

CASE NOTED

UNREPEALED ACTS

OF THE

GOVERNOR-GENERAL IN COUNCIL.

1834-1921.

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PART X.

BY

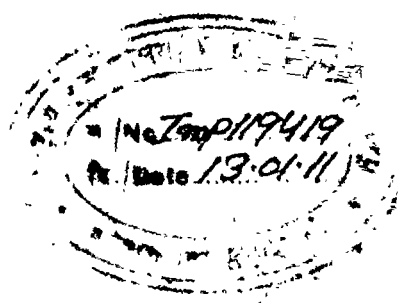
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159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person and read by the witness within the time aforesaid, if, when he read it, he knew it to be correct. ..

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document : Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

161. Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party, if he requires it ; such party may, if he pleases, cross-examine the witness thereupon.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

As to the application of s. 161 to police-diaries, see the Code of Criminal Procedure (Act V. of 1898), s. 172.

If, for such a purpose, it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence: and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence, if the party producing it requires him to do so.

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence, without the consent of the other party, or the order of the Court.

Illustration.

A sues B on an agreement, and gives B notice to produce it. At the trial, A calls for the document, and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped: He cannot do so.

165. The Judge may, in order to discover, or to obtain proper proof of, relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing: and neither the parties, nor their agents, shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document, which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked, or the document were called for, by the adverse party: nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149: nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

166. In cases tried by jury or with assessors, the jury or assessors may put any question to the witnesses, through or by leave of the Judge, which the Judge himself might put, and which he consider proper.

Power of jury or assessors to put questions.

CHAPTER XI.—OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

No new trial for improper admission or rejection of evidence.

SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

Number and year.	Title.	•Extent of repeal.
Stat. 26 Geo. III., cap. 57.	For the further regulation of the trial of persons accused of certain offences committed in the East Indies; for repealing so much of an Act, made in the twenty fourth year of the reign of His present Majesty (intituled "An Act for the better regulation and management of the affairs of the East India Company, and of the British possessions in India, and for establishing a Court of Judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies") as requires the servants of the East India Company to deliver inventories of their estates and effects: for rendering the laws more effectual against persons unlawfully resorting to the East Indies; and for the more easy proof in certain cases, of deeds and writings executed in Great Britain or India.	Section 38, so far as it relates to Courts of justice in the East Indies.

SCHEDULE.—(continued.)

ENACTMENTS REPEALED.—(continued.)

(See section 2.)—(continued.)

Number and year.	Title.	Extent of repeal.
Stat. 14 & 15 Vict., cap. 99.	To amend the Law of Evidence.	Section 11, and so much of section 19 as relates to British India.
Act XV. of 1852.	To amend the Laws of Evidence.	So much as has not been heretofore repealed.
Act XIX. of 1853.	To amend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency.	Section 19.
Act II. of 1855.	For the further improvement of the Law of Evidence.	So much as has not been heretofore repealed.
Act XXV. of 1861. “	For simplifying the procedure of the Courts of Criminal Judicature not established by Royal Charter.	Section 237.
* * *	* * * * *	* * * 1

1 The entry relating to ss. 7 and 8 of the General Clauses Act (I. of 1868) has been repealed by the General Clauses Act (X. of 1897).

ACT III. OF 1872.***The Special Marriage Act, 1872.**

RECEIVED THE G. G.'S ASSENT ON THE 22ND MARCH 1872.

An Act to provide a form of Marriage in certain cases.

WHEREAS it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh, or Jaina religion, and to legalize certain marriages the validity of which is doubtful; it is hereby enacted as follows :—

Local extent.

1. This Act extends to the whole of British India.

Commencement.

[Repealed by Act XVI. of 1874.]

2. Marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish, or the Hindu or the Muhammadan, or the Parsi or the Buddhist, or the Sikh or the Jaina religion, upon the following conditions :—

Conditions upon which marriages under Act may be celebrated.

- (1) neither party must, at the time of the marriage, have a husband or wife living ;
- (2) the man must have completed his age of eighteen years, and the woman her age of fourteen years, according to the Gregorian calendar ;
- (3) each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his or her father or guardian to the marriage ;
- (4) the parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal.

* Act III. of 1872 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; in Angul and the Khondmals by Reg. (III of 1913) s. 3; and in British Baluchistan by Reg. (II of 1913) s. 3.

This title has been given by the Indian Short Titles Act (XIV. of 1897).*

It 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. 1., p. 504

The North-Western Provinces Tarai

Ditto

... 1876, Pt. 1., p. 505.

1st Proviso.—No such law or custom, other than one relating to consanguinity or affinity, shall prevent them from marrying.

2nd Proviso.—No law or custom as to consanguinity shall prevent them from marrying, unless a relationship can be traced between the parties through some common ancestor, who stands to each of them in a nearer relationship than that of great-great-grandfather or great-great-grandmother, or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor, of the other.

3. The Local Government may appoint one or more Registrars under this Act, either by name or as holding any office for the time being, for any portion of the territory subject to its administration. The officer so appointed shall be called 'Registrar of Marriages under Act III. of 1872,' and is hereinafter referred to as the 'Registrar.' The portion of territory for which any such officer is appointed shall be deemed his district.*

Appointment of marriage Registrars.

(One of the parties to intending marriage to give notice to Registrars.

4. When a marriage is intended to be solemnized under this Act, one of the parties must give notice in writing to the Registrar before whom it is to be solemnized.

The Registrar to whom such notice is given must be the Registrar of a district within which one at least of the parties to the marriage has resided for fourteen days before such notice is given.

Such notice may be in the form given in the first schedule to this Act.

5. The Registrar shall file all such notices, and keep them with the records of his office, and shall also forthwith enter a true copy of every such notice in a book to be for that purpose furnished to him by the Government, to be called the "Marriage Notice book under Act III. of 1872," and such book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

Notice to be filed and copy entered in the Marriage Notice Book

* For notifications appointing Registrars under s. 3 for districts in—

- (1) Assam, see Assam Rules Manual, Ed. 1893, p. 26.
- (2) Bombay Presidency, see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, p. 98.
- (3) Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 19.
- (4) North-Western Provinces and Oudh, see Notification at p. 42 of the N. W. Provinces and Oudh List of Local Rules and Orders Ed. 1894.

6. Fourteen days after notice of an intended marriage has been given under section 4, such marriage may be solemnized, unless it has been previously objected to in the manner hereinafter mentioned.

Objection to marriage.

Any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2.

The nature of the objection made shall be recorded in writing by the Registrar in the register, and shall, if necessary, be read over and explained to the person making the objection, and shall be signed by him or on his behalf.

7. On receipt of such notice of objection the Registrar shall not proceed to solemnize the marriage until the lapse of fourteen days from the receipt of such objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, until the lapse of fourteen days from the opening of such Court.

Procedure on receipt of objection.

The person objecting to the intended marriage may file a suit in any civil Court having local jurisdiction (other than a Court of small Causes) for a declaratory decree, declaring that such marriage would contravene some one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2.

Objector may file suit.

8. The officer before whom such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been filed. If such certificate be lodged with the Registrar within fourteen days from the receipt of notice of objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, within fourteen days of the opening of such Court, the marriage shall not be solemnized till the decision of such Court has been given, and the period allowed by law for appeals from such decision has elapsed ; or, if there be an appeal from such decision, till the decision of the Appellate Court has been given.

Certificate of filing of suit to be lodged with Registrar.

If such certificate be not lodged in the manner and within the period prescribed in the last preceding paragraph, or if the decision of the Court be that such marriage would not contravene

any one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2, such marriage may be solemnized.

If the decision of such Court be that the marriage in question would contravene any one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2, the marriage shall not be solemnized.

9. Any Court in which any such suit as is referred to in section 7 is filed may, if it shall appear to it that the objection was not reasonable and *bona fide*, inflict a fine, not exceeding one thousand rupees, on the person objecting, and award it, or any part of it, to the parties to the intended marriage.

Court may fine when objection not reasonable.

10. Before the marriage is solemnized the parties and three witnesses, shall, in the presence of the Registrar, sign a declaration in the form contained in the second schedule to this Act. If either party has not completed the age of twenty one years, the declaration shall also be signed by his or her father or guardian, except in the case of a widow, and, in every case, it shall be countersigned by the Registrar.

Declaration by parties and witnesses.

11. The marriage shall be solemnized in the presence of the Registrar and of the three witnesses who signed the declaration. It may be solemnized in any form, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses, 'I [A,] take thee [B,] to be my lawful wife (or husband).'

Marriage how to be solemnized.

12. The marriage may be celebrated either at the office of the Registrar or at such other place, within reasonable distance of the office of the Registrar, as the parties desire: Provided that the Local Government may prescribe the conditions under which such marriages may be solemnized at places other than the Registrar's office, and the additional fees to be paid thereupon.

Place where marriage may be solemnized.

13. When the marriage has been solemnized, the Registrar shall enter a certificate thereof in a book to be kept by him for that purpose and to be called the 'Marriage Certificate Book under Act III. of 1872, in the form given in the third schedule to this Act, and such certificate shall be signed by the parties to the marriage and the three witnesses,

Certificate of marriage.

13A.* The Registrar shall send to the Registrar-General of

Transmission of certified copies of entries in Marriage Certificate Book to the Registrar General of Births Deaths, and Marriages.

Births, Deaths, and Marriages for the territories within which his district is situate, at such intervals as the "Local Government" from time to time, directs, a true copy certified by him, in such form as the Governor-General in Council, from time to time, prescribes, of all entries made by him in the said Marriage Certificate Book since the last of such intervals.*

14† The Local Government shall prescribe the fees to be paid

Fees.

to the Registrar for the duties to be discharged by him under this Act.

The Registrar may, if he thinks fit, demand payment of any such fee before solemnization of the marriage or performance of any other duty in respect of which it is payable.

The said Marriage Certificate Book shall at all reasonable times be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom shall, on application, be given by the Registrar on the payment to him by the applicant of a fee to be fixed by the Local Government for each such extract.

15 Every person, who being at the time married, procures a

Penalty on married person marrying again under Act.

marriage of himself to be solemnized under this Act, shall be deemed to have committed an offence under section 494 or section 495 of the Indian Penal Code, as the case may be; and the marriage so solemnized is void.

16. Every person married under this Act who, during the

Punishment of bigamy.

lifetime of his or her wife or husband, contracts any other marriage, 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 lifetime of a husband or wife, whatever may be the religion which he or she professed at the time of such second marriage,

* S. 13A has been inserted by Act VI of 1886, s. 29.

† As to the duty of the Registrar-General to make and keep indexes of the certified copies sent to his office under this section, see Act VI, of 1886, s. 7.

‡ For scale of fees to be paid to Registrars of Marriages prescribed by—

(1) The Government of Bombay, see Bombay List of Local Rules and Orders, Vol. I, Ed 1896, p 98 ;

(2) Chief Commissioner, Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896 p 19 ;

(3) Government, N. W. P. and Oudh, see Notification at p. 42 of the N. W. P. and Oudh List of Local Rules and Orders, Ed, 1894.

§ The words within quotations have been inserted by Act 38 of 1920.

17. The Indian Divorce Act shall apply to all marriages contracted under this Act and any such marriage may be declared null or dissolved in the manner therein provided, and for the causes therein mentioned, or on the ground that it contravenes some one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2 of this Act.

18. The issue of marriages solemnized under this Act shall, if they marry under this Act, be deemed to be subject to the law to which their fathers were subject as to the prohibition of marriages by reason of consanguinity and affinity, and the provisos to section 2 of this Act shall apply to them.

19. Nothing in this Act contained shall affect the validity of any marriage not solemnized under its provisions; nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage; but if the validity of any such mode shall hereafter come into question before any Court, such question shall be decided as if this Act had not been passed.

20. *Registry of marriages contracted before passing of Act. [Repealed by Act XII. of 1876]*

21. Every person making, signing, or attesting any declaration or certificate prescribed by this Act, containing a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be deemed guilty of the offence described in section 199 of the Indian Penal Code.

FIRST SCHEDULE.

(See section 4.)

NOTICE OF MARRIAGE.

To _____, a Registrar of marriages under Act III. of 1872 for the _____ District.

I hereby give you notice that a marriage under Act III. of 1872 is intended to be had, within three calendar months from the date hereof between me and the other party herein named and described (that is to say):—

Names.	Condition.	Rank or profession.	Age.	Dwelling-place.	Length of residence.
A B	Unmarried Widower.	Landowner.	Of full age.	...	23 days.
C D	Spinster.	...	Minor.

Witness my hand, this

day of _____ 18
(Signed) A. B

SECOND SCHEDULE

(See section 10.)

DECLARATION TO BE MADE BY THE BRIDEGROOM.

I, *A B*, hereby declare as follows :—

1. I am at the present time unmarried :
2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh, or Jaina religion :
3. I have completed my age of eighteen years :
4. I am not related to *C D* [*the bride*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *C D* is subject, and subject to the provisos of clause (4) of section 2 of Act III. of 1872, render a marriage between us illegal :

[And when the bridegroom has not completed his age of twenty-one years :

5. The consent of my father (or guardian, as the case may be) has been given to a marriage between myself and *C D*, and has not been revoked :]

6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) *A B* [*the bridegroom*].*Declaration to be made by the Bride.*I, *C D*, hereby declare as follows :—

1. I am at the present time unmarried :
2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh, or Jaina religion :
3. I have completed my age of fourteen years :
4. I am not related to *A B* [*the bridegroom*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *A B* is subject, and subject to the provisos of clause (4) of section 2 of Act III. of 1872, render a marriage between us illegal :

[And when the bride has not completed her age of twenty-one years, unless she is a widow :

5. The consent of *M N*, my father (or guardian, as the case may be), has been given to a marriage between myself and *A B*, and has not been revoked :]

6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) *C D* [*the bride*].Signed in our presence by the above-named *A B* and *C D*.

G H,
I E,
K L, } [*three witnesses*].

*And when the bridegroom or bride has not completed the age of twenty-one years, except in the case of a widow :*Signed in my presence and with my consent by the above-named *A B* and *C D* :

M N, the father [or guardian] of the above-named,
A B [or *C D*, as the case may be].

(Countersigned) *E. F.*

Registrar of Marriages under Act III. of 1872.
 for the District of

Dated the

day of

18 .

THIRD SCHEDULE.

(See section 13)

REGISTRAR'S CERTIFICATE.

I, *E F*, certify that on the of 18 appeared before me *A B* and *C D*, each of whom in my presence and in the presence of three credible witnesses, whose names are signed hereunder, made the declarations required by Act III. of 1872, and that a marriage under the said Act was solemnized between them in my presence.

(Signed) *E F*,

*Registrar of Marriages under Act III. of 1872
for the District of*

(Signed) *A B.*
C D.

G H,
I J, } *three witnesses.*
K L.

Dated the day of 18 .

FOURTH SCHEDULE.

(See section 20.)

[Repealed by Act XII. of 1876.]

ACT IV. OF 1872.**The Punjab Laws Act.***

RECEIVED THE G.-G'S ASSENT ON THE 28TH MARCH 1872.

An Act for declaring which of certain rules, laws, and regulations have the force of law in the Punjab, and for other purposes.

WHEREAS certain rules, laws, and regulations, made heretofore for the Punjab, acquired the force of law under the provisions of section twenty-five of the Indian Councils Act 1861; and whereas it is expedient to declare which of the said rules, laws, and regulations, shall henceforth be in force in the Punjab, and to amend, consolidate, or repeal others of the said rules, orders, and regulations; it is hereby enacted as follows :—

Short title. **1.** This Act may be called "The Punjab Laws Act, 1872."

2. It extends to the territories now under the administration of the Lieutenant-Governor of the Punjab, but not so as to alter the effect of any regulation made for any parts of the said territories under the Statute 33 Vic., cap. 3, section 1 :

Commencement. And it shall come into force on the first day of June 1872.

3. The Regulations, Acts, and orders specified in the first schedule hereto annexed, are in force in the Punjab to the extent specified in the third column of the said schedule.

Enactments repealed. **4.** *Repealed by Act 4 of 1914.*

CIVIL JUDICATURE.

5.† In questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family-relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be—

(a) any custom applicable to the parties concerned, which is not contrary to justice, equity, or good conscience, and has not

* This Act has been repealed in N. W. Frontier Provinces by Reg. VII of 1901 s. 5.

† S. 5 has been substituted by Act XII. of 1878 s. 1.

been by this or any other enactment, altered or abolished, and has not been declared to be void by any competent authority ;

(b) the Muhammadan law, in cases where the parties are Muhammadans, and the Hindu law, in cases where the parties are Hindus, except in so far as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act, or has been modified by any such custom as is above referred to.

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

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

Local customs and mercantile usages when valid.

DESCENT OF JAGIRS.

8. In all cases in which Government has declared any rule of descent to prevail in any family or families of assignees of land-revenue, such rule of descent shall be held to prevail, and to have prevailed, amongst them from the time when the declaration was made.

Rule of descent in family of assignee of land-revenue.

PRE-EMPTION.

9. [*Right of pre-emption.*] Repealed by Punjab Act 2 of 1905.

10. [*Presumption as to its existence.*] Repealed by Punjab Act 2 of 1905.

11. [*Its existence in towns to be proved.*] Repealed by Punjab Act 2 of 1905.

12. [*Devolution of right when property to be sold or foreclosed is situate within a village.*] Repealed by Punjab Act 2 of 1905.

13. [*Notice to pre-emptors.*] Repealed by Act 2 of 1905.

14. [*Loss of right of pre-emption.*] Repealed by Act 2 of 1905.

15. [*Right of pre-emptor on foreclosure.*] Repealed by Act 2 of 1905.

16. [*Suit to enforce right of pre-emption.*] Repealed by Act 2 of 1905.

† Ss. 22 to 32 repealed by Act 3. of 1907, except in Scheduled District.

16A.* [*Power to require payment into Court.*] Repealed by Act 2 of 1905.

17. [*Decree to fix time for payment.*] Repealed by Act VII of 1895 and Pun. Act 2 of 1905.

18. [*Effect of non-payment of purchase-money.*] Repealed by Act VII of 1895 and Pun. Act 2 of 1905.

19. [*Party to sell by joint-owners cannot withdraw his share and claim pre-emption as to rest.*] Repealed by Pun. Act 2 of 1905.

20. [*Preferential right to co-sharers in well where chakdari tenure prevails.*] Repealed by Pun. Act 2 of 1905.

DECREES CONCERNING LAND.

