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LAWS, &c.

It is a kind providence of God that India has come to be governed by the English. It would not be difficult to see the great benefits India has enjoyed under the British rule. After centuries of misrule and darkness we have received quiet and freedom, and seen the light of Christian civilization. The constant fear of plunder, the general insecurity of life and the great ignorance which prevailed in former times have given place to general security and liberty, and a widespread system of education. The railways, the telegraph, the postal system, the roads which now serve most useful purposes were unknown to our ancestors. Education of a kind was confined to particular classes of people alone : now the great advantages of education are open to all those who would avail themselves of them. The privileges of a share in the government of the country, which the British have given us to enjoy, could not have been given to us by any one of the powers that ever attempted to govern India. Especially the most transcendent privilege of freedom of conscience in religious matters has come to us in the providence of God through the English. The greatest boon which the West could ever have conferred on the East was the bringing into India of the Gospel of Jesus Christ. The facilities which are found in this rule for the spread of the kingdom of God in India are indeed such as every Christian ought to be truly thankful for.

One of the features of the British rule, which make it what it is, is their admirable laws and the fair administration of them. Our laws are based on very sound legislative principles. Every care is taken to make them conduce to our general good. They overlap Roman jurisprudence and contain most of the good one would find in the laws of the modern civilized nations.

If it is an essential of good citizenship that one should obey the laws of the country, it is most necessary that one should know the laws. That ignorance of law should not be allowed as a plea for its breach is a sound rule. One is apt to cause himself and others much trouble by remaining in utter ignorance of the laws which the country to which he belongs expects all citizens to observe.

But our laws are so numerous and intricate that a thorough knowledge of them would be the result only of a long and careful study. New laws are being frequently made and old ones more frequently amended. To learn them all and the decisions of the High Courts which are interpretations of them would be enough work for a lifetime. How many persons can afford to attempt it!

A story is told of a person who was on his trial before a certain magistrate. Clever lawyers were engaged on both sides, and worked with great zeal for three days. At the end of the case for the prosecution the accused was asked "guilty or not guilty?" His answer was remarkable. He said: "Your honor and these learned lawyers have spent three days in trying to find out whether I was guilty or not guilty. It seems you have not been able to find it out; and now want to know it from me. Surely I am an ignorant man. What can I tell?" One may really wonder sometimes if he is guilty or otherwise under the laws.

Although one may not know all the laws of our country or know them thoroughly, he can learn certain principles which would guide him in most matters, and some of the laws which have a special bearing on him or his class of people. Some of our laws are general and apply to all the subjects of Her Majesty in India. Others are meant for a particular locality and do not hold beyond it. Others again are enacted for a certain class of people and apply to all the members of the class. Thus the laws of succession, marriages, etc., are various according to the needs and usages among the Hindus, the Parsis, and the Christians.

In the following pages a few maxims of law will be stated without an extended commentary on them, and the text of some of the laws which a member of the Christian community would do well to know, will be added with a few notes. This is meant for those who have not the time and strength to go into a more minute and thorough study of law, and who would like to be guided in ordinary matters.

SOME LEGAL MAXIMS.

These maxims do not state the whole law with minute accuracy. They contain the principles which are capable of being modified in certain cases.

One legal maxim is that *he who hath nothing can give nothing*. At first sight this would seem to be too commonplace. But sometimes a person buys a right which does not exist in the possession of the vendor. For instance, a man buys the right of ownership of a piece of land from another who has nothing more than the right of a mortgagee. The deed of sale does not confer on the vendee any more than the right of the vendor. If he has no ownership he cannot transfer it to another. It is very important in effecting a transfer of property to see that the one who sells a right has it in his power to sell it.

Another maxim is that *an assignee is clothed with the rights of his principal.* When a man transfers his rights to another in some legal manner or by the operation of law, he gets all the rights of the original owner. If a person buys a house from its owner he becomes the owner. If he in his turn sells it to another that person becomes the owner. Also when a piece of land is leased to a person he can transfer his rights to another, and this transfer can be carried on in perpetuity.

Let a buyer beware is another maxim. When it is seen that a purchaser can furnish himself with all the rights of the vendor from whom he buys and that he can acquire no rights if the vendor had none, it will be easy to understand that it

is his duty to exercise caution in making a purchase. One good way to ascertain whether the vendor has a right to that which he sells is to examine his title-deeds and to find out in whose possession the property is. Any fraud or active concealment on the part of a seller is remediable in law, but otherwise a buyer must use circumspection. This care and attention should be used in all cases of transfer more or less.

So enjoy your property as not to injure another man's. This maxim contains the principle on which a man cannot allow the rain water from the eaves of his house to fall upon and injure his neighbour's house. One may have a right to dig in his land, but if he digs in such a manner as to injure his neighbour's house he is responsible. One can keep a ferocious dog in his house, but cannot allow it to go out and bite a neighbour. One may keep cattle, but he must not let them stray out and trespass on other people's grounds. He cannot build on his land so as to shut up his neighbour's windows which have been open for a certain length of time.

The law does not help those who sleep over their rights. If a person has acquired a right but does not exercise it, he sleeps over it. If a person owns a house but lets another person hold it against himself for a certain length of time, he cannot claim it. The idea is that he has lost the right or relinquished it, or that the right has expired. This principle of law has given rise to acts of limitation. Thus if a person has lent money to another on a bond and failed to claim it back for some years varying according to circumstances, the debt would be time-barred. If a person allows another to pass over his land for over twenty years he cannot sue to stop him from doing so. Thus indirectly those who exercise a right during the indolence of the former holder acquire a right by prescription. *The law helps the vigilant.*

In equal rights actual possession prevails. In common language it is said that possession is nine points of law. Possession is often evidence of title or of acquisition of title

by prescription. But as against a person who has a better right mere possession is of no avail.

No cause of action arises from a naked promise. This maxim has reference to contracts. When one party makes a promise that he would do a certain act, it is expected that the person to whom the promise is made is to do something on his part as a consideration for the contractor. When there is no such mutuality the contract cannot become the basis of an action. When a person promises to sell a house for a sum but does not receive the sum ; or when he passes a bond promising to return the sum mentioned in it with interest, but does not receive the sum ; or when he promises to execute some work for another person on payment of a sum of money, but does not receive the money, no action can be brought by the other party for the performance of, or damages resulting from the non-performance of the promise.

There are some exceptions to this rule, as to most others. When a man makes a gift, it is without any tangible recompense. But a gift is valid when made by a registered deed and accompanied by actual possession.

Let the principal be held responsible. In the course of business one has often to appoint an agent to act for him. Such an agent is supposed to act under the orders of the principal, and it is but fair that the latter should be held responsible for the acts of the former. In fact, he does them himself although he acts through the instrumentality of an agent. There are many minute and yet important distinctions in the various cases to which the principle is applied. And various rules are observed in cases of different sorts. For instance, when an agent transgresses his authority or when he acts without authority, questions as to the responsibility of the principal to third parties would arise. How far the principal should be held responsible has also to be decided. The maxim contains the general rule : it has exceptions.

No transaction between two persons should compromise a third person. If two persons enter into a contract that one of them should sell to the other an estate belonging to a third person, it is obvious that no sane man would attach any value to the transaction. Sometimes one person concedes a claim to another person when it belongs to a third. This happens in suits of certain kinds. But the third party is not bound by the concession. If the third person was privy to the transaction and made no protest the effect would be different.

A man should not be vexed for the same cause twice. When a question between two parties has once been discussed and finally decided it should not be re-opened except under some very special conditions. The wisdom of the rule is obvious. When a piece of evidence was out of the reach of a party when the question was discussed and comes into his possession afterwards in some exceptional cases, the question is allowed to be re-opened to that extent. A decision is not final if there is a recourse to an higher tribunal, until the matter is settled by such tribunal or the recourse abandoned. The question must have been decided between the same parties in a large sense. It cannot affect the rights of third parties.

When a man has been tried and punished for or acquitted of a criminal charge by a final authority he cannot be tried again for the same offence.

That which does not appear does not exist. If a person says that he holds an estate under a deed, but the deed is not produced in evidence, it may be presumed that no deed exists. If a person claims that a written sanction or authority has been given to him for an act but does not give evidence of it, it may be presumed to be not in existence. When by a decree a certain right is declared in favor of a person it cannot be presumed that any further right was granted to him if it does not appear in the decree.

One should not be condemned without a hearing. The principle contained in this maxim is too plain to need any explanation.

Many other maxims might be stated, but for want of space. They contain the principles of the administration of justice. They give the rules. As in other sciences, so in this, the exceptions make the rules. Exceptions are very important. But they cannot be all stated and discussed within the scope of such a book as this one. It is hoped that those given here will be useful in guiding in ordinary matters. In more difficult matters, of course, the services of lawyers or a reference to books of law will be needed.

The religion of Christ is for all mankind. His salvation is for all those who will come to Him for it. The Gospel is preached to all irrespective of age or caste or creed. It does not seldom happen that a young soul is led to see the truth in Jesus and accept it in earnestness. It is extremely desirable in many such cases that the person should not remain in the old and tempting environments, but place himself under healthful influences and in the midst of helpful associations. But for some good reasons, legislature has fixed a limit of age under which a boy or a girl should not be allowed a free exercise of choice contrary to the advice of his or her guardians. Some trouble is caused in the cases of youthful conversions, and it is desirable that the law concerning the age of majority and the limitations on minority should be known as well as the law about guardianship. These laws are not restricted in their application to Christians alone, but are useful in many respects to them.

ACT IX. OF 1875.

INDIAN MAJORITY ACT.

Preamble.

WHEREAS, in the case of persons domiciled in British India it is expedient to prolong the period of nonage, and to attain more uniformity and certainty respecting the age of majority than now exists. It is hereby enacted as follows:—

Short Title.

1. This act may be called the Indian Majority Act, 1875;

Local extent.

It extends to the whole of British India, and so far as regards subjects of Her Majesty, to the dominions of Princes and States in India, in alliance with Her Majesty:

And it shall come into force and have effect only on the expiration of three months from the passing thereof.

[This act received the assent of the Governor-General on March 2nd, 1875. So it began to be in force from June 2nd, 1875. Before the passing of the Act, majority was determined according to the various laws and acts to which persons were amenable. For instance, the age of majority for Hindus commenced at the end of the 15th year: that for Mahomedans on attaining the age of puberty. Besides some local enactments, such as Bengal Act IV of 1870, Act XL of 1858, Act IV of 1872 fixed the age of majority at various years.

Held, that Act IX of 1875 was intended by the Legislature to be applicable, and, in fact, was applicable only to European British subjects domiciled in those parts of India referred to in section 1, and that to any other European British subject whose domicile was in England, but who was temporarily residing in any part of India above alluded to the privileges and disabilities of minority attached until he had attained the age of twenty-one years.—Rohilkhand and Kumaon Bank *vs.* Row, I. L. R., 7 All.]

2. Nothing herein contained shall affect—

(*a*) the capacity of any person to act in the following matters (namely); Marriage, Dower, Divorce and Adoption;

(*b*) the religion or religious rites and usages of any class of Her Majesty's subjects in India; or (*c*) the capacity of any person, who before this Act comes into force, has attained majority under the law applicable to him.

[Under section 60 of the Indian Christian Marriage Act, a man above the age of 16 and a woman above the age of 13 can marry under certain circumstances.

A Brahmin boy 16 years of age, having left his father's house went to and resided in the house of a missionary, where he embraced Christianity and was baptized. In a suit by the father to recover possession of his son from the missionary, *held*, (1) that the question whether the boy was a minor was to be decided not according to Hindu Law but by Act IX of 1875; (2) that *the claim was not barred by section 2, clause (b), of the Act*; and, (3) that the father was entitled to a decree that his son should be delivered into his custody.—Reade *vs.* Krishna, M. L. R., 9 Mad.]

3. Subject as aforesaid, "every minor of whose person or property or both, a guardian, other than a guardian for a suit within the meaning of chapter XXXI of the Code of Civil Procedure has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age," shall, notwithstanding anything contained in the Indian Succession Act (No. X of 1865), or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years, and not before:

Subject as aforesaid, every other person domiciled in British India shall be deemed to have attained his majority when he shall have completed his age of eighteen years, and not before.

[The words included within quotation marks are from section 52 of Act VIII of 1890.

In the Code of Civil Procedure Act XIV of 1882, section 443, it was enacted that—"A guardian for the suit is not a guardian of person or property within the meaning of the Indian Majority Act 1875, section 3." But this Act has since been amended by Act VIII of 1890. It does not, however, make any material difference.

Chapter XXXI of the Code of Civil Procedure refers to suits by and against minors, etc.

A minor has been defined by the Indian Succession Act X of 1865 to be a person who has not completed the age of eighteen years.

A minor of whose person or property a guardian has been appointed under Act XL of 1858 does not attain his majority when he completes the age of *eighteen* years but when he completes the age of *twenty-one* years.—Khwahish Ali *vs.* Surja Prasad Sing, I. L. R., 3 All.

A minor under the jurisdiction of the Court of Wards means a person of whose estate the Court of Wards has actually assumed the management and not a person of whose estate the Court of Wards might with the sanction of Government take charge.—Periyasami *vs.* Sheshadri Ayyangar, I. L. R., 3 Mad.]

4. In computing the age of any person the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of section 3 at the beginning of the eighteenth anniversary of that day.

Illustrations.

(*a*) Z is born in British India on the first day of January 1850, and has a British Indian domicile. A guardian of his

person is appointed by a Court of Justice. Z attains majority at the first moment of the first day of January 1871.

(*b*) Z is born in British India on the twenty-ninth day of February 1852, and has a British Indian domicile. A guardian of his property is appointed by a Court of Justice. Z attains majority at the first moment of the twenty-eighth day of February 1873.

(*c*) Z is born on the first day of January 1850. He acquires a domicile in British India. No guardian is appointed of his person or property by any Court of Justice, nor is he under the jurisdiction of any Court of Wards. Z attains majority at the first moment of the first day of January 1868.

[The plea of minority should be decided on positive evidence and not merely on the alleged appearance of the minor.—Khettarmohon Ghose *vs.* Rameshur Ghose, W. R., 1864.]

In criminal matters, nothing is deemed to be an offence which is done by a child under seven years of age. Section 82 of the Indian Penal Code.

Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion. Section 83, I. P. C.

If an act is an offence unless done with the consent of some person, no consent is sufficient if given by a person under twelve years of age.

If a boy under fourteen years or a girl under sixteen years is removed from the custody of a lawful guardian without his consent it is an offence under section 363, I. P. C.

It is a high privilege given to Christians not only to believe in Christ but also to suffer for Him. A conversion to Christianity is often attended with all the unavailing results

of a struggle on the part of the devil to snatch the soul back from eternal life. Those who serve the devil combine to molest the new convert in many ways. His friends become his enemies: most of his household turn against him: his caste-fellows hate him. They try to deprive him of his rights, property and many other possessions. Little do they know that the rights, relations, and possessions he has in store for him in the eternal kingdom are immensely superior and more precious.

Thanks to the providence of God in giving the Indian Christians such a just government as we have under the British rule. Just and equitable provisions are made in the laws of our country for the cases which arise in connection with the conversion of persons to Christianity.

Act XXI of 1850 is an enactment made in the time of the East India Company. It was intended to extend the principle of section 9 of Regulation VII of 1832. The Act has never been repealed. On the contrary its operation has been extended by Act XV of 1874 to the whole of British India and some scheduled districts. It is a very important law especially with reference to converts to Christianity. It says: "So much of any law or usage in force . . . . as inflicts on any person forfeiture of rights or property or may be held in any way to impair or effect any right of inheritance by reason of his or her renouncing or having been excluded from the communion of any religion or being deprived of caste, shall cease to be enforced as law."

Under this law a convert to Christianity can claim all such rights as he could have enjoyed before his conversion or if he had not been converted. Any one claiming through a convert would be entitled just as much as if the convert had not renounced his former religion. Use has been made of this enactment by converts to Christianity in claiming their shares of the ancestral property. If a person could have drawn water from a cistern before he became a Christian he can draw it there after his conversion.

In giving the laws specially applicable to Indian Christians it would seem out of place to state at length the law relating to Guardians and Wards. It must be admitted that Act VIII of 1890 is not a special law, applicable to a particular class of people. But cases of many kinds arise with reference to Indian Christians in which use can be made of the enactment. When a man becomes a Christian and has children from a Hindu or Muhamedan wife, who has been kept away from him, should he not seek relief under this law? Cases of minors who have been taken or kept away from lawful guardianship have occasioned great trouble to Missionaries and Christians. And it is desirable that the law should be known. A young girl was found in famine days by a Missionary, apparently in great distress. She seemed to have no relations and none to take care of her. Out of pity she was taken and given food and clothes by the Missionary. After having been taught in a Christian school she was removed stealthily by a distant relation who offered her to Khandoba. What would be the right thing to do with regard to the girl or her distant relation?

Many a case may be found in which it would be well for Indian Christians and Missionaries to know the law given below.

ACT VIII of 1890.

Whereas it is expedient to consolidate and amend the law relating to Guardian and Wards. It is hereby enacted as follows:—

Chapter I.

Preliminary.

1.—(1) This Act may be called the Guardians and Wards Act, 1890.

(2) It extends to the whole of British India, inclusive of Upper Burma and British Beluchistan, and

(3) It shall come into force on the first day of July 1890.

[A petition of appeal was presented to the Governor in Council against an *ex parte* order made by the Agent to the Governor in the Scheduled District of Vizagapatam, the ground of the petition being that the petitioner's Vakil had not been heard. The appeal was referred to the High Court: Held, (1) that the Guardians and Wards Act, 1890, is in force in the Agency tracts, although no notification to that effect had been made under the Scheduled Districts Acts: (2) that the High Court had jurisdiction to set aside the *ex parte* order. Chakrapani *vs.* Varahalamma, I. L. R., 18 Mad.

Where a mother residing at Poona, the widow of a deceased European inhabitant of Poona applied to be appointed guardian of her three minor children, two of whom were residing with her and the third, a girl of the age of 16 years, was residing in England, and to have certain payments made to her out of the estate of their deceased father on their account, and to have certain powers over their persons given to her, and to have the costs of the application paid out of the shares of the three minor children in the hands of the Administrator-General of Bombay, the Court made the order applied for. *In re* Meakin, I. L. R., 21 Bom.]

2. (1) On and from that day the enactments mentioned in the Schedule shall be repealed to the extent specified in the third column thereof.

(2) But all proceedings had, certificates granted, allowances assigned, obligations imposed, and applications, appointments, orders and rules made under any of those enactments, shall, so far as may be, be deemed to have been respectively had, granted, assigned, imposed and made under this Act; and

(3) Any enactment or document referring to any of those enactments shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

3. This act shall be read subject to every enactment heretofore or hereafter passed relating to any Court of Wards by the Governor-General in Council, or by a Governor or Lieutenant-Governor in Council, and nothing in this Act shall be construed to affect or in any way derogate from the jurisdiction or authority of any Court of Wards or to take away any power possessed by any High Court established under the Statute 24 and 25, Victoria, chapter 104.

4. In this Act, unless there is something repugnant in the subject or context.

(1) "Minor" means a person who under the provisions of the Indian Majority Act, 1875, is to be deemed not to have attained his majority.

(2) "Guardian" means a person having the care of the person of a minor or of his property, or both his person and property.

(3) "Ward" means a minor for whose person or property or both, there is a guardian.

(4) "District Court" has the meaning assigned to that expression in the Code of Civil Procedure, and includes a High Court in the exercise of its ordinary original civil jurisdiction. District Court is a principal court of Original Civil Jurisdiction.

(5) "The Court" means the District Court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a guardian and where a guardian has been appointed or declared in pursuance of any such application, it means the Court which appointed or declared the guardian, or in any matter relating to the person of the ward, the District Court having jurisdiction in the place where the ward for the time being ordinarily resides.

(6) "Collector" means the chief officer in charge of the revenue-administration of a district, and includes any officer whom the Local Government by notification in the official Gazette, may by name, or in virtue of his office appoint to be a Collector in any local area or with respect to any class of persons, for all or any of the purposes of this Act.

(7) "European British subject" means a European British subject as defined in the Code of Criminal Procedure, 1882, and includes any Christian of European descent.

(8) "Prescribed" means prescribed by rules made by the High Court under this Act.

[The expression "European British subject" has been defined by the Code of Criminal Procedure, 1882, as (1), any subject of Her Majesty born, naturalized, or domiciled in the United Kingdom of Great Britain and Ireland or in any of the European, American or Australian Colonies or Possessions of Her Majesty or in the Colony of New Zealand or in the Colony of the Cape of Good Hope or Natal: (2) any child or grandchild of any such person by legitimate descent.]

Chapter II.

Appointment and Declaration of Guardians.

5. (1) Where a minor is a European British subject, a guardian or guardians of his person or property, or both, may be appointed by will or other instrument to take effect on the death of the person appointing—

(*a*) by the father of the minor, or

(*b*) if the father is dead or incapable of acting, by the mother.

(2) Where guardians have been appointed under sub-section (1) by both parents, they shall act jointly.

6. In the case of a minor who is not a European British subject, nothing in this Act shall be construed to take away or derogate from any power to appoint a guardian of his person or property, or both, which is valid by the law to which the minor is subject.

7. (1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made,

(*a*) appointing a guardian of his person or property, or both, or

(*b*) declaring a person to be such a guardian,

the Court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument, or appointed or declared by the Court an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

[See Sections 38-41 of this Act, as to the provisions about the cessation of the powers of a guardian. The power of the Court of Chancery to appoint guardians to infants, whether such infants have property or not, is possessed by the High Court. *Re* Jagannath Ramji, I. L. R., 19 Bom.

Under Act VIII. of 1890 a guardian cannot be appointed to the *property* of a minor who is a member of joint Hindu family governed by the Mitakshara law and possessed of no separate property. A guardian of the *person* of such a minor may be appointed under the Act. Virupakshapa *v.* Nilgangav, I. L. R., 19 Bom.]

8. An order shall not be made under the last foregoing section except on the application of—

(*a*) the person desirous of being or claiming to be, the guardian of the minor, or

(*b*) any relative or friend of the minor, or

(*c*) the Collector of the district or other local area within which the minor ordinarily resides or in which he has property, or

(*d*) the Collector having authority with respect to the class to which the minor belongs.

9. (1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides, or to a District Court having jurisdiction in a place where he has property.

(3) If the application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application, if, in its opinion, the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.

10. (1) If the application is not made by the Collector it shall be by petition signed and verified in manner prescribed by the Code of Civil Procedure for the signing and verification of a plaint and stating, so far as can be ascertained,

(*a*) the name, sex, religion, date of birth and ordinary residence of the minor :

(*b*) where the minor is a female, whether she is married, and, if so, the name and age of her husband :

(*c*) the nature, situation and approximate value of the property, if any, of the minor :

(*d*) the name and residence of the person having the custody or possession of the person or property of the minor :

(*e*) what near relations the minor has and where they reside ;

(*f*) Whether a guardian of the person or property or both of the minor has been appointed by any person entitled or claiming to be entitled, by the law to which the minor is subject, to make such an appointment:

(*g*) Whether an application has at any time been made to the Court or to any other Court with respect to the guardianship of the person or property or both, of the minor; and if so, when, to what court and with what result:

(*h*) Whether the application is for the appointment or declaration of a guardian of the person of the minor or of his property, or of both:

(*i*) Where the application is to appoint a guardian, the qualifications of the proposed guardian:

(*j*) Where the application is to declare a person to be a guardian, the grounds on which that person claims:

(*k*) the causes which have lead to the making of the application: and

(*l*) such other particulars, if any, as may be prescribed, or as the nature of the application renders it necessary to state.

(2) If the application is made by the Collector, it shall be by *letter* addressed to the court, and forwarded by post or in such other manner as may be found convenient and shall state, as far as possible, the particulars stated in sub-section (1).

(3) The application must be accompanied by a declaration of the willingness of the proposed guardian to act, and the declaration must be signed by him and attested by at least two witnesses.

[Ss. 51 and 52 refer to the signing and verification of plaints.]

52. 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 :

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 authorized by him in this behalf.

53. 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.

The verification shall be signed by the person making it.

(1) One reason why it should be mentioned if a minor is a female whether she is married, is that under Section 19 of the Act, her husband could be a proper guardian under certain circumstances, and no other person need be appointed or declared.

The information required under (*c*) would be necessary in deciding as to which Court should try the case.

The person having the custody of the minor would have to be made a party to a proceeding under this Act : and under certain conditions the person would have to relinquish his possession or guardianship pending the result of the proceeding. See Section 12 of the Act.

A Court is not precluded from entertaining a fresh application for the guardianship of a minor under Section 1 of Act IX of 1861 by the circumstance that a previous application of the same sort has been refused. Nehals *v.* Nawal, I. L. R., 1 All.

In filling the particulars required under (*i*) sub-sections (1) and (2) of Section 17 may be read.]

11. (i) If the Court is satisfied that there is ground for producing on the application it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for the hearing,—

(*a*) to be served in the manner directed in the Code of Civil Procedure on

(1) the parents of the minor, if they are residing in British India,

(2) the person, if any, named in the petition or letter as having the custody or possession of the person or property of the minor,

(3) the person proposed in the application or letter to be appointed or declared guardian, unless that person is himself the applicant, and

(4) any other person to whom, in the opinion of the Court, special notice of the application should be given ; and

(*b*) to be posted on some conspicuous part of the Court-house, and of the residence of the minor, and otherwise published in such manner as the Court, subject to any rules made by the High Court under this Act, thinks fit.

(ii) The Local Government may by general or special order require that, when any part of the property described in a petition under Section 10, sub-section 1, is land of which a Court of Wards could assume the superintendence, the Court shall also cause a notice, as aforesaid, to be served on the Collector in whose district the minor ordinarily resides, and on every Collector in whose district any portion of the land is situate, and the Collector may cause the notice to be published in any manner he deems fit.

(iii) No charge shall be made by the Court or the Collector for the service or publication of any notice served or published under sub-section (1).

[The provisions as to the service of summons, &c., will be found in the sixth chapter of the Civil Procedure Code, 1882.]

12 (1) The Court may direct that the person, if any, having the custody of the minor, shall produce him, or cause him to be produced, at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

(2) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (1) for the production shall require her to be produced in accordance with the customs and manners of the country.

(3) Nothing in this section shall authorize—

(*a*) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or

(*b*) any person to whom the temporary custody of and protection of the property of a minor is entrusted to dispossess, otherwise than by due course of law, any person in possession of any of the property.

13. On the day fixed for hearing of the application, or as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of or in opposition to, the application.

14. (1) If the proceedings for the appointment or declaration of a guardian of a minor are taken in more Courts than one, each of those Courts shall, on being apprized of the proceedings in the other Court or Courts, stay the proceedings before itself.

(2) If the Courts are both or all subordinate to the same Hight Court, they shall report the case to the High Court, and the High Court shall determine in which of the Courts

the proceedings with respect to the appointment or declaration of a guardian of the minior shall be had.

(3) In any other case in which proceedings are stayed under subsection (1), the Courts shall report the case, through the Local-Government, to the Governor-General in Council, and the Governor-General in Council shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

15. (1) If the law to which the minor is subject admits of his having two or more joint guardians of his person or property or both, the Court may, if it thinks fit, appoint or declare them.

(2) On the death of a father, being a European British subject, who has, by will or other instrument to take effect on his death, appointed a guardian of his minor child, the Court may appoint the mother to be guardian of the child jointly with the guardian appointed by the father.

(3) On the death of a mother, being a European British subject, who, during the incapacity of the father of her minor child, has, by will or other instrument to take effect on her death, appointed a guardian of her child, the Court may, if the father becomes capable of acting, appoint him to be sole guardian of the child or guardian of the child jointly with the guardian appointed by the mother, as it thinks fit.

(4) Separate guardians may be appointed or declared of the person and of the property of a minor.

(5) If a minor has several properties, the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties.

16. If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place where the property is situate shall on production of a certified copy of the order appointing or declaring the guardian, accept him as duly appointed or declared and give effect to the order.

17. In (1) appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this Section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex, and religion of the minor, the character and capacity of the proposed guardian, and his nearness of kin to the minor, the wishes, if any, of a deceased parent and any existing or previous relations of the proposed guardian with the minor or his property.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

(4) As between parents who are European British subjects adversely claiming the guardianship of the person, neither parent is entitled to it as of right, but other things being equal, if the minor is a male of tender years or a female, the minor should be given to the mother, and if the minor is a male of an age to require education and preparation for labor and business, then to the father.

(5) The Court shall not appoint or declare any person to be a guardian against his will.

[When the Court had refused on a summary proceeding, under clause 17 of the Charter, to appoint a guardian of the person and property of a minor who was not a European British subject, and who was living outside the limits of the ordinary original civil jurisdiction of the Court, there being testamentary guardians in existence and no application or suit filed to remove them; on these two last grounds the Court also refused to appoint a guardian of the minor's property under Act VIII. of 1890. In the matter of Shrishchunder Singh, I. L. R., 21 Cal.

Any guardian, however, appointed is liable to be removed, if some good reason is found by the Court to remove him.

Frequently a change of religion, and such a change accompanied with immorality, might prove sufficient cause for the interference of the Court. A change of religion, however, is not of itself always a sufficient reason for a change of the guardian. It was considered to be no ground for depriving the father of a minor son, of the right of guardianship unless the change was accompanied with immorality, in *R.* v. *Bezonji.*

In the case of a mother, however, the change of religion would probably be considered differently.

In *R.* v. *Nesbitt,* a boy of the age of twelve years having become a Christian, went to live with Missionaries, but was ordered to be restored to his father's custody.

In general, the mother of an illegitimate child would be the proper guardian of her minor child : but if the child was out of her custody, the question of guardianship would depend on the advantages of a better mode of living and morals likely to result to the minor.

The High Court, in its equitable jurisdiction, has authority to interfere with the legal right of a father to the custody of his child, if he be an improper person. In the matter of *Carran* 1. *Hyde.*

A father is not deprived of his right to custody of his children by reason of his conversion to Christianity.—*Muchoo* v. *Arjun Sahu,* 5. W. R.

A mother cannot have a right to the custody of her legitimate children adversely to the father. Ordinarily the custody of the mother is the custody of the father, and any removal of the children from place to place by the mother ought to be taken to be consistent with the right of the father as guardian and not as a taking out of his custody.—*Empress* v. *Prankrishna Sanna,* I. L. R., 8 Cal.

A child, the offspring of a Christian marriage, was living after her father's death under the protection of her mother.

A married man, a Christian, came to live with her mother, and in order to legalize their intercourse he and the mother became Mahomedans, and were married in Mahomedan form. About three years after, when the child had attained the age of 14, some of her relatives applied for an order, under Act IX. of 1861, that the girl be removed from the guardianship of the mother and her second husband, and placed under a Christian guardian. The girl deposed that she wished to remain with her mother and to become a Mahomedan. *Held* by the High Court, in granting the application and appointing a guardian in place of her mother, that a Judge, in the exercise of his jurisdiction under the Act, is justified in having respect to the religion professed by the father of the minor and in passing such orders with regard to the custody of the person of such minor as he may hold to be in accordance with what would have been the minor's father's wishes had he been alive to express them. Where a mother, under color of a change of religion, forms a connection or leads which, by persons professing her husband's faith, would be deemed immoral, she thereby ceases to be a proper person to be entrusted with the education of the children of her deceased husband.—*Skinner* v. *Orde*, 10 B. L. R. 18.]

18. Where a Collector is appointed or declared by the Court in virtue of his office to be guardian of the person or property, or both, of a minor, the order appointing or declaring, him shall be deemed to authorize and require the person for the time being holding the office to act as guardian of the minor with respect to his person or property, or both, as the case may be.

19. Nothing in this Chapter shall authorize the Court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a Court of Wards, or to appoint or declare a guardian of the person

(*a*) of a minor who is a married female, and whose husband is not, in the opinion of the Court, unfit to be guardian of her person, or

(*b*) subject to the provisions of this Act, with respect to European British subjects, of a minor whose father is living, and is not, in the opinion of the Court, unfit to be guardian of the person of the minor, or

(*c*) of a minor, whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor.

Chapter III.

Duties, Rights and Liabilities of Guardians General.

20. (1) A guardian stands in a fiduciary relation to his ward and same as provided by the will or other instrument, if any, by which he was appointed, or by this Act he must not make any profit out of his office.

[Along with the above, section 22 of this Act may be read.]

(2) The fiduciary relation of a guardian to his ward extends to and affects purchases by the guardian of the property of the ward, and by the ward of the property of the guardian immediately or soon after the ward has ceased to be a minor, and generally all transactions between them while the influence of the guardian still lasts or is recent.

[A guardian stands in the relation of *loco parentis* with regard to his ward and the influence he might have over the minor would not cease to exist as soon as the minor attains the age of majority. In some transactions between the ward and his guardian, it would be possible to find that no "free consent" is given by the ward in the sense in which the expression is used in the Contract Act. The acts of a person soon after he attains majority, will have a different aspect when done with reference to other persons.

Where a party after attaining full age allowed his mother to give him out to the world as a minor and as his guardian to mortgage his ancestral property and permitted the mortgagee to retain possession for five years. *Held*, that he could not afterwards turn round and repudiate arrangements which were made for his benefit and for which an innocent party had given valuable consideration. Parmeshur Ojha *vs.* Goolabee, 11 W. R.]

21. A minor is incompetent to act as guardian of any minor except his own wife or child, or where he is the managing member of an undivided Hindu family, the wife or child of another minor member of that family.

22. (1) A guardian appointed or declared by the Court shall be entitled to such allowance, if any, as the Court thinks fit, for his care and pains in the execution of his duties.

(2) When an officer of the Government as such officer, is so appointed or declared to be guardian, such fees shall be paid to the Government out of the property of the ward as the Local Government, by general or special order, directs.

23. A Collector appointed or declared by the Court to be guardian of the person or property or both of a minor shall in all matters connected with the guardianship of his ward be subject to the control of the Local Government or of such authority as that Government by notification in the Official Gazette, appoints in this behalf.

Guardian of the Person.

24. A guardian of the person of a ward is charged with the custody of the ward, and must look to his support, health, and education, and such other matters as the law to which the ward is subject requires.

[A Collector appointed guardian under Section 12 of Act XL of 1858 has power to make arrangements for a minor's education, and is not so far amenable to the jurisdiction of the Civil Courts. Ramendra Bhattacharjee *v.* Collector of Rajshahye, 14 W. R.

A testamentary guardian applied to the District Court for permission to remove his wards for the purpose of having them educated. *Held,* that as the guardian derived his authority from the will of the minor's father, and did not come within the meaning of the Regulations and Acts previous to Act IX of 1861, he could not thus apply to the District Court. Sheshadri Ayangar *vs.* Peria Natchiar. 8 Mad.]

25. (1) If a ward leaves or is removed from the custody of a guardian of his person the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of this guardian, may make an order for his return and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian.

(2) For the purpose of arresting the ward the Court may exercise the power conferred on a Magistrate of the first class by section 100 of the Code of Criminal Procedure, 1882.

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.

[The provision in the sub-section 1 is optional. The action of the Court will depend on the consideration of the question as to the welfare of the minor. The minor will not be delivered into the custody of a guardian if it is found by the Court that the guardian's custody will not conduce to the welfare of the minor. The causes for the removal of a guardian mentioned in section 39 of this Act may be read in connection with this section.

Section 100 of the Code of Criminal Procedure confers on the Magistrates of the first class a power in the nature of *Habeas Corpus.* The section says: "If any Presidency Magistrate, Magistrate of the first class or subdivisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to

the offence, he may issue a search-warrant for the peson so confined: and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.]

26. (1) A guardian of the person appointed or declared by the Court, unless he is the Collector or is a guardian appointed by will or other instrument, shall not, without the leave of the Court by which he was appointed or declared, remove the ward from the limits of its jurisdiction, except for such purposes as may be prescribed.

(2) The leave granted by the Court under sub-section (1) may be special or general, and may be defined by the order granting it.

Guardian of Property.

27. A guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own: and subject to the provisions of this chapter he may do all acts which are reasonable and proper for the realization, protection, or benefit of the property.

28. Where a guardian has been appointed by will or other instrument, his power to mortgage or charge or transfer by sale, gift, exchange or otherwise, immoveable property belonging to his ward is subject to any restriction which may be imposed by the instrument, unless he has under this Act been declared guardian and the Court which made the declaration permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

[A guardian appointed under Act XX of 1864 can pledge the property of his ward for purposes beneficial to the minor, but not as a security for money previously borrowed, which the minnor was under no obligation to pay. Ranmalsingji *vs.* Vadilal. I. L. R., 20 Bom.

Where a deed of sale was executed by a *defacto* guardian of certain minors and the consideration-money was duly applied for the benefit of the property and the transaction was found to be a necessary one and beneficial to the minors, the mere fact that the manager was not *dejure* guardian is not sufficient to invalidate the transaction. Ganga Persad *vs.* Phulsing. 10 B. L. R.

This section refers primarily to those guardians who have been appointed by will or other testamentary documents. The following section refers to guardians appointed or declared by a Court.]

29. Where a person other than a Collector or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward he shall not without the previous permission of the Court:—

(*a*) mortgage or charge or transfer by sale, gift, exchange, or otherwise any part of the immoveable property of his ward, or

(*b*) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.

