SCHEDULE II *continued.*

CHAPTER XI *continued.*

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	Warrant ... ...
225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody.	Ditto	Ditto ... ...
	If charged with an offence punishable with transportation for life, or imprisonment for 10 years.	Ditto	Ditto ... ...
	If charged with a capital offence ...	Ditto	Ditto ... ...
	If the person is sentenced to transportation for life, or to transportation, penal servitude or imprisonment for 10 years or upwards.	Ditto	Ditto ... ...
	If under sentence of death ...	Ditto	Ditto ... ...
225A	Omission to apprehend or sufferance of escape, on part of public servant in cases not otherwise provided for—		
	(*a*) in case of intentional omission or sufferance.	Shall not arrest without warrant.	Ditto ... ...
	(*b*) in case of negligent omission or sufferance.	Ditto	Summons ...
225B	Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.	May arrest without warrant.	Warrant ...
226	Unlawful return from transportation.	Ditto	Ditto ... ...
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto	Ditto.
Not bailable.	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for two years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class[1].
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto[1].
Not bailable.	Ditto ...	Transportation for life, and fine and rigorous imprisonment for 3 years before transportation.	Court of Session.
Ditto ...	Ditto ...	Punishment of original sentence, or, if part of the punishment has been undergone, the residue.	The Court by which the original offence was triable.

[1] Act X of 1886, sec. 18.

SCHEDULE II *continued.*

CHAPTER XI *continued.*

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Shall not arrest without warrant.	Summons ...
229	Personation of a juror or assessor ...	Ditto	Ditto ... ...

CHAPTER XII.

CHAPTER XII.—OFFENCES RELATING

231	Counterfeiting, or performing any part of the process of counterfeiting, coin.	May arrest without warrant.	Warrant ... ...
232	Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin.	Ditto	Ditto ... ...
233	Making, buying or selling instrument for the purpose of counterfeiting coin.	Ditto	Ditto ... ...
234	Making, buying or selling instrument for the purpose of counterfeiting the Queen's coin.	Ditto	Ditto ... ...
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	Ditto	Ditto ... ...
	If Queen's coin	Ditto	Ditto ... ...
236	Abetting in British India the counterfeiting out of British India of coin.	Ditto	Ditto ... ...
237	Import or export of counterfeit coin, knowing the same to be counterfeit.	Ditto	Ditto ... ...
238	Import or export of counterfeits of the Queen's coin, knowing the same to be counterfeit.	Ditto	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.

TO COIN AND GOVERNMENT STAMPS.

Not bailable.	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	The punishment provided for abetting the counterfeiting of such coin within British India.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.

SCHEDULE II. *continued.*

CHAPTER XII *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
239	Having any counterfeit coin known to be such when it came into possession, and delivering etc. the same to any person.	May arrest without warrant.	Warrant ...
240	The same with respect to the Queen's coin.	Ditto	Ditto ... ...
241	Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit.	Ditto	Ditto ... ...
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto	Ditto ... ...
243	Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto	Ditto ... ...
244	Person employed in a Mint causing coin to be of a different weight or composition from that fixed by law.	Ditto	Ditto ... ...
245	Unlawfully taking from a Mint any coining instrument.	Ditto	Ditto ... ...
246	Fraudulently diminishing the weight or altering the composition of any coin.	Ditto	Ditto ... ...
247	Fraudulently diminishing the weight or altering the composition of the Queen's coin.	Ditto	Ditto ... ...
248	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	Ditto	Ditto ... ...
249	Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.	Ditto	Ditto ... ...
250	Delivery to another of coin possessed with the knowledge that it is altered.	Ditto	Ditto ... ...
251	Delivery of Queen's coin possessed with the knowledge that it is altered.	Ditto	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable.	Not compoundable.	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of ten times the value of the coin counterfeited, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto	Court of Session.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.

SCHEDULE II *continued.*

CHAPTER XII *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof.	May arrest without warrant.	Warrant ... ...
253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.	Ditto	Ditto ... ...
254	Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered.	Ditto	Ditto ... ...
255	Counterfeiting a Government stamp.	Ditto	Ditto ... ...
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.	Ditto	Ditto ... ...
257	Making, buying or selling instrument for the purpose of counterfeiting a Government stamp.	Ditto	Ditto ... ...
258	Sale of counterfeit Government stamp.	Ditto	Ditto ... ...
259	Having possession of a counterfeit Government stamp.	Ditto	Ditto ... ...
260	Using as genuine a Government stamp known to be counterfeit.	Ditto	Ditto ... ...
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause loss to Government.	Ditto	Ditto ... ...
262	Using a Government stamp known to have been before used.	Ditto	Ditto ... ...
263	Erasure of mark denoting that stamp has been used.	Ditto	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable.	Not compoundable.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of ten times the value of the coin.	Presidency Magistrate or Magistrate of the first or second class.
Bailable ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II *continued.*

CHAPTER XIII.

CHAPTER XIII.—OFFENCES RELATING

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons ...
265	Fraudulent use of false weight or measure.	Ditto	Ditto ... ...
266	Being in possession of false weights or measures for fraudulent use.	Ditto	Ditto ... ...
267	Making or selling false weights or measures for fraudulent use.	Ditto	Ditto ... ...

CHAPTER XIV.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC

269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest without warrant.	Summons ...
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Ditto	Ditto ... ...
271	Knowingly disobeying any quarantine rule.	Shall not arrest without warrant.	Ditto ... ...
272	Adulterating food or drink intended for sale, so as to make the same noxious.	Ditto	Ditto ... ...
273	Selling any food or drink as food and drink knowing the same to be noxious.	Ditto	Ditto ... ...
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Ditto	Ditto ... ...
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	Ditto	Ditto ... ...
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	Ditto	Ditto ... ...

TO WEIGHTS AND MEASURES.

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.

HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.

SCHEDULE II *continued.*

CHAPTER XIV *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	Summons ...
278	Making atmosphere noxious to health.	Shall not arrest without warrant.	Ditto ... ...
279	Driving or riding on a public way so rashly or negligently as to endanger human life, etc.	May arrest without warrant.	Ditto ... ...
280	Navigating any vessel so rashly or negligently as to endanger human life, etc.	Ditto	Ditto ... ...
281	Exhibition of a false light, mark or buoy.	Ditto	Warrant ... ...
282	Conveying for hire any person by water, in a vessel in such a state, or so loaded, as to endanger his life.	Ditto	Summons ...
283	Causing danger, obstruction or injury in any public way or line of navigation.	Ditto	Ditto ... ...
284	Dealing with any poisonous substance so as to endanger human life, etc.	Shall not arrest without warrant.	Ditto ... ...
285	Dealing with fire or any combustible matter so as to endanger human life, etc.	May arrest without warrant.	Ditto ... ...
286	So dealing with any explosive substance.	Ditto	Ditto ... ...
287	So dealing with any machinery ...	Shall not arrest without warrant.	Ditto ... ...
288	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Ditto	Ditto ... ...
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal.	May arrest without warrant.	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Ditto ...	Fine of 500 rupees ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Fine of 200 rupees.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Ditto	Any Magistrate.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Any Magistrate.

SCHEDULE II *continued.*

CHAPTER XIV *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
290	Committing a public nuisance ...	Shall not arrest without warrant.	Summons ...
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Ditto ... ...
292	Sale etc. of obscene books, etc. ...	Ditto	Warrant ... ...
293	Having in possession obscene book etc. for sale or exhibition.	Ditto	Ditto ... ...
294	Obscene songs	Ditto	Ditto ... ...
294A	Keeping a lottery office	Shall not arrest without warrant.	Summons ...
	Publishing proposals relating to lotteries.	Ditto	Ditto ... ...

CHAPTER XV.

CHAPTER XV.—OFFENCES

295	Destroying, damaging, or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	May arrest without warrant.	Summons ...
296	Causing a disturbance to an assembly engaged in religious worship.	Ditto	Ditto ... ...
297	Trespassing in place of worship or sepulchre, disturbing funeral, with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Ditto	Ditto ... ...
298	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight, of any person, with intention to wound his religious feeling.	Shall not arrest without warrant.	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Fine of 200 rupees ...	Any Magistrate.
Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Fine of 1,000 rupees ...	Ditto.

RELATING TO RELIGION.

Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Compoundable.	Ditto	Ditto.

SCHEDULE II *continued.*

CHAPTER XVI.

CHAPTER XVI.—OFFENCES

Of Offences

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
302	Murder	May arrest without warrant.	Warrant ... ...
303	Murder by a person under sentence of transportation for life.	Ditto	Ditto ... ...
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, etc.	Ditto	Ditto ... ...
	If act is done with knowledge that it is likely to cause death, but without any intention to cause death, etc.	Ditto	Ditto ... ...
304A	Causing death by rash or negligent act.	Ditto	Ditto ... ...
305	Abetment of suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated.	Ditto	Ditto ... ...
306	Abetting the commission of suicide	Ditto	Ditto ... ...
307	Attempt to murder	Ditto	Ditto ... ...
	If such act cause hurt to any person	Ditto	Ditto ... ...
	Attempt by life-convict to murder, if hurt is caused.	Ditto	Ditto ... ...
308	Attempt to commit culpable homicide.	Ditto	Ditto ... ...
	If such act cause hurt to any person	Ditto	Ditto ... ...
309	Attempt to commit suicide ...	Ditto	Ditto ... ...
311	Being a thug	Ditto	Ditto ... ...

AFFECTING THE HUMAN BODY.

affecting Life.

SCHEDULE II *continued.*

CHAPTER XVI.

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable.	Not compoundable.	Death, or transportation for life, and fine.	Court of Session.
Ditto ...	Ditto ...	Death	Ditto.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Not bailable.	Ditto ...	Death, or transportation for life, or imprisonment for 10 years, and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
Ditto ...	Ditto ...	Death, or as above ...	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Not bailable.	Ditto ...	Transportation for life and fine.	Court of Session.

SCHEDULE II *continued.*

CHAPTER XVI *continued.*

Of the Causing of Miscarriage; of Injuries to Unborn Children;

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
312	Causing miscarriage	Shall not arrest without warrant.	Warrant ...
	If the woman be quick with child...	Ditto	Ditto ... ...
313	Causing miscarriage without woman's consent.	Ditto	Ditto ... ...
314	Death caused by an act done with intent to cause miscarriage.	Ditto	Ditto ... ...
	If act done without woman's consent	Ditto	Ditto ... ...
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Ditto	Ditto ... ...
316	Causing death of a quick unborn child by an act amounting to culpable homicide.	Ditto	Ditto ... ...
317	Exposure of a child under 12 years of age by parent or person having care of it, with intention of wholly abandoning it.	May arrest without warrant.	Ditto ... ...
318	Concealment of birth by secret disposal of dead body.	Ditto	Ditto ... ...
	Of Hurt.		
323	Voluntarily causing hurt	Shall not arrest without warrant.	Summons ...
324	Voluntarily causing hurt by dangerous weapons or means.	May arrest without warrant.	Ditto ... ...

of the Exposure of Infants; and of the Concealment of Births.

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
Ditto ...	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.
Not bailable.	Ditto	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto	Transportation for life, or as above.	Ditto.
Ditto ...	Ditto	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
Ditto ...	Ditto	Imprisonment of either description for 10 years and fine.	Ditto.
Bailable ...	Ditto	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
Ditto ...	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
		Of Hurt.	
Bailable ...	Compoundable.	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Any Magistrate.
Ditto ...	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II *continued.*

CHAPTER XVI *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
325	Voluntarily causing grievous hurt	May arrest without warrant.	Summons ...
326	Voluntarily causing grievous hurt by dangerous weapons or means.	Ditto	Ditto ... ...
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of an offence.	Ditto	Warrant ... ...
328	Administering stupefying drug with intent to cause hurt, etc.	Ditto	Ditto ... ...
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence.	Ditto	Ditto ... ...
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, etc.	Ditto	Ditto ... ...
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, etc.	Ditto	Ditto ... ...
332	Voluntarily causing hurt to deter public servant from his duty.	Ditto	Ditto ... ...
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Ditto	Ditto ... ...
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Shall not arrest without warrant.	Summons ...
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	May arrest without warrant.	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable.	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Not bailable.	Ditto	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto	Imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto	Ditto	Ditto.
Ditto ...	Ditto	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
Bailable ...	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.
Not bailable.	Ditto	Imprisonment of either description for 10 years and fine.	Ditto.
Bailable ...	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Not bailable.	Ditto	Imprisonment of either description for 10 years and fine.	Court of Session.
Bailable ...	Compoundable.	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 4 years, or fine of 2,000 rupees, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II *continued.*

CHAPTER XVI *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
336	Doing any act which endangers human life or the personal safety of others.	May arrest without warrant.	Summons ...
337	Causing hurt by an act which endangers human life, etc.	Ditto	Ditto ... ...
338	Causing grievous hurt by an act which endangers human life, etc.	Ditto	Ditto ... ...
			Of Wrongful Restraint
341	Wrongfully restraining any person	May arrest without warrant.	Summons ...
342	Wrongfully confining any person ...	Ditto	Ditto ... ...
343	Wrongfully confining for three or more days.	Ditto	Ditto ... ...
344	Wrongfully confining for ten or more days.	Ditto	Ditto ... ...
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Ditto ... ...
346	Wrongful confinement in secret ...	May arrest without warrant.	Ditto ... ...
347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, etc.	Ditto	Ditto ... ...
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, etc.	Ditto	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment of either description for 3 months, or fine of 250 rupees, or both.	Any Magistrate.
Ditto ...	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 6 months, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto	Imprisonment of either description for 2 years, or fine of 1,000 rupees, or both.	Ditto.
and Wrongful Confinement.			
Bailable ...	Compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Ditto	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Not compoundable.	Imprisonment of either description for 2 years and fine.	Ditto.
Ditto ...	Ditto	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto	Imprisonment of either description for 2 years, in addition to imprisonment under any other section.	Ditto.
Ditto ...	Ditto	Ditto	Ditto.
Ditto ...	Ditto	Imprisonment of either description for 3 years and fine.	Ditto.
Ditto ...	Ditto	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II *continued.*

CHAPTER XVI *continued.*

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	3 Whether a warrant or a summons shall ordinarily issue in the first instance.
			Of Criminal
352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons ...
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant ... ...
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto	Ditto ... ...
355	Assault or criminal force with intent to dishonour a person, otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant ... ...
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto	Ditto ... ...
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...
			Of Kidnapping, Abduction,
363	Kidnapping	May arrest without warrant.	Warrant ... ...
364	Kidnapping or abducting in order to murder.	Ditto	Ditto ... ...
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto	Ditto ... ...
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, etc.	Ditto	Ditto ... ...
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, etc.	Ditto	Ditto ... ...

Force and Assault.

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Compoundable.	Ditto	Ditto.
Not bailable.	Not compoundable.	Ditto	Any Magistrate.
Bailable ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Compoundable.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.

Slavery and Forced Labour.

Not bailable.	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.

SCHEDULE II *continued.*

CHAPTER XVI *continued.*

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.
368	Concealing or keeping in confinement a kidnapped person.	May arrest without warrant.	Warrant ... ...
369	Kidnapping or abducting a child with intent to take property from the person of such child.	Ditto	Ditto ... ...
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	Ditto ... ...
371	Habitual dealing in slaves	May arrest without warrant.	Ditto ... ...
372	Selling or letting to hire a minor for purposes of prostitution, etc.	Ditto	Ditto ... ...
373	Buying or obtaining possession of a minor for the same purposes.	Ditto	Ditto ... ...
374	Unlawful compulsory labour ...	Ditto	Ditto ... ...
	Of Rape.		
376	Rape	May arrest without warrant.	Warrant ... ...
	Of Unnatural Offences.		
377	Unnatural offences	May arrest without warrant.	Warrant ... ...

CHAPTER XVII.

CHAPTER XVII.—OFFENCES

Of Thefts.

379	Theft	May arrest without warrant.	Warrant ... ...
380	Theft in a building, tent or vessel .	Ditto	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable.	Not compoundable.	Punishment for kidnapping or abduction.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Bailable ...	Ditto ...	Ditto	Ditto.
Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Ditto	Ditto.
Bailable ...	Compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
		Of Rape.	
Not bailable.	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
		Of Unnatural Offences.	
Not bailable.	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
AGAINST PROPERTY.			
		Of Theft.	
Not bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

SCHEDULE II *continued.*

CHAPTER XVII *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
381	Theft by clerk or servant of property in possession of master or employer.	May arrest without warrant.	Warrant ... ...
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt or of restraint, in order to the committing of such theft or to retiring after committing it, or to retaining property taken by it.	Ditto	Ditto ... ...
	Of Extortion.		
384	Extortion	Shall not arrest without warrant.	Warrant ... ...
385	Putting or attempting to put in fear of injury, in order to commit extortion.	Ditto	Ditto ... ...
386	Extortion by putting a person in fear of death or grievous hurt.	Ditto	Ditto ... ...
387	Putting or attempting to put a person in fear of death or grievous hurt, in order to commit extortion.	Ditto	Ditto ... ...
388	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years.	Ditto	Ditto ... ...
	If the offence threatened be an unnatural offence.	Ditto	Ditto ... ...
389	Putting a person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to commit extortion.	Ditto	Ditto ... ...
	If the offence be an unnatural offence	Ditto	Ditto ... ...
	Of Robbery		
392	Robbery	May arrest without warrant.	Warrant ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable.	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Court of Session.
		Of Extortion.	
Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
Not bailable.	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life ...	Ditto.
and Dacoity.			
Not bailable.	Not compoundable.	Rigorous imprisonment for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II *continued.*

CHAPTER XVII *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
	If committed on the high-way between sunset and sunrise.	May arrest without warrant.	Warrant ... ...
393	Attempt to commit robbery ...	Ditto	Ditto ... ...
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery.	Ditto	Ditto ... ...
395	Dacoity	Ditto	Ditto ... ...
396	Murder in dacoity	Ditto	Ditto ... ...
397	Robbery or dacoity, with attempt to cause death or grievous hurt.	Ditto	Ditto ... ...
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	Ditto	Ditto ... ...
399	Making preparation to commit dacoity.	Ditto	Ditto ... ...
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Ditto	Ditto ... ...
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Ditto	Ditto ... ...
402	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto	Ditto ... ...
			Of Criminal Mis-
403	Dishonest misappropriation of moveable property, or converting it to one's own use.	Shall not arrest without warrant.	Warrant ... ...
404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	Ditto	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable.	Not compoundable.	Rigorous imprisonment for 14 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Ditto	Court of Session.
Ditto ...	Ditto ...	Death, transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Rigorous imprisonment for not less than 7 years.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.

appropriation of Property.

Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II *continued.*

CHAPTER XVII *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
405	If by clerk or person employed by deceased.	Shall not arrest without warrant.	Warrant ... ...
			Of Criminal
406	Criminal breach of trust	May arrest without warrant.	Warrant ... ...
407	Criminal breach of trust by a carrier, wharfinger, etc.	Ditto	Ditto ... ...
408	Criminal breach of trust by a clerk or servant.	Ditto	Ditto ... ...
409	Criminal breach of trust by public servant or by banker, merchant or agent, etc.	Shall not arrest without warrant.	Ditto ... ...
			Of the Receiving
411	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant ... ...
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Ditto	Ditto ... ...
413	Habitually dealing in stolen property.	Ditto	Ditto ... ...
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	Ditto	Ditto ... ...
			Of Cheating.
417	Cheating	Shall not arrest without warrant.	Warrant ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Breach of Trust.			
Not bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
of Stolen Property.			
Not bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto ... ...
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Of Cheating.			
Bailable ...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II *continued.*

CHAPTER XVII *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
418	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Shall not arrest without warrant.	Warrant ... ...
419	Cheating by personation	Ditto	Ditto ... ...
420	Cheating and thereby dishonestly inducing delivery of property, or the making, alteration or destruction of a valuable security.	Ditto	Ditto ... ...
	Of Fraudulent Deeds and		
421	Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant ... ...
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Ditto	Ditto ... ...
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto	Ditto ... ...
424	Fraudulent removal or concealment of property of himself or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto	Ditto ... ...
	Of Mischief.		
426	Mischief	Shall not arrest without warrant.	Summons ...
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Ditto	Warrant ... ...
428	Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards.	May arrest without warrant.	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto	Ditto	Ditto.
Ditto ...	Ditto	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Dispositions of Property.			
Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto	Ditto	Ditto.
Ditto ...	Ditto	Ditto	Ditto.
Ditto ...	Ditto	Ditto	Ditto.
Of Mischief.			
Bailable ...	Compoundable when the only loss or damage caused is loss or damage to a private person.	Imprisonment of either description for 3 months, or fine, or both.	Any Magistrate.
Ditto ...	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Not compoundable.	Ditto	Ditto.

SCHEDULE II *continued.*

CHAPTER XVII *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
429	Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, etc., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	May arrest without warrant.	Warrant ... ...
430	Mischief by causing diminution of supply of water for agricultural purposes, etc.	Ditto	Ditto ... ...
431	Mischief by injury to public road, bridge, navigable river or navigable channel, and rendering it impassable or less safe for travelling or conveying property,	Ditto	Ditto ... ...
432	Mischief by causing inundation or obstruction to public drainage, attended with damage.	Ditto	Ditto ... ...
433	Mischief by destroying or moving or rendering less useful a light-house or seamark, or by exhibiting false lights.	Ditto	Ditto ... ...
434	Mischief by destroying or moving etc. a landmark fixed by public authority.	Shall not arrest without warrant.	Ditto ... ...
435	Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards.	May arrest without warrant.	Ditto ... ...
436	Mischief by fire or explosive substance with intent to destroy a house, etc.	Ditto	Ditto ... ...
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.	Ditto	Ditto ... ...
438	The mischief described in the last section when committed by fire or any explosive substance.	Ditto	Ditto ... ...
439	Running vessel ashore with intent to commit theft, etc.	Ditto	Ditto ... ...
440	Mischief committed after preparation made for causing death or hurt, etc.	Ditto	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code...*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.

SCHEDULE II *continued.*

CHAPTER XVII *continued.*

1	2	3	4
Section.	*Offence.*	*Whether the police may arrest without warrant or not.*	*Whether a warrant or a summons shall ordinarily issue in the first instance.*
			Of Criminal
447	Criminal trespass	May arrest without warrant.	Summons ...
448	House-trespass	Ditto	Warrant ... ...
449	House-trespass in order to the commission of an offence punishable with death.	Ditto	Ditto ... ...
450	House-trespass in order to the commission of an offence punishable with transportation for life.	Ditto	Ditto ... ...
451	House-trespass in order to the commission of an offence punishable with imprisonment.	Ditto	Ditto ... ...
	If the offence is theft	Ditto	Ditto ... ...
452	House-trespass, having made preparation for causing hurt, assault, etc.	Ditto	Ditto ... ...
453	Lurking house-trespass or house-breaking.	Ditto	Ditto ... ...
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	Ditto	Ditto ... ...
	If the offence is theft	Ditto	Ditto ... ...
455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, etc.	Ditto	Ditto ... ...
456	Lurking house-trespass or house-breaking by night.	Ditto	Ditto ... ...

Trespass.

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
Not bailable.	Not compoundable.	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Any Magistrate.
Not bailable.	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II *continued.*

CHAPTER XVII *continued.*

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	May arrest without warrant.	Warrant ... ...
	If the offence is theft	Ditto	Ditto ... ...
458	Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, etc.	Ditto	Ditto ... ...
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Ditto	Ditto ... ...
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, etc.	Ditto	Ditto ... ...
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Ditto	Ditto ... ...
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Ditto	Ditto ... ...

CHAPTER XVIII.

CHAPTER XVIII.—OFFENCES RELATING TO

465	Forgery	Shall not arrest without warrant.	Warrant ... ...
466	Forgery of a record of a Court of Justice or of a Register of births etc. kept by a public servant.	Ditto	Ditto ... ...
467	Forgery of a valuable security, will, or authority to make or transfer any valuable security, or to receive any money, etc.	Ditto	Ditto ... ...
	When the valuable security is a promissory note of the Government of India.	May arrest without warrant.	Ditto ... ...
468	Forgery for the purpose of cheating	Shall not arrest without warrant.	Ditto ... ...

SCHEDULE II *continued.*

CHAPTER XVII *continued.*

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable.	Not compoundable.	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 14 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XVIII.

DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Court of Session.
Not bailable.	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

SCHEDULE II *continued.*

CHAPTER XVIII *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose.	Shall not arrest without warrant.	Warrant ... ...
471	Using as genuine a forged document which is known to be forged.	Ditto	Ditto ... ...
	When the forged document is a promissory note of the Government of India.	May arrest without warrant.	Ditto ... ...
472	Making or counterfeiting a seal, plate, etc. with intent to commit a forgery punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, etc., knowing the same to be counterfeit.	Shall not arrest without warrant.	Ditto ... ...
473	Making or counterfeiting a seal, plate, etc. with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, etc., knowing the same to be counterfeit.	Ditto	Ditto ... ...
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine; if the document is one of the description mentioned in section 466 of the Indian Penal Code.	Ditto	Ditto ... ...
	If the document is one of the description mentioned in section 467 of the Indian Penal Code.	Ditto	Ditto ... ...
475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto	Ditto ... ...
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto	Ditto ... ...
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, etc.	Ditto	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment of either description for 3 years and fine.	Court of Session.
Ditto ...	Ditto ...	Punishment for forgery ...	Ditto.
Not bailable.	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years, and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years, and fine.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years, and fine.	Ditto.

SCHEDULE II *continued.*

CHAPTER XVIII *continued.*

Of Trade and

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
482	Using a false trade or property-mark with intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant ... ...
483	Counterfeiting a trade or property-mark used by another, with intent to cause damage or injury.	Ditto	Ditto ... ...
484	Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, etc. of any property.	Ditto	Summons ...
485	Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.	Ditto	Ditto ... ...
486	Knowingly selling goods marked with a counterfeit property or trade-mark.	Ditto	Ditto ... ...
487	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, etc.	Ditto	Ditto ... ...
488	Making use of any such false mark	Ditto	Ditto ... ...
489	Removing, destroying or defacing any property-mark with intent to cause injury.	Ditto	Ditto ... ...

CHAPTER XIX.

CHAPTER XIX.—CRIMINAL BREACH

490	Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons ...
491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so.	Ditto	Ditto ... ...

Property-marks.

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

OF CONTRACTS OF SERVICE.

Bailable ...	Compoundable.	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.

SCHEDULE II *continued.*

CHAPTER XIX *continued.*

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.
492	Being bound by a contract to render personal service for a certain period at a distant place to which the employé is conveyed at the expense of the employer, and voluntarily deserting the service or refusing to perform the duty.	Shall not arrest without warrant.	Summons ...

CHAPTER XX.

CHAPTER XX.—OFFENCES

493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him, and to cohabit with him in that belief.	Shall not arrest without warrant.	Warrant ... ...
494	Marrying again during the lifetime of a husband or wife.	Ditto	Ditto ... ...
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Ditto	Ditto ... ...
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married.	Ditto	Ditto ... ...
497	Adultery	Ditto	Ditto ... ...
498	Enticing or taking away or detaining with a criminal intent a married woman.	Ditto	Ditto ... ...

CHAPTER XXI.

CHAPTER XXI.—

500	Defamation	Shall not arrest without warrant.	Warrant ... ...
501	Printing or engraving matter knowing it to be defamatory.	Ditto	Ditto ... ...
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Ditto	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Compoundable.	Imprisonment of either description for 1 month, or fine of double the expense incurred, or both.	Presidency Magistrate or Magistrate of the first or second class.

RELATING TO MARRIAGE.

Not bailable.	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session.
Bailable ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Not bailable.	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Bailable ...	Compoundable.	Imprisonment of either description for 5 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

DEFAMATION.

Bailable ...	Compoundable.	Simple imprisonment for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.

SCHEDULE II *continued.*

CHAPTER XXII.

CHAPTER XXII.—CRIMINAL INTIMIDATION,

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant ... ...
505	False statement, rumour, etc. circulated with intent to cause mutiny or offence against the public peace.	Ditto	Ditto ... ...
506	Criminal intimidation	Ditto	Ditto ... ...
	If threat be to cause death or grievous hurt, etc.	Ditto	Ditto ... ...
507	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Ditto	Ditto ... ...
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Ditto	Ditto ... ...
509	Uttering any word or making any gesture intended to insult the modesty of a woman, etc.	Ditto	Ditto ... ...
510	Appearing in a public place etc. in a state of intoxication, and causing annoyance to any person.	Ditto	Ditto ... ...

CHAPTER XXIII.

CHAPTER XXIII.—ATTEMPTS

511	Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.

INSULT AND ANNOYANCE.

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
Not bailable	Not compoundable.	Ditto	Presidency Magistrate or Magistrate of the first or second class.
Bailable ...	Compoundable.	Ditto	Ditto.
Ditto ...	Not compoundable.	Imprisonment of either description for 7 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years in addition to the punishment under above section.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for 24 hours, or fine of 10 rupees, or both.	Any Magistrate.

TO COMMIT OFFENCES.

According as the offence contemplated by the offender is bailable or not.	Compoundable when the offence attempted is compoundable.	Transportation or imprisonment not exceeding half of the longest term, and of any description, provided for the offence, or fine, or both.	The Court by which the offence attempted is triable.

SCHEDULE II *continued.*

CHAPTER XXIII *continued.*

OFFENCES AGAINST

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
	If punishable with death, transportation or imprisonment for seven years or upwards.	May arrest without warrant.	Warrant ... ...
	If punishable with imprisonment for three years and upwards but less than seven.	Ditto	Ditto ... ...
	If punishable with imprisonment for less than three years.	Shall not arrest without warrant.	Summons... ...
	If punishable with fine only ...	Ditto	Ditto ... ...

OTHER LAWS.

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable...	Not compoundable.	... ...	According to the provisions of section 29 of this Code.
Ditto ... ... Except in cases under the Indian Arms Act, 1878, section 19, which shall be bailable.	Ditto ...	... ...	
Bailable ...	Ditto ...	... ...	
Ditto	Ditto ...	... ...	

SCHEDULE III.

ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

I.—Ordinary Powers of a Magistrate of the Third Class.

(1) Power to arrest, or direct the arrest in his presence of, an offender; section 65.
(2) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant; sections 83, 84 and 86.
(3) Power to issue proclamations in cases judicially before him, section 87.
(4) Power to attach and sell property in cases judicially before him, section 88.
(5) Power to restore attached property, section 89.
(6) Power to issue search-warrant, section 96.
(7) Power to endorse a search-warrant and order delivery of thing found, section 99.
(8) Power to record statements or confessions during a police investigation, section 164.
(9) Power to authorise detention of a person during a police investigation, section 167.
(10) Power to detain an offender found in Court, section 351.
(11) Power to sell perishable property of a suspected character, section 525.

II.—Ordinary Powers of a Magistrate of the Second Class.

(1) The ordinary powers of a Magistrate of the third class.
(2) Power to order the police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial, section 155.

III.—Ordinary Powers of a Magistrate of the First Class.

(1) The ordinary powers of a Magistrate of the second class.
(2) Power to issue search-warrant otherwise than in course of an inquiry, section 98.
(3) Power to issue search-warrant for discovery of persons wrongfully confined, section 100.
(4) Power to require security to keep the peace, section 107.
(5) Power to require security for good behaviour, section 109.
(6) Power to make orders etc. in possession cases; sections 145, 146 and 147.
(7) Power to commit for trial, section 206.
(8) Power to stop proceedings when no complainant, section 249.
(9) Power to make orders of maintenance, sections 488 and 489.

IV.—Ordinary Powers of a Sub-Divisional Magistrate.

(1) The ordinary powers of a Magistrate of the first class.
(2) Power to direct warrants to landholders, section 78.
(2 A) Power to require security for good behaviour, section 110[1].

[1] Act X of 1886, sec. 19.

(3) Power to make orders as to local nuisances, section 133.
(4) Power to make orders prohibiting repetitions of nuisances, section 143.
(5) Power to make orders under section 444.
(6) Power to hold inquests, section 174.
(7) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186.
(8) Power to entertain complaints, section 191.
(9) Power to receive police-reports, section 191.
(10) Power to entertain cases without complaint, section 191.
(11) Power to transfer cases to a Subordinate Magistrate, section 192.
(12) Power to pass sentence on proceedings recorded by a Subordinate Magistrate, section 349.
(13) Power to sell property alleged or suspected to have been stolen, etc.; section 524.
(14) Power to withdraw cases other than appeals, and to try or refer them for trial; section 528.

V.—Ordinary Powers of a District Magistrate.

(1) The ordinary powers of a Sub-divisional Magistrate, being a Magistrate of the first class.
(2) Power to issue search-warrants for documents in custody of Postal or Telegraph authorities, section 96.
(3) Power to discharge persons bound to keep the peace or to be of good behaviour, section 124.
(4) Power to cancel bond for keeping the peace, section 125.
(5) Power to try summarily, section 260.
(6) Power to quash convictions in certain cases, section 350.
(7) Power to hear appeals from orders requiring security for good behaviour, section 406.
(8) Power to hear or refer appeals from convictions by Magistrates of the second and third classes, section 407.
(9) Power to call for records, section 435.
(10) Power to revise orders passed under section 514; section 515.

SCHEDULE IV.

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED.

POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED

By the Local Government

(1) Power to require security for good behaviour, section 110:
(2) Power to make orders as to local nuisances, section 133:
(3) Power to make orders prohibiting repetitions of nuisances, section 143:
(4) Power to make orders under section 144:
(5) Power to hold inquests, section 174:
(6) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186:
(7) Power to take cognisance of offences upon complaint, section 191:
(8) Power to take cognisance of offences upon police reports, section 191:
(9) Power to take cognisance of offences upon information, section 191:
(10) Power to try summarily, section 260:
(11) Power to hear appeals from convictions by Magistrates of the second and third classes, section 407:
(12) Power to sell property alleged or suspected to have been stolen, etc.; section 524.

By the District Magistrate

(1) Power to make orders prohibiting repetitions of nuisances, section 143:
(2) Power to make orders under section 144:
(3) Power to hold inquests, section 174:
(4) Power to take cognisance of offences upon complaint, section 191:
(5) Power to take cognisance of offences upon police reports, section 191:
(6) Power to transfer cases, section 192.

POWERS WITH WHICH A MAGISTRATE OF THE SECOND CLASS MAY BE INVESTED

By the Local Government

(1) Power to pass sentences of whipping, section 32 :
(2) Power to make orders prohibiting repetitions of nuisances, section 143 :
(3) Power to make orders under section 144 :
(4) Power to hold inquests, section 174 :
(5) Power to take cognisance of offences upon complaint, section 191 :
(6) Power to take cognisance of offences upon police reports, section 191 :
(7) Power to take cognisance of offences upon information, section 191 :
(8) Power to commit for trial, section 206.

By the District Magistrate

(1) Power to make orders prohibiting repetitions of nuisances, section 142 :
(2) Power to make orders under section 144 :
(3) Power to hold inquests, section 174 :
(4) Power to take cognisance of offences upon complaint, section 191 :
(5) Power to take cognisance of offences upon police reports, section 191.

POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED

By the Local Government

(1) Power to make orders prohibiting repetitions of nuisances, section 143 :
(2) Power to make orders under section 144 :
(3) Power to hold inquests, section 174 :
(4) Power to take cognisance of offences upon complaint, section 191 :
(5) Power to take cognisance of offences upon police reports, section 191 :
(6) Power to commit for trial, section 206.

POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED	BY THE DISTRICT MAGISTRATE.	(1) Power to make orders prohibiting repetitions of nuisances, section 143: (2) Power to make orders under section 144: (3) Power to hold inquests, section 174: (4) Power to take cognisance of offences upon complaint, section 191: (5) Power to take cognisance of offences upon police reports, section 191.
POWERS WITH WHICH A SUB-DIVISIONAL MAGISTRATE MAY BE INVESTED	BY THE LOCAL GOVERNMENT.	Power to call for records, section 435.

SCHEDULE V.

FORMS.

I.—SUMMONS TO AN ACCUSED PERSON.

(*See section* 68.)

To of .

WHEREAS your attendance is necessary to answer to a charge of (*state shortly the offence charged*), you are hereby required to appear in person (*or* by pleader, *as the case may be*) before the (*Magistrate*) of , on the day[1] of . Herein fail not.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

II.—WARRANT OF ARREST.

(*See section* 75.)

To (*name and designation of the person or persons who is or are to execute the warrant*).

WHEREAS of stands charged with the offence of (*state the offence*), you are hereby directed to arrest the said , and to produce him before me. Herein fail not.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

[1] That a summons should not be made returnable on Sunday, see Suth. 1864, Cr. 2.

(*See section* 76.)

This warrant may be endorsed as follows :—

If the said shall give bail himself in the sum of , with one surety in the sum of (*or* two sureties each in the sum of), to attend before me on the day of and to continue so to attend until otherwise directed by me, he may be released.

Dated this day of , 18 .

(*Signature.*)

III.—Bond and Bail-bond after Arrest under a Warrant.

(*See section* 86.)

I, (*name*), of , being brought before the District Magistrate of (*or as the case may be*) under a warrant issued to compel my appearance to answer to the charge of , do hereby bind myself to attend in the Court of on the day of next to answer to the said charge, and to continue so to attend until otherwise directed by the Court; and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

I do hereby declare myself surety for the abovenamed of that he shall attend before in the Court of on the day of next to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Court; and, in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

IV.—Proclamation requiring the Appearance of a Person Accused.

(*See section* 87.)

Whereas complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of , punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said of is required to appear at (*place*) before this Court (*or* before me) to answer the said complaint within days from this date.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

V.—PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS.

(*See section* 87.)

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of (*mention the offence concisely*) and a warrant has been issued to compel the attendance of (*name, description and address of the witness*) before this Court to be examined touching the matter of the said complaint; and whereas it has been returned to the said warrant that the said (*name of witness*) cannot be served, and it has been shown to my satisfaction that he has absconded (*or* is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said (*name*) is required to appear at (*place*) before the Court of on the day of next at . o'clock, to be examined touching , the offence complained of.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

VI.—ORDER OF ATTACHMENT TO COMPEL THE ATTENDANCE OF A WITNESS.

(*See section* 88.)

To the police-officer in charge of the police station at .

WHEREAS a warrant has been duly issued to compel the attendance of (*name, description and address*) to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served; and whereas it has been shown to my satisfaction that he has absconded (*or* is concealing himself to avoid the service of the said warrant); and thereupon a Proclamation was duly issued and published requiring the said to appear and give evidence at the time and place mentioned therein, and he has failed to appear;

This is to authorise and require you to attach by seizure the moveable property belonging to the said to the value of rupees which you may find within the District of and to hold the said property under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

ORDER OF ATTACHMENT TO COMPEL THE APPEARANCE OF A PERSON ACCUSED.

(*See section* 88.)

To (*name and designation of the person or persons who is or are to execute the warrant*).

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction

that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant), and thereupon a Proclamation was duly issued and published requiring the said to appear to answer the said charge within days; and whereas the said is possessed of the following property other than land paying revenue to Government in the village (*or* town of) , in the District of , viz. , and an order has been made for the attachment thereof;

You are hereby required to attach the said property by seizure, and to hold the same under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

ORDER AUTHORISING AN ATTACHMENT BY THE DEPUTY COMMISSIONER AS COLLECTOR.

(*See section* 88.)

To the Deputy Commissioner of the District of

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant), and thereupon a Proclamation was duly issued and published requiring the said to appear to answer the said charge within days, but he has not appeared; and whereas the said is possessed of certain land paying revenue to Government in the village (*or* town) of in the District of ;

You are hereby authorised and requested to cause the said land to be attached, and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

VII.—WARRANT IN THE FIRST INSTANCE TO BRING UP A WITNESS.

(*See section* 90.)

To (*name and designation of the police-officer or other person or persons who is or are to execute the warrant*).

WHEREAS complaint has been made before me that of has committed (*or* is suspected to have committed) the offence of (*mention the offence concisely*), and it appears likely that (*name and description of witness*) can give evidence concerning the said complaint; and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so;

This is to authorise and require you to arrest the said (*name*) and on the day of to bring him before this Court, to be examined touching the offence complained of.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

VIII.—WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE.

(*See section* 96.)

To (*name and designation of the police-officer or other person or persons who is or are to execute the warrant*).

WHEREAS information has been laid (*or* complaint has been made) before me of the commission (*or* suspected commission) of the offence of (*mention the offence concisely*), and it has been made to appear to me that the production of (*specify the thing clearly*) is essential to the inquiry now being made (*or* about to be made) into the said offence (*or* suspected offence);

This is to authorise and require you to search for the said (*the thing specified*) in the (*describe the house or place, or part thereof, to which the search is to be confined*), and, if found, to produce the same forthwith before this Court; returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

IX.—WARRANT TO SEARCH SUSPECTED PLACE OF DEPOSIT.

(*See section* 98.)

To (*name and designation of a police-officer above the rank of a Constable*).

WHEREAS information has been laid before me, and on due inquiry thereupon had I have been led to believe that the (*describe the house or other place*) is used as a place for the deposit (*or* sale) of stolen property (*or, if for either of the other purposes expressed in the section, state the purpose in the words of the section*);

This is to authorise and require you to enter the said house (*or other place*) with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house (*or other place, or if the search is to be confined to a part, specify the part clearly*) and to seize and take possession of any property (*or* documents, *or* stamps, *or* seals, *or* coins, *as the case may be*)—[Add (*when the case requires it*) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, *or* counterfeit stamps, *or* false seals, *or* counterfeit coin, (*as the case may be*)] and forthwith to bring before this Court such of the said things as may be taken possession of; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

X.—Bond to keep the Peace.

(*See section* 106.)

Whereas I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to keep the peace for the term of , I hereby bind myself not to commit a breach of the peace, or do any act that may probably occasion a breach of the peace, during the said term; and, in case of my making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

XI.—Bond for Good Behaviour.

(*See sections* 109 *and* 110.)

Whereas I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to be of good behaviour to Her Majesty the Queen, Empress of India, and to all her subjects for the term of (*state the period*), I hereby bind myself to be of good behaviour to Her Majesty and to all her subjects during the said term; and, in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

(*Where a bond with sureties is to be executed, add*)—We do hereby declare ourselves sureties for the abovenamed that he will be of good behaviour to Her Majesty the Queen, Empress of India, and to all her subjects during the said term; and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to Her Majesty the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

XII.—Summons on Information of a probable Breach of the Peace.

(*See section* 114.)

To of .

Whereas it has been made to appear to me by credible information that (*state the substance of the information*), and that you are likely to commit a breach of the peace (*or* by which act a breach of the peace will probably be occasioned), you are hereby required to attend in person (*or* by a duly authorised agent) at the Office of the Magistrate of on the day of , 18 , at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for rupees [*when sureties are required, add,* and also to give security by the bond of one (*or* two, *as the case may be*) surety (*or* sureties) in the sum of rupees (*each if more than one*)], that you will keep the peace for the term of

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XIII.—Warrant of Commitment on Failure to find Security to keep the Peace.

(*See section* 123.)

To the Superintendent (*or* Keeper) of the Jail at .

Whereas (*name and address*) appeared before me in person (*or* by his authorised agent) on the day of in obedience to a summons calling upon him to show cause why he should not enter into a bond for rupees with one surety (*or* a bond with two sureties each in rupees), that he the said (*name*) would keep the peace for the period of months; and whereas an order was then made requiring the said (*name*) to enter into and find security (*state the security ordered when it differs from that mentioned in the summons*), and he has failed to comply with the said order;

This is to authorise and require you the said Superintendent (*or* Keeper) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*) unless he shall in the meantime comply with the said order by himself and his surety (*or* sureties) entering into the said bond, in which case the same shall be received, and the said (*name*) released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XIV.—Warrant of Commitment on Failure to find Security for Good Behaviour.

(*See section* 123.)

To the Superintendent (*or* Keeper) of the Jail at .

Whereas it has been made to appear to me that (*name and description*) has been and is lurking within the district of having no ostensible means of subsistence (*or*, and that he is unable to give any satisfactory account of himself);

or

Whereas evidence of the general character of (*name and description*) has been adduced before me and recorded from which it appears that he is an habitual robber (*or* house-breaker, etc., *as the case may be*);

And whereas an order has been recorded stating the same and requiring the said (*name*) to furnish security for his good behaviour for the term of (*state the period*) by entering into a bond with one surety (*or* two or more sureties, *as the case may be*), himself for rupees , and the said surety (*or* each of the said sureties) for rupees , and the said (*name*) has failed to comply with the said order, and for such default has been adjudged imprisonment for (*state the term*) unless the said security be sooner furnished;

This is to authorise and require you the said Superintendent (*or* Keeper) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*) unless he shall in the meantime comply with the said order by himself and his surety (*or* sureties) entering into the said bond, in which case the same shall

be received and the said (*name*) released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*)

(*Signature.*)

XV.—Warrant to discharge a Person imprisoned on Failure to give Security.

(*See sections* 123 *and* 124.)

To the Superintendent (*or* Keeper) of the Jail at (*or other officer in whose custody the person is*).

Whereas (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the day of , and has since duly given security under section of the Code of Criminal Procedure,

or

and there have appeared to me sufficient grounds for the opinion that he can be released without hazard to the community;

This is to authorise and require you forthwith to discharge the said (*name*) from your custody, unless he is liable to be detained for some other cause.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*)

(*Signature.*)

XVI.—Order for the Removal of Nuisances.

(*See section* 133.)

To (*name, description and address*).

Whereas it has been made to appear to me that you have caused an obstruction (*or* nuisance) to persons using the public roadway (*or other public place*), which, etc. (*describe the road or public place*), by, etc. (*state what it is that causes the obstruction or nuisance*), and that such obstruction (*or* nuisance) still exists;

or

Whereas it has been made to appear to me that you are carrying on as owner, or manager, the trade or occupation of (*state the particular trade or occupation and the place where it is carried on*), and that the same is injurious to the public health (*or* comfort) by reason (*state briefly in what manner the injurious effects are caused*), and should be suppressed or removed to a different place;

or

Whereas it has been made to appear to me that you are the owner (*or* are in possession of *or* have the control over) a certain tank (*or* well *or* excavation) adjacent to the public way (*describe the thoroughfare*), and that the safety of the public is endangered by reason of the said tank (*or* well *or* excavation) being without a fence (*or* insecurely fenced);

or

Whereas, etc., etc. (*as the case may be*);

I do hereby direct and require you within (*state the time allowed*) to (*state what is required to be done to abate the nuisance*) or to appear at

in the Court of on the day next, and to show cause why this order should not be enforced;

or

I do hereby direct and require you within (*state the time allowed*) to cease carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on, or to appear, etc.;

or

I do hereby direct and require you within (*state the time allowed*) to put up a sufficient fence (*state the kind of fence and the part to be fenced*), or to appear, etc.

or

I do hereby direct and require you, etc., etc. (*as the case may be*).

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XVII.—MAGISTRATE'S ORDER CONSTITUTING A JURY.

(*See section* 138.)

WHEREAS on the day of , 18 , an order was issued to (*name*) requiring him (*state the effect of the order*), and whereas the said (*name*) has applied to me by a petition bearing date the day of for an order appointing a Jury to try whether the said recited order is reasonable and proper; I do hereby appoint (*the names, etc. of the five or more Jurors*) to be the Jury to try and decide the said questions, and do require the said Jury to report their decision within days from the date of this order at my office at .

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XVIII.—MAGISTRATE'S NOTICE AND PEREMPTORY ORDER AFTER THE FINDING BY A JURY.

(*See section* 140.)

To (*name, description and address*).

I HEREBY give you notice that the Jury duly appointed on the petition presented by you on the day of have found that the order issued on the day of requiring you (*state substantially the requisition in the order*) is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said order within (*state the time allowed*) on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XIX.—INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING INQUIRY BY JURY.

(*See section* 142.)

To (*name, description and address*).

WHEREAS the inquiry by a Jury appointed to try whether my order issued on the day of , 18 , is reasonable and proper is still pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended with so imminent serious danger to the public as to render necessary immediate measures to prevent such danger, I do hereby, under the provisions of section 142 of the Code of Criminal Procedure, direct and enjoin you forthwith to (*state plainly what is required to be done as a temporary safe-guard*), pending the result of the local inquiry by the Jury.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XX.—MAGISTRATE'S ORDER PROHIBITING THE REPETITION, ETC. OF A NUISANCE.

(*See section* 143.)

To (*name, description and address*).

WHEREAS it has been made to appear to me that, etc. (*state the proper recital, guided by* Form No. XVI or Form No. XXI, *as the case may be*);

I do hereby strictly order and enjoin you not to repeat the said nuisance by again placing or causing or permitting to be placed, etc. (*as the case may be*).

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXI.—MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, ETC.

(*See section* 144.)

To (*name, description and address*).

WHEREAS it has been made to appear to me that you are in possession (*or* have the management) of (*describe clearly the property*), and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road;

or

WHEREAS it has been made to appear to me that you and a number of other persons (*mention the class of persons*) are about to meet and proceed in a religious procession along the public street, etc. (*as the case may be*), and that such procession is likely to lead to a riot or an affray;

or

WHEREAS, etc., etc. (*as the case may be*);

I do hereby order you not to place or permit to be placed any of the earth or stones dug from your land in any part of the said road;

or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (*or, as the case recited may require*).

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXII.—MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO RETAIN POSSESSION OF LAND, ETC. IN DISPUTE.

(*See section* 145.)

IT appearing to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between (*describe the parties by name and residence, or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (*name or names or description*) is true,

I do decide and declare that he is (*or* they are) in possession of the said (*the subject of dispute*) and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of his (*or* their) possession in the meantime.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXIII.—WARRANT OF ATTACHMENT IN THE CASE OF A DISPUTE AS TO THE POSSESSION OF LAND, ETC.

(*See section* 146.)

To the Police-officer in charge of the Police-station at [*or*, To the Collector of].

WHEREAS it has been made to appear to me that a dispute likely to induce a breach of the peace existed between (*describe the parties concerned by name and residence, or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and whereas, upon due inquiry into the said claims, I have decided that neither of the said parties was in possession of the said (*the subject of dispute*) [*or* I am unable to satisfy myself as to which of the said parties was in possession as aforesaid];

This is to authorise and require you to attach the said (*the subject of dispute*) by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the

rights of the parties, or the claim to possession, shall have been obtained; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXIV.—Magistrate's Order prohibiting the doing of anything on Land or Water.

(*See section* 147.)

A dispute having arisen concerning the right of use of (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, the possession of which land (*or* water) is claimed exclusively by (*describe the person or persons*), and it appearing to me, on due inquiry into the same, that the said land (*or* water) has been open to the enjoyment of such use by the public (*or if by an individual or a class of persons, describe him or them*), and (*if the use can be enjoyed throughout the year*) that the said use has been enjoyed within three months of the institution of the said inquiry (*or if the use is enjoyable only at particular seasons, say* 'during the last of the seasons at which the same is capable of being enjoyed');

I do order that the said (*the claimant or the claimants of possession*), or any one in their interest, shall not take (*or* retain) possession of the said land (*or* water) to the exclusion of the enjoyment of the right of use aforesaid, until he (*or they*) shall obtain the decree or order of a competent Court adjudging him (*or* them) to be entitled to exclusive possession.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXV.—Bond and Bail-bond on a preliminary Inquiry before a Police-officer.

(*See section* 169.)

I, (*name*), of , being charged with the offence of , and after inquiry required to appear before the Magistrate of

or

and after inquiry called upon to enter into my own recognisance to appear when required, do hereby bind myself to appear at , in the Court of , on the day of next (*or* on such day as I may hereafter be required to attend) to answer further to the said charge, and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

I hereby declare myself (*or* we jointly and severally declare ourselves and each of us) surety (*or* sureties) for the above-said that he shall attend at , in the Court of , on the day of next (*or* on such day as he may hereafter be required to attend), further to

answer to the charge pending against him, and, in case of his making default therein, I hereby bind myself (*or* we hereby bind ourselves) to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

XXVI.—Bond to Prosecute or give Evidence.

(*See section* 170.)

I, (*name*), of (*place*), do hereby bind myself to attend at , in the Court of , at o'clock on the day of next, and then and there to prosecute (*or* to prosecute and give evidence, *or* to give evidence) in the matter of a charge of against one *A. B.*, and, in case of making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day : 18 .

(*Signature.*)

XXVII.—Notice of Commitment by Magistrate to Government Pleader.

(*See section* 218.)

The Magistrate of hereby gives notice that he has committed one for trial at the next Sessions; and the Magistrate hereby instructs the Government Pleader to conduct the prosecution of the said case.

The charge against the accused is that, etc. (*state the offence as in the charge*).

Dated this day of , 18 .

(*Signature.*)

XXVIII.—Charges[1].

(*See sections* 221, 222, 223.)

(I.)—Charges with one Head.

(*a*) I, [*name and office of Magistrate, etc.*], hereby charge you [*name of accused person*], as follows:—

(*b*) That you, on or about the day of , at , waged war against Her Majesty the Queen, Empress of India, and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognisance of the Court of Session [*when the charge is framed by a Presidency Magistrate, for* Court of Session *substitute* High Court].

On Penal Code, section 121.

(*c*) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

[1] In the body of the Code 'charge' is used as the statement of a specific offence.

[*To be substituted for* (*b*) :—]

On section 124.

(2) That you, on or about the day , at , with the intention of inducing the Hon'ble *A. B.*, Member of the Council of the Governor General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

On section 161.

(3) That you, being a public servant in the Department, directly accepted from [*state the name*], for another party [*state the name*], a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

On section 166.

(4) That you, on or about the day of , at , did [*or* omitted to do, *as the case may be*] , such conduct being contrary to the provisions of Act , section , and known by you to be prejudicial to , and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

On section 193.

(5) That you, on or about the day of , at , in the course of the trial of , before , stated in evidence that ' ,' which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

On section 304.

(6) That you, on or about the day of , at , committed culpable homicide not amounting to murder, causing the death of , and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

On section 306.

(7) That you, on or about the day of , at , abetted the commission of suicide by *A. B.*, a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

On section 325.

(8) That you, on or about the day of , at , voluntarily caused grevious hurt to , and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

On section 392.

(9) That you, on or about the day of , at , robbed [*state the name*] and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

On section 395.

(10) That you, on or about the day of , at , committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

[*In cases tried by Magistrates, substitute* 'within my cognisance' *for* 'within the cognisance of the Court of Session,' *and in* (*c*) *omit* 'by the said Court.']

(II.)—CHARGES WITH TWO OR MORE HEADS.

(*a*) I, [*name and office of Magistrate, etc.*], hereby charge you [*name of accused person*], as follows:—

On section 241.

(*b*) *First.*—That you, on or about the day of , at , knowing a coin to be counterfeit, delivered the same to another person, by name *A. B.*, as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

Secondly.—That you, on or about the day of , at , knowing a coin to be counterfeit, attempted to induce another person, by name *A. B.*, to receive it as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

(*c*) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

[*To be substituted for* (*b*):—]

On sections 302 and 304

(2) *First.*—That you, on or about the day of , at , committed murder by causing the death of , and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

Secondly.—That you, on or about the day of , at , by causing the death of , committed culpable homicide not amounting to murder, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

On sections 379 and 382.

(3) *First.*—That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

Secondly.—That you, on or about the day of , at , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

Thirdly.—That you, on or about the day of , at , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

Fourthly.—That you, on or about the day of , at , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft,

and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

(4) That you, on or about the day of , at , in the course of the inquiry into before , stated in evidence that ' ;' and that you, on or about the day of , at , in the course of the trial of , before , stated in evidence that ' ,' one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court][1].

Alternative charges on section 193.

[*In cases tried by Magistrates, substitute* 'within my cognisance' *for* 'within the cognisance of the Court of Session,' *and in* (*c*) *omit* 'by the said Court.']

(III.)—Charge for Theft after a previous Conviction.

I, (*name and office of Magistrate, etc.*), hereby charge you (*name of accused person*), as follows :—

That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* { High Court / Magistrate } *as the case may be*].

And you the said (*name of accused*) stand further charged that you, before the committing of the said offence, that is to say, on the day of , had been convicted by the (*state Court by which conviction was had*) at of an offence punishable under Chapter XVII of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night (*describe the offence in the words used in the section under which the offence was convicted*), which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under section 75 of the Indian Penal Code[2].

And I hereby direct that you be tried, etc.

XXIX.—Warrant or Commitment on a Sentence of Imprisonment or Fine if passed by a Magistrate.

(*See sections* 245 *and* 258.)

To the Superintendent (*or* Keeper) of the Jail at .

