အုန်းခင် (တ/၁၁၇၃)
ဒုတိယကိုင်းတရားသုကြီး
ရန်ကုန်တိုင်းတရားရုံး (အနောက်ပိုင်းခရိုင်)

ပြည်ထောင်စုမြန်မာနိုင်ငံ

ဥပဒေ

အတွဲ ၁၁

THE BURMA CODE

VOLUME XI

ပြည်ထောင်စုမြန်မာနိုင်ငံအစိုးရအမိန့်အရ ပုံနှိပ်ဖြန့်ချီသည်။
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နိဒါန်း။

ဤဥပဒေအတွဲ ၁၁ တွင်ပါဝင်သော ဥပဒေများမှာ၊ အပိုင်း ၂၂၊ ပုဂ္ဂလိက ဥပဒေများအပြင် အပိုင်း ၂၃၊ အမွေဆက်ခံရေး၊ အပိုင်း ၂၄၊ လူပွဲစားခံရေး၊ အပိုင်း ၂၅၊ အနုညာတဘုံစီရင်ဆုံးဖြတ်ရေး၊ အပိုင်း ၂၆၊ သီးခြားသက်သာခွင့် ဆိုင်ရာနှင့် အပိုင်း ၂၇၊ ရှေ့နေ ရှေ့ရပ်များ ဆိုင်ရာ ဟူသောခေါင်းကြီးများတွင် ပါဝင်သည့် ဥပဒေများဖြစ်ပါသည်။

ထိုဥပဒေများကို ၁၉၅၄ ခုနှစ်၊ ဒီဇင်ဘာလ ၃၁ ရက်နေ့ထိ ပြင်ဆင်ထားသည့်အတိုင်း၊ ပုံနှိပ်ခြင်းဖြစ်ပါသည်။

စံညွှန့်၊
အတွင်းရေးမှူး၊
ဥပဒေဘာသာပြန်နှင့် ဥပဒေပြင်ဆင်ရေးကော်မိတီ၊
တရားရေးဝန်ကြီးဌာန။

ရန်ကုန်မြို့၊ ၁၃၂၀ ပြည့်နှစ်၊ သီတင်းကျွတ်လဆန်း ၁၀ ရက်။
(၁၉၅၀ ခု၊ အောက်တိုဘာလ ၂၂ ရက်။)

TABLE OF CONTENTS.

အကျဉ်ပဒေများ၏ အစီအစဉ်။

PART XXII.—PERSONAL LAWS.

အဝိုင်း ၂၂။ ။ပုဂ္ဂလိကဥပဒေများ။

A. BUDDHIST.

က။ ဗုဒ္ဓဘာသာဝင်များဆိုင်ရာ။

	PAGE စာမျက်နှာ။
1. The Registration of Kittima Adoptions Act	1
2. ၁၉၅၄ ခုနှစ်၊ ဗုဒ္ဓဘာသာဝင် မိန်းမများ အထူးထိမ်းမြားမှုနှင့် အမွေဆက်ခံမှု အက်ဥပဒေ	၂

B. HINDU.

ခ။ ဟိန္ဒူဘာသာဝင်များဆိုင်ရာ။

1. The Hindu Widows' Re-marriage Act	16
2. The Anand Marriage Act	18
3. The Hindu Disposition of Property Act	19
4. The Caste Disabilities Removal Act	20
5. The Hindu Inheritance (Removal of Disabilities) Act ...	20
6. The Hindu Law of Inheritance Amendment Act ...	21
7. The Hindu Gains of Learning Act	21

C. MUHAMMADAN.

ဂ။ မူဟာမက်ဘာသာဝင်များဆိုင်ရာ။

1. The Kazis Act	22
2. The Mussalman Wakf Validating Act	24
3. မူဆလင် လင်မယားကွာရှင်းရေး အက်ဥပဒေ	၂၅

D. PARSI.

ဃ။ ပါရစီလူမျိုးများဆိုင်ရာ။

1. The Parsi Marriage and Divorce Act	27

E. Christian.

PAGE
စာမျက်နှာ။

၄။ ခရစ်ယာန် ဘာသာဝင်များဆိုင်ရာ။

1. The Church of Scotland Kirk Session Act 42
2. The Christian Marriage Act 43
3. The Foreign Marriage Act 72
4. The Burma Divorce Act 73
5. The Native Converts' Marriage Dissolution Act 100

F. General.

၈။ အရပ်ရပ်ဆိုင်ရာ။

1. The Special Marriage Act 109
2. The Married Women's Property Act 118
3. The Majority Act 121
4. The Guardians and Wards Act 122
5. The Maintenance Orders Enforcement Act 139
6. The Child Marriage Restraint Act 143
7. The Slavery Act 144

PART XXIII.—SUCCESSION.

အပိုင်း ၂၃။ ။အမွေဆက်ခံရေး။

1. The Succession Act 146
2. The Administrator-General's Act 265
3. The Legal Representatives Suits Act 284

PART XXIV.—INSOLVENCY.

အပိုင်း ၂၄။ ။လူပွဲစာခံရေး။

1. The Rangoon Insolvency Act 286
2. The Burma Insolvency Act 335

PART XXV.—ARBITRATION.

အပိုင်း ၂၅။ ။အနုညာတစီရင်ဆုံးဖြတ်ရေး။

1. The Arbitration (Protocol and Convention) Act 366
2. The Arbitration Act, 1944 373

TABLE OF CONTENTS.

အက်ဥပဒေများ၏ အစီအစဉ်။

PART XXII.—PERSONAL LAWS.

အခိုင်း ၂၂။ ။ပုဂ္ဂလိကဥပဒေများ။

A. BUDDHIST.

က။ ဗုဒ္ဓဘာသာဝင်များဆိုင်ရာ။

	PAGE စာမျက်နှာ။
1. The Registration of Kittima Adoptions Act	1
2. ၁၉၅၄ ခုနှစ်၊ ဗုဒ္ဓဘာသာဝင် မိန်းမများ အထူးထိမ်းမြားမှုနှင့် အမွေဆက်ခံမှု အက်ဥပဒေ	J

B. HINDU.

ခ။ ဟိန္ဒူဘာသာဝင်များဆိုင်ရာ။

1. The Hindu Widows' Re-marriage Act	16
2. The Anand Marriage Act	18
3. The Hindu Disposition of Property Act	19
4. The Caste Disabilities Removal Act	20
5. The Hindu Inheritance (Removal of Disabilities) Act ...	20
6. The Hindu Law of Inheritance Amendment Act ...	21
7. The Hindu Gains of Learning Act	21

C. MUHAMMADAN.

ဂ။ မူဟာမက်ဘာသာဝင်များဆိုင်ရာ။

1. The Kazis Act	22
2. The Mussalman Wakf Validating Act	24
3. မူဆလင် လင်မယားကွာရှင်းရေး အက်ဥပဒေ	J၅

D. PARSI.

ဃ။ ဝါရစီလူမျိုးများဆိုင်ရာ။

1. The Parsi Marriage and Divorce Act	27

PAGE
စာမျက်နှာ။

PART XXVI.—SPECIFIC RELIEF.

အပိုင်း ၂၆။ ။သီးခြားသက်သာခွင့်ဆိုင်ရာ။

1. The Specific Relief Act 390

PART XXVII.—LEGAL PRACTITIONERS.

အပိုင်း ၂၇။ ။ရှေ့နေရှေ့ရပ်များဆိုင်ရာ။

1. The Bar Council Act 419
2. The Legal Practitioners Act 425

PART XXII.—PERSONAL LAWS.

အပိုင်း ၂၂။ ။ပုဂ္ဂလိကဥပဒေများ။

A.—BUDDHIST.

၈။ ။ဗုဒ္ဓဘာသာဝင်များဆိုင်ရာ။

THE REGISTRATION OF KITTIMA ADOPTIONS ACT.

[BURMA ACT XIV, 1939.] (1st April, 1941.)

Extent. **1.** It shall extend only to those areas in which the Registration Act is in force.

Application. **2.** It shall apply only to Kittima adoptions by persons to whom the Burmese Buddhist Law is applicable.

Commencement. **3.** It shall come into force on the 1st April, 1941.

Definition. **4.** A Kittima son or daughter is one who is adopted with the express intention that he or she shall inherit according to the Burmese Buddhist Law.

Registration of *Kittima* adoptions. **5.** No dispute as to the right of any person to inherit as or through a Kittima son or daughter shall be entertained by any Court unless the fact of the adoption, if it was effected after the 1st April, 1941,[1] is evidenced by an instrument :—

(i) executed by the person making the adoption and (*a*) by the person who is adopted if not less than 18 years of age at the time of such execution aforesaid, or (*b*) if less than that age, then by the person or persons, if any, whose consent to the adoption is required by the Burmese Buddhist Law, and

(ii) attested by at least two witnesses, and

(iii) registered in Book 4 of the books referred to in sub-section (*1*) of section 51 of the Registration Act.

Repeal. **6.** Burma Act II of 1926[2] is hereby repealed.

---

[1] Date of commencement of this Act.

[2] This Act, entitled the Burma Registration of Adoptions Act, 1926, provided for the compulsory registration of *Kittima* adoptions in Burma, but never came into force.

၁၉၅၄ ခုနှစ်၊ ဗုဒ္ဓဘာသာဝင်မိန်းမများ အထူးထိမ်းမြားမှုနှင့် အမွေဆက်ခံမှု အက်ဥပဒေ။

[၁၉၅၄ ခုနှစ်၊ အက်ဥပဒေအမှတ် ၃၂။] (၁၉၅၄ ခု၊ ဖေဖော်လ ၂၃ ရက်။)

အောက်ပါအတိုင်း အက်ဥပဒေအဖြစ် ပြဋ္ဌာန်းလိုက်သည်။

၁။ ။ဤအက်ဥပဒေကို ၁၉၅၄ ခုနှစ်၊ ဗုဒ္ဓဘာသာဝင်မိန်းမများ အထူး ထိမ်းမြားမှုနှင့်အမွေဆက်ခံမှု အက်ဥပဒေဟု ခေါ်ရမည်။

၂။ ။ဤအက်ဥပဒေတွင် အကြောင်းအရာနှင့်ဖြစ်စေ၊ ရှေ့နောက်စကားတို့၏အဓိပ္ပါယ်နှင့်ဖြစ်စေ မဆန့်ကျင်လျှင်—

(က) ''ဗုဒ္ဓဘာသာဝင်မိန်းမ'' ဆိုသည်မှာ ပြည်ထောင်စု မြန်မာနိုင်ငံသားဖြစ်သည့်ပြင်၊ ဗုဒ္ဓဘာသာ ကိုးကွယ်သော မိန်းမကို၊ သို့တည်း မဟုတ် ဗုဒ္ဓဘာသာ ကိုးကွယ်သော မိဘတို့မှ မွေးဖွားသောမိန်းမကို ဆိုလိုသည်။

ခြွင်းချက်။ ။သို့ရာတွင် ဗုဒ္ဓဘာသာ ကိုးကွယ်သော မိဘတို့မှ မွေးဖွားသော မိန်းမတစ်ဦးသည်၊ ဤအက်ဥပဒေ စတင်အာဏာမတည်မီက အခြားဘာသာတခုခုသို့ အထင်အရှားကူးပြောင်း၍၊ ထိုအခြားဘာသာကိုကိုးကွယ်လျက်ရှိသူင့်၊ ထိုမိန်းမသည် ဗုဒ္ဓဘာသာကိုးကွယ်သော မိဘတို့မှ မွေးဖွားသည်ဟူသော အကြောင်းသဏ်သက်ကြောင့် ဗုဒ္ဓဘာသာဝင်မိန်းမဖြစ်သည်ဟု မမှတ်ယူရ။

(ခ) ''မှတ်ပုံတင်အရာရှိ'' ဆိုသည်မှာ၊ ဤအက်ဥပဒေအရ ထိမ်းမြားမှု မှတ်ပုံတင်အရာရှိကို ဆိုလိုသည်။

၃။ ။(၁) ရွာသူကြီးအား လုံးသည်၊ ဤအက်ဥပဒေအရ ထိမ်းမြားမှုမှတ်ပုံတင်အရာရှိများဖြစ်ရမည်။ နိုင်ငံတော်သမတသည် မိမိသင့်တော်သည် ထင်မြင်သောပုဂ္ဂိုလ်ကိုရွာသူကြီးမရှိသည့် ဒေသအတွက် ထိမ်းမြားမှု မှတ်ပုံတင်အရာရှိအဖြစ် ခန့်ထားနိုင်သည်။ မှတ်ပုံတင် အရာရှိများအား အကြောင်းကြားစာ ပုံစံများနှင့် ထိမ်းမြားမှု သက်သေခံမှတ်ပုံစာအုပ်များကို ပေးအပ်ထားရမည်။

(၂) မှတ်ပုံတင်အရာရှိအား လုံးသည် ပြည်သူ့ဝန်ထမ်းများဖြစ်သည်ဟု မှတ်ယူရမည်။

၄။ ။အခြားတည်ဆဲ တရားဥပဒေများတွင်သော်ငင်း၊ တရားဥပဒေကဲ့သို့အာဏာရှိသော ဓလေ့ထုံးစံများတွင်သော်ငင်း၊ မည်သို့ပင်ဆန့်ကျင်လျက်ပါရှိစေကာမူ၊ ဤအက်ဥပဒေမပြဋ္ဌာန်းချက်များသည်၊ ဗုဒ္ဓဘာသာဝင်မိန်းမနှင့် ထိုမိန်းမ၏ ဗုဒ္ဓဘာသာဝင်မဟုတ်သော လင်ယောကျ်ားတိုင်းအပေါ်၌ အာဏာသက်ရောက်ရမည်။

၅။ ။လူပျိုဘော်ဝင်ငြိုးဖြစ်သည့် ဗုဒ္ဓဘာသာဝင် မဟုတ်သော ယောကျ်ားတဦးနှင့် အသက် ၁၄ နှစ်အောက်မငယ်သည့် ဗုဒ္ဓဘာသာဝင် မိန်းမတဦးတို့သည်၊ ဤအက်ဥပဒေအရ ထိမ်းမြားနိုင်သည်။ သို့ရာတွင်—

(က) နှစ်ဦးလုံးမှာ စိတ်ပေါ့သွပ်သူများ မဖြစ်စေရ။

(ခ) အသက် ၂၀ မပြည့်သေးသည့် မိန်းမဖြစ်လျှင် မိဘ၏ သဘောတူချက်ကို သော်ငင်း၊ မိဘတို့သေဆုံးပါမူ၊ အမှန်အုပ်ထိန်းသူ၊ သို့တည်း မဟုတ်

တရားဥပဒေအရ အုပ်ထိန်းသူရှိလျှင်၊ ထိုအုပ်ထိန်းသူ၏ သဘောတူချက်ကိုသော်၎င်း ရရှိပြီးဖြစ်ရမည်။

(ဂ) မိန်းမမှာ မပြတ်စဲသော တရားဝင်လင်ယောက်ျား မရှိစေရ။

၆။ ။ဗုဒ္ဓဘာသာဝင်မဟုတ်သည့်ယောက်ျားတဦးနှင့် ဗုဒ္ဓဘာသာဝင်မိန်းမတဦး ထိမ်းမြားရန်ကြံရွယ်သည့်အခါ၊ မိဘတို့တဦးဦး ၁၄ ရက်ထက်မနည်းနေထိုင်လျက်ရှိသည့် ဒေသဆိုင်ရာ မှတ်ပုံတင်အရာရှိထံ ဇယားတွင် ပြဋ္ဌာန်းထားသည့် ပုံစံဖြင့်၊ မိမိတို့တဦးဦးက အကြောင်းကြားစာ ပေးပို့နိုင်သည်။ အကြောင်းကြားစာ ပုံစံကို မှတ်ပုံတင်အရာရှိထံ တောင်းယူလျှင်ရနိုင်သည်။

၇။ ။ပုဒ်မ ၆ အရ အကြောင်းကြားစာပေးသူသည်၊ အကြောင်းကြားစာတွင်ပြဋ္ဌာန်းထားသည့် ထုတ်ဖေါ်ချက်ကို သက်သေနှစ်ဦးနှင့် ထိမ်းမြားပေးရမည့် မှတ်ပုံတင်အရာရှိတို့ ရှေ့တွင် လက်မှတ်ထိုးရမည်။

၈။ ။(၁) မှတ်ပုံတင်အရာရှိသည်—

(က) အကြောင်းကြားစာ မိတ္တူတစောင်ကို မိမိ၏ရုံးရှိ အများ မြင်သာသည့် နေရာ၌ ကပ်ခြင်းဖြင့်၎င်း၊

(ခ) အကြောင်းကြားစာ မိတ္တူတစောင်ကို၊ တရားမကျင့်ထုံးဥပဒေအရ သမ္မာန်စာများ၊ သို့တည်းမဟုတ် နို့တစ်စာများပေးသည့် နည်းလမ်းအတိုင်း၊

(ကက) ထိမ်းမြားမည့်မိန်းမ အသက် ၂၁ မပြည့်သေးလျှင် ထိုမိန်းမ၏မိဘ၊ သို့တည်းမဟုတ် အုပ်ထိန်းသူ ဆိုင်သင့်ရာရာအား ပေးခြင်းဖြင့်၎င်း၊

(ခခ) မိန်းမသည် ယောက်ျားတဦးနှင့် ထိမ်းမြားဘူးလျှင်၊ ထိုယောက်ျားအား ပေးခြင်းပြင့်၎င်း

အကြောင်းကြားစာကို ကျေညာစေရမည်။

<u>ခြင်းချက်</u>။ ။သို့ရာတွင် အကြောင်းကြားစာ မိတ္တူပေးခြင်းခံရမည့် သူတဦးတယောက်၏ နေရပ်သည်၊ မှတ်ပုံတင်အရာရှိ၏ စီရင်ပိုင်ခွင့်အာဏာနယ်နိမိတ် ပြင်ပတွင်ရှိလျှင်၊ မှတ်ပုံတင်အရာရှိသည် မိတ္တူတစောင်ကို ထိုသူထံ စာပို့တိုက်မှ ရီစစ္စတြီပြုလုပ်၍ဖြစ်စေ၊ လူလွှတ်၍ဖြစ်စေ ပေးပို့နိုင်သည်။

(၂) မှတ်ပုံတင်အရာရှိသည် မြဋ္ဌာန်းထားသည့် ပုံစံပါမူလအကြောင်းကြားစာအောက်ခြေရှိ သက်သေခံလက်မှတ်တွင် ဆိုင်ရာအကြောင်းအရာများကို ရေးသွင်းရမည်။

၉။ ။ထိမ်းမြာ ရန်ကြံရွယ်ကြောင်း အကြောင်းကြားစာကို ပုဒ်မ ၆ အရပေးပြီးနောက် ၁၄ ရက်ကြာသည့်အခါ၊ ၏အက်ဥပဒေတွင်နောက်၌ဖေါ်ပြပါရှိသည့်နည်းလမ်းအတိုင်း ကြိုတင် ကန့်ကွက်ခြင်းမရှိလျှင် မှတ်ပုံတင်အရာရှိက သက်ဆိုင်သူနှစ်ဦးကိုထိမ်းမြားပေးနိုင်သည်။

၁၀။ ။အကြောင်းကြားစာပေးထားသူတို့ထိမ်းမြားလျှင်၊ ပုဒ်မ ၅ တွင် ပြဋ္ဌာန်းထားသည့်စည်းကမ်းတရပ်နှင့်ဖြစ်စေ၊အများနှင့်ဖြစ်စေ၊ဆန့်ကျင်မည်ဟူသော အကြောင်းပြချက်ဖြင့်မည်သူမဆိုမှတ်ပုံတင်အရာရှိထံလိပ်တပ်လျက် ထိုသူတို့အား ထိမ်းမြားခြင်းမပြုစေရန် စာရေးသားကန့်ကွက်နိုင်သည်။

၁၁။ ။(၁) ကန့်ကွက်လွှာရရှိသောအခါ မှတ်ပုံတင်အရာရှိသည်၊ ကန့်ကွက်သူအား စီရင်ပိုင်ခွင့်အာဏာရ တရားရုံးသို့ညွှန်ရမည့်ခြင် ထိမ်းမြားခြင်းကိုလည်း ထိုအခါ၌ထိုတရားရုံးဖွင့်လှစ်

လျက်ရှိလျှင်၊ ၁၄ ရက်မျှရွှေ့ဆိုင်းထားရမည်။ ဖွင့်လှစ်လျက်မရှိလျှင် ထိုတရားရုံးဖွင့်လှစ်သည့်နေ့မှ ၁၄ ရက်မျှရွှေ့ဆိုင်းထားရမည်။ သို့ရာတွင် မှတ်ပုံတင်အရာရှိသည် ကန့်ကွက်သူက လျောက်ထားသည့်အခါ လုံလောက်သော အကြောင်းတရပ်ရပ်ရှိသည်ဟုထင်မြင်လျှင် ထိုသို့ထိမ်းမြားခြင်းကို နောက်ထပ် ၁၄ ရက်ထက်မပိုသောကာလမျှ ထပ်မံရွှေ့ဆိုင်းနိုင်သည်။

(၂) ပုဒ်မခွဲ (၁)အရ စိရင်ပိုင်ခွင့်အာဏာရတရားရုံးသည်၊ မှတ်ပုံတင်အရာရှိ၏ ရုံးတည်ရှိရာဒေသတွင် စိရင်ပိုင်ခွင့်ရှိသည့်မြို့နယ်တရားမတရားရုံး၊ သို့တည်းမဟုတ် ရန်ကုန်မြို့တော်တရားမရုံး ဖြစ်စေရမည်။

၁၂။ ။(၁) အကြောင်းကြားစာပေးထားသူတို့၌၊ ပုဒ်မ ၅ အရ၊ ထိမ်းမြားနှင့်ခွင့်ရှိမရှိအမိန့်ချမှတ်ရန်၊ စိရင်ပိုင်ခွင့်အာဏာရတရားရုံးသို့ ကန့်ကွက်သူကလျောက်လွှာတင်သွင်းနိုင်သည်။

(၂) တရားရုံးက ထိုလျောက်လွှာရရှိကြောင်း သက်သေခံလက်မှတ် တစောင်ကို လျောက်ထားသူအား ပေးရမည်။

(၃) (က) တရားရုံးကပေးသည့် သက်သေခံလက်မှတ်ကို မှတ်ပုံတင်အရာရှိထံ ပုဒ်မ ၁၁၊ ပုဒ်မခွဲ (၁)အရ၊ ထိုအရာရှိခွင့်ပြုထားသည့် အချိန်ကာလအတွင်း တင်သွင်းလျှင်၊ အကြောင်းကြားစာပေးထားသူတို့၌ ပုဒ်မ ၅ အရ၊ ထိမ်းမြားနိုင်ခွင့်ရှိသည်ဟူသောအမိန့်ကို တရားရုံးမှ မရသမျှကာလပတ်လုံး ထိုသူတို့ကိုထိမ်းမြားမပေးရ။

(ခ) ထိုသက်သေခံလက်မှတ်ကို မှတ်ပုံတင်အရာရှိထံ ထိုအရာရှိခွင့်ပြုထားသည့် အချိန်ကာလအတွင်း မတင်သွင်းလျှင်၊ မှတ်ပုံတင်အရာရှိသည် သက်ဆိုင်သူနှစ်ဦးက ထိမ်းမြားလိုမူ ထိမ်းမြားပေးရမည်။

(၄) တရားရုံးသည် လျောက်လွှာတွင်ပါရှိသည့် အချက်များကိုငင်း၊ နှစ်ဘက်အမှုသည်များတင်ပြသည့်သက်သေခံချက်ကိုငင်း၊ အကျဉ်းချုပ်နည်းဖြင့်စစ်ဆေးကြားနာပြီးနောက်၊ ထိုသူနှစ်ဦးခွဲ ပုဒ်မ ၅ အရ၊ ထိမ်းမြားနိုင်ခွင့် ရှိမရှိဆုံးဖြတ်ရမည်ဖြင့် ထိုသို့ဆုံးဖြတ်သည့်အတိုင်းလည်း အမိန့်ချမှတ်ရမည်။ ထိုအမိန့်သည်အပြီးသတ်ဖြစ်ရမည်၊

(၅) တရားရုံးသည်၊ မိမိချမှတ်သောအမိန့်၏ မိတ္တူတစောင်ကို မှတ်ပုံတင်အရာရှိထံချက်ခြင်းပို့ရမည်။

(၆) (က) ထိုသူနှစ်ဦးခွဲ ပုဒ်မ ၅ အရ၊ ထိမ်းမြားနိုင်ခွင့်ရှိသည်ဟု တရားရုံးကအမိန့်ချမှတ်လျှင်၊ မှတ်ပုံတင်အရာရှိသည် ထိုသူတို့ကထိမ်းမြားလိုမူ ထိမ်းမြားပေးရမည်။

(ခ) ထိုသူနှစ်ဦးခွဲ ပုဒ်မ ၅ အရ၊ ထိမ်းမြားနိုင်ခွင့်မရှိဟု တရားရုံးကအမိန့်ချမှတ်လျှင်၊ မှတ်ပုံတင်အရာရှိသည် ထိမ်းမြားမပေးရ။

၁၃။ ။ကန့်ကွက်ခြင်းသည် မသင့်လျော်သည့်အပြင်၊ သဘောရိုးနှင့် ကန့်ကွက်ခြင်းလည်း မဟုတ်ဟု ပုဒ်မ ၁၂ အရ၊ လျောက်လွှာတင်သွင်းရာ တရားရုံးကထင်မြင်လျှင်၊ ၅၀၀ ထက်မပိုသည့်လျော်ကြေးငွေကို လျောက်ထားသူက ထိမ်းမြားမည့်သူနှစ်ဦးအား ပေးစေရန် စီရင်နိုင်သည်။

၁၄။ ။၅၂အက်ဥပဒေအရ၊ ထိမ်းမြားခြင်းကို သဘောတူချက်ပေးရမည့်သူသည်စိတ်ပေါ့သွပ်နေလျှင်၊ သို့တည်းမဟုတ် ထိုသို့သဘောတူချက်ပေးရမည့်သူ (မိဘမှတပါး) သည် လုံလောက်သောအကြောင်းမရှိဘဲ ထိမ်းမြားခြင်းကို သဘောတူချက်မပေးလျှင်၊ ထိမ်းမြားလိုသူတို့သည် စီရင်ပိုင်ခွင့်အာဏာရတရားရုံးသို့ လျောက်လွှာဖြင့် လျောက်ထားနိုင်သည်။

ထိုတရားရုံးသည် လျောက်လွှာပါအချက်များကို အကျဉ်းချုပ်နည်းဖြင့် စစ်ဆေးနိုင်သည်။

ထို့ပြင် စစ်ဆေးသောအခါ၊ ထိုသူတို့၌ ပုဒ်မ ၅ အရ၊ ထိမ်းမြားနိုင်ခွင့်ရှိသည်ဟုထင်မြင်လျှင်၊ထိမ်းမြားနိုင်ကြောင်းကို တရားရုံးကကျေညာရမည်။

ထိုကျေညာချက်သည် သဘောတူချက်ပေးရမည့်သူက သဘောတူချက်ပေးပြီးဖြစ်ဘိသကဲ့သို့အကျိုးသက်ရောက်ရမည်။

၁၅။ ။ပုဒ်မ ၉၊ ၁၂၊ ၁၄ တခုခုအရ၊ ထိမ်းမြားသောအခါ၊ မှတ်ပုံတင်အရာရှိသည် သက်သေနှစ်ဦးရှေ့တွင် သက်ဆိုင်သူတို့ကိုထိမ်းမြားပေးရမည်။ထိုသက်သေတို့သည် ပုဒ်မ ၆ တွင်ရည်ညွှန်းထားသည့်ထိမ်းမြားမှု သက်သေခံမှတ်ပုံစာအုပ်တွင် အသိသက်သေအဖြစ် လက်မှတ်ထိုးရမည်။ ထိမ်းမြားခြင်းကို မည်သည့်နည်းဖြင့်မဆို ဆောင်ရွက်နိုင်သည်။ သို့ရာတွင် ထိမ်းမြားမည့်သူများသည် မှတ်ပုံတင်အရာရှိနှင့် သက်သေများရှေ့တွင်၊ ထိုသူတို့ကြားလောက်အောင် '' ကျွန်ုပ်တို့သည် တရားဝင်လင်မယားအဖြစ် ပေါင်းဖက်ပါမည် '' ဟူ၍ပြောဆိုရမည်။

၁၆။ ။အထက်ပါအတိုင် ထိမ်းမြားပြီးသည့်အခါ၊ မှတ်ပုံတင်အရာရှိသည် သက်ဆိုင်သောအကြောင်းအရာများကို '' ထိန်းမြားမှုသက်သေခံ မှတ်ပုံစာအုပ် '' ဟုခေါ်တွင်သည့်မှတ်ပုံစာအုပ်၌၊ မူရင်းထပ်တူလေးစောင်ရေးသွင်းရမည်။ ထိုမှတ်ပုံစာအုပ်သည် ဤအက်ဥပဒေတွင်ပူးတွဲထားသည့် ဇယားပါပုံစံအတိုင်းဖြစ်စေရမည့်ပြင်၊ ထိုမှတ်ပုံစာအုပ်တွင် ထိမ်းမြားသူတို့ကငင်း၊ သက်သေတို့ကငင်း၊ မှတ်ပုံတင်အရာရှိကငင်း လက်မှတ်ထိုးရမည်။

၁၇။ ။(၁) မှတ်ပုံတင်အရာရှိသည်၊ သက်သေခံလက်မှတ်တစောင်ကို လင်အား၊ အခြားတစောင်ကိုမယားအားပေးအပ်ရမည်။ အကယ်၍မယားသည် အသက် ၂၀ မပြည့်သေးလျှင် သူ၏မိဘအား၊ သို့တည်းမဟုတ် အုပ်ထိန်းသူအားပေးအပ်ရမည်။ တတိယတစောင်ကို ပုဒ်မခွဲ (၂) နှင့်အညီ ခရိုင်ဝန်ထံပို့၍ စတုတ္ထတစောင်ကိုသိမ်းထားရမည်။

(၂) မှတ်ပုံတင်အရာရှိသည်၊ ပုဒ်မ ၆ အရ၊ အကြောင်းကြားစာရရှိလျှင်၊ ထို အဝကြောင်းကြားစာကိုငင်း၊ ထိမ်းမြားမှု သက်သေခံလက်မှတ်တစောင်ကိုငင်း၊ ထိမ်းမြားခြင်းဆိုင်ရာ အခြားစာတမ်းအမှတ်အသားအရပ်ရပ်ကိုငင်း၊ ထိမ်းမြားသည့်နေ့မှရက်သတ္တတပတ်အတွင်း ဆိုင်ရာခရိုင်ဝန်ထံသို့ မြို့နယ်အရာရှိမှတဆင့်ပို့ရမည့်။ ထို့ပြင် ဆိုခဲ့သည့်စာတမ်းအမှတ်အသားများကို ထိမ်းမြားမှုဆိုင်ရာမှတ်ပုံစာအုပ်တွင် တွဲထားရမည့်ပြင်၊ ခရိုင်ဝန်ရုံးတွင် အမြဲသိမ်းသားရမည်။

၁၈။ ။ထိန်းမြားမှုသက်သေခံမှတ်ပုံစာအုပ်နှင့် ထိန်းမြားခြင်းဆိုင်ရာ အခြားစာတမ်းအမှတ်အသားများကိုသင့်တော်သည့်အခါများ၌ကြည့်ရှုခွင့်ပြုရမည့်ပြင်၊ထိုစာတမ်းအမှတ်အသားများ၏တာဝန်ခံမိတ္တူများကို ရလိုကြောင်းလျှောက်ထားသည့်အခါ၊ ခရိုင်ဝန်သည်နိုင်ငံတော်သမဘာသတ်မှတ်သားသည့်နှုန်းအတိုင်း အခငွေကို မိမိအားလျှောက်သားသူကပေးဆောင်လျှင် ထုတ်ပေးရမည်။

၁၉။ ။၅၏အက်ဥပဒေအရ၊ ထိန်းမြားခြင်းနှင့်ဆိုင်သည့် စာတမ်းအမှတ်အသားများ၏တာဝန်ခံမိတ္တူများတွင် ပါရှိသည့်အကြောင်း အရာများသည် မှန်သည်ဟု သက်သေခံအဖြစ်လက်ခံရမည်။ နောက်ထပ်သက်သေထင်ရှားပြရန်မလို။

၂၀။ ။(၁) ဗုဒ္ဓဘာသာဝင်မဟုတ်သည့် ယောကျ်ားတဦးနှင့် ဗုဒ္ဓဘာသာဝင်မိန်းမတဦးတို့ပေါင်းဖက်နေထိုင်ပြုမူကြပုံသည် အကယ်၍ထိုသူနှစ်ဦးလုံးဗုဒ္ဓဘာသာဝင် မြန်မာလူမျိုးချည်းဖြစ်ခဲ့သော်၊ ဗုဒ္ဓဘာသာဓမ္မသတ်အရ၊ လင်မယားအရာမြောက်မည့် ပေါင်းဖက်နေထိုင်ပြုမူကြပုံမျိုးဖြစ်

လျှင်၊ ထိုသူတို့သည် ထိုသို့ပေါင်းဖက်စကပင် ထိမ်းမြားခဲ့ကြသည်ဟု မှတ်ယူရမည်ဖြင့်၊ ထိုသူတို့သည် ဤအက်ဥပဒေအရ၊ ထိမ်းမြားခဲ့ကြသည်ဟုလည်း မှတ်ယူရမည်။

(၂) ထိုလင်မယားသည် စတင်ပေါင်းဖက်သည့်နေ့မှစ၍ မည်သည့်အခါတွင်မဆို၊ ဤအက်ဥပဒေအရမှတ်ပုံတင်ရန် မှတ်ပုံတင်အရာရှိထံလျှောက်ထားနိုင်သည်။ ထိုအခါမှတ်ပုံတင်အရာရှိသည် ပုဒ်မ ၁၅ အရ လိုအပ်သည့်အတိုင်း၊ ထိုသူတို့ကို မိမိကထိမ်းမြားပေးဘိသကဲ့သို့ ပုဒ်မ ၁၆ နှင့် ၁၇ တွင်သတ်မှတ်ထားသည့်အတိုင်း ဆောင်ရွက်ရမည်။

(၃) ဤပုဒ်မပါပြဋ္ဌာန်းချက်များသည်၊ ပုဒ်မခွဲ (၁) ၌ ဖော်ပြထားသည့်ပေါင်းဖက်နေထိုင်ပြုမူကြုံပုံမျိုးဖြင့်၊ ဤအက်ဥပဒေစတင်အာဏာမတည်မီ ခြောက်လကာလအတိုင်းအခြားအတွင်းမည်သည့်အခါတွင်မဆို၊ ပေါင်းဖက်လျက်ရှိသည့် မုဒ္ဓဘာသာဝင်မိန်းမနှင့် မုဒ္ဓဘာသာဝင်မဟုတ်သည့်ယောကျ်ားတိုင်းအပေါ်၌ အာဏာသက်ရောက်ရမည်။

၂၁။ ။(၁) မုဒ္ဓဘာသာဝင်မိန်းမတဦးနှင့် မုဒ္ဓဘာသာဝင်မဟုတ်သည့် ယောကျ်ားတဦးတို့သည် မိမိတို့၏ထိခဲမြားခြင်းကို မှတ်ပုံမတင်ဘဲပေါင်းဖက်လျက်ရှိလျှင်၊ ထိုအကြောင်းကို၊ ထိုမိန်းမနေထိုင်ရာဒေသတွင် စီရင်ပိုင်ခွင့်အာဏာရှိသည့်မှတ်ပုံတင်အရာရှိထံ၊ ထိုမိန်းမကဖြစ်စေ၊ ထိုမိန်းမ၏အမိက၊ သို့တည်းမဟုတ်အဘက၊ သို့တည်းမဟုတ်အုပ်ထိန်းသူကဖြစ်စေ၊ အခြားဆွေမျိုးတော်စပ်သူတဦးဦးကဖြစ်စေ၊ သတင်းပေးနိုင်သည်။ မှတ်ပုံတင်အရာရှိသည်၊ သတင်းပေးချက်ကို ရေးမှတ်ထားရမည်၊ သို့တည်းမဟုတ်ရေးမှတ်ထားစေရမည်။ ထို့ပြင် ထိုသို့ရေးမှတ်ထားသည့် သတင်းပေးချက်အားလုံးကို သတင်းပေးသူက လက်မှတ်ထိုးရမည်။

(၂) ထိုနောက် မှတ်ပုံတင်အရာရှိသည်၊ ထိုမုဒ္ဓဘာသာဝင်မိန်းမနှင့် မုဒ္ဓဘာသာဝင်မဟုတ်သည့်ယောကျ်ားတို့ကို မိမိချိန်းဆိုသည့်နေ့ရက်တွင် မိမိထံလာရောက်ရန်ဆင့်ခေါ်ရမည်။ ထိုသူနှစ်ဦးလုံးက မိမိတို့၏ထိန်းမြားခြင်းကို မှတ်ပုံတင်လိုလျှင်၊ မှတ်ပုံတင်အရာရှိသည်၊ ပုဒ်မ ၁၅ အရ၊ လိုအပ်သည့်အထိုင်း ထိုသူ့ကို မိမိကထိန်းမြားပေးဘိသကဲ့သို့၊ ပုဒ်မ ၁၆ နှင့် ၁၇ တွင်သတ်မှတ်ထားသည့်အတိုင်း ဆောင်ရွက်ရမည်။ အကယ်၍ကဦးဦးကဖြစ်စေ၊ နှစ်ဦးလုံးကဖြစ်စေ၊ မိမိတို့၏ထိမ်းမြားခြင်းကို မှတ်ပုံမတင်လိုလျှင်၊ သို့တည်းမဟုတ် မလာရောက်လျှင်၊ မှတ်ပုံတင်အရာရှိသည်၊ ပုဒ်မ ၁၁ တွင်ရည်ညွှန်းထားသည့် စီရင်ပိုင်ခွင့်အာဏာရတရားရုံးသို့ ရေးမှတ်ထားသည့် သတင်းပေးချက်နှင့်တကွ အစီရင်ခံစာပေးပို့ရမည်။

(၃) အခြားတည်ဆဲ တရားဥပဒေများတွင် မည်သို့ပင်ပါရှိစေကာမူ၊ ထိုတရားရုံးသည်၊ အစီရင်ခံစာရရှိသောအခါ၊ ထိုအမှုသည် နည်းလမ်းတကျစွဲဆိုသည့် တရားမမှုဖြစ်ဘိသကဲ့သို့ ပုဒ်မခွဲ (၄) တွင်ဖော်ပြထားသည့်နှစ်ဘက်အမှုသည်များကိုငင်း၊ ထိုသူတို့တင်ပြသည့်သက်သေခံချက်ကိုငင်း၊ အကျဉ်းချုပ်နည်းအားဖြင့် စစ်ဆေးကြားနာပြီးနောက်၊ ထိုမိန်းမနှင့် ထိုယောကျ်ားတို့သည်၊ ပုဒ်မ ၂၀၊ ပုဒ်မခွဲ (၁) ၏အမိပ္ပါယ်အရ၊ လင်မယားဟုတ်မဟုတ်ဆုံးဖြတ်ရမည်ဖြင့်၊ ဆုံးဖြတ်သည့်အတိုင်း အမိန့်ချမှတ်ရမည်။ တရားရုံးသည် စဒိုတ်နှင့်စပ်လျဉ်း၍ မိမိသင့်တော်သည်ထင်မြင်သည့်အမိန့်ကို ချမှတ်နိုင်သည်။

(၄) (က) တဦးဦးကထိမ်းမြားခြင်းကို မှတ်ပုံမတင်လိုသည့်အမှုတွင်မှတ်ပုံတင်လိုသူအား တရားလိုဟူ၍ငင်း၊ မှတ်ပုံမတင်လိုသူအား တရားခံဟူ၍ငင်း မှတ်ယူရမည်။

(ခ) နှစ်ဦးလုံးက ထိမ်းမြားခြင်းကို မှတ်ပုံမတင်လိုသည့်အမှုတွင် ဆိုင်ရာသတင်းပေးသူအား တရားလိုဟူ၍ငင်း၊ မှတ်ပုံမတင်လိုသူနှစ်ဦးအား တရားခံဟူ၍ငင်းမှတ်ယူရမည်။

(၅) တရားရုံးသည်၊ မိမိချမှတ်သောအမိန့်၏ မိတ္တူတစောင်ကို မှတ်ပုံတင်အရာရှိထံသို့ချက်ခြင်းပေးပို့ရမည်။

(၆) တရားရုံးက ထိုယောကျ်ားနှင့်မိန်းမတို့သည် ပုဒ်မ ၂၀၊ ပုဒ်မခွဲ (၁) ၏ အဓိပ္ပါယ်အရ၊ လင်မယားဖြစ်သည်ဟုဆုံးဖြတ်လျှင် မှတ်ပုံတင်အရာရှိသည်၊ ထိုတရားရုံး၏အမိန့်အတိုင်း ထိမ်းမြားမှုသက်သေခံမှတ်ပုံစာအုပ်တွင် လိုအပ်သည့်မြင်ဆင်ချက်များပြု၍၊ ထိုမှတ်ပုံစာအုပ်တွင် သက်ဆိုင်သည့်အကြောင်းအရာများကို မူရင်းထပ်တူလေးစောင်ရေးသွင်းရမည်။ ထို့ပြင် မှတ်ပုံတင်အရာရှိသည်၊ ထိုမှတ်ပုံစာအုပ်တွင် လက်မှတ်ထိုးပြီးနောက် ပုဒ်မ ၁၇ တွင် သတ်မှတ်ထားသည့် အတိုင်း ဆောင်ရွက်ရမည်။

(၇) မြို့နယ်တရားမတရားရုံးမှချမှတ်သောအမိန့်ကို၊ ထိုရုံးတည်ရှိရာဒေသတွင် စီရင်ပိုင်ခွင့်ရှိသည့်ခရိုင်တရားမရုံး၌ အယူခံဝင်ခွင့်ရှိစေရမည်။ ရန်ကုန်မြို့တော်တရားမရုံးမှချမှတ်သောအမိန့်ကို၊ တရားလွှတ်တော်၌အယူခံဝင်ခွင့်ရှိစေရမည်။ အယူခံမှုတွင် ခရိုင်တရားမရုံးက၊ သို့တည်းမဟုတ် တရားလွှတ်တော်က ချမှတ်သောအမိန့်သည် အပြီးသတ်ဖြစ်ရမည်။

၂၂။ ။ဗုဒ္ဓဘာသာဝင်မဟုတ်သည့်ယောကျ်ားက၊ ဗုဒ္ဓဘာသာဝင်မိန်းမကို ထိမ်းမြားရန် ကတိပြုလျှင်၊ ထိုယောကျ်ားသည် ထိုမိန်းမကို ဤအက်ဥပဒေအရထိမ်းမြားရန် ကတိပြုသည်ဟု မှတ်ယူရမည်။

၂၃။ ။ဟိန္ဒူဘာသာ၊ ဆိ(ခ်)သာသာ၊ ဂျိန္နဘာသာတရပ်ရပ်ကို ကိုးကွယ်သော ပစ္စည်းမဲ့ဒေရသေးသည့် အိမ်ထောင်သားစုဝင် တဦးဦးယောက်သည်၊ ဗုဒ္ဓဘာသာဝင်မိန်းမနှင့် ဤအက်ဥပဒေအရ ထိမ်းမြားလျှင်၊ သို့တည်းမဟုတ် ထိမ်းမြားခဲ့သည်ဟု မှတ်ယူခြင်းခံရလျှင်၊ ထိုသူသည် ထိုအိမ်ထောင်သားစုမှခွဲခွါပြီဟု မှတ်ယူရမည်။ ထို့ပြင် ပစ္စည်းခွဲဝေခြင်းမပြုမီ၊ ထိုသူသေဆုံးလျှင်၊ ထိုသူပိုင်သည့်ဆိုင်ရာဆိုင်ခွင့်သည်၊ ထိုသူ၏မယားနှင့်သားသမီးများသို့ သက်ရောက်ရမည်။

၂၄။ ။(၁) ဤအက်ဥပဒေအရ ထိမ်းမြားသူ၏၊ သို့တည်းမဟုတ် ထိမ်းမြားခဲ့သည်ဟု မှတ်ယူခြင်းခံရသူတို့၏ ပစ္စည်းပိုင်ဆိုင်ခွင့်နှင့်စပ်လျဉ်းသောကိစ္စအားလုံးကို၊ ထိုသူတို့နှင့် ထိုသူတို့၏မိသားစုအားလုံးသည် ဗုဒ္ဓဘာသာဝင်မြန်မာလူမျိုးချည်း ဖြစ်ဘိသကဲ့သို့၊ ဗုဒ္ဓဘာသာ ဓမ္မသတ်အတိုင်း ဆုံးဖြတ်ရမည်။

(၂) ဤပုဒ်မနှင့် ပုဒ်မ ၂၆ ပါ ကိစ္စများအလို့ငှါ ''မိသားစု'' ဆိုသည့်စကားရပ်တွင် တရားဝင်လင်၊ တရားဝင်မယား၊ သို့တည်းမဟုတ် မယားများနှင့်တရားဝင်သားသမီးများ ပါဝင်သည်။

၂၅။ ။(၁) လင်မယားကွာရှင်းမှုကိစ္စ၊ ပစ္စည်းခွဲဝေမှုကိစ္စ၊ သားသမီးထိန်းသိမ်းမှုကိစ္စတို့ဆိုင်ရာ ဗုဒ္ဓဘာသာမှသတ်၏ ပြဋ္ဌာန်းချက်များသည်၊ ဤအက်ဥပဒေအရ ထိမ်းမြားကြသူတို့အပေါ်၌၎င်း၊ သို့တည်းမဟုတ် ထိမ်းမြားခဲ့ကြသည်ဟု မှတ်ယူခြင်းခံရသူတို့အပေါ်သို့၊ ထိုသူတို့သည် ဗုဒ္ဓဘာသာဝင် မြန်မာလူမျိုးချည်းဖြစ်ဘိသကဲ့သို့ အာဏာသက်ရောက်ရမည်။

ခြွင်းချက်။ ။သို့ရာတွင်၊ တနားဥပဒေကဲ့သို့ အာဏာရှိသောဘာသာရေးဓလေ့ထုံးစံတခုခုကဖြစ်စေ၊ ထိုသို့သောဘာသာရေးဓလေ့ထုံးစံကို အကျိုးသက်ရောက်စေသည့် တရာ့ဥပဒေတခုခုကဖြစ်စေ၊ ဗုဒ္ဓဘာသာဝင်မဟုတ်သည့် ယောကျ်ားတဦးအား ဗုဒ္ဓဘာသာဝင်မိန်းမတဦးနှင့် လင်မယားအဖြစ်ပေါင်းဖက်နေခြင်းကို ခွင့်မပြုသည့်အကြောင်းကြောင့်၊ ထိုယောကျ်ားက ထိုမိန်းမကို ကွာရှင်းပို့လျှင်ကွာရှင်းနိုင်သည်။ ထိုအကြောင်းကြောင့် ထိုယောကျ်ားက ထိုမိန်းမကိုကွာရှင်းလျှင်၊ သို့တည်းမဟုတ် စွန့်ခွါလျှင်၊ သို့တည်းမဟုတ် ကိုယ်ထိလက်ရောက် ညှဉ်းပန်းနှိပ်စက်ရာရောက်သည်

ဖြစ်စေ၊ မရောက်သည်ဖြစ်စေ၊ ရက်စက်သည့်အပြုအမူအားဖြင့် စိတ်ဆင်းရဲအောင်ပြုလျှင်၊ အဆိုပါ ဓလေ့ထုံးစံက၊ သို့တည်းမဟုတ် တရားဥပဒေက ခွင့်သို့ပင်ဆိုစေကာမူ—

(က) ထိုယောကျ်ားသည်၊ နှစ်ဦးပိုင်ပစ္စည်းများမှ မိမိရထိုက်သောအစုကို စွန့်လွှတ်ရမည်ပြင်၊ မုဒ္ဓဘာသာဝင်မိန်းမအား လျော်ကြေးပေးရမည်။

(ခ) မုဒ္ဓဘာသာဝင်မိန်းမသည်၊ သားသမီးအားလုံး ထိန်းသိမ်းခွင့်ကိုရရှိရမည်။ ထို့ပြင်

(ဂ) ထိုသူသည် အရွယ်မရောက်သေးသည့် သားသမီးများအတွက်၊ ကလေးစရိတ်ပေးရမည်။

(၂) ပြည်ထောင်စု မြန်မာနိုင်ငံသားဖြစ်သည့် မုဒ္ဓဘာသာဝင်မဟုတ်ခဲ့ဘူးသော မိန်းမတဦးသည်၊ မုဒ္ဓဘာသာဝင်မဟုတ်သည့်ယောကျ်ားနှင့် လင်မယားအဖြစ် ပေါင်းဖက်နေစဉ်၊ မုဒ္ဓဘာသာသို့ကူးပြောင်းကိုးကွယ်လျှင် ထိုသူတို့သည်၊ ဤအက်ဥပဒေအရ ထိန်းမြားကြဘိသကဲ့သို့ ပုဒ်မ ၂၄ နှင့် ပုဒ်မ ၂၅ (၁) ပါ ပြဋ္ဌာန်းချက်များသည် ထိုသူတို့နှင့်သက်ဆိုင်ရမည်။

ခြွင်းချက်။ ။သို့ရာတွင် ထိုမိန်းမ မုဒ္ဓဘာသာသို့ကူးပြောင်းကိုးကွယ်သည့်အခါ တရားဥပဒေကဲ့သို့ အာဏာရှိသော ထိုယောကျ်ား၏ ဘာသာရေးဓလေ့ထုံးစံတခုခုကဖြစ်စေ၊ ထိုသို့သော ဘာသာရေးဓလေ့ထုံးစံကို အကျိုးသက်ရောက်စေသည့်တရားဥပဒေတခုခုကဖြစ်စေ၊ ထိုယောကျ်ားအား ထိုမုဒ္ဓဘာသာဝင်မိန်းမနှင့် လင်မယားအဖြစ်ပေါင်းဖက်နေခြင်းကို ခွင့်မပြုသည့်အကြောင်းကြောင့် ကွာရှင်းလိုသော် ထိုမိန်းမ မုဒ္ဓဘာသာသို့ကူးပြောင်းကိုးကွယ်သည့်နေ့မှ သင့်လျော်သည့် ကာလအပိုင်းအခြားအတွင်း ထိုယောကျ်ားကဖြစ်စေ၊ ထိုမိန်းမကဖြစ်စေ၊ ကွာရှင်းနိုင်သည်။ ထို အကြောင်းကြောင့်—