30. A disposal of immoveable property by a guardian in contravention of the two last foregoing sections is voidable at the instance of any other person affected thereby.

[The sale by S's mother of his share, during his minority, in the estate of his deceased father was rightly held to be invalid ; but his claim to recover possession of the share from the purchasers who had redeemed a mortgage existing on the estate created by his father, without tendering payment of his share of the mortgage-debt, was properly dismissed. Pana Ali *vs.* Sadik Husein. 7 N. W.

The onus of proving that a sale by his guardian of a minor's property was necessary and for his benefit lies upon the purchaser, and that adequacy of price is an important point to be considered in determining this question. Dagdu bin Daud *vs.* Shekh Saheb. 2 Bombay.]

31. (1) Permission to the guardian to do any of the Acts mentioned in section 29 shall not be granted by the Court except in case of necessity, or for an evident advantage to the ward.

(2) The order granting the permission shall recite the necessity or advantage as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission ; and it shall be recorded, dated and signed by the Judge of the Court with his own hand or when from any cause he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation and be dated and signed by him.

(3) The Court may, in its discretion, attach to the permission the following among other conditions, namely :—

(*a*) That a sale shall not be completed without the sanction of the Court :

(*b*) That a sale shall he made to the highest bidder by public auction before the Court or some person appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court, subject to any rules made under this Act by the High Court, directs:

(*c*) That a lease shall not be made in consideration of a premium or shall be made for such term of years and subject to such rents and covenants as the Court directs:

(*d*) That the whole or any part of the proceeds of the Act permitted shall be paid into the Court by the guardian, to be disbursed therefrom or to be invested by the Court on prescribed securities or to be otherwise disposed of as the Court directs.

(4) Before granting permission to a guardian to do an act mentioned in Section 29, the Court may cause notice of the application to be given to any relative or friend of the ward who should, in its opinion, receive notice thereof, and shall hear and record the statement of any person who appears in opposition to the application.

32. Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Collector, the Court may from time to time by order define, restrict or extend his powers with respect to the property of the ward in such manner and to such extent, as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject.

33. (1) A guardian appointed or declared by the Court may apply by petition to the Court which appointed or declared him for its opinion, advice or direction on any present question respecting the management or administration of the property of his ward.

(2) If the Court considers the question to be proper for summary disposal, it shall cause a copy of the petition to be served on, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(3) The guardian stating in good faith the facts in the petition and acting upon the opinion, advise or direction given by the Court, shall be deemed, so far as regards his own responsibility, to have performed his duty as guardian in the subject-matter of the application.

34. Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Collector, he shall—

(*a*) if so required by the Court give a bond as nearly as may be in the prescribed form, to the Judge of the Court to ensure for the benefit of the Judge for the time being with or without sureties as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward :

(*b*) if so required by the Court deliver to the Court within six months from the date of his appointment or declaration by the Court or within such other time as the Court directs, a statement of the immoveable property belonging to the ward, of the money and other moveable property which he has received on behalf of the ward up to the date of delivering the statement and of the debts due on that date to or from the ward :

(*c*) if so required by the Court exhibit his accounts in the Court at such times and in such form as the Court from time to time directs :

(*d*) if so required by the Court, pay into the Court at such time as the Court directs, the balance due from him on those accounts, or so much thereof as the Court directs : and

(*e*) apply for the maintenance, education, and advancement of the ward, and of such persons as are dependent on him, and for the celebration of ceremonies to which the ward or any of those persons may be a party, such portion of the income of the property of the ward as the Court from time to time directs, and if the Court so directs the whole or any part of that property.

35. Where a guardian appointed or declared by the Court has given a bond duly to account for what he may receive in respect of the property of this ward, the Court may on application made by petition and on being satisfied that the engagement of the bond has not been kept, and upon such terms as to security or providing that any money received be paid into the Court or otherwise as the Court thinks fit, assign the bond to some proper person who shall thereon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the Court and shall be entitled to recover thereon as trustee for the ward in respect of any breach thereof.

36. (1) Where a guardian appointed or declared by the Court has not given a bond as aforesaid any person with the leave of the Court may, as next friend, at any time during the continuance of the minority of the ward and upon such terms as aforesaid, institute a suit against the guardian, or in case of his death against his representative for an account of what the guardian has received in respect of the property of the ward, and may, recover in the suit as trustee for the ward such amount as may be found to be payable by the guardian or his representative as the case may be.

(2) The provisions of sub-section (1) shall, so far as they relate to a suit against a guardian, be subject to the provisions of section 440 of the Code of Civil Procedure as amended by this Act. [See section 53 of the Act.]

37. Nothing in either of the last two foregoing sections shall be construed to deprive a ward or his representative of any remedy against the guardian or the representative of the guardian, which not being expressly provided in either of those sections any other beneficiary or his representative would have against his trustee or the representative of the trustee.

Termination of Guardianship.

38. On the death of one of two or more joint guardians

the guardianship continues to the survivor or survivors until a further appointment is made by the Court.

39. The Court may on the application of any person interested or of its own motion remove a guardian appointed or declared by the Court or a guardian appointed by will other instrument for any of the following causes, namely:—

(*a*) for abuse of his trust ;

(*b*) for continued failure to perform the duties of his trust ;

(*c*) for incapacity to perform the duties of his trust ;

(*d*) for ill-treatment or neglect to take proper care of his ward ;

(*e*) for contumacious disregard of any provision of this Act or of any order of the Court ;

(*f*) for conviction of an offence implying, in the opinion of the Court, a defect of character which unfits him to be the guardian of his ward ;

(*g*) for having an interest adverse to the faithful performance of his duties ;

(*h*) for ceasing to reside within the local limits of the jurisdiction of the Court ;

(*i*) in the case of a guardian of the property, for bankruptcy or insolvency ;

(*j*) by reason of the guardianship of the guardian ceasing or being liable to cease under the law to which the minor is subject:

Provided that a guardian appointed by will or other instrument, whether he has been declared under this Act or not shall not be removed—

(*a*) for the cause mentioned in clause (*g*) unless the adverse interest accrued after the death of the person who appointed him or it is shown that

person made and maintained the appointment in ignorance of the existence of the adverse interest, or

(*b*) for the cause mentioned in clause (*h*), unless such guardian has taken up such a residence as in the opinion of the Court renders it impracticable for him to discharge the functions of guardian.

[The word "*instrument*" in Sect. 39 of the Guardians and Wards Act VIII of 1890 means instruments *ejusdem generis* with a will, and a decree of a Civil Court is not an instrument within the contemplation of the section. Bai Harcor *v.* Bai Shangar. I. L. R., 18 Bom.

See cases cited under section 17 *infra*: Why cannot cases of minor girls living under the guardianship of persons, come under this section, when those persons offer them to Khandoba, in which case the infamous lives the girls are most likely to lead would be the result of an "abuse of the trust" or of "neglect to take proper care of the wards." Such persons as offer an orphan girl to Khandoba may come under the pale of sections 372 and 373 of the Indian Penal Code. A conviction under that section will probably bring the case under clause (*f*) of this section.

To constitute an offence under this section (372 I. P. C.), it is not necessary that there should have been a disposal equivalent to a transfer of possession or control over the minor's person: the mere fact of enrolling a minor among the dancing girls of a pagoda whose profession is admittedly that of prostitution, constitutes the offence. R. *v.* Jaili. 6 Bom. H. C. R. *v.* Padmavati, 5 Mad. H. C.]

40. (1) If a guardian appointed or declared by the Court desires to resign his office, he may apply to the Court to be discharged.

(2) If the Court finds that there is sufficient reason for the application, it shall discharge him and if the guardian making the application is the Collector and the Local Government approves of his applying to be discharged the Court shall in any case discharge him.

41. (1) The powers of a guardian of the person cease—

(*a*) by his death, removal or discharge :

(*b*) by the Court of Wards assuming superintendance of the person of the ward :

(*c*) by the ward ceasing to be a minor :

(*d*) in the case of a female ward, by her marriage to a husband who is not unfit to be guardian of her person or if the guardian was appointed or declared by the Court by her marriage to a husband who is not, in the opinion of the Court, so unfit : or

(*e*) in the case of a ward whose father was unfit to be guardian of the person of the ward, by the father ceasing to be so, or if the father was deceived by the Court to be so unfit, by his ceasing to be so in the opinion of the Court.

(2) The powers of a guardian of the property cease—

(*a*) by this death, removal or discharge :

(*b*) by the Court of Wards assuming superintendence of the property of the ward : or

(*c*) by the ward ceasing to be a minor.

(3) When for any cause the powers of a guardian cease the Court may require him or, if he is dead, his representative, to deliver as it directs any property in his possession or control belonging to the ward or any accounts in his possession or control relating to any past or present property of his ward.

(4) When he has delivered the property or accounts as required by the Court, the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered.

42. When a guardian appointed or declared by the Court is discharged or under the law to which the ward is subject ceases to be entitled to act or when any such guardian or a guardian appointed by will or other instrument is removed or dies the Court of its own motion or on application under Chapter II may, if the ward is still a minor, appoint or declare another guardian of his person or property or both as the case may be.

CHAPTER IV.

Supplemental Provisions.

43. (1) The Court may on the application of any person interested or of its own motion make an order regulating the conduct of proceedings of any guardian appointed or declared by the Court.

(2) Where there are more guardians than one of a ward and they are unable to agree upon a question affecting his welfare any of them may apply to the Court for its direction and the Court may make such order respecting the matter in difference as it thinks fit.

(3) Except where it appears that the object of making an order under sub-section (1) or sub-section (2) would be defeated by the delay the Court shall before making the order direct notice of the application therefor or of the intention of the Court to make it as the case may be to be given in a case under sub-section (1) to the guardian or in a case under sub-section (2) to the guardian who has not made the application.

(4) In case of disobedience to an order made under sub-section (1) or sub-section (2) the order may be enforced in the same manner as an injunction granted under section 492 or section 493 of the Code of Civil Procedure in a case under sub-section (1) as if the ward were the plaintiff and the guardian were the defendant or in a case under sub-section (2) as if the guardian who made the application were the plaintiff and the other guardian were the defendant.

(5) Except in a case under sub-section (2) nothing in this section shall apply to a Collector who is, as such, a guardian.

[Sec. 492 of the Civil Procedure Code says: "If in any suit it is proved by affidavit or otherwise—

(*a*) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit wrongfully sold in execution of a decree, or

(*b*) that the defendent threatens or is about to remove or dispose of his property with intent to defraud his creditors,

the Court may by order grant a temporary injunction to restrain such act or give such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit or refuse such injunction or other order."

Section 493 says: "In any suit for restraining the defendant from committing a breach of contract or other injury whether compensation be claimed in the suit or not the plaintiff may at any time after the commencement of the suit and either before or after judgment apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

The Court may by order grant such injunction on such terms as to the duration of the injunction keeping an account giving security or otherwise as the Court thinks fit, or refuse the same.

In case of disobedience an injunction granted under this section or section 492 may be enforced by the imprisonment of the defendant for a term not exceeding six months, or the attachment of his property or both.

No attachment under this section shall remain in force for more than a year, at the end of which time, if the defendant has not obeyed the injunction, the property attached may be sold, and out of the proceeds the Court may award to the plaintiff such compensation as it thinks fit, and may pay the balance (if any) to the defendant.]

44. If for the purpose or with the effect of preventing the Court from exercising its authority with respect to a ward, a guardian, appointed or declared by the Court, removes the ward from the limits of the jurisdiction of Court, in contravention of the provisions of section 26, he shall be liable by order of the Court to fine not exceeding one thousand rupees or to imprisonment in the Civil jail for a term which may extend to six months.

45. (1) In the following cases, namely :—

(*a*) if a person having the custody of a minor fails to produce him or cause him to be produced in compliance with a direction under section 12, sub-section (1), or to do his utmost to compel the minor to return to the custody of his guardian in obedience to an order under section 25, sub-section (1), or

(*b*) if a guardian appointed or declared by the Court fails to deliver to the Court, within the time allowed by or under clause (*b*) of section 34, a statement required under that clause, or to exhibit accounts in compliance with a requisition under clause (*c*) of that section, or to pay into the Court the balance due from him on those accounts in compliance with a requisition under clause (*d*) of that section, or

(*c*) if a person who has ceased to be a guardian, or the representative of such a person, fails to deliver any property or accounts in compliance with a requisition under section 41, sub-section (3),

he person, guardian, or representative, as the case may be,

shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and, in case of recusancy, to further fine not exceeding ten rupees for each day after the first during which the default continues, and not exceeding five hundred rupees in the aggregate, and to detention in the civil jail until he undertakes to produce the minor, or cause him to be produced, or to compel his return, or to deliver the statement, or to exhibit the accounts, or to pay the balance, or to deliver the property or accounts, as the case may be.

(2) If a person who has been released from detention on giving an undertaking under sub-section (1) fails to carry out the undertaking within the time allowed by the Court, the Court may cause him to be arrested and recommitted to the civil jail.

Reports by Collectors and Subordinate Courts.

46. (1) The Court may call upon the Collector, or upon any Court subordinate to the Court, for a report on any matter arising in any proceeding under this Act, and treat the report as evidence.

(2) For the purpose of preparing the report, the Collector or the Judge of the subordinate Court, as the case may be, shall make such inquiry as he deems necessary, and may, for the purposes of the inquiry, exercise any power of compelling the attendance of a witness to give evidence, or produce a document, which is conferred on a Court by the Code of Civil Procedure.

Orders appealable.

47. An appeal shall lie to the High Court from an order made by a District Court,—

(*a*) under section 7, appointing or declaring, or refusing to appoint or declare, a guardian ; or,

(*b*) under section 9, sub-section (3), returning an application ; or,

(*c*) under section 25, making or refusing to make an order for the return of a ward to the custody of his guardian ; or,

(*d*) under section 26, refusing leave for the removal of a ward from the limits of the jurisdiction of the Court, or imposing conditions with respect thereto ; or,

(*e*) under section 28 or section 29, refusing permission to a guardian to do an act referred to in the section ; or,

(*f*) under section 32, defining, restricting, or extending the powers of a guardian ; or,

(*g*) under section 39, removing a guardian ; or,

(*h*) under section 40, refusing to discharge a guardian ; or,

(*i*) under section 43, regulating the conduct or proceedings of a guardian, or settling a matter in difference between joint guardians, or enforcing the order ; or,

(*j*) under section 44 or section 45, imposing a penalty.

[Upon an application for cancelling a certificate of guardianship of the person and property of a minor, the District Judge ordered the certificate to be amended only as regards the guardianship of the person by appointing the applicant as such guardian and ordering a monthly allowance to be paid to her for the education and maintenance of the minor. The applicant appealed to the High Court: *Held*, that the order appealed from was one refusing to remove a guardian, and, as such, was not appealable under clauses (*f*) and (*g*) of section 47 of the Guardians and Wards' Act VIII. of 1890.—*Pakhwanti Dai* v. *Indra Narayan Sing*, I. L. R., 23 Cal. *Mohima Chander Biswas* v. *Tarini Shanker Ghose*, I. L. R., 19 Cal., was followed.

The effect of sections 47 and 48 of the Guardians and Wards' Act VIII. of 1890 is to allow no appeal from an order refusing to remove a guardian.—*In re* Bai Harka, I. L. R., 20 Bom.]

48. Save as provided by the last foregoing section, and by section 622 of the Code of Civil Procedure, an order made under this Act shall be final, and shall not be liable to be contested by suit or otherwise.

Finality of other orders.

49. The costs of any proceeding under this Act, including the costs of maintaining a guardian or other person in the civil jail, shall, subject to any rules made by the High Court under this Act, be in the discretion of the Court in which the proceeding is had.

Costs.

50. (1) In addition to any other power to make rules conferred expressly or impliedly by this Act, the High Court may, from time to time, make rules consistent with this Act—

Power of High Court to make rules.

(*a*) as to the matters respecting which, and the time at which, reports should be called for from Collectors and subordinate Courts;

(*b*) as to the allowances to be granted to, and the security to be required from, guardians, and the case in which such allowances should be granted;

(*c*) as to the procedure to be followed with respect to applications of guardians for permission to do acts referred to in sections 28 and 29;

(*d*) as to the circumstances in which such requisitions as are mentioned in clauses (*a*), (*b*), (*c*), and (*d*) of section 34 should be made;

(*e*) as to the preservation of statements and accounts delivered and exhibited by guardians;

(*f*) as to the inspection of those statements and accounts by persons interested;

(*g*) as to the custody of money, and securities for money, belonging to wards;

(*h*) as to the securities on which money belonging to wards may be invested;

(*i*) as to the education of wards for whom guardians, not being Collectors, have been appointed or declared by the Court ; and,

(*j*) generally, for the guidance of the Courts in carrying out the purposes of this Act.

(2) Rules under clauses (*a*) and (*i*) of sub-section (1) shall not have effect until they have been approved by the Loca Government, nor shall any rule under this section have effect until it has been published in the official Gazette.

Applicability of Act to guardians already appointed by Court.

51. A guardian appointed by, or holding a certificate of administration from, a Civil Court, under any enactment repealed by this Act, shall, save as may be prescribed, be subject to the provisions of this Act, and of the rules made under it, as if he had been appointed or declared by the Court under Chapter II.

Amendment of Indian Majority Act.

52. In section 3 of the Indian Majority Act, 1875, for the words, "every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards," the following shall be substituted, namely,—

"every minor of whose person or property, or both, a guardian, other than a guardian for a suit within the meaning of Chapter XXXI, of the Code of Civil Procedure, has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age."

[The defendant was sued upon a promissory note executed by him on the 24th August 1892, he being at that time 19 years of age. Eight years previously, *viz.*, on the 4th March 1884, a guardian of his person and property had been

appointed by an order of the High Court, but the guardian had been discharged on the 25th June 1892, and at the time of the execution of the note sued on, there was no guardian in existence either of his person or property : *Held* that, having regard to the provisions of section 3 of the Indian Majority Act IX. of 1875, the defendant was still a minor at the date of the note.—*Goverdhandas Jadhavji* v. *Hari Valabhdas Bhaidas*, I. L. R. 21 Bom.]

Amendment of Chapter XXXI. of the Code of Civil Procedure.

53. Chapter XXXI. of the Code of Civil Procedure shall be amended as follows, namely :—

A.—To section 440 of the said Code the following shall be added, namely :—

"If a minor has a guardian appointed or declared by an authority competent in this behalf, a suit shall not be instituted on behalf of the minor by any person other than such guardian, except with the leave of the Court granted after notice to such guardian, and after hearing any objections which he may desire to make with respect to the institution of the suit, and the Court shall not grant such leave unless it is of opinion that it is for the welfare of the minor that the person proposing to institute the suit in the name of the minor should be permitted to do so."

[Section 53 of Act VIII. of 1890, amending the Code of Civil Procedure, expressly requires the appointment of a guardian *ad litem*, whether or not a guardian is appointed under Act VIII. of 1890. In a suit against a minor the summons was attempted to be served on his guardian appointed under Act VIII. of 1890, but no guardian *ad litem* was appointed in the suit. The suit was decreed *ex parte*, no one having appeared for the minor : *Held* that the decree must be set aside, and the case sent back, in order that the minor might be represented in accordance with law, and the case retried.—*Dakeshur Pershad Narayen* v. *Singh Reval Mehton*, I. L. R., 24 Cal.

Sec. 440 of the Code of Civil Procedure says : "Every suit by a minor shall be instituted in his name by an adult person, who, in such suit, shall be called the next friend of the minor, and may be ordered to pay any costs in the suit as if he were the plaintiff."

Sec. 443 of the Code of Civil Procedure says : "Where the defendant to a suit is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor, to put in the defence for such minor, and generally to act on his behalf in the conduct of the case.

"A guardian for the suit is not a guardian of person or property within the meaning of the Indian Majority Act, 1875, Section 3."

Sec. 446 of the Civil Procedure Code says : "If the interest of the next friend of a minor is adverse to that of such minor, or if he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or if he does not do his duty, or pending the suit, ceases to reside within British India, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal : and the Court (if satisfied of the cause assigned) may order the next friend to be removed accordingly."

The enactments repealed and the extent to which they are repealed by this Act VIII. of 1890 are shown in the Schedule added hereto.]

B.—To section 443 of the said Code the following shall be added, namely :—

"Where an authority competent in this behalf has appointed or declared a guardian or guardians of the person or

property, or both, of the minor, the Court shall appoint him or one of them, as the case may be, to be the guardian for the suit under this section, unless it considers, for reasons to be recorded by it that some other person ought to be so appointed."

C.—After section 446 of the said Code the following shall be added, namely :—

"If the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend, unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor."

D.—For section 461 of the said Code the following shall be substituted, namely :—

Receipt by next friend or guardian *ad litem* of property under decree for minor.

"461. (1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor, either—

(*a*) by way of compromise before decree or order, or

(*b*) under a decree or order in favour of the minor.

"(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security, and give such directions, as will, in its opinion, sufficiently protect the property from waste, and ensure its proper application."

E.—For section 464 of the said Code as amended by the Civil Procedure Code Amendment Act, 1888, the following shall be substituted, namely:—

"464. Nothing in this chapter applies to a Sovereign Prince or Ruling Chief suing or being sued in the name of his State, or being sued by direction of the Governor-General in Council or a Local Government, in the name of an agent, or in any other name, or shall be construed to affect, or in any way derogate from the provisions of any local law for the time being in force relating to suits by or against minors, or by or against lunatics or other persons of unsound mind."

Princes and Chiefs and Wards of Court.

THE SCHEDULE.

ENACTMENTS REPEALED.

(*See section* 2.)

Number and year.	Title or subject.	Extent of repeal.
	Acts of the Governor-General in Council.	
XIV. of 1858 ...	Minors (Madras)	The whole.
XL. of 1858 ...	Minors (Bengal)	So much as has not been repealed.
IX. of 1861 ...	Minors	The whole.
XX. of 1864 ...	Minors (Bombay)	The whole.
XIV. of 1869 ...	Bombay Civil Courts Act, 1869.	So much of the last paragraph of section 16 as has not been repealed.
VII. of 1870 ...	Court-fees Act, 1870 ...	Section 19H and article 10 of Schedule I.
IV. of 1872 ...	Punjab Laws Act, 1872 ...	So far as it relates to Act XL. of 1858.
XIX. of 1873 ...	North-Western Provinces Land-revenue Act, 1873.	Section 258.
XIII. of 1874 ...	European British Minors Act, 1874.	The whole.

THE SCHEDULE—(*continued*).

Number and year.	Title or subject.	Extent of repeal.
XV. of 1874 ...	Laws Local Extent Act, 1874.	So far as it relates to any enactment repealed by this Act.
XX. of 1875 ...	Central Provinces Laws Act, 1875.	So far as it relates to Act XL. of 1858.
XVIII. of 1876 ...	Oudh Laws Act, 1876 ...	So far as it relates to Act XL. of 1858.
XIII. of 1879 ...	Oudh Civil Courts Act, 1879.	Clause (1) of section 25 relating to proceedings under Acts XL. of 1858 and IX. of 1861.
XIV. of 1882 ...	Code of Civil Procedure ...	The second paragraph of section 443.
XVIII. of 1884 ...	Punjab Courts Act, 1884 ...	So much of section 29 as has not been repealed.
XVII. of 1885 ...	Central Provinces Government Wards Act, 1885.	Section 5.
XII. of 1887 ...	Bengal, North-Western Provinces, and Assam Civil Courts Act, 1887.	Clause (*b*) of section 23, sub-section (2)
XI. of 1889 ...	Lower Burma Courts Act, 1889.	The words, "to be and," in section 99, sub-section (1), and section 102, so far as it relates to Act XIII. of 1874.
	Madras Regulations.	
V. of 1804 ...	Court of Wards	Section 20 and so much of sections 21 and 22 as relates to persons and property of minors not subject to the superintendence of the Court of Wards.
X. of 1831 ...	Minors' Estates	Section 3.
	Regulations under the Statute 33 *Victoria, Chapter* 3.	
IX. of 1874 ...	Arakan Hill District Laws.	So far as it relates to Acts XL. of 1858 and IX. of 1861.

One of the many difficulties a convert to Christianity has to meet with is that those of his household become his enemies. Often when the husband comes to Christ the wife refuses to follow him. Or when the wife has come to Christ the husband refuses to join her. It is a very sad predicament, and no one can profit by it unless he is guided by the Lord Himself.

In general it would not be difficult to find the hand of Providence in the marriage of a convert to Christianity, to an heathen wife, before he is led to accept the truth in Jesus. And the recommendation of Paul to such a soul would be not to try to be disengaged from the partner in life. Who knows if the Lord will not save the partner and make her join the husband in his faith. Such a husband or such a wife should use all legitimate means of bringing the other party to Jesus. It may be after a run of years that the happy reconciliation may take place.

But some marriages are mere human entanglements. It would of course be extremely difficult to pronounce such an opinion about a particular marriage. Perhaps it would need a whole lifetime to arrive at it with approximate correctness. Unless one has the guidance of the Spirit in such a matter he is in danger of making serious blunders.

Yet cases may occur in which a husband or a wife ought to be separated from the wife or the husband, either to form another union or to lead a single Christian life.

The Native Converts' Marriage Dissolution Act legalizes the dissolution of marriages of converts to Christianity under certain circumstances and conditions.

ACT XXI OF 1866.

NATIVE CONVERTS' MARRIAGE DISSOLUTION ACT.

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

[The Act received the Governor-General's assent on 2nd April 1866.]

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

[The dissolution contemplated under this Act is only on religious grounds therefore where a husband or a wife has been deserted for adultery or cruelty this Act cannot afford relief.]

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

[This Act has been declared to be in force in the whole of British India, by Act XV of 1874.

It has also been extended to some scheduled Districts.]

2. *Repealed.*

3. In this Act—

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

"Native wife" shall mean a married woman domiciled in British India, who shall have completed the age of thirteen years, and shall not be a Christian, a Mahomedan, nor a Jewess.

[A Mahomedan can marry a Christian or a Jew according to Mahomedan law. If a Mahomedan wife or husband become a Christian the other party can have no "religious grounds" for refusing conjugal rights to the convert. The case of a Jew or a Jewess would be similar. Thus practically this Act would apply to the cases of such persons as cannot cohabit with a convert to Christianity on religious grounds, viz., the Hindus, the Parsis, the Jains, &c. See sections 29-33.]

"Native law" shall mean any law, or custom having the force of law, of any persons domiciled in British India other than Christians, Mahomedans and Jews.

"Month" and "year" shall respectively mean month and year according to the British calendar.

"High Court" shall mean the highest civil court of appeal in any place to which this Act extends.

And unless there be something repugnant in the ubject or context, words importing the singular number shall include the plural and words importing the plural number shall include the singular.

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

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

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

[A District Judge ought in all cases to enquire into and set out in his judgment the facts relied on as giving jurisdiction to the Court to pronounce a decree of dissolution of marriage. Durand *vs.* Durand, 14 W. R.]

[A change of residence on the part of the defendant after the suit is commenced does not affect the jurisdiction of the Court.]

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

required by law for the verification of plaints: and the petition may be amended by permission of the Court.

[A court fee stamp of Rs. 5 must be used for the petition.]

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

[This citation orders the respondent to appear in court on a day fixed, to answer the petition. The day is not to be less distant than a month from the date of the citation. Disobedience to the order is punishable under sec. 174, I. P. C.

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

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

The third schedule contains the form to be used in the above case and orders the respondent to be in readiness to answer the questions put by the Commissioners of the Court. Failure to obey the citation is punishable under sec. 174, I. P. C.

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

Act XIV of 1882, §§ 72-92.

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

§ 174, I. P. C. says: Whoever being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent as such public servant to issue the same, intentionally omits to attend at that place or

time or departs from the place where he is bound to attend before the time at which it is lawful for him to depart shall be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to five hundred rupees or with both ; or if the summons, notice, order or proclamation is to attend in person or by an agent in a Court of justice with simple imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

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

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

Vide § 21 of this Act as to the presumptive evidence of marriage and desertion or repudiation for change of religion.

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

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

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

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

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

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

17. If the respondent be a male, and in answer to the interrogations of the Judge or Commissioners, as the case may be, shall refuse to cohabit with the petitioner, the Judge, if,

upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner, he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall adjourn the case for a year.

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

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

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

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

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

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

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

[*Vide* Sections 383—391, both inclusive, C. P. C.]

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

[The burden of proving that the desertion was owing to some other cause than the petitioner's change of religion, lies on the respondent. It is sufficient for the petitioner to prove that the respondent has been living with him till the change of religion took place.]

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

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

the petitioner, the Court shall pass a decree dismissing the suit, and stating the grounds of such dismissal.

24. If at any time, within twelve months after a decree dismissing the suit upon any of the grounds mentioned in the last preceding section, the respondent again desert or repudiate the petitioner upon the ground of his or her change of religion, the suit may be revived by summoning the respondent: and upon proof of the former decree and of such renewed desertion or repudiation, the suit shall re-commence at the stage at which it had arrived immediately before the passing of such decree: and after the proofs, interrogations, interview, and adjournment, which may then be requisite under the provisions hereinbefore contained, the Judge shall pass a decree of the nature mentioned in the sixteenth section of this Act.

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

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

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

27. A dissolution of marriage under the provisions of this Act shall not operate to deprive the respondent's

children (if any) by the petitioner of their status as legitimate children or of any right or interest which they would have had according to the Native law applicable to them, by way of maintenance, inheritance or otherwise, in case the marriage had not been so dissolved as aforesaid.

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

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

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

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

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

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

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

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

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

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

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

THE FIRST SCHEDULE.

Form of Petition.

To the Judge of the Civil Court of

The day of 18 .

The petition of *A. B.* of

Sheweth :—

1. That your petitioner was born on or about the day of 18 .

2. That your petitioner was on the day of in the year 18 lawfully married to *C. D.* at

3. That the said *C. D.* is now of the age of years or thereabouts.

4. That after his said marriage, your petitioner lived and cohabited with his said wife at aforesaid until the day of 18

5. That previous to the day of 18 your petitioner changed his religion for Christianity, and that on such day he was baptized and became a member of the Church of

6. That on the day of 18 [*at least six months prior to the date of the petition*], the said *C. D.* deserted your petitioner, and has not since resumed cohabitation with him.

7. That such desertion was in consequence of your petitioner's said change of religion.

8. That there is no collusion nor connivance between your petitioner and the said *C. D.*

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

A. B.

Form of verification.

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

THE SECOND SCHEDULE.

Form of Citation in ordinary Cases.

To *C. D.* of

Whereas *A. B.* of , claiming to have been lawfully married to you the said *C. D.*, has filed his [*or* her] petition against you in the Civil Court of , alleging that you the said *C. D.* have deserted him [*or* her] for six months in consequence of his [*or* her] having changed his [*or* her] religion for Christianity, and praying that, unless you consent to live and

cohabit with him [*or* her], it may be declared that his [*or* her] marriage is dissolved: Now this is to command you that, at the expiration of days [*at least one month*] from the date of the service of this on you, you do appear in the said Court then and there to make answer to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you.

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

Dated the day of 18 .

(*Signed*) *E. F.*,
Judge of the Civil Court of .

Indorsement to be made after service.

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

(*Signed*) *G. H.*

THE THIRD SCHEDULE.

Form of Citation in Case of Respondent exempt from Appearance in Court.

To *C. D.* of

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

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

Dated the day of 18 .

(*Signed*) *E. F.*,
Judge of the Civil Court of .

Indorsement to be made after service.

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

(*Signed*) *G. H.*

ACT XV OF 1872.

THE INDIAN CHRISTIAN MARRIAGE ACT.

[This is an important enactment with regard to Indian Christians. Its importance will be evident when it is considered how sacred and beneficial the institution of marriage itself is. It is necessary that Indian Christians should know the laws which govern their marriages. It appears from the reports of the various High Courts in India that very few mistakes have thus far been made by Indian Christians with reference to marriages solemnized under the law. Some may have been committed and dealt with by lower Courts without the necessity of having to take the matter up to the High Courts. Cases of improper solemnization of marriages would multiply if care was not taken by the Community to disseminate the knowledge of the law.]

THIS ACT RECEIVED THE G.-G.'S ASSENT ON THE 18TH JULY 1872.

An Act to consolidate and amend the law relating to the solemnization in India of the marriages of Christians.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the solemnization in India of the marriages of persons professing the Christian religion ; It is hereby enacted as follows:—

The Indian Christian Marriage Act applies to marriages of Christians solemnized in India. The parties need not both be Indians. Both may belong to other nationalities; if they profess the Christian religion their marriages are governed by this Act if solemnized in India.

PRELIMINARY.

Short title.

1. This Act may be called "The Indian Christian Marriage Act, 1872 ;"

Extent.

It extends to the whole of British India, and, so far only as regards Christian subjects of Her Majesty, to the territories of Native Princes and States in alliance with Her Majesty.

2. The enactments specified in the fifth schedule hereto annexed are repealed, but not so as to invalidate any marriage confirmed by, or solemnized under, any such enactment.

Enactments repealed.

And all appointments made, licenses granted, consents given, certificates issued, and other things duly done, under any such enactment, shall be deemed to be respectively made, granted, given, issued, and done under this Act.

For clause xxiv, of section nineteen of the Court Fees Act, 1870, the following shall be substituted :—

"xxiv. Petitions under the Indian Christian Marriage Act, 1872, sections forty-five and forty-eight."

Section 19 of the Court Fees Act exempts certain applications and papers from Court fee. It exempts petitions under sections 45 and 48 of this Act from fees.

Interpretation clause.

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

"Church of England" and "Anglican" mean and apply to the Church of England as by law established ;

"Church of Scotland" means the Church of Scotland as by law established ;

"Church of Rome" and "Roman Catholic" mean and apply to the Church which regards the Pope of Rome as its spiritual head ;

"Church" includes any chapel or other building generally used for public Christian worship ;

"Minor" means a person who has not completed the age of twenty-one years, and who is not a widower or a widow ;

"Native State" means the territories of any Native Prince or State in alliance with Her Majesty ;

The expression "Christians" means persons professing the Christian religion ;

And the expression "Native Christians" includes the Christian descendants of Natives of India converted to Christianity, as well as such converts.

PART I.

THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED.

Marriages to be solemnized according to Act.

4. Every marriage between persons, one or both of whom is *or are* a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section; and any such marriage solemnized otherwise than in accordance with such provisions shall be void.

The words in italics, *viz.*, *or are* have been inserted by Act XII. of 1891 Sch. II. The amendment brings all marriages between persons, one of whom is a Christian under the action of this Act.

5. Marriages may be solemnized in India—

Persons by whom marriages may be solemnized.

(1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies, and customs of the Church of which he is a Minister;

(2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies, and customs of the Church of Scotland;

(3) by any Minister of Religion licensed under this Act to solemnize marriages;

(4) by, or in the presence of, a Marriage Registrar appointed under this Act;

(5) by any person licensed under this Act to grant certificates of marriage between Native Christians.

Episcopal ordination means an ordination by a bishop. It may include an ordination by a bishop of the Anglican Church, the Church of Rome, or the Episcopal Methodist Church.

Persons licensed to grant certificates of marriage between Native Christians cannot grant them in cases of Europeans.

If a person, who does not hold a license to solemnize marriages solemnizes them, the marriages become void. He is liable to be punished under Section 68 of this Act.

Persons having received Episcopal ordination and clergymen of the Church of Scotland need no license to solemnize marriages under this Act. Other Christian ministers do.

S. an episcopally-ordained priest of the Syrian Church, under the jurisdiction of the Patriarch of Antioch, solemnized two marriages according to Roman ritual without publishing or causing to be affixed the notices of such marriages required by Part III of the Act. It was proved that S. used the Roman ritual with the sanction of his Bishop, who was appointed by the Patriarch. *Held*, that S. having received episcopal ordination was authorized to solemnize the marriages according to the rules, rites, ceremonies, and customs of his Church, and that it was not shewn that a marriage solemnized with the Roman ritual under the sanction of the Bishop of the Syrian Church, was not solemnized according to the rules, rites, ceremonies, and customs of the Syrian Church. *Held* further, that Part III of the Act only applies to ministers of religion licensed under the Act, and not to episcopally ordained persons—Caussavel *v.* Sawrez, I.L.R., 19 Mad.

Grant and revocation of licenses to solemnize marriages.

6. The Local Government, so far as regards the territories under its adminstration, and the Governor-General in Council, so far as regards any Native State, may, by notification in the local official Gazette or in the Gazette of India, as the case may be, grant licenses to Ministers of Religion to solemnize marriages within such territories and State respectively, and may, by a like notification, revoke such licenses.

(2) A license to solemnize marriages granted to a Minister of Religion under Act XXV. of 1864 (*to provide further for the solemnization of marriages in India of persons professing the Christian Religion*) shall be deemed, if in force on the day on which the Indian Marriage Act, 1865, came into force to have been, while that Act was in force, a license granted

under that Act, and, if in force on the day on which the Indian Christian Marriage Act, 1872, came into force, to have been, since that Act came into force, a license granted under that Act.

(3) A license to solemnize marriages granted to a Minister of Religion under Act XXV. of 1864 (*to provide further for the solemnization of marriages in India of persons professing the Christian Religion*), the Indian Marriage Act, 1865, or the Indian Christian Marriage Act, 1872, shall, if in force immediately before the commencement of this Act, be deemed to have been granted under the Indian Christian Marriage Act, 1872, as amended by sub-section (1) of this section.

