such money is payable to pay the same into the High Court, in trust in any cause then depending concerning such money, or, if there shall be no such cause, to the credit of such minor or person or unsound mind, subject to the order or disposition of the said Court ;

and shall be lawful for the said Court, upon petition in a summary way, to order any money so paid to be invested in Government securities, and to order payment or distribution thereof, or payment of the dividends or interest thereof, as to the said Court shall seem reasonable. †

47. Where, in any suit commenced or to be commenced in the High Court, it shall be made to appear to the Court that diligent search and enquiry have been made, after any person made a defendant, who is only a trustee, to serve him with the process of Court, and that he cannot be found, it shall be lawful for the said Court to hear and determine such cause, and to make such absolute decree therein against every person who shall appear to it to be only a trustee, and not otherwise concerned in interest in the matter in question, in such and the same manner as if such trustee had been duly served with the process of the Court, and had appeared at the hearing of such cause :

Provided always that no such decree shall bind, affect, or in any wise prejudice any person against whom the same shall be made, without service of process upon him as aforesaid, his heirs, executors, or administrators for or in respect of any estate, right, or interest which such person shall have at the time of making such decree for his own use or benefit, or otherwise than as a trustee as aforesaid. §

48. Every order to be made under this Act, which shall have the effect of a conveyance of any immoveable property, or a transfer of any such stock, Government securities, or thing in action as can only be transferred by stamped deed, or for the transfer of which a stamp is necessary, shall be chargeable with the like amount of stamp-duty as it would

† Compare 13 & 14 Vict., c. 60, s. 47.

§ Compare 13 & 14 Vict., c. 60, s. 49.

have been chargeable with if it had been a deed executed, or a transfer made, by the person or persons holding such property or entitled to such stock, Government securities, or thing in action.

Every such order shall be duly stamped for denoting the payment of the said duty.*

49. The High Court may order the costs and expenses of and relating to the petitions, orders, directions, conveyances, and transfers to be made in pursuance of this Act, or any of them, to be paid and raised out of or from the immoveable or moveable property, or the rents or produce thereof, in respect of which the same respectively shall be made, or in such manner as the said Court shall think proper†

Costs may be paid out of estate.

50. Upon any petition being presented under this Act to the High Court concerning a person of unsound mind, it shall be lawful for the said Court to make an order directing an enquiry whether such person is or is not of unsound mind, and incapable of managing himself and his affairs.

Power to order enquiry concerning person of unsound mind.

Such order shall have the same effect as the like order made under section 1 of Act XXXIV. of 1858 (*to regulate proceedings in Lunacy in the Courts of Judicature established by Royal Charter*) and the enquiry directed to be made shall be made in all respects in the manner declared and prescribed for making an enquiry under the last-mentioned Act.

Effect of order.

The High Court may postpone making any order upon the petition presented as aforesaid, until any enquiry so directed to be made shall have been finally concluded. ‡

Postponement of order pending enquiry.

51. Upon any petition under this Act being presented to the High Court it shall be lawful for the said Court to postpone making any order upon such petition, until the right of the petitioner shall have been declared in a suit duly instituted for that purpose.§

Suit may be directed.

52. Every order made or purporting to be made under this Act by the High Court shall be a complete indemnity to all persons whatsoever for act done pursuant thereto ; and it shall not

Indemnity to persons obeying orders under Act.

*Compare 15 & 16 Vict., c. 56, s. 13.

† Compare 13 & 14 Vict. c. 60 s. 51.

‡Compare 13 & 14 Vict, c. 60 s. 52.

§Compare 13 & 14 Vict. c. 60 s. 53.

be necessary for such persons to enquire concerning the propriety of such order, or whether the High Court has jurisdiction to make the same.*

53. Any order made by the High Court under this Act shall have the same effect, and be executed in the same manner as a decree.

Execution and effect of orders,

Short title.

54. This act may be cited as "The Indian Trustee Act 1866."

* Compare 15 & 16 Vict c. 55 s. 7.

ACT XXVIII OF 1866 *

RECEIVED THE G.-G.'s ASSENT ON THE 24TH OCTOBER 1866.

An Act to give Trustees, Mortgagees, and others, in cases to which English Law is applicable, certain powers now commonly inserted in Settlements, Mortgages, and Wills, and to amend the Law of property, and relieve Trustees.

Whereas it is expedient that, in cases to which English law is applicable, certain powers and provisions usually inserted in settlements, mortgages, wills, and other instruments, should be made incident to the estates of the persons interested, so as to dispense with the necessity of inserting the same in terms in every such instrument, and that in such cases trustees should be relieved; it is enacted as follows:—

Preamble.

Interpretation-clause.

1. In the construction of this Act useless there be something repugnant in the subject or context:—

"Immoveable property" shall include land, any benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth:

* Act XXVIII. has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

West Jalpaiguri the western Hills of Darjiling, the Darjiling Tarai, and the Damsion Sub-division of the Darjiling District See Gazette of India... 1881, Pt. 1., p. 74.
The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum ...	Ditto ... 1881, Pt. I., p. 504
The scheduled portion of the Mirzapur District ...	Ditto ... 1879, Pt. I., p. 383
Jaunsar Bawar ...	Ditto ... 1879, Pt. I., p. 382
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan ...	Ditto ... 1886, Pt. I., p. 48
The District of Silhat ...	Ditto ... 1879, Pt. I., p. 331
The rest of Assam (except the North Lushai Hills) ...	Ditto ... 1879, Pt. I., p. 299

It has been extended, under the same Act, to the Scheduled Districts of Kumaon and Garhwal.—See *Gazette of India* 1878, Pt. I., p. 606.

It has been declared under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, 1886, Pt. I., p. 301.

This Act is founded on 22 & 23 Vict., c. 35, and 28 & 24 Vict., c. 145.

"Mortgage" shall be taken to include every instrument by virtue whereof immoveable property is in any manner conveyed, pledged, or charged as security for the repayment of money or money's worth lent, and to be re-conveyed or released on satisfaction of the debt:

"Mortgagor" shall be taken to include every person by whom any such conveyance, pledge, or charge as aforesaid shall be made:

"Mortgagee" shall be taken to include every person to whom or in whose favour any such conveyance, pledge, or charge as aforesaid is made or transferred : and

"High Court" means any Court established or to be established under Statute 24 & 25 Vict., cap. 104, and includes* *the Chief Court of Lower Burma.*†

Powers of trustees for sale, &c., and trustees of renewable Leaseholds.

2. In all cases where, by any will, deed, or other instrument of settlement, it is expressly declared that trustees or other persons therein named or indicated shall have a power of sale, either generally or in any particular event, over any immoveable property named or referred to in, or from time to time subject to the uses or trusts of, such will, deed, or other instrument, it shall be lawful for such trustees or other persons, whether such property be vested in them or not, to exercise such power of sale by selling such property either together or in lots, and either by public auction or private contract, and either at one time or at several times.‡

3. It shall be lawful for the persons making any such sale to insert any such special or other stipulations, either as to title or evidence of title, or otherwise, in any conditions of sale, or contract for sale, as they shall think fit ; and also to buy in the property or any part thereof at any sale by auction, and to rescind or vary any contract for sale, and to resell the property which shall be so bought in, or as to which the contract shall be so rescinded, without being responsible for any loss which may be occasioned thereby,

* Certain words repealed by Act 18 of 1919 have been omitted.

† The words in italics have been inserted by the Lower Burma Courts Act (VI of 1900), Sec. 1.

‡ Compare 23 & 24 Vict., c. 145 s. 1.

and no purchaser under any such sale shall be bound to enquire whether the persons making the same may or may not have in contemplation any particular re-investment of the purchase money in the purchase of any other property or otherwise.*

4. For the purpose of completing any such sale as aforesaid, Trustees exercising power of sale, &c., empowered to convey shall have full power to convey or otherwise dispose of the property in question in such manner as may be necessary.†

5. The money so received upon any such sale as aforesaid shall be laid out in the manner indicated in that behalf in the will, deed, or instrument containing the power of sale ;

and, until the money to be received upon any sale as aforesaid shall be so disposed of, the same shall be invested at interest in Government securities for the benefit of such persons as would be entitled to the benefit of the money, and the interest and profits thereof, in case such money were then actually laid out as aforesaid :

Until so laid out, money to be invested in Government securities.

Provided that, if the will, deed, or instrument shall contain no such indication, the persons empowered to sell as aforesaid shall invest the money so received upon any such sale in their names upon Government securities in India, and the interest of such securities shall be paid and applied to such person or persons for such purposes and in such manner as the rents and profits of the property sold as aforesaid, would have been payable or applicable in case such sale had not been made.‡

Powers of Mortgagees.§

6. Where any principal-money is secured or charged by deed on any immoveable property, or on any interest therein, the person to whom such money shall for the time being be payable, his executors, administrators, and assigns, shall, at any time after the expiration of one year from the time when such principal-money shall have become payable, according to the terms of the deed, or after any interest on such principal-money shall have been in arrear for six months, or after any omission to pay any premium on any insurance which by the terms of the deed ought to be paid by the person entitled to the property subject to the

*Compare 23 & 24 Vict., c. 145, s. 2.

† Compare 23 & 24 Vict., c. 145, s. 3.

‡ Compare 23 & 24 Vict., c. 145, s. 4.

§ As to the application of ss. 6 to 19 to certain English mortgages, see Transfer of Property Act (IV. of 1882), s. 69, as amended by Act (III. of 1885) s. 6.

charge, have the following powers to the same extent (but no more) as if they had been in terms conferred by the person creating the charge, namely:—

1st, a power to sell, or concur with any other person in selling, the whole or any part of the property by public auction or private contract, subject to any reasonable conditions he may think fit to make and to rescind or vary contracts for sale, or buy in and re-sell the property, from time, to time, in like manner:

2nd, a power to appoint or obtain the appointment of a receiver of the rents and profits of the whole or any part of the property in manner hereinafter mentioned.*

7. Receipts for purchase-money given by the person or persons exercising the power of sale hereby conferred shall be sufficient discharges to the purchasers, who shall not be bound to see to the application of such purchase-money.†

8. No such sale as last aforesaid shall be made until after six months' notice in writing given to the person or one of the persons entitled to the property subject to the charge or affixed on some conspicuous part of such property;

but, when a sale has been effected in professed exercise of the powers hereby conferred, the title of the purchaser shall not be impeached on the ground that no case had arisen to authorize the exercise of such power, or that no such notice as aforesaid had been given; but any person damnified by any such unauthorized exercise of such power shall have his remedy in damages against the person or persons selling.‡

9. The money arising by any sale effected as aforesaid shall be applied by the person receiving the same as follows:—

Application of purchase-money.
first, in payment of all the expenses incident to the sale (or incurred in any attempted sale;

secondly, in discharge of all interest and costs then due in respect of the charge in consequence whereof the sale was made, and

thirdly, in discharge of all the principal-moneys then due in respect of such charge;

* Compare 23 & 24 Vict., c. 145, s. 11.

† Compare 23 & 24 Vict., c. 145, s. 12.

‡ Compare 23 & 24 Vict., c. 145, s. 13.

and the residue of such money shall be paid to the person entitled to the property subject to the charge, his executors, administrators, or assigns, as the case may be.*

10. The person exercising the power of sale hereby conferred shall have power by deed to convey or assign
Conveyance to purchaser. to and vest in the purchaser the property sold, for all the estate and interest therein which the person who created the charge had power to dispose of :

Provided that nothing herein contained shall be construed to authorize the mortgagee of a term of years to sell and convey the fee simple of the property comprised therein in cases where the mortgagor could have disposed of such fee simple at the date of the mortgage.†

11. At any time after the power of sale hereby conferred shall have become exerciseable, the person entitled to exercise the same shall be entitled to demand and recover from the person entitled to the property subject to the charge, all the deeds and documents in his possession or power relating to the same property, or to the title thereto, which he would have been entitled to demand and recover if the same property had been conveyed, appointed, or surrendered to and were then vested in him for all the estate and interest which the person creating the charge had power to dispose of ;

and where the legal estate shall be outstanding in a trustee, the person entitled to a charge created by a person equitably entitled, or any purchaser from such person, shall be entitled to call for a conveyance of the legal estate to the same extent as the person creating the charge could have called for such a conveyance if the charge had not been made.‡

12. Any person entitled to appoint or obtain the appointment of a receiver as aforesaid may from time to time, if any person or persons has or have been named in the deed of charge for that purpose, appoint such person or any one of such persons to be receiver, or if no person be so named, then may, by writing delivered to the person or any one of the persons entitled to the property subject to the charge, or affixed on some conspicuous part of the property, require such last-mentioned person or persons to appoint a fit and proper person as receiver, and if no such appointment be made within ten days after such requisition, then may in writing appoint any person he may think fit.§

* Compare 23 & 24 Vict., c. 145, s. 14.

† Compare 23 & 24 Vict., c. 145, s. 15.

‡ Compare 23 & 24 Vict., c. 145, s. 16.

§ Compare 23 & 24 Vict., c. 145, s. 17.

No person shall be ineligible for the office of receiver merely because he is an officer of the High Court.

13. Every receiver appointed as aforesaid shall be deemed to be the agent of the person entitled to the property subject to the charge, who shall be solely responsible for his acts or defaults, unless otherwise provided for in the charge.*

Receiver deemed agent of mortgagor.

14. Every receiver appointed as aforesaid shall have power to demand and recover and give effectual receipts for all the rents, issues, and profits of the property of which he is appointed receiver, by suit, distress, or otherwise, in the name either of the person entitled to the property subject to the charge, or of the person entitled to the money secured by the charge, to the full extent of the estate or interest which the person who created the charge had power to dispose of.†

Powers of receiver.

15. Every receiver appointed as aforesaid may be removed by the like authority, or on the like requisition as before provided with respect to the original appointment of a receiver, and new receivers may be appointed from time to time.‡

Receiver may be removed, and new receivers appointed.

16. Every receiver appointed aforesaid shall be entitled to retain out of any money received by him, in lieu of all costs, charges, and expenses whatsoever, such a commission, not exceeding five *per centum* on the gross amount of all money received, as shall be specified in his appointment, and if no amount shall be so specified, then five *per centum* on such gross amount.§

Receiver to receive commission not exceeding five per cent.

17. Every receiver appointed as aforesaid shall, if so directed in writing by the person entitled to the money secured by the charge, insure and keep insured from loss or damage by fire out of the money received by him the whole or any part of the property included in the charge which is in its nature insurable.||

Receiver to insure if required.