(က) ထိုယောကျ်ားက ထိုမိန်းမကိုကွာရှင်းလျှင်—

(ကက) မုဒ္ဓဘာသာသို့ ကူးပြောင်းကိုးကွယ်ခြင်းမပြုမီက၊ ထိုမိန်းမ နေထိုင်ရသည့် အတန်းအစားအခြေအနေအောက်မလျော့သော အတန်းအစားအခြေအနေတွင် ဆက်လက်နေထိုင်နိုင်အောင် လုံလောက်သည့်လစဉ်စရိတ်ကို ထိုမိန်းမနောက်ထပ်ထိမ်းမြားခြင်း မပြုသမျှကာလပတ်လုံး ထိုယောကျ်ားက ထိုမိန်းမအားပေးရမည်။

(ခခ) ထိုမိန်းမ မုဒ္ဓဘာသာသို့ ကူးပြောင်းကိုးကွယ်ခြင်းမပြုမီက၊ ထိုမိန်းမတဦးတည်းပိုင်ဖြစ်သော ပစ္စည်းအားလုံးကို ထိုမိန်းမ ရခွင့်ရှိရမည်။ သို့သော်လည်း ထိုသို့ကူးပြောင်းကိုးကွယ်ခြင်းမပြုမီက ထိုယောကျ်ားတဦးတည်းပိုင်ဖြစ်သော မည်သည့်ပစ္စည်းကိုမျှ ထိုမိန်းမ ရခွင့်မရှိစေရ။

(ဂဂ) ထိုမိန်းမသည် အရွယ်မရောက်သေးသည့် သားသမီးအားလုံး ထိန်းသိမ်းခွင့်ကိုရရှိရမည်။ ထို့ပြင်

(ဃဃ) ထိုယောကျ်ားသည် အဆိုပါအရွယ်မရောက်သေးသည့် သားသမီးများအတွက် ကလေးစရိတ်ပေးရမည်။

(ခ) ထိုမိန်းမက ထိုယောကျ်ားကိုကွာရှင်းလျှင်—

(ကက) ထိုမိန်းမ မုဒ္ဓဘာသာသို့ ကူးပြောင်းကိုးကွယ်ခြင်းမပြုမီက၊ ထိုမိန်းမတဦးတည်းပိုင်ဖြစ်သော ပစ္စည်းမှတပါး၊ ထိုယောကျ်ား တဦးတည်းပိုင်သော မည်သည့်ပစ္စည်းကိုမျှ ထိုမိန်းမ ရခွင့်မရှိစေရ။

(ခခ) ထိုမိန်းမသည် အရွယ်မရောက်သေးသည့် သားသမီးအားလုံး ထိန်းသိမ်းခွင့်ရရှိရမည်။

(ဂဂ) ထိုယောကျ်ားသည် အဆိုပါအရွယ်မရော က်သေးသည့် သားသမီးများအတွက် ကလေးစရိတ်ပေးရမည်။

ရှင်းလင်းချက်။ ။ဤပုဒ်မပါ ဘာသာခေးမလေ့ထုံးစံဆိုသည့်စကားရပ်၌ ''ဘာသာ'' ဆိုသည်မှာ ဗုဒ္ဓဘာသာဝင်ဖြစ်သည့်မိန်းမနှင့် ပေါင်းဖက်သည်မှစ၍ ထိုဒိန်းမ၏လင်ယောကျ်ား အစဉ်တစိုက်ကိုးကွယ်သည်ဘာသာကို ဆိုလိုသည်။

(၃) ဤပုဒ်မပါ ပြဋ္ဌာန်းချက်များသည် ဤအက်ဥပဒေ စတင်အာဏာမတည်မီ ခြောက်လအတွင်း၊ ဗုဒ္ဓဘာသာဝင်မိန်းမနှင့် ထိုမိန်းမ၏ ဗုဒ္ဓဘာသာဝင်မဟုတ်သည့် လင်ယောကျ်ား တို့ဖြစ်ပွါးသော (အာဏာရတရားရုံးက ဒီကရီချမှတ်ပြီးသည့် လင်မယားကွာရှင်းမှုကိစ္စမပါ) လင်မယားကွာရှင်းမှုကိစ္စ၊ သို့တည်းမဟုတ် ဗုဒ္ဓဘာသာဝင်မဟုတ်သည့် လင်ယောကျ်ားက ဗုဒ္ဓဘာသာဝင်မိန်းမကို စွန့်ခွါသည့်ကိစ္စ၊ သို့တည်းမဟုတ် ကိုယ်ထိလက်ရော က်ညှဉ်းပန်းနှိပ်စက်ရာ ရောက်သည်ဖြစ်စေ၊ မရောက်သည်ဖြစ်စေ၊ ရက်စက်သည့်အပြုအမူအားဖြင့် စိတ်ဆင်းရဲအောင်ပြုသည့်ကိစ္စအားလုံးနှင့်သက်ဆိုင်ရမည်။

၂၆။ ။ဤအက်ဥပဒေအရ ထိမ်းမြားကြသူတို့၏၊ သို့တည်းမဟုတ် ထိမ်းမြားခဲ့ကြသည်ဟု မှတ်ယူခြင်းခံရသူတို့၏ အမွေဆက်ခံမှုနှင့် စပ်လျဉ်းသည့်ကိစ္စအားလုံးကို ထိုသူဘို့နှင့် ထိုသူတို့၏ မိသားစုအားလုံးသည် ဗုဒ္ဓဘာသာဝင်မြန်မာလူမျိုးချည်းဖြစ်ဘိသကဲ့သို့၊ ဗုဒ္ဓဘာသာ ဓမ္မသတ်အတိုင်း ဆုံးဖြတ်ရမည်။

၂၇။ ။ဤအက်ဥပဒေအရ ထိမ်းမြားလျှင်၊ သို့တည်းမဟုတ် ထိမ်းမြားသည်ဟု မှတ်ယူခြင်းခံရလျှင်၊ ထိုသူနှစ်ဦးမှ ဖွါးမြင်သောသားသမီးများသည် တရားဝင်သားသမီးများဖြစ်သည်ဟု မှတ်ယူရမည်။

၂၈။ ။မည်သူမဆို၊ မဟုတ်မမှန်သည်လည်းဖြစ်၍၊ မဟုတ်မမှန်ဟု မိမိသိသည်လည်းဖြင်သော၊ သို့တည်းမဟုတ် ယုံကြည်သည်လည်းဖြစ်သော ဖေါ်ပြချက်ပါရှိသည့် (ဤအက်ဥပဒေအရ ပြဋ္ဌာန်းထားသော) ထုတ်ဖေါ်ချက်ကိုသော်၎င်း၊ ထိုသို့သော သက်သေခံလက်မှတ်ကိုသော်၎င်း ပြုလုပ်လျှင်၊ သို့တည်းမဟုတ် လက်မှတ်ထိုးလျှင်၊ သို့တည်းမဟုတ် မှန်ကန်ကြောင်း သက်သေခံလျှင်၊ ထိုသူသည် ရာဇသတ်ကြီး ပုဒ်မ ၀၉၉ အရ၊ ပြစ်မှုကျူးလွန်သည်ဟူ၍ မှတ်ယူရမည်။

၂၉။ ။မည်သည့်မှတ်ပုံတင်အရာရှိမဆို—

(၁) ဆိုင်ရာအကြောင်းကြားစာ ရရှိလျှင်၊ ထိုအကြောင်းကြားစာကို ပုဒ်မ ၈ အရ၊ ကျေညာခြင်းမပြုဘဲ၊ သို့တည်းမဟုတ်

(၂) ဆိုင်ရာအကြောင်းကြားစာကို မိမိရရှိပြီးနောက် ၁၄ ရက်အတွင်း၊ သို့တည်းမဟုတ်

(၃) ထိမ်းမြားမည့်မိန်းမသည် အသက် ၂၀ မပြည့်သေးသျှင်၊ ထိုမိန်းမ၏ မိဘထံမှဖြစ်စေ၊ မိဘသေဆုံးလျှင် အုပ်ထိန်းသူထံမှဖြင့်စေ၊ လိုအပ်သည့် သဘောတူချက်ကို ရရှိပြီးမဟုတ်ဘဲ၊ သို့တည်းမဟုတ်

(၄) ပုဒ်မ ၁၁ ပုဒ်မခွဲ (၁)၊ ပုဒ်မ ၁၂ ပုဒ်မခွဲ (၃) အပိုဒ် (က)၊ ပုဒ်မ ၁၂ ပုဒ်မခွဲ (၆) အပိုဒ် (ခ) တခုခုပါ ပြဋ္ဌာန်းချက်များနှင့်ဆန့်ကျင်၍

သိလျက်နှင့်တစ်ဇင် ဤအက်ဥပဒေအရ၊ ထိမ်းမြားပေးလျှင်၊ ထိုအချာရှိသည် တန်ဖိုး ဆောင်ဒဏ် ဖြစ်စေ၊ ၅၀၀ ထက်မပိုသော ငွေဒဏ်ဖြစ်စေ၊ ချမှတ်ခြင်းခံရိုက်စေရမည်။

၃၀။ ။နိုင်ငံတော်သမ္မတသည်၊ ဤအက်ဥပဒေဝါကျစ်များကို ဆောင်ရွက်ရန်အလို့ငှါ နည်းဥပဒေများပြုနိုင်သည်။

၃၁။ ။ဗုဒ္ဓဘာသာဝင်မိန်းမများ အထူးထိမ်းမြားမှုနှင့် အမွေဆက်ခံမှု အက်ဥပဒေ (၁၉၃၉ ခုနှစ်၊ မြန်မာနိုင်ငံ အက်ဥပဒေအမှတ် ၂၄) ကို ဤအက်ဥပဒေဖြင့် ရုပ်သိမ်းလိုက်သည်။

ဇယား။

ပုံစံ က (ယောကျ်ားအတွက်)။

(ပုဒ်မ ၆ ကိုကြည့်ရ)

ထိမ်းမြားလိုကြောင်းအကြောင်းကြားစာပုံစံ။

_____ခရိုင်။

_____မြို့နယ်။

_____ကျေးရွာ။

ထိမ်းမြားမှုမှတ်ပုံတင်အရာရှိထံ။

ကျွန်ုပ်သည်၊ ဤအကြောင်းကြားစာတွင် အမည်မှစ၍ အကြောင်းအရာများဖေါ်ပြပါရှိသော တဘက်သူနှင့် ၁၉၅၄ ခုနှစ်၊ ဗုဒ္ဓဘာသာဝင်မိန်းမများ အထူးထိမ်းမြားမှုနှင့် အမွေဆက်ခံမှုအက်ဥပဒေအရ၊ ထိမ်းမြားရန်ကြံရွယ်ကြောင်း အကြောင်းကြားပါသည်။

အကြောင်းကြားစာပေးပို့သူ၏ ဖေါ်ပြချက်များ။

အပိုင်း (၁)။

(က) အမည်။
(ခ) အလုပ်အကိုင်။
(ဂ) မည်သည့်နိုင်ငံသား။
(ဃ) ကိုးကွယ်သည့်ဘာသာ။
(င) အသက်။
(စ) အကြောင်းကြားစာပေးပို့သည့်နေ့ရက်မတိုင်မီ နောက်ဆုံး ၁၄ ရက်ထက်မနည်း နေထိုင်လျက်ရှိသည့်အရပ်။
(ဆ) မိဘများ၏အမည်—
(၁)
(၂)

(၈) မိဘများ၏ အလုပ်အကိုင်။
(၈၂) မိဘများ၏နေရပ်။
(၃) (မိဘများအသက်ရှင်လျက် မရှိလျှင်) အုပ်ထိန်းသူ၏ အမည်။
(၄) အုပ်ထိန်းသူ၏ အလုပ်အကိုင်နှင့် နေရပ်။
(၅) မိမိမှာအလျင်က ထိမ်းမြားဘူးသူ ဟုတ် မဟုတ်၊ ထိမ်းမြားဘူးသူဖြစ်လျှင် ထိုထိမ်းမြားမှုမှာ ယခုနေ့ရက်တွင် အတည်ဖြစ်လျက်ရှိမရှိ။
(၃) အလျင်မယား အသက်ရှင်လျက်ရှိသေးလျှင် ထိုမယား၏အမည်နှင့် နေရပ်။

အပိုင်း (၂)။

(က) (တဘက်သူ၏) အမည်။
(ခ) အလုပ်အကိုင်။
(ဂ) မည်သည့်နိုင်ငံသား။
(ဃ) ကိုးကွယ်သည့်ဘာသာ၊
(င) အသက်။
(စ) အကြောင်းကြားစာပေးပို့သည့် နေ့ရက်မတိုင်မီ နောက်ဆုံး ၁၄ ရက်ထက်မနည်း နေထိုင်လျက်ရှိသည့်အရပ်။
(ဆ) မိဘများ၏အမည်—
(၁)
(၂)
(၈) မိဘများ၏အလုပ်အကိုင်။
(၈၂) မိဘများ၏နေရပ်။
(၃) (မိဘများအသက်ရှင်လျက်မရှိလျှင်) အုပ်ထိန်းသူ၏အမည်။
(၄) အုပ်ထိန်းသူ၏ အလုပ်အကိုင်နှင့်နေရပ်။
(၅) အသက် ၂၀ မပြည့်သေးလျှင်၊ မိဘများ၏၊ သို့တည်းမဟုတ် အုပ်ထိန်းသူ၏ သဘောတူချက်ရရှိပြီး ဟုတ် မဟုတ်။
(၃) သဘောတူချက်ပေးသည့် မိဘများ၏၊ သို့တည်းမဟုတ် အုပ်ထိန်းသူ၏အမည်၊ အလုပ်အကိုင်နှင့် နေရပ်။
(၆) ထိုသူမှာ အလျင်က၊ ထိမ်းမြားဘူးသူ ဟုတ် မဟုတ်၊ ထိမ်းမြားဘူးသူဖြစ်လျှင်၊ ထိုထိမ်းမြားမှုမှာ ယခုနေ့ရက်တွင် အတည်ဖြစ်လျက်ရှိ မရှိ။

(လက်မှတ်။)

မှတ်ပုံတင်အရာရှိရွေးတွင်ထွက်ဆိုချက်။

အဆက်ပါ အကြောင်းကြားစာအပိုင်း (၁)တွင် ဖေါ်ပြပါရှိသော အကြောင်းအရာမှာ၊ ကျွန်ုပ်ကိုယ်တိုင်သိရှိရသဖြင့် ဟုတ်မှန်ကြောင်းဖြင့်ငင်း၊ အပိုင်း (၂)တွင်ဖေါ်ပြပါရှိသော အကြောင်းအရာမှာ၊ ထျွန်ုပ်ကြားသိယုံကြည်ရသမျှ ဟုတ်မှန်ကြောင်းဖြင့်ငင်း၊ ကျွန်ုပ် က ထွက်ဆိုပါသည်။ အထက်ပါအကြောင်းကြားစာတွင် ပါရှိသည့်ဖေါ်ပြချက်တခုခုမှာ၊ ကျွန်ုပ်သိရှိသမျှ မဟုတ်မမှန်လျှင်၊ ထို့ပြင်ယင်းသို့သောဖေါ်ပြချက်ကို ပြုလုပ်ရာတွင်၊ ကျွန်ုပ်က ထိုဖေါ်ပြချက်သည်

မဟုတ်မမှန်ကြောင်းသိရှိလျှင်သော်၎င်း၊ သို့တည်းမဟုတ် ယုံကြည်လျှင်သော်၎င်း၊ ထိုဖေါ်ပြချက်သည် ဟုတ်မှန်သည်မှာမယုံကြည်လျှင်သော်၎င်း၊ ကျွန်ုပ်မှာရာဇသတ်ကြီးပုဒ်မ ၁၉၉ အရ၊ တရားစွဲဆိုခံထိုက်သည်ဖြစ်ကြောင်း ကျွန်ုပ်သိရှိပါသည်။

(လက်မှတ်။)

အောက်ဝါသက်သေတို့ရှေ့တွင်—

(၁) (လက်မှတ်)

(အမည်၊ အလုပ်အကိုင်နှင့် နေရပ်။)

(၂) (လက်မှတ်)

(အမည်၊ အလုပ်အကိုင်နှင့် နေရပ်။)

အထက်ပါ ဖေါ်ပြချက်များကို ထွက်ဆိုသူအား ဘတ်ကြားရှင်းလင်းပြရာ၊ ထိုဖေါ်ပြချက်များပါ အကြောင်းအရာများမှန်ကန်ကြောင်း ထိုသူကဝန်ခံသည့်ပြင်၊ ယင်းသို့မှန်ကန်ကြောင်းဖြင့် ဤထွက်ဆိုချက်ကို၊ ကျွန်ုပ်ရှေ့၌ဝင်၊ အထက်တွင်လက်မှတ်ရေးထိုးသည့် သက်သေနှစ်ဦးရှေ့၌ဝင်၊ လက်မှတ်ရေးထိုးသည်။

(လက်မှတ်။)

ထိမ်းမြားမှုမှတ်ပုံတင်အရာရှိ။

အထက်ပါ အကြောင်းကြားစာမိတ္တူကို _____ရက်နေ့တွင် ကျွန်ုပ်၏ရုံးရှိ အများမြင်သောနေရာ၌ ကပ်သျက်ကြော်ငြာပြီးဖြစ်သည့်ပြင်၊ ထိုအကြောင်းကြားစာမိတ္တူများကို အောက်ပါနေ့ရက်များတွင်_____ထံ၊ $\frac{\text{ချအပ်}}{\text{ပို့}}$ ပြီးလည်းဖြစ်ကြောင်း။

(လက်မှတ်။)

ထိမ်းမြားမှုမှတ်ပုံတင်အရာရှိ။

ပုံစံ ခ (မိန်းမအတွက်)။

(ပုဒ်မ ၆ ကိုကြည့်။)

ထိမ်းမြားလိုကြောင်း အကြောင်းကြားစာပုံစံ။

_____ခရိုင်။

_____မြို့နယ်။

_____ကျေးရွာ။

ထိမ်းမြားမှုမှတ်ပုံတင်အရာရှိထံ။

ကျွန်မသည်၊ ဤအကြောင်းကြားစာတွင် အမည်မှစ၍၊ အကြောင်းအရာများ ဖေါ်ပြပါရှိသော တဘက်သူနှင့် ၁၉၅၄ ခုနှစ်၊ ဗုဒ္ဓဘာသာဝင်မိန်းမများ အထူးထိမ်းမြားမှုနှင့် အမွေဆက်ခံမှုအက်ဥပဒေအရ ထိမ်းမြားရန်ကြံရွယ်ကြောင်း အကြောင်းကြားပါသည်။

အကြောင်းကြားစာပေးပို့သူ၏ ဖေါ်ပြချက်များ။

အပိုင်း (၁)။

(က) အမည်။
(ခ) အလုပ်အကိုင်။
(ဂ) မည်သည့်နိုင်ငံသား။
(ဃ) ကိုးကွယ်သည့်ဘာသာ။
(င) အသက်။
(စ) အကြောင်းကြားစာ ပေးပို့သည့်နေ့ရက်မတိုင်မီ နောက်ဆုံး ၁၄ ရက်ထက်မနည်း နေထိုင်လျက်ရှိသည့်အရပ်။
(ဆ) မိဘများ၏အမည်—
(၁)
(၂)
(ဇ) မိဘများ၏အလုပ်အကိုင်။
(ဈ) မိဘများ၏နေရပ်။
(ည) (မိဘများအသက်ရှင်လျက်မရှိလျှင်) အုပ်ထိန်းသူ၏အမည်။
(ဋ) အုပ်ထိန်းသူ၏ အလုပ်အကိုင်နှင့်နေရပ်။
(ဌ) အသက် ၂၀ မပြည့်သေးလျှင်၊ မိဘများ၏၊ သို့တည်းမဟုတ် အုပ်ထိန်းသူ၏ သဘောတူချက်ရရှိပြီး ဟုတ် မဟုတ်။
(ဍ) သဘောတူချက်ပေးသည့် မိဘများ၏၊ သို့တည်းမဟုတ် အုပ်ထိန်းသူ၏အမည်၊ အလုပ်အကိုင်နှင့်နေရပ်။
(ဎ) မိမိမှာ အလျင်ကထိမ်းမြားဘူးသူဟုတ် မဟုတ်၊ ထိမ်းမြားဘူးသူဖြစ်လျှင် ထိုထိမ်းမြားမှုမှာ ယခုနေ့ရက်တွင် အတည်ဖြစ်လျက်ရှိမရှိ။
(ဏ) အလျင်လင် အသက်ရှင်လျက်ရှိသေးလျှင်၊ ထိုလင်၏အမည်နှင့်နေရပ်။

အပိုင်း (၂)။

(က) (တဘက်သူ၏) အမည်။
(ခ) အလုပ်အကိုင်။
(ဂ) မည်သည့်နိုင်ငံသား။
(ဃ) ကိုးကွယ်သည့်ဘာသာ။
(င) အသက်။
(စ) အကြောင်းကြားစာ ပို့သည့်နေ့ရက်မတိုင်မီ နောက်ဆုံး ၁၄ ရက်ထက် မနည်း နေထိုင်လျက်ရှိသည့်အရပ်။
(ဆ) မိဘများ၏အမည်—
(၁)
(၂)
(ဇ) မိဘများ၏အလုပ်အကိုင်။
(ဈ) မိဘများ၏နေရပ်။
(ည) (မိဘများအသက်ရှင်လျက်မရှိလျှင်) အုပ်ထိန်းသူ၏အမည်။

(၄) အုပ်ထိန်းသူ၏ အလုပ်အကိုင်နှင့်နေရပ်။
(၅) ထိုသူမှာ အလျင်ကထိမ်းမြားဘူးသူဟုတ် မဟုတ်၊ ထိမ်းမြားဘူးသူဖြစ်လျှင် ထို ထိမ်းမြားမှုမှာ ယခုနေ့ရက်တွင် အတည်ဖြစ်လျက်ရှိ မရှိ။

(လက်မှတ်။)

မှတ်ပုံတင်အရာရှိရှေ့တွင်ထွက်ဆိုချက်။

အထက်ပါ အကြောင်းကြားစာအပိုင်း (၁)တွင် ဖေါ်ပြပါရှိသော အကြောင်းအရာမှာ ကျွန်မကိုယ်တိုင်သိရှိရသမျှ ဟုတ်မှန်ကြောင်းဖြင့်ဝင်း၊ အပိုင်း (၂)တွင် ဖေါ်ပြပါရှိသော အကြောင်း အရာမှာ ကျွန်မကြားသိယုံကြည်ရသမျှ၊ ဟုတ်မှန်ကြောင်းဖြင့်ဝင်း၊ ကျွန်မ ကထွက် ဆိုပါသည်။ အထက်ပါ အကြောင်းကြားစာတွင် ပါရှိသည့်ဖေါ်ပြချက်တခုခုမှာ ကျွန်မသိရှိသမျှ မဟုတ်မမှန်လျှင်၊ ထို့ပြင် ယင်းသို့သောဖေါ်ပြချက်ကို ပြုလုပ်ရာတွင် ကျွန်မက ထိုဖေါ်ပြချက်သည်၊ မဟုတ်မမှန်ကြောင်းသိရှိလျှင်သော်ငင်း၊သို့တည်းမဟုတ် ယုံကြည်လျှင်သော်ငင်း၊ ထိုဖေါ်ပြချက်သည်၊ ဟုတ်မှန်သည်ဟု မယုံကြည်လျှင်သော်ငင်း၊ ကျွန်မမှာ ရာဇသတ်ကြီးပုဒ်မ ၁၉၉ အရ၊ တရားစွဲဆိုခံ ထိုက်သည်ဖြစ်ကြောင်း ကျွန်မသိရှိပါသည်။

(လက်မှတ်။)

အောက်ပါသက်သေတို့ရှေ့တွင်—
(၁) (လက်မှတ်)
(အမည်၊ အလုပ်အကိုင်နှင့် နေရပ်။)
(၂) (လက်မှတ်)
(အမည်၊ အလုပ်အကိုင်နှင့် နေရပ်။)

အထက်ပါ ဖေါ်ပြချက်များကို၊ ထွက်ဆိုသူအား၊ ဘတ်ကြားရှင်းလင်းပြရာ၊ ထိုဖေါ်ပြချက်များ ပါ အကြောင်းအရာများမှန်ကန်ကြောင်း ထိုသူကဝန်ခံသည့်ပြင်၊ ယင်းသို့မှန်ကန်ကြောင်းဖြင့် ၎ ထွက်ဆိုချက်ကို၊ ကျွန်ုပ်ရှေ့၌ဝင်း၊ အဆက်တွင်လက်မှတ်ဓရုးထိုးသည့် သက်သေနှစ်ဦးရှေ့၌ဝင်း၊ လက် မှတ်ရေးထိုးသည်။

(လက်မှတ်။)
ထိမ်းမြားမှုမှတ်ပုံတင်အရာရှိ။

အထက်ပါ အကြောင်းကြားစာမိတ္တူကို _____ ရက်နေ့တွင်၊ကျွန်ုပ်၏ ရုံးရှိ အများမြင်သောနေရာ၌ ကပ်လျက်ကြော်ငြာပြီးဖြစ်သည့်ပြင်၊ ထိုအကြောင်းကြားစာမိတ္တူများကို အောက်ပါ နေ့ရက်တွင် _____ ထံ ချအပ် ပြီးလည်းဖြစ်ကြောင်း။

(လက်မှတ်။)
ထိမ်းမြားမှုမှတ်ပုံတင်အရာရှိ။

ပုံစံ ၈။

(မူရင်းထပ်တူပေါင်းလေးစောင်ရှိစေရမည်။)

(ပုဒ်မ ၁၆ ကိုကြည့်ရှု)

ထိမ်းမြားကြောင်း သက်သေခံမှတ်ပုံစာအုပ်ပုံစံ။

အမှတ်.....။

ထိန်းမြားသည့် နေ့ရက်။

ထိမ်းမြားရာ အရပ်။

(က) လင်၏အမည်။

(ခ) အသက်။

(ဂ) မည်သည့်နိုင်ငံသား။

(ဃ) ကိုးကွယ်သည့်ဘာသာ။

(င) အလုပ်အကိုင်။

(စ) နေရပ်။

(ဆ) မိဘများ၏အမည်၊ အလုပ်အကိုင်နှင့် နေရပ်။

(ဇ) (မိဘများအသက်ရှင်လျက်မရှိလျှင်) အုပ်ထိန်းသူ၏အမည်၊ အလုပ်အကိုင်နှင့် နေရပ်။

(က) မယား၏အမည်။

(ခ) အသက်။

(ဂ) မည်သည့်နိုင်ငံသား။

(ဃ) ကိုးကွယ်သည့်ဘာသာ။

(င) အလုပ်အကိုင်။

(စ) နေရပ်။

(ဆ) မိဘများ၏အမည်၊ အလုပ်အကိုင်နှင့်နေရပ်။

(ဇ) (မိဘများအသက်ရှင်လျက်မရှိလျှင်) အုပ်ထိန်းသူ၏အမည်၊ အလုပ်အကိုင်နှင့် နေရပ်။

(ဈ) အသက် ၂၀ မပြည့်သေးလျှင် ထိမ်းမြားရန် သဘောတူခွင့်ပေးပြီးသည့် မိဘ၊ သို့မဟုတ် အုပ်ထိန်းသူ၏အမည်၊ အလုပ်အကိုင်နှင့်နေရပ်။

* [ကျွန်တော် နှင့် ကျွန်မ တို့၏၊ ယခုထိမ်းမြားမှု
ကို၊ အောက်ပါ သက်သေများရှေ့တွင် ပြုလုပ်ပါသည်။

လင်၏လက်မှတ်။

မယား၏လက်မှတ်။

ကျွန်ုပ်တို့ရှေ့တွင် ပြုလုပ်ပါသည်။

မောင်	အမည်.....။
	အလုပ် အကိုင်.....။
မ	နေ ရပ်.....။
	အမည်.....။
မောင်	အလုပ် အကိုင်.....။
မ	နေ ရပ်.....။

ထိမ်းမြားရန်သဘောတူချက်ပေးသူ၏လက်မှတ်။

အထက်တွင်အမည်ဖေါ်ပြပါရှိသူတို့၏ ထိမ်းမြားမှုကို ၁၉ ခုနှစ်၊
လ ရက်နေ့တွင် ကျွန်ုပ်ရှေ့၌ပြုလုပ်သည်။]

ထိမ်းမြားမှုမှတ်ပုံတင်အရာရှိ။

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* မူတ်ချက်။ ။အက်ဥပဒေပုဒ်မ ၂၁၊ ပုဒ်မခွဲ(၂)အရ၊ ထိမ်းမြားခြင်းကို မှတ်ပုံတင်ရန် ငြင်းဆိုသူများ ဖြင့်လျှင် ဤအပိုဒ်ကိုပယ်ဖျက်ရမည်။

B.—HINDU.

ခ။ ။ဟိန္ဒူဘာသာဝင်များဆိုင်ရာ။

THE HINDU WIDOWS' RE-MARRIAGE ACT.

[INDIA ACT XV, 1856.] (25th July, 1856.)

Preamble. Whereas it is known that, by the law as administered in the civil Courts, Hindu widows with certain exceptions are held to be, by reason of their having been once married, incapable of contracting a second valid marriage, and the offspring of such widows by any second marriage are held to be illegitimate and incapable of inheriting property ;

and whereas many Hindus believe that this imputed legal incapacity, although it is in accordance with established custom, is not in accordance with a true interpretation of the precepts of their religion, and desire that the civil law administered by the Courts of Justice shall no longer prevent those Hindus who may be so minded from adopting a different custom, in accordance with the dictates of their own conscience ;

and whereas it is just to relieve all such Hindus from this legal incapacity of which they complain, and the removal of all legal obstacles to the marriage

of Hindu widows will tend to the promotion of good morals and to the public welfare ; It is enacted as follows :—

Marriage of Hindu widows legalized.

1. No marriage contracted between Hindus shall be invalid, and the issue of no such marriage shall be illegitimate, by reason of the woman having been previously married or betrothed to another person who was dead at the time of such marriage, any custom and any interpretation of Hindu law to the contrary notwithstanding.

Rights of widow in deceased husband's property to cease on her re-marriage.

2. All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to re-marry, only a limited interest in such property, with no power of alienating the same, shall upon her re-marriage cease and determine as if she had then died ; and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same.

Guardianship of children of deceased husband on the re-marriage of his widow.

3. On the re-marriage of a Hindu widow, if neither the widow nor any other person has been expressly constituted by the will or testamentary disposition of the deceased husband the guardian of his children, the father or paternal grandfather, or the mother or paternal grandmother, of the deceased husband, or any male relative of the deceased husband, may petition the highest Court having original jurisdiction in civil cases in the place where the deceased husband was domiciled at the time of his death for the appointment of some proper person to be guardian of the said children, and thereupon it shall be lawful for the said Court, if it shall think fit, to appoint such guardian, who when appointed shall be entitled to have the care and custody of the said children, or of any of them, during their minority in the place of their mother ; and in making such appointment the Court shall be guided, so far as may be, by the laws and rules in force touching the guardianship of children who have neither father nor mother :

Provided that, when the said children have not property of their own sufficient for their support and proper education whilst minors, no such appointment shall be made otherwise than with the consent of the mother unless the proposed guardian shall have given security for the support and proper education of the children whilst minors.

Nothing in this Act to render any childless widow capable of inheriting.

4. Nothing in this Act contained shall be construed to render any widow who, at the time of the death of any person leaving any property, is a childless widow, capable of inheriting the whole or any share of such property, if before the passing of this Act she would have been incapable of inheriting the same by reason of her being a childless widow.

Saving of rights of widow

5. Except as in the three preceding sections is provided, a widow shall not, by reason of her re-marriage, forfeit any property or any right to which she

marrying, except as provided in sections 2 to 4.

would otherwise be entitled ; and every widow who has re-married shall have the same rights of inheritance as she would have had, had such marriage been her first marriage.

Ceremonies constituting valid marriage to have same effect on widow's marriage.

6. Whatever words spoken, ceremonies performed or engagements made on the marriage of a Hindu female who has not been previously married are sufficient to constitute a valid marriage shall have the same effect if spoken, performed or made on the marriage of a Hindu widow ; and no marriage shall be declared invalid on the ground that such words, ceremonies or engagements are inapplicable to the case of a widow.

Consent to re-marriage of minor widow.

7. If the widow re-marrying is a minor whose marriage has not been consummated, she shall not re-marry without the consent of her father, or if she has no father, of her paternal grandfather, or if she has no such grandfather, of her mother, or, failing all these, of her elder brother , or failing also brothers, of her next male relative.

Punishment for abetting marriage made contrary to this section.

All persons knowingly abetting a marriage made contrary to the provisions of this section shall be liable to imprisonment for any term not exceeding one year, or to fine, or to both.

Effect of such marriage.

And all marriages made contrary to the provisions of this section may be declared void by a Court of law : Provided that, in any question regarding the validity of a marriage made contrary to the provisions of this section, such consent as is aforesaid shall be presumed until the contrary is proved, and that no such marriage shall be declared void after it has been consummated.

Consent to re-marriage of major widow.

In the case of a widow who is of full age, or whose marriage has been consummated, her own consent shall be sufficient consent to constitute her re-marriage lawful and valid.

THE ANAND MARRIAGE ACT.

[INDIA ACT VII, 1909.] (22nd October, 1909.)

Preamble.

Whereas it is expedient to remove any doubts as to the validity of the marriage ceremony common among the Sikhs called Anand ; It is hereby enacted as follows :—

1. * * * *

Validity of Anand marriages.

2. All marriages which may be or may have been duly solemnized according to the Sikh marriage ceremony called Anand shall be, and shall be deemed to have been with effect from the date of the solemnization of each respectively, good and valid in law.

3. Nothing in this Act shall apply to— Exemption of certain marriages from Act.

(*a*) any marriage between persons not professing the Sikh religion, or

(*b*) any marriage which has been judicially declared to be null and void.

4. Nothing in this Act shall affect the validity of any marriage duly solemnized according to any other marriage ceremony customary among the Sikhs. Saving of marriages solemnized according to other ceremonies.

5. Nothing in this Act shall be deemed to validate any marriage between persons who are related to each other in any degree of consanguinity or affinity which would, according to the customary law of the Sikhs, render a marriage between them illegal. Non-validation of marriages within prohibited degrees.

THE HINDU DISPOSITION OF PROPERTY ACT.

[INDIA ACT XV. 1916.] (28th September, 1916.)

Whereas it is expedient to remove certain existing disabilities in respect of the power of disposition of property by Hindus for the benefit of persons not in existence at the date of such disposition; It is hereby enacted as follows :— Preamble.

1. * * * *

2. Subject to the limitations and provisions specified in this Act, no disposition of property by a Hindu, whether by transfer *inter vivos* or by will, shall be invalid by reason only that any person for whose benefit it may have been made was not in existence at the date of such disposition. Disposition for the benefit of persons not in existence.

3. The limitations and provisions referred to in section 2 shall be the following, namely :— Limitations and conditions.

(*a*) in respect of dispositions by transfer *inter vivos*, those contained in Chapter II of the Transfer of Property Act, and

(*b*) in respect of dispositions by will, those contained in sections 113, 114, 115 and 116 of the Succession Act.

4. * * * *

5. Where the President of the Union is of opinion that the Khoja community in the Union of Burma or any part thereof desire that the provisions of this Act should be extended to such community, he may, by notification in the Gazette, declare that the provisions of this Act, with the substitution of the word "Khojas" or "Khoja", as the case may be, for the word "Hindus" or "Hindu", wherever those words occur, shall apply to that community in such area as may be specified in the notification, and this Act shall thereupon have effect accordingly. Application of this Act to the Khoja community.

THE CASTE DISABILITIES REMOVAL ACT.

[INDIA ACT XXI, 1850.] (11th April, 1850.)

Preamble.

Whereas it is enacted by section 9, Regulation VII, 1832, of the Bengal Code, that "whenever in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the Hindu and the other of the Muhammadan persuasion, or where one or more of the parties to the suit shall not be either of the Muhammadan or Hindu persuasions, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled"; and whereas it will be beneficial to extend the principle of that enactment; It is enacted as follows :—

Law or usage which inflicts forfeiture of, or affects, rights on change of religion or loss of caste to cease to be enforced.

1. So much of any law or usage as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect 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.

THE HINDU INHERITANCE (REMOVAL OF DISABILITIES) ACT.

[INDIA ACT XII, 1928.] (20th September, 1928.)

Preamble.

Whereas it is expedient to amend the Hindu Law relating to exclusion from inheritance of certain classes of heirs, and to remove certain doubts; It is hereby enacted as follows :—

Application.

1. This Act shall not apply to any person governed by the Dayabhaga School of Hindu Law.

Persons not to be excluded from inheritance or rights in joint-family property.

2. Notwithstanding any rule of Hindu Law or custom to the contrary, no person governed by the Hindu Law, other than a person who is and has been from birth a lunatic or idiot, shall be excluded from inheritance or from any right or share in joint-family property by reason only of any disease, deformity, or physical or mental defect.

Saving and exception.

3. Nothing contained in this Act shall affect any right which has accrued or any liability which has been incurred before the 20th September, 1928,[1] or shall be deemed to confer upon any person any right in respect of any religious office or service or of the management of any religious or charitable trust which he would not have had if this Act had not been passed.

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[1] Date of commencement of this Act.

THE HINDU LAW OF INHERITANCE AMENDMENT ACT.

[INDIA ACT II, 1929.] (21st February, 1929.)

Whereas it is expedient to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate ; It is hereby enacted as follows :— Preamble.

1. This Act applies only to persons who, but for the passing of this Act would have been subject to the law of Mitakshara in respect of the provisions herein enacted, and it applies to such persons in respect only of the property of males not held in coparcenary and not disposed of by will. Application.

2. A son's daughter, daughter's daughter, sister, and sister's son shall, in the order so specified, be entitled to rank in the order of succession next after a father's father and before a father's brother : Order of succession of certain heirs.

Provided that a sister's son shall not include a son adopted after the sister's death.

3. Nothing in this Act shall— Savings.

(*a*) affect any special family or local custom having the force of law, or

(*b*) vest in a son's daughter, daughter's daughter or sister an estate larger than, or different in kind from, that possessed by a female in property inherited by her from a male according to the school of Mitakshara law by which the male was governed, or

(*c*) enable more than one person to succeed by inheritance to the estate of a deceased Hindu male which by a customary or other rule of succession descends to a single heir.

THE HINDU GAINS OF LEARNING ACT.

[INDIA ACT XXX, 1930.] (25th July, 1930.)

Whereas it is expedient to remove doubt, and to provide an uniform rule, as to the rights of a member of a Hindu undivided family in property acquired by him by means of his learning ; It is hereby enacted as follows :— Preamble.

1. * * * *

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(*a*) "acquirer" means a member of a Hindu undivided family who acquires gains of learning ;

(*b*) "gains of learning" means all acquisitions of property made substantially by means of learning, whether such acquisitions

be made before or after the 25th July, 1930,[1] and whether such acquisitions be the ordinary or the extraordinary result of such learning ; and

(*c*) "learning" means education, whether elementary, technical, scientific, special or general, and training of every kind which is usually intended to enable a person to pursue any trade, industry, profession or avocation in life.

Gains of learning not to be held not to be separate property of acquirer merely for certain reasons.

3. Notwithstanding any custom, rule or interpretation of the Hindu Law, no gains of learning shall be held not to be the exclusive and separate property of the acquirer merely by reason of—

(*a*) his learning having been, in whole or in part, imparted to him by any member, living or deceased, of his family, or with the aid of the joint funds of his family, or with the aid of the funds of any member thereof, or

(*b*) himself or his family having, while he was acquiring his learning, been maintained or supported, wholly or in part, by the joint funds of his family, or by the funds of any member thereof.

Savings.

4. This Act shall not be deemed in any way to affect—

(*a*) the terms or incidents of any transfer of property made or effected before the 25th July, 1930,[1]

(*b*) the validity, invalidity, effect or consequences of anything already suffered or done before the said date,

(*c*) any right or liability created under a partition, or an agreement for a partition, of joint family property made before the said date, or

(*d*) any remedy or proceeding in respect of such right or liability ; or to render invalid or in any way affect anything done before the said date in any proceeding pending in a Court on the said date ; and any such remedy and any such proceeding as is herein referred to may be enforced, instituted or continued, as the case may be, as if this Act had not been passed.

C.—MUHAMMADAN.

ဂ။ ။မုဟာမက်တာသာဝင်များဆိုင်ရာ။

THE KAZIS ACT.

[INDIA ACT XII, 1880.] (9th July, 1880.)

Preamble.

Whereas by the preamble to Act No. XI of 1864[2] it was (among other things) declared that it was inexpedient that the appointment of the *Kàzi-ul-*

[1] Date of commencement of this Act.

[2] Namely, the Native Law Officers Act, being an Act to repeal the law relating to the offices of Hindu and Muhammadan Law Officers and to the offices of *Kàzi ul-Kuzàt* and of *Kàzi*, and to abolish the former office.

Kuzàat, or of City, Town or Pargana *Kàzis*, should be made by the Government, and by the same Act the enactments relating to the appointment by the Government of the said officers were repealed ; and whereas by the usage of the Muhammadan community [* * * *][1] the presence of *Kàzis* appointed by the Government is required at the celebration of marriages and the performance of certain other rites and ceremonies, and it is therefore expedient that the Government should again be empowered to appoint persons to the office of *Kàzi*; It is hereby enacted as follows :—

Local extent.

1. The President of the Union may, by notification, extend[2] this Act to the whole or any part of the Union of Burma.

Power to appoint *Kàzis* for any local area.

2. Whenever it appears to the President of the Union that any considerable number of the Muhammadans resident in any local area desire that one or more *Kàzis* should be appointed for such local area, the President of the Union may, if he thinks fit, after consulting the principal Muhammadan residents of such local area, select one or more fit persons and appoint him or them to be *Kàzis* for such local area

If any question arises whether any person has been rightly appointed *Kàzi* under this section, the decision thereof by the President of the Union shall be conclusive.

The President of the Union may, if he thinks fit, suspend or remove any *Kàzi* appointed under this section who is guilty of any misconduct in the execution of his office, or who is for a continuous period of six months absent from the local area for which he is appointed, or leaves such local area for the purpose of residing elsewhere, or is declared an insolvent, or desires to be discharged from the office, or who refuses or becomes in the opinion of the President of the Union unfit, or personally incapable, to discharge the duties of the office.

Nàib Kàzis.

3. Any *Kàzi* appointed under this Act may appoint one or more persons as his *nàib* or *nàibs* to act in his place in all or any of the matters appertaining to his office throughout the whole or any portion of the local area for which he is appointed, and may suspend or remove any *nàib* so appointed.

When any *Kàzi* is suspended or removed under section 2, his *nàib* or *nàibs* (if any) shall be deemed to be suspended or removed, as the case may be.

Nothing in Act to confer judicial or administrative powers; or to render the presence of *Kàzi* necessary; or to prevent any one acting as *Kàzi*.

4. Nothing herein contained, and no appointment made hereunder, shall be deemed—

(*a*) to confer any judicial or administrative powers on any *Kàzi* or *Nàib Kàzi* appointed hereunder ; or

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[1] The words "in some parts of British India" were omitted by the Union of Burma Adaptation of Laws) Order, 1948.

[2] This Act has been extended to the Akyab district ; *see* Burma Rules and Orders Manual.

(*b*) to render the presence of a *Kàzi* or *Nàib Kàzi* necessary at the celebration of any marriage or the performance of any rite or ceremony; or

(*c*) to prevent any person discharging any of the functions of a *Kàzi.*

THE MUSSALMAN WAKF VALIDATING ACT.

[INDIA ACT VI, 1913.] (7th March, 1913.)

1. * * * *

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "wakf" means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by the Mussalman law as religious, pious or charitable;

(2) "Hanafi Mussalman" means a follower of the Mussalman faith who conforms to the tenets and doctrines of the Hanafi school of Mussalman law.

Power of Mussalmans to create certain wakfs.

3. It shall be lawful for any person professing the Mussalman faith to create a wakf, which in all other respects is in accordance with the provisions of Mussalman law, for the following among other purposes:—

(*a*) for the maintenance and support wholly or partially of his family, children or descendants, and

(*b*) where the person creating a wakf is a Hanafi Mussalman, also for his own maintenance and support during his lifetime or for the payment of his debts out of the rents and profits of the property dedicated:

Provided that the ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognized by the Mussalman law as a religious, pious or charitable purpose of a permanent character.

Wakfs not to be invalid by reason of remoteness of benefit to poor, etc.

4. No such wakf shall be deemed to be invalid merely because the benefit reserved therein for the poor or other religious, pious or charitable purpose of a permanent nature is postponed until after the extinction of the family, children or descendants of the person creating the wakf.

Saving of local and sectarian custom.

5. Nothing in this Act shall affect any custom or usage whether local or prevalent among Mussalmans of any particular class or sect.

Act to apply retrospectively.

6. This Act shall apply also to wakfs created before the 7th March, 1913.[1]

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[1] Date of commencement of this Act.

မူဆလင် လင်မယားကွာရှင်းရေးအက်ဥပဒေ။

[၁၉၅၃ ခုနှစ်၊ အက်ဥပဒေအမှတ် ၁၄။]

အောက်ဝါအတိုင်း အက်ဥပဒေအဖြစ် ပြဋ္ဌာန်းလိုက်သည်။

၁။ ။(၁) ဤအက်ဥပဒေကို ၁၉၅၃ ခုနှစ်၊ မူဆလင် လင်မယား ကွာရှင်းရေး အက်ဥပဒေဟု ခေါ်ရမည်။

(၂) ဤအက်ဥပဒေသည် နိုင်ငံတော် သမတ က၊ အမိန့်ကြော်ငြာစာဖြင့်သတ်မှတ် သည့်နေ့ရက်တွင် စတင်အာဏာတည်ရမည်။

(၃) ဤအက်ဥပဒေပါ ပြဋ္ဌာန်းချက်များသည်၊ လင်မယား ကွာရှင်းရေးနှင့်စပ်လျဉ်း၍ ဤအက်ဥပဒေတွင် ပြဋ္ဌာန်းသည့် အချက်များတွင်မှတပါး၊ အစ္စလမ် တရား ဥပဒေ၏ မူလ သဘောကို မထိခိုက်စေရ၊ ထို့ပြင် ၎င်းပြဋ္ဌာန်းချက်များသည် လက်ထပ်ရေးနှင့်စပ်လျဉ်း၍ တရား နည်းလမ်းအရ နှစ်ဦးသဘောတူ ပြုလုပ်သည့်ပဋိညာဉ်ကိုလည်း မထိခိုက်စေရ။

၂။ ။(၁) အစ္စလမ် တရားဥပဒေအရ၊ လက်ထပ်သော မိန်းမမှာ၊ အောက်ပါ အကြောင်း တခုခုကြောင့်ဖြစ်စေ၊ တခုထက်ပိုသော အကြောင်းများကြောင့်ဖြစ်စေ၊ လင်မယား ကွာရှင်းရန် ဒီကရီရထိုက်ခွင့်ရှိစေရမည်။

(က) လင်ဖြစ်သူ မည်သည့်နေရာ၌ ရောက်ရှိနေထိုင်သည်ကို မသိခဲ့ရခြင်း။

(ခ) မိမိအား လင်ဖြစ်သူက လုံလောက်သော အကြောင်းမရှိဘဲ စားစရိတ် ဓလာက်ပံ့ရန် ၆ လ တဆက်တည်း ပျက်ကွက်ခဲ့ခြင်း၊ သို့တည်းမဟုတ် ငြင်းဆန်ခဲ့ခြင်း။

(ဂ) လင်ဖြစ်သူသည် လုံလောက်သော ဒဏ်ကြောင်းမရှိဘဲ တနှစ်ပတ်လုံး သံဝါသ ပြုရန် ပျက်ကွက်ခဲ့ခြင်း။

(ဃ) လင်ဖြစ်သူသည် လက်ထပ်စဉ်က ပန်းသေရောဂါ စွဲကပ်နေသည့်ပြင်၊ နောက် လည်း ဆက်လက်၍ ပန်းသေရောဂါ စွဲကပ်နေခြင်း။

(င) လင်ဖြစ်သူသည် တနှစ်အောက်မနည်း ပြင်းထန်စွာ စိတ်ဝေါသွပ်သော ရောဂါစွဲကပ်နေခြင်း၊ သို့တည်းမဟုတ် လင်ဖြစ်သူသည် ပြင်းထန်သော ကုဋ္ဌ နူနာဖြစ်စေ၊ ပြင်းထန်သော ကာလသားရောဂါဖြစ်စေ စွဲကပ်နေခြင်း။

(စ) မိမိအား အရွယ်မရောက်မီ၊ မိမိ၏ဘခင်နှင့် ဘခင်၏ဘခင်မှတပါး အခြား အုပ်ထိန်းသူက လက်ထပ်ပေးခဲ့ရာ မိမိ၏လင်ယောက်ျားနှင့် သံဝါသပြုခြင်း မရှိခဲ့လျှင်၊ အသက်ဆယ့်ငါးနှစ်မပြည့်မီ လက်ထပ်ခြင်းကို ဖျက်သိမ်းခြင်း။

(ဆ) လင်ဖြစ်သူက မိမိအားညှဉ်းပန်းနှိပ်စက်ခြင်း။

ညှဉ်းပန်းနှိပ်စက်ခြင်းဆိုသည်မှာ—

(ကက) လက်ရောက် ကျူးလွန်လေ့ရှိခြင်း၊ သို့တည်းမဟုတ် ကိုယ်ထိလက်ရောက် ညှဉ်းပန်းနှိပ်စက်ရာ ရောက်သည်ဖြစ်စေ၊ မရောက်သည်ဖြစ်စေ၊ ရက်စက်သည့် အပြုအမူအားဖြင့် မိမိအား စိတ်ဆင်းရဲအောင် ပြုခြင်း၊ သို့တည်းမဟုတ်

(ခခ) မိမိအား ပြည့်တန်းဆာမ အဖြစ်သို့ရောက်အောင် အတင်းအကြပ်ပြုရန် အားထုတ်ခြင်း

တို့ကိုဆိုလိုသည်။

(ဇ) မိန်းမက လင်မယားကွာရှင်းပိုင်ခွင့်ရရန် အကြောင်းတရပ် အဖြစ်ဖြင့်၊ အစွဲလမ် တရားဥပဒေအရ၊ အသိအမှတ် ပြုထားသော အခြားအကြောင်းတရပ်ရပ်။

(၂) ပုဒ်မခွဲ (၁)၊ အပိုဒ် (က) ရှိ အကြောင်းကို အခြေပြု၍ သက်ဆိုင်ရာ တရားရုံးသည် လင်ဖြစ်သူဟောက်ဆုံးနေကြောင်း ထင်ရှားသည်ဟု သဘောရရှိလျှင်၊ ကွာရှင်းခွင့် ရှေးဦးဒီကရီချမှတ်ရမည်။ ထိုသို့ရှေးဦး ဒီကရီချမှတ်သည့်နေ့မှ လေးနှစ်မပြည့်မီ ကွာရှင်းခွင့် အပြီးသတ် ဒီကရီကို ချမှတ်ခြင်းမပြုရ။

ခြွင်းချက်။ ။သို့ရာတွင် လင်ဖြစ်သူသည် ထိုကာလ အပိုင်းအခြားအတွင်း ကိုယ်တိုင် လာရောက်၍သော်ငင်း၊ အာဏာလွှဲအပ်ထားသည့် ကိုယ်စားလှယ်မှတဆင့်သော်ငင်း၊ မိမိသည် မိမိ၏ အိမ်ထောင်မှုဝတ်တရားများကို ဆောင်ရွက်ရန် အသင့်ရှိမကြောင်းဖြင့် ဒီကရီချမှတ်သော တရားရုံး ကျေနပ်အောင် အကြောင်းပြလျှောက်ထားလျှင် ထိုတရားရုံးက အဆိုပါကွာရှင်းခွင့် ရှေးဦးဒီကရီကို ပယ်ဖျက်ရမည်။

(၃) ပုဒ်မခွဲ (၁)၊ အပိုဒ် (ဃ) ရှိ အကြောင်းကို အခြေပြု၍ သက်ဆိုင်ရာ တရားရုံးသည်၊ ပန်းသေရောဂါ စွဲကပ်ကြောင်းထင်ရှားသည်ဟု သဘောရရှိလျှင် ရှေးဦး ဒီကရီချမှတ်ရမည်။ ထိုသို့ရှေးဦးဒီကရီချမှတ်သည့်နေ့မှတစ်နှစ်အတွင်း လင်ဖြစ်သူသည် ပန်းသေရောဂါပျောက်ကင်းပြီဟု တရားရုံးကျေနပ်အောင် အကြောင်းလုံလောက်စွာပြနိုင်လျှင် အဆိုပါ ရှေးဦးဒီကရီကို ဝယ်ဖျက်ရမည်။ ထိုသို့ တရားရုံးကျေနပ်အောင် အကြောင်းလုံလောက်စွာမပြနိုင်လျှင် ကွာရှင်းခွင့်ရှေးဦးဒီကရီ ချမှတ်သည့်နေ့မှ တစ်နှစ်ပြည့်သောအခါ အပြီးသတ်ဒီကရီချမှတ်ရမည်။

၃။ ။ပုဒ်မ ၂၊ ပုဒ်မခွဲ (၁)၊ အပိုဒ် (က) အရ၊ စွဲဆိုသည့်အမှုတွင်—

(က) အမှုကို အများသိရှိစေရန် တရားရုံးက အများမြင်နိုင်သော နေရာတွင် တလတိုင်တိုင် ကြော်ငြာစာ ကပ်ထားရမည်။

(ခ) အကြင်သူတို့သည် လင်ဖြစ်သူသေဆုံးခဲ့ပါမူ အမွေစား အမွေခံဖြစ်ခဲ့၊ ထိုသူတို့၏အမည်နှင့် နေရပ်များကို လျှောက်လွှာတွင်ဖော်ပြရမည်။

(ဂ) တရားရုံးက အမှုအကြောင်း နို့တစ်စာကို အပိုဒ် (ခ) အရ၊ လျှောက်လွှာတွင် ဖော်ပြသူတို့ထံသို့ ပေးပို့ရမည်။ ထိုသူတို့သည် အမှုတွင် ပါဝင်ဆောင်ရွက် လျှောက်ထားနိုင်ခွင့်ရရှိရမည်။

၄။ ။အိမ်ထောင်ပြုပြီးသော မူဆလင်မိန်းမတဦးက အစွဲလမ်ဘာသာကို စွန့်လွှတ်လျှင် ဖြစ်စေ၊ အခြားဘာသာသို့ ကူးပြောင်းလျှင်ဖြစ်စေ၊ လင်မယားကွာရှင်းပြီး ဖြစ်စေရမည်။

၅။ ။ဤအက်ဥပဒေပါ ပြဋ္ဌာန်းချက်များသည်၊ ဤအက်ဥပဒေအရ၊ လင်မယားကွာရှင်းသည့်အခါ၊ အစွဲလမ်တရားဥပဒေအရ၊ ခန်းဝင်ပစ္စည်း (dower) နှင့်၊ သို့တည်းမဟုတ် ခန်းဝင်ပစ္စည်း (dower) ၏တစိတ်တဒေသနှင့် စပ်လျဉ်း၍ အိမ်ထောင်ပြုပြီးသော မိန်းမတဦးရဆိုက်သည့် အခွင့်အရေးကို မထိခိုက်စေရ၊

D.—PARSI.