21. [*Repealed by Act XVII of 1887 s. 2 and Sch.*]

INSOLVENCY.†

Power to invest Courts with insolvency-jurisdiction.

22.† The Local Government may invest any Court or any class of Courts with insolvency-jurisdiction in any specified local area.

23.† Any debtor, whose debts amount to rupees five hundred or upwards, and any creditor or creditors, to whom an aggregate sum of not less than rupees five hundred is due from any such debtor, may petition the Court having local insolvency-jurisdiction that the debtor be adjudicated an insolvent.

Procedure of Court there upon.

24.† If it appear that the debtor's liabilities amount to more than rupees five hundred, the Court may—

- (1) call upon the debtor to make a statement of his assets and liabilities;
- (2) invite by proclamation or otherwise the appearance persons to record claims against the debtor;
- (3) register all claims so recorded;
- (4) call upon the debtor to give reasonable security for his appearance, or, on default of reasonable security, order his confinement in the civil jail;

* Section 16 A has been substituted by Act XII. of 1878, s. 2.

† ss. 22 to 32 repealed by Act. 3 of 1907, except in the scheduled Districts.

(5) attach all the debtor's property in the Panjab, moveable or immoveable ;

(6) pass an order exempting the person and property of the debtor from further legal process, pending inquiry and the final orders of the Court.

Insolvent defined. A debtor on whom the order referred to in clause six of this section is passed, is deemed an insolvent.

25.* The Court shall make full inquiry into the origin, nature, and circumstances of the debts, and the conduct of the debtor in relation thereto ; and if the insolvent be shown to have been guilty of concealment, fraud, recklessness, or other gross misconduct in reference to the debts, and if his discharge, for that reason, is opposed by any of the creditors, the Court may, at its discretion, award a term of imprisonment in the civil jail not exceeding one year,

26.* If it appear that the debtor, after becoming unable to meet his liabilities, or in expectation of becoming so, has transferred his property, or any part thereof, with a view to defrauding his creditors, or to giving one or more creditors, a fraudulent preference over the others, the Court shall annul such transfer, and treat the property transferred as the other property of the debtor.

27.* The property of the insolvent shall be sold or administered, under the direction of the Court, either through the agency of its own officers or of assignees to be appointed by the Court, in the manner most conducive to the interest of the creditors, and the proceeds shall be divided rateably amongst them.

28.* The Court shall give effect to any composition or arrangement agreed upon between the debtor and the majority of the creditors: Provided that no injustice or injury appears to be inflicted by such composition or arrangement on any of the parties concerned, and that no fraud nor collusion is suspected. If any creditor objects to such arrangement, the Court shall decide as to the reasonableness of the the objection.

* Sec. 22 to 32 repealed by Act 3 of 1907, except in the shiquld Districts.

29.* When the sale or administration of the insolvent's property is complete, the Court may order the insolvent to be discharged, on his signing an agreement to liquidate, from any property which he may subsequently acquire, such portion of his debts as remains unpaid. Such order of discharge shall preclude any creditor whose claim is registered from suing the debtor in respect of such claim, unless it be shown that the debtor has acquired property, since the order of discharge, out of which the claim might have been defrayed.

When Court may order discharge of insolvent.

Effect of order,

30.* Nothing in the preceding sections shall apply to persons who may have been admitted to the benefit of any insolvency-law at a presidency-town ; nor shall any order passed under the preceding sections affect the remedy of any creditor against his debtor in respect of property which, at the time of the insolvency of such debtor, was not in the Panjab.

Foregoing rules not to apply to persons admitted to benefit of insolvency-law in presidency-towns.

31.* The Chief Court of the Panjab may, with the sanction of the Local Government, from time to time frame and issue rules, conformable to the provisions hereinbefore contained, for the better administration of insolvent estates, and may with the like sanction, alter any such rules.

Chief Court empowered to frame rules.

32.* The Local Government may at any time, with the previous sanction of the Governor-General in Council, exclude any particular class or race from the operation of these rules,

Power to exclude any class from operation of such rules.

33.* [*Repealed by Act XII. of 1891, Sch. I.*]

MINORS AND THE COURT OF WARDS.

34.* [*Bar of jurisdiction in certain cases.*] *Repealed by Panjab Act 2 of 1903.*

35.* [*Jurisdiction of Court of Wards.*] *Repealed by Panjab Act 2 of 1903.*

36. [*Deputy Commissioner may inquire into circumstances affecting jurisdiction.*] *Repealed Act 2 of 1903.*

37. [*Appeal to Commissioner against order under section 36.*] *Repealed by Act 2 of 1903.*

38. [*Extent of jurisdiction.*] *Repealed by Act 2 of 1903.*

* Ss. 32 to 32 repealed by Act III. of 1907, except in the scheduled Districts.

CRIMINAL JUDICATURE.

39. The provisions of the Indian Penal Code, with the exception of Chapter VI., shall be applicable to all offences committed before first January 1862, in territory which was, at the time of the commission of such offence, subject to the Government of the Punjab :

Indian Penal Code to apply to offences committed previous to first January 1862.

Provided that nothing contained in this section shall affect any privilege conferred on certain Chiefs in the Punjab by the Governor-General in Council, or by the Board of administration for the affairs of the Punjab, nor any indemnity or pardon granted by competent authority,

Saving of privileges conferred on certain Chiefs.

39A.* The Local Government may establish a system of village watchmen or municipal watchmen in any part of the territories under its administration, and in furtherance of this object may, from time to time, make rules to provide for the following matters :

Power to establish system of village-watchmen, and municipal-watchmen, and to make rules.

- (a) the definition of the limits of watchmen's beats ;
- (b) the determination of the several grades of watchmen, and the number of each grade to be appointed to each beat ;
- (c) the appointment, suspension, dismissal, and resignation of watchmen of each grade ;
- (d) the equipment and discipline of, and the control and supervision over, such watchmen ;
- (e) the conferring upon them, and the exercise by them of any powers, and the enjoyment by them of any protection or privilege, which may be exercised and enjoyed by a police-officer under any law for the time being in force ;
- (f) the performance by them of such duties relating to police, sanitation or statistics, or for the benefit of the village-communities or municipalities within their respective beats, as the Local Government thinks fit ;
- (g) the exercise of authority over, and the rendering of aid to, such watchmen by headmen of the villages or members of the Municipal committees of the towns comprised in their respective beats ;

* Section 39A has been substituted by Act XXIV. of 1881, s. 2, for those originally added by Act XV. of 1875.

- (k) the performance, by the headmen of villages comprised in the beat of any watchman, of any of the duties of a village-watchman in aid of, or substitution for, such watchman ;
- (i) the exercise, by such village-headmen for the purposes referred to in clauses (g) and (k), or by members of Municipal Committees for the purposes referred to in clause (g) of this section, of any of the powers, and the enjoyment by such headmen or members of any privilege or protection, of a village-watchman or a municipal watchman as the case may be ;
- (i) the determination of the rate at which, and the mode in which, watchmen shall be paid, and, in the case of village watchmen, of the mode in which their pay, the expenses of their equipment, and other charges connected with the village-watchman system shall be provided for, whether out of cesses or funds already leviable or available in the villages comprised in the beat, or by a special tax in money or kind to be imposed on any class of persons residing or owning property in or restoring to, such villages, or partly in one of these ways and partly in the other ;
- (k) the collection with or without the aid of the village headmen, and by any process available for the realization of the land-revenue, of any tax imposed under clause (j) of this section, and the application of, and the mode of accounting for, the same ; and generally for
- (l) the efficient working of the system of village watchmen or municipal-watchmen:

Provided—

1st.—that the rules to be made regarding the appointment of village-watchmen shall allow to the headmen of the villages comprised in the beat to which such a watchman is to be appointed, a power of nomination to be exercised in such manner, and subject to such reasonable conditions, as may be prescribed by such rules ;

2ndly.—that the rules to be made under clause (f) of this section with regard to village-watchmen shall include provisions for recording and securing due consideration of the views and opinions on the matters therein referred to of the headman of the villages comprised in each beat.

39B.* Every person is bound to render to a village-watchman, or municipal watchman, or village headman discharging the duties of a police-officer under the rules made hereunder, all the assistance which he is bound to render to a police-officer.

Obligation to assist watchmen and headmen.

Any person who obstructs such watchman or headman in the discharge of such duties may, be arrested without warrant by a police-officer or by any watchman or village-headman empowered in this behalf by the local Government.

Person obstructing watchman or headman may be arrested without warrant.

39C.† Whenever it seems to the Local Government expedient that the duties of watch and ward and other internal police-service of any town or village not comprised within the limits of a municipality, or within the limits of village-watchman's beat as defined under the power conferred by section thirty-nine A, should be performed by police-officers enrolled under Act V. 1861, the Local Government may direct that the said service shall be so performed, and may also "subject to the control"‡ of the Governor-General in Council, direct that the charges for the time being fixed by such Government on account of such service shall be defrayed by taxes to be levied in such town or village.

Power to direct local taxation for payment of police enrolled under Act V. of 1861.

39D.† When the Local Government has, under section thirty-nine C, directed that taxes shall be levied in any town or village, the Deputy Commissioner may from time to time issue a public notice in such town or village, explaining the nature of the taxes he proposes to levy.

Issue of notice of taxes proposed to be levied.

Any inhabitant of such town or village objecting to the taxation thus proposed may, within fifteen days from the publication of such notice, send his objection in writing to the Deputy Commissioner.

Objections to taxation.

After the expiry of fifteen days from the publication of the notice, the Deputy Commissioner may submit, for the information of the Local Government, a report of the proposal made by him.

Procedure thereon.

* Section 39 B has been substituted by Act XXIV. of 1881 s. 2, for those originally added by Act XV. of 1875.

† Ss 39 C to 39G have been added by Act XV. of 1875, s. 2.

‡ The words within quotations have been substituted by Act IV. of 1914.

Such report shall contain specific mention of the objections, if any, urged to his proposal, and his opinion on such objections.

No such tax shall be levied until it has, upon such report, been approved by the Local Government.

39E.* When any such tax has been so approved by the Local Government, the Deputy Commissioner may from time to time, subject to such rules consistent with this Act as the Local Government may from time to time prescribe, determine the rates at which it is to be levied.

Power to fix rates of tax.

39F.* The Local Government may, from time to time, make rules to provide for the collection of such taxes by any process available for the realization of the land-revenue, and to regulate the application and mode of accounting for the same.

Power to make rules for collection of taxes.

39G.* [*Indemnity-clause.*] *Repealed by Act XII. of 1891, Sch. I.*

HONORARY POLICE-OFFICERS.

40. The Local Government may, if it thinks fit, confer on any person any of the powers which may be exercised by a police-officer under any Act for the time being in force, "and may withdraw any powers so conferred." †

Local Government may confer powers of police-officer.

TRACK LAW.

41. When an offence is, has been, or may reasonably be supposed to have been, committed, and the tracks of the persons who may reasonably be supposed to have committed such offence, or of any animal or other property reasonably supposed to be connected with such offence, are followed to a spot within the immediate vicinity of a village, the person following such tracks may call upon any headman or village-watchman in such village to assist in carrying on the tracks.

Trackers may call for assistance in carrying on tracks.

42. If such headman or watchman do not forthwith give such assistance, or if the inhabitants of such village do not afford full opportunity for search in their houses for the offenders, or if, from the circumstances of the case, there shall appear good reason to believe that the inhabitants of such village,

Penalty for withholding assistance or conniving at offence or escape.

*. Ss. 39C to 39G have been added by Act XV. of 1875, s. 2.

† In s. 40 the words quoted have been added by Act XII. of 1878 s. 5.

or any of them, were conniving at the offence, or at the escape of the offenders, and such offenders cannot be traced beyond the village, the Magistrate of the district may, with the previous sanction of the Commissioner of the Division, inflict a fine upon such village not exceeding five hundred rupees,

Limit to fine. except in the case of stolen property over five hundred rupees in value, in which case the fine shall not exceed the value of such property.

Appeal to Chief Court.

An appeal against all convictions under this section shall lie to the Chief Court.

The Magistrate may direct that the fine imposed under this section, or any part thereof, shall be awarded to any persons injured by such offence in compensation for such injury ; and, in the case of stolen property recovered through the agency of a tracker, may direct that such property be not restored to its owner until he has paid to such tracker such fee, not exceeding one-fourth part of the value of the stolen property, as to the said Magistrate seems it.

Fine may be awarded to injured parties and fee to tracker.

SLAUGHTER OF KINE.

43.* The slaughter of kine and the sale of beef shall not take place, except subject to rules to be from time to time, either generally or in any particular instance, prescribed by the Local Government.

Control of slaughter of kine and sale of beef.

ARMED MEN AND FOREIGN VAGRANTS.

44.* No band of armed men shall enter into any city or town, except subject to rules to be from time to time, either generally or in any particular instance, prescribed by the Local Government.

Control of entry into towns of bands of armed men.

45. The Magistrate of the district may, if he considers that any band of foreign vagrants is likely to occasion a breach of the peace or to commit any offence under the Indian Penal Code, prohibit such band from entering his district ; or, if they are already in his district, may require them within a given time to leave it.

Powers of magistrate of district as to foreign vagrants.

46. If any such band fail to comply with the orders of the said Magistrate within the prescribed period he shall report the matter to the Local Government, and the Local Government may give such directions for the surveillance, control, or deportation of such band, as to it seems fit.

Surveillance, &c., of band failing to comply with Magistrate's order.

* In ss. 43, 44, and 47 the words "with the consent and" being repealed by Act XII. of 1898, s. 6, have been omitted.

MISCELLANEOUS.

47.* No person shall cross any river or stream on a buoy or inflated skin, nor shall have in his possession or custody any buoy or skin for the purpose of being used in crossing any river or stream, except subject to rules to be from time to time, either generally or in any particular instance, prescribed by the Local Government.

Crossing of streams on buoys or skins.

48. No person shall make use of the pasturage or other natural product of any land being the property of the Government, except with the consent and subject to rules to be from time to time, either generally or in any particular instance, prescribed by the Local Government.

Use of pasturage or natural product of Government land.

[**49** *Growing, selling, or keeping opium*]. Repealed by Act I, of 1878, s. 2, and Sch.

Power to make rules as to matters mentioned in sections 43 to 49.

50.† The Local Government may from time to time make rules as to the matters mentioned in sections 43 to 49 ‡ inclusive.

All existing rules upon such matters, which might have been made under this section had it been in force, shall be deemed to have been made hereunder.

Existing rules.

Conditions as to validity of rules hereafter made under this Act.

50.A.† No rules hereafter made by the Local Government under any power conferred by this Act shall be "subject to the Control of the Governor-General in council and no such rules shall be valid"§ unless—

(a) they are consistent with the laws for the time being in force in the Panjab ;

(b) they are published in the official Gazette ;

50B.† The Local Government may, in making any rule under any of the powers conferred by this Act, attach to the breach of it, in addition to any other consequences that would ensue from such breach, a punishment on conviction before a Magistrate not exceeding six month's imprisonment, or three hundred rupees fine, or both.

Penalties for breach of such rules.

* In ss. 43, 44 and 47 the words "with the consent and," being repealed by Act XII of 1878 s. 6 have been omitted.

† Ss. 50 and 50A and 50B, have been substituted for s. 50 by Act XV. of 1875 s. 3.

‡ In s. 50 read s. 48.

§ Certain words after this, which have been repealed by Pun. Act I of 1910, have been omitted,

51. All rules which the Local Government is empowered to issue under this Act, and all circulars issued by the Chief Court, shall be re-published from time to time by the Local Government* and upon such re-publication shall be arranged in the order of their subject-matter; and all such alterations or amendments as may have been made since the last preceding publication thereof, or may have become necessary or advisable, shall be embodied therewith; and upon such republication all such rules and circulars previously issued shall be repealed †

Re-publication of rules and orders.

SCHEDULE I ‡

ENACTMENTS DECLARED TO BE IN FORCE.

Explanation.—This Schedule does not refer to any Act which is in its terms applicable to the Panjab, or which has been extended to the Panjab by competent authority

Number and year.		Extent to which the enactment is in force.
Reg. 1. of 1798 § ...	A Regulation to prevent Fraud and Injustice in Conditional Sales of Land under Deeds of Bai-bil-wafa, or other Deeds of the same nature.	The whole, except such parts as relate to interest.
Reg. X. of 1804 ...	A Regulation for declaring the powers of the Governor-General in Council to provide for the immediate punishment of certain Offences against the State by the sentence of Courts-martial.	The whole, so far as it is not modified by Act V. of 1841.
Reg. XXVI. of 1806. § ...	A Regulation for extending to the province of Benares the Rates of Interest on future Loans, and Provisions relative thereto, contained in Regulation XV., 1793; also for a general extension of the period	Sections seven and eight.

* Certain words after this, which have been repealed by Pan. Act I. of 1910, have been omitted.

† Section 51 has been substituted for the original one by Act VII. of 1895.

‡ So much of Act IV. of 1872 as relates to Regs. V. of 1817 and XX. of 1825 was repealed by Act VI. of 1878, s. 2, and Sch., and X. of 1882, s. 2, and Sch. 1. (b), respectively. The references to these Regulations in this Schedule have therefore been omitted.

§ So much of Act IV. of 1872 as relates to Regs. 1 of 1798 and XVI. of 1806 will be repealed when Act IV. of 1882 is extended to the Panjab.—See ss. 1 and 2, and Sch. (b), *ib.*

SCHEDULE I.—(*continued*).ENACTMENTS DECLARED TO BE IN FORCE—(*continued*).

Number and year.	Title.	Extent to which the enactment is in force
	fixed by Regulations 1., 1798, and XXXIV., 1803, for the redemption of Mortgages and Conditional Sales of Land, under Deeds of Bai-bil-wafa, Katkabala, or other similar designation.	
Reg. III. of 1818.	A Regulation for the Confinement of State Prisoners.	The whole.
Reg. XI. of 1825.	A Regulation for declaring the Rules to be observed in determining Claims to Lands gained by alluvion or by dereliction of a river or the sea.	The whole.
Act XI. 1858* ...	An Act for making better provision for care of the persons and property of minors in the Presidency of Fort William in Bengal:	The whole.
Act. XVII. of 1861†	An Act to amend Act XIV. of 1843 (for regulating the customs Duties in the North-Western Provinces).	The whole, the word "Panjab" being substituted for the words "North-Western Provinces."
	"Rules for the conservancy of Forests and Jungles in the Hill Districts of the Panjab Territories, sanctioned by the Governor-General in Council, in letter of the Secretary to the Government of India, No. 1789, 21st May 1855."	The whole.