The licenses granted to ministers of religion under this section are good in the districts or territories for which they are granted. This section has been inserted by Act II of 1891, which amends this Act.

Marriage Registrars.

7. The Local Government may appoint one or more Christians, either by name, or as holding any office for the time being, to be the Marriage Registrar or Marriage Registrars for any district subject to its administration.

Senior Marriage Registrar.

Where there are more Marriage Registrars than one in any district, the Local Government shall appoint one of them to be the Senior Marriage Registrar.

Magistrate when to be Marriage Registrar.

When there is only one Marriage Registrar in a district, and such Registrar is absent from such district, or ill, or when his office is temporarily vacant, the Magistrate of the district shall act as, and be, Marriage Registrar thereof during such absence, illness, or temporary vacancy.

Marriage Registrars in Native States.

8 The Governor-General in Council may, by notification in the *Gazette of India*, appoint any Christian, either by name or as holding any office for the time being, to be a Marriage Re-

gistrar in respect of any district or place within the territories of any Native Prince or State in alliance with Her Majesty.

The Governor-General in Council may, by like notification, revoke any such appointment.

Licensing of persons to grant certificates of marriage between Native Christians.

9. The Local Government or (so far as regards any Native State) the Governor-General in Council may grant a license to any Christian, either by name or as holding any office for the time being, authorizing him to grant certificates of marriage between Native Christians.

Any such license may be revoked by the authority by which it was granted, and every such grant or revocation shall be notified in the official Gazette.

PART II.

TIME AND PLACE AT WHICH MARRIAGES MAY BE SOLEMNIZED.

Time for solemnizing marriage.

10. Every marriage under this Act shall be solemnized between the hours of six in the morning and seven in the evening:

Exceptions.

Provided that nothing in this section shall apply to—

(1)—a Clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening, under the hand and seal of the Anglican Bishop of the Diocese or his Commissary, or

(2)—a Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning, when he has received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is so solemnized, or from such person as the same Bishop has authorized to grant such license.

"3.— a Clergyman of the Church of Scotland solemnizing a marriage according to the rules, rites, ceremonies, and customs of the Church of Scotland."

Clause (3) has been inserted by Act II of 1891. A clergyman of the Church of Scotland can solemnize a marriage after seven o'clock in the evening under certain circumstances.

11. No Clergyman of the Church of England shall solemnize a marriage in any place other than a church, "where worship is generally held according to the forms of the Church of England," ‡

Place for solemnizing marriage.

unless there is no such church within five miles distance by the shortest road from such place, or

unless he has received a special license authorizing him to do so under the hand and seal of the Anglican Bishop of the Diocese or his Commissary.

For such special license, the Registrar of the Diocese may charge such additional fee as the said Bishop from time to time authorizes.

Fee for special license.

The word "church" in this section is made to include any place consecrated for divine service. Section 3 of Act II of 1891 says —

In section 11 of the said Act ('*viz.*, Act XV of 1872') after the words "other than a church" the words "where worship is generally held according to the forms of the Church of England" shall be added, and between the word "no"' and the word "Church" in the expression "unless there is no church" the word such "shall be inserted."

PART III.

Marriages solemnized by Ministers of Religion licensed under this Act.

12. Whenever a marriage is intended to be solemnized by a Minister of Religion licensed to solemnize marriages under this Act—

Notice of intended marriage.

one of the persons intending marriage shall give notice in

writing, according to the form contained in the first schedule hereto annexed, or to the like effect, to the Minister of Religion whom he or she desires to solemnize the marriage, and shall state therein

(*a*) the name and surname, and the profession or condition, of each of the persons intending marriage,

(*b*) the dwelling place of each of them,

(*c*) the time during which each has dwelt there, and

(*d*) the church or private dwelling in which the marriage is to be solemnized:

Provided that, if either of such persons has dwelt in the place mentioned in the notice during more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

Publication of such notice.

13. If the persons intending marriage desire it to be solemnized in a particular church, and if the Minister of Religion to whom such notice has been delivered be entitled to officiate therein, he shall cause the notice to be affixed in some conspicuous part of such church.

Return or transfer of notice.

But, if he is not entitled to officiate as a Minister in such church, he shall, at his option, either return the notice to the person who delivered it to him, or deliver it to some other Minister entitled to officiate therein, who shall thereupon cause the notice to be affixed as aforesaid.

Notice of intended marriage in private dwelling.

14. If it be intended that the marriage shall be solemnized in a private dwelling, the Minister of Religion, on receiving the notice prescribed in section twelve, shall forward it to the Marriage Registrar of the District, who shall affix the same to some conspicuous place in his own office.

15. When one of the persons intending marriage is a minor, every Minister receiving such notice shall, unless within twenty-four hours after its receipt he returns the same under the provisions of section thirteen, send by the post or otherwise a copy of such notice to the Marriage Registrar of the District, or, if there be more than one Registrar of such district, to the Senior Marriage Registrar.

Sending copy of notice to Marriage Registrar when one party is a minor.

The word *minor* has been defined by the provisions of the Indian Majority Act, 1875. A minor has capacity to act in matters relating to marriage but certain safeguards are placed on him by law.

The obligation of sending a copy of the notice to the Marriage Registrar of the District is not removed by the Minister's delivering the notice to another Minister.

16. The Marriage Registrar or Senior Marriage Registrar, as the case may be, on receiving any such notice, shall affix it to some conspicuous place in his own office, and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrars in the same district, who shall likewise publish the same in the manner above directed.

Procedure on receipt of notice.

17. Any Minister of Religion consenting or intending to solemnize any such marriage as aforesaid, shall, on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making the declaration hereinafter required, issue under his hand a certificate of such notice having been given and of such declaration having been made:

Issue of certificate of notice given and declaration made.

Proviso. Provided—

(1) that no such certificate shall be issued until the expiration of four days after the date of receipt of the notice by such Minister;

(2) that no lawful impediment be shown to his satisfaction why such certificate should not issue; and

(3) that the issue of such certificate has not been forbidden, in manner hereinafter mentioned, by any person authorized in that behalf.

The consent of parents or guardians is necessary in the case of minors. See section 19. And if such consent is withheld, a certificate cannot be given under this section.

Declaration before issue of Certificate.

18. The certificate mentioned in section seventeen shall not be issued until one of the persons intending marriage has appeared personally before the Minister and made a solemn declaration—

(*a*) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage,

and, when either or both of the parties is or are a minor or minors,

(*b*) that the consent or consents required by law has or have been obtained thereto, or that there is no person resident in India having authority to give such consent, as the case may be.

The forbidden affinities, according to the customs of the Anglican Church, are—

A man may not marry his

1. Grandmother.
2. Grandfather's wife.
3. Wife's grandmother.
4. Father's sister.
5. Mother's sister.
6. Father's brother's wife.
7. Mother's brother's wife.
8. Wife's father's sister.
9. Wife's mother's sister.
10. Mother.
11. Step-mother.
12. Wife's mother.
13. Daughter.
14. Wife's daughter.
15. Son's wife.
16. Sister.
17. Wife's sister.
18. Brother's wife.
19. Son's daughter.
20. Daughter's daughter.
21. Son's son's wife.
22. Daughter's son's wife.
23. Wife's son's daughter.
24. Wife's daughter's daughter.
25. Brother's daughter.
26. Sister's daughter.
27. Brother's son's wife.
28. Sister's son's wife.
29. Wife's brother's daughter.
30. Wife's sister's daughter.

A woman may not marry with her

1. Grandfather.
2. Grandmother's husband.
3. Husband's grandfather.
4. Father's brother.
5. Mother's brother.
6. Father's sister's husband.
7. Mother's sister's husband.
8. Husband's father's brother.
9. Husband's mother's brother.
10. Father.
11. Step-father.
12. Husband's father.
13. Son.
14. Husband's son.
15. Daughter's husband.
16. Brother.
17. Husband's brother.
18. Sister's husband.
19. Son's son.
20. Daughter's son.
21. Son's daughter's husband.
22. Daughter's daughter's husband.
23. Husband's son's son.
24. Husband's daughter's son.
25. Brother's son.
26. Sister's son.
27. Brother's daughter's husband.
28. Sister's daughter's husband.
29. Husband's brother's son.
30. Husband's sister's son.

"Other lawful hindrance" may be the former marriage of one of the parties not dissolved by law: the engagement of one of the parties to a third person not lawfully dissolved: the unsoundness of mind laboured under by one of the parties.

The maxim, *ignorantia juris non excusat* cannot be applied to a declaration, though in fact false, made under section 18 of Act XV of 1872, inasmuch as the declaration required by that section to be made is a declaration as to the belief only of the person making it: and further in order to entail the penal consequences provided for by section 66 of the Act such false declaration must be made "intentionally." Queen-Empress *vs.* Robinson, I. L. R. 16 All.

The consent referred to in this section is defined in the following section. When the person whose consent is needed does not live in India, the certificate may not be withheld. See also section 45 of this Act.

Consent of father, or guardian, or mother.

19. The father, if living, of any minor, or, if the father be dead, the guardian of the person of such minor, and, in case there be no such guardian, then the mother of such minor, may give consent to the minor's marriage,

and such consent is hereby required for the same marriage, unless no person authorized to give such consent be resident in India.

Power to prohibit by notice issue of certificate.

20. Every person whose consent to a marriage is required under section nineteen is hereby authorized to prohibit the issue of the certificate by any Minister, at any time before the

issue of the same, by notice in writing to such Minister, subscribed by the person so authorized with his or her name and place of abode and position with respect to either of the persons intending marriage, by reason of which he or she is so authorized as aforesaid.

Procedure on receipt of notice.

21. If any such notice be received by such Minister, he shall not issue his certificate, and shall not solemnize the said marriage, until he has examined into the matter of the said prohibition, and is satisfied that the person prohibiting the marriage has no lawful authority for such prohibition, or until the said notice is withdrawn by the person who gave it.

Issue of certificate in case of minority.

22. When either of the persons intending marriage is a minor, and the Minister is not satisfied that the consent of the person whose consent to such marriage is required by section nineteen has been obtained, such Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of the notice of marriage.

Issue of certificates to Native Christians.

23. When any Native Christian about to be married takes notice of marriage to a Minister of Religion, or applies for a certificate from such Minister under section seventeen, such Minister shall, before issuing the certificate, ascertain whether such Native Christian is cognizant of the purport and effect of the said notice or certificate, as the case may be, and, if not, shall translate or cause to be translated the notice or certificate to such Native Christian into some language which he understands.

Form of certificate.

24. The certificate to be issued by such Minister shall be in the form contained in the second schedule hereto annexed, or to the like effect.

Solemnization of marriage.

25. After the issue of the certificate by the Minister, marriage may be solemnized between the persons therein described according to such form or ceremony as the Minister thinks fit to adopt:

Provided that the marriage be solemnized in the presence of at least two witnesses besides the Minister.

Certificate void if marriage not solemnized within two months.

26. Whenever a marriage is not solemnized within two months after the date of the certificate issued by such Minister as aforesaid, such certificate and all proceedings (if any) thereon shall be void,

and no person shall proceed to solemnize the said marriage until new notice has been given, and a certificate thereof issued in manner aforesaid.

PART IV.

REGISTRATION OF MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION.

Marriages when to be registered.

27. All marriages hereafter solemnized in India between persons one or both of whom professes or profess the Christian religion, except marriages solemnized under Part V. or Part VI. of this Act, shall be registered in manner hereinafter prescribed.

Part V. of this Act refers to marriages solemnized by or before a Marriage Registrar and Part VI. refers to marriages between Native Christians.

Registration of marriages solemnized by Clergyman of Church of England.

28. Every Clergyman of the Church of England shall keep a register of marriages, and shall register therein, according to the tabular form set forth in the third schedule hereto annexed, every marriage which he solemnizes under this Act.

Quarterly returns to Archdeaconry.

29. Every Clergyman of the Church of England shall send four times in every year returns in duplicate, authenticated by his signature, of the entries in the register of marriages solemnised at any place where he has any spiritual charge, to the Registrar of the Archdeaconry to which he is subject, or within the limits of which such place is situate.

Such quarterly returns shall contain all the entries of marriages contained in the said register from the first day of January to the thirty-first day of March, from the first day of April to the thirtieth day of June, from the first day of July to the thirtieth day of September, and from the first day of October to the thirty-first day of December, of each year, respectively, and shall be sent by such Clergyman within two weeks from the expiration of each of the quarters above specified.

Contents of returns.

The said Registrar, upon receiving the said returns, shall send one copy thereof to the Secretary to the Local Government.

30. Every marriage solemnized by a Clergyman of the Church of Rome shall be registered by the person and according to the form directed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is solemnized,

Registration and returns of marriages solemnized by Clergyman of Church of Rome.

and such person shall forward quarterly to the Secretary to the Local Government returns of the entries of all marriages registered by him during the three months next preceding.

31. Every Clergyman of the Church of Scotland shall keep a register of marriages,

Registration and returns of marriages solemnized by Clergyman of Church of Scotland.

and shall register therein, according to the tabular form set forth in the third schedule hereto annexed, every marriage which he solemnizes under this Act,

and shall forward quarterly to the Secretary to the Local Government, through the Senior Chaplain of the Church of Scotland, returns, similar to those prescribed in section twenty-nine, of all such marriages.

32. Every marriage solemnized by any person who has received episcopal ordination, but who is not a Clergyman of the Church of England, or of the Church of Rome, or by any Minister of Religion licensed under this Act to solemnize marriages, shall, immediately after the solemnization thereof, be registered in dupli-

Certain marriages to be registered in duplicate.

cate by the person solemnizing the same ; (that is to say) in a marriage-register-book to be kept by him for that purpose, according to the form contained in the fourth schedule hereto annexed, and also in a certificate attached to the marriage-register-book as a counterfoil.

Entries of such marriages to be signed and attested.

33. The entry of such marriage in both the certificate and marriage-register-book shall be signed by the person solemnizing the marriage, and also by the persons married, and shall be attested by two credible witnesses, other than the persons solemnizing the marriage, present at its solemnization.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book.

Certificate to be forwarded to Marriage Registrar, copied, and sent to Government.

34. The person solemnizing the marriage shall forthwith separate the certificate from the marriage-register-book, and send it, within one month from the time of the solemnization, to the Marriage Registrar of the District in which the marriage was solemnized, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar,

who shall cause such certificate to be copied into a book to be kept by him for that purpose,

and shall send all the certificates which he has received during the month, with such number and signature or initials added thereto as are hereinafter required, to the Secretary to the Local Government.

Copies of certificates to be entered and numbered.

35. Such copies shall be entered in order from the beginning to the end of the said book, and shall bear both the number of the certificate as copied, and also a number to be entered by the Marriage Registrar, indicating the number of the entry of the said copy in the said book, according to the order in which he receives each certificate.

36. The Marriage Registrar shall also add such last-mentioned number of the entry of the copy in the book to the certificate, with his signature or initials, and shall, at the end of every month, send the same to the Secretary to the Local Government.

Registrar to add number of entry to certificate, and send to Government.

37. When any marriage between Native Christians is solemnized under Part I. or Part III. of this Act, the person solemnizing the same shall, instead of proceeding in the manner provided by sections twenty-eight to thirty-six, both inclusive, register the marriage in a separate register-book, and shall keep it safely until it is filled, or, if he leave the district in which he solemnized the marriage before the said book is filled, shall make over the same to the person succeeding to his duties in the said district.

Registration of marriages between Native Christians under Part I. or III.

Custody and disposal of register-book.

Whoever has the control of the book at the time when it is filled, shall send it to the Marriage Registrar of the District, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall send it to the Secretary to the Local Government, to be kept by him with the records of his office.

PART V.

Marriages solemnized by, or in the Presence of, a Marriage Registrar.

38. When a marriage is intended to be solemnized by, or in the presence of, a Marriage Registrar, one of the parties to such marriage shall give notice in writing, in the form contained in the first schedule hereto annexed, or to the like effect, to any Marriage Registrar of the District within which the parties have dwelt,

Notice of intended marriage before Marriage Registrar.

or, if the parties dwell in different districts, shall give the like notice to a Marriage Registrar of each district,

and shall state therein the name and surname, and the profession or condition, of each of the parties intending marriage, the dwelling-place of each of them, the time during which each has dwelt therein, and the place at which the marriage is to be solemnized:

Provided that, if either party has dwelt in the place stated in the notice for more than one month, it may be stated therein that he or she has dwelt there one month and upward.

Publication of notice.

39. Every Marriage Registrar shall, on receiving any such notice, cause a copy thereof to be affixed in some conspicuous place in his office.

When one of the parties intending marriage is a minor every Marriage Registrar shall, within twenty-four hours, after the receipt by him of the notice of such marriage, send, by post or otherwise, a copy of such notice to each of the other Marriage Registrars (if any) in the same district, who shall likewise affix the copy in some conspicuous place in his own office.

Notice to be filed, and copy entered in Marriage Notice Book.

40. The Marriage Registrar shall file all such notices, and keep them with the records of his office,

and shall also forthwith enter a true copy of all such notices in a book to be furnished to him for that purpose by the Local Government, and to be called the "Marriage Notice Book"; and the Marriage Notice Book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

Certificate of notice given, and oath made.

41. If the party by whom the notice was given requests the Marriage Registrar to issue the certificate next hereinafter mentioned, and if one of the parties intending marriage has made oath as hereinafter required, the Marriage Registrar shall issue

under his hand a certificate of such notice having been given, and of such oath having been made:

Proviso. Provided—

that no lawful impediment be shown to his satisfaction why such certificate should not issue ;

that the issue of such certificate has not been forbidden, in manner hereinafter mentioned, by any person authorized in that behalf by this Act;

that four days after the receipt of the notice have expired, and further,

that where, by such oath, it appears that one of the parties intending marriage is a minor, fourteen days after the entry of such notice have expired.

Oath before issue of certificate.

42. The certificate mentioned in section forty-one shall not be issued by any Marriage Registrar until one of the parties intending marriage appears personally before such Marriage Registrar, and makes oath

(*a*) that he or she believed that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage, and

(*b*) that both the parties have, or (where they have dwelt in the districts of different Marriage Registrars) that the party making such oath has, had their, his, or her usual place of abode within the district of such Marriage Registrar, and, where either or each of the parties is a minor,

(*c*) that the consent or consents to such marriage required by law has or have been obtained thereto, or that there is no person resident in India authorized to give such consent, as the case may be.

Those who are allowed by law to make a solemn affirmation can make it instead of an oath. Section 2, clause 17, of Act 1 of 1868 says : " 'Oath, 'swear,' and 'affidavit,' shall include affirmation, declaration, affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing."

43. When one of the parties intending marriage is a minor, and both such parties are at the time resident in any of the towns of Calcutta, Madras, and Bombay, and are desirous of being married in less than fourteen days after the entry of such notice as aforesaid, they may apply by petition to a Judge of the High Court, for an order upon the Marriage Registrar to whom the notice of marriage has been given, directing him to issue his certificate before the expiration of the said fourteen days required by section forty-one.

Petition to High Court to order certificate in less than fourteen days.

And on sufficient cause being shown, the said Judge may, in his discretion, make an order upon such Marriage Registrar, directing him to issue his certificate at any time to be mentioned in the said order before the expiration of the fourteen days so required.

Order on petition

And the said Marriage Registrar, on receipt of the said order, shall issue his certificate in accordance therewith.

44. The provisions of section nineteen apply to every marriage under this Part, either of the parties to which is a minor; and any person whose consent to such marriage would be required thereunder may enter a protest against the issue of the Marriage Registrar's certificate, by writing, at any time before the issue of such certificate, the word "forbidden" opposite to the entry of the notice of such intended marriage in the Marriage Notice Book, and by subscribing thereto his or her name and place of abode, and his or her position with respect to either of the parties, by reason of which he or she is so authorized.

Consent of father or guardian.

Protest against issue of certificate.

When such protest has been entered, no certificate shall issue until the Marriage Registrar has examined into matter of the protest, and is satisfied that it ought not to obstruct the

Effect of protest.

issue of the certificate for the said marriage, or until the protest be withdrawn by the person who entered it.

Petition where person whose consent is necessary is insane,

45. If any person whose consent is necessary to any marriage under this Part is of unsound mind,

or unjustly withholds consent.

or if any such person (other than the father) without just cause withholds his consent to the marriage,

the parties intending marriage may apply by petition, where the person whose consent is necessary is resident within any of the towns of Calcutta, Madras, and Bombay, to a Judge of the High Court, or if he is not resident within any of the said towns then to the District Judge:

Procedure on petition.

And the said Judge of the High Court, or District Judge, as the case may be, may examine the allegations of the petition in a summary way:

And if upon examination such marriage appears proper, such Judge of the High Court or District Judge, as the case may be, shall declare the marriage to be a proper marriage.

Such declaration shall be as effectual as if the person whose consent was needed had consented to the marriage;

and if he has forbidden the issue of the Marriage Registrar's certificate, such certificate shall be issued, and the like proceedings may be had under this Part in relation to the marriage as if the issue of such certificate had not been forbidden.

Petition when Marriage Registrar refuses certificate.

46. Whenever a Marriage Registrar refuses to issue a certificate under this Part, either of the parties intending marriage may apply by petition, where the district of such Registrar is within any of the towns of Calcutta, Madras, and Bombay, to a Judge of the High Court, or if such district is not within any of the said towns, then to the District Judge:

The said Judge of the High Court, or District Judge, as the case may be, may examine the allegations of the petitions in a summary way, and shall decide thereon.

Procedure on petition.

The decision of such Judge of the High Court or District Judge, as the case may be, shall be final, and the Marriage Registrar to whom the application for the issue of a certificate was originally made shall proceed in accordance therewith.

47. Whenever a Marriage Registrar resident in any Native State refuses to issue his certificate, either of the parties intending marriage may apply by petition to the Governor-General in Council, who shall decide thereon.

Petition when Marriage Registrar in Native State refuses certificate.

Such decision shall be final, and the Marriage Registrar to whom the application was originally made shall proceed in accordance therewith.

48. Whenever a Marriage Registrar, acting under the provisions of section forty-four, is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall apply by petition, where his district is within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or if such district be not within any of the said towns, then to the District Judge:

Petition when Registrar doubts authority of person forbidding.

The said petition shall state all the circumstances of the case, and pray for the order and direction of the Court concerning the same,

Procedure on petition.

and the said Judge of the High Court or District Judge, as the case may be, shall examine into the allegations of the petition and the circumstances of the case,

and if, upon such examination, it appears that the person forbidding the issue of such certificate is not authorized by law so to do, such Judge of the High Court or District Judge,

as the case may be, shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid, and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage, as if the issue had not been forbidden.

Reference when Marriage Registrar in Native State doubts authority of person forbidding.

Whenever a Marriage Registrar appointed under section eight to act within any Native State is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall send a statement of all the circumstances of the case, together with all documents relating thereto, to the Governor-General in Council.

Procedure on reference.

If it appears to the Governor-General in Council that the person forbidding the issue of such certificate is not authorized by law so to do, the Governor-General in Council shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage, as if the issue of the certificate had not been forbidden.

Liability for frivolous protest against issue of certificate.

49. Every person entering a protest with the Marriage Registrar, under this Part, against the issue of any certificate, on grounds which such Marriage Registrar, under section forty-four, or a Judge of the High Court or the District Judge, under section forty-five or forty-six, declares to be frivolous and such as ought not to obstruct the issue of the certificate, shall be liable for the costs of all proceedings in relation thereto and for damages, to be recovered by suit by the person against whose marriage such protest was entered.

Form of certificate.

50. The certificate to be issued by the Marriage Registrar under the provisions of section forty-one shall be in the form contained in the

second schedule to this Act annexed or to the like effect; and the Local Government shall furnish to every Marriage Registrar a sufficient number of forms of certificate.

Solemnization of marriage after issue of certificate.

51. After the issue of the certificate of of the Marriage Registrar,

or, where notice is required to be given under this Act to the Marriage Registrars for different districts, after the issue of the certificates of the Marriage Registrars for such districts,

marriage may, if there be no lawful impediment to the marriage of the parties described in such certificate or certificates, be solemnized between them, according to such form and ceremony as they think fit to adopt.

But every such marriage shall be solemnized in the presence of some Marriage Registrar (to whom shall be delivered such certificate or certificates as aforesaid), and of two or more credible witnesses besides the Marriage Registrar.

And in some part of the ceremony each of the parties shall declare as follows, or to the like effect—

"I do solemnly declare that I know not of any lawful impediment why I, *A.B.*, may not be joined in matrimony to *C.D.*"

And each of the parties shall say to the other as follows, or to the like effect—"I call upon these persons here present to witness that I, *A. B.*, do take thee, *C. D.*, to be my lawful wedded wife [*or* husband].

When marriage not had within two months after notice, new notice required.

52. Whenever a marriage is not solemnized within two months after the copy of the notice has been entered by the Marriage Registrar as required by section forty, the notice and the certificate, if any, issued thereupon, and all other proceedings thereupon, shall be void;

and no person shall proceed to solemnize the marriage, nor shall any Marriage Registrar enter the same, until new notice has been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid.

53. A Marriage Registrar before whom any marriage is solemnized under this Part may ask of the persons to be married the several particulars required to be registered touching such marriage.

Marriage Registrar may ask for particulars to be registered.

54. After the solemnization of any marriage under this Part, the Marriage Registrar present at such solemnization shall forthwith register the marriage in duplicate ; that is to say, in a marriage-register-book, according to the form of the fourth schedule hereto annexed, and also in a certificate attached to the marriage-register-book as a counterfoil.

Registration of marriages solemnized under Part V.

The entry of such marriage in both the certificate and the marriage-register-book shall be signed by the person by or before whom the marriage has been solemnized, if there be any such person, and by the Marriage Registrar present at such marriage, whether or nor it is solemnized by him, and also by the parties married, and attested by two credible witnesses other than the Marriage Registrar and person solemnizing the marriage.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book.

55. The Marriage Registrar shall forthwith separate the certificate from the marriage-register-book, and send it, at the end of every month, to the Secretary to the Local Government.

Certificates to be sent monthly to Secretary to Government.

The Marriage Registrar shall keep safely the said register-book until it is filled, and shall then send it to the Secretary to the Local Government, to be kept by him with the records of his office.

Custody of register-book.

56. The Marriage Registrars in Native States shall send the certificates mentioned in section fifty-four to such officers as the Governor-General in Council from time to time, by notification in the *Gazette of India*, appoints in this behalf.

Officers to whom Registrars in Native States shall send certificates.

57. When any Native Christian about to be married gives a notice of marriage, or applies for a certificate from a Marriage Registrar, such Marriage Registrar shall ascertain whether the said Native Christian understands the English language, and, if he does not, the Marriage Registrar shall translate, or cause to be translated, such notice or certificate, or both of them, as the case may be, to such Native Christian into a language which he understands;

Registrars to ascertain that notice and certificate are understood by Native Christians.

or the Marriage Registrar shall otherwise ascertain whether the Native Christian is cognizant of the purport and effect of the said notice and certificate.

58. When any Native Christian is married under the provisions of this Part, the person solemnizing the marriage shall ascertain whether such Native Christian understands the English language, and, if he does not, the person solemnizing the marriage shall, at the time of the solemnization, translate, or cause to be translated, to such Native Christian, into a language which he understands, the declarations made at such marriage in accordance with the provisions of this Act.

Native Christians to be made to understand declarations.

59. The registration of marriages between Native Christians under this Part shall be made in conformity with the rules laid down in section thirty-seven (so far as they are applicable), and not otherwise.

Registration of marriages between Native Christians.

PART VI.

Marriage of Native Christians.

On what conditions marriages of Native Christitians may be certified.

60. Every marriage between Native Christians applying for a certificate shall, without the preliminary notice required under Part III., be certified under this Part, if the following conditions be fulfilled, and not otherwise :—

(1) The age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years :

(2) Neither of the persons intending to be married shall have a wife or husband still living :

(3) In the presence of a person licensed under section nine, and of at least two credible witnesses other than such person, each of the parties shall say to the other—

"I call upon these persons here present to witness that I, *A. B.*, in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, *C. D.*, to be my lawful wedded wife [*or* husband]," or words to the like effect:

Provided that no marriage shall be certified under this Part when either of the parties intending to be married has not completed his or her eighteenth year, unless such consent as is mentioned in section nineteen has been given of the intended marriage, or unless it appears that there is no person living authorized to give such consent.

Grant of certificate.

61. When, in respect to any marriage solemnized under this Part, the conditions prescribed in section sixty have been fulfilled, the person licensed as aforesaid, in whose presence the said declaration has been made, shall, on the application of either of the parties to such marriage, and, on the payment of a fee of four annas, grant a certificate of the marriage.

The certificate shall be signed by such licensed person, and shall be received in any suit touching the validity of such marriage as conclusive proof of its having been performed.

Keeping of Register-book and deposit of extracts therefrom with Registrar-General.

62. (1) Every person licensed under section 9 shall keep in English, or in the vernacular language in ordinary use in the district or State in which the marriage was solemnized, and in such form as the Local Government by which he was licensed may from time to time prescribe, a register-book of all marriages solemnized under this Part in his presence, and shall deposit in the office of the Registrar-General of Births, Deaths, and Marriages for the territories under the administration of the said Local Government in such form and at such intervals as that Government may prescribe, true and duly authenticated extracts from his register-book of all entries made therein since the last of those intervals.

(2) Where the person keeping the register-book was licensed as regards a Native State by the Governor-General in Council, references in sub-section (1) to the Local Government therein mentioned shall be read as references to the Local Government, to whose Registrar-General of Births, Deaths, and Marriages certified copies of entries in registers of births and deaths are for the time being required to be sent under section 24, sub-section (2), of the Births, Deaths, and Marriages Registration Act, 1886.

[This section has been inserted by Act II. of 1891, amending the Christian Marriage Act, 1872.]

Searches in register-book and copies of entries.

63. Every person licensed under this Act to grant certificates of marriage, and keeping a marriage-register-book under section sixty-two, shall, at all reasonable times, allow search to be made in such book, and shall, on payment of the proper fee, give a copy, certified under his hand, of any entry therein.

64. The provisions of section sixty-two and sixty-three, as to the form of the register-book, depositing extracts therefrom, allowing searches thereof, and giving copies of the entries therein, shall, *mutatis mutandis*, apply to the books kept under section thirty-seven.

Books in which marriages of Native Christians under Part I. or III. are registered.

65. This Part of this Act, except so much of sections sixty-two and sixty-three as are referred to in section sixty-four, shall not apply to marriages between Roman Catholics.

Part IV. not to apply to Roman Catholics.

But nothing herein contained shall invalidate any marriage celebrated between Roman Catholics under the provisions of Part V. of Act No. XXV. of 1864, previous to the twenty-third day of February 1865.

Saving of certain marriages.

PART VII.

PENALTIES.

66. Whoever, for the purpose of procuring a marriage or license of marriage, intentionally,—

False oath, declaration, notice, or certificate for procuring marriage.

(*a*) where an oath or declaration is required by this Act, or by any rule or custom of a Church according to the rites and ceremonies of which a marriage is intended to be solemnized, such Church being the Church of England or of Scotland or of Rome, makes a false oath or declaration, or,

(*b*) where a notice or certificate is required by this Act, signs a false notice or certificate,

shall be deemed to have committed the offence punishable under section 193 of the Indian Penal Code with imprisonment of either description for a term which may extend to three years, and, at the discretion of the Court, with fine.

This section has been inserted by Act II. of 1891, amending the Christian Marriage Act 1872.

The maxim *ignorantia juris non excusat* cannot be applied to a declaration, though, in fact, false, made under section 18 of Act XV. of 1872, inasmuch as the declaration required by that section to be made is a declaration as to the belief only of the person making it: and, further, in order to entail the penal consequences provided for by section 66 of the said Act, such false declaration must be made "intentionally." Queen-Empress *vs.* Robinson, I. L. R. 16 All.

Forbidding, by false personation, issue of certificate by Marriage Registrar.

67. Whoever forbids the issue, by a Marriage Registrar, of a certificate, by falsely representing himself to be a person whose consent to the marriage is required by law, knowing or believing such representation to be false, or not having reason to believe it to be true, shall be deemed guilty of the offence described in section two hundred and five of the Indian Penal Code.

Section 205 of the Indian Penal Code says: "Whoever falsely personates another, and in such assumed character makes any admission or statement or confesses judgment or causes any process to be issued or becomes bail or security or does any other act in any suit or crimnial prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Solemnizing marriage without due authority.

68. Whoever, not being authorized by section 5 of this Act to solemnize marriages, solemnizes or professes to solemnize, in the absence of a Marriage Registrar of the district in which the ceremony takes place, a marriage between persons, one or both of whom is or are a Christian or Christians, shall be punished with imprisonment which may extend to ten years, or (in lieu of a sentence of imprisonment for seven years or upwards) with transportation for a term of not less than seven years, and not exceeding ten years,

or, if the offender is an European or American, with penal servitude according to the provisions of Act XXIV. of 1855 (*to substitute penal servitude for the punishment of transportation in respect of European and American convicts*),

and shall be liable to fine.

This section has been inserted by Act II. of 1891, section 6, and modified by Act XII. of 1891, Schedule I.

The accused who was charged with having committed an offence under the Indian Christian Marriage Act, section 68, was acquitted on its appearing that the Christian whose marriage he purported to solemnize was a child of the age of three years. The child had been baptized and her father was a Christian. *Held*, that the child was a person professing the Christian religion within the meaning of section 3 of the Indian Christian Marriage Act, and that the acquittal was wrong. Queen-Empress *vs.* Veeradu, I. L. R., 18 Mad.

In the Indian Christian Marriage Act, section 68, the word "solemnize" is equivalent to the words, "conduct, celebrate, or perform." Therefore, any unauthorised person not being one of the persons being married, who takes part in performing a marriage, that is, in doing any act supposed to be material to constitute the marriage, is liable to be convicted under that section; and a charge of abetment is sustainable against the persons being married. Queen-Empress *vs.* Paul, I. L. R., 20 Mad.

A person who performs a ceremony of marriage according to Hindu form between a Native Christian and a Hindu commits an offence under section 68 of Act XV. of 1872, unless he is authorized to solemnize marriages under section 5 of the Act. Queen-Empress *vs.* Yohan, I. L. R., 17 Mad.

Solemnizing marriage out of proper time, or without witnesses.

69. Whoever knowingly and wilfully solemnizes a marriage between persons, one or both of whom is or are a Christian or Christians, at any time other than between the hours of six in the morning and seven in the evening, or in the absence of at least two credible witnesses other than the person solemnizing the marriage, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Saving of marriages solemnized under special license.

This section does not apply to marriages solemnized under special licenses granted by the Anglican Bishop of the Diocese or by his Commissary, nor to marriages performed between the hours of seven in the evening and six in the morning by a clergyman of the Church of Rome, when he has received the general or special license in that behalf mentioned in section 10.

Nor does this section apply to marriages solemnized by a clergyman of the Church of Scotland according to the rules, rites, ceremonies, and customs of the Church of Scotland.

The last para. about marriages solemnized by clergymen of the Church of Scotland is added by Act II. of 1891, section 7.

70. Any Minister of Religion licensed to solemnize marriages under this Act, who, without a notice in writing, or, when one of the parties to the marriage is a minor, and the required consent of the parents or guardians to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part III., shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Solemnizing, without notice or within fourteen days after notice, marriage with minor.

71. A Marriage Registrar under this Act, who commits any of the following offences:—

Issuing certificate, or marrying, without publication of notice;

[The clause (2) about the expiry of two months from the entering of the notice, &c., has been inserted by Act II. of 1891, section 8.]

(1) knowingly and wilfully issues any certificate for marriage, or solemnizes any marriage, without publishing the notice of such marriage as directed by this Act;

(2) after the expiration of two months after the copy of the notice has been entered as required by section 40 in respect of any marriage, solemnizes such Marriage;

(3) solemnizes, without an order of a competent Court authorizing him to do so, any marriage, when one of the parties is a minor, before the expiration of fourteen days after the receipt of the notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Senior Marriage Registrar of the District if there be more Marriage Registrars of the District than one, and if he himself be not the Senior Marriage Registrar;

Solemnizing marriage with minor within fourteen days without authority of Court, or without sending copy of notice;

(4) issues any certificate the issue of which has been prohibited, as in this Act provided, by any person authorized to prohibit the issue thereof;

Issuing certificate against authorized prohibition;

shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

Issuing certificate after expiry of notice, or, in case of minor, within fourteen days after notice, or against authorized prohibition.

72. Any Marriage Registrar knowingly and wilfully issuing any certificate for marriage after the expiration of "two" months after the notice has been entered by him as aforesaid,

or knowingly and wilfully issuing, without the order of a competent Court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage is a minor, before the expiration of fourteen days after the entry of such notice, or any certificate the issue of which has been forbidden as aforesaid by any person authorized in its behalf,

shall be deemed to have committed an offence under section one hundred and sixty-six of the Indian Penal Code.

The time mentioned in the first para. of this section has been reduced to *two* months by Act II. of 1891, section 8.

Section 166 of the Indian Penal Code says: Whoever being a public servant knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause or knowing it to be likely that he will by such disobedience cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both.

Illustration.