Whereas on the day of , 18 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar for 18 , was convicted before me (*name and official designation*) of the offence of (*mention the offence or offences concisely*) under section (*or*

[1] See 10 Cal. 937. It is not necessary in India to allege which of the two contradictory statements is false, or to establish the falsity of that which is impeached as untrue, 7 All. 44, overruling 5 All. 17, and following 6 Suth. Cr. 65: 4 Mad. H.C. 51; and 13 Ben. 324.

[2] See another form, 4 Mad. H. C., Rulings, xi.

sections) of the Indian Penal Code (*or* of Act), and was sentenced to (*state the punishment fully and distinctly*) ;

This is to authorise and require you, the said Superintendent (*or* Keeper), to receive the said (*prisoner's name*) into your custody in the said jail, together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) _____ (*Signature.*)

XXX.—Warrant of Imprisonment on Failure to recover Amends by Distress.

(*See section* 250.)

To the Superintendent (*or* Keeper) of the Jail at .

Whereas (*name and description*) has brought against (*name and description of the accused person*) the complaint that (*mention it concisely*), and the same has been dismissed as frivolous (*or* vexatious), and the order of dismissal awards payment by the said (*name of complainant*) of the sum of rupees as amends; and whereas the said sum has not been paid and cannot be recovered by distress of the moveable property of the said (*name of complainant*) and an order has been made for his simple imprisonment in jail for the period of days, unless the aforesaid sum be sooner paid ;

This is to authorise and require you, the Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), subject to the provisions of section 69 of the Indian Penal Code, unless the said sum be sooner paid, and on the receipt thereof forthwith to set him at liberty; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) _____ (*Signature.*)

XXXI.—Summons to a Witness.

(*See sections* 68 *and* 252.)

To of .

Whereas complaint has been made before me that of has (*or* is suspected to have) committed the offence of (*state the offence concisely, with time and place*), and it appears to me that you are likely to give material evidence for the prosecution ;

You are hereby summoned to appear before this Court on the day of next at ten o'clock in the forenoon, to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court; and you are hereby warned that if you shall without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXXII.—PRECEPT TO DISTRICT MAGISTRATE TO SUMMON JURORS AND ASSESSORS.

(*See section* 326.)

To the District Magistrate of .

WHEREAS a Criminal Session is appointed to be held in the Court-house at on the day of next, and the names of the persons herein stated have been duly drawn by lot from among those named in the revised list of jurors and assessors furnished to this Court; you are hereby required to summon the said persons to attend at the said Court of Session at 10 A.M. on the said date, and, within such date, to certify that you have done so in pursuance of this precept.

(*Here enter the names of Jurors and Assessors.*)

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXXIII.—SUMMONS TO ASSESSOR OR JUROR.

(*See section* 328.)

To (*name*) of (*place.*)

PURSUANT to a precept directed to me by the Court of Session of requiring your attendance as an Assessor (*or* a Juror) at the next Criminal Session, you are hereby summoned to attend at the said Court of Session at (*place*) at ten o'clock in the forenoon on the day of next.

Given under my hand and seal of office, this day of 18 .

(*Seal.*) (*Signature.*)

XXXIV.—WARRANT OF COMMITMENT UNDER SENTENCE OF DEATH.

(*See section* 374.)

To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS at the Session held before me on the day of , 18 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section of the Indian Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the Court of ;

This is to authorise and require you, the said Superintendent (*or* Keeper), to receive the said (*prisoner's name*) into your custody in the said jail, together with this warrant, and him there safely to keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said Court.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXXV.—WARRANT OF EXECUTION ON A SENTENCE OF DEATH.

(*See section* 381.)

To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the Session held before me on the day of , 18 , has been by a warrant of this Court, dated the day of , committed to your custody under sentence of death, and whereas the order of the Court of confirming the said sentence has been received by this Court;

This is to authorise and require you the said Superintendent (*or* Keeper) to carry the said sentence into execution by causing the said to be hanged by the neck until he be dead, at (*time and place of execution*), and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXXVI.—WARRANT AFTER A COMMUTATION OF A SENTENCE

(*See sections* 381 *and* 382.)

To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS at a Session held on the day of , 18 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the said Session, was convicted of the offence of , punishable under section of the Indian Penal Code, and sentenced to , and was thereupon committed to your custody; and whereas by the order of the Court of (a duplicate of which is hereunto annexed) the punishment adjudged by the said sentence has been commuted to the punishment of transportation for life (*or, as the case may be*);

This is to authorise and require you the said Superintendent (*or* Keeper), safely to keep the said (*prisoner's name*) in your custody in the said jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said order,

or

if the mitigated sentence is one of imprisonment, say, after the words 'custody in the said jail,' 'and there to carry into execution the punishment of imprisonment under he said order according to law.'

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXXVII.—Warrant to levy a Fine by Distress and Sale.

(*See section* 386.)

To (*name and designation of the police-officer or other person, or persons, who is or are to execute the warrant*).

Whereas (*name and description of the offender*) was on the day of , 18 , convicted before me of the offence of (*mention the offence concisely*) and sentenced to pay a fine of rupees , and whereas the said (*name*), although required to pay the said fine, has not paid the same or any part thereof;

This is to authorise and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the District of ; and, if within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (*or* forthwith), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said fine; returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXXVIII.—Warrant of Commitment in certain Cases of Contempt when a Fine is imposed.

(*See section* 480.)

To the Superintendent (*or* Keeper) of the Jail at .

Whereas at a Court holden before me on this day (*name and description of the offender*) in the presence (*or* view) of the Court committed wilful contempt;

And whereas for such contempt the said (*name of offender*) has been adjudged by the Court to pay a fine of rupees , or in default to suffer simple imprisonment for the space of (*state the number of months or days*);

This is to authorise and require you, the Superintendent (*or* Keeper) of the said jail, to receive the said (*name of offender*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), unless the said fine be sooner paid; and, on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXXIX.—Magistrate's or Judge's Warrant of Commitment of Witness refusing to answer.

(*See section* 485.)

To (*name and designation of officer of Court*).

Whereas (*name and description*), being summoned (*or* brought before this Court) as a witness and this day required to give evidence on an inquiry

into an alleged offence, refused to answer a certain question (*or* certain questions) put to him touching the said alleged offence, and duly recorded, without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody for (*term of detention adjudged*);

This is to authorise and require you to take the said (*name*) into custody, and him safely keep in your custody for the space of days, unless in the meantime he shall consent to be examined and to answer the questions asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XL.—WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE.

(*See section* 488.)

To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS (*name, description and address*) has been proved before me to be possessed of sufficient means to maintain his wife (*name*) [*or* his child (*name*), who is by reason of (*state the reason*) unable to maintain herself (*or* himself)] and to have neglected (*or* refused) to do so, and an order has been duly made requiring the said (*name*) to allow to his said wife (*or* child) for maintenance the monthly sum of rupees ; and whereas it has been further proved that the said (*name*) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (*or* months) of : And thereupon an order was made adjudging him to undergo simple (*or* rigorous) imprisonment in the said jail for the period of ;

This is to authorise and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody in the said jail, together with this warrant, and there carry the said order into execution according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLI.—WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY DISTRESS AND SALE.

(*See section* 488.)

To (*name and designation of the police-officer or other person to execute the warrant*).

WHEREAS an order has been duly made requiring (*name*) to allow to his said wife (*or* child) for maintenance the monthly sum of rupees , and whereas the said (*name*) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (*or* months) of ;

This is to authorise and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the district of , and if within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (*or* forthwith), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said sum; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLII.—Bond and Bail-bond on a preliminary Inquiry before a Magistrate.

(*See sections* 496 *and* 499.)

I, (*name*), of (*place*), being brought before the Magistrate of (*as the case may be*) charged with the offence of , and required to give security for my attendance in his Court and at the Court of Session, if required, do bind myself to attend at the Court of the said Magistrate on every day of the preliminary inquiry into the said charge, and should the case be sent for trial by the Court of Session, to be, and appear, before the said Court when called upon to answer the charge against me; and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

I hereby declare myself (*or* We jointly and severally declare ourselves and each of us) surety (*or* sureties) for the said (*name*) that he shall attend at the Court of on every day of the preliminary inquiry into the offence charged against him, and, should the case be sent for trial by the Court of Session, that he shall be, and appear, before the said Court to answer the charge against him, and in case of his making default therein, I bind myself (*or* we bind ourselves) to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

XLIII.—Warrant to discharge a Person imprisoned on Failure to give Security.

(*See section* 500.)

To the Superintendent (*or* Keeper) of the Jail at

(*or other officer in whose custody the person is*).

Whereas (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the day of , and has since with his surety (*or* sureties) duly executed a bond under section 499 of the Code of Criminal Procedure;

This is to authorise and require you forthwith to discharge the said (*name*) from your custody, unless he is liable to be detained for some other matter.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLIV.—WARRANT OF ATTACHMENT TO ENFORCE A BOND.

(*See section* 514.)

To the police-officer in charge of the police station at .

WHEREAS (*name, description and address of person*) has failed to appear on (*mention the occasion*) pursuant to his recognisance, and has by such default forfeited to Her Majesty the Queen, Empress of India, the sum of rupees (*the penalty in the bond*); and whereas the said (*name of person*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him;

This is authorise and require you to attach any moveable property of the said (*name*) that you may find within the district of , by seizure and detention, and, if the said amount be not paid within three days, to sell the property so attached or so much of it as may be sufficient to realise the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLV.—NOTICE TO SURETY ON BREACH OF A BOND.

(*See section* 514.)

To of .

WHEREAS on the day of , 18 , you became surety for (*name*) of (*place*) that he should appear before this Court on the day of , and bound yourself in default thereof to forfeit the sum of rupees to Her Majesty the Queen, Empress of India; and whereas the said (*name*) has failed to appear before this Court, and by reason of such default you have forfeited the aforesaid sum of rupees ;

You are hereby required to pay the said penalty or show cause, within days from this date, why payment of the said sum should not be enforced against you.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLVI.—NOTICE TO SURETY OF FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(*See section* 514.)

To of .

WHEREAS on the day of , 18 , you became surety by a bond for (*name*) of (*place*) that he would be of good behaviour for the

period of , and bound yourself in default thereof to forfeit the sum of rupees to Her Majesty the Queen, Empress of India; and whereas the said (*name*) has been convicted of the offence of (*mention the offence concisely*) committed since you became such surety, whereby your security-bond has become forfeited;

You are hereby required to pay the said penalty of rupees , or to show cause within days why it should not be paid.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLVII.—Warrant of Attachment against a Surety.

(*See section* 514.)

To .

Whereas (*name, description and address*) has bound himself as surety for the appearance of (*mention the condition of the bond*), and the said (*name*) has made default, and thereby forfeited to Her Majesty the Queen, Empress of India, the sum of rupees (*the penalty in the bond*);

This is to authorise and require you to attach any moveable property of the said (*name*) which you may find within the District of , by seizure and detention; and, if the said amount be not paid within three days, to sell the property so attached, or so much of it as may be sufficient to realise the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLVIII.—Warrant of Commitment of the Surety of an Accused Person admitted to Bail.

(*See section* 514.)

To the Superintendent (*or* Keeper) of the Civil Jail at .

Whereas (*name and description of surety*) has bound himself as a surety for the appearance of (*state the condition of the bond*), and the said (*name*) has therein made default whereby the penalty mentioned in the said bond has been forfeited to Her Majesty the Queen, Empress of India; and whereas the said (*name of surety*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him, and the same cannot be recovered by attachment and sale of moveable property of his, and an order has been made for his imprisonment in the Civil Jail for (*specify the period*);

This is to authorise and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody with this warrant and him safely to keep in the said Jail for the said (*term of imprisonment*), and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLIX.—NOTICE TO THE PRINCIPAL OF FORFEITURE OF A BOND TO KEEP THE PEACE.

(*See section* 514.)

To (*name, description and address*).

WHEREAS on the day of , 18 , you entered into a bond not to commit, etc. (*as in the bond*), and proof of the forfeiture of the same has been given before me and duly recorded;

You are hereby called upon to pay the said penalty of rupees , or to show cause before me within days why payment of the same should not be enforced against you.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

L.—WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL ON BREACH OF A BOND TO KEEP THE PEACE.

(*See section* 514.)

To (*name and designation of police-officer*) at the police-station of .

WHEREAS (*name and description*) did on the day of , 18 , enter into a bond for the sum of rupees , binding himself not to commit a breach of the peace, etc. (*as in the bond*), and proof of the forfeiture of the said bond has been given before me and duly recorded; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorise and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees which you may find within the District of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realise the same; and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

LI.—WARRANT OF IMPRISONMENT ON BREACH OF A BOND TO KEEP THE PEACE.

(*See section* 514.)

To the Superintendent (*or* Keeper) of the Civil Jail at .

WHEREAS proof has been given before me and duly recorded that (*name and description*) has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to Her Majesty the Queen, Empress of India, the sum of rupees ; and whereas the said (*name*) has failed to pay the said sum or to show cause why the said sum should not be

paid, although duly called upon to do so, and payment therefore cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*);

This is to authorise and require you, the said Superintendent (*or* Keeper) of the said Civil Jail, to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*); and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

LII.—Warrant of Attachment and Sale on Forfeiture of Bond for Good Behaviour.

(*See section* 514.)

To the police-officer in charge of the police-station at .

Whereas (*name, description and address*) did on the day of , 18 , give security by bond in the sum of rupees for the good behaviour of (*name etc. of the principal*), and proof has been given before me and duly recorded of the commission by the said (*name*) of the offence of , whereby the said bond has been forfeited; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorise and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees which you may find within the District of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realise the same, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

LIII.—Warrant of Imprisonment on Forfeiture of Bond for Good Behaviour.

(*See section* 514.)

To the Superintendent (*or* Keeper) of the Civil Jail at .

Whereas (*name, description and address*) did on the day of 18 , give security by bond in the sum of rupees for the good behaviour of (*name etc. of the principal*) and proof of the breach of the said bond has been given before me and duly recorded, whereby the said (*name*) has forfeited to Her Majesty the Queen, Empress of India, the sum of rupees ; and whereas he has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his

moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*);

This is to authorise and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*); returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

APPENDIX A.

(Supra, p. 59, note 2.)

Places outside British India in which the Code is in force.

The Code of Criminal Procedure is in force (in some cases with certain modifications) in—

1. The Haidarábád Assigned Districts (J. M. Macpherson's *Lists of British Enactments in force in Native States*, Calcutta, 1885, p. 34);

The Civil and Military Station of Bangalore (ibid. p. 85);

The Salt sources in the Rájputána Agency (ibid. pp. 103, 106, 108, 109, 110).

The Rájputána Parganas under British administration (Todgarh, Dewair, Saroth, Chang and Kot-karana), (ibid. p. 112): as to other Native States in the Rájputána Agency, see ibid. p. 444;

The District of Quetta (ibid. pp. 114, 115);

The Bombay States of Akalkot, Játh, Miraj (Senior), Miraj (Junior), and Ramdurg; (ibid. pp. 332, 337, 339).

2. The cantonments of Quetta, Mittri, Sikandarábád, Dísah, Maú, Nágod, Naogáon, Nímach, Satná, Ábu, Deoli, and, probably, others (ibid. pp. 130, 131, 132, 149, 193, 200, 211, 223, 229, 249, 254, 262). Cantonments.

3. The lands occupied by the following railways constructed in or passing through Native States: G. I. Peninsular (*Kurundwar*), Nágpur and Chhattísgarh (*Khairagarh and Nundgaon*), Rájputána-Malwa, Bhaunagar-Gondal, Bombay, Baroda and Central India, Madras Railway (*Mysore*), Sindhia (*Dholpur, Gwáliár*), Bhopál, Sind-Pishín (ibid. pp. 271, 273, 279, 280, 281, 285, 287, 291, 294, 295, 300, 302, 314, 318, 319, 325, 328, 329). Railways.

4. In Mysore the Code of 1872 and its amending Acts were in force when the present Mahárájá was placed in possession. Whether he has passed a regulation applying the Code of 1882 I have not been able to ascertain. Mysore.

5. As to Kashmír, the British officer for the time being on duty has the powers of a magistrate of the first class as described in section 20 of the Code of 1872[1] for the trial of offences committed by European British subjects, or by Native British subjects being servants of European British subjects: Kashmír.

Provided that in the case of any offender being a European British subject, he has only power to pass a sentence of imprisonment for a term not exceeding three months, or fine not exceeding

[1] i.e. secs. 32, 33 of Act X of 1882.

one thousand rupees, or both; and when the offence complained of is, under the Penal Code, punishable with death, or with transportation for life, or when it cannot, in the opinion of such officer, be adequately punished by him, he shall (if he thinks that the accused person ought to be committed) commit him to the Chief Court of the Panjáb.

Fines are recovered in manner provided by section 307 of the Code of 1872[1]. Sentence of whipping is carried into execution in manner provided by sections 310, 311, 312, and 313 of the same Code[2] (ibid. p. 420).

Persian Gulf.

6. As to the Persian Gulf, see ibid. 449.

Zanzibar.

7. As to Zanzibar, under the Zanzibar Order in Council of 1884 the Code is made applicable to Zanzibar as from the commencement of that Order. Subject to the other provisions of this Order, the Code and the other enactments relating to the administration of criminal justice in India for the time being applicable to Zanzibar has effect as if Zanzibar were a district in the Presidency of Bombay, and the Judicial Assistant is deemed to be the Magistrate of the district; the Consul-General is deemed to be the Sessions Judge; the High Court of Judicature at Bombay is deemed to be the High Court; and the powers both of the Governor-General in Council and of the Local Government under those enactments are exercisable by the Secretary of State, or, with his previous or subsequent assent, by the Governor-General in Council.

APPENDIX B.

(Supra, p. 161.)

Offences triable by Jury.

As to this matter, four of the Local Governments have published notifications to the following effect:—

Lower Provinces.

In the Lower Provinces:—7th January, 1862 (*Calcutta Gazette*, 1862, p. 87): In the district of the Twenty-four Parganas, Huglí, Bardwán, Murshídábád, Nadiyá, Patna, and Dacca, the trial by any Court of Session of all the offences defined in chaps. VIII, XI, XVI, and XVII of the Penal Code shall be by jury. 27th May, 1862 (*Calcutta Gazette*, 1862, p. 2041): In the above-mentioned districts the trial by any Court of Session of the offences defined in chap. XVIII of the Penal Code (offences relating to documents, and to trade or property-marks) shall be by jury. 15th October,

[1] i.e. secs. 386, 387, 389 of Act X of 1882.

[2] See secs. 391–395 of Act X of 1882.

1862 (*Calcutta Gazette*, 1862, p. 3416): Abetments of and attempts to commit any of the above-mentioned offences shall be tried by jury.

In Assam, 28th March, 1862 (*Calcutta Gazette*, 1862, p. 1286): In all the districts comprising the Assam Division the trial of all offences by the Court of Sessions shall be by jury. Assam.

In Madras, see the *Fort St. George Gazette*, 15th March, 1862, p. 450 (Sessions Courts of Chittur, Cuddapah, Masulipatam and Rajamundry): 13th May, 1862, p. 777 (Cuddalore): 1st August, 1862, p. 177 (Negapatam): 2 Jan. 1863, p. 1 (Chittur, Cuddapah, Masulipatam, Rajahmundry, Cuddalore, Negapatam): 14th April, 1863, p. 633 (Tanjore): 22 Feb. 1870, p. 220 (Cuddalore). *Fort St. George Gazette*, 20th March, 1883, Part I, p. 150: In all Courts of Session in the Madras Presidency, except those in the Agencies of Ganjam, Godávarí, and Vizagapatam, trials of the following offences must be by jury:—the offences described in the Penal Code, secs. 379, 380, 382, 392, 393, 394, 395, 397, 398, 399, 400, 401, 402, 411, 412, 414, 451, 452, 453, 454, 455, 456, 457, 458, 459, and 461. Madras.

In Bombay (*Bombay Government Gazette*, 12th August, 1875, Part I, p. 798): The Court of Sessions at Puṇá must try by jury all offences for which under chaps. VIII, XI, XII, XVI, XVII, or XVIII of the Penal Code, or under any of those chapters taken in connection with sec. 75 of the Penal Code, the punishment awardable is death, transportation for life, or transportation or imprisonment for a period extending to ten years or upwards, and also all abetments of or attempts to commit any of the offences included in those chapters. Any person who may be tried by a jury for any of the offences specified must be tried by the same jury for all offences with which he may be charged on the same trial. Trial by jury has been introduced into the other Sessions Courts in the Bombay Presidency; but I have been unable to find the notifications. Bombay.

In Burma, 8th June, 1877 (*British Burma Gazette*, 1877, Part II, p. 117): The trial before the Courts of Session in British Burma of all offences committed by European British subjects shall be by jury. 22nd December, 1875 (*British Burma Gazette*, 1875, Part II, p. 233): The trial of all offences by the Court of the Recorder of Rangoon, and by the Court of the Judge of the town of Maulmain, shall be by jury. Burma.

Similar notifications have been issued by the Local Governments of the N. W. Provinces and the Panjáb, and, probably, by those of Oudh, the Central Provinces, and Coorg; but I have been unable to find them.

APPENDIX C.

(Supra, p. 162.)

Number of Jury.

As to this matter, six of the Local Governments have issued notifications to the following effect:—

Lower Provinces. In the Lower Provinces (*Calcutta Gazette*, 22d Jan. 1873, Part I, p. 152): In trials by jury before a Court of Session, in which an European (not being an European British subject) or an American is the accused person, or one of the accused persons, the jury shall consist of five persons in the districts named in the subjoined list A, and of three persons in the districts named in list B:—

List A. Bardwán, Midnapur, Huglí, Howrah, Twenty-four Parganas, Murshidábád, Dacca, Patna, Sháhábád, Tirhut, Sáran and Champárean, Monghyr, Bhágulpur, Cuttack.

List B. Bánkurá, Bírbhúm, Nadiyá, Jessor, Dinájpur, Máldah, Rájshahi, Rangpur, Bográ, Pabna, Darjíling, Jalpaiguri, Faridpur, Bakarganj, Maimansinh, Sylhet, Cachar, Chittagong, Noakhálí, Tipperah, Gaya, Purneah, Santál Parganas, Púrí, Balasor, Hazáríbágh, Lohardagga, Singbhúm, Mánbhúm, Goálpará, Kámrup, Darrang, Naugong, Síbságar, Lakhimpúr.

Ibid. (*Calcutta Gazette*, June 11, 1873, Part I, p. 741): In trials before the Court of Session in which the accused person in not a European or American, the jury shall consist of five persons in all districts in which the system of trial by jury had been, or may hereafter be, extended.

Madras. In Madras (*Fort St. George Gazette Extraordinary*, 21st December, 1872, p. 2): In trials by jury before Sessions Courts the jury shall consist of five jurors. To the same effect is para. 12 of the notification of 1st Jan. 1873 in the *Fort St. George Gazette*, 25th March, 1873, p. 598, and see the notification No. 92, *ibid.*, 20th March, 1883, Part I, p. 150.

Bombay. In Bombay (*Bombay Government Gazette*, 13th Feb., 1873, p. 129): In all trials by jury before the Puná Court of Session of offences under chaps. VIII, IX, XII, XVI, XVII, XVIII of the Indian Penal Code, the jury shall consist of five persons. Throughout the Bombay Presidency five is the number of the jury in trials before the Court of Session in which a European, not being a European British subject, or an American, is the accused person or one of the accused persons.

N. W. Provinces. In the North-Western Provinces (*N.-W. Provinces Gazette*, 1873, p. 1042): The jury in trials by jury before the Court of Session shall consist of seven persons in the districts of the N.W. Provinces.

In the Panjáb (*Panjáb Gazette*, 1873, p. 76): The jury in trials before the Court of Session in the districts of Lahore, Delhi, Rawal Pindi and Pesháwar, shall consist of nine persons: in the districts of Ambálah, Multán and Sialkot of five persons, and in all other districts of the Panjáb of three persons. Panjáb.

Similar notifications have doubtless been issued by the Local Governments of Oudh, the Central Provinces, Burma and Coorg; but I have not been able to find them. It is very desirable that each of the Local Governments should revise and issue in an accessible form all its uncancelled notifications under the Codes of Criminal Procedure of 1861, 1872, and 1882.

APPENDIX D.

(Supra, p. 2, note 2.)

THE UNREPEALED PART OF 9 GEO. IV. C. 74.

Whereas many wholesome alterations have been made in the criminal law of England, and the administration thereof, by authority of Parliament; and it is expedient that some of the said alterations should be extended to the British territories under the government of the United Company of Merchants of England trading to the East Indies: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that this Act shall commence and take effect on and from the 1st day of March, 1829, and shall extend to all persons and all places, as well on land as on the high seas, over whom or which the criminal jurisdiction of any of his Majesty's Courts of justice erected or to be erected within the British territories under the government of the United Company of Merchants of England trading to the East Indies does or shall hereafter extend. Commencement of Act.

. . . . . .

And for the more effectual prosecution of accessories before the fact to felony, be it enacted, that if any person shall counsel, procure or command any other person to commit any felony, whether the same be a felony at common law or by virtue of any statute or statutes made or to be made, the person so counselling, procuring or commanding shall be deemed guilty of felony, and may be indicted and convicted either as an accessory before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted Trial of accessory before the fact although offence committed on high seas or abroad.

and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may be punished in the same manner as an accessory before the fact to the same felony, if convicted as an accessory, may be punished; and the offence of the person so counselling, procuring or commanding, howsoever indicted, may be enquired of, tried, determined, and punished by any Court which shall have jurisdiction to try the principal felon, in the same manner as if such offence had been committed at the same place as the principal felony, although such offence may have been committed on the high seas, or at any place on land, whether within his Majesty's dominions or without; and that in case the principal felony, and the offence of counselling, procuring, or commanding, shall have been committed in different places, the last mentioned offence may be inquired of, tried, determined, and punished in any of his Majesty's courts of justice within the British territories under the government of the said United Company having jurisdiction to try either of the said offences: Provided always, that no person who shall be once duly tried for any such offence, whether as any accessory before the fact or as for a substantive felony, shall be liable to be again indicted or tried for the same offence.

Where offences of principal and accessory are committed in different places.

No person tried twice for same offence.

Accessory after fact triable by any court having jurisdiction to try principal.

And be it enacted, that if any person shall become an accessory after the fact to any felony, whether the same by a felony at common law, or by virtue of any statute or statutes made or to be made, the offence of such person may be inquired of, tried, determined, and punished by any court which shall have jurisdiction to try the principal felon, in the same manner as if the act by reason whereof such person shall have become an accessory had been committed at the same place as the principal felony, although such act may have been committed either on the high seas or at any place on land, whether within his Majesty's dominions or without; and that in case the principal felony, and the act by reason whereof any person shall have become accessory, shall have been committed in different places, the offence of such accessory may be enquired of, tried, determined, and punished in any of his Majesty's courts of justice within the British territories under the government of the said United Company, having jurisdiction to try either of the said offences: Provided always, that no person who shall be once duly tried for any offence of being an accessory shall be liable to be again indicted or tried for the same offence.

When offences of principal and accessory are committed in different places.

No person tried twice for same offence.

Accessory may be prosecuted

And be it enacted, that if any principal offender shall be in anywise convicted of any felony, it shall be lawful to proceed

against any accessory, either before or after the fact, in the same manner as if such principal felon shall die or be pardoned, or otherwise delivered before attainder; and every such accessory shall suffer the same punishment, if he or she be in anywise convicted, as he should have suffered if the principal had been attainted. After conviction of principal.

. . . . . .

And be it enacted, that all offences prosecuted in any of his Majesty's courts of Admiralty shall, upon every first and subsequent conviction, be subject to the same punishments, whether of deaths or otherwise, as if such offence had been committed upon the land. Admiralty offences.

And be it enacted, that wherever this or any other statute relating to any offence, whether punishable upon indictment or summary conviction, in describing or referring to the offence or the subject-matter thereof, or the offender, or the party affected or intended to be affected by the offence, shall use words importing the singular number or the masculine gender only, yet the statute shall be understood to include several matters as well as one matter, and several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction; and wherever any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where such body shall be the party aggrieved. Construction of criminal statutes.

. . . . . .

And be it enacted, that where any person, being feloniously stricken, poisoned, or otherwise hurt at any place whatsoever, either upon the land or at sea, within the limits of the Charter of the said United Company, shall die of such stroke, poisoning, or hurt at any place without those limits, or being feloniously stricken, poisoned or otherwise hurt at any place whatsoever, either upon land or at sea, shall die of such stroke, poisoning, or hurt at any place within the limits aforesaid, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory before or after the fact to murder or manslaughter, may be dealt with, inquired of, tried, determined, and punished by any of his Majesty's courts of justice within the British territories under the government of the said United Company, in the same manner in all respects as if such offence had been wholly committed within the jurisdiction of the court within the jurisdiction of which such offender shall be apprehended or be in custody. . . . . Trial of murder, etc. where cause of death only, but not death, or where death only, but not cause, happens within limits of Company's charter.

APPENDIX E.

(Supra, p. 265).

THE UNREPEALED PART OF ACT X OF 1875.

Advocate General may exhibit informations.

144. The Advocate General may, with the previous sanction of the Governor-General in Council or the Local Government, exhibit to the local High Court, against persons subject to the jurisdiction of the said Court, info mations for all purposes for which Her Majesty's Attorney-General may exhibit informations on behalf of the Crown in the Court of Queen's Bench or Exchequer [1].

Such proceedings may be taken upon every such information as may lawfully be taken in case of similar informations filed by her Majesty's Attorney-General in England, so far as the circumstances of the case and the course and practice of proceeding in the said High Courts respectively will admit.

All fines, penalties, forfeitures, debts and sums of money recovered or levied under or by virtue of any such information shall belong to the Government of India.

Power to enter *nolle prosequi*.

146. At any stage of any proceeding under this Act, before the return of the verdict, the Advocate General may, if he think fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the information or charge; and thereupon all proceedings on such information or charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal [2].

[1] Informations are filed *ex officio* in the Court of Queen's Bench (or as it is now called, the Queen's Bench Division of the High Court of Justice) without the intervention of a grand jury. They lie for misdemeanors only, and not for treasons, felonies or misprision of treason (Archbold, p. 116).

Informations are filed in the Court of Exchequer to recover debts due to the Crown under revenue and other penal statutes, and damages for trespassing on Crown lands.

[2] So in England the party discharged remains liable to be re-indicted, Archbold, p. 115.

INTRODUCTION TO THE CODE OF CIVIL PROCEDURE.

It is obvious that, in every system of jurisprudence professing to provide for the due administration of public justice, some forms of proceeding must be established, to bring the matters in controversy between the parties, who are interested therein, before the tribunal by which they are to be adjudicated. And for the sake of the despatch of business, as well as for its due arrangement with reference to the rights and convenience of all the suitors, many rules must be adopted to induce certainty, order, accuracy, and uniformity in these proceedings[1].

The Anglo-Indian Courts have always tried to do justice between man and man. But no one can say that their procedure was formerly characterised by certainty, order and accuracy; and its want of uniformity is equally incontestable.

Multiformity of old procedure.

Before the 1st July, 1859, there were no less than nine different systems of civil procedure simultaneously in force in Bengal: four in the Supreme Court, corresponding to its common-law, equity, ecclesiastical and admiralty jurisdictions; one for the Court of Small Causes at Calcutta; one in the military Courts of Requests; and three in the Courts of the East India Company, one for regular suits, a second for summary suits, and a third applicable to the jurisdiction of the Deputy Collector in what were called resumption-suits[2]. The procedures, as well as the jurisdictions, of the Supreme Court were all founded on the charter of George III, dated 26th March, 1774. These jurisdictions were technically termed 'sides' of the Court, and the procedure on each 'side' was similar to the procedure of the corresponding Court in England, with this difference, that the *viva voce* examinations of

Procedures of Supreme Courts.

[1] See Story, *Commentaries on Equity Pleading*, § 1.

[2] Also called *lá-khiráj* suits. All land in India is assumed to be subject to *khiráj* (the tax imposed by Muhammadans on the land of conquered countries), unless the right to it has been granted away by the sovran; and *lá-khiráj* suits were instituted to try the question whether lands held without payment of revenue were so held by a legal title or not. They were called 'resumption-suits,' because by reason of them the Government is said to 'resume' the right illegally withheld from it, First Report of Commissioners appointed to consider the reform of the judicial establishments etc. of India, p. 200. See in Bengal, Ben. Regs. 19 of 1793, 37 of 1793, and 7 of 1882: in Madras, Mad. Regs. 25 of 1802, and 13 of 1802: in Bombay, Bom. Regs. 17 of 1827 and 6 of 1833.

witnesses were taken down in writing and the depositions were signed by the witnesses. The source of the procedure of the Small Causes Court I have not been able to ascertain. There were no written pleadings in this Court. Procedure in the military Courts of Requests was regulated by Act XI of 1841. In these Courts also there were no written pleadings.

Procedure of Company's Courts.

The civil procedure of the Company's Courts originated in a code of regulations passed by Lord Cornwallis, in 1793[1]. That code was applicable chiefly to regular suits, the practice of the Courts being more similar to that of the Courts of equity than of common law[2], and there was only one class of cases for which it was then considered necessary to provide a more summary procedure. These were suits for the forcible dispossession of disputed land and crops. But, a few years later, the summary procedure was extended to cases connected with the collection and exaction of rent. The summary jurisdiction in cases of forcible dispossession was transferred to the Magistrates by Act IV of 1840; and the summary jurisdiction in cases of rent, which had gradually increased so as to embrace almost every question between the zamíndár and raiyat, was transferred by Ben. Reg. 8 of 1831 to the collector of land-revenue.

Written pleadings.

In suits in the Company's Courts there were written pleadings, which consisted of a plaint, an answer, a reply and a rejoinder. The parties were not restricted to any particular form, but each told his story in his own way. The pleadings were in consequence argumentative and sometimes very voluminous, and full of irrelevant matter and repetition; and they often failed to bring the parties to direct issue. A regulation passed in 1814[3], no doubt, required the Judge, after the close of the proceedings, to settle the issues, or rather fix the points to be determined. But this 'most whole-

[1] Ben. Reg. 3 of 1793.

[2] It was, however, nearer to the Scottish than to any English system, First Report, p. 198.

[3] Ben. Reg. 26 of 1814, sec. 10, cl. 2, cl. 4. Other rules on the subject of civil procedure were contained in Reg. 4 of 1793, sec. 7: Reg. 2 of 1806, sec. 2: Reg. 23 of 1814, secs. 46, 73: Reg. 26 of 1814, sec. 4, cl. 2: Reg. 5 of 1831, sec. 16: Reg. 6 of 1832, sec. 3 (which enabled European judges to avail themselves of the assistance of Natives as a panchâyat, as assessors, or as jurors), and Acts XII of 1843, IV of 1850, VIII of 1850, XV of 1850, XXV of 1852, and XV of 1853. The jurisdiction of the provincial Courts depended on Ben. Reg. 3 of 1793, sec. 8: 7 of 1795, sec. 7: 2 of 1803, sec. 5: 5 of 1831, secs. 5, 15, cl. 2, and 27, cl. 3; and Act XXV of 1837, sec. 1. As to the Courts in which suits were to be instituted, see Act IX of 1844, sec. 1, and Reg. 5 of 1831, sec. 7. As to the power of the Sadr Court to transfer suits, see Acts III of 1837 and XXVII of 1838. The Sadr Court might, under Reg. 25 of 1814, sec. 5, cl. 1, call up from any subordinate Court and determine any original suit amounting to Rs. 50,000 and upwards; but this jurisdiction appears never to have been exercised.

some regulation' (as it was called by the Judicial Committee) was much neglected by the lower Courts, and the parties were allowed to bring in from time to time as might be convenient their exhibits and lists of witnesses, with a petition stating the point to prove which they were adduced. No particular course was prescribed to be followed at the final hearing. The Judge either himself perused the pleadings and depositions, or listened to them as read by a corruptible Native officer. 'The parties were then heard, and the general practice in this case was for the Judge to put a question to the vakíl of one of the parties, which was answered by the opposite vakíl to the best of his ability, and then a good deal of wrangling sometimes followed between the opposed pleaders [1].' The Judge, as he does still, determined both fact and law, but his judgment was often reversed by the appellate Court on merely technical grounds, not affecting the merits of the case or the jurisdiction [2].

Mutatis mutandis, it may be said that in the other parts of British India the systems of civil procedure were equally numerous, and, it may be added, equally imperfect [3].

First Law Commission.

The evils arising from this state of things had long been felt; and in 1834, the statute 3 & 4 Wm. IV, c. 85, sec. 53, provided that certain persons styled the Indian Law Commissioners should inquire into all existing forms of judicial procedure in force in any part of British India, and should suggest such alterations as might in their opinion be beneficially made in those forms.

These Commissioners recommended extensive alterations, and appear to have drafted a Code of Civil Procedure. This I have never seen. It is certain, however, that in or about 1853, Mr. A. J. Moffatt Mills (a judge of the Sadr Díwání Adálat) and Mr. (afterwards Sir H. B.) Harington were appointed 'special Commissioners for revising the Code of Civil Procedure;' and that the result of their labours, a draft entitled 'The Code of Civil Procedure of the Courts of the East India Company [4],' was printed in

[1] First Report, p. 199.

[2] First Report, p. 83.

[3] The Madras Regulations on the subject were 2 and 3 of 1802, 4 of 1816, sec. 14, cl. 2, and 4 of 1816, sec. 24. The procedure of Village Munsifs and Village Panchâyats is unaffected by the Code (see sec. 61, cl. c). The jurisdiction of the provincial Courts depended on Mad. Reg. 2 of 1802, sec. 5: 4 of 1816, sec. 5, cl. 1: Reg. 6 of 1816, sec. 11: Reg. 3 of 1833, secs. 4 and 5, and Act VII of 1843, secs. 3 and 4. The Bombay rules as to procedure were in Bom. Regs. 2 of 1827, sec. 10, 4 of 1827, and 17 of 1827, secs. 32, 34. The procedure of officers appointed to try small suits in military bazárs in Bombay is unaffected by the Code. The jurisdiction of the provincial Courts depended on Bom. Reg. 2 of 1827, sec. 21: Reg. 1 of 1830, sec. 5, cl. 1: Reg. 18 of 1831, sec. 3, cl. 2.

[4] This draft contains 1026 sections distributed among 36 chapters, the arrangement and drafting of which are very faulty. As to its substance, it

1854 and laid before another body of Commissioners in England appointed under 16 & 17 Vic. c. 95, sec. 28. These Commissioners were thus instructed by Sir Charles Wood, then President of the Board for the affairs of India:—

'It is obviously most desirable that a simple system of pleading and practice, uniform, as far as possible, throughout the whole jurisdiction, should be adopted, and one which is also capable of being applied to the administration of justice in the inferior Courts of India. The embarrassment will thus be avoided which a diversity of procedure throws in the way of an appellate jurisdiction; and the proceedings in the new Court[1] will be a pattern and guide to the inferior tribunals in the Mufassal.

'Your first duty, therefore, should be to address yourselves to the preparation of such a code of simple and uniform procedure.'

Four draft codes.

The Commissioners accordingly produced and submitted to Her Majesty in their first report a draft code of procedure for all ordinary civil courts in the Lower Provinces of Bengal, with the exception of the Court of Small Causes in Calcutta. In their third and fourth reports, dated the 20th May, 1856, they submitted similar codes for the civil courts in the North-Western Provinces and the Presidencies of Madras and Bombay. Four Bills founded on these drafts were in 1857 introduced into the Legislative Council by Mr. (now Sir Barnes) Peacock, and referred to Select Committees. These Bills were amalgamated and became law as Act VIII of 1859. The principal improvements which it made were, according to Sir Barnes Peacock[2], these: (*a*) it enabled the Civil Courts to grant injunctions to restrain a defendant from committing waste, injury or breach of contract; (*b*) it enabled Civil Courts to appoint receivers or managers for the preservation or the better management or custody of property in dispute; (*c*) it provided that the parties to a suit might, where they were at issue on some question of law or fact, state a case to the Judge in the form of an issue and agree among themselves in writing to abide by the finding of the Judge upon such issue, such finding to be enforceable as if it were a judgment in a contested suit; and (*d*), as introduced, it dispensed with the necessity of going through all the tedious and technical forms of pleading in the Supreme Courts. But the Code as passed did not apply to those Courts, or to the Presidency Small

The Code of 1859.

is enough to say that under it written pleadings would have been retained, but restricted to a plaint and to an answer in which the defendant might introduce fresh matter.

[1] i.e. the Court formed by amalgamating the Supreme and the Sadr Courts in each of the Presidencies, now called the High Court.

[2] Proceedings of the Legislative Council of India, 1857, col. 23.

Cause Courts. Nor did it extend to the Non-regulation Provinces.

Amendments of Act VIII of 1859.

The day after the Code had taken effect in Bengal, and before it had come into force in Madras and Bombay, Mr. Harington, *nil actum reputans dum quid superesset agendum*, moved the first reading of a Bill (afterwards Act IV of 1860) to amend one of its rules relating to appeals to the Sadr Court, and the process of amendment went on to the end of 1863—Acts XLIII of 1860, XXIII of 1861, IX of 1863, and XVIII of 1863 being passed in swift succession.

In the meanwhile the Code had been extended to almost the whole of British India[1], and it was also made applicable to the High Courts in the exercise of their civil, intestate, testamentary, and matrimonial jurisdictions[2].

Mr. Harington's Consolidation Bill.

In 1863–1864 a Bill consolidating the Acts above mentioned, and also providing for the service of summons upon, and for examining criminals confined in gaol, and for enabling the Courts to obtain the testimony of experts on questions relating to the law of the religion of the parties, was prepared by Mr. (afterwards Sir Henry) Harington. This Bill was published in April, 1864, and introduced and referred to a Select Committee in the following November. This Committee made many amendments in the wording of the Bill, but left its bad arrangement unaltered and its numerous defects unsupplied. They presented a report dated 6th April, 1865. The amended draft, with the report, was sent home to the Secretary of State in Council, and by him referred to the Indian Law Commissioners. They were of opinion that the project of consolidation should be deferred, and that it would be better to amend the Code by successive enactments, as occasion might demand. The Secretary of State in Council in his despatch of the 25th February, 1867, expressed his concurrence in that opinion.

Further changes in the law.

In consequence the work was broken off; but after the correspondence above referred to, there were more changes in the law, each tending to make some portion of the existing Code inapplicable to existing circumstances. Besides the modifications effected by local Acts, the General Clauses Act of 1868, the Prisoners' Testimony Act of 1869, the General Stamp Act of the same year, the Court Fees Act of 1870, the Limitation Act of

[1] Subject, in the Non-regulation Provinces, to the restriction that the sale of land in execution of decrees should not take place without the consent of some executive authority.

[2] See the revoked Letters Patent of May 14, 1862, § 37, and the present Letters Patent of December 28, 1865, § 37. As to proceedings in the intestate and testamentary jurisdictions, see the Succession Act, X of 1865, secs. 3, 238 and 261. As to the matrimonial jurisdiction, see Act IV of 1869, sec. 45.

1871, the Evidence Act of 1872, the Oaths Act of 1873, all had this effect to a greater or less extent. Moreover, Act V of 1866 had provided a summary procedure on bills of exchange, and Act X of 1867 dealt with references by provincial Courts of Small Causes.

Again, the Code of 1859 was unquestionably ill-drawn, ill-arranged and incomplete, and there had been a large number of decisions, which showed either some inconvenience in the rules of the Code or some ambiguity of expression, or absence of direction, which had given rise to disputes. To a certain extent these matters were settled by judicial decisions; but the decisions, however well they might interpret the language of the Code, did not always lay down the rule most beneficial to suitors, and even in the more frequent instances, when the decision laid down the best rule, it was often convenient to embody it in the written law.

Lastly, the Government of India had decided to make sundry amendments in the law relating to the execution of decrees, and to render more efficient the provisions of the Code as to execution-debtors unable to pay their debts.

Under these circumstances, the Government of India, with the advice of Mr. (now Lord) Hobhouse, who was then law-member, and the sanction of the Secretary of State, determined to proceed with Mr. Harington's Bill, and the writer, who was then Secretary to the Government of India in the Legislative Department, with the permission of Mr. Hobhouse, recast Mr. Harington's draft. In doing so he attempted a clearer and more methodical arrangement of the different parts and clauses of the Code than was then the case: he embodied in it a number of judicial decisions, some incorporated in the substance of the enactments, some by way of explanation: in a few instances he proposed rules more generally convenient than those which had been decided to result from the then wording of the Code: he supplied several forms of proceeding which he thought might be useful to suitors; and he added certain provisions as to joinder of parties, *lis alibi pendens*, foreign judgments, interrogatories, affidavits, admission of documents, administration suits, suits by and against minors and lunatics, suits relating to charities, interpleader, etc., some of which were borrowed with necessary modifications from the orders and rules made in England under the Judicature Acts, others from the rules of the High Court of Calcutta, and others from the New York Code of Civil Procedure. Of these new provisions, one, the chapter on interpleader, was wholly drawn by Mr. Hobhouse; the chapter on payment into court and the section on set-off were

either wholly or chiefly from his pen; and the other chapters, especially those on execution of decrees and appeals to the Queen in Council, owe much to his skill and industry.

Arrangement of the new Code.

The re-arrangement of the Code was made on the following principles. First, the course of an ordinary suit is followed, from the moment that the plaintiff determines to sue until he obtains execution of his decree. Incidental proceedings (as, for example, when either party dies or becomes insolvent, or a female party marries, or a local investigation is required) are then separately dealt with. Thirdly, we have suits in particular cases, as, for example, when the plaintiff is a pauper, a lunatic, or a mere stakeholder; or the defendant is a corporation, a minor, or a military man. Fourthly, the Code deals with provisional remedies (such as arrest and attachment before judgment, and interlocutory injunctions), which are wanted to prevent the plaintiff absconding or property disappearing or being wasted pending litigation. Fifthly, we have special proceedings not of the nature of regular suits—such as references to arbitration and summary suits on negotiable instruments. These five divisions exhaust the subject of procedure in the exercise of original jurisdiction. If, then, an unsuccessful litigant wishes to present an appeal, or to have a judgment reviewed, he will find the law on these subjects in Parts dealing respectively with appeals and reviews. References of points of law to the High Courts are also separately dealt with: the special rules relating to the Courts established under 24 & 25 Vic. c. 104 in the Presidency-towns and at Allahabad are placed in a Part by themselves; and the body of the draft is completed by a few sections comprising some miscellaneous matters which could not conveniently be placed under any of the other heads. The new Code was thus divided into ten Parts, relating respectively to—

I. Suits in general.
II. Incidental proceedings.
III. Suits in particular cases.
IV. Provisional remedies.
V. Special proceedings.
VI. Appeals.
VII. Review of judgment.
VIII. References to the High Court.
IX. Special rules relating to the chartered High Courts.
X. Certain miscellaneous matters.

The draft, with a preliminary report dated March 8, 1875, was presented to the Council, published in the Gazette of India, and

circulated to the Local Governments. A further report, dated 13th September, 1876, describing many improvements in the draft suggested by the criticisms of Messrs. Pitt Kennedy, Belchambers, Plowden and others[1], was presented to the Council with the revised Bill in September, 1876. And a final report, describing many further improvements due to Sir R. Garth, Sir Charles Turner, Mr. Justice Ainslie, and Pandit Lakshmí Náráyana, was presented to the Council in the spring of 1877. After a memorable speech by Sir Arthur, now Lord Hobhouse, the Bill became law on the 30th March in that year, and it came into force on the following 1st of October.

Amendments of Code of 1877.

Nine months' experience, however, showed that several amendments, both formal and substantial, were desirable. Local laws prescribing a special procedure for suits between landlord and tenant had not been sufficiently saved by section 4, and the result was that the local legislatures were debarred from making any law dealing with that matter. Section 229 did not provide for Courts, such as that of the Resident at Mandalay, which were then outside British India. And there were other difficulties as to the rules for the payment of subsistence-money of imprisoned judgment-debtors: as to appeals against orders for the sale of attached property or rejecting applications to set aside *ex parte* decrees, and as to the power of Judicial Commissioners to regulate their own procedure. The chapter on Insolvency did not extend to persons against whose property orders of attachment had issued in execution of money-decrees, and it required amendment in other respects. The section (622) as to revision by the High Court did not provide for the case where the lower Court appeared to have acted in the exercise of its jurisdiction illegally or with material irregularity. And there were several slips in the drafting, of which perhaps the most important was in the first clause of the section (113) on *res judicata*. The writer, who had succeeded Sir Arthur Hobhouse as law-member, therefore introduced into the Viceregal Council a Bill which became law as Act XII of 1879, and amended about 130 sections of the Code.

The Code of 1882.

In the beginning of 1882 another Bill was introduced to exempt from attachment the whole of the salaries of public officers and railway servants when not exceeding rs. 20 *per mensem*, extending section 539 (as to suits relating to public charities) to suits relating to religious endowments, and applying sections 434 and 650 A to

[1] Messrs. Field, Maclean, R. J. Crosthwaite and J. W. Smyth (all of the Bengal Civil Service), and Hukm Chand, an Extra Assistant Commissioner in the Panjáb.

Revenue as well as to Civil Courts. The Select Committee to which this Bill was referred added some ten or twelve less important amendments of other parts of the Code; and as the Code had been already amended, thought that the convenience of the courts, the bar and the public required that Act X of 1877 and its amending Act (XII of 1879) should be repealed and re-enacted with the amendments proposed by the amended Bill, but without any change in the order and numbering of the parts, chapters and sections of the Act of 1877. The Council agreed to this, and the present Code, Act XIV of 1882, accordingly became law.

The Code begins with a short preamble and nine sections containing certain definitions and other preliminary matter. The portions of the Code which extend to the provincial Courts of Small Causes are declared by section 5 and schedule II. The portions extending to the Presidency Small Cause Courts are declared by Act XV of 1882, sec. 23 and its second schedule. The few portions which do *not* apply to the High Courts in the exercise of original jurisdiction are declared by the Code itself, section 638.

Part I. Of Suits in General.

This Part deals with litigation in the simplest case, from the time that the plaintiff decides on suing and has to select his *forum* to the time when, having obtained a decree, he proceeds to execute it. It assumes that the plaintiff is a sane adult British subject, and neither a pauper, a military man, or a mere stakeholder. It assumes that the defendant is another sane adult British subject, that he is not a military man, and that he does not attempt to abscond or to waste the subject-matter of the suit. It also assumes that the suit is not compromised, and that in the course of the litigation neither party dies, becomes insolvent, marries, or requires a commission to issue. It is divided into eighteen chapters relating to the following subjects:—

I. The jurisdiction of the Courts and *res judicata*.
II. The place of suing.
III. Parties, their appearances, applications and acts.
IV. The frame of the suit, and the form of the plaint.
V. The institution of suits.
VI. Service of summons on the defendant.
VII. The appearance of the parties, and the consequence of non-appearance.
VIII. Written statements.
IX. The examination of the parties at the first hearing.

X. The admission, inspection, production, and impounding of documents.
XI. The settlement of issues.
XII. The disposal of the suit at the first hearing.
XIII. Adjournments.
XIV. Summoning witnesses.
XV. Examination of parties and witnesses.
XVI. Judgment and decree.
XVII. Costs.
XVIII. Execution of decrees.

Chapter I. Of the Jurisdiction of the Courts and Res Judicata.

The first question for a person seeking judicial relief is, whether his suit can be brought; whether, in other words, the Courts have jurisdiction to grant the desired relief.

Here the Code first declares generally that no person shall by reason of his descent or place of birth be in any civil proceeding exempt from the jurisdiction of any of the Courts[1]. This had been the law in the Bengal Presidency since the year 1836 in regard to all the civil courts except the Munsif's[2]. But this declaration does not affect special laws, such as have been provided for the care of the property and persons of minors[3], and for privileged persons, such as the late King of Oudh, and the families of the Nawáb of the Carnatic[4] and the Nawáb of Surat[5].

The Code then declares the jurisdiction to try all suits of a 'civil nature,' excepting suits of which their cognisance is barred, by any law for the time being in force; such, for instance, as the Limitation Act, or Act XVIII of 1850, which bars suits against judges for acts done by them in good faith[6] in the discharge of their judicial duties[7], or the Code of Criminal Procedure, sections 133, 140, 142, which prevent the civil Courts from interfering with the orders of magistrates for the removal of public nuisances[8], or the Code of Civil Procedure itself, sec. 244. The

[1] For the old legislation as to the persons amenable to civil jurisdiction, see Acts XI of 1836, sec. 2: XXIV of 1836, sec. 5: III of 1839, sec. 1: VI of 1843, sec. 7: III of 1850, sec. 1.

[2] It was extended to the Munsif's court in 1843.

[3] 2 N. W. P. 79, 82.

[4] Act XXXVII of 1858.

[5] Act XVIII of 1848.

[6] And see infra, sec. 288.

[7] 2 Mad. H. C. 396, 443: 3 Bom. H. C., A. C. J. 36: 5 Suth. Civ. R. 104, col. 1: 13 Suth. 13.

[8] See 2 Agra, 81: 13 Suth. 13. But as to a Magistrate's order concerning the interior of a *private* house, see 8 Suth. Civ. R. 239.

Other laws by which the cognisance of suits is barred are—Act XIII of 1857, secs. 13, 14 (quality etc. of opium delivered to Government): Act I of 1859, sec. 57 (suits by seamen for wages): Act IX of

regulation of ritual is not within the province of civil Courts[1]. But the Code explains that a suit in which the right to property or an office is contested is a suit of a civil nature, although the right may depend on the decision of questions as to religious rites or ceremonies[2]. In other words, the Courts do not meddle with matters of religion, except so far as such matters are inseparable from questions as to civil rights or liabilities. The rule corresponds with that followed by the English Courts with regard to dissenting religious bodies[3]. And the Courts will not give relief when by so doing they would recognise an immoral custom[4], as where the dancing-girls of a temple sue to enforce a monopoly of the gains of prostitution. The Courts cannot take cognisance of 'acts of state,' that is, acts done in the exercise of sovran powers[5] which do not profess to be justified by municipal law[6]. It must, however, be remembered that the Secretary of State in Council cannot in India claim on behalf of the Crown the prerogative of immunity from suit[7]; and where the act complained of professes to be done under the sanction of municipal law and in the exercise of powers conferred by that law, the circumstance that it is an act done by the sovran power, or by the delegate of that power, does not oust the jurisdiction of the Courts[8]. And a suit will not lie for costs awarded by a civil court, or for damages occasioned by a civil action, even though brought maliciously and without reasonable or probable cause[9]. The Code of Civil Procedure (unlike the Code of Criminal Procedure, sec. 55) contains no rule that a judge shall not try any case in which he is personally interested, except in case of necessity, where no other Judge has jurisdiction. That a judge of the High Court will refuse

Matters of religion.

Immorality.

Acts of state.

Costs or damages.

Trial by interested judge.

1859, sec. 16 (forfeitures and attachments): Act XXIII of 1871, secs. 4–7 (claims to pensions and grants): Act I of 1877, sec. 21 (contracts which cannot be specifically enforced): Act VI of 1878, sec. 17 (decisions of Collector as to treasure trove): Act XVII of 1878, secs. 1, 3, 4 (compensation for acts relating to ferries), and a large number of local enactments relating to encumbered estates, revenue matters, village cesses, hereditary offices, forests and forest produce, rent-suits. For the restriction of the interference of the Bombay Courts in caste questions, see Bom. Reg. II of 1827, sec. 21, and 2 Bom. 470: 6 Bom. 725: 11 Bom. 534.

[1] 5 Bom. 80, 81.

[2] The words 'or tenets' should have been added. See 5 Mad. 313.

[3] See *Cooper* v. *Gordon*, L. R., 8 Eq. 249: *Brown* v. *Curé of Montreal*, L. R., 6 P. C. 157.

[4] 1 Mad. 168.

[5] e.g. the powers of making peace and war, of concluding treaties, of seizing property by right of conquest.

[6] L. R., 2 I. A. 38; following 7 Moore, I. A. 476; and see 5 Mad. 273, dissenting from 1 Cal. 11. See, too, 3 All. 829, per Stuart C.J.

[7] 21 & 22 Vic. c. 106, sec. 65.

[8] 5 Mad. 282, per Turner C.J.