18. Every receiver appointed as aforesaid shall pay and apply all the money received by him in the first place in discharge of Government revenue, and of all taxes, rates, and assessments whatsoever, and in payment of his commission as aforesaid, and of the premiums on

Application of money received by him.

* Compare 23 & 24 Vict., c. 145, s. 18.

† Compare 23 & 24 Vict., c. 145, s. 19.

‡ Compare 23 & 24 Vict., c. 145, s. 20.

§ Compare 23 & 24 Vict., c. 145, s. 21.

|| Compare 23 & 24 Vict., c. 145, s. 22.

the insurances, if any; and in the next place in payment of all the interest accruing due in respect of any principal-money then charged on the property over which he is receiver, or on any part thereof; and, subject as aforesaid, shall pay all the residue of such money to the person for the time being entitled to the property subject to the charge, his executors, administrators, or assigns.*

19. The powers and provisions contained in sections 6 to 18 of this Act, both inclusive, relate only to mortgages or charges made to secure money advanced or to be advanced by way of loan, or to secure an existing or future debt†

This part to relate to charges by way of mortgage only.

Leases.

20. Where any license to do any act which, without such license, would create a forfeiture, or give a right to re-enter, under a condition or power reserved in any lease heretofore granted, or to be hereafter granted, shall, at any time after this Act comes into operation, be given to any lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant made or to be made, or to the actual assignment, under-lease, or other matter thereby specifically authorized to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such license);

Restriction on effect of license to alien.

and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force, and shall be available as against any subsequent breach of covenant or condition, assignment, under-lease, or other matter not specifically authorized or made dispunishable by such license, in the same manner as if no such license had been given; and the condition or right of re-entry shall be and remain in all respects as if such license had not been given, except in respect of the particular matter authorized to be done.‡

21. Where in any lease heretofore granted or to be hereafter granted there is or shall be a power or condition of re-entry on assigning or under-letting, or doing any other specified act without license, and a license at any time after the passing of this Act shall be given to one of several lessees or co-owners to assign or under-let his share or interest, or to do any other act prohibited to be done without license; or shall be given to any lessee or

Restricted operation of partial licenses.

* Compare 23 & 24 Vict., c. 145, s. 23.

† Compare 23 & 24 Vict., c. 145, s. 24.

‡ Compare 23 & 24 Vict., c. 35, s. 1.

owner, or any one of several lessees or owners, to assign or underlet part only of the property, or to do any other such act as aforesaid in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees, or owner or owners, of the other shares or interests in the property, or by the lessee or owner of the rest of the property (as the case may be) over or in respect of such shares or interests or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject for such license.*

22. Where the reversion upon a lease is reserved, and the rent or other reservation is legally apportioned, the assignee of each part of the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, have and be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation, in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.†

Rent-charges.

23. The release from a rent-charge of part of the immoveable property charged therewith shall not extinguish the whole rent-charge, but shall operate only to bar the right to recover any part of the rent-charge out of the property released, without prejudice, nevertheless, to the rights of all persons interested in the property remaining unreleased and not concurring in or confirming the release.‡

Powers.

24. A deed hereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed or by any instrument in writing not testamentary, notwithstanding it shall have been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional or other form of execution or attestation or solemnity :

* Compare 23 & 24 Vict., c. 35, s. 2.

† Compare 22 & 23 Vict., c. 35, s. 3.

‡ Compare 22 & 23 Vict., c. 35, s. 10.

Provided always that this provision shall not operate to defeat any direction in the instrument creating the power, that the consent of any particular person shall be necessary to a valid execution, or that any act shall be performed in order to give validity to any appointment, having no relation to the mode of executing and attesting the instrument :

and nothing herein contained shall prevent the donee of a power from executing it conformably to the power by writing or otherwise than by an instrument executed and attested as an ordinary deed, and to any such execution of a power this provision shall not extend.*

25. Where, by any will which shall come into operation after the passing of this Act, the testator shall have charged his immoveable property, or any specific portion thereof, with the payment of his debts, or with the payment of any legacy or other specific sum of money, and shall have bequeathed the property so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy, or sum of money out of such property, it shall be lawful for the said legatee or legatees in trust, notwithstanding any trusts actually declared by the testator, to raise such debts, legacy, or money as aforesaid by sale and absolute disposition by public auction or private contract, of the said property or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other ;

and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same shall think proper.†

26. The powers conferred by the last preceding section shall extend to all and every person or persons in whom the property bequeathed in trust shall for the time being be vested by survivorship, or under the laws relating to intestate or testamentary succession, or to any person or persons who may be appointed under any power in the will, or by the High Court, to succeed to the trusteeship vested in such legatee or legatees in trust as aforesaid.‡

27. If any testator who shall have created such a charge as is described in section 25 of this Act shall not have bequeathed the property charged as aforesaid in such terms as that is whole estate and interest therein shall become ves-

Legatee in trust may raise money by sale, notwithstanding want of express power in will

Powers given by last section extended to survivors, legatees, &c.

Executors to have power of raising money, &c., where no sufficient bequest.

* Compare 22 & 23 Vict., c. 35, s. 12.

† Compare 22 & 23 Vict., c. 35, s. 14.

‡ Compare 22 & 23 Vict., c. 35, s. 15.

ted in any trustee or trustees, the executor or executors (if any) for the time being named in such will shall have the same or the like power of raising the said moneys as is hereinbefore vested in the legatee or legatees in trust of the said property, and such power shall from time to time devolve on, and become vested in, the person or persons (if any) in whom the executorship shall for the time being be vested.*

28. Purchasers or mortgagees shall not be bound to enquire whether the powers conferred by sections 25, 26, and 27 of this Act, or any of them, shall have been duly and correctly exercised by the person or persons acting in virtue thereof.†

Inheritance.

29. In cases of intestacies occurring before the first day of January 1866, where there shall be a total failure of heirs of the purchaser, or where any immoveable property shall be descendible as if an ancestor had been the purchaser thereof, and there shall be a total failure of the heirs of such ancestor, then and in every such case the property shall descend, and the descent shall thenceforth be traced, from the person last entitled to the property as if he had been the purchaser thereof.‡

This section shall be read as part of Act No. XXX. of 1839§ (for the amendment of the law of inheritance).||

Assignment of Moveables and Terms for years.

30. Any person shall have power to assign moveable property now by law assignable, terms for years of immoveable property, and estates by *elegit*, directly to himself and another person or other persons or corporation, by the like means as he might assign the same to another.¶

Purchasers.

31. The *bona-fide* payment to and the receipt of any person to whom any purchase or mortgage-money shall be payable upon any express or implied trust shall effectually discharge the

* Compare 22 & 23 Vict., 35, s. 16.

† Compare 22 & 23 Vict., c. 35, s. 17.

‡ Compare 22 & 23 Vict., c. 35, s. 19.

§ Repealed, except as to descents before 1866, by Act No. VIII. of 1868.

|| Compare 22 & 23 Vict., c. 35, s. 20.

¶ Compare 22 & 23 Vict., c. 35, s. 21.

person paying the same from seeing to the application, or being answerable for the misapplication thereof.*

Investment of Trust funds.

32. Trustees having trust-money in their hands, which it is their duty to invest at interest, shall be at liberty, at their discretion, to invest the same in any Government securities, and such trustees shall also be at liberty, at their discretion, to call in any trust-funds invested in any other securities than as aforesaid, and to invest the same on any such securities as aforesaid, and also from time to time, at their discretion, to vary any such investments as aforesaid for others of the same nature :

Provided always that no such original investment as aforesaid, and no such change of investment as aforesaid, shall be made where there is a person under no disability entitled in possession to receive the income of the trust-fund for his life, or for a term of years determinable with his life, or for any greater estate, without the consent in writing of such person.†

Trustees and Executors.

33.‡ In all cases where any property is held by trustees in trust for a minor, either absolutely or contingently on his attaining majority, or on the occurrence of any event previously to his attaining majority, it shall be lawful for such trustees, at their sole discretion, to pay to the guardians (if any) of such minor, or otherwise to apply for or towards the maintenance or education of such minor, the whole or any part of the income to which such minor may be entitled in respect of such property whether there be any other fund applicable to the same purpose, or any other person bound by law to provide for such maintenance or education or not ;

and such trustees shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time, in proper securities, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations shall have arisen:

* Compare 22 & 23 Vict., c. 35, s. 23, omitting the limiting clause, "unless the contrary shall be expressly declared by the instrument creating the trust or security."

† Compare 23 & 24 Vict., c. 145, s. 25.

‡ Sections 33 to 37 are repealed in places to which places the Indian Trusts Act (II. of 1882) extends or is extended. See the Indian Trusts Act (II. of 1882), s. 2.

Provided always that it shall be lawful for such trustees at any time, if it shall appear to them expedient, to apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.*

34. Whenever any trustee, either original or substituted, and whether appointed by any High Court or otherwise, shall die, or be six months absent from British India, or desire to be discharged from, or refuse, or become unfit or incapable, to act in the trusts or powers in him reposed, before the same shall have been fully discharged and performed, it shall be lawful for the person or persons, nominated for that purpose by the deed, will, or other instrument creating the trust (if any), or if there be no such person or no such person able and willing to act, then for the surviving or continuing trustees or trustee for the time being, or the acting executors or executor, or administrators or administrator, of the last surviving and continuing trustee, or for the retiring trustees, if they shall all retire simultaneously, or for the last retiring trustee, or where there are two or more classes of trustees of the instrument creating the trust, then for the surviving or continuing trustees or trustee of the class in which any such vacancy or disqualification shall occur (and for this purpose any refusing or retiring trustee shall, if willing to act in the execution of the power, be considered a continuing trustee), by writing to appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying, or being absent from British India, or desiring to be discharged, or refusing or becoming unfit or incapable to act as aforesaid.

So often as any new trustee or trustees shall be so appointed as aforesaid, all the trust-property (if any), which for the time being shall be vested in the surviving or continuing trustees or trustee, or in the heirs, executors, or administrators of any trustee, shall with all convenient speed be conveyed and transferred so that the same may be legally and effectually vested in such new trustee or trustees, either solely or jointly with the surviving or continuing trustees or trustee as the case may require.

Every new trustee to be appointed as aforesaid, as well before as after such conveyance of transfer as aforesaid, and also every trustee appointed by any High Court, either before or after the passing of this Act, shall have the same powers, authorities, and discretions, and shall in all respects act as if he had been originally nominated a trustee by the deed, will, or other instrument (if any) creating trust.†

*Compare 23 & 24 Vict., c. 145, s. 26 † Compare 23 & 24 Vict., c. 145, s. 27.

The Official Trustee may with his consent, and by the order of the High Court, be appointed under this section in any case in which only one trustee is to be appointed, and such trustee is to be the sole trustee.

Appointment of official Trustee to be a trustee.

NOTES.

The Trustees and mortgagees Powers Act—XXVIII of 1866 does not apply to charitable trusts. S. 34 of the Act is repealed wholly; there is no saving or exception in favour of charitable trusts or of trustees of properties dedicate to charity 33, B. 509;

35. The power of appointing new trustees hereinbefore contained may be exercised in cases where a trustee nominated in a will has died in the life-time of the testator.*

Appointment in place of trustee predeceasing testator.

36. The receipts in writing of any trustees or trustee for any money payable to them or him by reason, or in the exercise, of any trusts or power reposed or vested in them or him, shall be sufficient discharges for the money therein expressed to be received, and shall effectually exonerate the persons paying such money from seeing to the application thereof, or from being answerable for any loss or misapplication thereof.†

Trustees' receipts to be discharges.

37. Every deed, will, or other instrument creating a trust, either expressly or by implication, shall without prejudice to the clauses actually contained therein, be deemed to contain a clause in the words or to the effect following, that is to say.

Every trust-instrument deemed to contain clauses for indemnity and reimbursement of trustees.

“that the trustees or trustee for the time being of the said deed, will, or other instrument, shall be respectively chargeable only for such moneys, stocks, funds, and securities as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects, or defaults, and not for those of each other, nor for any banker, broker, or other person with whom any trust-moneys or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor for any other loss, unless the same shall happen through their own wilful default respectively; and also that it shall be lawful for the trustees or trustee for the time being of the said deed, will, or other instrument, to reimburse

* Compare 23 & 24 Vict., c. 145, s. 28.

† Compare 23 & 24 Vict., c. 145, s. 29.

themselves or himself, or pay or discharge out of the trust-premises all expenses incurred in or about the execution of the trust or powers of the said deed, will, or other instrument."*

38. It shall be lawful for any executors to pay any debts or claims upon any evidence that they may think sufficient, and to accept any composition, or any security for any debts due to the deceased, and to allow any time for payment of any such debts as they shall think fit, and also to compromise, compound, or submit to arbitration all debts, accounts, claims, and things whatsoever relating to the estate of the deceased, and for any of the purposes aforesaid to enter into, give, and execute such agreements, instruments of composition, releases, and other things as they shall think expedient, without being responsible for any loss to be occasioned thereby.†

39. [*Trustee, &c., making payment under power-of-attorney, not liable by reason of death of party giving power.*] Repealed by the Powers-of-attorney Act (VII. of 1882), s. 6.

40. Where an executor or administrator liable as such to the rents, covenants, or agreements contained in any lease or agreement for a lease granted or assigned, whether before or after the passing of this Act, to the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said lease, or agreement for a lease, as may have accrued due and been claimed up to the time of the assignment hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised, although the period for laying out the same may not have arrived, and shall have assigned the lease or agreement for a lease to a purchaser thereof, he shall be at liberty to distribute the residuary estate of the deceased to and amongst the parties entitled thereto, respectively, without appropriating any part, or any further part (as the case may be), of the estate of the deceased to meet any future liability under the said lease or agreement for a lease.

The executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said lease or agreement for a lease.

* Compare 22 & 23 Vict., c. 35, s. 31.

† Compare 23 & 24 Vict., c. 145, s. 30.

Nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed.*

41. In like manner, where an executor or administrator is liable as such to the rent, covenants, or agreements contained in any conveyance on chief rent or rent-charge (whether any such rent be by limitation of use, grant, or reservation), or agreement for such conveyance, granted or assigned to or made and entered into with the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said conveyance or agreement for a conveyance, as may have accrued due and been claimed up to the time of the conveyance hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and shall have conveyed such property, or assigned the said agreement for such conveyance as aforesaid, to a purchaser thereof, he shall be at liberty to distribute the residuary estate of the deceased to and amongst the parties entitled thereto, respectively without appropriating any part or any further part (as the case may be) of such estate to meet any future liability under the said conveyance or agreement for a conveyance.