A, being an officer directed by law to take property in execution of a decree pronounced in or by a Court of justice, knowingly disobeys the direction of law with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

Persons authorized to solemnize marriage (other than Clergy of Churches of England, Scotland, or Rome);

73. Whoever, being authorized under this Act to solemnize a marriage,

and not being a Clergyman of the Church of England, solemnizing a marriage after due publication of banns, or under a license from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf,

or, not being a Clergyman of the Church of Scotland, solemnizing a marriage according to the rules, rites, ceremonies, and customs of that Church,

or, not being a Clergyman of the Church of Rome, solemnizing a marriage according to the rites, rules, ceremonies and customs of that Church,

knowingly and wilfully issues any certificate for marriage under this Act, or solemnizes any marriage between such persons as aforesaid, without publishing, or causing to be affixed, the notice of such marriage as directed in Part III. of this Act, or after the expiration of two months after the certificate has been issued by him ;

issuing certificate or marrying without publishing notice, or after expiry of certificate.

or knowingly and wilfully issues any certificate for marriage, or solemnizes a marriage between such persons when one of the persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by post or otherwise, a copy of such notice to the Marriage Registrar, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar of the District ;

Issuing certificate for or solemnizing marriage with minor within fourteen days after notice;

or knowingly and wilfully issues any certificate the issue of which has been forbidden, under this Act, by any person authorised to forbid the issue;

issuing certificate authorizing forbidden :

or knowingly and wilfully solemnizes any marriage forbidden by any person authorised to forbid the same,

solemnizing marriage authorizing forbidden.

shall be punished with imprisonment for a term which may extend to four years, and shall also be liable to fine.

74. Whoever, not being licensed to grant a certificate of marriage under Part VI. of this Act, grants such certificate, intending thereby to make it appear that he is so licensed, shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

Unlicensed person granting certificate pretending to be licensed.

"Whoever, being licensed to grant certificates of marriage under Part VI. of this Act, without just cause refuses, or wilfully neglects or omits, to perform any of the duties imposed upon him by that Part, shall be punished with fine which may extend to one hundred rupees."

[The latter para. of this section has been added by Act II. of 1811, Section 9.]

Destroying or falsifying register-books.

75. Whoever, by himself or another, wilfully destroys or injures any register-book or the counterfoil certificates thereof, or any part thereof, or any authorized extract therefrom,

or falsely makes or counterfeits any part of such register-book or counterfoil certificates,

or wilfully inserts any false entry in any such register-book or counterfoil certificate or authenticated extract,

shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Limitation of prosecutions under Act.

76. The prosecution for every offence punishable under this Act shall be commenced within two years after the offence is committed.

PART VIII.

MISCELLANEOUS.

What matters need not be proved in respect of marriage in accordance with Act.

77. Whenever any marriage has been solemnized in accordance with the provisions of sections four and five, it shall not be void merely on account of any irregularity in respect of any of the following matters, namely:—

(1)—Any statement made in regard to the dwelling of the persons married, or to the consent of any person whose consent to such marriage is required by law:

(2)—The notice of the marriage:

(3)—The certificate or translation thereof:

(4)—The time and place at which the marriage has been solemnized:

(5)—The registration of the marriage.

78. Every person charged with the duty of registering any marriage, who discovers any error in the form or substance of any such entry, may, within one month next after the discovery of such error, in the presence of the persons married, or, in case of their death or absence, in the presence of two other credible witnesses, correct the error by entry in the margin without any alteration of the original entry, and shall sign the marginal entry, and add thereto the date of such correction, and such person shall make the like marginal entry in the certificate thereof.

Corrections of errors.

And every entry made under this section shall be attested by the witnesses in whose presence it was made.

And in case such certificate has been already sent to the Secretary to the Local Government, such persons shall make and send in like manner a separate certificate of the original erroneous entry, and of the marginal correction therein made.

79. Every person solemnizing a marriage under this Act, and hereby required to register the same,

Searches and copies of entries.

and every Marriage Registrar or Secretary to a Local Government having the custody for the time being of any register of marriages, or of any certificate or duplicate or copies of certificate under this Act,

shall, on payment of the proper fees, at all reasonable times, allow searches to be made in such register, or for such certificate or duplicate or copies, and give a copy under his hand of any entry in the same.

80. Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage-register or certificate, or duplicate, required to be kept or delivered under this Act, of any entry of a marriage in such register or of any such certificate or duplicate, shall be received as evidence of the marriage purporting to be so

Certified copy of entry in marriage-register, &c., to be evidence.

entered, or of the facts purporting to be so certified therein, without further proof of such register or certificate or duplicate, or of any entry therein, respectively, or of such copy.

Sending certificates of certain marriages to Secretary of State for India.

81. The Secretary to the Local Government and the officers appointed under section fifty-six shall, at the end of every quarter in each year, select from the certificates of marriages forwarded to them respectively during such quarter, the certificates of the marriages of which the Governor-General in Council may desire that evidence shall be transmitted to England,

and shall send the same certificates, signed by them respectively, to the Secretary to the Government of India in the Home Department, for the purpose of being forwarded to the Secretary of State for India and delivered to the Registrar-General of Births, Deaths, and Marriages:

Provided that, in the case of the Governments of Madras and Bombay, the said certificates shall be forwarded by such Governments respectively directly to the Secretary of State for India.

Local Government to prescribe fees.

82. Fees shall be chargeable under this this Act for—

receiving and publishing notices of marriages;

issuing certificates of marriage by Marriage Registrars, and registering marriages by the same;

entering protests against, or prohibitions of, the issue of marriage certificates by the said Registrars;

searching register-books or certificates or duplicates or copies thereof;

giving copies of entries in the same under sections sixty-three and seventy-nine.

The Local Government shall fix the amount of such fees respectively,

and may from time to time vary or remit them, either generally or in special cases, as to it may seem fit.

83. The Local Government may make rules in regard to the disposal of the fees mentioned in section eighty-two, the supply of register-books, and the preparation and submission of returns of marriages solemnized under this Act.

Power to make rules.

84. The powers conferred on the Local Government by sections eighty-two and eighty-three may, so far as regards Native States, be exercised by the Governor-General in Council.

Power to prescribe fees and rules for Native States.

85. The Local Government may, by notification in the official Gazette, declare who shall, in any place to which this Act applies, be deemed to be the District Judge.

Power to declare who shall be District Judge.

86. The powers and functions given by this Act to the Governor-General in Council may be delegated to, and exercised by, such officers as the Governor-General in Council from time to time appoints in this behalf.

Power to delegate functions under this Act of Governor-General in Council.

And all such powers and functions may be exercised, as regards Native States *situate within or bordering on* the Presidencies of Fort Saint George and Bombay, by the Governors in Council of those Presidencies respectively.

[The words in italics have been substituted for "situate within the local limits of " by Act II. of 1891, section 10.]

87. Nothing in this Act applies to any marriage performed by any Minister, Consul, or Consular Agent between subjects of the State which he represents and according to the laws of such State.

Saving of Consular marriages.

88. Nothing in this Act shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into.

Non-validation of marriages within prohibited degrees.

SCHEDULE I.

(*See Sections* 12 *and* 38.)

NOTICE OF MARRIAGE.

To a Minister [*or* Registrar] of

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

Names.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence.	Church, chapel, or place of worship in which the marriage is to be solemnized.	District in which the other party resides, when the parties dwell in different districts.
James Smith.	*Widower.*	*Carpenter.*	*Of full age.*	16, *Clive Street.*	23 *days.*	*Free Church of Scotland Church, Calcutta.*	
Martha Green.	*Spinster.*	.....	*Minor.*	20, *Hastings Street.*	*More than a month.*		

Witness my hand, this day of *seventy-two.*

(*Signed*) *JAMES SMITH.*

[The *italics* in this schedule are to be filled up, as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

SCHEDULE II.

(See Sections 24 and 50.)

CERTIFICATE OF RECEIPT OF NOTICE.

I,

do hereby certify that, on the day of , notice was duly entered in my Marriage Notice Book of the marriage intended between the parties therein named and described, delivered under the hand of one of the parties (that is to say):—

Names.	Condition.	Rank or profession.	Age.	Dwelling Place.	Length of residence.	Church, chapel, or place of worship in which the marriage is to be solemnized.	District in which the other party resides, when the parties dwell in different districts.
James Smith.	*Widower.*	*Carpenter.*	*Of full age.*	*16, Clive Street.*	*23 days.*	*Free Church of Scotland Church, Calcutta.*	
Martha Green.	*Spinster.*	.....	*Minor.*	*20, Hastings Street.*	*More than a month.*		

and that the declaration required by section seventeen [*or* forty-one] of "The Indian Christian Marriage Act, 1872" has been duly made by the said (*James Smith*).

Date of notice entered.
Dateo f certificate given.

The issue of this certificate has not been prohibited by any person authorized to forbid the issue thereof.

Witness my hand, this day of *seventy-two.*

(*Signed*)

This certificate will be void, unless the marriage is solemnized on or before the day of .

[The *italics* in this schedule are to be filled up, as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

SCHEDULE III.

(See sections 28 and 31.)

FORM OF REGISTER OF MARRIAGES.

Quarterly Returns
of
MARRIAGES
for

The Archdeaconry of ... { *Calcutta.* / *Madras.* / *Bombay.* }

I, ——, Registrar of the Archdeaconry of { *Calcutta,* / *Madras,* / *Bombay,* } do hereby certify that the annexed are correct copies of the originals and Official Quarterly Returns of Marriage within the Archdeaconry of { *Calcutta,* / *Madras,* / *Bombay,* } as made and transmitted to me for the quarter commencing the day of ending the day of in the year of Our Lord.

[*Signature of Registrar.*]

Registrar of the Archdeaconry of { *Calcutta.* / *Madras.* / *Bombay.* }

MARRIAGES solemnized at { *Allahabad.* / *Barrackpore.* / *Bareilly.* / *Calcutta, &c., &c.* }

When Married.			Names of Parties.											
Year.	Month.	Day.	Christian.	Surname.	Age.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and surname.	By banns or license.	Signatures of the parties.	Signatures of two or more witnesses present.	Signature of the person solemnizing the marriage.

SCHEDULE IV.

(*See sections 32 and 54.*)

MARRIAGE REGISTER BOOK.

Number.	When Married.			Names of Parties.		Age.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and surname.
	Day.	Month	Year.	Christian Name.	Surname.					
1				*James* ..	*White* ...	26 *years* ...	*Widower*...	*Carpenter* .	*Agra* ...	*William White.*
				Martha ...	*Duncan* ...	17 *years*	*Spinster* ...	.....	*Agra* ...	*John Duncan.*

Married in the

This marriage was solemnized between us { *James White,* / *Martha Duncan,* } in the presence of us { *John Smith.* / *John Green.* }

CERTIFICATE OF MARRIAGE.

Number.	When Married.			Names of Parties.		Age.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and surname.
	Day.	Month	Year.	Christian name.	Surname.					
1				*James* ...	*White* ...	26 *years* ...	*Widower* ...	*Carpenter* ...	*Agra* ...	*William White.*
				Martha.	*Duncan* ...	17 *years* ...	*Spinster* ...	.....	*Agra* ...	*John Duncan.*

Married in the

This marriage was solemnized between us { *James White,* / *Martha Duncan,* } in the presence of us { *John Smith.* / *John Green.* }

SCHEDULE V.

(*See Section 2.*)

ENACTMENTS REPEALED.

Number and Year.	Title.	Extent of Repeal.
Statute 58. ... ... Geo. 3. Cap. 84.	An Act to remove doubts as to the validity of certain marriages had and solemnized within the British Territories in India	The whole.
Stat. 14 and 15 Vic. Cap. 40.	An Act for marriages in India ...	The whole.
Act No. V of 1852 ...	An Act for giving effect to the provisions of an Act of Parliament passed in the 15th year of the reign of Her present Majesty instituted, an Act for Marriages in India.	So much as has not been repealed.
Act No V of 1865 ...	The Indian Marriage Act, 1865 ...	The whole Act except so far as it relates to the Straits Settlements.
Act XXII of 1866 ...	An Act to extend the Indian Marriage Act, 1865, to the Hyderabad Assigned Districts and the Cantonments of Secunderabad, Trimulgherry and Aurangabad.	The whole.

THE INDIAN DIVORCE ACT.

It is one of the saddest events in one's life to be divorced from a partner for life. It destroys the joys and comforts of home. The children become, practically, orphans, and have to contend with almost all the disadvantages of that condition of life. The fewer such events occur in society the better; would that they never took place. God never meant marriage for dissolution. There are cases, however, in which a divorce would be the lesser evil.

ACT IV. OF 1869.

RECEIVED THE G. G.'s ASSENT ON THE 26TH FEBRUARY 1869.

An Act to amend the law relating to Divorce and Matrimonial Causes in India.

Preamble.

Whereas it is expedient to amend the law relating to the divorce of persons professing the Christian religion, and to confer upon certain Courts jurisdiction in matters matrimonial ;

It is hereby enacted as follows :—

I.—Preliminary.

Short title. Commencement of Act.

1. This Act may be called "The Indian Divorce Act," and shall come into operation on the first day of April 1869.

Extent of Act.

2. This Act shall extend to the whole of British India, and (so far only as regards British subjects within the dominions hereinafter mentioned) to the dominions of Princes and States in India in alliance with her Majesty.

Extent of power to grant relief generally.

Nothing hereinafter contained shall authorize any Court to grant any relief under this Act, except in cases where the petitioner professes the Christian religion, and resides in India at the time of presenting the petition,

and to make decrees of dissolution

or to make decrees of dissolution of marriage except in the following cases : (*a*) where the marriage shall have been solemnized in India ; or (*b*) where the adultery, rape, or unnatural crime complained of shall have been committed in India ; or (*c*) where the husband has, since the solemnization of the marriage, exchanged his profession of Christianity

for the profession of some other form of religion ;

or to make decrees of nullity of marriage except in cases where the marriage has been solemnized in India.

and nullity.

Section 2 of the Indian Limitation Act, 1877, says, "Nothing contained in "sections 2 and 3 or in Parts II and III" (of the Limitation Act) "applies—

"(*a*) to suits under the Divorce Act."

Thus practically the Limitation Act does not apply to suits for divorce.

The petitioner, a European British subject, resident at Secunderabad, in the Deccan, sued for a divorce, alleging against the respondent various acts of adultery committed at Secunderabad :

Held, that the High Court of Bombay had jurisdiction to try the suit under the provisions of the Indian Divorce Act IV, of 1869.

Held, that the petition satisfied the Act by alleging residence of the petitioner in India and the commission of the act of adultery whilst the parties last resided together in India. It was not necessary to show the residence of the respondent.

Thornton *vs.* Thornton, I. L. R., 10 Bom.

Interpretation-clause.

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

(1) "High Court" means, in any Regulation province—the Court there established under the Act of the twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four;

in the territories for the time being subject to the Government of the Lieutenant-Governor of the Punjab—the Chief Court of the Punjab;

in Burma—the Special Court constituted under the Lower Burma Courts Act, 1889,

and in any other Non-Regulation Province and in any place in the dominions of the Princes and States of India in alliance with Her Majesty—the High Court or Chief Court to whose original criminal jurisdiction the petitioner is for the time being subject, or would be subject if he or she were a European British subject of Her Majesty :

In the case of any petition under this Act, "High Court" is that one of the aforesaid Courts within the local limits of whose ordinary appellate jurisdiction, or of whose jurisdiction under this Act, the husband and wife resides or last resided together:

(2) "District Judge" means, in the Regulation Provinces—a Judge of a principal Civil Court of original jurisdiction;

in the Non-Regulation Provinces, other than Sindh and the areas for the time being comprised within the local limits of the ordinary civil jurisdiction of the Recorder of Rangoon and of the civil jurisdiction of the Court of the Judge of the Town of Moulmein—a Commissioner of a Division;

in Sindh—the Judicial Commissioner of that Province;

in the areas aforesaid—the Recorder of Rangoon and the Judge of the Town of Moulmein, respectively;

and in any place in the dominions of the Princes and States aforesaid—such officer as the Governor-General of India in Council shall from time to time appoint in this behalf by notification in the *Gazette of India*, and, in the absence of such officer, the High Court in the exercise of its original jurisdiction under this Act:

(3) "District Court" means in the case of any petition under this Act, the Court of the District Judge within the local limits of whose ordinary jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together:

(4) "Court" means the High Court or the District Court, as the case may be:

(5) "Minor children" means, in the case of sons of native fathers, boys who have not completed the age of sixteen years, and, in the case of daughters of native fathers, girls who have not completed the age of thirteen years: In other cases it means unmarried children who have not completed the age of eighteen years:

(6) "Incestuous adultery" means adultery committed by a husband with a woman with whom, if his wife were dead, he could not lawfully contract marriage by reason of her being within the prohibited degrees of consanguinity (whether natural or legal) or affinity :

(7) "Bigamy with adultery" means adultery with the same woman with whom the bigamy was committed:

(8) "Marriage with another woman" means marriage of any person, being married, to any other person, during the life of the former wife, whether the second marriage shall have taken place within the dominions of Her Majesty or elsewhere:

(9) "Desertion" implies an abandonment against the wish of the person charging it : and

(10) "Property" includes, in the case of a wife, any property to which she is entitled for an estate in remainder or reversion, or as a trustee, executrix, or administratrix ; and the date of the death of the testator or intestate shall be deemed to be the time at which any such wife becomes entitled as executrix or administratrix.

II.—Jurisdiction.

Matrimonial jurisdiction of High Courts to be exercised subject to Act. Exception.

4. The jurisdiction now exercised by the High Courts in respect of divorce *a mensâ et toro*, and in all other causes, suits, and matters matrimonial, shall be exercised by such Courts and by the District Courts subject to the provisions in this Act contained, and not otherwise : except so far as relates to the granting of marriage-licenses, which may be granted as if this Act had not been passed.

The Indian Divorce Act was intended to apply to such marriages as are recognized as marriages by Christians, and not to polygamous contracts such as are the unions known as marriages to the Mahomedan law. Such polygamous contracts are not subject to the jurisdiction of the Courts created by the Indian Divorce Act, 1869. Zabaidast Khan *vs.* His wife, 2 N. W.

The High Court cannot entertain a suit of a matrimonial nature otherwise than as provided by the Indian Divorce Act, and therefore has no jurisdiction to make a decree of nullity on the ground that the marriage was invalid. Gasper *vs.* Gonsalves, 13 B. L. R.

In a suit for dissolution of marriage where at the time of the presentation of the petition the respondent does not reside within the jurisdiction of the Court, the jurisdiction of the Judge and right of the petitioner to petition him will depend on where the parties "last resided together." Wingrove *vs.* Wingrove, 14 W. R.

Enforcement of decrees or orders made heretofore by Supreme or High Court.

5. Any decree or order of the late Supreme Court of Judicature at Calcutta, Madras, or Bombay, sitting on the ecclesiastical side, or of any of the said High Courts sitting in the exercise of their matrimonial jurisdiction, respectively, in any cause or matter matrimonial, may be enforced and dealt with by the said High Courts, respectively, as hereinafter mentioned, in like manner as if such decree or order had been originally made under this Act by the Court so enforcing or dealing with the same.

Pending suits.

6. All suits and proceedings in causes and matters matrimonial, which, when this Act comes into operation, are pending in any High Court, shall be dealt with and decided by such Court, so far as may be, as if they had been originally instituted therein under this Act.

Court to act on principles of English Divorce Court.

7. Subject to the provisions contained in this Act, the High Courts and District Courts shall, in all suits and proceedings hereunder, act and give relief on principles and rules which, in the opinion of the said Courts, are, as nearly as may be, conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief.

The petitioner having (as he believed) on the 12th December 1885, discovered that the respondent had been guilty of adultery, brought her from Secunderabad to Bombay, and sent her to England on the 25th December 1885. On the 26th February 1886 he filed his petition in the High Court of Bombay. On the 26th March 1886 the respondent filed a suit against the petitioner in the High Court of Justice in England for restitution of con-

jugal rights. On motion made on respondent's behalf to stay proceedings in the present suit, until the suit in England should be determined: *Held*, in the circumstances of the case, that a stay of proceedings ought not to be granted. Thornton *vs.* Thornton, I. L. R., 10 Bom.

In a suit for dissolution of marriage by reason of the cruelty and adultery of the respondent, the first charge and the marriage of the parties were held to be established by the production of a previous decree for judicial separation on account of cruelty, and by proof of the identity of the parties. Leslie *vs.* Leslie, I. L. R., 22 Cal.

The petitioner and his wife married according to the rites of the Hindu religion. The wife subsequently left her husband and lived in adultery with another man. Both the husband and wife subsequently became Christians, but the wife continued to live in adultery. The husband sued under Act IV of 1869 for the dissolution of the marriage: *Held*, that having regard to section 7, the marriages contemplated by the Act are those founded on the Christian principle of a union of one man and one woman to the exclusion of others, and that consequently the Act does not contemplate relief in cases where the parties have been married under the rites of the Hindu law, a Hindu marriage not being a monogamous one. Thapita Peter *vs.* Thapita Lakshmi, I. L. R., 17 Mad.

Extraordinary jurisdiction of High Court.

8. The High Court may, whenever it thinks fit, remove and try and determine as a Court of original jurisdiction any suit or proceeding instituted under this Act in the Court of any District Judge within the limits of its jurisdiction under this Act.

Power to transfer suits.

The High Court may also withdraw any such suit or proceeding, and transfer it for a trial or disposal to the Court of any other such District Judge.

Reference to High Court.

9. When any question of law, or usage, having the force of law, arises at any point in the proceedings previous to the hearing of any suit under this Act by a District Court or at any subsequent stage of such suit, or in the execution of the decree therein or order thereon, the Court may, either of its own motion or on

the application of any of the parties, draw up a statement of the case and refer it, with the Court's own opinion thereon, to the decision of the High Court.

If the question has arisen previous to or in the hearing, the District Court may either stay such proceedings, or proceed in the case pending such reference, and pass a decree contingent upon the opinion of the High Court upon it.

If a decree or order has been made, its execution shall be stayed until the receipt of the order of the High Court upon such reference.

III.—Dissolution of Marriage.

When husband may petition for dissolution.

10. Any husband may present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof, been guilty of adultery.

When wife may petition for dissolution.

Any wife may present a petition to the District Court or to the High Court, praying that her marriage may be dissolved, on the ground that, since the solemnization thereof, her husband has exchanged his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman ;

or has been guilty of incestuous adultery,

or of bigamy with adultery,

or of marriage with another woman with adultery,

or of rape, sodomy, or bestiality,

or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *a mensâ et toro*,

or of adultery coupled with desertion, without reasonable excuse, for two years and upwards.

Contents of petition.

Every such petition shall state, as distinctly as the nature of the case permits, the facts on which the claim to have such marriage dissolved is founded.

Adulterer to be co-respondent.

11. Upon any such petition presented by a husband, the petitioner shall make the alleged adulterer a co-respondent to the said petition, unless he is excused from so doing on one of the following grounds, to be allowed by the Court:—

(1.)—That the respondent is leading the life of a prostitute, and that the petitioner knows of no person with whom the adultery has been committed ;

(2.)—That the name of the alleged adulterer is unknown to the petitioner, although he has made due efforts to discover it ;

(3.)—That the alleged adulterer is dead.

Under the Divorce Act IV, of 1869, the addition of a co-respondent is not necessary if the wife has been leading the life of a prostitute, and the petitioner knows of no person with whom adultery has been committed. Where the respondent was living, not a life of promiscuous intercourse with all who sought her, but living with separate persons in succession and professed to be able to attribute her respective children to a father, she was held not to be leading a life of prostitution within the meaning of the Act. Where a petitioner neglected for fourteen years to take any steps to obtain a separation from his wife, whom he knew to be living in adultery, the Court refused to allow the petition to be amended by the addition of co-respondents. Roe *vs.* Roe, 3 B. L. R.

Court to be satisfied of absence of collusion.

12. Upon any such petition for the dissolution of a marriage, the Court shall satisfy itself, so far as it reasonably can, not only as to the facts alleged, but also whether or not the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery, or has condoned the same, and shall also inquire into any counter-charge which may be made against the petitioner.

13. In case the Court, on the evidence in relation to any such petition, is satisfied that the petitioner's case has not been proved, or is not satisfied that the alleged adultery has been committed,

Dismissal of petition.

or finds that the petitioner has, during the marriage, been accessory to, or conniving at, the going through of the said form of marriage or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

then and in any of the said cases the Court shall dismiss the petition.

When a petition is dismissed by a District Court under this section, the petitioner may, nevertheless, present a similar petition to the High Court.

[Subsequently to the institution of a suit for dissolution of marriage and on the same day on which the suit came on for hearing, the petitioner and the respondent each filed petitions setting out that it was agreed between them that from that date the marriage between them should be dissolved: that neither of them should have any claim against the other; that each should marry again at pleasure and prayed that dissolution of the marriage might be granted on these terms, each party bearing his or her own costs: *Held*, that this amounted to collusion within the meaning of section 13 of Act IV of 1869, and that the petition must be dismissed. Christian *vs.* Christian, I. L. R., 11 Cal.]

14. In case the Court is satisfied on the evidence that the case of the petitioner has been proved,

Power to Court to pronounce decree for dissolving marriage.

and does not find that the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

the Court shall pronounce a decree declaring such marriage to be dissolved in the manner and subject to all the provisions and limitations in sections 16 and 17 made and declared:

Provided that the Court shall not be bound to pronounce such decree if it finds that the petitioner has, during the marriage, been guilty of adultery,

or if the petitioner has, in the opinion of the Court, been guilty of unreasonable delay in presenting or prosecuting such petition,

or of cruelty towards the other party to the marriage,

or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse,

or of such wilful neglect or misconduct of or towards the other party as has conduced to the adultery.

Condonation.

No adultery shall be deemed to have been condoned within the meaning of this Act unless where conjugal cohabitation has been resumed or continued.

[The petitioner sued for a divorce on the ground of his wife's adultery. The adultery was admitted, but the respondent proved that her husband had been guilty of various acts of cruelty towards her, which disentitled him to an unconditional divorce, and claimed on this ground a right to a judicial separation with alimony under Section 15 of the Indian Divorce Act. She was at the time of the suit living with the correspondent. *Held*, that the respondent was not entitled to a decree for judicial separation with alimony. The Court has discretion under Section 14 of the Act to refuse a decree for divorce if the petitioner has been guilty of cruelty although the cruelty may have been condoned. Gordon *vs.* Gordon and Saran, 3 B. L. R.

A false charge by a husband against his wife, of adultery, although such charge is made wilfully maliciously and without reasonable or probable cause is not an act amounting at law to cruelty, so as to entitle the wife to a judicial separation. Augustin *vs.* Augustin, I. L. R., 4 All.

When a husband having received reasonably probable information of his wife's adultery, has by continuing cohabitation condoned the offence, subsequent misconduct of the wife tending to, though falling short of, adultery revives the condoned adultery. Pereira *vs.* Pereira and Bounjour, I. L. R., 5 Mad.

A husband separated himself from his wife, who up to the time of his doing so was a virtuous woman, merely because she had run him into debt. He did not write to her or go to see her or make her an allowance proportionate to his income, after he had done so. *Held*, upon a petition by the husband

for dissolution of his marriage on the ground of his wife's adultery such adultery having been committed during such separation, that his conduct towards his wife disqualified him from obtaining the relief sought. Holloway *vs.* Holloway and Campbell, I. L. R., 5 All.

The discretion to be exercised under Section 14 of the Indian Divorce Act must be a regulated discretion. The Court cannot grant or withhold a divorce on the mere footing that the petitioner's adultery is more or less pardonable, or that it has been more or less frequent. There must be special circumstances attending the commission of such adultery or special features placing it in some category capable of distinct statement and recognition in order that the discretion may be fitly exercised in favour of a petitioner. 8 Bom.

After the District Court had passed a decree for dissolution of marriage but before the confirmation of the decree by the High Court, the petitioner in ignorance of the law, married another woman, but he ceased to co-habit with the woman on discovering his mistake. Under the circumstances, the High Court made the decree absolute, holding that under Section 14 of the Indian Divorce Act it had a discretion to do so. Kyte *vs.* Kyte and Cooke, I. L. R., 20 Bom.]

Relief in case of opposition on certain grounds.

15. In any suit instituted for dissolution of marriage, if the respondent opposes the relief sought on the ground, in case of such a suit instituted by husband, of his adultery, cruelty, or desertion without reasonable excuse, or, in case of such a suit instituted by a wife, on the ground of her adultery and cruelty, the Court may in such suit give to the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had presented a petition seeking such relief, and the respondent shall be competent to give evidence of or relating to such cruelty or desertion.

Decrees for dissolution to be *nisi*.

16. Every decree for a dissolution of marriage made by a High Court, not being a confirmation of a decree of a District Court, shall in the first instance, be a decree *nisi*, not to be made absolute till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs.

During that period any person shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not being brought before the Court.

Collusion.

On cause being so shown, the Court shall deal with the case by making the decree absolute, or by reversing the decree *nisi*, or by requiring further inquiry, or otherwise as justice may demand.

The High Court may order the costs of counsel and witnesses, and otherwise arising from such cause being shown, to be paid by the parties or such one or more of them as it thinks fit, including a wife if she have separate property.

Whenever a decree *nisi* has been made, and the petitioner fails, within a reasonable time, to move to have such decree made absolute, the High Court may dismiss the suit.

Held, that under the Divorce Act a third person may shew cause against a decree *nisi* being made absolute, but is not at liberty to institute proceedings, *e.g.* by obtaining a rule. King *vs.* King, I. L. R., 6 Bom.

It is not necessary in order that a decree *nisi* for dissolution of a marriage may be made absolute that the decree should be served upon the respondent. Hicks *vs.* Hicks, I. L. R., 8 Cal.

Confirmation of decree for dissolution by District Judge.

17. Every decree for a dissolution of marriage made by a District Judge shall be subject to confirmation by the High Court.

Cases for confirmation of a decree for dissolution of marriage shall be heard (where the number of the Judges of the High Court is three or upwards) by a Court composed of three such Judges, and in case of difference the opinion of the majority shall prevail, or (where the number of the Judges of the High Court is two) by a Court composed of such two Judges, and in case of difference the opinion of the senior Judge shall prevail.

The High Court, if it think further enquiry or additional evidence to be necessary, may direct such enquiry to be made, or such evidence to be taken.

The result of such enquiry and the additional evidence shall be certified to the High Court by the District Judge, and the High Court shall thereupon make an order confirming the decree for dissolution of marriage, or such other order as to the Court seems fit:

Provided that no decree shall be confirmed under this section till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs.

During the progress of the suit in the Court of the District Judge, any person suspecting that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce, shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to apply to the High Court to remove the suit under section 8, and the High Court shall thereupon, if it think fit, remove such suit and try and determine the same as a Court of original jurisdiction, and the provisions contained in section 16 shall apply to every suit so removed; or it may direct the District Judge to take such steps in respect of the alleged collusion as may be necessary to enable him to make a decree in accordance with the justice of the case.

IV.—Nullity of Marriage.

Petition for decree of nullity.

18. Any husband or wife may present a petition to the District Court or to the High Court, praying that his or her marriage may be declared null and void.

Grounds of decree.

19. Such decree may be made on any of the following grounds:—

(1)—That the respondent was impotent at the time of the marriage and at the time of the institution of the suit;

(2)—That the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;

(3)—That either party was a lunatic or idiot at the time of the marriage;

(4)—That the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force.

Nothing in this section shall affect the jurisdiction of the High Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.

[The prohibited degrees mentioned in section 19 of the Divorce Act do not necessarily mean the degrees prohibited by the law of England. . . . but those prohibited by the customary law to which the parties belong. Lopez *vs.* Lopez, I. L. R., 12 Cal.]

Confirmation of District Judge's decree.

20. Every decree of nullity of marriage made by a District Judge shall be subject to confirmation by the High Court and the provisions of section 17, clauses 1, 2, 3, and 4, shall, *mutatis mutandis*, apply to such decrees.

Children of annulled marriage.

21. Where a marriage is annulled on the ground that a former husband or wife was living, and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, or when a marriage is annulled on the ground of insanity, children begotten before the decree is made shall be specified in the decree, and shall be entitled to succeed, in the same manner as legitimate children, to the estate of the parent who at the time of the marriage was competent to contract.

V.—Judicial Separation.

22. No decree shall hereafter be made for a divorce *a mensâ et toro*, but the husband or wife may obtain a decree of judicial separation on the ground of adultery, or cruelty, or desertion without reasonable excuse for two years or upwards, and such decree shall have the effect of a divorce *a mensâ et toro* under the existing law, and such other legal effect as hereinafter mentioned.

Bar to decree for divorce *a mensâ et toro;* but judicial separation obtainable by husband or wife.

23. Application for judicial separation on any one of the grounds aforesaid may be made by either husband or wife by petition to the District Court or the High Court; and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly.

Application for separation made by petition.

24. In every case of a judicial separation under this Act, the wife shall, from the date of the sentence, and whilst the separation continues, be considered as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her.

Separated wife deemed spinster with respect to after-acquired property.

Such property may be disposed of by her in all respects as an unmarried woman, and on her decease the same shall, in case she dies intestate, go as the same would have gone if her husband had been then dead:

Provided that, if any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

25. In every case of a judicial separation under this Act the wife shall, whilst so separated, be considered as an unmarried woman for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding; and her husband shall not be liable in respect of any contract, act or costs entered into, done, omitted, or incurred by her during the separation:

Separated wife deemed spinster for purposes of contract and suing.

Provided that, where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife and the same is not duly paid by the husband, he shall be liable for necessaries supplied for her use:

Provided also that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

Reversal of Decree of Separation.

26. Any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may, at any time thereafter, present a petition to the Court by which the decree was pronounced, praying for a reversal of such decree, on the ground that it was obtained in his or her absence, and that there was reasonable excuse for the alleged desertion, where desertion was the ground of such decree.

Decree of separation obtained during absence of husband or wife may be reversed.

The Court may, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly; but such reversal shall not prejudice or affect the ights or remedies which any other person would have had, in case it had not been decreed, in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the times of the sentence of separation and of the reversal thereof.

VI.—Protection-orders.

Deserted wife may apply to Court for protection.

27. Any wife to whom the fourth section of the Indian Succession Act, 1865, does not apply, may, when deserted by her husband, present a petition to the District Court or the High Court, at any time after such desertion, for an order to protect any property, which she may have acquired or may acquire and any property of which she may have become possessed or may become possessed after such desertion, against her husband or his creditors, or any person claiming under him.

Court may grant protection-order.

28. The Court, if satisfied of the fact of such desertion, and that the same was without reasonable excuse, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and other property from her husband and all creditors and persons claiming under him. Every such order shall state the time at which the desertion commenced, and shall, as regards all persons dealing with the wife in reliance thereon, be conclusive as to such time.

Discharge or variation of orders.

29. The husband or any creditor of, or person claiming under, him may apply to the Court by which such order was made for the discharge or variation thereof, and the Court, if the desertion has ceased, or if for any other reason it think fit so to do, may discharge or vary the order accordingly.

Liability of husband seizing wife's property after notice of order.

30. If the husband, or any creditor of, or person claiming under, the husband, seizes or continues to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which she is hereby empowered to bring), to return or deliver to her the specific property, and also to pay her a sum equal to double its value.

31. So long as any such order of protection remains in force, the wife shall be and be deemed to have been, during such desertion of her, in the like position in all respects, with regard to property and contracts and suing and being sued, as she would be under this Act if she obtained a decree of judicial separation.

Wife's legal position during continuance of order.

VII.—Restitution of Conjugal Rights.

32. When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, either wife or husband may apply, by petition to the District Court or the High Court, for restitution of conjugal rights ; and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

Petition for restitution of conjugal rights.

33. Nothing shall be pleaded in answer to a petition for restitution of conjugal rights, which would not be ground for a suit for judicial separation or for a decree of nullity of marriage.

Answer to petition.

VIII.—Damages and Costs.

34. Any husband may, either in a petition for dissolution of marriage or for judicial separation, or in a petition to the District Court or the High Court limited to such object only, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner.

Husband may claim damages from adulterer.

Such petition shall be served on the alleged adulterer and the wife, unless the Court dispenses with such service, or directs some other service to be substituted.

The damages to be recovered on any such petition shall be ascertained by the said Court, although the respondents or either of them may not appear.

After the decision has been given, the Court may direct in what manner such damages shall be paid or applied.

Power to order adulterer to pay costs.

35. Whenever in any petition presented by a husband the alleged adulterer has been made a co-respondent, and the adultery has been established, the Court may order the co-respondent to pay the whole or any part of the costs of the proceedings:

Provided that the co-respondent shall not be ordered to pay the petitioner's costs—

(1) if the respondent was, at the time of the adultery, living apart from her husband, and leading the life of a prostitute, or

(2) if the co-respondent had not, at the time of the adultery, reason to believe the respondent to be a married woman.

Power to order litigious intervenor to pay costs.

Whenever any application is made under section 17, the Court, if it thinks that the applicant had no grounds or no sufficient grounds for intervening, may order him to pay the whole or any part of the costs occasioned by the application.

In a suit for a divorce instituted by a husband against his wife, the Court has a discretion to make the husband pay the wife's costs already incurred, and to give security for her future cost. Mayhew *vs.* Mayhew, I. L. R., 19 Bom.

Unless special circumstances are made out, the husband will not be ordered to pay the wife's costs in a suit by the husband for dissolution of the marriage. Thomas *vs.* Thomas, I. L. R., 23 Cal.