[9] 1 Bom. 467. But see *Churchill* v. *Siggers*, 3 El. & Bl. 938.

to try such cases, see Bourke, Rep. O. C. p. 273. For the English common law on this subject see *Dimes* v. *Grand Junction Canal Co.*, 3 H. L. Ca. 793 : *Serjeant* v. *Dale*, L. R., 2 Q. B. D. 566, 567. We may leave this subject of jurisdiction with the remark that the so-called merger of torts in felony does not exist in India[1]. A Hindú or Mahomedan therefore whose civil rights have been infringed by an act which is also a non-compoundable offence is not bound to prosecute the offender before bringing his civil suit. Nor is his right to sue suspended until the offender is brought to justice. The Code should have contained rules, either by way of express enactment or of illustration, as to each of these matters.

Lis alibi pendens.

Section 12 then provides for the plea of *lis alibi pendens*, the *exceptio litis pendentis* of the civilians. It bars suits only where the matter in issue is also directly in issue in a previous suit between the same parties for the same relief in a British Indian Court having jurisdiction to grant it; and explains that the pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action. It is founded on three English cases : *Foster* v. *Vassall*, 3 Atk. 589 : *Devie* v. *Lord Brownlow*, 2 Dick. 611 : *Behrens* v. *Sieveking*, 2 My. & Cr. 602.

Res judicata.

Section 13 treats of *res judicata*, a plea founded on the two maxims *Nemo debet bis vexari pro eadem causa* and *Interest rei publicae ut sit finis litium*, and a subject of which the importance in a country inhabited by a litigious population is only equalled by the difficulty of dealing with it clearly, concisely and accurately in a legislative enactment.

As *res judicata* is a plea in bar, not a plea to the jurisdiction, the place of this section may be objected to; but the circumstance that the corresponding section 2 of Act VIII of 1859 stood in the forefront of that Code, and the convenience of having so important a clause in a prominent position seemed in this instance to outweigh considerations of logical arrangement. The principal clause and its first Explanation are founded on the definition in Livingston's code of evidence for the State of Louisiana, § 192. '*Res judicata* is whatever has been finally decided by a Court of competent jurisdiction—proceeding according to the forms of law—by a valid sentence—on a matter alleged, and either desired or expressly or impliedly confessed by the other; and it is conclusive evidence of that which it decides, between the same parties or those that represent them, litigating for the same thing, under the same title and in the same quality.' But the Indian Code provides that in the former suit the matter in issue must have been not

[1] See Vol. I. of this work, p. 18.

only substantially, but directly in issue. The second, third, fourth and fifth Explanations rest on decisions of English or Indian Courts. But the second Explanation extends to matters which might or ought to have been made ground of attack in the former suit. The third declares that any relief claimed on the plaint, which is not expressly granted by the decree, shall be deemed to have been refused. The fourth declares that a decision is 'final' when it is such as the Court making it could not alter (except on review) on the application of either party or reconsider of its own motion. An appealable decision may be 'final' until the appeal is made. The fifth lays down that when persons litigate *bona fide* in respect of a private right claimed in common for themselves and others, all persons interested in such right shall be deemed to claim under the litigants. The sixth is taken from Livingston's code, just mentioned, § 198, and should be transferred to the Evidence Act. The section is not exhaustive as to the effect of *res judicata*. It does not deal with the case of judgments *in rem*, nor with that of parties represented by, though not claiming under, the parties to the former suit[1].

Foreign judgments.

Section 14 declares, in general accordance with the rules prevailing in England[2], when a foreign judgment shall not bar a suit in British India. This section provides by implication that a foreign judgment shall be a bar in certain cases to a suit on the same cause of action, but not to a suit upon the judgment[3]. Whether such suits will lie in India, when the judgments sued on are made by Courts situate in Native States, has not yet been settled[4]. The Madras High Court holds that such suits will lie; while the Bombay High Court infers, from the power given to the Government of India by section 434 to declare that the judgments of Native Courts may be executed as if they had been passed by British Courts, that the Legislature did not intend that suits should be brought on the judgments of Native Courts. It is hard to see how such an inference can fairly be drawn. The Code makes no distinction between the Courts of Native States and other foreign Courts, except that the former Courts are or may be treated more favourably. As regards suits on other foreign judgments, the Indian Courts

[1] As to this see 14 Moore, I. A. 376: 6 Bom. 715.

[2] See 2 Smith's Leading Cases, 869, but consider, as to clause (*b*), *Godard* v. *Gray*, L. R., 6 Q. B. 139.

[3] 6 Mad. 275. See form of plaint, infra, Sched. IV. no. 27.

[4] See 7 Mad. 105, 164, dissenting from 6 Bom. 295 and 8 Bom. 595. Suits on judgments passed by the French Courts at Chandernagore, Mahé and Pondicherry have often been brought in Calcutta and Madras; see 4 Suth. Civ. R. 108: 15 Suth. Civ. R. 500: 8 Mad. H. C. 14: 2 Mad. 337: 2 Mad. 400.

would follow the English rules, which have recently been stated by Fry J. as follows[1]:—

The Courts of England consider the defendant bound—

(*a*) Where he is the subject of a foreign country in which the judgment has been obtained:

(*b*) Where he was resident in the foreign country when the action began:

(*c*) Where the defendant in the character of plaintiff has selected the forum in which he is afterwards sued:

(*d*) Where he has voluntarily appeared:

(*e*) Where he has contracted to submit himself to the forum in which the judgment was obtained:

(*f*) And possibly, if *Becquet* v. *MacCarthy*, 2 B. & Ad. 951, be right, where the defendant has, within the foreign jurisdiction, real estate in respect of which the cause of action arose while he was within that jurisdiction.

Moreover, in a case reported in 2 Mad. 400, Turner C.J. decided the following points:—

(1) Where a defendant sued in a foreign tribunal takes no objection to the jurisdiction, he cannot afterwards question that jurisdiction.

(2) Mere irregularity of procedure on the part of a foreign tribunal, which ordinarily proceeds in accordance with the recognised principles of judicial investigation, is not sufficient ground for refusing to give effect to its judgment.

(3) Where the limitation-law bars the remedy but does not extinguish the right, a foreign judgment in a suit on a contract is not open to the objection that the suit was time-barred in the country where the contract was made.

The judgments of all Courts situate in England, with the exception of the Judicial Committee of the Privy Council, are 'foreign judgments' within the meaning of the Code; and the Bombay High Court has treated as a foreign judgment the call-order of the Court of Chancery on a contributory of a company registered in England and being wound up under the authority of the latter Court[2].

The Limitation Act (Sched. II, art. 117) provides a six-years limitation for suits on foreign judgments.

[1] *Rousillon* v. *Rousillon*, 14 Ch. Div. 371. And see *Obicini* v. *Bligh*, 1 Moore & Scott, 477: *Vanquelin* v. *Bouard*, 15 C. B., N. S. 341: *Scott* v. *Pilkington*, 2 B. & S. 11: *Abouloff* v. *Oppenheimer*, 10 Q. B. Div. 295: *Grant* v. *Easton*, 13 Q. B. Div. 302: and the note to the *Duchess of Kingston's Case*, 2 Smith, L. C., 9th ed., 812. As to the desirability of giving credit to foreign judgments, see 1 Mad. 198, per Holloway J.

[2] 8 Bom. H. C., O. C. J. 200.

Chapter II. Of the Place of Suing.

Assuming that his suit can be brought, the next question for a person seeking judicial relief is, to which Court he ought to resort. The Code answers this by declaring (sec. 15) that 'every suit shall be instituted in the Court of the lowest grade competent to try it.' The competence here referred to is determined by the actual value of the plaintiff's claim or its subject-matter (the Suits Valuation Act, VII of 1887, the Provincial Small Cause Courts Act, IX of 1887, the Presidency Small Cause Courts Act, XV of 1882), and the local laws regulating the jurisdiction of the Courts. These laws are now as follows:—

In Bengal, the North-Western Provinces and Assam, Act XII of 1887, secs. 18–25.

In Madras, Act III of 1873, amended by Act XXI of 1885: Madras Reg. IV of 1816, sec. 5.

In Bombay, Act XIV of 1869: Act II of 1864 (Aden): Bom. Act XII of 1866 (Sind).

In the Panjáb, Act XVIII of 1884.

In Oudh, Act XIII of 1879.

In the Central Provinces, Act XVI of 1885.

In Burma, Act XVII of 1875.

In Coorg, Reg. II of 1881.

In Ajmer and Merwára, Reg. I of 1877.

Forum depending on the subject-matter.

Section 16 specifies the suits whose forum is fixed with reference to the subject-matter. Such are suits relating to immoveable property and suits for moveables which have been distrained or attached. But suits to obtain compensation for wrong to immoveable property may be optionally instituted in the Court within whose jurisdiction the defendant resides. Exceptions are made in the cases of suits to obtain relief respecting land where, as in the case of a specific performance of a contract of sale, the relief sought can be obtained by the personal obedience of the defendant. Such suits, as well as suits for compensation for wrongs to immoveable property, may be brought either in the Court which has jurisdiction over the land or in the Court which has jurisdiction over the person of the defendant.

Forum depending on defendant's residence etc., or place where cause of action arose.

Section 17 deals with the suits which must be instituted where the defendant resides, carries on business, or personally works for gain, or where the cause of action arose. Where there are several defendants, only some of whom reside etc. within the local limits of the Court's jurisdiction, the suit cannot be instituted in the Court without either (*a*) the leave of the Court, or (*b*) the acquiescence of the non-residents.

Section 18 provides for suits for compensation for wrongs to person or moveable property where the wrong is done in one jurisdiction and the defendant resides in another.

Section 19 provides for suits for immoveable property situate in a single district but within the jurisdiction of different Courts, and for the case where the property is situate in different districts. Power is given by section 20 to stay proceedings where all the defendants do not reside within the jurisdiction.

Transfer of suits in subordinate Courts.

Section 25 provides for the transfer by the High Court or District Court of suits pending in a subordinate Court of first instance or of appeal. This applies to suits in Courts of Small Causes which are declared by section 2 to be 'subordinate' to the High Court and District Court.

Chapter III. Of Parties and their Appearances and Acts.

Parties.

Having ascertained the Court to which he must resort, the third question for the person seeking judicial relief is, for and against what parties such relief must be claimed.

The first eight sections of this chapter are taken, with some modifications, from the orders framed in England under the Supreme Court of Judicature Act, 1875, and give a wide latitude as to the persons who may be made parties. Section 30 declares that when there are numerous parties having the same interest in one suit, one or more of them may, with the permission of the Court, sue or be sued, or may defend, in such suit on behalf of all parties so interested. A caste, for instance, may be represented by a group of its members[1]. Any person on whose behalf a suit is so instituted or defended may apply to the Court to be made a party (sec. 32), and the Court is empowered to give the conduct of the suit to such plaintiff as it thinks fit. A like power exists in England under 15 & 16 Vic. c. 86, s. 42, rule 7. Save upon the application of either party on or before the first hearing, the Court cannot order the name of any party to be struck out. But it may at any time, with or without such application, add parties and order any plaintiff to be made a defendant, or any defendant to be made a plaintiff (sec. 32). It often happens that a nonjoinder or misjoinder is not discovered till after issues are settled and the evidence is gone into; and the Judge should have full power to correct the mistake whenever it is found out. The objections for want of parties, for joinder of parties who have no interest, or for misjoinder, if not taken before the first hearing, will be deemed to have been waived (sec. 34).

[1] 11 Bom. 536, per West J.

Chapter IV. Of the Frame of the Suit.

Section 42 declares that every suit shall as far as practicable be so framed as to afford ground for a final-decision upon the subjects in dispute, and so to prevent further litigation concerning them. Claims ought not to be split.

'Were the rule otherwise, a man might be sued repeatedly in respect of different parts of the same matter, and conflicting judgments might be pronounced regarding separate portions of the same property, included in the same cause of action. And as the value of the property claimed by the plaint determines the class of judges by which a suit is cognisable and the remedies of the parties in an appeal, a suit might be split up, so that each branch of it should be decided by a judge of a lower class than that by which, with reference to the value of the whole property in litigation, it ought to be decided, and the right of the parties to appeal would be unfairly limited[1].'

The suit must include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action upon which he sues; but he may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. If, however, he does so, he cannot afterwards sue in respect of the portion so relinquished. When he is entitled to more than one remedy in respect of the same cause of action, he may sue for all or any of his remedies; but if he omits, except with the leave of the Court obtained before the first hearing, to sue for any of such remedies, he cannot afterwards sue for the remedy so omitted (sec. 43).

After these provisions, the Code contains four sections as to the joinder of causes of action and multifariousness, i.e. the joining in one suit of several distinct and naturally dissimilar claims upon the same defendant or several defendants[2]. These sections are taken from the orders framed in England under the Supreme Court of Judicature Act, 1875 (Order xviii, rr. 2 and 5). The rule respecting the claims that may be joined with a suit for the recovery of land places suits to obtain declarations of title to land on the same footing as suits to recover it, and enables a mortgagee to join with either of those suits claims to enforce any of his remedies under the mortgage. This is in accordance with a decision of the Master of the Rolls on the corresponding English rule; see 3 Ch. D. 629: 22 Ch. D. 281. The Code (sec. 44) expressly provides for joining with claims by or against a legal representative, claims which he was personally entitled to, or liable for, jointly with the deceased Joinder of causes of action.

[1] W. Macpherson, *New Civil Procedure for British India*, 1871, p. 54, citing 2 Suth. 148.

[2] See 14 Cal. 681.

person whom he represents, e. g. on a promissory note jointly executed by the deceased and the person who becomes his executor.

When causes of action are united, the jurisdiction of the Court as regards the suit depends on the amount or value of the aggregate subject-matter at the date of instituting the suit (sec. 45).

Chapter V. Of the Institution of Suits.

The plaint. The Code here provides that every suit shall be commenced by plaint, and contains rules as to the language and contents of the plaint, as to its signature and verification, and as to rejecting it, amending it, or returning it for amendment. As to its contents, the Code declares that, if the plaintiff has allowed a set-off or relinquished a portion of his claim, the plaint must show the amount so allowed or relinquished. Where he sues in a representative character, the plaint must show that he has taken the steps necessary to enable him to sue; and if the cause of action arose beyond the period ordinarily allowed for instituting the suit, the plaint must show the ground of exemption from such law (sec. 50).

Copies of plaint. When the plaint is admitted, section 58 requires the plaintiff to present as many copies of it as there are defendants, unless where

Concise statements. the Court, by reason of the length of the plaint, the number of the defendants etc., allows him to present a like number of concise statements of the claim made and the remedy required.

When the plaintiff sues upon a document in his possession, he must produce it in Court when the plaint is presented, and deliver the document or a copy to be filed. The object is to prevent forgery and fraudulent alteration during the trial, and not, as is sometimes supposed, to enable the Court to refer to documents so filed as if they were thereby made evidence without further proof.

Suits on lost bills. Section 61 provides for suits on lost negotiable instruments, and is taken from Act V of 1866, sec. 14, the Indian equivalent of 17 & 18 Vic. c. 125, s. 87=45 & 46 Vic. c. 61, s. 70.

The chapter ends with the provision, sec. 63, that a document which ought to be, but is not, produced when the plaint is presented shall not without the leave of the Court be received in evidence on his behalf at the hearing. But this does not apply to documents handed to a witness merely to refresh his memory, or produced for cross-examination of the defendant's witnesses, or in answer to any case set up by him.

Chapter VI. Of the Issue and Service of Summons.

Issue of summons. When the plaint has been registered and the copies or concise statements required by section 58 have been filed, a summons may be

issued to each defendant (sec. 64), and if the Court thinks fit, he must appear in person, provided he resides within the local limits of the Court's ordinary jurisdiction, or within fifty or, where there is a railway communication for five-sixths of the distance, two hundred miles from the court-house. The Court determines when issuing the summons whether it shall be for the settlement of issues only or for the final disposal of the suit.

Service of summons.

Sections 72–92 contain elaborate provisions as to the service of the summons. The object is to make sure, as far as possible, that the summons comes to the knowledge of the defendant. When it is considered how large a proportion of the suits in British India are decided *ex parte* owing to the defendant's failure to appear, the importance of this part of the Code can hardly be exaggerated. The Code of 1859, sec. 55, provided that when the defendant could not be found (i.e. when the process-server *said* that he could not be found), and there was no one else on whom service could be made, the serving officer was to fix a copy of the summons on the outer door of the house in which the defendant was dwelling, but it omitted to say what the effect of this fixing was to be, nor did it take any precautions against the fraud and indolence of process-servers. The new Code provides as a rule that personal service shall be proved by the written acknowledgment of the person served (sec. 79), and where such proof is impossible, that the serving officer should fix a copy of the summons on the defendant's dwelling and return the original with an endorsement stating the circumstances (sec. 80). He is then examined on oath touching his proceedings (sec. 82). And the Court may then order substituted service if it is satisfied that the summons cannot be served in the ordinary way.

Privileged defendants (ss. 640, 641).

In the case of privileged defendants, sections 91 and 92 provide for substituting for a summons a letter sent by post or by a special messenger.

Chapter VII. Of the appearance of the parties and consequence of non-appearance.

The Code then lays down rules of procedure in the cases where both parties attend (sec. 96); where the summons has not been served in consequence of the plaintiff's failure to pay the fees for serving it (sec. 97); where neither party appears (secs. 98, 99); where the plaintiff only appears (sec. 100); where the defendant only appears (sec. 102); where the defendant residing out of British India does not appear (sec. 104); where one of several plaintiffs or defendants does not appear (secs. 105, 106). A dismissal for default or a decree *ex parte* is no more than a just consequence of

Dismissal for default.

Decree *ex parte*.

the failure to appear, where it is voluntary; and where it is involuntary, there is a remedy in the powers given to the Court by sections 101, 103 and 108.

The chapter concludes with sections (108, 109) as to the setting aside the decrees passed *ex parte* against the defendant. No such decree will be set aside without notice to the opposite party.

Chapter VIII. Of Written Statements and Set-off.

Pleadings.

The present Code, like Act VIII of 1859, requires no written pleading except the plaint. It was admitted on all hands that in the large majority of cases coming before the Courts, namely, suits for debt, written pleadings of any other kind are useless. This had been proved in England by the experience of the County Courts and in India by the experience of the Presidency Courts of Small Causes and the military Courts of Request. But in suits relating to immoveable property and in other cases of complexity and difficulty[1], it is often convenient to have the written statements of the parties. The Code therefore here permits the parties at any time before or at the first hearing to tender written statements of their respective cases, and the Court may itself at any time require a written statement from any of the parties and receive one for the purpose of answering a statement so required. These statements must not be argumentative (sec. 114), and the Court is empowered to deal with them when they violate this rule or are prolix or irrelevant (sec. 116).

Written statements.

Set-off.

Sections 111, 216 and 221 were intended to contain the Indian law of set-off, or the compensation of one debt for another, and to differ from the present English rules on this subject (Orders xix. r. 3, xxi. r. 17). In England, set-off is not confined to pecuniary claims, and in the case of such claims the power of set-off is not limited to debts. Claims for unliquidated damages may now be set off in all Courts against debts, debts against damages, and damages against damages. But under the Indian Code set-off is confined to suits for the recovery of money, and the following four requirements must be fulfilled:—

(*a*) The sum of money claimed to be set-off must be ascertained:

(*b*) It must be legally recoverable by the defendant from the plaintiff:

(*c*) In such claim both parties must fill the same character as they fill in the plaintiff's suit.

(*d*) The amount claimed to be set-off must not exceed the pecuniary limits of the Court's jurisdiction.

If these four requirements are fulfilled, the Court sets-off one

[1] See, for instance, the Patent Act, XV of 1859, sec. 34.

debt against another, and such set-off has the same effect as a plaint in a cross-suit, so as to enable the Court to pronounce final judgment in the same suit both on the original and on the cross-claim. But the decisions of the High Courts on this section make it hard to say what the law of India as to set-off is at present. The pleader's lien upon the amount decreed is expressly saved from the effect of set-off. This saving was suggested by *Pringle* v. *Gloag*, 10 Chan. Div. 676, affirmed by Order lxv. r. 14 [1].

Chapter IX. Of the Examination of the Parties at the first hearing.

At the first hearing the Court ascertains from the defendant or his pleader whether he admits or denies the allegations of fact made in the plaint, and also ascertains from each party or his pleader whether he admits or denies allegations of fact made in the written statement of the opposite party and not admitted or denied by the party against whom they are made. The Court records such admissions and denials (sec. 117). The Code intentionally omits to provide that allegations of fact in written statements, if not denied, shall be taken to be admitted. Such a provision would have been dangerous in the case of untrained pleaders.

At any hearing the Court may examine orally any party appearing in Court or any companion of his able to answer material questions relating to the suit.

On the corresponding sections of the Draft Code of 1859 the Commissioners observe: 'The object of the first examination is merely to enable the Judge to ascertain what is the matter in dispute between the parties. In the interrogatories which he may put to them for this purpose some allowance must be made for misapprehension on both sides. It is also manifest that statements made at this examination stand on a different footing from evidence given in a trial of fact. After the Judge has once ascertained and recorded the points in dispute, the parties may be examined to them like other witnesses.'

Chapter X. Of Discovery, and on the Admission, Inspection, Production etc. of Documents.

Interrogatories.

The object in compelling what is called 'discovery' is to procure an admission of the case made by the plaint, either in aid of proof or to supply the want of it, and to avoid expense [2]. The first seven sections of this chapter correspond with the

[1] See *Edwards* v. *Hope*, 14 Q. B. D. 922.

[2] Wigram, Points in the Law of Discovery, § 2. As to discovery in aid of execution, see sec. 267, infra.

English Order xxxi. rules 1–10, from which they were immediately taken. The ultimate source of the practice of putting special interrogatories is, no doubt, the civil law[1]. The Code here empowers parties at any time to deliver interrogatories in writing. But the leave of the Court is always required, there being no exception, as in England, where the plaintiff seeks relief on the ground of fraud or breach of trust. And in deciding on any application for leave the Court should take into account any offer which may be made by the party sought to be interrogated, to deliver particulars, or to make admissions or to produce documents relating to the matter in question (Order xxxi. r. 2). Sections 123, 125, 127 provide for inquiring into the propriety of exhibiting interrogatories; for the costs of improper interrogatories; for making objections to answering interrogatories, and for compelling persons to answer sufficiently. No defendant shall deliver interrogatories for the examination of the plaintiff unless such defendant has already tendered a written statement which has been received and placed on the record. Otherwise the plaintiff would be delayed, without knowing the nature of the defence, until he had answered.

Admission of documents.

As to admission of documents, either party may, not less than ten days before the hearing, require the other party to admit the genuineness of any document material to the suit. The Evidence Act, sec. 58, then applies. The party refusing to give the admission is chargeable with the expense of proving the document, unless the Court thinks there were good reasons for the refusal (sec. 128). A similar clause is contained in the Common Law Procedure Act, 15 & 16 Vic. c. 76, secs. 117, 118. But the Code requires the demand for admission to be served through the Court.

Discovery of documents.

Discovery is not confined to facts resting merely in the knowledge of the defendant. The Court is empowered at any time during the pendency of the suit to order discovery of documents relating to any matter in question in the suit; but a party must apply for a like order, if at all, before the first hearing (sec. 129). The Court may also at any time compel production of documents relating to any such matter. The latter power, which goes far beyond the former practice of the Court of Chancery[2], was suggested by Order xxxi. rule 11, under the Judicature Act. The Indian Courts will probably not compel the defendant to produce documents relating solely to his title.

[1] See Story, Equity Pleading, § 39.

[2] See *Hardman* v. *Ellames*, 2 My. & K. 755, and Story, Equity Pleading, § 859.

Sections 131, 132, 133 provide for inspecting and copying of specified documents not relating solely to the party's own title. Inspection of documents.

When any discovery or inspection is objected to, and the Court is satisfied that the right to such discovery or inspection depends on the determination of any question in dispute in the suit, section 135 (taken from the English Order xxxi. rule 19) empowers the Court to order that question to be first determined.

Whoever disobeys any order to answer interrogatories, or for discovery or inspection, which has been served personally upon him, is made by section 136 guilty of an offence under the Penal Code, sec. 188. He is also liable, if a plaintiff, to have his suit dismissed: if a defendant, to be placed in the same position as if he had not defended.

Section 137 enables the Court of its own accord, or on the application of a party, to send for the records of any other suit or proceeding and to inspect the same. This was originally taken from the draft code of Messrs Mills and Harington. But such an application must be supported by an affidavit showing either that the applicant cannot without unreasonable delay or expense obtain an authenticated copy or that the production of the original is necessary for the ends of justice. To stop a practice which existed in the Mufassal, the Code here declares that the power to send for records shall not enable the Court to use in evidence any document which would be inadmissible in the suit. Power to send for records.

In order to preclude questions on appeal as to whether a document was in evidence or not, section 141 provides that no document shall be placed on the record unless it has been regularly proved or admitted.

The provisions in this chapter as to documents apply, so far as may be, to all other material objects producible as evidence (sec. 145). Material objects.

The practice as to the admission of documents has recently been extended in England to the admission of certain facts; and the Code should provide, in accordance with the English Order xxxii. r. 4, that if it be made to appear to the Judge that one of the parties was, a reasonable time before the first hearing, required in writing to admit any specific fact, and without reasonable cause refused to do so, the Court should either disallow to such party or order him to pay (as the case may be) the costs incurred in consequence of such refusal. Notice to admit facts would in many cases supersede interrogatories and thus save expense and delay. Notice to admit facts.

Chapter XI. Of the Settlement of Issues.

Settling issues.

In the course of administering justice between litigants there are two successive objects,—to ascertain the subject for decision, and to decide[1]. The Code having provided for each of the parties stating his own case, now provides for collecting, from the opposition of their statements, the points of the legal controversy. It explains the term 'issues,' and then requires the Court, at the first hearing of the suit,

(*a*) to read the plaint and written statements (if any);

(*b*) to examine the parties where necessary, e.g. where the facts are not sufficiently stated in the plaint (6 Ben. 274);

(*c*) to ascertain upon what material points of fact or of law the parties are at variance; and

(*d*) to frame and record the issues on which the right decision of the case appears to depend—not those which the parties may themselves have selected (2 Bom. H. C. 164).

The Code also directs that when issues both of fact and of law arise in the same suit and the Court thinks that the case may be disposed of on the issues of law only, the issues of law shall be tried first. The object of this is to save expense and to prevent cases being remanded for trial of issues of fact which in the result prove wholly irrelevant. The Court itself frames the issues, (1) from the allegations made on oath by the parties or their friends, or made by their pleaders; (2) from allegations made in the plaint, the written statements, or in answer to interrogatories; and (3) from the contents of documents produced by either party.

Here the Indian differs importantly from the English practice, which is thus prescribed by Order XXXIII, r. 1: 'Where in any cause or matter it appears to the Court or a Judge that the issues of fact in dispute are not sufficiently defined the parties may be directed to prepare issues, and such issues shall, *if the parties differ*, be settled by the Court or a Judge.' For the purpose of framing the issues correctly, the Court may compel the attendance of witnesses and the production of documents. The Court is empowered to amend, add, and, at any time before passing the decree, strike out issues.

Issues stated by parties.

When the parties are agreed as to the question of fact or of law to be decided, they may state it in the form of an issue and agree in writing to be bound by the finding of the Court (sec. 150, 151). The rules on this head correspond with sections 142, 143 of the Code of 1859, which were taken, with some alterations, from the Common Law Procedure Act, 1852, sections 42–45, reproduced in the present Order xxxiv. rr. 9–12.

[1] Stephen's Principles of Pleading, 7th ed. p. 1.

Chapter XII. Disposal of the Suit at first hearing.

Judgment at first hearing.

If at the first hearing it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment; and where there are several defendants, and any one of them is not at issue with the plaintiff, the Court may at once pronounce judgment for, or against him, and the suit proceeds only against the other defendants. But in by far the greater number of suits the whole matter in dispute may be resolved into one or more simple issues, on which the parties may at once go to trial. The Code therefore provides that when the parties are at issue, and issues have been framed by the Court, and the Court is satisfied that no further argument or evidence than the parties can at once supply is required, the Court may determine such issues, and pronounce judgment (sec. 154).

When the summons has been issued for the final disposal of the suit and either party fails to produce his evidence, the Court may either pronounce judgment at once, or frame and record issues and then adjourn the suit for the production of the evidence necessary for deciding those issues (sec. 155).

Chapter XIII. Of Adjournments.

Power to adjourn.

The Court may, if sufficient cause be shown[1], at any stage of the suit, grant time to the parties, and adjourn the hearing, making such order as it thinks fit with respect to the costs of adjournment. But great encouragement had been given to perjury and subordination of perjury, great delays, expense and inconvenience had been caused, in consequence of the facilities formerly enjoyed of obtaining adjournments, especially in the hearing of evidence. The Code therefore provides (sec. 156) that when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment to be necessary for reasons recorded by the Judge with his own hand.

Chapter XIV. Of the summoning and attending of Witnesses.

Summonses to witnesses.

The parties may, after the summons has been delivered for service on the defendant, obtain summonses to persons whose attendance is required either to give evidence or to produce documents; but in all such cases the applicant must, before the summons

[1] As, for instance, where the defendant surprises the plaintiff by a written statement filed the day before the day fixed for final disposal, 7 Suth. Civ. R. 84.

is granted, pay into court the travelling and other expenses of the person to be summoned. These provisions derive ultimately from Act XIX of 1853, sec. 12. The Court issues summonses as a matter of course, except where there is reason to think they are applied for merely to obstruct the course of justice [1], or the application is made so late that the witness could not possibly appear before the applicant's case is closed [2].

Absconding witnesses.

When a witness absconds, his property may be attached; but the serving-officer must previously be examined on oath touching the non-service, and if the witness appears, the attachment may be withdrawn. Where a witness on whom a summons has been served disobeys the summons, the Court may sentence him to fine not exceeding rs. 500. He is also liable, when personal service has been made, to a civil suit for damages [3].

Limit of distance.

No witness is bound to attend in person unless he resides (*a*) within the local limits of the ordinary jurisdiction of the Court, or (*b*) without such limits and at a place less than fifty or, when there is railway communication for five-sixths of the distance, two hundred miles from the Court-house. It is obvious that in a country nearly as large as Europe there must be some limit beyond which witnesses should not be required to travel even by railway.

Lunatic witnesses.

No person known to be of unsound mind should be summoned as a witness without the previous consent of the Court. Act II of 1855, sec. 14, contained a rule to this effect. But it was repealed by the Evidence Act of 1872, and nothing was put in its place.

Refusal to give evidence.

Parties.

If any party to a suit present in court refuses without lawful excuse when required by the Court to give evidence or produce documents, the Court may pass a decree against him, or make any order as to the suit that it thinks fit; and whenever any party to a suit is summoned to give evidence or produce a document, the rules as to witnesses contained in the Code apply to him. It is no longer necessary to serve him with notice to show cause why he should not attend.

Chapter XV. Of the hearing of the Suit and examination of Witnesses.

On the day fixed for the hearing, or to which the hearing has been adjourned, the party having the right to begin states his case and produces his evidence. The Code here states the rules as to the *ordo*

[1] 14 Suth. Civ. R. 66, 67. There should have been a clause equivalent to the second proviso to sec. 216 of the Code of Criminal Procedure, *supra*, p. 141.

[2] 9 Suth. Civ. R. 530: 14 ibid. 493: 25 ibid. 71.

[3] See Act XIX of 1853, sec. 26, and Act X of 1855, sec. 10.

incipiendi, or, as it is not very accurately[1] called, the right to begin. The plaintiff, as a rule, begins. But the defendant begins where he admits the facts alleged by the plaintiff and contends that, either in point of law or on some additional facts alleged by the defendant, the plaintiff is not entitled to any part of the relief which he seeks. The corresponding English rules will be found in Taylor on Evidence, §§ 350, 353, 356. The other party then states his case and produces his evidence, if any, and the party beginning, if he chooses, replies. Right to begin.

The witnesses must be examined orally in open court in the presence and under the personal direction and superintendence of the Judge (sec. 181), but this of course is subject to the provisions contained in section 192, chapter XVI and section 383; and in appealable cases the evidence is taken down in writing in the language of the Court in the form of a narrative, read over in the presence of the Judge and of the witness, and also in the presence of the parties or their pleaders. The Judge then corrects the narrative, if necessary, and signs it (sec. 182). The object of these provisions, as of the corresponding section (172) of the Code of 1859, is to relieve the administration of justice in India of one of its chief scandals, the careless and perfunctory method of taking evidence[2]. Another of these scandals is the constant production of inadmissible evidence, and the Code should contain a clause like that in section 298 of the Code of Criminal Procedure, empowering the Judge to prevent the production of such evidence, whether it is or is not objected to by the parties. Examination of witnesses.

When English is not the language of the Court, but the parties do not object to have such evidence as is given in English taken down in that language, the Judge may so take it down in his own hand (sec. 185). This provision saves expense in translating, and gives the appellate Judge the same material as the Judge of first instance. Taking down evidence in English.

In unappealable cases, the Judge, as the examination of each witness proceeds, makes with his own hand a memorandum of the substance of the deposition; or, when he is unable to do so, causes the memorandum to be made in writing from his dictation in open Court (sec. 189). Memorandum.

It often happens in India that a Judge who has partly heard a case is unable to decide it in consequence of being transferred to another district. The Code of 1859 made no provision for this case, and it was consequently held that the Judge's successor was Transfer of Judge.

[1] The expression assumes that beginning is always an advantage, whereas it may be quite the reverse, Best on Evidence, sec. 637.

[2] Macpherson, C. P. 200.

bound to recall and examine the witnesses *de novo*, unless the parties consented to his proceeding upon the evidence already recorded. The present Code therefore provides that when the Judge taking down any evidence is removed from the Court before the conclusion of the suit, his successor may deal with the evidence as if he himself had taken it down (sec. 191).

Section 192 provides for the examination of a witness *de bene esse*.

The Court may at any stage of the suit recall and re-examine any witness who has not departed (sec. 193).

Oaths and affirmations.

The Code does not provide that witnesses shall give their evidence on oath or affirmation. Act X of 1873, sec. 5, however, declares that oaths or affirmations shall be made by all witnesses, that is, all persons who may lawfully be examined or give or be required to give evidence by or before any Court or person having by law or consent of parties to examine such persons or to receive evidence. Where the witness is a Hindú or Muhammadan, or has an objection to making an oath, he makes, instead, an affirmation. For intentionally giving false evidence, witnesses are punishable under the Penal Code, sec. 193.

Protection of witnesses.

The Code is also silent as to the protection of witnesses from the liability to which persons are ordinarily subject for defamatory statements. This is left to be dealt with by the Penal Code, secs. 52 and 499, ninth exception [1]. Under Indian legislation a witness' privilege is much less extensive than under the English law [2]. But the Calcutta High Court has ruled (and the Judicial Committee has approved of the ruling) that witnesses who have given evidence cannot be sued for damages in respect thereof [3]. As to their exemption from arrest under civil process, see infra, section 642.

Chapter XVI. Of Affidavits.

Power to order facts to be proved by affidavit.

This chapter empowers the Court at any time, *for sufficient reason*, to order any particular fact to be proved by affidavit. This instrument was formerly unknown in the Mufussal. In uncontested cases and in applications of an urgent and provisional character the affidavit is a useful mode of taking evidence. And when sifted by cross-examination, as it is always liable to be (sec. 195), it is not more likely to mislead than oral evidence. 'In point of fact,' as Mr. Hobhouse said [4], 'one who cross-examines on affidavits has a considerable advantage, in that his enemy has

[1] See Vol. I of this work, pp. 103, 288.

[2] That in England a witness is absolutely privileged as to anything he may, as such, say in reference to the inquiry, see *Seaman* v. *Netherclift*, 2 C. P. D. 53.

[3] 11 Ben. 328.

[4] Abstract of Proceedings, 1876, p. 244.

written a book, and a book which he has had time to study before he comes to cross-examine.' The Code therefore provides that evidence may be given by affidavit upon any application; indicates the matters to which affidavits should be confined, and specifies the officers by whom the oaths of declarants may be administered. The attendance of declarants for cross-examination must be in Court, unless they are exempt under section 640 or 641, or the Court otherwise directs. The costs of every affidavit containing impertinent matter are, as a rule, paid by the party producing the same (sec. 196); but when such matter is small in amount, the Court may exempt him from such costs.

The Evidence Act does not apply to affidavits; and as answers to interrogatories are affidavits (4 Cal. 836), it seems also inapplicable to such answers. The Code, sec. 647, empowers the High Court to make rules for the admission, in miscellaneous proceedings, of affidavits as evidence. But there is no such power in the case of suits and appeals.

The Code should have laid down some rules as to the form of an affidavit, e.g. that it should be drawn up in the first person and divided into paragraphs numbered consecutively, and each, as nearly as may be, confined to a distinct portion of the subject: that it should state the description and true place of abode of the deponent, etc.

Chapter XVII. Of Judgment and Decree.

The judgment.

After the oral evidence has been taken, the documentary evidence (if any) produced, and the parties heard, the Court pronounces a written judgment either at once or on some future day of which due notice must be given (sec. 198). The judgment is dated and signed by the Judge in open court at the time of pronouncing it, and cannot be altered or added to save to correct verbal errors, or to supply some accidental defects, not affecting a material part of the case, or on review (sec. 202). The judgments of the Courts of Small Causes, from which there is no appeal, need not contain more than the points for determination, and the decision thereupon. The judgments of all other Courts must contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision (sec. 203): otherwise the appellate Court would not have the assistance it is entitled to expect from the Court below. Every judgment must direct by whom the costs of each party must be paid, and whether in whole or in what part or proportion (sec. 219). Where issues have been framed, the Court must, as a rule, state its finding or decision, with the reasons thereof, upon each separate issue (sec. 204).

The decree.

The decree follows the judgment, and the Code should have contained an express provision to this effect. The decree bears date the day on which the judgment was pronounced. It must agree with the judgment, it states the number of the suit, the names and description of the parties, the particulars of the claim, the relief granted, or other determination of the suit, and, lastly, the amount of costs incurred, and by whom and in what proportion such costs are to be paid[1].

Alteration of decree.

Whether a decree could be altered by consent of parties was a question on which opinions conflicted. Section 210 of the Code enables the Court, after passing a decree for payment of money, on the application of the judgment-debtor, and with the consent of the decree-holder, to order that the money be paid by instalments on such terms as it thinks fit; and where any decree is at variance with the judgment, or contains any clerical or arithmetical error, sec. 206 enables the Court, on the motion of any party, to amend the decree. But, save as provided by sections 206 and 210, no decree can be altered at the request of parties.

The Code then gives special rules as to the decrees in suits for immoveable property (secs. 207 and 211); for moveable property (sec. 208); for money due to the plaintiff (secs. 209 and 210); for mesne profits (sec. 212); for the administration of property under the decree of the Court (sec. 213); to enforce a right of pre-emption (sec. 214); for dissolution of partnership (sec. 215); for an account between principal and agent (sec. 215A); and, lastly, when a set-off has been allowed (sec. 216).

Chapter XVIII. Of Costs.

Power to give costs.

The Court has full power to give and apportion costs of every application and suit in any manner it thinks fit[2], and may exercise this power even where it has no jurisdiction to try the case. This discretion is restricted by the special rules in ss. 100, 123, 366, 373, 379, 452, and 532. Wherever the Court directs that the costs shall not follow the event,—i. e. shall not be paid to the successful litigant,—the Court must state its reasons in writing. Every order relating to costs which does not form part of a decree may be executed as if it were a decree for money (sec. 220). The Court may direct that the costs payable to *A* by *B* shall be set-off against a sum admitted or found to be due from *A* to *B* (sec. 221). Lastly, the Court may give interest on costs at any rate not exceeding six per cent., and may direct that costs with or without interest be paid out of or charged upon the subject-matter of the suit.

As to appealing on the subject of costs, see Ben. F. B. 496:

[1] 10 Moore, I. A. 563. [2] See, besides s. 220, ss. 20, 26, 47, 53, 101, 128, 454.

6 Ben. 581: 8 Cal. 91: 12 Cal. 271. The rule in Calcutta seems to be that when costs form part of a decree or order, and the decree or order is appealable, the part of it relating to costs is appealable also, and to the same extent as the decree or order itself. The Code designedly omits to provide when alone decisions on this subject shall be appealable. To do so would, it was thought, deprive the appellate Courts of a power often usefully exercised in controlling the discretion of the Courts of first instance. The cases of a next friend and a guardian *ad litem* ordered to pay costs are specially provided for by sec. 588, cl. (22). Appealing on subject of costs.

Chapter XIX. Of the Execution of Decrees.

The matter of this long and important chapter is distributed under nine heads, namely, (*A*) Courts by which decrees may be executed, (*B*) application for execution, (*C*) staying execution, (*D*) questions for Court executing decree, (*E*) the mode of executing decrees, (*F*) attachment of property, (*G*) sale and delivery of property, (*H*) resistance to execution, and (*I*) arrest and imprisonment.

(*A*) Courts by which decrees may be executed. A decree may be executed either by the Court which passed it or by the Court to which it is sent for execution; and the Code (secs. 223–228) prescribes a procedure, deriving originally from Act XXXIII of 1852, when a Court desires that its own decree shall be executed by another Court. Application for execution.

(*B*) Application for execution. The Court does not execute its decree unless and until the successful party applies to it for execution. Under the Code of 1859 a decree was treated by many creditors as a rather eligible mode of investing their money. The interest was good and the security very good. It was true that under the Limitation Act the creditor could not enforce his decree if three years had elapsed since some step taken to enforce it; but the only result of that provision was that some formal step was taken every three years, and, practically, the decree ran on unsatisfied and hanging over the debtor it might be for fifty years or more. The Code checks this practice by declaring (sec. 230) in substance that a decree shall not remain in force for more than twelve years, unless the creditor has been prevented from reaping its fruits by some fraud or force on the part of the judgment-debtor. Rules are then provided for the case of a holder of a decree desiring to enforce it, and for the special cases of applications, 1. by a joint decree-holder, 2. by the transferee of a decree, and, 3. when the judgment-debtor dies before execution.

(*C*) Staying execution. The Code (sec. 239) then enables the Court to which a decree has been sent for execution under Staying execution.

section 223 to stay upon sufficient cause execution for a reasonable time, and empowers it to require security from or impose conditions upon the judgment-debtor. These provisions correspond with the old proceeding in England by *audita querela*, whereby the judgment-debtor might prevent execution on the ground of some matter of defence which there was no opportunity of raising in the original action. See now Order xlii. r. 27.

Questions for Court executing decree.

(*D*) Questions for Court executing decree. The Code (sec. 244) then declares that certain questions relating to mesne profits, interest, execution, discharge, or satisfaction shall be determined by the Court executing the decree, and not by separate suit.

Mode of executing decrees.

(*E*) The mode of executing decrees. The Code then provides a procedure on receiving and admitting applications for the execution of decrees (sec. 245); and deals with the cases where there are cross-decrees between the same parties (sec. 246); and cross-claims under the same decree (sec. 247); where the decree is against the representative of the deceased for money; where the decree is executed against a surety (sec. 253); where the decree is for money (sec. 254); or for mesne profits (sec. 255); for a specific moveable (sec. 259); for specific performance or restitution of conjugal rights (sec. 260); for the execution of conveyances or endorsement of negotiable instruments (secs. 261, 262); for immoveable property (secs. 263, 264), *first*, where the property is not in the occupancy of raiyats or other persons entitled to occupy the same, and, *secondly*, where, as is usually the case in India, the property is in the occupancy of persons having a legal right of occupancy so long as they pay their rents according to established rates. Provision is, lastly, made for the partition of separate possession of a share of an undivided estate paying revenue to Government (sec. 265).

Attachment of property.

(*F*) Attachment of property. The Code then describes the kinds of property liable to attachment and sale in execution of a decree. It follows the Mesne Process Act in authorising the attachment and sale of property over which the judgment-debtor has a power which he may exercise for his own benefit. And it follows Act VI of 1855, sec. 1. cl. 1, in declaring that trust property may be taken in execution of a decree against the beneficiary[1]. It exempts from attachment twelve classes of articles,

[1] Before 1855 trust property could not be taken in execution of a judgment of the Supreme Court. 'There can hardly' (write the Commissioners, First Report, p. 65) 'be said to be any fixed practice on this subject in the Company's Courts. But we have reason to think that some Judges of the Company's Courts might hesitate to put a decree in execution against property which had been formally vested by regular deeds in trustees for the benefit of the defendant.'

such as the necessary wearing apparel of the judgment-debtor, his wife, and children; the salary of a public officer or railway servant, where it does not exceed rs. 20 a month, and is therefore absolutely necessary to enable him to live and perform his duties; the tools of artisans; implements of husbandry and cattle kept *bona fide* for agricultural purposes[1]; and the wages of labourers and domestic servants (sec. 266). Seamen's wages are exempted by the Merchant Shipping Act, 1854, 17 & 18 Vic. c. 104, sec. 233. 'The principle is that it is against public policy to make a man compulsorily idle either by taking away the tools which are necessary to enable him to earn his living, or by anticipating the wages of his daily labour and so destroying all motive for self-exertion.'

Discovery in aid of execution.

The Court is empowered to summon and examine the judgment-debtor and any other person as to any property liable to be seized in satisfaction of the decree (sec. 267). This corresponds with the English rule on discovery in aid of execution (Order xlii. r. 32).

Attachment of debts.

Special provisions are made for the attachment of debts, shares, and other moveable property not in the judgment-debtor's possession (sec. 268). 'Debts' here, like 'debts' in sec. 266, includes all pecuniary claims, whether accruing or actually owing, over which the Courts of British India have jurisdiction[2], with the following exceptions:—conditional debts, *Howell* v. *Metropolitan District Ry. Co.*, 19 Ch. D. 508; debts due to the judgment-debtor and another not a party to the judgment, *Macdonald* v. *Tacquah Gold Mining Company*, 53 L. J., Q. B. 376, and the claims exempted by the proviso to section 266, clauses (*e*), (*g*), (*h*), (*i*) and (*j*).

Thus the following debts have been held to be attachable: interest on railway stock guaranteed by one company to another, *Bouch* v. *Sevenoaks Railway*, 4 Ex. D. 133: and money in the hands of (1) the official liquidator of a company against which judgment has been obtained, *Ex p. Turner*, 2 D. F. & J. 354; (2) a re-

[1] There was a similar exemption of cattle in a Bombay Regulation (4 of 1827, sec. 62, cl. 2), suggested by the statute which gave the writ of elegit (13 Edw. I. c. 18), or, more likely, by Blackstone's account of that writ. Mr. Thorburn has recently proposed that grain and straw sufficient to keep the cultivator till the next following harvest should also be exempted. This would not be much, as in most Indian provinces there are two harvests in the year.

[2] 5 Bom. 249. But the mere circumstance that the garnishee is at the time of the application for attachment beyond the limits of British India does not exempt the debt from attachment, *ibid.*

ceiver appointed in an administration-suit, *Rapier* v. *Wright*, 14 Ch. D. 638; (3) a sheriff, the money being the proceeds of an execution levied by him, *Murray* v. *Simpson*, 8 Ir. C. L. Appx. xlv; and (4) a trustee, *Nash* v. *Pease*, 47 L. J., Q. B. 766.

Attachment of other moveable property.

Provision is also made for the attachment of other moveable property in the debtor's possession (sec. 269); of negotiable instruments (sec. 270); of property in dwelling-houses and zanánas (sec. 271); of property deposited in Court or with a public officer (sec. 272); of decrees (sec. 273); of immoveable property (sec. 274).

Attachment in execution of decrees of several Courts.

Property not in the custody of any Court is sometimes attached in execution of decrees of more Courts than one. In such cases the Code provides (sec. 285) that the Court to receive or realise such property shall be the Court of highest grade, or, where the Courts are of equal rank, the Court under whose decree the property was first attached.

General attachment.

The Code of 1859 (sec. 214) empowered the Courts to order a general attachment of the debtor's moveable property, wherever it might be found. This afforded facilities for oppression, and it was said by Mr. Cockerell in Council that 'an unscrupulous decree-holder armed with a warrant for the general attachment of his debtor's property, used it as a sort of roving commission to plunder his enemies by pouncing upon their property on the plea that, though in their possession, it actually belonged to his judgment-debtor[1].' The Code omits this provision. Section 267 seems to do all that is needed.

Sale and delivery of property.

(*G*) Of sale and delivery of property. This branch of the subject is subdivided into (*a*) general rules; (*b*) rules as to moveable property; (*c*) rules as to immoveable property.

Proclamation of sale.

Of the general rules the most important are those contained in sections 287, 291 and 294. Section 287 requires that the proclamation of sale shall specify, not only the property to be sold, but also the revenue and incumbrances (if any) to which it is liable, the amount for the recovery of which the sale is ordered, and every other thing material for the purchaser to know. For the purpose of ascertaining the matters to be so specified, the Court is empowered to summon and examine such persons as it thinks necessary.

Postponement of sale.

Section 291 enables the Court to adjourn the sale where an immediate sale is likely to cause undue injury to the judgment-debtor and the postponement will not seriously prejudice the decree-holder[2].

Decree-holder not

Section 294 declares that no holder of a decree in execution of

[1] Proceedings, 1876, p. 253.

[2] 20 Suth. 130.

which property is sold shall, without the express permission of the Court, bid for or purchase the property. to purchase.

The Code of 1859 provided (sec. 270) that the person who first attached property should be the first to be paid out of it even as against another creditor who had obtained a prior decree. This provision often led to unseemly scrambles for priority; and it was frequently matter of accident, or of favour from the ministerial officers of the Court, whether one of several decree-holders, all equally entitled, should be paid in full to the detriment of the others. The Select Committee therefore decided that there should be a rateable division among all the judgment-creditors up to the point when it becomes inconvenient to delay dealing with the assets; and section 295 accordingly declares that, whenever assets are realised in execution of a decree, and more persons than one have previously applied for execution of money-decrees against the judgment-debtor and have not been satisfied, the assets shall be divided rateably among them. But this general rule is qualified in cases where the property is subject to a mortgage or charge. And it is only a rule of procedure, not affecting the civil rights of the parties[1]. Rateable division of assets.

The rules as to moveable property deal specially with the sale and transfer of negotiable instruments and shares in public companies (secs. 296, 301, 302) and with the delivery of property to which the judgment-debtor is entitled subject to a lien (sec. 300). In the case of any property not specially provided for the Court may make a vesting order (sec. 303). Moveable property.

As to immoveable property, the Code provides that any Court other than a Court of Small Causes may order such property to be sold in execution (sec. 304). When the property is a share of undivided land, and two or more persons, one of whom is a co-sharer, respectively advance the same sum at any bidding, such bidding is deemed the bidding of the co-sharer (sec. 310). The object of this is not only to keep out strangers, but to prevent sales from being damped by the subsequent action of co-sharers. The decree-holder may apply to have a sale set aside on the ground of material irregularity. No order to set aside a sale is made unless both judgment-debtor and decree-holder have had an opportunity of being heard (sec. 313). The title to the property vests in the purchaser, not from the date of the attachment, but from that of the confirmation of the sale. The attachment may have been months or years before the purchase, and its effect is, not to deprive the judgment-debtor of the owner- Immoveable property.

[1] 22 Suth. 98: 4 Cal. 29.

ship of the property, but to place the property *in custodia legis*, and to prevent the defendant dealing with it to the plaintiff's prejudice. The purchaser is a stranger to the property till the date of his purchase, and there is no reason why he should be entitled to the rents and profits before that date.

Transfer to collector of decrees for sale of land.

The Code of 1859 contained no check upon the unreserved and unqualified sale of the land of the debtor who could not pay. There was indeed one section (248) which provided that in certain circumstances the execution of a decree might be handed over to a collector. Whether it was intended to give the collector any discretionary power in such cases may be doubted; but at all events, if this was intended, the intention was not clearly expressed, and the Courts had held that the collector was only a ministerial officer for carrying its decrees into effect. The result was that sales had gone on in a rigid mechanical way without even the check of an upset price, or of a power of adjourning the sale when there were few bidders, and with the common result that the property was bought in by the judgment-creditor himself at a great under-value[1]. The present Code therefore not only provides, as we have seen, for adjourning the sale and preventing the decree-holder from buying; it also empowers the Local Governments to declare that, in any local area, the execution of decrees for sale of immoveable property shall be transferred to the collector, and to prescribe rules for the transmission, execution and re-transmission of such decrees (sec. 320). When the execution of a decree has been so transferred, the collector may (*a*) postpone the sale so as to enable the judgment-debtor to raise the amount, or (*b*) raise the amount by letting or mortgaging the whole or part of the property, or (*c*) sell the property or so much thereof as may be necessary. Twelve sections (secs. 322–325 c) provide a procedure for the collector in exercise of this jurisdiction.

Resistance to execution.

(*H*) Of resistance to execution. The Code here deals with the cases where resistance to the execution of a decree for the possession of property is caused by the judgment-debtor, or at his instigation (secs. 329, 330); by a claimant in good faith other than the judgment-debtor (sec. 331); where the person dispossessed is not the judgment-debtor and disputes the right of the decree-holder to be put into possession (sec. 332); where the purchaser of any immoveable property sold in execution is resisted by the judgment-debtor or by some claimant in good faith (secs. 334, 335).

[1] Sir A. Hobhouse's speech, Proceedings, 1876, pp. 232, 233.

(*f*) Of arrest and imprisonment. The Code then provides for the arrest of judgment-debtors and their imprisonment in the civil gaol. The Code here prohibits the breaking open of outer doors of dwelling-houses for the purpose of making arrests, and makes due provision regarding the entry into zanánas. In the case of a decree for money when the debtor pays the amount of the decree and the costs of the arrest he is at once released. He is also released if he furnish sufficient security that he will appear when called upon and that he will within one month apply to be declared an insolvent (sec. 336). The State defrays the cost of maintaining criminal prisoners while in jail; but in civil cases, no judgment-debtor is arrested unless the decree-holder pays into Court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from his arrest until he can be brought before the Court. When he is committed to gaol, the Court fixes a monthly allowance for his subsistence to be supplied by the party on whose application the decree has been executed (sec. 339), and the judgment-debtor will be discharged on failure to pay the allowance (sec. 341, cl. *d*).

Arrest and imprisonment of judgment-debtors.

Subsistence-allowance.

Under the Code of 1859 a judgment-debtor might be imprisoned for two years if the debt exceeded rs. 500, six months if it exceeded rs. 50, and three months if it was rs. 50 or less. The Select Committee was strongly urged to abolish imprisonment altogether. Though it did not see its way to such a change, it greatly shortened those terms; and section 342 declares that no person shall be imprisoned in execution of a decree for more than six months, or if the decree be for payment of a sum not exceeding 50 rs., for more than six weeks. It is desirable that the Indian legislature should follow the example of almost every civilised country in the world[1], and get rid altogether of imprisonment for debt, which J. S. Mill called a barbarous expedient of a rude age, 'repugnant to justice as well as to humanity.' Moreover, in India, the power to imprison for debt sometimes leads to gross abuses. It was stated by the Dekkhan Raiyats Commission—and the statement when quoted in the Viceregal Council[2] was not contradicted—that 'the terror of being put into a prison, even for debt, was so extraordinary and so unreasonable among the Native population, that they were willing to make any sacrifices, even in some recorded instances to the extent of surrendering their wives and

Imprisonment for debt.

[1] Under the New York Civil Procedure Code, § 3221, a debtor may be imprisoned in one case only, viz. where his female servant recovers judgment for wages not amounting to more than fifty dollars, and his property is insufficient to satisfy the execution.

[2] Abstract of Proceedings, 1876, p. 271.

daughters to the creditor for immoral purposes, rather than be sent to jail; and further, that it led to absolute slavery, and also to the execution of fresh bonds upon any terms whatever.'

All persons attested for and belonging to Her Majesty's Indian Army are exempt from liability to be arrested for debt[1]; and a soldier of Her Majesty's European forces while serving as such is similarly exempt, unless the decree is for a sum exceeding £30 exclusive of costs[2].

Chapter XX. Of Insolvent Judgment-debtors.

The Code of 1859 contained the germ, but only the germ, of an insolvent law. It provided in sec. 271 that when a sale took place under a decree the proceeds should first be applied in paying the holder of that decree and then go rateably and without any priority among the other decree-holders. It then declared that an arrested debtor might apply for discharge on giving up all his property; that if the Court discharged him, his person was not to be arrested again under the same decree; and that the decree-holder was to be paid out of the proceeds of his property. But his person was not protected as against any debt other than that for which he had been arrested; his property was not protected at all; and the Court was not told what to do with his property after paying the decree-holder. These provisions were but little used, and indeed there was small inducement to the debtor to avail himself of them[3]. An insolvent law, if possible more imperfect, was provided for the Panjáb by Act IV of 1872, secs. 24-31.