The executor or administrator so distributing the residuary estate shall not, after having made or executed such conveyance or assignment, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said conveyance or agreement for conveyance.

Nothing herein contained shall prejudice the right of the grantor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or among whom the said assets may have been distributed.†

42. Where an executor or administrator shall have given such or the like notices as in the opinion of the Court in which such executor or administrator is sought to be charged would have been given by the High Court in an administration suit, for creditors and others to send into the executor or administrator their claims against the

* Compare 22 & 23 Vict., c. 35, s. 57.

† Compare 22 & 23 Vict., c. 35, s. 28.

estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices, or the last of the said notices, for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets, or a part thereof as the case may be.

Nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.*

43. Any trustee, executor, or administrator shall be at liberty, without the institution of a suit, to apply by petition to any Judge of the High Court for the opinion, advice, or direction of such judge on any question respecting the management or administration of the trust-property or the assets of any testator or intestate.

Trustee, executor, &c., may apply by petition to Judge of High Court, for opinion, advice, &c., in management, &c., of trust property.

Such application shall be served upon, or the hearing thereof shall be attended by, all persons interested in such application, or such of them as the said judge shall think expedient.

The trustee, executor, or administrator acting upon the opinion, advice, or direction given by the said Judge, shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor, or administrator, in the subject-matter of the said application :

Provided, nevertheless, that this Act shall not extend to indemnify any trustee, executor, or administrator, in respect of any act done in accordance with such opinion, advice, or direction as aforesaid, if such trustee, executor, or administrator shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice, or direction ; and the costs of such application as aforesaid shall be in the discretion of the Judge to whom the said application shall be made.†

NOTES

What question can be considered under this Act—Vide 7B-381. see also 12 B. 638 ; 12 Bom. L. B. 1040.

* Compare 22 & 23 Vict., c. 35, s. 29.

† Compare 22 & 23 Vict., c. 35, s. 30.

General Provisions.

44. For the purposes of this Act, a person shall be deemed to be entitled to the possession or to the receipt of the rents and income of immoveable or moveable property, although his estate may be charged or incumbered, either by himself or by any former owner, or otherwise howsoever to any extent, but the estates or interest of the parties entitled to any such charge or incumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents and income as aforesaid, unless they shall concur therein.*

45. The provisions contained in this Act shall, except as hereinbefore otherwise provided, extend only to persons entitled or acting under a deed, will, codicil, or other instrument executed after this Act comes into operation, or under a will or codicil confirmed or revived by a codicil executed after that date,† and only to property in British India and to cases to which English law is applicable.

46. This Act may be called "The Trustees' and Mortgagees' Powers Act, 1866."

* Compare 23 & 24 Vict., c. 145, s. 31. † Compare 23 & 24 Vict., c. 145 s. 34.

ACT I. OF 1867.**Ganges Tolls.**

RECEIVED THE G.-G.'S ASSENT ON THE 18TH JANUARY 1867.

An Act to authorize the levy of tolls for the improvement of the navigation of the Ganges.

WHEREAS it is expedient to authorize the levy of tolls on certain steamers, flats, and boats plying on the river Ganges, to be applied for the improvement of the navigation of the said river between Allahabad and Dinapore ; It is hereby enacted as follows :—

Interpretation-clause.

1. In construing this Act—

“Lieutenant-Governor” shall mean the Lieutenant-Governor of the North-Western Provinces of the Presidency of Fort William ;

“Master” shall include every person (except a pilot) having command or charge of any steamer, flat, or boat ; and

“Magistrate” shall include any person exercising any of the powers of a Magistrate.

2. A toll not exceeding twelve annas per hundred maunds

Toll not exceeding 12 annas per 100 maunds chargeable on vessels ascending or descending Ganges.

shall be payable, at such place or at one of such places subject to the government of the Lieutenant-Governor as he shall from time to time direct, in respect of every steamer, flat, and boat of the burden of two hundred maunds and upwards, which shall pass up or down the Ganges by such place or any one of such places :

Provided that toll shall be levied in the case of steamers only on sixty-five per cent. of the burden, and in the case of flats only on ninety per cent of the burden.

3. The burden of steamers and flats liable to pay tolls under

Rules for measurement of burden.

this Act shall be determined according to the method which may from time to time be practised by the Master Attendant at Calcutta in order to ascertain the amount of port-dues which such steamers and flats would be liable to pay on arriving within the limits of the port of Calcutta.

The following method shall be used for determining in maunds, according to actual floatage or displacement, the burden of boats liable to pay tolls under this Act : (that is to say), half the length in feet at the water-level of the boat shall be multiplied by the greatest width in feet at the water-level, and the product shall further be multiplied by the draft of water in feet, and the number so found shall be taken to be the burden in maunds.

Thereupon the toll shall be calculated according to the even hundreds of maunds, fractions of a hundred being neglected.

4. The funds raised by the tolls payable under this Act shall be applicable, at the discretion of the Lieutenant Governor, to defray the expenses of improving and facilitating the navigation of the Ganges between Allahabad and Dinapore.

Application of funds raised under Act.

5. The Lieutenant-Governor may appoint any person he may think fit to collect the tolls payable under this Act at any place or places under his government, and may from time to time remove any such person and appoint another person in his stead.

Appointment of Collector or of tolls.

6. Sections 2 and 3 of this Act, and a list of the rates of toll and of the place or places of collecting the toll leviable under this Act, shall be at all times exhibited at such place or places in the English and Urdu languages, and shall also be published thrice in the local Gazette.

List of tolls.

7. Every person so appointed shall collect the tolls leviable under this Act by himself, or by any officer in his establishment (if any) whom he shall appoint in this behalf.

Person to collect tolls, and receiver to give voucher for same.

The officer to whom any such toll shall be paid shall grant to the person paying the same a voucher in writing under his hand, describing the name of his office and the place at which such payment shall be made, the name (if any), burden, and other proper description of the steamer, flat, or boat, and the voyage in respect of which such toll shall be paid.

8. If any toll leviable under this Act in respect of any steamer, flat, or boat shall not be paid on demand to the person authorized to collect the same, it shall be lawful for such person to seize such steamer, flat, or boat, and any furniture thereof, and to detain the same; and such person shall, within twenty-four hours of such seizure and detention, report the same to the nearest Collector or Deputy Collector, of the district in which the seizure has been made, or other public officer duly authorized by the Lieutenant Governor in this behalf.

Payment of tolls how enforced.

On receipt of such report, the Collector, Deputy Collector, or other officer as aforesaid, shall publish a notice appointing a day for the sale of the said steamer, flat, or boat, and any furniture thereof.

The sale shall be held at some period not less than fifteen days from the date of the publication of notice of sale.

If the toll and also any expenses occasioned by non-payment be not paid, or sufficient cause for non-payment be not shown, at or before the time of sale to the Collector, Deputy Collector, or other officer as aforesaid, such officer shall sell the steamer, flat, or boat, and furniture seized, or so much thereof as may be necessary to pay the toll, and also any expenses occasioned by non-payment.

So much of the property seized as may not have been sold, and so much of the sale-proceeds as may be in excess of the sum necessary for satisfying the toll and for defraying the expenses occasioned by non-payment, shall be returned to the master of the steamer, flat, or boat.

9. Notwithstanding anything in this Act contained, the person authorized to collect the tolls payable under this Act at any such place as last aforesaid, may, in his own name, sue for and recover, on behalf of the Government of India, the amount of any tolls payable to him under this Act, by suit in any of the Civil Courts against the owner or master of any steamer, flat, or boat liable thereto.

10. Upon the refusal or neglect of any owner or master of any steamer, flat, or boat liable to pay toll under this Act, to satisfy the person authorized to collect such toll as to what is the true burden, as ascertained under section 3 of this Act, of the steamer, flat, or boat, it shall be lawful for such person to cause such steamer, flat, or boat to be measured at the expense of the master thereof, and such expense shall be recoverable in the the same manner as tolls payable under this Act;

or it shall be lawful for such person to deliver to the master or owner of such steamer, flat, or boat, or to leave for him on board such steamer, flat, or boat, a notice in writing, specifying what, in his judgment, is the burden of the steamer, flat, or boat, and the burden specified in such notice shall be deemed to be the real burden of the steamer, flat, or boat, and be treated as such for all the purposes of this Act, until the owner or master of the steamer, flat, or boat shall give sufficient proof of the true burden thereof, as ascertained under section 3 of this Act.

11. The master of any steamer, flat, or boat which shall depart from, or arrive at, any place as last aforesaid, upon, or in the course of, or at the termination of, any voyage, shall, upon demand by any person authorized to collect or receive the tolls under this Act, specify whence he is come and whither he is bound.

If any master of any such steamer, flat, or boat, shall refuse, or neglect so to do, or shall make a false statement as to the place from which he is come or to which he is bound, or shall endeavour to evade the payment of any toll payable under this Act, he shall be punishable by a Magistrate to a fine not exceeding two hundred rupees.

12. If any dispute shall arise respecting the liability of any Magistrate to decide disputes respecting tolls. steamer, flat, or boat to the payment of toll under this Act, or in respect of the burden of any steamer, flat, or boat, or the amount of toll payable, or the amount of any charges on account of any sale under this Act, such dispute shall be heard and determined by a Magistrate, and the decision of such Magistrate shall be final.

13. The Lieutenant-Governor may, from time to time, as he Lieutenant-Governor may alter tolls. may think fit, reduce all or any of the tolls payable under this Act, in respect of all vessels or of any particular class or classes of vessels, and again raise such tolls to any amount not exceeding the amount hereinbefore specified.

He may also prescribe a mode or modes of measurement for burden differing from those prescribed in section 3 of this Act; provided that the tolls payable under such new mode or modes of measurement shall not exceed the amount specified as aforesaid.

14. Whenever, in the opinion of such officer as the Lieutenant-Governor shall appoint in this behalf, the Power to prohibit construction of bandhels. construction of any bandhels or other contrivance for fishing or for any other purpose, in any part of the Ganges between Allahabad and Dinapore, is likely to cause obstruction to the free and safe navigation of such part, he may, by notice in writing, to be served on the owner or person in charge of such bandhel or other contrivance, or, if such owner or other person cannot be found, to be affixed at some conspicuous place in the nearest village, prohibit the construction of such bandhel or other contrivance.

15. Any person who shall wilfully disobey any prohibition under the last preceding section, or shall Penalty for causing obstruction to navigation. wilfully cause or aid in causing any obstruction to the navigation of the Ganges between Allahabad and Dinapore, or who shall wilfully omit to remove such obstruction after being lawfully required so to do, shall be punished, on conviction before a Magistrate, with simple imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both, and shall also be liable to pay such fine as may be sufficient to meet all reasonable expenses incurred in abating or removing such obstruction or in repairing such damage.

16. It shall be lawful for the Lieutenant-Governor from time to time to make rules not repugnant to any law in force, and to repeal, alter, and amend such rules, for the management of the navigation of any part of the Ganges between Allahabad and Dinapore, and for regulating the conduct of persons employed for any of the purposes of this Act; and the Lieutenant-Governor may affix fines as penalties for the infringement of such rules, not exceeding fifty rupees for any one infringement, of five rupees a day for any continuing infringement.

Such rules may contain directions for any of the following amongst other matters:—

(a) for fixing the number and the width of steamers, flats, and boats to be allowed to pass into or out of or through any part of the Ganges between Allahabad and Dinapore at one time or abreast;

(b) for determining the length of time during which steamers, flats, or boats may remain stationary on such part, and the amount of demurrage to be paid by steamers, flats, or boats remaining stationary beyond such time ;

(c) for regulating the mode in which, and the place or places at which, tolls are to be levied under this Act;

(d) for the removal of sunken vessels and obstructions ;

(e) and for the storing and disposal of the cargo of steamers, flats, and boats seized under this Act.*

17. All fines imposed under this Act may be recovered in the manner prescribed by the Code of Criminal Procedure, 1882,† and may be disposed of as the Lieutenant-Governor shall from time to time direct.

*See *North-Western Provinces Gazette*, 15th September 1869, pp. 363, 364.

†The reference to the Code of Criminal Procedure (Act XXV. of 1861) is altered in accordance with the new Code of Criminal Procedure (Act V. of 1898).

ACT III. OF 1867.***The Public Gaming Act, 1867.**

RECEIVED THE G.-G.'S ASSENT ON THE 25 TH JANUARY 1867.

An Act to provide for the punishment of public gambling and the keeping of common gaming houses in the North-Western Provinces of the Presidency of Fort William, and in the Punjab, Oudh, the Central Provinces, and Lower Burma.

WHEREAS it is expedient to make provision for the punishment of public gambling and the keeping of common gaming-houses in the territories † respectively subject to the governments of the Lieutenant-Governor of the North-Western Provinces of the Presidency of Fort William "and" ‡ of the Lieutenant-Governor of the Punjab, and to the administrations of the Chief Commissioner of Oudh, of the Chief Commissioner of the Central Provinces, and of the Chief Commissioner of Lower Burma; † It is hereby enacted as follows:—

Interpretation-clause

1. In this Act—

Lieutenant-Governor"

Lieutenant-Governor" means the Lieutenant-Governor of the said North-Western Provinces, or the Punjab, as the case may be :

Chief Commissioner."

"Chief Commissioner" means the Chief Commissioner of Oudh, the Central Provinces, or Lower Burma, † as the case may be :

["Gaming" includes wagering or betting, except wagering or betting upon a horse-race, when such wagering or betting takes place.

(a) on the day on which such race is run, and

(b) in an enclosure which the stewards controlling such race have with the sanction of the Local Government, set apart for the purpose, but does not include a lottery ;

* Act III. of 1867 has been declared in force in certain Railway lands by Act XIV. of 1874 and in British Baluchistan by Reg. 1 of 1890.

The short title has been given by the Repealing and Amending Act (V. of 1897).

† The territories are now known as Lower Burma.—See Burma Laws Act (XIII. of 1898), s. 7.

The Chief Commissioner is styled Lieutenant-Governor of Burma.—See Proclamation, dated the 9th April 1897, *Gazette of India*, pt. 1., p. 261.

‡ The word "and" has been inserted by Act XII. of 1891.