In a suit by a husband for a divorce on the ground of his wife's adultery, an application was made that the petitioner should be directed to pay the respondent's costs. The marriage took place after the passing of the Succession Act, 1865, and it was contended that as Section 4 of the Act did not allow the husband to acquire any interest in his wife's property, he would not be able to pay her costs: there was, however, no evidence before the Court that the wife had any separate property, and the application was granted. Broadhead *vs.* Broadhead, 5 B. L. R.

In a suit for judicial separation between persons subject to the Succession Act, the Court will not, unless under exceptional circumstances, order the husband to give security for his wife's costs. The principle upon which the

Divorce Court in England acts in requiring the husband in a suit for judicial separation, to provide for his wife's costs, is based upon the absolute right which the law formerly gave the husband, upon marriage, to the whole of his wife's personal estate and to the income from her real estate, leaving her destitute of all means to conduct her case: but this state of the law has been completely altered in India by Section 4 of the Succession Act, which prevents any person from acquiring or losing rights in respect of property by marriage. Proby *vs.* Proby, I. L. R., 5 Cal.

A wife without property of her own seeking a divorce is entitled to have provision made by her husband for the payment of her costs in the suit. Natall *vs.* Natall, I. L. R., 9 Mad.

IX.—Alimony.

Alimony *pendente lite.*

36. In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection, the wife may present a petition for alimony pending the suit.

Such petition shall be served on the husband; and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the suit as it may deem just:

Provided that alimony pending the suit shall in no case exceed one-fifth of the husband's average net income for the three years next preceding the date of the order, and shall continue, in case of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be.

In an application for alimony, it is sufficient to set out the fact of the marriage in the petition. An affidavit to that effect is unnecessary. Crump *vs.* Crump, 3 B. L. R.

Alimony *pendente lite* will be granted by the Court from the date of the serving of the citations, not from the date of the return. Kelly *vs.* Kelly, 3 B. L. R.

In a suit by the husband for a divorce on the ground of his wife's adultery where it is found that the wife is at the time of presenting the petition living with the co-respondent or living apart from the husband, under such circumstances that she does not pledge his credit, an application by the wife for alimony *pendente lite* will be refused. Gordon *vs.* Gordon, 3 B. L. R.

The Court has jurisdiction to grant alimony *pendente lite* in a suit by the husband for dissolution of marriage on an application made by the wife after a decree *nisi* has been made. Thomas *vs.* Thomas, I. L. R., 23 Cal.]

37. The High Court may, if it think fit, on any decree absolute declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,

Power to order permanent alimony.

and the District Judge may, if he thinks fit, on the confirmation of any decree of his, declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,

order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable; and for that purpose may cause a proper instrument to be executed by all necessary parties.

In every such case the Court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the Court may think reasonable:

Power to order monthly or weekly payments.

Provided that, if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part, as to the Court seems fit.

The Court has power under section 37 of Act IV. of 1869 to order permanent alimony to the wife when a husband obtains a divorce on the ground of her adultery. Kelly *vs.* Kelly, 5 B. L. R.

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

Court may direct payment of alimony to wife or to her trustee.

X.—Settlements.

Power to order settlement of wife's property for benefit of husband and children.

39. Whenever the Court pronounces a decree of dissolution of marriage or judicial separation for adultery of the wife, if it is made to appear to the Court that the wife is entitled to any property, the Court may, if it think fit, order such settlement as it thinks reasonable to be made of such property or any part thereof, for the benefit of the husband, or of the children of the marriage, or of both.

Any instrument executed pursuant to any order of the Court at the time of or after the pronouncing of a decree of dissolution of marriage or judicial separation shall be deemed valid notwithstanding the existence of the disability of coverture at the time of the execution thereof.

Settlement of damages.

The Court may direct that the whole or any part of the damages recovered under section 34 shall be settled for the benefit of the children of the marriage, or as a provision for the maintenance of the wife.

Inquiry into existence of ante-nuptial or post-nuptial settlements.

40. The High Court, after a decree absolute for dissolution of marriage, or a decree of nullity of marriage,

and the District Court, after its decree for dissolution of marriage or of nullity of marriage has been confirmed,

may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders, with reference to the application of the whole or a portion of the property settled, whether for the benefit of the husband or the wife, or of the children (if any) of the marriage, or of both children and parents, as to the Court seems fit:

Provided that the Court shall not make any order for the benefit of the parents or either of them at the expense of the children.

By an ante-nuptial settlement A settled certain immoveable property in Calcutta to which he was absolutely entitled upon himself for life, then upon his intended wife for life, then upon the children of the marriage : but in the event of the intended wife dying in his life-time without leaving issue, then upon himself, his heirs, and assigns for ever. The marriage having been dissolved on the ground of the adultery of the wife before any children were born of the marriage and the wife having subsequently married the correspondent by whom she had children and with whom she continued to live, the Court, under section 40, Act IV. of 1869, declared the settlement void as regarded the wife and directed the trustees to reconvey the property to A for an absolute estate. Wood *vs.* Wood, 14 B. L. R.

XI.—Custody of Children.

Power to make orders as to custody of children in suit for separation.

41. In any suit for obtaining a judicial separation the Court may, from time to time, before making its decree, make such interim-orders, and may make such provisions in the decree as it deems proper with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of such suit, and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the said Court.

When a wife obtains a decree for judicial separation on the ground of her husband's cruelty and adultery and there is nothing to impeach her own conduct, the Court will allow her to have the custody of the children. Macleod *vs.* Macleod, 6 B. L. R.

When the marriage is dissolved on account of the adultery of the wife, she is not entitled to have access to the children of the marriage. Kelly *vs.* Kelly, 5 B. L. R.

Power to make such orders after decree.

42. The Court, after a decree of judicial separation, may, upon application (by petition) for this purpose, make, from time to time, all such orders and provision, with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of the decree, or for placing such children under the protection of the said Court, as might have been made by such decree or by interim-orders in case the proceedings for obtaining such decree were still pending.

Power to make orders as to custody of children in suits for dissolution or nullity.

43. In any suit for obtaining a dissolution of marriage or a decree of nullity of marriage instituted in, or removed to, a High Court, the Court may from time to time, before making its decree absolute or its decree (as the case may be), make such interim-orders, and may make such provision in the decree absolute or decree,

and in any such suit instituted in a District Court, the Court may from time to time, before its decree is confirmed, make such interim-orders, and may make such provision on such confirmation,

as the High Court or District Court (as the case may be) deems proper with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of the suit;

and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the Court.

Power to make such orders after decree or confirmation

44. The High Court, after a decree absolute for dissolution of marriage or a decree of nullity of marriage,

and the District Court, after a decree for dissolution of marriage or of nullity of marriage has been confirmed,

may, upon application by petition for the purpose, make from time to time all such orders and provision, with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the said Court, as might have been made by such decree absolute or decree (as the case may be), or by such interim-orders as aforesaid.

According to Art. 20, Schedule II. of Act. VII of 1870, every petition under the Indian Divorce Act except petitions under section 44 of the same Act and every memorandum of appeal under section 55 of the same Act must bear a twenty rupees stamp.

XII.—Procedure.

45. Subject to the provisions herein contained, all proceedings under this Act between party and party shall be regulated by the Code of Civil Procedure.

Code of Civil Procedure to apply.

46. The forms set forth in the schedule to this Act, with such variation as the circumstances of each case require, may be used for the respective purposes mentioned in such schedule.

Forms of petitions and statements.

47. Every petition under this Act for a decree of dissolution of marriage, or of nullity of marriage, or of judicial separation shall state that there is not any collusion or connivance between the petitioner and the other party to the marriage.

Stamp on petition.

Petition to state absence of collusion.

The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in manner required by law for the verification of plaints, and may at the hearing be referred to as evidence.

Statements to be verified.

48. When the husband or wife is a lunatic or idiot, any suit under this Act (other than a suit for restitution of conjugal rights) may be brought on his or her behalf by the committee or other person entitled to his or her custody.

Suits on behalf of lunatics.

49. Where the petitioner is a minor, he or she shall sue by his or her next friend to be approved by the Court; and no petition presented by a minor under this Act shall be filed until the next friend has undertaken in writing to be answerable for costs.

Suits by minors.

Such undertaking shall be filed in Court, and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit.

Art. 7, Schedule II of Act VII. of 1870, requires an undertaking under section 49 of the Divorce Act to bear eight annas Court Fee Stamp.

Service of petition.

50. Every petition under this Act shall be served on the party to be affected thereby, either within or without British India, in such manner as the High Court by general or special order from time to time directs: Provided that the Court may dispense with such service altogether in case it seems necessary or expedient so to do.

Mode of taking evidence.

51. The witnesses in all proceedings before the Court, where their attendance can be had, shall be examined orally, and any party may offer himself or herself as a witness, and shall be examined, and may be cross-examined and re-examined, like any other witness:

Provided that the parties shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, or by direction of the Court, be subject to be cross-examined by or on behalf of the opposite party orally, and after such cross-examination may be re-examined orally as aforesaid by or on behalf of the party by whom such affidavit was filed.

The co-respondent in a suit by a husband for the dissolution of his marriage with his wife on the ground of adultery, was summoned by the petitioner in such suit as a witness. The Court did not explain to him before he was sworn, that it was not compulsory upon but optional with him to give evidence or not. He did not object to be sworn and replied to the questions asked him by the petitioner's counsel without hesitation, until he was asked whether he had had sexual intercourse with the respondent. He then asked the Court if he was bound to answer such question. The Court told him he was bound to do so and he accordingly answered such question, answering it in the affirmative. Had the Court not told him that he was bound to answer such question he would have declined to answer it. *Held*, under such circumstances, that the co-respondent had not "offered" to give evidence within the meaning of section 51 of the Divorce Act, 1869, and therefore his evidence was not admissible. De Bretton *vs.* De Bretton, I. L. R., 4 All.

52. On any petition presented by a wife, praying that her marriage may be dissolved by reason of her husband having been guilty of adultery, coupled with cruelty, or of adultery coupled with desertion without reasonable excuse, the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

Competence of husband and wife to give evidence as to cruelty or desertion.

The respondent in a suit for divorce under Act IV. of 1869 can be examined as a witness. By section 52 she may be compelled to give evidence in the cases there supposed. In other cases her evidence is admissible if she offers herself as a witness. Kelly *vs.* Kelly, 3 B. L. R.

53. The whole or any part of any proceeding under this Act may be heard, if the Court thinks fit, with close doors.

Power to close doors.

54. The Court may from time to time adjourn the hearing of any petition under this Act, and may require further evidence thereon if it sees fit so to do.

Power to adjourn.

55. All decrees and orders made by the Court in any suit or proceeding under this Act shall be enforced and may be appealed from, in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced and may be appealed from, under the laws, rules, and orders for the time being in force:

Enforcement of and appeals from orders and decrees.

Provided that there shall be no appeal from a decree of a District Judge for dissolution of marriage or of nullity of marriage: nor from the order of the High Court confirming or refusing to confirm such decree:

Provided also that there shall be no appeal on the subject of costs only.

No appeal as to costs.

A husband brought a suit for divorce against his wife on the ground of her adultery: the co-respondent appeared in that suit. The respondent appealed on the ground that on the evidence the Court ought not to have held th adultery as proved. *Held*, that in that appeal the co-respondent was not entitled to be heard in opposition to the appeal. Kelly *vs.* Kelly, 5 B. L. R.

At the hearing of an appeal from a decree dismissing a suit by a wife for dissolution of marriage on the ground of her husband's incestuous adultery with her sister M. and cruelty, the appellant produced certain letters written by the respondent and M. to each other, which showed that a criminal intimacy existed between them. These letters were not written until after the appellant had filed the appeal. *Held*, that such letters were admissible and should be admitted and that having been brought to the Court's notice by the appellant's counsel the Court was bound in the interests of justice to require their production in order to enable it to decide the appeal on its real merits. Morgan *vs.* Morgan, I. L. R., 4 All.

The decree in a suit for dissolution of marriage by the husband having awarded damages against the co-respondent and he not having appealed on the question of damages, it was contended that the High Court could only deal with that part of the decree which dissolved the marriage. *Held*, under the Indian Divorce Act, that the Court had the fullest power to deal with the case according as justice might require, including the award of damages by the Court below. Kyte *vs.* Kyte and Cook, I. L. R. 20 Bom.

56. Any person may appeal to Her Majesty in Council from any decree (other than a decree *nisi*) or order under this Act of a High Court made on appeal or otherwise,

Appeal to Queen in Council.

and from any decree (other than a decree *nisi*) or order made in the exercise of original jurisdiction by Judges of a High Court or of any Division Court from which an appeal shall not lie to the High Court,

when the High Court declares that the case is a fit one for appeal to Her Majesty in Council.

XIII.—Re-marriage.

57. When six months after the date of an order of a High Court confirming the decree for a dissolution of marriage made by a District Judge have expired,

Liberty to parties to marry again.

or when six months after the date of any decree of a High Court dissolving a marriage have expired, and no appeal has been presented against such decree to the High Court in its appellate jurisdiction,

or when any such appeal has been dismissed,

or when in the result of any such appeal any marriage is declared to be dissolved,

but not sooner, it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been dissolved by death:

Provided that no appeal to Her Majesty in Council has been presented against any such order or decree.

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

English clergyman not compelled to solemnize marriages of persons divorced for adultery.

58. No clergyman in Holy Orders of the Church of England shall be compelled to solemnize the marriage of any person whose former marriage has been dissolved on the ground of his or her adultery, or shall be liable to any suit, penalty, or censure for solemnizing or refusing to solemnize the marriage of any such person.

English minister refusing to perform ceremony to permit use of his Church.

59. When any minister of any church or chapel of the said Church refuses to perform such marriage service between any persons who but for such refusal would be entitled to have the same service performed in such Church or Chapel, such minister shall permit any other minister in Holy Orders of the said Church, entitled to officiate within the diocese in which such Church or Chapel is situate, to perform such marriage service in such Church or Chapel.

XIV. Miscellaneous.

Decree for separation or protection-order valid as to persons dealing with wife before reversal.

60. Every decree for judicial separation or order to protect property, obtained by a wife under this Act, shall, until reversed or discharged, be deemed valid, so far as necessary, for the protection of any person dealing with the wife.

No reversal, discharge, or variation of such decree or order shall affect any rights or remedies which any person would otherwise have had in respect of any contracts or acts of the wife entered into or done between the dates of such decree or order, and of the reversal, discharge, or variation thereof.

Indemnity of persons making payment to wife without notice of reversal of decree or protection-order.

All persons who in reliance on any such decree or order make any payment to, or permit any transfer or act to be made or done by, the wife who has obtained the same, shall, notwithstanding such decree or order may then have been reversed, discharged, or varied, or the separation of the wife from her husband may have ceased, or at some time since the making of the decree or order been discontinued, be protected and indemnified as if, at the time of such payment, transfer, or other act, such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued, unless, at the time of the payment, transfer, or other act, such persons had notice of the reversal, discharge, or variation of the decree or order, or of the cessation or discontinuance of the separation.

Bar of suit for criminal conversation.

61. After this Act comes into operation, no person competent to present a petition under sections 2 and 10 shall maintain a suit for criminal conversation with his wife.

Power to make rules.

62. The High Court shall make such rules under this Act as it may from time to time consider expedient, and may from time to time alter and add to the same:

Provided that such rules, alterations, and additions are consistent with the provisions of this Act and the Code of Civil Procedure.

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

SCHEDULE OF FORMS.

No. 1.—Petition by Husband for a dissolution of Marriage with damages against Co-respondent, by reason of adultery.

(*See Sections* 10 *and* 34.)

In the (High) Court of

To the Hon'ble Mr. Justice

[*or* To the Judge of].

The day of 18 .

The petition of *A B* of

Sheweth,

1. That your petitioner was, on the day of One thousand eight hundred and , lawfully married to *C B*, then *C D*, spinster, at

2. That, from his said marriage, your petitioner lived and cohabited with his said wife at and at in , and lastly at , in , and that your petitioner and his said wife have had issue of their said marriage, *five* children, of whom *two* sons only survive, aged respectively *twelve* and *fourteen* years.

3. That during the *three* years immediately preceding, the day of One thousand eight hundred and *X Y* was constantly, with few exceptions, residing in the house of your petitioner at aforesaid, and that, on divers occasions during the said period, the dates of which are unknown to your petitioner, the said *C B* in your petitioner's said house committed adultery with the said *X Y*.

4. That no collusion or connivance exists between me and my said wife for the purpose of obtaining a dissolution of our said marriage or for any other purpose.

Your petitioner, therefore, prays that this (Hon'ble) Court will decree a dissolution of the said marriage, and that the said *X Y* do pay the sum of Rupees 5,000 as damages by reason of his having committed adultery with your petitioner's said wife ; such damages to be paid to your petitioner, or otherwise paid or applied as to this (Hon'ble) Court seems fit.

(Signed) *A. B.*

Form of Verification.

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

——:o:——

No. 2.—Respondent's statement in answer to No. 1.

In the Court of the day of

Between *A B*, petitioner,

C B, respondent, and

X Y, co-respondent.

C B, the respondent, by *D E*, her attorney [*or* vakil], in answer to the petition of *A B*, says that she denies that she has on divers or any occasion committed adultery with *X Y*, as alleged in the third paragraph of the said petition.

Wherefore the respondent prays that this (Hon'ble) Court will reject the said petition.

(Signed) *C. B.*

——:o:——

No. 3.—Co-Respondent's statement in answer to No. 1.

In the (High) Court of

The day of

Between *A B*, petitioner,

C B, respondent, and

X Y, co-respondent.

X Y, the co-respondent, in answer to the petition filed in this cause, saith that he denies that he committed adultery with the said *C B*, as alleged in the said petition.

Wherefore the said *X Y* prays that this (Hon'ble) Court will reject the prayer of the said petitioner, and order him to pay the costs of and incident to the said petition.

(Signed) *X. Y.*

No. 4.—Petition for Decree of Nullity of Marriage.

(*See Section* 18.)

In the (High) Court of

To the Hon'ble Mr. Justice

[*or* To the Judge of].

The day of 18 .

The petition of *A B*, falsely called *A D*,

Sheweth,

1. That on the day of , One thousand eight hundred and , your petitioner, then a spinster, eighteen years of age, was married in fact, though not in law, to *C D*, then a bachelor of about thirty years of age, at [*some place in India*].

2. That from the day of , One thousand eight hundred and , until the month of , one thousand eight hundred and , your petitioner lived and cohabited with the said *C D*, at divers places, and particularly at aforesaid.

3. That the said *C D*, has never consummated the said pretended marriage by carnal copulation.

4. That, at the time of the celebration of your petitioner's said pretended marriage, the said *C D* was, by reason of his impotency or malformation, legally incompetent to enter into the contract of marriage.

That there is no collusion or connivance between her and the said *C D*, with respect to the subject of this suit.

Your petitioner therefore prays that this (Hon'ble) Court will declare that the said marriage is null and void.

(Signed) *A. B.*

Form of Verification: see No. 1.

No. 5.—PETITION BY WIFE FOR JUDICIAL SEPARATION ON THE GROUND OF HER HUSBAND'S ADULTERY.

(*See Section 22.*)

In the (High) Court of

To the Hon'ble Mr. Justice [*or* To the Judge of].

The day of 18 .

The petition of *C B*, of , the wife of *A B*, SHEWETH,

1. That on the day of , One thousand eight hundred and *sixty* , your petitioner, the *C D*, was lawfully married to *A B*, at the Church of , in the

2. That, after her said marriage, your petitioner cohabited with the said *A B*, at and at , and that your petitioner and her said husband have issue living of their said marriage, *three* children, to wit, *&c., &c.**

3. That, on divers occasions in or about the months of *August, September,* and *October,* One thousand eight hundred and *sixty* , the said *A B*, at aforesaid, committed adultery with *E F*, who was then living in the service of the said *A B*, and your petitioner at their said residence aforesaid.

4. That, on divers occasions in the months of *October, November,* and *December,* One thousand eight hundred and *sixty* , the said *A B*, at aforesaid, committed adultery with *G H*, who was then living in the service of the said *A B* and your petitioner at their said residence aforesaid.

5. That no collusion or connivance exists between your petitioner and the said *A B* with respect to the subject of the present suit.

Your petitioner therefore prays that this (Hon'ble) Court will decree a judicial separation to your petitioner from her said husband by reason of his aforesaid adultery.

(Signed) *C. B.*

* State the names and ages of the children.

Form of Verification: see No. 1.

No. 6.—Statement in answer to No. 5.

In the (High) Court of

B against *B*.

The day of

The respondent, *A B*, by *W Y*, his attorney [*or* vakil], saith:—

1. That he denies that he committed adultery with *E F*, as in the third paragraph of the petition alleged.

2. That the petitioner condoned the said adultery with *E F*, if any.

3. That he denies that he committed adultery with *G H*, as in the forth paragraph of the petition alleged.

4. That the petitioner condoned the said adultery with *G H*, if any.

Wherefore this respondent prays that this Court will reject the prayer of the said petition.

(Signed) *A. B.*

——:o:——

No. 7.—Statement in reply to No. 6.

In the (High) Court of

B against *B*.

The day of

The petitioner, *C B*, by her attorney [*or* vakil], says—

1. That she denies that she condoned the said adultery of the respondent with *E F*, as in the second paragraph of the statement in answer alleged.

2. That even if she had condoned the said adultery, the same has been revived by the subsequent adultery of the respondent with *G H*, as set forth in the fourth paragraph of the petition.

(Signed) *C. B.*

No. 8.—Petition for a judicial separation by reason of cruelty.

(*See Section* 22.)

In the (High) Court of

To the Hon'ble Mr. Justice [*or* to the Judge of

The day of 186 .

The petition of *A B* (wife of *C B*) of

Sheweth,

1. That, on the day of , One thousand eight hundred and , your petitioner, then *A D*, spinster, was lawfully married to *C B*, at

2. That from her said marriage, your petitioner lived and cohabited with her said husband at until the day of One thousand eight hundred and , when your petitioner separated from her said husband as hereinafter more particularly mentioned, and that your petitioner and her said husband have had no issue of their said marriage.

3. That, from and shortly after your petitioner's said marriage, the said *C B* habitually conducted himself towards your petitioner with great harshness and cruelty, frequently abusing her in the coarsest and most insulting language, and beating her with his fists, with a cane, or with some other weapon.

4. That, on an evening in or about the month of , One thousand eight hundred and , the said *C B*, in the highway and opposite to the house in which your petitioner and the said *C B* were then residing at aforesaid, endeavoured to knock your petitioner down, and was only prevented from so doing by the interference of *F D*, your petitioner's brother.

5. That subsequently, on the same evening, the said *C B*, in his said house at aforesaid, struck your petitioner with his clenched fist a violent blow on her face.

6. That on one Friday night in the month of , One thousand eight hundred and , the said *C B*, in , without provocation, threw a knife at your petitioner, thereby inflicting a severe wound on her right hand.

7. That on the afternoon of the day of , One thousand eight hundred and , your petitioner, by reason of the great and continued cruelty practised towards her by her said husband, with assistance withdrew from the house of her said husband to the house of her father at : that from and after the said day of One thousand eight hundred and , your petitioner hath lived separate and apart from her said husband, and hath never returned to his house or to cohabitation with him.

8. That there is no collusion or connivance between your petitioner and her said husband with respect to the subject of the present suit.

Your petitioner therefore prays that this (Hon'ble) Court will decree a judicial separation between your petitioner and the said *C B*, and also order that the said *C B* do pay the costs of and incident to these proceedings.

(Signed) *A B.*

Form of Verification : see No. 1.

No. 9.—Statement in answer to No. 8.

In the (High) Court of

The day of

Between *A B*, petitioner, and

C B, respondent.

C B, the respondent, in answer to the petition filed in this cause by *W F*, his attorney [*or* vakil], saith that he denies that he has been guilty of cruelty towards the said *A B*, as alleged in the said petition

(Signed) *C B.*

No. 10.—PETITION FOR REVERSAL OF DECREE OF SEPARATION.

(*See Section* 24.)

In the (High) Court of

To the Hon'ble Mr. Justice [*or* To the Judge of].

The day of 18

The petition of *A B*, of ,

SHEWETH,

1. That your petitioner was, on the day of , lawfully married to

2. That on the day of this (Hon'ble) Court, at the petition of pronounced a decree affecting the petitioner to the effect following, to wit—

[*Here set out the decree.*]

3. That such decree was obtained in the absence of your petitioner, who was then residing at .

[*State facts tending to show that the petitioner did not know of the proceedings; and, further, that had he known he might have offered a sufficient defence.*]

Or

That there was reasonable ground for your petitioner leaving his said wife, for that his said wife

[*Here state any legal grounds justifying the petitioner's separation from his wife.*]

Your petitioner therefore prays that this (Hon'ble) Court will reverse the said decree.

(Signed) *A B.*

Form of Verification: see No. 1.

No. 11.—Petition for Protection-order.

(*See Secton 27.*)

In the (High) Court of .

To the Hon'be Mr. Justice [*or* To the Judge of].

The day of 18 .

The petition of *C B*, of ,

the wife of *A B*,

Sheweth,

That on the day of she was lawfully married to *A B*, at .

That she lived and cohabited with the said *A B*, for years at , and also at , and hath had children, issue of her said marriage, of whom are now living with the applicant, and wholly dependent upon her earnings.

That, on or about , the said *A B*, without any reasonable cause, deserted the applicant, and hath ever since remained separate and apart from her.

That, since the desertion of her said husband, the applicant hath maintained herself by her own industry [*or* on her own property, *as the case may be*], and hath thereby and otherwise acquired certain property consisting of [*here state generally the nature of the property*].

Wherefore she prays an order for the protection of her earnings and property acquired since the said day of , from the said *A B*, and from all creditors and persons claiming under him.

(Signed) *C B*.

NO. 12—PETITION FOR ALIMONY PENDING THE SUIT.

(*See Ssection* 36.)

In the (High) Court of

B against *B*

To the Hon'ble Mr. Justice [*or* To the Judge of].

The day of 186 .

The petition of *C B.*, the lawful wife of *A B.*

SHEWETH,

1. That the said *A B*, has for some years carried on the business of , at , and from such business derives the nett annual income of from Rs. 4,000 to 5,000.

2. That the said *A B* is possessed of plate, furniture, linen, and other effects at his said house aforesaid, all of which he acquired in right of your petitioner as his wife, or purchased with money he acquired through her of the value of Rs. 10,000.

3. That the said *A B* is entitled, under the will of his father, subject to the life-interest of his mother therein, to property of the value of Rs. 5,000 or some other considerable amount.

Your petitioner therefore prays that this (Hon'ble) Court will decree such or sums of money by way of alimony, pending the suit as to this (Hon'ble) Court may seem meet.

(Signed) *C B.*

Form of Verification : see No. 1.

NO. 13.—STATEMENT IN ANSWER TO NO. 12.

In the (High) Court of

B against *B*

A B, of , the above-named respondent, in answer to the petition for alimony, pending the suit, of *C B*, says :—

1. In answer to the first paragraph of the said petition, I say that I have for the last *three* years carried on the business of , at , and that from such business, I have derived a nett annual income of Rs. 900, but less than Rs. 1,000.

2. In answer to the second paragraph of the said petition I say that I am possessed of plate, furniture, linen, and other chattels and effects at my said house aforesaid, of the value of Rs. 7,000, but, as I verily believe, of no larger value.

And I say that a portion of the said plate, furniture, and other chattels and effects of the value of Rs. 1,500, belonged to my said wife before our marriage, but the remaining portions thereof I have since purchased with my own moneys And I say that, save as hereinbefore set forth, I am not possessed of the plate and other effects as alleged in the said paragraph in the said petition, and that I did not acquire the same as in the said petition also mentioned.

3. I admit that I am entitled, under the will of my father, subject to the life-interest of my mother therein, to property of the value of Rs. 5,000, that is to say, I shall be entitled under my said father's will, upon the death of my mother, to a legacy of Rs. 7,000, out of which I shall have to pay to my father's executors the sum of Rs. 2,000, the amount of a debt owing by me to his estate, and upon which debt I am now paying interest at the rate of five per cent. per annum.

4. And in further answer to the said petition, I say that I have no income whatever except that derived from my aforesaid business ; that such income, since my said wife left me, which she did on the day of last, has been considerably diminished, and that such diminution is likely to continue. And I say that, out of my said income, I have to pay the annual sum of Rs. 100 for such interest as aforesaid to my late father's executors, and also to support myself and my two eldest children.

5. And, in further answer to the said petition, I say that when my wife left my dwelling-house on the day of last, she took with her, and has ever since withheld and still withholds from me, plate, watches, and other effects in the second paragraph of this my answer mentioned, of the value of, as I verily believe, Rs. 800 at the least; and I also say that, within five days of her departure from my house as aforesaid, my said wife received bills due to me from certain lodgers of mine, amounting in the aggregate to Rs. , and that she has ever since withheld and still withholds from me the same sum.

(Signed) *A B.*

NO. 14—UNDERTAKING BY MINOR'S NEXT FRIEND TO BE ANSWERABLE FOR RESPONDENT'S COSTS.

(*See Section* 49.)

In the (High) Court of

I, the undersigned *A B*, of , being the next friend of *C D*, who is a minor, and who is desirous of filing a petition in this Court, under the Indian Divorce Act, against *D D*, of , hereby undertake to be responsible for the costs of the said *D D* in such suit, and that, if the said *C D* fail to pay to the said *D D*, when and in such manner as the Court shall order, all such costs of such suit as the Court shall direct him (*or* her) to pay to the said *D D*, I will forthwith pay the same to the proper officer of this Court.

Dated this day of 18 .

(Signed) *A B.*

ACT X. OF 1865.

INDIAN SUCCESSION ACT.

This Act lays down the law about inheritance for the whole of British India. Those who belong to such sections of the population of British India as have special laws of suc-

cession allowed to them by Goverment must claim exemption from this law. The Hindus, the Parsis, the Mahomedans have their special laws of inheritance. Practically this Act is applicable to Europeans domiciled in India and to Indian Christians only. In some cases it has been conceded that conversion to Christianity does not mean a change in the modes of living or in the acquisition of and rights to property. This is an important enactment. We are sorry our space does not permit anything more than the text of the law.

ACT X. OF 1865.

INDIAN SUCCESSION ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 16TH MARCH 1865.

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

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

Preamble.

PART I.

Preliminary.

Short title.

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

Act to constitute law of British India in cases of intestate or testamentary succession.

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

Interpretation clause.

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

Words importing the singular number include the plural; words importing the plural number include the singular; and

words importing the male sex include the female :

"Person" includes any company or association, or body of persons whether incorporated or not :

"Year" and "month" respectively mean a year and month reckoned according to the British calendar :

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

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

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

"British India" means the territories which are or may become vested in Her Majesty or Her Successors by the Statute 21 and 22 Vic., cap. 106 (*an Act for the better Government of India*).

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

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

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

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

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

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

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

And in every part of British India to which this Act shall extend, " Local Government " shall mean the person authorized by law to administer executive Government in such part ; and

" High Court " shall mean the highest Civil Court of Appeal therein, and for the purposes of sections 242, 242A, 246A and 277A, shall include the Court of the Recorder of Rangoon.

Interests and powers not acquired nor lost by marriage.

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

[Section 2 of Married Women's Property Act III of 1874, says:—" The fourth section of the said Indian Succession Act shall not apply and shall be deemed never to have applied to any marriage, one or both of the parties to which professed at the time of the marriage, the Hindu, Muhamedan, Budhist, Sikh or Jain religions."]

PART II.

Of Domicile.

Law regulating succession to deceased person's immoveable and moveable property respectively.

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

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

Illustrations.

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

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

One domicile only affects succession to moveables.

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

Domicile of origin of person of legitimate birth.

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

Illustrations.

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

Domicile of origin of illegitimate child.

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

Continuance of domicile of origin.

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

Acquisition of new domicile.

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

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

Illustrations.

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

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

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

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

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

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

(*g*) A, having come to Calcutta under the circumstances stated in the last preceding illustration, continues to reside there after such political changes having occurred as would enable him to return with safety to Chandernagore, and he intends that the residence in Calcutta shall be permanent. A has acquired a domicile in British India.

Special mode of acquiring domicile in British India.

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

Domicile not acquired by residence as representative of foreign Government, or as part of his family.

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

Continuance of new domicile.

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

Minor's domicile.

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

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

Domicile acquired by woman on marriage.

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

Wife's domicile during marriage.

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

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

Minor's acquisition of new domicile.

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

Lunatic's acquisition of new domicile.

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

Succession to moveable property in British India, in absence of proof of domicile elsewhere.

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

PART III.

OF CONSANGUINITY.

Kindred or consanguinity.

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

Lineal consanguinity.

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

Every generation constitutes a degree, either ascending or descending.

A man's father is related to him in the first degree, and so likewise is his son ; his grandfather and grandson in the second degree ; his great-grandfather and great-grandson in the third.

Collateral consanguinity.

22. Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other.

For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased to the common stock, and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

Persons held for purpose of succession to be similarly related to deceased.

23. For the purpose of succession there is no distinction between those who are related to a person deceased through his father, and those who are related to him through his mother;

nor between those who are related to him by the full blood and those who are related to him by the half blood;

nor between those who were actually born in his lifetime and those who, at the date of his death, were only conceived in the womb, but who have been subsequently born alive.

Mode of computing degrees of kindred.

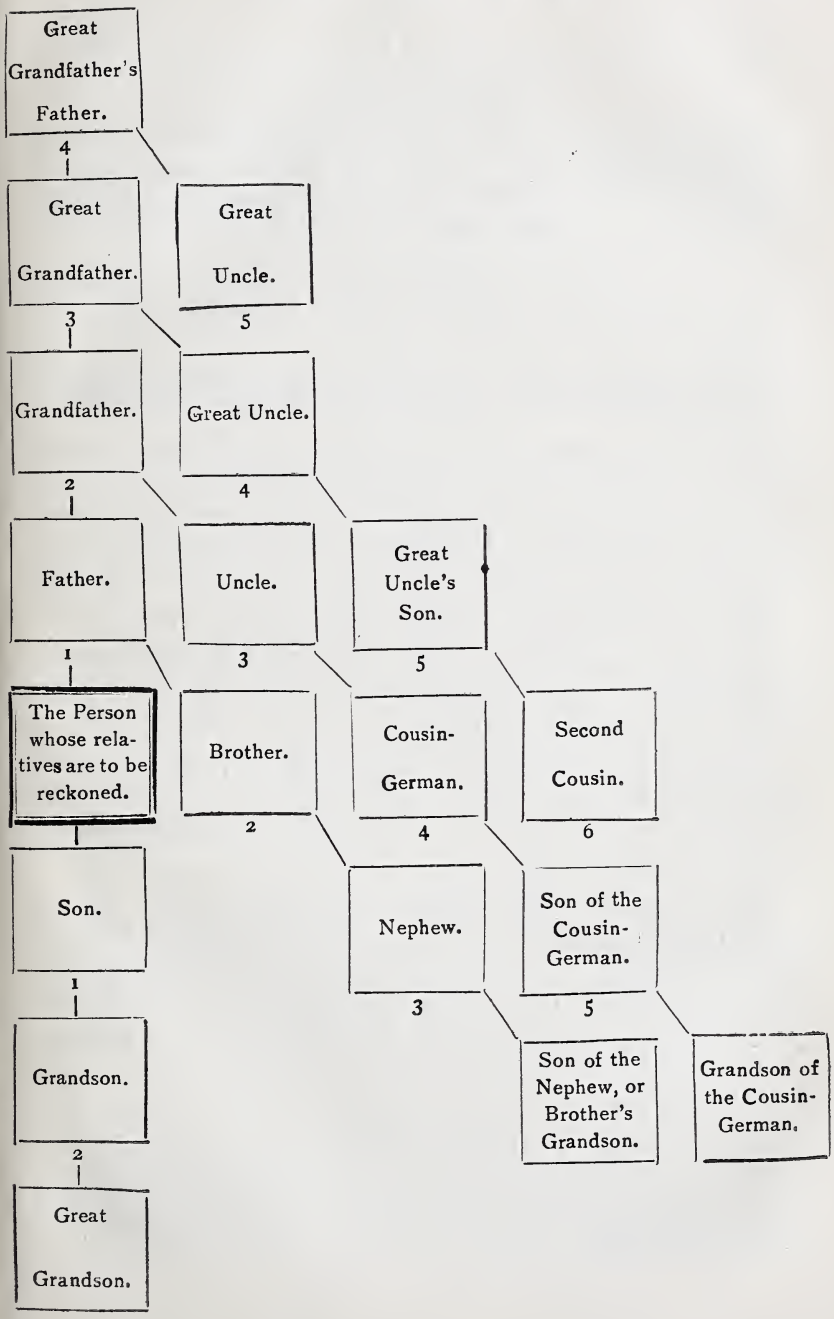
24. In the annexed table of kindred, the degrees are computed as far as the sixth, and are marked by numeral figures.

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

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

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

Table of Consanguinity.



Part IV.

OF INTESTACY.

As to what property deceased considered to have died intestate.

25. A man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

Illustrations.

(*a*) A has left no will. He has died intestate in respect of the whole of his property.

(*b*) A has left a will, whereby he has appointed B his executor; but the will contains no other provisions. A has died intestate in respect of the distribution of his property.