Chapter XX of the Code of 1882 contains a simple but complete procedure in insolvency, adapted to the provincial Courts[4]. Any judgment-debtor arrested or imprisoned in execution of a decree for money (which includes a decree for damages), or against whose property an order of attachment has been made in execution of such a decree, may apply to the District Court for a declaration of insolvency. Any

[1] Act V of 1869, Part III, (b). The Governor General, the Governors of Madras and Bombay, the members of their respective councils, the Lieutenant Governor of Bengal and the Judges of the High Courts are exempt from arrest by order of the Presidency Small Cause Courts (Act XV of 1882, sec. 93). And the new Provincial Small Cause Courts Act, IX of 1887 (section 15 and sched. II, clauses 1 and 2), excepts from the cognisance of these Courts suits in which such orders could be made.

[2] 44 & 45 Vic. c. 58, s. 144.

[3] Sir A. Hobhouse's speech, 23rd February, 1875, Abstract of Proceedings.

[4] That it applies to debtors on the original side of the Presidency High Courts, see 11 Cal. 451: 8 Mad. 276. But the jurisdiction in insolvency under 11 & 12 Vic. c. 21 still exists in the Presidency Towns.

holder of such a decree may also apply that the judgment-debtor may be declared an insolvent. The application sets forth, amongst other things, the particulars of the debtor's property, the place in which it is to be found, his willingness to put it at the disposal of the Court, the particulars of all pecuniary claims against him, and the names and residences of his creditors. The Court fixes a day for hearing the application, and causes a copy to be served on the creditors, or, where the applicant is the decree-holder, on the judgment-debtor. On the day so fixed the Court examines the judgment-debtor as to his then circumstances and as to his future means of payment, and hears the creditors in opposition to his discharge. If the Court is satisfied that the statements in the application are substantially true, and that the debtor has not with intent to defraud his creditors concealed or transferred any part of his property since the institution of the suit in which was passed the decree in execution of which he was arrested or imprisoned, that he has not recklessly contracted debts or given an unfair preference, and that he has not committed any other act of bad faith regarding the matter of the application, the Court may declare him to be an insolvent, and may either discharge him, or appoint a receiver of his property. The creditors then prove their debts: the Court frames a schedule of such persons and debts; and the declaration of insolvency is deemed to be a decree in favour of each creditor for his debt. But a partner in an insolvent firm is not entitled to prove in competition with its creditors. The order appointing a receiver vests in him all the insolvent's property, except necessary wearing apparel, and other things exempted from attachment and sale in execution of a decree.

Discharge of insolvent.

Duty of receiver.

The receiver then gives security and collects the assets, and on his certifying that the insolvent has placed him in possession thereof, the Court may discharge the insolvent on such conditions as it thinks fit (sec. 355). The receiver then proceeds to convert the property into money, and to pay thereout (1) debts etc. due by the insolvent to Government, (2) the decree-holder's costs, and (3) debts secured by mortgage of the insolvent's property. He then distributes the balance among the scheduled creditors rateably according to the amounts of their respective debts[1], and he retains as remuneration a commission to be fixed by the Court not exceeding five per cent. on the amount of the balance distributed. In the case of a large balance, a commission of three or even of two per cent. is sufficient. The receiver, lastly, delivers the surplus, if any, to the insolvent or his legal representative.

[1] As to calls due from insolvent contributories, see Act VI of 1882, secs. 125, 127, 144 (*e*).

An insolvent when discharged cannot be arrested or imprisoned on account of any of the scheduled debts; but his property, except what is vested in the receiver and except the particulars exempted from attachment and sale, is liable to attachment and sale, until the debts due to the scheduled creditors are satisfied to the extent of one-third, or until the expiry of twelve years from the date of the order of discharge (sec. 357). When the amount of the scheduled debts is only rs. 200 or less, the Court may declare the insolvent absolved from further liability. A similar declaration must be made after the scheduled debts have been satisfied to the extent of one-third, or after the expiry of twelve years from the order of discharge.

In the case of a dishonest applicant for a declaration the Court *must*, if any of his creditors so require, sentence the applicant to imprisonment for a term not exceeding a year, or it *may*, if it thinks fit, send him to the Magistrate to be dealt with according to law.

The foregoing provisions are intended only for natural persons. For the case of an insolvent company provision is made by Act VI of 1882.

Part II. Of Incidental Proceedings.

The Code here deals with the following subjects: the death, marriage and insolvency of parties (secs. 361–372): the withdrawal and adjustment of suits (secs. 373–375); payment into Court (secs. 376–379); requiring security for costs (secs. 380–382), and issuing commissions (secs. 383–396).

Death, marriage, and insolvency of parties.

The rules as to the procedure in suits when a party dies, marries, or becomes insolvent were originally taken, with some modifications, from the Common Law Procedure Act, 1854 (15 & 16 Vic. c. 76); and see Order xvii. r. 1. The Code does not here provide that suits shall not become defective by the assignment, creation or a devolution of any estate or title *pendente lite*. But see as to such assignments the Transfer of Property Act, sec. 52[1]: *Seear* v. *Lawson*[2], and *Kino* v. *Rudkin*[3].

Withdrawal and adjustment of suits.

The rules as to withdrawal of suits apply to suits at any stage, whether in the original or appellate Courts, and even to proceedings in execution[4]. They correspond with the English Order (xxvi) as to discontinuance. But though the Code allows the plaintiff to abandon part of his claim, it does not, as it ought, permit him to

[1] Vol. I. of this work, p. 766.
[2] 16 Ch. D. 121.
[3] 6 Ch. D. 160, and see *Campbell* v. *Holyland*, 7 Ch. D. 166.
[4] 5 Mad. H. C. 298.

discontinue his suit against one or more of the defendants, while continuing his suit against the rest. The Code is also defective in not providing for giving to the defendant notice of the plaintiff's withdrawal or abandonment[1], so that the defendant may show cause why the requisite permission should not be granted. It should also provide here for striking out, on the application of the defendant, the whole or any part of his alleged grounds of defence.

Payment into Court.

The provisions as to payment into Court apply to every suit for debt or damages. The payment amounts to an admission of the claim in respect of which it is made, and there is no power (as there is under the English Order xxii. r. 1) to pay money into Court with a defence denying liability. Provision is made in section 379 for the two cases (*a*) where the plaintiff accepts the deposit as satisfaction in part, and (*b*) where he accepts it as satisfaction in full.

Requiring security for costs.

The other incidental proceedings here dealt with are: requiring security for costs where the plaintiff resides out of or leaves British India and does not possess sufficient immoveable property in that country[2], and issuing commissions.

Commissions.

Commissions are of four kinds; to examine witnesses (secs. 383–391); to make local investigations (secs. 392–393); to examine accounts (secs. 394–395); and to make partition of immoveable property (sec. 396).

1. To examine witnesses.

Most of the provisions for commissions to examine absent witnesses were adapted by the framers of the Code of 1859 from Act VII of 1841. The present Code provides here for four classes of witnesses:

(1) persons resident within the jurisdiction of the Court who are exempted under section 640 or 641 from attending the Court, or who are from sickness or infirmity unable to attend it (sec. 383);

(2) persons resident beyond the jurisdiction;

(3) persons about to leave the jurisdiction before the date on which they are required to be examined in Court; and

(4) officers of Government who cannot attend the Court without detriment to the public service (sec. 386).

Commissions to examine the first class of witnesses may be issued to any proper person (sec. 385): commissions to examine the other classes must be issued either to a Court within whose jurisdiction the witnesses reside or to a pleader of a High Court (sec. 386). Unless under the circumstances mentioned in section 390, evidence taken under a commission cannot be read as evidence

[1] 6 All. 211.

[2] Where a suit is brought by collusion or instigation of a third party the Code gives no power to require the plaintiff to furnish security; see Fulton, 157, per Peel C.J.

in the suit without the consent of the party against whom it is offered. Section 400 requires the Court to direct the parties to appear before the Commissioner. This dispenses with the necessity of giving the other side notice of the issue of a commission.

The English statute 22 Vic. c. 20 provides for taking evidence in suits and proceedings pending before the chartered High Courts in places out of their jurisdiction.

2. For local investigations.

The sections as to commissions for local investigations were founded on three old regulations[1]. In suits relating to disputed boundaries, it is sometimes necessary that an actual inspection and investigation on the spot should be made, either by the judge himself or by a trustworthy commissioner in his stead. There has always been some difficulty in finding persons on whom sufficient reliance may be placed for making these investigations; and the commissioner employed is often accused by one of the parties, and sometimes with truth, of having been corrupted by the other. Cases of greater complexity occur where there is reason to fear that he may have been tampered with by both. Before the Code of 1859 was enacted this difficulty was aggravated by the fact that the commissioner, though appointed to take the examination of witnesses and to make plans of localities, could not himself be examined as a witness. The latter part of section 180 of Act VIII of 1859 (= sec. 393 of the present Code) removed this difficulty, by allowing the commissioner to be personally examined as a witness, though, to prevent him from being unduly harassed, the permission of the Court is made a condition precedent to his examination by a party. In the Bengal Presidency, ámíns, or Native commissioners employed under Act XII of 1856, are usually deputed to make investigations under these provisions.

3. To examine accounts.

The sections as to commissions to examine accounts are employed when a party desires to use in evidence something more than the particular entries referred to in section 62 of the Code; and they should be read in connexion with the Evidence Act, section 65, cl. (*g*).

4. To make partitions.

The sections as to partition relate only to property *not* paying revenue to Government. Partitions of immoveable property paying revenue are left to be dealt with by various local laws relating to this subject[2].

[1] Ben. Reg. 4 of 1793, sec. 17: Mad. Reg. 3 of 1802, sec. 18: Bom. Reg. 4 of 1827, sec. 31.

[2] See in Bombay, Bom. Act V of 1879, secs. 113, 114, 117; in the Lower Provinces, Ben. Act VIII of 1876; in the N. W. Provinces, Act XIX of 1873; in the Panjáb, Act XXXIII of 1871, sec. 65 (2); in Oudh, Act XVII of 1876; in the Central Provinces, Act XIX of 1863; in Ajmer, Reg. II of 1877.

Part III. Of Suits in Particular Cases.

This Part contains eight chapters relating to the following subjects: suits by paupers (secs. 401–415); suits by or against Government or public officers (secs. 416–429); suits by aliens and by or against foreign and native rulers (secs. 430–434); suits by or against corporations and companies (secs. 435, 436); suits by or against trustees, executors, and administrators (secs. 437–439); suits by or against minors and persons of unsound mind; (secs. 440–464); suits by or against military men (secs. 465–469); and, lastly, interpleader suits (secs. 470–476).

Suits by Paupers.

The right to sue *in forma pauperis* is founded on a statute of Henry VII, which provided that every poor person having cause of action should have, by discretion of the Chancellor, writs original and writs of subpœna free of charge. The Indian legislature dealt with the subject by Act IX of 1839[1]. In England the amount which excludes the operation of the rules as to paupers was formerly £5, but is now £25[2]. The Code of Civil Procedure defines a pauper as a person not possessed of sufficient means to enable him to pay the court-fee prescribed for the plaint, or not entitled to property worth rs. 100 other than necessary wearing apparel and the subject-matter of the suit[3]. A pauper cannot sue for loss of caste, libel, slander, abusive language or assault (sec. 402); but, subject to these restrictions, he may bring and prosecute all suits *ex delicto* as well as *ex contractu*[4]. His application for leave to sue as such will be rejected when it appears that he has entered into any champertous agreement (sec. 407). So he will be dispaupered if, after being allowed to sue as a pauper, he enters into a similar agreement (sec. 414). Where his application to sue as a pauper in respect of any right has been rejected on this or any other ground mentioned in section 407, he cannot sue in the ordinary way in respect of such right unless he first pays the costs incurred by Government in opposing his application (sec. 413).

In England, no one can sue as a pauper unless he has laid a case before counsel for his opinion whether or not he has reasonable

[1] There had been Regulations on the subject: Ben. Reg. 28 of 1814: Mad. Reg. VII of 1818, &c.: Bom. Reg. VI of 1827.

[2] Order xxvi. r. 22.

[3] In Bengal, Civil Court Ámíns may be employed to ascertain the means of persons suing *in forma pauperis*, Act XII of 1856, sec. 5, cl. 5.

[4] Fulton, 386, where the defendant was allowed to defend *in forma pauperis* an action of trespass for an assault.

grounds for proceeding and (one must suppose) obtained an opinion in his favour. When he is admitted to sue or defend as a pauper the Court may assign a counsel or solicitor, or both, to assist him; and any one taking or seeking any remuneration for conducting his case is guilty of a contempt (Order xvi. rr. 23, 26, 27). The Code provides (secs. 406, 407) for examining the pauper or his agent, and for rejecting his application if his allegations do not show a right to sue. But there is nothing in the Code corresponding with the second and third of the English rules.

A pauper plaintiff may, apparently, be required under section 380 to give security for costs[1]. As to the discretion of the judges of the Presidency Small Cause Courts to remit the costs of paupers, see Act XV of 1882, sec. 74.

Suits by or against Government.

The Courts of Small Causes have no jurisdiction in suits concerning any act ordered or done by the Governor General in Council or the Local Government[2]. But save as aforesaid, suits against the Government or public officers may be instituted in any Court however inferior. Two months' previous notice must be given (sec. 424), and no warrant of arrest can be issued without the consent of the District Judge (sec. 425).

Suits by Aliens.

The Code then lays down rules as to when private aliens and foreign States may sue in the Courts of British India (sec. 430).

Aliens.

Alien friends may always sue[3]: alien enemies only when they reside in British India with the permission of the Government.

Foreign States.

A foreign State may sue provided it has been recognised by Her Majesty or the Government of India, and the object of the suit is to enforce the private, as distinguished from the political[4] or territorial, rights of the head or of the subjects of that State (sec. 431). If a foreign chief become a suitor in our territories he may fairly be subjected to the incidents of the position he has chosen to assume. But in order to protect the dignity of such personages and to avoid awkward complications, the Code bars suits *against* sovran princes, ruling chiefs, ambassadors and envoys, except with the consent of Government, exempts their persons from arrest, and declares that

[1] See *Burke* v. *Lidwell*, 1 Jo. & Lat. 703.

[2] See Act XV of 1882, sec. 19, Act IX of 1887, sec. 15, and Sched. II.

[3] See the Naturalization Act, XXX of 1852, sec. 8.

[4] That infringing a prerogative right of a foreign state does not constitute a cause of action, see *Emperor of Austria* v. *Day*, 3 D. F. & J. 217, per Turner L.J.

no decree shall be executed against their property unless with a like consent (sec. 433). The Code also provides (sec. 434) for the execution in British India of the decrees of the Courts of such Native States as the Governor General in Council declares worthy of this privilege.

Suits by and against Corporations and Companies.

The chapter on suits by and against corporations and companies authorised to sue and be sued in the name of a trustee provides for the subscription and verification of the plaint (sec. 435), and for service of the summons on a corporation or company (sec. 436). Explanation II to section 17 declares where, for the purpose of determining the forum, a corporation or company shall be deemed to carry on business. The Court may require the personal appearance of any principal officer of the corporation or company, able to answer material questions relating to the suit. Section 124 provides for delivering interrogatories to any member or officer of a litigant corporation.

As to the remedies against a corporation which neglects a statutory duty, see 3 Mad. 209, 210. Injunctions against a corporation are binding on its members and officers (sec. 495). In England any judgment or order against a corporation which it wilfully disobeys may, by leave of the Court, be enforced by writ of sequestration against the corporate property, or by attachment against the directors or other officers, or by writ of sequestration against their property (Order xlii. r. 31).

Special provisions as to suits by and against literary, scientific, and charitable societies registered under Act XXI of 1860 are contained in that Act, sections 6, 7, 8.

Suits by and against Trustees and Executors.

In the chapter relating to suits by and against trustees, executors and administrators, the Code, first, provides that in suits concerning trust-property, the trustee shall represent the beneficiaries, and that, unless the Court otherwise directs, they need not be made parties (sec. 437). This is equivalent to 15 & 16 Vic. c. 86, s. 42, and Order xvi. r. 8. The Court will order the beneficiaries to be made parties when the trustees etc. are wholly uninterested in the matter[1], or have an adverse interest therein[2]. The Code then directs that, when there are several executors or administrators,

[1] *Clegg* v. *Rowland*, L. R., 3 Eq. 373.
[2] *Payne* v. *Parker*, L. R., 1 Chan. App. 327.

they must all be made parties to a suit against one or more of them (sec. 438), except in the case of executors who have not proved and administrators who are outside the jurisdiction. It, lastly, declares that, unless the Court otherwise directs, the husband of a married administratrix or executrix shall not be a party to a suit by or against her (sec. 439).

Suits by and against Minors and Lunatics.

The chapter on suits by and against minors and persons of unsound mind is substantially taken from the rules of the High Court at Fort William, dated 10th June, 1874. But the Code allows married women to act as next friends (sec. 445), and the Court is in every case, on being satisfied of a defendant's minority, to appoint a guardian *ad litem* (sec. 443); and no order to change a minor's pleader is required. Nothing in the greater part of this chapter applies to minors or persons of unsound mind for whose person or property a guardian or manager has been appointed by a Court of Wards or by the Civil Court under any local law.

As to redemption suits on behalf of minor mortgagors, see Act IV of 1882, sec. 91, cl. (*d*): as to suits by minors in the Matrimonial Court, Act IV of 1869, sec. 49: as to suits in Presidency Courts of Small Causes by a minor for wages, piece-work or work as a servant, Act XV of 1882, sec. 32.

Suits by and against Military Men.

The chapter (XX) on suits by and against military men provides that where a party to a suit is an officer or soldier, is actually serving as such, and cannot obtain leave of absence, he may authorise any one to sue or defend in his stead. The necessary power of attorney is exempted from the court-fee. The Code then contains provisions as to the signature etc. of this authority, and as to the powers of persons so authorised, and as to service of process upon them or upon defendant officers and soldiers (secs. 467, 468). The chapter ends with a section providing for execution of process within the limits of a cantonment or garrison.

Interpleader.

The chapter on interpleader (XXXIII) is substituted for Act VIII of 1841 (= 1 & 2 Wm. IV. c. 58), which was accordingly repealed by Act X of 1877. It shows when an interpleader suit may be instituted (sec. 470); what the plaint must state (sec. 471); when the thing claimed must be paid into Court (sec. 472); the procedure at the first hearing (sec. 473); when agents and tenants

can compel their principals or landlords to interplead (sec. 474); how the plaintiff's costs may be secured (sec. 475); and, lastly, the procedure where the defendant in an interpleader-suit is actually suing the stakeholder in another suit (sec. 476). This last provision is somewhat at variance with Lord Cottenham's doctrine that the plaintiff must not be under any liabilities to either of the defendants beyond those which arise from the title to the property in contest [1].

Under the English Interpleader Acts the common-law Courts could only compel interpleader where one of the claimants had actually commenced an action against the stakeholder. The Code follows the practice in this respect of the equity Courts.

On the other hand, the Code differs from the old equity practice, and follows that of the common-law Courts, in allowing a bailee [2] to cause his bailor to interplead with a third party claiming the subject-matter by an adverse independent title. Section 474, however, prohibits an agent and a tenant from compelling his principal and landlord to interplead with any person claiming otherwise than through the principal and landlord.

The English Courts have ruled that the Crown cannot be made to interplead (*Candy* v. *Maugham*, 1 D. & L. 745), and the Indian Courts would probably follow this ruling. But it would not apply to the Secretary of State for India in Council, who stands in the place of the East India Company.

30 & 31 Vic. c. 142, s. 31 provides in England for an interpleader where claims are made in respect of goods taken in execution or the proceeds thereof. There is no such provision in India.

Part IV. Provisional Remedies.

We now come to the provisional remedies which may be required to prevent the defendant absconding, and property disappearing or being wasted pending litigation. The Code here deals with the following subjects: arrest before judgment; attachment before judgment; compensation for improper arrests or attachments; temporary injunctions; interlocutory orders; and, lastly, the appointment of receivers.

Arrest and Attachment before Judgment.

Arrest before judgment.

The sections (477–482) as to arrest before judgment correspond with the English Order lxix, and supersede the writ of *ne exeat regno*. They apply to every suit—in tort as well as in contract—

[1] See *Crawshay* v. *Thornton*, 2 My. & Cr. 1, 19.

[2] e.g. a wharfinger.

except suits for the possession of immoveable property, and they enable the Court, on the application of the plaintiff, to arrest the defendant and compel him to give security for appearing to answer any decree that may be passed against him. A similar power is given by the Companies Act (VI of 1882, sec. 164) when a contributory is about to abscond or to remove or conceal property.

Attachment before judgment.

Sections 483–490 enable the Court on the application of the plaintiff to require the defendant to give security to satisfy the decree, and, in default, to have his property attached. Provision is made (sec. 491) for compensating the defendant for an improper arrest or attachment.

Injunctions and Interlocutory Orders.

The sections on injunctions (492–497) deal only with temporary, or, as they are sometimes called, provisional injunctions. The subject of perpetual injunctions is treated in the Specific Relief Act, secs. 32–57[1]. A temporary injunction may be granted in three cases: (1) where any property in litigation is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree; (2) where the defendant threatens or is about to remove or dispose of his property with intent to defraud his creditors; and (3) where the plaintiff sues to restrain the defendant from committing a breach of contract or other injury (secs. 492, 493). The imprisonment by which injunctions under this chapter are enforced cannot exceed six months (sec. 493). In all cases except those of great urgency, the Court must before granting an injunction cause the application for it to be notified to the opposite party (sec. 494). Where an injunction has been issued on insufficient grounds, compensation not exceeding rs. 1000 may be given to the defendant (sec. 497).

Temporary injunction.

Interlocutory orders.

An interlocutory order may be made to sell perishable articles, and for the detention, preservation or inspection of any property the subject of a suit. For these purposes the Court may permit the entry on or into any land or building in possession of any party to the suit, the taking of samples, and the trial of experiments. The sections (498–500) on this subject correspond with the English Order xxxii. rules 2, 3 and 4.

Receivers.

Chapter XXXVI provides for the appointment of a receiver whenever the Court thinks it necessary for the realisation, preservation,

[1] See Vol. I. of this work, pp. 937, 983–990.

or better custody or management of any property in litigagation or under attachment[1]. The Court commits the property to the receiver's custody or management if necessary, and removes the person in possession of such property. But it would seem that the receiver has title even before the security is perfected[2]. The receiver gives such security as the Court thinks fit, passes his accounts, pays the balance due from him, and is responsible for any loss occasioned to the property by his wilful default or gross negligence. In exercising these powers where the applicant is a creditor, the Court should have regard to the amount of the debt claimed by him, to the amount which may probably be obtained by the receiver, and to the probable costs of his appointment (Order l. r. 15 A). The jurisdiction under this chapter requires much judgment in its exercise, and is therefore confined to High Courts and District Courts. The lower Courts, moreover, have not a sufficient field open to them for selecting proper receivers.

The appointment of a receiver may be made at the instance of any party, and the defendant, for example, need not bring a cross-suit[3].

Part V. Of Special Proceedings.

The Code then deals with four kinds of special proceedings not of the nature of regular suits. These proceedings are: reference to arbitration; proceedings on agreement of parties; summary procedure on negotiable instruments; and suits relating to public charities.

Reference to arbitration.

The provisions of the Code as to reference to arbitration (secs. 506–526) are ultimately founded on the Common Law Procedure Act, 1854, secs. 3–10, which, however, deals with compulsory references. The Code here provides for the case in which the parties to a suit desire that any matter in difference between them *in the suit* be referred for arbitration. They apply in writing for an order of reference. They nominate the arbitrator, or if they cannot agree with respect to the nomination, or the person named refuses to act, the Court nominates (sec. 507). The Court makes an order

[1] As to the appointment of a receiver by a mortgagee, see Act XXVIII of 1866, sec. 6 (supra, Vol. I. p. 817). That a receiver cannot be appointed for property in the hands of an official liquidator, see the Companies Act, VI of 1882, sec. 141.

[2] See in England, *Edwards* v. *Edwards*, 2 Ch. D. 291: *Ex p. Evans*, 13 Ch. D. 252.

[3] See in England, *Sargant* v. *Read*, 1 Ch. D. 600.

of reference, specifying a time for delivering the award, and, when there are two or more arbitrators, providing, by appointment of an umpire or otherwise, for difference of opinion among them (sec. 509). The Court issues the same process to the parties and witnesses whom the arbitrators desire to examine as it may issue in suits tried before it (sec. 513.) The arbitrators may state a special case (sec. 517.) The Court may correct the award in certain cases (sec. 518). It may also remit awards for reconsideration (sec. 520), and an award remitted becomes void if the arbitrators refuse to reconsider it. But no award can be set aside except where the arbitrator or either party has been guilty of certain misconduct, or the award has been made after the Court has superseded the arbitration (sec. 522). If the Court sees no cause to remit the award and there is no application to set it aside, the Court gives judgment accordingly, and thereupon follows a decree, from which no appeal lies except in so far as it is in excess of, or not in accordance with, the award (sec. 522). The object of this is to give finality to proceedings in arbitration [1].

Filing agreements to refer.

The Code also provides for filing in Court agreements to refer to arbitration (secs. 523, 524) and awards made in matters referred to arbitration without the intervention of a Court (sec. 524). Compare the English rules as to making a voluntary submission to arbitration a rule of one of the superior Courts, 3 & 4 Wm. IV. c. 42, s. 29, and 17 & 18 Vic. c. 125, s. 17.

The Indian Courts have power to make orders of reference also in suits relating to religious endowments [2] and in suits against Dekkhan agriculturists [3].

Proceedings on agreement of parties.

Persons claiming to be interested in the decision of any question of fact or of law may enter into an agreement in writing stating the question in the form of a case for opinion, and providing that upon the finding of the Court thereon, certain money shall be paid or property delivered by one of them to the other, or that one or more of them shall do or refrain from doing some other specified act (sec. 527). The agreement is filed as a suit in the Court of the lowest grade having jurisdiction in the matter to which it relates; and the case is heard and disposed of as a suit (secs. 529–531).

These provisions correspond with the English rules as to stating questions of law in the form of a special case (Order xxxiv. rr. 1–8). But the Code provides for stating questions of fact as well

[1] 4 All. 286, per Straight J.

[2] Act XX of 1863, sec. 16.

[3] Act XVII of 1879, sec. 15.

as of law. On the other hand, the Code does not enable a Judge to raise a question of law by special case or otherwise without consent, and there is no provision (such as is contained in the English rule 4) as to special cases in matters to which a married woman, minor, or person of unsound mind is a party.

Summary procedure on negotiable instruments.

Chapter XXXIX provides a summary procedure on negotiable instruments unless the defendant shows a defence on the merits within a specified time. It applied in the first instance only to the High Courts and Courts of Small Causes in the three Presidency-towns, and to the Courts of the Recorder of Rangoon and the Judge of Karáchi. But it may be extended by the Local Government to any other Court having ordinary original civil jurisdiction, and it has been so extended in the Madras Presidency, to all the District Munsifs' Courts, and in Burma, to the Courts of the Judge of Maulmain, and the Deputy Commissioner of Akyab. It corresponds with 18 & 19 Vic. c. 67, which Sir Henry Maine had introduced into India as Act V of 1866. In accordance with a decision of Bramwell B. on the English statute, the Code here declares that the defendant need not pay into court the sum mentioned in the summons unless his defence is not *prima facie* sustainable, or there is reasonable doubt as to its good faith.

Suits under this chapter must be brought within six months from the time the instrument sued on becomes due and payable[1].

The principle embodied in 18 & 19 Vic. c. 67 has recently been extended[2] in England to actions for the recovery of land by landlords against tenants holding over or persons claiming under such tenants; and it seems worthy of consideration whether there should not be a similar extension in India, so far as regards the houses, gardens, mines and quarries to which the Transfer of Property Act, chap. v, applies.

Public charities.

Chapter XL deals with suits relating to trusts created for public charitable or religious purposes. The Supreme Courts in the Presidency-towns had an equitable jurisdiction over charities, and under 53 Geo. III, c. 155, s. 111, the Advocate General had the right to appear and represent the Crown in informations for the administration of charitable funds[3]. This jurisdiction the present High Courts inherited. But the provincial Courts had no such jurisdiction. The Code here provides that in case of breach of trust for a public charitable or

[1] See the Limitation Act, infra, Sched. II, art. 5.

[2] See Order xiv. r. 1.

[3] See 4 Moore, I. A. 190.

religious purpose, or whenever the direction of the Court is deemed necessary for the administration of such a trust, the Advocate General or two or more persons directly interested in the trust may sue, either in the High Court or the District Court, for a decree appointing new trustees and otherwise dealing with the administration of the trust.

To a suit under this chapter by private beneficiaries the Code requires the consent of the Advocate General or (outside the Presidency-towns) the Collector, or such officer as the Local Government appoints in this behalf.

Part VI. Of Appeals.

The first five Parts of the Code deal, as we have seen, with suits and other proceedings in a Court of first instance. But the unsuccessful party may be (and in India, as a rule, is) dissatisfied with the decision of that Court. In such case he generally has the right to appeal to a superior tribunal. If, then, he exercises that right, and either party is dissatisfied with the decision of the appellate Court, he may, as a rule, have a second appeal to the High Court. Lastly, from the decision of the High Court on this second appeal there may, in certain cases, be an appeal to the Queen in Council.

Part VI accordingly contains five chapters dealing with the following classes of appeals: appeals from original decrees (secs. 540–583); appeals from appellate decrees, otherwise called second appeals (secs. 584–587); appeals from orders (secs. 588–591); pauper appeals (secs. 592, 593); and, lastly, appeals to the Queen in Council (secs. 594–616).

Appeals from Original Decrees.

The Code here begins by declaring that appeals shall lie from all decrees (as defined in sec. 2) of the Courts of first instance, unless when such appeals are expressly barred by the Code itself[1] or some other law, such, for example, as the Limitation Act[2], and the Acts relating respectively to Courts of Small Causes[3], to summary suits for possession of immoveable property[4], to the trial of claims for waste lands[5]. The procedure on appeal is of extreme

[1] See secs. 283, 332, 629.

[2] Act XV of 1877, sec. 4, and Sched. II, Nos. 151, 152, 153, 156.

[3] Act XV of 1882, secs. 37, 39: Act IX of 1887, sec. 27.

[4] Act I of 1871, sec. 9; see Vol. I. of this work, pp. 948-949.

[5] Act XXIII of 1863, sec. 14. See also the bars in Act XXI of 1866 (Native Converts' Marriages), sec. 29: Act XV of 1872 (Christian Marriages), sec. 46; and the following local enactments: Act XVII of 1879 (Dekkhan Agriculturists), sec. 33: Bengal Act VII of 1876, sec. 62: Mad. Reg. XIV of 1816, sec. 5.

simplicity. The appellant presents a memorandum, accompanied by a copy of the decree appealed against. The Code lays down rules as to the form and contents of this memorandum (sec. 541), and forbids the appellant to urge, without the leave of the Court, any ground of objection not set forth therein (sec. 542). To stop the practice of presenting appeals merely for the purpose of delaying execution, the Code declares (sec. 545) that execution of a decree is not stayed by reason only of its having been appealed; but the appellate Court may stay execution when substantial loss may otherwise result to the appellant, and he applies without unreasonable delay and gives security for performing such decree as may ultimately be binding on him. Sections 548–570 prescribe the procedure after the appellant's memorandum is admitted. The Code is so framed as to enable the parties to conduct their own business at the expense of as little personal inconvenience as possible. It is necessary, therefore, that they should have due warning when the Court is able to proceed with the hearing of the cause. To afford them reasonable time for preparation and for instructing their professional agents if they choose to employ any, a day is fixed for hearing the appeal, so as to allow the respondent sufficient time to appear and answer (sec. 552), and notice of the day so fixed must be published and served on him (sec. 553). If a party neglects to appear on the day so fixed, the consequence is judgment by default in the case of the appellant, and proceeding *ex parte* in the case of the respondent (sec. 556). This is as near an approach to the practice in original suits as the different nature of an appeal admits of. Sections 571–578 contain rules as to the judgment in appeal. In order that the litigants may understand the grounds of the decision, and exercise, if they see fit, the right of second appeal[1], section 574 requires the judgment to state the points for determination, the decision thereupon, the reasons for the decision, and, when the decree appealed against is reversed, the relief to which the appellant is entitled. This last provision was suggested by Sir B. Peacock's ruling in *Bell* v. *Gurudas Roy*, 1 Ben. A. C. 50.

Judgment in appeal.

When the appeal is heard by two judges who differ in opinion on a point of law, the appeal may be referred to one or more of the other judges of the same Court, and is decided according to the majority (if any) of all the judges who have heard the appeal, including those who first heard it. Where there is no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree is affirmed (sec. 575). No decree

Difference of opinion.

[1] 10 Cal. 935, per Field J.

can be reversed or substantially varied in appeal, on account of any error, defect or irregularity not affecting the merits of the case *or the jurisdiction of the Court* (sec. 578). This provision, which resembles that in the Code of Criminal Procedure, section 537, has lately been modified by sec. 11 of the Suits Valuation Act, VII of 1887 [1].

Decree in appeal.

The decree in appeal is then dealt with (secs. 579–583). A decree of affirmance should contain, in addition to the particulars mentioned in section 579, so much of the decree below as it is intended to supersede, and thus avoid the necessity of a reference to the superseded decree [2].

Second Appeals.

Grounds of second appeal.

The Code then treats of second appeals [3], i. e. appeals to the High Court from appellate decrees by subordinate Courts. Such appeals lie on the following grounds and no others (secs. 584, 585):—

(*a*) the decision being contrary to some specified law—i.e. legislative enactment—or usage having the force of law—i. e. the common or customary law of the country or community [4]:

(*b*) the decision having failed to determine some material issue of law or usage having the force of law:

(*c*) a substantial error or defect in the prescribed procedure, which may possibly have produced error or defect in the decision of the case on its merits.

In order to cause finality in petty litigation relating to moveable property, the Code then provides that no second appeal lies in any suit of the nature cognisable in Courts of Small Causes (as to which see Act IX of 1887, sec. 15), when the amount or value of the subject-matter of the original suit does not exceed rs. 500 (sec. 586).

Appeals from Orders.

Appeals from orders.

The next chapter (XLIII) enumerates the orders under the Code from which alone appeals lie. All orders based on such appeals are final. An appeal is allowed (sec. 588, cl. 29) from any order inflicting a penalty on account of a contempt committed in the face of the Court, even though the person affected by the order is not a party to the suit.

Pauper Appeals.

Pauper appeals.

Pauper appeals are dealt with by Chapter XLIV. Applications for permission to appeal as a pauper will be rejected unless the Court on perusing the judgment and the decree appealed against sees reason to think the latter 'contrary to law or to some usage having the force of law [4],' or is otherwise erroneous or unjust.

[1] See infra, next after the Court Fees Act.

[2] 14 Moo. I. A. 492.

[3] The old misleading terms 'regular appeals' and 'special appeals' are discarded.

[4] 7 All. 653, per Petheram C.J.

Appeals to the Queen in Council.

Appeals to the Queen in Council.

The next chapter (XLV) deals with appeals to the Queen in Council, that is to say, the Judicial Committee of the Privy Council, to whom, in causes of a certain amount, there is an appeal in the last resort from the sentences of the Courts of British India, and of all the other dependencies and colonies of the realm [1].

This chapter reproduces the provisions of Act VI of 1874, which had been, as a Bill, submitted to, and approved by, the Judicial Committee, and which was repealed and re-enacted by the Code of 1877. It declares that an appeal lies to the Queen in Council—

(*a*) from any final decree passed on appeal by any Court of final appellate jurisdiction;

(*b*) from any final decree passed by a High Court in the exercise of original civil jurisdiction; and

(*c*) from any other decree where the case is certified to be a fit one for appeal (sec. 596).

But this declaration is subject to any rules that may from time to time be made by the Judicial Committee, and also to the following provisions:—

1. In each of the cases mentioned in clauses (*a*) and (*b*) the amount or value of the subject-matter of the suit in the Court of first instance, and the amount or value of the matter in dispute on appeal to the Queen in Council, must be at least rs. 10,000, or the decree must involve, directly or indirectly, some claim or question to or respecting property of like amount or value [2].

2. Where the decree affirms the decision of the Court immediately below the Court which passed it, the appeal must involve some substantial question of law.

3. No appeal lies to the Queen in Council (1) from the judgment of a chartered High Court where an appeal from such judgment can be preferred to a Division Bench, (2) from a decree in a suit of the nature cognisable in Courts of Small Causes when the amount or value of the subject-matter of the original suit does not exceed rs. 500.

The rest of the chapter contains rules as to the application for certificate as to value or fitness; the security and deposit required

[1] See 3 & 4 Wm. IV. c. 41. The statutory provisions relating specially to Indian appeals are 13 Geo. III. c. 63, sec. 18: 37 Geo. III. c. 142, sec. 16; 3 & 4 Wm. IV. c. 41, secs. 23, 24; 8 & 9 Vic. c. 30; and 24 & 25 Vic. c. 104, secs. 8 and 11. As to appeals from Indian Vice-Admiralty Courts, see 30 & 31 Vic. c. 45, sec. 18.

[2] Before Act VI of 1874 was passed it was doubtful whether a person having an appealable claim for less than rs. 10,000 might not add the costs of suit so as to bring it within the amount, and so get the appeal as of right.

on granting such certificate; the procedure on admitting the appeal; the powers, pending the appeal, of the Court whose decree is appealed from (sec. 608), and the procedure to enforce the orders of the Judicial Committee (sec. 610). Of these rules, the most important are contained in sec. 608, under which the stay of execution pending an appeal is the exception and not the rule. The object of this is to stop appeals presented merely for the purpose of delaying execution.

Appeals in *forma pauperis.*

The Code expressly excludes from this chapter matters of criminal, admiralty or vice-admiralty jurisdiction, and appeals from orders of prize-courts[1]. It is silent as to appeals to the Judicial Committee *in forma pauperis.* It seems that, though the Courts in India admit such appeals, the appellant should make a special application to Her Majesty in Council for leave to prosecute his appeal as a pauper[2].

The period of limitation prescribed for the admission of an appeal to Her Majesty in Council is six months from the date of the decree appealed against; and every application to enforce an order of Her Majesty in Council must be made within twelve years from the time when a present right to enforce it accrues to some person capable of releasing the right.

Principles on which Judicial Committee acts.

We may conclude this subject by stating some of the principles on which the Judicial Committee has on various occasions declared that it deals with Indian appeals:—

(*a*) Where a compromise has been sanctioned, it is 'extremely reluctant to interfere with the discretion of the Courts in India,' when two Courts there have arrived at the same conclusion, unless it can be shown that those Courts have acted upon an erroneous principle (13 Moore, I. A. 34).

(*b*) Upon a boundary question, it is 'extremely reluctant to reverse the judgment of an Indian Court' unless the Committee is clearly satisfied that such judgment was wrong (13 Moore, I. A. 68; but see ibid., 181).

(*c*) The Committee will 'never disturb the concurrent decision of both Courts below upon a question of fact, unless it very clearly appears that there has been some miscarriage of justice, some mistrial, or that the conclusion is very plainly erroneous' (13 Moore, I. A. 82). But this rule does not apply where those Courts have never dealt with the real question raised by the issues and have drawn wrong inferences from the evidence (13 Moore, I. A. 232, 244: and see 12 ibid. 145).

[1] That there is no appeal from the decision of the Lords of the Treasury as to Indian prize-money, see *Case of the Army of the Deccan*, 2 Knapp. 103.

[2] See 4 Moore, I. A. 114, 136, and Macpherson, *Practice*, p. 246.

(*d*) Where an award has been made on an agreement to submit to arbitration a boundary dispute, their lordships 'look to the broad principles of justice and equity,' and, whilst they are always willing to pay due deference to the Regulations, they discourage 'mere technical objections which affect not the merits of the case' and the invention of new grounds of dispute which have occurred in the course of the litigation (7 Moore, I. A. 474–5).

(*e*) The judgment of a Judge of the High Court on the original side is equivalent at least to 'the verdict of a jury, to which the Judge who tries the case makes no objection' (6 Moore, I. A. 50).

(*f*) Their lordships will not entertain a purely technical objection to a party's right of action which was not taken in the Court below (5 Moore, I. A. 1, 26, per Lord Brougham: 3 Moore, I. A. 229: and see L. R., 4 App. Ca. 413, that they will not entertain any grounds of appeal not so taken).

(*g*) Where some evidence has been wrongly admitted, their lordships, who are judges of the fact, will consider 'whether throwing aside the evidence which ought not to have been admitted, there still remains sufficient evidence to support the decrees' (4 Ben. 499, and see 9 Ben. 371).

(*h*) No appeal against a decree merely as to costs would be allowed (1 Moore, I. A. 479).

To these we may probably add that where the sum involved is below the appealable amount, their lordships will give special leave to appeal, on the ground that the construction of an Indian Act affecting the interests of a large class of persons is involved. See *Brown* v. *McLaughan*, L. R., 3 P. C. 458, a case from South Australia, where the appeal was limited to the construction of the colonial statute.

Part VII. Reference and Revision.

This Part consists of a single chapter dealing with the reference of doubtful questions to, and the revision of non-appealable cases by, the High Court (secs. 617–622).

Reference of questions to High Court.

The questions which may be referred are questions of 'law or usage having the force of law[1],' and questions as to the construction of documents when such construction may affect the merits. The Court trying any suit or appeal in which the decree is final, i.e. which cannot come before the High Court on appeal, may, either of its own motion or on the application of any of the parties, draw up a statement of the facts and the question, and refer such statement, with its own opinion on the point, for the decision of the High Court. It may then pass a decree contingent upon such

[1] See above, p. 434.

decision. The High Court hears the parties, decides the point, and sends a copy of its decision to the referring Court (sec. 619). The Registrar of a Small Cause Court may in like manner state cases for the opinion of the Judge (sec. 646).

Revision of cases by High Court.

The section (622) as to revision empowers the High Court to call for the records of non-appealable cases[1] where the lower Court appears (*a*) to have exercised a jurisdiction not vested in it by law, (*b*) to have failed to exercise such jurisdiction, or (*c*) to have acted in the execution of its jurisdiction illegally or with material irregularity. The High Court may then pass such order in the case as it thinks fit, reversing or modifying the decision of the subordinate court. This brief section, like its prototype, Act XXIII of 1861, sec. 35, has given rise to some doubt and litigation, and should be explained or illustrated so as to express more clearly the intentions of the legislature. The effect of lapse of time[2] and of acquiescence[3] should be indicated, and in the first line, after 'may' the words 'either of its own motion or on the application of any of the parties' should be inserted.

Part VIII. Review of Judgment.

Review of judgment.

Sometimes, after a decree has been made, new and important evidence is discovered, or some mistake, apparent on the face of the record, is found to have been made. In such case, where there is no appeal, the party aggrieved may apply for a review of judgment to the Court which passed the decree, whether that Court be a Court of first instance or a Court of appeal.

Part VIII consists of a single chapter dealing with this subject, the persons who may apply for a review, and the Judge to whom such applications may be made (secs. 623–629). If the application is granted, the Court rehears the whole case or such part of it as the Court thinks fit (sec. 630). By 'rehearing' is understood a re-arguing and reconsideration of the case, after receiving the additional evidence, the discovery of which was the ground of admitting the review[4]. A *new trial* can be had, in civil cases, only in the Presidency Courts of Small Causes: see Act XV of 1882, sec. 37.

Rehearing.

Part IX. The Chartered High Courts.

This Part contains the special rules relating to the chartered High Courts, that is, the tribunals established in the Presidency-towns and at Allahabad under the 24th & 25th Vic. chap. 104.

These Courts take evidence and record judgments and orders according to their own rules (sec. 633). They may order their decrees

[1] This includes cases in Courts of Small Causes.

[2] See 6 Suth. Misc. Rulings, 96, col. 2: 15 Suth. Civ. R. 518, col. 2.

[3] 10 Suth. Civ. R. 6.

[4] Field, *Evidence*, 726.

made in exercise of their ordinary original civil jurisdiction to be executed before the costs are taxed (sec. 634). The portions of the Code specified in section 638, para. 1, do not apply to the High Court in the exercise of that jurisdiction; and section 579, as to the contents and signature of the decree, does not apply on the appellate side. Non-judicial and quasi-judicial acts may be done by the registrar (sec. 637).

Nothing in the Code extends or applies to any Judge of a High Court in the exercise of jurisdiction as an insolvent Court.

Part X. Miscellaneous.

The tenth and last Part of the Code deals with various miscellaneous matters which could not conveniently be treated in any of the foregoing divisions. It deals with the exemption from personal appearance (secs. 640, 641), and arrest under civil process (sec. 642); it provides a procedure in case of certain offences relating to public justice when committed in a civil Court (sec. 643); it requires the forms contained in the fourth schedule to be used for their respective purposes (sec. 644); it provides for the language of subordinate Courts (sec. 645); and sec. 648 provides a procedure for arresting a person or attaching property outside the local limits of the jurisdiction of the Court desiring the arrest or attachment. A copy of its warrant or order is sent to the proper District Court with the probable amount of the costs of the arrest or attachment, and the District Court then takes the necessary steps. A similar provision is contained in the Code of Criminal Procedure.

Schedules.

The Code concludes with four schedules. The first enumerates the enactments repealed; the second shows what chapters and sections of the Code extend to provincial Courts of Small Causes; the third saves certain provisions contained in six Bombay enactments; and the fourth contains 180 forms—plaints (*a*) for breach of contract; (*b*) for damages upon wrongs; (*c*) in suits for special relief, forms of summonses, registers of suits, memoranda, decrees, orders, notices, warrants, certificates, commissions, injunctions, bonds, etc., etc. Some of these were drawn by the writer: others were taken (with some changes) from the schedule to the County Court Orders in Equity (framed under 28 & 29 Vic. c. 99), and from the volume of forms published by the commissioners appointed to revise the New York Code of Civil Procedure; a few from Act VIII of 1859, and the rest were drawn by Mr. L. D. Broughton for the Court of the Recorder of Rangoon, and had stood the test of practice.

The Code received the assent of the Governor-General on the 17th March, 1882, and came into force on the 1st June in the same year. Since then it has on the whole worked satisfactorily; and, though a large number of cases appear in the Indian law reports to have been decided on its provisions, it will be found on examination that these cases rather illustrate its obvious meaning than expose its undeniable defects. Small portions of the Code have been repealed by Act XIV of 1885, Acts IV and X of 1886, and Act VIII of 1887: section 622 has been modified in its application to the Panjáb (Act XVIII of 1884); and the second schedule has been altered to adapt it to the new Provincial Small Cause Courts Act, IX of 1887. But during the last five years no amendments have been made. On a recent and careful perusal of the Code it seems to me to require the following alterations and additions, besides the amendments above suggested:—

Suggested amendments.

The expression 'cause of action' should be defined, and used throughout the Code in strict accordance with the definition.

The question as to whether suits can be brought on the judgments of Native Courts should be set at rest.

The Courts should be expressly empowered to stay frivolous or vexatious suits.

The words 'debts' and 'debt' in secs. 266 and 268 should be defined or explained.

In section 32, cl. 3, after 'consent' the words 'in writing' should be inserted.

Sections 53 and 111 should be amended so as to express unmistakeably the intention of the legislature.

The commencement of the proviso to section 74 should be made to harmonise with the wording of the English Order ix. r. 6.

In Chapter XXIX the mode of enforcing judgments and orders against corporations should be prescribed, and section 124 and the second Explanation to section 17 should be transferred to that chapter. Provision should be clearly made for service on a foreign corporation which has no place of business in British India.

Chapter XXXI should expressly provide for service on guardians *ad litem* of minors and on committees of lunatics.

Lastly, if the Government of India decide on abolishing imprisonment for debt and modifying the law relating to suits for restitution of conjugal rights, the Code will have to be changed in accordance with such decision.

THE CODE OF CIVIL PROCEDURE, 1882.

CONTENTS.

PART I.

OF SUITS IN GENERAL.

CHAPTER I.

OF THE JURISDICTION OF THE COURTS AND RES JUDICATA.

CHAPTER II.

OF THE PLACE OF SUING.

CHAPTER III.

OF PARTIES AND THEIR APPEARANCES, APPLICATIONS AND ACTS.

Recognised Agents and Pleaders.

CHAPTER IV.

OF THE FRAME OF THE SUIT.

CHAPTER V.

OF THE INSTITUTION OF SUITS.

CHAPTER VI.

OF THE ISSUE AND SERVICE OF SUMMONS.

Issue of Summons.

Service of Summons.

Service of Process.

Postage.

CHAPTER VII.

OF THE APPEARANCE OF THE PARTIES AND CONSEQUENCE OF NON-APPEARANCE.

CHAPTER VIII.

OF WRITTEN STATEMENTS AND SET-OFF.

CHAPTER IX.

OF THE EXAMINATION OF THE PARTIES BY THE COURT.

CHAPTER X.

OF DISCOVERY, AND OF THE ADMISSION, INSPECTION, PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS.

CHAPTER XI.

OF THE SETTLEMENT OF ISSUES.

CHAPTER XII.

DISPOSAL OF THE SUIT AT THE FIRST HEARING.

CHAPTER XIII.

OF ADJOURNMENTS.

CHAPTER XIV.

OF THE SUMMONING AND ATTENDANCE OF WITNESSES.

CHAPTER XV.

OF THE HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

CHAPTER XVI.

OF AFFIDAVITS.

CHAPTER XVII.

OF JUDGMENT AND DECREE.

CHAPTER XVIII.

OF COSTS.

CHAPTER XIX.

OF THE EXECUTION OF DECREES.

A.—Of the Court by which Decrees may be executed.

B.—Of Application for Execution.

G.—Of Sale and Delivery of Property.

(a) General Rules.

(b) Rules as to Moveable Property.

CHAPTER XX.

OF INSOLVENT JUDGMENT-DEBTORS.

PART II.

OF INCIDENTAL PROCEEDINGS.

CHAPTER XXI.

OF THE DEATH, MARRIAGE AND INSOLVENCY OF PARTIES.

CHAPTER XXII.

OF THE WITHDRAWAL AND ADJUSTMENT OF SUITS.

CHAPTER XXIII.

OF PAYMENT INTO COURT.

CHAPTER XXIV.

OF REQUIRING SECURITY FOR COSTS.

CHAPTER XXV.

OF COMMISSIONS.

A.—Commissions to examine Witnesses.

B.—Commissions for Local Investigations.

C.—Commissions to examine Accounts.

D.—Commission to make Partition.

E.—General Provisions.

PART III.

OF SUITS IN PARTICULAR CASES.

CHAPTER XXVI.

SUITS BY PAUPERS.

CHAPTER XXVII.

SUITS BY OR AGAINST GOVERNMENT OR PUBLIC OFFICERS.

CHAPTER XXVIII.

SUITS BY ALIENS AND BY OR AGAINST FOREIGN AND NATIVE RULERS.

CHAPTER XXIX.

SUITS BY AND AGAINST CORPORATIONS AND COMPANIES.

CHAPTER XXX.

SUITS BY AND AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS.

CHAPTER XXXI.

SUITS BY AND AGAINST MINORS AND PERSONS OF UNSOUND MIND.

CHAPTER XXXII.

SUITS BY AND AGAINST MILITARY MEN.

CHAPTER XXXIII.

INTERPLEADER.

PART IV.

PROVISIONAL REMEDIES.

CHAPTER XXXIV.

OF ARREST AND ATTACHMENT BEFORE JUDGMENT.

A.—Arrest before Judgment.

B.—Attachment before Judgment.

C.—Compensation for improper Arrests or Attachments.

CHAPTER XXXV.

OF TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS.

A.—Temporary Injunctions.

B.—Interlocutory Orders.

CHAPTER XXXVI.

APPOINTMENT OF RECEIVERS.

PART V.

OF SPECIAL PROCEEDINGS.

CHAPTER XXXVII.

REFERENCE TO ARBITRATION.

CHAPTER XXXVIII.

OF PROCEEDINGS ON AGREEMENT OF PARTIES.

CHAPTER XXXIX.

OF SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS.

CHAPTER XL.

OF SUITS RELATING TO PUBLIC CHARITIES.

PART VI.

OF APPEALS.

CHAPTER XLI.

OF APPEALS FROM ORIGINAL DECREES.

CHAPTER XLII.

OF APPEALS FROM APPELLATE DECREES.

CHAPTER XLIII.

OF APPEALS FROM ORDERS.

CHAPTER XLIV.

OF PAUPER APPEALS.

CHAPTER XLV.

OF APPEALS TO THE QUEEN IN COUNCIL.

PART VII.

CHAPTER XLVI.

OF REFERENCE TO AND REVISION BY THE HIGH COURT.

PART VIII.

CHAPTER XLVII.

OF REVIEW OF JUDGMENT.

PART IX.

CHAPTER XLVIII.

SPECIAL RULES RELATING TO THE CHARTERED HIGH COURTS.

PART X.

CHAPTER XLIX.

MISCELLANEOUS.

ACT No. XIV OF 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 17th March, 1882.)

An Act to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; It is hereby enacted as follows:— Preamble.

PRELIMINARY.

1. This Act may be cited as 'The Code of Civil Procedure:' Short title.

and it shall come into force on the first day of June, 1882. Commencement.

This section and section 3 extend to the whole of British India[1]. The other sections extend to the whole of British India except the Scheduled Districts as defined in Act No. XIV of 1874[2]. Local extent.

[1] Act I of 1868, sec. 2, cl. 8, infra, vol. i. p. 488.

[2] The 'other sections' have since been extended to the following scheduled districts, viz. the Provinces of Sind and Coorg (*Gazette of India*, June 3, 1882, Part I, p. 217), the Districts of Darjíling, Jalpaigori, Hazáríbágh, Lohárdaga, Mánbhúm, the Pargana of Dhálbhúm in Singhbhúm, and the Mahál of Angúl (*ibid.* p. 218), the Districts of Kámrup, Naugong, Darrung, Síbságar, Lakhimpur, Goálpára (excluding the Eastern Dwárs), Silhat, and Káchár (excluding the North Káchár Hills) (*ibid.* p. 218), the Jhánsí Division (except secs. 15, 19, 23, 24, 25 and 652), Pargana Jaunsár Bawár and the scheduled portion of the Mirzapur District (*ibid.* p. 217), the scheduled Districts of the Panjáb (*ibid.* p. 219) and of the Central Provinces, except so much as authorises the sale of immoveable property in execution of a decree, not being a decree directing

Interpretation-clause.

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

'chapter:' 'chapter' means a chapter of this Code:

'district:' 'District Court:' 'district' means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a 'District Court'), and includes the local limits of the ordinary original civil jurisdiction of a High Court[1]: every Court of a grade inferior to that of a District Court and every Court of Small Causes shall, for the purposes of this Code, be deemed to be subordinate to the High Court and the District Court:

'pleader:' 'pleader' means every person entitled to appear and plead for another in Court[2], and includes an advocate[3], a vakíl[4], and an attorney[5] of a High Court:

'Government Pleader:' 'Government Pleader' includes also any officer appointed by the Local Government to perform all or any of the functions expressly imposed by this Code[6] on the Government Pleader[7]:

'Collector:' 'Collector' means every officer performing the duties of a Collector of land-revenue[8]:

'decree:' 'decree' means the formal expression of an adjudication

the sale of such property (*Gazette of India*, p. 217), Ajmer and Merwára (*ibid.* July 29, 1882, Part I, p. 289), and the Cantonment of Morar (*ibid.*). As to Upper Burma the Code is in force in the town of Mandalay only (Act XX of 1886, sched. II).

[1] See Act I of 1868, sec. 2, cl. 11, supra, vol. i. p. 488.

[2] See Act XVIII of 1879 amended by Act IX of 1884.

[3] As to the Presidency High Courts see the Letters Patent, 28th Dec. 1865, sec. 9: as to the High Court at Allahabad, L. P. 17th March, 1866, secs. 7, 8: as to other High Courts, Act IX of 1884, sec. 8.

[4] This means 'pleader:' it is the term used by the Letters Patent of the Presidency High Courts, hence its use here; 8 Bom. 145.

[5] As to attorneys of the chartered High Courts, see the Letters Patent above cited, and Act XVIII of 1879, sec. 5. As to the Courts in which they are entitled to practice, see Act XVIII of 1879, sec. 5; Act XVII of 1875, secs. 84, 87 (Burma); Reg. I of 1877, sec. 28 (*d*), (Ajmer). That judicial notice will be taken of the names of advocates, attorneys, vakíls and pleaders, see the Evidence Act, infra, sec. 57, cl. 12.