'Instrument of gaming' includes any article used as a means or appurtenances of, or for the purpose of carrying on or facilitating, gaming ;

"Common gaming house " means any house, room, hut, vessel, or any place whatsoever, in which any instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, room, tent, enclosure, space, vehicle, vessel or place whether by way of charge for the use of such house, room, tent, enclosure, space, vehicle, vessel, place or instrument or otherwise howsoever.]*

"Common gaming-house " means any house, walled enclosure, room, or place in which cards, dice, tables, "Common gaming-house." or other instruments of gaming, are kept or used for the profit or gain of the person owning, occupying, using, or keeping such house, enclosure, room, or place, whether by way of charge for the use of the instruments of gaming, or of the house, enclosure, room, or place. or otherwise howsoever.†

NOTES.

Gambling is not punishable unless it is carried on in public places, 3 N. W. P. 134 ; 14 P. B. 1896 Cr.

Profit or gain.—When the occupier of a house derives his profit from the game it is common gaming-house, 27A 567.

Lottery tickets are instruments of gaming—12 W. R. Cr. 34.

2. Sections 13 and 17‡ of this Act shall extend to the whole of the said territories ; and it shall be competent to the Lieutenant-Governor or the Chief Commissioner, as the case may be, whenever he may think fit, to extend, by a notification to be published in three successive numbers of the official Gazette, all or any of the remaining sections of this Act to any city, town, suburb, railway-station-house, and place being not more than three miles distant from any part of such station-house within the territories subject to his Government or Administration, and in such notification to define, for the purposes of this Act, the limits of such city, town, suburb, or station-house, and from time to time to alter the limits so defined.

* The words within brackets have been substituted by U. P. Act I of 1917 for the original definition of 'common gaming house.'

† Certain words after this repealed by Act 17 of 1917 have been omitted.

‡ The words and figures, "sections 13 and 17," have been substituted for the words and figures, "sections 13, 17, and 18," as s 18 has already been repealed, —See Act XII. of 1901,

[Sections 13 and 17 of this Act shall extend to the whole of the said territories ; and it shall be competent to the Lieutenant-Governor, whenever he may think fit, to extend by notification to be published in the official Gazette, all or any of the remaining sections of this Act to any area within the United Provinces.] *

From the date of any such extension, so much of any rule having the force of law which shall be in operation in the territories to which such extension shall have been made, as shall be inconsistent with or repugnant to any section so extended, shall cease to have effect in such territories.

NOTES.

Vide 12 P. R. 1866 cr. ; 23 P. R. 1887 cr. ; 3 P. R. 1885 cr. ; 12 Cr. L. J. 107.

3. Whoever, being the owner or occupier, or having the use, Penalty for owning or of any house, walled enclosure, room, or keeping, or having charge place situate within the limits to which this of, gaming-house. Act applies, opens, keeps, or uses the same as a common gaming-house ; and

whoever, being the owner or occupier of any such house, walled enclosure, room, or place as aforesaid, knowingly or wilfully permits the same to be opened, occupied, used, or kept by any other person as a common gaming-house ; and

whoever has the care or management of or in any manner assists in conducting, the business of any house, walled enclosure, room, or place as aforesaid, opened, occupied, used, or kept for the purpose aforesaid ; and

whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, walled enclosure, room, or place,

shall be liable to a fine not exceeding two hundred rupees, or to imprisonment of either description, as defined in the Indian Penal Code, for any term not exceeding three months.

NOTES.

Alterations in United Provinces.

In the United Provinces read "house, room, tent, walled enclosure, space, vehicle, vessel, or place" for the words "walled enclosure, room, or place" in sections 3, 4, 5, 6 and 10, vide a. 3 of U P Act 1 of 1917.

Profit—To support a conviction the owner must derive profit. 19 P R 1871 cr; 16 A. L. J 780.

* The words within brackets have been substituted by U P Act V of 1919 for paragraph (1) of section 2.

In order to support a conviction there must be evidence that instruments of gaming were kept or used—L. B. R. (1872—1892), 532.

Separate convictions for keeping a common gaming house and gambling in it himself is illegal. L. B. R. (1893—1900) 459.

4. Whoever is found in any such house, walled enclosure, room, or place playing or gaming with cards, dice, counters, money, or other instruments of gaming, or is found there present for the purpose of gaming, whether playing for any money, wager, stake, or otherwise, shall be liable to a fine not exceeding one hundred rupees, or to imprisonment of either description, as defined in the Indian Penal Code, for any term not exceeding one month ;

and any person found in any common gaming-house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.

NOTES.

Alterations in U. P.—As regards alterations in U. P. vide notes under section 3.

Conditions of convictions—(1) The house must be a common gaming-house, (2) that cards dice and other instruments of gaming were kept or used for the profit or gain of the person owning, occupying, using or keeping the house (S. C. 203 Oudh ; 46 P. R. 1867 Cr. ; 6 C. L. R. 17 ; 2 N. W. P. 289.

Misjoinder of charges—Persons separately charged under ss. 3 and 4 cannot be tried together, 5 P. W. R. 1910 Cr.=5 Ind. Cas. 720. But see 14 Cr. L. J. 293.

Sentence of fine and imprisonment—cannot both be imposed upon an accused convicted under ss. 3 and 4—L. B. R. (1872—1892) 434. For first offence under s. 4 fine is more appropriate form of punishment L. B. R. (1872—1892) 428. Presumption as regards whether any house is a gambling house or not—vide 35 A. 1 ; 29 P. R. 1881.

Found—A person seen actually in a gaming house is found in the house, 22 P. R. 1895 Cr. when not found conviction is illegal, Cr. Dig. 63 of 1876 ; 35 P. R. 1894 Cr.

Limit of sentence—is rigorous imprisonment for two months or fine of Rs. 200. A. W. N. 1881, 129 ; A man cannot be sentenced to more than one week's imprisonment in default of fine (L. B. R. 1893—1900) 385.

5. If the Magistrate of a district,* or other officer invested with the full powers of a Magistrate,† or the District Superintendent of Police, upon credible information, and after such inquiry

Power to enter and authorize police to enter and search.

* For power of Local Government to authorize Magistrates of the second class to exercise the powers conferred by s. 5 on the Magistrate of the district, see Act XVI of 1894, s. 5.

† Now the District Magistrate or a Magistrate of the first class—See Act V of 1898, s. 3 The Code was extended to British Baluchistan under ss. 5 and 5 (a) of the Scheduled Districts Act (XIV of 1874).—See *Gazette of India*, 1898, Pt. II, p. 721.

as he may think necessary, has reason to believe that any house, walled enclosure, room, or place, is used as a common gaming-house,

he may either himself enter, or by his warrant authorize any officer of police, not below such rank as the Lieutenant-Governor or Chief Commissioner shall appoint in this behalf, to enter, with such assistance as may be found necessary, by night or by day, and by force, if necessary, any such house, walled enclosure, room, or place ;

and may either himself take into custody, or authorize such officer to take into custody, all persons whom he or such officer finds therein, whether or not then actually gaming ;

and may seize, or authorize such officer to seize, all instruments of gaming, and all moneys and securities for money, and articles of value, reasonably suspected to have been used ; or intended to be used, for the purpose of gaming, which are found therein ;

and may search, or authorize such officer to search, all parts of the house, walled enclosure, room, or place, which he or such officer shall have so entered when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody ;

and may seize, or authorize such officer to seize, and take possession of, all instruments of gaming found upon such search.*

NOTES.

A magistrate has no jurisdiction to leave execution of warrant to discretion of police, L. B. R. (1872—1892) 86.

Credible information what is—vide 7 P. R. 1882, Cr. (F. B.) But police report is not 9 P. R. 1876 Cr. ; 28 A. 210.

Illegal warrant what is—vide 11½ P. R. 1895 Cr. ; 8 Ind. Cas 137, but see 34 A. 597 ; 17 P. R. 1897 Cr.

A search warrant can be issued only on credible information—19 P. R. 1871 Cr. ; 9 P. R. 1876 Cr. ; 2 N. W. P. 476.

Endorsement—A search warrant may be endorsed by a police officer, to whom it was originally directed, to another who is not of a rank below that authorized under the Act to enter and search, 30 A. 60, but see 22 P. R. 1895 Cr.

Conviction of owner—even in the absence of legal warrant is valid. 22 P. R. 1895 Cr. See also L. B. R. (1893—1900) 321.

Is used as a common gaming-house—Actual user is necessary, 19 A. L. 691.

* For Legislation alterations in U. P.—vide notes under section 9.

6. When any cards, dice, gaming-tables, cloths, boards, or other instruments of gaming, are found in any house, walled enclosure, room, or place, entered or searched under the provisions of the last preceding section or about the person of any of those who are found therein, it shall be evidence until the contrary is made to appear, that such house, walled enclosure, room, or place, is used as a common gaming-house, and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Magistrate or police-officer, or any of his assistants.

Finding cards, &c., in suspected houses to be evidence that such houses are common gaming houses.

NOTES.

Alterations by Legislature—As regards alterations in the United Provinces. Vide Notes under Section 3.

Scope—It is only when the house is searched under the provisions of S. 5 that the presumption allowed by S. 6 arises. L. B. R., (1872—1892). 53 ; 548.

Evidence—The word "evidence" in this section means proof. A. W. N. 1884, 286.

Presumptions—Only arise when search is made under section 5 and a conviction cannot be sustained merely on the strength of such presumptions, in a case where the search was not duly made—6 N. L. R. 168, see also, A. W. N. 1882, 132; L. B. R. (1872—1892) 407 ; 19 A. L. J. 691. But the fact of a certain house being a gaming house can be proved aliunde.—I. A. L. J. 116 Neither a conviction is vitiated if it had not caused any failure of justice and if the presumption ordinarily raised under S. 114 of the Evidence Act by the evidence as to search and the other evidence in the case support the conviction. A. W. N. 1884, 291.

Instruments of gaming—Cowries are not ordinarily instruments of gaming—18 A. 23—A. W. N. 1895, 139 ; 6 C. P. L. R. Cr. 17 ; 3 P. R. 1896 Cr, but if they are used in a particular case as instruments of gaming, they are instruments of gaming. 19 A 311.

7. If any person found in any common gaming-house entered by any Magistrate or officer of police under the provisions of this Act, upon being arrested by any such officer, or upon being brought before any Magistrate, on being required by such officer or Magistrate to give his name and address, shall refuse or neglect to give the same, or shall give any false name or address, he may, upon conviction before the same or any other Magistrate, be adjudged to pay any penalty not exceeding five hundred rupees, together with such costs as to such Magistrate shall appear reasonable, and on the non-payment of such penalty and costs, or, in the first instance, if to such Magistrate it shall seem fit, may be imprisoned for any period not exceeding one month.

Penalty on persons arrested for giving false names and addresses.

8. On conviction of any person for keeping or using any such common gaming-house, or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed, and may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and converted into money, and the proceeds thereof with all moneys seized therein to be forfeited; or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

NOTES.

- Forfeiture of property can be ordered in cases where there is a conviction and is restricted to property belonging to convicted persons—5 P. R. 1898 Cr. Forfeiture of money found on the persons of the gambler is illegal.—19 A. L. J. 765.

9. It shall not be necessary, in order to convict any person of keeping a common gaming-house, or being concerned in the management of any common gaming-house, to prove that any person found playing at any game was playing for any money, wager, or stake.

Proof of playing for stake unnecessary.

10. It shall be lawful for the Magistrate before whom any persons shall be brought, who have been found in any house, walled enclosure, room, or place, entered, under the provisions of this Act, to require any such persons to be examined on oath or solemn affirmation, and give evidence touching any unlawful gaming in such house, walled enclosure, room, or place, or touching any act done for the purpose of preventing, obstructing, or delaying the entry into such house, walled enclosure, room, or place or any part thereof, of any Magistrate, or officer authorized as aforesaid.

Magistrate may require any person apprehended to be sworn and give evidence.

No person so required to be examined as a witness shall be excused from being so examined when brought before such Magistrate as aforesaid, or from being so examined at any subsequent time by or before the same or any other Magistrate, or by or before any Court on any proceeding or trial in any ways relating to such unlawful gaming or any such acts as aforesaid, or from answering any question put to him touching the matters aforesaid, on the ground that his evidence will tend to criminate himself.

Any such person so required to be examined as a witness, who refuses to make oath or take affirmation accordingly, or to answer any such question as aforesaid, shall be subject to be dealt with in all respects as any person committing the offence described

in section 178 or section 179 (as the case may be) of the Indian Penal Code.

NOTES.

LEGISLATIVE ALTERATIONS—For legislative alterations of this section in the United Provinces, vide notes under section 3.

WHEN CANNOT BE EXAMINED—When the entry into the house is not under the provisions of this Act one of the co-accused could not be examined as a witness—1 A. L. J. 115.

11. Any person who shall have been concerned in gaming contrary to this Act, and who shall be examined as a witness before a Magistrate on the trial of any person for a breach of any of the provisions of this Act relating to gaming, and who, upon such examination, shall, in the opinion of the Magistrate, make true and faithful discovery, to the best of his knowledge, of all things as to which he shall be so examined, shall thereupon receive from the said Magistrate a certificate in writing to that effect, and shall be freed from all prosecutions under this Act for anything done before that time in respect of such gaming.

Witnesses indemnified.

NOTES.

An approver can be acquitted if the condition is satisfied. 20 O. C. 4.

12. Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill, wherever played.

Act not to apply to certain games.

NOTES.

Repealed in U. P.—Section 12 of the Public Gambling Act has been repealed in U. P. by the U. P. Act 1 of 1917.

Gaming and setting birds and animals to fight in public places.

13. A police-officer may apprehend without warrant—

any person found [playing for money or other valuable thing with cards, dice, counters, or other instruments of gaming, used in playing any game not being a game of mere skill,] in any public street, place, or thoroughfare, situated within the limits aforesaid, or

any person setting any birds or animals to fight in any public street, place, or thoroughfare, situated within the limits aforesaid or

any person there present aiding and abetting such public fighting of birds and animals.

Such person, when apprehended, shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding fifty rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month ;

and such police-officer may seize all instruments of gaming found in such public place, or on the person of those whom he shall so arrest, and the Magistrate may, on conviction of the offender, order such instruments to be forthwith destroyed.

Destruction of instruments of gaming found in public places.

found in such public place, or on the person of those whom he shall so arrest, and the Magistrate may, on conviction of the offender,

NOTES.