(*c*) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

(*d*) A has bequeathed 1,000*l.* to B, and 1,000*l.* to the eldest son of C, and has made no other bequest; and has died leaving the sum of 2,000*l.* and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of 1,000*l.*

Devolution of such property.

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

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

Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.

27. Where the intestate has left a widow, if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules herein contained.

If he has left no lineal descendants, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are of kindred to him, in the order and according to the rules herein contained.

If he has left none who are of kindred to him, the whole of his property shall belong to his widow.

Where intestate has left no widow, and where he has left no kindred.

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

PART V.

OF THE DISTRIBUTION OF AN INTESTATE'S PROPERTY.

(*a*) *Where he has left lineal descendants.*

Rules of distribution.

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

Where intestate has left child or children only.

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

Where intestate has left no child, but grandchild or grandchildren.

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

Illustrations.

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

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

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

Where intestate has left only great-grandchildren or remoter lineal descendants.

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

Where intestate leaves lineal descendants not all in same degree of kindred to him and those through whom the more remote descent are dead.

33. If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him ; and

one of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease ; and

one of such shares shall be allotted in respect of each of such deceased lineal descendants ; and

the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be ; such surviving child and children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

Illustrations.

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

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

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

(*b*) *Where the Intestate has left no lineal Descendants.*

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

Rules of distribution where intestate has left no lineal descendants.

Where intestate's father living.

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

Where intestate's father dead, but his mother, brothers, and sisters living.

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

Illustration.

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

Where intestate's father dead, and his mother, a brother or sister, and children of any deceased brother or sister, living.

37. If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister, and the child or children of any brother or sister who may have died in the intestate's lifetime, are also living, then the mother and each living brother or

sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Illustration.

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

Where intestate's father dead, and his mother and children of any deceased brother or sister living.

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

Illustrations.

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

Where intestate's father dead, but his mother living, and no brother, nor sister, nor nephew.

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

Where intestate has left neither lineal descendant, nor father, nor mother.

40. Where the intestate has left neither lineal descendant, nor father, nor mother, the property is divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the

shares which their respective parents would have taken if living at the intestate's death.

Where intestate has left neither lineal descendant, nor parent, nor brother, nor sister.

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

Illustrations.

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

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

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

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

Children's advancements not brought into hotch-pot.

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

PART VI.

Of the Effect of Marriage and Marriage-settlements on Property.

Rights of widower and widow respectively.

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

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

Effect of marriage between person domiciled and one not domiciled, in British India.

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

Settlement of minor's property in contemplation of marriage.

PART VII.

Of Wills and Codicils.

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

Persons capable of making wills.

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

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

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

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

Illustrations.

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

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

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

Testamentary guardian.

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

Will obtained by fraud, coercion, or importunity.

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

Illustrations.

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

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

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

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

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

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

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

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

Will may be revoked or altered.

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

PART VIII.

Of the Execution of Unprivileged Wills.

Execution of unprivileged wills.

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

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

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

Third.—The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person ; and each of the witnesses must sign the will in the presence of the testator, but it shall not be

necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

Incorporation of papers by reference.

51. If a testator, in a will or codicil duly attested, refers to any other document than actually written as expressing any part of his intention, such document shall be considered as forming a part of the will or codicil in which it is referred to.

PART IX.

Of Privileged Wills.

Privileged will.

52. Any soldier being employed in an expedition, or engaged in actual warfare, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a will made as is mentioned in section 53.

Such wills are called privileged wills.

Illustrations.

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

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

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

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

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

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

Mode of making, and rules for executing, privileged wills.

53. Privileged wills may be in writing or may be made by word of mouth.

The execution of them shall be governed by the following rules :—

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

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

Third.—If the instrument purporting to be a will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his will, if it be shown that it was written by the testator's directions or that he recognized it as his will.

If it appear on the face of the instrument that the execution of it in the manner intended by him was not completed, the instrument shall not, by reason of that circumstance, be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

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

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

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

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

PART X.

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

54. A will shall not be considered as insufficiently attested by reason of any benefit thereby given, either by way of bequest or by way of appointment, to any person attesting it, or to his or her wife or husband :

Effect of gift to attesting witness.

but the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them.

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

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

Witness not disqualified by interest or by being executor.

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

Revocation of will by testator's marriage.

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

Power of appointment defined.

57. No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged will is hereinbefore required

Revocation of unprivileged will or codicil.

to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Illustrations.

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

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

Effect of obliteration, interlineation, or alteration in unprivileged will.

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

Revocation of privileged will or codicil.

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

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

60. No unprivileged will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived, otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same;

Revival of unprivileged will.

and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

Extent of revival of will or codicil partly revoked, and afterwards wholly revoked.

PART XI.

Of the Construction of Wills.

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

Wording of will.

62. For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a Court must enquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact, a knowledge of which may conduce to the right application of the words which the testator has used.

Enquiries to determine questions as to object or subject of will.

Illustrations.

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

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

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

Misnomer or misdescription of object.

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

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

Illustrations.

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

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

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

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

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

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

When words may be supplied.

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

Illustration.

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

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

Rejection of erroneous particulars in description of subject.

Illustrations.

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

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

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

When part of description may not be rejected as erroneous.

Explanation.—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under section 65 are to be considered as struck out of the will.

Illustrations.

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

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

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

Extrinsic evidence admissible in case of latent ambiguity.

Illustrations.

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

(*b*) A, by his will, leaves to B "his estate called Sultânpur Khurd." It turns out that he had two estates called Sultânpur Khurd. Evidence is admissible to show which estate was intended.

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

Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency.

Illustrations.

(*a*) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his will he bequeaths 1,000 rupees to "his aunt Caroline" and 1,000 rupees to "his cousin Mary," and afterwards bequeaths 2,000 rupees to "his before-mentioned aunt Mary." There is no person to whom the description given in the will can apply, and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty under section 76.

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

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

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

Meaning of clause to be collected from entire will.

Illustrations.

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

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

When words may be understood in restricted sense, and when in sense wider than usual.

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

Illustrations.

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

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

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

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

Which of two possible constructions preferred.

72. No part of a will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

No part rejected if it can be reasonably construed.

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

Interpretation of words repeated in different parts of will.

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

Testator's intention to be effectuated as far as possible.

Illustrations.

The testator, by a will made on his death-bed, bequeathed all his property to C D for life, and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under section 105, but it shall take effect so far as regards the gift to C D.

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

The last of two inconsistent clauses prevails.

Illustrations.

(*a*) The testator, by the first clause of his will, leaves his estate of Ramnagar "to A," and by the last clause of his will, leaves it "to B and not to A." B shall have it.

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

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

Will or bequest void for uncertainty.

Illustration.

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

Words describing subject refer to property answering description at testator's death.

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

Power of appointment executed by general bequest.

78. Unless a contrary intention shall appear by the will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power;

and bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power.

Implied gift to objects of power in default of appointment.

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

Illustrations.

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

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

Bequest to "heir," &c., of particular person without qualifying terms.

Illustrations.

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

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

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

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

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

Bequest to "representatives," &c., of particular person.

Illustration.

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

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

Bequest without words of limitation.

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

Bequest in alternative.

Illustrations.

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

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

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

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

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

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

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

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

Effect of words, describing of class added to bequest to a person.

Illustrations.

(*a*) A bequest is made—

to A and his children,

to A and his children by his present wife,

to A and his heirs,

to A and the heirs of his body,

to A and the heirs male of his body,

to A and the heirs female of his body,

to A and his issue,

to A and his family,

to A and his descendants,

to A and his representatives,

to A and his personal representatives,

to A, his executors, and administrators.

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

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

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

Bequest to class of persons under general description only.

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

Construction of terms.

86. The word "children" in a will applies only to lineal descendants in the first degree ;

the word "grandchildren" applies only to lineal descendants in the second degree of the person whose "children" or "grandchildren" are spoken of ;

the words "nephews" and "nieces" apply only to children of brothers or sisters ;

the words "cousins," or "first cousins," or "cousins-german," apply only to children of brothers or of sisters of the father or mother of the person whose "cousins," or "first cousins," or "cousins-german," are spoken of;

the words "first cousins once removed" apply only to children of cousins-german, or to cousins-german of a parent of the person whose "first cousins once removed" are spoken of;

the words "second cousins" apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose "second cousins" are spoken of;

the words "issue" and "descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of.

Words expressive of collateral relationship apply alike to relatives of full and of half-blood.

All words expressive of relationship apply to a child in the womb who is afterwards born alive.

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

Words expressing relationship denote only legitimate relatives, or, failing such relatives, reputed legitimate.

Illustrations.

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

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

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

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

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

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

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

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

Rules of construction where will purports to make two bequests to same person.

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

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

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

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

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

Explanation.—In the four last rules, the word "will" does not include a codicil.

Illustrations.

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

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

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

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

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

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

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

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

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

Constitution of residuary legatee.

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

Illustrations.

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

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

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

Property to which residuary legatee entitled.

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

Illustration.

A, by his will, bequeaths certain legacies, one of which is void under section 105, and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his will, A purchases a zamindari, which belongs to him at the time of his death. B is entitled to the two legacies and the zamindari as part of the residue.

Time of vesting of legacy in general terms.

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

In what case legacy lapses.

92. If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the will that the testator intended that it should go to some other person.

In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Illustrations.

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

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

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

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

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

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

Legacy does not lapse if one of two joint legatees die before testator.

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

Illustration.

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

Effect of words showing testator's intention to give distinct shares.

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

Illustration.

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

When lapsed share goes as undisposed of.

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

Illustration.

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

When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.

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

Illustration.

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

Bequest to A for benefit of B does not lapse by A's death.

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

Survivorship in case of bequest to described class.

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

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

Illustrations.

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

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

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

(*d*) A sum of money was bequeathed to A for her life, and after her decease to the children of B. At the death of the testator, B had two children living, C and D, and after that event, two children, E and F, were born to B. C and E died in the lifetime of A, C having made a will, E having made no will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E, and one to F.

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

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

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

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

PART XII.

Of Void Bequests.

Bequest to person by particular description who is not in existence at testator's death.

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

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

Illustrations.

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

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

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

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

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

Bequest to person not in existence at testator's death, subject to prior bequest.

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

Illustrations.

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

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

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

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

Rule against perpetuity.

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

Illustrations.

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

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

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

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

Bequest to a class, some of whom may come under rules in sections 100 and 101.

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

Illustrations.

(*a*) A fund is bequeathed to A for life, and after his death to all his children who shall attain the age of 25. A survives the testator, and has some children living at the testator's death. Each child of A's living at the testator's death must attain the age of 25 (if at all) within the limits allowed for a bequest. But A may have children after the testator's decease, some of whom may not attain the age of 25 until more than 18 years have elapsed after the decease of A. The bequest to A's children, therefore, is

inoperative as to any child born after the testator's death ; and, as it is given to all his children as a class, it is not good as to any division of that class, but is wholly void.

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

Illustrations.

Bequest to take effect on failure of bequest void under section 100, 101 and 102.

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

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

(*b*) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, and, if no son of A shall attain that age, to B. A and B survive the testator. The bequest to B is intended to take effect upon failure of the bequest to such of A's sons as shall first attain the age of 25, which bequest is void under section 101. The bequest to be is void.

Effect of direction for accumulation.

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

Exception.—Where the property is immoveable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death ;

and at the end of the year such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made had elasped.

Illustrations.

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

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

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

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

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

Bequest to religious or charitable uses.

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

Illustrations.

A, having a nephew, makes a bequest by a will not executed nor deposited as required—

for the relief of poor people;
for the maintenance of sick soldiers;
for the erection or support of a hospital;
for the education and preferment of orphans;
for the support of scholars;
for the erection or support of a school;

for the building and repairs of a bridge ;
for the making of roads ;
for the erection or support of a church ;
for the repairs of a church ;
for the benefit of ministers of religion ;
for the formation or support of a public garden.
All these bequests are void.

PART XIII.

Of the Vesting of Legacies.

Date of vesting of legacy when payment or possession postponed.

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

And in such cases the legacy is, from the testator's death, said to be vested in interest.

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

Illustrations.

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

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

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

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

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

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

Date of vesting when legacy contingent upon specified uncertain event.

107. A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens.

A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible.

In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

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

Illustrations.

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

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

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

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

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

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

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

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

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

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

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

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

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

Vesting of interest in bequest to such members of a class as shall have attained particular age.

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

Illustration.

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

PART XIV.

Of Onerous Bequests.

Onerous bequest.

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

Illustration.

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

One of two separate and independent bequests to same person may be accepted and other refused.

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

Illustrations.

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

PART XV.

Of Contingent Bequests.

Bequests contingent upon specified uncertain event, no time being mentioned for its occurrence.

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

Illustrations.

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

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

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

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

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

Bequest to such of certain persons as shall be surviving at some period not specified.

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

Illustrations.

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

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

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

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

PART XVI.

OF CONDITIONAL BEQUESTS.

Bequest upon impossible condition.

113. A bequest upon an impossible condition is void.

Illustrations.

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

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

Bequest upon illegal or immoral condition.

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

Illustrations.

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

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

Fulfilment of condition precedent to vesting of legacy.

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

Illustrations.

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

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

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

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

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

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

(*g*) A legacy is bequeathed to A if he executes a certain document within a time sepecified in the will. The document is executed by A without a reasonable time, but not within the time specified in the will. A has not performed the condition, and is not entitled to receive the legacy.

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

Bequest to A, and, on failure of prior bequest, to B.

Illustrations.

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

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

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

When second bequest not to take effect on failure of first.

Illustration.

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

118. A bequest may be made to any person with the condition superadded that, in case a specified uncertain event shall happen, the thing bequeathed shall go to another person; or that, in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person.

Bequest over, conditional upon happening or not happening of specified uncertain event.

In each case the ulterior bequest is subject to the rules contained in sections 107, 108, 109, 110, 111, 112, 113, 114, 116, and 117.

Illustrations.

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

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

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

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

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

Condition must be strictly fulfilled.

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

Illustrations.

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

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

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

Original bequest not affected by invalidity of second.

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

Illustrations.

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

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

(*c*) An estate is bequeathed to A for life, and, if he marries, to the eldest son of B for life. B, at the date of the testator's death, had not had a son. The bequest over is void under section 92, and A is entitled to the estate during his life.

Bequest conditioned that it shall cease to have effect in case specified uncertain event shall happen or not happen.

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

Illustrations.

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

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

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

(*d*) An estate is bequeathed to A, with proviso that, if she becomes a nun,

she shall cease to have any interest in the estate. A becomes a nun. She loses her interest under the will.

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

Such condition must not be invalid under section 107.

122. In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by section 107.

Result of legatee rendering impossible or indefinitely postponing act for which no time specified, and on non-performance of which subject-matter to go over.

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

Illustrations.

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

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

Performance of condition, precedent or subsequent within specified time.

124. Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest

is to cease to have effect, the act must be performed within the time specified unlessthe perf ormance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

Further time in case of fraud.

PART XVII.

Of Bequests with Directions as to Application or Enjoyment.

Direction that funds be employed in particular manner following absolute bequest of same to or for benefit of any person.

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

Illustration.

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

Direction that mode of enjoyment of absolute bequest is to be restricted to secure specified benefit for legatee.

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

Illustrations.

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

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

Bequest of fund for certain purposes, some of which cannot be fulfilled.

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

Illustrations.

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

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

PART XVIII.

Of Bequest to an Executor.

Legatee named as executor cannot take unless he shows intention to act as executor.

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

Illustration.

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

PART XIX.

OF SPECIFIC LEGACIES.

Specific legacy defined.

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

Illustrations.

(*a*) A bequeaths to B—

"the diamond-ring presented to him by C":

"his gold chain":

"a certain bale of wool":

"a certain piece of cloth":

"all his household-goods, which shall be in or about his dwelling house in M Street, in Calcutta, at the time of his death":

"the sum of 1,000 rupees in a certain chest":

"the debt which B owes him":

"all his bills, bonds, and securities belonging to him, lying in his lodgings in Calcutta":

"all his furniture in his house in Calcutta:"

"all his goods on board a certain ship then lying in the river Hughli":

"2,000 rupees which he has in the hands of C":

"the money due to him on the bond of D":

"his mortgage on the Rampur factory":

"one-half of the money owing to him on his mortgage of Rampur factory":

"1,000 rupees, being part of a debt due to him from C":

"his capital stock of 1,000, in East India Stock":

"his promissory notes of the Government of India, for 10,000 rupees, in their four per cent. loan":

"all such sums of money as his executors may, after his death, receive in respect of the debt due to him from the insolvent firm of D and Company":

"all the wine which he may have in his cellar at the time of his death":

"such of his horses as B may select":

"all his shares in the Bank of Bengal":

"all the shares in the Bank of Bengal which he may possess at the time of his death":

"all the money which he has in the 5½ per cent. loan of the Government of India":

"all the Government securities he shall be entitled to at the time of his decease."

Each of these legacies is specific.

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

The legacy is specific.

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

The legacy is specific.

(*d*) A bequeaths to B—

his house in Calcutta:

his zamindari of Rampur:

his taluq of Ramnagar:

his lease of the indigo-factory of Salkya:

an annuity of 500 rupees out of the rents of his zamíndari of W.

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

Each of these bequests is specific.

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

Each of these bequests is specific.

(*f*) A bequeaths a sum of money—

to buy a house in Calcutta for B:

to buy an estate in Zila Faridpur for B:

to buy a diamond-ring for B:

to buy a horse for B :

to be invested in shares in the Bank of Bengal for B :

to be invested in Government securities for B :

A bequeaths to B—

"a diamond-ring":

"a horse":

"10,000 rupees worth of Government securities ":

"an annuity of 500 rupees ":

"2,000 rupees to be paid in cash ":

"so much money as will produce 5,000 rupees four per cent. Government securities ":

These bequests are not specified.

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

No one of these legacies is specific.

Bequest of sum certain where stocks, &c., in which invested are described.

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

Illustrations.

A bequeaths to B—

"10,000 rupees of his funded property":

"10,000 rupees of his property now invested in shares of the East India Railway Company":

"10,000 rupees, at present secured by mortgage of Rampur factory."

No one of these legacies is specific.

Bequest of stock where testators had, at date of will, equal or greater amount of stock of same kind.

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

Illustration.

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

The legacy is not specific.

Bequest of money where not payable until part of testator's property disposed of in certain way.

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

Illustration

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

The legacy is not specific.

When enumerated articles not deemed specifically bequeathed.

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

Retention, in form, of a specific bequest to several persons in succession.

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

Illustrations.

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

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

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

Sale and investment of proceeds of property bequeathed to two or more persons in succession.

Illustration.

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

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

When deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

PART XX.

Of Demonstrative Legacies.

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

Demonstrative legacy defined.

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this, that

where specified property is given to the legatee, the legacy is specific:

where the legacy is directed to be paid out of a specified property, it is demonstrative.

Illustrations.

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

(*b*) A bequeaths to B—

"ten bushels of the corn which shall grow in his field of Greenacre":

"80 chests of the indigo which shall be made at his factory of Rampur":

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

"an annuity of 500 rupees" from his funded property:"

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

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

A bequeaths to B—

"10,000 rupees out of his estate at Ramnagar," or charges it on his estate at Ramnagar:

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

Each of these bequests is demonstrative.

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

Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

Illustration.

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

PART XXI.

Of Ademption of Legacies.

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

Ademption explained.

Illustrations.

(*a*) A bequeaths to B—

"the diamond ring presented to him by C":

"his gold-chain":

"a certain bale of wool":

"certain piece of cloth":

"all his household goods which shall be in or about his dwelling house in M Street in Calcutta, at the time of his death":

A, in his lifetime,

sells or gives away the ring:

converts the chain into a cup:

converts the wool into cloth:

makes the cloth into a garment:

takes another house into which he removes all his goods.

Each of these legacies is adeemed.

(*b*) A bequeaths to B—

"the sum of 1,000 rupees in a certain chest:"

"all the horses in his stable."

At the death of A, no money is found in the chest, and no horses in the stable.

The legacies are adeemed.

(*c*) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned.

The legacy is adeemed.

Non-ademption of demonstrative legacy.

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

Ademption of specific bequest of right to receive something from third party.

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

Illustrations.

(*a*) A bequeaths to B—

"the debt which C owes him":

"2,000 rupees which he has in the hands of D":

"the money due to him on the bond of E":

"his mortgage on the Rámpur factory."

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

All the legacies are adeemed.

(*b*) A bequeaths to B—

"his interest in certain policies of life assurance."

A in his lifetime receives the amount of the policies.

The legacy is adeemed.

Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.

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

Illustration.

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

Ademption *pro tanto* by testator's receipt of portion of entire fund of which portion has been specifically bequeathed.

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

Illustration.

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

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

Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and testator having received portion of that fund, remainder insufficient to pay both legacies.

Illustration.

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

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

Ademption where stock specifically bequeathed does not exist at testator's death.

Illustration.

A bequeaths to B—

"his capital stock of 1,000*l.* in East India Stock."

"his promissory notes of the Government of India for 10,000 rupees in their four per cent. loan."

A sells the stock and the notes.

The legacies are adeemed.

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

Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death.

Illustration.

A bequeaths to B—

"his 10,000 rupees in the 5½ per cent. loan of the Government of India."

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

One-half of the legacy is adeemed.

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

Non-ademption of specific bequest of goods described as connected with certain place, by reason of removal.

Illustrations.

A bequeaths to B "all his household goods which shall be in or about his dwelling house in Calcutta at the time of his death." The goods are removed from the house to save them from fire. A dies before they are brought back.

A bequeaths to B "all is household goods which shall be in or about his dwelling house in Calcutta at the time of his death. During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

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

When removal of thing bequeathed does not constitute ademption.

Illustrations.

A bequeaths to B all the bills, bonds, and other securities for money belonging to him, then lying in his lodgings in Calcutta. At the time of his death, these effects had been removed from his lodgings in Calcutta.

A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only, which he removes with himself to each house. At the time of his death, the furniture is in the house at Chinsurah.

A bequeaths to B all his goods on board a certain ship then lying in the river Hugli. The goods are removed by A's directions to a warehouse in which they remain at the time of A's death.

No one of these legacies is revoked by ademption.

149. Where the thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity which shall be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption ;

When thing bequeathed is a valuable to be received by testator from third person ; and testator himself, or his representative, receives it.

but if he mixes it up with the general mass of his property, the legacy is adeemed.

Illustration.

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

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

Change by operation of law of subject of specific bequest between date of will and testator's death.

Illustration.

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

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

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

The sum of 2,000*l.* is transferred by the trustees into A's own name.

A bequeaths to B the sum of 10,000 rupees in promissory notes of the Government of India, which he has power, under his marriage-settlement, to dispose of by will. Afterwards, in A's lifetime, the fund is converted into Consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed.

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

Change of subject without testator's knowledge.

Illustration.

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

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

Stock specifically bequeathed, lent to third party on condition that it be replaced.

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

Stock specifically bequeathed, sold but replaced, and belonging to testator at his death.

PART XXII.

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

154. Where property specifically bequeathed is subject at the death of the testator to any pledge, lien, or incumbrance, created by the testator himself, or by any person under whom he claims, then, unless a contrary intention appears by the will, the legatee, if he accepts the bequest, shall accept it subject to such pledge or incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance.

Non-liability of executor to exonerate specific legatees.

A contrary intention shall not be inferred from any direction which the will may contain for the testator's debts generally.

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

Illustrations.

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

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

Completion of testator's title to things bequeathed to be at cost of his estate.

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

Illustrations.

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

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

Exoneration of legatee's immoveable property for which land revenue or rent payable periodically.

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

Illustration.

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

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

Exoneration of specific legatee's stock in joint-stock company.

but, if any call or other payment shall, after the testator's death, become due in respect of such stock, the same shall, as between the testator's estate and the legatee, be borne by the legatee if he accept the bequest.

Illustrations.

(*a*) A bequeathed to B his shares in a certain railway. At A's death there was due from him the sum of 5*l.* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s.* in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(*b*) A has agreed to take 50 shares in an intended joint-stock company, and has contracted to pay up 5*l.* in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

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

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

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

PART XXIII.

Of Bequests of Things described in General Terms.

Bequest of thing described in general terms.

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

Illustrations.

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

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

PART XXIV.

Of Bequests of the Interest or Produce of a Fund.

Bequest of interest or produce of fund.

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

Illustrations.

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

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

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

PART XXV.

Of Bequests of Annuities.

Annuity created by will payable for life only, unless contrary intention appears by will.

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

Illustrations.

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

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

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

Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity.

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

Illustrations.

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

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

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

Abatement of annuity.

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

Where gift of annuity and residuary gift, whole annuity to be first satisfied.

PART XXVI.

Of Legacies to Creditors and Portioners.

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

Creditor *primâ facie* entitled ro legacy as well as debt.

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

Child *primâ facie* entitled to legacy as well as portion.

Illustrations.

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

No ademption by subsequent provision for legatee.

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

Illustrations.

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

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

PART XXVII.

Of Election.

Circumstances in which election takes place.

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

Devolution of interest relinquished by owner.

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

Testator's belief as to his ownership immaterial.

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

Illustrations.

(*a*) The farm of Sultanpur was the property of C. A bequeathed it to B, giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultanpur, which is worth 800 rupees. C forfeits his legacy of 1,000 rupees, of

which 800 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

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

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

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

Bequest for man's benefit how regarded for purpose of election.

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

Illustration.

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

Person deriving benefit indirectly not put to election.

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

Illustrations.

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

Person taking in individual capacity under will may in other character elect to take in opposition.

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

Illustration.

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

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

Illustration.

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

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

When acceptance of benefit given by will constitutes election to take under will.

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

Illustrations.

(*a*) A is owner of an estate called Sultanpur Khurd, and has a life interest in another estate called Sultanpur Buzurg, to which, upon his death his son B will be absolutely entitled. The will of A gives the estate of Sultanpur Khurd to B, and the estate of Sultanpur Buzurg to C. B, in ignor-

ance of his own right to the estate of Sultánpur Buzurg, allows C to take possession of it, and enters into possession of the estate of Sultánpur Khurd. B has not confirmed the bequest of Sultánpur Buzurg to C.

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

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

Presumption arising from enjoyment by legatee for two years.

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

Confirmation of bequest by act of legatee.

Illustration.

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

176. If the legatee shall not, within one year after the death of the testator, signify to the testator's representatives his intention to conform or to dissent from the will, the representatives shall, upon the expiration of that period, require him to make his election;

When testator's representatives may call upon legatee to elect.

and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will.

Effect of non-compliance.

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

Postponement of election in case of disability.

PART XXVIII.

Of Gifts in Contemplation of Death.

178. A man may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by will.

Property transferable by gift made in contemplation of death.

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

When gift said to be made in contemplation of death.

Such a gift may be resumed by the giver.

Such gift resumable.

It does not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.

When it fails.

Illustration.

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

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

A dies of the illness during which he delivered these articles.
B is entitled to—

the watch :
the debt secured by C's bond :
the bank-note :
the promissory note of the Government of India :
the bill of exchange :
the money secured by the mortgage-deeds.

(*b*) A being ill, and in expectation of death, delivers to B the key of a trunk, or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk or over the deposited goods, and desire him to keep them in case

of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents, or to A's goods of bulk in the warehouse.

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

PART XXIX.

Of Grant of Probate and Letters of Administration.

Character and property of executor or administrator as such.

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

Administration with copy annexed of authenticated copy of will proved abroad.

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

Probate only to appointed executor.

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

Appointment express or implied.

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

Illustration.

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

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

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

Persons to whom probate cannot be granted.

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

Grant of probate to several executors simultaneously or at different times.

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

Illustrations.

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

Separate probate of codicil discovered after grant of probate.

185. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executor made by the will.

Procedure when different executors appointed by codicil.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Accrual of representation to surviving executor.

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

Right as executor or legatee when established.

187. No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction within the province shall have granted probate of the will under which the right is claimed, or shall have granted letters of administration under section 180.

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

Effect of probate.

189. Letters of administration cannot be granted to any person who is a minor or is of unsound mind,

To whom administration may not be granted.

nor to a married woman without the previous consent of her husband.

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

Right to intestate's property when established.

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

Effect of letters of administration.

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

Acts not validated by administration.

193. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship;

Grant of administration where executor has not renounced.

except that, when one or more of several executors have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Exception.

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

Form and effect of renunciation of executorship.

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

Procedure where executor renounces or fails to accept within time limited.

196. When the deceased has made a will, but has not appointed an executor; or

Grant of administration to universal or residuary legatee.

when he has appointed executor who is legally incapable, or refuses to act, or has died before the testator, or before he has proved the will; or

when the executor dies after having proved the will, but before he has administered all the estate of the deceased;

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

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

Right to administration of representative of deceased residuary legatee.

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

Grant of administration where no executor nor residuary legatee, nor representative of such legatee.

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

Citation before grant of administration to legatee other than universal or residuary.

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

Order in which connections entitled to administer.

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

Administration to widow unless Court see cause to exclude her.

Illustrations.

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

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

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

Association with widow in administration.

203. If there be no widow, or if the Court see cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate:

Administration where no widow, or widow excluded.

Provided that, when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration.

Proviso.

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

Title of kindred to administration.

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

Right of widower to administration of wife's estate.

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

Grant of administration to creditor.

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

Administration where property left in British India.

PART XXX.

Of Limited Grants.

(*a*) *Grants limited in Duration.*

Probate of copy or draft of lost will.

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

Probate of contents of lost or destroyed will.

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

Probate of copy where original exists.

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

Administration until will produced.

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

(*b*) *Grants for the Use and Benefit of others having Right.*

Administration, with will annexed, to attorney of absent executor.

212. When any executor is absent from the province in which application is made, and there is no executor within the province willing to act, letters of administration, with the will annexed, may be granted to the

attorney of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administration, with will annexed, to attorney of absent person, who, if present, would be entitled to administer.

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

Administration to attorney of absent person entitled to administer in case of intestacy.

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

Administration during minority of sole executor or residuary legatee.

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

Adminstration during minority of several executors or residuary legatees.

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

Administration for use and benefit of lunatic *jus habens*

217. If a sole executor, or a sole universal or residuary legatee or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates, be a lunatic, letters of administration, with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate

has been committed by competent authority, or if there be no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the lunatic until he shall become of sound mind.

Adminstration *pendente lite.*

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

(*c*) *For Special Purposes.*

Probate limited to purpose specified in will.

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

Administration with will annexed limited to particular purpose.

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

Administration limited to property in which person has beneficial interest.

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

may be granted to the person beneficially interested in the property, or to some other person on his behalf.

Administration limited to suit.

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

Administration limited to purpose of becoming party to suit to be brought against administrator.

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

Administration limited to collection, and preservation of deceased's property.

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

225. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor shall, at time of the death of such person, be resident out of the province, and it shall appear to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who, under ordinary circumstance, would be entitled to a grant of administration, it shall be lawful for the Judge in his discretion, having regard to consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered, to appoint such person as he shall think fit to be administrator;

Appointment, as administrator, of person other than one who, under ordinary circumstances, would be entitled to administration.

and in every such case letters of administration may be limited or not as the Judge shall think fit.

(d) Grants with Exception.

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

Probate or administration with will annexed, subject to exception.

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

Administration with exception.

(e) Grants of the Rest.

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

Probate or administration of rest.

(*f*) *Grants of Effects Unadministered.*

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

Grant of effects unadministered.

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

Rules as to grants of effects unadministered.

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

Administration when limited grant expired, and still some part of estate unadministered.

(*g*) *Alteration in Grants.*

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

What errors may be rectified by Court.

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

Procedure where codicil discovered after grant of administration with will annexed.

(*h*) *Revocation of Grants.*

Revocation or annulment for just cause.

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

"Just cause."

Explanation.—Just cause is—

1*st*, that the proceedings to obtain the grant were defective in substance ;

2*nd*, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case ;

3*rd*, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently ;

4*th*, that the grant has become useless and inoperative through circumstances ;

5*th*, that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XXXIV. of this Act, or has exhibited under that Part an inventory or account which is untrue in a material respect.

Illustrations.

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

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

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

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

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

(*f*) Since probate was granted a later will has been discovered.

(*g*) Since probate was granted, codicil has been discovered, which revokes or adds to the appointment of executors under the will.

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

PART XXXI.

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

Jurisdiction of District Judge in granting and revoking probates, &c.

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

Power to appoint Delegate of District Judge to deal with con-contentious nases.

235A. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe :

Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

District Judge's powers as to grant of probate and administration.

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

District Judge may order person to produce testamentary papers.

237. The District Judge may order any person to produce and bring into Court any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person ;

and if it be not shown that any such paper or writing in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined respecting the same;

and such person shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending, or in not answering such questions, or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

Proceedings of District Judge's Court in relation to probate and administration.

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

When and how District Judge to interfere for protection of property.

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

When probate or administration may be granted by District Judge.

240. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it shall appear by a petition, verified as hereinafter mentioned of the person applying for the same, that the testator or intestate, as the case may be, at the time of his decease, had a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

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

Disposal of application made to Judge of District in which deceased had no fixed abode.

241A. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned, that the testator or intestate, as the case may be, at the time of his death reside within the jurisdiction of such Delegate.

Probate and letters of administration may be granted by Delegate.

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

Conclusiveness of probate or letters of administration.

Provided that probates and letters of administration granted by a High Court after the first day of April 1875 shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

Effect of unlimited probates, &c., granted by High Court.

242A. Whenever a grant of probate or letters of administration is made by a High Court with such effect as last aforesaid, the Registrar, or such other officer as the High Court making the grant appoints in this behalf,

Transmission of certificate by High Court granting probate, &c., to other Courts.

shall send to each of the other High Courts a certificate to the following effect:—

I, A. B., Registrar [*or as the case may be*] of the High Court of Judicature at [*or as the case may be*], hereby certify that, on the day of 18 , the High Court of Judicature at [*or as the case may be*], granted probate of the will [*or* letters of administration of the estate] of *C. D.*, late of deceased, to *E. F.*, of , and *G. H.*, of and that such probate [*or letters*] has [*or have*] effect over all the property of the deceased throughout the whole of British India;

and such certificate shall be filed by the High Court receiving the same.

This section has been added by Act XIII. of 1875, section 3.

Conclusiveness of application for probate or administration, if properly made and verified.

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

Petition for probate.

244. Application for probate shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will annexed, and stating—

the time of the testator's death,

that the writing annexed is his last will and testament,

that it was duly executed,

the amount of assets which are likely to come to the petitioner's hands, and

that the petitioner is the executor named in the will ;

and in addition to these particulars, when the application is to the District Judge, the petition shall further state that the deceased, at the time of his death, had his fixed place of abode, or had some property, moveable or immoveable, situate within the jurisdiction of the Judge ;

" and when the application is to a District Delegate the petition shall further state that the deceased, at the time of his death, resided within the jurisdiction of such Delegate."

The last para. of this section is added by Act VI. of 1881, section 4.

In what cases translation of will to be annexed to petition.

Verification of translation by person other than Court translator.

245. In cases wherein the will is written in any language other than English, or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed ; or, if the will be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the follwing manner :—

"I (*A. B.*) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

Petition for letters of administration.

246. Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating—

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims, that the deceased left some property within the jurisdiction of the District Judge " or District Delegate," to whom the application is made, and

the amount of assets which are likely to come to the petitioner's hands ;

" and when the application is to a District Delegate, the petition shall further state that the deceased at the time of his death, resided within the jurisdiction of such Delegate."

246A. Every person applying to a High Court for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition in addition to the matters respectively required by section 244 and section 246 of this Act, that to the best of his belief no application has been made to any other High Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid ;

Additional statements in petition, for probate, &c.

or where any such application has been made, the High Court to which it was made, the person or persons by whom it was made and the proceedings (if any) had thereon.

And the High Court, to which any application is made under the proviso to section 242 of this Act, may, if it think fit, reject the same.

Inserted by Act XIII. of 1825.

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

Petition for probate or administration to be signed and verified.

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

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

Verification of petition for probate by one witness to will.

" I (*C. D.*), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present, and saw the said testator affix his

signature (*or* mark) thereto (*as the case may be*), (*or* that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

Punishment for false averment in petition or declaration.

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

District Judge may examine petitioner in person.

250. In all cases it shall be lawful for the District Judge "or District Delegate," if he shall think proper—

to examine the petitioner in person, upon oath or solemn affirmation, and also

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

require further evidence,

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

and issue citations to inspect proceedings.

The citation shall be fixed up in some conspicuous part of the Court-house and also in the office of the Collector of the District and otherwise published or made known in such manner as the Judge "or District Delegate" issuing the same may direct.

Publication of citation.

251. Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate; and, immediately on any caveat being lodged with any District Delegate, he shall send a copy

Caveats against grant of probate or administration.

thereof to the District Judge, and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

252. The caveat shall be to the following effect:—

"Let nothing be done in the matter of the estate of *A.B.*, late of , deceased, who died on the day of at , without notice to *C.D.*, of ."

After entry of caveat, no proceeding taken on petition until after notice to caveator.

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

District Delegate when not to grant probate or administration.

253A. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

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

253B. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Power to transmit statement to District Judge in doubtful cases where no contention.

253C. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

Procedure where there is contention or District Delegate thinks probate or letters of administration should be refused in his Court.