SCHEDULE II.—*Repealed by Act XVII of 1914.*

* Act IV of 1872. has been repealed so far as it relates to Act XI. of 1858.—See Act VIII. of 1890, s. 2, and Sch.

† Act XVII. of 1861 was repealed by Act VIII. of 1875, s. 2, and Sch. the First Schedule of Act IV. of 1872, so far as it relates to Act XVII. of 1861, has been repealed by Act XII. of 1861, Sch. 1.

ACT V. OF 1872.

RECEIVED THE G.-G.'S ASSENT ON THE 28TH MARCH 1872.

An Act to remove doubts as to the jurisdiction of the High Court of Bombay over the Province of Sindh.

WHEREAS it is expedient to remove doubts which have arisen
 Preamble. as to the jurisdiction of the High Court of
 Bombay over the Province of Sindh; It is
 hereby enacted as follows:—

Bar of jurisdiction in
 Sindh of Bombay High
 Court. 1. The High Court of Bombay has
 not, and shall be deemed never to
 have had, jurisdiction over the Province
 of Sindh.

Saving of Act XXIV. of
 1867. 2.* Nothing herein contained shall
 be deemed to affect the Administrator
 General's Act 1874.†

Saving of probates and
 administrations. 3.* Nothing herein contained shall be deemed to invalidate
 the grant of any probate or letters of Admin-
 istration heretofore or hereafter made by
 the High Court of Judicature at Bombay
 or to affect the rights, powers, or duties of any executor or ad-
 ministrator under, or by virtue of, any such probate or letters.

Saving of High Court's
 criminal jurisdiction. 4.* Nothing herein contained shall be deemed to affect the
 criminal jurisdiction of the said High Court
 so far as regards European British subjects
 of Her Majesty.

* Ss. 2, 3, and 4, were added to this Act by Act. XX. of 1872.

† In s 2 the figures "1874" have been substituted for the figures "1867"
 by Act XII. of 1891, Sch. II. But now read Act III of 1912.

ACT IX. OF 1872.***The Indian Contract Act.**

RECEIVED THE G.-G.'S ASSENT ON THE 25TH APRIL 1872.

Preamble.

WHEREAS it is expedient to define and amend certain parts of the law relating to contracts ; It is hereby enacted as follows :—

PRELIMINARY.

Short title.

1. This Act may be called "The Indian Contract Act, 1872.,

Extent.

It extends to the whole of British India ; † and it shall come into force on the first day of September 1872.

Commencement.

The enactments mentioned in the schedule hereto are repealed to the extent specified in the third column thereof ; but nothing herein contained shall affect the provisions of any Statute, Act, or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

* For the statement of Objects and Reasons for the Bill, which was based on a Report of Her Majesty's Commissioners appointed to prepare a body of substantive law for India, dated July 6, 1866, see *Gazette of India*, 1867, Extraordinary, p. 34. For the Report of the Select Committee, see *Ibid*, 1871, p. 313, and *Ibid*, 1872, p. 527.

The chapters and sections of the Transfer of Property Act (IV. of 1882) which relate to contracts are, in places in which that Act is in force, to be taken as part of Act IX. of 1872—See IV. of 1882, s. 4.

† Act IX. of 1872 has been declared in force, in—

- (1) the Santhal Parganas [see the Santhal Parganas Settlement Regulation (III of 1872) as amended by the Santhal Parganas Laws Regulation (III. of 1899). s. 3.];
- (2) the Arakan Hill District [see the Arakan Hill District Laws Regulation (I of 1916), s. 2.
- (3.) Upper Burma (except the Shan States) by Act (XIII. of 1898), s. 4;
- (4) British Baluchistan [see the British Baluchistan Laws Regulation (II of 1913), s. 3.]

Act IX. of 1872 has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in—

- (1) the North-Western Provinces Tarai (see *Gazette of India*, 1876, Pt. I., p. 506) ;
- (2) 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). The District of Lohardaga included at this time the present District of Palamanu, which was separated in 1894.

*Act IX. of 1872 has been extended by notification under s. 5 of the Scheduled Districts Act (XIV. of 1874), to the whole of Upper Burma, except the Shan States (see *Gazette of India*, 1893, Pt. II., p. 272).

2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :—

Interpretation-clause. (a.)—When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal :

(b.)—When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted,* becomes a promise :

(c.)—The person making the proposal is called the ‘promisor,’ and the person accepting the proposal is called the ‘promisee.’

(d.)—When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise :

“Agreement.” (e.) Every promise and every set of promises, forming the consideration for each other, is an agreement :

“Reciprocal promises.” (f.)—Promises which form the consideration or part of the consideration for each other, are called reciprocal promises :

“Void agreement.” (g.)—An agreement not enforceable by law is said to be void.

“Contract.” (h.)—An agreement enforceable by law is a contract :

(i.)—An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract :

“Void contract.” (j.)—A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

CHAPTER I.

OF THE COMMUNICATION, ACCEPTANCE, AND REVOCATION
OF PROPOSALS.

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting, or revoking, by which he intends to communicate such proposal, acceptance, or revocation, or which has the effect of communicating it.

Communication, acceptance, and revocation of proposals.

Communication, when complete.

4. The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete,
as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor ;
as against the acceptor, when it comes to the knowledge of proposer.

The communication of a revocation is complete,
as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it,
as against the person to whom it is made, when it comes to his knowledge.

Illustrations.

(a.) A proposes, by letter, to sell a house to B at a certain price,
The communication of the proposal is complete when B receives the letter.

(b.) B accepts A's proposal by a letter sent by post.
The communication of the acceptance is complete,
as against A when the letter is posted;
as against B when the letter is received by A.

(c.) A revokes his proposal by telegram.
The revocation is complete as against A when the telegram is despatched.
It is complete as against B when B receives it.

B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

5. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer but not afterwards.

Revocation of proposals and acceptances.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustrations.

A proposes, by a letter sent by post, to sell his house to B. B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

Revocation how made.

6. A proposal is revoked—

(1) by the communication of notice of revocation by the proposer to the other party ;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time without communication of the acceptance ;

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance ; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Acceptance must be absolute.

7. In order to convert a proposal into a promise the acceptance must.

(1) be absolute and unqualified ;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise ; but, if he fails to do so, he accepts the acceptance.

8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal,

Acceptance by performing conditions or receiving consideration.

9. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express and implied. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

CHAPTER II.

OF CONTRACTS, VOIDABLE CONTRACTS, AND VOID AGREEMENTS.

10. All agreements are contracts* if they are made by free consent of parties competent to contract, for a lawful consideration, † and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed by which any contract is required to be made in writing ‡ or in the presence of witnesses, or any law relating to the registration of documents.§

11. Every person is competent to contract who is of the age of majority according to the law to which he is subject, || and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

12. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it, and of forming a rational judgment as to its effect upon his interests.

* See s. 2 cl. (h), *supra*.

† See s. 25 expl 2, and s. 102, *infra*.

‡ See, for example, the following:—

(1) s. 25, *infra*;

(2) the Indian Copyright Act (III. of 1914), Sch. s. 5,

(3) the Conveyance of Land Act (XXXI. of 1864), ss. 14, 18;

(4) the Merchant Shipping Act (57 & 58 Vict. c. 60), 24,

(5) The Imperial Bank of India Act (47 of 1920) s. 21.

(6) the Transfer of property Act (IV. of 1882), ss. 54, 59, 107, 123,

(7) the Indian Companies Act (VII. of 1913).

(8) the Apprentices Act (XIX. of 1860), s. 8.

Of. also s. 4 of the Workman's Breach of Contract Act (XIII. of 1869) and the Carries Act (III. of 1865), ss. 6, 7.

§ See now the Indian Registration Act (XVI. of 1908).

|| See the Indian Majority Act (IX. of 1875). For exception to this rule in the case of emigrants see the Assam Labour and Emigration Act (VI. of 1901).

¶ But see s. 48, *infra*.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations.

(a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b) A sane man, who is delirious from fever, or who is so drunk, that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

“Consent” defined. **13.** Two or more persons are said to consent when they agree upon the same thing in the same sense.

“Free consent” defined. **14.** Consent is said to be free when it is not caused by —

- (1) coercion, as defined in section 15, or
- (2) undue influence, as defined in section 16, or
- (3) fraud as defined in section 17, or
- (4) misrepresentation, as defined in section 18, or
- (5) mistake, subject to the provisions of sections 20, 21, & 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation, or mistake.

15. “Coercion” is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

“Coercion” defined.

Explanation.—It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed.

Illustration.

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code.

A afterwards sues B for breach of contract at Calcutta.

A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Indian Penal Code was not in force at the time when or place where, the act was done.

16. (1)* A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other, and uses that position to obtain an unfair advantage over the other.

(2) In particular, and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

- (a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
- (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3). Where a person who is in a position to dominate the will of another enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provision of section 111 of the Indian Evidence Act, 1872.

Illustrations.

(a.) A, having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(b.) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(c.) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(d.) A applies to a banker for a loan at a time when there is stringency in the money-market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

17. "Fraud" means and includes any of the following acts committed by a party to a contract, or "Fraud" defined. with his connivance, or by his agent,† with intent to deceive another party thereto, or his agent, or to induce him to enter into the contract:—

* S. 16 has been substituted for the original by the Indian Contract Act Amendment Act (VI. of 1899), s. 2.

† Compare s. 238 *infra*.

- (1) — The suggestion, as a fact, of that which is not true, by one who does not believe it to be true ;
- (2) — The active concealment of a fact by one having knowledge or belief of the fact,
- (3) — A promise made without any intention of performing it ;
- (4) — any other act fitted to deceive ,
- (5) — Any such act or omission as the law specially declares to be fraudulent.

Explanation.— Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of a person keeping silence to speak,* or unless his silence is, in itself, equivalent to speech.

Illustrations.

- (a.) A sells by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.
- (b.) B is A's daughter, and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.
- (c.) B says to A, " If you donot deny it, I shall assume that the horse is sound." A says nothing. Here A's silence is equivalent to speech.
- (d.) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

"Misrepresentation" defined.

18. "Misrepresentation" means and includes—

- (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true though he believes it to be true ;
- (2) any breach of duty which, without an intent to deceive, gains and advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him ;
- (3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

19. When consent to an agreement is caused by coercion,† fraud, or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

Voidability of agreements without free consent.

* See s. 143, *infra*.

† In s. 19 the words "undue influence" have been omitted being repealed by the Indian Contract Act, Amendment Act (VI. of 1899), s. 3.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations.

(a.) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

(b.) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(c.) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out, and the mortgage-debt redeemed.

(d.) B, having discovered a vein of ore, on the estate of A, adopts means to conceal and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A.

(e.) A is entitled to succeed to an estate at the death of B; B dies; C having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

19A.† When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused,

Power to set aside contract induced by undue influence.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

† S. 19A has been added by the Indian Contract Act Amendment Act (VI, of 1899) s. 3.

Illustrations.

(a.) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(b.) A, a money-lender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 12 per cent. per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just.

Agreement void where both parties are under mistake as to matter of fact.

20. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

Illustrations.

(a.) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away, and the goods lost. Neither party was aware of these facts. The agreement is void.

(b.) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(c.) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

21. A contract is not voidable because it was caused by a mistake as to any law in force in British India; but a mistake as to a law not in force in British India has the same effect as a mistake of fact.

Effect of mistake as to law.

Illustration.

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation. The contract is not voidable.*

Contract caused by mistake of one party as to matter of fact.

22. A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

* See s.s. 26, 27, 28, 30, *infra*.

† The second illustration to section 21 has been repealed by Act 24 of 1917.

What considerations and objects are lawful, and what not.

23. The consideration or object of an agreement is lawful, unless—

- it is forbidden by law;* or
- is of such a nature that, if permitted, it would defeat the provisions of any law; or
- is fraudulent; or
- involves or implies injury to the person or property of another; or the Court regards it as immoral or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement, of which the object or consideration is unlawful, is void.

Illustrations.

(a.) A agrees to sell his house to B for 10,000 rupees. Here B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(b.) A promises to pay B 1,000 rupees at the end of six months if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party, and they are lawful considerations.

(c.) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise; and these are lawful considerations.

(d.) A promises to maintain B's child, and B promises to pay A 1,000 rupees yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(e.) A, B, and C, enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(f.) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(g.) A, being agent for a landed proprietor, agrees for money without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment by A on his principal.

(h.) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(i.) A's estate is sold for arrears of revenue under the provisions of an Act of the legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction in effect, a purchase by the defaulter, and would so defeat the object of the law.

(j.) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(k.) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code.

Void Agreements.

Agreements void if consideration and object unlawful in part.

24. If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Illustration.

A Promises to superintend, on behalf of B, a legal manufacture of indigo and an illegal traffic in other articles. B promises to pay to A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise, and the consideration for B's promise, being in part unlawful.

Agreement without consideration void, unless—

25. An agreement made without consideration is void unless—

(1) it is expressed in writing, and registered under the law for the time being in force for the registration of documents,* and is made on account of natural love and affection between parties standing in a near relation to each other ; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do ; or unless

(3) it is a promise, made in writing, and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.*

In any of these cases such an agreement is a contract.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate ; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

* In s. 25 the word "documents" has been substituted for the word "assurances" by the Repealing and Amending Act (XII. of 1891). For the law relating to the registration of documents, the Indian Registration Act (XVI. of 1908).

* See now the Indian Limitation Act (IX. of 1908).

Illustrations.

(a.) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.

(b.) A, for natural love and affection, promises to give his son, B Rs. 1,000. A puts his promise to B into writing, and registers it. This is a contract.

(c.) A finds B's purse, and gives it to him. B promises to give A Rs. 50. This is a contract.

(d.) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(e.) A owes B Rs. 1,000 but the debt is barred by the Limitation Act. A signs a written promise to pay Rs. 500 on account of the debt. This is a contract.

(f.) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract, notwithstanding the inadequacy of the consideration.

(g.) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given. The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

Agreement in restraint of marriage void.

26. Every agreement in restraint of the marriage of any person, other than a minor,* is void.

Agreement in restraint of trade void.

27. Every agreement by which any one is restrained for exercising † a lawful profession, trade or business, of any kind, is to that extent void.

Exception 1.—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

Exception 2.—Partners may, upon or in anticipation of a dissolution of the partnership, agree that some or all of them will not carry on a business similar to that of the partnership within such local limits as are referred to in the last preceding exception.

* During his or her minority, as to which see act IX. of 1875.

† The words "restrained from exercising," do not mean an absolute restriction, and are intended to apply to a partial restriction limited to some particular place—*Per Couch, C. J., 14 B. L. R. 85.*

Exception 3.—Partners may agree that some one or all of them will not carry on any business other than that of the partnership during the continuance of the partnership.

or during continuance of partnership.

28. Every agreement, by which any party thereto, is restricted absolutely from enforcing his rights under or in respect of any contract by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Agreements in restraint of legal proceedings void.

Exception 1.—This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Saving of contract to refer to arbitration dispute that may arise.

*When such a contract has been made, a suit may be brought for its specific performance; and if a suit, other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party in respect of any subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit.**

Exception 2.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

Saving of contract to refer questions that have already arisen.

29. Agreements, the meaning of which is not certain, or capable of being made certain, are void.

Agreements void for uncertainty.

Illustrations.

(a.) A agrees to sell to B 'a hundred tons of oil.' There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(b.) A agrees to sell to B one hundred tons of oil of a specified description known as an article of commerce. There is no uncertainty here to make the agreement void.

(c.) A, who is a dealer of cocoanut-oil only, agrees to sell to B one hundred tons of oil. The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut-oil.

* In s. 28, the italicized clause of exception (1) has been repealed by the Specific Relief Act (I of 1877) throughout British India, except in the scheduled districts in which that Act is not in force.

(d.) A agrees to sell to B 'all the grain in my granary at Ramnagar'. There is no uncertainty here to make the agreement void.

(e.) A agrees to sell to B, one thousand maunds of rice at a price to be fixed by C.' As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(f.) A agrees to sell to B, my white horse for rupees five hundred or rupees one thousand'. There is nothing to show which of the two prices was to be given. The agreement is void.

30. Agreements by way of wager are void, and no suit shall be brought for recovering anything alleged to be won and any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

Agreement by way
wager void.

Exception in favour of
certain prizes for horse-
racing.

This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize, or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.*

Section 294A of the
Indian Penal Code not
affected.

Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code apply.

CHAPTER III.

OF CONTINGENT CONTRACTS.

31. A 'contingent contract' is a contract to do or not to do something, if some event collateral to such contract does or does not happen.

"Contingent contract"
defined.

Illustration.

A contracts to pay B, Rs. 10,000 if B's house is burnt. This is a contingent contract.

Enforcement of contracts
contingent on an event hap-
pening.

32. Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

If the event becomes impossible, such contracts becomes void.

Illustrations.

(a.) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until B dies in A's lifetime.

(b.) A makes a contract with B to sell a horse to B at a specified price if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

(c.) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

33. Contingent contracts to do or not to do anything, if an

Enforcement of contract
contingent on an event not
happening.

uncertain future event does not happen,
can be enforced when the happening of that
event becomes impossible and not before.

Illustration.

A agrees to pay B a sum of money if a certain ship does not return. This ship is sunk. The contract can be enforced when the ship sinks.

34. If the future event on which a contract is contingent is

When event on which
contract is contingent to be
deemed impossible, if it is
the future conduct of a liv-
ing person.

the way in which a person will act at an
unspecified time, the event shall be consi-
dered to become impossible when such
person does anything which renders it im-
possible that he should so act within any

definite time, or otherwise than under further contingencies.

Illustration.

A agrees to pay B a sum of money if B marries C.

C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die, and that C may afterwards marry B.

35. Contingent contracts to do or not to do anything, if a

When contracts become
void which are contingent
on happening of specified
event within fixed time.

specified uncertain event happens within a
fixed time, become void, if, at the expiration
of the time fixed, such event has not hap-
pened, or if, before the time fixed, such event

becomes impossible.

Contingent contracts to do or not to do anything, if a specified

When contracts may be
enforced which are contin-
gent on specified event not
happening within fixed
time.

uncertain event does not happen within
a fixed time, may be enforced by law
when the time fixed has expired, and
such event has not happened, or, before the
time fixed has expired, if it becomes certain

that such event will not happen.

Illustrations.