Legislative alterations in U. P.—For the words within brackets the word "gaming" has been substituted in the united Provinces. (Vide U. P. Act I of 1917. S. 5)

Public place.—Signifies a place where the public resort as a matter of fact whether or not with the permission of a private owner. 19 Cr. L. J. 917. A canal bank where the public do not frequent is not a public place. 3 Lah. L. J. 53. As regards what places are public places Vide. A. W. N. 1881 p. 8 ; A. W. N. 1887. 75 ; A. W. N. 1881, 17 ; 19 P. R. 1882 Cr. 13 P. R. 1882 Cr. ; S. C. 91, Oudh ; A. W. N. 1895, 127 ; 1 A. L. J. 129 ; A. W. N. 1904, 92 ; 11 P. R. 1880 Cr. ; 19 P. R. 1905 Cr. ; L. B. R. (1872—1892) 317 ; 21 Ind. Cas. 910.

Holding a bullock race and betting thereon is not an offence under this section L. B. R (1872—1892) 541.

Apprehended—A proceeding against a person not apprehended by the police is not illegal—L. B. R. (1893—1900) 251.

Confiscation—A magistrate is not competent to order the forfeiture of the money found on the spot—18 P. R. 1891 Cr. ; S. C. 63 (Oudh) ; 26 A. 270 ; 40 A. 517.

Fine or imprisonment—Double punishment of fine and imprisonment is illegal. 25 P. R. 1880 Cr.

Game of chance—A game which consists of throwing a ring over a pin is a game of chance and not a game of skill—8 A. L. J. 1262.

Exception of games of mere skill. **13A.*** Nothing in this Act shall apply to any game of mere skill wherever played.

NOTE.

Vide 8 A. L. J. 1262.

14. Offences punishable under this Act shall be triable by any Magistrate having jurisdiction in the place where the offence is committed.

Offences by whom triable. But such Magistrate shall be restrained within the limits of his jurisdiction under the Code of Criminal Procedure,† as to the amount of fine or imprisonment he may inflict.

NOTE.

Vide—2 Ind. Jur. N. S. 340.

* This section is in force in U. P. and has been added by s. 6 of the U. P. Act I of 1917.

† See Act V. of 1898, ss. 32, 34, and 446. This Act was extended to British Baluchistan under ss 5 and 5 (a) of the Scheduled District Act. (XIV. of 1874).—See *Gazette of India*, 1898, Pt. II., p. 721.

15. Whoever, having been convicted of an offence punishable under section 3 or section 4 of this Act, shall again be guilty of any offence punishable under either of such sections, shall be subject for every such subsequent offence to double the amount of punishment to which he would have been liable for the first commission of an offence of the same description :

Provided that he shall not be liable in any case to a fine exceeding six hundred rupees, or to imprisonment for a term exceeding one year.

16. The Magistrate trying the case may direct any portion of any fine which shall be levied under sections 3 and 4 of this Act, or any part of the moneys or proceeds of articles seized and ordered to be forfeited under this Act, to be paid to an informer.

17. All fines imposed under this Act may be recovered in the manner prescribed by sections 386, 387, and 389 of the Code of Criminal Procedure,* and such fines shall (subject to the provisions contained in the last preceding section) be applied as the Lieutenant-Government or Chief Commissioner, as the case may be, shall from time to time direct.

* See now Act V. of 1898.

ACT XVI. OF 1867.

The Acting Judges Act, 1867.*

RECEIVED THE G.—G.'S ASSENT ON THE 1ST MARCH 1867.*

An Act to authorize the making of acting appointment to certain Judicial offices.

WHEREAS the Governor-General of India in Council or the Local Government, as the case may be, is empowered to appoint by divers enactments to appoint the Judges of certain Courts in British India: And whereas it has been doubted whether he or it is empowered to appoint persons to act temporarily as such Judges, and it is expedient to remove such doubts; it is hereby enacted as follows:—

1. In every case in which the Governor-General of India in Council, or the Local Government, as the case may be, has power under any Act or Regulation to appoint a Judge of any Court in British India, such power shall be taken to include the power to appoint any person capable of being appointed a permanent Judge of such Court, to act as Judge of the same Court for such time as the Governor-General of India in Council or the Local Government, as the case may be, shall direct.

Every person so appointed to act temporarily as a Judge of any such Court shall have the powers, and perform the duties which he would have had and been liable to perform in case he had been duly appointed a permanent Judge of the same Court.

2. Every such Act and Regulation shall be construed as if it contained a special clause to the purport or effect of the first section of this Act.

*This title has been given by the Indian Short Titles Act (XIV. of 1897). Act XVI. of 1867 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:— The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dalbhum, and the Kolhan in the District of Singbhum—See *Gazette of India*, 1881, Pt. I., p. 504.

ACT XIX OF 1867.

The Darjeeling (High Court's Jurisdiction) Act, 1867*

RECEIVED THE G.—G.'S ASSENT ON THE 8TH MARCH 1867.

An Act to make further provision for the administration of justice in the District of Darjeeling.

WHEREAS it is expedient to make further provision for the administration of justice in the District of Darjeeling; It is hereby enacted as follows:—

[1. *Repeal of Act X. of 1863.*] *Repealed by Act XVI. of 1874.*

2. The High Court of Judicature for the Bengal Division of the Presidency of Fort William shall have and exercise, with regard to the District of Darjeeling, all such jurisdiction and powers as it has and exercises with regard to any other territory.†

* This short title was given by Act I of 1903.

† I. e. Outside the local limits of its ordinary original civil jurisdiction.

ACT XXII OF 1867.*

RECEIVED THE G-G'S ASSENT ON THE 15TH MARCH 1867.

An Act for the regulation of Public Sarais and Puraos.

WHEREAS it is expedient to provide for the regulation of public Sarais and Puraos; It is hereby enacted as follows:—

Preamble.

1. [*Repeal of Bengal Regulation XIV of 1807, section 11, clause 5.*] Repealed by Act XII of 1891.

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

Interpretation-clause.

“Sarai” means any building used for the shelter and accommodation of travellers, and includes, in any case in which only part of a building is used as a sarai, the part so used of such building:

It also includes a puraο so far as the provisions of this Act are applicable thereto:

“Keeper of a sarai” includes the owner, and any person having or acting in the care or management thereof:

“Magistrate of the District” † means the chief officer charged with the executive administration of a district in criminal matters, whatever may be his designation: ‡

3. Within six months after this Act shall come into operation, the Magistrate of the District in which any sarai to which this Act shall apply may be situate shall, and from time to time thereafter such Magistrate may, give to the keeper of every such sarai notice in writing of this Act, by leaving such notice for the keeper at the sarai; and shall by such notice require the keeper to register the sarai as by this Act provided.

Notice of Act to be given to keepers of sarais.

* Act XXII of 1867 has been declared, under the Scheduled Districts Act (XIV of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum

... See *Gazette of India*, 1881, Pt. I, p. 504.

The North-Western Provinces Tarai Ditto 1876, Pt. I, p. 505.

It has been declared to be in force throughout British India, except as regards the Scheduled Districts by Act (XV of 1874), s. 3; in the Santhal Parganas by Reg. (III of 1872), s. 3, as amended by Reg. (III of 1899), s. 3; and in Upper Burma (except the Shan States) by Act (XIII of 1898), s. 4.

See also note to s. 17.

† This reference should now be read as “District Magistrate”; see Criminal Procedure Code (Act V of 1898), s. 3.

‡ Here certain words repealed by Act 10 of 1914 have been omitted.

Form of notice.

Such notice may be in the form in the schedule to this Act annexed or to the like effect.

4. The Magistrate of the District shall keep a register in which shall be entered by such Magistrate, or such other person as he shall appoint in this behalf, the names and residences of the keepers of all sarais within his jurisdiction, and the situation of every such sarai.

Registers of sarais to be kept.

No charge shall be made for making any such entry.

5. After one month after the giving of such notice to registrar as by this Act provided, the keeper of any sarai or any other person shall not receive any lodger, or allow any person, cattle, sheep, elephant, camel, or other animal, or any vehicle, to halt or be placed in such sarai until the same, and the name and residence of the keeper thereof, shall have been registered as by this Act provided.

Lodgers, &c., not to be received in sarais until registered.

6. The Magistrate of the District may, if he shall think fit, refuse to register, as the keeper of the sarai a person who does not produce a certificate of character in such form, and signed by such persons, as the Local Government shall from time to time direct.

Magistrate may refuse to register keeper not producing certificate of character.

Duties of keepers of sarais. **7.** The keeper of a sarai shall be bound—

(1) when any person in such sarai is ill of any infectious or contagious disease, or dies of such disease, to give immediate notice thereof to the nearest police-station.

(2) at all times, when required by any Magistrate or any other person duly authorized by the Magistrate of the District in this behalf, to give him free access to the sarai, and allow him to inspect the same or any part thereof.

(3) to thoroughly cleanse the rooms and verandahs and drains of the sarai, and the wells, tanks, or other sources from which water is obtained for the persons, or animals using it, to the satisfaction of, and so often as shall be required by, the Magistrate of the District, or such person as he shall appoint in this behalf :

(4) to remove all noxious vegetation on or near the sarai, and all trees and branches of trees capable of affording to thieves means of entering or leaving the sarai :

(5) to keep the gates, walls, fences, roofs, and drains of the sarai in repair :

(6) to provide such number of watchmen as may, in the opinion of the Magistrate of the District, subject to such rules as the Local Government may prescribe in this behalf, be necessary for the safety and protection of persons and animals or vehicles lodging in, halting at, or placed in, the sarai : and

(7) to exhibit a list of charges for the use of the sarai at such place and in such form and languages as the Magistrate of the District shall from time to time direct.

8. The keeper of a sarai shall, from time to time, if required so to do by an order of the Magistrate of the District served upon him, report, either orally or in writing, as may be directed by the Magistrate, to such Magistrate, or to such person as the Magistrate shall appoint, every person who resorted to such sarai during the preceding day or night.

If written reports are required for any space of time exceeding a single day or night, schedules shall be furnished by the Magistrate of the District to the keeper.

The keeper shall from time to time fill up the said schedules with the information so required, and transmit them to the said Magistrate, in such manner, and at such intervals as may from time to time be ordered by him.

9. If any sarai, by reason of abandonment or of disputed ownership, shall remain untenanted, and thereby become a resort of idle and disorderly persons, or become in a filthy or unwholesome state, or be complained of by any two or more of the neighbours as a nuisance, the Magistrate of the District, after due enquiry, may cause notice in writing to be given to the owner, or to the person, claiming to be the owner, if he be known and resident within the district, and may also cause such notice to be put on some conspicuous part of the sarai requiring the persons concerned therein, whoever they may be, to secure, enclose, clean, or clear the same :

and, if such requisition shall not be complied with within eight days, the Magistrate of the District may cause the necessary work to be executed, and all expenses thereby incurred shall be paid by the owner of the sarai, and shall be recoverable like penalties under this Act, or, in case of abandonment or disputed ownership of the sarai, by the sale of any material found therein,

10. If a sarai, or any part thereof, be deemed by the Magistrate of the District to be in a ruinous state or likely to fall, or in any way dangerous to the persons or animals lodging in, or halting at, the sarai, he shall give notice in writing to the keeper of the sarai, requiring him forthwith to take down, repair, or secure (as the case may be) the sarai, or such part thereof, as the case may require.

If the keeper do not begin to take down, repair, or secure the sarai, or such part as aforesaid, within three days after such notice, and complete such work with due diligence, the Magistrate shall cause all or so much of the sarai as he shall think necessary to be taken down, repaired, or otherwise secured.

All the expenses so incurred by the Magistrate shall be paid by the keeper of the sarai, and shall be recoverable from him as hereinafter mentioned.

11. If any such sarai, or any part thereof, be taken down by virtue of the powers aforesaid, the Magistrate of the District may sell the materials thereof or so much of the same as shall be taken down under the provisions of the last preceding section, and apply the proceeds of such sale in payment of the expenses incurred, and shall restore the overplus (if any) arising from such sale to the owner of such sarai on demand, and may recover the deficiency (if any) as if the amount thereof were a penalty under this Act.

12. Whoever, being the keeper of any sarai, suffers the same to be in a filthy and unwholesome state or overgrown with vegetation, or, after the expiration of two days from the time of his receiving notice in writing from the Magistrate of the District to cleanse or clear the same, or after he shall have been convicted of suffering the same to be in such state or so overgrown as aforesaid, shall allow the same to continue in such state, or so overgrown, shall be liable to the penalties provided in section 14 of this Act :

Provided that the Magistrate of the District may, in lieu of enforcing such daily penalty, enter on, and cleanse or clear, the said sarai, and the expense incurred by the Magistrate in respect thereof shall be paid to him by the keeper, and shall be recoverable as by this Act provided in the case of penalties.

13. The Local Government may from time to time make regulations for the better attainment of the objects of this Act, provided that such rules be not inconsistent with this Act, or with

any other law for the time being in force, and may from time to time, repeal, alter, and add to, the same.

14. All regulations made under this Act, and all repeals thereof, and alterations and additions there-
Regulations to be published. shall be published in the local official Gazette.

14. If the keeper of a sarai offend against any of the provisions of this Act, or any of the regulations made in pursuance of this Act, he shall, for every such offence, be liable, on conviction before any Magistrate, to a penalty not exceeding twenty rupees, and to a further penalty, not exceeding one rupee a day, during which the offence continues :
Penalty for infringing Act or regulations.

Provided always that this Act shall not exempt any person from any penalty or other liability to which he may be subject irrespective of this Act.
Saving of penalties incurred otherwise.

All penalties imposed under this Act any be recovered in the same manner as fines may be recovered under sections 386, 387, and 389 of the Code of Criminal Procedure.*
Recovery of penalties.

15. Where a keeper of sarai is convicted of a third offence under this Act, he shall not afterwards act as keeper of a sarai without the license in writing of the Magistrate of the District, who may either withhold such license, or great the same on such terms and conditions as he may think fit.
Effect of conviction for third offence.

16. No part of this Act, except section 8, shall apply to any sarai which may be under the direct management of the Local Government, or of any municipal committee.
Section 8 only to apply to certain sarais.

17. This Act shall, in the first instance, extend only to the territories under the Government of the Lieutenant-Governor of the North-West Provinces of the Presidency of Fort William in Bengal.
Extent of Act.

But it shall be lawful for the Local Government, by notification in the local Gazette, to extend this Act. † *mutatis mutandis* to any other part of the territories which are or may be ves-
Power to Local Government to extend Act.

* See Act V. of 1898.

† It has been extended to oudh.—See Notification No. 591, dated 25th July 1883. *North Western Provinces and Oudh Gazette*, 28th July, 1883, Pt. 1., P. 433.