[These three sections have been inserted by Act VI of 1881, sec. 7.]

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

Grant of probate to be under seal of Court.

Form of such grant.

"I, , Judge of the District of , [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*), hereby make known that on the day of , in the year , the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will named, he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same in this Court within six months from the date of this grant, or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date, or within such further time as the Court may from time to time appoint."

Grant of letters of administration to be under seal of Court.

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

Form of such grant.

"I, , Judge of the District of , [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*),] hereby make known that on the day of letters of administration (with *or* without the will annexed, *as the case may be*), of the property and credits of , late of , deceased, were granted to , the father (*or as the case may be*) of the deceased, he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same in

this Court within six months from the date of this grant, or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date, or within such further time as the Court may from time to time appoint."

Administration bond.

256. "Every person to whom any grant of letters of administration is committed" shall give a bond to the Judge of the District Court to ensure for the benefit of the Judge for the time being, with one more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge shall, from time to time, by any general or special order, direct.

Assignment of administration bond.

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

Time for grant of probate and administration.

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

Filing of original wills of which probate or administration, with will annexed, granted.

259. Every District Judge "or District Delegate" shall file and preserve all original wills of which probate or letters of administration, with the will annexed, may be granted by him among the records of his Court, until some

public registry for wills is established : and the local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

Grantee of probate or administration alone to sue, &c., until same revoked.

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

Procedure in contentious cases.

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

Payment to executor or administrator before probate or administration revoked.

262. Where any probate is or letters of administration are revoked, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same ;

Right of such executor or administrator to recoup himself.

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him, which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Appeals from orders of District Judge.

263. Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeals to the High

Court under the rules contained in the Code of Civil Procedure applicable to appeals.

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

Concurrent jurisdiction of High Court.

PART XXXII.

Of Executors of their own Wrong.

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

Executor of his own wrong.

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

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

Illustrations.

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

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

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

266. When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come

Liability of executor of his own wrong.

to his hands, after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration.

PART XXXIII.

Of the Powers of an Executor or Administrator.

In respect of causes of action surviving deceased, and rents due at death.

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

Demands and rights of action of or against deceased survive to and against executor or administrator.

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

Illustrations.

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

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

Power of executor or administrator to dispose of property.

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

Illustrations.

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

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

Purchase by executor or administrator of deceased's property.

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

Powers of several executors or administrators, exerciseable by one.

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

Illustrations.

(*a*) One of several executors has power to release a debt due to the deceased.

(*b*) One has power to surrender a lease.

(*c*) One has power to sell the property of the deceased, moveable or immoveable.

(*d*) One has power to assent to a legacy.

(*e*) One has power to endorse a promissory note payable to the deceased.

(*f*) The will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

Survival of powers on death of one of several executors or administrators.

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

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

Powers of administrator of effects unadministered.

Powers of administrator during minority.

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

275. When probate or letters of administration have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

Powers of married executrix or administratrix.

276. It is the duty of an executor to perform the funeral of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

As to deceased's funeral.

277. (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the grant, or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands, and the manner in which they have been applied or disposed of.

Inventory and account.

(2) The High Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code.

(4) The exhibition of an intentionally false inventory or account under this section, shall be deemed to be an offence under section 193 of that Code.

Inserted by Act VI of 1889 Sec 7.

277A. In all cases where "a grant has been made," of probate or letters of administration intended to have effect throughout the whole of British India, the executor or administrator to the effects of any person dying in British India and leaving property in more than

Inventory to include property in any part of British India.

one province, shall include in the inventory of the effects of the deceased his moveable or immoveable property situate in each of the provinces.

And the value of such property situate in the said provinces, respectively, shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby, wheresoever situate within British India.

Added by Act XIII of 1875.

As to property of, and debts owing to, deceased.

278. The executor or administrator shall collect, with reasonable diligence, the property of the deceased, and the debts that were due to him at the time of his death.

Expenses to be paid before all debts.

279. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and deathbed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid next after such expenses.

280. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and deathbed charges.

Wages for certain services to be next paid, and then other debts.

281. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artisan, or domestic servant, are next to be paid, and then the other debts of the deceased.

Save as aforesaid all debts to be paid equally and rateably.

282. Save as aforesaid, no creditor is to have a right of priority over another, by reason that his debt is secured by an instrument under seal, or on any other account.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assest of the deceased will extend.

Application of moveable property to payment of debts where domicile not in British India.

283. If the domicile of the deceased was not in British India, the application of his moveable property to the payment of his debts is to be regulated by the law of "British India."

Creditor paid in part under section 283 to bring payment into account before sharing in proceeds of immoveable property.

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

Illustration.

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

Debts to be paid before legacies.

285. Debts of every description must be paid before any legecy.

Executor or administrator not bound to pay legacies without indemnity.

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

Abatement of general legacies.

287. If the assets after payment of debts, necessary expenses, and specific legacies, not sufficient to pay all the general legacies in full

the latter shall abate or be diminished in equal proportions;

Exectuor not to pay one legatee in preference to another.

and the executor has not right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

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

Non abatement of specific legacy when assets sufficient to pay debts.

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

Right under demonstrative legacy when assests sufficient to pay debts and necessary expenses.

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

Rateable abatement of specific legacies.

Illustrations.

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

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

Legacies treated as general for purpose of abatement.

PART XXXV.

Of the Executor's Assent to a Legacy.

Assent necessary to complete legatee's title.

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

Illustrations.

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

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

Effect of executor's assent to specific legacy.

293. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property required that it shall be transferred in a particular way.

Nature of assent.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Illustrations.

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

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

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

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

(*e*) A person to whom a specific article has been bequeathed takes possession of it, and retains it without any objection on the part of the executor. His assent may be presumed.

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

Conditional assent.

Illustrations.

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

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

295. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may, in like manner, be expressed or implied.

Assent of executor to his own legacy.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee, and is not referable to his character of executor.

Implied assent.

Illustration.

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

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

Effect of executor's assest.

Illustrations.

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

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

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

Executor when to deliver legacies.

Illustration.

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

PART XXXVI.

Of the Payment and Apportionment of Annuities.

Commencement of annuity when no time fixed by will.

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

When annuity, to be paid quarterly or monthly, first falls due.

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

Date of successive payments when first payment directed to be made within given time, or on day certain.

300. Where there is a direction that the first payment of an annuity shall be made within one month, or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Apportionment where annuitant dies between times of payment.

and if the annuitant should die in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

PART XXXVII.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

Investment of sum bequeathed where legacy, not specific, given for life.

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

Investment of general legacy, to be paid at future time.

302. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Intermediate interest.

The intermediate interest shall form part of the residue of the testator's estate.

Procedure when no fund charged with, or appropriated to, annuity.

303. Where an annuity is given, and no fund is charged with its payment, or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased ; or,

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made, from time to time authorize or direct.

Transfer to residuary legatee of contingent bequest.

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

Investment of residue bequeathed for life, without direction to invest in particular securities.

305. Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease

invested in such securities as the High Court may for the time being regard as good securities, shall be converted into money, and invested in such securities.

Investment of residue bequeathed for life, with direction to invest in specified securities.

306. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Time and manner of conversion and investment.

307. Such conversion and investment as are contemplated by the two last preceding sections shall be made at such times and in such manner as the executor shall, in his discretion, think fit;

Interest payable until investment.

and until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund, when so invested, shall receive interest at the rate of four per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

308. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no discretion in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom or by whose District Delegate the probate was, or letters of administration with the will annexed were, granted to the account of the legatee, unless the legatee be a ward of the Court of Wards;

and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account, and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid ;

and such money, when paid in, shall be invested in the purchase of Government securities which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit as the Judge or the Court of Wards, as the case may be, may direct.

PART XXXVIII.

Of the Produce and Interest of Legacies.

Legatee's title to produce of specific legacy.

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

Exception.—A specific bequest, contingent in its terms does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the estator's estate.

Illustrations.

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

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

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

Residuary legatee's title to produce of residuary fund.

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

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

Illustrations.

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

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

Interest when no time fixed for payment of general legacy.

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

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

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

(3) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

Interest when time fixed.

312. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.

The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor,

the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance.

Rate of interest.

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

No interest on arrears of annuity within first year after testator's death.

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

Interest on sum to be invested to produce annuity.

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

PART XXXIX.

Of the Refunding of Legacies.

Refund of legacy paid under Judge's orders.

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

No refund if paid voluntarily.

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

Refund when legacy becomes due on performance of condition within further time allowed under Section 124.

318. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets, in such case, if further time has been allowed under Section 124 for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

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

When each legatee compellable to refund in proportion.

320. Where an executor or administrator has given such notices as would have been given by the High Court in an administration-suit for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he shall not have had notice at the time of such distribution.

Distribution of assets.

But nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may follow assets.

321. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

Within what period creditor may call upon legatee to refund.

322. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to

When legatee not satisfied, or compelled to refund under section 321, cannot oblige one paid in full to refund.

him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When unsatisfied legatee must first proceed against executor, if solvent.

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

Limit of refunding of one legatee to another.

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

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and, if properly administered, would give 200 rupees to B. 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

325. The refunding shall, in all cases, be without interest.

Residue after usual payments to be paid to residuary legatee.

326. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Transfer of assets from British India to executor or administrator in country of domicile for distribution.

326A. Where a person not having his domicile in British India has died, leaving assets both in British India and in the country in which he had his domicile at the time of his death, and there have been a grant of probate or letters of administration in British India with respect to the assets there and a grant of

administration in the country of domicile with respect to the assets in that country, the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 320, and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

Inserted by Act II. of 1890.

PART XL.

Of the Liability of an Executor or Administrator for Devastation.

Liability of executor or administrator for devastation.

327. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(*a*) The executor pays out of the estate an unfounded claim. He is liable to make good the loss.

(*b*) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss.

(*c*) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

For neglect to get in any part of property.

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

Illustrations.

(*a*) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount.

(*b*) The executor neglects to sue for a debt till the debtor is liable to plead the Act for the limitation of suits, and debt is thereby lost to the estate. The executor is liable to make good the amount.

PART XLI.

MISCELLANEOUS.

329. [*Repealed by Act VII. of* 1870.]

330. [*Repealed by Act XXIV of* 1867.]

331. The provisions of this Act shall not apply to intestate or testamentary succession to the property of any Hindu, Muhammadan, or Buddhist, nor shall they apply to any will made, or any intestacy occurring, before the first day of January 1866.

Succession to property of Hindus, &c., and certain wills, intestacies, and marriages not affected.

Section 4 shall not apply to any marriage contracted before the same day.

332. The Governor-General of India in Council shall, from time to time, have power, by an order either retrospectively from the passing of this Act, or prospectively, to exempt, from the operation of the whole or any part of this Act, the members of any race, sect, or tribe in British India, or any part of such race, sect or tribe, to whom he may consider it impossible or inexpedient to apply the provisions of this Act, or of the part of the Act mentioned in the order.

Power of Governor-General to exempt any race, sect, or tribe in British India from operation of Act.

The Governor-General of India in Council shall also have power, from time to time, to revoke such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations made under this section shall be published in the *Gazette of India*.

Surrender of revoked probate or letters of administration.

333. When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

If such person wilfully and without reasonable cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment of either description for a term which may extend to three months, or with both.

Added by Act VI. of 1889.

APPENDIX.

It can be gathered from the foregoing pages that the Indian Christian community numbers about 772,055 souls. It is spread over the length and breadth of this great peninsula. There is hardly an important town in India where there are no Christians; some towns have a larger body of Indian Christians than others, and villages are the places where the common people have heard gladly the tidings of salvation. Although the figures given above are not the result of a complete and accurate search, which can be accomplished only by an authoritative census, they understate the facts rather than overstate them.

This community has not been always as large as it is now. It has been growing and developing. True to the description in the parable of the mustard seed, Christianity has grown in this country from a small beginning. It has met with and overcome opposition and difficulties of numerous kinds: it has steadily, if in some cases slowly, grown in power, usefulness, and blessedness. Like the sources of a large river, the beginnings of Christianity in India have been more or less shrouded in obscurity. Very soon, however, this river of life became visible, and its benefits to the country around appreciable. It has grown even during the last ten years from about 559,651 to more than 772,055.

This is an evidence that the Christian community is growing and will yet grow. Nothing can grow which has no life in it: Christianity would have remained where it was, or even diminished, had it been a lifeless institution, forced upon India by external and foreign strength; but numerical growth is not the only mark of life in Christianity.

It is sometimes asserted that Christian Missions in India are a failure because they do not number among their adherents any but the lowest of the population, or the

menials employed in the houses of Europeans living in India. Even if Christian Missions did nothing more than this, they could not be a failure. It is not a small mercy for those Europeans who sojourn in India to have the menials, with whom they come in constant and immediate contact, who have more or less the care of their children, and who are to a certain extent a medium between the Europeans and the other people of this country, converted to Christianity, from which flow blessings of life. In Christ there is neither circumcision nor uncircumcision, no free man and no bond man. But the Indian Christian community does not consist of menials alone. From the information contained in Part I of this book, it will be seen that there are in India more than—

1,010	Protestant	Indian	Christian ordained ministers.
590	,,	,,	,, Medical men.
1,098	,,	,,	Christians in Government Service.
646	,,	,,	Christian authors and editors.
354	,,	,,	,, traders.
106	,,	,,	Christians who have visited foreign countries.
92	,,	,,	Christian lawyers.
15	,,	,,	,, civil Engineers.

It would appear surprising that there are no less than 39,060 Indian Christians who live by agriculture.

In these calculations many traders whose income is small have not been counted; nor have such Government servants been named as hold very humble positions. Of mechanical engineers there is a large class having a strong proportion of those who work as joiners and fitters in workshops and factories. The number of those who have visited foreign countries does not include who have accompanied Europeans as their domestic servants. Besides there certainly are many persons in respectable positions of life about whom no definite information was obtained for the compilation of this book.

It would be interesting to note that there are about 391,166 Indian Christian pupils in schools and colleges. The youth is the father of the man. Those young boys and girls who are now studying with a view to fit themselves up for life give fair promise of holding respectable positions hereafter. Let us wait a few years to see how many more lawyers, physicians and ministers will rise from the rank and file of this legion of students to add strength to the community to which they belong.

At present Indian Christians are to be found in almost all places of public responsibility and usefulness. There are Indian Christian lawyers, judges, magistrates, engineers, doctors, members of legislative councils, professors, editors, principals and teachers of schools, contractors, landlords, municipal commissioners, and many other positions of trust and respect are held by them. It is leaven working in a dough. It may not be very long before the whole population of India is thoroughly leavened with the wholesome and life-giving influence of Christianity.

The Indian Christian community is one of the most loyal sections of her Majesty's subjects. It has come into existence and grown under her benign rule. It has enjoyed the protection of her just government, which tolerates freedom in religious matters. It is taught by its religion to be amenable to the power under which its members are kept by Providence. The Indian Christian community has never rebelled against political power, in many instances they have suffered injustice and wrong rather than taken the law in their own hands. The British Government will always find in this community obedient, useful and helpful subjects.

Christianity did not come to India with the sword in the one hand and the Bible in the other. It has come noiselessly like the gentle dew of the morning. It has fallen on unfavourable soils in many cases, like the seeds in the parable of the sower, but it has grown more than a hundredfold ; in fact, it has grown more prolific under opposition. Our

Lord only commanded the preaching of the Gospel. It has been preached, and its preaching has been blessed in the conversion of countless souls in India. There are at present 70 different missions in India; with an extremely small exception they are all independent of State support. They are sent and supported by societies commanding no political power. They have been organized in foreign lands by those who have received and enjoyed the blessings of salvation through Jesus Christ, they have been carried on by them at no small sacrifice of comfort and money. These Missions have occupied nearly the whole of this country. There are 2,797 foreign Missionaries in the field, with about 33,000 Indian agents and helpers. They preach, establish schools and colleges, organize and confirm churches, publish books and periodicals, give lectures and addresses, visit the zenanas of the non-Christians, help the needy, heal the sick, and distribute the great gifts of God's kingdom freely in our land. If the West once owed to the East, the West is certainly repaying the debt of blessings with redoubled usury now.

Those American and European Christians who have sent out to India their money and men and women at a great sacrifice will surely feel thankful to God for crowning all their efforts for the conversion of the host of Indian souls. Freely they received, freely they gave, and the Lord has blessed their services in the salvation of thousands upon thousands. There is joy in heaven over the return of a single lost sinner. How much joy will there be felt in the holy abode over the conversion of as many in India as have been led through the instrumentality of Christian Missions to see their lost condition and to come to Christ, in Whom alone there is remission of sins, and salvation? Can a better return be expected from any other investment? If some people in the West have wondered why any fruits were not appearing as fast as they wished to see them, let them learn from the figures and statements in this little volume to count no delay. One day with the Lord is like a thousand years,

and a thousand years like one day. India has had systems of religious thought: it has given religion to other countries: it is very proud of its own: it has held to its beliefs most tenaciously: the fetters of a heavy caste system hold its millions under severe bondage: but none is mightier than the Lord. The old edifice is undermined, and is sure to fall to the ground some day. Conversions in India do not take place as rapidly as they might do among people who have had no religion before. But truth will conquer, and is conquering, in India.

Although the seventy Missions now labouring in India come from different countries and denominations, they are one in Christ. Although they work in different districts they have a common object. Although their modes of operating are different, they strive for one aim. They all love the same Master, and are given the care of his sheep and lambs. They have a community of interest. What is a gain to one Mission is a gain to the others; what is a loss to one society is a loss to the others. It is one of the objects of this book to furnish the means for one body of workers to sympathize with another, to learn from another and to praise the Lord for His great mercies with another. One soweth, another watereth, but the Lord causes to grow. All praise is His.

It will be seen from the foregoing information that in large cities more than one body of Christians are working for the spread of the Kingdom of Christ. But many places are large enough to give scope to the activities of several Missions. Their work is often of various kinds and for different sections of the population. If carried on in right spirit and proper ways, one Mission is likely to be very helpful to another in the same place. There are, for instance, in Ahmednagar, Deccan, among other Missions, the American Mission and the Christian Literature Society. The latter body has a large Christian School for boys. These boys are trained to be school masters. They are supported partially through their course by the American Missionaries, who send them

there to be educated. On graduation they are sent out to different villages in the charge of the American Mission to open or conduct primary schools. If one was not told that these two bodies were distinct from each other he is sure to suppose from the unison in which they work that there was but one Mission or Society doing all this grand work. The work of the Tract and Book Society and of the Bible Society can in most cases be done in places occupied by other societies, and prove a help to them. Such is, to a certain extent, also the work of Zenana Missions, Medical Missions, and other agencies of a similar nature.

But there are many districts yet which have not been reached by Christian Missions. New Missions will find large fields for usefulness in those parts of India where the light of the Gospel has not yet shone. Those Mission which can afford to enlarge their work will do well to extend their operations to such places.

It might seem out of place in a book about Indian Christians to write about foreign Missions, but Missions are so connected at present with the Indian Christian population of this country that in talking about the one, one cannot help talking about the other. Foreign Missions brought Christianity into our land. They have worked for the Salvation of the Indian people: they are still working. Foreign Missions are the soil on which the Indian Christian community has grown. Foreign Missions are the parent, the Indian Christian community the offspring. But Foreign Missions cannot be expected to do everything for the conversion of India; they cannot be expected to do it always. Children should not remain children all their lives. No teacher is perfect whose students need to be taught all their lives. It seems to be the rule in God's economy that a father should so bring up his children that they should become fathers in future and bring up their children. A teacher should so educate his pupils that they might be able to educate others. Each torch when once lighted should be able to light other torches.

There are at present, as remarked before, about 33,000, Indian Christian agents working in connection with Missions. This fact shows that Missions need their help and that Indian Christians can help in the great work. Can the Indian Christians do the work when foreign Missions are withdrawn? Have foreign Missions so taught their agents as to enable them to do their work independently of their support and care? How can this be accomplished? A few suggestions may be offered for consideration.

Such persons as are capable of becoming leaders may be chosen from the agents. They may be allowed more acquaintance with the plans and rules of working adopted by the Mission with which they are connected. Some few of them may be given charge of a small portion each of the field under the guidance of a Missionary. They should be taught and helped.

Education and independence might be begun in churches. Church militant is the proper source of Missions. Each church in connection with a Mission should be taught to have its own Mission. Each member of the church should be taught to give to do something towards some aggressive work started and carried on by the Church. The Church as a whole should be taught to plan for, organize, and maintain some Missionary effort.

As many Indian Christians as can follow some means of livelihood, independent of Mission service, should be encouraged to do so. At the same time they should be taught the duty of carrying the news of salvation to others.

The Church in each Mission station may become in due course of time able to pay for the Mission work in the Station and even help to carry it on in other places.

India is a country of agriculturists. The Aryans were tillers of land, and their descendants of the present day are also tillers of land to a large extent. The number of Indian

Christians who live by agriculture is very large. Except perhaps in large cities most churches in India have a strong membership from this class of persons. Many of them have their own fields, and most others know much about, and can work well in fields. Take the case of an ordinary village church with perhaps 50 members—men and women. In such a village there would probably be a teacher and a preacher. The Church would be expected under the present condition of things to pay a part of the salary of an itinerant pastor, who has charge of two or more churches. The teacher and the preacher would be paid by the Mission. Suppose a field covering five acres of land, watered by the supply from a well, was purchased in the same way as a school-house or a preacher's quarters are built. Suppose each member of the church was to take into the field a certain number of baskets of manure from his yard and to give a fixed number of days' labour to the cultivation of the field. Those who have bullocks and ploughs would plough part of the field or draw water from the well. If the village was at some distance from a large town, sugar-cane might be grown and jaughery sold in the town. If the village was near a large town, vegetables and fruits of different kinds could be grown and sold. A field of the size mentioned above, if properly cultivated, has been found on experiment to yield an income of from Rs. 600 to Rs. 700 a year. This sum can pay the salaries of all the agents in the place. The work in the field should be arranged for and regulated by a small committee of the church. All the work, or as much as is possible, should be voluntary and unpaid. It would interest the Christians in the place in aggressive work, and in a short time enable them to do for other villages what the Mission has done for them. This experiment is being tried in some places in the country. In two places fields have been hired, because the churches had no money to buy them. In another place a church is considering the idea of planting a mango grove. Such a project may not be paying for some years, but is likely afterwards to yield handsomely without much labour.

The above plan may not be very successful in large towns where mission work is carried on, on a large scale. In such places other industries could be started and managed by churches on the principle of voluntary labour. Some regularly paid agents would have to be employed, but work can be found for such Christians as stand in need of it and the gains used to support independent indigenous aggressive work. Cabinet-making, cloth-weaving, brick-making and a variety of such industries can be carried on at a profit which can be used for Christian work.

Another way tried in some places is to form a committee of influential trustworthy men of means. This committee should find out what all such members of a local Christian community as have no regular work can do. It should find them employment by recommending them to persons and bodies in a position to give them work as clerks, agents, workmen, labourers, &c., according to their fitness. If the committee is successful and sufficiently active, there should not be found a single idle soul that can do some honest work. In such a condition of things every man, woman and child is expected to give one tenth of their earnings towards carrying on Missionary work. Some who can manage a small shop of groceries and such other articles as can sell well may be, under this system, found a capital. An industrious, active, wide awake man can sell flour, spices, matches, &c., in a small shop opened near a stand of carts which bring goods into, and take out from, a large town. The gains are marvelous from such a shop.

Many a way may be suggested and tried. The principle to be borne in mind is that all such work should converge to the one great point of indigenous self-supporting Christian work. The advice and guidance of Foreign Missionaries in many such undertakings will be invaluable, and in some cases, indispensable. But the work must grow.

It has been said before that there are about 391,166 children of Indian Christians studying in Schools. Very few of

them appear to be taught in Non-Christian Schools and Colleges. All the rest are uuder Christian instruction. They do not, however, fill all the schools conducted by Christian Missions. A great many more children attend Missionary institutions than these sons and daughters of Indian Christians. It appears to be rightly the policy of most Missions to start and conduct schools for the young. Educational Missions are among the most useful and successful. The young are more impressible than the grown up They come freely under the Christian influences exerted in all such institutions being ttracted by the prospect of secular advantages. When converted they become very useful Christians. The results of such a Christian training often do not appear soon : but they do follow. A wise man was asked when one should begin to train a child to make it grow as it should. He replied that the training should be begun at least two hundred years before the birth of the child. Teaching the young may seem to be so much labour lost, but it is like the bread cast upon waters that it might return after many years. The fruits of Christian training now imparted to boys and girls will be reaped in future generations. How much bigotry and superstition have been overcome by Missionary educational institutions. Conversions appear to depend somewhat upon the length of time non-Christian students spend in Christian schools and colleges, the opportunity they find for coming under direct Christian influence, and the influences exerted on them outside the school. It would however be very rare to find a youth come out of a Christian institution just as he entered it and without any change for the better in his religious beliefs or in his life and character. When one meets an intelligent person in Government service or some business it is not very difficult to find out from his talk or ways where he has had his education. If he has not reached the stage of conversion he is frequently on the path toward it, and his children are nearer the kingdom of heaven than he was when he began his educational course.

Time will come sooner or later when the Indian Christian Community will be able to establish its own educational institutions. Christian Colleges may be the later stage of its development. It is of very great importance that as many Christian young men and women as have the fitness for it should be encouraged and helped to acquire a liberal education. They can be leaders and helpers of the community. Their influence is sure to be felt by, and used for the good of, the people they come in contact with. They have splendid opportunities for doing the Master's service in their respective capacities. How much good to the community and the cause of Christianity can be, under the blessing of God, accomplished by trained Christian young men and women if their energies are rightly used? Take, for instance, the result of the work of a Christian College in this respect. The Madras Christian College has 159 Protestant Indian Christian graduates. Of them 57 are engaged in Mission or Educational work; 47 are in Government service; 13 are following independent professions as Lawyers, Doctors, &c.; 42 are prosecuting their studies further or whose occupation is not correctly known; 4 are ordained Ministers. Thus, out of every hundred Protestant Indian Christian Graduates of the Madras Christian College.

35·22 are in Mission or Educational service,
30·20 „ Government service,
8·18 „ Professions,
26·40 „ Students, &c.,
2·52 „ Ordained Ministers.

The Christian Colleges in other presidencies are also turning out Christian lawyers, doctors, ministers, and officers of Government. Cannot these armies of young men and women work marvelously for the good of our community and for the cause of Christ in India?

The way of helping deserving lads to acquire high education is to support them either wholly or partially through their course. A condition may be fixed to the effect that

when they get through, they would be expected to help other young men, at least to the extent to which they are helped. If each church, composed of two hundred members, supported a young man, through his college course, at a time, we could expect in a few years the number of Christian graduates to increase very considerably. It would not be very difficult for many churches to try the experiment. It would be better in many cases to support a young man partially, rather than wholly, through his course. It would make him more active, teach him self-respect, and make it easier for him to return the help he receives. Much will depend on a wise selection.

The material progress and strength of a community depends on the proportion of those who acquire to those who consume wealth. Only a few can rise to the top of the ladder but many will be in the happy mediocrity. If each person tries his level best to improve his opportunities the result, however, will be marvelous. He may not become a University graduate—he may not hold a very high post: he may not be a very rich man. But if each Indian Christian is taught to respect himself; if he is taught to help himself all he honestly can: if he is taught to love his Master and his community what strength will be added to the cause of Christianity in India! We can learn something from the Marwarees and Baniahs—(the Jews of India). They work—they deny—they endure astonishingly. They do it all for perishing wealth: if we did like them for heavenly inheritance and use in this world what would be the result?

It is sometimes urged that we are taught to pray for our "this day's," "daily bread" and not to care for the morrow. But they misuse the privilege involved in the above mentioned commands who spend or throw away the bread which God gives them in trust for the morrow. Our community needs to be more thrifty. How little so ever a value we may place on money or material wealth, we have no right to throw away even the crumbs of the loaves which have fed

the five thousand. It is quite true that what we use rightly for the Master is our wealth. But it is also true that money saved is money gained. We ought to give all we can for the kingdon of God: we may spend what is needed for our use in the Master's service; but we have no right to be imprudent and improvident.

One way to make the members of our community more prudent seems to invite them to make use of Provident Funds. There are several good institutions of this kind managed by Indian Christains. It is a difficult undertaking and involves some outlay and no small amount of care and labour. But its good results are a sufficient recompense. A general fund for a large area has its own advantages. But a "Pice Bank" or a "Helping Fund" is within the reach even of each church or town.

The Indian Christian Community is composed of members who hold different opinions on some religious subjects. It is spread far and wide over the country. Most of its sections have special and local objects of interest. Yet it does not seen impossible for the whole community to do something as a body for the body. It is not impossible to have a universal agreement on essential points. If for the discussion of political questions Indians can form a National Congress why cannot we hold a meeting at certain times and places for the object of extending Christian fellowship and sympathy? Questons of common interest could be discussed, acquaintance formed with one another and spiritual help reciprocated. There are doubtless many in our midst who can attend such meetings and prove a great help to those who come together. The Israelities were to meet in Jerusalem three times a year. We do not need to go to a Jerusalem ; nor need we meet so often : but if we meet we cannot fail to be blessed.

The objects of such a meeting may be furthered by a periodical dealing with the important questions of all sorts relating to the Indian Christian community. There are some

able and useful papers at present in circulation in India. But there is yet room for another solely devoted to the interests of the community. It would be a messenger from one part of the country to another. It would make known the trials and needs of one locality to another : and bring help all around. It might be edited by a staff and news about the community gathered from all quarters to be published in it.

It may also be noted that there is a large field in the direction of manual industries yet open, before our community. The Western countries use machines for almost everything. They can turn out large quantities of work in a short time. But it often means a friction between capital and labour. We have little capital, but we can put in a deal of labour. If our brethren can learn there are a hundred and one different things that can be done with the hand and find a good market. With a few rupees a young Christian can follow in the footsteps of his Master while at the hamlet of Nazareth. He can buy enough material and tools to make a decently humble living. When one wants a good carpenter he should find one in a Christian. When one has a watch to be repaired he should have to go to a Christian watch-maker. When one wants a good tailor he should find none better than a Christian tailor. For honesty, industry, workmanship and willingness none should be preferred to him.

A great many more points about the Indian Christian community will suggest themselves to the readers of the information contained in the foregoing parts of this book. Those mentioned above might strike one as of the most common place. They are given here more with a view to incite further inquiry and thought than to deal with them in an exhaustive manner as a whole. As the community grows these points will multiply and be better discussed by abler minds.

One word more. Our community has its weak points. But of one thing we need be in no doubt. We need not doubt of the love and blessing of our Master and our Lord.

We are weak but He is strong. We are poor but He is rich. We are ignorant but He is omniscient. He who has begun a good work in us will perfect it against the day of His appearing.

POSTAL INFORMATION.

(From "Indian Postal Guide.")

INLAND POSTAGE RATES.

Prepaid Rates.

Each Post-card.	Letters.			Packets. Newspapers, Books and Patterns.	Registered Newspapers. Postage payable in Postage Stamps.		Registered Parcels. Postage which includes Registration Fee, payable in Postage Stamps.			Unregistered Parcels. Postage payable in Postage Stamps.		
Single.	Reply.	Not exceeding ½ tola	Exceeding ½ tola, but not exceeding 1½ tola.	For every additional 1½ tola or fraction thereof.	Not exceeding 10 tolas.	For every additional 10 tolas or fraction thereof.	Not exceeding 4 tolas.	Not exceeding 20 tolas.	For every additional 20 tolas or fraction thereof.	Not exceeding 20 tolas.	Exceeding 20 tolas, but not exceeding 40 tolas.	For every additional 40 tolas or fraction thereof.	Not exceeding 20 tolas.	Exceeding 20 tolas, but not exceeding 40 tolas.	For every additional 40 tolas or fraction thereof up to 440 tolas.
¼	½	½	1	1	½	½	¼	½	½	4	8	4	2	4	4
as.	an.	an.	an.	an.	an.	an.	an.	an.	an.	as.	as.	as.	as.	as.	as.

Unpaid Postage chargeable on delivery.

- For an unpaid letter or packet—double the prepaid rate.
- For an insufficiently paid letter or packet—double the deficiency.
- For an unpaid registered parcel—the prepaid rate.

COMMISSION ON ORDINARY INLAND MONEY ORDERS.

On any sum not exceeding Rs. 10 ... ... 2 annas

" exceeding Rs. 10, but not exceeding Rs. 25 ... 4 annas

" " " 25 ... ... 4 annas for each complete sum of Rs. 25 and 4 annas for the remainder; provided that, if the remainder do not exceed Rs. 10, the charge for it is only 2 annas.

(The value of a single money order may not exceed Rs. 600.)

COMMISSION ON TELEGRAPHIC MONEY ORDERS.

										Rs.	a.	
On sums not exceeding Rs. 25										1	4	These rates include cost of telegram.
"	exceeding Rs. 25,	but not	exceeding	Rs. 50 ...	...	...	1	8				
"	"	"	50	"	"	" 75 ...	...	1	12			
"	"	"	75	"	"	" 100 ...	...	2	0			
"	"	"	100	"	"	" 125 ...	...	2	4			
"	"	"	125	"	"	" 150 ...	...	2	8			
"	"	"	150	"	"	" 200 ...	...	3	0			
"	"	"	200	"	"	" 250 ...	...	3	8			
"	"	"	250	"	"	" 300 ...	...	4	0			

VALUE-PAYABLE COMMISSION.

The amount specified for realisation will, when recovered, be paid to the sender by means of a money order. In the case of an unregistered parcel or book packet the whole amount specified will be remitted; in the case of any other value-payable article the amount specified will be remitted, *minus* a commission calculated at ordinary Inland Money Order rates (as given above).

Registered and unregistered parcels, registered letters, registered and unregistered book packets and Railway Receipt-notes, can be sent value-payable

INSURANCE FEES.

When the Value Insured does not exceed		
Rs. 50	Rs. 100.	Every additional Rs 100.
2 as.	4 as.	4 as.

REGISTRATION FEE (FOR ARTICLES OTHER THAN REGISTERED PARCELS).—Two Annas (in stamps) for each article registered.

ACKNOWLEDGMENT CHARGE—One (Anna in stamps for registered articles, and in cash for ordinary registered parcels).

FOREIGN POSTAGE RATES.

Registration fee—2 annas (in stamps) for each letter, post-card, or packet registered.
*Acknowledgment fee.—2 annas (in stamps), in addition to the registration fee, for each letter, post-card, or packet registered.
[For the countries and places to which post-cards cannot be sent or registration is not available or prepayment of postage is compulsory, see the Schedule of Foreign Postage Rates in Section III of this Book.]

Countries and Places.	Union Rates.							
	Letters per ½ oz.	Each Post-card. Single.	Each Post-card. Reply.	Printed papers, including books and newspapers. Each packet not exceeding 10 oz.	Legal & Commercial documents. Each packet. Not exceeding 10 oz.	Legal & Commercial documents. Each packet. For 2 oz. additional.	Samples. Each packet. Not exceeding 4 oz.	Samples. Each packet. For 2 oz. additional.
	A.	A.	A.	A.	A.	A	A.	A.
Any part of the world, with the exceptions of the places mentioned below, by any route, and Ceylon by P. and O. or French Packet or by private vessel	*2½	1	2	½	2½	1	1	½
Ceylon by Land Post or Indian Packet	Indian Inland rates from any Indian post office.							
Aden, Berbera, Bulhar, Harrar, Laheg, Makalla, Perim, Shehr, and Zaila								
French and Portuguese possessions in India ...								
Indian offices in the Persian Gulf and Turkish Arabia and on the Mekran Coast								

* *Exception*:—In the case of registered articles for Ceylon, the acknowledgment fee is one anna, by whatever route they may be sent.

FOREIGN MONEY ORDER COMMISSION.

For a Sterling Money Order not exceeding.

£2	£5	£7	£10	£12	£15	£17	£20
R. A. 0 4	R. A. 0 8	R. A. 0 12	R. A. 1 0	R. A. 1 4	R. A. 1 8	R. A. 1 12	R. A. 2 0

The following are the principal countries with which money orders may be exchanged :—

* United Kingdom.	Belgium.	Denmark.	*Hungary.
* Africa, W. Coast (British).	* Bosnia-Herzegovina.	Egypt.	Italy.
* Austria.	* British Guiana.	France.	Malta.
* Australian Colonies.	* Canada.	Germany.	*Natal.
	* Cape Colony.	*Gibraltar.	*Newfoundland.
		*Holland.	*New Zealand.
* Norway.			
* Portugal.			
* Sweden.			
Switzerland.			
* U. S of America.			
* W. Indies (British)			

Money orders drawn on countries marked * and on Tasmania may not exceed £10. For other countries the limit is £20.

Money Orders expressed in Indian currency may be drawn on—

British East Africa.	German East Africa.	Straits Settlements.	Faridkot State.
British North Borneo and Labuan.	Hong Kong (British Offices).	Zanzibar.	Gwalior ,,
Ceylon	Japan.	Portuguese India (*Goa and Damaun*).	Jhind ,,
Formosa (certain places only).	Mauritius.	Chamba State.	Nabha ,,
	Seychelles.		Patiala ,,

Limit of value, Rs. 150. Inland rates of commission apply to these orders.

Telegraphic money orders expressed in Indian currency may also be drawn on Ceylon. Limit of value is Rs. 150. The rates of commission are four annas higher in each case than the rates applicable to inland telegraphic money orders, except as regards sums not exceeding Rs. 10 on which the commission is one rupee six annas.