(a.) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

(b.) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

36. Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Illustrations,

(a.) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(b.) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

CHAPTER IV.

OF THE PERFORMANCE OF CONTRACTS.

Contracts which must be performed.

37. The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of death of the promisors before performance unless a contrary intention appears from the contract.

Illustrations

(a.) A promises to deliver goods to B on a certain day on payment of Rs. 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives.

(b.) A promises to paint a picture for B by a certain day at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

38. Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Effect of refusal to accept offer of performance.

Every such offer must fulfil the following conditions :—

(1.) It must be unconditional.

(2.) It must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do.

(3.) If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Illustration.

A contracts to deliver to B at his warehouse, on the 1st March 1873, 100 bales of cotton of a particular quality. In order to make an offer of performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

39. When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract,* unless he has signified, by words or conduct, his acquiescence in its continuance.

Effect of refusal of party to perform promise wholly

Illustrations.

(a.) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(b.) A, a singer, enters into a contract with B, the manager of a theatre to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

By whom contracts must be performed.

40 If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Person by whom promise is to be performed.

Illustrations.

(a.) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B, or by causing it to be paid to B by another; and if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

* And see s. 75, *infra*.

(b.) A promises to paint a picture for B. A must perform this promise personally.

41. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Effect of accepting performance from third person

42. When two or more persons have made a joint promise, then (unless a contrary intention appears by the contract) all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

Devolution of joint liabilities,

43. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one "or more"* of such joint promisors to perform the whole of the promise.

Any one of joint promisors may be compelled to perform.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Each promisor may compel contribution.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Sharing of loss by default in contribution.

Explanation.—Nothing in this section shall prevent a surety from recovering, from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Illustrations.

(a.) A, B, and C jointly promise to pay D, 3,000 rupees. D, may compel either A or B or C to pay him 3,000 rupees.

(b.) A, B, and C jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1,250 rupees from B.

* In s. 43, the words "or more" have been inserted by the Repealing and Amending Act (XII, of 1891).

(c.) A, B, and C are under a joint promise to pay D, 3,000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(d.) A, B, and C are under a joint promise to pay D, 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

44. Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.*

Effect of release of one joint contractor.

45. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.†

Devolution of joint rights.

Illustration.

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and, after the death of C, with the representatives of B and C jointly.

Time and Place for Performance.

46. Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Time for performance of promise, where no application is to be made, and no time is specified.

Explanation—The question, "What is a reasonable time?" is, in each particular case, a question of fact.

47. When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day, and at the place at which the promise ought to be performed.

Time and place for performance of promise where time is specified and no application to be made.

* See s. 138, *Infra*.

† For an exception to s. 45 in the case of Government Securities, see the Indian Securities Act (XIII. of 1886), s. 5.

Illustration.

A promises to deliver goods at B's warehouse on the 1st January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

48. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

Application for performance on certain day to be at proper time and place.

Explanation—The question, "What is a proper time and place?" is, in each particular case, a question of fact.

49. When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Place for performance of promise where no application to be made, and no place fixed.

Illustration.

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

50. The performance of any promise may be made in any manner or at any time which the promisee prescribes or sanctions.

Performance in manner or at time prescribed or sanctioned by promisee.

Illustrations.

(a.) B owes A, 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

(b.) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(c.) A owes B, 2,000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of the goods operates as a part-payment.

(d.) A desires B, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

Performance of Reciprocal Promises,

51. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise,

Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.

Illustrations.

(a.) A and B contract that A shall deliver goods to B to be paid for by B on delivery.

A need not deliver the goods unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods unless A is ready and willing to deliver them on payment.

(b.) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

52 Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order ; and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Order of performance of reciprocal promises.

Illustrations.

(a.) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

(b.) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

53. When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented ; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the nonperformance of the contract.

Liability of party preventing event on which contract is to take effect.

Illustration.

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

54. When a contract consists of reciprocal promises, such, that one of them cannot be performed, or that its performance cannot be claimed, till the other has been performed, and the promisor of the promise last-mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and

Effect of default as to that promise which should be first performed in contract consisting of reciprocal promises.

must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Illustrations.

(a.) A hires B's ship to take in and convey from Calcutta to the Mauritius a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performances of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

(b.) A contracts with B to execute certain builders' work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(c.) A contracts with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and B must make compensation.

(d.) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

55. When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable, at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time : but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.*

* Compare ss. 62 and 63, *infra*.

Agreement to do impossible act.

56. An agreement to do an act impossible in itself is void.

(Contract to do act afterwards becoming impossible or unlawful,

A contracts to do an act which, after the contract is made becomes impossible,† or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.‡

Compensation for loss through non-performance of act known to be impossible or unlawful,

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Illustrations.

(a.) A agrees with B to discover treasure by magic. The agreement is void.

(b.) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The Contract becomes void.

(c.) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy. A must make compensation to B for the loss caused to her by the non-performance of his promise.

(d.) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

(e.) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

57. Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract ; but the second is a void agreement.

Reciprocal promises to do things legal, and also other things illegal.

Illustration.

A and B agree that A shall sell B a house for 10,000 rupees, but that, if B uses it as a gambling house, he shall pay A 50,000 rupees for it.

The first set of reciprocal promises, namely, to sell the house, and to pay 10,000 rupees for it, is a contract.

The second set is for an unlawful object, namely, that B may use the house as a gambling house, and is a void agreement.

† Otherwise than by the default of the contractor.

‡ But see s. 65, *infra*. And see the Specific Relief Act (1 of 1877), s. 13.

58. In the case of an alternative promise, one branch of which is legal, and the other illegal, the legal branch alone can be enforced.

Alternative promise, one branch being illegal.

Illustration.

A and B agree that A shall pay B 1,000 rupees, for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice, and a void agreement as to the opium.

Appropriation of Payments.

59. Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Application of payment where debt to be discharged is indicated.

Illustrations.

(a.) A owes B, among other debts, 1,000 rupees upon a promissory note, which falls due on the 1st June. He owes B, no other debt of that amount. On the 1st June A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(b.) A owes B, among other debts, the sum of 567 rupees. B writes to A, and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

60. Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Application of payment where debt to be discharged is not indicated.

61. Where neither party makes any appropriation, the payment shall be applied in discharge of the debts* in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionally.

Application of payment where neither party appropriates.

Contracts which need not be performed.

Effect of novation, rescission, and alteration of contract.

62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

* Probably the lawful debts referred to in s. 60.

Illustrations.

(a.) A owes money to B under a contract. It is agreed, between A, B, and C, that B shall thenceforth accept C as his debtor instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b.) A owes B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract, and extinguishes the old.

(c.) A owes B 1,000 rupees under a contract. A owes C 1,000 rupees, B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.

63. Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance,* or may accept, instead of it, any satisfaction which he thinks fit.

Illustrations.

(a.) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(b.) A owes B, 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(c.) A owes B 5,000 rupees. C pays to B, 1,000 rupees, and B accepts them, in satisfaction of his claim on A. The payment is a discharge of the whole claim.†

(d.) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.

(e.) A owes B, 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a composition‡ of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand.

64. When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.§

* But see s. 135, *infra*.

† See s. 41, *supra*.

‡ The word "composition" has been substituted for the word "compensation" by the Repealing and Amending Act (XII of 1891).

§ See s. 75, *infra*.

65. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it or to make compensation for it, to the person from whom he received it.

Obligation of person who has received advantage under void agreement or contract that becomes void.

Illustrations.

(a.) A pays B, 1,000 rupees, in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(b.) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the 1st of May. He is bound to pay A for them.

(c.) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months and B engages to pay her a hundred rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

(d.) A contracts to sing for B at a concert for 1,000 rupees which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the 1,000 rupees paid in advance.

66. Rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules as apply to the communication or revocation of a proposal.*

Mode of communicating or revoking rescission of voidable contract

Effect of neglect of promisee to afford promisor reasonable facilities for performance.

67. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Illustration.

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non-performance of the contract, if it is caused by such neglect or refusal.

* See ss. 3 and 5, *supra*.

CHAPTER V.

OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT.

68. If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Claim for necessaries supplied to person incapable of contracting or on his account.

Illustrations.

(a.) A supplies B, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

(b.) A supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

Reimbursement of person paying money due by another, payment of which he is interested.

69 A person, who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Illustration.

B holds land in Bengal, on a lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.*

Obligation of person enjoying benefit of non-gratuitous act.

Illustrations.

(a.) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(b.) A saves B's property from fire. A is not entitled to compensation from B if the circumstances show that he intended to act gratuitously.

* As to suits by minors under s. 70 in Presidency Small Cause Courts, see the Presidency Small Cause Courts Act (XV. of 1883), s. 32.

71. A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.*

Responsibility of finder of goods.

Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.

72. A person to whom money has been paid, or anything delivered, by mistake or under coercion,† must repay or return it.

Illustrations.

(a.) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(b.) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

CHAPTER VI.

OF THE CONSEQUENCES OF BREACH OF CONTRACT.

73. When a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Compensation for loss or damage caused by breach of contract.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

When an obligation resembling those created by contract has been incurred, and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it, and had broken his contract.

Compensation for failure to discharge obligation resembling those created by contract.

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

* See ss. 151 and 152, *infra*. As to definition of "bailee," see s. 148, *infra*.

† For definition of coercion, see s. 15, *supra*.

Illustrations.

(a) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price, to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract-price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(b) A hires B's ship to go to Bombay, and there take on board on the first of January, a cargo which A is to provide, and to bring it to Calcutta the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(c) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A by way of compensation, the amount, if any, by which the contract-price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(d) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract-price over the price which B can obtain for the ship at the time of the breach of promise.

(e) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur for sale at the place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market-price at the time when it actually arrived,

(f) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the costs of making the repairs conform to the contract.

(g.) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freight rises, and on the first of January the hire obtainable for the ship is higher than the contract-price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract-price and the price for which B could hire a similar ship for a year on and from the first of January.

(h.) A contracts to supply B with a certain quantity of shot at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract-price of the iron and the sum for which A could have obtained and delivered it.

(i) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(j) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A, 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(k.) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract-price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(l.) A, a builder contracts to erect and finish a house by the first of January in order that B may give possession of it at that time to C to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down, and has to be rebuilt by B, who in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

(m) A sells certain merchandise to B, warranting it to be of a particular quality, and B in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(n.) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay together with interest up to the day of payment.

(o.) A contracts to deliver 50 maunds of salpêtre to B on the first of January at a certain price. B afterwards, before the first of January, contracts to sell salpêtre to C at a price higher than the market-price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market-price of the first of January, and not the profit which would have arisen to B from the sale to C is to be taken into account.

(p) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise and B having no cotton is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill,

(q.) A contracts to sell and deliver to B on the first of January, certain cloth which B intends to manufacture into caps of a particular kind for which there is no demand except at that season. The cloth is not delivered till after the appointed time and too late to be used that year in making caps. B is entitled to receive from A by way of compensation, the difference between the contract price of the cloth and its market-price at the time of delivery, but not the profits which he expected to obtain by making caps nor the expenses which he has been put to making preparation for the manufacture.

(r.) A, a ship-owner contracts with B to convey him from Calcutta to Sydney in A's ship sailing on the first of January, and B pays to A by way of deposit, one-half of his passage-money. The ship does sail on the 1st of January, and B after being in consequence detained in Calcutta for sometime, and

thereby put to some expense, proceeds to Sydney in another vessel and in consequence arriving too late in Sydney, loses a sum of money. A is liable to repay B his deposit with interest, and the expense to which he is put by his detention in Calcutta and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

74.* When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, *or if the contract contains any other stipulation by way of penalty*, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named, *or, as the case may be the penalty stipulated for.*

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty

*Exception.—*When any person enters into any bail bond, recognizance, or other instrument of the same nature, or, under the provisions of any law or under the order, of the Government of India or of any Local Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

*Explanation.—*A person who enters into a contract with Government does not necessarily thereby undertake any public duty or promise to do an act in which the public are interested.

Illustrations.

(a.) A contracts with B to pay B, Rs. 1,000 if he fails to pay B, Rs. 5,00 on a given day. A fails to pay B, Rs. 500 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 1,000, as the Court considers reasonable.

(b.) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B, Rs. 5,000. A practises as a surgeon in Calcutta. A is entitled to such compensation, not exceeding Rs. 5,000, as the Court considers reasonable.

(c.) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

(d.) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent. at the end of six months, with a stipulation that, in case of default,

* Paragraph 1 and the explanation following it have been substituted for the paragraph originally enacted. The difference between the old and the new paragraph is shown by the italicised words which are newly inserted in the repealed paragraph. The explanation which follows paragraph 1 is entirely new. See the Indian Contract Act Amendment Act (VI. of 1899), s. 4 (1).

interest shall be payable at the rate of 75 per cent. from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.*

(e) A, who owes money to B, a money-lender, undertakes to repay him by delivering to him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds. This is a stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach.*

(f.) A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments, with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.*

(g.) A borrows Rs 100 from B, and gives him a bond for Rs 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.*

Party rightfully rescinding contract entitled to compensation.

75. A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract,

Illustration.

A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A willfully absents herself from the theatre, and B, in consequence rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

CHAPTER VII.

SALE OF GOODS.

When Property in Goods sold passes.

'Goods' defined.

76. In this chapter, the word 'goods' means and includes every kind of moveable property.

77. 'Sale' in the exchange of property for a price- It involves the transfer of the ownership of the thing sold from the seller to the buyer.

'Sale' defined.

Sale how effected,

78. Sale is effected by offer and acceptance of ascertained goods for a price, or of a price for ascertained goods,

* Illustrations (d), (e), (f), and (g), have been added by the Indian Contract Act Amendment Act (VI. of 1899), s. 4 (2).

together with payment of the price or delivery of the goods ; or with tender, part-payment, earnest, or part-delivery ; or with an agreement, express or implied, that the payment or delivery, or both, shall be postponed.

Where there is a contract for the sale of ascertained goods, the property in the goods sold passes to the buyer when the whole or part of the price, or when the earnest, is paid, or when the whole or part of the goods is delivered.*

If the parties agree, expressly or by implication, that the payment or delivery, or both, shall be postponed, the property passes as soon as the proposal for sale is accepted.

Illustrations

(a.) B offers to buy A's horse for 500 rupees. A accepts B's offer, and delivers the horse to B. The horse becomes B's property on delivery.

(b.) A sends goods to B, with the request that he will buy them at a stated price if he approves of them, or return them if he does not approve of them. B retains the goods, and informs A that he approves of them. The goods become B's when B retains them.

(c.) B offers A, for his horse, 1,000 rupees, the horse to be delivered to B on a stated day, and the price to be paid on another stated day. A accepts the offer. The horse becomes B's as soon as the proposal is accepted.

(d.) B offers A, for his horse, 1,000 rupees on a month's credit. A accepts the offer. The horse becomes B's as soon as the offer is accepted.

(e.) B, on the 1st January, offers to A, for a quantity of rice, 2,000 rupees, to be paid on the 1st March following, the rice not to be taken away till paid for. A accepts the offer. The rice becomes B's as soon as the offer is accepted.

Transfer of ownership of thing sold, which has yet to be ascertained, made or finished.

79. Where there is a contract for the sale of a thing which has yet to be ascertained, made, or finished,† the ownership of the thing is not transferred to the buyer until it is ascertained, made, or finished.

Illustration.

B orders A, a barge-builder, to make him a barge. The price is not made payable by instalments. While the barge is building, B pays to A money from time to time on account of the price. The ownership of the barge does not pass to B until it is finished.

Completion of sale of goods, which the seller is to put into state in which buyer is to take them.

80. Where, by a contract for the sale of goods, the seller is to do any thing to them for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such thing has been done.

*That is, when the whole is delivered, or when part is delivered in progress of delivery of the whole—See s. 92, *infra*.

† See s. 80 *infra*.

Illustration.

A, a ship-builder, contracts to sell to B for a stated price a vessel which is lying in A's yard the vessel to be rigged and fitted for a voyage, and the price to be paid on delivery. Under the contract, the property in the vessel does not pass to B until the vessel has been rigged, fitted up, and delivered.

Completion of sale of goods when seller has to do anything thereto in order to ascertain price.

81. Where anything remains to be done to the goods by the seller for the purpose of ascertaining the amount of the price, the sale is not complete until this has been done.

Illustrations.

(a.) A, the owner of a stack of bark, contracts to sell it to B, weigh and deliver it, at 100 rupees per ton. B agrees to take and pay for it on a certain day. Part is weighed and delivered to B; the ownership of the residue is not transferred to B until it has been weighed pursuant to the contract.

(b.) A contracts to sell a heap of clay to B at a certain price per ton. B is, by the contract, to load the clay in his own carts, and to weigh each load at a certain weighing machine, which his carts must pass on their way from A's grounds to B's place of deposit. Here, nothing more remains to be done by the seller; the sale is complete, and the ownership of the heap of clay is transferred at once.

82. Where the goods are not ascertained at the time of making the contract of sale, it is necessary to the completion of the sale that the goods shall be ascertained.*

Completion of sale when goods are unascertained at date of contract.

Illustration.

A agrees to sell to B 20 tons of oil in A's cisterns. A's cisterns contain more than 20 tons of oil. No portion of the oil has become the property of B.

83. Where the goods are not ascertained at the time of making the agreement for sale, but goods answering the description in the agreement are subsequently appropriated by one party for the purpose of the agreement, and that appropriation is assented to by the other, the goods have been ascertained, and the sale is complete.

Ascertainment of goods by subsequent appropriation.

Illustration.

A, having a quantity of sugar in bulk more than sufficient to fill 20 hogsheads, contracts to sell to B 20 hogsheads of it. After the contract, A fills 20 hogsheads with the sugar, and gives notice to B that the hogsheads are ready, and requires him to take them away. B says he will take them as soon as he can. By this appropriation by A, and assent by B the sugar becomes the property of B.

* See s. 79, *supra*.

84. Where the goods are not ascertained at the time of making the contract of sale, and, by the terms of the contract, the seller is to do an act with reference to the goods which cannot be done until they are appropriated to the buyer, the seller has a right to select any goods answering to the contract, and, by his doing so, the goods are ascertained.

Ascertainment of goods by seller's selection.

Illustration.

B agrees with A to purchase of him at a stated price, to be paid on a fixed day, 50 maunds of rice out of a larger quantity in A's granary. It is agreed that B shall send sacks for the rice, and that A shall put the rice into them. B does so, and A puts 50 maunds of rice into the sacks. The goods have been ascertained.