It has also been extended to the Punjab.—See Notification No. 4499, dated 13th December 1879 ; see *Punjab Gazette*, 18th December 1879, Pt. I. P. 727.

ted in Her Majesty or Her successors by the Statute 21 & 22 Vict., cap. 106 (*an Act for the better government of India*), except the towns of Calcutta, Madras, and Bombay.*

Short title.

18. This Act may be called "The Sarais Act, 1867."

SCHEDULE.

FORM OF NOTICE.

Take notice that on the day of 1867, an Act, called "The Sarais Act, 1867," was passed, and that before the day of 18 you, being the keeper of a sarai [*or purao*] within [*here state the district over which the jurisdiction of the Magistrate giving the notice extends*], must have your sarai [*or purao*] registered, and that the register is to be kept at [*here state where the register is to be kept*], and that, if you do not have your sarai [*or purao*] so registered, you will be liable to a penalty not exceeding twenty rupees, and to a further penalty, not exceeding one rupee a day, for every day, during which the offence continues, and that, on your applying to [*here give the name and address of the person to keep the register*], he will register your sarai [*or purao*] free of all charge to you.

Dated the day of 18

* Here the words, "and the settlement of Prince of Wales's Island, Singapore, and Malacca, have been repealed by Act XII. of 1891,

ACT XXIII OF 1867.***The Punjab Murderous Outrages Act 1867.†**

RECEIVED THE G-G'S ASSENT ON THE 18TH MARCH 1867.

An Act for the Suppression of Murderous Outrages in certain Districts of the Punjab.

WHEREAS in certain districts of the Punjab, fanatics have frequently murdered or attempted to murder servants of the Queen and other persons :
 Preamble.
 And whereas the general law of the country is not adequate to suppress such offences ; It is hereby enacted as follows :—

1. It shall be lawful for the Lieutenant-Governor of the Punjab, with the previous consent of the Governor-General of India in Council, by a proclamation published in the official Gazettee, from time to time to declare any part or parts of the territories under his Government to be subject to the operation of all or any of the provisions of this Act, and also, by such proclamation and with such consent as aforesaid, from time to time to withdraw from the operation of such provisions any part or parts of the said territories which he may previously have declared to be subject thereto, and in like manner, as occasion shall require, to subject the same part or parts again to the operation of the same provisions or of any of them.

2. Any fanatic who shall murder, or who shall, within the meaning of the Indian Penal Code, section 307, attempt to murder, any servant of the Queen or other person, shall, on conviction thereof, be punished either with death or with transportation for life, and all his property, shall be forfeited to Government.

3. [*Offences under the Act to be offences under Penal Code.*]
Repealed by Act XVI. of 1874.

4. Whenever any fanatic shall be killed in the act of committing any such offence as aforesaid, or being wounded and taken prisoner in the act of committing any such offence as aforesaid, shall afterwards die of his wounds, it shall

* Act XXIII. of 1867 has been repealed in British Baluchistan and the N. W. Frontier Province by Reg 4 of 1901. Reference to British Baluchistan and the Chief Commissioner, respectively. See British Baluchistan Regulation (I. of 1890), s. 4 (1).

† This short title has been added by Act 1 of 1903.

be competent to the Sessions Judge or Commissioner* who under the provisions hereinafter contained, would have had cognizance of the offence if the offender could have been brought to trial, to proceed to hold an inquest into the circumstances of the death of the offender, and on proof of his having been killed as aforesaid, or of his having died of wounds received as aforesaid, to adjudge that the whole of his property shall be forfeited to Government, and to dispose of his body as such Sessions Judge or Commissioner* shall think fit.

5. Subject to the provision contained in section 14 of this Act, any offence triable under this Act shall be tried by the Sessions Judge or Commissioner* of the Division in which it has been committed ; and in respect of all such offences, the Sessions Judge or Commissioner* shall follow the procedure prescribed for a Magistrate by section 149, Chapter XVII., and the provisions applicable to warrant-cases of the Code of Criminal Procedure :†

Provided that, if he shall be of opinion that any witness or evidence is offered for the purpose of vexation or delay, or of defeating the ends of justice, he may require the accused person to satisfy him that there are reasonable grounds for believing that such witness or evidence is material, and if the Sessions Judge or Commissioner* be not so satisfied, he shall not be bound to summon the witness or examine the evidence so offered.

6. Trials under this Act before the Sessions Judge or Commissioner* shall be conducted with the aid of two or more assessors as members of the Court.

The Sessions Judge or Commissioner* may appoint such persons (other than persons specified in section 405‡ of the Code of Criminal Procedure) at such time and in such manner as he may think fit to serve as assessors, and no person shall be exempt, within the meaning of section 406‡ of the same Code, from serving as such assessors.

The provisions of the Code of Criminal Procedure shall, save as aforesaid, apply to assessors appointed under this section.

7. When any trial under this Act is concluded, if the accused person be convicted, it shall be sufficient if the Court, in passing judgment, and in

* For the word "Commissioner" wherever it occurred, the words "Sessions Judge or Commissioner" have been substituted by Act IX. of 1877, s. 2.

† See now s. 204 and Ch. XXI. of Act V. of 1898.

‡ See now Act V. of 1898, ss. 278 and 320.

recording the finding and sentence, shall specify the offence of which he is convicted, and the Court shall immediately issue a warrant to the officer in charge of the jail in which the prisoner is confined to cause the sentence to be carried into execution, and such sentence shall be carried into execution accordingly.

No sentence of death passed under this Act shall require confirmation by any Court.

8. When any person shall be sentenced to death under this Act, his body shall be disposed of as the Sessions Judge or Commissioner by whom he was so sentenced shall direct.

Disposal of bodies of criminals sentenced to death.

9. The proceedings in every trial held under this Act shall be reported to the Lieutenant-Governor,* without unnecessary delay, by the officer before whom such trial shall have been held.

Proceedings to be reported to Lieutenant-Governor.

10. Notwithstanding anything contained in the Code of Criminal Procedure,† “for in any other enactment for the time being in force,”‡ no appeal shall lie from any order or sentence under this Act.

No appeal from orders or sentences under Act.

11. If any Sessions Judge or Commissioner in whom jurisdiction is vested by this Act shall be of opinion that the accused person has committed an offence punishable under the Indian Penal Code, but that such offence is not contemplated by the preamble to this Act, the offender shall be dealt with in manner provided in such case by the Code of Criminal Procedure.†

Procedure when Sessions Judge or Commissioner thinks offender's crime not contemplated by Act

12. The said Lieutenant-Governor shall have, with respect to the confinement of any person charged with or suspected of an intention to commit any offence punishable under this Act, the powers which are vested in the Governor-General of India by any law regarding the confinement of persons charged with or suspected of State-offences ;§ and the provisions of any such law shall, *mutatis mutandis*, be applicable to all cases in which the Lieutenant-Governor shall proceed under the authority of this section.

Lieutenant Governor's powers as to confinement of persons under Act.

* In British Baluchistan the reference “Lieutenant-Governor” should be read as “Chief Commissioner.”—See British Baluchistan Law Regulation (I. of 1890), s. 4 (1).

† See Act V. of 1898.

‡ The words quoted have been substituted for the original by Act XII. of 1891, Sch. II.

§ See Regulation 111 of 1818.

13. Any person having the full powers of Magistrate may cause any person against whom there are in his judgment grounds of proceeding under the last preceding section, to be apprehended ; and, after such enquiry as he may think necessary, may detain such person in safe custody until he shall have received the orders of the said Lieutenant-Governor, to whom, in all such cases he shall report his proceedings without unnecessary delay.

14. The jurisdiction conferred by this Act on a Sessions Judge or Commissioner may be exercised, in the case of any offence punishable under this Act, by any person having the full powers of a Magistrate whom the Sessions Judge or Commissioner to whom he may be subordinate, or the said Lieutenant-Governor, shall, after the commission of such offence, specially invest with such jurisdiction.

15. It shall be lawful for the said Lieutenant-Governor, either on his own motion or at the request of the Chief Court of the Punjab, from time to time withdraw any class of cases from the operation of this Act.

16. With the previous consent of the said Lieutenant-governor but not otherwise, the said Chief Court may, from time to time, make and issue circular orders for the guidance of officers in cases under this Act; provided that such orders are consistent with the provisions herein contained.

All such order shall be published in the official Gazette, and shall be obeyed by the officers aforesaid.*

17. [*Repealed by Act XII. of 1891, Sch. I.*]

* Not in force in British Baluchistan.

ACT XXV OF 1867.

The Press and Registration of Books Act, 1867.*

RECEIVED THE G.-G.'S ASSENT ON THE 22ND MARCH 1867.

An Act for the regulation of Printing-Presses and newspapers, for the preservation of copies of books printed in British India ; and for the registration of such books.

Preamble. WHEREAS it is expedient to provide for the regulation of printing-presses and of periodicals containing news, for the preservation of

* This title has been given by the Indian Short Titles Act. (XIV. of 1897)
Act XXV. of 1867 has been declared to be in force in the whole of British-India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, in force in Upper Burma (except the Shan States by Act XIII. of 1808), s. 4; in the Santhal Parganas by Reg. (III. of 1872), s. 3. as amended by Reg. (III. of 1899), s. 3.

It is included in the Schedule to the Santhal Parganas Laws Regulation, III. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See <i>Gazette of India</i> ...	1860, Pt. I., p. 672.
Aden	Ditto	... 1879, Pt. I., p. 434.
Territory of Peint	Ditto	... 1887, Pt. I., p. 145.
West Jalpáiguri, the Western Dvairs (that is, the country lying between the Tista and Sunkos rivers in the Jalpáiguri District), the Western Hills of Dárjiling, (that is, the hills west of the Tista river in the District of Darjiling) the Dárjiling Tarái, and the Domeson Sub-division of the Dárjiling District	Ditto	... 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum	Ditto	... 1881, Pt. I., p. 504.
Kumáon and Garhwál	Ditto	... 1876, Pt. I., p. 605.
The scheduled portion of the Mirzapur District	Ditto	... 1879, Pt. I., p. 383.
Jansar Bawar	Ditto	... 1879, Pt. I., p. 382.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismil Khan, Dera Ghazi Khan	Ditto	... 1886, Pt. I., p. 48.
The District of Silhat	Ditto	... 1879, Pt. I., p. 631.
The District of Kamrup. Naugong. Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Dvairs) and Kachar (excluding the North Kachar Hills	Ditto	... 1878, Pt. I., p. 533.
The Island of Perim	Ditto	... 1887, Pt. I., p. 5.

copies* of every book printed or lithographed in British India, and for the registration of such books; It is hereby enacted as follows;—

NOTES.

Translation—Copyright is not infringed by translation, 14 B. 596; 19 B. 567.

PART I.

PRELIMINARY.

Interpretation clause. **1.** In this Act, unless there shall be something repugnant in the subject or context,—

“Book” includes every volume, part or division of a volume and pamphlet, in any language, and every sheet of music, map, chart, or plan separately printed or lithographed:

“British India” means the territories which are or shall be vested in Her Majesty or Her successors by the Statute 21 and 22 Vict., cap. 106 (*an Act for the better government of India*):†

“Magistrate” means any person exercising the full powers of a Magistrate, and includes a Magistrate of Police: ‡

§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 includes a Chief Commissioner.

2, [*Repeal of Act XI of 1835.*] *Repealed by Act XIV of 1870.*

The Garo Hills, the Khasi and Jaintia Hills the Naga Hills, the North Cachar Hills in the Cachar District, and the Eastern Dvdrs in the Goalparah District ... Dirto ... 1897 Pt. 1., p. 299.

It has been extended under the same Act, to the North-Western Provinces Tarai.—See *Gazette of India*, Sep. 23, 1876, Pt. I., p. 506.

It has been declared, under the same Act, not to be in force in the District of Lahaul.—See *Gazette of India*, May 1, 1886, Pt. I, p. 301.

* In the preamble, the word “three,” which had been originally inserted before the word “copies,” has been omitted, having been repealed by Act X. of 1890, s. 1.

† Here the words, “other than the settlement of Prince of Wales’s Island, Singapore, and Malacca,” have been omitted, having been repealed by Act XII. of 1891.

‡ In s. 1. in the definition of the word “Magistrate,” the words “and a Justice of the Peace” which had originally been inserted after the word “Police,” has been omitted, having been repealed by Act X. of 1890, s. 2.

§ Certain words before this, repealed by Act 10 of 1914 have been omitted.

PART II.

OF PRINTING-PRESSES AND NEWSPAPERS.

3. Every book or paper printed within British India shall have printed legibly on it the name of the printer and the place of printing, and (if the book or paper be published) "the name"* of the publisher, and the place of publication.

NOTES

OBJECT—The intention of the section is to inform the public who the responsible printer or publisher was and to convey that information on the face of the paper—16 M. 443.

PRINTER—includes printer of a portion. 14 Bom. L.R. 40.

PUBLISHER—is a man who causes a book to be printed and offers it to the public for sale. A. W. N. 1887, 95; but does not include a vendor of a news paper or book. 23 C. 414.

4. No person shall, within British India, keep in his possession any press for the printing of books or papers, who shall not have made and subscribed the following declaration before the Magistrate within whose local jurisdiction such press may be:—

"I, *A B*, declare that I have a press for printing at——." And this last blank shall be filled up with a true and precise description of the place where such press may be situate.

NOTES.

CHANGE OF PLACE does not require a new declaration on the part of the printer. 9 P. R 1889 Cr.

A declaration made under this section is intended by the legislature to have a certain effect, namely, that of fastening responsibility or the conduct of the press on the person declaring in respect of matters where public interests are involved. 18 Bom. C. R 675.

5. No printed prodical work, containing public news or comments on public news, shall be published in British India, except in conformity with the rules hereinafter laid down?—

(1) The printer and the publisher of every such periodical work shall appear before the Magistrate within whose local jurisdiction such work shall be published and shall make and subscribe, in duplicate, the following declaration :—

* The word quoted has been inserted by Act XII. of 1891.

"I, *A B*, declare that I am the printer [*or publisher, or printer and publisher*] of the periodical work entitled—and printed [*or published, or printed and published, as the case may be*] at——." And the last blank in this form of declaration shall be filled up with a true and precise account of the premises where the printing or publication is conducted :

(2) As often as the place of printing or publication is changed, a new declaration shall be necessary :

(3) As often as the printer or the publisher who shall have made such declaration as is aforesaid shall leave British India, a new declaration from a printer or publisher resident within the said territories shall be necessary.

NOTES.