၁၁။ ။ပါရှိလူမျိုးများဆိုင်ရာ။

THE PARSI MARRIAGE AND DIVORCE ACT.

CONTENTS.

I.—PRELIMINARY.

Sections.

1. Extent.
2. Definitions.

II.—MARRIAGES BETWEEN PARSIS.

3. Requisites to validity of Parsi marriages.
4. Remarriage when unlawful.
5. Punishment of bigamy.
6. Certificate and registry of marriage.
7. Appointment of Registrar.
8. Marriage register to be open for public inspection.
9. Copy of certificate to be sent to Registrar-General of Births, Deaths and Marriages.
10. Registration of divorces.
11. Penalty for solemnizing marriage contrary to section 4.
12. Penalty for priest's neglect of requirements of section 6.
13. Penalty for omitting to subscribe and attest certificate.
14. Penalty for making, etc., false certificate.
15. Penalty for failing to register certificate.
16. Penalty for secreting, destroying or altering register.
17. Formal irregularity not to invalidate marriage.

III.—PARSI MATRIMONIAL COURTS.

18. Constitution of Special Courts under the Act.
19. * * * *
20. Parsi District Matrimonial Courts.
21. Power to alter territorial jurisdiction of Courts.
22. * * * *
23. Court Seal.
24. Appointment of delegates.

Sections.

25. Power to appoint new delegates.
26. Delegates to be deemed public servants.
27. Selection of delegates under section 20 to be from those appointed under section 24.
28. Practitioners in Matrimonial Courts.
29. Court in which suits to be brought.

IV.—MATRIMONIAL SUITS.

30. Suits for nullity.
31. Suits for dissolution.
32. Grounds for divorce.
33. Joining of co-defendant.
34. Suits for judicial separation.
35. Decrees in certain suits.
36. Suit for restitution of conjugal rights.
37. Counter-claim by defendant for any relief.
38. No suit to be brought to enforce marriage or contract arising out of marriage when husband is under sixteen years or wife under fourteen years.
39. Alimony *pendente lite*.
40. Permanent alimony.
41. Payment of alimony to wife or to her trustee.
42. Disposal of joint property.
43. Suits may be heard with closed doors.
44. Validity of trial.
45. Provisions of Code of Civil Procedure to apply to suits under the Act.
46. Determination of questions of law and procedure and of fact.
47. Appeal to High Court.
48. Liberty to parties to marry again.

V.—CHILDREN OF THE PARTIES.

49. Custody of children.
50. Settlement of wife's property for benefit of children.

VI.—MISCELLANEOUS.

51. Superintendence of High Court.
52. Applicability of provisions of the Act.

SCHEDULE I.—Table of prohibited degrees of consanguinity and affinity.
SCHEDULE II.—Certificate of Marriage.

THE PARSI MARRIAGE AND DIVORCE ACT.

[INDIA ACT III, 1936.] (22nd June, 1936.)

I.—PRELIMINARY.

Extent.

[1]1. This Act extends to Parsis in the Union of Burma.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) * * * *

(2) "Court" means a Court constituted under this Act;

(3) to "desert", together with its grammatical variations and cognate expressions, means to desert the other party to a marriage without reasonable cause and without the consent, or against the will, of such party;

(4) "grievous hurt" means—

(*a*) emasculation;

(*b*) permanent privation of the sight of either eye;

(*c*) permanent privation of the hearing of either ear;

(*d*) privation of any member or joint;

(*e*) destruction or permanent impairing of the powers of any member or joint;

(*f*) permanent disfiguration of the head or face; or

(*g*) any hurt which endangers life;

(5) "husband" means a Parsi husband;

(6) "marriage" means a marriage between Parsis whether contracted before or after the commencement of this Act;

(7) a "Parsi" means a Parsi Zoroastrian;

(8) "priest" means a Parsi priest and includes *Dastur* and *Mobed*; and

(9) "wife" means a Parsi wife.

II.—MARRIAGES BETWEEN PARSIS.

Requisites to validity of Parsi marriages.

3. No marriage shall be valid if—

(*a*) the contracting parties are related to each other in any of the degrees of consanguinity or affinity set forth in Schedule I; or

(*b*) such marriage is not solemnized according to the Parsi form of ceremony called "Ashirvad" by a priest in the presence of two Parsi witnesses other than such priest; or

(*c*) in the case of any Parsi (whether such Parsi has changed his or her religion or domicile or not) who has not completed the age of twenty-one years, the consent of his or her father or guardian has not been previously given to such marriage.

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

Remarriage when unlawful.

4. (*1*) No Parsi (whether such Parsi has changed his or her religion or domicile or not) shall contract any marriage under this Act or any other law in the lifetime of his or her wife or husband, whether a Parsi or not, except after his or her lawful divorce from such wife or husband or after his or her marriage with such wife or husband has lawfully been declared null and void or dissolved, and if the marriage was contracted with such wife or husband under the Parsi Marriage and Divorce Act, 1865,[1] or under this Act, as in force for the time being in the Union of Burma or India or Pakistan, except after a divorce, declaration or dissolution as aforesaid under either of the said Acts. India XV, 1865.

(*2*) Every marriage contracted contrary to the provisions of sub-section (*1*) shall be void.

Punishment of bigamy.

5. Every Parsi who during the lifetime of his or her wife or husband, whether a Parsi or not, contracts a marriage without having been lawfully divorced from such wife or husband, or without his or her marriage with such wife or husband having legally been declared null and void or dissolved, shall be subject to the penalties provided in sections 494 and 495 of the Penal Code for the offence of marrying again during the lifetime of a husband or wife.

Certificate and registry of marriage.

6. Every marriage contracted under this Act shall, immediately on the solemnization thereof, be certified by the officiating priest in the form contained in Schedule II. The certificate shall be signed by the said priest, the contracting parties, or their fathers or guardians when they shall not have completed the age of twenty-one years, and two witnesses present at the marriage; and the said priest shall thereupon send such certificate together with a fee of two rupees to be paid by the husband to the Registrar of the place at which such marriage is solemnized. The Registrar on receipt of the certificate and fee shall enter the certificate in a register to be kept by him for that purpose and shall be entitled to retain the fee.

Appointment of Registrar.

7. For the purposes of this Act a Registrar shall be appointed. Within the local limits of the ordinary original civil jurisdiction of the High Court, the Registrar shall be appointed by the Chief Justice of such Court,[2] and without such limits, by the President of the Union.

Marriage register to be open for public inspection.

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

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[1] Repealed by India Act III of 1936.

[2] The Chief Justice has appointed the Deputy Commissioner, Rangoon Town District, to be the Registrar within the local limits of the original civil jurisdiction of the High Court, *see Burma Gazette*, 1939, Part IV, page 196.

9. Every Registrar shall, at such intervals as the President of the Union directs, send to the Registrar-General of Births, Deaths and Marriages a true copy, certified by him in such form as the President of the Union from time to time prescribes, of all certificates entered by him in the said register of marriages since the last of such intervals. Copy of certificate to be sent to Registrar-General of Births, Deaths and Marriages.

10. When a Court passes a decree for divorce, nullity or dissolution, the Court shall send a copy of the decree for registration to the Registrar of Marriages within its jurisdiction appointed under section 7 ; the Registrar shall enter the same in a register to be kept by him for the purpose, and the provisions of Part II applicable to the Registrars and registers of marriages shall be applicable, so far as may be, to the Registrars and registers of divorces and decrees of nullity and dissolution. Registration of divorces.

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

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

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

14. Every person making or signing or attesting any such certificate containing a statement which is false, and which he either knows or believes to be false, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both ; and if the act amounts to forgery as defined in the Penal Code, then such person shall also be liable, on conviction thereof, to the penalties provided in section 466 of the said Code. Penalty for making, etc., false certificate.

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

16. Any person secreting, destroying, or dishonestly or fraudulently altering the said register in any part thereof, shall be punished with imprisonment of either description as defined in the Penal Code for a term which may extend Penalty for secreting, destroying or altering

register. to two years, or if he be a Registrar, for a term which may extend to five years, and shall also be liable to fine which may extend to five hundred rupees.

Formal irregularity not to invalidate marriage.

17. No marriage contracted under this Act shall be deemed to be invalid solely by reason of the fact that it was not certified under section 6, or that the certificate was not sent to the Registrar, or that the certificate was defective, irregular or incorrect.

III.—Parsi Matrimonial Courts.

Constitution of Special Courts under the Act.

18. For the purpose of hearing suits under this Act, Parsi Matrimonial Courts shall be constituted at Rangoon and at such other places as the President of the Union shall think fit.

19. * * * *

Parsi District Matrimonial Courts.

20. Subject to the provisions contained in section 21, the local limits of the jurisdiction of such Court shall be conterminous with the limits of the district in which it is held. In Rangoon, a Judge of the High Court, and elsewhere the Judge of the principal Court of original civil jurisdiction at such place, shall be the Judge of such Matrimonial Court, and in the trial of cases under this Act he shall be aided by seven delegates.

Power to alter territorial jurisdiction of Courts.

21. The President of the Union may alter the local limits of the jurisdiction of any Parsi Matrimonial Court and may include within such limits any number of districts.

22. * * * *

Court seal.

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

Appointment of delegates.

24. (*1*) The President of the Union shall appoint persons to be delegates to aid in the adjudication of cases arising under this Act, after giving the local Parsis an opportunity of expressing their opinion in such manner as the President of the Union may think fit.

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

Power to appoint new delegates.

25. The appointment of a delegate shall be for ten years; but he shall be eligible for reappointment for the like term or terms. Whenever a delegate shall die, or have completed his term of office, or be desirous of relinquishing his office, or refuse or become incapable or unfit to act, or cease to be a Parsi, or be convicted of an offence under the Penal Code or other law for the time being in force, or be adjudged insolvent, then and so often the President of

the Union may appoint any person being a Parsi to be a delegate in his stead ; and the name of the person so appointed shall be published in the Gazette.

Delegates to be deemed public servants.

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

Selection of delegates under section 20 to be from those appointed under section 24.

27. The delegates selected under section 20 to aid in the adjudication of suits under this Act shall be taken under the orders of the presiding Judge of the Court in due rotation from the delegates appointed by the President of the Union under section 24 :

Provided that each party to the suit may, without cause assigned, challenge any three of the delegates attending the Court before such delegates are selected and no delegate so challenged shall be selected.

Practitioners in Matrimonial Courts.

28. All legal practitioners entitled to practise in the principal civil Court of a district shall be entitled to practise in the Parsi Matrimonial Court of such district.

Court in which suits to be brought.

29. (*1*) All suits instituted under this Act shall be brought in the Court within the limits of whose jurisdiction the defendant resides at the time of the institution of the suit.

(*2*) When the defendant shall at such time have left the Union of Burma such suit shall be brought in the Court at the place where the plaintiff and defendant last resided together.

(*3*) In any case, whether the defendant resides in the Union of Burma or not, such suit may be brought in the Court at the place where the plaintiff resides or at the place where the plaintiff and the defendant last resided to gether, if such Court, after recording its reasons in writing, grants leave so to do.

IV.—Matrimonial Suits.

Suits for nullity.

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

Suits for dissolution.

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

Grounds for divorce.

32. Any married person may sue for divorce on any one or more of the following grounds, namely :—

(*a*) that the marriage has not been consummated within one year after its solemnization owing to the wilful refusal of the defendant to consummate it :

(*b*) that the defendant at the time of the marriage was of unsound mind and has been habitually so up to the date of the suit :

Provided that divorce shall not be granted on this ground, unless the plaintiff (1) was ignorant of the fact at the time of the marriage, and (2) has filed the suit within three years from the date of the marriage ;

(*c*) that the defendant was at the time of marriage pregnant by some person other than the plaintiff :

Provided that divorce shall not be granted on this ground, unless (1) the plaintiff was at the time of the marriage ignorant of the fact alleged, (2) the suit has been filed within two years of the date of marriage, and (3) marital intercourse has not taken place after the plaintiff came to know of the fact ;

(*d*) that the defendant has since the marriage committed adultery or fornication or bigamy or rape or an unnatural offence :

Provided that divorce shall not be granted on this ground if the suit has been filed more than two years after the plaintiff came to know of the fact ;

(*e*) that the defendant has since the marriage voluntarily caused grievous hurt to the plaintiff or has infected the plaintiff with venereal disease or, where the defendant is the husband, has compelled the wife to submit herself to prostitution :

Provided that divorce shall not be granted on this ground if the suit has been filed more than two years (i) after the infliction of the grievous hurt, or (ii) after the plaintiff came to know of the infection, or (iii) after the last act of compulsory prostitution ;

(*f*) that the defendant is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Penal Code :

Provided that divorce shall not be granted on this ground, unless the defendant has prior to the filing of the suit undergone at least one year's imprisonment out of the said period ;

(*g*) that the defendant has deserted the plaintiff for at least three years ;

(*h*) that a decree or order for judicial separation has been passed against the defendant, or an order has been passed against the defendant by a Magistrate awarding separate maintenance to the plaintiff, and the parties have not had marital intercourse for three years or more since such decree or order ;

(*i*) that the defendant has failed to comply with a decree for restitution of conjugal rights for a year or more ; and

(*j*) that the defendant has ceased to be a Parsi :

Provided that divorce shall not be granted on this ground if the suit has been filed more than two years after the plaintiff came to know of the fact.

Joining of co-defendant.

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

Suits for judicial separation.

34. Any married person may sue for judicial separation on any of the grounds for which such person could have filed a suit for divorce, or on the ground that the defendant has been guilty of such cruelty to him or her or their children, or has used such personal violence, or has behaved in such a way, as to render it in the judgment of the Court improper to compel him or her to live with the defendant.

Decrees in certain suits.

35. In any suit under sections 30, 31, 32 or 34, whether defended or not, if the Court be satisfied that any of the grounds set forth in those sections for granting relief exist, that none of the grounds therein set forth for withholding relief exist, and that—

(*a*) the act or omission set forth in the plaint has not been condoned ;

(*b*) the husband and wife are not colluding together ;

(*c*) the plaintiff has not connived at or been accessory to the said act or omission ;

(*d*) (save where a definite period of limitation is provided by this Act) there has been no unnecessary or improper delay in instituting the suit ; and

(*e*) there is no other legal ground why relief should not be granted ;

then and in such case, but not otherwise, the Court shall decree such relief accordingly.

Suit for restitution of conjugal rights.

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

Counter-claim by defendant for any relief.

37. In any suit under this Act, the defendant may make a counter-claim for any relief he or she may be entitled to under this Act.

No suit to be brought to enforce marriage or contract arising out of marriage when husband is under sixteen years or wife under fourteen years.

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

Alimony *pendente lite*.

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

Permanent alimony.

40. (*1*) The Court may, if it shall think fit, at the time of passing any decree under this Act or subsequently thereto on application made to it for the purpose, order that the husband shall,—

(*a*) to the satisfaction of the Court, secure to the wife while she remains chaste and unmarried such gross sum or such monthly or periodical payment of money for a term not exceeding her life as, having regard to her own property, if any, her husband's ability and the conduct of the parties, shall be deemed just, and for that purpose may require a proper instrument to be executed by all necessary parties and suspend the pronouncing of its decree until such instruments shall have been duly executed, or

(*b*) make such monthly payments to the wife for her maintenance and support as the Court may think reasonable.

In case any such order shall not be obeyed by her husband it may be enforced in the manner provided for the execution of decrees and orders under the Code of Civil Procedure, and further the husband may be sued by any person supplying the wife with necessaries during the time of such disobedience for the price of such necessaries.

(*2*) The Court, if satisfied that there is a change in the circumstances of either party at any time, may at the instance of either party vary, modify or rescind such order in such manner as the Court may deem just.

Payment of alimony to wife or to her trustee.

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

Disposal of joint property.

42. In any suit under this Act the Court may make such provisions in the final decree as it may deem just and proper with respect to property presented at or about the time of marriage which may belong jointly to both the husband and wife.

Suits may be heard with closed doors.

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

Validity of trial.

44. Notwithstanding anything contained in section 20, where in the case of a trial in a Parsi Matrimonial Court not less than five delegates have attended throughout the proceedings, the trial shall not be invalid by reason of the absence during any part thereof of the other delegates.

Provisions of Code of Civil Procedure to apply to suits under the Act.

45. The provisions of the Code of Civil Procedure shall, so far as the same may be applicable, apply to proceedings in suits instituted under this Act, including proceedings in execution and orders subsequent to decree.

Determination of questions of law and procedure and of fact.

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

Provided that, where such delegates are equally divided in opinion, the decision on the facts shall be the decision of the presiding Judge.

Appeal to High Court.

47. An appeal shall lie to the High Court from—

(*a*) the decision of any Court established under this Act, on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits, and on no other ground ; and

(*b*) the granting of leave by any such Court under sub-section (*3*) of section 29 :

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

Liberty to parties to marry again.

48. When the time hereby limited for appealing against any decree granting a divorce or annulling or dissolving a marriage shall have expired, and no appeal shall have been presented against such decree, or when any such appeal shall have been dismissed, or when in the result of any appeal a divorce has been granted or a marriage has been declared to be annulled or dissolved, but not sooner, it shall be lawful for the respective parties thereto to marry again, as if the prior marriage had been terminated by death.

V.—Children of the Parties.

Custody of children.

49. In any suit under this Act, the Court may from time to time pass such interim orders and make such provisions in the final decree as it may deem just and proper with respect to the custody, maintenance and education of the children under the age of sixteen years, the marriage of whose parents is the subject of such suit, and may, after the final decree upon application by petition for this purpose, make, revoke, suspend or vary from time to time all such orders and provisions with respect to the custody, maintenance and education of suchichildren as might have been made by such final decree or by interim orders n case the suit for obtaining such decree were still pending.

Settlement of wife's property for benefit of children.

50. In any case in which the Court shall pronounce a decree of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife is entitled to any property either in possession or reversion, the Court may order such settlement as it shall think reasonable to be made of any part of such property, not exceeding one-half thereof, for the benefit of the children of the marriage or any of them.

VI.—MISCELLANEOUS.

Superintendence of High Court.

51. The High Court shall have superintendence[1] over all Courts constituted under this Act subject to its appellate jurisdiction in the same manner as it has over other Courts [* * * * *].[2]

Applicability of provisions of the Act.

52. (*1*) The provisions of this Act shall apply to all suits to which the same are applicable whether the circumstances relied on occurred before or after the passing of this Act, and whether any decree or order referred to was passed under this Act or under the law in force before the passing of this Act, and where any proceedings are pending in any Court at the time of the commencement of this Act, the Court shall allow such amendment of the pleadings as may be necessary as the result of the coming into operation of this Act.

(2) A Parsi who has contracted a marriage under the Parsi Marriage and Divorce Act, 1865,[3] or under this Act as in force for the time being in the Union of Burma or India or Pakistan, even though such Parsi may change his or her religion or domicile, so long as his or her wife or husband is alive and so long as such Parsi has not been lawfully divorced from such wife or husband or such marriage has not lawfully been declared null and void or dissolved under the decree of a competent Court under any of the said Acts, shall remain bound by the provisions of this Act. India XV, 1865.

SCHEDULE I.

(*See* section 3.)

Table of prohibited Degrees of Consanguinity and Affinity.

A man shall not marry his—

1. Paternal grand-father's mother.
2. Paternal grand-mother's mother.
3. Maternal grand-father's mother.
4. Maternal grand-mother's mother.
5. Paternal grand-mother.
6. Paternal grand-father's wife.

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[1] For rules made by the High Court in exercise of this power, *see Burma Gazette*, 1939, Part IV, page 157.

[2] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

[3] Repealed by India Act III of 1936.

7. Maternal grand-mother.
8. Maternal grand-father's wife.
9. Mother or step-mother.
10. Father's sister or step-sister.
11. Mother's sister or step-sister.
12. Sister or step-sister.
13. Brother's daughter or step-brother's daughter, or any direct lineal descendant of a brother or step-brother.
14. Sister's daughter or step-sister's daugther, or any direct lineal descendant of a sister or step-sister.
15. Daughter or step-daughter, or any direct lineal descendant of either.
16. Son's daughter or step-son's daughter, or any direct lineal descendant of a son or step-son.
17. Wife of son or step-son, or of any direct lineal descendant of a son or step-son.
18. Wife of daughter's son or of step-daughter's son, or of any direct lineal descendant of a daughter or step-daughter.
19. Mother of daughter's husband.
20. Mother of son's wife.
21. Mother of wife's paternal grand-father.
22. Mother of wife's paternal grand-mother.
23. Mother of wife's maternal grand-father.
24. Mother of wife's maternal grand-mother.
25. Wife's paternal grand-mother.
26. Wife's maternal grand-mother.
27. Wife's mother or step-mother.
28. Wife's father's sister.
29. Wife's mother's sister.
30. Father's brother's wife.
31. Mother's brother's wife.
32. Brother's son's wife.
33. Sister's son's wife.

A woman shall not marry her—

1. Paternal grand-father's father.
2. Paternal grand-mother's father.
3. Maternal grand-father's father.
4. Maternal grand-mother's father.
5. Paternal grand-father.
6. Paternal grand-mother's husband.
7. Maternal grand-father.
8. Maternal grand-mother's husband.
9. Father or step-father.
10. Father's brother or step-brother.
11. Mother's brother or step-brother.

12. Brother or step-brother.
13. Brother's son or step-brother's son, or any direct lineal descendant of a brother or step brother.
14. Sister's son or step-sister's son, or any direct lineal descendant of a sister or step-sister.
15. Son or step-son, or any direct lineal descendant of either.
16. Daughter's son or step-daughter's son, or any direct lineal descendant of a daughter or step-daughter.
17. Husband of daughter or of step-daughter, or of any direct lineal descendant of a daughter or step-daughter.
18. Husband of son's daughter or of step-son's daughter, or of any direct lineal descendant of a son or step-son.
19. Father of daughter's husband,
20. Father of son's wife.
21. Father of husband's paternal grand-father.
22. Father of husband's paternal grand-mother.
23. Father of husband's maternal grand-father.
24. Father of husband's maternal grand-mother.
25. Husband's paternal grand-father.
26. Husband's maternal grand-father.
27. Husband's father or step-father.
28. Brother of husband's father
29. Brother of husband's mother.
30. Husband's brother's son, or his direct lineal descendant.
31. Husband's sister's son, or his direct lineal descendant.
32. Brother's daughter's husband.
33. Sister's daughter's husband.

NOTE.—In the above table the words "brother" and "sister" denote brother and sister of the whole as well as half-blood. Relationship by step means relationship by marriages.

SCHEDULE II.

(*See* section 6.)

Certificate of Marriage.

Date and place of marriage ...	
Names of the husband and wife ...	
Condition at the time of marriage ...	
Rank or profession ...	
Age ...	
Residence ...	
Names of the fathers or guardians ...	
Rank or profession ...	
Signature of the officiating priest ...	
Signatures of the contracting parties	
Signatures of the fathers or guardians of the contracting parties under 21 years of age.	
Signatures of witnesses ...	

E.—CHRISTIAN.

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THE CHURCH OF SCOTLAND KIRK SESSION ACT.

[INDIA ACT XXIII, 1899.] (27th September, 1899.)

Preamble.

Whereas there are in the Union of Burma Kirk Sessions of the Church of Scotland which have been duly constituted to be Church Courts for ecclesiastical purposes in pursuance of Acts of the General Assembly of the Church of Scotland;

And whereas it is expedient that such Kirk Sessions, and any others which may hereafter be so constituted, should be incorporated with the powers hereinafter provided;

It is hereby enacted as follows:—

1. * * * *

Scotch Kirk Sessions to be bodies corporate.

2. (*1*) Every Kirk Session which has been, or may hereafter be, duly constituted to be a Church Court for ecclesiastical purposes in pursuance of an Act of the General Assembly of the Church of Scotland, is hereby declared to be, and the same shall be, a body corporate having perpetual succession and a common seal.

(*2*) A notification by the President of the Union in the Gazette that a Kirk Session has been duly constituted in pursuance of an Act of the General Assembly of the Church of Scotland shall be conclusive proof that it has been so constituted.

Power to hold and dispose of property.

3. (*1*) Every Kirk Session constituted as aforesaid shall, as a body corporate, have power to acquire and hold any property which has been, or may hereafter be, vested in it for the purposes of the Congregation for which it has been, or may hereafter be, constituted, or of any trust which may have been, or may hereafter be, accepted by it, to transfer the same, to contract and to do all other things necessary for, or incidental to, the purposes of its constitution or of any such trust as aforesaid.

(*2*) The signature of the Moderator and Treasurer or Session-clerk for the time being of a Kirk Session constituted as aforesaid shall, if affixed on behalf and by order of the Kirk Session, be sufficient for all purposes for which the signature of the Kirk Session is required.

THE CHRISTIAN MARRIAGE ACT.

CONTENTS.

PRELIMINARY.

Sections.

1. * * * *
2. * * * *
3. Interpretation clause.

PART I.

THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED.

4. Marriages to be solemnized according to Act.
5. Persons by whom marriages may be solemnized.
6. Grant and revocation of licences to solemnize marriages.
7. Marriage Registrars.
   Senior Marriage Registrar.
   Magistrate when to be Marriage Registrar.
8. Marriage Registrars in Karenni.
9. Licensing of persons to grant certificates of marriage between native Christians.

PART II.

TIME AND PLACE AT WHICH MARRIAGES MAY BE SOLEMNIZED.

10. Time for solemnizing marriage.
    Exceptions.
11. Place for solemnizing marriage.
    Fee for special licence.

PART III.

MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THIS ACT.

12. Notice of intended marriage.
13. Publication of such notice.
    Return or transfer of notice.
14. Notice of intended marriage in private dwelling.
15. Sending copy of notice to Marriage Registrar when one party is a minor.
16. Procedure on receipt of notice.

Sections.

17. Issue of certificate of notice given and declaration made.
Proviso.
18. Declaration before issue of certificate.
19. Consent of father, or guardian, or mother.
20. Power to prohibit by notice issue of certificate.
21. Procedure on receipt of notice.
22. Issue of certificate in case of minority.
23. Issue of certificates to native Christians.
24. Form of certificate.
25. Solemnization of marriage.
26. Certificate void if marriage not solemnized within two months.

PART IV.

REGISTRATION OF MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION.

27. Marriages when to be registered.
28. Registration of marriages solemnized by clergymen of Church of England.
29. Quarterly Returns to Archdeaconry.
Contents of returns.
30. Registration and returns of marriages solemnized by clergymen of Church of Rome.
31. Registration and returns of marriages solemnized by clergymen of Church of Scotland.
32. Certain marriages to be registered in duplicate.
33. Entries of such marriages to be signed and attested.
34. Certificate to be forwarded to Marriage Registrar, copied and sent to Registrar-General.
35. Copies of certificates to be entered and numbered.
36. Registrar to add number of entry to certificate, and send to Registrar-General.
37. Registration of marriages between native Christians.
Custody and disposal of register-book.

PART V.

MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE OF, A MARRIAGE REGISTRAR.

38. Notice of intended marriage before Marriage Registrar.
39. Publication of notice.
40. Notice to be filed and copy entered in Marriage Notice Book.
41. Certificate of notice given and oath made.
Proviso.

Sections.

42. Oath before issue of certificate.
43. * * * *
44. Consent of father or guardian.
Protest against issue of certificate.
Effect of protest.
45. Petition where person whose consent is necessary is insane, or unjustly withholds consent.
Procedure on petition.
46. Petition when Marriage Registrar refuses certificate.
Procedure on petition.
47. Petition when Marriage Registrar in Karenni refuses certificate.
48. Petition when Registrar doubts authority of person forbidding.
Procedure on petition.
Reference when Marriage Registrar in Karenni doubts authority of person forbidding.
Procedure on reference.
49. Liability for frivolous protest against issue of certificate.
50. Form of certificate.
51. Solemnization of marriage after issue of certificate.
52. When marriage not had within two months after notice, new notice required.
53. Marriage Registrar may ask for particulars to be registered.
54. Registration of marriage solemnized under Part V.
55. Certificates to be sent monthly to Registrar-General.
Custody of register-book.
56. Officers to whom Registrars in Karenni shall send certificates.
57. Registrars to ascertain that notice and certificate are understood by native Christians.
58. Native Christians to be made to understand declarations.
59. Registration of marriages between native Christians.

PART VI.

Marriage of Native Christians.

60. On what conditions marriages of native Christians may by certified.
61. Grant of certificate.
62. Keeping of register-book and deposit of extracts therefrom with Registrar-General.
63. Searches in register-book and copies of entries.
64. Books in which marriages of native Christians under Part I or Part III are registered.
65. Part VI not to apply to Roman Catholics.

PART VII.

PENALTIES.

Sections.

66. False oath, declaration, notice or certificate for procuring marriage.
67. Forbidding, by false personation, issue of certificate by Marriage Registrar.
68. Solemnizing marriage without due authority.
69. Solemnizing marriage out of proper time, or without witnesses.
Saving of marriages solemnized under special licence.
70. Solemnizing without notice, or within fourteen days after notice, marriage with minor:
71. Issuing certificate, or marrying without publication of notice; marrying after expiry of notice;
solemnizing marriage with minor within fourteen days without authority of Court, or without sending copy of notice;
issuing certificate against authorized prohibition.
72. Issuing certificate after expiry of notice, or, in case of minor, within fourteen days after notice, or against authorized prohibition.
73. Persons authorized to solemnize marriages (other than clergy of Churches of England, Scotland or Rome)—
issuing certificate, or marrying, without publishing notice, or after expiry of certificate;
issuing certificate for, or solemnizing, marriage with minor within fourteen days after notice;
issuing certificate authorizedly forbidden;
solemnizing marriage authorizedly forbidden.
74. Unlicensed person granting certificate pretending to be licensed.
75. Destroying or falsifying register-books.
76. Limitation of prosecutions under Act.

PART VIII.

MISCELLANEOUS.

77. What matters need not be proved in respect of marriage in accordance with Act.
78. Correction of errors.
79. Searches and copies of entries.
80. Certified copy of entry in marriage register, etc., to be evidence.
81. Certificates of certain marriages for His Britannic Majesty's Secretary of State.
82. President to prescribe fees.
83. Power to make rules.

Sections.

84. * * * *
85. Power to declare who shall be District Judge.
86. * * * *
87. Saving of Consular marriages.
88. Non-validation of marriages within prohibited degrees.

SCHEDULE I.—NOTICE OF MARRIAGE.

SCHEDULE II.—CERTIFICATE OF RECEIPT OF NOTICE.

SCHEDULE III.—FORM OF REGISTER OF MARRIAGES.

SCHEDULE IV.—MARRIAGE REGISTER-BOOK.
CERTIFICATE OF MARRIAGE.

THE CHRISTIAN MARRIAGE ACT.

[INDIA ACT XV. 1872] (18th July, 1872.)

PRELIMINARY.

[1] 1. * * * *

2. * * * *

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

"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 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 widow;

the expression "Christians" means persons professing the Christian religion; and the expression "native Christians" includes the Christian descendants of natives of India or Pakistan or the Union of Burma converted to Christianity, as well as such converts;

"Registrar-General of Births, Deaths and Marriages" means a Registrar-General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act.

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[1] Omitted by the Union of Burma (Adaptation) of Laws Order, 1948.

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.[1]

Persons by whom marriages may be solemnized.

5. Marriages may be solemnized in the Union of Burma—

(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.

Grant and revocation of licences to solemnize marriages.

6. The President of the Union may, by notification, grant licences to Ministers of religion to solemnize marriages in the Union of Burma and may by a like notification, revoke such licences.

Marriage Registrars.

7. The President of the Union 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.

Senior Marriage Registrar.

Where there are more Marriage Registrars than one in any district, the President of the Union 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 Karenni.

8. The President of the Union may, by notification in the Gazette, appoint any Christian, either by name or as holding any office for the time

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[1] See section 4 of the Buddhist Women's Special Marriage and Succession Act, 1954 (*ante*) which says that notwithstanding anything to the contrary contained in any law for the time being in force or in any custom having the force of law, the provisions of that Act shall apply to a Buddhist woman and her non-Buddhist husband.

being, to be a Marriage Registrar in respect of any district or place within the [territories of any Chief of Karenni.][1]

The President of the Union may, by like notification, revoke any such appointment.

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

9. The President of the Union may grant a licence 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 licence may be revoked by the President of the Union and every such grant or revocation shall be notified in the Gazette.

[2][If any person licensed under this section solemnizes or affects to solemnize any marriage under Part VI or grants any certificate as therein mentioned, knowing that one of the parties to such marriage or affected marriage was at the date of such solemnization not a Christian, he shall be liable to have his licence cancelled, and in addition thereto he shall be deemed to be guilty of an offence under section 73, and shall be punishable accordingly.]

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 licence 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 licence 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 licence, or

(3) a clergyman of the Church of Scotland solemnizing a marriage according to the rules, rites, ceremonies and customs of the Church of Scotland.

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[1] The words in square brackets should now be read as "Kayah State." See amendments to the Constitution of the Union of Burma regarding the Karenni State.

[2] This paragraph was inserted by the Burma Laws (Adaptation) Act, 1940 (Burma Act XXVII, 1940), in order to give effect to the provisions contained in section 6 of the Marriage Validation Act, 1892 (India Act II, 1892). Section 3 of that Act declared that all marriages which had already been solemnized under Part VI of the Indian Christian Marriage Act, 1872 (India Act XV, 1872), between persons of whom one only was a native Christian, shall be as good and valid in law as if such marriages had been solemnized between persons of whom both were native Christians.

Place for solemnizing marriage.

11. No clergyman of the Church of England shall solemnize a marriage in any place other than a church where worship is generally held according to the forms of the Church of England, unless there is no such church within five miles distance by the shortest road from such place, or unless he has received a special licence authorizing him to do so under the hand and seal of the Anglican Bishop of the Diocese or his Commissary.

Fee for special licence.

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

PART III.

MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THIS ACT.

Notice of intended marriage.

12. Whenever a marriage is intended to be solemnized by a Minister of religion licensed to solemnize marriages under this Act, one of the persons intending marriage shall give notice in writing, according to the form contained in the First Schedule hereto annexed, or to the like effect, to the Minister of religion whom he or she desires to solemnize the marriage, and shall state therein—

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

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

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

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

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

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 12, shall forward it to the Marriage Registrar of the district, who shall affix the same to some conspicuous place in his own office.

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

15. When one of the persons intending marriage is a minor, every Minister receiving such notice shall, unless within twenty-four hours after its receipt he returns the same under the provisions of section 13, send, by 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.

Procedure on receipt of notice.

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.

Issue of certificate of notice given and declaration made.

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 :

Proviso.

Provided—

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

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

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

Declaration before issue of certificate.

18. The certificate mentioned in section 17 shall not be issued until one of the persons intending marriage has appeared personally before the Minister and made a solemn declaration—

(*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 the Union of Burma having authority to give such consent, as the case may be.

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 the Union of Burma.

Power to prohibit by notice issue of certificate.

20. Every person whose consent to a marriage is required under section 19 is hereby authorized to prohibit the issue of the certificate by any Minister, at any time before the issue of the same, by notice in writing to such Minister, subscribed by the person so authorized with his or her name and place of abode and position with respect to either of the persons intending marriage, by reason of which he or she is so authorized as aforesaid.

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 19 has been obtained, such Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of the notice of marriage.

Issue of certificates to native Christians.

23. When any native Christian about to be married takes a notice of marriage to a Minister of religion, or applies for a certificate from such Minister under section 17, such Minister shall, before issuing the certificate, ascertain whether such native Christian is cognizant of the purport and effect of the said notice or certificate, as the case may be, and, if not, shall translate or cause to be translated the notice or certificate to such native Christian into some language which he understands.

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 the Union of Burma 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 [1] in manner hereinafter prescribed.

Registration of marriages solemnized by clergymen 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 solemnized at any place where he has any spiritual charge, to the Registrar of the Archdeaconry to which he is subject, or within the limits of which such place is situate.

Contents of returns.

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.

The said Registrar upon receiving the said returns shall send one copy thereof to the Registrar-General of Births, Deaths and Marriages.

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

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, and such person shall forward quarterly to the Registrar-General of Births, Deaths and Marriages returns of the entries of all marriages registered by him during the three months next preceding.

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

31. Every clergyman of the Church of Scotland 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, and shall forward quarterly to the Registrar-General of Births, Deaths and Marriages, through the Senior Chaplain of the Church of Scotland, returns, similar to those prescribed in section 29, of all such marriages.

Certain marriages to be registered in duplicate.

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 duplicate by the person solemnizing the same ; (that is to say)

[1] As to the establishment of general registry offices of births, deaths and marriages, *see* the Births, Deaths and Marriages Registration Act, Volume IV of this Code.

PART V.

MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE OF, A MARRIAGE REGISTRAR.

Notice of intended marriage before Marriage Registrar.

38. When a marriage is intended to be solemnized by, or in the presence of, a Marriage Registrar, one of the parties to such marriage shall give notice in writing, in the form contained in the First Schedule hereto annexed, or to the like effect, to any Marriage Registrar of the district within which the parties have dwelt, or, if the parties dwell in different districts, shall give the like notice to a Marriage Registrar of each district, and shall state therein the name and surname, and the profession or condition, of each of the parties intending 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 upwards.

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 President of the Union 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 :

Provided—

Proviso.

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

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

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

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

Oath before issue of certificate.

42. The certificate mentioned in section 41 shall not be issued by any Marriage Registrar until one of the parties intending marriage appears personally before such Marriage Registrar, and makes oath—

(*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

(*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 the Union of Burma authorized to give such consent, as the case may be.

43. * * * *

Consent of father or guardian. Protest against issue of certificate.

44. The provisions of section 19 apply to every marriage under this Part, either of the parties to which is a minor ;

and any person whose consent to such marriage would be required 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.

Effect of protest.

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

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

Procedure on petition.

And the District Judge may examine the allegations of the petition in a summary way ; and, if upon examination such marriage appears proper, such District Judge shall declare the marriage to be a proper marriage.

Such declaration shall be 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 to the District Judge.

Procedure on petition.

The said District Judge, may examine the allegations of the petition in a summary way, and shall decide thereon.

The decision of such District Judge 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.

Petition when Marriage Registrar in Karenni refuses certificate.

47. Whenever a Marriage Registrar resident in Karenni[1] refuses to issue his certificate, either of the parties intending marriage may apply by petition to the President of the Union who shall decide thereon.

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

Petition when Registrar doubts authority of person forbidding.

48. Whenever a Marriage Registrar, acting under the provisions of section 44, 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 to the District Judge.

Procedure on petition.

The said petition shall state all the circumstances of the case, and pray for the order and direction of the Court concerning the same, and the said District Judge 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 District Judge 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 Karenni doubts authority of person forbidding.

Whenever a Marriage Registrar appointed under section 8 to act within Karenni[1] 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 President of the Union.

Procedure on reference.

If it appears to the President of the Union that the person forbidding the issue of such certificate is not authorized by law so to do, the President of the Union 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 44, or the District Judge, under section 45 or 46,

[1] Now the Kayah State.

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 41 shall be in the form contained in the Second Schedule to this Act annexed or to the like effect, and the President of the Union 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 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 held 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 40, 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.

Marriage Registrar may ask for particulars to be registered.

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.

Registration of marriage solemnized under Part V.

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.

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 not 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.

Certificates to be sent monthly to Registrar-General.

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 Registrar-General of Births, Deaths and Marriages.

Custody of register-book.

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

Officers to whom Registrars in Karenni shall send certificates.

56 The Marriage Registrars in Karenni[1] shall send the certificates mentioned in section 54 to such officers as the President of the Union from time to time, by notification in the Gazette, appoints in this behalf.[2]

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

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

Native Christians to be made to understand declarations.

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.

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[1] Now the Kayah State.

[2] *Cf.* section 24 (2) of the Births, Deaths and Marriages Registration Act, Volume IV of this Code.

Registration of marriages between native Christians.

59. The registration of marriages between native Christians under this Part shall be made in conformity with the rules laid down in section 37 (so far as they are applicable), and not otherwise.

PART VI.

MARRIAGE OF NATIVE CHRISTIANS.

On what conditions marriages of native Christians 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 9, 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 19 has been given to 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 60 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. 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 President of the Union 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, in such form and at such intervals as the President of the Union may prescribe, true and duly authenticated extracts

from his register-book of all entries made therein since the last of those intervals.

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 62, 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 an entry therein.

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

64. The provisions of sections 62 and 63, 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 37.

Part VI not to apply to Roman Catholics.

65. This Part of this Act, except so much of sections 62 and 63 as are referred to in section 64, shall not apply to marriages between Roman Catholics.

PART VII.

PENALTIES.

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

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

(*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 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.

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 205 of the Penal Code.

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, and shall also be liable to fine.

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 licence.

This section does not apply to marriages solemnized under special licences 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 licence 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.

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

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.

Issuing certificate, or marrying without publication of notice;

marrying after expiry of notice;

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

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

(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 any 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 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 ;

(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.

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 this behalf, shall be deemed to have committed an offence under section 166 of the Penal Code. Issuing certificate after expiry of notice, or, in case of minor, within fourteen days after notice, or against authorized prohibition.

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 licence from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf, Persons authorized to solemnize marriages (other than clergy of Churches of England, Scotland or Rome)—

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 authorized to forbid the issue ; issuing certificate authorizedly forbidden ;

or knowingly and wilfully solemnizes any marriage forbidden by any person authorized to forbid the same ; solemnizing marriage authorizedly forbidden.

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

Unlicensed person granting certificate pretending to be licensed.

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.

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.

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 authenticated 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 4 and 5, 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.

Correction of errors.

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.

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

And in case such certificate had been already sent to the Registrar-General of Births, Deaths and Marriages, such person shall make and send in

like manner a separate certificate of the original erroneous entry, and of the marginal correction therein made.

Searches and copies of entries.

79. Every person solemnizing a marriage under this Act, and hereby required to register the same, and every Marriage Registrar or Registrar-General of Births, Deaths and Marriages 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.

Certified copy of entry in marriage register, etc. to be evidence.

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 an 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 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.

Certificates of certain marriages for His Britannic Majesty's Secretary of State.

81. The Registrar-General of Births, Deaths and Marriages and the officers appointed under section 56 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 President of the Union may desire that evidence shall be transmitted to England, and shall send the same certificates, signed by them respectively, to His Britannic Majesty's Secretary of State.

President to prescribe fees.

82. Fees shall be chargeable under this Act for—

receiving and publishing notices of marriages;

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

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

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

giving copies of entries in the same under sections 63 and 79.

The President of the Union 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 him may seem fit.

Power to make rules.

83. The President of the Union may make rules in regard to the disposal of the fees mentioned in section 82, the supply of register-books, and the preparation and submission of returns of marriages solemnized under this Act.

84. * * * *

Power to declare who shall be Dist ict Judge.

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

86. * * * *

Saving of Consular marriages.

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.

Non-validation of marriages within prohibited degrees.

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.

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*	*Monbnein.*	*23 days.*	*Church of England, Monbnein*	
Martha Green.	*Spinster.*	.....	*Minor.*	*Monbnein.*	*More than a month.*		

Witness my hand, this day of

(*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 here by 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.*	*Moulmein.*	*23 days.*	*Church of England. Moulmein.*	
Martha Green.	*Spinster.*	.....	*Minor.*	*Moulmein.*	*More than a month.*		

and that the declaration, or oath required by section 17 or 41 of the Christian Marriage Act has been duly made by the said (*James Smith*).

Date of notice entered }
Date of 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

(*Signed*)

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

[The *italics* in the 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.....

I, , Registrar of the Archdeaconry of do hereby certify that the annexed are correct copies of the originals and official Quarterly Returns of Marriages within the Archdeaconry of 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

MARRIAGES solemnized at

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 licence.	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.					
				James ...	*White* ...	*26 years* ...	*Widower* ...	*Carpenter*	*Moulmein* ...	*William White.*
				Martha ...	*Duncan* ...	*17 years* ...	*Spinster* ...	...	*Moulmein* ...	*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.					
				James ...	*White* ...	*20 years* ...	*Widower* ..	*Carpenter*	*Montmein* ...	*William White.*
				Martha ...	*Duncan* ...	*17 years* ...	*Spinster* ...	...	*Montmein* ...	*John Duncan.*

Married in the

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

THE FOREIGN MARRIAGE ACT.

[INDIA ACT XIV. 1903.] (23rd October, 1903.)

Preamble.

WHEREAS it is expedient to give effect to the Foreign Marriages Order in Council, 1903 ; It is hereby enacted as follows :—

[1] 1. * * * *

Notice of marriage intended to be solemnized under the Foreign Marriage Act.

2. (*1*) Notice in writing of a marriage which it is intended to solemnize under the Foreign Marriage Act, 1892, may be given by one of the parties intending such marriage to— 55 & 56 Vict., c. 23.

(*a*) a Marriage Registrar appointed under the Christian Marriage Act, where either of such parties is a person professing the Christian religion ;

(*b*) a District Magistrate or Political Agent where neither of such parties is a person professing the Christian religion :

Provided that the party giving such notice as aforesaid shall have had his usual place of abode for not less than three consecutive weeks immediately preceding the giving of notice within the local limits of the area for which the Marriage Registrar, Magistrate or Political Agent to whom the notice is given, is appointed.

(*2*) Every notice given under this section shall state—

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

(*b*) the residence of each of them ;

(*c*) the time during which each of them has dwelt there ; and

(*d*) the place in which the intended marriage is to be solemnized;

and it shall contain a declaration by the party giving the notice to the effect that he believes that there is no impediment of kindred or affinity or other lawful hindrance to the solemnization of the said intended marriage.

(*3*) A copy of every notice given under this section shall be published by being affixed in some conspicuous place in the office of the officer to whom the notice is given.

(*4*) On the expiration of four clear days after such notice as aforesaid has been published in the manner prescribed by sub-section (*3*), the officer to whom the notice is given, unless he is aware of any impediment of kindred or affinity or other lawful hindrance to the solemnization of the said intended marriage, shall, on payment of such fee (if any) as the President of the Union may fix in this behalf, furnish the party by whom the notice was given with a certificate, under his hand and seal, to the effect that the notice has been so given and published.