Transfer of ownership of moveable property, when sold together with immoveable.

85. Where an agreement is made for the sale of immoveable and moveable property combined, the ownership of the moveable property does not pass before the transfer of the immoveable property.

Illustration,

A agrees with B for the sale of a house and furniture. The ownership of the furniture does not pass to B until the house is conveyed to B.

Buyer to bear loss after goods have become his property.

86. When goods have become the property of the buyer, he must bear any loss arising from their destruction or injury.

Illustrations,

(a.) B offers and A accepts, 100 rupees for a stack of firewood standing on A's premises, the firewood to be allowed to remain on A's premises till a certain day, and not to be taken away till paid for. Before payment, and while the firewood is on A's premises, it is accidentally destroyed by fire. B must bear the loss.

(b.) A bids 1,000 rupees for a picture at a sale by auction. After the bid, it is injured by an accident. If the accident happens before the hammer falls the loss falls on the seller; if afterwards, on A.

87. When there is a contract for the sale of goods not yet in existence, the ownership of the goods may be transferred by acts done, after the goods are produced in pursuance of the contract by the seller, or by the buyer with the seller's assent,

Transfer of ownership of goods agreed to be sold while non-existent.

Illustrations.

(a.) A contracts to sell to B, for a stated price, all the indigo which shall be produced at A's factory during the ensuing year. A, when the indigo has been manufactured, gives B an acknowledgment that he holds the indigo at his disposal. The ownership of the indigo vests in B from the date of the acknowledgment.

(b.) A, for a stated price, contracts that B may take and sell any crops that shall be grown on A's land in succession to the crops then standing. Under his contract, B, with the assent of A, takes possession of some crops grown in succession to the crops standing at the time of the contract. The ownership of the crops, when taken possession of, vests in B.

(c.) A, for a stated price, contracts that B may take and sell any crops that shall be grown on his land in succession to the crops then standing. Under this contract, B applies to A for possession of some crops grown in succession to the crops which were standing at the time of the contract. A refuses to give possession. The ownership of the crops has not passed to B, though A may commit a breach of contract in refusing to give possession.

88. A contract for the sale of goods to be delivered at a future day is binding, though the goods are not in the possession of the seller at the time of making the contract, and though, at that time, he has no reasonable expectation of acquiring them otherwise than by purchase.

Contract to sell and deliver at a future day goods not in seller's possession at date of contract.

Illustration.

A contracts, on the first January, to sell B 50 shares in the East Indian Railway Company, to be delivered and paid for on the first March of the same year. A, at the time of making the contract, is not in possession of any shares. The contract is valid.

89. Where the price of goods sold is not fixed by the contract of sale, the buyer is bound to pay the seller such a price as the Court considers reasonable.

Determination of price not fixed by contract.

Illustration.

B, living in Patna, orders of A, a coach-builder at Calcutta, a carriage of a particular description. Nothing is said by either as to the price. The order having been executed, and the price being in dispute between the buyer and the seller, the Court must decide what price it considers reasonable.

Delivery.

90. Delivery of goods sold may be made by doing anything which has the effect of putting them in the possession of the buyer, or of any person authorized to hold them on his behalf.

Delivery how made.

Illustrations.

(a.) A sells to B a horse, and causes or permits it to be removed from A's stables to B's. The removal to B's stable is a delivery.

(b.) B in England orders 100 bales of cotton from A, a merchant of Bombay, and sends his own ship to Bombay for the cotton. The putting the cotton on board the ship is a delivery to B.

(c.) A sells to B certain specific goods which are locked up in a godown. A gives B the key of the godown in order that he may get the goods. This is a delivery.

(d.) A sells to B five specific casks of oil. The oil is in the warehouse of A. B sells the five casks to C. A receives warehouse-rent for them from C. This amounts to a delivery of the oil to C, as it shows an assent on the part of A to hold the goods as warehouseman of C.

(e.) A sells to B 50 maunds of rice in the possession of C, a warehouseman. A gives B an order to C to transfer the rice to B, and C assents to such order, and transfers the rice in his books to B. This is a delivery.

(f.) A agrees to sell B five tons of oil, at 1,000 rupees per ton, to be paid for at the time of delivery. A gives to C, a warfing, at whose wharf he had twenty tons of the oil, an order to transfer five of them into the name of B. C makes the transfer in his books, and gives A's clerk a notice of the transfer for B. A's clerk takes the transfer-notice to B, and offers to give it to him on payment of the price of the oil. B refuses to pay. There has been no delivery to B, as B never assented to make C his agent to hold for him the five tons selected by A.

91. A delivery to a warfing or carrier of the goods sold has the same effect as a delivery to the buyer, but does not render the buyer liable for the price of goods which do not reach him unless the delivery is so made as to enable him to hold the warfing or carrier responsible for the safe custody or delivery of the goods.

Effect of delivery to wharfing or carrier.

Illustration.

B, at Agra, orders of A, who lives at Calcutta, three casks of oil to be sent to him by railway. A takes three casks of oil directed to B to the railway station, and leaves them there without conforming to the rules which must be complied with in order to render the Railway Company responsible for their safety. The goods do not reach B. There has not been a sufficient delivery to charge B in a suit for the price.

92. A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder,

Effect of part-delivery.

Illustrations.

(a.) A ship arrives in a harbour laden with a cargo consigned to A, the buyer of the cargo. The captain begins to discharge it, and delivers over part of the goods to A in progress of the delivery of the whole. This is a delivery of the cargo to A for the purpose of passing the property in the cargo.

(b.) A sells to B a stack of firewood, to be paid for by B on delivery. After the sale, B applies for and obtains from A leave to take away some of the firewood. This has not the legal effect of a delivery of the whole.

(c.) A sells 50 maunds of rice to B. The rice remains in A's warehouse. After the sale, B sells to C 10 maunds of the rice, and A, at B's desire, sends the 10 maunds to C. This has not the legal effect of a delivery of the whole.

Seller not bound to deliver until buyer applies for delivery.

93. In the absence, of any special promise, the seller of goods is not bound to deliver them until the buyer applies for delivery.*

94. In the absence of any special promise as to delivery, goods sold are to be delivered at the place at which they are at the time of the sale; and goods contracted to be sold are to be delivered at the place at which they are at the time of the contract for sale, or, if not then in existence, at the place at which they are produced.

Place of delivery.

Seller's Lien.

95. Unless a contrary intention appears by the contract, a seller has a lien† on sold goods as long as they remain in his possession, and the price or any part of it remains unpaid.‡

Seller's lien.

96. Where, by the contract, the payment is to be made at a future day, but no time is fixed for the delivery of the goods, the seller has no lien, and the buyer is entitled to a present delivery of the goods without payment. But, if the buyer becomes insolvent before delivery of the goods, or if the time appointed for payment arrives before the delivery of the goods, the seller may retain the goods for the price.

Lien where payment to be made at a future day, but no time fixed for delivery.

Explanation.—A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them.

* Insolvency defined.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given: B allows the sugar to remain in A's warehouse. Before the expiry of the three months, B becomes insolvent. A may retain the goods for the price.

97. Where, by the contract, the payment is to be made at a future day, and the buyer allows the goods to remain in the possession of the seller until that day, and does not then pay for them, the seller may retain the goods for the price.

Seller's lien where payment to be made at future day, and buyer allows goods to remain in seller's possession.

* See s. 46, *supra*.

† For the amount of the purchase money.

‡ Or untendered.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three month's credit shall be given. B allows the sugar to remain in A's warehouse till the expiry of the three months, and then does not pay for them. A may retain the goods for the price.

98. A seller, in possession of goods sold, may retain them for the price against any subsequent buyer, unless the seller has recognized the title of the subsequent buyer.

A seller's lien against subsequent buyer.

Stoppage in Transit.

99. A seller who has parted with the possession of the goods, and has not received the whole price, may, if the buyer becomes insolvent, stop the goods while they are in transit to the buyer.

Power of seller to stop in transit.

100. Goods are to be deemed in transit while they are in the possession of the carrier, or lodged at any place in the course of transmission to the buyer, and are not yet come into the possession of the buyer or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged.

When goods are to be deemed in transit.

Illustrations.

(a.) B, living at Madras, orders goods of A at Patna, and directs that they shall be sent to Madras. The goods are sent to Calcutta, and there delivered to C, a wharfinger, to be forwarded to Madras. The goods, while they are in the possession of C, are in transit.

(b.) B, at Delhi, orders goods of A at Calcutta. A consigns and forwards the goods to B at Delhi. On arrival there, they are taken to the warehouse of B, and left there. B refuses to receive them, and immediately afterwards stops payment. The goods are in transit.

(c.) B, who lives at Puna, orders goods of A at Bombay. A sends them to Puna by C, a carrier, appointed by B. The goods arrive at Puna, and are placed by C, at B's request, in C's warehouse for B. The goods are no longer in transit.

(d.) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. The transit is at an end when the cotton is delivered on board the ship.

(e.) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. A delivers the cotton on board the ship, and takes bills of lading from the master, making the cotton deliverable to A's order or assigns. The cotton arrives at London, but, before coming into B's possession, B becomes insolvent. The cotton has not been paid for. A may stop the cotton.

101. The seller's right of stoppage does not, except in the cases hereinafter mentioned, cease on the buyer's re-selling the goods while in transit, and receiving the price, but continues until the goods have been delivered to the second buyer, or to some person on his behalf.

Continuance of right of stoppage.

102. The right of stoppage ceases if the buyer, having obtained a bill of lading or other document showing title of the goods,* assigns it, while the goods are in transit, to a second buyer, who is acting in good faith, and who gives valuable consideration for them.

Cessation of right on assignment, by buyer, of bill of lading.

Illustrations.

(a.) A sells and consigns certain goods to B, and sends him the bill of lading. A being still unpaid, B becomes insolvent, and, while the goods are in transit, assigns the bill of lading for cash to C, who is not aware of his insolvency. A cannot stop the goods in transit.

(b.) A sells and consigns certain goods to B, A being still unpaid. B becomes insolvent, and while the goods are still in transit, assigns the bill of lading for cash to C, who knows that B is insolvent. The assignment not being in good faith, A may still stop the goods in transit.

103. Where a bill of lading or other instrument of title to any goods is assigned by the buyer of such goods by way of pledge to secure an advance made specifically upon it in good faith, the seller cannot, except on payment or tender to the pledgee of the advance so made, stop the goods in transit.

Stoppage where bill of lading is pledged to secure specific advanced.

Illustrations.

(a.) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C to secure a specific advance of 5,000 rupees made to him upon the bill of lading by C. C becomes insolvent, being indebted to C to the amount of 9,000 rupees. A is not entitled to stop the goods except on payment or tender to C of 5,000 rupees.

(b.) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C to secure the sum of 5,000 rupees due from him to C upon a general balance of account. B becomes insolvent. A is entitled to stop the goods in transit without payment or tender to C of the 5,000 rupees.

104. The seller may effect stoppage in transit, either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other depository in whose possession they are.

Stoppage how effected

105. Such notice may be given, either to the person who has the immediate possession of the goods, or to the principal whose servant has possession, In the latter case, the notice must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer.

Notice of seller's claim.

* See s. 103, excep. 1, *infra*.

Right of seller on stop-
page.

106. Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid.

Illustration.

A sells to B 100 bales of cotton ; 60 bales having come into B's possession, and 40 being still in transit, B becomes insolvent, and A, being still unpaid stops the 40 bales in transit. A is entitled to hold the 40 bales until the price of the 100 bales is paid.

Re-sale.

107. Where the buyer of goods fails to perform his part of the contract, either by not taking the goods sold to him, or by not paying for them, the seller, having a lien on the goods or having stopped them in transit, may, after giving notice to the buyer of his intention to do so, re-sell them after the lapse of a reasonable time, and the buyer must bear any loss, but is not entitled to any profit, which may occur on such re-sale,

Title.

Title conveyed by seller
of goods to buyer.
cases :—

108. No seller can give to the buyer of goods a better title to those goods than he has himself, except in the following

Exception 1.—When any person is, by the consent of the owner, in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or other document showing title to goods, he may transfer the ownership of the goods, of which he is so in possession, or to which such documents relate, to any other person, and give such person a good title thereto, notwithstanding any instructions of the owner to the contrary :* Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods or documents has no right to sell the goods.

Exception 2.—If one of several joint-owners of goods has the sole possession of them by the permission of the co-owners, the ownership of the goods is transferred to any person who buys them of such joint owner in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods has no right to sell them.

* It has been held that this exception does not apply 'where there is only a qualified possession, such as a hirer of goods has, or where the possession is for a specific purpose—*Greenwood v. Holquette* 12 B. L. R. 48.

Exception 3.—When a person has obtained possession of goods under a contract voidable at the option of the other party there to, the ownership of the goods is transferred to a third person, who, before the contract is rescinded, buys them in good faith of the person in possession ; unless the circumstances which render the contract voidable amounted to an offence committed by the person in possession or those whom he represents.

In this case the original seller is entitled to compensation from the original purchaser for any loss which the seller may have sustained by being prevented from rescinding the contract.

Illustrations.

(a.) A buys from B, in good faith, a cow which B had stolen from C. The property in the cow is not transferred to A.

(b.) A, a merchant, entrusts B, his agent, with a bill of lading relating to certain goods, and instructs B not to sell the goods for less than a certain price and not to give credit to D. B sells the goods to D for less than that price, and gives D three months' credit. The property in the goods passes to D.

(c.) A sells to B goods of which he has the bill of lading, but the bill of lading is made out for delivery of the goods to C, and it has not been endorsed by C. The property is not transferred to B.

(d.) A, B, and C are joint Hindu brothers, who own certain cattle in common. A is left by B and C in possession of a cow, which he sells to D. D purchases *bona fide*. The property in the cow is transferred to D.

(e.) A, by a misrepresentation not amounting to cheating, induces B to sell and deliver to him a horse. A sells the horse to C before B has rescinded the contract. The property in the horse is transferred to C ; and B is entitled to compensation from A for any loss which B has sustained by being prevented from rescinding the contract.

(f.) A compels B by wrongful intimidation, or induces him by cheating or forgery, to sell him a horse, and, before B rescinds the contract, sells the horse to C. The property is not transferred to C.

Warranty.

109. If the buyer, or any person claiming under him, is, by reason of the invalidity of the seller's title, deprived of the thing sold, the seller is responsible to the buyer, or the person claiming under him, for loss caused thereby, unless a contrary intention appears by the contract.

Establishment of implied warranty of goodness or quality.

110. An implied warranty of goodness or quality may be established by the custom of any particular trade.

Warranty of soundness implied on sale of provisions.

111. On the sale of provisions, there is an implied warranty that they are sound.

Warranty of bulk implied on sale of goods by sample.

112. On the sale of good by sample, there is an implied warranty that the bulk is equal in quality to the sample.*

113. Where goods are sold as being of a certain denomination, there is an implied warranty that they are such goods as are commercially known by that denomination, although the buyer may have bought them by sample or after inspection of the bulk.

Warranty implied where goods are sold as being of a certain denomination.

Explanations.—But, if the contract specifically states that the goods, though sold as of a certain denomination, are not warranted to be of that denomination, there is no implied warranty.

Illustrations

(a.) A, at Calcutta, sells to B twelve bags of "waste silk" then on its way from Murshidabad to Calcutta. There is an implied warranty by A that the silk shall be such as is known in the market under the denomination of "waste silk".

(b.) A buys, by sample, and after having inspected the bulk, 100 bales of "Fair Bengal" cotton. The cotton proves not to be such as is known in the market as "Fair Bengal." There is a breach of warranty.

114. Where goods have been ordered for a specified purpose, for which goods of the denomination mentioned in the order are usually sold, there is an implied warranty by the seller that the goods supplied are fit for that purpose.*

Warranty where goods ordered for a specified purpose.

Illustration.

B orders of A, a copper-manufacturer, copper for sheathing a vessel. A, on this order, supplies copper. There is an implied warranty that the copper is fit for sheathing a vessel.

115. Upon the sale of an article of a well-known ascertained kind, there is no implied warranty of its fitness for any particular purpose.

Warranty on sale of article of well-known ascertained kind.

Illustration.

B writes to A, the owner of a patent invention for cleaning cotton—"Send me your patent cottoncleaning machine to clean the cotton at my factory." A sends the machine according to order. There is an implied warranty by A that that it is the article known as A's patent cotton-cleaning machine, but none that it is fit for the particular purpose of cleaning the cotton at B's factory.

* See s. 118, *infra*.

116. In the absence of fraud and of any express warranty of quality, the seller of an article which answers the description under which it was sold is not responsible for a latent defect in it.

Seller when not responsible for latent defects.

Illustration.

A sells to B a horse. It turns out that the horse had, at the time of the sale, a defect of which A was unaware. A is not responsible for this.

117. Where a specific article, sold with a warranty, has been delivered and accepted, and the warranty is broken, the sale is not thereby rendered voidable, but the buyer is entitled to compensation from the seller for loss caused by the breach of warranty.

Buyer's right on breach of warranty.

Illustration.

A sells and delivers to B a horse warranted sound. The horse proves to have been unsound at the time of sale. The sale is not thereby rendered voidable, but B is entitled to compensation from A for loss caused by the unsoundness.

118. Where there has been a contract, with a warranty, for the sale of goods which, at the time of the contract, were not ascertained or not in existence, and the warranty is broken, the buyer may accept the goods or refuse to accept the goods when tendered.

Right of buyer on breach of warranty in respect of goods not ascertained.

or keep the goods for a time reasonably sufficient for examining and trying them, and then refuse to accept them: Provided that, during such time, he exercises no other act of ownership over them than is necessary for the purpose of examination and trial.

In any case the buyer is entitled to compensation from the seller for any loss caused by the breach of warranty: but if he accepts the goods, and intends to claim compensation, he must give notice of his intention to do so within a reasonable time after discovering the breach of the warranty.

Illustrations.

(a.) A agrees to sell, and, without application on B's part, deliver to B, 200 bales of unascertained cotton by sample. Cotton not in accordance with sample is delivered to B. B may return it if he has not kept it longer than a reasonable time for the purpose of examination.

(b.) B agrees to buy of A twenty-five sacks of flour by sample. The flour is delivered to B, who pays the price. B, upon examination, finds it not equal to sample; B afterwards uses two-sacks, and sells one. He cannot now rescind the contract and recover the price, but he is entitled to compensation from A for any loss caused by the breach of warranty.