BRITISH POSTAL ORDERS

of the following denominations :—

s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
1	0	2	6	5	0	7	6	15	0
1	6	3	0	6	0	10	0	20	0
2	0	3	6	5	0	10	6	.....	

are sold at post offices, and are payable in the United Kingdom and at the British post office, Constantinople. The cost of a postal order is its nominal value converted into Indian currency at the rate of exchange in force, *plus* commission.

FOREIGN PARCEL POST.

The following are the principal countries to which parcels may be sent from any post office in India :—

United Kingdom.	Egypt.	Mauritius.	South Australia.
Austria-Hungary.	France.	New South Wales.	Spain.
Belgium.	Germany.	New Zealand.	Straits Settlements.
British East Africa.	Gibraltar.	Norway.	Sweden.
British Central Africa.	Greece.	Persia.	Switzerland.
Canada.	Holland.	Portugal	Tasmania.
Cape Colony.	Hong Kong (British Offices).	Queensland.	Transvaal.
Ceylon.	Italy.	Russia in *Europe*.	Victoria.
Denmark.	Japan.	Seychelles.	Western Australia.
	Malta.	Siam (certain places only).	West Indies.
			Zanzibar.

* Letters for United Kingdom and British possessions (not Australia), for each half oz 1 anna.

Table of Equivalents of Weight in Tolas, Onnces, and Grammes.

1 Tola = Grammes $11\frac{241}{6250}$ or Ounce $\frac{7}{175}$.

1 Ounce = Tolas $2\frac{31}{175}$ or Grammes $28\frac{693}{2000}$.

1 Gramme = ounce $\frac{2000}{56022}$ or Tola $\frac{6250}{72891}$

Tolas.	Grammes.	lb.	oz.	lb.	oz.	Tolas.	Grammes	Grammes	lb.	oz.	Tolas.
1	11·6625	0	·4114	0	1	2·4365	28·3465	1	0	·0352	·0857
2	23·3251	0	·8228	0	2	4·8611	56·693	2	0	·0705	·1714
3	34·9876	0	1·2342	0	3	7·2916	85·0395	3	0	·1058	·2572
4	46·6502	0	1·6457	0	4	9·7222	113·386	4	0	·1411	·3429
5	58·3128	0	2·0571	0	5	12·1527	141·7325	5	0	·176 3	·4287
6	69·9753	0	2·4685	0	6	14·5833	170·079	6	0	·2116	·5144
7	81·6379	0	2·8799	0	7	17·0138	198·4255	7	0	·2469	·6002
8	93·3004	0	3·2914	0	8	19·4444	226·772	8	0	·2822	·6859
9	104·9630	0	3·7028	0	9	21·8749	255·1185	9	0	·3174	·7717
10	116·625	0	4·114	0	10	24·305	283·465	10	0	·352	·857
20	233·251	0	8·228	0	11	26·7361	311·8115	20	0	·705	1·714
30	349·876	0	12·342	0	12	29·1666	340·158	30	0	1·058	2·572

NOTE.—For foreign parcels posted in India 30 tolas are reckoned as the equivalent of one pound, 80 tolas = 1 seer, 40 seers = 1 maund.

TELEGRAMS.

Inland telegrams will be accepted at all Post Offices (except some Branch Offices) during the hours fixed for registration of letters, and will be forwarded by post (registered) to the nearest Telegraph Office for onward transmission. No charge will be made for postage or registration. Foreign telegrams and Press telegrams will not be received.

Telegrams presented at a Post Office must be prepaid, either in cash or postage stamps, at the following rates :—

	Rs. a. p.
Deferred telegrams, 1 anna per word ; *minimum charge*	0 8 0
Ordinary „ 2 annas „ „	1 0 0
Urgent „ 4 „ „ „	2 0 0

A reply to a telegram may be prepaid by the sender up to a maximum of Rs. 2.

Service stamps will not be recognised in prepayment of State telegrams.

Telegrams should be written distinctly on printed forms, which are obtainable *gratis* at the Post Office. Senders are recommended to use these forms, but telegrams written on ordinary paper will be accepted.

Telegrams may be worded in English or in a foreign or vernacular language, but all foreign or vernacular words or figures must be written in English characters and figures. If a telegram is presented at the Post Office written in vernacular, the Postmaster will transcribe it in English character, or if desired by the sender, translate it into English, the transcription or translation so made being signed by the sender. No charge will be made for this service.

The sender of a telegram will be granted a receipt for the amount paid by him. The receipt will be signed by the Postmaster and stamped with the date stamp of the Post Office.

INLAND TELEGRAMS

There are three classes of telegrams—Deferred, Ordinary, and Urgent, and the following are the rates of charge for State and Private telegrams between any two Offices in India, including Burma :—

	Deferred Telegrams.		Ordinary Telegrams.		Urgent Telegrams.	
	First eight words or groups of five figures.	Each additional word or groups of five figures.	First eight words or groups of five figures.	Each additional word or groups of five figures.	First eight words or groups of five figures.	Each additional word or groups of five figures.
	Rs. a.	*Rs. a.*	*Rs. a.*	*Rs. a.*	*Rs. a.*	*Rs. a.*
Between any two offices in India (including Burma)	0 8	0 1	1 0	0 2	2 0	0 4

I.—'Deferred' telegrams are not transmitted till the wires are clear of *Urgent* and *Ordinary* telegrams; but they are delivered by messengers between daybreak and 9 P. M. (local time).

II.—'Ordinary' telegrams are transmitted in their turn after *Urgent* telegrams, and are delivered by messengers between daybreak and 9 P. M. (local time).

III.—'Urgent' telegrams receive instant transmission, and have the precedence over *Ordinary* telegrams, and the right of special delivery at destination. In cases of life and death, or of extraordinary emergency, an urgent telegram can be sent from any office at any time.

IV.—No charge is made for the transmission of the address.

Address.—The address includes the addressee's name and address and the name of the office to which the telegram is to go. Care should be taken that the latter is written as given in the list of Telegraph Offices published in the *Telegraph Guide*. The address must contain all the information necessary to ensure delivery without search or inquiry. The sender in all

cases has to bear the consequence of insufficiency in the address, which, after the telegram has been despatched, can neither be completed nor altered, except by a paid service advice.

The addressee's name and address may be written in a preconcerted or abbreviated form. However, in order that a telegram so addressed may be delivered, the addressee must have registered the abbreviated address at the Telegraph Office to which the telegram is addressed.

Sender's name —This means the actual name or designation of the sender. Name and designation cannot both be admitted, unless it would otherwise be obviously impossible for the addressee to identify the sender. A telegram cannot be sent by several persons in their separate names ; it must be in the name of only one individual or firm ; it may, however, be sent by a party acting jointly having a recognised collective capacity, but the designation or style of such party must be used, not their several names. If the sender of a telegram desire his own address to be telegraphed, it must be paid for. The sender's name and address may, however, be transmitted free in a preconcerted or abbreviated form if registered.

In a Press telegram four times as many words are allowed for the same money as in a Private or State telegram.

TELEGRAMS FOR CEYLON.

The following are the rates charged for telegrams to Ceylon. All words in addresses, except the name of the office from which a telegram is sent, are counted when computing the charges :—

	For each word.
	Rs. a. p.
From any Office in India	0 3 0
From any Office in Burma	0 4 0

TELEGRAMS TO EUROPE.

The following are the rates charged for telegrams transmitted to the United Kingdom and Europe generally, except Russia and Turkey. All words in addresses, except the name of the office from which a telegram is sent, are counted when computing the charges :—

		For each word.
		Rs. a. p.
From any Office in India	*Viâ* Suez or Teheran ..	3 0 0
	Viâ Turkey	2 11 0
From any Office in Burma	*Viâ* Suez or Teheran .	3 2 0
	Viâ Turkey	2 13 0

Passengers wishing to change to a Superior Class at any period of the journey, either for the remainder of the journey or for any part of it, can obtain an excess ticket on application to the Guard of the train and on payment of the difference in fare, and they are requested to satisfy themselves that the excess ticket specifies all that they have paid for. Passenger fares—First Class, 12 pies per mile. Third Class by Mail, 3 pies per mile. Second Class, 6 pies per mile. Third Class by other trains, $2\frac{1}{2}$ pies per mile.

First and Second Class Return Tickets are also issued between all other G. I. P. Stations and charged over this Railway at two single fares for the double journey, being available for return on any day within six months of the date of issue.

Refund of Fares for Tickets purchased but not used.—In the case of a Passenger having purchased a ticket which it is afterwards found is not required or cannot be used, the Station Master (or at City Booking Offices, the Booking Clerk) is authorised to refund the value of such ticket if requested to do so *within three hours of the time at which it was issued*, provided the Station Master or the Booking Clerk, as the case may be, is satisfied with the explanation given of the reason why the ticket was not used. Should the matter not be brought to notice in time for the Station Master to make the refund, the ticket will be collected from the Passenger and forwarded to the office of the General Traffic Manager, and the passengers must apply to the General Traffic Manager for a refund. This procedure should be followed when part of the journey is performed, as well as in cases in which the tickets are not used at all.

Lost Tickets.— Passengers who state they have lost or mislaid their tickets, and apply for a return of their fares, are requested to take notice that the Company do not hold themselves liable to make any return to Passengers, who, from neglect or any cause, fail to produce their tickets.

Passengers' Luggage.— Free Allowance and Excess Charges.—All packages of whatever description (except as mentioned below) belonging to Passengers, whether taken by them into the carriage or not, are treated as luggage when booked to accompany them by Passenger or Mixed Trains, no distinction being made between personal and ordinary luggage.

The whole of the luggage accompanying a passenger is weighed, and out of the total weight the following free allowances shall be granted, namely :—

For a First Class Passenger... ... ...One and a half maund.

For a Second Class Passenger ... ...Thirty seers.

For a Third Class Passenger by Mail Train ...Twenty seers.

For a Third Class Passenger by Ordinary Train ...Fifteen seers.

Half these quantities is allowed for each child's (half) ticket.

LOST LUGGAGE.—Articles found in the Carriages or on the Railway are kept at the Station for forty-eight hours, and if not claimed within that time are placed in the Lost Property Office at Victoria Terminus. Application concerning property so lost should be made at once to the nearest Station Master, and also to the General Traffic Manager. A fee of four annas is charged for each article when claimed at the Lost Property Office, but if not claimed within one month, an additional storage charge of four annas per month is made. All lost luggage, if not claimed within six month, is sold by the Company to pay expenses.

LEFT LUGGAGE.—For the accommodation of passengers desiring to leave their luggage, rooms have been established at the Victoria Terminus, Musjid, Byculla, Kalyan, Nasik, Ahmednagar, Khandwa and Poona, Dhond, Nandgaon, Nagpur, Hotgi, Wadi, and Burhanpur stations, in which packages may be left in the Company's charge at following rates :—

For the first twenty-four hours or part of twenty-four hours—One anna per package.

For every further period of twenty-four hours—Four pies per package.

INDIAN RAILWAY FARES.

The following are the fares charged for Passengers :—

RAILWAYS.	1st Class Rate per mile.	2nd Class Rate per mile.	3rd Class by Mail per mile.	3rd Class by other Trains per mile.	Intermediate Class Rate per mile.
	a. p	a. p.	a. p.	a. p.	a. p.
G. I. P. Railway	1 0	0 6	0 3	0 2⅓	...
B. B. & C. I. Ry. (including R.-M. Ry.), Broad Gauge...	1 0	0 6	.....	2¼ to 2½	First 300 miles, 3 pies. Additional dist, 2 pies.
Do. do. Metre Gauge	1 3	0 8	.....	2 to 2¼	
H. H. the Gaekwar's Railway	Upper Class. 9 pies.	Lower Class. 3 pies.	.....	...	...

INDIAN RAILWAY FARES.

The following are the fares charged for Passengers.

Railways.	1st Class rate per mile.	2nd Class rate per mile.	3rd Class by Mail per Mile.	3rd Class by other Tains per mile.	Intr. Class rate per mile.
Nizam's Railway	1 6	0 6	0 2½	0 2	
Southern Mahratta Railway	1 0	0 6	0 2½	0 2	
Bengal Nagpur Railway ...	1 6	0 8	0 2	0 2	0 3
Wardha Coal State Railway.	1 6	0 9	.....	0 2	0 3
Madras Railway	1 0	0 6	0 2½	0 1½	
South Indian Railway ...	1 0	0 4	0 2	0 2	
East Indian Railway... ...	1 6	0 9	0 2½	0 2½	0 4½
North Western Ry. (including the P. N. & I. V. S. Railway	1 0	0 6	Miles. pies. to 125 0 2½ p. ml. 126 to 250 0 2½ do. over 250 0 2 do.	...	...
O. & R. State Railway ...	0 12	0 6	.....	0 2½	0 4
Nalhatee State Railway ...	0 6	0 6	1½ to 3	0 1¾	0 4½
Tirhoot State Railway ...	1 6	0 9	0 2¾	1½ to 3	0 4
Bhavnagar Gondal Junagad-Porbandar Railway ...	1 0	0 6	.....	0 2¾	...
Indian Midland Railway ...	1 0	0 6	0 3	1st 100 miles, 2½ 2nd ,, 200 miles, 2½-2¾ above 400 ,, 2¼	...

The Indian Episcopate.

Calcutta.

Thomas Fanshaw Middleton	1814
Reginald Heber	1823
John Thomas James	1827
John Mathias Turner	1829
Daniel Wilson	1832
George Edward Lynch Cotton	1858

Robert Milman 1867
Edward Ralph Johnson 1876
James Edward Cowell Welldon 1899

Madras.

Daniel Corrie 1837
George John Trevor Spencer 1835
Thomas Dealtry 1849
Frederick Gell 1861
Henry Whitehead... 1899

Bombay.

Thomas Carr 1837
John Harding 1851
Henry Alexander Douglas 1868
Louis George Mylne 1876
James MacArthur... 1898

Colombo.

James Chapman 1845
Piers Calvely Claughton... 1859
Hugh Willoughby Jermyn 1871
Reginald Stephen Copleston 1875

Lahore.

Thomas Valpy French 1877
Henry James Matthew 1888
George Augustus Lefroy... 1899

Rangoon.

Jonathan Holt Titcomb 1877
John Miller Strachan 1882

Travancore and Cochin.

John Martindale Speechly 1879
Edward Noel Hodges 1890

Chota Nagpur.

Jabez Cornelius Whitley 1890

Lucknow.

Alfred Clifford 1893

Tinnevelly.

Samuel Morley 1899

India Sunday School Union.

The India Sunday Union is an interdenominational agency, and has a net work of organization which covers India, Burma, Ceylon and the Straits. This vast field is divided into 16 sections, over each of which there is a Sunday School Auxiliary Committee made up of the local Portestant Missionaries.

OBJECTS OF THE I. S. S. U. BRIEFLY STATED.

The Union exists (1) to *Emphasize* the Spiritual aim and end of all Sunday School effort. (2) To *Consolidate* and *Extend* Sunday School Work. (3) To *Educate* Sunday School Teachers in the best Principles and Methods of Teaching. (4) To *produce* English and Vernacular Literature suitable for Sunday School Teachers and Scholars.

GENERAL OFFICERS.

President ... ... Calcutta.

Vice-Presidents ... { Rev. R. M. Gray, M. A. ... Bombay.
Rev. H. D. Goldsmith, M. A. Madras.

Honorary Treasurer... H. S. Cashman, Esq.,
19-1, Bow Bazar St. ... Calcutta.

Honorary Secretary...	Rev. T. J. Scott, D. D. ...	Bareilly.
Hon. Sec., Cen. Com...	Rev. F. W. Warne, B.D. ...	Calcutta.
Gen. Secretary ...	Rev. R. Burges, 117, Dharatala St. ...	Do.
Secretary, I. B. R. A..	c/o ,, ,, ,, ...	Do.
Hon. Editor, I.S.S.J.,	,, ,, ,, ...	Do.

I. S. S. U. STATISTICS

SHOWING THE GROWTH OF SUNDAY SCHOOLS FROM 1891 TO 1897.

Based on Statistics supplied to the I. S. S. U.

Years.	Schools.	Teachers.	Scholars.	Total Teachers and Scholars.
1891	4,608	8,910	1,52,002	1,60,912
1892	5,548	10,715	1,97,754	2,08,469
1893	3,182	5,000	1,25,346	1,30,346
1894	4,957	9,558	1,53,082	1,62,640
1895	4,849	7,440	1,42,510	1,49,950
1896	5,365	8,467	2,07,753	2,06,220
1897	5,538	7,192	2,50,979	2,58,171

1898 not yet collected.

1899 depends on activity of the Indian Christian Church.

Names of Auxiliaries and Missions.	Secretary.
Central India Auxiliary ...	Rev. F. H. Russell, M.A.
North Orissa Auxiliary ...	Rev. G. H. Hamlen, B.A.
Central Province and Berar Auxiliary.	Rev. J. Taylor.
Punjab Auxiliary	Rev. W. J. Clark, M.A.
Mysore Auxiliary	Capt. J. Spence, Esq.
Bombay Auxiliary	Rev. F. W. Dunster.
Burma Auxiliary	Rev. A. E. Seagrave, M.A.
N.-W. P. & Oudh Auxiliary ...	Rev. W. A. Mansell, M.A.
Bengal Auxiliary	Rev. J. Culshaw.
S. Travancore Auxiliary ...	H. Hewett, Esq.

Sunday School Statistics of all Nations.

World's Third Sunday School Convention, July 11th to 16th, 1898.

——	Sunday Schools.	Teachers.	Scholars.	Total Membership.
EUROPE.				
England and Wales ...	43,632	613,036	6,843,072	7,456,108
Scotland	6,338	63,939	713,360	772,299
Ireland...	3,620	27,980	319,316	347,296
Austria, including Bohemia	208	533	7,340	7,873
Belgium	83	403	4,616	5,019
Bulgaria	35	140	1,576	1,716
Denmark	819	4,275	71,371	75,646
Finland	7,611	12,928	165,140	178,068
France	1,475	3,876	61,200	65,076
Germany	7,131	39,872	814,175	854,047
Greece	4	7	180	187
Holland	1,900	4,962	168,110	173,072
Italy	336	1,482	15,787	17,269
Norway	749	3,311	65,311	68,622
Portugal	18	70	1,419	1,489
Russia	83	785	15,679	16,464
Spain	48	220	4,275	4,495
Sweden...	5,360	18,144	252,247	270,391
Switzerland	1,762	7,490	122,567	130,057
Turkey in Europe ...	30	170	1,420	1,590

Sunday School Statistics of all Nations.

World's Third Sunday School Convention, July 11th to 16th, 1898.

—	Sunday Schools.	Teachers.	Scholars.	Total Membership.
ASIA.				
India, including Ceylon.	5,578	13,937	247,472	261,409
Persia	107	440	4,876	5,316
Siam	19	64	809	873
China	105	1,053	5,264	6,317
Japan	150	390	7,019	7,409
Turkey in Asia ...	516	4,250	25,833	30,083
AFRICA ...	4,246	8,455	161,394	169,849
NORTH AMERICA.				
United States	132,697	1,394,630	10,893,523	12,288,153
Canada...	8,986	75,064	582,070	657,134
Newfoundland and Labrador	375	2,363	23,856	26,219
West Indies	2,306	10,769	111,335	122,104
Central America and Mexico	550	1,300	15,000	16,300
SOUTH AMERICA ...	350	3,000	150,000	153,000
OCEANIA.				
Australasia	7,458	54,670	595,031	649,701
Fiji Islands	1,474	2,700	42,909	45,609
Hawaiian Islands ...	230	1,413	15,840	17,253
Other Islands	210	800	10,000	10,800
World's Total ...	246,658	2,378,921	22,540,392	24,919,313

(From I. S. S. U. Report.)

Christian Endeavour Societies.

COUNTRIES.	Young peoples'.	Junior.	Intermediate.	Mothers'.	Senior.	Parent	TOTAL.
United States ...	28,099	12,282	744	70	26	1	41,222
Canada	2,927	516	10	1	...	2	3,456
Foreign	8,319	1,045	5	6	19	...	9,394
Floating Societies..	...	...	...	...	...	...	119
TOTAL ...	39,310	13,843	759	77	45	3	54,191
India	382	50	...	...	...	1	433

NUMERICAL STRENGTH OF PROTESTANT MISSIONS.

(WIVES OF MISSIONARIES NOT INCLUDED.)

INDIA.

Society.	*Missionaries.*		
	Total 1899.	Increase on 1898.	Decrease on 1898.
Baptists	436	...	17
Congregationalists ...	159	8	...
Church of England ...	528	38	...
Presbyterians	467	...	2
Methodists	298	23	...
Lutherans	263	...	68
Moravians	27	20	...
Society of Friends ...	25	4	...
Women Missionaries ...	108	9	...
Independent Missionaries	400	178	...
Salvation Army ...	86	...	...
Total	2,797		
Total increase ...	329		

THE
Indian Christian Union of Great Britain.

FOUNDED 1895.

Patrons:

The Right Rev. J. C. E. Welldon, D, D., Lord Bishop of Calcutta.
The Very Rev. Dean Farrar, D. D., F.R. S.
Rev. H. E. Fox, M. A. (Hon. Sec.), C. M. S.
Rev. G. W. Olver (Sec.), W. M. S.
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33, East Street, Manchester Square, London, W.

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Coldstream, W., Esq., I. C. S.

K. C. Bhuttarcharji, Esq., Meerut, Honorary Secretary and Treasurer for North India.

Corresponding Members :

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Dr. Hormasji D. Ponchkhanawalla, Bombay.
The Rev. G.R. Navalkar, Nasik.
Digamber Dalaya, Esq., B. A., Tahsildar, Khandesh.
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D. S. Sawarkar, Esq., Satara.
K. Chandy, Esq , B.A., Mysore
Baba Chandu Lal, Esq., Punjab

All communications, subscriptions, donations, and applications for membership to be sent to the Hon. Secretary and Treasurer, 33, East Street, Manchester Square, London, W.

Objects of the Union

1.—To bring together Indian Christians residing in Great Britain and Ireland and to cement the relations between them and European Christians.

2.—To give advice and introductions, &c., to Indian Christians coming to this country and to give relief to any of them in distress.

3.—To endeavour to remove racial prejudices among Christian people.

4.—To unite in fellowship all who love the Lord Jesus Christ in sincerity and truth, irrespective of sect or denomination, and to promote their spiritual, moral and social welfare.

Constitution of the Indian Christian Union.

1.—The Union shall be called the "Indian Christian Union."

2.—That the Members of the Union shall be Indian Christians of all denominations (subscribing 2s. 6d., or more, annually). The amount of the subscription limits the liability of the Member.

3.—That every Member, before being elected, shall be duly proposed and seconded by Members of the Union.

4.—That all Ecclesiastical dignitaries and other sympathisers shall be eligible to be patrons; that the clergy and ministers of all denominations shall be eligible as Vice-Presidents; that all subscribers of a guinea, including ladies, shall be eligible as Honorary Members.

5.—That the affairs of the Union shall be managed by a President, Hon. Secretary and Treasurer, and an Executive Committee, elected annually. In the event of death or resignation of any of the Officers, or Members of the Executive Committee, the Executive Committee shall have power to make a provisional appointment till the next General Meeting.

6.—That the Executive Committee shall meet once a month and the General Meeting of the Union shall be held once a quarter, or oftener if desirable.

7.—That any Member desiring to bring forward a motion affecting the interests of the Union, shall give a month's notice to the Honorary Secretary.

8.—That no rules shall be altered or new rules made, except by a two-thirds majority vote of the Members present at a Meeting specially convened for the purpose.

9.—That the organ of the Union shall be called THE INDIAN CHRISTIAN GUARDIAN.

SALVATION ARMY IN INDIA AND CEYLON.

CORPS AND OUTPOSTS, being villages in which Salvation Army operations are carried on	1,445
OFFICERS AND CADETS	1,236

Schools—		
(*a*) Boarding and Industrial Schools ...	... 17	237
(*b*) Day Schools	...220	
Dispensaries		2
Training Homes for Officers		13
Village Brotherhood Banks		10
Rescue Homes		4

A Farm Colony and two Peasant Settlements, including men, women, and children.

A Prison-Gate Home.

PROGRESS OF PROTESTANT MISSIONS.

First Period—Sowing—1799—1859.*

	1799.	1820.	1830.	1845.	1859.
Income ... ...£	10,000	121,756	226,440	632,000	918,000
Missionaries (Men)	150	421	734	1,319	2,032
Do. (Unmarried women)		1	31	72	76
Native ministers		7	10	158	169
Other native helpers	80	166	850	3,152	5,785
Native communicants	7,000	21,787	51,322	159,000	22,700
Native disciples or catechumens ...	5,000	15,728	102,275	185,000	25,200
Missionary organizations... ...	6	20	25	65	98

Second Period—Reaping—1859—1897.*

	1859.	1889.	1895.	1897.
Income ... ...£	918,000	2,130,000	2,865,662	2,902,794
Missionaries (men)...	2,032	4,135	6,369	6,576
Missionaries (unmarried women ...	76	1,889	3,390	3,982

* These figures exclude Bible and Christian literature work missions to the Jews, to decadent Christian Churches, and to the Colonies, and the wives of missionaries.

Native ministers ...	169	3,327	4,018	4,185
Other native helpers.	5,785	41,754	61,124	67,754
Native communicants.	227,000	850,000	1,057,000	1,448,861
Native disciples or catechumens ...	252,000	650,000	864,155	447,165
Missionary organizations	98	262	365	367

A LIST OF CHRISTIAN NEWSPAPERS, &c., PUBLISHED IN INDIA.

Balbodh Mewa.—Established in 1873. Published monthly by the American Marathi Mission. Editor : Miss H. Bruce, Satara. Annual subscription Re. 1-2. An illustrated magazine for children.

Balshikahaks.—Published by the Bombay Tract and Book Society. Notes on Sunday School Lessons in Marathi. 100 copies, 5 as.

Bengal Missionary Gleaner.—Published monthly in Bengali. Office : 33 Amherst Street, Calcutta. Annual subcription, Annas 8. Object : To develope Missionary spirit in the Bengali church.

Bombay Diocesan Record.—Established in 1881. Published quarterly in English, at the Bombay Education Society's Press. Annual subscription, Re. 1.

Bombay Guardian.—Established in 1851. Published in English every Saturday. Office : Khetwadi Main Road, Bombay. Annual subscription, Rs. 5, including postage. English subcription, 7s. 6d. per annum, may be paid to Dyer Brothers, Rose Street Corner, Paternoster Square, London.

Bombay Young Men's Monthly.—Organ of the Young Men's Christian Association, Bombay. Circulated free.

Burman Messenger.—Published at the American Baptist Mission Press, Rangoon. Monthly subscription, Re. 1-6, with postage.

Ceylon Church Missionary Gleaner.—Established in 1878. Published monthly in English at Colombo. Annual subscription, Re.1-8.

Ceylon Diocesan Gazette.—Established in 1876. Published monthly in English at Colombo. Subscription, Rs. 2-8 a year.

Ceylon Friend.—Published fortnightly at Colombo, by the Wesleyan Mission. Annual subscription, Re. 1-50 cents.

Children's Friend.—Published weekly in Urdu and Hindi, at Lucknow. It is an illustrated weekly for children. Annual subscription, per copy, 1½ Anna.

Children's Lamp.—Established in 1862. Published monthly, in Singalese, at Colombo, for free distribution.

Christian College Magazine.—Established in 1883. Published on 10th of every month in English at the Lawrence Asylum Press, Madras. Annual subscription, Rs. 5: *Bona fide* students, Rs. 3.-8 .

Christian Companion.—Published quarterly at Colombo.

Christian Friend.—Published quarterly, in Tamil, at the Religious Tract Society, Jaffna.

Church Missionary Gleaner.—Published monthly in English, at Madras, Bombay and London. Annual subscription, Re. 1-14.

Christian Patriot.—Published every Saturday in English, at Madras. Annual subscription, Rs. 5; Foreign subscription, 8s. Organ of the Madras Native Christian community.

Diocesan Record, Madras.—Published once in 2 months in English at the C. M. S. Press, Cottayam. Annual subscription, 6 annas to Natives and 12 annas to Europeans.

Dnyanodaya.—Published every Thursday in English and Marathi at Bombay. Annual subscription, Re. 1-13. Editor, The Rev. R. A. Hume, M. A., D. D. Published by the American Marathi Mission.

Desopkari.—Published by the C. L. Society.

Epiphany.—Published every Saturday in English, at the Oxford Mission House, 42, Cornwallis Street, Calcutta. Distributed free.

Friend of Malabar.—Established in 1879, at the C. M. S. Press, Cottayam, Travancore. Published monthly in Malayalam. Annual subscription, As 12.

Harvest Field.—Published on the 1st of every month in English by the Wesleyan Mission at the Wesleyan Mission Press, Mysore City. Subscription, Rs. 2 per annum, with postage; to Native Ministers, &c., Re. 1.-8 per annum with postage. A Missionary Magazine. Editor, The Rev. E. W. Thompson, M.A.

Home Messenger and Association Record.—Y. M. C. A. and Y. W. C. A.—Annual subscription, Rs. 2. Colombo.

India Sunday School Journal.—Monthly official organ of the India Sunday School Union. Published at 41, Lower Circular Road, Calcutta. Annual subscription Re 1-8, with postage. It gives International Sunday School Notes.

Indian Christian Herald.—Published in English every Saturday, at 81, Chuckebare Road, Ballygunj, Calcutta. An organ of the Bengal Christian community. Editor, The Hon. K. C. Banerji, M.A., L.L.B. Annual subscription, Rs. 2, with postage; single copy, As. 2.

Indian Christian Messenger.—Published every Saturday and Thursday in English, at Cawnpore. Subscription Rs. 3-8 per annum. An organ of the Indian Christian community of the N.-W. P. and Oudh.

Indian Church Quarterly Review.—Published quarterly at 47, Bentinck Street, Calcutta. Annual subscription, Rs. 6.

Indian Churchman.—Established in July 1866. Published monthly, in English, at 224, Lower Circular Road, Calcutta. Annual subscription, Rs. 4.

Indian Evangelical Review.—Established in 1873. Published quarterly at 20, British Indian Street, Calcutta, in English. Annual subscription, Rs. 5; Foreign subscription, $ 2-50.

Indian Methodist Times.—Published on the 1st of each month at 16, Sudder Street, Calcutta. Subscription, Rs. 2 per annum, with postage.

Indian Watchman.—Published fortnightly at Dadar, Bombay. Annual subscription, Rs. 2-8.

Indian Witness.—Established in 1871. Published every Friday in English, 46, Dharmtolla Street, Calcutta. Annual subscription, Rs. 6.

Indian Epworth Herald.—M. E. Publishing House, 46, Dharmtolla Street, Calcutta.

Indian Endeavorer.—M. E. Publishing House, 56, Dharmtolla Street, Calcutta.

India's Cry.—Published monthly, in English, by the Salvation Army, Bombay Education Society's Press, Bombay. Annas 2 per copy.

Kristo Bandhab.—Established in 1879. Published on the 1st of every month in Bengali, at the Baptist Mission Press, 41, Lower Circular Road, Calcutta. Annual subcription, Rs. 1-12 Mofussil.

Keralopkari.—Published at Cannanore by the Basel German Mission. Editor, Mr. S. Chandran.

Life Line—Published monthly in English, at the American Baptist Mission Press, Rangoon. Subscription, Re. 1 per month. It is a Temperance paper.

Madras Diocesan Record.—Published quarterly at the S. P. C. K. Press, Vepery. Editor, Rev. A. Williams.

Makzani Masihi.—Published on the 1st and 15th of each month at Allahabad, in Roman, Urdu and English. Annual subscription, Rs. 2. It is a paper for Indian Christians.

Medical Missions in India.—Quarterly Journal. Annual subscription, Rs. 1-2. Ajmere.

Morning Star.—Published every month in Karen at the American Baptist Mission Press, Rangoon. Annual subscription, Re. 1-6 with postage.

Morning Star.—Established in 1841. Published in English and Tamil every alternate Thursday at Manippay, Jaffna, by the American Mission. Subscription Re. 1-4.

News.—Published monthly in English at the American Baptist Mission Press, Rangoon. Subscription Re. 1-6 per annum.

North Indian Church Missionary Gleaner.—Published monthly in English at 10, Mission Row, Calcutta. Annual subscription, Re. 1-14 including postage.

Old Church Parish Magazine.—Published on the 15th of each month at 11, Mission Row, Calcutta. Subscription annually, Rs. 1-8.

On Guard.—Published monthly in English, at Simla. Annual subscription, Rs. 2. It is a Temperance paper.

Progress.—Established in 1880. Published monthly in English, at the S. P. C. K. Press, Vepery. Annas 14 per annum, with postage.

Rangoon Diocesan Quarterly Paper.—Published quarterly at the Church Press, Rangoon. Subscription, Re. 1-8 annually.

Tamil War-Cry.—Published monthly in Tamil at Madras. One pice per copy. Published by the Salvation Army.

Vepery Magazine.—Published in English at Vepery, Madras. Subscription, 3 annas monthly.

Vrittanta Patrika.—Published by the Wesleyan Mission, Mysore.

White Ribbon.—M. E. Publishing House, 46, Dharamtola Street Calcutta.

Woman's Friend. Published fortnightly in Bengali at 46, Dharmtola Street, Calcutta; only postage is charged annas 12.

Young Men of India.—Published in English at the beginning of each month at Madras. Organ of the International Committee of Young Men's Christian Association, India.

Zenana Magazine and Mission School Magazine.—Published by the Christian Literature Society.

STATISTICS OF INDIAN LANGUAGES.

Hindi spoken by...	8,56,75,000
Bengali ,, ...	4,13,44,000
Telugu ,, ...	1,98,85,000
Marathi ,, ...	1,88,93,000
Panjabi ,, ...	1,77,25,000
Tamil ,, ...	1,52,30,000
Guzrathi ,, ...	1,06,20,000
Canarese ,, ...	97,52,000
Orya ,, ...	90,11,000
Malayalam ,, ...	54,28,000
Urdu ,, ...	36,69,000
Sindhi ,, ...	25,92,000
Santhali ,, ...	17,10,000
Paharee (West) spoken by	15,23,000
Assamese ,, ...	14,36,000
Gond ,, ...	13,80,000
Paharee (East) ,, ...	11,53,000
Marwadi ,, ...	11,47,000
Pushtu ,, ...	10,81,000
Cole (Munda) ,, ...	6,54,000
Tulloo ,, ...	4,92,000
Cutchee ,, ...	4,40,000
Gipsy ,, ...	4,01,000
Orion ,, ...	3,68,000
Khonde ,, ...	3,20,000
English ,, ...	2,38,000

Some 89 other languages are spoken.

Per 100 of population.

34	speak	Hindi	7	speak	Panjabi.
16	,,	Bengali	6	,,	Tamil.
8	,,	Telugu	4	,,	Guzrathi.
8	,,	Marathi	4	,,	Canarese.
1	,,	Urdu	4	,,	Orya.
1	,,	Sindhi	2	,,	Malyalam.

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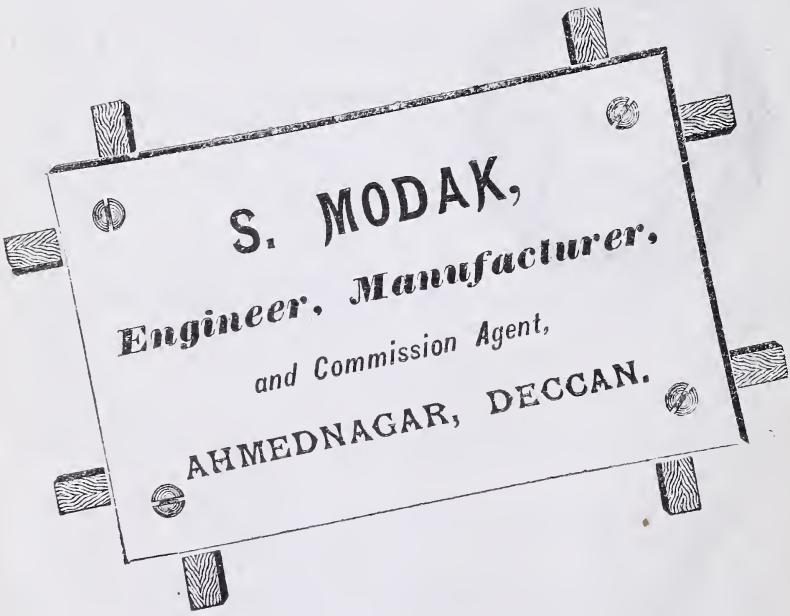

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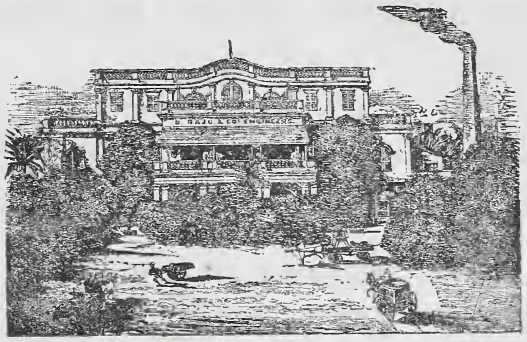

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