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[1] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

THE BURMA DIVORCE ACT.

CONTENTS.

I.—PRELIMINARY.

Sections.

1. * * * *
2. Extent of Act.
   Extent of power to grant relief.
3. Interpretation clause.

II.—JURISDICTION.

4. Matrimonial jurisdiction of High Court and District Courts to be exercised subject to Act.
5-6. * * * *
7. Court to act on principles of English Divorce Court.
8. Extraordinary jurisdiction of High Court.
   Power to transfer suits.
9. Reference to High Court.

III.—DISSOLUTION OF MARRIAGE.

10. When husband may petition for dissolution.
    When wife may petition for dissolution.
    Contents of petition.
11. Adulterer to be co-respondent.
12. Court to be satisfied of absence of collusion.
13. Dismissal of petition.
14. Power to Court to pronounce decree for dissolving marriage.
    Condonation.
15. Relief in case of opposition on certain grounds.
16. Decrees for dissolution to be *nisi*.
    Collusion.
17. Confirmation of decree for dissolution by District Judge.
17A. Appointment of officer to exercise duties of King's Proctor.

IV.—NULLITY OF MARRIAGE.

18. Petition for decree of nullity.
19. Grounds of decree.
20. Confirmation of District Judge's decree.
21. Children of annulled marriage.

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18. Petition for decree of nullity.
19. Grounds of decree.
20. Confirmation of District Judge's decree.
21. Children of annulled marriage.

V.—JUDICIAL SEPARATION.

Sections.

22. Bar to decree for divorce *a mensâ et toro*; but judicial separation obtainable by husband or wife.
23. Application for separation made by petition.
24. Separated wife deemed spinster with respect to after-acquired property.
25. Separated wife deemed spinster for purposes of contract and suing.

Reversal of Decree of Separation.

26. Decree of separation obtained during absence of husband or wife may be reversed.

VI.—PROTECTION-ORDERS.

27. Deserted wife may apply to Court for protection.
28. Court may grant protection-order.
29. Discharge or variation of orders.
30. Liability of husband seizing wife's property after notice of order.
31. Wife's legal position during continuance of order.

VII.—RESTITUTION OF CONJUGAL RIGHTS.

32. Petition for restitution of conjugal rights.
33. Answer to petition.

VIII.—DAMAGES AND COSTS.

34. Husband may claim damages from adulterer.
35. Power to order adulterer to pay costs.
Power to order litigious intervenor to pay costs.

IX.—ALIMONY.

36. Alimony *pendente lite*.
37. Power to order permanent alimony.
Power to order monthly or weekly payments.
38. Court may direct payment of alimony to wife or to her trustee.

X.—SETTLEMENTS.

39. Power to order settlement of wife's property for benefit of husband and children.
Settlement of damages.
40. Inquiry into existence of ante-nuptial or post-nuptial settlements.

XI.—Custody of Children.

Sections.

41. Power to make orders as to custody of children in suit for separation.
42. Power to make such orders after decree.
43. Power to make orders as to custody of children in suits for dissolution or nullity.
44. Power to make such orders after decree or confirmation.

XII.—Procedure.

45 Code of Civil Procedure to apply.
46. Forms of petitions and statements.
47. Petition to state absence of collusion.
Statements to be verified.
48. Suits on behalf of lunatics.
49. Suits by minors.
50. Service of petition.
51. Mode of taking evidence.
52. Competence of husband and wife to give evidence as to cruelty or desertion.
53. Power to close doors.
54. Power to adjourn.
55. Enforcement of, and appeals from, orders and decrees.
No appeal as to costs.
56. Appeal to Supreme Court.

XIII.—Re-Marriage.

57. Liberty to parties to marry again.
58. English clergyman not compelled to solemnize marriages of persons divorced for adultery.
59. English minister refusing to perform ceremony to permit use of his church.

XIV.—Miscellaneous.

60. Decree for separation or protection-order valid as to persons dealing with wife before reversal.
Indemnity of persons making payment to wife without notice of reversal of decree or protection-order.
61. Bar of suit for criminal conversation.
62. Power to make rules.
62A. * * * *

SCHEDULE OF FORMS.

Nos.

1. Petition by husband for a dissolution of marriage with damages against co-respondent by reason of adultery.
2. Respondent's statement in answer to No. 1.
3. Co-respondent's statement in answer to No. 1.
4. Petition for decree of nullity of marriage.
5. Petition by wife for judicial separation on the ground of her husband's adultery.
6. Statement in answer to No. 5.
7. Statement in reply to No. 6.
8. Petition for a judicial separation by reason of cruelty.
9. Statement in answer to No. 8.
10. Petition for reversal of decree of separation.
11. Petition for protection-order.
12. Petition for alimony pending the suit.
13. Statement in answer to No. 12.
14. Undertaking by minor's next friend to be answerable for respondent's costs.

THE BURMA DIVORCE ACT. [1]

[INDIA ACT IV, 1869.] (1st April, 1869.)

I.—PRELIMINARY.

1. * * * *

Extent of Act.

2. [This Act extends to the whole of the Union of Burma.] [2]

Extent of power to grant relief generally, and to make decrees of nullity,

Nothing herein contained shall authorize any Court to grant any relief under this Act except where the petitioner or respondent professes the Christian religion.

* * * * [3]

or to make decrees of nullity of marriage except where the marriage has been solemnized in the Union of Burma and the petitioner is resident in the Union of Burma at the time of presenting the petition,

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[1] Sub-section (3) of section 29 of the Limitation Act says that nothing in that Act shall apply to suits under the Burma Divorce Act.

[2] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

[3] Omitted by the same Order.

or to grant any relief under this Act, other than a decree of dissolution of marriage or of nullity of marriage, except where the petitioner resides in the Union of Burma at the time of presenting the petition. or other relief.

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

(1) " District Judge " and " District Court " mean, in relation to cases arising in Karenni,[1] such officer as the President of the Union may appoint in this behalf and, in the absence of such appointment, the High Court ;

(2)—(3) * * * *

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

(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 ; "Minor children."

(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 ; "Incestuous adultery."

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

(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 His Britannic Majesty or elsewhere ; "Marriage with another woman."

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

(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. "Property."

A petition under this Act may be presented (*a*) to the District Court within the local limits of whose ordinary jurisdiction the husband and wife reside or last resided together, or (*b*) to the High Court in any case where the husband and wife reside or last resided together in the Union of Burma, and may not be presented to any other Court in the Union of Burma.

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[1] Now the Kayah State.

II.—Jurisdiction.

Matrimonial jurisdiction of High Court and District Courts to be exercised subject to Act.

4. The jurisdiction of the High Court in respect of causes, suits and matters matrimonial shall be exercised by such Court and by the District Courts subject to the provisions of this Act and not otherwise.

5—6. * * * *

Court to act on principles of English Divorce Court.

7. Subject to the provisions contained in this Act, the High Court 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 Supreme Court of Judicature in England for the time being acts and gives relief :

Provided that nothing in this section shall deprive the said Courts of jurisdiction in a case where the parties to a marriage professed the Christian religion at the time of the occurrence of the facts on which the claim to relief is founded.

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.

Power to transfer suits.

The High Court may also withdraw any such suit or proceeding, and transfer it for 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 or upwards.

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. Contents of petition.

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 :— Adulterer to be co-respondent

(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.

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. Court to be satisfied of absence of collusion.

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, 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. Dismissal of 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.

14. In case the Court is satisfied on the evidence that the case of the petitioner has been proved, 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 Power to Court to pronounce decree for dissolving marriage.

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.

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 a 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 the 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.

Collusion.

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.

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.

17. Every decree for a dissolution of marriage made by a District Judge shall be subject to confirmation by the High Court. Confirmation of decree for dissolution by District Judge.

Cases for confirmation of a decree for dissolution of marriage shall be heard by a Court composed of three Judges, and in case of difference the opinion of the majority 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[1] 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.

17A. The President of the Union may appoint an officer[2] who shall, within the jurisdiction of the High Court, have the like right of showing cause why a decree for the dissolution of marriage should not be made absolute or should not be confirmed, as the case may be, as is exercisable in England by the King's Proctor, and the President of the Union may make rules[3] regulating the manner in which the right shall be exercised and all matters incidental to, or consequential on, such exercise. Appointment of officer to exercise duties of King's Proctor.

IV.—Nullity of Marriage.

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. Petition for decree of nullity.

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[1] The High Court has directed that no decree for dissolution of a marriage shall be confirmed till after the expiration of six months therefrom ; *see Burma Gazette*, 1940, Part IV, page 149.

[2] The Attorney-General has been appointed King's Proctor for Burma ; *see Burma Gazette*, 1940, Part I, page 330.

[3] For the Burma Divorce (Domiciled Parties) Intervention Proceedings Rules, *see Burma Gazette*, 1940, Part I, page 330.

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.

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 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.

Bar to decree for divorce *a mensâ et toro*; but judicial separation obtainable by husband or wife.

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.

Application for separation made by petition.

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.

Separated wife deemed spinster with respect to after-acquired property.

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.

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.

Separated wife deemed spinster for purposes of contract and suing.

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 :

Provided that where, upon any such judicial separation, alimony has been decreed or orderd 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.

Decree of separation obtained during absence of husband or wife may be reversed.

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.

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 rights 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 section 20 of the Succession Act 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.

Wife's legal position during continuance of order.

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.

VII.—Restitution of Conjugal Rights.

Petition for 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.

Answer to petition.

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.

VIII.—Damages and Costs.

Husband may claim damages from adulterer.

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.

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.

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 nett 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.

Power to order permanent alimony.

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, 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.

Power to order monthly or weekly payments.

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 :

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.

Court may direct payment of alimony to wife or to her trustee.

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.

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.

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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.

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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.

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 provision 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.

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 the 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.

XII.—Procedure.

Code of Civil Procedure to apply.

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.

Forms of petitions and statements.

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.

Petition to state absence of collusion.

47. Every petition [1] 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;

Statements to be verified.

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.

Suits on behalf of lunatics.

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 by minors.

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.

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.

Service of petition.

50. Every petition under this Act shall be served on the party to be affected thereby, either within or without the Union of Burma, 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.

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[1] For Court-fee, *see* the Court Fees Act, item 20, Schedule II.

Competence of husband and wife to give evidence as to cruelty or desertion.

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.

Power to close doors.

53. The whole or any part of any proceeding under this Act may be heard, if the Court thinks fit, with closed doors.

Power to adjourn.

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.

Enforcement of and appeal from orders and decrees.

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 :

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 :

No appeals as to costs.

Provided also that there shall be no appeal on the subject of costs only.

Appeal to Supreme Court.

56. Any person may appeal to [the Supreme Court][1] from any decree (other than a decree *nisi*) or order under this Act of the High Court made on appeal or otherwise, and from any decree (other than a decree *nisi*) or order made in the exercise of original jurisdiction by Judges of the 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 [the Supreme Court][1].

XIII.—Re-Marriage.

Liberty to parties to marry again.

57. When six months after the date of an order of the High Court confirming the decree for a dissolution of marriage made by a District Judge have expired, or when six months after the date of any decree of the 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 [the Supreme Court] [1] has been presented against any such order or decree.

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

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. No person competent to present a petition under sections 2 and 10 shall maintain a suit for criminal conversation with his wife.

62. The High Court shall make such rules [1] under this Act as it may consider expedient : Power to make rules.

Provided that such rules, alterations and additions are consistent with the provisions of this Act and the Code of Civil Procedure.

All such rules shall be published in the Gazette.

[2]**62A.** * * * *

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 , 19 .

The petition of *A.B.*, of

SHEWETH,

1. That your petitioner was on the day of , one thousand nine hundred and , lawfully married to *C.B.*, then *C.D.*, spinster, at .[3]

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 nine 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.

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[1] *See* the High Court Rules and Orders.

[2] This section was deleted by the Union of Burma (Adaptation of Laws) Order, 1948.

[3] If the marriage was solemnized out of the Union of Burma, the adultery must be shown to have been committed in the Union of Burma.

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.

No. 2.—RESPONDENT'S STATEMENT IN ANSWER TO NO. 1.

In the (High) Court of

The day of , 19

Between *A.B.*, petitioner,

C.B., respondent, and

X.Y., co-respondent.

C.B., the respondent, by *D.E.*, her advocate, in answer to the petition of *A.B.*, says that she denies that she has on divers or any occasions 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.*

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 c says that he denies that he committed adultery with the said *C.B.* as al in the said petition.

Wherefore the said *X.Y.*, prays that this (Hon'ble) Court will r the prayer of the said petitioner and order him to pay the 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 , 19 .
The petition of *A.B.*, falsely called *A.D.*

SHEWETH,

1. That on the day of , one thousand nine 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 the Union of Burma*].

2. That from the said day of , one thousand nine hundred and , until the month of , one thousand nine 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.

5. 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 , 19 .
The petition of *C.B.*, of , the wife of *A.B.*

SHEWETH,

1. That on the day of , one thousand nine hundred and , your petitioner, then *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, *etc., etc.* [1]

3. That on divers occasions in or about the months of *August, September* and *October*, one thousand nine hundred and 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 nine hundred and , 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.*

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 advocate, says,—

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 fourth paragraph of the petition alleged.

4. That the petitioner condoned the said adultery with *G.H.*, if any.

Wherefore this respondent prays that this (Hon'ble) Court will reject the prayer of the said petition.

(Signed) *A.B.*

NO. 7.—STATEMENT IN REPLY TO NO. 6.

In the (High) Court of

B. against *B.*

The day of

[1] State the respective ages of the children.

The petitioner, *C.B.*, by her advocate, 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 , 19 .

The petition of *A.B.* (wife of *C.B.*) of

SHEWETH,

1. That on the day of , one thousand nine 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 nine 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 nine 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 fists a violent blow on her face.

6. That on one Friday night in the month of , one thousand nine 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 nine 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 nine hundred and , your petitioner has lived separate and apart from her said husband, and has 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 , 19 .

Between *A.B.*, petitioner, and *C.B.*, respondent.

C.B., the respondent, in answer to the petition filed in this cause, by *W. J.*, his advocate, says 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 , 19 .

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* section 27.)

In the (High) Court of

To the Hon'ble Mr. Justice [*or* To the Judge of].

The day of , 19 .

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 had 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 has ever since remained separate and apart from her.

That since the desertion of her said husband, the applicant has maintained herself by her own industry [*or* in her own property, *as the case may be*] and has 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* section 36.)

In the (High) Court of

B. against *B.*

To the Hon'ble Mr. Justice [or To the Judge of].
The day of , 19 .
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 net 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 [1].

Your petitioner, therefore, prays that this (Hon'ble) Court will decree such sum 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.

---

[1] The petitioner should state her husband's income as accurately as possible.

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 Burma Divorce Act, against *D.D.* of , hereby underake 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 , 19 .

(Signed) *A.B.*

THE NATIVE CONVERTS' MARRIAGE DISSOLUTION ACT.

CONTENTS.

Sections.

1—2. * * * * *

3. Interpretation clause.
4. When convert deserted by his wife may sue for conjugal society.
5. When convert deserted by her husband may sue.
6. Court in which suit shall be brought.
7. Suit to be commenced by verified petition.
8. On service of petition, citation to respondent.
9. Form of citation.
10. Service of citation.
11. Penalty on respondent not obeying citation.
12. Points to be proved on appearance of petitioner.
13. First interrogation of respondent.
14. Interrogations by Judge may be public or private.
15. Procedure when female respondent refuses to cohabit with petitioner.
    Adjournment for a year.
    Interview.
16. Procedure on expiration of adjournment.
    Interrogation of respondent.
    Decree.
17. Decree in case of male respondent refusing to cohabit on grounds of petitioner's change of religion.
    Proviso.
18. Decree if respondent so refuse in case of unconsummated marriage, either party being *impubes* at time of marriage.
19. Liberty to parties to marry again.
20. Judge to order commission to issue for examination of exempted persons.

Sections.

21. Proof of marriage and desertion or repudiation of petitioner in consequence of conversion.
22. Code of Civil Procedure applied.
23. Dismissal of suit if either party under age required by Act, or if parties cohabiting, or respondent willing to cohabit.
24. Revival of suit after such dismissal.
25. Petitioner's cruelty or adultery to bar suit.
26. Male petitioner's cohabitation with one of several wives to bar suit.
27. Dissolution of marriage not to affect status or right of children.
28. Power to Court to award alimony.
29. No appeal under Act ; but Judge may state case raising question whether conversion has dissolved marriage.
30. Case to state necessary facts and documents, and suit to be stayed.
31. * * * *
32. High Court may refer case to Judge for additions or alterations.
33. High Court may decide question raised, and Judge shall dispose of case accordingly.
34. Saving of Roman Catholic marriages.

THE FIRST SCHEDULE.—FORM OF PETITION.

THE SECOND SCHEDULE.—FORM OF CITATION IN ORDINARY CASES.

THE THIRD SCHEDULE.—FORM OF CITATION IN CASE OF RESPONDENT EXEMPT FROM APPEARANCE IN COURT.

THE NATIVE CONVERTS' MARRIAGE DISSOLUTION ACT.

[INDIA ACT XXI, 1866.] (2nd April, 1866.)

Preamble

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 :—

1—2. * * * * *

Interpretation clause.

3. In this Act—

"native husband."

" native husband " shall mean a married man domiciled in the Union of Burma, who shall have completed the age of eighteen years, and shall not be a Christian, a Muhammadan nor a Jew ;

"native wife."

" native wife " shall mean a married woman domiciled in the Union of Burma, who shall have completed the age of fourteen years, and shall not be a Christian, a Muhammadan nor a Jewess ;

"native law."

"native law" shall mean any law, or custom having the force of law, of any persons domiciled in the Union of Burma, other than Christians, Muhammadans and Jews.

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

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

When convert deserted by her husband may sue.

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.

Court in which suit shall be brought.

6. If the respondent, at the time of commencement of such suit, reside within the local limits of the ordinary original civil jurisdiction of the High Court, 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.

Suit to be commenced by verified petition.

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.

On service of petition, citation to respondent.

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.

Form of citation.

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 where the repondent 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.

Service of citation.

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.

Penalty on respondent not obeying citation.

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

Points to be proved on appearance of petitioner.

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 eighteen years, and that the female party to the suit has completed the age of fourteen 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 ; and

(6) that such desertion or repudiation had continued for the six months immediately before the commencement of the suit.

First interrogation of respondent.

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 interrogations shall be made by commissioners acting under such commission as hereinafter mentioned.

Interrogations by Judge may be public or private.

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.

Procedure when female respondent refuses to cohabit with petitioner.

Adjournment for a year.

Interview.

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

Procedure on expiration of adjournment.

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 section 12 and this section of this Act shall be proved to the

Interrogation of respondent.

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.

Decree.

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

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

Proviso.

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.

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

18. Notwithstanding anything hereinbefore contained, if it shall appear at any stage of the suit that both or either of the parties had not attained puberty at the date of their marriage, and that such marriage has not been consummated, and if, in answer to the interrogatories made pursuant to section 13 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.

Liberty to parties to marry again.

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

Judge to order commission to issue for examination of exempted persons.

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.

Proof of marriage and desertion or repudiation of petitioner in consequence of conversion.

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

Code of Civil Procedure applied.

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.

Dismissal of suit if either party under age required by Act, or if parties cohabiting, or respondent willing to cohabit.

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 eighteen years, or that the female party to the suit is or was at the same time under the age of fourteen years, or that the petitioner and the respondent are cohabiting as man and wife, or the Court is satisfied by the evidence adduced that the respondent is ready and willing so to cohabit with the petitioner, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

Revival of suit after such dismissal.

24. If, at any time within twelve months after a decree dismissing the suit upon any of the grounds mentioned in the last preceding section, the respondent again desert or repudiate the petitioner upon the ground of his or her change of religion, the suit may be revived by summoning the respondent; and, upon proof of the former decree and of such renewed repudiation or desertion, the suit shall 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 section 16 of this Act.

Petitioner's cruelty or adultery to bar suit.

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.

Male petitioner's cohabitation with one of several wives to bar suit.

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

The provisions as to revival contained in section 24 of this Act shall apply, *mutatis mutandis*, to a suit dismissed under this section.

Dissolution of marriage not to affect status or right of children.

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.

Power to Court to award alimony.

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.

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

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

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

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. * * * *

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

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

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

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. case accordingly.

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

THE FIRST SCHEDULE.

(*See* section 7.)

FORM OF PETITION.

To the Judge of the Civil Court of
The day of 19

The petition of *A.B.* of

Sheweth :—

1. That your petitioner was born on or about the day of 19 .

2. That your petitioner was on the day of in the year 19 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 19 .

5. That previous to the day of 19 your petitioner changed his religion for Christianity, and that on such day he was baptised and became a member of the Church of

6. That on the day of 19 [*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.

(*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.

THE SECOND SCHEDULE.

(*See* section 9.)

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 Penal Code.

Dated the day of 19 .

(*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 19 .

(*Signed*) *G.H.*

THE THIRD SCHEDULE.

(*See* section 9.)

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 Penal Code.

Dated the day of 19 .

(*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 19 ,

(*Signed*) *G.H.*

F.—GENERAL.

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THE SPECIAL MARRIAGE ACT.

CONTENTS.

Sections.

1. * * * * *
2. Conditions upon which marriages under Act may be celebrated.
3. Appointment of Registrars.
4. One of the parties to intended marriage to give notice to Registrar.
5. Notice to be filed and copy entered in the Marriage Notice Book.
6. Objection to marriage.
7. Procedure on receipt of objection.
   Objector may file suit.
8. Certificate of filing of suit to be lodged with Registrar.
9. Court may fine when objection not reasonable.

Sections.

10. Declaration by parties and witnesses.
11. Marriage how to be solemnized.
12. Place where marriage may be solemnized.
13. Certificate of marriage.
13A. Transmission of certified copies of entries in Marriage Certificate Book to the Registrar-General of Births, Deaths and Marriages.
14. Fees.
15. Penalty on married person marrying again under Act.
16. Punishment of bigamy.
17. Burma Divorce Act to apply.
18. Law to apply to issue of marriages under Act.
19. Saving of marriages solemnized otherwise than under Act.
20. * * * * *
21. Penalty for signing declarations or certificates containing false statements.
22. Effect of certain marriages on coparcenary.
23. Rights of succession in certain cases of marriage under Act.
24. Succession to the property of parties married under Act.
25. Person marrying under Act not to have right of adoption.
26. Adoption by father of person marrying under Act.

FIRST SCHEDULE.—NOTICE OF MARRIAGE.

SECOND SCHEDULE.—DECLARATIONS TO BE MADE BY THE BRIDEGROOM AND BRIDE.

THIRD SCHEDULE.—REGISTRAR'S CERTIFICATE.

THE SPECIAL MARRIAGE ACT.

[INDIA ACT III, 1872.] (2nd March, 1872.)

Preamble.

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

1. * * * * *

Conditions upon which marriages under Act

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

or between persons each of whom professes one or other of the following religions, that is to say, the Hindu, Buddhist, Sikh or Jaina religion, upon the following conditions :— may be celebrated.

(1) neither party must, at the time of the marriage, have a husband or wife living ;

(2) the man must have completed his age of eighteen years, and the woman her age of fourteen years, according to the Gregorian calendar ;

(3) each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his or her father or guardian to the marriage ;

(4) the parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal.

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

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

Appointment of Registrars.

3. The President of the Union may appoint Registrars under this Act for specified areas in the Union of Burma. The area for which any such officer is appointed shall be deemed to be his district.

One of the parties to intended marriage to give notice to Registrar.

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

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

Such notice may be in the form given in the First Schedule to this Act.

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

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

Objection to marriage.

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

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

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

Procedure on receipt of objection.

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

Objector may file suit.

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

Certificate of filing of suit to be lodged with Registrar.

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

If such certificate be not lodged in the manner and within the period prescribed in the last preceding paragraph, or if the decision of the Court be that such marriage would not contravene any one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2, such marriage may be solemnized.

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

Court may fine when objection not reasonable.

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

Declaration by parties and witnesses.

10. Before the marriage is solemnized, the parties and three witnesses shall, in the presence of the Registrar, sign a declaration in the form contained in the Second Schedule to this Act. If either party has not completed the age of twenty-one years, the declaration shall also be signed by his or her father or

guardian, except in the case of a widow, and in every case, it shall be countersigned by the Registrar.

Marriage how to be solemnized.

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

Place where marriage may be solemnized.

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

Certificate of marriage.

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

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

13A. The Registrar shall send to the Registrar-General of Births, Deaths and Marriages, at such intervals as the President of the Union from time to time directs, a true copy certified by him, in such form as the President of the Union from time to time prescribes, of all entries made by him in the said Marriage Certificate Book since the last of such intervals.[1]

Fees.

14. The President of the Union shall prescribe the fees to be paid to the Registrar for the duties to be discharged by him under this Act.

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

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

Penalty on married person marrying

15. Every person who, being at the time married, procures a marriage of himself to be solemnized under this Act, shall be deemed to have committed

[1] As to the duty of the Registrar-General to make and keep indexes of the certified copies sent to his office under this section, *see* section 7 of the Births, Deaths and Marriages Registration Act, Volume IV of this Code.

again under Act.

an offence under section 494 or section 495 of the Penal Code, as the case may be; and the marriage so solemnized is void.

Punishment of bigamy.

16. Every person married under this Act who, during the lifetime of his or her wife or husband, contracts any other marriage, shall be subject to the penalties provided in sections 494 and 495 of the Penal Code for the offence of marrying again during the lifetime of a husband or wife, whatever may be the religion which he or she professed at the time of such second marriage.

Burma Divorce Act to apply.

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

Law to apply to issue of marriages under Act.

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

Saving of marriages solemnized otherwise than under Act.

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

20. * * * *

Penalty for signing declarations or certificates containing false statements.

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

Effect of certain marriages on coparcenary.

22. The marriage under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family.

Rights of succession in certain cases of marriage under Act.

23. A person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act shall have the same rights and be subject to the same disabilities in regard to any right of succession to any property as a person to whom the Caste Disabilities Removal Act applies:

Provided that nothing in this section shall confer on any person any right to any religious office or service, or to the management of any religious or charitable trust.

24. Succession to the property of any person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act, and to the property of the issue of such marriage, shall be regulated by the provisions of the Succession Act. Succession to the property of parties married under Act.

25. No person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act shall have any right of adoption. Person marrying under Act not to have right of adoption.

26. When a person professing the Hindu, Buddhist, Sikh or Jaina religion marries under this Act, his father shall, if he has no other son living, have the right to adopt another person as a son under the law to which he is subject. Adoption by father of person marrying under Act.

FIRST SCHEDULE.

(*See* section 4.)

NOTICE OF MARRIAGE.

To , a Registrar of Marriages under the Special Marriage Act for the District.

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

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

Witness my hand, this day of 19 .

(*Signed*) *A.B.*

SECOND SCHEDULE.

(*See* section 10.)

DECLARATION TO BE MADE BY THE BRIDEGROOM.

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

1. I am at the present time unmarried.

2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion : [or (*as the case may be*) I profess the Hindu, or the Buddhist, or the Sikh or the Jaina religion.]

3. I have completed my age of eighteen years.

4. I am not related to *C.D.* [*the bride*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *C.D.* is subject, and subject to the provisos of clause (4) of section 2 of the Special Marriage Act, render a marriage between us illegal.

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

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

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

(*Signed*) *A.B.* [*the bridegroom*].

DECLARATION TO BE MADE BY THE BRIDE.

I, *C.D.*, hereby declare as follows :—

1. I am at the present time unmarried.

2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion : [or (*as the case may be*) I profess the Hindu, or the Buddhist, or the Sikh or the Jaina religion.]

3. I have completed my age of fourteen years.

4. I am not related to *A.B.* [*the bridegroom*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *A.B.* is subject, and subject to the provisos of clause (4) of section 2 of the Special Marriage Act, render a marriage between us illegal.

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

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

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

(*Signed*) *C.D.* [*the bride*].

Signed in our presence by the above-named *A.B.* and *C.D.* :

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

[*And when the bridegroom or bride has not completed the age of twenty-one years, except in the case of a widow :*

Signed in my presence and with my consent by the above-named *A.B.* and *C.D.* :

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

(*Countersigned*) *E. F,*
Registrar of Marriages under the Special Marriage Act for the District of

Dated the day of 19 .

THIRD SCHEDULE.

(*See* section 13.)

REGISTRAR'S CERTIFICATE.

I, *E. F.*, certify that, on the of 19 appeared before me *A.B.* and *C.D.*, each of whom in my presence and in the presence of three credible witnesses, whose names are signed hereunder, made the declarations required by the Special Marriage Act and that a marriage under the said Act was solemnized between them in my presence.

(*Signed*) *E.F.*

Registrar of Marriages under the Special Marriage Act for the District of

(*Signed*) *A.B.*
C.D.

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

Dated the day of 19 .

THE MARRIED WOMEN'S PROPERTY ACT.

[INDIA ACT III, 1874.] (24th February, 1874.)

Preamble.

Whereas it is expedient to make such provision as hereinafter appears for the enjoyment of wages and earnings by women married before the first day of January, 1866, and for insurances on lives by persons married before or after that day:

And whereas by the Indian Succession Act, 1865, section 4,[1] it is enacted that 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: India X, 1865.

And whereas by force of the said Act all women to whose marriages it applies are absolute owners of all property vested in, or acquired by, them, and their husbands do not by their marriage acquire any interest in such property, but the said Act does not protect such husbands from liabilities on account of the debts of their wives contracted before marriage, and does not expressly provide for the enforcement of claims by or against such wives:

It is hereby enacted as follows :—

I.—PRELIMINARY.

1. * * * *

Extent of Act.

2. [This Act extends to the whole of the Union of Burma.][2]

But nothing herein contained applies to any married woman who at the time of her marriage professed the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion, or whose husband, at the time of such marriage, professed any of those religions.

And the President of the Union may from time to time, by order, either retrospectively from the 24th February, 1874,[3] or prospectively, exempt from the operation of all or any of the provisions of this Act the members of any race, sect or tribe, or part of a race, sect or tribe, to whom he may consider it impossible or inexpedient to apply such provisions.

The President of the Union may also revoke any such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations under this section shall be published in the Gazette.

3. * * * *

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[1] See now section 20 of the Succession Act, *post*.

[2] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

[3] Date of commencement of this Act.

II.—Married Women's Wages and Earnings.

Married women's earnings to be their separate property.

4. The wages and earnings of any married woman acquired or gained by her in any employment, occupation or trade carried on by her and not by her husband, and also any money or other property so acquired by her through the exercise of any literary, artistic or scientific skill, and all savings from and investments of such wages, earnings and property, shall be deemed to be her separate property, and her receipts alone shall be good discharges for such wages, earnings and property.

III.—Insurance by Wives and Husbands.

Married woman may effect policy of insurance.

5. Any married woman may effect a policy of insurance on her own behalf and independently of her husband ; and the same and all benefit thereof, if expressed on the face of it to be so effected, shall enure as her separate property, and the contract evidenced by such policy shall be as valid as if made with an unmarried woman.

Insurance by husband for benefit of wife.

6. (*1*) A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate.

When the sum secured by the policy becomes payable in the Union of Burma, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing.

Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors.

(2) Notwithstanding anything contained in section 2, the provisions of sub-section (*1*) shall apply in the case of any policy of insurance such as is referred to therein which is effected by any Hindu, Muhammadan, Sikh or Jain after the first day of April, 1923.[1]

Provided that nothing herein contained shall affect any right or liability which has accrued or been incurred under any decree of a competent Court passed before the first day of April, 1923.[1]

IV.—Legal Proceedings by and against Married Women.

Married women may take legal proceedings.

7. A married woman may maintain a suit in her own name for the recovery of property of any description which by force of the Succession Act, or of

[1] The date prescribed by India Act XIII of 1923, which amended this section.

this Act, is her separate property ; and she shall have, in her own name, the same remedies, both civil and criminal, against all persons, for the protection and security of such property, as if she were unmarried, and she shall be liable to such suits, processes and orders in respect of such property as she would be liable to if she were unmarried.

Wife's liability for post-nuptial debts.

8. If a married woman possesses separate property, and if any person enters into a contract with her with reference to such property, or on the faith that her obligation arising out of such contract will be satisfied out of her separate property, such person shall be entitled to sue her, and, to the extent of her separate property, to recover against her whatever he might have recovered in such suit had she been unmarried at the date of the contract and continued unmarried at the execution of the decree :

Provided that nothing herein contained shall—

(*a*) entitle such person to recover anything by attachment and sale or otherwise out of any property which has been transferred to a woman or for her benefit on condition that she shall have no power during her marriage to transfer or charge the same or her beneficial interest therein, or

(*b*) affect the liability of a husband for debts contracted by his wife's agency expressed or implied.

V.—Husband's Liability for Wife's Debts.

Husband not liable for wife's ante-nuptial debts.

9. A husband married after the thirty-first day of December, 1865, shall not by reason only of such marriage be liable for the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and shall, to the extent of her separate property, be liable to satisfy such debts as if she had continued unmarried :

Proviso.

Provided that nothing contained in this section shall invalidate any contract into which a husband may, before the passing of this Act, have entered in consideration of his wife's ante-nuptial debts.

VI.—Husband's Liability for Wife's Breach of Trust or Devastation.

Extent of husband's liability for wife's breach of trust or devastation.

10. Where a woman is a trustee, executrix or administratrix, either before or after marriage, her husband shall not, unless he acts or intermeddles in the trust or administration, be liable for any breach of trust committed by her, or for any misapplication, loss or damage to the estate of the deceased caused or made by her, or for any loss to such estate arising from her neglect to get in any part of the property of the deceased.

THE MAJORITY ACT.

[INDIA ACT IX, 1875.] (2nd June, 1875.)

[1]**1.** * * * *

2. Nothing herein contained shall affect— Savings.

(*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 [persons].[2]

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 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 shall, notwithstanding anything contained in the Succession Act 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. Age of majority of persons domiciled in the Union of Burma.

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

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. Age of majority how computed.

Illustrations.

(*a*) *Z* is born in the Union of Burma on the first day of January 1920, and has a Union of Burma 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 1941.

(*b*) *Z* is born in the Union of Burma on the twenty-ninth day of February 1922, and has a Union of Burma 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 1943.

(*c*) *Z* is born on the first day of January 1920. He acquires a domicile in the Union of Burma. No guardian is appointed of his person or property by any Court of Justice. *Z* attains majority at the first moment of the first day of January 1938.

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[1] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

[2] Substituted *ibid*.

THE GUARDIANS AND WARDS ACT.

CONTENTS.

CHAPTER I.

PRELIMINARY.

Sections.

1-3. * * * *

4. Definitions.

4A. Power to confer jurisdiction on subordinate judicial officers and to transfer proceedings to such officers.

CHAPTER II.

APPOINTMENT AND DECLARATION OF GUARDIANS.

5. Power of parents to appoint in case of European Christians.

6. Saving of power to appoint in other cases.

7. Power of the Court to make order as to guardianship.

8. Persons entitled to apply for order.

9. Court having jurisdiction to entertain application.

10. Form of application.

11. Procedure on admission of application.

12. Power to make interlocutory order for production of minor and interim protection of person and property.

13. Hearing of evidence before making of order.

14. Simultaneous proceedings in different Courts.

15. Appointment or declaration of several guardians.

16. Appointment or declaration of guardian for property beyond jurisdiction of the Court.

17. Matters to be considered by the Court in appointing guardian.

18. Appointment or declaration of Collector in virtue of office.

19. Guardian not to be appointed by the Court in certain cases.

CHAPTER III.

DUTIES, RIGHTS AND LIABILITIES OF GUARDIANS.

General.

20. Fiduciary relation of guardian to ward.

21. Capacity of minors to act as guardians.

Sections.

22. Remuneration of guardian.
23. Control of Collector as guardian.

Guardian of the Person.

24. Duties of guardian of the person.
25. Title of guardian to custody of ward.
26. Removal of ward from jurisdiction.

Guardian of Property.

27. Duties of guardian of property.
28. Powers of testamentary guardian.
29. Limitation of powers of guardian of property appointed or declared by the Court.
30. Voidability of transfers made in contravention of section 28 or section 29.
31. Practice with respect to permitting transfers under section 29.
32. Variation of powers of guardian of property appointed or declared by the Court.
33. Right of guardian so appointed or declared to apply to the Court for opinion in management of property of ward.
34. Obligations on guardian of property appointed or declared by the Court.
34A. Power to award remuneration for auditing accounts.
35. Suit against guardian where administration-bond was taken.
36. Suit against guardian where administration-bond was not taken.
37. General liability of guardian as trustee.

Termination of Guardianship.

38. Right of survivorship among joint guardians.
39. Removal of guardian.
40. Discharge of guardian.
41. Cessation of authority of guardian.
42. Appointment of successor to guardian dead, discharged or removed.

CHAPTER IV.

SUPPLEMENTAL PROVISIONS.

43. Orders for regulating conduct or proceedings of guardians, and enforcement of those orders.
44. Penalty for removal of ward from jurisdiction.
45. Penalty for contumacy.

Sections.

46. Reports by Collectors and subordinate Courts.
47. Orders appealable.
48. Finality of other orders.
49. Costs.
50. Power of High Court to make rules.

THE GUARDIANS AND WARDS ACT.

[INDIA ACT VIII, 1890.] (1st July, 1890.)

CHAPTER I.

PRELIMINARY.

1-3. * * * *

Definitions.

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 Majority Act, 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 of both his person and property ;

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

(4) " District Court " includes the High Court in the exercise of its ordinary original civil jurisdiction ;

(5) " the Court " means—

(*a*) the District Court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a guardian ; or

(*b*) where a guardian has been appointed or declared in pursuance of any such application—

(i) the Court which, or the Court of the officer who, appointed or declared the guardian or is under this Act deemed to have appointed or declared the guardian ; or

(ii) 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 ; or

(*c*) in respect of any proceeding transferred under section 4A, the Court of the officer to whom such proceeding has been transferred ;

(6) " Collector " includes any officer whom the President of the Union, by notification, may 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;

[1](7) "European Christian" includes any Christian of European descent; and

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

Power to confer jurisdiction on subordinate judicial officers and to transfer proceedings to such officers.

4A. (*1*) The High Court may, by general or special order, empower any officer exercising original civil jurisdiction subordinate to a District Court, or authorize the Judge of any District Court to empower any such officer subordinate to him, to dispose of any proceedings under this Act transferred to such officer under the provisions of this section.

(*2*) The Judge of a District Court may, by order in writing, transfer at any stage any proceeding under this Act pending in his Court for disposal to any officer subordinate to him empowered under sub-section (*1*).

(*3*) The Judge of a District Court may at any stage transfer to his own Court or to any officer subordinate to him empowered under sub-section (*1*) any proceeding under this Act pending in the Court of any other such officer.

(*4*) When any proceedings are transferred under this section in any case in which a guardian has been appointed or declared, the Judge of the District Court may, by order in writing, declare that the Court of the Judge or officer to whom they are transferred shall, for all or any of the purposes of this Act, be deemed to be the Court which appointed or declared the guardian.

CHAPTER II.

APPOINTMENT AND DECLARATION OF GUARDIANS.

Power of parents to appoint in case of European Christians.

5. (*1*) Where a minor is an [European Christian] [1], 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.

Saving of power to appoint in other cases.

6. In the case of a minor who is not an [European Christian] [1], 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.

Power of the Court to make order as to guardianship.

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.

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

(*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.

Persons entitled to apply for order.

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.

Court having jurisdiction to entertain application.

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 an 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.

Form of application.

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 led 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 mentioned 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.

Procedure on admission of application.

11. (*1*) If the Court is satisfied that there is ground for proceeding 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—

(i) the parents of the minor if they are residing in the Union of Burma,

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

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

(iv) 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.

(2)—(3) * * * *

Power to make interlocutory order for production of minor and interim protection of person and property.

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 her 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 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.

Hearing of evidence before making of order.

13. On the day fixed for the 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.

Simultaneous proceedings in different Courts.

14. (*1*) If 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 apprised of the proceedings in the other Court or Courts, stay the proceedings before itself.

(*2*) The Courts 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 minor shall be had.

Appointment or declaration of several guardians.

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 an [European Christian,] [1] 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 an [European Christian,] [1] 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 the 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.

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

(*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.

Appointment or declaration of guardian for property beyond jurisdiction of the Court.

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.

Matters to be considered by the Court in appointing guardian.

17. (*1*) In 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 Christians][1] 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 labour and business, then to the father.

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

Appointment or declaration of Collector in virtue of office.

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.

Guardian not to be appointed by the Court in certain cases.

19. Nothing in this Chapter shall authorize the Court to appoint and 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 Christians],[1] 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.

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

CHAPTER III.

DUTIES, RIGHTS AND LIABILITIES OF GUARDIANS.

General.

Fiduciary relation of guardian to ward.

20. (*1*) A guardian stands in a fiduciary relation to his ward, and, save 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.

(*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.

Capacity of minors to act as guardians.

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.

Remuneration of guardian.

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 President of the Union, by general or special order, directs.

Control of Collector as guardian.

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 guardianship of his ward, be subject to the control of the President of the Union or of such authority as he, by notification in the Gazette, appoints in this behalf.

Guardian of the Person.

Duties of 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.

Title of guardian to custody of ward.

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 his 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.

(*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.

Removal of ward from jurisdiction.

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.

Duties of 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 realisation, protection or benefit of the property.

Powers of testamentary guardian.

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.

Limitation of powers of guardian of property appointed or declared by the 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.

Voidability of transfers made in contravention of section 28 or section 29.

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

Practice with respect to permitting transfers under section 29.

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 be made to the highest bidder by public auction, before the Court or some person specially 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 for the permission 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.

Variation of powers of guardian of property appointed or declared by the Court.

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.

Right of guardian so appointed or declared to apply to the Court for opinion in management of property of ward.

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, advice 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.

Obligations on guardian of property appointed or declared by the Court.

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 enure 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.

Power to award remuneration for auditing accounts.

34A. When accounts are exhibited by a guardian of the property of a ward in pursuance of a requisition made under clause (*c*) of section 34 or otherwise, the Court may appoint a person to audit the accounts, and may direct that remuneration for the work be paid out of the income of the property.

Suit against guardian where administration bond was taken.

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 his 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 thereupon 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.

Suit against guardian where administration bond was not taken.

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 the Code of Civil Procedure.

General liability of guardian as trustee.

37. Nothing in either of the two last foregoing sections shall be construed to deprive a ward or his representative of any remedy against his 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.

Right of survivorship among joint guardians.

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.

Removal of guardian.

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 or 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 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.

Discharge of guardian.

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 President of the Union approves of his applying to be discharged, the Court shall in any case discharge him.

Cessation of authority of guardian.

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

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

(*b*) * * * *

(*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 deemed 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 his death, removal or discharge ;

(*b*) * * * *

(*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 the 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.

Appointment of successor to guardian dead, discharged or removed.

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.

Orders for regulating conduct or proceedings of guardians, and enforcement of those orders

43. (*1*) The Court may, on the application of any person interested or of its own motion, make an order regulating the conduct or 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 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.

Penalty for removal of ward from jurisdiction

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 the 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.

Penalty for contumacy.

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*),

the 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 re-committed 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 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.

Finality of other orders.

48. Save as provided by the last foregoing section and by section 115 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.

Costs.

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.

Power of High Court to make rules.

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 [1] consistent with this Act--

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

(*b*) as to the allowances to be granted to, and the security to be required from, guardians, and the cases 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 ;

(*ff*) as to the audit of accounts under section 34A, the class of persons who should be appointed to audit accounts, and the scales of remuneration to be granted to them ;

(*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 President of the Union, nor shall any rule under this section have effect until it has been published in the Gazette.

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[1] For such rules, *see Burma Gazette*, 1940, Part IV page 231.

THE MAINTENANCE ORDERS ENFORCEMENT ACT.

[INDIA ACT XVIII, 1921.] (5th October, 1921.)

Preamble.

Whereas it is expedient to facilitate the enforcement in the Union of Burma of maintenance orders made in[* * *][1] His Britannic Majesty's Dominions and Protectorates and *vice versa* ; It is hereby enacted as follows :—

1. * * * *

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

"Court of summary jurisdiction" means the Court of a District Magistrate ;

"dependants" means such persons as a person against whom a maintenance order is made is liable to maintain according to the law in force in the part of His Britannic Majesty's Dominions in which the maintenance order is made ;

"maintenance order" means a decree or order, other than an order of affiliation, made by a Court in the exercise of civil or criminal jurisdiction for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made ;

"prescribed" means prescribed by rules made under this Act ;

"proper authority" means the authority appointed by, or under the law of, a reciprocating territory to receive and transmit documents to which this Act applies ; and

[2]["reciprocating territory" means any part of His Britannic Majesty's Dominions or India or Pakistan in respect of which provisions similar to those contained in this Act for the time being apply.]

Reciprocal arrangements.

3. (*1*) If the President of the Union is satisfied that provisions have been made by the Legislature of any part of [His Britannic Majesty's Dominions or India or Pakistan][2] for the enforcement within that part of maintenance orders made by Courts in the Union of Burma, the President of the Union may, by notification in the Gazette, declare that this Act applies in respect of that part of [His Britannic Majesty's Dominions or India or Pakistan][2] and thereupon it shall apply accordingly.

(*2*) The President of the Union may, by like notification, declare that this Act applies in respect of any British protectorate, or in respect of any State in India or Pakistan, and where such a declaration has been made, this Act shall apply as if such protectorate or State were a reciprocating territory.

Registration in the Union of Burma of maintenance orders made

4. (*1*) Where a maintenance order has, whether before or after the 5th October, 1921,[3] been made against any person by any Court in any reciprocating territory, and a certified copy of the order has been transmitted by the proper authority of that territory to the President of the Union ,the President of the

[1] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.
[2] Substituted *ibid.*
[3] Date of commencement of this Act.

in any reciprocating territory.

Union shall send a copy of the order to the prescribed officer of a Court in the Union of Burma for registration, and, on receipt thereof, the order shall be registered in the prescribed manner.

(*2*) The Court in which an order is to be so registered as aforesaid shall, if the Court by which the order was made was, in the opinion of the President of the Union, a Court of superior jurisdiction, be the High Court, and, if the Court was not, in his opinion, a Court of superior jurisdiction, be a Court of summary jurisdiction.

Transmission of maintenance orders made in the Union of Burma.

5. Where a Court in the Union of Burma has, whether before or after the 5th October, 1921[1], made a maintenance order against any person, and it is proved to that Court that the person against whom the order was made is resident in a reciprocating territory, the Court shall send to the President of the Union, for transmission to the proper authority of that territory, a certified copy of the order.

Power of summary Courts to make provisional maintenance orders against persons resident in a reciprocating territory.

6. (*1*) Where application is made to a Court of summary jurisdiction in the Union of Burma for a maintenance order against any person, and it is proved that that person is resident in a reciprocating territory, the Court may, in the absence of that person, if after hearing the evidence it is satisfied of the justice of the application, make any such order as it might have made if that person had wilfully neglected to attend the Court; but in such case the order shall be provisional only and shall have no effect unless and until confirmed by a competent Court in such territory.

(*2*) The evidence of every witness who is examined on any such application shall be reduced to writing and such deposition shall be read over to, and signed by, him.

(*3*) Where such an order is made, the Court shall send to the President of the Union, for transmission to the proper authority of the reciprocating territory in which the person against whom the order is made is alleged to reside, the depositions so taken and a certified copy of the order, together with a statement of the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing, and such information as the Court possesses for facilitating the identification of that person and ascertaining his whereabouts.

(*4*) Where any such provisional order has come before a Court in a reciprocating territory for confirmation, and the order has by that Court been remitted to the Court of summary jurisdiction which made the order for the purpose of taking further evidence, that Court shall, after giving the prescribed notice, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application.

(*5*) If it appears to the Court hearing such evidence that the order ought not to have been made, the Court may rescind the order, but in any other case

[1] Date of commencement of this Act.

the depositions shall be sent to the President of the Union and dealt with in like manner as the original depositions.

(*6*) The confirmation of an order made under this section shall not affect any power of a Court of summary jurisdiction to vary or rescind that order :

Provided that, on the making of a varying or rescinding order, the Court shall send a certified copy thereof to the President of the Union for transmission to the proper authority of the reciprocating territory in which the original order was confirmed, or to which it was sent for confirmation, and that, in the case of an order varying the original order, the order shall not have any effect unless and until confirmed in like manner as the original order.

Power of Court of summary jurisdiction to confirm maintenance order made o t of the Union of Burma.

7. (*1*) Where a maintenance order has been made by a Court in a reciprocating territory and the order is provisional only, and has no effect unless and until confirmed by a Court of summary jurisdiction in the Union of Burma, and a certified copy of the order, together with the depositions of the witnesses and a statement of the grounds on which the order might have been opposed, has been transmitted to the President of the Union, and it appears to the President of the Union that the person against whom the order has been made is resident in the Union of Burma, the President of the Union may send the said documents to the prescribed officer of a Court of summary jurisdiction, with a requisition that a summons be issued calling upon the person to show cause why that order should not be confirmed, and, upon receipt of such documents and requisition, the Court shall issue such a summons and cause it to be served upon such person.

(*2*) A summons issued under sub-section (*1*) shall for all purposes be deemed to be a summons issued by the Court in the exercise of its original criminal jurisdiction.

(*3*) At the hearing it shall be open to the person to whom the summons was issued to raise any defence which he might have raised in the original proceedings had he been a party thereto but no other defence, and the certificate from the Court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(*4*) If at the hearing the person served with the summons does not appear or, on appearing, fails to satisfy the Court that the order ought not to be confirmed, the Court may, notwithstanding any pecuniary limit imposed on its power by any law for the time being in force in the Union of Burma, confirm the order either without modification or with such modifications as to the Court after hearing the evidence may seem just :

Provided that no sum shall be awarded as maintenance under this section, or shall be recoverable as such, at a rate exceeding that proposed in the provisional order.

(5) If the person to whom the summons was issued appears at the hearing and satisfies the Court that for the purpose of any defence it is necessary to

remit the case to the Court which made the provisional order for the taking of any further evidence, the Court may for that purpose send a certified copy of the record to the President of the Union for transmission to that Court through the proper authority of the reciprocating territory, and may adjourn the proceedings.

(6) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming Court, and where on an application for rescission or variation the Court is satisfied that it is necessary to remit the case to the Court which made the provisional order for the purpose of taking any further evidence, the Court may for that purpose send a certified copy of the record to the President of the Union for transmission to that Court through the proper authority of the reciprocating territory, and may adjourn the proceedings.

Enforcement of maintenance orders.