(c.) 'B makes two pairs of shoes for A by A's order. When the shoes are delivered, they do not fit A. A keeps both pairs for a day. He wears one pair for a short time in the house, and takes a long walk out of doors in the other pair. He may refuse to accept the first pair, but not the second. But he may recover compensation for any loss sustained by the defect of the second pair.

Miscellaneous.

When buyer may refuse to accept, if goods not ordered are sent with goods ordered.

119. When the seller sends to the buyer goods not ordered with goods ordered, the buyer may refuse to accept any of the goods so sent, if there is risk or trouble in separating the goods ordered from the goods not ordered.

Illustration.

A orders of B specific articles of china. B sends these articles to A in a hamper with other articles of china which had not been ordered. A may refuse to accept any of the goods sent.

Effect of wrongful refusal to accept.

120. If a buyer wrongfully refuses to accept the goods sold to him, this amounts to a breach of the contract of sale.

121. When goods sold have been delivered to the buyer, the

Right of sellers as to rescission, on failure of buyer to pay price at time fixed.

seller is not entitled to rescind the contract, on the buyer's failing to pay the price at the time fixed, unless it was stipulated by the contract that he should be so entitled.

122. Where goods are sold by auction, there is a distinct and

Sale and transfer of lots sold by auction.

separate sale of the goods in each lot, by which the ownership thereof is transferred as each lot is knocked down.

Effect of use, by seller, of pretended biddings to raise price.

123. If, at a sale by auction, the seller makes use of pretended biddings to raise the price, the sale is voidable at the option of the buyer.

CHAPTER VIII.

OF INDEMNITY AND GUARANTEE.

124. A contract by which one party promises to save the

'Contract of indemnity' defined.

other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity."

Illustration.

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

125. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—
 Rights of indemnity-holder when sued.

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

126. A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety" the person in respect of whose default the guarantee is given is called "the principal debtor," and the person to whom the guarantee is given is called the "creditor." A guarantee may be either oral or written.
 "Contract of guarantee," "surety," "principal debtor," and "creditor,"

127. Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.
 Consideration for guarantee.

Illustrations.

(a.) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration for C's promise.

(b.) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that, if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(c.) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

Surety's liability.

128. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Illustration.

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable, not only for the amount of the bill, but also for any interest and charges which may have become due on it.

129. A guarantee which extends to a series of transaction is called a "continuing guarantee."

"Continuing guarantee."

Illustrations.

(a.) A, in consideration that B will employ C in collecting the rents of B's zamindari, promises B to be responsible, to the amount of 5000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(b.) A guarantees payment to B a tea-dealer, to the amount of £100, for any tea he may, from time to time, supply to C. B supplies C with tea to above the value of £100 and C pays B for it. Afterwards B supplies C with tea to the value of £200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100.

(c.) A guarantees payment to B of the price of five sacks of flour, to be delivered by B to C, and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

Revocation of continuing guarantee.

130. A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

Illustrations.

(a.) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees on default of C.

(b.) A guarantees to B, to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

131. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

Revocation of continuing guarantee by surety's death.

132. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

Liability of two persons primarily liable, not affected by arrangement between them that one shall be surety on other's default.

Illustration,

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact, that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

133. Any variance, made without the surety's consent, in the terms of the contract between the principal, "debtor,"* and the creditor, discharges the surety as to transactions subsequent to the variance.

Discharge of surety by
variance in terms of contract

Illustrations.

(a.) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(b.) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the later Act.

(c.) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him, and not by a fixed salary. A is not liable for subsequent misconduct of B.

(d.) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards, B becomes embarrassed, and, without the knowledge of A, B and C, contract that C shall continue to supply B with oil for ready money, and that the payment shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(e.) C contracts to lend B, 5,000 rupees on the first March. A guarantees repayment. C pays the 5,000 rupees to B on the first January. A is discharged from his liability as the contract has been varied, inasmuch as C might sue B for the money before the first of March.

134. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.†

Discharge of surety by
release or discharge of prin-
cipal debtor.

* The word within quotations have been inserted by Act 24 of 1917.

† See ss. 39, 53, 54, 55, 62, 63, 67, 118, 120, *supra*.

Illustrations.

(a.) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed, and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(b.) A contracts with B to grow a crop of indigo on A's land, and to deliver it to B at a fixed rate and C guarantees A's performance of this contract. B diverts a stream of water which is necessary for irrigation of A's land, and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

(c.) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

135. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.

Surety not discharged when agreement made with third person to give time to principal debtor.

136. Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Illustration.

C, the holder of an overdue bill of exchange drawn by A as surety for B and accepted by B, contracts with M to give time to B. A is not discharged.

137. Mere forbearance on the part of the creditor to sue the principal debtor, or to enforce any other remedy against him, does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Creditor's forbearance to sue does not discharge surety.

Illustration.

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

138. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.*

Release of one co-surety does not discharge others.

* See s. 44, *supra*.

139. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Discharge of surety by creditor's act or omission impairing surety's eventual remedy.

Illustrations.

(a.) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.*

(b.) C lends money to B on the security of a joint and several promissory note made in C's favour by B, and by A, as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture, and apply the proceeds in discharge of the note. Subsequently, C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realized. A is discharged from liability on the note.

(c.) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

140. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.†

Rights of surety on payment or performance.

141. A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not ; and, if the creditor loses or, without the consent of the surety, parts with such security the surety is discharged to the extent of the value of the security.‡

Surety's right to benefit of creditor's securities.

Illustrations.

(a.) C advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture. B cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(b.) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.

* See s. 133, *supra*.

† For example, the right to stop in transit.

‡ See s. 139, *Supra*.

(c.) A, as surety for B, makes a bond jointly with B to C, to secure a loan from C to B. After-wards, C obtains from B a further security for the same debt. Subsequently, C gives up the further security. A is not discharged.

142. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with a knowledge and assent, concerning a material part of the transaction, is invalid

Guarantee obtained by misrepresentation invalid

143. Any guarantee which the creditor obtained by means of keeping silence as to a material circumstance is invalid.

Guarantee obtained by concealment invalid.

Illustrations.

(a.) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A, in consequence, calls upon him to furnish security for his duly accounting: gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(b.) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons B and C have privately agreed that B should pay five rupees per ton beyond the market-price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

144. Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.*

Guarantee on contract that creditor shall not act on it until co-surety joins.

145. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Implied promise to indemnify surety.

Illustrations.

(a.) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but he is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs as well as the principal debt.

(b.) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A, to secure the amount. C, the holder of the bill, demands payment of it from A, and, on A's refusal to pay, sues him upon the bill. A not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

* See s. 33, *Supra*.

(c.) A guarantees to C, to the extent of 2,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

146. Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.*

Co-sureties liable to contribute equally.

Illustrations.

(a.) A, B, and C are sureties to D for the sum of 3,000 rupees lent to E. E makes default in payment. A, B, and C are liable, as between themselves, to pay 1,000 rupees each.

(b.) A, B, and C are sureties to D for the sum of 1,000 rupees lent to E, and there is a contract between A, B, and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter, and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

147. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.*

Liability of co-sureties bound in different sums.

Illustrations.

(a.) A, B, and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B, and C, are each liable to pay 10,000 rupees.

(b.) A, B, and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

(c.) A, B, and C as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees. A, B, and C, have to pay each the full penalty of his bond.

* See s. 43. *supra*.

CHAPTER IX.

OF BAILMENT.

148. A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the persons delivering them. The person delivering the goods is called the "bailor." The person to whom they are delivered is called the "bailee."

Explanation :—If a person, already in possession of the goods of another, contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods although they may not have been delivered by way of bailment.

149. The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

Delivery to bailee how made.

150. The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware and which, materially interfere with the use of them, or expose the bailee to extra-ordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

Bailor's duty to disclose faults in goods bailed.

If the goods are bailed for hire, the bailor is responsible for such damage whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations.

(a.) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damages sustained.

(b.) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

151. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality, and value as the goods bailed.*

Care to be taken by bailee

* As to railway contracts, see the Indian Railway Act, (IX. of 1890), s. 72. Cf. also, as to liability of common carriers, see s. 8 of the Carriers Act (III. of 1895).

152. The bailee, in the absence of any special contract, is not responsible for the loss, destruction, or deterioration of the thing bailed, if the bailee has taken the amount of care of it described in section 151.

Bailee when not liable for loss, &c., of things bailed.

Termination of bailment by bailee's act inconsistent with conditions.

153. A contract of bailment is voidable at the option of the bailor if the bailee does any act with regard to the goods bailed, inconsistent with the condition of the bailment.

Illustration.

A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

154. If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Liability of bailee making unauthorized use of goods bailed.

Illustrations.

(a) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls, and is injured. B is liable to make compensation to A for the injury done to the horse.

(b.) A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care, but marches to Cuttack instead. The horse accidentally falls, and is injured. A is liable to make compensation to B for the injury to the horse.

155. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

Effect of mixture, with bailor's consent of his goods with bailee's.

156. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively ; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

Effect of mixture, without bailor's consent, when the goods can be separated.

Illustration.

A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark. A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales and any other individual damage.

157. If the bailee, without the consent of the bailor, mixes the goods of the bailor, with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods, and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Effect of mixture, with out bailor's consent when the goods cannot be separated:

Illustration.

A bails a barrel of Cape flour, worth Rs. 45 to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B. must compensate A for the loss of his flour.

158. Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Repayment by bailor of necessary expenses.

159. The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose. But, if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.*

Restoration of goods lent gratuitously.
Return of goods bailed on expiration of time or accomplishment of purpose.

160. It is the duty of the bailee to return or deliver, according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.†

161. If, by the fault of the bailee, the goods are not returned, delivered, or tendered at the proper time, he is responsible to the bailor for any loss, destruction, or detrioration of the gods from that time.‡

Bailee's responsibility when goods are not duly returned.

Termination of gratuitous bailment by death.

162. A gratuitous bailment is terminated by the death either of the bailor or of the bailee

* See Story, *Bailments* §. 258,

† But see ss. 24, 152, *supra*, and 170, *infra*, to the provisions of which this section must be subject,

‡ As to railway contracts, see the Indian Railways Act (IX. of 1890), s. 72.

163. In the absence of any contract to the contrary, the bailor entitled to increase or profit from goods bailed. bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

Illustration.

A leaves a cow in the custody of B to be taken care of. The cow has a calf B is bound to deliver the calf as well as the cow to A.

164. The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them.

165. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

166. If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.*

167. If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

168. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.†

169. When a thing, which is commonly the subject of sale, is lost, if the owner cannot, with reasonable diligence, be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

* See the Indian Evidence Act (1. of 1872), s. 117.

† See Story, *Bailments*, § 121a.

(1) when the thing is in danger of perishing or of losing the greater part of its value ; or,

(2) when the lawful charges of the finder in respect of the thing found amount two-thirds of its value. *

170. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Illustrations.

(a.) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered,

(b.) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give A three months' credit for the price. B is not entitled to retain the coat until he is paid.

171. Bankers, factors, wharfingers, attorneys of a High Court, and policy brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods[†] bailed to them ;[‡] but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.§

General lien of bankers, factors, wharfingers, attorneys, and policy-brokers.

Bailments of Pledges.

172. The bailment of goods as security for payment of a debt or performance of a promise is called "pledge." The bailor is in this case called the "pawnor." The bailee is called the "pawnee." "Pledge," "pawnor," and "pawnee" defined.

173. The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

Pawnee's right of retention.

* *New York Civil Code*, § 943.

† Whether belonging to the bailor or not.

‡ As such ?

§ As to the lien of agent. s. 221, *infra*. As to the lien of Railway Administration, see the Indian Railways Act (IX. of 1890) s. 55.

174. The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged, but, such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

Pawnee not to retain for debt or promise other than that for which goods pledged.

Presumption in case of subsequent advances.

175. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Pawnee's right as to extraordinary expenses incurred.

176. If the pawnor makes default in payment of the debt, or performance, at the stipulated time, of the promise in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security ; or he may sell the thing pledged on giving the pawnor reasonable notice of the sale.

Pawnee's rights where pawnor makes default.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

177. If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them ; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

Defaulting pawnor's right to redeem.

178. A person who is in possession of any goods or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods or documents ; Provided that the pawnee acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly.

Pledge by possessor of goods or of documentary title to goods.

Provided also that such goods or documents have not been obtained from their lawful owner, or from any person in lawful custody of them, by means of an offence or fraud-*

179. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.
Pledge where pawnor has only a limited interest.

Suits by Bailees or Bailors against Wrong-doers.

180. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.
Suit by bailor or bailee against wrong-doer.

181. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.
Apportionment of relief or compensation obtained by such suit.

CHAPTER X.

AGENCY.

Appointment and Authority of Agents.

182. An 'agent' is a person employed to do any act for another,† or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the 'principal.'
'Agent' and 'principal' defined.

183. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.‡
Who may employ agent.

184. As between the principal and third persons, any person may become an agent; but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.
Who may be an agent.

* Cf. the Factors Act (5 & 6 Vict. c, 39), ss. 1 and 3.

† Cf. s. 225, *infra*. As to the effect of an agent's fraud, see s. 17, *supra*; and s. 238, *infra*.

‡ Cf. s. 11, *supra*.

Consideration not necessary.

185. No consideration is necessary to create an agency.

Agent's authority may be expressed or implied.

186. The authority of an agent may be expressed or implied.*

187. An authority is said to be express when it is given by Definition of express and words spoken or written. An authority is implied authority. said to be implied when it is to be inferred from the circumstances of the case ; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Illustration.

A owns a shop in Serampore, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

188. An agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act.

Extent of agent's authority.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

Illustrations.

(a.) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt and may give a valid discharge for the same.

(b.) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the purpose of carrying on the business.

189. An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence in his own case, under similar circumstances.†

Agent's authority in an emergency.

Illustrations.

(a.) An agent for sale may have goods repaired if it be necessary.

(b.) A consigns provisions to B at Calcutta, with directions to send them immediately to C at Cuttack. B may sell the provisions at Calcutta, if they will not bear the journey to Cuttack without spoiling.

* But see the Indian Registration Act (XVI. of 1908), and the Code of Civil Procedure (Act V. of 1908).

† But see s. 214, *infra*.

Sub-Agents.

190. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must be employed.

"Sub-agent" defined.

191. A "sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

192. Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by, and responsible for, his acts, as if he were an agent originally appointed by the principal.

Representation of principal by sub-agent properly appointed.

The agent is responsible to the principal for the act of the sub agent.

Sub-agent's responsibility.

The sub-agent is responsible for his acts to the agent, but not to the principal, except in cases of fraud or wilful wrong.

193. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third person; the principal is not represented by, or responsible for the acts of the persons so employed,* nor is that person responsible to the principal.

Agent's responsibility for sub-agent appointed without authority.

194. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Relation between principal and person duly appointed by agent to act in business of agency.

Illustrations.

(a.) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

*Unless, of course, he ratifies them.—See s. 196, *infra*.

(b) A authorizes B, a merchant in Calcutta, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co., for the recovery of the money. D is not a sub-agent, but is solicitor for A.

195. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case ; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Illustrations.

(a) A instructs B, a merchant, to buy a ship for him. B employs a ship-surveyor, of good reputation to choose a ship for A. The surveyor makes the choice negligently, and the ship turns out to be unseaworthy, and is lost. B is not, but the surveyor is, responsible to A.

(b) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

Ratification.

196. Where acts* are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such act. If he ratify them, the same effects will follow as if they had been performed by his authority.

Right of person as to acts done for him without his authority.

Effect of ratification.

Ratification may be expressed or implied.

197. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Illustrations.

(a) A, without authority, buys goods for B. Afterwards B sells them to C on his own account. B's conduct implies a ratification of the purchase made for him by A.

(b) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan.

Knowledge requisite to valid ratification.

198. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Effect of ratifying unauthorized act forming part of a transaction.

199. A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

200. An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Ratification of unauthorized act cannot injure third person.

Illustrations.

(a.) A, not being authorized thereto by B, demands, on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

(b.) A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

Revocation of Authority.

201. An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.*

Termination of agency.

202. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absent of an express contract, be terminated to the prejudice of such interest.

Termination of agency where agent has an interest in subject-matter.

Illustrations.

(a.) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(b.) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

203. The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

When principal may revoke agent's authority.

* That is, lawful acts.

204. The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.

Illustrations.

(a.) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(b.) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

205. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation* to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

206. Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Revocation and renunciation may be expressed or implied.

207. Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

Illustration.

A empowers B to let A's house. Afterwards A lets it, himself. This is an implied revocation of B's authority,

208. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

When termination of agent's authority takes effect as to agent, and as to third persons.

Illustrations.

(a.) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

* See s. 73, *supra*.

(b.) A, at Madras, by letter, directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Madras. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

(c.) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

209. When an agency is terminated by the principal dying

Agent's duty on termination of agency by principal's death or insanity.

or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

210. The termination of the authority of an agent causes the

Termination of sub-agent's authority.

termination (subject to the rules herein contained regarding the termination of an

agent's authority) of the authority of all sub-agents appointed by him.

Agents Duty to Principal.

211. An agent is bound to conduct the business of his prin-

Agent's duty in conducting principal's business.

cipal according to the directions given by the principal,* or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

Illustrations.

(a.) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. A must make good to B the interest usually obtained by such investments.

(b.) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

212. An agent is bound to conduct the business of the agency

Skill and diligence required from agent.

with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal

* But see s. 189 *supra*.

in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill, or misconduct.

Illustrations.

(a.) A, a merchant in Calcutta, has an agent, B, in London, to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as e.g., by variation of rate of exchange—but not further.

(b.) A, an agent, for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(c.) A, an insurance-broker, employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the under-writers. A is bound to make good the loss to B.

(d.) A, a merchant in England, directs B, his agent at Bombay, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival, the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Agent's accounts.

213. An agent is bound to render proper accounts to his principal on demand.

214. It is the duty of an agent, in case of difficulty, to use

Agent's duty to communicate with principal.

all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions *

215. If an agent deals on his own account in the business of

Right of principal when agent deals, on his own account, in business of agency without principal's consent.

of the agency, without first obtaining the consent of his principal, and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Illustrations.

(a) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

* Secs. 189, *supra*.

(b.) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option,

216. If an agent, without the knowledge of his principal, in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Principal's right to benefit gained by agent dealing on his own account in business of agency.

Illustration.

A directs B, his agent, to buy a certain house for him, B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

217. An agent may retain * out of any sums received on deals account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Agent's right of retainer out of sums received on principal's account.

218. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

Agent's duty to pay sums received for principal.

219. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act ; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale many not have been sold, or although the sale may not be actually complete.

When agent's remuneration becomes due.

220. An agent, who is guilty of misconduct in the business of the agency,* is not entitled to any remuneration in respect of that part of the business which he has misconducted.

Agent not entitled to remuneration for business misconducted.

Illustrations.

(a.) A employs B to recover 1,00,000 rupees from C, and to lay it out on good security. B recovers the 1,00,000 rupees, and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security which he ought to have

* See s. 221, *infra*.

† See ss. 195, 211, 212, 213, 214, 215, *supra*.

known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(b) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

221. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property, whether moveable or immoveable of the principal received by him, until the amount due to himself for commission, disbursements, and services in respect of the same, has been paid or accounted for to him.*

Principal's Duty to Agent.

222. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

Agent to be indemnified against consequence of lawful acts.

Illustrations.

(a.) B, at Singapur, under instructions from A, of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs, and expenses.

(b.) B, a broker at Calcutta, by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B.† B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs, and expenses.

223. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, thought it cause an injury to the rights of third persons.

Agent to be indemnified against consequences of acts done in good faith.

Illustration.

(a.) A, a decree-holder, and entitled to execution of B's goods, requires the officer of the Court to seize certain goods representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum, which he is compelled to pay to C, in consequence of obeying A's directions.

* As to the general lien of an agent who is a banker, factor, attorney, or policy-broker, see s. 171, *supra*.

† It must be assumed that the disclosed principal could not be sued, see s. 230, *infra*.

(b.) B, at the request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards, C, the true owner of the goods, sues B, and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C, and for B's own expenses.

224. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.*

Illustrations.

(a.) A employs B to beat C, and agrees to indemnify him against all consequences of the act. A thereupon beats C, and has to pay damages to C for so doing. B is not liable to indemnify A for those damages.

(b.) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C, and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

Compensation to agent for injury caused by principal's neglect.

lect or want of skill.

225. The principal must make compensation to his agent in respect of injury† caused to such agent by the principal's neglect or want of skill.

Illustration.

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make compensation to B.

Effect of Agency on Contracts with Third Persons.

226. Contracts entered into through an agent, and obligations arising from acts done by agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into, and the acts done, by the principal in person.

Illustrations.

(a.) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set off against that claim a debt due to himself from B.

(b.) A, being B's agent, with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

227. When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Principal how far bound, when agent exceeds authority.

* See s. 24, *supra*. † Cf. the Indian Fatal Accidents Act (XIII. of 1855.)

Illustration.

A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

228. Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

Principal not bound when excess of agent's authority is not separate.

Illustration.

A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

229. Any notice given to, or information obtained by, the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to, or obtained by, the principal.

Consequences of notice given to agent.

Illustrations.

(a.) A is employed by B to buy from C certain goods, of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set off a debt owing to him from C against the price of the goods.

(b.) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set-off against the price of the goods a debt owing to him from C.

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.

230. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary.

Such a contract shall be presumed to exist in the following cases :—

(1) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad :

(2) Where the agent does not disclose the name of his principal :

(3) Where the principal, though disclosed cannot be sued.

231. If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract ; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

232. Where one man makes a contract with another, neither knowing, nor having reasonable ground to suspect, that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

Illustration.

A, who owes 500 rupees to B, sells 1,000 rupees' worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge, nor reasonable ground of suspicion, that such is the case. C cannot compel B to take rice without allowing him to set-off A's debt.

233. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Illustration.

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C or both for the price of the cotton.

234. When a person who has made a contract with an agent, induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively,

235. A person untruly* representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

* See s. 208, *supra*.

236. A person with whom a contract has been entered into, in the character of agent is not entitled to require the performance of it, if he was in reality acting, not as agent, but on his own account.

Person falsely contracting as agent not entitled to performance.

237. When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations, if he has, by his words or conduct, induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

Liability of principal inducing belief that agent's unauthorized acts were authorized.

Illustrations.

(a.) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(b.) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation in private orders from A. The sale is good.

238. Misrepresentations made, or frauds committed by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals;* but misrepresentations made or frauds committed by agents, in matters which do fall within their authority, do not affect their principals.

Effect on agreement, of misrepresentation or fraud by agent.

Illustrations.

(a.) A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation which he was not authorized by B to make. The contract is voidable as between B and C at the option of C.

(b.) A, the captain of B's ship signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

CHAPTER XI.

OF PARTNERSHIP.

239. "Partnership" is the relation which subsists between persons who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them.†

"Partnership" defined.

* See s. 250, *infra*.

† This would apply to members of Joint-stock Companies; but the law applicable to them is saved by s. 266, *supra*.

"Firm" defined.

Persons who have entered into partnership with one another are called collectively a "firm."

Illustrations.

(a.) A and B buy 100 bales of cotton, which they agree to sell for their joint account. A and B are partners in respect of such cotton.

(b.) A and B buy 100 bales of cotton, agreeing to share it between them. A and B are not partners.

(c.) A agrees with B, a goldsmith, to buy and furnish gold to B, to be worked up by him and sold, and that they shall share in the resulting profit or loss. A and B are partners.

(d.) A and B agree to work together as carpenters, but that A shall receive all profits and shall pay wages to B. A and B are not partners.

(e.) A and B are joint owners of a ship. This circumstance does not make them partners.

240. A loan to a person engaged or about to engage in any trade or undertaking, upon a contract with Lender not a partner by advancing money for share of profits. such person that the lender shall receive interest at a rate varying with the profits, or that he shall receive a share of the profits, does not, of itself, constitute the lender a partner, or render him responsible as such.†

241. In the absence of any contract to the contrary, property left by a retiring partner, or the representative of a deceased partner to be used in the business, is to be considered a loan within the meaning of the last preceding section. Property left in business by retiring partner, or deceased partner's representative.

242. No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking, by a share of the profits of such trade or undertaking, shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner. Servant or agent remunerated by share of profits not a partner.

243. No person, being a widow or child of a deceased partner of a trader, and receiving, by way of annuity, a proportion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him. Widow or child of deceased partner receiving annuity out of profits, not a partner.

244. No person receiving, by way of annuity or otherwise, a portion of the profits of any business, in consideration of the sale by him of the goodwill of such business, shall, by reason only Person receiving portion of profits for sale of goodwill not a partner.

† See *Molico, March, & Co. v. Court of Wards*, 10 B. L. R. 312.

of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities.*

Responsibility of person leading another to believe him a partner.

partner in such firm.

245. A person who has, by words spoken or written, or by his conduct, led another to believe that he is a partner in a particular firm, is responsible to him as a

Liability of person permitting himself to be represented as a partner.

246. Any one consenting to allow himself to be represented as a partner is liable, as such, to third persons who, on the faith thereof, give credit to the partnership.†

247. A person who is under the age of majority according to the law‡ to which he is subject may be admitted to the benefits of partnership, but

Minor partner not personally liable, but his share is,

cannot be made personally liable for any obligation of the firm ; but the share of such minor in the property of the firm is liable for the obligations of the firm.

248. A person who has been admitted to the benefits of partnership under the age of majority‡ becomes,

Liability of minor partner on attaining majority.

on attaining that age, liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice, within a reasonable time, of his repudiation of the partnership.

249. Every partner is liable for all debts and obligations incurred while he is a partner in the usual

Partner's liability for debts of partnership

course of business by, or on behalf of, the partnership ; but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such firm for anything done before he became a partner.

250. Every partner is liable to make compensation to third persons in respect of loss or damage arising

Partner's liability to third person for neglect or fraud of co-partner.

from the neglect or fraud of any partner in the management of the business of the firm.

251. Each partner, who does any act necessary for, or usually done in, carrying on the business of such a

Partner's power to bind co-partners.

partnership as that of which he is a member,

* Cf. the Partnership Act, 1865 (28 & 29 Vict., c. 86), s.

† See the Indian Evidence Act (I. of 1872), s. 109.

‡ See the Indian Majority Act (IX, of 1875).

binds his co-partners to the same extent as if he were their agent duly appointed for that purpose.

Exception.—If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement.

Illustrations

(a.) A and B trade in partnership. A residing in England, and B in India, A draws a bill of exchange in the name of the firm. B has no notice of the bill, nor is he at all interested in the transaction. The firm is liable on the bill, provided the holder did not know of the circumstances under which the bill was drawn.

(b.) A, being one of a firm of solicitors and attorneys, draws a bill of exchange in the name of the firm without authority. The other partners are not liable on the bill.

(c.) A and B carry on business in partnership as bankers. A sum of money is received by A on behalf of the firm. A does not inform B of such receipt, and afterwards A appropriates the money to his own use. The partnership is liable to make good the money.

(d.) A and B are partners. A, with the intention of cheating B, goes to shop and purchases articles on behalf of the firm, such as might be used in the ordinary course of the partnership-business, and converts them to his own separate use, there being no collusion between him and the seller. The firm is liable for the price of goods.

252. Where partners have by contract regulated and defined, as between themselves, their rights and obligations, such contract can be annulled or altered only by consent of all * of them, which consent must either be expressed or be implied from a uniform course of dealing.

Annulment of contract,
defining partner's rights
and obligations.

Illustration.

A, B, and C, intending to enter into partnership, execute written articles of agreement, by which it is stipulated that the net profits arising from the partnership-business shall be equally divided between them. Afterwards they carry on the partnership-business for many years, A receiving one-half of the net profits, and the other half being divided equally between B and C. All parties know of and acquiesce in this arrangement. This course of dealing supercedes the provision in the articles as to the division of profits.

Rules determining part-
ner's mutual relations, where
no contract to contrary

253. In the absence of any contract to the contrary, the relations of partners to each other are determined by the following rules :—

- (1) All partners are joint owners of all property originally brought into the partnership-stock, or bought with money belonging to the partnership, or acquired for

* Cf. s. 253, cl. 5 *infra*.

purposes of the partnership-business. All such property is called partnership property. The share of each partner in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss ;

- (2) All partners are entitled to share equally in the profits of the partnership business, and must contribute equally towards the losses sustained by the partnership :
- (3.) Each partner has a right to take part in the management of the partnership-business :
- (4.) Each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business :
- (5) When differences arise as to ordinary matters connected with the partnership-business, the decision shall be according to the opinion of the majority of the partners ; but no change in the nature of the business of the partnership can be made, except with the consent of all the partners : *
- (6.) No person can introduce a new partner into a firm without the consent of all the partners :
- (7.) If, from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members :
- (8.) Unless the partnership has been entered into for a fixed term, any partner may retire from it at any time :
- (9) Where a partnership has been entered into for a fixed term, no partner can, during such term, retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever, except by order of Court :
- (10.) Partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.

When Court may dissolve partnership.

254. At the suit of a partner, the Court may dissolve the partnership in the following cases : —

- (1.) When a partner becomes of unsound mind :
- (2.) When a partner, other than the partner suing, has been adjudicated an insolvent under any law relating to insolvent debtors :

* See s. 252, *supra*.

- (3.) When a partner, other than the partner suing, has done any act by which the whole interest of such partner is legally transferred to a third person :
- (4.) When any partner becomes incapable of performing his part of the partnership contract :
- (5.) When a partner, other than the partner suing, is guilty of gross misconduct in the affairs of the partnership or towards his partners :
- (6.) When the business of the partnership can only be carried on at a loss.

Dissolution of partnership by prohibition of business.

255. A partnership is in all cases dissolved by its business being prohibited by law.

Rights and obligations of partners in partnership continued after expiry of term for which it was entered into.

256. If a partnership, entered into for a fixed term, be continued after such term has expired, the rights and obligations of the partners will, in the absence of any agreement to the contrary, remain the same as they were at the expiration of the term, so far as such rights and obligations can be applied to a partnership dissolvable at the will of any partner.

General duties of partners.

257. Partners are bound to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

Account to firm of benefit derived from transaction affecting partnership

258. A partner must account to the firm for any benefit derived from a transaction affecting the partnership.

Illustrations.

(a.) A, B, and C are partners in trade. C, without the knowledge of A and B, obtains for his own sole benefit a lease of the house in which the partnership business is carried on. A and B are entitled to participate, if they please, in the benefit of the lease.

(b.) A, B, and C, carry on business together in partnership as merchants trading between Bombay and London. D, a merchant in London, to whom they make their consignments, secretly allows C a share of the commission which he receives upon such consignments, in consideration of C's using his influence to obtain the consignment for him. C is liable to account to the firm for the money so received by him.

259. If a partner, without the knowledge and consent of the other partners, carries on any business competing or interfering with that of the firm, he must account to the firm for all profits made in such business, and must make compensation to the firm for any loss occasioned thereby.

Obligations to firm of partner carrying on competing business.

260. A continuing guarantee, given either to a firm or to a third person, in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or in respect of the transactions of which, such guarantee was given.

Revocation of continuing guarantee by change in firm.

261. The estate of a partner who has died is not, in the absence of an express agreement, liable in respect of any obligation incurred by the firm after his death.

Non-liability of deceased partner's estate for subsequent obligation.

262. Where there are joint debts due from the partnership and also separate debts due from any partner, the partnership property must be applied in the first instance in payment of the debts of the firm; and if there is any surplus, then the share of each partner must be applied in payment of his separate debts, or paid to him. The separate property of any partner must be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

Payment of partnership debts and of separate debts.

263. After a dissolution of partnership, the rights and obligations of the partners continue in all things necessary for winding up the business of the partnership.

Continuance of partners' rights and obligations after dissolution.

264. Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given, unless they themselves had notice of such dissolution.

Notice of dissolution.

265.† Where a partner is entitled to claim a dissolution of partnership, or where a partnership has terminated, the Court may, in the absence of any contract to the contrary, wind up the business of the partnership, provide for the payment of its debts,

Winding-up by Court on dissolution or after termination.

* Cf. the Mercantile Law Amendment Act 1856 (19 & 20 Vict., c. 97.) s. 4.

† S. 265 has been substituted for the original section by the Indian Contract Amendment Act (IV. of 1866), s. 1.

and distribute the surplus according to the shares of the partners respectively.

Limited liability partnerships, incorporated partnerships, and joint-stock companies.

266. Extraordinary partnerships, such as partnerships with limited liability, incorporated partnerships, and joint-stock companies, shall be regulated by the law for the time being in force relating thereto.*

SCHEDULE.—ENACTMENTS REPEALED.

Statutes.

No. and year of Statute	TITLE.	Extent of repeal.
Stat. 29 Car. II., cap. 3.†	An Act for prevention of Frauds and Perjuries.	Sections 1, 2, 3, 4 and 17.
Stat. 11. annd 12 Vict. cap. 21.‡	To consolidate and amend the law relating to insolvent debtors in India.	Section 42.

Acts.

No. and year of Act.	TITLE.	Extent of repeal.
Act XII. of 1840	An Act for the amendment of the law regarding factors, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat. 4 Geo. IV., Chap. 83, as altered and amended by the Stat. 6 Geo. IV., Chap. 94.	The whole.
Act XIV. of 1840	An Act for rendering a written memorandum necessary to the validity of certain promises and engagements, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat. 9 Geo. IV., Chap. 14.	The whole.

* See the Indian Companies Act (VII. of 1913) and the following special Acts : V. of 1838 (Bengal Bonded Warehouse) as amended by V. of 1867 (Oriental Gas Company) as amended by XI. of 1867 ; the Presidency Banks Act (XI. of 1867) ; Madras Act VI. of 1869 (Madras Equitable Assurance Society) &c.

† Short title, "The Statute of Frauds."—See the Short Titles Act, 1896* (59 and 60 Vict., c. 14).

‡ The Indian Insolvency Act, 1848.

Acts.—(contd.)

No. and year of Act.	TITLE.	Extent of repeal.
Act XX. of 1844.	An Act to amend the law relating to Advances <i>bond fide</i> made to Agents intrusted with goods, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat. 5 & 6 Vict., c. 39, as altered by this Act.	The whole.
Act XXI. of 1848	An Act for avoiding Wagers.	The whole.
Act V. of 1866 *	An Act to provide a summary procedure on bills of exchange, and to amend in certain respects the commercial law of British India.	Sections 9 & 10.
Act XV. of 1866	An Act to amend the law of partnership in India.	The whole.
Act VIII. of 1867	An Act to amend the law relating to Horse-racing in India.	The whole.

* Short title, "The Policies of Insurance (Marine and Fire) Assignment Act, 1866."—See the Indian Short Titles Act (XIV. of 1897).

ACT XV. OF 1872.

The Indian Christian Marriage Act.

RECEIVED THE G.-G.'S ASSENT ON THE 18TH JULY 1872.

An Act to consolidate and amend the law relating to the solemnization in India of the marriages of Christians.

WHEREAS it is expedient to consolidate and amend the law relating to the solemnization in India of the marriages of persons professing the Christian religion ; It is hereby enacted as follows :—

PRELIMINARY.

1. This Act may be called "The Indian Christian Marriage Act, 1872 ;"
 Short title.
 It extends to the whole of British India, and, so far only as regards Christian subjects of Her Majesty,
 Extent to the territories of Native Princes and States in alliance with Her Majesty.

2. The enactments specified in the fifth schedule hereto annexed are repealed, but not so as to invalidate any marriage confirmed by, or solemnized under, any such enactment.
 Enactments repealed.

And all appointments made, licenses granted, consents given, certificates issued, and other things duly done, under any such enactment, shall be deemed to be respectively made, granted, given, issued, and done under this Act.

For clause xxiv. of section nineteen of the Court Fees Act, 1870, the following shall be substituted :—

"xxiv. Petitions under the Indian Christian Marriage Act, 1872, sections forty-five and forty-eight."

3. In this Act, unless there is something repugnant in the subject or context—
 Interpretation-clause.

* Act XV of 1872 has been declared, under the Scheduled Districts Act (XIV of 1874) to be in force in the following Scheduled Districts—

The Districts of Házaribágh, Lohárdagá, and Mámbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum See *Gazette of India*, 1881, Pt. I., p. 504

The North-Western Provinces Taráí..... Ditto 1876, Pt. I., p. 505.
 It has been declared in force in the Santhál Parganas by Reg. (III. of 1872), s. 3 as amended by Reg. (III. of 1899), s. 3 ; in the Arakan Hill District by Reg. 1 of 1916 s. 3 ; in Upper Burma (except the Shan States) by Act (XIII. of 1898), s. 4 ; and in British Baluchistan by Reg. (II of 1913, s. 3)

"Church of England" and "Anglican" mean and apply to the Church of England as by law established ;

"Church of Scotland" means the Church of Scotland as by law established ;

"Church of Rome" and "Roman Catholic" mean and apply to the Church which regards the Pope of Rome as its spiritual head ;

"Church" includes any chapel or other building generally used for public Christian worship ;

"Minor" means a person who has not completed the age of twenty-one years, and who is not a widower or a widow ;

"Native State" means the territories of any Native Prince or State in alliance with Her Majesty ;

The expression "Christians" means persons professing the Christian religion ;

And the expression "Native Christians" includes Christian descendants of Natives of India converted to Christianity, as well as such converts.