[6] See secs. 408, 414, 419, 420, 421, 426 and 427. Other functions are imposed on Government Pleaders by Ben. Regs. 19 of 1793, sec. 15; 37 of 1793, sec. 10; 3 of 1794, sec. 16; 33 of 1803, sec. 3; and Act XXXV of 1858, sec. 3; in Burma see Act XVII of 1875, secs. 84, 87; in the Dekkhan, Act XVII of 1879, sec. 69.

[7] See *British Burma Gazette*, June 1878, Part II, p. 175.

[8] e.g. a Deputy Commissioner.

upon any right claimed, or defence set up, in a Civil Court when such adjudication, so far as regards the Court expressing it, decides the suit[1] or appeal[2]. An order rejecting a plaint, or directing accounts to be taken, or determining any question mentioned or referred to in section 244, but not specified in section 588, is within this definition: an order specified in section 588 is not within this definition[3]:

'order' means the formal expression of any decision of a Civil Court which is not a decree as above defined: 'order:'

'judgment' means the statement given by the Judge of the grounds of a decree or order: 'judgment:'

'Judge' means the presiding officer of a Court: 'Judge:'

'judgment-debtor' means any person against whom a decree or order has been made: 'judgment-debtor:'

'decree-holder' means any person in whose favour a decree[4] or any order capable of execution has been made, and includes any person to whom such decree or order is transferred: 'decree-holder:'

'written' includes printed and lithographed, and 'writing' includes print and lithograph[5]: 'written:'

'signed' includes marked, when the person making the 'signed:'

[1] 6 Bom. 54.

[2] 'decree' accordingly includes an order dismissing an appeal as barred by limitation, 7 All. 42: 9 Bom. 452: an order rejecting an application to sue as a pauper and striking the case off the Court's file, 9 All. 129: an order under sec. 381 dismissing a suit for failure by the plaintiff to furnish security for costs, 8 All. 108: an order under sec. 396 declaring the rights of the parties in a partition suit, but leaving their shares to be determined in executing the decree, 12 Cal. 273: an order rejecting an application under sec. 93 of the Bengal Tenancy Act, 1885, 14 Cal. 313.

The following orders have been ruled not to be 'decrees':—*Award, or Agreement to refer*, directing or refusing filing of an, 2 All. 471; 5 All. 333; 6 All. 186. *Certificate* that case is fit for appeal to Queen in Council, granting or refusing, 1 Cal. 102; 7 Cal. 339. *Deciding* on settlement of issues that a hibbanáma relied on by a party is invalid, 4 Cal. 531. *Dismissing* suit where summons not served, 9 Cal. 163. *Inspection* of documents, 9 Bom. H. C. 398. *Restraint* of proceedings in former suit, refusing, 2 Hyde, 212. *Review* of judgment, dismissing, 4 Ben. A. C. J. 10. *Withdrawal* of suit, allowing, 6 All. 211.

[3] Nor is a decree that the defendant *B* is liable to pay half of whatever sum *C* might certify to be due, and reserving further consideration when the plaintiff *A* should produce *C*'s certificate, 9 Bom. 184, 195.

[4] or a share in such decree, 5 Cal. 593.

[5] This definition was inserted with a view of encouraging printing in legal proceedings.

mark is unable to write his name; it also includes stamped with the name of the person referred to[1]:'

'foreign Court:' 'foreign Court' means a Court situate beyond the limits of British India and not having authority in British India nor established by the Governor General in Council[2]:

'foreign judgment:' 'foreign judgment' means the judgment[3] of a foreign Court:

'public officer:' 'public officer' means a person falling under any of the following descriptions (namely):—

every Judge;

every covenanted servant of Her Majesty;

every commissioned officer in the military or naval forces of Her Majesty while serving under Government;

every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorised by a Court of Justice to perform any of such duties;

every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of Government, or to make any survey, assessment or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the

[1] i.e. in the subsequent sections of this Code as being required to sign or verify certain documents, 3 All. 575. He may use a stamp even though he can write his name (*ibid.*). The use of a seal capable of producing an impression of the name and title of the person using it is common among Natives of rank. Hence the last twelve words of this clause.

[2] The English Courts (other than the Judicial Committee of the Privy Council, which has 'authority in British India') are with regard to the Courts in India as much foreign courts as the courts of France or any other country, 8 Bom. 574, and see L. R., 1 I. A. 385.

[3] *Rectius* 'decree': see the definitions, p. 467.

pecuniary interests of Government, or to make, authenticate or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty [1].

'Government.'

And in any part of British India in which this Code operates, 'Government' includes the Government of India [2] as well as the Local Government [3].

Enactments repealed.

3. The enactments specified in the first schedule hereto annexed are hereby repealed to the extent mentioned in the third column thereof. But all notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed and forms framed under any such enactment, shall, so far as they are consistent with this Code, be deemed to be respectively published, made, appointed, filed, prescribed and framed hereunder.

References in previous Acts.

And when in any Act, Regulation or notification passed or issued prior to the day on which this Code comes into force, reference is made to Act No. VIII of 1859, Act No. XXIII of 1861, or the 'Code of Civil Procedure,' or to Act No. X of 1877, or to any other Act hereby repealed, such reference shall, so far as may be practicable, be read as applying to this Code or the corresponding part thereof.

Saving of procedure in suits instituted before 1st June, 1882.

Save as provided by section 99 A, nothing herein contained shall affect any proceedings prior to decree in any suit instituted or appeal presented before the first day of June, 1882 [4], or any proceedings after decree that may have been commenced and were still pending at that date [5].

Appeals pending on 29th July, 1879.

Every appeal pending on the twenty-ninth day of July, 1879 [6], which would have lain if this Code had been in force on the date of its presentation, shall be heard and determined as

[1] This includes the Official Trustees appointed under Act XVII of 1864, 7 Cal. 499; and the Administrators General; and see 7 Ben. 446; but it would not include a municipal commissioner or any other person comprised in the Penal Code, sec. 21, cl. 10.

[2] Act I of 1868, sec. 2, cl. (9).

[3] *Ibid.* cl. (10).

[4] The day on which the Code came into force.

[5] 3 Bom. 161 : 8 Bom. 287, 294.

[6] The day on which Act XII of 1879 was passed.

if this Code had been in force on such date; and every order passed before the same day, purporting to transfer a case to a Collector under Act No. X of 1877, section 320, and every notification published before the same day, purporting to be issued under Act No. X of 1877, section 360, shall be deemed to have been respectively passed and issued in accordance with law.

Saving of certain Acts affecting Central Provinces, Burma, Panjáb and Oudh.

4. Save as provided in the second paragraph of section 3, nothing herein contained shall be deemed to affect the following enactments (namely):—

The Central Provinces Courts Act, 1865[1]:

The Burma Courts Act, 1875:

The Panjáb Courts Act, 1877[2]:

The Oudh Civil Courts Act, 1879:

or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council, prescribing a special procedure for suits between landholders and their tenants or agents,

or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council, providing for the partition of immoveable property[3].

And where under any of the said Acts concurrent civil jurisdiction is given to the Commissioner and the Deputy Commissioner, the Local Government may declare which of such officers shall, for the purposes of this Code, be deemed to be the District Court.

Sections extending to Provincial Small Cause Courts.

5. The chapters and sections of this Code specified in the second schedule hereto annexed extend (so far as they are applicable) to Courts of Small Causes constituted under Act No. XI of 1865[4], and to all other Courts (other than the Courts of Small Causes in the towns of Calcutta, Madras and Bombay) exercising the jurisdiction of a Court of Small Causes. The other chapters and sections of this Code do not extend to such Courts.

[1] Now to be construed as referring to the Central Provinces Civil Courts Act 1885 (Act XVI of 1885, sec. 1).

[2] See now Act XVIII of 1884.

[3] 13 Cal. 223.

[4] To be construed as referring to the Provincial Small Cause Courts Act, 1887 (IX of 1887, sec. 2, cl. 3).

Saving of jurisdiction and procedure of certain Courts.

6. Nothing in this Code affects the jurisdiction or procedure—

(*a*) of Military Courts of Request[1];

(*b*) [*repealed by Act VIII of* 1887];

(*c*) of Village Munsifs or Village Panchâyats under the provisions of the Madras Code[2]; or

(*d*) of the Recorder of Rangoon sitting as an Insolvent Court in Rangoon, Maulmain, Akyab or Bassein[3];

or shall operate to give any Court jurisdiction over suits of which the amount or value of the subject-matter exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

Saving of certain Bombay laws.

7. With respect to

(*a*) the jurisdiction exercised by certain jágírdárs and other authorities invested with powers under the provisions of Bombay Regulation XIII of 1830 and Act No. XV of 1840 in the cases therein mentioned, and

(*b*) cases of the nature defined in the enactments specified in the third schedule hereto annexed,

the procedure in such cases, and in the appeals to the Civil Courts allowed therein, shall be according to the rules laid down in this Code, except where those rules are inconsistent with any specific provisions contained in the enactments mentioned or referred to in this section.

Presidency Small Cause Courts.

8. Save as provided in sections 3, 25, 86, 223, 225, 386, and chapter XXXIX, and by the Presidency Small Cause Courts Act, 1882[4], this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay[5].

[1] 44 & 45 Vic. c. 58, ss. 148–150. They exist only where any part of Her Majesty's regular forces is serving in India beyond the jurisdiction of a Court of Small Causes. 'India' here is defined (*ibid.* s. 190, cl. 21) as 'any territories the government of which is vested in Her Majesty by or in pursuance of 21 & 22 Vic. c. 106, and also any territories in India under the dominion of any native prince or princes.' The Indian laws relating to military Courts of Requests were repealed by Act VIII of 1887.

[2] Mad. Regs. 4 of 1816, 5 of 1816, and 12 of 1816.

[3] Act XVII of 1875, sec. 66.

[4] Act XV of 1882.

[5] The rest of this section was repealed by Act XV of 1882, sec. 2; 6 Mad. 431.

Division of Code.

9. This Code is divided into ten Parts as follows :—

The first Part :	Suits in General.
The second Part :	Incidental Proceedings.
The third Part :	Suits in Particular Cases.
The fourth Part :	Provisional Remedies.
The fifth Part :	Special Proceedings.
The sixth Part :	Appeals.
The seventh Part :	Reference to and Revision by the High Court.
The eighth Part :	Review of Judgment.
The ninth Part :	Special Rules relating to the Chartered High Courts.
The tenth Part :	Certain Miscellaneous Matters.

PART I.

OF SUITS IN GENERAL.

CHAPTER I.

OF THE JURISDICTION OF THE COURTS AND RES JUDICATA.

No exemption by descent or place of birth.

10. No person shall, by reason of his descent or place of birth, be in any civil proceeding exempted from the jurisdiction of any of the Courts.

Courts to try all civil suits unless

11. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature[1]

[1] Thus the Courts have entertained the following suits: suit to declare the plaintiff's right to be restored to his caste, 7 Suth. Civ. R. 299: suit to declare that an alleged Hindú marriage is invalid, 6 Ben. 243: suits between Hindús for divorce or for restitution of conjugal rights, *ibid.* 252: 4 N. W. P. 109: suit for breaking a curdpot in a temple on a certain day, 9 Bom. H. C. 413 and many others. But they have refused to entertain the following declaratory suits: suit for a declaration that the plaintiff is a member of a Hindú society from which he has been excluded, such exclusion neither depriving him of caste, nor affecting any right of property, 3 Ben. App. Civ. 91: suit for a declaration that the plaintiff is entitled to be summoned to all marriages, and to receive a present of *pán* from the members of a particular community (S. D. A. 1854, p. 1850): or to offerings made by *jájmans* to family priests, S. D. A. 1852, p. 398; 1 Hay, 365; 5 Suth. Civ. R. 225: or to a mere dignity unconnected with any emoluments (2 Bom. 476: 6 Bom. 119): and the following suits for damages:—for loss of honours and voluntary offerings at a temple, 5 Mad. 313: for intrusion on an officer to which no fees were of right appurtenant (2 Bom. 470: 7 Mad. 91): for not offering food to an idol (6 Bom. 122): against a magistrate acting judicially and with jurisdiction, though carelessly and irregularly (7 Ben. 449): and the following suits for specific performance of alleged obligations: to compel a Hindú widow to adopt a son (19 Suth. 127: 7 Cal. 288: 7 Moo. I. A. 206): to compel hereditary priests of a temple to put certain ornaments on the god's image on certain days, 5 Bom. 83: to compel Hindús against their will to invite other Hindús to their houses or their entertainments, 6 Suth. Civ. R. 325. So the Courts have rejected a suit by one purohit against another purohit for interfering with an alleged exclusive right of performing ceremonies at a certain place, Marshall, 161, and see the case in 3 Moo. I. A. 198; and suits against barbers to compel them to shave the plaintiffs (Sadr Decisions, 1854, p. 465), or to pare their nails (1 Suth. Civ. R. 352, col. 1). For other cases in which a suit was held not 'of a civil nature,' see 7 Mad. 91, and supra, p. 391. A suit is not maintainable to establish a right to a mere dignity unconnected with any fees, profits or emoluments, 6 Bom. 121, following 2 Bom. 476 and a decision of the Privy Council in 3 Moore, I. A. 198. A suit by a temple servant for damages for omitting to make a daily offering of rice and cake to the

specially barred.

excepting suits of which their cognisance is barred[1] by any enactment for the time being in force.

Explanation.—A suit in which the right to property[2] or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies[3].

Plea of pending suit.

12. Except where a suit has been stayed under section 20, the Court shall not try any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit for the same relief between the same parties, or between parties under whom they or any of them claim, pending in the same or any other Court, whether superior or inferior, in British India having jurisdiction to grant such relief, or in any Court beyond the limits of British India established by the Governor General in Council and having like jurisdiction, or before her Majesty in Council[4].

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action[5].

Res judicata.

13. No Court shall try any suit[6] or issue[7] in which the

idol will not lie, unless indeed he sues as representing the idol, 6 Bom. 122.

[1] i. e. expressly barred. Giving a concurrent remedy (see e. g. sec. 318) does not bar a suit for possession by a purchaser at an execution-sale, 14 Cal. 645.

[2] In 7 Bom. 329, the Court adjudicated on the right of exclusive worship of an idol in a sanctuary set up by a caste. Hindú idols are property, 4 Mad. 315; and see 2 Mad. 62. The right to perform the worship of an idol is 'property,' 3 Cal. 390, 391.

[3] 'The members of a sect are entitled, subject to the rules made by the duly constituted authorities of the sect, to take part in its public worship; and if any member is wrongfully prevented from so doing, he is entitled to relief from the Civil Courts,' 6 Mad. 153. The words 'or tenets' should be added to the explanation, 5 Mad. 318.

[4] As to the plea of *lis alibi pendens*, see Daniell's Chan. Practice, 6th edition, i. 459: Story, Equity Pleadings, secs. 736–744.

[5] Story, Equity Pleadings, sec. 741. It follows, therefore, that the existence of a decree of a foreign Court is no bar to the execution of a decree of a Court in British India, even though the cause of action in both suits be the same, 7 Cal. 82, where the foreign decree had been obtained in Chandernagore on the basis of the decree of a British Indian Court.

[6] i. e. such a matter as might have formed the subject of a separate suit independently of the special provisions of the Code, such as sec. 45, per Mahmúd J.; 7 All. 252. This does not apply to proceedings on execution, 3 All. 185: and see 11 Bom. 114.

[7] The answer of *res judicata* is admissible to estop a defendant from defence as well as a plaintiff from attack, 6 Bom. 485; so in England *Outram* v. *Morewood*, 3 East, 346, 365.

matter[1] directly and substantially in issue has been directly and substantially in issue in a former suit[2] between the same parties, or between parties under whom they or any of them claim[3], litigating under the same title, in a Court of jurisdiction competent[4] to try such subsequent suit[5] or the suit in which such issue has been subsequently raised, and has been heard and finally decided[6] by such Court.

Explanation I.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation II.—Any matter which might and ought[7] to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit[8].

[1] The Madras High Court has limited this to matters of fact, 5 Mad. 304. But see 4 All. 55 (construction of bond). It is the 'matter in issue' (Evidence Act, sec. 3), not the 'subject-matter' of the suit that forms the essential test of *res judicata*, 4 All. 58.

[2] i.e. a former civil suit. The judgment of a criminal court will not operate as a bar, 4 All. 99. Nor will a decision in former execution proceedings, 3 All. 141. That decisions by revenue courts do not make a matter in issue *res judicata*, see 3 All. 521. But see 5 All. 280: and 9 All. 388. As to judgments in rent-suits, 6 Cal. 406; and see 12 Cal. 563, 580.

[3] 8 All. 91.

[4] i.e. to try and dispose of the suit or issue on account of its nature 'with conclusive effect,' otherwise the higher jurisdiction provided by the Code would be excluded by the lower, 9 Bom. 81: 8 Mad. 83. And the competence must exist at the time when the first suit was brought, 10 Cal. 697: 11 Cal. 157.

[5] 9 Cal. 439, following Sir B. Peacock in 8 Suth. Civ. R. 175: 11 Cal. 301: S. C. L. R., 9 I. A. 204.

[6] These words apply, not to the expression of opinion in the judgment, but to what has been decided by the decree, 4 Mad. 136. A suit dismissed on the ground of 'uncertainty,' 9 All. 155, or of multifariousness, or for failure to appear, is not 'finally decided,' 13 Ben. App. 37: 6 Bom. 482. Nor is a suit against *A* and *B* for a joint jama, when dismissed on the ground that the jama is several, Marshall, 418. But where a decree is passed in accordance with a compromise, see sec. 175 infra.

[7] 5 Bom. 594.

[8] 10 Bom. H. C. 293: 3 All. 189: 4 All. 22. Explanation II must be taken to refer to the title litigated in the former suit as contra-distinguished from the relief claimed. Where several independent grounds of action are available, a party is not bound to unite them all in one suit, though he is bound to bring before the Court all grounds of attack available to him with reference to the title which is made the ground of action, per Muttusámi Ayyár J., 7 Mad. 265. Explanation II is not intended to enable a party to treat a point as having been decided in his favour in a former suit, which was in fact not so decided. It applies to a case where the defendant had a defence

Explanation III.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purpose of this section, be deemed to have been refused [1].

Explanation IV.—A decision is final within the meaning of this section when it is such as the Court making it could not alter (except on review) on the application of either party [2] or reconsider of its own motion. A decision liable to appeal may be final within the meaning of this section until the appeal is made [3].

Explanation V.—Where persons litigate *bonâ fide* in respect of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purpose of this section, be deemed to claim under the persons so litigating [4].

Explanation VI.—Where a foreign judgment is relied on, the production of the judgment duly authenticated is presumptive evidence that the Court which made it had competent jurisdiction, unless the contrary appear on the record; but such presumption may be removed by proving the want of jurisdiction.

When foreign judgment no bar to suit in British India.

14. No foreign judgment shall operate as a bar to a suit in British India—

(*a*) if it has not been given on the merits of the case [5]:

(*b*) if it appears on the face of the proceedings to be founded on an incorrect view of international law or of any law in force in British India:

which he might if he had so pleased and ought to have brought forward, but he did not do so and the suit was decided against him. Then he is as much bound by the adverse decree as if he had set up the defence, and he is equally estopped from setting up the defence in any future suit under similar circumstances, 5 Cal. 925, per Garth C.J.

[1] This applies to relief claimed which the Court is bound to grant with reference to the matters directly and substantially in issue, 4 Mad. 310.

[2] An *ex parte* decree is not 'final' so long as it is open to the Court, on the application of the parties, to modify it, 7 Cal. 25.

[3] Everything that should have the authority of *res judicata* is and ought to be subject to appeal, Savigny, cited 7 Bom. 466.

[4] 10 Mad. 223. This explanation does not refer to bona fide defences but to bona fide claims, 6 Mad. 121.

It is not limited to suits under sec. 30, 2 Mad. 332. It only applies to cases where several different persons claim an easement or other right by one common title, as for instance where the inhabitants of a village claim by custom right of pasturage over the same tract of land, or to take water from the same spring or well, 6 Cal. 54, referring to *Arlett* v. *Ellis*, 7 B. & C. 346, and *Blewitt* v. *Tregonning*, 3 A. & E. 554. See also 8 Mad. 496: 10 Mad. 82: 6 Cal. 33.

[5] *The Delta*, 1 Prob. Div. 393, and see 4 Mad. 359, where an *ex parte*

(*c*) if it is in the opinion of the Court before which it is produced contrary to natural justice [1]:

(*d*) if it has been obtained by fraud [2]:

(*e*) if it sustains a claim founded on a breach of any law in force in British India [3].

CHAPTER II.

OF THE PLACE OF SUING.

Court in which suit instituted.

15. Every suit shall be instituted in the Court of the lowest grade competent [4] to try it [5].

Suits instituted where subject-matter situate.

16. Subject to the pecuniary or other limitations prescribed by any law, suits

(*a*) for the recovery of immoveable property [6],

(*b*) for the partition of immoveable property,

(*c*) for the foreclosure or redemption of a mortgage of immoveable property,

decree was given at Mahé against a native of British India on a cause of action arising in British India.

[1] This would enable the Court to disregard a foreign judgment in cases in which, by a faulty or irregular procedure, the defendant had not been allowed the opportunity of fairly defending the suit, 4 Mad. 365. That the validity and service of summonses etc. alleged to have emanated from a foreign court must be strictly proved, see 11 Bom. 241. That a decree on a foreign judgment must be executed according to the rules and procedure of British Indian Courts, see 2 Mad. 337, where a decree against *A* personally for the full amount due on a French judgment against his deceased father was limited to the assets of the deceased. That a call-order made by the Court of Chancery in England upon a contributory of a company registered in England and being wound up under the authority of that Court is treated by the Indian Courts as a foreign judgment, see 8 Bom. H. C., O. C. J. 200.

[2] See 4 Suth. Civ. R. 108; 15 *ibid.* 500. As to the meaning of 'fraud' see supra, Vol. I. pp. 98 n. 2, 555.

[3] See the English decisions on the subjects dealt with by this section in Smith's Leading Cases, 9th ed. pp. 868-882, and Piggott's Foreign Judgments, 2nd ed. pp. 106-175.

[4] i. e. having jurisdiction with reference to the pecuniary value and nature of the suit, 7 All. 239. The corresponding section of the Code of 1859 does not affect the jurisdiction of a Subordinate Judge to try a suit wherein are joined several causes of action the cumulative value of which exceeds rs. 1000, although, if several suits had been brought on these several causes, such suits must have been instituted in the Munsif's Court, 6 Cal. 6.

[5] This provision is a rule of procedure, not jurisdiction. It is imperative on the suitor, and intended to prevent the Court of the higher grade from being over-crowded with suits. But such Court is not bound to take advantage of it, 7 All. 234, 240. And see sec. 331 infra.

[6] See the definition of immoveable property, supra, Vol. I. p. 487.

(*d*) for the determination of any other right to or interest in immoveable property[1],

(*e*) for compensation for wrong to immoveable property,

(*f*) for the recovery of moveable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate[2]:

Provided that suits to obtain relief respecting, or compensation for wrong to, immoveable property held by or on behalf of the defendant may, when the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction he actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.—In this section 'property' means property situate in British India[3].

Suits instituted where defendants reside or cause of action arose.

17. Subject to the limitations aforesaid, all other suits shall be instituted in a Court within the local limits of whose jurisdiction—

(*a*) the cause of action[4] arises, or

(*b*) all the defendants, at the time of the commencement of

[1] That a suit to follow the purchase-money of land on which the plaintiff had a mortgage and which has been taken up under the Land Acquisition Act, does not come under clause (*d*), see 6 Mad. 344, and compare *In re Stewart's Trusts*, 22 L. J., N. S. Chan. 369.

[2] A suit therefore will not lie in a British Indian Court for land situate in a Native State (2 Mad. H. C. 437), and consent of parties cannot give jurisdiction in such cases, 9 Bom. H. C. 242. Whether a Court will decree the sale of mortgaged land situate in British India, but outside its jurisdiction, see 9 Bom. H. C. 12; 9 Ben. 171.

[3] This section does not apply to the High Court in the exercise of its original civil jurisdiction, sec. 638, infra.

[4] i. e. according to the High Court at Madras, the whole cause of action, including every fact necessary to the maintenance of the action, 3 Mad. H. C. 384. But the Allahabad High Court holds that here 'cause of action' does not mean 'whole cause of action,' but includes *material* part of the cause of action, 4 All. 425, and see 13 Ben. 461, 14 Ben. 367. A suit for compensation for breach of contract may accordingly be brought either at the place where the contract was made and the defendant's obligation established, or where performance was to be had and breach occurred, 5 All. 279, 280. The English Courts have ruled that in the C. L. P. Act, 1852, sec. 18, 'cause of action' means, not the whole cause of action, i. e. contract and breach, but 'the act on the part of the defendant which gives the plaintiff his cause of

the suit, actually and voluntarily reside[1], or carry on business, or personally work for gain; or

(*c*) any of the defendants, at the time of the commencement of the suit, actually and voluntarily resides[1], or carries on business, or personally works for gain: provided that either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

Explanation I.—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside[1] at both places in respect of any cause of action arising at the place where he has such temporary lodging.

Explanation II.—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations.

(*a*) *A* is a tradesman in Calcutta. *B* carries on business in Delhi. *B*, by his agent in Calcutta, buys goods of *A*, and requests *A* to deliver them to the East Indian Railway Company. *A* delivers the goods accordingly in Calcutta. *A* may sue *B* for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where *B* carries on business.

(*b*) *A* resides at Simla, *B* at Calcutta, and *C* at Delhi. *A*, *B* and *C* being together at Benares, *B* and *C* make a joint promissory-note payable on demand, and deliver it to *A*. *A* may sue *B* and *C* at Benares, where the cause of action arose. He may also sue them at Calcutta, where *B* resides, or at Delhi, where *C* resides; but in each of these cases, if the non-resident defendant objects, the suit cannot be maintained without the leave of the Court[2].

Suits for compensation for

18. In suits for compensation for wrong done to person or moveable property, if the wrong was done within the local

complaint' (*Jackson* v. *Spittall*, L. R., 5 C. P. 542: *Vaughan* v. *Weldon*, L. R., 10 C. P. 47).

[1] This is to be construed broadly, so as to prevent a debtor from evading the claims of his creditors, 6 Bom. 102. As to the meaning of 'residence' and dwelling-place, see 1 All. 51. The residence intended is not an exclusive residence, see L. R., 1 I. A. 396, 397 (a case as to a condition). As Lord Kenyon said (*Rex* v. *Sargent*, 5 T. R. 466), 'it never can be contended that in order to constitute a residence in any place, it is necessary to reside any given number of days, or even any great part of the year. It happens perpetually that persons have different places of abode, in some of which they reside more or less, as suits their convenience.'

[2] This section does not apply to the High Court in the exercise of its original civil jurisdiction, sec. 638, infra.

wrongs to person or moveables.

limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the plaintiff may at his option sue in either of the said Courts.

Illustrations.

(*a*) *A*, residing in Delhi, beats *B* in Calcutta. *B* may sue *A* either in Calcutta or in Delhi.

(*b*) *A*, residing in Delhi, publishes in Calcutta statements defamatory of *B*. *B* may sue *A* either in Calcutta or in Delhi.

(*c*) *A*, travelling on the line of a railway company whose principal office is at Howrah, is upset and injured at Allahabad by negligence imputable to the company. He may sue the company either at Howrah or at Allahabad.

Suits for immoveable property (*a*) in single district, but in different jurisdictions; (*b*) in different districts.

19. If the suit be to obtain relief respecting, or compensation for wrong to, immoveable property situate within the limits of a single district, but within the jurisdiction of different Courts, the suit may be instituted in the Court within whose jurisdiction any portion of the property is situate: provided that, in respect of the value of the subject-matter of the suit, the entire claim be cognisable by such Court.

If the immoveable property be situate within the limits of different districts, the suit may be instituted in any Court, otherwise competent to try it, within whose jurisdiction any portion of the property is situate[1].

Power to stay proceedings where all defendants do not reside within jurisdiction.

20. If a suit which may be instituted in more than one Court is instituted in a Court within the local limits of whose jurisdiction the defendant or all the defendants does not or do not actually and voluntarily reside, or carry on business, or personally work for gain, the defendant or any defendant may, after giving notice in writing to the other parties of his intention to apply to the Court to stay proceedings, apply to the Court accordingly;

and if the Court, after hearing such of the parties as desire to be heard, is satisfied that justice is more likely to be done by the suit being instituted in some other Court, it may stay proceedings either finally or till further order, and make such order as it thinks fit as to the costs already incurred by the parties or any of them.

[1] And the Court, if it decrees the sale of the whole property, may order such sale to be made, 8 Cal. 703: 14 Cal. 661. Section 19 does not apply to the High Court in the exercise of its original civil jurisdiction, sec. 638, infra.

In such case, if the plaintiff so requires, the Court shall return the plaint with an endorsement thereon of the order staying proceedings.

Every such application shall be made at the earliest possible opportunity, and in all cases before the issues are settled; and any defendant not so applying shall be deemed to have acquiesced in the institution of the suit [1]. Application when to be made.

21. Where the Court, under section 20, stays proceedings, and the plaintiff re-institutes his suit in another Court, the plaint shall not be chargeable with any court-fee: provided that the proper fee has been levied on the institution of the suit in the former Court, and that the plaint has been returned by such Court. Remission of court-fee where suit instituted in another Court.

22. Where a suit may be instituted in more Courts than one, and such Courts are subordinate to the same appellate Court, any defendant, after giving notice in writing to the other parties of his intention to apply to such Court to transfer the suit to another Court, may apply accordingly; and the appellate Court, after hearing the other parties, if they desire to be heard, shall determine in which of the Courts having jurisdiction the suit shall proceed [2]. Procedure where Courts in which suit may be instituted subordinate to same appellate Court.

23. Where such Courts are subordinate to different appellate Courts, but are subordinate to the same High Court, any defendant, after giving notice in writing to the other parties of his intention to apply to the High Court to transfer the suit to another Court having jurisdiction, may apply accordingly. If the suit is brought in any Court subordinate to a District Court, the application, together with the objections, if any, filed by the other parties, shall be submitted through the District Court to which such Court is subordinate. The High Court may, after considering the objections, if any, of the other parties, determine in which of the Courts having jurisdiction the suit shall proceed [3]. Procedure where they are not so subordinate.

[1] 6 Mad. 349. Sec. 20 contains the only provision in the Code for staying proceedings. There is no express power to stay frivolous or vexatious suits, as there is in England under Order xxv. r. 4.

[2] The order for transfer will not be made unless the suit is brought in a Court having jurisdiction, 9 All. 191, approving of 6 Cal. 30.

[3] This is intended to provide for those cases where on the ground of

Procedure where they are subordinate to different High Courts.

24. Where such Courts are subordinate to different High Courts, any defendant may, after giving notice in writing to the other parties of his intention to apply to the High Court within whose jurisdiction the Court in which the suit is brought is situate [1], apply accordingly.

If the suit is brought in any Court subordinate to a District Court, the application, together with the objections, if any, filed by the other parties, shall be submitted through the District Court to which such Court is subordinate;

and such High Court [2] shall, after considering the objections, if any, of the other parties, determine in which of the several Courts having jurisdiction the suit shall proceed [3].

Transfer of suits.

25. The High Court or District Court may, on the application of any of the parties, after giving notice to the parties and hearing such of them as desire to be heard, or of its own motion without giving such notice, withdraw any suit, whether pending in a Court of first instance or in a Court of appeal subordinate to such High Court or District Court, as the case may be, and try [4] the suit itself, or transfer it for trial to any other such subordinate Court competent [5] to try the same in respect of its nature and the amount or value of its subject-matter [6].

expense or convenience or some other good reason the Court thinks the place of trial ought to be changed. A defendant desiring a transfer ought clearly to explain by petition and affidavit the nature of the claim and defence, the issues, the evidence required, and then satisfy the Court that the change is desirable, 9 Cal. 980.

[1] that the suit may be transferred to another Court having jurisdiction but subordinate to another High Court.

[2] i.e. the High Court mentioned in the first clause of this section.

[3] In 5 All. 60 it was held that this section does not empower a High Court to transfer a suit instituted within its own jurisdiction to the jurisdiction of another High Court, but only to declare in which Court a suit shall proceed and, if necessary, to stay all further proceedings within its own jurisdiction. If this had been the intention of the legislature, it would surely have given express power to stay proceedings, as in secs. 20, 476.

[4] Unless the evidence is retaken there is no trial, 7 All. 342.

[5] i.e. having jurisdiction, 7 All. 239.

[6] An order under this section transferring a suit in which an appeal would lie from the decree made therein is not subject to revision by the High Court, 6 All. 233. The High Court cannot under this section transfer an appeal unless the Court from which the transfer is sought to be made has jurisdiction to hear the appeal, 6 Cal. 30.

Section 25 is applicable to cases of winding-up companies, 9 All. 182.

For the purposes of this section, the Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

CHAPTER III.

OF PARTIES AND THEIR APPEARANCES, APPLICATIONS AND ACTS.

Persons who may be joined as plaintiffs.

26. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly[1], severally[2] or in the alternative[3] in respect of the same cause of action[4]. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall

[1] 9 All. 486.

[2] Thus where eight trustees of a charity brought an action for a libel contained in a letter written by the defendant, it was held in England that they might rightly join, though no joint injury was shown, *Booth* v. *Briscoe*, 2 Q. B. D. 496. Each had a separate right to sue arising out of the same cause of action. But in 11 Cal. 524, where thirteen deserters committed to jail under one warrant and for the same offence jointly sued the gaoler for wrongful detention after the expiry of their term of imprisonment, the plaint was taken off the file, because 'the causes of action, though similar in nature, were in fact distinct and separate.' This decision ignored the word 'severally' and seems erroneous.

The Madras High Court once said that in a suit to recover property, in the absence of a special provision, all the co-owners should be joined as plaintiffs, or, if they refuse, as defendants, 3 Mad. 234.

[3] The words 'in the alternative' apply to cases in which there is a doubt as to who is the person entitled to sue, 6 Mad. 243; whether, e.g. principal or agent should be plaintiff. They also, apparently, permit a plaintiff to join two separate alternative causes of action against the same defendant, *Bagot* v. *Easton*, 7 Ch. D. 1.

[4] From the English Order xvi. r. 1, but with the addition of the words 'in respect of the same cause of action;' i.e. the same set of facts which give or may give *A* a right to legal relief against *B*. And see 6 Bom. 266, 275, where Sargent J. said that here 'cause of action meant not only the act complained of, but also the right violated by that act.' Where one of two Hindú widows and her adopted son sued as co-plaintiffs claiming either the whole family estate for the son if the adoption were valid, or, if the adoption were invalid, half the estate for the plaintiff widow, the suit was held bad for misjoinder, 6 Mad. 239; and see 6 Bom. 266, 275. In the Madras case there were antagonistic claims arising out of the same cause of action.

be entitled to his costs occasioned by so joining any person who is not found entitled to relief, unless the Court in disposing of the costs of the suit otherwise directs.

Court may substitute or add plaintiff for or to plaintiff suing.

27. Where a suit has been instituted in the name of the wrong person as plaintiff [1], or where it is doubtful whether it has been instituted in the name of the right plaintiff [2], the Court may, if satisfied that the suit has been so commenced through a *bonâ fide* mistake [3], and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted [4] or added as plaintiff or plaintiffs upon such terms as the Court thinks just [5].

Persons who may be joined as defendants.

28. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, in respect of the same matter [6]. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

Joinder of parties liable on same contract.

29. The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundís and promissory notes [7].

[1] e.g. by beneficiary instead of trustee, by mortgagor instead of mortgagee.

[2] e.g. in an action for breach of a contract made by an agent.

[3] of law or of fact, *Ducket* v. *Gover*, 6 Ch. D. 82.

[4] It has been held in England that a new plaintiff cannot be substituted for the original plaintiff except by consent of the latter, *Emden* v. *Carte*, 17 Ch. D. 169, where the Court added a plaintiff and gave him the conduct of the suit.

[5] See *Turquand* v. *Fearon*, 4 Q. B. D. 280.

[6] From the English Order xvi. r. 4, with the addition of the words 'in respect of the same matter,' 8 Cal. 172. Sec. 28 is not imperative, 8 Cal. 238. It does for defendants what sec. 26 does for plaintiffs. It was said in Council that sec. 28 would enable a landlord to proceed in a single suit for the enhancement of the rent of the tenants of a whole estate. In England, *A* sued *B* for trespass on land of which *A* was lessee under *C*. The defence was a right of way granted by *C*. It was held that *A* might add *C* as a defendant, claiming against him, in case the right of way was established, damages for breach of covenant for quiet enjoyment, *Child* v. *Stenning*, 5 Ch. D. 695. But a stranger to a contract of which specific performance is sought cannot be a party to a suit. Where, therefore, *A* sues as against *B* for specific performance of a contract to sell lands and as against *C* for a declaration that he was not entitled to any charge on those lands, *C* is improperly made a party, 5 Bom. 177. See 12 Cal. 555.

[7] Thus the holder of bills of ex-

One party may sue or defend on behalf of all in same interest.

30. Where there are numerous parties[1] having the same interest in one suit, one or more of such parties may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of all parties so interested[2]. But the Court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such parties either by personal service or (if from the number of parties or any other cause such service is not reasonably practicable) by public advertisement, as the Court in each case may direct[3].

Suit not to fail by reason of misjoinder.

31. No suit shall be defeated by reason of the misjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it[4].

Nothing in this section shall be deemed to enable plaintiffs to join in respect of distinct causes of action[5].

Court may dismiss or add parties.

32. The Court may, on or before the first hearing, upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant[6], improperly joined, be struck out;

and the Court may at any time[7] either upon or without

change may join the drawer and the acceptor as co-defendants in the same suit, 3 Cal. 541.

[1] i.e. persons, 9 Cal. 606. The first part of this section implies that the plaintiff therein contemplated wishes to sue on behalf of other persons similarly interested in suing, they also wishing the same, 5 All. 606. That when there is community of interest among a large number of persons a few should be allowed to represent the whole, see 3 Mad. H. C. 229.

[2] See Order xvi. r. 9.

[3] This section applies to a case where many persons are jointly interested in obtaining relief, 7 All. 182, per Petheram C.J.; as, for instance, where one part-owner of a ship sues on behalf of himself and his co-owners for freight, *De Hart* v. *Stevenson*, 1 Q. B. D. 313, or where one co-owner of a patent sues for an infringement, *Sheehan* v. *G. E. Ry. Co.*, 16 Ch. D. 59. Its object is to save the record from being incumbered. It does not allow individuals to sue on behalf of the general public, but it enables some of a class having special interests to represent the rest of the class, 9 Mad. 463. It applies to suits affecting the property of a Malabar *tarawád*, which 'is something in the nature of a corporation,' but not the kind contemplated in sec. 435, 6 Mad. 125: 10 Mad. 327.

[4] Order xvi. r. 11.

[5] 6 Bom. 275.

[6] Thus if an officer of a corporation or company be made a defendant for purposes of discovery only, his name should be struck out, as the necessary relief can be got under sec. 124; see *Wilson* v. *Church*, 9 Ch. D. 552.

[7] even, apparently, after decree, 6 Mad. 227.

such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant or that any defendant be made a plaintiff [1], and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit [2], be added [3].

Consent of person added as plaintiff.

No person shall be added as a plaintiff, or as the next friend of a plaintiff, without his own consent [4] thereto [5].

Parties to suits instituted under s. 30.

Any person on whose behalf a suit is instituted or defended under section 30 may apply to the Court to be made a party to such suit.

Defendants added to be served.

All parties whose names are so added [6] as defendants shall be served with a summons in manner hereinafter mentioned, and (subject to the provisions of the Indian Limitation Act, 1877, section 22) the proceedings as against them shall be deemed to have begun only on the service of such summons [7].

Conduct of suit.

The Court may give the conduct of the suit to such plaintiff as it seems proper [8].

[1] 7 Bom. 167. But see 10 Mad. 44.

[2] i. e. (as a rule) questions directly arising out of and incident to the original cause of action, in which, either in character of plaintiff or defendant, the person to be joined has an identity or community of interest with that party in the litigation on whose side he is to be ranged, 2 All. 743, per Straight J.

[3] This section applies to a suit which is to some extent properly instituted, though partially defective. There is no jurisdiction at the hearing to add a plaintiff unless the original plaintiff had some title to sue, 6 Cal. 371, 376: 4 Cal. 359: 6 Mad. 331 (where application to be made plaintiffs was granted). The object of this provision is to enable the Court to try and determine, once for all, material questions common to the parties and to third parties and not merely questions between the parties to the suit, 5 Mad. 52. As to assignees *pendente lite*, see 8 Bom. 323, and *Kino* v. *Rudkin*, 6 Ch. D. 160. The Secretary of State for India in Council may be added, 9 Cal. 277. For the exercise of these powers no period of limitation is provided: they may be used so long as the case is *sub judice*, 12 Cal. 651.

[4] This need not be in writing, as under the corresponding English rule.

[5] Because the suit may be improperly brought, and if a person were made plaintiff without his consent, he might also be made liable for costs, 7 Cal. 244. If a person objects to be made a plaintiff, the proper course is to make him a defendant. But the section does not contemplate an application by the person proposed to be added, 5 Cal. 882, 886.

[6] whether on the application of the plaintiff, or on their own application, or by the Court acting on its own authority and without any application, 2 All. 491, 492.

[7] Order xvi. r. 11.

[8] See Order xvi. r. 39.

Where defendant added, plaintiff to amend.

33. Where a defendant is added, the plaint, if previously filed, shall, unless the Court direct otherwise, be amended in such manner as may be necessary, and an amended copy of the summons shall be served on the new defendant and the original defendants[1].

Time for taking objections as to non-joinder or misjoinder.

34. All objections for want of parties, or for joinder of parties who have no interest in the suit, or for misjoinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the first hearing[2]; and any such objection not so taken shall be deemed to have been waived by the defendant.

Any party may authorise any other party to appear etc for him.

35. When there are more plaintiffs than one, any one or more of them may be authorised by any other of them to appear, plead or act for such other in any proceeding under this Code: and in like manner when there are more defendants than one, any one or more of them may be authorised by any other of them to appear, plead or act for such other in any such proceeding[3].

Authority to be in writing, signed and filed.

The authority shall be in writing signed by the party giving it, and shall be filed in Court.

Recognised Agents and Pleaders.

Appearances etc. may be in person, by recognised agent, or by pleader.

36. Any appearance, application or act in or to any Court, required or authorised by law to be made or done by a party to a suit or appeal in such Court, may, except when otherwise expressly provided by any law for the time being in force[4], be made or done by the party in person, or by his recognised agent[5], or by a pleader duly appointed[6] to act on his behalf:

Provided that any such appearance shall be made by the party in person, if the Court so direct[7].

[1] Order xvi. r. 13. But as to consolidated suits see *In re Wortley*, 4 Ch. D. 181.

[2] 7 Cal. 594, 603: 8 Cal. 277: 6 All. 57.

[3] 2 Bom. H. C., A. C. J. 103.

[4] See, e. g., sec. 404 infra: 4 Bom. H. C., A. C. J. 91. That a recognised agent cannot sue or appear in his own name, see 5 Ben. Appx. 11: 2 N. W. P. 179.

[5] 13 Suth. Civ. R. 344: 15 ibid. 245. He cannot address the Court as a suitor may do, 3 ibid. 108.

[6] i. e. duly appointed according to the law regarding pleaders in force in the particular Court, 8 Bom. 105.

[7] In the case of a pauper, sec. 36 is controlled by sec. 404, see 4 Bom. H. C., A. C. J. 91.

Recognised agents.

37. The recognised agents of parties by whom such appearances, applications and acts may be made or done are—

Persons holding general powers-of-attorney.

(*a*) persons holding general powers-of-attorney [1] from parties not resident [2] within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, authorising them to make and do such appearances, applications and acts on behalf of such parties;

Certificated mukhtárs holding special powers.

(*b*) mukhtárs duly certificated under any law for the time being in force, and holding special powers-of-attorney authorising them to do, on behalf of their principals, such acts as may legally be done by mukhtárs;

Persons carrying on business for parties out of jurisdiction.

(*c*) persons carrying on trade or business for and in the names of parties not resident [3] within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorised to make and do such appearances, applications and acts [4].

Recognised agents in Panjáb, Oudh and Central Provinces.

Nothing in the former part of this section applies to the territories now administered respectively by the Lieutenant-Governor of the Panjáb, and the Chief Commissioners of Oudh and the Central Provinces; but in those territories the recognised agents of parties by whom such appearances, applications and acts may be made and done shall be such persons as the Local Government may, from time to time, by notification in the official Gazette, declare in this behalf [5].

Service of process on recognised agent.

38. Processes served on the recognised agent [6] of a party to a suit or appeal shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

[1] Bourke, O. C. J. 244. The power must be duly stamped, see infra, Act I of 1879, sched. I. art. 50.

[2] This covers every absence which may reasonably be supposed to have been contemplated by the legislature. It must be construed broadly, so as not to prevent a creditor from enforcing his claims against his debtor, 6 Bom. 100, 102.

[3] 6 Bom. H. C. 159.

[4] This clause must be read with sec. 76, 4 Bom. 416. For a case in which a firm was held not within cl. (*c*), see 8 Bom. H. C. 159. As to the agent of a firm ceasing to exist, or to carry on business, see 13 Suth. Civ. R. 344: 9 Bom. H. C. 427. As to the Political Agent appointed to manage the estate of a minor Chief, 11 Bom. 53.

[5] See the Panjáb Notification No. 3857, dated Oct. 3, 1877: and *The N. W. Provinces and Oudh Gazette*, July 27, 1878, p. 1058.

[6] But an order directed to be served on an attorney cannot be served on his clerk, 2 Hyde, 116.

The provisions of this Code for the service of process on a party to a suit shall apply to the service of process on his recognised agent [1].

Appointment of pleader.

39. The appointment of a pleader to make or do any appearance, application or act as aforesaid shall be in writing, and such appointment shall be filed in court.

When so filed, it shall be considered to be in force until revoked with the leave of the Court, by a writing signed by the client and filed in court [2], or until the client or the pleader dies, or all proceedings in the suit are ended so far as regards the client [3].

No advocate of any High Court established by Royal Charter shall be required to present any document empowering him to act.

Service of process on pleader.

40. Processes served on the pleader of any party or left at the office or ordinary residence of such pleader, relative to a suit or appeal, and whether the same be for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents; and, unless the Court otherwise directs, shall be as effectual for all purposes in relation to the suit or appeal as if the same had been given to or served on the party in person [4].

Agent to receive process.

41. Besides the recognised agents described in section 37, any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

His appointment to be in writing signed and filed.

Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument, or, if the appointment be general, a duly attested copy thereof, shall be filed in court.

[1] Of course sec. 38 does not bar service on the parties themselves, Suth. 1864, Mis. 21.

[2] Cf. the English Order vii. r. 3.

[3] That a new vakálatnáma is unnecessary in proceedings subsequent to decree, see 8 Suth. Civ. R. 92 (appeals to the Queen in Council): 12 ibid. 465 (application for a new trial): 5 Bom. H. C., A. C. J. 83 (resisting claim to property attached in execution): 4 Mad. H. C. Rulings, xliii (suit remanded by appellate Court).

[4] 6 Bom. H. C., A. C. J. 141 (order requiring party to attend and give evidence). As to divorce suits, see 6 Bom. 416, 429.

CHAPTER IV.

OF THE FRAME OF THE SUIT.

Suit how framed.

42. Every suit shall, as far as practicable, be so framed as to afford ground for a final decision upon the subjects in dispute, and so to prevent further litigation concerning them.

Suit to include whole claim.

43. Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action [1]; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court [2].

Relinquishment of part of claim.

If a plaintiff omit to sue [3] in respect of, or intentionally relinquish, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished [4].

Omission to sue for one of several remedies.

A person entitled to more than one remedy [5] in respect of the same cause of action may sue for all or any of his remedies; but if he omits (except with the leave of the Court

[1] i.e. the cause of action upon which the suit is brought, 8 Mad. 520; see 12 Cal. 291. One of the reasons for prohibiting the splitting of an entire demand is that the defendant be not put to unnecessary vexation, and one test is whether the same evidence and the same arguments apply in the two cases.

[2] 9 Mad. 279.

[3] The words 'omit to sue' include accidental or involuntary omission, 11 Moore, I. A. 605 (S. C., 8 Suth. P. C. 3).

[4] 9 Cal. 143, affirmed by the P. C., 12 Cal. 482: 2 All. 838: 3 All. 543, 660: 4 All. 171. Thus where the property of a Hindú family consisted of lands as well as debts, and two of the family at first sued for a partition of the debts only and then compromised and withdrew the suit without the permission of the Court, a second suit brought by them for a partition of the whole property was barred, 7 Bom. 182. So where *A* sued for rent at an enhanced rate for a certain year, he could not afterwards sue for the original rent for previous years. The correct test is whether the claim in the new suit is, in fact, founded on a cause of action distinct from that which was the foundation of the former suit, 11 Moo. I. A. 605. Thus where *A* deposits three Government promissory notes with *B*, who misappropriates them, and *A* sues *B* for two of the notes, *A* cannot afterwards sue *B* for the third note, ibid. For other cases in which the second suit is barred, see 4 Suth. Ref. 20: 12 Suth. Civ. R. 79: 14 ibid. 253: 18 ibid. 337: 21 ibid. 223: 3 Ben. A. C. J. 265: 7 Bom. 377.

For cases in which the second suit is not barred, see 4 All. 180, 461: 6 All. 616: 7 All. 624: 9 All. 23: 7 Bom. 446: 8 Cal. 819: 12 Cal. 60, 339; and see Act IV of 1882, sec. 99.

Where the plaintiff omits to sue in respect of a portion of his claim, stating that he does not relinquish it, but means to sue again for it, he can, of course, gain nothing by such statement, 2 N. W. P. 90.

[5] i.e. entitled at the time of suing for the first remedy, 3 All. 857.

obtained before the first hearing[1]) to sue for any of such remedies, he shall not afterwards sue for the remedy so omitted.

For the purpose of this section, an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action[2].

Illustration.

A lets a house to *B* at a yearly rent of Rs. 1,200. The rent for the whole of the years 1881 and 1882 is due and unpaid. *A* sues *B* only for the rent due for 1882. *A* shall not afterwards sue *B* for the rent due for 1881[3].

Only certain claims to be joined with suit for recovery of land.

44. *Rule a.*—No cause of action shall, unless with the leave of the Court[4], be joined with a suit for the recovery of immoveable property[5], or to obtain a declaration of title to immoveable property, except—

(*a*) claims in respect of mesne profits[6] or arrears of rent in respect of the property claimed,

(*b*) damages for breach of any contract under which the property or any part thereof is held, and

(*c*) claims by a mortgagee to enforce any of his remedies under the mortgage[7].

Claims by or against executor, administrator or heir.

Rule b.—No claim by or against an executor, administrator or heir[8] as such, shall be joined with claims by or against him personally, unless the last-mentioned claims are alleged to arise with reference to the estate in respect of which the

[1] The application for leave is in time if made directly the case is called on, and before anything has been done towards the hearing, 5 Bom. 463, 465.

[2] Where a mortgagee in execution of a decree for the satisfaction of any claim, whether arising under the mortgage or not, attaches the mortgaged property, he may, notwithstanding anything contained in this section, institute a suit for sale of the property, under sec. 67 of the Transfer of Property Act, supra, Vol. I. p. 780.

[3] 6 Cal. 793: 12 Cal. 50.

[4] In England leave has been given to join with an action for the recovery of land, (*a*) a claim to recover a deed relating to the land, and to recover personal estate comprised in the same instrument, 2 Ch. D. 111; (*b*) a claim for a receiver, 24 W. R. 845; (*c*) where the plaintiff was both heir at law and one of the next of kin of an intestate, a claim for administration, 24 W. R. 901.

[5] 5 Mad. 161.

[6] As to these, see 8 Cal. 332, 343, 8 Suth. Civ. R. 104, where the expression was interpreted as meaning 'those profits which a person in actual wrongful possession of certain land did actually receive, or might with ordinary diligence have received, from that land.'

[7] Order xviii. r. 2. There is no appeal from an order under sec. 44. rule *a*, 8 All. 191.

[8] 6 Bom. 390, 393.

plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents [1].

Plaintiff may join several causes of action.

45. Subject to the rules contained in chapter II and in section 44, the plaintiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly [2] interested against the same defendant, or the same defendants jointly, may unite such causes of action in the same suit [3].

Court may order separation.

But if it appear to the Court that any such causes of action cannot be conveniently tried or disposed of together, the Court may, at any time before the first hearing, of its own motion or on the application of any defendant, or at any subsequent stage of the suit, if the parties agree, order separate trials of any such causes of action to be had, or make such other order as may be necessary or expedient for the separate disposal thereof [4].

When causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit, whether or not an order has been made under the second paragraph of this section.

Defendant may apply to confine suit.

46. Any defendant alleging that the plaintiff has united in the same suit several causes of action which cannot be conveniently disposed of in one suit may at any time before the first hearing, or, where issues are settled, before any evidence is recorded [5], apply to the Court for an order confining

[1] 9 All. 221.

[2] *Jointly* (not necessarily *equally*) interested as to the subject-matter of the suit which the causes of action have in contemplation, 6 Mad. 242. 'Joint interest in the main questions raised by the litigation is a condition precedent to the joinder of several causes of action against several defendants,' 6 All. 108, per Straight J.

[3] It is a prerequisite of the right given by this section that the Court to which the plaint is presented should have jurisdiction over all the causes of action, 7 Mad. 173. That this section is not a restrictive proviso to sec. 28, see 5 All. 178, per Mahmúd J.

[4] 8 Mad. 75. This power does not, of course, extend to the dismissal of certain defendants and ordering that a fresh suit be brought against them, 8 Bom. 619. As to the procedure of the Court where there is a misjoinder, see 7 Bom. 291.

[5] but not afterwards, 7 All. 100.

the suit to such of the causes of action as may be conveniently disposed of in one suit[1].

Power to exclude some causes and order amendment.

47. If, on the hearing of such application, it appears to the Court that the causes of action are such as cannot all be conveniently disposed of in one suit, the Court may order any of such causes of action to be excluded, and may direct the plaint to be amended accordingly, and may make such order as to costs as may be just.

Every amendment made under this section shall be attested by the signature of the Judge.

CHAPTER V.

OF THE INSTITUTION OF SUITS.

Suits to be commenced by plaint.

48. Every suit shall be instituted by presenting a plaint to the Court[2] or such officer as it appoints in this behalf.

Language of plaint.

49. The plaint must be distinctly written in the language of the Court; provided that, if such language is not English, the plaint may (with the permission of the Court) be written in English; but in such case, if the defendant so require, a translation of the plaint into the language of the Court shall be filed in court[3].

Particulars to be contained in plaint.

50. The plaint must contain the following particulars:—

(*a*) the name of the Court in which the suit is brought;

(*b*) the name, description and place of residence of the plaintiff[4];

[1] Order xxiii. r. 8. This section enables a defendant who is embarrassed by a multifarious suit to get the trial confined to a reasonable aggregate of causes of action, and in such a case the other causes must needs be left over for another suit, 8 Bom. 619.

[2] 2 Bom. H. C., A. C. J. 42: 10 ibid. 495, overruling 5 ibid. 117.

[3] A paper referred to in a plaint is not part of the plaint, Bourke, O. C. J. 273.

[4] Where *A* sues, under a power of attorney on behalf of *B*, the suit must be brought in *B*'s name, 1 N. W. P. 277. See also 4 ibid. 59. Where the plaintiff sells his rights *pendente lite* the vendee's name should not be substituted; but the irregularity may be cured by the defendant's consent, 3 Ben. A. C. J. 214.

(*c*) the name, description[1] and place of residence of the defendant, so far as they can be ascertained;

(*d*) a plain and concise statement of the circumstances constituting the cause of action, and where and when it arose;

(*e*) a demand of the relief which the plaintiff claims[2]; and

(*f*) if the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished.

In money suits.

If the plaintiff seeks the recovery of money, the plaint must state the precise amount, so far as the case admits.

In a suit for mesne profits, and in a suit for the amount which will be found due to the plaintiff on taking unsettled accounts between him and the defendant, the plaint need only state approximately the amount sued for.

Where plaintiff sues as representative.