8. (1) Subject to the provisions of this Act, where an order has been registered under this Act in the High Court, the order shall, from the date of such registration, be of the same force and effect, and all proceedings may be taken thereon as if it had been an order originally obtained in the High Court in the exercise of its civil jurisdiction, or in such civil Court subordinate to the High Court as may be named by the High Court in this behalf, and that Court shall have power to enforce the order accordingly.

(2) A Court of summary jurisdiction in which an order has been registered under this Act or by which an order has been confirmed under this Act, and the officers of such Court, shall have such powers and perform such duties, for the purpose of enforcing the order, as may be prescribed.

Payment of charges for transmission of sums awarded as maintenance and other costs and charges.

9. A Court in registering or confirming an order for maintenance in accordance with the provisions of this Act shall direct that the charges for the transmission to the Court, from which the order has been received or in which the provisional order has been made, as the case may be, of the sum awarded as maintenance shall be borne by the person against whom the order has been so made or confirmed, and shall be recovered from him in addition to the sum awarded as maintenance and in addition to, and in the same manner as, such other costs and charges as may be awarded or levied by the Court.

Proof of documents signed by officers of Court.

10. For the purposes of this Act, any document purporting to be signed by a judge or officer of a Court outside the Union of Burma shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a Court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the Court to sign the document.

Depositions to be evidence.

11. Depositions taken in a Court in any reciprocating territory may, for the purposes of this Act, be received in evidence in proceedings before Courts of summary jurisdiction under this Act.

12. The President of the Union may make rules for the purpose of carrying into effect the purposes of this Act, and in particular may make rules for the levy of the costs or charges for anything done under this Act and for all matters which are directed or permitted to be prescribed. Rule-making power.

THE CHILD MARRIAGE RESTRAINT ACT.

[INDIA ACT XIX, 1929.] (1st April, 1930.)

1. * * * *

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(*a*) "child" means a person who, if a male, is under eighteen years of age, and if a female, is under fourteen years of age;

(*b*) "child marriage" means a marriage to which either of the contracting parties is a child;

(*c*) "contracting party" to a marriage means either of the parties whose marriage is thereby solemnized; and

(*d*) "minor" means a person of either sex who is under eighteen years of age.

3. Whoever, being a male above eighteen years of age and below twenty-one contracts a child marriage shall be punishable with fine which may extend to one thousand rupees. Punishment for male adult below twenty-one years of age marrying a child.

4. Whoever, being a male above twenty-one years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both. Punishment for male adult above twenty-one years of age marrying a child.

5. Whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage. Punishment for solemnizing a child marriage.

6. (*1*) Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnized, or negligently fails to prevent it from being solemnized, shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both: Punishment for parent of guardian concerned in a child marriage.

Provided that no woman shall be punishable with imprisonment.

(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnized.

Imprisonment not to be awarded for offences under section 3.

7. Notwithstanding anything contained in the Burma General Clauses Act, or section 64 of the Penal Code, a Court sentencing an offender under section 3 shall not be competent to direct that, in default of payment of the fine imposed, he shall undergo any term of imprisonment.

Jurisdiction under this Act.

8. Notwithstanding anything contained in section 190 of the Code of Criminal Procedure, no Court other than that of a District Magistrate shall take cognizance of, or try, any offence under this Act.

Mode of taking cognizance of offences.

9. No Court shall take cognizance of any offence under this Act save upon complaint made within one year of the solemnization of the marriage in respect of which the offence is alleged to have been committed.

Preliminary inquiries into offences under this Act.

10. The Court taking cognizance of an offence under this Act shall, unless it dismisses the complaint under section 203 of the Code of Criminal Procedure, either itself make an inquiry under section 202 of that Code, or direct a Magistrate of the first class subordinate to it to make such inquiry.

Power to take security from complainant.

11. (1) At any time after examining the complainant and before issuing process for compelling the attendance of the accused, the Court shall, except for reasons to be recorded in writing, require the complainant to execute a bond, with or without sureties, for a sum not exceeding one hundred rupees, as security for the payment of any compensation which the complainant may be directed to pay under section 250 of the Code of Criminal Procedure ; and if such security is not furnished within such reasonable time as the Court may fix, the complaint shall be dismissed.

(2) A bond taken under this section shall be deemed to be a bond taken under the Code of Criminal Procedure, and Chapter XLII of that Code shall apply accordingly.

THE SLAVERY ACT.

[INDIA ACT V, 1843.] (7th April, 1843.)

Prohibition of sale of person or right to his labour on ground of slavery.

1. No public officer shall, in execution of any decree or order of Court, or for the enforcement of any demand of rent or revenue, sell or cause to be sold any person, or the right to the compulsory labour or services of any person, on the ground that such person is in a state of slavery.

2. No rights arising out of an alleged property in the person and services of another as a slave shall be enforced by any civil or criminal Court or Magistrate. Bar to enforcement of rights arising out of alleged property in person as a slave.

3. No person who may have acquired property by his own industry, or by the exercise of any art, calling or profession, or by inheritance, assignment, gift or bequest, shall be dispossessed of such property or prevented from taking possession thereof on the ground that such person or that the person from whom the property may have been derived was a slave. Bar to dispossession of property on ground of owner's slavery.

4. Any act which would be a penal offence if done to a free man shall be equally an offence if done to any person on the pretext of his being in a condition of slavery. Penal offence against alleged slave.

PART XXIII—SUCCESSION.

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THE SUCCESSION ACT.

CONTENTS.

PART I.

PRELIMINARY.

Sections.

1. * * * *
2. Definitions.
3. Power of President to exempt any race, sect or tribe from operation of Act.

PART II.

OF DOMICILE.

4. Application of Part.
5. Law regulating succession to deceased person's immoveable and moveable property, respectively.
6. One domicile only affects succession to moveables.
7. Domicile of origin of person of legitimate birth.
8. Domicile of origin of illegitimate child.
9. Continuance of domicile of origin.
10. Acquisition of new domicile.
11. Special mode of acquiring domicile in the Union of Burma.
12. Domicile not acquired by residence as representative of foreign Government, or as part of his family.
13. Continuance of new domicile.
14. Minor's domicile.
15. Domicile acquired by woman on marriage.
16. Wife's domicile during marriage.
17. Minor's acquisition of new domicile.
18. Lunatic's acquisition of new domicile.
19. Succession to moveable property in the Union of Burma in absence of proof of domicile elsewhere.

PART III.

MARRIAGE.

Sections.

20. Interests and powers not acquired nor lost by marriage.
21. Effect of marriage between person domiciled and one not domiciled in the Union of Burma.
22. Settlement of minor's property in contemplation of marriage.

PART IV.

OF CONSANGUINITY.

23. Application of Part.
24. Kindred or consanguinity.
25. Lineal consanguinity.
26. Collateral consanguinity.
27. Persons held for purpose of succession to be similarly related to deceased.
28. Mode of computing of degrees of kindred.

PART V.

INTESTATE SUCCESSION.

CHAPTER I.

Preliminary.

29. Application of Part.
30. As to what property deceased considered to have died intestate.

CHAPTER II.

Rules in cases of Intestates other than Parsis.

31. Chapter not to apply to Parsis.
32. Devolution of such property.
33. Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.
33A. Special provision where intestate has left widow and no lineal descendants.
34. Where intestate has left no widow, and where he has left no kindred.
35. Rights of widower.

Distribution where there are lineal Descendants.

36. Rules of distribution.
37. Where intestate has left child or children only.
38. Where intestate has left no child, but grandchild or grandchildren.
39. Where intestate has left only great-grandchildren or remoter lineal descendants.

Sections.

40. Where intestate leaves lineal descendants not all in same degree of kindred to him, and those through whom the more remote are descended are dead.

Distribution where there are no lineal Descendants.

41. Rules of distribution where intestate has left no lineal descendants.
42. Where intestate's father living.
43. Where intestate's father dead, but his mother, brothers and sisters living.
44. Where intestate's father dead and his mother, a brother or sister, and children of any deceased brother or sister, living.
45. Where intestate's father dead and his mother and children of any deceased brother or sister living.
46. Where intestate's father dead, but his mother living and no brother, sister, nephew or niece.
47. Where intestate has left neither lineal descendant, nor father, nor mother.
48. Where intestate has left neither lineal descendant, nor parent, nor brother, nor sister.
49. Children's advancements not brought into hotchpot.

CHAPTER III.

Special Rules for Parsi Intestates.

50. Division of property among widow and children of intestate.
51. Division of property among widower and children of intestate.
52. Division of property amongst the children of male intestate who leaves no widow.
53. Division of property amongst the children of female intestate who leaves no widower.
54. Division of pre-deceased child's share of intestate's property among the widow or widower and issue of such child.
55. Division of property when the intestate leaves a widow or widower, but no lineal descendants.
56. Division of property when the intestate leaves neither widow, nor widower, nor lineal descendants.

PART VI.

TESTAMENTARY SUCCESSION.

CHAPTER I.

Introductory.

57. Application of certain provisions of Part to wills made by Hindus, etc.
58. General application of Part.

CHAPTER II.

Of Wills and Codicils.

Sections.

59. Persons capable of making wills.
60. Testamentary guardian.
61. Will obtained by fraud, coercion or importunity.
62. Will may be revoked or altered.

CHAPTER III.

Of the Execution of unprivileged Wills.

63. Execution of unprivileged wills.
64. Incorporation of papers by reference.

CHAPTER IV.

Of privileged Wills.

65. Privileged wills.
66. Mode of making, and rules for executing, privileged wills.

CHAPTER V.

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

67. Effect of gift to attesting witness.
68. Witness not disqualified by interest or by being executor.
69. Revocation of will by testator's marriage.
70. Revocation of unprivileged will or codicil.
71. Effect of obliteration, interlineation or alteration in unprivileged will.
72. Revocation of privileged will or codicil.
73. Revival of unprivileged will.

CHAPTER VI.

Of the Construction of Wills.

74. Wording of will.
75. Inquiries to determine questions as to object or subject of will.
76. Misnomer or misdescription of object.
77. When words may be supplied.
78. Rejection of erroneous particulars in description of subject.
79. When part of description may not be rejected as erroneous.
80. Extrinsic evidence admissible in cases of latent ambiguity.
81. Extrinsic evidence inadmissible in case of patent ambiguity or deficiency.

Sections.

82. Meaning of clause to be collected from entire will.
83. When words may be understood in restricted sense, and when in sense wider than usual.
84. Which of two possible constructions preferred.
85. No part rejected, if it can be reasonably construed.
86. Interpretation of words repeated in different parts of will.
87. Testator's intention to be effectuated as far as possible.
88. The last of two inconsistent clauses prevails.
89. Will or bequest void for uncertainty.
90. Words describing subject refer to property answering description at testator's death.
91. Power of appointment executed by general bequest.
92. Implied gift to objects of power in default of appointment.
93. Bequest to "heirs," etc., of particular person without qualifying terms.
94. Bequest to "representatives," etc., of particular person.
95. Bequest without words of limitation.
96. Bequest in alternative.
97. Effect of words describing a class added to bequest to person.
98. Bequest to class of persons under general description only.
99. Construction of terms.
100. Words expressing relationship denote only legitimate relatives or failing such relatives reputed legitimate.
101. Rules of construction where will purports to make two bequests to same person.
102. Constitution of residuary legatee.
103. Property to which residuary legatee entitled.
104. Time of vesting legacy in general terms.
105. In what case legacy lapses.
106. Legacy does not lapse if one of two joint legatees die before testator.
107. Effect of words showing testator's intention to give distinct shares.
108. When lapsed share goes as undisposed of.
109. When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.
110. Bequest to A for benefit of B does not lapse by A's death.
111. Survivorship in case of bequest to described class.

CHAPTER VII.

Of Void Bequests.

112. Bequest to person by particular description, who is not in existence at testator's death.
113. Bequest to person not in existence at testator's death, subject to prior bequest.
114. Rule against perpetuity.

Sections.

115. Bequest to a class some of whom may come under rules in sections 113 and 114.
116. Bequest to take effect on failure of prior bequest.
117. Effect of direction for accumulation.
118. Bequest to religious or charitable uses.

CHAPTER VIII.

Of the Vesting of Legacies.

119. Date of vesting of legacy when payment or possession postponed.
120. Date of vesting when legacy contingent upon specified uncertain event.
121. Vesting of interest in bequest to such members of a class as shall have attained particular age.

CHAPTER IX.

Of Onerous Bequests.

122. Onerous bequests.
123. One of two separate and independent bequests to same person may be accepted, and other refused.

CHAPTER X.

Of Contingent Bequests.

124. Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.
125. Bequest to such of certain persons as shall be surviving at some period not specified.

CHAPTER XI.

Of Conditional Bequests.

126. Bequest upon impossible condition.
127. Bequest upon illegal or immoral condition.
128. Fulfilment of condition precedent to vesting of legacy.
129. Bequest to A and on failure of prior bequest to B.
130. When second bequest not to take effect on failure of first.
131. Bequest over, conditional upon happening or not happening of specfied uncertain event.
132. Condition must be strictly fulfilled.
133. Original bequest not affected by invalidity of second.
134. Bequest conditioned that it shall cease to have effect in case a specified uncertain event shall happen or not happen.

Sections.

135. Such condition must not be invalid under section 120.
136. 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.
137. Performance of condition, precedent or subsequent, within specified time. Further time in case of fraud.

CHAPTER XII.

Of Bequests with Directions as to Application or Enjoyment.

138. Direction that fund be employed in particular manner following absolute bequest of same to or for benefit of any person.
139. Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee.
140. Bequest of fund for certain purposes, some of which cannot be fulfilled.

CHAPTER XIII

Of Bequests to an Executor.

141. Legatee named as executor cannot take unless he shows intention to act as executor.

CHAPTER XIV.

Of Specific Legacies.

142. Specific legacy defined.
143. Bequest of certain sum where stocks, etc., in which invested are described.
144. Bequest of stock where testator had, at date of will, equal or greater amount of stock of same kind.
145. Bequest of money where not payable until part of testator's property disposed of in certain way.
146. When enumerated articles not deemed specifically bequeathed.
147. Retention, in form, of specific bequest to several persons in succession.
148. Sale and investment of proceeds of property bequeathed to two or more persons in succession.
149. Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

CHAPTER XV.

Of Demonstrative Legacies.

150. Demonstrative legacy defined.
151. Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

CHAPTER XVI.

Of Ademption of Legacies.

Sections.

152. Ademption explained.
153. Non-ademption of demonstrative legacy.
154. Ademption of specific bequest of right to receive something from third party.
155. Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.
156. Ademption *pro tanto* by testator's receipt of portion of entire fund of which portion has been specifically bequeathed.
157. 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.
158. Ademption where stock, specifically bequeathed, does not exist at testator's death.
159. Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death.
160. Non-ademption of specific bequest of goods described as connected with certain place, by reason of removal.
161. When removal of thing bequeathed does not constitute ademption.
162. When thing bequeathed is a valuable to be received by testator from third person; and testator himself, or his representative, receives it.
163. Change by operation of law of subject of specific bequest between date of will and testator's death.
164. Change of subject without testator's knowledge.
165. Stock specifically bequeathed lent to third party on condition that it be replaced.
166. Stock specifically bequeathed sold but replaced, and belonging to testator at his death.

CHAPTER XVII.

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

167. Non-liability of executor to exonerate specific legatees.
168. Completion of testator's title to things bequeathed to be at cost of his estate.
169. Exoneration of legatee's immoveable property for which land revenue or rent payable periodically.
170. Exoneration of specific legatee's stock in joint stock company.

CHAPTER XVIII.

Sections.

Of Bequests of Things described in General Terms.

171. Bequest of thing described in general terms.

CHAPTER XIX.

Of Bequests of the Interest or Produce of a Fund.

172. Bequest of interest or produce of fund.

CHAPTER XX.

Of Bequests of Annuities.

173. Annuity created by will payable for life only unless contrary intention appears by will.
174. 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.
175. Abatement of annuity.
176. Where gift of annuity and residuary gift, whole annuity to be first satisfied.

CHAPTER XXI.

Of Legacies to Creditors and Portioners.

177. Creditor *primâ facie* entitled to legacy as well as debt.
178. Child *primâ facie* entitled to legacy as well as portion.
179. No ademption by subsequent provision for legatee.

CHAPTER XXII.

Of Election.

180. Circumstances in which election takes place.
181. Devolution of interest relinquished by owner.
182. Testator's belief as to his ownership immaterial.
183. Bequest for man's benefit how regarded for purpose of election.
184. Person deriving benefit indirectly not put to election.
185. Person taking in individual capacity under will may in other character elect to take in opposition.
186. Exception to provisions of last six sections.
187. When acceptance of benefit given by will constitutes election to take under will.

Sections.

188. Circumstances in which knowledge or waiver is presumed or inferred.
189. When testator's representatives may call upon legatee to elect.
190. Postponement of election in case of disability.

CHAPTER XXIII.

Of Gifts in Contemplation of Death.

191. Property transferable by gift made in contemplation of death.

PART VII.

PROTECTION OF PROPERTY OF DECEASED.

192. Person claiming right by succession to property of deceased may apply for relief against wrongful possession.
193. Inquiry made by Judge.
194. Procedure.
195. Appointment of curator pending determination of proceeding.
196. Powers conferable on curator.
197. Prohibiton of exercise of certain powers by curators.
Payment of debts, etc., to curator.
198. Curator to give security and may receive remuneration.
199. Report from Collector where estate includes revenue paying land.
200. Institution and defence of suits.
201. Allowances to apparent owners pending custody by curator.
202. Accounts to be filed by curator.
203. Inspection of accounts and right of interested party to keep duplicate.
204. Bar to appointment of second curator for same property.
205. Limitation of time for application for curator.
206. Bar to enforcement of Part against public settlement or legal directions by deceased.
207. * * * *
208. Saving of right to bring suit.
209. Effect of decision of summary proceeding.
210. Appointment of public curators.

PART VIII.

REPRESENTATIVE TITLE TO PROPERTY OF DECEASED ON SUCCESSION.

211. Character and property of executor or administrator as such.
212. Right to intestate's property.
213. Right as executor or legatee when established.

Sections.

214. Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons.
215. Effect on certificate of subsequent probate or letters of administration.
216. Grantee of probate or administration alone to sue, etc., until same revoked.

PART IX.

PROBATE, LETTERS OF ADMINISTRATION AND ADMINISTRATION OF ASSETS OF DECEASED.

217. Application of Part.

CHAPTER I.

Of Grant of Probate and Letters of Administration.

218. To whom administration may be granted, where deceased is a Hindu Muhammadan, Buddhist, Sikh, Jaina or exempted person.
219. Where deceased is not a Hindu, Muhammadan, Buddhist, Sikh, Jaina or exempted person.
220. Effect of letters of administration.
221. Acts not validated by administration.
222. Probate only to appointed executor.
223. Persons to whom probate cannot be granted.
224. Grant of probate to several executors simultaneously or at different times.
225. Separate probate of codicil discovered after grant of probate.
226. Accrual of representation to surviving executor.
227. Effect of probate.
228. Administration, with copy annexed, of authenticated copy of will proved abroad.
229. Grant of administration where executor has not renounced.
230. Form and effect of renunciation of executorship.
231. Procedure where executor renounces or fails to accept within time limited.
232. Grant of administration to universal or residuary legatees.
233. Right to administration of representative of deceased residuary legatee.
234. Grant of administration where no executor, nor residuary legatee, nor representative of such legatee, or,
235. Citation before grant of administration to legatee other than universal or residuary.
236. To whom administration may not be granted.

CHAPTER II.

OF LIMITED GRANTS.

Grants limited in duration.

Sections.

237. Probate of copy or draft of lost will.
238. Probate of contents of lost or destroyed will.
239. Probate of copy where original exists.
240. Administration until will produced.

Grants for the Use and Benefit of Others having Right.

241. Administration, with will annexed, to attorney of absent executor.
242. Administration, with will annexed, to attorney of absent person who, if present, would be entitled to administer.
243. Administration to attorney of absent person entitled to administer in case of intestacy.
244. Administration during minority of sole executor or residuary legatee.
245. Administration during minority of several executors or residuary legatees.
246. Administration for use and benefit of lunatic or minor.
247. Administration *pendente lite*.

Grants for Special Purposes.

248. Probate limited to purpose specified in will.
249. Administration, with will annexed, limited to particular purpose.
250. Administration limited to property in which person has beneficial interest.
251. Administration limited to suit.
252. Administration limited to purpose of becoming party to suit to be brought against administrator.
253. Administration limited to collection and preservation of deceased's property.
254. Appointment, as administrator, of person other than one who, in ordinary circumstances, would be entitled to administration.

Grants with Exception.

255. Probate or administration, with will annexed, subject to exception.
256. Administration with exception.

Grants of the Rest.

257. Probate or administration of rest.

Grant of Effects Unadministered.

Sections.

258. Grant of effects unadministered.
259. Rules as to grants of effects unadministered.
260. Administration when limited grant expired and still some part of estate unadministered.

CHAPTER III.

Alteration and Revocation of Grants.

261. What errors may be rectified by Court.
262. Procedure where codicil discovered after grant of administration with will annexed.
263. Revocation or annulment for just cause.

CHAPTER IV.

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

264. Jurisdiction of District Judge in granting and revoking probates, etc.
265. Power to appoint Delegate of District Judge to deal with non-contentious cases.
266. District Judge's powers as to grant of probate and administration.
267. District Judge may order person to produce testamentary papers.
268. Proceedings of District Judge's Court in relation to probate and administration.
269. When and how District Judge to interfere for protection of property.
270. When probate or administration may be granted by District Judge.
271. Disposal of application made to Judge of district in which deceased had no fixed abode.
272. Probate and letters of administration may be granted by Delegate.
273. Conclusiveness of probatee or letters of administration.
274. Transmission to High Courts of certificate of grants of probate or letters of administration.
275. Conclusiveness of application for probate or administration if properly made and verified.
276. Petition for probate.
277. In what case translation of will to be annexed to petition.
Verification of translation by person other than Court translator.
278. Petition for letters of administration.
279. * * * *
280. Petition for probate, etc., to be signed and verified.
281. Verification of petition for probate by one witness to will.
282. Punishment for false averment in petition or declaration.

Sections.

283. Powers of District Judge.
284. Caveats against grant of probate or administration.
Form of caveat.
285. After entry of caveat no proceeding taken on petition until after notice to caveator.
286. District Delegate when not to grant probate or administration.
287. Power to transmit statement to District Judge in doubtful cases where no contention.
288. Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.
289. Grant of probate to be under seal of Court.
290. Grant of letters of administration to be under seal of Court.
291. Administration-bond.
292. Assignment of administration-bond.
293. Time for grant of probate and administration.
294. Filing of original wills of which probate or administration with will annexed granted.
295. Procedure in contentious cases.
296. Surrender of revoked probate or letters of administration.
297. Payment to executor or administrator before probate or administration revoked.
298. Power to refuse letters of administration.
299. Appeals from orders of District Judge.
300. Concurrent jurisdiction of High Court.
301. Removal of executor or administrator and provision for successor.
302. Directions to executor or administrator.

CHAPTER V.

Of Executors of their own Wrong.

303. Executor of his own wrong.
304. Liability of executor of his own wrong.

CHAPTER VI.

Of the powers of an Executor or Administrator.

305. In respect of causes of action surviving deceased, and rents due at death.
306. Demands and rights of action of or against deceased survive to and against executor or administrator.
307. Power of executor or administrator to dispose of property.
308. General powers of administration.

Sections.

309. Commission or agency charges.
310. Purchase by executor or administrator of deceased's property.
311. Powers of several executors or administrators exercisable by one.
312. Survival of powers on death of one of several executors or administrators.
313. Powers of administrator of effects unadministered.
314. Powers of administrator during minority.
315. Powers of married executrix or administratrix.

CHAPTER VII.

Of the Duties of an Executor or Administrator.

316. As to deceased's funeral.
317. Inventory and account.
318. Inventory to include property in any part of India or Pakistan and the Union of Burma in certain cases.
319. As to property of, and debts owing to, deceased.
320. Expenses to be paid before all debts.
321. Expenses to be paid next after such expenses.
322. Wages for certain services to be next paid, and then other debts.
323. Save as aforesaid, all debts to be paid equally and rateably.
324. Application of moveable property to payment of debts where domicile not in the Union of Burma.
325. Debts to be paid before legacies.
326. Executor or administrator not bound to pay legacies without indemnity.
327. Abatement of general legacies.
328. Non-abatement of specific legacy when assets sufficient to pay debts.
329. Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.
330. Rateable abatement of specific legacies.
331. Legacies treated as general for purpose of abatement.

CHAPTER VIII.

Of Assent to a Legacy by Executor or Administrator.

332. Assent necessary to complete legatee's title.
333. Effect of executor's assent to specific legacy.
334. Conditional assent.
335. Assent of executor to his own legacy.
336. Effect of executor's assent.
337. Executor when to deliver legacies.

CHAPTER IX.

Of the Payment and Apportionment of Annuities.

Sections.

338. Commencement of annuity when no time fixed by will.
339. When annuity, to be paid quarterly or monthly, first falls due.
340. Dates of successive payments when first payment directed to be made within given time or on day certain ; death of annuitant before date of payment.

CHAPTER X.

Of the Investment of Funds to provide for Legacies.

341. Investment of sum bequeathed where legacy, not specific, given for life.
342. Investment of general legacy to be paid at future time : disposal of intermediate interest.
343. Procedure when no fund charged with, or appropriated to, annuity.
344. Transfer to residuary legatee of contingent bequest.
345. Investment of residue bequeathed for life, without direction to invest in particular securities.
346. Investment of residue bequeathed for life, with direction to invest in specified securities.
347. Time and manner of conversion and investment.
348. Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

CHAPTER XI.

Of the Produce and Interest of Legacies.

349. Legatee's title to produce of specific legacy.
350. Residuary legatee's title to produce of residuary fund.
351. Interest when no time fixed for payment of general legacy.
352. Interest when time fixed.
353. Rate of interest.
354. No interest on arrears of annuity within first year after testator's death.
355. Interest on sum to be invested to produce annuity.

CHAPTER XII.

Of the Refunding of Legacies.

356. Refund of legacy paid under Court's orders.
357. No refund if paid voluntarily.

Sections.

358. Refund when legacy has become due on performance of condition within further time allowed under section 137.
359. When each legatee compellable to refund in proportion.
360. Distribution of assets.
361. Creditor may call upon legatee to refund.
362. When legatee, not satisfied or compelled to refund under section 361, cannot oblige one paid in full to refund.
363. When unsatisfied legatee must first proceed against executor, if solvent.
364. Limit to refunding of one legatee to another.
365. Refunding to be without interest.
366. Residue after usual payments to be paid to residuary legatee.
367. Transfer of assets from the Union of Burma to executor or administrator in country of domicile for distribution.

CHAPTER XIII.

Of the Liability of an Executor or Administrator for Devastation.

368. Liability of executor or administrator for devastation.
369. Liability of executor or administrator for neglect to get in any part of property.

PART X.

Succession Certificates.

370. Restriction on grant of certificates under this Part.
371. Court having jurisdiction to grant certificate.
372. Application for certificate.
373. Procedure on application.
374. Contents of certificate.
375. Requisition of security from grantee of certificate.
376. Extension of certificate.
377. Forms of certificate and extended certificate.
378. Amendment of certificate in respect of powers as to securities.
379. Mode of collecting Court-fees on certificates.
380. Local extent of certificate.
381. Effect of certificate.
382. Effect of certificate granted or extended by British representative in foreign State.
383. Revocation of certificate.
384. Appeal.
385. Effect on certificate of previous certificate, probate or letters of administration.

Sections.

386. Validation of certain payments made in good faith to holder of invalid certificate.
387. Effect of decisions under this Part, and liability of holder of certificate thereunder.
388. Investiture of inferior Courts with jurisdiction of District Court for purposes of this Part.
389. Surrender of superseded and invalid certificates.
390. * * * *

PART XI.

MISCELLANEOUS.

391. Savings.

SCHEDULES.

SCHEDULE I.—Table of Consanguinity.
SCHEDULE II.—
Part I.—Order of next-of-kin in case of Parsi intestates referred to in section 55 (*b*).
Part II.—Order of next-of-kin in case of Parsi intestates referred to in section 56.
SCHEDULE III.—Provisions of Part VI applicable to certain Wills and Codicils described in section 57.
SCHEDULE IV.—Form of Certificate.
SCHEDULE V.—Form of Caveat.
SCHEDULE VI.—Form of Probate.
SCHEDULE VII.—Form of Letters of Administration.
SCHEDULE VIII.—Forms of Certificate and Extended Certificate.

THE SUCCESSION ACT.

[INDIA ACT XXXIX, 1925.] (30th September, 1925.)

PART I.

PRELIMINARY.

1. * * * *

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions

(*a*) " administrator " means a person appointed by competent authority to administer the estate of a deceased person when there is no executor ;

(*b*) "codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions, and shall be deemed to form part of the will;

(*bb*) "District Judge" includes a Judge of the High Court;

(*c*) "executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided;

(*d*) "Burman or Indian Christian" means a native of the Union of Burma or India or Pakistan who is, or in good faith claims to be, of unmixed Asiatic descent and who professes any form of the Christian religion;

(*e*) "minor" means any person subject to the Majority Act who has not attained his majority within the meaning of that Act, and any other person who has not completed the age of eighteen years; and "minority" means the status of any such person;

(*f*) "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; and

(*g*) * * * *

(*h*) "will" means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.

Power of President to exempt any race, sect or tribe from operation of Act.

3. (*1*) The President of the Union may, by notification in the Gazette, either retrospectively or prospectively, exempt from the operation of any of the following provisions of this Act, namely, sections 5 to 49, 58 to 191, 212, 213 and 215 to 369, the members of any race, sect or tribe, or of any part of such race, sect or tribe, to whom the President of the Union considers it impossible or inexpedient to apply such provisions or any of them mentioned in the order.

(*2*) The President of the Union may, by a like notification, revoke any such order, but not so that the revocation shall have retrospective effect.

(*3*) Persons exempted under this section are in this Act referred to as "exempted persons."

PART II.

OF DOMICILE.

Application of Part.

4. This Part shall not apply if the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina.

Law regulating succession to deceased person's immoveable and moveable property, respectively.

5. (*1*) Succession to the immoveable property in the Union of Burma of a person deceased shall be regulated by the law of the Union of Burma wherever such person may have had his domicile at the time of his death.

(2) Succession to the moveable property of a person deceased is regulated by the law of the country in which such person had his domicile at the time of his death.

Illustrations.

(i) *A*, having his domicile in the Union of Burma, dies in France, leaving moveable property in France, moveable property in England, and property, both moveable and immoveable in the Union of Burma. The succession to the whole is regulated by the law of the Union of Burma.

(ii) *A*, an Englishman, having his domicile in France, dies in the Union of Burma, and leaves property, both moveable and immoveable, in the Union of Burma. 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 the Union of Burma.

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

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

Illustration.

At the time of the birth of *A*, his father was domiciled in England. *A*'s domicile of origin is in England, whatever may be the country in which he was born.

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

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

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. Acquisition of new domicile.

Explanation.—A man is not to be deemed to have taken up his fixed habitation in the Union of Burma merely by reason of his residing there in [the Burma][1] civil, military, naval or air-force service, or in the exercise of any profession or calling.

Illustrations.

(i) *A*, whose domicile of origin is in England, proceeds to the Union of Burma, where he settles as a barrister or a merchant, intending to reside there during the remainder of his life. His domicile is now in the Union of Burma.

(ii) *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.

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

(iii) *A*, whose domicile of origin is in France, comes to reside in the Union of Burma under an engagement with the Government of the Union of Burma 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 the Union of Burma.

(iv) *A*, whose domicile is in England, goes to reside in the Union of Burma 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 the Union of Burma, however long the residence may last.

(v) *A*, having gone to reside in the Union of Burma in the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in the Union of Burma. *A* has acquired a domicile in the Union of Burma.

(vi) *A*, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Rangoon, and resides in Rangoon 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 the Union of Burma.

(vii) *A*, having come to Rangoon in the circumstances stated in the last preceding illustration, continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Rangoon shall be permanent. *A* has acquired a domicile in the Union of Burma.

Special mode of acquiring domicile in the Union of Burma.

11. Any person may acquire a domicile in the Union of Burma by making and depositing in some office in the Union of Burma, appointed in this behalf by the President of the Union, a declaration in writing under his hand of his desire to acquire such domicile; provided that he has been resident in the Union of Burma 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 such first-mentioned person 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 acquired.

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 [the Government][1] 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.

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

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

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

17. Save as hereinbefore otherwise provided in this Part, a person cannot, during minority, acquire a new domicile. Minor'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. Lunatic's acquisition of new domicile.

19. If a person dies leaving moveable property in the Union of Burma, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of the Union of Burma. Succession to moveable property in the Union of Burma in absence of proof of domicile elsewhere.

PART III.

MARRIAGE.

20. (*1*) No person shall, by marriage, acquire any interest in the property of the person whom he or she marries or become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried. Interests and powers not acquired nor lost by marriage.

(*2*) This section—

(*a*) shall not apply to any marriage contracted before the first day of January, 1866 [1];

(*b*) 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, Muhammadan, Buddhist, Sikh or Jaina religion.

21. If a person whose domicile is not in the Union of Burma marries in the Union of Burma a person whose domicile is in the Union of Burma, 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 the Union of Burma at the time of the marriage. Effect of marriage between person domiciled and one not domiciled in the Union of Burma.

22. (*1*) The property of a minor may be settled in contemplation of marriage, provided the settlement is made by the minor with the approbation Settlement of minor's property in

[1] Date of commencement of the Indian Succession Act, 1865 (India Act X, 1865).

contemplation of marriage.

of the minor's father, or, if the father is dead or absent from the Union of Burma, with the approbation of the High Court.

(*2*) Nothing in this section or in section 21 shall apply to any will made or intestacy occurring before the first day of January, 1866,[1] or to intestate or testamentary succession to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jaina.

PART IV.

OF CONSANGUINITY.

Application of Part.

23. Nothing in this Part shall apply to any will made or intestacy occurring before the first day of January, 1866,[1] or to intestate or testamentary succession to the property of any Hindu, Muhammadan, Buddhist, Sikh, Jaina or Parsi.

Kindred or consanguinity.

24. Kindred or consanguinity is the connection or relation of persons descended from the same stock or common ancestor.

Lineal consanguinity.

25. (*1*) 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 and his son, grandson, great-grandson and so downwards in the direct descending line.

(*2*) Every generation constitutes a degree, either ascending or descending.

(*3*) A person'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 degree, and so on.

Collateral consanguinity.

26. (*1*) 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.

(*2*) For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is necessary to reckon upwards from the person deceased to the common stock and then downwards to the collateral relative, a degree being allowed for each person, both ascending and descending.

Persons held for purpose of succession to be similarly related to deceased.

27. For the purpose of succession, there is no distinction—

(*a*) between those who are related to a person deceased through his father, and those who are related to him through his mother; or

(*b*) between those who are related to a person deceased by the full blood, and those who are related to him by the half blood; or

[1] Date of commencement of the Indian Succession Act, 1865 (India Act X, 1865).

(*c*) between those who were actually born in the lifetime of a person deceased 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 of degrees of kindred.

28. Degrees of kindred are computed in the manner set forth in the table of kindred set out in Schedule I.

Illustrations.

(i) 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.

(ii) 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.

(iii) 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.

PART V.

INTESTATE SUCCESSION.

CHAPTER I.

Preliminary.

Application of Part.

29. (*1*) This Part shall not apply to any intestacy occurring before the first day of January, 1866,[1] or to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jaina.

(*2*) Save as provided in sub-section (*1*) or by any other law for the time being in force, the provisions of this Part shall constitute the law of the Union of Burma in all cases of intestacy.

As to what property deceased considered to have died intestate.

30. A person is deemed to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

Illustrations.

(i) *A* has left no will. He has died intestate in respect of the whole of his property.

(ii) *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 the property.

(iii) *A* has bequeathed his whole property for an illegal purpose. *A* has died intestate in respect of the distribution of his property.

(iv) *A* has bequeathed 1,000 rupees to *B* and 1,000 rupees to the eldest son of *C*, and has made no other bequest ; and has died leaving the sum of 2,000 rupees 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 rupees.

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[1] Date of commencement of the Indian Succession Act, 1865 (India Act X, 1865).

CHAPTER II.

Rules in cases of Intestates other than Parsis.

Chapter not to apply to Parsis.

31. Nothing in this Chapter shall apply to Parsis.

Devolution of such property.

32. The property of an intestate 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 hereinafter contained in this Chapter.

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

Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.

33. Where the intestate has left a widow—

(*a*) 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 hereinafter contained;

(*b*) save as provided by section 33A, if he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are of kindred to him, in the order and according to the rules hereinafter contained;

(*c*) if he has left none who are of kindred to him, the whole of his property shall belong to his widow.

Special provision where intestate has left widow and no lineal descendants.

33A. (*1*) Where the intestate has left a widow but no lineal descendants and the nett value of his property does not exceed five thousand rupees, the whole of his property shall belong to the widow.

(*2*) Where the nett value of the property exceeds the sum of five thousand rupees, the widow shall be entitled to five thousand rupees thereof and shall have a charge upon the whole of such property for such sum of five thousand rupees, with interest thereon from the date of the death of the intestate at 4 per cent. per annum until payment.

(*3*) The provision for the widow made by this section shall be in addition and without prejudice to her interest and share in the residue of the estate of such intestate remaining after payment of the said sum of five thousand rupees, with interest as aforesaid, and such residue shall be distributed in accordance with the provisions of section 33 as if it were the whole of such intestate's property.

(*4*) The nett value of the property shall be ascertained by deducting from the gross value thereof all debts, and all funeral and administration expenses of the intestate, and all other lawful liabilities and charges to which the property shall be subject.

(*5*) This section shall not apply—

(*a*) to the property of—

(i) any Burman or Indian Christian,

(ii) any child or grandchild of any male person who is or was at the time of his death a Burman or Indian Christian, or

(iii) any person professing the Hindu, Buddhist, Sikh or Jaina religion the succession to whose property is, under section 24 of the Special Marriage Act, regulated by the provisions of this Act ;

(*b*) unless the deceased dies intestate in respect of all his property.

Where intestate has left no widow, and where he has left no kindred

34. 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 hereinafter contained ; and, if he has left none who are of kindred to him, it shall go to the Government.

Rights of widower.

35. A husband surviving his wife has the same rights in respect of her property if she dies intestate, as a widow has in respect of her husband's property, if he dies intestate.

Distribution where there are lineal Descendants.

Rules of distribution.

36. The rule for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants shall be those contained in sections 37 to 40.

Where intestate has left child or children only.

37. 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 is only one, or shall be equally divided among all his surviving children.

Where intestate has left no child, but grandchild or grand-children.

38. 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 is only one, or shall be equally divided among all his surviving grandchildren.

Illustrations.

(i) *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 will have one-ninth.

(ii) 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.

Where intestate has left only great-grandchildren or remoter lineal descendants.

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

Where intestate leaves lineal descendants not all in same degree of kindred to him, and those through whom the more remote are descended are dead.

40. (*1*) 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.

(*2*) One of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and one of such shares shall be allotted in respect of each of such deceased lineal descendants; and the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be, such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

Illustrations.

(i) *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.

(ii) *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.

(iii) *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.

(iv) *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 the posthumous child.

Distribution where there are no lineal Descendants.

Rules of distribution where intestate has left no lineal descendants.

41. 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) shall be those contained in sections 42 to 48.

42. If the intestate's father is living, he shall succeed to the property. Where intestate's father living.

43. 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. Where intestate's father dead but his mother, brothers and sisters living.

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.

44. 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. Where intestate's father dead and his mother, a brother or sister, and children of any deceased brother or sister living.

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 two children of George divide the remaining one-fifth equally between them.

45. 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. Where intestate's father dead and his mother and children of any deceased brother or sister living.

Illustration.

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

46. 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's father dead, but his mother living and no brother, sister, nephew or niece.

Where intestate has left neither lineal descendant, nor father, nor mother.

47. Where the intestate has left neither lineal descendant, nor father, nor mother, the property shall be 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.

48. Where the intestate has 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.

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

(ii) *A*, the intestate, has left a great-grandfather, or a 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, will take equal shares.

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

(iv) 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 will each take one-eleventh of he property.

Children's advancements not brought into hotchpot.

49. Where a distributive share in the property of a person who has died intestate is claimed by a child, or any descendant of a child, of such person, no money or other property which the intestate may, during his life, have paid, given or settled to, or for the advancement of, the child by whom or by whose descendant the claim is made shall be taken into account in estimating such distributive share.

CHAPTER III.

Special Rules for Parsi Intestates.

Division of property among widow and children of intestate.

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

Division of property among widower and children of intestate.

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

52. When a Parsi dies leaving children but no widow, the property of which he dies intestate shall be divided amongst the children, so that the share of each son shall be four times the share of each daughter. Division of property amongst the children of male intestate who leaves no widow.

53. When a female Parsi dies leaving children but no widower, the property of which she dies intestate shall be divided amongst the children in equal shares. Division of property amongst the children of female intestate who leaves no widower.

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

55. When a Parsi dies leaving a widow or widower, but without leaving any lineal descendants,— Division of property when the intestate leaves a widow or widower, but no lineal descendants.

(*a*) his or her father and mother, if both are living, or one of them if the other is dead, shall take one moiety of the property in respect of which he or she dies intestate, and the widow or widower shall take the other moiety, provided that, where both the father and the mother of the intestate survive him or her, the father's share shall be double the share of the mother ;

(*b*) where neither the father nor the mother of the intestate survives him or her, the intestate's relatives on the father's side, in the order specified in Part I of Schedule II, shall take the moiety which the father and the mother would have taken if they had survived the intestate. The next-of-kin standing first in Part I of that Schedule shall be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity ;

(*c*) where there are no relatives on the father's side, the intestate's widow or widower shall take the whole.

56. When a Parsi dies leaving neither lineal descendants nor a widow or widower, his or her next-of-kin, in the order set forth in Part II of Schedule II, shall be entitled to succeed to the whole of the property as to which he or she dies intestate. The next-of-kin standing first in Part II of the same schedule shall be preferred to those standing second, the second to the third, Division of property when the intestate leaves neither widow nor

widower, nor lineal descendants.

and so on in succession, provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity.

PART VI.

TESTAMENTARY SUCCESSION.

CHAPTER I.

Introductory.

Application of certain provisions of Part to wills made by Hindus, etc.

57. The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927: Provided that marriage shall not revoke any such will or codicil.

General application of Part.

58. (*1*) The provisions of this Part shall not apply to testamentary succession to the property of any Muhammadan nor, save as provided by section 57, to testamentary succession to the property of any Hindu, Buddhist, Sikh or Jaina; nor shall they apply to any will made before the first day of January, 1866. [1]

(*2*) Save as provided in sub-section (*1*) or by any other law for the time being in force, the provisions of this Part shall constitute the law of the Union of Burma applicable to all cases of testamentary succession.

CHAPTER II.

Of Wills and Codicils.

Persons capable of making wills.

59. Every person of sound mind not being a minor may dispose of his property by will.

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

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

Explanation 3.—A person 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 intoxication or from illness or from any other cause, that he does not know what he is doing.

Illustrations.

(i) *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

[1] Date of commencement of the Indian Succession Act, 1865 (India Act X, 1865).

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.

(ii) *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.

(iii) *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.

60. A father, whatever his age may be, may by will appoint a guardian or guardians for his child during minority. Testamentary guardian.

61. 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 Will obtained by fraud, coercion, or importunity

Illustrations.

(i) *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.

(ii) *A*, by fraud and deception, prevails upon the testator to bequeath a legacy to him. The bequest is void.

(iii) *A*, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment.

(iv) *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.

(v) *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.

(vi) *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.

(vii) *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*.

(viii) *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*.

62. 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. Will may be revoked or altered.

CHAPTER III.

Of the Execution of unprivileged Wills.

63. Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his will according to the following rules:— Execution of unprivileged wills.

(*a*) 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.

(*b*) 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.

(*c*) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will, or has seen some other person sign the will in the presence and by the direction of the testator, or has 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 shall 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.

64. If a testator, in a will or codicil duly attested, refers to any other document then actually written as expressing any part of his intentions, such document shall be deemed to form a part of the will or codicil in which it is referred to.

CHAPTER IV.

Of privileged Wills.

Privileged will.

65. Any soldier being employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a will made in the manner provided in section 66. Such wills are called privileged wills.

Illustrations.

(i) *A*, a medical officer attached to regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged will.

(ii) *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.

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

(iv) *A*, a mariner of a ship, in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, for the purposes of this section, a mariner at sea, and can make a privileged will.

(v) *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.

(vi) *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.

66. (*1*) Privileged wills may be in writing, or may be made by word of mouth.

(*2*) The execution of privileged wills shall be governed by the following rules:—

(*a*) The will may be written wholly by the testator, with his own hand. In such case it need not be signed or attested.

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

(*c*) 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 deemed to be his will if it is shown that it was written by the testator's directions or that he recognised it as his will.

(*d*) If it appears on the face of the instrument that the execution of it in the manner intended by the testator 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.

(*e*) If the soldier, airman or mariner has written instructions for the preparation of his will, but has died before it could be prepared and executed, such instructions shall be considered to constitute his will.

(*f*) If the soldier, airman or mariner has, in the presence of two witnesses, given verbal instructions for the preparation of his will, and they have been reduced into writing in his lifetime, but he has 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.

(*g*) The soldier, airman or mariner may make a will by word of mouth by declaring his intentions before two witnesses present at the same time.

(*h*) A will made by word of mouth shall be null at the expiration of one month after the testator, being still alive, has ceased to be entitled to make a privileged will.

CHAPTER V.

Of the Attestation, Revocation and Revival of Wills.

Effect of gift to attesting witness.

67. A will shall not be deemed to be insufficiently attested by reason of any benefit thereby given either by way of bequest or by way of appointment to any person attesting it, or to his or her wife or husband; but the bequest or appointment shall be void so far as concerns the 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.

Witness not disqualified by interest or by being executor.

68. No person, by reason of interest in, or of his being an executor of, a will, shall be disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

Revocation of will by testator's marriage.

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

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

Revocation of unprivileged will or codicil.

70. 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 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.

(i) *A* has made an unprivileged will. Afterwards, *A* makes another unprivileged will which purports to revoke the first. This is a revocation.

(ii) *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.

71. 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 have been thereby rendered illegible or undiscernible, unless such alteration has been executed in like manner as hereinbefore is required for the execution of the will :

Provided 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 is 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 of some other part of the will.

Revocation of privileged will or codicil.

72. 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 by 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 by 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.

Revival of unprivileged will.

73. (*1*) No unprivileged will or codicil, nor any part thereof, which has been revoked in any manner, 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.

(2) When any will or codicil, which has been partly revoked and afterwards wholly revoked, is revived, such revival shall not extend to so much thereof as has been revoked before the revocation of the whole thereof, unless an intention to the contrary is shown by the will or codicil.

CHAPTER IV.

Of the Construction of Wills.

Wording of will.

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

Inquiries to determine questions as to object or subject of will.

75. For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a Court shall inquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

Illustrations.

(i) *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

(ii) *A*, by his will, leaves to *B* "my 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.

(iii) *A*, by his will, leaves to *B* "the estate which I 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.

76. (*1*) Where the words used in a 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.

(2) 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.

(i) *A* bequeaths a legacy to "Thomas, the second son of my 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 will have the legacy.

(ii) *A* bequeaths a legacy "to Thomas, the second son of my brother John." The testator has an only brother, named John, whose first son is named Thomas, and whose second son is named William. Thomas will have the legacy.

(iii) 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.

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

(v) The testator, having six grandchildren, makes a bequest to "my 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 will take a share with the others.

(vi) 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 will, if he survives the testator, receive a legacy of 1,000 rupees.

When words may be supplied.

77. 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* will take a legacy of five hundred rupees.

Rejection of erroneous particulars in description of subject.

78. 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.

Illustration.

A bequeaths to *B* "my 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* will pass by the bequest.

When part of description may not be rejected as erroneous.

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

Explanation.—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under section 78 shall be deemed to have been struck out of the will.

Illustrations.

(i) *A* bequeaths to *B* "my 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 will be considered as limited to such of the testator's marsh-lands lying in *L* as were in the occupation of *X*.

(ii) *A* bequeaths to *B* 'my marsh-lands lying in *L* and in the occupation of *X*, comprising 1,000 acres 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 will 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.

Extrinsic evidence admissible in

80. Where the words of a 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 applications was intended. cases of latent ambiguity.

Illustrations.

(i) A man, having two cousins of the name of Mary bequeaths a sum of money to "my 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.

(ii) *A*, by his will, leaves to *B* "my estate called the Shan States Tea Estate." It turns out that he had two estates called the Shan States Tea Estate. Evidence is admissible to show which estate was intended.

81. Where there is an ambiguity or deficiency on the face of a will, no extrinsic evidence as to the intentions of the testator shall be admitted. Extrinsic evidence inadmissible in case of patent ambiguity or deficiency.

Illustrations.

(i) 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 "my aunt Caroline" and 1,000 rupees to "my cousin, Mary" and afterwards bequeaths 2,000 rupees to "my 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 "my before-mentioned aunt, Mary." The bequest is therefore void for uncertainty under section 89.

(ii) *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.

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

82. 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. Meaning of clause to be collected from entire will.

Illustrations.

(i) 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*.

(ii) 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*".

83. 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 When words may be understood in restricte

sense, and when in sense wider than usual.

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.

(i) A testator gives to *A* "my farm in the occupation of *B*," and to *C* "all my 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 my 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*.

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

(iii) *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.

Which of two possible constructions preferred.

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

No part rejected, if it can be reasonably construed.

85 No part of a will shall be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

Interpretation of words repeated in different parts of will.

86. If the same words occur in different parts of the same will, they shall be taken to have been used everywhere in the same sense, unless a contrary intention appears.

Testator's intention to be effectuated as far as possible.

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

Illustration.

The testator by a will made on his death-bed bequeathed all his property to *C D* for life and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under section 118, but it will take effect so far as regards the gift to *C D*.

The last of two inconsistent clauses prevails.

88. Where two clauses or gifts in a will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

Illustrations.

(i) The testator by the first clause of his will leaves his estate of Hmawbi "to *A*," and by the last clause of his will leaves it "to *B* and not to *A*." *B* will have it.

(ii) 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 will prevail.

89. 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 the Schedule" and no Schedule is found, or "I bequeath 'money,' 'wheat,' 'oil,'" or the like, without saying how much, this is void.

90. The description contained in a will of property, the subject of gift, shall, unless a contrary intention appears by the will, be deemed to refer to and comprise the property answering that description at the death of the testator. Words describing subject refer to property answering description at testator's death.

91. Unless a contrary intention appears by the will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power; and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power. Power of appointment executed by general bequest.