"Registrar General of Births Deaths and Marriages" means a Registrar General of Births, Deaths and Marriages" appointed under the Births, Deaths and Marriages Registration Act 1886.*

PART I.

THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED.

4 Every marriage between persons, one or both of whom is "or are"† a Christian or Christians shall be solemnized in accordance with the provisions of the next following section; and any such marriage solemnized otherwise than in accordance with such provisions shall be void.

Marriages to be solemnized according to Act.

5. Marriages may be solemnized in India—

(1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies, and customs of the Church of which he is a Minister ;

Persons by whom marriages may be solemnized.

* This paragraph was added by the Births, Deaths, and Marriages Registration Act (VI of 1886), s. 30 cl. (a).

† In s. 4 the words have been inserted by Act XII. of 1891, Sch. II.

(2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites ceremonies, and customs of the Church of Scotland ;

(3) by any Minister of Religion licensed under this Act to solemnize marriages ;

(4) by, or in the presence of, a Marriage Register appointed under this Act ;

(5) by any person licensed under this Act to grant certificates of marriage between Native Christians.

6* The Local Government so far as regards the territories Grant and revocation of licenses to solemnize marriages. under its administration, and the Governor-General in Council, so far as regards any Native State may, by notification in the local official Gazette or in the Gazette of India, as the case may be, grant licenses to Ministers of Religion to solemnize marriages within such territories and State respectively, and may, by a like notification, revoke such licenses.

7. The Local Government may appoint one or more Christians either by name, or as holding any office for the time being, to be the Marriage Registrar or Marriage Registrars for any district subjects to its administration.†

Where there are more Marriage Registrars than one in any district, the Local Government shall appoint one of them to be the Senior Marriage Registrar.

When there is only one Marriage Registrar in a district, and Magistrate when to be such Registrar is absent from such district or ill, or when his office is temporarily vacant, the Magistrate of the District shall act as, and be, Marriage Registrar thereof during such absence, illness, or temporary vacancy.

8. The Governor-General in Council may, by notification in the Gazette of India, appoint any Christian, either by name or as holding any office for the time being, to be a Marriage Registrar in respect of any district or place within the territories of any Native Prince or State in alliance with Her Majesty.‡

* S. 6 has been substituted by Act II. of 1891, s. 1.

† See *Bombay Government Gazette*. Nov. 21. 1872. p. 1203 ; *British Burma Gazette*. June 28, 1873, p. 138.

‡ See *Gazette of India*, June 14, 1873, p. 550 Aug. 9, 1873, p. 712.

The Governor-General in Council may, by like notification, revoke any such appointment

9. The Local Government or (so far as regards any Native State) the Governor-General in Council may grant a license to any Christian, either by name or as holding any office for the time being, authorizing him to grant certificates of marriage between Native Christians.

Any such license may be revoked by the authority by which it was granted, and every such grant or revocation shall be notified in the official Gazette.

PART II.

TIME AND PLACE AT WHICH MARRIAGES MAY BE SOLEMNIZED.

10. Every marriage* under this act shall be solemnized between the hours of six in the morning and seven in the evening :

Exceptions.

Provided that nothing in this section shall apply to—

(1)—a Clergman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening, under the hand and seal of the Anglican Bishop of the Diocese or his Commissary, or

(2)—a Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning, when he has received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is so solemnized, or from such person as the same Bishop has authorized to grant such license, or

(3)—a Clergyman of the Church of Scotland solemnizing a marriage according to the rules, rites, ceremonies, and customs of the Church of Scotland."*

11. No Clergyman of the Church of England shall solemnize a marriage in any place other than a church, "where worship is generally held according to the forms of the Church of England"† unless there is no "such" ‡ church within five miles' distance by the shortest road from such place, or

* In s. 10, cl (3) has been added by Act II. of 1891, s. 2.

† In s. 11 the words quoted have been inserted by Act II. of 1891, s. 3.

‡ The words "such" has been inserted by Act II. of 1891, s. 3.

unless he has received a special license authorizing him to do so under the hand and seal of Anglican Bishop of the Diocese or his Commissary.

For such special license, the Registrar of the Diocese may charge with additional fee as the said Bishop from time to time authorizes.

Fee for special license,

PART III.

MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THIS ACT.

12. Whenever a marriage is intended to be solemnized by a Minister of Religion licensed to solemnize marriages under this Act—

one of the persons intending marriage shall give notice in writing, according to the form contained in the first schedule hereto annexed, or to the like effect, to the Minister of Religion whom he or she desires to solemnize the marriage, and shall state therein

- (a) the name and surname, and the profession or condition, of each of the persons intending marriage,
- (b) the dwelling place of each of them,
- (c) the time during which each has dwelt there, and
- (d) the church or private dwelling in which the marriage is to be solemnized :

Provided that, if either of such persons has dwelt in the place mentioned in the notice during more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

13. If the persons intending marriage desire it to be solemnized in a particular church, and if the Minister of Religion to whom such notice has been delivered be entitled to officiate therein, he shall cause the notice to be affixed in some conspicuous part of such church.

But, if he is not entitled to officiate as a Minister in such church, he shall at his option, either return the notice to the person delivered it to him, or deliver it to some other Minister entitled to officiate therein, who shall thereupon cause the notice to be affixed as aforesaid.

14. If it be intended that the marriage shall be solemnized in a private dwelling, the Minister of Religion, on receiving the notice prescribed in section 12, shall forward it to the Marriage Registrar of the District, who shall affix the same to some conspicuous place in his own office.*

15. When one of the persons intending marriage is a minor,* every Minister receiving such notice shall, unless within twenty-four hours after its receipt he returns the same under the provisions of section 13, send by the post or otherwise a copy of such notice to the Marriage Registrar of the district, or, if there be more than one Registrar of such district, to the Senior Marriage Registrar.

16. The Marriage Registrar or Senior Marriage Registrar, as the case may be, on receiving any such notice, shall affix it to some conspicuous place in his own office, and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrars in the same district, who shall likewise publish the same in the manner above directed.

17. Any Minister of Religion consenting or intending to solemnize any such marriage as aforesaid, shall, on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making the declaration herein-after required, issue under his hand a certificate of such notice having been given and of such declaration having been made :

Provido,

Provided—

(1) that no such certificate shall be issued until the expiration of four days after the date of the receipt of the notice by such minister ;

(2) that no lawful impediment be shown to his satisfaction why such certificate should not issue ; and

(3) that the issue of such certificate has not been forbidden, in manner hereinafter mentioned, by any person authorized in that behalf.

18. The certificate mentioned in section 17 shall not be issued until one of the persons intending marriage has appeared personally before the Minister and made a solemn declaration—

* See Act IX. of 1875

† See s. 20.

- (a) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage,

and, when either or both of the parties is or are a minor or minors,

- (b) that the consent or consents required by law* has or have been obtained thereto, or that there is no person resident in India having authority to give such consent, as the case may be.

19. The father, if living, of any minor, or, if the father be
Consent of father, or dead, the guardian of the person of such guardian, or mother. minor, and, in case there be no such guardian, then the mother of such minor, may give consent to the minor's marriage,

and such consent is hereby required for the same marriage, unless no person authorized to give such consent be resident in India.

20. Every person whose consent to a marriage is required
Power to prohibit by notice issue of certificate, under section 19 is hereby authorized to prohibit the issue of the certificate by any Minister, at any time before the issue of the same, by notice in writing to such Minister, subscribed by the person so authorized with his or her name and place of abode and position with respect to either of the persons intending marriage, by reason of which he or she is so authorized as aforesaid.

21. If any such notice be received by such Minister, he
Procedure on receipt of notice. shall not issue his certificate, and shall not solemnize the said marriage, until he has examined into the matter of the said prohibition, and is satisfied that the person prohibiting the marriage has no lawful authority for such prohibition,

or until the said notice is withdrawn by the person who gave it.

22. When either of the persons intending marriage is a minor,
Issue of certificate in case of minority. and the Minister is not satisfied that the consent of the person whose consent to such marriage is required by section 19 has been obtained, such Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of the notice of marriage.

* See s. 19.

23. When any Native Christian about to be married takes notice of marriage to a Minister of Religion, or applies for a certificate from such Minister under section 17, such Minister shall, before issuing the certificate, ascertain whether such Native Christian is cognizant of the purport and effect of the said notice or certificate, as the case may be, and, if not, shall translate or cause to be translated the notice or certificate to such Native Christian into some language which he understands.

24. The certificate to be issued by such Minister shall be in the form contained in the second schedule thereto annexed, or to the like effect,

25 After the issue of the certificate by the Minister, marriage may be solemnized between the persons therein described according to such form or ceremony as the Minister thinks fit to adopt :

Provided that the marriage be solemnized in the presence of at least two witnesses besides the Minister.

26. Whenever a marriage be solemnized within two months after the date of the certificate issued by such Minister as afore-said, such certificate and all proceedings (if any) thereon shall be void.

and no person shall proceed to solemnize the said marriage until new notice has been given, and a certificate thereof issued in manner aforesaid.

PART IV.

REGISTRATION OF MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION.

27. All marriages hereafter solemnized in India between persons one or both of whom professes or profess the Christian religion, except marriages solemnized under Part V. or Part VI. of this Act, shall be registered in manner hereinafter prescribed.

28. Every Clergyman of the Church of England shall keep a register of marriages, and shall register therein, according to the tabular form set forth in the third schedule hereto annexed, every marriage which he solemnizes under this Act,

29. Every Clergyman of the Church of England shall send
(Quarterly returns to Arch- four times in every year returns in duplicate,
 deaconry. authenticated by his signature, of the entries
 in the register of marriages solemnized at any place where he has
 any spiritual charge, to the Registrar of the Archdeaconry to
 which he is subject, or within the limits of which such place is
 situate:

Such quarterly returns shall contain all the entries of marria-
Contents of returns. ges contained in the said register from the
 first day of January to the thirty-first day of
 March, from the first day of April to the thirtieth day of June,
 from the first day of July to the thirtieth day of September, and
 from the first day of October to the thirty-first day of December
 of each year, respectively, and shall be sent by such Clergyman
 within two weeks from the expiration of each of the quarters above
 specified.

The said Registrar, upon receiving the said returns, shall send
 one copy thereof to "Registrar-General of Births, Deaths, and
 Marriages."*

30. Every marriage solemnized by a Clergyman of the
Registration and returns of marriages solemnized by
 Clergyman of Church of Rome. Church of Rome shall be registered by the
 person and according to the form directed
 in that behalf by the Roman Catholic Bishop
 of the Diocese or Vicariate in which such
 marriage is solemnized,

and such person shall forward quarterly to the "Registrar-
 General of Births, Deaths, and Marriages"* returns of the entries
 of all marriages registered by him during the three months next
 preceding,

31. Every Clergyman of the Church
Registration and returns of marriages solemnized by
 Clergyman of Church of Scotland. of Scotland shall keep a register of
 marriages,

and shall register therein according to the tabular form set
 forth in third schedule hereto annexed, every marriage which he
 solemnizes under this Act,

and shall forward quarterly to the "Registrar-General of Births,
 Deaths, and Marriages,"* through the Senior Chaplain of the

* The words quoted were substituted for the words "Secretary to the Local Government" by Act (VI. of 1886), s. 30, cl. (b). As to the establishment of General registry office of Births, Deaths, and Marriages, see Act (VI. of 1886), Chap. II.

Church of Scotland, returns similar to those prescribed in section 29, of all such marriages.

32. Every marriage solemnized by any person who has received episcopal ordination, but who is not a Clergyman of the Church of England, or of the Church of Rome, or by any Minister of Religion licensed under this Act to solemnize marriages, shall, immediately after solemnization thereof, be registered in duplicate by the person solemnizing the same ; (that is to say) in a marriage-register book to be kept by him for that purpose, according to the form contained in the fourth schedule hereto annexed, and also in a certificate attached to the marriage-register book as a counterfoil.

33. The entry of such marriage in both the certificate and marriage-register book shall be signed by the person solemnizing the marriage, and also by persons married, and shall be attested by two credible witnesses, other than the person solemnizing the marriage, present at its solemnization.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register book.

34. The person solemnizing the marriage shall forthwith separate the certificate from the marriage-register book, and send it, within one month from the time of the solemnization, to the Marriage Registrar of the District in which the marriage was solemnized, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar,

who shall cause such certificate to be copied into a book to be kept by him for that purpose,

and shall send all the certificates which he has received during the month, with such number and signature or initials added thereto as are hereinafter required, to the "Registrar-General of Births, Deaths, and Marriages."*

35. Such copies shall be entered in order from the beginning to the end of the said book, and shall bear both the number of the certificate as copied and also a number to be entered by the Marriage Registrar, indicating the number of the entry of the said copy in the said book, according to the order in which he receives each certificate.

* The words quoted were substituted for the words "Secretary to the Local Government" by Act (VI. of 1836), s. 30, cl. (b).

36. The Marriage Registrar shall also add such last-mentioned number of the entry of the copy in the book to the certificate, with his signature or initials, and shall, at the end of every month, send the same to the "Registrar-General of Births, Deaths, and Marriages."*

Registrar to add number of entry to certificate, and send to Government.

37. When any marriage between Native Christians is solemnized under Part I. or Part III. of this Act the person solemnizing the same shall, instead of proceeding in the manner provided by sections 28 to 36, both inclusive, register the marriage in a separate register-book, and shall keep it safely until it is filled, or, if he leave the district in which he solemnized the marriage before the said book is filled, shall make over the same to the person succeeding to his duties in the said district.

Registration of marriages between Native Christians under Part I. or III.

Custody and disposal of register-book.

Whoever has the control of the book at the time when it is filled, shall send it to the Marriage Registrar of the District, or if there be more Marriage Registrars, who shall send it to the "Registrar-General of Births, Deaths, and Marriages,"* to be kept by him with the records of his office.

PART V.

MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE OF, A MARRIAGE REGISTRAR.

38. When a marriage is intended to be solemnized by or in the presence of, a Marriage Registrar, one of the parties to such marriage shall give notice in writing, in the form contained in the first schedule hereto annexed, or to the like effect, to any Marriage Registrar of the District within which the parties have dwelt,

or, if the parties dwell in different districts, shall give the like notice to a Marriage Registrar of each district,

and shall state therein the name and surname, and the profession or condition, of each of the parties intending, the dwelling-place of each of them, the time during which each has dwelt therein, and the place at which the marriage is to be solemnized :

Provided that, if either party has dwelt in the place stated in the notice for more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

* The words quoted were substituted for the words "Secretary to the Local Government" by Act (VI of 1886), s. 30, cl. (b).

38. Every Marriage Registrar shall, on receiving any such notice, cause a copy thereof to be affixed in some conspicuous place in his office.

Publication of notice.

When one of the parties intending marriage is a minor, every Marriage Registrar shall, within twenty-four hours after the receipt by him of the notice of such marriage, send, by post or otherwise, a copy of such notice to each of the other Marriage Registrars (if any) in the same district, who shall likewise affix the copy in some conspicuous place in his own office.

Notice to be filed, and copy entered in Marriage Notice Book.

40. The Marriage Registrar shall file all such notices, and keep them with the records of his office,

and shall also forthwith enter a true copy of all such notices in a book to be furnished to him for that purpose by the Local Government, and to be called the "Marriage Notice Book ;"

and the Marriage Notice Book shall be open at all reasonable times, without fee, to all person desirous of inspecting the same.

41. If the party by whom the notice was given requests the Marriage Registrar to issue the certificate next hereinafter mentioned, and if one of the parties intending marriage has made oath as hereinafter required, the Marriage Registrar shall issue under his hand a certificate of such notice having been given, and of such oath having been made :

Certificate of notice given, and oath made.

Proviso.

Proviso —

that no lawful impediment be shown to his satisfaction why such certificate should not issue ;

that the issue of such certificate has not been forbidden in manner hereinafter mentioned, by any person authorized in that behalf by this Act ;

that four days after the receipt of the notice have expired, and further,

that where, by such oath, it appears that one of the parties intending marriage is a minor, fourteen days after the entry of such notice have expired.

42. The certificate mentioned in section 41 shall not be issued by any Marriage Registrar, until one of the parties intending marriage appears personally before such Marriage Registrar, and makes oath*

Oath before issue of certificate.

(a) that he or she believes that there is no any impediment of kindred or affinity, or other lawful hindrance, to the said marriage, and

(b) that both the parties have, or (where they have dwelt in the districts of different Marriage Registrars) that the party making such oath has, had their, his, or her usual place of abode within the district of such Marriage Registrar,

and, where either or each of the parties is a minor,

(c) that the consent or consents to such marriage required by law has or have been obtained thereto, that there is no person resident in India authorized to give such consent, as the case may be.

43. When one of the parties intending marriage is a minor, and both such parties are at the time resident in any of the towns of Calcutta, Madras, and Bombay, and are desirous of being married in less than fourteen days after the entry of such notice as aforesaid, they may apply by petition to a judge of the High Court, for an order upon the Marriage Registrar to whom the notice of marriage has been given, directing him to issue his certificate before the expiration of the said fourteen days required by section 41.

And on sufficient cause being shown, the said judge may, in his discretion, make an order upon such Marriage Registrar, directing him to issue his certificate at any time to be mentioned in the said order before the expiration of the fourteen days so required.

And the said Marriage Registrar, on receipt of the said order, shall issue his certificate in accordance therewith.

44. The provisions of section 19 apply to every marriage under this Part, either of the parties to which is a minor ;

and any person whose consent to such marriage would be required there-under may enter a protest against the issue of the Marriage Registrar's certificate, by writing, at any time before the issue of such certificate, the word "forbidden" opposite to the entry of the notice of such intended marriage in the Marriage Notice Book, and by subscribing thereto his or her name and place of abode, and his or her position with respect to either of the parties, by reason of which he or she is so authorized.