When the plaintiff sues in a representative character[3], the plaint should show, not only that he has an actual existing interest in the subject-matter but that he has taken the steps necessary to enable him to institute a suit concerning it.

Illustrations.

(*a*) *A* sues as *B*'s executor. The plaint must state that *A* has proved *B*'s will.

[1] Where the Government has recognised a person as having a right to bear particular titles, a plaint in a suit against him should mention the titles, 12 Ben. 443; and the Judicial Committee remarked that it was against the policy of the law that anything should be done which tends to increase one of the great social evils of India, viz. the indisposition of persons of consequence to appear as suitors in Courts of justice. Their lordships even said (ibid 449) that 'description' includes all those titles by which the party is generally known. A Hindú widow sued as representing her deceased husband should be so described, 8 Bom. 309.

[2] That under a prayer for general relief, the plaintiff is not entitled to any relief inconsistent with his plaint, see 5 Ben. 682, 689. The Court must take into consideration all the rights of the parties and by its decree give effect to those rights as far as possible; but it should confine itself to granting such relief as is prayed by the plaint, 1 Mad. H. C. 477. Thus in a suit to establish a right of ownership over certain land, the Court should not enter into, and decide upon, the plaintiff's right to an easement over the same, 2 Bom. H. C. 176. However, in 6 Cal. 485 White J. seems to have granted an injunction for which there had not been a specific prayer. As to interest on the amount of mesne profits decreed, though not prayed for in the plaint, see 3 Moo. I. A. 220. That the plaintiff is limited to the sum laid in his plaint as mesne profits, though by the evidence a larger sum appears due to him, see 2 Moo. I. A. 113.

[3] This applies not only to executors, administrators and guardians, but to the manager of a Hindú family, 7 Bom. 470.

(*b*) *A* sues as *C*'s administrator. The plaint must state that *A* has taken out administration to *C*'s estate.

(*c*) *A* sues as guardian of *D*, a Muhammadan minor. *A* is not *D*'s guardian according to Muhammadan law and usage. The plaint must state that *A* has been specially appointed *D*'s guardian.

Defendant's interest and liability to be shown.

The plaint must show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

Illustration.

A dies, leaving *B* his executor, *C* his legatee, and *D* a debtor to *A*'s estate. *C* sues *D* to compel him to pay his debt in satisfaction of *C*'s legacy. The plaint must show that *B* has causelessly refused to sue *D*, or that *B* and *D* have colluded for the purpose of defrauding *C*, or other such circumstances rendering *D* liable to *C*.

Grounds of exemption from limitation-law.

If the cause of action arose beyond the period ordinarily allowed by any law for instituting the suit, the plaint must show the ground upon which exemption from such law is claimed.

Plaints to be signed and verified.

51. The plaint shall be signed by the plaintiff and his pleader (if any), and shall be verified at the foot by the plaintiff or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case[1]:

Provided that if the plaintiff is, by reason of absence or for other good cause, unable to sign the plaint, it may be signed by any person duly authorised by him in this behalf[2].

Contents of verification.

52. The verification must be to the effect that the same is true to the knowledge of the person making it, except as to matters stated on information and belief, and that as to those matters he believes it to be true[3].

Verification to be signed.

The verification shall be signed by the person making it[4].

[1] In the case of a person holding a general power of attorney, or of any other recognised agent, the Court will not insist on any extreme stringency of proof, 4 Bom. 468.

[2] e.g. by a person holding a general power of attorney to sue on behalf of the plaintiff, 4 Bom. 468. But see 9 All. 505 (allegations of fraud). That a person added as co-plaintiff should verify the plaint, see 1 Ben. A. C. J. 100. As to the practice of the Calcutta High Court when a suit is brought by a firm, see 12 Ben. 35.

[3] 6 Cal. 675.

[4] It is expedient, though not necessary, that it should be made in the presence of an officer of the Court, 4 Bom. 468.

When plaint may be rejected, returned for amendment, or amended.

53. The plaint may, at the discretion[1] of the Court and at or before the first hearing[2], be rejected[3], returned for amendment within a time to be fixed by the Court[4], or amended then and there, upon such terms as to the payment of costs occasioned by the amendment[5] as the Court thinks fit,

(*a*) if it does not state correctly and without prolixity the several particulars hereinbefore required to be specified therein; or

(*b*) if it contains any particulars other than those so required[6]; or

(*c*) if it is not signed and verified as hereinbefore required; or

(*d*) if it does not disclose a cause of action[7]; or

(*e*) if it is not framed in accordance with section 42; or

(*f*) if it is wrongly framed by reason of nonjoinder or misjoinder of parties, or because the plaintiff has joined causes of action which ought not to be joined in the same suit[8]:

Proviso.

Provided that a plaint cannot be altered so as to convert a suit of one character into a suit of another and inconsistent character[9].

[1] This discretion is the discretion described in the Specific Relief Act (supra, Vol. I. p. 962), sec. 22; 7 All. 83.

[2] even after it has been registered, 2 Mad. H. C. 51. The power conferred by this section cannot be exercised by a Court of first instance after the first hearing, 7 All. 79, dissenting from 5 Bom. 609, where the Court held that the words 'at or before the first hearing' were merely directory and not mandatory. The Legislature certainly intended them to be mandatory. But the High Courts at Calcutta, 6 Cal. 332, 626, and Madras, 6 Mad. 239, agree with the Bombay High Court, and the antinomy calls for legislative solution.

[3] The judge, in considering whether he should admit or reject a plaint, should not refer to documents and facts not annexed to or stated in the plaint, nor ascertained by interrogating the plaintiff, 10 Bom. 182.

[4] 1 Mad. 427.

[5] i. e. amendment of the faults specified in this section, 7 All. 101.

[6] e.g. mere argument, or a prayer that the defendant be prosecuted for forgery, 8 Suth. Civ. R. 296.

[7] Compare the English judgment on demurrer, L. R., 6 I. A. 121.

[8] It has been held in England (under Order xxviii) that an action may be turned into an information (2 Ch. Div. 221), and that pleadings may be amended so as to raise an entirely new case requiring fresh evidence (5 Prob. Div. 26). But of course the Court, in the exercise of its discretion, may refuse to allow such an amendment.

[9] 5 Cal. 602: 7 Cal. 455: 4 Bom. 587: 7 Bom. 155: 2 Mad. 298: 9 All. 188. For example, a suit for possession with mesne profits into a suit for resumption, 6 Suth. Civ. R. 211. Were the rule otherwise, perjury and forgery would be encouraged, 9 Bom. H. C. 6-7: citing Marshall, 70, per Peacock C.J., and 5 Bom. H. C., A. C. J. 133.

When a plaint is amended, the amendment shall be attested by the signature of the Judge. Attestation of amendment.

54. The plaint shall be rejected in the following cases :— When plaint shall be rejected.

(*a*) if the relief sought is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so :

(*b*) if the relief sought is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court[1], fails to do so[2] :

(*c*) if the suit appears from the statement in the plaint to be barred by any positive rule of law[3] :

(*d*) if the plaint, having been returned for amendment within a time fixed by the Court, is not amended within such time[4].

55. When a plaint is rejected, the Judge shall record with his own hand an order to that effect with the reason for such order. Procedure on rejecting plaint.

56. The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. When rejection does not preclude fresh plaint.

57. The plaint shall be returned to be presented to the proper Court in the following cases :— Return of plaint to be presented to proper Court.

(*a*) if a suit has been instituted in a Court whose grade is lower or higher than that of the Court competent to try it, where such Court exists, or where no option as to the selection of the Court is allowed by law[5] :

(*b*) if, in a suit relating to immoveable property, but not

[1] 2 All. 875.

[2] 9 Bom. 357.

[3] Such, for instance, as sec. 424, infra, or the Limitation Act, 2 Mad. H. C. 51.

[4] Under this section a plaint can only be rejected before it is registered, 2 Mad. 308 : 8 Cal. 192. That the Indian Courts have no power, like that exercised by Courts in England, to dismiss a suit with liberty for the plaintiff to bring a fresh suit for the same matter, or to enter a non-suit, see 13 Moo. I. A. 160.

[5] 7 Mad. 171 : 10 Mad. 211, following 8 Bom. 313 and 8 Cal. 834. Even though the plaintiff fraudulently understates the value of the subject-matter of the suit, and the under-statement has only been detected after investigation, the plaint should be returned, 8 Mad. 62.

coming under the proviso to section 16, it appears that no part of such property is situate within the local limits of the jurisdiction of the Court to which the plaint is presented:

(*c*) if, in any other case, it appears that the cause of action did not arise, and that none of the defendants are dwelling or carrying on business, or personally working for gain, within such local limits [1].

Procedure on returning plaint.

On returning a plaint, the Judge shall, with his own hand, endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reason for returning it.

Procedure on admitting plaint.

58. The plaintiff shall endorse on the plaint, or annex thereto, a memorandum of the documents (if any) which he has produced along with it; and, if the plaint be admitted, shall present as many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements [2] of the nature of the claim made, or of the relief or remedy required, in the suit, in which case he shall present such statements.

Concise statements.

If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.

The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

The chief ministerial officer of the Court shall sign such memorandum and copies or statements if, on examination, he finds them to be correct.

Register of suits.

The Court shall also cause the particulars mentioned in section 50 to be entered in a book to be kept for the purpose and

[1] The duty imposed by this section should be performed where, after the trial has begun, or even after it has concluded, it appears that the Court has not jurisdiction, 8 Cal. 834: 2 All. 357: 8 Bom. 313, overruling 7 Bom. 487: 9 Bom. 266: 7 Mad. 171: 8 Mad. 62. As to appeals from orders under this section, see 4 All. 478. It does not apply to the original side of the High Court, infra sec. 638, and see 8 Bom. 380.

[2] See infra, Schedule IV, No. cxiv.

called the Register of civil suits. Such entries shall be numbered in every year according to the order in which the plaint is admitted.

Production of document on which plaintiff sues.

59. If a plaintiff sues upon a document in his possession or power, he shall produce it in court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint[1].

List of other documents.

If he rely on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

Statement in case of documents not in his possession.

60. In the case of any such document not in his possession or power, he shall, if possible, state in whose possession or power it is.

Suits on lost negotiable instruments.

61. In case of any suit founded upon a negotiable instrument, if it be proved that the instrument is lost, and if an indemnity be given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may make such decree as it would have made if the plaintiff had produced the instrument in court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint[2].

Production of shop-book.

62. If the document on which the plaintiff sues be an entry in a shop-book or other book in his possession or power, the plaintiff shall produce the book at the time of filing the plaint, together with a copy of the entry on which he relies.

Original entry to be marked and returned.

The Court, or such officer as it appoints in this behalf, shall forthwith mark the document[3] for the purpose of identification; and, after examining and comparing the copy with the original and attesting the copy if found correct, shall return[4] the book to the plaintiff and cause the copy to be filed.

[1] All such documents, whether irrelevant or otherwise inadmissible, must be received; but under sec. 129 of the Code [now sec. 140] the Court is competent to reject such documents and rid the record of their presence, Marshall, 127, 135, per Peacock C.J.

[2] 2 All. 754 (lost cheque).

[3] The Court is not required to *inspect* it, 3 Bom. H. C. 92, 93.

[4] See sec. 143 infra.

Inadmissibility of document not produced when plaint filed.

63. A document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court[1], be received in evidence on his behalf at the hearing of the suit[2].

Nothing in this section applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant, or handed to a witness merely to refresh his memory.

CHAPTER VI.

OF THE ISSUE AND SERVICE OF SUMMONS.

Issue of Summons.

Summons.

64. When the plaint has been registered, and the copies or concise statements required by section 58 have been filed, a summons may be issued to each defendant to appear and answer the claim on a day to be therein specified,

(*a*) in person, or

(*b*) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(*c*) by a pleader accompanied by some other person able to answer all such questions.

Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court:

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim[3].

Copy or statement annexed to summons.

65. Every such summons shall be accompanied with one of the copies or concise statements mentioned in section 58.

[1] 8 Bom. 377, 380. As to proof of leave, see 13 Moore, I. A. 83.

[2] The words are imperative, the object being to prevent dishonest fabrication of documents, 1 Hyde, 145, 146. But omission to produce the document on which the plaintiff sues is no ground for rejecting the plaint, 2 Bom. H. C., A. C. J. 369.

[3] Of course the judge must be satisfied of the identity of the defendant, or that the pleader who appears for him is duly instructed, 3 Ben. 402, 403, per Markby J.

Court may order defendant or plaintiff to appear in person.

66. If the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

If the Court sees reason to require the personal appearance of the plaintiff on the same day, it may make an order for such appearance.

No party ordered to appear in person unless resident within 50, or, where railway, 200 miles.

67. No party shall be ordered to appear in person unless he resides

(*a*) within the local limits of the Court's ordinary original jurisdiction, or

(*b*) without such limits and at a place less than fifty or, where there is railway-communication for five-sixths of the distance between the place where he resides and the place where the Court is situate, two hundred miles from the court-house.

Summons to be either to settle issues or for final disposal.

68. The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly [1]:

Provided that, in every suit heard by Courts of Small Causes, the summons shall be for the final disposal of the suit.

Fixing day for appearance of defendant.

69. The day for the appearance of the defendant shall be fixed by the Court with reference to its current business, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

What shall be deemed 'sufficient time' must be determined with reference to the circumstances of the case [2].

Summons to order defendant to produce documents.

70. The summons to appear and answer shall order the defendant to produce any document in his possession or power, containing evidence relating to the merits of the plaintiff's case, or upon which the defendant intends to rely in support of his case.

[1] Marshall, 307.

[2] Such as, for example, the nature of the rights involved, the importance of the claim, the distance of the parties from the court, 3 Mad. H. C. 167.

Defendant when directed to produce his witnesses.

71. When the summons is for the final disposal of the suit, it shall direct the defendant to produce, on the day fixed for his appearance, the witnesses upon whose evidence he intends to rely in support of his case.

Service of Summons.

Delivery of summons for service.

72. The summons shall be delivered to the proper officer of the Court[1], to be served by him or one of his subordinates.

Mode of service.

73. Service of the summons shall be made by delivering or tendering[2] a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

Service on several defendants.

74. When there are more defendants than one, service of the summons shall be made on each defendant[3]:

Provided that, if the defendants are partners[4], and the suit relates to a partnership-transaction or to an actionable wrong in respect of which relief is claimable from the firm, the service may be made unless the Court directs otherwise either (*a*) on one defendant for himself and for the other defendants, or (*b*) on any person having[5] the management of the business of the partnership at the principal place[6], within the local limits of the Court's ordinary original civil jurisdiction, of such business.

Service to be on defendant in person or on his agent.

75. Whenever it may be practicable, the service shall be made on the defendant in person, unless he have an agent empowered to accept the service[7], in which case service on such agent shall be sufficient.

Service on agent by whom defendant carries on business.

76. In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons issues,

[1] As to the employment of special bailiffs, see 2 Ben., A. C. J. 59: 11 ibid. 1.

[2] Merely showing it is not enough.

[3] Where husband and wife are both defendants they must both be served: cf. the English Order ix. r. 3.

[4] i.e. apparently, when they are sued as having been partners when the cause of action accrued. See *Ex p. Young*, 19 Ch. D. 124: *Davis* v. *Morris*, 10 Q. B. D. 436, 444, and the present English Orders, ix. r. 6, xvi. r. 14.

[5] at the time of service: cf. the English Order ix. r. 6.

[6] The words 'at the principal place' etc. do not refer to the defendant mentioned in clause (*a*). See, however, 11 Ben. Appx. 26, per Macpherson J.

[7] 17 Suth. Civ. R. 33, col. 2.

service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service [1].

For the purpose of this section, the master of a ship is the agent of his owner or charterer [2].

Service on agent in charge, in suits for immoveable property.

77. In a suit to obtain relief respecting [3], or compensation for wrong to, immoveable property, if the service cannot be made on the defendant in person, and the defendant have no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

When service may be on male member of defendant's family.

78. If in any suit the defendant cannot be found and if he have no agent empowered to accept the service of the summons on his behalf, the service may be made on any adult male member of the family of the defendant who is residing with him.

Explanation.—A servant is not a member of the family within the meaning of this section.

Person served to sign acknowledgment.

79. When the serving-officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

Procedure when defendant refuses to accept service, or

80. If the defendant or other person refuses to sign the acknowledgment,

or if the serving-officer cannot find the defendant, and there is no agent empowered to accept the service of the summons

[1] This section and section 37, cl. (*c*) must be construed together. The 'manager or agent' intended is one who has an initiative and independent discretion, albeit subject possibly to principles and general orders prescribed for his guidance. A servant employed only to carry out orders or to execute a particular commission, and a factor or commission-agent not in any way identified with the firm for which he acts, is not such an agent, 4 Bom. 416, 422.

[2] As to service on a ship's agent, 7 Bom. H. C., O. C J. 197. Service duly made under this section seems effectual though not communicated to the real defendants. But service unduly made does not become effectual by reason of the fact of such service being subsequently notified to the parties really interested as defendants, 4 Bom. 416, 423.

[3] See sec. 16, clauses (*a*) to (*f*): 9 Cal. 733, where the suit was for foreclosure or sale of certain immoveable property.

cannot be found.

on his behalf, nor any other person on whom the service can be made,

the serving officer shall affix a copy of the summons on the outer door of the house in which the defendant ordinarily resides[1] and then return the original to the Court from which it issued, with a return endorsed thereon or annexed thereto, stating that he has so affixed the copy and the circumstances under which he did so.

Endorsement of time and manner of service.

81. The serving-officer shall, in all cases in which the summons has been served under section 79, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served.

Examination of serving-officer.

82. When a summons is returned under section 80, the Court shall examine the serving-officer on oath[2] touching his proceedings, and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

Substituted service.

Where the Court is satisfied[3] that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding the service, or that for any other reason[4] the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the court-house, and also upon some conspicuous part of the house, if any, in which the defendant is known to have last resided, or in such other manner as the Court thinks fit[5].

Effect of substituted service.

83. The service substituted by order of the Court shall be as effectual[6] as if it had been made on the defendant personally.

[1] 5 Mad. H. C. 101: 7 Bom. H. C., A. C. J. 138.

[2] See the General Clauses Act, s. 2, cl. 17, supra, Vol. I, p. 489.

[3] 19 Suth. P. C. 353, 356.

[4] The plaintiff's ignorance of the proper way to describe the parties he sought to sue is not such a reason, *Sloman v. Government of New Zealand*, 1 C. P. D. 563, 567.

[5] There is no provision for substituting for service a notice by advertisement in a newspaper.

[6] i. e. effectual for proceeding with the suit, and nothing more. This section must be read with the second clause of sec. 108; 2 Bom. 452.

When service substituted, time for appearance fixed.

84. Whenever service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require[1].

Service when defendant resides within jurisdiction of another Court and has no agent to accept service.

85. If the defendant resides within the jurisdiction of any Court other than the Court in which the suit is instituted, and has no agent resident within the local limits of the jurisdiction of the latter Court empowered to accept the service of the summons, such Court shall send the summons, either by one of its officers or by post, to any Court, not being a High Court, having jurisdiction at the place where the defendant resides, by which it can be conveniently served, and shall fix such time for the appearance of the defendant as the case may require.

The Court to which the summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court, and shall then return the summons to the Court from which it originally issued, together with the record (if any) made under this paragraph.

Service, within Presidency-towns and Rangoon, of process issued by Provincial Courts.

86. Whenever any process issued by any Court established beyond the limits of the towns of Calcutta, Madras, Bombay and Rangoon is to be served within any such town, it shall be sent to the Court of Small Causes, within whose jurisdiction the process is to be served,

and such Court of Small Causes shall deal with such process in the same manner as if the process had been issued by itself,

and shall then return the process to the Court from which it issued.

Service on defendant in jail.

87. If the defendant be in jail, the summons shall be delivered to the officer in charge of the jail in which the defendant is confined, and such officer shall cause the summons to be served upon the defendant.

The summons shall be returned to the Court from which it issued, with a statement of the service endorsed thereon and signed by the officer in charge of the jail and by the defendant.

[1] The time should be sufficient for notice of the fact to reach the defendant wherever he may be; and if an *ex parte* decree is obtained by the plaintiff, the Court, on being satisfied that the time fixed was insufficient, will set aside the decree, 2 Bom. 449.

Procedure if jail be in different district.

88. If the jail in which the defendant is confined is not in the district in which the suit is instituted, the summons may be sent by post or otherwise to the officer in charge of such jail, and such officer shall cause the summons to be served upon the defendant, and shall return the summons to the Court from which it issued, with a statement of the service endorsed thereon, and signed as provided in section 87.

Service when defendant resides out of British India and has no agent to accept service.

89. If the defendant resides out of British India, and has no agent in British India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post[1] if there be postal communication between such place and the place where the Court is situate[2].

Service through British Resident or Agent of Government.

90. If there be a British Resident or Agent of Government in or for the territory in which the defendant resides, the summons may be sent to such Resident or Agent, by post or otherwise, for the purpose of being served upon the defendant; and if the Resident or Agent returns the summons with an endorsement under his hand that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be conclusive evidence of the service.

Substitution of letter for summons.

91. The Court may, notwithstanding anything hereinbefore contained, substitute for the summons a letter signed by the Judge or such officer as he appoints in this behalf, when the defendant is, in the opinion of the Court, of a rank which entitles him to such mark of consideration.

The letter shall contain all the particulars required to be stated in the summons, and, subject to the provisions contained in section 92, shall be treated in all respects as a summons.

Mode of sending such letter.

92. When a letter is so substituted for a summons, it may be sent to the defendant by post or by a special messenger

[1] under a registered cover, 15 Suth. Civ. R. 31.

[2] The question has not arisen in India, but the Courts will probably hold that this section is not confined to natural persons, but applies also to a foreign corporation having no place of business in British India; see *Scott* v. *Royal Wax Candle Co.*, 1 Q. B. D. 404.

selected by the Court[1], or in any other manner which the Court thinks fit; unless the defendant has an agent empowered to accept service of summons, in which case the letter may be delivered or sent to such agent.

Service of Process.

Process to be served at expense of party issuing. Costs of service.

93. Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

The court-fee leviable for such service shall be levied within a time to be fixed by the Court, before the process is issued.

Notices and orders, how served.

94. All notices and orders required by this Code to be given to or served on any person shall be in writing, and shall be served in the manner hereinbefore provided for the service of summons.

Postage.

Postage.

95. Postage, where chargeable on any notice, summons or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed by the Court before the communication is forwarded:

Provided that the Local Government, with the previous sanction of the Governor General in Council, may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

CHAPTER VII.

OF THE APPEARANCE OF THE PARTIES AND CONSEQUENCE OF NON-APPEARANCE.

Parties to appear on day fixed in summons for defendant.

96. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the court-house in person or by their respective pleaders, and the suit shall then be heard, unless the hearing be adjourned to a future day fixed by the Court.

Dismissal of suit where

97. If, on the day so fixed for the defendant to appear and answer, it be found that the summons has not been

[1] But see 2 Ben. A. C. J. 59.

summons not served in consequence of failure to pay fee.

served upon him in consequence of the failure of the plaintiff to pay the court-fee leviable for such service, the Court may order that the suit be dismissed[1]:

Proviso.

Provided that no such order shall be passed, although the summons has not been served upon the defendant, if, on the day fixed for him to appear and answer, he attends in person or by agent, when he is allowed to appear by agent.

If neither party appears, suit dismissed.

98. If on the day fixed for the defendant to appear and answer, or on any other subsequent day to which the hearing of the suit is adjourned, neither party appears, the suit shall be dismissed, unless the Judge, for reasons to be recorded under his hand, otherwise directs.

In such case plaintiff may bring fresh suit:

99. Whenever a suit is dismissed under section 97 or section 98, the plaintiff may (subject to the law of limitation) bring a fresh suit; or if, within the period of thirty days from the date of the order dismissing the suit, he satisfies the Court that there was a sufficient excuse for his not paying the court-fee required within the time allowed for

or Court may restore suit to file.

the service of the summons, or for his non-appearance[2], as the case may be, the Court shall pass an order to set aside the dismissal[3] and appoint a day for proceeding with the suit.

Dismissal where plaintiff fails for a year to apply for fresh summons.

99A. If, after a summons has, whether before or after the first day of June, 1882[4], been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails for a period of one year from such return to apply for the issue of a fresh summons and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that such defendant is avoiding service of process, the Court may dismiss the suit as against such defendant.

In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

Procedure where only plaintiff appears,

100. If the plaintiff appears and the defendant does not appear[5], the procedure shall be as follows:

[1] 5 Bom. H. C. 118: 2 All. 318. Such an order is not appealable, 9 Cal. 627.

[2] 3 Bom. H. C. 60.

[3] Such an order is not appealable, 10 Mad. 270, 290.

[4] the day on which the Code of 1882 came into force.

[5] i.e. in answer to a summons under sec. 64 to appear and answer

(*a*) if it is proved that the summons was duly served, the Court may proceed *ex parte*: when summons duly served,

(*b*) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant: when summons not duly served;

(*c*) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant[1]. when summons served, but not in due time.

If it is owing to the plaintiff's default[2] that the summons was not served in sufficient time, the Court shall order him to pay the costs occasioned by such postponement[3].

101. If the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit, as if he had appeared on the day fixed for his appearance. Where defendant appears on day of adjourned hearing, and assigns cause for previous non-appearance.

102. If the defendant appears and the plaintiff does not appear, the Court shall dismiss the suit, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder[4]. Where defendant only appears.

103. When a suit is wholly or partially dismissed under Decree against

the claim on a specified day, 7 All. 538. For cases in which the defendant was held *not* to have appeared, see 7 Suth. Civ. R. 81: 6 Ben. 688: 4 Bom. H. C., A. C. J. 206: 1 N.W.P. 154: 7 All. 538.

[1] When the plaintiff appears and the defendant does not appear, sec. 100 applies, whether the defendant has been summoned only to appear and answer, or has, in addition, been summoned to attend and give evidence, 5 Cal. 353, 355.

[2] As, for example, when he gives a wrong address of the defendant, or fails to point him out to the serving-officer.

[3] Where the Dekkhan Raiyats Act (XVII of 1879) is in force, this section must be read with some modification, 5 Bom. 187.

[4] As to appeals from judgments against plaintiffs by default for non-appearance, see 2 Mad. 750.

Plaintiff by default bars fresh suit.

section 102[1], the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action[2]. But he may apply for an order to set the dismissal aside[3]; and, if it be proved that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall set aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

No order shall be made under this section unless the plaintiff has served the defendant with notice in writing of his application.

Procedure where defendant residing out of British India does not appear.

104. If, on the day fixed for the hearing of a suit against a defendant residing out of British India, who has no agent empowered to accept service of summons, or on any day to which the hearing has been adjourned, the defendant does not appear, the plaintiff may apply to the Court for permission to proceed with his suit, and the Court may direct that the plaintiff be at liberty to proceed with his suit in such manner and subject to such conditions as the Court thinks fit.

Non-appearance of one or more of several plaintiffs.

105. If there be more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, and pass such order as it thinks fit.

Non-appearance of one or more of several defendants.

106. If there be more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the Court shall, at the time of passing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

Non-appearance of party ordered to appear in person.

107. If a plaintiff or defendant, who has been ordered to appear in person under the provisions of section 66 or section 436, does not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing

[1] i. e. for the plaintiff's non-appearance. Section 103 does not apply when the suit is dismissed for any other reason, 5 N. W. P. 74: 7 N. W. P. 77, 126: 3 All. 292: 4 Mad. H. C. 56.

[2] 9 Cal. 426.

[3] 7 Mad. 41.

sections applicable to plaintiffs and defendants, respectively, who do not appear.

Of setting aside Decrees ex parte.

Setting aside decree *ex parte* against defendant.

108. In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was made for an order to set it aside [1]; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause [2] from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the decree upon such terms as to costs, payment into court or otherwise, as it thinks fit, and shall appoint a day for proceeding with the suit [3].

No decree set aside without notice to opposite party.

109. No decree shall be set aside on any such application as aforesaid, unless notice thereof in writing has been served on the opposite party.

CHAPTER VIII.

OF WRITTEN STATEMENTS AND SET-OFF.

Written statements.

110. The parties may, at any time before or at the first hearing [4] of the suit, tender written statements of their respective cases [5], and the Court shall receive such statements and place them on the record.

Particulars of set-off to be given in

111. If in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained

[1] As to the time within which this application must be made, see infra, Act XV of 1877, Sched. II. art. 154.

[2] See for illustrations of 'sufficient cause,' 2 Hyde 216: 13 Suth. Civ. R. 237: 18 ibid. 141; 25 ibid. 394: 2 Bom. H. C. 267: 3 ibid. O. C. J. 60: 7 ibid. A. C. J. 138.

[3] Under section 647 this applies to execution proceedings, as well as to suits and appeals, 10 Cal. 416, 422. The defendant may also appeal under sec. 540 against an *ex parte* decree [contra, 4 All. 387]; but then he has no evidence of his own to depend upon. He has not the advantage which he might have obtained by cross-examining the plaintiff's witnesses, and his contention on appeal must be limited either to questions of law or to such arguments as arise upon the evidence which the plaintiff has placed on the record, 8 Cal. 274, per Field J., and see 9 Mad. 445, dissenting from 4 All. 387.

[4] i.e. before the parties have entered upon their case, 4 Bom. 578.

[5] That a stranger to the suit will not be allowed to tender a statement on behalf a party, see Bourke, O. C. J. 153.

written statement.

sum of money[1] legally recoverable[2] by him from the plaintiff, and if in such claim of the defendant against the plaintiff both parties fill the same character as they fill in the plaintiff's suit[3], the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, tender a written statement containing the particulars of the debt sought to be set-off.

Inquiry.

The Court shall thereupon inquire into the same, and if it finds that the case fulfils the requirements of the former part of this section, and that the amount claimed to be set-off does not exceed the pecuniary limits of its jurisdiction[4], the Court shall set-off the one debt against the other.

Effect of set-off.

Such set-off shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original and on the cross claim; but it shall not effect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree[5].

Illustrations.

(*a*) *A* bequeaths rs. 2,000 to *B*, and appoints *C* his executor and residuary legatee. *B* dies and *D* takes out administration to *B*'s effects. *C* pays rs. 1,000 as surety for *D*. Then *D* sues *C* for the legacy. *C* cannot set-off the debt of rs. 1,000 against the legacy, for neither *C* nor *D* fills the same character with respect to the legacy as they fill with respect to the payment of the rs. 1,000.

[1] 2 All. 252 (not compensation for waste by usufructuary mortgagee): and see 9 Bom. 403.

[2] For cases in which a sum was held not to be 'legally recoverable,' see 2 Suth. Civ. R. 297 (rent barred by time): 6 Suth. Ref. 26 (money spent without authority in repairs): 15 Suth. Civ. R. 252 (demand already dismissed): 16 ibid. 308 (demand based on unenforceable decree). *Rawley* v. *Rawley*, 1 Q. B. D. 460 (debt arising on unratified promise of an infant).

[3] 5 All. 301, where Straight J. remarks that at present the law of procedure in India does not sanction set-off or counter-claim as contemplated by art. 3, Order xix of the Judicature Act, 1875.

[4] 3 N. W. P. 114. In 1 Suth. Civ. R. 297, the Court seemed to think that a claim enforceable in a Collector's court could not be set-off in a civil court.

[5] It has been held that this section regulates procedure and does not take away any right of set-off which parties would have had independently of its provisions, 7 All. 284: 4 Bom. 407: 11 Cal. 560. It was never, said Garth C.J., intended to enact any new law as to what is, and what is not, the subject of set-off, 9 Cal. 918. With deference, it *was* intended by sec. 112 to state when, and when only, set-off should be allowed. The decision in 2 Mad. H. C. 296, relied on in 11 Cal. 560 and 4 Bom. 407, was on secs. 121, 195 of the Code of 1859. As to the decree where a set-off has been allowed, see sec. 216 infra.

(*b*) *A* dies intestate and in debt to *B*. *C* takes out administration to *A*'s effects, and *B* buys part of the effects from *C*. In a suit for the purchase-money by *C* against *B*, the latter cannot set-off the debt against the price, for *C* fills two different characters, one as the vendor to *B*, in which he sues *B*, and the other as representative to *A* [1].

(*c*) *A* sues *B* on a bill of exchange. *B* alleges that *A* has wrongfully neglected to insure *B*'s goods and is liable to him in compensation which he claims to set-off. The amount not being ascertained cannot be set-off [2].

(*d*) *A* sues *B* on a bill of exchange for rs. 500. *B* holds a judgment against *A* for rs. 1,000. The two claims being both definite, pecuniary demands may be set-off.

(*e*) *A* sues *B* for compensation on account of a trespass. *B* holds a promissory note for rs. 1,000 from *A* and claims to set-off that amount against any sum that *A* may recover in the suit. *B* may do so, for as soon as *A* recovers, both sums are definite pecuniary demands.

(*f*) *A* and *B* sue *C* for rs. 1,000. *C* cannot set-off a debt due to him by *A* alone.

(*g*) *A* sues *B* and *C* for rs. 1,000. *B* cannot set-off a debt due to him alone by *A* [3].

(*h*) *A* owes the partnership-firm of *B* and *C* rs. 1,000. *B* dies leaving *C* surviving. *A* sues *C* for a debt of rs. 1,500 due in his separate character. *C* may set-off the debt of rs. 1,000.

112. Except as provided in the last preceding section, no written statement shall be received after the first hearing of the suit:

No written statement received after first hearing.

Provided that the Court may at any time require a written statement, or additional written statement, from any of the parties [4], and fix a time for presenting the same:

Provisos.

[1] So a debt due as manager of a Muhammadan's estate cannot be set-off against a personal liability, 5 All. 299.

[2] 2 Mad. H. C. 296. As to setting-off a claim for unliquidated damages capable of being immediately ascertained and which was connected with the same transaction, and arose out of one and the same contract, as that in respect of which the plaintiff's suit was brought, see 4 Bom. 407, following 2 Mad. H. C. 296, and 4 ibid. 120.

[3] Joint and separate debts cannot be set-off against each other, 9 Bom. 404, citing Story, *Eq. Jur.* § 1437 a. So a shareholder cannot set-off a debt due to him from the company against calls by the liquidator in a winding-up (see *Re Whitehouse*, 9 Ch. D. 595), and directors cannot set-off any money due from the company to them against the amounts which they are ordered to replace (*Flitcroft's case*, 21 Ch. D. 519).

[4] This enables the Court to call for a written statement to supply omissions in the plaint, not to add to or vary the plaintiff's claim, 11 Suth. Civ. R. 71. As to appealing when the Court has called for a statement without any sufficient cause, see 22 Suth. 377.

Provided also that a written statement, or an additional written statement, may, with the permission of the Court, be received at any time for the purpose of answering written statements so required and presented.

Failure to present written statement called for by Court.

113. If any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

Frame of written statements.

114. Written statements shall be as brief as the nature of the case admits, and shall not be argumentative, but shall be confined as much as possible to a simple narrative of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he either admits or believes he will be able to prove [1].

Every such statement shall be divided into paragraphs, numbered consecutively, and each paragraph containing as nearly as may be a separate allegation.

Written statements to be signed and verified.

115. Written statements shall be signed and verified in the manner hereinbefore [2] provided for signing and verifying plaints [3], and no written statement shall be received unless it be so signed and verified.

Power as to argumentative, prolix or irrelevant written statements.

116. If it appears to the Court that any written statement, whether called for by the Court or spontaneously tendered, is argumentative or prolix, or contains matter irrelevant [4] to the suit [5], the Court may amend it then and there, or may, by an order to be endorsed thereon, reject the same, or return it to the party by whom it was made for amendment within a time to be fixed by the Court, imposing such terms as to costs or otherwise as the Court thinks fit.

[1] 3 Ben. Appx. 12 : 5 Suth. Civ. R. 56, 58 : 8 ibid. 296.

[2] Sec. 51.

[3] Consequently, a person filing a written statement in a suit is bound by law to state the truth; and if he makes a statement which is false to his knowledge or belief, or which he does not believe to be true, he is guilty of giving false evidence within the meaning of sec. 191 of the Penal Code, 6 All. 628.

[4] As to the 'irrelevancy' here referred to, the question is, not whether the written statement discloses a good defence, but whether the facts stated therein are such as the defendant believed to be material to his case, 10 Bom. H. C. 428.

[5] As to applications in Presidency High Courts to take statements off the file on the grounds here mentioned, see 3 Ben. Appx. 12 : 10 Bom. H. C. 425.

When any amendment is made under this section, the Judge shall attest it by his signature. Attestation of amendments.

When a statement has been rejected under this section, the party making it shall not present another written statement, unless it be expressly called for or allowed by the Court. Effect of rejection.

CHAPTER IX.

OF THE EXAMINATION OF THE PARTIES BY THE COURT.

117. At the first hearing of the suit, the Court shall ascertain from the defendant or his pleader whether he admits or denies the allegations of fact made in the plaint, and shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials. Ascertainment whether allegations in plaint and written statements admitted or denied.

118. At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally[1] by the Court: and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party[2]. Oral examination of party, or companion of himself or his pleader.

119. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record. Substance of examination to be written.

120. If the pleader of any party who appears by a pleader refuses or is unable to answer any material question relating to the suit which the Court is of opinion[3] that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone Refusal or inability of pleader to answer.

[1] Such party or person is a 'witness' (Act X of 1873, s. 5), and must therefore be sworn or affirmed.

[2] But the parties cannot question each other.

[3] The Court should record the question asked, and the grounds of such opinion, 17 Suth. Civ. R. 508, and see 2 Bom. H. C. 340.

the hearing of the suit to a future day, and direct that such party shall appear in person on such day.

If such party fails without lawful excuse[1] to appear in person on the day so appointed, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

CHAPTER X.

OF DISCOVERY, AND OF THE ADMISSION, INSPECTION, PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS.

Power to deliver interrogatories.

121. Any party may at any time[2] by leave of the Court[3] deliver through the Court interrogatories in writing for the examination of the opposite party, or where there are more opposite parties than one, any one or more of such parties, with a note at the foot thereof stating which of such interrogatories each of such persons is required to answer[4]:

Provided that no party shall deliver more than one set of interrogatories to the same person without the permission of the Court, and that no defendant shall deliver interrogatories for the examination of the plaintiff unless such defendant has previously tendered a written statement and such statement has been received and placed on the record.

Service of interrogatories.

122. Interrogatories delivered under section 121 shall be served on the pleader (if any) of the party interrogated, or in the manner hereinbefore provided for the service of summons, and the provisions of sections 79, 80, 81 and 82 shall, in the latter case, apply so far as may be practicable.

123. The Court, in adjusting the costs of the suit, shall, at

[1] See for instances secs. 176, 640, and 641, infra, 3 Mad. H. C. 167 (insufficient time), 18 Suth. Civ. R. 18 (necessary absence on service of Government).

[2] This probably means, in the case of the plaintiff, 'at any time after he has presented the plaint:' in the case of the defendant, see the proviso to sec. 121, which agrees with *Egremont Burial Board* v. *Egremont Iron Co.*, 14 Ch. D. 158.

[3] Leave of the Court is always necessary. Supra, p. 402.

[4] This section contemplates, first, leave to interrogate, and, secondly, the service of the interrogatories through the Court. The Court does not, at this stage, determine what questions must be answered, 5 Cal. 709.

the instance of any party, inquire or cause inquiry to be made into the propriety of delivering such interrogatories; and if it thinks that such interrogatories have been delivered unreasonably, vexatiously or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

Inquiry into propriety of exhibiting interrogatories.

124. If any party to a suit be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply to the Court for an order allowing him to deliver interrogatories to any member or officer of such corporation, company or body, and an order may be made accordingly[1].

Service of interrogatories on officer of corporation or company.

125. Any party called upon to answer interrogatories, whether by himself or by any such member or officer, may refuse to answer any interrogatory on the ground that it is irrelevant[2], or is not put *bonâ fide* for the purposes of the suit[3], or that the matter inquired after is not sufficiently material at that stage of the suit[4], or on any other like ground[5].

Power to refuse to answer interrogatories as irrelevant, etc.

[1] That an ordinary member of a company should not be interrogated unless it is shown that he has the required information and that there is no officer capable of giving it, see *Berkeley* v. *Standard Discount Co.*, 13 Ch. Div. 99, per Jessel M.R. The company's solicitor acts for the member or officer directed to answer, and charges the company with the cost, *ibid.* As to the duty of directors to obtain information for the purpose of answering interrogatories, see *Southwark Water Co.* v. *Quick*, 3 Q. B. D. 321, per Cotton L.J. Where the officer put forward by a corporation is also its attorney or pleader in the suit, he cannot object to answer on the ground of privilege under the Evidence Act, sec. 146; see *Mayor of Swansea* v. *Quirk*, 5 C. P. D. 106.

[2] See, for example, *Wier* v. *Tucker*, L. R., 14 Eq. 25: *Hodson* v. *Taylor*, L. R., 9 Q. B. 79. In England interrogatories which do not relate to any matters in question in the suit are deemed irrelevant, though they might be admissible on the oral cross-examination of a witness (Order xxxi. second proviso). That an interrogatory may be relevant as leading up to a matter in issue, see *Jones* v. *Richards*, 15 Q. B. D. 439.

[3] *Baker* v. *Lane*, 3 H. & C. 544: *The Mary or Alexandra*, L. R., 2 A. & E. 319.

[4] See *Mercier* v. *Cotton*, 1 Q. B. D. 442: *Gay* v. *Labouchere*, 4 Q. B. D. p. 207.

[5] e.g. that the question tends to criminate, or that the answer would expose him to penalties or proceedings for maintenance; and see *Lockett* v. *Lockett*, L. R., 4 Ch. App. 33 b. The Code is silent as to scandalous interrogatories, e.g. one asking whether the defendants, who were sued as husband and wife, were married.

Time for filing affidavit in answer.

126. Interrogatories shall be answered by affidavit[1] to be filed in court within ten days from the service thereof or within such further time as the Judge may allow[1].

Procedure where party omits to answer sufficiently.

127. If any person interrogated omits or refuses to answer, or answers insufficiently[2], any interrogatory, the party interrogating may apply[3] to the Court for an order requiring him to answer or to answer further, as the case may be. And an order may be made requiring him to answer or to answer further either by affidavit or by *viva voce* examination as the Judge may direct: provided that the Judge shall not require an answer to any interrogatory which in his opinion need not have been answered under section 125.

Power to demand admission of genuineness of documents.

128. Either party may, by a notice through the Court, within a reasonable time not less than ten days before the hearing, require the other party to admit (saving all just exceptions to the admissibility of such document in evidence) the genuineness of any document material to the suit[4].

The admission shall also be made in writing signed by the other party or his pleader and filed in court.

If such notice be not given, no costs of proving such document shall be allowed, unless the Judge otherwise orders.

If such notice is not complied with within four days after its being served, and the Judge thinks it reasonable that the admission should have been made, the party refusing shall bear the expense of proving such document, whatever may be the result of the suit.

Power to order discovery of document.

129. The Court may, at any time during the pendency therein of any suit, order any party[5] to the suit to declare by

[1] Answers to interrogatories are simply affidavits obtained in the way which the Code provides, and the party wishing to use them at the hearing must put them in as his evidence, 4 Cal. 836, per Wilson J.

[2] As to answers containing irrelevant and improper matter, see *Peyton* v. *Harting*, L. R., 9 C. P. 9: as to embarrassing answers, *Lyell* v. *Kennedy*, 27 Ch. D. 1: as to extremely prolix answers, *Lyell* v. *Kennedy*, 33 W. R. 44.

[3] The application should specify the interrogatories or parts of interrogatories to which a further answer is required, *Anstey* v. *N. & S. Woolwich Subway Co.* 11 Ch. D. 439.

[4] Compare Order xxxii. r. 2. The Code does not (as it ought) empower any party to require another party to admit any specific fact.

[5] That an order under this section cannot be made against the next friend of an infant or lunatic, see *Dyke* v. *Stephens*, 30 Ch. D. 189, dissenting from *Higginson* v. *Hall*, 10 Ch. D. 235.

affidavit all the documents which are or have been in his possession or power relating to any matter in question in the suit[1], and any party to the suit may, at any time before the first hearing, apply to the Court for a like order.

Affidavit in answer to such order.

Every affidavit made under this section shall specify[2] which, if any, of the documents therein mentioned the declarant objects to produce, together with the grounds of such objection.

Power to order production of documents during suit.

130. The Court may, at any time during the pendency therein of any suit, order the production by any party[3] thereto of such of the documents in his possession[4] or power relating to[5] any matter in question in such suit or proceeding as the Court thinks right; and the Court may deal with such documents when produced in such manner as appears just[6].

Notice to produce for inspection documents referred to in plaint, etc.

131. Any party to a suit may at any time before or at the hearing thereof give notice through the Court to any other party to produce any specified document for the inspection of

[1] e.g. the documents of title of a defendant in ejectment, 3 C. P. D. 196.

[2] As to sufficiency of specification, see *Taylor* v. *Batten*, 4 Q. B. D. 85.

[3] not by his pleader, Suth. 1864, Civ. R. 164: *Cashin* v. *Craddock*, 2 Ch. D. 140.

[4] i. e. exclusive possession.

[5] See 10 Cal. 808. As to the practice when a party producing documents wishes to have certain portions sealed up, see 4 Cal. 835.

[6] Order xxxi. r. 14. The Court has no discretion as to refusing to allow the production, provided the documents are not privileged, 2 Bom. 453, following *Bustros* v. *White*, L. R., 1 Q. B. D. 139. What documents are privileged depends on the Evidence Act (secs. 122, 124, 126, 129), and the English decisions necessary to supplement that measure. Thus, reports of medical men procured by a solicitor for the purposes of an action (2 Ex. D. 437); the survey of a ship made for a like purpose (3 P. D. 162); reports etc. relating to impending litigation prepared for purpose of submission to solicitor (3 Q. B. D. 315); communications between solicitor and client (4 Q. B. D. 85); communications by a third party to a solicitor with reference to actual or pending litigation (17 Ch. D. 681, 682); and, probably, documents tending to criminate the party discovering them (5 Ex. D. 23, 108).

Neither the Code nor the English Order provides for the case where relevant documents are in the joint possession of the party disclosing them and some person not a party to the suit. Such documents cannot be ordered to be produced (10 Q. B. D. 465) unless no interest can be affected by their production other than the interest of the parties to the suit, 15 Q. B. D. 473, where the defendant was liquidator of a company which had been wound up, and had, as such, the possession and control of the documents in question.

One partner of a firm represents the other partners for the purposes of production of documents, 1 Bom. 496.

the party giving such notice or of his pleader [1], and to permit such party or pleader to take copies thereof.

Consequence of non-compliance with such notice.

No party failing to comply with such notice shall afterwards be at liberty to put any such document in evidence on his behalf in such suit, unless he satisfies the Court that such document relates only to his own title, or that he had some other and sufficient cause [2] for not complying with such notice.

Party receiving such notice to deliver notice when and where inspection may be had.

132. The party to whom such notice is given shall, within ten days from the receipt thereof, deliver through the Court to the party giving the same a notice stating a time within three days from such delivery at which the documents, or such of them as he does not object to produce, may be inspected at his pleader's office or some other convenient place [3], and stating which, if any, of the documents he objects to produce, and on what grounds.

Application for order of inspection.

133. If any party served with notice under section 131 omits to give notice under section 132 of the time for inspection, or objects to give inspection [4], or names an inconvenient place for inspection, the party desiring it may apply to the Court for an order of inspection [5].

Application to be founded on affidavit.

134. Except in the case of documents referred to in the plaint, written statement or affidavit of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing (*a*) of what documents inspection is sought, (*b*) that the party applying is entitled to inspect them, and (*c*) that they are in the possession or power of the party against whom the application is made.

Power to order issue or question

135. If the party from whom discovery of any kind or inspection is sought objects to the same or any part thereof,

[1] This includes an advocate, a vakíl, an attorney of a High Court, and a recognised agent, *supra*, pp. 466, 488; but not a co-defendant (*Bartley* v. *Bartley*, 1 Drew. 233) nor a non-professional relative (*Summerfield* v. *Pritchard*, 17 Beav. 9).

[2] *Webster* v. *Whewall*, 15 Ch. D. 120; *Quilter* v. *Heatly*, 23 Ch. D. 42.

[3] 5 Bom. 467; *Prestney* v. *Corpn. of Colchester*, 24 Ch. Div. 376.

[4] As in the case of privileged letters, 11 Cal. 655.

[5] Such order will not be made unless the applicant has taken the steps mentioned in sec. 131, 10 Cal. 56. The Code should have expressly empowered the Court to grant an order for inspection in such place and in such manner as it may think fit.

and if the Court is satisfied that the right to such discovery or inspection depends on the determination of any issue or question in dispute in the suit [1], or that for any other reason it is desirable that any such issue or question should be determined before deciding upon the right to the discovery or inspection, the Court may order that the issue or question be determined first and reserve the question as to the discovery or inspection [2].

On which right to discovery depends to be first determined.

136. If any party fails to comply with any order under this chapter [3], to answer interrogatories or for discovery, production or inspection, which has been duly served, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and if a defendant, to have his defence, if any, struck out [4], and to be placed in the same position as if he had not appeared and answered;

Consequences of failure to answer or give inspection.

and the party interrogating or seeking discovery, production or inspection may apply to the Court for an order to that effect, and the Court may make such order accordingly [5].

Any party failing to comply with any order under this chapter, to answer interrogatories or for discovery, production or inspection, which has been served personally upon him, shall also be deemed guilty of an offence under section 188 of the Indian Penal Code [6].

[1] e.g. the existence of a partnership or agency.

[2] Order xxxi. r. 20. It empowers the Court to raise and determine, before the hearing of the cause, an issue for the exclusive purpose of deciding the right to discovery of evidence which is to be used at the trial, 6 Bom. 572. For English decisions on the corresponding rule see *Wood* v. *The Anglo-Italian Bank, Ld.*, 34 L. T., N. S. 255: *Re Leigh's Estate*, 6 Ch. Div. 256.

[3] Thus when interrogatories are delivered with the leave of the Court under sec. 121, the Court virtually orders them to be answered within ten days from the date of service (sec. 126). If the party interrogated disobeys, the Court may make an order under sec. 136; 10 Cal. 506.

[4] 7 All. 159: 9 Cal. 923, where the Judge making the order said that the party against whom it was made might come in and seek to set it aside. The powers given by this section will not be exercised save in extreme cases, 5 Cal. 708, 710 (where '36' is misprinted for '136').

[5] The Court's power is discretionary, and (e.g.) a suit will not be dismissed under this section where the plaintiff fails to answer interrogatories because he has become incapable of transacting business, *Cardwell* v. *Tomlinson*, 54 L. J., Ch. 957.

[6] As regards the chartered High Courts (where a party disobeying such an order is liable to be committed for contempt), this remedy may be regarded as cumulative, 7 Bom. 1.

Court may send for papers from its own records or from other Courts.

137. The Court may of its own accord, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court[1], the record[2] of any other suit or proceeding, and inspect the same[3].

Every application made under this section shall (unless the Court otherwise directs) be supported by an affidavit of the applicant or his pleader, showing how the record is material to the suit in which the application is made[4], and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

Nothing contained in this section shall be deemed to enable the Court to use in evidence any document which under the Indian Evidence Act, 1872, would be inadmissible in the suit.

Documentary evidence to be in readiness at first hearing.

138. The parties or their pleaders shall bring with them and have in readiness at the first hearing of the suit, to be produced when called for[5] by the Court, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court at any time before such hearing has ordered to be produced.

Effect of non-production of documents.

139. No documentary evidence in the possession or power of any party which should have been, but has not been, produced in accordance with the requirements of section 138, shall be received at any subsequent stage of the proceedings unless good cause be shown to the satisfaction of the Court for the non-production thereof[6]. And the Judge receiving any such evidence shall record his reasons for so doing.

Documents to be received by Court.

140. The Court shall receive the documents respectively produced by the parties at the first hearing, provided that the

[1] i. e. Court *ejusdem generis*, and not e. g. the court of wards, see 15 Suth. Civ. R. 150.

[2] or such part thereof as is specified in the application, Suth. 1864, Civ. R. 272, col. 2.

[3] 7 Cal. 565.

[4] 1 Ind. Jur., N. S. 283, per Phear J.

[5] They need not *file* their documentary evidence unless it is called for, 1 Ben. A. C. J. 120.

[6] 9 Suth. Civ. R. 294.

documents produced by each party be accompanied by an accurate list thereof prepared in such form as the High Court may from time to time direct[1].

Irrelevant or inadmissible documents.

The Court may at any stage of the suit reject[2] any document which it considers irrelevant or otherwise inadmissible, recording[3] the grounds of such rejection.

No documents to be placed on record unless proved.

141. No document shall be placed on the record unless it has been proved or admitted in accordance with the law of evidence for the time being in force. Every document so proved or admitted shall be endorsed with the number and title of the suit, the name of the person producing it, and the date on which it was produced. The Judge shall then endorse with his own hand a statement that it was proved against or admitted by (as the case may be) the person against whom it is used. The document shall then be filed as part of the record:

Proved documents marked and filed.

Entries in shop-books.

Provided that, if the document be an entry in a shop-book or other book, the party on whose behalf such book is produced may furnish a copy of the entry, which may be endorsed as aforesaid, and shall be filed as part of the record, and the Court shall mark the entry[4], and shall then return the book to the person producing it.

All documents produced at the first hearing and not so proved or admitted shall be returned to the parties respectively producing them.

Rejected documents marked,

142. When a document so proved or admitted is relied on as evidence by either party, but the Court considers it inadmissible, it shall be further endorsed with the addition of the word 'rejected,' and the endorsement shall be signed by the Judge.

and returned.

The document shall then be returned to the party who produced it.

[1] The Panjáb Chief Court has prescribed such form, *Judicial Circulars*, No. xviii. p. 42. And see the Circular of the Judicial Commissioner of the Central Provinces, No. xiv. of 1881. See also *British Burma Gazette*, Nov. 1887, Part III, p. 149.

[2] Marshall, 127, 135: 11 Suth. Civ. R. 350.

[3] The official copies of the Code have here 'recording to the grounds,' etc.—an obvious misprint or clerical error.

[4] for the purpose of identification. Compare sec. 62, par. 2.

Power to order any document to be impounded.

143. Notwithstanding anything contained in sections 62, 141 and 142, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

Return of document admitted in evidence.

144. In suits in which an appeal is not allowed, when the suit has been disposed of, and in suits in which an appeal is allowed, when the time for preferring an appeal from the decree has elapsed, or, if an appeal has been preferred, then after the appeal has been disposed of, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit, and placed on the record, shall, unless the document is impounded under section 143, be entitled to receive back the same:

Return of document before time limited.

Provided that a document may be returned at any time before either of such events, if the person applying for such return delivers to the proper officer a certified copy of such document to be substituted for the original:

Documents not returned.

Provided also that no document shall be returned which, by force of the decree, has become void or useless.

Receipt for returned document.

On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt-book to be kept for the purpose.

Provisions as to documents applied to material objects.

145. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

CHAPTER XI.

OF THE SETTLEMENT OF ISSUES.

Framing of issues.

146. Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue.

Each material proposition affirmed by one party and denied by the other must form the subject of a distinct issue.

Issues are of two kinds: (*a*) issues of fact, (*b*) issues of law.

At the first hearing of the suit, the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance[1], and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to the Court to depend[2].

When issues both of law and of fact arise in the same suit, and the Court is of opinion that the case may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Nothing in this section requires the Court to frame and record issues when the defendant at the first hearing of the suit makes no defence[3].

147. The Court may frame the issues from all or any of the following materials:— Allegations from which issues may be framed.

(*a*) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties or persons[4];

(*b*) allegations made in the plaint or in the written state-

[1] One party has no power to summon another to give evidence on the settlement of issues, 1 Hyde, 147.

[2] It may be laid down as a general rule that only such averments should be made the subject of issues as are essential to support the cause of action and are denied by the defendant, or as are essential to support a plea and are denied by the plaintiff. Mere pieces of evidence which are to be adduced to enable the Court to infer the truth of a material averment ought not to be made the subject of separate issues, 3 N W. P. 307, per Turner J. There is nothing in the Code which makes the omission by the Judge to settle issues fatal to the trial of the suit, 13 Moo. I. A. 573 (on Act VIII of 1859): 11 Moo. I. A. 25; but such an omission would be a grave irregularity. A direction to ascertain an amount properly payable may be equivalent to an issue, 12 Moo. I. A. 502, 503.