92. Where property is bequeathed to or for the benefit of certain objects as a specified person may appoint or for the benefit of certain objects in such proportions as a specified person may appoint, and the will does not provide for the event of no appointment being made, if the power given by the will is not exercised, the property belongs to all the objects of the power in equal shares. Implied gift to objects of power in default of appointment.

Illustration.

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

93. 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 "heirs," etc., of particular person without qualifying terms.

Illustrations.

(i) *A* leaves his property "to my 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.

(ii) *A* bequeaths 10,000 rupees "to *B* for his life, and, after the death of *B*, to my 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.

(iii) *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.

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

Bequest to "representatives," etc., of particular person.

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

Illustration.

A 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 will apply it in the first place to the discharge of such part of *A*'s debts as may remain unpaid: if there be any surplus *B* will 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.

Bequest without words of limitation.

95. 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 in alternative.

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

Illustrations.

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

(ii) 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*.

(iii) A bequest is made to *A* or to *B* *A* is dead at the date of the will. The legacy goes to *B*.

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

(v) Property is bequeathed to *A* or his nearst 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.

(vi) 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.

(vii) 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.

97. 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 a class added to bequest to person.

Illustrations.

(i) 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.

(ii) A bequest is made to *A* and his brothers. *A* and his brothers are jointly entitled to the legacy.

(iii) 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 then answer the description of issue of *A*.

98. 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.

Bequest to class of persons under general description only.

99. In a will—

Construction of terms.

(*a*) the word "children" applies only to lineal descendants in the first degree of the person whose "children" are spoken of;

(*b*) the word "grandchildren" applies only to lineal descendants in the second degree of the person whose "grandchildren" are spoken of;

(*c*) the words "nephews" and "nieces" apply only to children of brothers or sisters;

(*d*) 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;

(*e*) 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;

(*f*) 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;

(*g*) the words "issue" and "descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of;

(*h*) words expressive of collateral relationship apply alike to relatives of full and of half blood; and

(*i*) all words expressive of relationship apply to a child in the womb who is afterwards born alive.

Words expressing relationship denote only legitimate relatives or failing such relatives reputed legitimate

100. In the absence of any intimation to the contrary in a will, the word "child," the word "son," the word "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or, where there is no such legitimate relative, a person who has acquired, at the date of the will, the reputation of being such relative.

Illustrations.

(i) *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 "my children." The property belongs to *B* and *C* in equal shares, to the exclusion of *D*.

(ii) *A*, having a niece of illegitimate birth, who has acquired the reputation of being his niece, and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

(iii) *A*, having in his will enumerated his children, and named as one of them *B*, who is illegitimate, leaves a legacy to "my said children." *B* will take a share in the legacy along with the legitimate children.

(iv) *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.

(v) *A* bequeaths 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 the children of *B*. After the date of the will and before the death of the testator, *E* and *F* were born, and acquired the reputation of being the children of *B*. Only *C* and *D* are objects of the bequest.

(vi) *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.

(vii) *A* makes a bequest in favour of his child to be born of a woman who never becomes his wife. The bequest is void.

(viii) *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.

101. 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 have effect in determining the construction to be put upon the will:—

(*a*) If the same specific thing is bequeathed twice to the same legatee in the same will or in the will and again in the codicil, he is entitled to receive that specific thing only.

(*b*) 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.

(*c*) 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.

(*d*) 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 clauses (*a*) to (*d*) of this section, the word "will" does not include a codicil.

Illustrations.

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

(ii) *A*, having one diamond ring, which was given him by *B*, bequeaths to *C* the diamond ring which was given 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*.

(iii) *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.

(iv) *A*, by his will, bequeaths to *B* the sum of 5,000 rupees and afterwards in the same will bequeaths to *B* the sum of 6,000 rupees. *B* is entitled to receive 11,000 rupees.

(v) *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.

(vi) *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

(vii) *A*, by his will, bequeaths "500 rupees to *B* because she was my nurse," and in another part of the will bequeaths 500 rupees to *B* "because she went to England with my children." *B* is entitled to receive 1,000 rupees

(viii) *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.

(ix) *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.

102. 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.

(i) *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, etc., to give to *B*, now at school, towards equipping him to any profession he may hereafter be appointed to." *B* is constituted residuary legatee.

(ii) *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.

(iii) *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.

103. 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, of which one is void under section 118, 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 an estate, which belongs to him at the time of his death. *B* is entitled to the two legacies and the estate as part of the residue.

Time of vesting legacy in general terms.

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

In what case legacy lapses.

105. (*1*) 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 appears by the will that the testator intended that it should go to some other person.

(*2*) In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Illustrations.

(i) The testator bequeaths to *B* "500 rupees which *B* owes me." *B* dies before the testator; the legacy lapses.

(ii) 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.

(iii) 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*.

(iv) 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.

(v) 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.

(vi) The testator and the legatee perished in the same shipwreck. There is no evidence to show who died first. The legacy lapses.

Legacy does not lapse if one of two joint legatees die before testator.

106. If a legacy is given to two persons jointly, and one of them dies 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.

107. If a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then, if any legatee dies 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* will only take so much as they would have had if *A* had survived the testator.

108. Where a share which lapses is a part of the general residue bequeathed by the will, that share shall go as undisposed of. When lapsed share goes as undisposed

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.

109. Where a bequest has been made to any child or other lineal descendant of the testator, and the legatee dies in the lifetime of the testator, but any lineal descendant of his survives 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 appears by the will. When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.

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*.

110. 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. Bequest to *A* for benefit of *B* does not lapse by *A*'s death.

111. Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as are alive at the testator's death. Survivorship in case of bequest to described class.

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 are then alive, and to the representatives of any of them who have died since the death of the testator.

Illustrations.

(i) *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 will belong to *C* and *D*, to the exclusion of the representative of *E*.

(ii) 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.

(iii) 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*.

(iv) *A* bequeathed 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 belong to *D*, *E* and the representatives of *C*, in equal shares.

(v) *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 any child. The bequest after the death of *B* is void.

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

(vii) *A* bequeaths a fund to the children of *B*, to be divided among them when the eldest shall attain majority. At the testator's death *B* has 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.

CHAPTER VII.

Of Void Bequests.

Bequest to person by particular description, who is not in existence at testator's death.

112. 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 is dead, to his representatives.

Illustrations.

(i) *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.

(ii) *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.

(iii) *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* has 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*.

(iv) *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.

(v) *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.

113. 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. Bequest to person not in existence at testator's death, subject to prior bequest.

Illustrations.

(i) 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.

(ii) 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.

(iii) 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 portions shall be settled so that it may belong to herself for life and may be divisible among her children after her death. *A* has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect in the case of each daughter who marries under eighteen of substituting for the absolute bequest to her a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of 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.

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

114. 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 death 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. Rule against perpetuity.

Illustrations.

(i) 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.

(ii) 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.

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

(iv) 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 daughters whose share it was. All these provisions are valid.

Bequest to a class some of whom may come under rules in sections 113 and 114.

115. If a bequest is made to a class of persons with regard to some of whom it is inoperative by reason of the provisions of section 113 or section 114, such bequest shall be void in regard to those persons only and not in regard to the whole class.

Illustrations.

(i) 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 in regard to those who do not attain the age of 25 within 18 years after *A*'s death, but is operative in regard to the other children of *A*.

(ii) A fund is bequeathed to *A* for his life, and after his death to *B*, *C*, *D* and all other children of *A* who shall attain the age of 25. *B*, *C*, *D* are the children of *A* living at the testator's decease. In all other respects the case is the same as that supposed in illustration (i). Although the mention of *B*, *C* and *D* does not prevent the bequest from being regarded as a bequest to a class, it is not wholly void. It is operative as regards any of the children *B*, *C* or *D*, who attains the age of 25 within 18 years after *A*'s death.

Bequest to take effect on failure of prior bequest.

116. Where, by reason of any of the rules contained in sections 113 and 114, any bequest in favour of a person or of a class of persons is void in regard to such person or the whole of such class, any bequest contained in the same will and intended to take effect after or upon failure of such prior bequest is also void.

Illustrations.

(i) 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 114. The bequest to *B* is void.

(ii) 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 114. The bequest to *B* is void.

Effect of direction for accumulation.

117. (*1*) Where the terms of a will direct that the income arising from any property shall be accumulated either wholly or in part during any period longer than a period of eighteen years from the death of the testator, such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the aforesaid period, and at the end of such period of eighteen years the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(*2*) This section shall not affect any direction for accumulation for the purpose of—

(i) the payment of the debts of the testator or any other person taking any interest under the will, or

(ii) the provision of portions for children or remoter issue of the testator or of any other person taking any interest under the will, or

(iii) the preservation or maintenance of any property bequeathed ;

and such direction may be made accordingly.

Bequest to religious or charitable uses.

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

Illustration.

A having a nephew makes a bequest by a will not executed and 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.

CHAPTER VIII.

Of the Vesting of Legacies.

Date of vesting of legacy when payment or

119. 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

possession postponed.

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.

(i) *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.

(ii) *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*.

(iii) 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*.

(iv) 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.

(v) *A* bequeaths the whole of his property to *B* upon trust to pay certain debts out of the income, and then to make over the fund to *C*. At *A*'s death the gift to *C* becomes vested in interest in him.

(vi) 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 vested 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.

120. (*1*) A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens.

(*2*) A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible.

(*3*) 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.

(i) 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.

(ii) 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 is fulfilled by his attaining that age.

(iii) 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 has happened.

(iv) 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.

(v) 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 neither attains 18 nor marries 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*.

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

(vii) An estate is bequeathed to *A* until he shall take advantage of any law 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 such a law.

(viii) 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*.

(ix) *A* leaves his Moulmein rubber estate to *B*, if *B* shall convey his own Thatôn rubber estate to *C*. *B*'s interest in the bequest is contingent until he has conveyed the latter estate to *C*.

(x) 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 is 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.

(xi) 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.

(xii) *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.

(xiii) *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.

121. 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.

Vesting of interest in bequest to such members of a class as shall have attained particular age.

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.

CHAPTER IX.

Of Onerous Bequests.

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

Onerous bequests

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.

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

Illustration.

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

CHAPTER X.

Of Contingent Bequests.

Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.

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

Illustrations.

(i) 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.

(ii) A legacy is bequeathed to *A*, and, in case of his death without children, to *B*. If *A* survives the testator or dies in his lifetime leaving a child, the legacy to *B* does not take effect.

(iii) 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.

(iv) 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* dies without children during the lifetime of *A*.

(v) 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* dies in the lifetime of *A*."

Bequest to such of certain persons as shall be surviving at some period not specified.

125. 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 are alive at the time of payment or distribution, unless a contrary intention appears by the will.

Illustrations.

(i) 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*.

(ii) 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*.

(iii) 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*.

(iv) 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*.

CHAPTER XI.

Of Conditional Bequests.

126. A bequest upon an impossible condition si void. Beq est upon impossible condition.

Illustrations.

(i) An estate is bequeathed to *A* on condition that he shall walk 100 miles in an hour. The bequest is void.

(ii) *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.

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

Illustrations.

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

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

128. 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. Fulfilment of condition precedent to vesting of legacy.

Illustrations.

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

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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.

(vi) *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.

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

Bequest to *A* and on failure of prior bequest to *B*.

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

Illustrations.

(i) *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.

(ii) *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.

When second bequest not to take effect on failure of first.

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

Illustration.

A makes a bequest to his wife, but in case she should die in his lifetime, bequeaths to *B* that which he had bequeathed to her. *A* and his wife perish together, under circumstances which make it impossible to prove that she died before him. The bequest to *B* does not take effect.

Bequest over, conditional upon happening or not happening of specified uncertain event.

131. (*1*) 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.

(*2*) In each case the ulterior bequest is subject to the rules contained in sections 120, 121, 122, 123, 124, 125, 126, 127, 129, and 130.

Illustrations.

(i) 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* dies under 18.

(ii) 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*.

(iii) 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.

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

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

Condition must be strictly fulfilled.

132. An ulterior bequest of the kind contemplated by section 131 cannot take effect, unless the condition is strictly fulfilled.

Illustrations.

(i) 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.

(ii) 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.

(iii) 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.

133. If the ulterior bequest be not valid the original bequest is not affected by it.

Illustrations.

(i) An estate is bequeathed to *A* for his life with 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 has been inserted in the will.

(ii) An estate is bequeathed to *A* for her life and, if she do not desert her husband, to *D*. *A* is entitled to the estate during her life as if no condition had been inserted in the will.

(iii) 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 105, and *A* is entitled to the estate during his life.

Bequest conditioned that it shall cease to have effect in case a specified uncertain event shall happen or not happen.

134. 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.

(i) 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.

(ii) 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.

(iii) 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.

(iv) An estate is bequeathed to *A*, with a proviso that, if she becomes a nun, she shall cease to have any interest in the estate. *A* becomes a nun. She loses her interest under the will.

(v) 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 120.

135. 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 120.

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.

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

Illustrations.

(i) 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.

(ii) 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. Further time in case of fraud.

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

CHAPTER XII.

Of Bequests with Directions as to Application or Enjoyment.

Direction that fund be employed

138. 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.

in particular manner following absolute bequest of same to or for benefit of any person.

Illustration.

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

139. 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.

Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee.

Illustrations.

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

(ii) *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.

140. 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.

Bequest of fund for certain purposes, some of which cannot be fulfilled.

Illustrations.

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

(ii) *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.

CHAPTER XIII.

Of Bequests to an Executor.

141. 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.

Legatee named as executor cannot take unless he shows intention to act as executor.

Illustration.

A legacy is given to *A*, who is named an executor. *A* orders the funeral according to 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.

CHAPTER XIV.

Of Specific Legacies.

Specific legacy defined.

142. 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.

(i) *A* bequeaths to *B*—

"The diamond ring presented to me by *C*" :
"my gold chain" :
"a certain bale of wool" :
"a certain piece of cloth" :
"all my household goods which shall be in or about my dwelling house in M. Street, in Rangoon, at time of my death" :
"the sum of 1,000 rupees in a certain chest" :
"the debt which *B* owes me" :
"all my bills, bonds and securities belonging to me lying in my lodgings in Rangoon" :
"all my furniture in my house in Rangoon" :
"all my goods on board a certain ship now lying in the Rangoon river" :
"2,000 rupees which I have in the hands of *C*" :
"the money due to me on the bond of *D*" :
"my mortgage on the Pegu factory" :
"one-half of the money owing to me on my mortgage of the Pegu factory" :
"1,000 rupees, being part of a debt due to me from *C*" :
"my capital stock of 1,000*l*. in East India Stock" :
"my promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan" :
"all such sums of money as my executors may, after my death receive in respect of the debt due to me from the insolvent firm of *D* and Company" :
"all the wine which I may have in my cellar at the time of my death" :
"such of my horses as *B* may select" :
"all my shares in the Imperial Bank of India" :
"all my shares in the Imperial Bank of India which I may possess at the time of my death" :
"all the money which I have in the 5½ per cent. loan of the Government of India" :
"all the Government Securities I shall be entitled to at the time of my decease."

Each of the legacies is specific.

(ii) *A*, having Government promissory notes for 10,000 rupees, bequeaths to his executors "Government promissory notes for 10,000 rupees in trust to sell" for the benefit of *B*. The legacy is specific.

(iii) *A* having property at Toungoo, and also in other places, bequeaths to *B* all his property at Toungoo. The legacy is specific.

(iv)—(v) * * * *

(vi) *A* bequeaths a sum of money—

to buy a house in Rangoon for *B* ;
to buy a rubber estate at Moulmein for *B* :
to buy a diamond ring for *B* :
to buy a horse for *B* :

to be invested in shares in the Imperial Bank of India for *B* :
to be invested in Government securities for *B*.

A beq eaths 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 purchase 5,000 rupees four per cent. Government securities."

These bequests are not specific.

(vii) *A*, having property in England and property in the Union of Burma, bequeaths a legacy to *B*, and directs that it shall be paid out of the property which he may leave in the Union of Burma. He also beq ieaths a legacy to *C*, and directs that it shall be paid out of property which he may leave in England. No one of these legacies is specific.

143. Where a certain sum is bequeathed, the legacy is not specific merely because the stock, funds or securities in which it is invested are described in the will.

Bequest of certain sum where stocks, etc., in which invested are described.

Illustration.

A bequeaths to *B*—

" 10,000 rupees of my funded property " :
" 10,000 rupees of my property now invested in shares of the Burma Oil Company " :
" 10,000 rupees, at present secured by mortgage of the Pegu factory. "

No one of these legacies is specific.

144. 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.

Bequest of stock where testator had, at date of will, equal or greater amount of stock of same kind.

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.

145. 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 has been reduced to a certain form, or remitted to a certain place.

Bequest of money where not payable until part of testator's property disposed of in certain way.

Illustration.

A beqeaths to *B* 10,000 rupees and directs that this legacy shall be paid as soon as *A*'s property in the Union of Burma shall be realized in England. The legacy is not specific.

146. 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.

When enumerated articles not deemed specifically be queathed.

Retention, in form, of specific bequest to several persons in succession.

147. 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.

(i) *A*, having a lease of a house for a term of years, fifteen 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 fifteen years *C* can take nothing under the bequest.

(ii) *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.

Sale and investment of proceeds of property bequeathed to two or more persons in succession.

148. 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 authorize or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the will.

Illustration.

A, having a lease for a term of years, bequeaths all his property to *B* for life and after *B*'s death to C. The lease must be sold, the proceeds invested as stated in this section, 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.

Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

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

CHAPTER XV.

Of Demonstrative Legacies.

Demonstrative legacy defined.

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

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this, that—

where specified property is given to the legatee, the legacy is specific;
where the legacy is directed to be paid out of specified property, it is demonstrative.

Illustrations.

(i) *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.

(ii) *A* bequeaths to B—

"ten bushels of the corn which shall grow in my field of Green Acre":

"80 chests of the indigo which shall be made at my factory at Pegu":

"10,000 rupees out of my five per cent. promissory notes of the Government of India":

an annuity of 500 rupees "from my funded property":

"1,000 rupees out of the sum of 2,000 rupees due to me by *C*":

an annuity, and directs it to be paid "out of the rents arising from my paddy lands at Henzada."

(iii) *A* bequeaths to *B*—

"10,000 rupees out of my paddy lands at Henzada" or charges it on his paddy lands at Henzada;

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

Each of these bequests is demonstrative.

Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

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

Illustration.

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

CHAPTER XVI.

Of Ademption of Legacies.

Ademption explained.

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

Illustrations.

(i) *A* bequeaths to *B*—

"the diamond ring presented to me by *C*";

"my gold chain":

"a certain bale of wool";

"a certain piece of cloth":

"all my household goods which shall be in or about my dwelling-house in M. Street in Rangoon, at the time of my death":

in his life time,—

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.

(ii) *A* bequeaths to *B*—

"the sum of 1,000 rupees in a certain chest":
"all the horses in my stable."

At the death of *A*, no money is found in the chest, and no horses in the stable. The legacies are adeemed.

(iii) *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.

153. 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.

154. 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.

(i) *A* bequeaths to *B*—

"the debt which *C* owes me":
"2,000 rupees which I have in the hands of *D*":
"the money due to me on the bond of *E*":
"my mortgage on the Pegu factory."

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

(ii) *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.

155. 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 me 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

156. If a portion of an entire fund or stock is 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.

receipt of portion of entire fund of which portion has been specifically bequeathed.

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.

157. 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, then, 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.

158. 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*—

"my capital stock of 1,000*l*. in East India Stock":

"my promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan."

A sells the stock and the notes. The legacies are adeemed.

159. Where stock which has been specifically bequeathed exists only in part 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.

160. A specfic 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.

(i) *A* bequeaths to *B* "all my household goods which shall be in or about my dwelling-house in Rangoon at the time of my death." The goods are removed from the house to save them from fire. *A* dies before they are brought back.

(ii) *A* bequeaths to *B* "all my household goods which shall be in or about my dwelling-house in Rangoon at the time of my 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.

When removal of thing bequeathed does not constitute ademption.

161. 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.

Illustrations.

(i) *A* bequeaths to *B* "all the bills, bonds and other securities for money belonging to me now lying in my lodgings in Rangoon." At the time of his death, these effects had been removed from his lodgings in Rangoon.

(ii) *A* bequeaths to *B* all his furniture then in his house in Rangoon. The testator has a house at Rangoon and another at Insein, 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 Insein.

(iii) *A* bequeaths to *B* all his goods on board a certain ship then lying in the Rangoon river. 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.

When thing bequeathed is a valuable to be received by testator from third person; and testator himself, or his representative, receives it.

162. Where a thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity which may 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; 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.

Change by operation of law of subject of specific bequest between date of will and testator's death.

163. 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.

Illustrations.

(i) *A* bequeaths to *B* "all the money which I have in the 5½ per cent. loan of the Government of India." The securities for the 5½ per cent. loan are converted during *A*'s lifetime into 5 per cent. stock.

(ii) *A* bequeaths to *B* the sum of £3,000 invested in Consols in the names of trustees for *A*. The sum of £3,000 is transferred by the trustees into *A*'s own name.

(iii) *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

164. 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 my 3 per cent. Consols." The Consols are, without *A*'s knowledge, sold by his agent, and the proceeds converted into East India Stock. This legacy is not adeemed.

165. 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.

166. 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.

CHAPTER XVII.

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

167. (*1*) 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.

(*2*) A contrary intention shall not be inferred from any direction which the will may contain for the payment of the testator's debts generally.

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

Illustrations.

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

(ii) *A* bequeaths to *B* a rubber estate 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.

168. 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.

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

(ii) *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.

169. 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, as the case may be, up to the day of his death.

Illustrations.

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 will make good 25 rupees in respect of the rent.

Exoneration of specific legatee's stock in joint stock company

170. 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 the stock, such call or payment shall, as between the testator's estate and the legatee, be borne by the estate ; but, if any call or other payment becomes due in respect of such stock after the testator's death, the same shall, as between the testator's estate and the legatee, be borne by the legatee, if he accepts the bequest.

Illustrations.

(i) *A* bequeaths to *B* his shares in a certain railway. At *A*'s death there was due from him the sum of 100 rupees in respect of each share, being the amount of a call which had been duly made, and the sum of five rupees 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.

(ii) *A* has agreed to take 50 shares in an intended joint stock company, and has contracted to pay up 100 rupees 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.

(iii) *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.

(iv) *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.

(v) *A* is the owner of ten shares in a railway company. At a meeting held during his lifetime a call is made of fifty rupees 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.

CHAPTER XVIII.

Of Bequests of Things described in General Terms.

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

Bequest of thing described in general terms.

Illustrations.

(i) *A* bequeaths to *B* a pair of carriage-horses and a diamond ring. The executor must provide the legatee with such articles if the state of the assets will allow it.

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

CHAPTER XIX.

Of Bequests of the Interest or Produce of a Fund.

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

Bequest of interest or produce of fund.

Illustrations.

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

(ii) *A* bequeaths the interest of his 5½ per cent. promissory notes of the Government of India to *B* for his life, and after his death to *C*. *B* is entitled to the interest of the notes during his life, and *C* is entitled to the notes upon *B*'s death.

(iii) *A* bequeaths to *B* the rents of his lands at *X*. *B* is entitled to the lands.

CHAPTER XX.

Of Bequests of Annuities.

173. 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, notwithstanding 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.

Annuity created by will payable for life only unless contrary intention appears by will.

Illustrations.

(i) *A* bequeaths to *B* 500 rupees a year. *B* is entitled during his life to receive the annual sum of 500 rupees.

(ii) *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.

(iii) *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.

174. 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.

(i) *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.

(ii) *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*.

Abatement of annuity.

175. 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.

Where gift of annuity and residuary gift, whole annuity to be first satisfied.

176. 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.

CHAPTER XXI.

Of Legacies to Creditors and Portioners.

Creditor *primâ facie* entitled to legacy as well as debt.

177. 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.

Child *primâ facie* entitled to legacy as well as portion.

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

Illustration.

A by articles entered into in contemplation of his marriage with *B* covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, *A* bequeaths 20,000 rupees to each of the married daughters of himself and *B*. The legatees are entitled to the benefit of this bequest in addition to their portions.

179. No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee. No ademption by subsequent provision for legatee.

Illustrations.

(i) *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.

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

CHAPTER XXII.

Of Election.

180. Where a person, 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. Circumstances in which election takes place.

181. An interest relinquished in the circumstances stated in section 180 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. Devolution of interest relinquished by owner.

182. The provisions of sections 180 and 181 apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own. Testator's belief as to his ownership immaterial.

Illustrations.

(i) The paddy land at Taikkyi 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 paddy land at Taikkyi, 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.

(ii) *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.

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

(iv) *A*, a person of the age of 18, domiciled in the Union of Burma but owning real property in England, to which *C* is heir-at-law, bequeaths a legacy to *C* and, subject to s. 2, devises and bequeaths to *B* "all my property whatsoever and wheresoever," and dies under 21. The real property in England does not pass by the will. *C* may claim his legacy without giving up the real property in England.

Bequest for man's benefit how regarded for purpose of election.

183. A bequest for a person's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Illustration.

The Moulmein rubber estate being the property of *B*, *A* bequeathed it to *C*, and bequeathed another estate called the Thatôn rubber estate 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 Moulmein rubber estate in opposition to it.

Person deriving benefit indirectly not put to election.

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

Illustration.

The lands at Thatôn are settled upon *C* for life, and after his death upon *D*, his only child. *A* bequeaths the lands at Thaton 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 at Thatôn which accrued after the death of the testator and before the death of *C*. In his individual character he retains the lands at Thatôn in opposition to the will.

Person taking in individual capacity under will may in other character elect to take in opposition.

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

Illustration.

The Thatôn rubber estate is settled upon *A* for life, and, after his death, upon *B*. *A* leaves the Thaton rubber estate 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 Thatôn rubber estate 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 provisions of last six sections.

186. Notwithstanding anything contained in sections 180 to 185, 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, then, 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 Thatôn rubber estate during her life. *A* by his will bequeaths to his wife an annuity of 200 rupees during her life, in lieu of her interest in the Thatôn rubber estate, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000 rupees. 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 rupees.

When acceptance of benefit given by will constitutes election to take under will.

187. Acceptance of a benefit given by a will constitutes an election by the legatee to take under the will, if he had 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.

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

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

Circumstances in which knowledge or waiver is presumed or inferred.

188. (*1*) 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.

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

Illustration.

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

When testator's representatives may call upon legatee to elect.

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

Postponement of election in case of disability.

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

CHAPTER XXIII.

Of Gifts in Contemplation of Death.

Property transferable by gift made in contemplation of death.

191. (*1*) A man may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by will.

(*2*) 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.

(*3*) Such a gift may be resumed by the giver, and shall not take effect if he recovers from the illness during which it was made, nor if he survives the person to whom it was made.

Illustrations.

(i) *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.

(ii) *A* being ill, and in expectation of death, delivers to *B* the key of a trunk or the key of a warehouse in which goods of bulk belonging to *A* are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of *A*'s death. *A* dies of the illness during which he delivered these articles *B* is entitled to the trunk and its contents or to *A*'s goods of bulk in the warehouse.

(iii) *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 VII.

PROTECTION OF PROPERTY OF DECEASED.

Person claiming right by succession to property of deceased may apply for relief against wrongful possession.

192. (*1*) If any person dies leaving property, moveable or immoveable, any person claiming a right by succession thereto, or to any portion thereof, may make application to the District Judge of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended.

(*2*) Any agent, relative or near friend may, in the event of any minor or any disqualified or absent person being entitled by succession to such property as aforesaid, make the like application for relief.

Inquiry made by Judge.

193. The District Judge to whom such application is made shall, in the first place, examine the applicant on oath, and may make such further inquiry, if any, as he thinks necessary as to whether there is sufficient ground for believing that the party in possession or taking forcible means for seizing possession has no lawful title, and that the applicant, or the person on whose

behalf he applies, is really entitled and is likely to be materially prejudiced if left to the ordinary remedy of a suit, and that the application is made *bonâ fide.*

Procedure.

194. If the District Judge is satisfied that there is sufficient ground for believing as aforesaid but not otherwise, he shall summon the party complained of, and give notice of vacant or disturbed possession by publication, and, after the expiration of a reasonable time, shall determine summarily the right to possession (subject to a suit as hereinafter provided) and shall deliver possession accordingly :

Provided that the Judge shall have the power to appoint an officer who shall take an inventory of effects and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the inquiry necessary for summoning the party complained of or not.

Appointment of curator pending determination of proceeding.

195. If it further appears upon such inquiry as aforesaid that danger is to be apprehended of the misappropriation or waste of the property before the summary proceeding can be determined, and that the delay in obtaining security from the party in possession or the insufficiency thereof is likely to expose the party out of possession to considerable risk, provided he is the lawful owner, the District Judge may appoint one or more curators, whose authority shall continue according to the terms of his or their respective appointments, and in no case beyond the determination of the summary proceeding and the confirmation or delivery of possession in consequence thereof :

Provided that, in case of land, the Judge may delegate to the Collector, or to any officer subordinate to the Collector, the powers of a curator :

Provided further, that every appointment of a curator in respect of any property shall be duly published.

Powers conferable on curator.

196. The District Judge may authorize the curator to take possession of the property either generally, or until security is given by the party in possession, or until inventories of the property have been made, or for any other purpose necessary for securing the property from misappropriation or waste by the party in possession :

Provided that it shall be in the discretion of the Judge to allow the party in possession to continue in such possession on giving security or not, and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories, or the securing of deeds or other effects.

Prohibition of exercise of certain powers by curators.

197. (*1*) Where a certificate has been granted under Part X or a grant of probate or letters of administration has been made, a curator appointed under this Part shall not exercise any authority lawfully belonging to the holder of the certificate or to the executor or administrator.

Payment of debts, etc., to curator.

(2) All persons who have paid debts or rents to a curator authorized by a Court to receive them shall be indemnified, and the curator shall be responsible for the payment thereof to the person who has obtained the certificate, probate or letters of administration, as the case may be.

Curator to give security and may receive remuneration.

198. (1) The District Judge shall take from the curator security for the faithful discharge of his trust, and for rendering satisfactory accounts of the same as hereinafter provided, and may authorize him to receive out of the property such remuneration, in no case exceeding five per centum on the moveable property and on the annual profits of the immoveable property, as the District Judge thinks reasonable.

(2) All surplus money realized by the curator shall be paid into Court, and invested in public securities for the benefit of the persons entitled thereto upon adjudication of the summary proceeding.

(3) Security shall be required from the curator with all reasonable despatch, and, where it is practicable, shall be taken generally to answer all cases for which the person may be afterwards appointed curator; but no delay in the taking of security shall prevent the Judge from immediately invesling the curator with the powers of his office.

Report from Collector where estate includes revenue-paying land.

199. (1) Where the estate of the deceased person consists wholly or in part of land paying revenue to Government, in all matters regarding the propriety of summoning the party in possession, of appointing a curator, or of nominating individuals to that appointment, the District Judge shall demand a report from the Collector, and the Collector shall thereupon furnish the same:

Provided that in cases of urgency the Judge may proceed, in the first instance, without such report.

(2) The Judge shall not be obliged to act in conformity with any such report, but (if he is not a Judge of the High Court) in case of his acting otherwise than according to such report, he shall immediately forward a statement of his reasons to the High Court, and the High Court, if it is dissatisfied with such reasons, shall direct the Judge to proceed conformably to the report of the Collector.

Institution and defence of suits.

200. The curator shall be subject to all orders of the District Judge regarding the institution or the defence of suits, and all suits may be instituted or defended in the name of the curator on behalf of the estate:

Provided that an express authority shall be requisite in the order of the curator's appointment for the collection of debts or rents; but such express authority shall enable the curator to give a full acquittance for any sums of money received by virtue thereof.

Allowances to apparent owners pending custody by curator.

201. Pending the custody of the property by the curator, the District Judge may make such allowances to parties having a *prima facie* right thereto as upon a summary investigation of the rights and circumstances of the parties interested he considers necessary, and may, at his discretion, take security for

the repayment thereof with interest, in the event of the party being found, upon the adjudication of the summary proceeding, not to be entitled thereto.

Accounts to be filed by curator.

202. The curator shall file monthly accounts in abstract, and shall, on the expiry of each period of three months, if his administration lasts so long, and upon giving up the possession of the property, file a detailed account of his administration to the satisfaction of the District Judge.

Inspection of accounts and right of interested party to keep duplicate.

203. (*1*) The accounts of the curator shall be open to the inspection of all parties interested ; and it shall be competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by the curator.

(2) If it is found that the accounts of the curator are in arrear, or that they are erroneous or incomplete, or if the curator does not produce them whenever he is ordered to do so by the District Judge, he shall be punishable with fine not exceeding one thousand rupees for every such default.

Bar to appointment of second curator for same property.

204. If the Judge of any district has appointed a curator in respect of the whole of the property of a deceased person, such appointment shall preclude the Judge of any other district from appointing any other curator, but the appointment of a curator in respect of a portion of the property of the deceased shall not preclude the appointment of another curator in respect of the residue or any portion thereof :

Provided that no Judge shall appoint a curator or entertain a summary proceeding in respect of property which is the subject of a summary proceeding previously instituted under this Part before another Judge :

Provided further, that if two or more curators are appointed by different Judges for several parts of an estate, the High Court may make such order as it thinks fit for the appointment of one curator of the whole property.

Limitation of time for application for curator.

205. An application under this Part to the District Judge must be made within six months of the death of the proprietor whose property is claimed by right in succession.

Bar to enforcement of Part against public settlement or legal directions by deceased.

206. Nothing in this Part shall be deemed to authorize the contravention of any public act of settlement or of any legal directions given by a deceased proprietor of any property for the possession of his property after his decease in the event of minority or otherwise, and, in every such case, as soon as the Judge having jurisdiction over the property of a deceased person is satisfied of the existence of such directions, he shall give effect thereto.

207. * * * * *

Saving of right to bring suit.

208. Nothing contained in this Part shall be any impediment to the bringing of a suit either by the party whose application may have been rejected before or after the summoning of the party in possession, or by the party who may have been evicted from the possession under this Part.

Effect of decision of summary proceeding.

209. The decision of a District Judge in a summary proceeding under this Part shall have no other effect than that of settling the actual possession; but for this purpose it shall be final, and shall not be subject to any appeal or review.

Appointment of public curators.

210. The President of the Union may appoint public curators for any district or number of districts; and the District Judge having jurisdiction shall nominate such public curators in all cases where the choice of a curator is left discretionary with him under this Part.

PART VIII.

REPRESENTATIVE TITLE TO PROPERTY OF DECEASED ON SUCCESSION.

Character and property of executor or administrator as such.

211. (*1*) 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.

(*2*) When the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, nothing herein contained shall vest in an executor or administrator any property of the deceased person which would otherwise have passed by survivorship to some other person.

Right to intestate's property.

212. (*1*) 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.

(*2*) This section shall not apply in the case of the intestacy of a Hindu, Muhammadan, Buddhist, Sikh, Jaina, or Burman or Indian Christian.

Right as executor or legatee when established.

213. (*1*) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in the Union of Burma has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed.

(2) This section shall not apply in the case of any will made by a Muhammadan, Hindu, Buddhist, Sikh or Jaina.

Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons.

214. (*1*) No Court shall—

(*a*) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effects of the deceased person or to any part thereof, or

(*b*) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt,

except on the production, by the person so claiming, of—

(i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or

(ii) a certificate granted under section 31 or section 32 of the Administrator General's Act, and having the debt mentioned therein, or

(iii) a succession certificate having the debt specified therein with effect in the Union of Burma.

(2) The word " debt " in sub-section (*1*) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

Effect on certificate of subsequent probate or letters of administration.

215. (*1*) A grant of probate or letters of administration in respect of an estate shall be deemed to supersede any certificate previously granted with effect in the Union of Burma, in respect of any debts or securities included in the estate.

(*2*) When at the time of the grant of the probate or letters any suit or other proceeding instituted by the holder of any such certificate regarding any such debt or security is pending, the person to whom the grant is made shall, on applying to the Court in which the suit or proceeding is pending, be entitled to take the place of the holder of the certificate in the suit or proceeding :

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

Grantee of probate or administration alone to sue etc., until same revoked.

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

PART IX.

PROBATE, LETTERS OF ADMINISTRATION AND ADMINISTRATION OF ASSETS OF DECEASED.

Application of Part.

217. Save as otherwise provided by this Act or by any other law for the time being in force, all grants of probate and letters of administration with the will annexed and the administration of the assets of the deceased in cases of intestate succession shall be made or carried out, as the case may be, in accordance with the provisions of this Part.

CHAPTER I.

Of Grant of Probate and Letters of Administration.

To whom administration may be

218. (*1*) If the deceased has died intestate and was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, administration

granted, where deceased is a Hindu, Muhammadan, Buddhist, Sikh, Jaina or exempted person.

of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

(*2*) When several such persons apply for such administration, it shall be in the discretion of the Court to grant it to any one or more of them.

(*3*) When no such person applies, it may be granted to a creditor of the deceased.

Where deceased is not a Hindu, Muhammadan, Buddhist, Sikh, Jaina or exempted person.

219. If the deceased has died intestate and was not a person belonging to any of the classes referred to in section 218, 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, namely :—

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

Illustrations.

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

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

(*b*) If the Judge thinks 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.

(*c*) If there is no widow, or if the Court sees cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate :

Provided that, when the mother of the deceased is one of the class of persons so entitled, she shall be solely entitled to administration.

(*d*) Those who stand in equal degree of kindred to the deceased are equally entitled to administration.

(*e*) 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.

(*f*) 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.

(*g*) Where the deceased has left property in the Union of Burma, letters of administration shall be granted according to the foregoing rules, notwithstanding that he had his domicile in a country in which the law relating to testate and intestate succession differs from the law of the Union of Burma.

220. 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.

221. 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.

222. (*1*) Probate shall be granted only to an executor appointed by the will. Probate only to appointed executor.

(*2*) The appointment may be expressed or by necessary implication.

Illustrations.

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

(ii) *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.

(iii) *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.

223. Probate cannot be granted to any person who is a minor or is of unsound mind, nor to any association of individuals unless it is a company which satisfies the conditions prescribed by rules to be made by the President of the Union in this behalf. Persons to whom probate cannot be granted.

224. When several executors are appointed, probate may be granted to them all simultaneously or at different times. Grant of probate to several executors simultaneously or at different times.

Illustration.

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*.

225. (*1*) If a codicil is discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will. Separate probate of codicil discovered after grant of probate.

(*2*) If different executors are appointed by the codicil, the probate of the will shall be revoked, and a new probate granted of the will and the codicil together.

226. 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. Accrual of representation to surviving executor.

227. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such. Effect of probate.

Administration, with copy annexed, of authenticated copy of will proved abroad.

228. When a will has been proved and deposited in a Court of competent jurisdiction situated beyond the limits of the Union of Burma, * * * * *[1] and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Grant of administration where executor has not renounced.

229. 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:

Provided 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.

Form and effect of renunciation of executorship.

230. 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.

Procedure where executor renounces or fails to accept within time limited.

231. If an executor renounces, or fails to accept an 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.

Grant of administration to universal or residuary legatees.

232. When—

(*a*) the deceased has made a will, but has not appointed an executor, or

(*b*) the deceased has appointed an executor who is legally incapable or refuses to act, or who has died before the testator or before he has proved the will, or

(*c*) 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.

Right to administration of representative of deceased residuary legatee.

233. 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.

Grant of administration where no executor, nor residuary legatee

234. 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

[1] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

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. nor representative of such legatee.

235. 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.

236. Letters of administration cannot be granted to any person who is a minor or is of unsound mind, nor to any association of individuals unless it is a company which satisfies the conditions prescribed by rules to be made by the President of the Union in this behalf. To whom administration may not be granted.

CHAPTER II.

OF LIMITED GRANTS.

Grants limited in duration.

237. When a 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 is produced. Probate of copy or draft of lost will.

238. When a 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 contents of lost or destroyed will.

239. When the will is in the possession of a person residing out of the Union of Burma, 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 is produced. Probate of copy where original exists.

240. 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 is produced. Administration until will produced.

Grants for the Use and Benefit of Others having Right.

241. When any executor is absent from the Union of Burma, and there is no executor within the Union of Burma willing to act, letters of administration, with the will annexed, may be granted to the attorney or agent of the Administration, with will annexed, to attor-

ney of absent executor.

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.

242. When any person to whom, if present, letters of administration with the will annexed, might be granted, is absent from the Union of Burma, letters of administration, with the will annexed, may be granted to his attorney or agent, limited as mentioned in section 241.

Administration to attorney of absent person entitled to administer in case of intestacy.

243. When a person entitled to administration in case of intestacy is absent from the Union of Burma, and no person equally entitled is willing to act, letters of administration may be granted to the attorney or agent of the absent person, limited as mentioned in section 241.

Administration during minority of sole executor or residuary legatee.

244. 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 may think fit until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

Administration during minority of several executors or residuary legatees.

245. 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 attained his majority.

Administration for use and benefit of lunatic or minor.

246. 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 applicable in the case of the deceased, is a minor or 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 is no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the minor or lunatic until he attains majority or becomes of sound mind, as the case may be.

Administration *pendente lite.*

247. 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.

Grants for Special Purposes.

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

249. If an executor appointed generally gives an authority to an attorney or agent 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, with will annexed, limited to particular purpose.

250. 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 beneficiary, or to some other person on his behalf. Administration limited to property in which person has beneficial interest.

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

252. 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 Union of Burma, the Court may 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 executor or administrator, and carrying the decree which may be made therein into effect. Administration limited to purpose of becoming party to suit to be brought against administrator.

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

254. (*1*) 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 is, at the time of the death of such person, resident out of the Union of Burma, and it appears 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, in Appointment, as administrator, of person other than one who in ordi-

nary circumstances would be entitled to administration.

ordinary circumstances, would be entitled to a grant of administration, the Court may, in its discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as it thinks fit to be administrator.

(2) In every such case letters of administration may be limited or not as the Court thinks fit.

Grants with Exception.

Probate or administration, with will annexed, subject to exception.

255. 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.

Administration with exception.

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

Grants of the Rest.

Probate or administration of rest.

257. Whenever a grant with exception of probate, or of 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.

Grant of Effects Unadministered.

Grant of effects unadministered.

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

Rules as to grants of effects unadministered.

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

Administration when limited grant expired and still some part of estate unadministered.

260. When a limited grant has expired by efflux 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.

CHAPTER III.

Alteration and Revocation of Grants.

What errors may be rectified by

261. 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. Court.

262. If, after the grant of letters of administration with the will annexed, a codicil is discovered, it may be added to the grant on due proof and identification, and the grant may be altered and amended accordingly. Procedure where codicil discovered after grant of administration with will annexed.

263. The grant of probate or letters of administration may be revoked or annulled for just cause. Revocation or annulment for just cause.

Explanation.—Just cause shall be deemed to exist where—

(*a*) the proceedings to obtain the grant were defective in substance ; or

(*b*) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or

(*c*) 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 ; or

(*d*) the grant has become useless and inoperative through circumstances ; or

(*e*) 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 Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations.

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

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

(iii) The will of which probate was obtained was forged or revoked.

(iv) *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.

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

(vi) Since probate was granted, a later will has been discovered.

(vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.

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

CHAPTER IV.

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

264. (*1*) The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district. Jurisdiction of District Judge in granting and revoking probates, etc.

(*2*) * * * *

Power to appoint Delegate of District Judge to deal with non-contentious cases.

265. (*1*) The High Court may 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 prescribe.

(*2*) Persons so appointed shall be called " District Delegates."

District Judge's powers as to grant of probate and administration.

266. 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 pending in his Court.

District Judge may order person to produce testamentary papers.

267. (*1*) 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.

(*2*) If it is not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined respecting the same.

(*3*) Such person shall be bound to answer truly 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 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.

(*4*) 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.

268. The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, save as hereinafter otherwise provided, be regulated, so far as the circumstances of the case permit, by the Code of Civil Procedure.

When and how District Judge to interfere for protection of property.

269. (*1*) Until probate is granted of the will of a deceased person, or an administrator of his estate is 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 thinks fit, to appoint an officer to take and keep possession of the property.

(*2*) This section shall not apply when the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, nor shall it apply to any part of the property of a Burman or Indian Christian who has died intestate.

When probate or administration may be granted by District Judge.

270. Probate of the will or letters of administration to the estate of a deceased person may be granted by a District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter provided, 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.

Disposal of application made to Judge of district in which deceased had no fixed abode.

271. 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, orlimited to the property within his own jurisdiction.

Probate and letters of administration may be granted by Delegate.

272. 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 provided, that the testator or intestate, as the case may be, at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

Conclusiveness of probate or letters of administration.

273. (*1*) Probate or letters of administration granted in the Union of Burma shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout the Union of Burma, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts and all persons delivering up such property to the person to whom such probate or letters of administration have been granted.

[1] (*2*) Probate and letters of administration granted in British India before or in proceedings commenced before the 1st April, 1937, shall, if they have effect throughout British India, under the Indian Succession Act, 1925, have effect also throughout the Union of Burma, unless otherwise directed by the grant, and shall be subject to this Act in the same manner as if granted in the Union of Burma.

India XXXIX, 1925.

Transmission to High Courts of certificates of grants of probate or letters of administration.

274. (*1*) When the High Court or District Judge has granted probate or letters of administration which, under the law for the time being in force in India or Pakistan, are to have the same effect throughout India or Pakistan as if they had been granted by a High Court or District Judge therein, the High Court or District Judge shall send a certificate to the following Courts, namely :—

(*a*) when the grant has been made by the High Court, to each of the High Courts in India or Pakistan ;

[1] This sub-section was substituted by the Burma Laws (Adaptation) Act, 1940 (Burma Act XXVII, 1940), in order to adopt the rule of interpretation made by the Government of Burma (Adaptation of Laws) Order, 1937, that mention of "this Act" or section or Part of this Act means, as respects any period before the 1st April, 1937, the Indian Succession Act, 1925 (India Act XXXIX, 1925), or the corresponding section or Part thereof. Similar provision has been made in India under the Indian Succession Act, 1925.

(*b*) when the grant has been made by a District Judge, to the High Court and to each of the High Courts in India or Pakistan.

(*2*) Every certificate referred to in sub-section (*1*) shall be made as nearly as circumstances admit in the form set forth in Schedule IV.

(*3*) Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in India or Pakistan, the Court required to send the certificate referred to in sub-section (*1*) shall send a copy thereof to such District Judge.

Conclusiveness of application for probate or administration if properly made and verified.

275. The application for probate or letters of administration, if made and verified in the manner hereinafter provided, shall be conclusive for the purpose of authorizing the grant of probate or administration ; and no such grant shall be impeached by reason only 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.

276. (*1*) Application for probate or for letters of administration, with the will annexed, 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 or, in the cases mentioned in sections 237, 238 and 239, a copy, draft, or statement of the contents thereof, annexed, and stating—

(*a*) the time of the testator's death,

(*b*) that the writing annexed is his last will and testament,

(*c*) that it was duly executed,

(*d*) the amount of assets which are likely to come to the petitioner's hands, and

(*e*) when the application is for probate, that the petitioner is the executor named in the will.

(*2*) In addition to these particulars, the petition shall further state,—

(*a*) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge ; and

(*b*) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

(*3*) * * * *

In what cases translation of will to be annexed to petition.

277. In cases wherein the will, copy or draft, 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, copy or draft is in any other language, then by any

person competent to translate the same, in which case such translation shall be verified by that person in the following manner, namely :— Verification of translation by person other than Court translator.

"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."

278. (*1*) Application for letters of administration shall be made by petition distinctly written as aforesaid and stating— Petition for letters of administration.

(*a*) the time and place of the deceased's death ;

(*b*) the family or other relatives of the deceased, and their respective residences ;

(*c*) the right in which the petitioner claims ;

(*d*) the amount of assets which are likely to come to the petitioner's hands ;

(*e*) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge ; and

(*f*) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

(*2*) * * * *

279. * * * *

280. 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, namely :— Petition for probate, etc., 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."

281. 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, namely :— 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 (*or* that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

282. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be deemed to have committed an offence under section 193 of the Penal Code. Punishment for false averment in petition or declaration.

Powers of District Judge.

283. (*1*) In all cases the District Judge or District Delegate may, if he thinks proper,—

(*a*) examine the petitioner in person, upon oath ;

(*b*) 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 ;

(*c*) 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.

(*2*) 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.

(*3*) Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of another District Judge, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued the citation.

Caveats against grant of probate or administration.

284. (*1*) Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate.

(*2*) Immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge.

(*3*) 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 had a fixed place of abode 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.

(*4*) The caveat shall be made as nearly as circumstances admit in the form set forth in Schedule V.

After entry of caveat, no proceeding taken on petition until after notice to caveator.

285. 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 District Delegate 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 may think reasonable.

District Delegate when not to grant probate or administration.

286. 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.—" Contention " means 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.

Power to transmit statement to District Judge in doubtful cases where no contention.

287. 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.

Procedure where there is contention or District Delegate thinks probate or letters of administration should be refused in his Court.

288. 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 which 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.

Grant of probate to be under seal of Court.

289. When it appears to the District Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in the form set forth in Schedule VI.

Grant of letters of administration to be under seal of Court.

290. When it appears 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 shall grant the same under the seal of his Court in the form set forth in Schedule VII.

Administration bond.

291. (*1*) Every person to whom any grant of letters of administration, other than a grant under section 241, is committed, shall give a bond to the District Judge with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge may, by general or special order, direct.

(2) When the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person—

(*a*) the exception made by sub-section (*1*) in respect of a grant under section 241 shall not operate ;

(*b*) the Dictrict Judge may demand a like bond from any person to whom probate is granted.

Assignment of administration bond.

292. 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 or their own name or names as if the same had been originally given to him or them instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustees for all persons interested, the full amount recoverable in respect of any breach thereof.

Time for grant of probate and administration.

293. 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.

294. (*1*) 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.

(*2*) The President of the Union shall make regulations for the preservation and inspection of the wills so filed.

Procedure in contentious cases.

295. 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 has appeared to oppose the grant shall be the defendant.

Surrender of revoked probate or letters of administration.

296. (*1*) 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.

(*2*) If such person wilfully and without reasonable cause omits so to deliver up the probate or letters, he shall be punishable with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to three months, or with both.

Payment to executor or administrator before probate or administration revoked.

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

Power to refuse letters of administration.

298. Notwithstanding anything hereinbefore contained, it shall, where the deceased was a Muhammadan, Buddhist or exempted person, or a Hindu, Sikh or Jaina, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

299. Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure applicable to appeals. Appeals from orders of District Judge.

300. (*1*) 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.

(*2*) * * * *

301. The High Court may, on application made to it, suspend, remove or discharge any private executor or administrator and provide for the succession of another person to the office of any such executor or administrator who may cease to hold office, and the vesting in such successor of any property belonging to the estate. Removal of executor or administrator and provision for successor.