Prima facie evidence—Such declaration is a *Prima facie* evidence of publication and to throw on the accused the burden of showing that the actual publisher was not the person mentioned in the declaration. 9 M 387 = 1 W cir 578.

6. Each of the two originals of every declaration so made and subscribed as is aforesaid shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made.

One of the said originals shall be deposited among the records of the office of the Magistrate, and the other shall be deposited among the records of the High Court of Judicature or "other principal Civil Court of original jurisdiction for the place where"* the said declaration shall have been made.

The officer in charge of each original shall allow any person to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said declaration attested by the seal of the Court which has the custody of the original, on payment of a fee of two rupees.

7. In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, that the said person

* In s. 6, the words quoted have been substituted for the words "other Court within the local limits of, whose ordinary original civil jurisdiction."—See Act X. of 1890, s. 3.

was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every periodical work whereof the title shall correspond with the title of the periodical work mentioned in the declaration.

NOTES.

Liability—Person giving declaration must be presumed to know of all he was printing and publishing. 35 C. 141 ; 35 C. 948 ; 1 P 1905 Cr. But if he makes out his *bonafides* of his absence from the place he may be excused 38 C. 227 See also 32 M 338 ; 1 P. R 1905 Cr.

8. Provided always that any person who may have subscribed any such declaration as aforesaid, and who may subsequently cease to be the printer or publisher of the periodical work mentioned in such declaration, may appear before any Magistrate, and make and subscribe in duplicate the following declaration :—

New declaration by persons who have signed declaration, and subsequently ceased to be printers or publishers.

“I, *A B*, declare that I have ceased to be the printer [*or* publisher, *or* printer and publisher] of the periodical work entitled——”

Each original of the latter declaration shall be authenticated by the signature and seal of the Magistrate before whom the said latter declaration shall have been made, and one original of the said latter declaration shall be filed along with each original of the former declaration.

The officer in charge of each original of the latter declaration shall allow any person applying to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said latter declaration attested by the seal of the Court having custody of the original on payment of a fee of two rupees.

Inspection and supply of copies.

In all trials in which a copy, attested as is aforesaid, of the former declaration shall have been put in evidence, it shall be lawful to put in evidence a copy, attested as is aforesaid, of the latter declaration, and the former declaration shall not be taken to be evidence that the declarant was, at any period subsequent to the date of the latter declaration, printer or publisher of the periodical work therein mentioned.

Putting copy in evidence.

PART III.

DELIVERY OF BOOKS.

9. Printed or lithographed copies of the whole of every book which shall be printed or lithographed in British India after this Act shall come into force, together with all maps, prints, or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same, shall, notwithstanding any agreement (if the book be published) between the printer and publisher thereof, be delivered by the printer at such place and to such officer as the Local Government shall, by notification in the official Gazette, from time to time direct, and free of expense to the Government as follows, that is to say :—

Copies of books printed after commencement of Act to be delivered gratis to Government,

- (a) in any case, within one calendar month after the day on which any such book shall first be delivered out of the press, one such copy, and
- (b) if within one calendar year from such day the Local Government shall require the printer to deliver other such copies not exceeding two in number, then within one calendar month after the day on which any such requisition shall be made by the Local Government on the printer, another such copy, or two other such copies as the Local Government may direct,

the copies so delivered being bound, sewed, or stitched together and upon the best paper on which any copies of the book shall be printed or lithographed.

The publisher or other person employing the printer shall, at a reasonable time before the expiration of the said month, supply him with all maps, prints, and engravings finished and coloured as aforesaid, which may be necessary to enable him to comply with the requirements aforesaid.

Nothing in the former part of this section shall apply to—

- (i) any second or subsequent edition of a book in which edition no additions or alterations either in the letter-press or in the maps, prints, or other engravings belonging to the book have been made, and a copy of the first or some preceding edition of which book has been delivered under this Act, or.
- (ii) any periodical work published in conformity with the rules laid down in section 5 of this Act.

* Part III has been substituted by Act X. of 1890, s. 4.

Receipt for copies delivered under last foregoing section.

10. The officer to whom a copy of a book is delivered under the last foregoing section shall give to the printer a receipt in writing therefor.

11. The copy delivered pursuant to clause (a) of the first paragraph of section 9 of this Act shall be disposed of as the Local Government shall from time to time determine.

Disposal of copies delivered under section 9.

any copy or copies delivered pursuant to clause (b) of the said paragraph shall be transmitted to the British Museum or the Secretary of State for India, or to the British Museum and the said Secretary of State as the case may be.

PART IV.

PENALTIES.

12. Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 of this Act shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

Penalty for printing contrary to rule in section 3.

NOTE.

Omission to comply with section 3 is punishable under s. 12—5 P. R. 1909 Cr.

13. Whoever shall keep in his possession any such press as aforesaid without making such a declaration as is required by section 4 of this Act shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

Penalty for keeping press without making declaration required by section 4.

14. Any person who shall, in making any declaration under the authority of this Act, make a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, and imprisonment for a term not exceeding two years.

Punishment for making false statement.

15. Whoever shall print or publish any such periodical work as is hereinbefore described without conforming to the rules hereinbefore laid down, or who ever shall print or publish, or shall cause to be printed or published, any such periodical work, knowing that the said rules have not been observed with respect to that work, shall, on conviction before a Magistrate, be punished with fine not exceeding five thousand rupees, or imprisonment for a term not exceeding two years, or both.

Penalty for printing or publishing periodicals without conforming to rules.

NOTES.

The Local Government is empowered to annul declarations made under this Act and any acting against such order is punishable under this section—5 Vide L. C 7 and 8 of Act—7 of 1908.

16.* If any printer of any such book as is referred to in section 9 of this Act shall neglect to deliver copies of the same pursuant to that section, he shall, for every such default, forfeit to the Government such sum, not exceeding fifty rupees, as a Magistrate having jurisdiction in the place where the book was printed may, on the application of the officer to whom the copies should have been delivered, or of any person authorized by that officer in this behalf, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the magistrate may determine to be the value of the copies which the printer ought to have delivered.

Penalty for not delivering books or not supplying printer with maps.

If any publisher or other person employing any such printer shall neglect to supply him, in the manner prescribed in the second paragraph of section 9 of this Act, with the maps, prints, or engravings which may be necessary to enable him to comply with the provisions of that section, such publisher or other person shall, for every such default, forfeit to the government such sum, not exceeding fifty rupees, as such a Magistrate as aforesaid may, on such an application as aforesaid, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the maps, prints, or engravings which such publisher or other person ought to have supplied.

17* Any sum forfeited to the Government under the last foregoing section may be recovered under the warrant of the Magistrate determining the sum, or of his successor in office in the manner authorized by the Code of Criminal Procedure for the time being in force, and within the period prescribed by the Indian Penal Code for the levy of a fine.

Recovery of forfeitures and disposal thereof and of fines.

* Ss. 16 and 17 have been substituted by Act X. of 1890, s. 5.

All fines or forfeitures under this Part of this Act shall, when recovered, be disposed of as the local Government shall from time to time direct.

PART V.

REGISTRATION OF BOOKS.

18. There shall be kept at such office, and by such officer as
Registration of memo- as the local Government shall appoint in this
randa of books. behalf, a book to be called a Catalogue of
 Books printed in British India, wherein shall
 be registreted a memorandum of every book which shall have been
 delivered "pursuant to clause (a) of the first paragraph of section
 9" of this Act.*

Contents of memorand- Such memorandum shall (so far as may be
um. practiceable) contain the following parti-
 culars that is to say:—

(1) the title of the book and the contents of the title page, with a translation into English of such title and contents, when the same are not in the English language:

(2) the language in which the book is written:

(3) the name of the author, translator, or editor of the book, or any part thereof:

(4) the subject:

(5) the place of printing, and the place of publication:

(6) the name or firm of the printer, and the name or firm of the publisher:

(7) the date of issue from the press or of the publication:

(8) the number of sheets, leaves, or pages:

(9) the size:

(10) the first, second, or other number of the edition:

(11) the number of copies of which the edition consists:

(12) whether the book is printed or lithographed:

(13) the price at which the book is sold to the public: and

(14) the name and residence of the proprietor of the copyright or of any portion of such cypyright.

* In s. 18. the words, letter, and figure quoted have been substituted for the words and figure "pursuant to section 9."—See Act X. of 1890, s. 6.

Such memorandum shall be made and registered in the case of each book as soon as practicable after the delivery of the "copy thereof pursuant to clause (a) of the first paragraph of section 9."*

Registration of memorandum.

Every registration under this section shall, upon payment of the sum of two rupees to the officer keeping the said catalogue,† be deemed to be an entry in the book of registry kept under Act No. XX, of 1847 (for the encouragement of learning in the territories subject to the Government of the East India Company, by defining, and providing for the enforcement of the right called Copyright therein); and the provisions contained in that Act as to the said book of registry shall apply *mutatis mutandis* to the said catalogue.

Effect of registration.

Act XX. of 1847 applied.

19. The memoranda registered during each quarter in the said catalogue shall be published in the local Gazette as soon as may be after the end of such quarter, and a copy of the memoranda so published shall be sent to the said "Government of India"‡

Publication of memoranda registered.

Sending copies.

PART VI.

MISCELLANEOUS.

20. The Local Government shall have power to make such rules as may be necessary or desirable for carrying out the object of this Act, and from time to time to repeal, alter, and add to such rules.§

Power to make rules.

* In s. 18, the words, letter and figure quoted have been substituted for the words "copies thereof in manner aforesaid"—See Act X of 1890 s. 6.

† All such books as become the property of Government for educational purposes are exempted from this payment—Home Department No. 4822 dated 21st October 1869 *Gazette of India* Oct 23, 1869 p. 400.

‡ The words written quotations have been substituted by Act 10 of 1914.

§ Rules have been made under this section by the—
Madras Govt see *Fort Saint George Gazette*, dated 27th September 1867 p. 749.

Bombay Govt., see *Bombay Govt. Gazette*, dated 6th February 1868, p. 93.

, ditto ditto dated 20th July 1871, p. 783.

Bengal Govt., see *Calcutta Gazette*, dated 3rd July 1867, p. 1137.

N. W. P. Govt., see *Govt. Gazette, N. W. P.* dated 15th May 1867, pp. 327—29.

Punjab Govt., see *Govt. Gazette, Punjab*, dated 20th June 1867, p. 531.

Chief Commr., Oudh, see *Govt. Gazette, Oudh*, dated 26th July 1873, p. 8.

„ Central Provs., see *Central Provs. Gazette*, dated 13th July 1867, Supp.

British Burma, see *British Burma Gazette*, dated 9th October 1875, Pt II., pp. 180, 190.

Publication. All such rules, and all repeals and alterations thereof, and additions thereto, shall be published in the local Gazette.

Power to exclude any class of books from operation of Act. **21.** The "Local Government"* may, by notification in the "Local Gazette" exclude any class of books "or papers"† from the operation of the whole or any part or parts of this Act.‡

* The words "or papers" have been added by Act—11 of 1915.

† The words within quotations have been substituted by Act 38 of 1920.

‡ By virtue of the power vested in the Governor-General in Council by s. 21 of Act XXV. of 1867, entitled 'An Act for the regulation of Printing-presses and Newspapers, for the preservation of copies of books printed in British India, and for the registration of such books,' His Excellency in Council is pleased to declare that the following publications are exempted from the provisions of the said Act:—

- 1.—[Cancelled. Home department, No. 3276, dated 16th August 1872, *Gazette of India*, 17th August 1872, Part I, p. 777.]
- 2.—Acts of the Legislative Councils without notes or commentaries.
- 3.—Price-lists and tradesmen's circulars.
- 4.—Catalogues of books and other articles, auctioneers' notices, and advertisements.
- 5.—Play-bills, comprising advertisements of theatrical and musical entertainments.
- 6.—Decision of Courts of law without notes or commentaries.
- 7.—Petitions and appeals addressed to constituted authority under the provisions of law.
- 8.—Testimonials of private individuals or public officers.
- 9.—Annual reports of schools, banks, societies, and firms.
- 10.—Almanacs and calendars.
- 11.—Labels affixed to articles of commerce"—Home Department, No. 5604, dated 21st December 1871, *Gazette of India*, 23rd December, 1871, p. 979.

ACT XXXII OF 1867.

The Chief Commissioner's Powers Act, 1867.

RECEIVED THE G.-G.'s ASSENT ON THE 18TH JULY 1867.

An Act to enable the Governor-General of India in Council to delegate to a Chief Commissioner any power conferred on a Local Government by an Act of the Governor-General of India in Council.

WEREAS it is expedient to enable the Governor-General of India in Council to delegate to the "Chief Commissioner"* of the Central Provinces,† any power conferred on the Governor-General in Council as the Local Government of the territories under the administration of such Commissioner by any Act of the said Governor-General in Council; It is hereby enacted as follows:—

1.† It shall be lawful for the Governor-General of India in Council empowered to delegate to Chief Commissioners certain power. by a notification published in the *Gazette of India*, to delegate to the Chief Commissioner of the Central Provinces,† all or any of the powers heretofore or hereafter conferred by any Act of the Governor General of India in Council on the Governor-General of India in Council as the Local Government of the territories under the administration of such Chief Commissioner; and all acts done by the Chief Commissioner, to whom any such power shall have been delegated as aforesaid, in exercise of the same power, shall be as valid as if they had been done by the said Governor-General in Council.

Short title.

2. This Act may be called "The Chief Commissioners' Powers Act."

* The words within quotations have been substituted by Act 10 of 1914.

† In the preamble the words "and British Burma" and in section 1 "or British Burma" are repealed by Act (I of 1903) sch III part II.

‡ Under s. 1 the following powers have been delegated to the chief Commissioner of Burma:—

(a) the powers of the Governor-General in Council under Act XXX. of 1852 (for the naturalization of Aliens).—*Gazette of India*, 1874, p. 351.

(b) the powers of the Local Government under Act I. of 1859 (for the amendment of the law relating to merchant Seamen)—*Gazette of India*, 1873, p. 236.

(c) the powers of the Local Government under Act V. of (1861 for the regulation of Police), except s. 4.—*Gazette of India*, 1868, P. 358.

Note.—In Acts of the Governor-General in Council passed after Jan. 2, 1868, the expression "Local Government" includes a "Chief Commissioner."—See Act X. of 1897, s. 2 (29). All powers conferred or duties imposed upon the Chief Commissioner of British Burma by or under any enactment shall be deemed to be conferred or imposed by the Lieutenant-Governor of Burma.—See Act (XIII. of 1898), s. 15.

ACT V OF 1868.