[3] And there is nothing in the Code which requires the Court to allow an issue to be raised on a point of law which the Court considers to be perfectly clear.

The Code nowhere empowers the Judge to try issues of fact with the aid of a jury, 2 N. W. P. 97.

[4] The Court is not bound by the language of the plaint and written statement, 11 Cal. 410.

ments (if any) tendered in the suit, or in answer to interrogatories delivered in the suit;

(*c*) the contents of documents produced by either party[1].

Court may examine witnesses or documents before framing issues.

148. If the Court be of opinion that the issues cannot be correctly framed without the examination of some person not before the Court, or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, to be fixed by the Court, and may (subject to the rules contained in the Indian Evidence Act) compel the attendance of any person or the production of any document by the person in whose hands it may be, by summons or other process.

Power to amend, add and strike out issues.

149. The Court may at any time before passing a decree amend the issues[2] or frame additional issues[3] on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the controversy between the parties shall be so made or framed[4].

The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced[5].

Questions of fact or law may by agreement be stated in form of issue.

150. When the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing,

(*a*) that upon the finding of the Court in the affirmative or the negative of such issue, a sum of money specified in the agreement, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the

[1] As to the proper issues in a suit to establish an easement, when limitation is pleaded, see 6 Cal. 812.

[2] 5 Cal. 64, where Garth C.J. said that the power of amending issues given to the Indian Courts is almost in the same language as the power of amendment given to judges in England by sec. 222 of the C. L. P. Act, 1852, and that a judge is not bound to make such amendments except for the purpose of more effectually putting in issues and trying the real question or questions in controversy.

[3] It should not add an issue or amend the plaint so as to raise a wholly different question to that on which the parties have come into court, 2 Ind. Jur., N. S. 118, per Markby J.

[4] and see the proviso to sec. 53. The power given by these sections is not so extensive as that given in England by the Judicature Act, 7 Bom. 160.

[5] 3 Suth. Civ. R. 147, 150.

parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement,

(*b*) that upon such finding some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct, or

(*c*) that upon such finding one or more of the parties shall do or abstain from doing some particular act, specified in the agreement, and relating to the matter in dispute.

Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

151. If the Court be satisfied, after making such inquiry as it deems proper,

(*a*) that the agreement was duly executed by the parties,

(*b*) that they have a substantial interest in the decision of such question as aforesaid, and

(*c*) that the same is fit to be tried and decided,

it may proceed to record and try the issue, and state its finding or opinion thereon in the same manner as if the issue had been framed by the Court;

and may, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement;

and upon the judgment so given, decree shall follow and may be executed in the same way as if the judgment had been pronounced in a contested suit.

CHAPTER XII.

DISPOSAL OF THE SUIT AT THE FIRST HEARING.

If parties not at issue on any question of law or fact.

152. If at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment[1].

If one of several defendants be not at issue with plaintiff.

153. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or fact, the Court may at once pronounce judgment for or against such defendant, and the suit shall proceed only against the other defendants.

[1] 3 Ben. A. C. J. 402.

If parties at issue on questions of law or fact,

154. When the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court be satisfied that no further argument or evidence than the parties can at once supply is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues,

Court may determine issue, and pronounce judgment.

and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them object[1].

If the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument, as the case requires.

If either party fails to produce his evidence, Court may pronounce judgment, or adjourn suit.

155. If the summons has been issued for the final disposal of the suit, and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment,

or may, if it thinks fit, after framing and recording issues under section 146, adjourn the suit for the production of such evidence as may be necessary to its decision upon such issues.

CHAPTER XIII.

OF ADJOURNMENTS.

Court may grant time, and adjourn hearing.

156. The Court may, if sufficient cause be shown[2], at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

In all such cases the Court shall fix a day for the further

[1] 1 N. W. P. 147. Otherwise a party might be precluded from offering evidence in proof of his case.

[2] See 7 Suth. Civ. R. 84: 3 Bom. H. C., O. C. J. 55.

hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment: Costs of adjournment.

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing to be necessary for reasons to be recorded by the Judge with his own hand.

157. If, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Chapter VII, or make such other order as it thinks fit[1]. Procedure if parties fail to appear on day fixed.

158. If any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith[2]. Court may proceed notwithstanding either party fails to produce evidence, etc.

CHAPTER XIV.

OF THE SUMMONING AND ATTENDANCE OF WITNESSES.

159. The parties may, after the summons has been delivered for service on the defendant, whether it be for the settlement of issues only, or for the final disposal of the suit, obtain, on application to the Court or to such officer as it appoints in this behalf, before the day fixed for such settlement or disposal, as the case may be, summonses to persons whose attendance is required either to give evidence or to produce documents[3]. Summons to attend to give evidence or produce documents.

[1] It will be remembered that a suit dismissed under chap. VII (sec. 102) may be revived under sec. 103.

[2] 7 Mad. 41, and see 4 Mad. H. C. 56, 254. A decision under sec. 758 can only be altered on appeal or review.

[3] Such summonses are issued as a matter of course (5 Suth. Civ. R. 111), except when they are applied for vexatiously (14 Suth. Civ. R. 66), or their issue would be useless, as where the application is made so late that the witness cannot be reasonably expected to attend in time before the applicant's case closes, 9 Suth. Civ. R. 530.

Expenses of witness paid into court.

160. The party applying for a summons shall, before the summons is granted and within a period to be fixed by the Court, pay into court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned[1], in passing to and from the court in which he is required to attend, and for one day's attendance[2].

Scale of expenses.

If the Court be subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to the rules (if any) laid down by competent authority[3].

Tender of expenses to witness.

161. The sum so paid into court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally[4].

Procedure where insufficient sum paid in.

162. If it appear to the Court or to such officer as it appoints in this behalf that the sum paid into court is not sufficient to cover such expenses, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account; and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Expenses if witness detained more than one day.

If it be necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of the party at whose instance he was summoned; or the Court may discharge the person summoned without requiring him to give evidence;

[1] Compensation for loss of time will be refused, 2 Hyde, 236.

[2] In 5 Suth. Ref. 6, Peacock C.J. laid down that no action for the expenses of a witness will lie.

[3] See *N. W. P. and Oudh Gazette*, 14 Jan., 1882, Part II, p. 45: *Judicial Circular* (Chief Court, Panjáb), No. xviii. p. 42.

[4] That a witness is entitled to be paid his expenses by the party at whose instance he has been summoned, although he has not applied for them before giving his evidence, see 4 Bom. 619.

or may both order such levy and discharge such person as aforesaid[1].

Time, place and purpose of attendance to be specified in summons.

163. Every summons for the attendance of a person to give evidence or produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the person summoned is called on to produce shall be described in the summons with reasonable accuracy[2].

Summons to produce document.

164. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons, if he cause such document to be produced instead of attending personally to produce the same.

Power to require persons in Court to give evidence.

165. Any person present in court may be required by the Court to give evidence or to produce any document then and there in his actual possession or power.

Summons how served.

166. Every summons to a person to give evidence or produce a document shall be served as nearly as may be in manner hereinbefore prescribed for the service of summons on the defendant[3]; and the rules contained in Chapter VI as to proof of service shall apply in the case of all summonses served under this section.

Time for serving summons.

167. The service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required[4].

Attachment of property of absconding witness.

168. If the serving-officer certify to the Court that the summons for the attendance of a person, either to give evidence or to produce a document, cannot be served, the

[1] As to appeals from orders under this section for attachment and sale, see infra, sec. 588, cl. (13).

[2] Suth. 1864, Civ. R. 164.

[3] 6 Suth. Civ. R. 126.

[4] This is in favour of the witness and for enforcing diligence on the party. It does not give the Courts any discretion as to granting or refusing summonses in consideration of their being applied for at a late period, 9 Bom. 310, per West J.

Court shall examine the serving-officer on oath touching the non-service:

and upon being satisfied that such evidence or production is material, and that the person for whose attendance the summons has been issued is absconding or keeping out of the way for the purpose of avoiding the service of the summons[1], may issue a proclamation requiring him to attend to give evidence, or produce the document, at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door of the house in which he ordinarily resides.

If he does not attend at the time and place named in such proclamation, the Court may in its discretion[2], at the instance of the party on whose application the summons was issued, make an order for the attachment of the property of the person whose attendance is required, to such amount as the Court thinks fit, not exceeding the amount of the costs of attachment and of the fine which may be imposed under section 170:

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property.

Withdrawal of attachment.

169. If, on the attachment of his property, such person appears and satisfies the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

Procedure if witness fails to appear.

170. If such person does not appear, or, appearing, fails to satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place mentioned therein, the Court may impose upon him such fine not exceeding five hundred rupees as the Court thinks fit[3], having regard to his condition in life and all the circumstances of the case, and may order the property attached,

[1] 6 Suth. Civ. R. 235: 1 ibid. 26.
[2] 8 Suth. Civ. R. 505.
[3] A revival of the repealed Act XIX of 1853, sec. 28.

or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of the said fine, if any [1]:

Provided that, if the person whose attendance is required pays into court the costs and fine as aforesaid, the Court shall order the property to be released from attachment.

Court may of its own accord summon as witnesses strangers to suit.

171. Subject to the rules of this Code as to attendance and appearance and to the provisions of the Indian Evidence Act, 1872, if the Court at any time thinks it necessary to examine any person other than a party to the suit and not named as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

Duty of persons summoned to give evidence or produce document.

172. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit must attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document must either attend to produce it, or cause it to be produced, at such time and place.

When they may depart.

173. No person so summoned and attending shall depart unless and until (*a*) he has been examined or has produced the document and the Court has risen, or (*b*) he has obtained the Court's leave to depart [2].

Consequences of failure to comply with summons.

174. If any person on whom a summons to give evidence or produce a document has been served fails to comply with the summons, or if any person so summoned and attending departs in contravention of section 173, the Court may order him to be arrested and brought before the Court:

Provided that no such order shall be made when the Court has reason to believe that the person so failing had a lawful excuse for such failure.

When any person so brought before the Court fails to satisfy it that he had a lawful excuse for not complying with the summons, the Court may sentence him to fine not exceeding five hundred rupees.

[1] A suit will not lie to set aside a sale under sec. 170, but the claimant may sue the purchaser to establish his right to the property sold.

[2] As to the former law, see 5 Mad. H. C. 132.

Explanation.—Non-payment or non-tender of a sum sufficient to defray the expenses mentioned in section 160 shall be deemed a lawful excuse within the meaning of this section[1].

Procedure when witness apprehended cannot give evidence or produce documents.

If any person so apprehended and brought before the Court cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and on such bail or security being given, may release him.

Procedure when witness absconds.

175. If any person so failing to comply with a summons absconds or keeps out of the way, so that he cannot be apprehended and brought before the Court, the provisions of sections 168, 169 and 170 shall, *mutatis mutandis*, apply.

Persons bound to attend in person.

176. No one shall be bound to attend in person to give evidence or to be examined in Court unless he resides—

(*a*) within the local limits of its ordinary original jurisdiction, or

(*b*) without such limits and at a place less than fifty or (where there is railway-communication for five-sixths of the distance between the place where he resides and the place where the Court is situate) two hundred miles distance from the court-house.

Refusal of party to give evidence when called on by Court.

177. If any party to a suit present in Court refuses, without lawful excuse[2], when required by the Court, to give evidence or to produce any document then and there in his actual possession or power, the Court may in its discretion either pass a decree against him, or make such order in relation to the suit as the Court thinks fit[3].

[1] So probably would the fact that the summons required the witness to attend on Sunday or any other recognised holiday. See 8 Ben. Appx. 12, a case on the Code of Criminal Procedure.

[2] i. e. such an excuse as would in law justify the refusal to give evidence, 1 N. W. P. 242.

[3] 3 Mad. H. C. 299: 4 Mad. H. C. 142. This section is extended (by Act V of 1881, sec. 83) to probate-proceedings before the District Judge. The discretion conferred by it must be exercised with more than usual care, and a caveator's refusal to answer a question does not justify the Judge in dispensing with proof of the will set up and passing a decree in the petitioner's favour, 9 Bom. 241.

Rules as to witnesses apply to parties summoned.

178. Whenever any party to a suit is required to give evidence or to produce a document, the rules as to witnesses contained in this Code shall apply to him so far as they are applicable.

CHAPTER XV.

OF THE HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

Statement and production of evidence by party having right to begin.

179. On the day fixed for the hearing of the suit, or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove[1].

Rules as to right to begin.

Explanation.—The plaintiff has the right to begin unless where the defendant admits the facts alleged by the plaintiff[2] and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

Statement and production of evidence by other party.

180. The other party shall then state his case and produce his evidence (if any)[3].

Reply by party beginning.

The party beginning is then entitled to reply.

Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party. In the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

[1] The Code does not expressly say that the party beginning shall be allowed at the close of his case, if his opponent does not announce any intention to adduce evidence, to address the Court a second time for the purpose of summing up the evidence. See 1 Mad. H. C. 377.

[2] i. e. all the material allegations in the plaint, 7 C. L. R. 274, cited by O'Kinealy, *Code of Civil Procedure*, 2nd ed. p. 201.

[3] That the Court cannot refuse to hear some of defendant's witnesses on the supposition that it would only go to prove the same facts deposed by his other witnesses previously examined, see 2 Moo. I. A. 427.

Witnesses examined in open court.

181. The evidence of the witnesses in attendance shall be taken orally in open court[1] in the presence, and under the personal direction and superintendence, of the Judge.

How evidence taken in appealable cases.

182. In cases in which an appeal is allowed, the evidence of each witness shall be taken down in writing[2], in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and also in the presence of the parties or their pleaders, and the Judge shall, if necessary, correct the same and shall sign it.

When deposition interpreted.

183. If the evidence is taken down under section 182 in a language different from that in which it was given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it was given[3].

Memorandum when evidence not taken down by judge.

184. In cases in which the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes[4], and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

When evidence may be taken in English.

185. Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down with his own hand.

Any particular question and answer

186. The Court may of its own motion or on the application of any party or his pleader take down, or cause to be taken down, any particular question and answer, or any

[1] As to examining in their palanquins *parda* women not claiming exemption under sec. 640, see 1 Ben., Short Notes, v. See, too, 2 Hyde, 88.

[2] See 7 Ben. 74 and 5 Bom. 63 (cases under the Insolvent Act), and 6 Cal. 762.

[3] As to the effect of failing to comply with the requirements of secs. 182, 183, see 6 Cal. 762.

[4] 6 Suth. Civ. R. 112, 113.

objection to any question, if there appear any special reason for so doing. may be taken down.

187. If any question put to a witness be objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon. Questions objected to and allowed by Court.

188. The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination. Remarks on demeanour of witnesses.

189. In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record. Memorandum of evidence in unappealable cases.

190. If the Judge be rendered unable to make a memorandum as above required by this chapter, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open court. Judge unable to make such memorandum to record reason of his inability.

Every memorandum so made shall form part of the record.

191. Where the Judge taking down any evidence, or causing any memorandum to be made under this chapter, dies or is removed from the Court before the conclusion of the suit, his successor may, if he thinks fit, deal with such evidence or memorandum as if he himself had taken it down or caused it to be made[1]. Power to deal with evidence taken down by Judge removed before conclusion of suit.

192. If a witness be about to leave the jurisdiction of the Court, or if other sufficient cause be shown to the satisfaction of the Court why his evidence should be taken immediately, Power to examine witness immediately.

[1] This section only allows the evidence taken at the hearing before Judge *A* to be used as evidence at the hearing before Judge *B* when Judge *A* has died or been removed: it does not allow the two hearings to be linked together and virtually made one, 7 All. 857: see sec. 199; 8 All. 35, 576. And it does not apply to the case where the suit has been transferred, 4 Bom. H. C., A. C. J. 98.

the Court[1] may, upon the application of either party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided[1].

Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and may then be read at any hearing of the suit.

Court may recall and examine witness.

193. The Court may at any stage of the suit recall any witness who has been examined and who has not departed in accordance with section 173, and may (subject to the provisions of the Indian Evidence Act, 1872) put such questions to him as the Court thinks fit.

CHAPTER XVI.

OF AFFIDAVITS.

Power to order any point to be proved by affidavit.

194. Any Court of first instance and any appellate Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party *bonâ fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit[2].

[1] Phear J. held that such evidence cannot be taken by a commissioner, except by consent, 5 Ben. 252. But the Indian Courts are courts of equity, and have, as such, an inherent jurisdiction to issue commissions to take evidence *de bene esse*.

[2] *Blackburn Union* v. *Brooks*, 7 Ch. D. 68. A plaintiff's affidavits in reply need not, apparently, be restricted to cutting down the defendant's evidence, but may be confirmatory of the plaintiff's evidence in chief; see in England, *Peacock* v. *Harper*, 7 Ch. D. 648.

Power to order attendance of declarant for cross-examination.

195. Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the declarant[1].

Such attendance shall be in court unless the declarant is exempted under this Code from personal appearance in court, or the Court otherwise directs.

Matters to which affidavits confined.

196. Affidavits shall be confined to such facts as the declarant is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted, provided that reasonable grounds thereof be set forth.

The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party producing the same[2].

Oath of declarant by whom administered.

197. In the case of any affidavit under this Code—

(*a*) any Court or Magistrate, or

(*b*) any officer whom a High Court may appoint in this behalf, or

(*c*) any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf[3],

may administer the oath of the declarant[4].

CHAPTER XVII.

OF JUDGMENT AND DECREE.

Judgment when pronounced.

198. The Court, after the evidence has been duly taken[5] and the parties have been heard either in person or by their respective

[1] Order xxxviii. r. 1.

[2] Order xxxviii. r. 3, with the addition in paragraph 1 of the proviso and in paragraph 2 of words in parenthesis.

[3] See *Bombay Government Gazette*, 13 Oct. 1877, Part I, p. 908: *Calcutta Gazette*, 13 July 1881, Part I, p. 720.

[4] The person administering the oath should express the time when and the place where he takes the affidavit (Order xxxviii. r. 5). And when the deponent is illiterate or blind, the person taking the affidavit should certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and made his signature in presence of such person.

[5] 4 Bom. H. C., A. C. J. 102.

pleaders or recognised agents, shall pronounce judgment in open court[1], either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

Judgment written by Judge's predecessor.

199. A Judge may pronounce a judgment written by his predecessor but not pronounced[2].

200. The judgment shall be written in the language of the Court[3], or in English, or in the Judge's mother-tongue[4].

Language of judgment. Translation of judgment.

201. Whenever the judgment is written in any language other than that of the Court, the judgment shall, if any of the parties so require, be translated into the language of the Court, and the translation shall also be signed by the Judge or such officer as he appoints in this behalf.

Judgment dated and signed.

202. The judgment shall be dated and signed by the Judge in open court at the time of pronouncing it, and shall not be altered or added to, save to correct verbal errors or to supply some accidental defect not affecting a material part of the case, or on review.

Judgments of Small Cause Courts.

203. The judgments of the Courts of Small Causes need not contain more than the points for determination and the decision thereupon.

Judgments of other Courts.

The judgments of all other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decisions[5].

Court to state its decision on each issue.

204. In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons thereof[6],

[1] But see Marshall, 327, where the Judge, to satisfy himself as to the boundaries of some land in litigation, himself made a local inquiry and pronounced judgment at the spot.

[2] 17 Suth. Civ. R. 475. This shows the intention of the legislature that the case should be heard by one Judge, and that the judgment should be that of the Judge who has heard the case, though it may be delivered by the other, 7 All. 859.

[3] Sec. 645, infra.

[4] That the irregularity of writing a judgment in a wrong language does not invalidate the decision, see 17 Suth. Civ. R. 352.

[5] Reported examples of insufficient judgments will be found in 1 Suth. Civ. R. 295: 2 ibid. 7: 3 ibid. 176, col. 2: 11 ibid. 159: 12 ibid. 254: 15 ibid. 131: Marshall, 332: 5 Mad. H. C. 174: 8 Bom. 368: 2 N. W. P. 109.

That a judge cannot, without giving evidence as a witness, import into a case his own knowledge of particular facts, see L. R., 3 I. A. 286, per Sir Barnes Peacock.

[6] If the reasons are omitted the finding is not a conclusive finding of fact, binding on a Court of second appeal, 8 Bom. 368.

upon each separate issue, unless the finding upon any one or more of the issues be sufficient for the decision of the suit[1]. Exception.

205. The decree[2] shall bear date the day on which the judgment was pronounced; and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree. Date of decree.

206. The decree must agree with the judgment: it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claims, as stated in the register, and shall specify clearly the relief granted or other determination of the suit[3]. Contents of decree.

The decree shall also state the amount of costs incurred in the suit, and by what parties and in what proportions such costs are to be paid[4].

If the decree is found to be at variance with the judgment[5], or if any clerical or arithmetical error be found in the decree, the Court shall, of its own motion or on that of any of the parties[6], amend the decree so as to bring it into conformity with the judgment or to correct such error: provided that reasonable notice has been given to the parties or their pleaders of the proposed amendment[7]. Power to amend decree.

[1] 10 Cal. 1095, 1097: 4 Mad. 134. The facts which constitute the cause of action should be distinctly stated in the judgment, and not merely a legal conclusion, 2 Sev. 289.

[2] The omission of an express provision that a decree shall follow a judgment was an inadvertency, 5 All. 526.

[3] 6 All. 30.

[4] It is not the usual practice, when costs of an interlocutory proceeding have been disposed of, to consider that an award of the general costs of the suit interferes with the order disposing of those partial costs, L. R., 10 I. A. 116, per Sir A. Hobhouse. Unless interest on costs is specially decreed, or the parties submit to the Court's discretion, such interest cannot be given in execution, L. R., 4 I. A. 137.

For forms of decrees, see infra, Sched. IV, Nos. 127–133.

[5] 7 All. 755.

[6] The application may be made at any time, according to the High Courts at Madras, 10 Mad. 51, and Bombay, 11 Bom. 284. But the Allahabad High Court has held that it must be made within three years, 4 All. 23.

[7] 6 Cal. 22: 7 All. 875, 876. The amendment can be made even after the decree has been approved by the appellate Court, 9 Mad. 354. Whether under sec. 622 the High Court can revise such amendments, see 7 All. 276, 875. An order refusing to amend can be revised under that section, 6 All. 125. Sec. 206 gives no power to alter or vary the decree, or to correct errors arising from accidental slips or omissions; this can only be done on a review of judgment or an appeal, 2 All. 505. Section 206

Decree for recovery of immoveable property.

207. When the subject-matter of the suit is immoveable property, and such property is identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers [1].

Decree for delivery of moveable property.

208. When the suit is for moveable property, if the decree be for the delivery of such property, it shall also state the amount of money to be paid as an alternative if delivery cannot be had [2].

In suits for money, decree may order certain interest to be paid on principal sum adjudged.

209. When the suit is for a sum of money due to the plaintiff, the Court may, in the decree, order interest at such rate as the Court deems reasonable [3] to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit [4].

Decree may order payment by instalments.

210. In all decrees for the payment of money [5], the Court may for any sufficient reason order that the amount shall be paid by instalments, with or without interest [6].

Order, after de-

And after the passing of any such decree the Court may, on the application of the judgment-debtor [7] and with the

would not enable the Court, where the decree omitted to provide for the costs of an interlocutory proceeding, to rectify the omission. Nor could it antedate or postdate a judgment by consent: otherwise in England under Orders xxviii. r. 11; and xli. r. 3.

[1] Even where there is no such identification, the decree should specify the boundaries, 23 Suth. Civ. R. 285: 25 ibid. 39: but see 10 ibid. 96.

[2] 16 Suth. Civ. R. 240: 19 ibid. 123.

[3] 6 N. W. P. 359: 12 Ben. 477 (75 per cent. per annum!). For cases where interest was refused as amounting to a penalty, see 11 Ben. 135: 9 Cal. 615: 7 N. W. P. 108. Where the plaintiff is a Hindú and the interest exceeds the principal, see 1 Mad. H. C. 5: 3 Bom. H. C., A. C. S. 23. But in the Bengal Mufassal, see 24 Suth. Civ. R. 106: 9 Cal. 825, 871: 14 Cal. 781. As to *dámdupát* in Bombay, see 3 Bom. 131, 132, and supra, vol. i. p. 564, n. 1.

[4] 12 Cal. 569.

[5] This does not include decrees in which a sale of land is ordered in pursuance of a contract specifically affecting the property, 2 All. 129, 320, or in which a lien is enforced on a *nankar*-annuity, 2 All. 649.

[6] But the Court cannot order that the amount of a decree shall not be paid until the expiration of a fixed time from its date, 2 All. 649, where the headnote is wrong.

[7] within six months from the date of the decree, Limitation Act, art. 175.

consent[1] of the decree-holder, order that the amount decreed be paid by instalments on such terms as to the payment of interest, the attachment of the property of the defendant, or the taking of security from him, or otherwise, as it thinks fit:

cree, for payment by instalments.

Save as provided in this section and section 206, no decree shall be altered at the request of parties[2].

211. When the suit is for the recovery of possession of immoveable property[3] yielding rent or other profit, the Court[4] may provide in the decree for the payment of rent or mesne profits in respect of such property from the institution of the suit until the delivery of possession to the party in whose favour the decree is made, or until the expiration of three years from the date of the decree[5] (whichever event first occurs), with interest thereupon at such rate as the Court thinks fit.

In suits for land, Court may decree payment of mesne profits with interest.

Explanation.—'Mesne profits' of property mean those profits which the person in wrongful possession of such property actually received, or might with ordinary diligence have received, therefrom, together with interest on such profits[6].

212. When the suit is for the recovery of possession of immoveable property and for mesne profits which have accrued on the property during a period prior to the institution of the suit, and the amount of such profits is disputed, the Court may either determine the amount by the decree itself, or may pass a decree for the property and direct an inquiry into the amount of mesne profits, and dispose of the same on further orders.

Court may determine amount of mesne profits prior to suit, or may reserve inquiry.

213. When the suit is for an account of any property and for its due administration under the decree of the Court, the Court, before making the decree, shall order[7] such accounts

Administration-suit.

[1] 2 All. 481: 7 Mad. 152.

[2] Sec. 210 confers no authority on the Court to relieve a bond-debtor from a stipulation for the payment of the whole debt on failure to pay punctually any instalment, 4 Bom. 96.

[3] 9 Bom. H. C. 7.

[4] i. e. the Court trying the case. An ámín, 21 Suth. Civ. R. 269, or the Court executing the decree (25 ibid. 270), cannot assess mesne profits.

[5] The limit of three years was inserted with a view to ensure speedy execution of such decrees.

[6] 8 Suth. Civ. R. 104, per Hobhouse J.: 1 Agra Misc. App. 17.

[7] An order directing an account was formerly unappealable, 9 Cal. 773. But now it is a 'decree,' supra, p. 467. For a form see infra, Sched. IV. Nos. 130, 131.

and inquiries to be taken and made, and give such other directions, as it thinks fit[1].

In the administration by the Court of the property of any person who dies after this Code comes into force, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured[2] and unsecured[3] creditors and as to debts and liabilities proveable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being with respect to the estates of persons adjudged insolvent[4];

and all persons who in any such case would be entitled to to be paid out of such property may come in under the decree for its administration, and make such claims against the same as they may respectively be entitled to by virtue of this Code[5].

Suit to enforce right of pre-emption.

214. When the suit is to enforce a right of pre-emption[6] in respect of a particular sale of property, and the Court finds for the plaintiff, if the amount of purchase-money has not been paid into court, the decree shall specify a day on or before which it shall be so paid[7], and shall declare that on payment of such purchase-money, together with the cost (if any) decreed against[8] him, the plaintiff shall obtain possession of the property, but that if such money and costs are not so paid, the suit shall stand dismissed with costs[9].

[1] When the Court orders under this section a sale of any property vested in an executor, administrator or trustee, he should have the conduct of the sale, unless the Court directs otherwise (Order l. r. 10).

[2] *Ex parte Joselyne*, 8 Ch. D. 327.

[3] *Ex parte Nelson*, 14 Ch. D. 41.

[4] This and the following paragraph are taken from 38 & 39 Vic. c. 77, sec. 10. The effect is that a secured creditor can only prove for the balance after realising or valuing his security, *Re Withernsea Brick Works*, 16 Ch. Div. 337, 343, per Lush J.

[5] The rest of this section was repealed by Act IV of 1886.

[6] See as to this in the Lower Provinces, 6 Suth. Civ. R. 250: 15 ibid. 455: 20 ibid. 216: 4 Cal. 831, and in the N. W. Provinces, 2 N. W. P. 222: 5 All. 180: 7 All. 107.

[7] 2 All. 744. If the Court is closed when the time for making the payment expires, the payment, if made on the day when the Court next re-opens, will be deemed to be made within time, 2 N. W. P. 112: 7 All. 107.

[8] Where costs are awarded in favour of the preemptor he may, when depositing the purchase-money under the decree, deduct therefrom such costs, 6 All. 352.

[9] As to the form of the decree in cases where rival pre-emptors possessing equal rights of pre-emption come forward to enforce the right in respect

Suit for dissolution of partnership.

215. When the suit is for the dissolution of a partnership [1], the Court, before making its decree, may pass an order fixing the day on which the partnership shall stand dissolved, and directing such accounts to be taken and other acts to be done as it thinks fit [2].

Suit for account between principal and agent.

215A. When a suit is for an account of pecuniary transactions between a principal and agent, and in all other suits not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before making its decree, pass an order [3] directing such accounts to be taken as it thinks fit.

Decree when set-off is allowed.

216. If the defendant has set-off the amount of a debt against the claim of the plaintiff, and such set-off has been allowed [4], the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

Effect of decree as to sum awarded to defendant.

The decree of the Court, with respect to any sum awarded to the defendant, shall have the same effect, and be subject to the same rules in respect of appeal or otherwise, as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

Certified copies of judgment and decree.

217. Certified copies [5] of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense.

of the same sale, and in cases where one of two rival pre-emptors possesses a right of pre-emption superior to that of the other, see 6 All. 370. That a suit for pre-emption must include the whole of the pre-emptional property, see 6 All. 423, 455.

[1] See Sched. IV. Nos. 113, 132, 133.

[2] 5 All. 500: 7 All. 227.

[3] Such an order is a 'decree' (supra, p. 467), and therefore appealable.

[4] 25 Suth. Civ. R. 275.

[5] not merely translations, 1 Bom. H. C. 165.

CHAPTER XVIII.

OF COSTS.

Costs of applications.

218. When disposing of any application under this Code, the Court may give to either party the costs of such application [1], or may reserve the consideration of such costs for any future stage of the proceedings.

Judgment to direct by whom costs to be paid.

219. The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit [2], and whether in whole or in what part or proportion [3].

Power of Court as to costs.

220. The Court shall have full power to give and apportion costs of every application and suit in any manner it thinks fit [4], and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power.

Provided that, if the Court directs that the costs of any application or suit shall not follow the event [5], the Court shall state its reasons in writing.

Every order relating to costs made under this Code and not forming part of a decree may be executed as if it were a decree for money.

[1] The interlocutory order giving these costs is not affected by the general award of costs of the suit, 9 Cal. 797.

[2] Persons, therefore, not parties to the record cannot be subject to such an order, 7 Bom. 486, per Scott J. And the Court cannot e. g. declare that the costs shall be paid by the unsuccessful party in a future suit, 23 Suth. Civ. R. 89.

[3] As e. g. where a plaintiff, claiming in respect of two distinct matters, succeeds as to one and fails as to the other, Marshall, 79.

[4] But see supra, sec. 123, and infra, secs. 111, 379, par. 1, which to some extent limit this discretionary power. And the discretion must be exercised on fixed principles. Thus a successful appellant is, as a rule, entitled to his costs, 3 Cal. 473, 484: *Exp. Masters*, 1 Ch. Div. 113, and it may be said, generally, that where a party successfully enforces a legal right and is guilty of no misconduct, then (subject to sec. 22 of the Presidency Small Cause Courts Act, XV of 1882) he is entitled to costs, see *Cooper* v. *Whittingham*, 15 Ch. Div. 501. So, as a rule, is the mortgagee in a redemption suit, 8 Bom. 190. So is a party who has no interest in the suit (2 Suth. Civ. R. 33: 12 ibid. 444), or has not opposed the plaintiff's claim (3 ibid. 23), or disclaims (11 ibid. 48).

As to appeals from orders awarding costs, see 8 Cal. 91: 11 Cal. 359: 8 Bom. 368. In England such an order is appealable only when made on a wrong principle, or when the costs are part of the relief to which a party is entitled, Daniell, 6th ed., 1274–5.

[5] i.e. the result of the whole litigation, *Waring* v. *Pearman*, 32 W. R. 429, and see *Garnet* v. *Bradley*, 3 App. Ca. 950.

Costs may be set-off against sum admitted or found due.

221. The Court may direct that the costs payable to one party by another shall be set-off against a sum which is admitted or is found in the suit to be due from the former to the latter [1].

Interest on costs. Payment of costs out of subject-matter.

222. The Court may give interest on costs at any rate not exceeding six per cent. per annum, and may direct that costs, with or without interest, be paid out of, or charged upon, the subject-matter of the suit.

CHAPTER XIX.

OF THE EXECUTION OF DECREES [2].

A.—Of the Court by which Decrees may be executed.

Court by which decree may be executed.

223. A decree may be executed either by the Court which passed it [3] or by the Court to which it is sent for execution under the provisions hereinafter contained.

The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,

(*a*) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court [4], or

(*b*) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree [3] sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(*c*) if the decree directs the sale of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it [5], or

[1] But it has been held in England that a defendant cannot enforce contribution for costs against a co-defendant, *Dearsley* v. *Middleweek*, 18 Ch. D. 236. In India see and consider 9 Suth. Civ. R. 300.

[2] The rules contained in this chapter apply also to the execution of any process for arrest, sale, or payment, which may be ordered by a civil court in any civil proceedings, sec. 649 infra.

[3] Where that Court ceases to exist or to have jurisdiction, see infra, sec. 649, para. 2, and 6 Cal. 513.

[4] See sec. 17 (*b*) supra, p. 479.

[5] 6 Cal. 519.

(*d*) if the Court which passed the decree[1] considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

The Court which passed a decree[1] may of its own motion send it for execution to any Court subordinate thereto[2].

The Court to which a decree is sent under this section for execution shall certify[3] to the Court which passed it the fact of such execution, or, where the former Court fails to execute the same, the circumstances attending such failure.

If the decree has been passed in a case cognisable by a Court of Small Causes and the Court which passed it[1] wishes it to be executed in Calcutta, Madras, Bombay or Rangoon, such Court may send to the Court of Small Causes in Calcutta, Madras, Bombay or Rangoon, as the case may be, the copies and certificate respectively mentioned in clauses (*a*), (*b*), and (*c*) of section 224; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

If the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, if the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

Procedure when Court desires that its own decree shall be executed by another Court.

224. The Court sending a decree for execution under section 223 shall send

(*a*) a copy of the decree;

(*b*) a certificate[4] setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed[5], or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unexecuted; and

[1] See p. 547, note 3.

[2] A munsif's Court may execute a decree in a suit beyond its ordinary jurisdiction which has been transferred to it for execution by a District Court, Mad. 397.

[3] As to recalling the proceedings before the return of the certificate, see 6 Cal. 504.

[4] See form, Sched. IV. No. 134.

[5] When this Court has ceased to exist, or to have jurisdiction to execute the decree, see infra, sec. 649, par. 2.

(c) a copy of any order for the execution of the decree, and, if no such order has been made, a certificate to that effect.

Court receiving copies of decree etc. to file same without proof.

225. The Court to which a decree is so sent shall cause such copies and certificate to be filed, without any further proof of the decree or order for execution, or of the copies thereof, or of the jurisdiction of the Court which passed it, unless the former Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

Execution of decree or order by Court to which it is sent.

226. When such copies are so filed, the decree or order may, if the Court to which it is sent be the District Court, be executed by such Court or by any subordinate Court[1] which it directs to execute the same.

Execution by High Court of decree transmitted.

227. If the Court to which the decree is sent for execution be a High Court, the decree shall be executed by such Court in the same manner as if it had been made by such Court in the exercise of its ordinary original civil jurisdiction.

Powers of Court in executing transmitted decree.

Appeal from its orders.

228. The Court[2] executing a decree sent to it under this chapter shall have the same powers in executing[3] such decree as if it had been passed by itself[4]. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its orders in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

Decrees of Courts established by Government of India in foreign States.

229. A decree of any Court established by the authority of the Governor General in Council in the territories of any Foreign Prince or State[5], which cannot be executed within the jurisdiction of the Court by which it was made, may be executed in manner herein provided within the jurisdiction of any Court in British India[6].

[1] That a Court of Small Causes is 'subordinate' to the District Court, see sec. 2 supra.

[2] Its powers under this section are confined to the execution of the decree, 6 Ben. Appxx. 66. It cannot question the propriety or correctness of the order directing execution, nor can it stay execution except temporarily under sec. 239, 7 All. 333.

[3] But it cannot send on the decree to a *third* court for execution, except as provided by sec. 226; see 3 Cal. 512.

[4] It can, e. g. determine whether execution is barred, 5 Cal. 897.

[5] See *Bombay Government Gazette*, 18 March, 1880, Part I, pp. 290, 291.

[6] 4 Ben. A. C. J. 134.

B.—Of Application for Execution.

Application for execution.

230. When the holder of a decree desires to enforce it[1], he[2] shall apply[3] to the Court which passed the decree[4] or to the officer, if any, appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court, then to such Court or to the proper officer thereof.

The Court may in its discretion refuse execution at the same time against the person and property of the judgment-debtor[5].

Where an application to execute a decree for the payment of money or delivery of other property has been made under this section and granted[6], no subsequent application to execute the same decree shall be granted after the expiration of twelve years[7] from any of the following dates (namely):—

(*a*) the date of the decree sought to be enforced or of the decree (if any) on appeal affirming the same, or

(*b*) where the decree or any subsequent order directs any payment of money[8], or the delivery of any property, to be made at a certain date[9]—the date of the default in making the payment or delivering the property in respect of which the applicant seeks to enforce the decree.

Nothing in this section shall prevent the Court from granting an application for execution of a decree after the expiration of the said term of twelve years[10], where the judgment-debtor by fraud[11] or force prevented the execution of the decree at

[1] As to applying for execution of a portion of a decree which is perfect for execution in some respects, and imperfect in others, see 3 Ben. 114, 118, per Peacock C.J.

[2] 4 Cal. 605 : 7 All. 107.

[3] under sec. 235; see 3 Cal. 235.

[4] See p. 548, note 5.

[5] 8 Suth. Civ. R. 282.

[6] i.e. found to be made regularly and formally 'admitted' (sec. 245), 8 Cal. 297, and see 6 Mad. 173.

[7] This limitation applies to the subsequent application, not to the order passed thereon, 6 Mad. 361.

[8] 4 All. 155.

[9] i.e. an actual specified date, not merely monthly or annually, 7 Mad. 84.

[10] i.e. an application for execution made after the expiration etc., 6 Mad. 361.

[11] 4 Mad. 292. Here the word 'fraud' has a sense wider than that in which it is generally used in English law, 6 Mad. 376, per Innes J., citing Labeo's definition of dolus malus: 'Omnis calliditas, fallacia, machinatio ad circumveniendum, fallendum, decipiendum alterum adhibita,' Dig. iv. 3, 1. Where the judgment-debtor, on seeing the bailiff approach

some time within twelve years immediately before the date of the application.

Notwithstanding anything herein contained, proceedings may be taken to enforce any decree within three years after the passing of this Code, unless when the period prescribed for taking such proceedings by the law in force [1] immediately before the passing of this Code [2] shall have expired before the completion of the said three years [3].

Application by joint decree-holder.

231. If a decree has been passed jointly in favour of more persons than one, any one or more of such persons, or his or their representatives, may apply for the execution of the whole decree for the benefit of them all [4], or, where any of them has died, for the benefit of the survivors and the representative in interest of the deceased [5].

If the Court sees sufficient cause [6] for allowing the decree to be executed on an application so made, it shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application [7].

Application by transferee of decree.

232. If a decree be transferred by assignment in writing [8] or by operation of law, from the decree-holder to any other person, the transferee may apply for its execution to the Court which passed it [9]; and, if that Court thinks fit [10], the decree

his house to attach his property, left the verandah, went inside the house, chained the door and refused to open it, his conduct was held to be a fraudulent prevention within the meaning of this section, 9 Bom. 318.

[1] 9 Mad. 454. This section does not apply to decrees by the High Courts, 6 Bom. 258.

[2] 7 Bom. 214.

[3] 6 All. 388: 12 Cal. 559, dissenting from 6 All. 189; and see 8 All. 419, 536.

[4] But see 6 All. 69, where the execution was conditional on all the decree-holders joining in a conveyance to the judgment-debtor. That the execution of a joint decree cannot be taken out in part, see 5 All. 31, following 3 Ben. A. C. J. 114, per Peacock C.J. But see 9 Cal. 482. That one joint decree-holder, by foregoing his right to execute the decree, cannot deprive another of his right to execute, see 5 N. W. P. 16.

[5] 1 Ben. A. C. J. 62. If the representative of a deceased decree-holder wishes to take out execution he should get his name substituted on the record (sec. 363), or take out administration under the Succession Act or Act V of 1881, or a certificate under Act XXVII of 1860.

[6] 21 Suth. Civ. R. 32. No appeal lies from an order refusing to allow one of several joint decree-holders to execute.

[7] 1 Ben. A. C. J. 28.

[8] The transferee under an oral assignment is not entitled as of right to execution, 9 Bom. 179, 181.

[9] not to the Court (if any) to which it has been sent for execution, 5 Ben. 497: 9 Bom. H. C. 46, 49.

[10] 4 Ben. A. C. J. 200. The pro-

may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder [1]:

Provided as follows:—

(*a*) where the decree has been transferred by assignment, notice in writing of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to such execution:

(*b*) where a decree for money against several persons [2] has been transferred to one of them, it shall not be executed against the others [3].

Transferee to hold subject to equities.

233. Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

Application against judgment-debtor's representative.

234. If a judgment-debtor dies before the decree has been fully executed [4], the holder of the decree may apply to the Court which passed it to execute the same against the legal representative [5] of the deceased.

bability of the decree being executed against one of several judgment-debtors is no ground for refusing the application of the purchaser of the decree who seeks to execute it against another judgment-debtor, 8 Mad. 455.

[1] 9 Bom. 179: 11 Bom. 153. There is no appeal from orders under this section allowing or refusing execution, 3 Cal. 371, 708; but the transferee may sue for a declaration that the transfer is valid, and entitles him to execute the decree, 7 All. 457, 459. An order disallowing the judgment-debtor's objection to the assignee of the decree taking out execution is a decree and appealable, 1 All. 668: 2 All. 91.

[2] i. e. a decree for money personally due by two or more persons, 11 Cal. 393.

[3] 9 Suth. Civ. R. 232, per Peacock C.J. The reason is because when one of the persons jointly liable under a decree unites in himself the characters of creditor and joint debtor in respect of the whole decretal debt, the effect is to extinguish the liability of all the cojudgment-debtors under the decree. The transferee's remedy is a suit for contribution, 9 Suth. Civ. R. 232. But where only a share of the decree-holder's rights is transferred to one of the cojudgment-debtors, the effect is to extinguish only so much of the judgment-debt as he has so acquired; and application for execution may be made in respect of the whole unextinguished portion, 5 All. 27, 33, 34.

[4] and after the decree has been made, 14 Ben. 335, note.

[5] 3 Cal. 708: 4 Cal. 908: 8 Bom. 241, 255. A Hindú widow may be the 'legal representative' of her deceased husband within the meaning of this section, 6 Cal. 479. No appeal lies by the person placed on the record as legal representative, 3 Cal. 709. But see 2 Cal. 334 (suit); 5 Cal. 86 (injunction): 3 Cal. 708 (revision).

Such representative shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of[1]; and for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder[2], compel the said representative to produce such accounts as it thinks fit.

Contents of application.

235. The application for the execution of a decree shall be in writing[3], verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars (namely):—

(*a*) the number of the suit;

(*b*) the names of the parties;

(*c*) the date of the decree;

(*d*) whether any appeal has been preferred from the decree[4];

(*e*) whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree[5];

(*f*) whether any and what previous applications have been made for execution of the decree and with what result;

(*g*) the amount of the debt[6] or compensation, with the interest, if any, due upon the decree, or other relief granted thereby;

[1] In the case of a Hindú's undivided family the share of a deceased father passes by survivorship to the sons, and is not assets in their hands for the purposes of this section, 5 Mad. 223, 225, 235; unless it has been attached before his death, and thus brought under the control of the Court for the satisfaction of the decree, 5 Mad. 233.

[2] i.e. 'the person whose name appears on the record as the person in whose favour the decree was made, or some person whom the Court has by order recognised as the decree-holder from the original plaintiff or his representatives,' 2 Mad. 217.

[3] But see infra, sec. 256.

[4] 14 Suth. Civ. R. 205.

[5] This puts on the party applying for execution the obligation of stating any adjustment between the parties after decree, that is, any matter not done through the Court, as well as any agreement through the Court, 2 Mad. 216. See infra, sec. 258.

[6] 4 Mad. 219, where there had been a decree declaring certain parties entitled to a constantly recurring right to receive certain amounts of sacred rice, and the Court held that the decree-holders would not, on each application for execution, be able to state definitely to what extent relief was required.

(*h*) the amount of costs, if any, awarded;

(*i*) the name of the person against whom the enforcement of the decree is sought [1]; and

(*j*) the mode in which the assistance of the Court is required [2], whether by the delivery of property specifically decreed, by the arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise as the nature of the relief sought may require [3].

Inventory to accompany application for attachment of moveable property.

236. Whenever an application is made for the attachment of any moveable property belonging to the judgment-debtor but not in his possession [4], the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same [5].

Further particulars when application is for attachment of immoveable property.

237. Whenever an application is made for the attachment of any immoveable property belonging to the judgment-debtor, it shall contain at the foot a description of the property sufficient to identify it [6], and also a specification of the judgment-debtor's share or interest therein to the best of the belief of the applicant and so far as he has been able to ascertain the same.

Every such description and specification shall be verified in manner hereinbefore provided for the verification of plaints [7].

When application must be accompanied by extract from Collector's register.

238. If the property be land registered in the Collector's office, the application for attachment shall be accompanied by an authenticated extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for such land, and the shares of the registered proprietors [8].

[1] 18 Suth. Civ. R. 56: 24 ibid. 3.

[2] 7 N. W. P. 79.

[3] i. e. the mode of execution is to be adapted in each case to the nature of the particular relief sought to be enforced under the decree, 1 Hyde, 158.

[4] See infra, secs. 268 and 272.

[5] This inventory must, when the property is moveable, be delivered into Court along with the application under sec. 235, 7 Cal. 559.

[6] 12 Suth. Civ. R. 488: 18 ibid. 411: 7 Mad. 107.

[7] See note 5.

[8] 11 Suth. Civ. R. 175: 16 ibid. 149.

C.—Of staying Execution.

When Court may stay execution.

239. The Court to which a decree has been sent for execution under this chapter[1] shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time[2], to enable the judgment-debtor to apply to the Court by which the decree was made, or to any Court having appellate jurisdiction[3] in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby, or if application for execution had been made thereto[4];

and in case the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution or discharge of such property or person pending the result of the application for such order.

Power to require security from judgment-debtor.

240. Before passing an order under section 239 to stay execution, or for the restitution of property or the discharge of the judgment-debtor, the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

Liability of judgment-debtor to be retaken.

241. No discharge under section 239 of the property or person of a judgment-debtor shall prevent it or him from being retaken in execution of the decree sent for execution[5].

Order of Court which passed decree binds Court applied to.

242. Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution[6].

[1] Sec. 223.

[2] 7 All. 330: 8 Cal. 918.

[3] 3 N. W. P. 168.

[4] 5 Cal. 736: 8 Cal. 918. This section alleviates any hardship that might result from the realisation, by simultaneous executions in more than one district, of more than the amount decreed, 8 Cal. 690.

[5] Compare sec. 341 infra.

[6] But see sec. 228 supra. The Court to which a decree is sent for execution must not try whether the Court which passed the decree had jurisdiction to make it or not. A contrary rule would virtually subject the decrees of the Civil Courts to revision and reversal by Courts to

Stay of execution pending suit between decree-holder and judgment-debtor.

243. If a suit be pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may (if it think fit) stay execution [1] on the decree, either absolutely or on such terms as it thinks fit, until the pending suit has been decided [2].

D.—Questions for Court executing Decree.

Questions to be decided by Court executing decree.

244. The following questions shall be determined by order of the Court executing a decree [3] and not by separate suit [4] (namely)—

(*a*) questions regarding the amount of any mesne profits as to which the decree has directed inquiry [5];

(*b*) questions regarding the amount of any mesne profits or interest [6] which the decree has made payable [7] in respect of the subject-matter of a suit, between the date of its institution and the execution of the decree, or the expiration of three years from the date of the decree [8];

(*c*) any other questions [9] arising [10] between the parties [11] to the suit [12] in which the decree was passed, or their representatives [13],

which they are not subordinate, 7 Bom. 483. And it cannot refuse execution because the property decreed to be sold is unsaleable, 8 Bom. 185.

[1] No appeal lies from an order under this section, 9 Cal. 214. Secus, 7 Cal. 733. See 11 Bom. H. C. 151.

[2] 6 N. W. P. 181. But see 7 Cal. 733.

[3] i.e. the Court executing the decree at the time when the application is made: not the Court which has executed the decree and thereby become *functus officio*, 10 Cal. 540.

[4] 6 Bom. 8, 148: 9 Bom. 458, 469: 7 All. 549. This bars suits on the judgments of British Indian Courts. As to suits on the judgments of foreign and Native Courts, see supra, p. 393, and sec. 14.

[5] See sec. 212 supra.

[6] Sec. 209 supra.

[7] Sec. 211 supra, and cf. L. R., 2 I. A. 219.

[8] Sec. 211.

[9] 20 Suth. Civ. R. 162.

[10] i.e. directly arising, 7 All. 174, per Duthoit J. Questions as to the construction of the decree are questions relating to its execution, 9 Cal. 873.

[11] See 11 Ben. 149, and 4 Bom. H. C. 119 (judgment-debtor's sureties for performance of decree).

[12] 6 Bom. 590: but not between parties to the decree (8 Mad. 477) or co-decree-holders, 5 Cal. 593. The object is to put a limit to litigation and to prevent one suit growing out of another, 5 Mad. 218–19.

[13] i. e. heirs, devisees, executors, or administrators, 5 All. 97, 456: 8 All. 632: 7 Cal. 403: 12 Cal. 498: 3 Mad. 363. The official assignee is not a 'representative' of the judgment-debtor within the meaning of this section, 7 All. 752. Nor, of course, is the purchaser of the plaintiff's interest not on the record, 21 Cal. 151.

and relating to the execution[1], discharge or satisfaction of the decree[2].

Nothing in this section shall be deemed to bar a separate suit for mesne profits accruing between the institution of the first suit and the execution of the decree therein, where such profits are not dealt with by such decree[3].

E.—Of the Mode of executing Decrees.

Procedure on receiving application for execution of decree.

245. The Court, on receiving an application[4] for the execution of a decree, shall ascertain whether such of the requirements of sections 235, 236, 237 and 238 as may be applicable to the case have been complied with; and if they have not been complied with, the Court may reject the application, or may allow it to be amended then and there, or within a time fixed by the Court. If the application be not so amended, it shall be rejected[5].

Every amendment made under this section shall be attested by the signature of the Judge.

[1] 4 All. 420: 8 All. 146: 8 Cal. 477: 9 Cal. 872: 10 Cal. 411: 5 Bom. 45: 6 Bom. 148: 9 Bom. 468: 5 Mad. 217. In execution-proceedings the Court will look at the substance of the transaction, and will not be disposed to set aside an execution upon mere technical grounds where they find that it is substantially right, L. R., 6 I. A. 233.

[2] 7 Cal. 733: 7 Mad. 255: 8 Mad. 473: 10 Mad. 117: 5 All. 212: 6 All. 393, 448: 9 All. 229: 10 Bom. 155. An order directing accounts is not in the nature of a final decree and was therefore not an appealable order under the corresponding section of the Code of 1877, 9 Cal. 773. But the definition of a decree in the present Code expressly includes such orders. An order granting an application for the sale of certain property, to satisfy a sum which, in the course of certain execution proceedings has been found due to the applicant for mesne profits, is not appealable, 5 Cal. 50. Orders determining questions mentioned or referred to in this section and not specified in sec. 588 are 'decrees,' see the definition, p. 467, supra, and are appealable.

[3] and were not claimed in the plaint: see sec. 13, expl. III, supra. A Court whose decree for possession of land has been reversed can order the land to be restored with the mesne profits accrued during such possession, 14 Cal. 484. And where the decree under which an execution sale has taken place is reversed, sec. 244 does not bar a suit for the purchase money, 13 Cal. 326.

[4] As to the stamp see the Court Fees Act, infra, sched. II. art. 1. As to limitation, see sec. 230 supra, and Act XV of 1877, sched. II. art. 179.

[5] 8 Cal. 479: 14 Cal. 124. An appeal lies from orders rejecting applications under this section, see sec. 588, cl. (11).

Procedure on admitting application.

When the application is admitted, the Court shall enter in the register [1] of the suit a note of the application and the date on which it was made, and shall order [2] execution of the decree according to the nature of the application:

Provided that, in the case of a decree for money, the value of the property attached shall, as nearly as may be, correspond with the amount for which the decree has been made.

Cross-decrees.

246. If cross-decrees between the same parties [3] for the payment of money be produced [4] to the Court, execution shall be taken out only by the party who holds a decree for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum [5].

If the two sums be equal, satisfaction shall be entered up on both decrees.

Explanation I.—The decrees contemplated by this section are decrees capable of execution at the same time [6] and by the same Court [7].

Explanation II.—This section applies where either party is an assignee of one of the decrees, and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

Explanation III. This section does not apply unless

the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits; and

the sums due under the decrees are definite.

[1] Sec. 58 supra.

[2] 8 Suth. Civ. R. 283: 19 ibid. 132: 8 Ben. 255; but see sec. 230, para. 2, and sec. 256.

[3] This section does not apply to cross-claims under the same decree, 5 All. 273. When *A* obtained a decree against *C*, and *C* obtained a decree against *A* and *B*, *C* could, if he chose, execute the second decree for the whole amount as against *A*. He is therefore equally entitled to execute in another way, i.e. by setting off the amount thereof as against *A*'s decree, 9 Cal. 480, 481, following *Mitchell* v. *Oldfield*, 4 T. R. 123.

[4] Ben. F. B. 503.

[5] The execution-purchaser need not inquire whether the judgment-debtor had a cross-judgment of higher amount, such as would have rendered the order for execution incorrect, L. R., 13 Ind. App. 10: 614 Cal. 18.

[6] 7 Suth. Civ. R. 535.

[7] 3 N. W. P. 104. See 1 Ben. F. B. 23.

Illustrations.

(*a*) *A* holds a decree against *B* for Rs. 1,000. *B* holds a decree against *A* for the payment of Rs. 1,000 in case *A* fails to deliver certain goods at a future day. *B* cannot treat his decree as a cross-decree under this section.

(*b*) *A* and *B*, co-plaintiffs, obtain a decree for Rs. 1,000 against *C*, and *C* obtains a decree for Rs. 1,000 against *B*. *C* cannot treat his decree as a cross-decree under this section[1].

(*c*) *A* obtains a decree against *B* for Rs. 1,000. *C*, who is a trustee for *B*, obtains a decree on behalf of *B* against *A* for Rs. 1,000. *B* cannot treat *C*'s decree as a cross-decree under this section.

Cross-claims under same decree.

247. When two parties are entitled under the same decree to recover from each other sums of different amounts, the party entitled to the smaller sum shall not take out execution against the other party; but satisfaction for the smaller sum shall be entered on the decree[2].

When the amounts are equal, neither party shall take out execution, but satisfaction for each sum shall be entered on the decree.

Notice to show cause why decree should not be executed.

248. The Court shall issue a notice[3] to the party against whom execution is applied for, requiring him to show cause, within a period to be fixed by the Court, why the decree should not be executed against him,

(*a*) if more than one year has elapsed between the date of the decree and the application for its execution, or

(*b*) if the enforcement of the decree be applied for against the legal representative of a party to the suit in which the decree was made[4]:

Proviso.

Provided that no such notice shall be necessary in consequence of more than one year having elapsed between the date of the decree and the application for execution, if the application be made within one year from the date of any decree passed on appeal from the decree sought to be

[1] Because *C*'s liability under the decree obtained by *A* and *B* is a liability, not to *B* only, who is *C*'s debtor under the second decree, but to *B* and another person *A*, 9 Cal. 480, per Field J.