302. Where probate or letters of administration in respect of any estate has or have been granted under this Act, the High Court may, on application made to it, give to the executor or administrator any general or special directions in regard to the estate or in regard to the administration thereof. Directions to executor or administrator.

CHAPTER V.

Of Executors of their own Wrong.

303. 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.

Exception.—(1) 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.

(2) 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.

(i) *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.

(ii) *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.

(iii) *A* sues as executor of the deceased, not being such. He is an executor of his own wrong.

Liability of executor of his own wrong.

304. When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands after deducting payments made to the rightful executor or administrator, and payments made in due course of administration.

CHAPTER VI.

Of the Powers of an Executor or Administrator.

In respect of causes of action surviving deceased and rents due at death.

305. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same power for the recovery of debts as the deceased had when living.

Demands and rights of action of or against deceased survive to and against executor or administrator.

306. 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 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.

(i) A collision takes place on a railway in consequence of some neglect or default of an official 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.

(ii) *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.

307. (*1*) Subject to the provisions of sub-section (*2*), an executor or administrator has power to dispose of the property of the deceased, vested in him under section 211, either wholly or in part, in such manner as he may think fit.

Illustrations.

(i) 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.

(ii) The executor in the exercise of his discretion mortgages a part of the immoveable estate of the deceased. The mortgage is valid

(2) If the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, the general power conferred by sub-section (*1*) shall be subject to the following restrictions and conditions, namely :—

(i) The power of an executor to dispose of immoveable property so vested in him is subject to any restriction which may be imposed in this behalf by the will appointing him, unless probate has been granted to him and the Court which granted the probate 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.

(ii) An administrator may not, without the previous permission of the Court by which the letters of administration were granted,—

(*a*) mortgage, charge or transfer by sale, gift, exchange or otherwise any immoveable property for the time being vested in him under section 211, or

(*b*) lease any such property for a term exceeding five years.

(iii) A disposal of property by an executor or administrator in contravention of clause (i) or clause (ii), as the case may be, is voidable at the instance of any other person interested in the property.

(*3*) Before any probate or letters of administration is or are granted in such a case, there shall be endorsed thereon or annexed thereto a copy of sub-section (*1*) and clauses (i) and (iii) of sub-section (*2*), or of sub-section (*1*) and clauses (ii) and (iii) of sub-section (*2*), as the case may be.

(*4*) A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by sub-section (*3*) not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorize an executor or administrator to act otherwise than in accordance with the provisions of this section.

General powers of administration.

308. An executor or administrator may, in addition to, and not in derogation of, any other powers of expenditure lawfully exercisable by him, incur expenditure—

(*a*) on such acts as may be necessary for the proper care or management of any property belonging to any estate administered by him, and

(*b*) with the sanction of the High Court, on such religious, charitable and other objects, and on such improvements, as may be reasonable and proper in the case of such property.

Commission or agency charges.

309. An executor or administrator shall not be entitled to receive or retain any commission or agency charges at a higher rate than that for the time being fixed in respect of the Administrator General by or under the Administrator General's Act.

Purchase by executor or administrator of deceased's property.

310. If any 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 exercisable by one.

311. 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.

(i) One of several executors has power to release a debt due to the deceased.

(ii) One has power to surrender a lease.

(iii) One has power to sell the property of the deceased whether moveable or immoveable.

(iv) One has power to assent to a legacy.

(v) One has power to endorse a promissory note payable to the deceased.

(vi) 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.

312. Upon the death of one or more of several executors or administrators, in the absence of any direction to the contrary in the will or grant of letters of administration, all the powers of the office become vested in the survivors or survivor,

Powers of administrator of effects unadministered.

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

Powers of administrator during minority.

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

Powers of married executrix or administratrix.

315. When a grant of probate or letters of administration has been made to a married woman, she has all the powers of an ordinary executor or administrator.

CHAPTER VII.

Of the Duties of an Executor or Administrator.

As to deceased's funeral.

316. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

Inventory and account.

317. (*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 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 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.

(*2*) The High Court may 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 Penal Code.

(*4*) The exhibition of an intentionally false inventory or accounts under this section shall be deemed to be an offence under section 193 of that Code.

Inventory to include property in any part of India or Pakistan and the Union of Burma in certain cases.

318. In all cases where a grant has been made of probate or letters of administration intended to have effect throughout the whole of India or Pakistan and the Union of Burma, the executor or administrator shall include in the inventory of the effects of the deceased all his moveable and immoveable property situate in India or Pakistan and the Union of Burma, and the value of such property situate in the Union of Burma and in each province of India or Pakistan 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 India or Pakistan and the Union of Burma.

As to property of, and debts owing to, deceased.

319. 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.

320. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, shall be paid before all debts.

Expenses to be paid next after such expenses.

321. 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, shall be paid next after the funeral expenses and death-bed charges.

Wages for certain services to be next paid, and then other debts.

322. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant shall next be paid, and then the other debts of the deceased according to their respective priorities (if any)

Save as aforesaid, all debts to be paid equally and rateably.

323. Save as aforesaid, no creditor shall have a right of priority over another ; but the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably as far as the assets of the deceased will extend.

Application of moveable property to payment of debts where domicile not

324. (*1*) If the domicile of the deceased was not in the Union of Burma, the application of his moveable property to the payment of his debts is to be regulated by the law of the Union of Burma.

(*2*) No creditor who has received payment of a part of his debt by virtue of sub-section (*1*) shall be entitled to share in the proceeds of the immoveable

in the Union of Burma.

estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

(3) This section shall not apply where the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person.

Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 5,000 rupees, and immoveable property to the value of 10,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The creditors holding instruments under seal receive half of their debts out of the proceeds of the moveable estate. The proceeds of the immoveable estate are to be applied in payment of the debts on instruments not under seal until one-half of such debts has been discharged. This will leave 5,000 rupees which are to be distributed rateably amongst all the creditors without distinction, in proportion to the amount which may remain due to them.

Debts to be paid before legacies.

325. Debts of every description must be paid before any legacy.

Executor or administrator not bound to pay legacies without indemnity.

326. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Abatement of general legacies.

327. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions, and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, or to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Non-abatement of specific legacy when assets sufficient to pay debts.

328. 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.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

329. 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.

Rateable abatement of specific legacies.

330. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Illustration.

A has bequeathed to *B* a diamond ring valued at 500 rupees, and to *C* a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator ; and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to *B*, and rupees 666-10-8 to *C*.

Legacies treated as general for purpose of abatement.

331. 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.

CHAPTER VIII.

Of Assent to a Legacy by Executor or Administrator.

Assent necessary to complete legatee's title.

332. The assent of the executor or administrator is necessary to complete a legatee's title to his legacy.

Illustrations.

(i) *A* by his will bequeaths to *B* his Government paper which is in deposit with the Imperial Bank of India. The Bank has no authority to deliver the securities, nor *B* a right to take possession of them, without the assent of the executor.

(ii) *A* by his will has bequeathed to *C* his house in Rangoon in the tenancy of *B*. *C* is not entitled to receive the rents without the assent of the executor or administrator.

Effect of executor's assent to specific legacy.

333. (*1*) The assent of the executor or administrator to a specific bequest shall be sufficient to divest his interest as executor or administrator therein, and to transfer the subject of the bequest of the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

(*2*) This assent may be verbal, and it may be either express or implied from the conduct of the executor or administrator.

Illustrations.

(i) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(ii) 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.

(iii) 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*.

(iv) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(v) 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.

Conditional assent.

334. The assent of an executor or administrator to a legacy may be conditional, and if the condition is one which he has a right to enforce, and it is not performed, there is no assent.

Illustrations.

(i) *A* bequeaths to *B* his lands at Henzada, which at the date of the will, and at the death of *A*, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest, on condition that *B* shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(ii) 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.

Assent of executor to his own legacy.

335. (*1*) When the executor or administrator 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.

(*2*) 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 or administrator.

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.

Effect of executor's assent.

336. The assent of the executor or administrator to a legacy gives effect to it from the death of the testator.

Illustrations.

(i) 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.

(ii) *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*.

Executor when to deliver legacies.

337. An executor or administrator is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor not bound to pay them before the expiration of a year.

CHAPTER IX.

Of the Payment and Apportionment of Annuities.

Commencement of annuity when no time fixed by will.

338. Where an annuity is given by a 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

339. 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 or administrator thinks fit, be paid when due, but the executor or administrator shall not be bound to pay it till the end of the year. monthly, first falls due.

340. (*1*) 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. Dates of successive payments when first payment directed to be made within a given time or on day certain; death of annuitant before date of payment.

(*2*) If the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

CHAPTER X.

Of the Investment of Funds to provide for Legacies.

341. 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 authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due. Investment of sum bequeathed where legacy, not specific, given or life.

342. (*1*) Where a general legacy is given to be paid at a future time, the executor or administrator shall invest a sum sufficient to meet it in securities of the kind mentioned in section 341. Investment of general legacy to be paid at future time; disposal of intermediate interest.

(*2*) The intermediate interest shall form part of the residue of the testator's estate.

343. 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 securities of the kind mentioned in section 341. Procedure when no fund charged with, or appropriated to annuity.

344. Where a bequest is contingent, the executor or administrator is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee, if any, on his giving sufficient security for the payment of the legacy if it shall become due. Transfer to residuary legatee of contingent bequest.

345. (*1*) 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 securities of the kind mentioned in section 341 shall be converted into money and invested in such securities. Investment of residue bequeathed for life, without direction to invest in

particular securities.

(2) This section shall not apply if the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person.

Investment of residue bequeathed for life, with direction to invest in specified securities.

346. 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.

347. Such conversion and investment as are contemplated by sections 345 and 346 shall be made at such time and in such manner as the executor or administrator thinks fit; and, until such conversion and investment are 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 at the date of the testator's death) of such part of the fund as has not been so invested:

Provided that the rate of interest prior to completion of investment shall be six per cent. per annum when the testator was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person.

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

348. (*1*) Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge, by whom or by whose District Delegate the probate was or letters of administration with the will annexed were, granted to the account of the legatee.

(*2*) * * * *

(*3*) Such payment into the Court of the District Judge shall be a sufficient discharge for the money so paid.

(*4*) Money when paid in under this section 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 may direct.

CHAPTER XI.

Of the Produce and Interest of Legacies.

Legatee's title to produce of specific legacy.

349. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(i) *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*.

(ii) *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.

(iii) The testator bequeaths all his four per cent. Government promissory notes to *A* when he shall complete the age of 18. *A*, if he completes 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 form part of the residue.

Residuary legatee's title to produce of residuary fund.

350. 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.

(i) 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*.

(ii) The testator bequeaths the residue of his property to *A* when he shall complete the age of 18. *A*, if he completes 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.

351. Where no time has been fixed for the payment of a general legacy, interest begins to run from expiration of one year from the testator's death.

Exception.—(*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.

352. 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, or unless the will contains a direction to the contrary.

Rate of interest.

353. The rate of interest shall be four per cent. per annum in all cases except when the testator was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, in which case it shall be six per cent. per annum.

No interest on arrears of annuity within first year after testator's death.

354. 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.

355. 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.

CHAPTER XII.

Of the Refunding of Legacies.

Refund of legacy paid under Court's orders.

356. When an executor or administrator has paid a legacy under the order of a Court, 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.

357. When an executor or administrator 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 has become due on performance of condition within further time allowed under section 137.

358. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor or administrator has thereupon, without fraud, distributed the assets, in such case, if further time has been allowed under section 137 for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor or administrator, but those to whom he has paid it are liable to refund the amount.

When each legatee compellable to refund in proportion.

359. When the executor or administrator has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

Distribution of assets.

360. Where an executor or administrator has given such notices as the High Court may, by any general rule, prescribe or, if no such rule has been made, as the High Court would give 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 :

Provided that 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.

361. 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 or administrator was voluntary or not. Creditor may call upon legatee to refund.

362. 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 section 361, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor. When legatee not satisfied or compelled to refund under section 361, cannot oblige one paid in full to refund.

363. 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 or administrator if he is solvent ; but if the executor or administrator is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion, When unsatisfied legatee must first proceed against executor, if solvent.

364. 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. Limit to refunding of one legatee to another.

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.

365. The refunding shall in all cases be without interest. Refunding to be without interest.

366. 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. Residue after usual payments to be paid to residuary legatee.

367. Where a person not having his domicile in the Union of Burma has died leaving assets both in the Union of Burma and in the country in which he had his domicile at the time of his death, and there has been a grant of probate or letters of administration in the Union of Burma 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 the Union of Burma, after having given such notices as are mentioned in section 360, and after having discharged, at the expiration Transfer of assets from the Union of Burma to executor or administrator in country of domicile for distribution.

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 the Union of Burma 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.

CHAPTER XIII.

Of the Liability of an Executor or Administrator for Devastation.

Liability of executor or administrator for devastation.

368. 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.

(i) The executor pays out of the estate an unfounded claim. He is liable to make good the loss.

(ii) 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.

(iii) 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.

Liability of executor or administrator for neglect to get in any part of property.

369. 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.

(i) 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.

(ii) The executor neglects to sue for a debt till the debtor is able to plead that the claim is barred by limitation and the debt is thereby lost to the estate. The executor is liable to make good the amount.

PART X.

SUCCESSION CERTIFICATES.

Restriction on grant of certificates under this Part.

370. (*1*) A succession certificate (hereinafter in this Part referred to as a certificate) shall not be granted under this Part with respect to any debt or security to which a right is required by section 212 or section 213 to be established by letters of administration or probate :

Provided that nothing contained in this section shall be deemed to prevent the grant of a certificate to any person claiming to be entitled to the effects of a deceased Burman or Indian Christian, or to any part thereof,

with respect to any debt or security, by reason that a right thereto can be established by letters of administration under this Act.

(*2*) For the purposes of this Part, " security " means—

(*a*) any promissory note, debenture, stock or other security of the Government of the Union of Burma or of any Government in India or Pakistan ;

(*b*) any bond, debenture, or annuity charged by Act of Parliament on the revenues of India or Pakistan ;

(*c*) any stock or debenture of, or share in, a company or other incorporated institution ;

(*d*) any debenture or other security for money issued by, or on behalf of, a local authority ;

(*e*) any other security which the President of the Union may, by notification in the Gazette, declare to be a security for the purposes of this Part.

Court having jurisdiction to grant certificate.

371. The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at that time he had no fixed place of residence, the District Judge within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate under this Part.

Application for certificate.

372. (*1*) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely :—

(*a*) the time of the death of the deceased ;

(*b*) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits ;

(*c*) the family or other near relatives of the deceased and their respective residences ;

(*d*) the right in which the petitioner claims ;

(*e*) the absence of any impediment under section 370, or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted ; and

(*f*) the debts and securities in respect of which the certificate is applied for.

(*2*) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence under section 198 of the Penal Code.

(*3*) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.

Proeedure on application.

373. (*1*) If the District Judge is satisfied that there is ground for entertaining the application, he shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing—

(*a*) to be served on any person to whom, in the opinion of the Judge special notice of the application should be given, and

(*b*) to be posted on some conspicuous part of the Court-house and published in such other manner, if any, as the Judge, subject to any rules made by the High Court in this behalf, thinks fit,

and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

(*2*) When the Judge decides the right thereto to belong to the applicant, the Judge shall make an order for the grant of the certificate to him.

(*3*) If the Judge cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having *prima facie* the best title thereto.

(*4*) When there are more applicants than one for a certificate, and it appears to the Judge that more than one of such applicants are interested in the estate of the deceased, the Judge may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants.

Contents of certificate.

374. When the District Judge grants a certificate, he shall therein specify the debts and securities set forth in the application for the certificate, and may thereby empower the person to whom the certificate is granted—

(*a*) to receive interest or dividends on, or

(*b*) to negotiate or transfer, or

(*c*) both to receive interest or dividends on, and to negotiate or transfer,

the securities or any of them.

Requisition of security from grantee of certificate.

375. (*1*) The District Judge shall, in any case in which he proposes to proceed under sub-section (*3*) or sub-section (*4*) of section 373, and may, in any other case, require, as a condition precedent to the granting of a certificate, that the person to whom he proposes to make the grant shall give to the Judge a bond with one or more surety or sureties, or other sufficient security, for rendering an account of debts and securities received by him and for indemnity of persons who may be entitled to the whole or any part of those debts and securities.

(*2*) The Judge may, on application made by petition and on cause shown to his satisfaction, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise, as he thinks fit, assign the bond or other security to some proper person, and that person shall thereupon be entitled to sue thereon in his own name as if it had been originally given

to him instead of to the Judge of the Court, and to recover, as trustee for all persons interested, such amount as may be recoverable thereunder.

Extension of certificate.

376. (*1*) A District Judge may, on the application of the holder of a certificate under this Part, extend the certificate to any debt or security not originally specified therein, and every such extension shall have the same effect as if the debt or security to which the certificate is extended had been originally specified therein.

(*2*) Upon the extension of a certificate, powers with respect to the receiving of interest or dividends on, or the negotiation or transfer of, any security to which the certificate has been extended may be conferred, and a bond or further bond or other security for the purposes mentioned in section 375 may be required, in the same manner as upon the original grant of a certificate.

Forms of certificate and extended certificate.

377. Certificates shall be granted and extensions of certificates shall be made, as nearly as circumstances admit, in the forms set forth in Schedule VIII.

Amendment of certificate in respect of powers as to securities.

378. Where a District Judge has not conferred on the holder of a certificate any power with respect to a security specified in the certificate, or has only empowered him to receive interest or dividends on, or to negotiate or transfer, the security, the Judge may, on application made by petition and on cause shown to his satisfaction, amend the certificate by conferring any of the powers mentioned in section 374 or by substituting any one for any other of those powers.

Mode of collecting Court-fees on certificates.

379. (*1*) Every application for a certificate or for the extension of a certificate shall be accompanied by a deposit of a sum equal to the fee payable under the Court-fees Act, in respect of the certificate or extension applied for.

(*2*) If the application is allowed, the sum deposited by the applicant shall be expended, under the direction of the Judge, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.

(*3*) Any sum received under sub-section (*1*) and not expended under sub-section (*2*) shall be refunded to the person who deposited it.

Local extent of certificate.

India XXXIX, 1925.

[1] **380.** A certificate granted under this Part in the Union of Burma or granted under the corresponding Part of the Indian Succession Act, 1925, before or in proceedings commenced before the 1st April, 1937, shall have effect throughout the whole of the Union of Burma and shall be subject to this Act in the same manner as if granted in the Union of Burma.

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[1] This section was substituted by the Burma Laws (Adaptation) Act, 1940 (Burma Act XXVII, 1940), in order to adopt the rule of interpretation made by the Government of Burma (Adaptation of Laws) Order, 1937, that mention of "this Act" or section or part of this Act means, as respects any period before the 1st April, 1937, the Indian Succession Act, 1925 (India Act XXXIX, 1925), or the corresponding section or Part thereof.

Similar provision has been made in the Indian Succession Act, 1925 (India Act XXXIX, 1925.)

Effect of certificate.

381. Subject to the provisions of this Part, the certificate of the District Judge shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of section 370, or other defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted.

Effect of certificate granted or extended by Burman representative in foreign State.

382. Where a certificate in the form, as nearly as circumstances admit, of Schedule VIII has been granted to a resident within a foreign State by the [Burman][1] representative accredited to the State, or where a certificate so granted has been extended in such form by such representative, the certificate shall, when stamped in accordance with the provisions of the Court-fees Act with respect to certificates under this Part, have the same effect in the Union of Burma as a certificate granted or extended under this Part.

Revocation of certificate.

383. A certificate granted under this Part may be revoked for any of the following causes, namely:—

(*a*) that the proceedings to obtain the certificate were defective in substance;

(*b*) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case;

(*c*) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;

(*d*) that the certificate has become useless and inoperative through circumstances;

(*e*) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

Appeal.

384. (*1*) Subject to the other provisions of this Part, an appeal shall lie to the High Court from an order of a District Judge granting, refusing, or revoking a certificate under this Part, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Judge, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted.

(*2*) An appeal under sub-section (*1*) must be preferred within the time allowed for an appeal under the Code of Civil Procedure.

(*3*) Subject to the provisions of sub-section (*1*) and to the provisions as to reference to and revision by the High Court and as to review of judgment

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

of the Code of Civil Procedure, as applied by section 141 of that Code, an order of a District Judge under this Part shall be final.

Effect on certificate of previous certificate, probate or letters of administration.

385. Save as provided by this Act, a certificate granted thereunder in respect of any of the effects of a deceased person shall be invalid if there has been a previous grant of such a certificate or of probate or letters of administration in respect of the estate of the deceased person and if such previous grant is in force.

Validation of certain payments made in good faith to holder of invalid certificate.

386. Where a certificate under this Part has been superseded or is invalid by reason of the certificate having been revoked under section 383, or by reason of the grant of a certificate to a person named in an appellate order under section 384, or by reason of a certificate having been previously granted, or for any other cause, all payments made, or dealings had, as regards debts and securities specified in the superseded or invalid certificate, to or with the holder of that certificate, in ignorance of its supersession or invalidity, shall be held good against claims under any other certificate.

Effect of decisions under this Part, and liability of holder of certificate thereunder.

387. No decision under this Part upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this Part shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto.

Investiture of inferior Courts with jurisdiction of District Court for purposes of this Part.

388. (*1*) The President of the Union may, by notification in the Gazette, invest any Court inferior in grade to a District Judge with power to exercise the functions of a District Judge under this Part.

(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Judge in the exercise of all the powers conferred by this Part upon the District Judge, and the provisions of this Part relating to the District Judge shall apply to such an inferior Court as if it were a District Judge :

Provided that an appeal from any such order of an inferior Court as is mentioned in sub-section (*1*) of section 384 shall lie to the District Judge, and not to the High Court, and that the District Judge may, if he thinks fit, by his order on the appeal make any such declaration and direction as that sub-section authorizes the High Court to make by its order on an appeal from an order of a District Judge.

(*3*) An order of a District Judge on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, as applied by section 141 of that Code, be final.

(*4*) The District Judge may withdraw any proceedings under this Part from an inferior Court, and may either himself dispose of them or transfer them

to another such Court established within the local limits of the jurisdiction of the District Judge and having authority to dispose of the proceedings.

(*5*) A notification under sub-section (*1*) may specify any inferior Court specially or any class of such Courts in any local area.

(*6*) Any civil Court which for any of the purposes of any enactment is subordinate to or subject to the control of a District Judge shall, for the purposes of this section, be deemed to be a Court inferior in grade to a District Judge.

Surrender of superseded and invalid certificates.

389. (*1*) When a certificate under this Part has been superseded or is invalid from any of the causes mentioned in section 386, the holder thereof shall, on the requisition of the Court which granted it, deliver it up to that Court.

(*2*) If he wilfully and without reasonable cause omits so to deliver it up, he shall be punishable with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to three months, or with both.

390. * * * *

PART XI.

MISCELLANEOUS.

Savings.

391. Nothing in Part VIII, Part IX or Part X shall—

(i) validate any testamentary disposition which would otherwise have been invalid ;

(ii) invalidate any such disposition which would otherwise have been valid ;

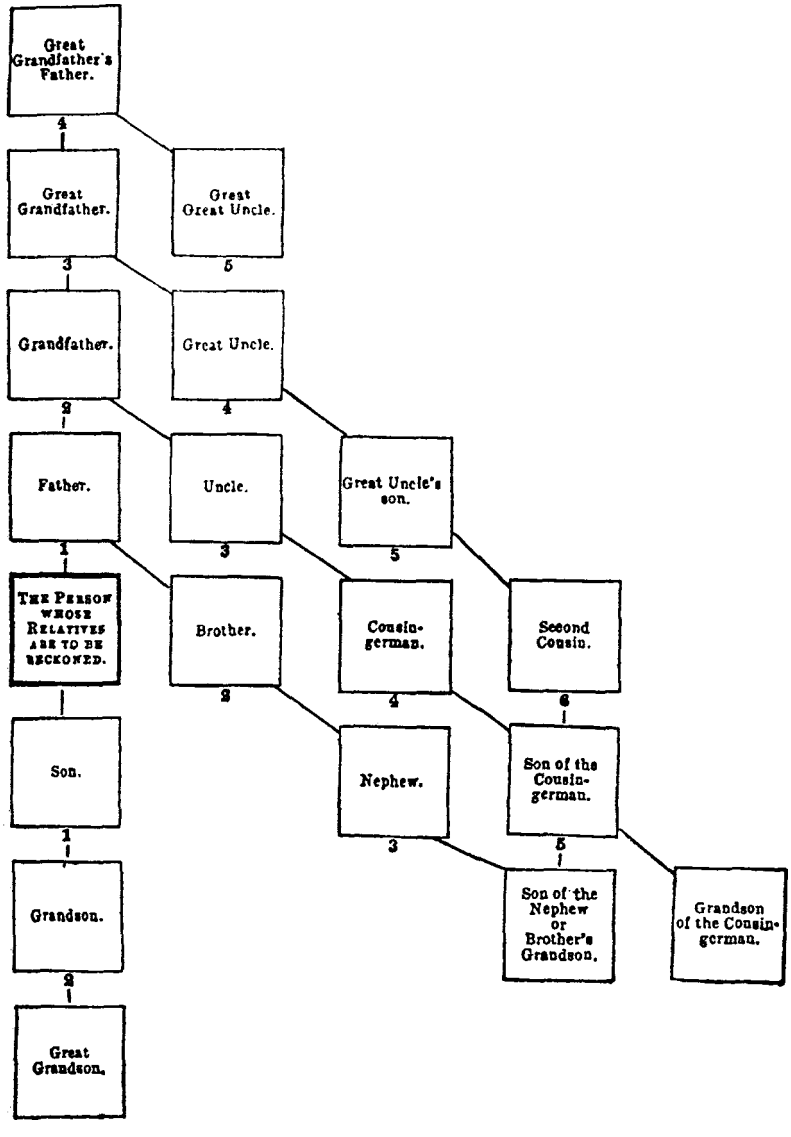
(iii) deprive any person of any right of maintenance to which he would otherwise have been entitled ; or

(iv) affect the Administrator General's Act.

SCHEDULE I.

(*See* section 28.)

TABLE OF CONSANGUINITY.



SCHEDULE II.

PART I.

(*See* section 55.)

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

(2) Grandfather and grandmother.

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

(4) Great-grandfather and great-grandmother.

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

PART II.

(*See* section 56.)

(1) Father and mother.

(2) Brothers and sisters and the lineal descendants of such of them as have predeceased the intestate.

(3) Paternal grandfather and paternal grandmother.

(4) Children of the paternal grandfather, and the lineal descendants of such of them as have predeceased the intestate.

(5) Paternal grandfather's father and mother.

(6) Paternal grandfather's father's children and the lineal descendants of such of them as have predeceased the intestate.

(7) Brothers and sisters by the mother's side and the lineal descendants of such of them as have predeceased the intestate.

(8) Maternal grandfather and maternal grandmother.

(9) Children of the maternal grandfather, and the lineal descendants of such of them as have predeceased the intestate.

(10) Son's widow, if she has not re-married at or before the death of the intestate.

(11) Brother's widow, if she has not re-married at or before the death of the intestate.

(12) Paternal grandfather's son's widow, if she has not re-married at or before the death of the intestate.

(13) Maternal grandfather's son's widow, if she has not re-married at or before the death of the intestate.

(14) Widowers of the intestate's deceased daughters if they have not re-married at or before the death of the intestate.

(15) Maternal grandfather's father and mother.

(16) Children of the maternal grandfather's father, and the lineal descendants of such of them as have predeceased the intestate.

(17) Paternal grandmother's father and mother.

(18) Children of the paternal grandmother's father, and the lineal descendants of such of them as have predeceased the intestate.

SCHEDULE III.

(*See* section 57.)

PROVISIONS OF PART VI APPLICABLE TO CERTAIN WILLS AND CODICILS DESCRIBED IN SECTION 57.

Sections 59, 61, 62, 63, 64, 68, 70, 71, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 95, 96, 98, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, and 190.

Restrictions and modifications in application of foregoing sections.

1. Nothing therein contained shall authorize a testator to bequeath property which he could not have alienated *inter vivos*, or to deprive any persons of any right of maintenance of which, but for the application of these sections, he could not deprive them by will.

2. Nothing therein contained shall authorize any Hindu, Buddhist, Sikh or Jaina to create in property any interest which he could not have created before the first day of September, 1870.

3. Nothing therein contained shall affect any law of adoption or intestate succession.

4. In applying section 70 the words "than by marriage or" shall be omitted.

5. In applying any of the following sections, namely, sections seventy-five, seventy-six, one hundred and five, one hundred and nine, one hundred and eleven, one hundred and twelve, one hundred and thirteen, one hundred and fourteen, one hundred and fifteen, and one hundred and sixteen, to such wills and codicils the words "son," "sons," "child," and "children" shall be deemed to include an adopted child; and the word "grand-children" shall be deemed to include the children, whether adopted or natural-born, of a child whether adopted or natural-born, and the expression "daughter-in-law" shall be deemed to include the wife of an adopted son.

SCHEDULE IV.

[*See* section 274 (*2*).]

FORM OF CERTIFICATE.

I, *A.B.*, Registrar (*or* as the case may be) of the High Court (*or* as the case may be) hereby certify that on the day of , the High Court (*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 the Union of Burma.

SCHEDULE V.

[*See* section 284 (*4*).]

FORM OF CAVEAT.

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 .

SCHEDULE VI.

(*See* section 289.)

FORM OF PROBATE.

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.

SCHEDULE VII.

(*See* section 290.)

FORM OF LETTERS OF ADMINISTRATION.

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.

SCHEDULE VIII.

(*See* section 377.)

FORMS OF CERTIFICATE AND EXTENDED CERTIFICATE.

In the Court of

To *A.B.*

Whereas you applied on the day of for a certificate under Part X of the Succession Act, in respect of the following debts and securities, namely :—

Debts.

Serial number.	Name of debtor.	Amount of debt, including interest, on date of application for certificate.	Description and date of instrument, if any, by which the debt is secured.

Securities.

Serial number.	Description.			Market-value of security on date of application for certificate.
	Distinguishing number or letter of security.	Name, title or class of security.	Amount or par value of security.	

This certificate is accordingly granted to you and empowers you to collect those debts [*and*] [*to receive*] [*interest*] [*dividends*] [*on*] [*to negotiate*] [*to transfer*] [*those securities*].

Dated this day of .

District Judge.

In the Court of

On the application of *A.B.* made to me on the day of I hereby extend this certificate to the following debts and securities namely :—

Debts.

Serial number.	Name of debtor.	Amount of debt, including interest, on date of application for extension.	Description and date of instrument, if any, by which the debt is secured.

Securities.

Serial number.	Description.			Market-value of security on date of application for extension.
	Distinguishing number or letter of security.	Name, title or class of security.	Amount or p ar value of security.	

This extension empowers *A.B.* to collect those debts [*and*] [*to receive*] [*interest*] [*dividends*] [*on*] [*to negotiate*] [*to transfer*] [*those securities*].

Dated this day of .

District Judge.

THE ADMINISTRATOR GENERAL'S ACT.

CONTENTS.

PART I.

PRELIMINARY.

Sections.

1. Extent.
2. Interpretation clause.

PART II.

THE OFFICE OF ADMINISTRATOR GENERAL.

3. Appointment and designation of the Administrator General.
4. Appointment and powers of Deputy Administrators General.
5. Administrator General to be a corporation sole, to have perpetual succession and official seal, and to sue and be sued in his corporate name.

PART III.

RIGHTS, POWERS, DUTIES AND LIABILITIES OF THE ADMINISTRATOR GENERAL.

(a) *Grants of Letters of Administration and Probate.*

Sections.

6. As regards Administrator General, High Court to be deemed a Court of competent jurisdiction for the purpose of granting probate or letters of administration.
7. Administrator General entitled to letters of administration, unless granted to next-of-kin.
8. Administrator General entitled to letters of administration in preference to creditor, non-universal legatee or friend.
9. When Administrator General is to administer estates of persons other than exempted persons.
10. Power to direct Administrator General to apply for administration.
11. Power to direct Administrator General to collect and hold assets until right of succession or administration is determined.
12. Grant of probate or letters of administration to person appearing in the course of proceedings taken by Administrator General under sections 9, 10 and 11.
13. Grant of administration to Administrator General in certain cases.
14. Administrator General not precluded from applying for letters within one month after death.

(b) *Estates of Persons subject to the Army Act, or the Air Force Act.*

15. Act not to affect Regimental Debts Act, 1893.
16. Letters of administration not necessary in respect of small estates administered by Administrator General in accordance with the Regimental Debts Act, 1893.
17. Power to grant Administrator General letters limited to purpose of dealing with assets in accordance with the Regimental Debts Act, 1893.

(c) *Revocation of Grants.*

18. Recall of Administrator General's administration, and grant of probate, etc., to executor or next-of-kin.
19. Cost of obtaining administration, etc., may on revocation be ordered to be paid to Administrator General out of assets.
20. After revocation, letters granted to Administrator General to be deemed as to him to have been voidable only.
21. Payments made by Administrator General prior to revocation.

(d) *General.*

Sections.

22. Administrator General's petition for grant of letters of administration.
23. Probates or letters to be granted to Administrator General by his name of office.
24. Effect of probate or letters granted to Administrator General.
25. Transfer by private executor or administrator of interest under probate or letters.
26. Distribution of assets.
27. Appointment of Official Trustee as trustee of assets after completion of administration.
28. Power for High Court to give directions regarding administration of estate.
29. No security nor oath to be required from Administrator General.
Manner in which petitions to be verified by Administrator General and his Deputy.
Entry of Administrator General not to constitute notice of a trust.
30. Power to examine on oath.

(e) *Grant of Certificates.*

31. In what case Administrator General may grant certificate.
32. Grant of certificate to creditors and power to take charge of certain estates.
33. Administrator General not bound to grant certificate unless satisfied of claimant's title, etc.
34. Effect of certificate.
35. Revocation of certificate.
36. Surrender of revoked certificate.
37. Administrator General not bound to take out administration on account of assets for which he has granted certificate.
38. Transfer of certain assets from the Union of Burma to executor or administrator in country of domicile for distribution.

(f) *Liability.*

39. Liability of Government.
40. Creditors' suits against Administrator General.
41. Notice of suit not required in certain cases.

PART IV.

FEES.

42. Fees.
43. Disposal of fees.

PART V.

AUDIT OF THE ADMINISTRATOR GENERAL'S ACCOUNTS.

Sections.

44. Audit of Administrator General's accounts.
45. Auditors to examine accounts and report to President.
46. Power of auditors to summon and examine witnesses and to call for documents.
47. Costs of audit, etc.

PART VI.

MISCELLANEOUS.

48. General powers of administration.
49. Power of person beneficially interested to inspect Administrator General's accounts, etc., and take copies.
50. Power to make rules.
51. False evidence.
52. Assets unclaimed for twelve years to be transferred to Government.
53. Mode of proceeding by claimant to recover principal money so transferred.
54. District Judge in certain cases to take charge of property of deceased persons, and to report to Administrator General.
55. Succession Act and Burma Companies Act not to affect Administrator General and saving of provisions of Rangoon Police Act as to petty estates.
56. Order of Court to be equivalent to decree.
57. Provision for administration by Consular Officer in certain circumstances of foreign subject.
58. * * * *
59. Saving of provisions of the Registration Act.

THE ADMINISTRATOR GENERAL'S ACT.

[INDIA ACT III. 1913.] (1st April, 1914.)

PART I.

PRELIMINARY.

[1]1. * * * *

Interpretation clause.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "assets" means all the property, moveable and immoveable, of a deceased person, which is chargeable with and applicable to, the payment of his debts and legacies, or available for distribution among his heirs and next-of-kin ;

[1] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

India X, 1865.

(2) " exempted person " means a Burman or Indian Christian, a Hindu, Muhammadan, Parsi or Buddhist, or a person exempted under section 332 of the Indian Succession Act, 1865, [1] from the operation of that Act ;

(3) * * * *

(4) " Burman or Indian Christian " means a native of the Union of Burma or India or Pakistan who is or in good faith claims to be of unmixed Asiatic descent, and who professes any form of the Christian religion ;

(5) " letters of administration " includes any letters of administration, whether general or with a copy of the will annexed, or limited in time or otherwise ;

(6) " next-of-kin " includes a widower or widow of a deceased person, or any other person who by law would be entitled to letters of administration in preference to a creditor or legatee of the deceased ;

(7) * * * *

(8) " prescribed " means prescribed by rules under this Act.

(9) (11) * * * *

PART II.

THE OFFICE OF ADMINISTRATOR GENERAL.

Appointment and designation of the Administrator General.

3. (*1*) The President of the Union shall appoint an Administrator General.

(*2*) No person shall be appointed to the office of Administrator General who is not—

(*a*) a Barrister, or

(*b*) an Advocate of the High Court.

Appointment and powers of Deputy Administrators General.

4. The President of the Union may appoint a Deputy or Deputies to assist the Administrator General ; and any Deputy so appointed shall, subject to the control of the President of the Union and the general or special orders of the Administrator General, be competent to discharge any of the duties and to exercise any of the powers of the Administrator General, and when discharging such duties or exercising such powers shall have the same privileges and be subject to the same liabilities as the Administrator General.

Administrator General to be a corporation sole, to have perpetual succession and official seal and to sue and be sued in his corporate name.

5. The Administrator General shall be a corporation sole by the name of the Administrator General of the Union of Burma and, as such Administrator General, shall have perpetual succession and an official seal, and may sue and be sued in his corporate name.

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[1] *See* now section 3 of the Succession Act, *ante*.

PART III.

RIGHTS, POWERS, DUTIES AND LIABILITIES OF THE ADMINISTRATOR GENERAL.

(a) *Grants of Letters of Administration and Probate.*

As regards Administrator General, High Court to be deemed a Court of competent jurisdiction for the purpose of granting probate or letters of administration.

6. So far as regards the Administrator General, the High Court shall be deemed to be a Court of competent jurisdiction for the purpose of granting probate or letters of administration under any law for the time being in force wheresoever the estate to be administered is situate.

Administrator General entitled to letters of admtnistration, unless granted to next-of-kin.

7. Any letters of administration which are granted by the High Court shall be granted to the Administrator General unless they are granted to the next-of-kin of the deceased.

Administrator General entitled to letters of administration in preference to creditor, non-universal legatee or friend.

8. The Administrator General shall be deemed by all the Courts to have a right to letters of administration other than letters *pendente lite* in preference to that of—

(*a*) a creditor, or
(*b*) a legatee other than an universal legatee, or
(*c*) a friend of the deceased.

When Administrator General is to administer estates of persons other than exempted persons.

9. If any person, not being an exempted person, has died leaving in the Union of Burma assets exceeding the value of two thousand rupees, and if no person to whom any Court would have jurisdiction to commit administration of such assets has, within one month after his death, applied in the Union of Burma for probate of his will, or for letters of administration of his estate, the Administrator General shall, subject to any rules made by the President of the Union, within a reasonable time after he has had notice of the death of such person, and of his having left assets, take such proceedings as may be necessary to obtain from the High Court letters of administration of the estate of such person.

Power to direct Administrator General to apply for administration.

10. Whenever any person has died leaving assets within the local limits of the ordinary original civil jurisdiction of the High Court, the Court, on being satisfied that danger is to be apprehended of misappropriation, deterioration or waste of such assets unless letters of administration of the estate of such person are granted, may, upon the application of the Administrator General or of any person interested in such assets or in the due administration thereof, make an order, upon such terms as to indemnifying the Administrator General against costs and other expenses as the Court thinks fit, directing the Administrator General to apply for letters of administration of the estate of such person:

Provided that, in the case of an application being made under this section for letters of administration of the estate of an exempted person, the Court may refuse to grant letters of administration if it is satisfied that such grant is unnecessary for the protection of the assets; and in such case the Court shall make such order as to the costs of the application as it thinks fit.

Power to direct Administrator General to collect and hold assets until right of succession or administration is determined.

11. (*1*) Whenever any person has died leaving assets within the local limits of the ordinary original civil jurisdiction of the High Court, and such Court is satisfied that there is no person immediately available, who is legally entitled to the succession to such assets, or that danger is to be apprehended of misappropriation, deterioration or waste of such assets, before it can be determined who may be legally entitled to the succession thereto, or whether the Administrator General is entitled to letters of administration of the estate of such deceased person, the Court may, upon the application of the Administrator General or of any person interested in such assets, or in the due administration thereof, forthwith direct the Administrator General to collect and take possession of such assets, and to hold, deposit, realize, sell or invest the same according to the directions of the Court, and in default of any such directions according to the provisions of this Act so far as the same are applicable to such assets.

(*2*) Any order of the Court made under the provisions of this section shall entitle the Administrator General—

(*a*) to maintain any suit or proceeding for the recovery of such assets, and

(*b*) if he thinks fit, to apply for letters of administration of the estate of such deceased person, and

(*c*) to retain out of the assets of the estate any fees chargeable under rules made under this Act, and to reimburse himself for all payments made by him in respect of such assets which a private administrator might lawfully have made.

Grant of probate or letters of administration to person appearing in the course of proceedings taken by

12. If, in the course of proceedings to obtain letters of administration under the provisions of section 9, section 10 or section 11, any person appears and establishes his claim—

(*a*) to probate of the will of the deceased, or

(*b*) to letters of administration as next-of-kin of the deceased, and gives such security as may be required of him by law,

Administrator General under sections 9, 10 and 11.

the Court shall grant probate of the will or letters of administration accordingly, and shall award to the Administrator General the costs of any proceedings taken by him under those sections to be paid out of the estate as part of the testamentary or intestate expenses thereof.

Grant of administration to Administrator General in certain cases.

13. If, in the course of proceedings to obtain letters of administration under the provisions of section 9, section 10 or section 11, no person appears and establishes his claim to probate of a will, or to a grant of letters of administration as next-of kin of the deceased, within such period as to the Court seems reasonable, or if a person who has established his claim to a grant of letters of administration as next-of-kin of the deceased fails to give such security as may be required of him by law, the Court may grant letters of administration to the Administrator General.

Administrator General not precluded from applying for letters within one month after death.

14. Nothing in this Act shall be deemed to preclude the Administrator General from applying to the Court for letters of administration in any case within the period of one month from the death of the deceased.

(b) *Estates of Persons subject to the Army Act or the Air Force Act.*

Act not to affect Regimental Debts Act, 1893.

15. Nothing in this Act shall be deemed to affect the provisions of the Regimental Debts Act, 1893, [which Act is hereby declared to apply to persons subject to that Act, if any, in the Union of Burma].[1] 55 & 56 Vict. c. 57.

Letters of administration not necessary in respect of small estates administered by Administrator General in accordance with the Regimental Debts Act, 1893.

16. It shall not be necessary for the Administrator General to take out letters of administration of the estate of any deceased person which is being administered by him in accordance with the provisions of the Regimental Debts Act, 1893, if the value of such estate does not on the date when such administration is committed to him exceed rupees one thousand, but he shall have the same power in regard to such estate as he would have had if letters of administration had been granted to him. 55 & 56 Vict. c. 57.

Power to grant Administrator General letters limited to purpose of

17. If the Administrator General applies in accordance with the provisions of the Regimental Debts Act, 1893, for letters of administration of the estate of any person subject to the Army Act or the Air Force Act, the 55 & 56 Vict. c. 57.

[1] The words within brackets were inserted by the Union of Burma (Adaptation of Laws) Order, 1948.

Court may grant to him letters of administration limited to the purpose of dealing with such estate in accordance with the provisions of the Regimental Debts Act, 1893.

dealing with assets in accordance with the Regimental Debts Act, 1893.

(c) *Revocation of Grants.*

18. If an executor or next-of-kin of the deceased, who has not been personally served with a citation or who has not had notice thereof in time to appear pursuant thereto, establishes to the satisfaction of the Court a claim to probate of a will or to letters of administration in preference to the Administrator General, any letters of administration granted in accordance with the provisions of this Act to the Administrator General may be revoked and probate or letters of administration may be granted to such executor or next-of-kin as the case may be :

Recall of Administrator General's administration, and grant of probate, etc., to executor or next-of-kin.

Provided that no letters of administration granted to the Administrator General shall be revoked for the cause aforesaid, except in cases in which a will of the deceased is proved in the Union of Burma, unless the application for that purpose is made within six months after the grant to the Administrator General and the Court is satisfied that there has been no unreasonable delay in making the application, or in transmitting the authority under which the application is made.

19. If any letters of administration granted to the Administrator General in accordance with the provisions of this Act are revoked the Court, may order the costs of obtaining such letters of administration, and the whole or any part of any fees which would otherwise have been payable under this Act, together with the costs of the Administrator General in any proceedings taken to obtain such revocation, to be paid to or retained by the Administrator General out of the estate :

Cost of obtaining administration, etc., may, on revocation, be ordered to be paid to Administrator General out of assets.

Provided that nothing in this section shall affect the provisions of clause (*c*) of sub-section (*2*) of section 11.

20. If any letters of administration granted to the Administrator General in accordance with the provisions of this Act are revoked, the same shall, so far as regards the Administrator General and all persons acting under his authority in pursuance thereof, be deemed to have been only voidable, except as to any act done by any such Administrator General or other person as aforesaid after notice of a will or of any other fact which would render such letters void :

After revocation, letters granted to Administrator General to be deemed as to him to have been voidable only.

Provided that no notice of a will or of any other fact which would render any such letter void shall affect the Administrator General or any person acting under his authority in pursuance of such letters unless, within the

period of one month from the time of giving such notice, proceedings are commenced to prove the will, or to cause the letters to be revoked, and such proceedings are prosecuted without unreasonable delay.

Payments made by Administrator General prior to revocation.

21. If any letters of administration granted to the Administrator General in accordance with the provisions of this Act are revoked, upon the grant of probate of a will or upon the grant of letters of administration with a copy of the will annexed, all payments made or acts done by or under the authority of the Administrator General in pursuance of such letters of administration, prior to the revocation, which would have been valid under any letters of administration lawfully granted to him with a copy of such will annexed, shall be deemed valid notwithstanding such revocation.

(d) *General.*

Administrator General's petition for grant of letters of administration.

22. Whenever the Administrator General applies for letters of administration in accordance with the provisions of this Act, it shall be sufficient if the petition required to be presented for the grant of such letters states,

(i) the time and place of the death of the deceased to the best of the knowledge and belief of the petitioner,

(ii) the names and addresses of the surviving next-of-kin of the deceased if known,

(iii) the particulars and value of the assets likely to come into the hands of the petitioner,

(iv) particulars of the liabilities of the estate if known.

Probates or letters to be granted to Administrator General by his name of office.

23. All probates or letters of administration granted to the Administrator General shall be granted to him by the name of the Administrator General of the Union of Burma.

Effect of probate or letters granted to Administrator General.

24. Probate or letters of administration granted by the High Court to the Administrator General shall have effect over all the assets of the deceased throughout the Union of Burma, and shall be conclusive as to the representative title against all debtors of the deceased and all persons holding such assets, and shall afford full indemnity to all debtors paying their debts and all persons delivering up such assets to such Administrator General.

[1] A grant made by any High Court in British India to an Administrator General before the separation of Burma and India shall have the same effect for the purposes of this section as it would have had if the separation had not taken place.

[1] The Administrator General's Act of India (India Act III, 1913) contains a reciprocal provision as respects grants made by the Rangoon High Court.

Transfer by private executor or administrator of interest under probate or letters.

25. (*1*) Any private executor or administrator may, with the previous consent of the Administrator General by an instrument in writing under his hand notified in the Gazette, transfer the assets of the estate in the Union of Burma vested in him by virtue of such probate or letters to the Administrator General by that name or any other sufficient description.

(*2*) As from the date of such transfer the transferor shall be exempt from all liability as such executor or administrator, as the case may be, except in respect of acts done before the date of such transfer, and the Administrator General shall have the rights which he would have had, and be subject to the liabilities to which he would have been subject, if the probate or letters of administration, as the case may be, had been granted to him by that name at the date of such transfer.

Distribution of assets.

26. (*1*) When the Administrator General has given the prescribed notice 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 has notice of.

(*2*) He shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution.

(*3*) No notice of any claim which has been sent in and has been rejected or disallowed in part by the Administrator General shall affect him unless proceedings to enforce such claim are commenced within one month after notice of the rejection or disallowance of such claim has been given in the prescribed manner and unless such proceedings are prosecuted without unreasonable delay.

(*4*) Nothing in this section shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively.

(*5*) In computing the period of limitation for any suit, appeal or application under the provisions of any law for the time being in force, the period between the date of submission of the claim of a creditor to the Administrator General and the date of the final decision of the Administrator General on such claim shall be excluded.

Appointment of Official Trustee as trustee of assets after completion of administration.

27. (*1*) When the Administrator General has, so far as may be, discharged all the liabilities of an estate administered by him, he shall notify the fact in the Gazette, and he may, by an instrument in writing, with the consent of the Official Trustee and subject to any rules made by the President of the Union, appoint the Official Trustee to be the trustee of any assets then remaining in his hands.

(*2*) Upon such appointment such assets shall vest in the Official Trustee as if he had been appointed trustee in accordance with the provisions of the Official Trustees Act, and shall be held by him upon the same trusts as the same were held immediately before such appointment.

Power for High Court to give directions regarding administration of estate.

28. (*1*) The High Court may, on application made to it, give to the Administrator General any general or special directions as to any estate in his charge or in regard to the administration of any such estate.

(*2*) Applications under sub-section (*1*) may be made by the Administrator General or any person interested in the assets or in the due administration thereof.

No security nor oath to be required from Administrator General.

29. (*1*) The Administrator General shall not be required by any Court to enter into any administration-bond, or to give other security to the Court, on the grant of any letters of administration to him by that name.

Manner in which petitions to be verified by Administrator General and his Deputy.

(*2*) Neither the Administrator General nor the Deputy Administrator General shall be required to verify, otherwise than by his signature, any petition presented by him under the provisions of this Act, and, if the facts stated in any such petition are not within the Administrator General's own personal knowledge, the petition may be subscribed and verified by any person competent to make the verification.

Entry of Administrator General not to constitute notice of a trust.

(*3*) The entry of the Administrator General by that name in the books of a company shall not constitute notice of a trust, and a company shall not be entitled to object to enter the name of the Administrator General on its register by reason only that the Administrator General is a corporation, and in dealing with assets the fact that the person dealt with is the Administrator General shall not of itself constitute notice of a trust.

Power to examine on oath.

30. The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath (which he is hereby authorized to administer) any person who is willing to be so examined by him regarding such question.

(e) *Grant of Certificates.*

In what case Administrator General may grant certificate.