RECEIVED THE G.-G.'S ASSENT ON THE 13TH MARCH 1868.

*An Act to enable the Governor of Bombay in Council to delegate to the Commissioner in Sindh certain of the powers of a Local Government.**

1. It shall be lawful for the Governor of Bombay in Council, by a notification published in the *Bombay Government Gazette*, to delegate to the Commissioner in Sindh all or any of the powers conferred on the said Governor in Council, as the Local Government of the Province of Sindh, by any of the Bombay Regulations or by any Act of the Governor-General of India in council solely applicable to the Presidency of Bombay, or by any Act passed heretofore or hereafter by the Governor of Bombay in council, or by any of the Acts of the Governor-General of India in Council mentioned in the schedule to this Act.

2. It shall be lawful for the Governor of Bombay in Council,† to delegate to the Commissioner in Sindh all or any of the powers heretofore or hereafter conferred by any Act of the Governor-General of India in Council on the Governor of Bombay in Council as the Local Government of the Province of Sindh.

3. All acts done by the Commissioner in Sindh under the authority of any power so delegated shall be as valid as if they had been done by the Governor of Bombay in Council.

SCHEDULE.‡

Act XXXVI. of 1850 (to enable improvements to be made in towns.

"The Foreign Jurisdiction and Extradition Act, 1879" §

Act XXV. of 1861 for (simplifying the procedure of the Courts of criminal Judicature not established by Royal Charter).

Act VI. of 1863 (to consolidate and amend the laws relating to the administration of the Department of Sea-customs in India).

"The Indian Forest Act, 1878." §

* See Bombay Act (III of 1901). s. 3 (3).

† Here certain words repealed by Act—38 of 1920 have been omitted.

‡ The Schedule, so far as it relates to Act XXVI. of 1850, has been repealed by Act XII. of 1891, Sch. I.

§ The words quoted have been substituted by Act XII. of 1891. Sch. II.

ACT XXIV OF 1868.*

RECEIVED THE G.-G.'S ASSENT ON THE 1ST OCTOBER 1868.

An Act to prohibit the practice of inoculation in Kumaon and Garhwal.

WHEREAS it is expedient to prohibit the practice of inoculation with the small-pox in the districts of Kumaon and Garhwal; It is hereby enacted as follows:—

1. Whoever produces or attempts to produce in any person by inoculation with variolous matter, or by willful exposure to variolous matter, or to anything impregnated therewith, or who wilfully, by any other means, produces the disease of small-pox in any person, shall be liable, on conviction before a Magistrate, to imprisonment for a term not exceeding three months, or to fine not exceeding two hundred rupees, or to both.

2. If any person having been inoculated with the small-pox in a place to which this Act does not extend, shall afterwards enter any place to which this Act extends, before the date of forty days from the date of such inoculation, or without a certificate from a qualified medical officer that such person is no longer likely to cause contagion, such person shall be liable, on conviction, before a Magistrate, to imprisonment for a period not exceeding three months, or to a fine not exceeding two hundred rupees, or to both.

3. Whenever an offender is sentenced to pay a fine under this Act, the convicting Magistrate may award any portion not exceeding one-half of such fine to the person on whose information the offender has been convicted.

4. This Act extends only to the district of Kumaon and Garhwal.

* Act XXI.V. of 1868 has been extended to the Tarai Paraganas by notification under the Scheduled Districts Act (XIV. of 1874).

† Sic, read expiry.

ACT I OF 1869.

The Oudh Estates Act, .

RECEIVED THE G.-G.'S ASSENT ON THE 12TH JANUARY 1869.

An Act to define the Rights of Taluqdars and Others in certain Estates in Oudh, and to regulate the Succession thereto.

WHEREAS after the re-occupation of Oudh by the British Government in the year 1858, the proprietary right in divers estates in that province was, under certain conditions, conferred by the British Government upon certain taluqdars and others; and whereas doubts may arise as to the nature of the rights of the said taluqdars and others in such estates, and as to the course of succession thereto; and whereas it is expedient to prevent such doubts, and to regulate such course, and to provide for such other matters connected therewith as are hereinafter mentioned; It is hereby enacted as follows :—

Preamble.

I.—Preliminary.

Short title.
Extent of Act.

1. This Act may be cited as "The Oudh Estates Act, 1869," and shall extend only to the estates hereinafter referred to.

Interpretation-clause.

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

"Transfer," with its grammatical variations and cognate expressions, means to make an alienation '*inter vivos*,' whether before or after the commencement of this Act;*"

Transfer.

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

"Codicil" means an instrument made in relation to a will, and explaining, altering, or adding to its dispositions; it is considered as forming an additional part of the will:

Sign.

"Sign," with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include 'mark' with its grammatical variations and cognate expressions ;"*

* The words within quotations have been substituted by U. P. Act III of 1910.

“Attest”, with its grammatical variations when used with reference to any instrument other than a will, means to sign such instrument as a witness in the presence of the executant after having seen the executant sign the same or after having received from the executant a personal acknowledgment of his signature to the same ;

Attest.

“Provided that, where attestation by more than one witness is required, in shall not be necessary that more than one of such witnesses should be present at the same time :

“Provided also that no particular form of attestation shall be required.”*

“Registered”† means registered according to the provisions of the rules relating to the registration of assurances for the time being in force in Oudh :

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

“Talukdar” means any person whose name is entered in the first of the lists mentioned in section 8 :

“Grantee” means any person whose name is entered in the fifth or sixth of the lists mentioned in section 8 ;”*

Grantee.

“Estate means——

(a) the *Taluqua* or immoveable property acquired or held by a talukdar or grantee in the manner mentioned in section 3, section 4 or section 5 and (b) the other immoveable property situated in the united provinces in which a talukdar or grantee or his heir or legatee or a transferee referred to in section 14 has a separate, permanent, heritable and transferable right, and in respect of which he has made a declaration in accordance with the provisions of section 32 A.

Estate.

“Heir” means a person who has inherited or inherits otherwise than as a widow or a mother, an estate whether before or after the commencement of this Act”*

Heir

“Legatee” means a person to whom there has been or is bequeathed an estate whether before or after the commencement of this Act.*

Legatee.

* This definition has been added by s 2 of U. P. Act No 3 of 1910.

† For a new definition of the word “registered,” See Act X of 1885, s. 1.

Emplation—The words 'heir' and legatee' used with reference to a *taluqdar* or grantee or a person whose name has been inserted in the list referred to in section 31A, subsection (3), are not restricted to the immediate heirs and legatee of such *taluqdar*, grantee or person"*

Words expressing relationship denote only legitimate relatives, but apply to children in the womb who are afterwards born alive.

II.—Rights and Liabilities of Taluqdars and Grantees.

3. Every Taluqdar with whom a summary settlement of the Government revenue was made between the first day of April 1858 and the tenth day of October 1859, or to whom, before the passing of this Act and subsequently to the first day of April 1858, a Talqudari sanad has been granted.

Taluqdars to have heritable and transferable rights in their estates. shall be deemed to have thereby acquired a permanent, heritable, and transferable right in the estate comprising the villages and lands named in the list attached to the agreement or Kabuliyat executed by such taluqdar when such settlement was made,

or which may have been or may be decreed to him by the Court of an officer engaged in making the first regular settlement of the province of Oudh, such decree not having been appealed from within the time limited for appealing against it, or, if appealed from, having been affirmed,

subject to all the conditions affecting the Taluqdar contained in the orders passed by the Governor-General of India on the tenth and nineteenth days October 1859, and re-published in the first Schedule hereto annexed, and subject also to all the conditions other than those relating to succession contained in the sanad under which the estate is held.

Subject to certain conditions, "Explanation—Notwithstanding anything contained in the Crown Grants Act, 1895, the conditions of the *sanad* relating to succession, in so far as they are inconsistent with the provisions of this Act, shall not apply to the estate." *

4. Every person whose lands the proclamation issued in Oudh in the month of March 1858 by order of the Governor-General of India specially exempted from confiscation, and whose names are contained in the second schedule hereto annexed, shall be deemed to possess, in the lands for which such person executed a kabuliyat between the first day of April 1858 and the first day of April 1860,

* The words within quotations have been substituted by Cr. P Act 3 of 1910.

the same right and title which he would have possessed thereto if he had acquired the same in the manner mentioned in section 3; and he shall be deemed to hold the same subject to all the conditions affecting taluqdars which are referred to in the said section, and to be a taluqdar for all the purposes of this Act.

5. Every grantee shall possess the same rights, and be subject to the same conditions in respect of the estate comprised in his grant as a taluqdar possesses and is subject to, under section 3, in respect of his estate.

Grantees' rights and liabilities,
Saving of certain redemption-suits.

6. Nothing in sections 3, 4 and 5, or in the said orders, or in any sanad, shall be deemed to bar a suit for redemption.

(a) Where the instrument of mortgage was executed on or after the thirteenth day of February 1844, and fixed no term within which the property comprised therein might be redeemed, or

(b) Where the instrument of mortgage fixed a term within which the property comprised therein might be redeemed, and such term did not expire before the thirteenth day of February 1855.

7. If a taluqdar or grantee, or any heir or legatee of a taluqdar or grantee, desire that any elephants, Jewels, arms, or other articles of moveable property belonging to him, shall devolve along with his estate, he shall take an inventory of such articles. Such inventory shall be signed by him and deposited in the office of the Deputy Commissioner of the district wherein such estate or the greater part thereof is situate; and thereupon such of the said articles as shall not have been transferred shall (so far as may be possible) be used and enjoyed by the person who, under or by virtue of this Act, is for the time being in actual possession or in receipt of the rents and profits of the said estate or the greater part thereof, otherwise than as mortgagee or lessee.

III.—Lists of Taluqdars and Grantees.

8. Within six months after the passing of this Act, the Chief Commissioner of Oudh, subject to such instructions as he may receive from the Governor-General of India in Council, shall cause to be prepared six lists, namely :—

First—A list of all persons who are to be considered taluqdars within the meaning of this Act;

Second—A list of the taluqdars whose estates, according to the custom of the family on and before the thirteenth day of February 1856, ordinarily devolved upon a single heir;

Third—A list of the taluqdars, not included in the second of such lists, to whom sanads or grants have been or may be given or made by the British Government up to the date fixed for the closing of such lists, declaring that the succession to the estates comprised in such sanads or grants shall thereafter be regulated by the rule of primogeniture;

Fourth—A list of the taluqdars to whom the provisions of section 23 are applicable;

Fifth—A list of the grantees to whom sanads or grants have been or may be given or made by the British Government, up to the date fixed for the closing of such list, declaring that the succession to the estates comprised in such sanads or grants shall thereafter be regulated by the rule of primogeniture;

Sixth—A list of the grantees to whom the provisions of section 23 are applicable.

9. When the lists mentioned in section 8 shall have been approved by the Chief Commissioner of Oudh, they shall be published in the "local official Gazette"* After such publication, the first and second of the said lists shall not, except in the manner provided by section 30 or section 31, as the case may be, be liable to any alteration in respect of any names entered therein.

If, at any time after the publication of the said lists, it appears to the "Local Government."* that the name of any person has been wrongly omitted from, or wrongly entered in, any of the said lists, "the Local Government."* may order the name to be inserted in the proper lists, and such name shall be published in the *Gazette of India* in a supplementary list, and such person shall be treated in all respects as if his name had been from the first inserted in the proper list.

10. No persons shall be considered taluqdars or grantees within the meaning of this Act other than the persons named in such original or supplementary lists as aforesaid. The Courts shall take judicial notice of the said lists, and shall regard them as conclusive evidence that the persons named therein are such taluqdars or grantees.

* The words within quotations have been substituted by Act 38 of 1920.

• IV.—Powers of Taluqdars and Grantees to transfer and bequeath.

11. Subject to the provisions of this Act, and to all the conditions other than those relating to successions under which the estate was conferred by the British Government, every taluqdar and grantee, and every heir and legatee of a taluqdar and grantee, of sound mind and not a minor, shall be competent to transfer the whole or any portion of his estate, or of his right and interest therein, during his life-time, by sale, exchange, mortgage, lease, or gift, and to bequeath by his will to any person the whole or any portion of such estate, right, and interest.

A married woman may make a bequest under this Act of any property which she could alienate by her own act during her life.

Persons who are deaf or dumb or blind are not thereby incapacitated for making a transfer or bequest under this Act if they are able to know what they do by it.

One who is ordinarily insane may make a transfer or bequest under this Act during an interval in which he is of sound mind.

No person can make a transfer or bequest under this Act while he is in such a state of mind, whether from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

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

12. No transfer or bequest under this Act shall be valid whereby the vesting of the thing transferred or bequeathed may be delayed beyond the life-time of one or more persons living at the decease of the transferee or testator 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 transferred or bequeathed is to belong.

13.* (1) "No *taluqdar* or grantee, and no heir or legatee of a taluqdar or grantee, and no transferee referred to in section 14, and no heir or legatee of such transferee, shall have power to give his estate, or any portion thereof, or any interest therein—

* Section 13 has been substituted by U. P. Act III of 1910.

(a) to any person who would have succeeded to such estate, portion or interest under the provisions of this Act applicable to such estate, had the donor died intestate as to his estate at a time when the gift took effect,

except by a registered instrument, signed by the donor and attested by two or more witnesses,

(b) to any person other than a person mentioned in clause (a),

except by an instrument signed by the donor and attested by two or more witnesses not less than three months before his death and presented for registration within one month from the date of its execution and registered.

(2) No gift made under sub-section (1) shall be valid unless followed, within six months from the date of execution of the instrument of gift, by delivery by the donor, or his representative in interest, of possession of the property comprised therein."

"**13A*** No taluqdar or grantee, and no heir or legatee of a taluqdar or grantee, and no transferee referred to in section 14, and no heir or legatee of such transferee, shall have power to bequeath his estate, or any portion thereof or any interest therein—

(1) (a) "to a person who would have succeeded to such estate, portion or interest under the provisions of this Act applicable to such estate, had the person so bequeathing died intestate as to his estate, at the time when the bequest took effect,

(b) to his daughter,

(c) to a son of his daughter, or

(d) to a younger son,

except by a will executed and attested;

"(2) to a person who might in the absence of other heirs, have succeeded to such estate, portion or interest under the provisions of this Act applicable to such estate, had the person so bequeathing died intestate as to his estate, at the time when the bequest took effect, except by a will duly executed and attested not less than three months before the death of the testator and presented for registration within one month from the date of its execution and registered ;

* Section 13 A has been added by U. P. Act III of 1910