[2] 13 Suth. Civ. R. 106. The two parties must hold the same character, and possess identical rights of enforcing execution; and enforcement of the decree will be refused, or satisfaction entered up, only when this is the case, 5 All. 273, 274.

[3] See form, Sched. IV, no. 135. The notice must be served as a summons, sec. 94, i. e. as provided by secs. 72–92. As to the presumption that the notice has been issued, see the Evidence Act, sec. 114, and 22 Suth. Civ. R. 5.

[4] See sec. 234 supra.

executed, or of the last order against the party against whom execution is applied for, passed on any previous application for execution, or

in consequence of the application being against the legal representative of the judgment-debtor, if upon a previous application [1] for execution against the same person the Court has ordered execution to issue against him [2].

Explanation.—In this section the phrase 'the Court' means the Court by which the decree was passed, unless the decree has been sent to another Court for execution, in which case it means such other Court.

Procedure after issue of notice.

249. If the person to whom notice is issued under the last preceding section does not appear, or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed [3].

If he offers any objection to the enforcement of the decree, the Court shall consider such objection and pass such order as it thinks fit [4].

Warrant when to issue.

250. When the preliminary measures (if any) required by the foregoing provisions have been taken, the Court, unless it sees cause to the contrary [5], shall issue its warrant for the execution of the decree.

Date, signature, seal and delivery.

251. Such warrant shall be dated the day on which it is issued, signed by the Judge or such officer as the Court appoints in this behalf, sealed with the seal of the Court, and delivered to the proper officer to be executed.

And a day shall be specified in such warrant on or before which it must be executed, and the proper officer shall endorse thereon the day and manner in which it was executed, or, if it was not executed, the reason why it was not executed, and shall

[1] 23 Suth. Civ. R. 32.

[2] Omission to give, on applying for execution, the notice required by this section affects the regularity of the execution-sale and the validity of all the execution-proceedings, 3 All. 424, following 6 Cal. 103.

[3] See 14 Ben. 330.

[4] As to the procedure in such case, see 5 Ben. Appx. 65, per Jackson J.

[5] As, for example, where there are cross-decrees (sec. 246), or the decree-holder dies while execution-proceedings are pending (sec. 243). The Code does not empower a Court of first instance to refuse to execute a decree against which no appeal has been preferred, and the time for appealing against which has expired, 10 Cal. 819.

return it with such endorsement to the Court from which it issued[1].

Decree against representative for money to be paid out of deceased's property.

252. If the decree be against a party as the legal representative[2] of a deceased person, and the decree be for money to be paid out of the property of the deceased, it may be executed by the attachment and sale of any such property[3]:

If no such property remains in the possession of the judgment-debtor, and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property not duly applied by him, in the same manner as if the decree had been against him personally[4].

Decree against surety.

253. Whenever a person has, before[5] the passing of a decree in an original suit, become liable as surety for the performance of the same[6] or of any part thereof, the decree may be executed against him to the extent to which he has rendered himself liable, in the same manner as a decree may be executed against a defendant:

Provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety[7].

Decree for money.

254. Every decree or order directing a party to pay money, as compensation or costs, or as the alternative[8] to some other relief granted by the decree or order, or otherwise[9], may be enforced by the imprisonment of the judgment-debtor[10] or by the attachment[11] and sale of his property in manner hereinafter provided, or by both.

Decree for amount to be subse-

255. If the decree be for mesne profits or any other matter the amount of which in money is to be subsequently

[1] 10 Cal. 18. And see supra, sec. 223.

[2] 4 Cal. 342.

[3] as passed to the representative, 3 Ben. F. B. 314, per Peacock C.J.

[4] As to execution against a representative, see 12 Suth. Civ. R. 517: 14 ibid. 362.

[5] 7 Mad. 284, 287: 3 All. 809.

[6] 3 N. W. P. 88.

[7] 2 All. 604: 8 All. 639. The decree-holder has also, of course, his remedy on the surety-bond, 6 N. W. P. 261.

[8] Sec. 208.

[9] e. g. as interest on the amount decreed or on the costs, sec. 209.

[10] This includes a pardanashín woman, 1 Ben. F. B. R. 31. The Code contemplates only one arrest. A judgment-creditor once arrested and imprisoned in execution of a decree cannot be again arrested under a fresh writ on the same decree, 12 Cal. 657.

[11] See form of warrant of attachment, Sched. IV, no. 136.

quently ascertained.

determined, the property of the judgment-debtor may, before the amount due from him under the decree has been ascertained, be attached as in the case of an ordinary decree for money [1].

Power to direct immediate execution of decree for money not exceeding rs. 1,000.

256. When a decree is passed for a sum of money only, and the amount decreed does not exceed the sum of one thousand rupees, the Court may, when passing the decree, on the oral application of the decree-holder, order immediate execution thereof by the issue of a warrant directed either against the person [2] of the judgment-debtor if he is within the local limits of the jurisdiction of the Court, or against his moveable property [3] within the same limits [4].

Modes of paying money under decree.

257. All money payable under a decree shall be paid as follows (namely)—

(*a*) into the Court whose duty it is to execute the decree; or

(*b*) out of Court to the decree-holder; or

(*c*) otherwise as the Court which made the decree directs.

Agreement to give time to judgment-debtor.

257 A. Every agreement to give time for the satisfaction of a judgment-debt [5] shall be void unless it is made for consideration and with the sanction of the Court which passed the decree, and such Court deems the consideration to be under the circumstances reasonable [6].

Agreement for satisfaction of judgment-debt.

Every agreement for the satisfaction of a judgment-debt, which provides for the payment, directly or indirectly, of any sum in excess of the sum due or to accrue due under the decree, shall be void unless it is made with the like sanction [7].

Any sum paid in contravention of the provisions of this section shall be applied to the satisfaction of the judgment-debt;

[1] 8 Suth. Civ. R. 9, and see ibid. 42.

[2] This provision is unaffected by sec. 642, par. 2.

[3] See the General Clauses Act, s. 2, cl. 6, supra, vol. i. p. 488, and 8 Ben. 508.

[4] There cannot be, under this section, simultaneous executions against both person and property.

[5] i.e. every agreement between a judgment-debtor and a judgment-creditor for extending the time for enforcing the decree by execution. This section is not intended to prevent the parties from entering into a fresh contract for the payment of the judgment-debt by instalments or otherwise, 11 Cal. 671.

[6] 8 Bom. 538: 5 All. 492.

[7] 1 Bom. 538: 9 Bom. 178. This section applies only as between parties to the suit and decree, 6 Mad. 101. When the agreement is made with the sanction of the Court, the decree may be executed in accordance with its provisions, 5 All. 492, 596.

and the surplus, if any, shall be recoverable by the judgment-debtor.

Payment to decree-holder.

258. If any money payable under a decree[1] is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, or if any payment is made in pursuance of an agreement of the nature mentioned in section 257 A, the decree-holder[2] shall certify such payment or adjustment to the Court whose duty it is to execute the decree[3].

The judgment-debtor also may inform the Court of such payment or adjustment, and apply[4] to the Court to issue a notice to the decree-holder to show cause[5], on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after due service of such notice, the decree-holder fails to appear on the day fixed, or having appeared fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

No such payment or adjustment shall be recognised by any Court[6] unless it has been certified as aforesaid[7].

Decrees for specific moveables.

259. If the decree be for any specific moveable[8], or for any share in a specific moveable, or for the recovery of a wife, it

[1] i.e. an existing decree, 5 Bom. H. C., A. C. J. 78.

[2] Where there are more decree-holders than one, this means 'all the decree-holders' (Act I of 1868, s. 2, cl. 2), 9 Cal. 835. As to the application for a certificate of part-payment, see 5 Cal. 448.

[3] What this means is, that the judgment-creditor must go to the Court and say, 'My decree has been adjusted and extinguished: strike off the case,' 7 All. 431.

[4] within 20 days, Act XV of 1877, sched. II, art. 161; which seems too short a time: see 6 Bom. 146.

[5] i.e. to allege and prove to the satisfaction of the Court, 11 Cal. 168.

[6] The High Courts at Calcutta and Allahabad hold that this means, any Court *executing the decree*, not any Court hearing a suit for money paid to a judgment-creditor out of court and not certified, 9 Cal. 790 and 10 Cal. 356: 3 All 533, 539: 7 All. 128, 129. But the High Court of Bombay (6 Bom. 146, 10 Bom. 155) holds that such suits are barred; and where the judgment-debtor, pursuant to a non-certified compromise, executed a bond in satisfaction of the debt, that Court held the bond to be without consideration, 8 Bom. 300.

[7] This section refers to any decree, 6 Cal. 788. It does not bar a suit for damages for breach of a contract to certify satisfaction of a decree, 8 Mad. 277: and see 9 Mad. 101.

[8] See the Specific Relief Act, I of 1877, s. 11, supra, vol. i. p. 951.

or recovery of wives.

may be enforced by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the imprisonment of the judgment-debtor, or by attaching his property or by both imprisonment and attachment if necessary.

When any attachment under this section has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed under section 208, such amount, and, in other cases, such compensation, as it thinks fit, and shall pay the balance, if any, to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease to exist.

Decree for specific performance or restitution of conjugal rights.

260. When the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights[1], or for the performance of or abstention from any other particular act[2], has been made, has had an opportunity of obeying the decree or injunction and has wilfully failed to obey it[3], the

[1] As to these decrees in case of Hindús, see 1 Bom. 164: 14 Ben. 298: 6 Suth. Civ. R. 105: 8 ibid. 467: 23 ibid. 22, col. 1: 2 Agra Civ. C. App. 112: 8 All. 78: 5 Bom. H. C., A. C. J. 209 (leprosy). In a very recent case Pinhey J. refused to compel a Hindú woman to cohabit with a husband to whom she had been married when she was eleven years old, and with whom she had never lived, 9 Bom. 529, and see 1 Ind. Jur. N.S. 307. But this decision has been reversed on appeal. In England disobedience to an order for restitution of conjugal rights is no longer punishable by attachment, but is a ground for judicial separation, or, in the case of an adulterous husband, of dissolution of marriage, 47 & 48 Vic. c. 68. s. 5. As to decrees for restitution etc. in the case of Parsís, see Act XV of 1865, sec. 36: 9 Bom. H. C. 290: in the case of Muhammadans, 11 Moore I. A. 551: 8 All. 149.

[2] A decree declaring a party entitled to a constantly recurring right to receive certain payments in kind, valued at a certain annual sum, cannot be executed under the Code, 4 Mad. 219.

[3] 1 All. 501.

decree may be enforced by his imprisonment, or by the attachment of his property, or by both[1].

When any attachment under this section has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, the property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance, if any, to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of one year from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist.

Decree for execution of conveyances, or endorsement of negotiable instruments.

261. If the decree be for the execution of a conveyance, or for the endorsement of a negotiable instrument, and the judgment-debtor neglects or refuses to comply with the decree, the decree-holder may prepare the draft of a conveyance or endorsement in accordance with the terms of the decree, and deliver the same to the Court.

The Court shall thereupon cause the draft to be served on the judgment-debtor in manner hereinbefore provided for serving a summons, together with a notice in writing stating that his objections, if any, thereto shall be made within such time (mentioning it) as the Court fixes in this behalf.

The decree-holder may also tender a duplicate of the draft to the Court for execution, upon the proper stamp-paper if a stamp is required by law.

On proof of such service, the Court, or such officer as it appoints in this behalf, shall execute the duplicate so tendered, or may, if necessary, alter the same, so as to bring it into accordance with the terms of the decree and execute the duplicate so altered:

Provided that, if any party object to the draft so served as aforesaid, his objections shall, within the time so fixed, be stated in writing and argued before the Court, and the

[1] It cannot be enforced by directing the názir to carry out a mandatory injunction by (e. g.) pulling down a wall, 8 Cal. 174.

Court shall thereupon pass such order[1] as it thinks fit, and execute, or alter and execute, the duplicate in accordance therewith.

Form and effect of execution of conveyance by Court.

262. The execution of a conveyance, or the endorsement of a negotiable instrument, by the Court under the last preceding section may be in the following form, '*C. D.*, Judge of the Court of (*or as the case may be*), for *A. B.*, in a suit by *E. F.*, against *A. B.*,' or in such other form as the High Court may from time to time prescribe, and shall have the same effect as the execution of the conveyance or endorsement of the instrument by the party ordered to execute or endorse the same[2].

Decree for immoveable property.

263. If the decree be for the delivery of any immoveable property[3], possession thereof shall be delivered over to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, and, if need be, by removing any person bound by the decree who refuses to vacate the property[4].

Delivery of immoveable property when in occupancy of tenant.

264. If the decree be for the delivery of any immoveable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property[5], and proclaiming to the occupant by beat of drum, or in such other mode as is customary, at some convenient place, the substance of the decree in regard to the property:

Provided that, if the occupant can be found, a notice in

[1] Such orders are appealable to the High Court, sec. 588, cl. (15), sec. 589.

[2] That an assignment, by endorsement signed by the Judge, of a mortgage for more than rs. 100 requires registration, see 2 All. 392.

[3] This would not include an order for foreclosure absolute, *Wood* v. *Wheater*, 22 Ch. D. 281. Section 263 relates only to the delivery of immediate possession. When the property is in the occupation of a tenant, etc., see sec. 264.

[4] This power to remove would, where the property is a house, probably include the right to break the door, 7 Bom. H. C., Cr. Ca. 85.

For a form of warrant to give possession, etc., see sched. IV, no. 137.

[5] When this was not done, see 15 Suth. Civ. R. 99.

writing containing such substance shall be served upon him, and in such case no proclamation need be made [1].

Partition of estate or separation of share.

265. If the decree be for the partition [2] or for the separate possession of a share of an undivided estate paying revenue to Government, the partition [2] of the estate or the separation of the share shall be made by the Collector and according to the law, if any, for the time being in force for the partition [2], or the separate possession of shares, of such estates [3].

F.—Of Attachment of Property.

Property liable to attachment and sale in execution of decree.

266. The following property is liable to attachment and sale in execution of a decree, (namely), lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundís, promissory-notes, Government-securities, bonds or other securities for money, debts [4], shares in the capital or joint stock of any railway, banking or other public Company or Corporation, and, except as hereinafter mentioned, all other saleable [5] property [6], moveable or immoveable, belonging to the judgment-debtor or over which, or the profits of which, he has a disposing power which he may exercise for his own

[1] If the decree-holder does not choose to put in motion this power, and contents himself with a mere formal order declaring his possession, but giving him no actual possession, it seems that (notwithstanding secs. 13 and 244) he may sue for ejectment, 11 Cal. 93.

[2] 'partition' here includes the delivery of the shares to their respective allottees, 11 Bom. 662.

[3] 8 Bom. 539. This section does not apply to raiyatwárí land, but to permanently settled estates, 6 Mad. 97, confirmed in 7 Mad. 382. As to the meaning of 'estate' in the N. W. Provinces, see 6 All. 452; in the Lower Provinces, 7 Cal. 153: 10 Cal. 436, 440. As to executing decrees in partition-cases, see 3 Cal. 514 and 551: 7 Cal. 153.

[4] 'Debts' here means claims other than judgment-debts [as to these see sec. 273 and 6 Mad. 419], over which the Courts of British India have jurisdiction. It does not include debts due to a British subject by a foreign government or a subject of a foreign government, 5 Bom. 249.

[5] Where the decree expressly directs certain property to be sold, its saleability cannot be questioned in execution, 8 Bom. 187.

[6] That a decree for money may be attached, see 7 Ben. 318. So can a right to redeem, 5 Ben. 380, unless the person applying for attachment is the mortgagee, 5 Ben. 450: 1 Cal. 337. And see 7 Mad. 315 (share of land in Malabar devised with a clause that it should be held impartible), and 7 Ben. A. C. J. 159 (house built and occupied with permission of owner of land for forty years).

benefit[1], and whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, (namely)—

(*a*) the necessary wearing apparel of the judgment-debtor, his wife and children[2];

(*b*) tools of artizans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle as may in the opinion of the Court[3] be necessary to enable him to earn his livelihood as such;

(*c*) the materials of houses and other buildings belonging to and occupied by agriculturists[4];

(*d*) books of account[5];

(*e*) mere rights to sue for damages[6];

(*f*) any right of personal service[7];

[1] A member of an undivided Hindú family may, in the Bombay Presidency, alienate for valuable consideration his share in the undivided property. Such share may therefore be taken in execution for his debt, 10 Bom. H. C., 139; and see 4 Cal. 723: L. R., 4 I. A. 247: 4 Cal. 809. But land assigned to a Hindú widow with a proviso against alienation could not be attached and sold in execution of a money-decree against her, 10 Bom. 604.

[2] 9 Bom. H. C. 272. The *mangalasūtra*, or neck-ornament worn by a Hindú married woman during her husband's lifetime and never removed till his death, is part of her 'necessary wearing apparel,' 9 Bomb. 106. And all ornaments on her person, if forming part of her *stridhana*, are exempt from execution against her husband, 8 Bom. H. C., A. C. J. 129.

[3] In order to exempt from execution any of the debtor's cattle the Court must first express its opinion that such cattle are necessary to enable him to earn his livelihood, and the Court which has to decide this point is the Court which issues the execution, 10 Cal. 40.

[4] This exempts houses dwelt in by agriculturists as such and the farm-buildings appended to such dwellings, 7 Bom. 531. It does not exempt the materials of a house specifically mortgaged, 4 Bom. 25, where the mortgagee has obtained a decree for its sale.

[5] 3 Bom. H. C., O. C. J. 42. Though account-books cannot be attached and sold as waste paper, yet, to prevent a judgment-debtor from making away with his books and thus defeating a decree-holder, the Court executing a decree may, when the decree-holder applies to attach debts in execution, require the judgment-debtor to produce his books in Court and leave them in the Court's custody, 3 N. W. P. 334.

[6] 7 Ben. 187: 6 N. W. P. 95. 'Damages' here includes mesne profits, 9 Cal. 697, per Field J.

[7] 10 Bom. 395, e.g. the right of a *sebait* to perform the worship of an idol, 7 Suth. C. R. 266: 6 Bom. 300: 6 Ben. 728: 5 Ben. 617. Were the law otherwise the right might be sold to a Muhammadan or a Christian who might not be willing to worship the idol, and who could not, moreover, prepare its food. But see L. R., 6 I. A. 182, and 6 Bom. 596.

(*g*) stipends and gratuities allowed to military and civil pensioners of Government[1], and political pensions;

(*h*) the salary of a public officer or of any servant of a Railway Company, when such salary does not exceed twenty rupees *per mensem*, and one moiety of the salary of any such officer or servant when his salary exceeds that amount[2];

(*i*) the pay and allowances of persons to whom the Native Articles of War[3] apply;

(*j*) the wages of labourers[4] and domestic servants[5];

(*k*) an expectancy of succession by survivorship, or other merely contingent or possible right or interest[6];

(*l*) a right to future maintenance[7].

Explanation.—The particulars mentioned in clauses (*g*), (*h*), (*i*), and (*j*) are exempt from attachment or sale whether before or after they are actually payable:

Provided also that nothing in this section shall be deemed

(*a*) to exempt the materials of houses and other buildings from attachment or sale in execution of decrees for rent, or

(*b*) to affect the Army Act, 1881[8], or any similar law for the time being in force[9].

[1] 7 Suth. Civ. R. 169: 4 Mad. H. C. 277: 5 ibid. 371. This includes gratuities granted in consideration of past services, 5 Mad. 272: 6 All. 173. For 'pensioners' the word 'ex-servants' should have been used.

[2] 'Salary' here means pay actually drawn by the judgment-debtor at the time of the attachment or from time to time, 6 Mad. 179.

[3] See Act V of 1869, Part III, cl. (*b*).

[4] i.e. those who earn their daily bread by personal manual labour or in occupations which require little or no art, skill, or previous education, 5 Bom. 134.

[5] As to the meaning of this expression, see 8 Ben. 244, a case on the construction of a will.

[6] such as the interest of an heir expectant on the death of a Hindú widow in possession, 7 Ben. 341, and see 8 Suth. Civ. R. 253; or the interest which the vendor of land has in the purchase-money before execution of the conveyance, where it has been agreed that payment shall be made on such execution, 3 All. 12. A claim which may accrue under a pending award cannot be sold in execution, 7 Ben. 187: nor can the life-interest of the judgment-debtor in the residue of the property of a testator after full administration thereof, 6 Moore, I. A. 510. Whether a decree-holder who is also a partner of the judgment-debtor can attach the judgment-debtor's share in the partnership assets, the business being then in the hands of a receiver under a decree for dissolution and winding-up, see 5 Ben. 382, 386: 4 Bom. 222.

[7] 6 Suth. Mis. 64, col. 2: 7 Suth. Civ. R. 311: but see 10 Cal. 521 and 6 Ben. 646.

[8] 44 & 45 Vic. c. 58, sec. 151.

[9] 9 Mad. 170. The sale of arms by the názir of the Court, in execution of a decree, is a sale by a public

Power to summon and examine persons as to property liable to be seized.

267. The Court may, of its own motion or on the application of the decree-holder, summon any person whom it thinks necessary, and examine him in respect to any property liable to be seized in satisfaction of the decree[1], and may require the person summoned to produce any document in his possession or power relating to such property[2], and, before issuing the summons of its own motion, shall declare the person on whose behalf the summons is so issued.

Attachment of debt, share and other property not in possession of judgment-debtor.

268. In the case of (*a*) a debt not secured by a negotiable instrument, (*b*) a share in the capital of any public Company or Corporation, (*c*) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court, the attachment shall be made by a written order prohibiting[3],

(*a*) in the case of the debt, the creditor from recovering the debt and the debtor[4] from making payment thereof until the further order of the Court[5];

(*b*) in the case of the share, the person in whose name the share may be standing, from transferring the same or receiving any dividend thereon[6];

(*c*) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

A copy of such order shall be fixed up in some conspicuous part of the court-house, and another copy of the same shall be sent, in the case of the debt, to the debtor[7], in the case of the share, to the proper officer of the Company or Corporation,

servant in discharge of his duty, and is therefore excluded from the operation of the Indian Arms Act, XI of 1878 (see sec. 1, cl. *b*), 9 Bom. 518.

[1] 22 Suth. Civ. R. 330.

[2] 3 N. W. P. 334.

[3] For forms of such order, see sched. IV, nos. 138. 139, 140.

[4] who is called the garnishee. That he cannot set-off a debt due to him by the decree-holder see L. R., 10 Q. B. 28.

[5] The Court cannot call on a person subject to a prohibitory order to pay, or show cause why he should not pay, his debt into Court. The Court must satisfy itself that a debt is due, and the debt must then be sold and delivery made under secs. 284 and 381, 10 Mad. 194. As to the position of a judgment-creditor attaching a debt under this section as regards prior assignees, see 8 Bom. H. C., O. C. J. 169.

[6] Cf. the English rules as to distringas, 1 & 2 Vic. c. 100, ss. 14, 15: 3 & 4 Vic. c. 82, s. 1: Order xlvi. r. 1.

[7] It is not enough to affix it to the wall of the debtor's dwelling-house, 10 Ben. Appx. 12.

and in the case of the other moveable property (except as aforesaid), to the person in possession of the same[1].

A debtor[2] prohibited under clause (*a*) of this section may pay the amount of his debt into court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct, until the further orders of the Court[3].

A copy of every such order shall be fixed up in a conspicuous part of the court-house and shall be served on the officer so required.

Every such officer may from time to time pay into court any portion so withheld, and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the judgment-debtor.

Attachment of moveable property in possession of judgment-debtor.

269. If the property be moveable property[4] in the possession of the judgment-debtor, other than the property mentioned in the first proviso to section 266, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Proviso.

Provided that when the property seized is subject to speedy and natural decay[5], or when the expense of keeping it in custody will exceed its value, the proper officer may sell it at once.

Power to make rules for maintenance and custody, while under attachment, of

The Local Government may, from time to time, make rules for the maintenance and custody, while under attachment, of

[1] The execution-creditor cannot enforce his rights to the property mentioned in this section by *suit*. He must follow the procedure which it prescribes, L. R., 3 I. A. 241, 251, per Sir B. Peacock.

[2] See note 4, p. 570.

[3] 5 Bom. 198. A provincial Court of Small Causes must adopt the machinery of sec. 223 when execution is sought against persons or property outside its local jurisdiction. Where the salary of a public officer is disbursed outside that jurisdiction the Court cannot therefore attach it under this clause, 6 All. 243.

[4] See the General Clauses Act, sec. 2, cl. (*b*), vol. I. of this work, p. 488.

[5] as in the case of green fruit and vegetables, milk, fish, and meat.

tenance of attached live-stock.

live-stock and other moveable property[1], and the officer attaching property under this section shall, notwithstanding the provisions of the former part of this section, act in accordance with such rules.

Attachment of negotiable instruments.

270. If the property be a negotiable instrument not deposited in a court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into court and held subject to the further orders of the Court.

Seizure of property in building.

271. No person executing any process under this Code directing or authorising seizure of moveable property shall enter any dwelling-house after sunset and before sunrise, or shall break open any outer door of a dwelling-house[2]. But, when any such person has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe any such property to be[3]:

Seizure of property in zanánás.

Provided that, if the room be in the actual occupancy of a woman, who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to her that she is at liberty to withdraw; and after allowing a reasonable time for such woman to withdraw, and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

Attachment of

272. If the property be deposited in, or be in the custody[4]

[1] See *Fort St. George Gazette*, 14 Aug. 1883, Part I, p. 515. *Calcutta Gazette*, 16 April, 1879, Part I, p. 356; 18 July, 1883, Part I, p. 621. *N. W. P. and Oudh Gazette*, 15th Oct. 1881, Part II, p. 1083; 17th Nov. 1883, Part I, p. 622. Panjáb notification No. 3858, dated 3rd Oct. 1877. *Central Provinces Gazette* 1877, Part I A, p. 303. *Assam Gazette*, 6 Sep. 1879, Part I, p. 538. As to Coorg see the *Mysore Gazette*, 26 June, 1880, Part I, p. 167.

[2] Even though the defendant has absconded to evade the execution, 8 Bom. H. C., A. C. J. 127, where the Court held that the privilege extended also to an out-house or any office annexed to a dwelling-house; but not to a building standing some distance from the dwelling-house, and not forming part of it. That a bailiff may break open the door of a shop or godown, see 3 Bom. 89.

[3] 5 Mad. H. C. 189. As to the liability of a judgment-creditor who attaches property not belonging to his judgment-debtor, see 8 Bom. H. C., A. C. J. 177: 3 Bom. 74: 3 Ben. A. C. J. 414.

[4] i.e. actual custody, 7 Mad. 48.

of, any Court or public officer, the attachment shall be made by a notice[1] to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice issues[2]: property deposited in court or with Government officer.

Provided that, if such property is deposited in, or is in the custody[3] of, a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment, or otherwise, shall be determined by such Court[4]. Proviso.

273. If the property be a decree for money passed by the Court which passed the decree sought to be executed, the attachment shall be made by an order of the Court directing the proceeds of the former decree to be applied in satisfaction of the latter decree[5]. Attachment of decree for money.

If the property be a decree for money passed by any other Court, the attachment shall be made by a notice in writing to such Court under the hand of the Judge of the Court which passed the decree sought to be executed, requesting the former Court to stay the execution of its decree until such notice is cancelled by the Court from which it was sent. The Court receiving such notice shall stay execution accordingly, unless and until

(*a*) the Court which passed the decree sought to be executed cancels the notice, or

(*b*) the holder of the decree sought to be executed applies to the Court receiving such notice to execute its own decree.

On receiving such application, the Court shall proceed to execute the decree and apply the proceeds in satisfaction of the decree sought to be executed.

In the case of all other decrees[6] the attachment shall be Attachment of

[1] See form, Sched. IV. no. 142.

[2] Suggested by the English stop-order.

[3] i. e. actual custody, 7 Mad. 48.

[4] and not by the Court which made the order of attachment, 7 Cal. 555. When the property attached is deposited with the Collector, the Court has no such jurisdiction, 13 Suth. Civ. R. 301, col. 2.

[5] Attachment under this section of a money-decree cannot lead to its sale, 2 All. 290: 6 Mad. 418. Secus, apparently, in the Lower Provinces, 7 Ben. 318: 6 Cal. 213, 243.

[6] 2 All. 290.

other decrees.

made by a notice in writing, under the hand of the Judge of the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, when such decree has been passed by any other Court, also by sending to such Court a like notice in writing to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent. Every Court receiving such notice shall give effect to the same until it is so cancelled.

Decree-holders to give information.

The holder of any decree attached under this section shall be bound to give the Court executing the same such information and aid as may reasonably be required.

Attachment of immoveable property.

274. If the property be immoveable[1], the attachment shall be made by an order[2] prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from receiving the same from him by purchase, gift, or otherwise.

The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be fixed up in a conspicuous part of the property and of the court-house[3].

When the property is land paying revenue to Government, a copy of the order shall also be fixed up in the office of the Collector of the District in which the land is situate.

Order to withdraw attachment after satisfaction of decree.

275. If the amount decreed with costs and all charges and expenses resulting from the attachment of any property be paid into court, or if satisfaction of the decree be otherwise made through the Court, or if the decree is set aside or reversed, an order shall be issued, on the application of any person interested in the property, for the withdrawal of the attachment.

Private alienation

276. When an attachment has been made by actual seizure

[1] This does not include a debt secured by mortgage-lien on immoveable property, 12 Cal. 546. But see 9 Cal. 511.

[2] See form, Sched. IV. no. 141.

[3] As to irregularity in proclaiming sales, see 4 All. 300, dissenting from 7 Cal. 34. The omission to beat a drum is a material irregularity, 10 Bom. 504. That objections as to the absence of formalities cannot be taken for the first time before the Judicial Committee, see 6 Cal. 129.

or by written order duly intimated and made known in manner aforesaid [1], any private alienation [2] of the property attached, whether by sale, gift, mortgage, or otherwise, and any payment of the debt or dividend, or a delivery of the share, to the judgment-debtor during the continuance of the attachment [3], shall be void as against all claims enforceable under the attachment [4]. of property after attachment.

277. If the property attached is coin or currency-notes, the Court may, at any time during the continuance of the attachment, direct [5] that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same. Court may direct coin etc. attached to be paid to party entitled.

278. If any claim be preferred to, or any objection be made to the attachment of, any property attached in execution of a decree [6], on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection [7] with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit [8]: Investigation of claims to, and objections to attachment of, attached property.

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

If the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale Postponement of sale.

[1] 1 Ben. S. N. xx, followed in 2 All. 58.

[2] 4 All. 219. A renewal of a mortgage existing on the property prior to the attachment is not an 'alienation' within the meaning of this section, except so far as it enhances the charge, 4 Mad. 417. And a transfer effected by a vesting order of the Court under the Indian Insolvent Act (11 & 12 Vic. c. 21), s. 7, is not a 'private alienation,' but rather one by operation of law, 1 N. W. P. 172, 188.

[3] 12 Ben. 411.

[4] 2 Ben. F. B. R. 49 (affirmed by the Judicial Committee, 10 Ben. 134): 6 All. 33: 7 Cal. 118. This section, being a restriction of private rights of alienation, must be strictly construed. While it gives an especial right to judgment-creditors as distinguished from simple creditors, it is an essential condition precedent to the exercise of that right that there should be a sale in execution and that its result should appear in assets realised thereby, 7 All. 702.

[5] See form of order, Sched. IV. no. 143.

[6] otherwise than under sec. 268, see 4 Bom. 323.

[7] 5 Suth. Mis. 28, col. 1: 8 Suth. Civ. R. 26.

[8] 2 Ben. F. B. 91. See form of notice to the attaching creditor, Sched. IV. no. 144.

may postpone it pending the investigation of the claim or objection [1].

Evidence to be adduced by claimant.

279. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed [2] of, the property attached.

Release of property from attachment.

280. If upon the said investigation the Court is satisfied that, for the reason stated in the claim or objection, such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall pass an order for releasing the property, wholly or to such extent as it thinks fit, from attachment [3].

Disallowance of claim to release.

281. If the Court is satisfied that the property was, at the time it was attached, in possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim [4].

Continuance of attachment subject to incumbrance.

282. If the Court is satisfied that the property is subject to a mortgage or lien in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or lien [5].

Suits to establish right to attached property.

283. The party against whom an order under section 280, 281, or 282 is passed may institute a suit to establish the right which he claims to the property in dispute [6], but, subject to the result of such suit, if any, the order shall be conclusive [6].

[1] 12 Cal. 696 : 11 Bom. 118 : 9 All. 232.

[2] on his own account, and not, e.g., as a trustee for, or tenant of, the judgment-debtor.

[3] As to suits by persons against whom orders are passed under sec. 280, 281, or 282, see the Limitation Act, Sched. II. art. 11.

[4] 4 All. 190.

[5] 9 Cal. 888 : 11 Cal. 673 : 10 Bom. 659. A suit under sec. 283 does not lie in a provincial Court of Small Causes, Act IX of 1887, Sched. II.

[6] 9 Bom. 35 : 1 All. 381 : 4 Mad. 131.

Power to order sale and proceeds to be paid to person entitled.

284. Any Court may[1] order that any property which has been attached[2], or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

Property attached in execution of decrees of several Courts.

285. Where property not in the custody[3] of any Court has been attached in execution of decrees of more Courts than one[4], the Court which shall receive or realise such property and shall determine any claim thereto, and any objection to the attachment thereof, shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached[5].

G.—Of Sale and Delivery of Property.

(*a*) *General Rules.*

Sales by whom conducted and how made.

286. Sales in execution of decrees shall be conducted by an officer of the Court or by any other person whom the Court may appoint[6], and, except as provided in section 296, shall be made by public auction[7] in manner hereinafter mentioned.

Proclamation of sales by public auction.

287. When any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court[8]. Such proclamation shall state the time[9]

[1] 4 Bom. 522, 523; 2 All. 752: 3 All. 504. He may also apply for a review of the order, 7 Suth. Civ. R. 79, col. 2. But see 3 Mad. H. C. 220. This section is not an exception to sec. 545, 6 Mad. 98.

[2] That a regularly perfected attachment is an essential preliminary to sales in execution of simple decrees for money, see 5 All. 91, per Straight J. See 12 Cal. 322.

[3] i.e. actual custody, 7 Mad. 48.

[4] and such attachments are existing at the same time, 6 All. 255, 258.

[5] 6 Mad. 357: 4 All. 361: 12 Cal. 338. This section applies to immoveable, as well as to moveable property, 7 Mad. 48, 49, following 3 All. 356. The doubt was raised in 7 Cal. 413.

[6] 12 Suth. Civ. R. 238; where the Court held that the words 'whom the Court may appoint' applied to the 'officer' as well as the 'other person.'

[7] As to sham bidders at such auctions see the Penal Code, s. 228, supra, vol. I, p. 183, and 9 Moo. I. A. 324.

[8] It cannot refuse to sell on the ground that a stranger impeaches the decree as having been fraudulently obtained, 8 Bom. 533. He should sue for an injunction.

[9] The sale should not be on a holiday or when the Courts are closed, 3 Suth. Misc. 24.

and place of sale[1], and shall specify as fairly and accurately as possible—

(*a*) the property to be sold;

(*b*) the revenue assessed upon the estate or part of the estate[2], when the property to be sold is an interest in an estate[2] or a part of an estate paying revenue to Government[3];

(*c*) any incumbrance to which the property is liable[4];

(*d*) the amount for the recovery of which the sale is ordered, and

(*e*) every other thing which the Court considers material for the purchaser to know in order to judge of the nature and value of the property[5].

For the purpose of ascertaining the matters so to be specified, the Court may summon any person whom it thinks necessary, and examine him in respect to any such matters, and require him to produce any document in his possession or power relating thereto[6].

Rules to be made by High Courts.

The High Court shall, as soon as may be after this Code comes into force, make rules for the guidance of the Courts in exercise of their duties under this section. The High Court may, from time to time, alter any rules so made. All such rules shall be published in the local official Gazette and shall thereupon have the force of law[7]. As regards his own Court and the Court of Small Causes at Rangoon, the Recorder

[1] so as to give due notice to intending purchasers, 12 Suth. 488.

[2] i.e. aliquot part of an estate, 11 Ben. 56.

[3] 9 Cal. 656.

[4] The amount of the incumbrance still outstanding should be specified, 7 Cal. 34, 41–42. He that causes the property of his judgment-debtor to be sold in execution cannot afterwards set up any claim of his own against that property unless he shows that the purchaser bought with notice of his claim, 10 Cal. 611, following 3 Ben. A. C. J. 407: 24 Suth. Civ. R. 263, and 1 Bom. 314.

[5] If, therefore, the property of which sale is sought is a debt, and the Court receives notice from the alleged debtor that no such debt exists, the Court should satisfy itself of the existence, or otherwise, of the debt, and if it comes to the conclusion that the debt does not exist, should abstain from proceeding to sale, 4 Bom. 326.

For a form of warrant of sale under this section see sched. IV, no. 145.

[6] As to the issue of a new proclamation where portion of the property is released from attachment, see 3 Cal. 544; and where the sale is postponed, see sec. 291 infra.

[7] See *Bombay Government Gazette*, 8 Feb. 1883, Part I, p. 119: *N. W. P. and Oudh Gazette*, 16 April 1881, Part II, p. 365; *ibid.* 12th Nov. 1881, Part II, p. 1143; 24 Feb. 1883, Part II, p. 158: *Assam Gazette*, 22 March 1879, Part I, p. 208.

of Rangoon shall be deemed to be a 'High Court' within the meaning of this paragraph.

Nothing in this section shall apply to cases in which the execution of the decree has been transferred to the Collector.

Indemnity of Judges, etc.

288. No Judge or other public officer shall be answerable for any error, misstatement or omission in any proclamation under section 287, unless the same has been committed or made dishonestly.

Mode of making proclamation.

289. The proclamation shall be made, in manner prescribed by section 274, on the spot where the property is attached[1], and a copy thereof shall then[2] be fixed up in the court-house and, in the case of land paying revenue to Government, also in the Collector's office.

If the Court so direct, such proclamation shall also be published in the local official Gazette and in some local newspaper, and the costs of such publication shall be deemed to be costs of the sale.

Time of sale.

290. Except in the case of property mentioned in the proviso to section 269, no sale under this chapter shall, without the consent[3] in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been fixed up in the court-house of the Judge ordering the sale[4].

Power to adjourn sale.

291. The Court may in its discretion adjourn any sale under this chapter (other than a sale by the Collector) to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment: provided that when the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court[5].

[1] When distinct properties are proclaimed for sale in one execution, a copy of the order must be fixed up on each property, 11 Cal. 76.

[2] As to the former law, see 4 All. 301.

[3] 5 Cal. 259.

[4] An infringement of this rule vitiates the sale, 7 All. 289; and see 5 Cal. 878, where an order confirming a premature sale was set aside under sec. 622.

[5] The applicant for an adjournment ought to show, (1) that serious injury

Whenever a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall be made, unless the judgment-debtor consents to waive it. Every such sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to such officer, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court that ordered the sale.

Stoppage of sale on tender, or proof of payment.

Officers concerned in execution-sales not to bid or buy.

292. No officer[1] having any duty to perform in connection with any sale under this chapter shall either directly or indirectly bid for, acquire or attempt to acquire, any interest in any property sold at such sale.

Defaulting purchaser answerable for loss by re-sale.

293. The deficiency of price (if any) which may happen on a re-sale under this Code[2] by reason of the purchaser's default[3], and all expenses attending such re-sale, shall be certified to the Court by the officer holding the sale,

and shall, at the instance of either the judgment-creditor or the judgment-debtor, be recoverable from the defaulter[4] under the rules contained in this chapter for the execution of a decree for money[5].

Decree-holder not to bid or buy without permission.

294. No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property[6].

If decree-holder pur-

When a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, if

will be caused to him in case it is not granted, and (2) that he has applied for it promptly, see 10 Moo. I. A. 327, and 5 Mad. H. C. 410.

[1] This does not include the pleaders of the parties to the suit, 10 Mad. 111; but see N. W. P. 46.

[2] See infra, secs. 297, 306, 308, and 7 Cal. 337.

[3] A purchaser at a court-sale who fails to pay the deposit required by sec. 306 is a defaulting purchaser within the meaning of sec. 293, 5 Bom. 575.

[4] but not from his agent, 20 Suth. Civ. R. 80.

[5] The defaulter is not bound to pay interest on the amount of the deficiency and expenses, 9 Suth. Civ. R. 500.

[6] 5 Cal. 308. When such permission is given the decree-holder is bound to exercise the most scrupulous fairness in purchasing the property; and if he or his agent dissuades others from purchasing at the sale, that of itself is a sufficient ground why the purchase should be set aside, 7 Cal. 347. No appeal lies from an order refusing permission, 13 Cal. 174. When the decree-holder buys without permission the sale is not *ipso facto* void; but stands until set aside under s. 294, para. 3.

he so desires, be set-off against one another[1], and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly. chase, amount of decree may be taken as payment.

When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order[2] set aside the sale[3]; and the costs of such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder[4].

295. Whenever assets[5] are realised[6] by sale or otherwise[7] in execution of a decree, or more persons than one[8] have, prior to the realisation, applied to the Court by which such assets are held for execution of decrees for money[9] against the same judgment-debtor[10], and have not obtained satis- Proceeds of execution-sale to be divided rateably among decree-holders.

[1] Where there are competing decree-holders who have applied for execution of their decrees, sec. 294 must be taken as subject to sec. 295. So that the decree-holder who has been permitted under the former section to purchase in execution of his own decree must share the proceeds rateably with his competitors and will not be allowed to set-off the purchase-money against the amount due on his decree, 6 Bom. 570, 5 Mad. 123.

[2] Such orders are appealable, sec. 588, cl. (16), within 30 days from the date of sale, Act XV of 1877, sched. II, art. 166.

[3] the judgment-debtor or other person interested must show that he has sustained some substantial injury arising from the irregularity, 11 Cal. 731. The purchase is not void *ab initio*, but only voidable on the application of the judgment-debtor etc., 11 Bom. 590.

[4] See 10 Cal. 759, where the decree-holder without permission bid and bought *benâmi*. The judgment-debtor cannot sue to set aside the sale, see sec. 244 and 5 Mad. 217.

[5] 10 Mad. 61. This includes money paid into court by sale or otherwise in execution of a decree, 6 Bom. 16, but not money paid by a judgment-debtor under arrest, in satisfaction of the decree against him, 6 Bom. 588.

[6] from the property of the judgment debtor, 6 Bom. 588.

[7] i.e. by other process of execution provided for by the Code, 13 Cal. 225.

[8] i. e. more decree-holders than one of the same Court. The words 'more persons than one' do not include outsiders or decree-holders of other Courts, except perhaps those appearing on certificates under the provisions of chap. XIX, 5 Bom. 201.

[9] This includes a decree for mesne profits, 5 Mad. 124, a mortgage-decree directing the mortgage-money to be realised from the mortgaged property and from the mortgagor personally, and indeed every other decree by virtue of which money is payable, 11 Cal. 718.

[10] i.e. the judgment-debtor or the judgment-debtors, whose property has been sold in execution of the decree, 9 Cal. 922. If there is one decree against *A*, and another decree against *A* and *B*, and the decree-holders in each case apply for execution against *A*, but execution is taken out and

faction thereof, the assets, after deducting the costs of the realisation, shall be divided rateably among all such persons [1]:

Provided as follows:—

Proviso where property is sold subject to mortgage.

(*a*) when any property is sold subject to a mortgage or charge[2], the mortgagee or incumbrancer shall not as such be entitled to share in any surplus arising from such sale:

(*b*) when any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the assent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same right against the proceeds of the sale as he had against the property sold [3]:

Proviso.

(*c*) when immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale;

secondly, in discharging the interest and principal-money due on the incumbrance;

thirdly, in discharging the interest and principal-moneys due on subsequent incumbrances [4] (if any); and

fourthly, rateably among the holders[5] of decrees for money against the judgment-debtor [6], who have, prior to the sale of the said property, applied to the Court which made the decree ordering such sale for execution of such decrees and have not obtained satisfaction thereof.

If all or any of such assets be paid to a person not entitled

assets realised in one case only, the decree-holders under each decree would under this section be entitled to a rateable share of the assets, 9 Cal. 920.

[1] 4 Bom. 472; 12 Cal. 294, 321. This section and sec. 266, clause (*c*) and explanation (*a*) must be read together. An ordinary judgment-creditor is not, therefore, entitled to a rateable proportion of the assets realised by the sale of a house belonging to and occupied by an agriculturist, under a decree obtained by another creditor for rent due to him in respect of such house, 4 Bom. 429.

[2] i.e. sold with express notice of a mortgage or charge, 14 Suth. Civ. R. 209: 21 ibid. 43: 5 Bom. 477.

[3] 10 Cal. 567, where no such order was made. Orders under sec. 295 may be revised under sec. 622, 4 Mad. 383.

[4] according to their priority, 7 All. 378, 381.

[5] i.e. *bonâ fide* holders, 11 Cal. 42. Where the Court cannot satisfy itself as to the *bona fides* of the claim, it should exclude the claimant from the distribution of assets.

[6] whose immoveable property has been sold in execution of a decree, 9 Cal. 922.

to receive the same, any person so entitled may sue such person to compel him to refund the assets[1].

Nothing in this section affects any right of the Government[2].

(*b*) *Rules as to Moveable Property*[3].

Rules as to negotiable instruments and shares in public Companies.

296. If the property to be sold be a negotiable instrument or a share in any public Company or Corporation, the Court may[4], instead of directing the sale to be made by public auction, authorise the sale of such instrument or share through a broker at the market-rate of the day.

Payment for other moveable property sold.

297. In the case of other moveable property[5], the price of each lot shall be paid for at the time of sale, or as soon after as the officer holding the sale directs[6], and, in default of payment, the property shall forthwith be again put up and sold[7].

On payment of the purchase-money, the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

Irregularity not to vitiate sale of moveable property. Person injured may sue.

298. No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation, or (if such other person be the purchaser) for the recovery of the specific property and for compensation in default of such recovery[8].

Delivery of move-

299. When the property sold is a negotiable instrument

[1] 9 Suth. Civ. R. 515. Such a suit cannot be brought in a provincial Court of Small Causes, Act IX of 1887.

[2] And the rule of procedure contained in it does not interfere with the substantive rights of the parties, 10 Cal. 576.

[3] There is no provision (like sec. 313 as to immoveable property) that the purchaser at an execution-sale of moveables may have the sale set aside on the ground that the person whose property purported to be sold had no saleable interest in it. The execution-creditor does not warrant the title, and as in the case of a sale in England by the sheriff of goods seized under a *fi. fa.* the buyers buy at their own peril, 2 Bom. 264.

[4] if it thinks fit, 8 Suth. Civ. R. 415.

[5] See the General Clauses Act, supra, vol. I. p. 488.

[6] 4 N. W. P. 37.

[7] In case of a deficiency on the resale, see sec. 293.

[8] 6 N. W. P. 252, following 9 Suth. Civ. R. 118.

able property actually seized.

or other moveable property, of which actual seizure has been made, the property shall be delivered to the purchaser.

Delivery of property to which judgment-debtor entitled subject to lien.

300. When the property sold is any moveable property to which the judgment-debtor is entitled subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice[1] to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

Delivery of debts and of shares in Companies.

301. When the property sold is a debt not secured by a negotiable instrument, or is a share in any public Company, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser[2], or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the Company from permitting any such transfer or making any such payment to any person except the purchaser[3].

Transfer of negotiable instruments and shares.

302. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public Company is standing is required to transfer such instrument or share, the Judge may endorse the instrument or the certificate of the share, or may execute such other document as may be necessary.

The endorsement or execution shall be in the following form or to the like effect:—'*A. B.*, by *C. D.*, Judge of the Court of (*or as the case may be*); in a suit by *E. F.* against *A. B.*'

Until the transfer of such instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same; and any endorsement made, or document executed, or receipt signed, as aforesaid, shall be as valid and effectual for all

[1] See form, sched. IV, no. 146. [2] See form, sched. IV, no. 147.
[3] See form, sched. IV, no. 148.

purposes as if the same had been made or executed or signed by the party himself.

Vesting order in case of other property.

303. In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

(c) Rules as to Immoveable Property.

What courts may order sales of land.

304. Sales of immoveable property[1] in execution of a decree may be ordered by any Court[2] other than a Court of Small Causes.

Postponement of sale to enable defendant to raise amount.

305. When an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by mortgage or lease or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may on his application postpone the sale of property comprised in the order for sale, for such period as it thinks proper[3], to enable him[4] to raise the amount.

Certificate to judgment-debtor.

In such case the Court shall grant a certificate to the judgment-debtor authorising him, within a period to be mentioned therein, and notwithstanding anything contained in section 276, to make the proposed mortgage, lease or sale: provided that all moneys payable under such mortgage, lease or sale shall be paid into court and not to the judgment-debtor:

Provided also that no mortgage, lease or sale under this section shall become absolute until it has been confirmed by the Court.

Deposit by purchaser of immove-

306. On every sale of immoveable property under this chapter, the person declared to be the purchaser[5] shall pay

[1] See supra, vol. I. p. 487. A decree charging immoveable property has been held to be itself 'immoveable property' within the meaning of secs. 304-317, 1 All. 348.

[2] When the property is situate outside the local limits of its jurisdiction, see sec. 223.

[3] 5 Mad. H. C. 272: 15 Suth. Civ. R. 322. A year is too much, 2 N. W. P. 11.

[4] The Court itself cannot mortgage or let the property, Suth. 1864, Misc. 5.

[5] This includes a decree-holder to whom a lot is knocked down, Suth. 1864, Misc. 30.

able property.

immediately after such declaration a deposit of twenty-five per centum on the amount of his purchase-money[1] to the officer conducting the sale, and, in default of such deposit[2], the property shall forthwith be put up again and sold[3].

Time for payment in full.

307. The full amount of purchase-money shall be paid by the purchaser[4] before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or, if the fifteenth day be a Sunday or other holiday, then on the first office-day after the fifteenth day[5].

Procedure in default of payment.

308. In default of payment within the period mentioned in the last preceding section, the deposit, after defraying the expenses of the sale, shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

Notification on re-sale of immoveable property.

309. Every re-sale[6] of immoveable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh notification in the manner and for the period hereinbefore prescribed for the sale.

Co-sharer of share to have preference in bidding.

310. When the property sold in execution of a decree is a share of undivided immoveable property[7], and two or more persons, of whom one is a co-sharer, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the co-sharer[8].

Setting aside sale

311. The decree-holder[9], or any person whose immoveable

[1] Unless this payment is made at once, there is no sale, 5 All. 316.

[2] No deposit, no sale, 5 All. 316.

[3] Disputes as to whether the deposit was offered should be decided by the Judge before commencing a second sale, 6 Mad. 197.

[4] into court, or, in the Lower Provinces and Madras, into the Government Treasury.

[5] For the purposes of this section payment into the Government Treasury is, in the Lower Provinces and Madras, equivalent to a payment into Court, 8 Cal. 528 and 7 Mad. 211.

[6] not every *postponed* sale, 1 Suth. Misc. 3.

[7] This does not include the case where the property is the interest of a mortgagee in such a share, 3 All. 15.

[8] This section contemplates a distinct bid by the co-sharer, 3 All. 827, following 2 All. 850; and see 6 N. W. P. 272: 7 N. W. P. 281.

[9] This includes both a decree-holder who has attached and one who has entitled himself to a rateable distribution under sec. 295, 10 Mad. 57.

property has been sold[1] under this chapter, may apply[2] to the Court to set aside the sale on the ground of a material irregularity[3] in publishing or conducting it[4]; of land on ground of irregularity.

but no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity[5].

312. If no such application as is mentioned in the last preceding section be made, or if such application be made and the objection be disallowed[6], the Court shall pass an order[7] confirming the sale as regards the parties to the suit and the purchaser. Effect of objection being disallowed and of its being allowed.

If such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale[8].

No suit to set aside, on the ground of such irregularity, an order passed under this section shall be brought by the party against whom such order has been made.

[1] These words do not include a mere co-sharer in undivided immoveable property, 5 All. 42, or a person who has purchased the property at a prior execution-sale, such prior sale not having been confirmed, 8 Cal. 367. But see 2 All. 352, 396: 13 Cal. 346 (mortagees who had obtained a foreclosure-decree): 14 Cal. 240 (person alleging that his property has been sold in execution).

[2] within 30 days from the date of the sale, Act XV of 1887, sched. II, art. 166.

[3] 8 All. 116.

[4] The expression 'conducting the sale' refers to the action of the officer conducting the sale, not to anything done before the order of sale, 7 All. 641.

[5] 9 Cal. 656: 11 Cal. 658. Thus the use at a sale of depreciatory language by the execution-creditor who was bidding by his agent, 5 Cal. 308: not affixing copy of sale-proclamation, 7 Cal. 466: or not stating the amount of Government revenue in the sale-proclamation, may be properly objected to in the Court of first instance; L. R., 10 Ind. App. 25. But mere inadequacy of price is not a 'material irregularity,' 8 Bom. 424. Nor is selling on a close holiday, 3 All. 333. Nor is the omission to state the amount of rent payable in respect of a tenure brought to sale, 7 Cal. 723. Nor is fraud, 7 Bom. H. C. 74: 8 Suth. Civ. R. 506. A sale will not be set aside because the decree having been passed more than twelve years before, the execution had been barred by limitation, 6 Mad. 238. And the death of the decree-holder before the sale does not render it void, 3 All. 765; and see 7 All. 365.

[6] by the Court before which the proceedings under sec. 311 are taken, 11 Cal. 287, not by the appellate Court.

[7] See form, sched. IV, no. 149. An appeal to the High Court lies from this order, secs. 588, cl. (16), and 589.

[8] and directing by whom the sale-expenses should be paid, 6 N. W. P. 309. No appeal lies from such order, 11 Bom. 603.

Application to set aside sale on ground of judgment-debtor having no saleable interest.

313. The purchaser at any such sale may apply[1] to the Court[2] to set aside the sale, on the ground that the person whose property purported to be sold had no saleable interest[3] therein, and the Court may make such order[4] as it thinks fit: provided that no order to set aside a sale shall be made, unless the judgment-debtor[5] and the decree-holder have had opportunity of being heard against such order[6].

Confirmation of sale.

314. No sale of immoveable property in execution of a decree shall become absolute until it has been confirmed by the Court[7].

If sale set aside, price to be returned to purchaser.

315. When a sale of immoveable property is set aside under section 312 or 313,

or when it is found that the judgment-debtor had no saleable interest[8] in the property which purported to be sold and the purchaser is for that reason deprived of it,

the purchaser shall be entitled to receive back his purchase-money (with or without interest as the Court may direct) from any person to whom the purchase-money has been paid.

[1] within 60 days from the date of the sale, Act XV of 1877, sched. II, art. 172.

[2] not to the Collector to whom the decree in execution of which the sale is made has been transferred, 9 All. 43.

[3] at the time of sale, 9 Cal. 220. That an incumbrance upon a property sold in execution is not enough to enable an auction-purchaser to set aside the sale on the ground that the judgment-debtor had no saleable interest in the property, see 9 Cal. 506, 627, and 10 Cal. 372. See too 9 All. 167, where the incumbrance exceeded the probable value of the property. The meaning is that, if a purchaser under an execution-sale buys a property which turns out to have no existence at all, or to be of no saleable value whatever, the Court may then set aside the sale. But misrepresentation or concealment in the notification which induces the purchaser to pay much more than the real value is no ground for applying under this section, 10 Cal. 372.

[4] An appeal lies from such order to the High Court, secs. 588, cl. (16), 589.

[5] or where he has died, his legal representative, 7 Bom. 424. The section should expressly provide for giving notice to the judgment-debtor or his representative, 7 Bom. 424.

[6] Section 313 is designed for the protection of persons who ignorantly and innocently purchase valueless property. It does not apply to one who buys knowing that the judgment-debtor had no saleable interest, 3 All. 527. Under this section the purchaser may resist the confirmation of the sale and so prevent its conclusion. Under sec. 315 he may apply after the confirmation for the refund of the purchase-money, on the ground that nothing has passed by the sale, 8 Mad. 101.

[7] That the price is low is in itself no ground for refusing to confirm the sale, L. R., 3 I. A. 230: 10 I. A. 25: 8 Bom. 425.

[8] 5 All. 577.