31. Whenever any person has died leaving assets in the Union of Burma, and the Administrator General is satisfied that such assets, excluding any sum of money deposited in a Government Savings Bank, or in any provident fund to which the provisions of the Provident Funds Act apply, did not at the date of death exceed in the whole two thousand rupees in value, he may, after the lapse of one month from the death if he thinks fit, or before the lapse of the said month if he is requested so to do by writing under the hand of the executor or the widow or other person entitled to administer the estate of the deceased, grant to any person claiming otherwise than as a creditor to be interested in such assets, or in the due administration thereof, a certificate under his hand entitling the claimant to receive the assets therein mentioned left by

the deceased in the Union of Burma to a value not exceeding in the whole two thousand rupees :

Provided that no certificate shall be granted under this section—

(i) where probate of the deceased's will or letters of administration of his estate has or have been granted, or

(ii) in respect of any sum of money deposited in a Government Savings Bank or in any provident fund to which the provisions of the Provident Funds Act apply.

Grant of certificate to creditors and power to take charge of certain estates.

32. If, in cases falling within section 31, no person claiming to be interested otherwise than as a creditor in such assets or in the due administration thereof obtains, within three months of the death of the deceased, a certificate from the Administrator General under the same section, or probate of a will or letters of administration of the estate of the deceased, and such deceased was not an exempted person, or was an exempted person who has left assets within the ordinary original civil jurisdiction of the High Court, or within any area notified by the President of the Union in this behalf in the Gazette, the Administrator General may administer the estate without letters of administration, in the same manner as if such letters had been granted to him ; and if he neglects or refuses to administer such estate, he shall, upon the application of a creditor, grant a certificate to him in the same manner as if he were interested in such assets otherwise than as a creditor, and such certificate shall have the same effect as a certificate granted under the provisions of section 31, and shall be subject to all the provisions of this Act which are applicable to such certificate :

Provided that the Administrator General may, before granting such certificate, if he thinks fit, require the creditor to give reasonable security for the due administration of the estate of the deceased.

Administrator General not bound to grant certificate unless satisfied of claimant's title, etc.

33. The Administrator General shall not be bound to grant any certificate under section 31 or section 32 unless he is satisfied of the title of the claimant and of the value of the assets left by the deceased in the Union of Burma, either by the oath of the claimant or by such other evidence as he requires.

Effect of certificate.

34. The holder of a certificate granted in accordance with the provisions of section 31 or section 32 shall have in respect of the assets specified in such certificate the same powers and duties, and be subject to the same liabilities, as he would have had or been subject to if letters of administration had been granted to him :

Provided that nothing in this section shall be deemed to require any person holding such certificate,

(*a*) to file accounts or inventories of the assets of the deceased before any Court or other authority, or

(*b*) save as provided in section 32 to give any bond for the due administration of the estate.

Revocation of certificate.

35. The Administrator General may revoke a certificate granted under the provisions of section 31 or section 32 on any of the following grounds, namely :—

(i) that the certificate was obtained by fraud or misrepresentation made to him,

(ii) that the certificate was obtained by means of an untrue allegation of a fact essential in law to justify the grant though such allegation was made in ignorance or inadvertently.

Surrender of revoked certificate.

36. (*1*) When a certificate is revoked in accordance with the provisions of section 35, the holder thereof shall, on the requisition of the Administrator General, deliver it up to the Administrator General, but shall not be entitled to the refund of any fee paid thereon.

(2) If such person wilfully and without reasonable cause omits to deliver up the certificate he shall be punishable with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

Administrator General not bound to take out administration on account of assets for which he has granted certificate.

37. The Administrator General shall not be bound to take out letters of administration of the estate of any deceased person on account of the assets in respect of which he grants any certificate, under section 31 or section 32, but he may do so if he revokes such certificate under section 35 or ascertains that the value of the estate exceeded two thousand rupees.

Transfer of certain assets from the Union of Burma to executor or administrator in country of domicile for distribution.

38. Where a person not having his domicile in the Union of Burma has died leaving assets in the Union of Burma and in the country in which he had his domicile at the time of his death, and proceedings for the administration of his estate with respect to assets in the Union of Burma have been taken under section 31 or section 32, and there has been a grant of administration in the country of domicile with respect to the assets in that country, the holder of the certificate granted under section 31 or section 32, or the Administrator General, as the case may be, after having given the prescribed notice for creditors and others to send in to him their claims against the estate of the deceased, and after having discharged, at the expiration of the time therein named, such lawful claims as he has notice of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of the Union of Burma 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.

(f) *Liability.*

Liability of Government.

39. (*1*) The revenues of the Union of Burma shall be liable to make good all sums required to discharge any liability which the Administrator General, if he were a private administrator, would be personally liable to discharge, except when the liability is one to which neither the Administrator General nor any of his officers has in any way contributed, or which neither he nor any of his officers could by the exercise of reasonable diligence have averted, and in either of those cases the Administrator General shall not, nor shall the revenues of the Union of Burma, be subject to any liability.

(*2*) * * * *

Creditor's suits against Administrator General.

40. (*1*) If any suit be brought by a creditor against the Administrator General, such creditor shall be liable to pay the costs of the suit unless he proves that not less than one month previous to the institution of the suit he had applied in writing to the Administrator General, stating the amount and other particulars of his claim, and had given such evidence in support thereof as, in the circumstances of the case, the Administrator General was reasonably entitled to require.

(*2*) If any such suit is decreed in favour of the creditor, he shall, nevertheless, unless he is a secured creditor, be only entitled to payment out of the assets of the deceased equally and rateably with the other creditors.

Notice of suit not required in certain cases.

41. Nothing in section 80 of the Code of Civil Procedure shall apply to any suit against the Administrator General in which no relief is claimed against him personally.

PART IV.

FEES.

Fees.

42. (*1*) There shall be charged in respect of the duties of the Administrator General such fees, whether by way of percentage or otherwise, as may be prescribed by the President of the Union :

55 & 56 Vict., c. 56.

Provided that, in respect of the duties of the Administrator General under the Regimental Debts Act, 1893, the fees prescribed in this section shall be determined in accordance with the provisions of that Act.

(*2*) The fees under this section may be at different rates for different estates or classes of estates or for different duties, and shall, so far as may be, be arranged so as to produce an amount sufficient to discharge the salaries and all other expenses incidental to the working of this Act (including such sum as the President of the Union may determine to be required to insure the revenues of the Union of Burma against loss under this Act).

Disposal of fees.

43. (*1*) Any expenses which might be retained or paid out of any estate in the charge of the Administrator General, if he were a private administrator of such estate, shall be so retained or paid, and the fees prescribed under

section 42 shall be retained or paid in like manner as and in addition to such expenses.

(*2*) The Administrator General shall transfer and pay to such authority, in such manner and at such time as the President of the Union may prescribe, all fees received by him under this Act, and the same shall be carried to the account and credit of the Government.

PART V.

AUDIT OF THE ADMINISTRATOR GENERAL'S ACCOUNTS.

Audit of the Administrator-General's accounts.

44. The accounts of the Administrator-General shall be audited at least once annually, and at any other time if the President of the Union so direct, by the prescribed person and in the prescribed manner.

Auditors to examine accounts and report to President.

45. The auditors shall examine the accounts and forward to the President of the Union a statement thereof in the prescribed form, together with a report thereon and a certificate signed by them showing,

[1] (*a*) whether the accounts have been audited in the prescribed manner,

[2] (*aa*) whether, so far as can be ascertained by such audit, the accounts contained a full and true account of everything which ought to be inserted therein,

(*b*) whether the books which by any rules made under this Act are directed to be kept by the Administrator General have been duly and regularly kept, and

(*c*) whether the assets and securities have been duly kept and invested and deposited in the manner prescribed by this Act, or by any rules made thereunder,

or (as the case may be) that such accounts are deficient, or that the Administrator General has failed to comply with this Act or the rules made thereunder, in such respects as may be specified in such certificate.

Power of auditors to summon and examine witnesses, and to call for documents.

46. (*1*) Every auditor shall have the powers of a civil Court under the Code of Civil Procedure,

(*a*) to summon any person whose presence he thinks necessary to attend him from time to time ; and

(*b*) to examine any person on oath to be by him administered ; and

(*c*) to issue a commission for the examination on interrogatories or otherwise of any persons ; and

(*d*) to summon any person to produce any document or thing the production of which appears to be necessary for the purpose of such audit or examination.

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[1] Substituted by Act XXI, 1948.

[2] Inserted *ibid.*

(*2*) Any person who when summoned refuses, or without reasonable cause neglects, to attend or to produce any document or thing, or attends and refuses to be sworn, or to be examined, shall be deemed to have committed an offence within the meaning of, and punishable under, section 188 of the Penal Code, and the auditor shall report every case of such refusal or neglect to the President of the Union.

Costs of audit, etc.

47. The costs of and incidental to such audit and examination shall be determined in accordance with rules made by the President of the Union, and shall be defrayed in the prescribed manner.

PART VI.

MISCELLANEOUS.

General powers of administration.

48. The Administrator General may, in addition to and not in derogation of, any other powers of expenditure lawfully exercisable by him, incur expenditure—

(*a*) on such acts as may be necessary for the proper care and management of any property belonging to any estate in his charge, and

(*b*) with the sanction of the High Court on such religious, charitable and other objects, and on such improvements as may be reasonable and proper in the case of such property.

Power of person beneficially interested to inspect Administrator General's accounts, etc., and take copies.

49. Any person interested in the administration of any estate which is in the charge of the Administrator General shall, subject to such conditions and restrictions as may be prescribed, be entitled at all reasonable times to inspect the accounts relating to such estate and the reports and certificates of the auditor, and, on payment of the prescribed fee, to copies thereof and extracts therefrom.

Power to make rules.

50. (*1*) The President of the Union shall make rules for carrying into effect the objects of this Act and for regulating the proceedings of the Administrator General.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the accounts to be kept by the Administrator General and the audit and inspection thereof;

(*b*) the safe custody, deposit and investment of assets and securities which come into the hands of the Administrator General;

(*c*) the remittance of sums of money in the hands of the Administrator General in cases in which such remittances are required;

(*d*) subject to the provisions of this Act, the fees to be paid under this Act, and the collection and accounting for any such fees ;

(*e*) the statements, schedules and other documents to be submitted to the President of the Union or to any other authority by the Administrator General and the publication of such statements, schedules or other documents ;

(*f*) the realization of the cost of preparing any such statements, schedules or other such documents ;

(*g*) the manner in which and the person by whom the costs of and incidental to any audit under the provisions of this Act are to be determined and defrayed ;

(*h*) the manner in which summonses issued under the provisions of section 46 are to be served, and the payment of the expenses of any persons summoned or examined under the provisions of this Act and of any expenditure incidental to such examination ; and

(*i*) any matter in this Act directed to be prescribed.

(*3*) All rules made under this Act shall be published in the Gazette and, on such publication, shall have effect as if enacted in this Act.

False evidence.

51. Whoever, during any examination authorized by this Act, makes upon oath a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

Assets unclaimed for twelve years to be transferred to Government.

52. All assets in the charge of the Administrator General which have been in his custody for a period of twelve years or upwards without any application for payment thereof having been made and granted by him shall be transferred, in the prescribed manner, to the account and credit of the Government :

Provided that this section shall not authorize the transfer of any such assets as aforesaid if any suit or proceeding is pending in respect thereof in any Court.

Mode of proceeding by claimant to recover principal money so transferred.

53. (*1*) If any claim is hereafter made to any part of the assets transferred to the account and credit of the Government under the provisions of this Act and if such claim is established to the satisfaction of the prescribed authority, the Government shall pay to the claimant the amount of the principal so transferred to its account and credit or so much thereof as appears to be due to the claimant.

(*2*) If the claim is not established to the satisfaction of the prescribed authority, the claimant may, without prejudice to his right to take any other proceedings for the recovery of such assets, apply by petition to the High Court against the Government, and such Court, after taking such evidence as it thinks fit, shall make such order in regard to the payment of the whole or

any part of the said principal sum as it thinks fit, and such order shall be binding on all parties to the proceeding :

Provided that nothing in this section affects any option afforded to a claimant [by any other law in force].[1]

(3) The Court may further direct by whom the whole or any part of the costs of each party shall be paid.

District Judge in certain cases to take charge of property of deceased persons, and to report to Administrator General.

54. (*1*) Whenever any person, other than an exempted person, dies leaving assets within the limits of the jurisdiction of a District Judge, the District Judge shall report the circumstance without delay to the Administrator General, stating the following particulars so far as they may be known to him :—

(*a*) the amount and nature of the assets,

(*b*) whether or not the deceased left a will and, if so, in whose custody it is,

(*c*) the names and addresses of the surviving next-of-kin of the deceased,

and, on the lapse of one month from the date of the death,

(*d*) whether or not any one has applied for probate of the will of the deceased or letters of administration of his estate.

(2) The District Judge shall retain the assets under his charge, or appoint an officer under the provisions of section 269 of the Succession Act to take and keep possession of the same, until the Administrator General has obtained letters of administration, or until some other person has obtained probate or such letters or a certificate from the Administrator General under the provisions of this Act, when the assets shall be delivered over to the holder of such probate, letters of administration or certificate :

Provided that the District Judge may, if he thinks fit, sell any assets which are subject to speedy and natural decay, or which for any other sufficient cause he thinks should be sold, and he shall thereupon credit the proceeds of such sale to the estate.

(*3*) The District Judge may cause to be paid out of any assets of which he or such officer has charge, or out of the proceeds of such assets or of any part thereof, such sums as may appear to him to be necessary for all or any of the following purposes, namely :—

(*a*) the payment of the expenses of the funeral of the deceased and of obtaining probate of his will or letters of administration of his estate or a certificate under this Act,

(*b*) the payment of wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant,

(*c*) the relief of the immediate necessities of the family of the deceased, and

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

(*d*) such acts as may be necessary for the proper care and management of the assets left by the deceased,

and nothing in the Succession Act or in any other law for the time being in force with respect to rights of priority of creditors of deceased persons shall be held to affect the validity of any payment so caused to be made.

Sucession Act and Burma Companies Act not to affect Administrator General, and saving of provisions of the Rangoon Police Act as to petty estates.

55. (*1*) Nothing contained in the Succession Act or the Burma Companies Act shall be taken to supersede or affect the rights, duties and privileges of the Administrator General.

(*2*) Nothing contained in the Succession Act or in this Act shall be deemed to affect, or to have affected, any law for the time being in force relating to the moveable property under two hundred rupees in value of persons dying intestate in the town of Rangoon, which shall be or has been taken charge of by the police for the purpose of safe custody.

Order of Court to be equivalent to decree.

56. Any order made under this Act by any Court shall have the same effect as a decree.

Provision for administration by Consular Officer in case of death in certain circumstances of foreign subject.

57. Notwithstanding anything in this Act, or in any other law for the time being in force, the President of the Union may, by general or special order, direct that, where a subject of a foreign State dies in the Union of Burma, and it appears that there is no one in the Union of Burma other than the Administrator General entitled to apply to a Court of competent jurisdiction for letters of administration of the estate of the deceased, letters of administration shall, on the application to such Court of any Consular Officer of such foreign State, be granted to such Consular Officer on such terms and conditions as the Court may, subject to any rules made in this behalf by the President of the Union by notification in the Gazette, think fit to impose.

58. * * * *

Saving of provisions of the Registration Act.

59. Nothing in this Act shall be deemed to affect the provisions of the Registration Act.

THE LEGAL REPRESENTATIVES SUITS ACT.

[INDIA ACT XII, 1855.] (27th March, 1855.)

Preamble.

Whereas it is expedient to enable executors, administrators or representatives in certain cases to sue and be sued in respect of certain wrongs which, according to the present law, do not survive to or against such executors, administrators or representatives; It is enacted as follows :—

Executors may sue and be sued in certain cases

1. An action may be maintained by the executors, administrators or representatives of any person deceased for any wrong committed in the lifetime of such person, which has occasioned pecuniary loss to his estate, for

which wrong an action might have been maintained by such person, so as such wrong shall have been committed within one year before his death, and the damages, when recovered, shall be part of the personal estate of such person ; for wrongs committed in life-time of deceased.

and further, an action may be maintained against the executors or administrators or heirs or representatives of any person deceased for any wrong committed by him in his life-time for which he would have been subject to an action, so as such wrong shall have been committed within one year before such person's death ; and the damages to be recovered in such action shall, if recovered against an executor or administrator bound to administer according to the English law, be payable in like order of administration as the simple contract debts of such person.

2. No action commenced under the provisions of this Act shall abate by reason of the death of either party, but the same may be continued by or against the executors, administrators or representatives of the party deceased : Death of either party not to abate suit.

Provided that, in any case in which any such action shall be continued against the executors, administrators or representatives of a deceased party, such executors, administrators or representatives may set up a want of assets as a defence to the action, either wholly or in part, in the same manner as if the action had been originally commenced against them. Proviso.

PART XXIV—INSOLVENCY.

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THE RANGOON INSOLVENCY ACT

CONTENTS.

PRELIMINARY.

Sections.

1. * * * *
2. Definitions.

PART I.

CONSTITUTION AND POWERS OF COURT.

Jurisdiction.

3. Court having jurisdiction in insolvency.
4. Jurisdiction to be exercised by a single Judge.
5. Exercise of jurisdiction in chambers.
6. Delegation of powers to officers of Court.
7. Power of Court to decide all questions arising in insolvency.

Appeals.

8. Appeals in insolvency.

PART II.

PROCEEDINGS FROM ACT OF INSOLVENCY TO DISCHARGE.

Acts of Insolvency.

9. Acts of insolvency.

Order of Adjudication.

10. Power to adjudicate.
11. Restrictions on jurisdiction.
12. Conditions on which creditor may petition.
13. Proceedings and order on creditor's petition.

Sections.

14. Conditions on which debtor may petition.
15. Proceedings and order on debtor's petition.
16. Discretionary powers as to appointment of interim receiver.
17. Effect of order of adjudication.
18. Stay of proceedings.
18A. Control over insolvency proceedings in subordinate Courts.
19. Power to appoint special manager.
20. Advertisement of order of adjudication.

Annulment of Adjudication.

21. Power for Court to annul adjudication in certain cases.
22. Concurrent proceedings in British Courts.
23. Proceedings on annulment.

Proceedings consequent on Order of Adjudication.

24. Insolvent's schedule.
25. Protection order.
26. Meetings of creditors.
27. Public examination of the insolvent.

Composition and Schemes of Arrangement.

28. Submission of proposal and acceptance by creditors.
29. Approval of proposal by Court.
30. Order on approval.
31. Power to re-adjudge debtor insolvent.
32. Limitation of effect of composition or scheme.

Control over Person and Property of Insolvent.

33. Duties of insolvent as to discovery and realization of property.
34. Arrest of insolvent.
35. Redirection of letters.
36. Discovery of insolvent's property.
37. Power to issue commissions.

Discharge of Insolvent.

38. Discharge of insolvent.
39. Cases in which Court must refuse an absolute discharge.
40. Hearing of application for discharge.
41. Power to annul adjudication on failure to apply for discharge.
42. Renewal of application and variation of terms of order.
43. Duty of discharged insolvent to assist in realization of property.
44. Fraudulent settlements.
45. Effect of order of discharge.

PART III.

ADMINISTRATION OF PROPERTY.

Proof of Debts.

Sections.

46. Debts provable in insolvency.
47. Mutual dealings and set-off.
48. Rules as to proof of debts.
49. Priority of debts.
50. Rent due before adjudication.

Property available for Payment of Debts.

51. Relation of assignee's title.
52. Description of insolvent's property divisible amongst creditors.

Effect of Insolvency on Antecedent Transactions.

53. Restriction of rights of creditor under execution.
54. Duties of Court executing decree as to property taken in execution.
55. Avoidance of voluntary transfer.
56. Avoidance of preference in certain cases.
57. Protection of *bonâ fide* transactions.

Realization of Property.

58. Possession of property by official assignee.
59. Seizure of property of insolvent.
60. Appropriation of portion of pay or other income to creditors.
61. Vesting and transfer of property.
62. Disclaimer of onerous property.
63. Disclaimer of leaseholds.
64. Power to call on official assignee to disclaim.
65. Power for Court to rescind contract.
66. Power for Court to make vesting order in respect of disclaimed property.
67. Persons injured by disclaimer may prove.
68. Duty and powers of official assignee as to realization.

Distribution of Property.

69. Declaration and distribution of dividends.
70. Joint and separate properties.
71. Calculation of dividends.
72. Right of creditor who has not proved debt before declaration of a dividend.

Sections.

73. Final dividend.
74. No suit for dividend.
75. Power to allow insolvent to manage property, and allowance to insolvent for maintenance or service.
76. Right of insolvent to surplus.

PART IV.

OFFICIAL ASSIGNEE.

77. Appointment and removal of official assignee of insolvents' estates.
78. Power to administer oath.
79. Duties as regards the insolvent's conduct.
80. Duty to furnish list of creditors.
81. Remuneration.
82. Misfeasance.
83. Name under which to sue or be sued.
84. Office vacated by insolvency.
85. Discretionary powers and control thereof.
86. Appeal to Court.
87. Control of Court.

PART V.

COMMITTEE OF INSPECTION.

88. Committee of inspection.
89. Control of committee of inspection over official assignee.

PART VI.

PROCEDURE.

90. Powers of the Court.
91. Consolidation of petitions.
92. Power to change carriage of petition.
93. Continuance of proceedings on death of debtor.
94. Power to stay proceedings.
95. Power to present petition against a partner.
96. Power to dismiss petition against some respondents only.
97. Separate insolvency petitions against partners.
98. Suits by official assignee and insolvent's partners.
99. Proceedings in partnership name.
100. Warrants of Insolvency Courts.

PART VII.

LIMITATION.

Sections.

101. Limitation of appeals.

PART VIII.

PENALTIES.

102. Undischarged insolvent obtaining credit.
103. Punishment of insolvent for certain offences.
103A. Disqualifications of insolvent.
104. Procedure on charge under section 103.
105. Criminal liability after discharge or composition.

PART IX.

SMALL INSOLVENCIES.

106. Summary administration in small cases.

PART X.

SPECIAL PROVISIONS.

107. Exemption of corporation, etc., from insolvency proceedings.
108. Administration in insolvency of estate of person dying insolvent.
109. Vesting of estate and mode of administration.
110. Payments or transfer by legal representative.
111. Saving of jurisdiction of Administrator-General.

PART XI.

RULES.

112. Rules.
113. Sanction to rules.
114. Publication of rules.

PART XII.

SUPPLEMENTAL.

115. Exemption from duty of transfers, etc., under this Act.
116. The Gazette to be evidence.
117. Swearing of affidavits.
118. Formal defect not to invalidate proceedings.
119. * * * *

120. Certain provisions to bind the Government.
121. * * * *
122. Lapse and credit to Government of unclaimed dividends.
123. Claims to monies credited to Government under section 122.
124. Access to insolvent's books.
125. Fees and percentages.
126. Courts to be auxiliary to each other.

THE FIRST SCHEDULE.—MEETINGS OF CREDITORS.
THE SECOND SCHEDULE.—PROOF OF DEBTS.

THE RANGOON INSOLVENCY ACT.

[INDIA ACT III, 1909.] (1st January, 1910.)

PRELIMINARY.

1. * * * *

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(*a*) " creditor " includes a decree-holder ;
(*b*) " debt " includes a judgment-debt, and " debtor " includes a judgment-debtor ;
(*c*) " official assignee " includes an acting official assignee and a deputy official assignee, whether permanent or acting ;
(*d*) " prescribed " means prescribed by rules ;
(*e*) " property " includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit ;
(*f*) " rules " means rules made under this Act ;
(*g*) " secured creditor " includes a landlord who under any enactment for the time being in force has a charge on land for the rent of that land ;
(*h*) " the Court " means the High Court ; and
(*i*) " transfer of property " includes a transfer of any interest therein and any charge created thereon.

PART I.

CONSTITUTION AND POWERS OF COURT.

Jurisdiction.

3. Jurisdiction in insolvency shall be exercised by the High Court under the provisions of this Act. Court having jurisdiction in insolvency.

Jurisdiction to be exercised by a single Judge.

4. All matters in respect of which jurisdiction is given by this Act shall be ordinarily transacted and disposed of by or under the direction of one of the Judges of the Court, and the Chief Justice shall, from time to time, assign a Judge for that purpose.

Exercise of jurisdiction in chambers.

5. Subject to the provisions of this Act and of rules, the Judge exercising jurisdiction in insolvency may exercise in chambers the whole or any part of his jurisdiction.

Delegation of powers to officers of Court.

6. (*1*) The Chief Justice may from time to time direct that, in any matters in respect of which jurisdiction is given to the Court by this Act, an officer of the Court appointed by him in this behalf shall have all or any of the powers in this section mentioned; and any order made or act done by such officer in the exercise of the said powers shall be deemed the order or act of the Court.

(*2*) The powers referred to in sub-section (*1*) are the following, namely :—

(*a*) to hear insolvency petitions presented by debtors, and to make orders of adjudication thereon ;

(*b*) to hold the public examination of insolvents ;

(*c*) to make any order or exercise any jurisdiction which is prescribed as proper to be made or exercised in chambers ;

(*d*) to hear and determine any unopposed or *ex-parte* application ;

(*e*) to examine any person summoned by the Court under section 36.

(*3*) An officer appointed under this section shall not have power to commit for contempt of Court.

Power of Court to decide all questions arising in insolvency.

7. Subject to the provisions of this Act, the Court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case :

Provided that, unless all the parties otherwise agree, the power hereby given shall, for the purpose of deciding any matter arising under section 36, be exercised only in the manner and to the extent provided in that section.

Appeals.

Appeals in insolvency.

8. (*1*) The Court may review, rescind or vary any order made by it under its insolvency jurisdiction,

(*2*) Orders in insolvency matters shall, at the instance of any person aggrieved, be subject to appeal as follows, namely :—

(*a*) an appeal from an order made by an officer of the Court empowered under section 6 shall lie to the Judge assigned under section 4 for the transaction and disposal of matters in insolvency and no further appeal shall lie except by leave of such Judge ;

(*b*) save as otherwise provided in clause (*a*), an appeal from an order made by a Judge in the exercise of the jurisdiction conferred by this Act shall lie in the same way and be subject to the same provisions as an appeal from an order made by a Judge in the exercise of the ordinary original civil jurisdiction of the Court.

PART II.

PROCEEDINGS FROM ACT OF INSOLVENCY TO DISCHARGE.

Acts of Insolvency.

Acts of insolvency.

9. A debtor commits an act of insolvency in each of the following cases, namely:—

(*a*) if, in the Union of Burma or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally;

(*b*) if, in the Union of Burma or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;

(*c*) if in the Union of Burma or elsewhere, he makes any transfer of his property or of any part thereof, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent;

(*d*) if, with intent to defeat or delay his creditors,—

(i) he departs or remains out of the Union of Burma;

(ii) he departs from his dwelling-house or usual place of business or otherwise absents himself;

(iii) he secludes himself so as to deprive his creditors of the means of communicating with him;

(*e*) if any of his property has been sold or attached for a period of not less than twenty-one days in execution of the decree of any Court for the payment of money;

(*f*) if he petitions to be adjudged an insolvent;

(*g*) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts;

(*h*) if he is imprisoned in execution of the decree of any Court for the payment of money.

Explanation.—For the purposes of this section, the act of an agent may be the act of the principal, even though the agent have no specific authority to commit the act.

Order of Adjudication.

Power to adjudicate.

10. Subject to the conditions specified in this Act, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a

creditor or by the debtor, and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

Explanation.—The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication.

Restrictions on jurisdiction.

11. The Court shall not have jurisdiction to make an order of adjudication, unless—

(*a*) the debtor is, at the time of the presentation of the insolvency petition, imprisoned in execution of the decree of a Court for the payment of money in any prison to which debtors are ordinarily committed by the Court in the exercise of its ordinary original jurisdiction ; or

(*b*) the debtor, within a year before the date of the presentation of the insolvency petition, has ordinarily resided or had a dwelling-house or has carried on business either in person or through an agent within the limits of the ordinary original civil jurisdiction of the Court ; or

(*c*) the debtor personally works for gain within those limits ; or

(*d*) in the case of a petition by or against a firm of debtors the firm has carried on business within a year before the date of the presentation of the insolvency petition within those limits.

Conditions on which creditor may petition.

12. (*1*) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

(*a*) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and

(*b*) the debt is a liquidated sum payable either immediately or at some certain future time, and

(*c*) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.

(*2*) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent or give an estimate of the value of the security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

Proceedings and order on creditor's petition.

13. (*1*) A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts.

(*2*) At the hearing the Court shall require proof of—

(*a*) the debt of the petitioning creditor, and

(*b*) the act of insolvency or, if more than one act of insolvency is alleged in the petition, some one of the alleged acts of insolvency.

(*3*) The Court may adjourn the hearing of the petition and order service thereof on the debtor.

(*4*) The Court shall dimiss the petition—

(*a*) if it is not satisfied with the proof of the facts referred to in sub-section (2); or

(*b*) if the debtor appears and satisfies the Court that he is able to pay his debts, or that he has not committed an act of insolvency or that for other sufficient cause no order ought to be made.

(*5*) The Court may make an order of adjudication if it is satisfied with the proof above referred to, or if on a hearing adjourned under sub-section (*3*) the debtor does not appear and service of the petition on him is proved, unless in its opinion the petition ought to have been presented before some other Court having insolvency jurisdiction.

(*6*) Where the debtor appears on the petition and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security (if any) being given as the Court may require for payment to the petitioner of any debt which may be established against the debtor in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.

(*7*) Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make an order of adjudication on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition on which proceedings have been stayed as aforesaid.

(*8*) A creditors's petition shall not, after presentation, be withdrawn without the leave of the Court.

Conditions on which debtor may petition.

14. (*1*) A debtor shall not be entitled to present an insolvency petition unless—

(*a*) his debts amount to five hundred rupees, or

(*b*) he has been arrested and imprisoned in execution of the decree of any Court for the payment of money, or

(*c*) an order of attachment in execution of such a decree has been made and is subsisting against his property.

(*2*) A debtor in respect of whom an order of adjudication, whether made under this Act or under the Burma Insolvency Act, has been annulled owing to his failure to apply or to prosecute an application for his discharge shall not be entitled to present an insolvency petition without the leave of the Court by which the order of adjudication was annulled. Such Court shall not grant leave unless it is satisfied either that the debtor was prevented by any reasonable cause from presenting or prosecuting his application, as the case may be, or that the petition is founded on facts substantially different from those contained in the petition on which the order of adjudication was made.

Proceedings and order on debtor's petition.

15. (*1*) A debtor's petition shall allege that the debtor is unable to pay his debts, and, if the debtor proves that he is entitled to present the petition, the Court may thereupon make an order of adjudication, unless in its opinion the petition ought to have been presented before some other Court having insolvency jurisdiction.

(*2*) A debtor's petition shall not, after presentation, be withdrawn without the leave of the Court.

(*3*) On the making of the order admitting his petition, a debtor shall—

(*a*) unless the Court otherwise directs, produce all his books of account, and

(*b*) file such lists of creditors and debtors and afford such assistance to the Court as may be prescribed,

failing which the Court may dismiss his petition.

Discretionary powers as to appointment of interim receiver.

16. The Court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of an insolvency petition and before an order of adjudication is made, appoint the official assignee to be interim receiver of the property of the debtor or of any part thereof, and direct him to take immediate possession thereof or any part thereof, and the official assignee shall thereupon have such of the powers conferable on a receiver appointed under the Code of Civil Procedure as may be prescribed.

Effect of order of adjudication.

17. On the making of an order of adjudication, the property of the insolvent wherever situate shall vest in the official assignee and shall become divisible among his creditors, and thereafter, except as directed by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable in insolvency shall, during the pendency of the insolvency proceedings, have any remedy against the property of the insolvent in respect of the debt or shall commence any suit or other legal proceeding, except with the leave of the Court and on such terms as the Court may impose:

Provided that this section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

Stay of proceedings.

18. (*1*) The Court may, at any time after the making of an order of adjudication, stay any suit or other proceeding pending against the insolvent before any Judge or Judges of the Court or in any other Court subject to the superintendence of the Court.

(*2*) An order made under sub-section (*1*) may be served by sending a copy thereof, under the seal of the Court, by post to the address for service of the plaintiff or other party prosecuting such suit or proceeding, and notice of such order shall be sent to the Court before which the suit or proceeding is pending.

(*3*) Any Court in which proceedings are pending against a debtor may, on proof that an order of adjudication has been made against him under this Act, either stay the proceedings or allow them to continue on such terms as it may think just.

Control over insolvency proceedings in subordinate Courts.

18A. (*1*) The Court may, at any time after the presentation of an insolvency petition, stay any insolvency proceedings pending against the debtor in any Court subject to the superintendence of the Court, and may, at any time after the making of an order of adjudication, annul an adjudication against the debtor made by any such Court.

(*2*) Where an adjudication is annulled under sub-section (*1*) all sales and dispositions of property and payments duly made and all acts done by the Court whose order is annulled, or by the receiver appointed by it or other person acting under his authority, shall be valid, but the property vested in such Court or receiver shall vest in the official assignee, and the Court may make such direction in regard to the custody of such property as it thinks fit.

(*3*) Notice of the order annulling an adjudication under sub-section (*1*) shall be published in the Gazette and in such other manner as may be prescribed.

Power to appoint special manager.

19. (*1*) If in any case the Court, having regard to the nature of the debtor's estate or business or to the interests of the creditors generally, is of opinion that a special manager of the estate or business ought to be appointed to assist the official assignee, the Court may appoint a manager thereof accordingly to act for such time as the Court may authorize, and to have such powers of the official assignee as may be entrusted to him by the official assignee or as the Court may direct.

(2) The special manager shall give security and furnish accounts in such manner as the Court may direct and shall receive such remuneration as the Court may determine.

Advertisement of order of adjudication.

20. Notice of every order of adjudication, stating the name, address and description of the insolvent, the date of the adjudication, the Court by which the adjudication is made and the date of presentation of the petition, shall be published in the Gazette and in such other manner as may be prescribed.

Annulment of Adjudication.

Power for Court to annul adjudication in certain cases.

21. (*1*) Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent are paid in full, the Court may, on the application of any person interested, by order annul the adjudication, and the Court may, of its own motion or on application made by the official assignee or any creditor, annul any adjudication made on the petition of a debtor who was by reason of the provisions of sub-section (*2*) of section 14, not entitled to present such petition.

(*2*) For the purposes of this section, any debt disputed by a debtor shall be considered as paid in full, if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with

costs, and any debt, due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into Court.

Concurrent proceedings in British Courts.

22. Where it is proved to the satisfaction of the Court that insolvency proceedings are pending in any other British Court whether within or without the Union of Burma against the same debtor and that the property of the debtor can be more conveniently distributed by such other Court, the Court may annul the adjudication or may stay all proceedings thereon.

Proceedings on annulment.

23. (*1*) Where an adjudication is annulled, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the official assignee or other person acting under his authority, or by the Court, shall be valid, but the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such terms and subject to such conditions (if any) as the Court may declare by order.

(*2*) Where a debtor has been released from custody under the provisions of this Act and the order of adjudication is annulled as aforesaid, the Court may, if it thinks fit, recommit the debtor to his former custody, and the jailor or keeper of the prison to whose custody such debtor is so recommitted shall receive such debtor into his custody according to such recommitment, and thereupon all processes which were in force against the person of such debtor at the time of such release as aforesaid shall be deemed to be still in force against him as if such order had not been made.

(*3*) Notice of the order annulling an adjudication shall be published in the Gazette and in such other manner as may be prescribed.

Proceedings consequent on Order of Adjudication.

Insolvent's schedule.

24. (*1*) Where an order of adjudication is made against a debtor, he shall prepare and submit to the Court a schedule verified by affidavit, in such form and containing such particulars of and in relation to his affairs as may be prescribed.

(*2*) The schedule shall be so submitted within the following times, namely :—

(*a*) if the order is made on the petition of the debtor, within thirty days from the date of the order,

(*b*) if the order is made on the petition of a creditor, within thirty days from the date of service of the order.

(*3*) If the insolvent fails, without reasonable excuse, to comply with the requirements of this section, the Court may, on the application of the official assignee or of any creditor, make an order for his committal to the civil prison.

(*4*) If the insolvent fails to prepare and submit any such schedule as aforesaid, the official assignee may, at the expense of the estate, cause such a schedule to be prepared in manner prescribed.

Protection order.

25 (*1*) Any insolvent who shall have submitted his schedule as aforesaid may apply to the Court for protection, and the Court may on such application make an order for the protection of the insolvent from arrest or detention.

(*2*) A protection order may apply either to all the debts mentioned in the schedule or to any of them as the Court may think proper, and may commence and take effect at and for such time as the Court may direct, and may be revoked or renewed as the Court may think fit.

(*3*) A protection order shall protect the insolvent from being arrested or detained in prison for any debt to which such order shall apply, and any insolvent arrested or detained contrary to the terms of such order shall be entitled to his release :

Provided that no such order shall operate to prejudice the right of any creditor in the event of such order being revoked or the adjudication annulled.

(*4*) Any creditor shall be entitled to appear and oppose the grant of a protection order, but the insolvent shall be *primâ facie* entitled to such order on production of a certificate signed by the official assignee that he has so far conformed to the provisions of this Act.

(*5*) The Court may make a protection order before an insolvent has submitted his schedule if it thinks it necessary to do so in the interests of the creditors.

Meetings of creditors.

26. (*1*) At any time after the making of an order of adjudication against an insolvent, the Court, on the application of a creditor or of the official assignee, may direct that a meeting of creditors shall be held to consider the circumstances of the insolvency and the insolvent's schedule and his explanation thereof and generally as to the mode of dealing with the property of the insolvent.

(*2*) With respect to the summoning of and proceedings at a meeting of creditors the rules in the First Schedule shall be observed.

Public examination of the insolvent.

27 (*1*) Where the Court makes an order of adjudication it shall hold a public sitting on a day to be appointed by the Court, of which notice shall be given to creditors in the prescribed manner, for the examination of the insolvent, and the insolvent shall attend thereat, and shall be examined as to his conduct, dealings and property.

(*2*) The examination shall be held as soon as conveniently may be after the expiration of the time for the filing of the insolvent's schedule.

(*3*) Any creditor who has tendered a proof or a legal practitioner on his behalf may question the insolvent concerning his affairs and the causes of his failure.

(*4*) The official assignee shall take part in the examination of the insolvent ; and for the purpose thereof, subject to such directions as the Court may give, may be represented by a legal practitioner.

(*5*) The Court may put such questions to the insolvent as it may think expedient.

(*6*) The insolvent shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Such notes of the examination as the Court thinks proper shall be taken down in writing and shall be read over either to or by the insolvent and signed by him, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor at all reasonable times.

(*7*) When the Court is of opinion that the affairs of the insolvent have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but such order shall not preclude the Court from directing further examination of the insolvent whenever it may deem fit to do so.

(*8*) Where the insolvent is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the Court makes him unfit to attend his public examination, or is a woman who according to the customs and manners of the country ought not to be compelled to appear in public, the Court may make an order dispensing with such examination, or directing that the insolvent be examined on such terms, in such manner and at such place as to the Court seems expedient.

Composition and Schemes of Arrangement.

Submission of proposal and acceptance by creditors.

28. (*1*) An insolvent may at any time after the making of an order of adjudication submit a proposal for a composition in satisfaction of his debts or a proposal for a scheme of arrangement of his affairs in the prescribed form, and such proposal shall be submitted by the official assignee to a meeting of creditors.

(*2*) The official assignee shall send to each creditor who is mentioned in the schedule, or who has tendered a proof before the meeting, a copy of the insolvent's proposals with a report thereon, and if on the consideration of such proposal the majority in number and three-fourths in value of all the creditors whose debts are proved resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors.

(*3*) The insolvent may at the meeting amend the terms of his proposal if the amendment is in the opinion of the official assignee calculated to benefit the general body of creditors.

(*4*) Any creditor who has proved his debt may assent to or dissent from the proposal by a letter, in the prescribed form, addressed to the official assignee so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting.

Approval of proposal by Court.

29. (*1*) The insolvent or the official assignee may after the proposal is accepted by the creditors apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.

(*2*) Except where an estate is being summarily administered or special leave of the Court has been obtained, the application shall not be heard until

after the conclusion of the public examination of the insolvent. Any creditor who has proved may be heard by the Court in opposition to the application notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal.

(*3*) The Court shall before approving the proposal hear a report of the official assignee as to the terms thereof and as to the conduct of the insolvent and any objections which may be made by or on behalf of any creditor.

(*4*) Where the Court is of opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, or in any case in which the Court is required to refuse the insolvent's discharge, the Court shall refuse to approve the proposal.

(5) Where any facts are proved on proof of which the Court would be required either to refuse, suspend or attach conditions to the debtor's discharge, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than four annas in the rupee on all the unsecured debts provable against the debtor's estate.

(*6*) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of an insolvent.

(*7*) In any other case the Court may either approve or refuse to approve the proposal.

Order on approval.

30 (*1*) If the Court approves the proposal, the terms shall be embodied in an order of the Court, and an order shall be made annulling the adjudication, and the provisions of section 23, sub-sections (*1*) and (*3*), shall thereupon apply, and the composition or scheme shall be binding on all the creditors so far as relates to any debt due to them from the insolvent and provable in insolvency.

(*2*) The provisions of the composition or scheme may be enforced by the Court on application by any person interested, and any disobedience of an order of the Court made on the application shall be deemed a contempt of Court.

Power to re-adjudge debtor insolvent.

31. (*1*) If default is made in the payment of any instalment due in pursuance of any composition or scheme, approved as aforesaid, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any person interested, re-adjudge the debtor insolvent and annul the composition or scheme, and the property of the debtor shall thereupon vest in the official assignee but without prejudice to the validity of any transfer or payment duly made or of anything duly done under or in pursuance of the composition or scheme.

(*2*) Where a debtor is re-adjudged insolvent under sub-section (*1*), all debts provable in other respects which have been contracted before the date of such re-adjudication shall be provable in the insolvency.

Limitation of effect of composition or scheme.

32. Notwithstanding the acceptance and approval of a composition or scheme the composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Act, the insolvent would not be discharged by an order of discharge in insolvency, unless the creditor assents to the composition or scheme.

Control over Person and Property of Insolvent.

Duties of insolvent as to discovery and realization of property.

33. (*1*) Every insolvent shall, unless prevented by sickness or other sufficient cause, attend any meeting of his creditors which the official assignee may require him to attend, and shall submit to such examination and give such information as the meeting may require.

(*2*) The insolvent shall—

(*a*) give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively,

(*b*) submit to such examination in respect of his property or his creditors,

(*c*) wait at such times and places on the official assignee or special manager,

(*d*) execute such powers-of-attorney, transfers and instruments, and

(*e*) generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors,

as may be required by the official assignee or special manager, or may be prescribed or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the official assignee or special manager, or any creditor or person interested.

(*3*) The insolvent shall aid, to the utmost of his power, in the realization of his property and the distribution of the proceeds among his creditors.

(*4*) If the insolvent wilfully fails to perform the duties imposed upon him by this section, or to deliver up possession to the official assignee of any part of his property which is divisible amongst his creditors under this Act and which is for the time being in his possession or under his control, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

Arrest of insolvent.

34 (*1*) The Court may, either of its own motion or at the instance of the official assignee or of any creditor, by warrant addressed to any police-officer or prescribed officer of the Court, cause an insolvent to be arrested and committed to the civil prison, or if in prison to be detained until such time as the Court may order, under the following circumstances, namely:—

(*a*) if it appears to the Court that there is probable reason for believing that he has absconded or is about to abscond with a view of avoiding examination in respect of his affairs, or of otherwise

avoiding, delaying or embarrassing proceedings in insolvency against him ; or

(*b*) if it appears to the Court that there is probable reason for believing that he is about to remove his property with a view of preventing or delaying possession being taken of it by the official assignee, or that there is probable reason for believing that he has concealed or is about to conceal or destroy any of his property or any books, documents or writings which might be of use to his creditors in the course of his insolvency ; or

(*c*) if he removes any property in his possession above the value of fifty rupees without the leave of the official assignee.

(*2*) No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Act relating to fraudulent preferences.

Redirection of letters.

35. Where the official assignee has been appointed interim receiver or an order of adjudication is made, the Court, on the application of the official assignee, may, from time to time, order that for such time, not exceeding three months, as the Court thinks fit, all post letters, whether registered or unregistered, parcels and money orders addressed to the debtor at any place or places mentioned in the order for re-direction, shall be re-directed or delivered by the postal authorities in the Union of Burma to the official assignee, or otherwise as the Court directs, and the same shall be done accordingly.

Discovery of insolvent's property.

36. (*1*) The Court may, on the application of the official assignee or of any creditor who has proved his debt, at any time after an order of adjudication has been made, summon before it in such manner as may be prescribed the insolvent or any person known or suspected to have in his possession any property belonging to the insolvent, or supposed to be indebted to the insolvent, or any person whom the Court may deem capable of giving information respecting the insolvent, his dealings or property ; and the Court may require any such person to produce any documents in his custody or power relating to the insolvent, his dealings or property.

(*2*) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant, cause him to be apprehended and brought up for examination.

(*3*) The Court may examine any person so brought before it concerning the insolvent, his dealings or property, and such person may be represented by a legal practitioner.

(*4*) If on his examination any such person admits that he is indebted to the insolvent, the Court may, on the application of the official assignee, order him to pay to the official assignee, at such time and in such manner as to the Court seems expedient, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Court thinks fit, with or without costs of the examination.

(5) If on his examination any such person admits that he has in his possession any property belonging to the insolvent, the Court may, on the application of the official assignee, order him to deliver to the official assignee that property, or any part thereof, at such time, in such manner and on such terms as to the Court may seem just.

(6) Orders made under sub-sections (4) and (5) shall be executed in the same manner as decrees for the payment of money or for the delivery of property under the Code of Civil Procedure respectively.

(7) Any person making any payment or delivery in pursuance of an order made under sub-section (4) or sub-section (5) shall by such payment or delivery be discharged from all liability whatsoever in respect of such debt or property.

Power to issue commissions.

37. The Court shall have the same powers to issue commissions and letters of request for the examination on commission or otherwise of any person liable to examination under section 36 as it has for the examination of witnesses under the Code of Civil Procedure.

Discharge of Insolvent.

Discharge of insolvent.

38. (1) An insolvent may, at any time after the order of adjudication, apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application, but, save where the public examination of the insolvent has been dispensed with under the provisions of this Act, the application shall not be heard until after such examination has been concluded. The application shall be heard in open Court.

(2) On the hearing of the application, the Court shall take into consideration any report of the official assignee as to the insolvent's conduct and affairs and, subject to the provisions of section 39, may—

(a) grant or refuse an absolute order of discharge, or

(b) suspend the operation of the order for a specified time, or

(c) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired property.

Cases in which Court must refuse an absolute discharge.

39 (1) The Court shall refuse the discharge in all cases where the insolvent has committed any offence under this Act, or under sections 421 to 424 of the Penal Code, and shall, on proof of any of the facts hereinafter mentioned, either—

(a) refuse the discharge ; or

(b) suspend the discharge for a specified time ; or

(c) suspend the discharge until a dividend of not less than four annas in the rupee has been paid to the creditors ; or

(d) require the insolvent as a condition of his discharge to consent to a decree being passed against him in favour of the official assignee for any balance or part of any balance of the debts provable under the insolvency which is not satisfied at the date

of his discharge; such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the insolvent in such manner and subject to such conditions as the Court may direct; but in that case the decree shall not be executed without leave of the Court, which leave may be given on proof that the insolvent since his discharge acquired property or income available for payment of his debts.

(*2*) The facts hereinbefore referred to are—

(*a*) that the insolvent's assets are not of a value equal to four annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of such value has arisen from circumstances for which he cannot justly be held responsible;

(*b*) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency;

(*c*) that the insolvent has continued to trade after knowing himself to be insolvent;

(*d*) that the insolvent has contracted any debt provable under this Act without having at the time of contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it;

(*e*) that the insolvent has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liability;

(*f*) that the insolvent has brought on or contributed to his insolvency by rash or hazardous speculations or by unjustifiable extravagance in living or by gambling, or by culpable neglect of his business affairs;

(*g*) that the insolvent has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any suit properly brought against him;

(*h*) that the insolvent has within three months preceding the time of presentation of the petition incurred unjustifiable expense by bringing a frivolous or vexatious suit;

(*i*) that the insolvent has within three months preceding the date of the presentation of the petition, when unable to pay his debts as they became due, given an undue preference to any of his creditors;

(*j*) that the insolvent has concealed or removed his books or his property or any part thereof, or has been guilty of any other fraud or fraudulent breach of trust.

(*3*) The power of suspending and of attaching conditions to an insolvent's discharge may be exercised concurrently.

(*4*) On any application for discharge the report of the official assignee shall be *primâ facie* evidence and the Court may presume the correctness of any statement contained therein.

Hearing of application for discharge.

40. Notice of the appointment by the Court of the day for hearing the application for discharge shall be published in the prescribed manner and sent one month at least before the day so appointed to each creditor who has proved, and the Court may hear the official assignee and may also hear any creditor. At the hearing the Court may put such questions to the insolvent and receive such evidence as it may think fit.

Power to annul adjudication on failure to apply for discharge.

41. If an insolvent does not appear on the day so appointed for hearing his application for discharge or if an insolvent shall not apply to the Court for an order of discharge within such time as may be prescribed, the Court, on the application of the official assignee or of a creditor or of its own motion, may annul the adjudication or make such other order as it may think fit, and the provisions of section 23 shall apply on such annulment,

Renewal of application and variation of terms of order.

42. (*1*) Where the Court refuses the discharge of the insolvent it may, after such time and in such circumstances as may be prescribed, permit him to renew his application.

(*2*) Where an order of discharge is made subject to conditions and at any time after the expiration of two years from the date of the order the insolvent shall satisfy the Court that there is no reasonable probability of his being in a position to comply with the terms of such order, the Court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit.

Duty of discharged insolvent to assist in realization of property.

43. A discharged insolvent shall, notwithstanding his discharge, give such assistance as the official assignee may require in the realization and distribution of such of his property as is vested in the official assignee, and, if he fails to do so, shall be guilty of a contempt of Court; and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done subsequent to the discharge, but before its revocation.

Fraudulent settlements.

44. In either of the following cases, that is to say—

(1) in the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or

(2) in the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the

date of his marriage any estate or interest (not being money or property of or in right of his wife) ;

if the settlor is adjudged insolvent or compounds or arranges with his creditors, and it appears to the Court that the settlement, covenant or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend an order of discharge or grant an order subject to conditions or refuse to approve a composition or arrangement.

Effect of order of discharge.

45. (*1*) An order of discharge shall not release the insolvent from—

(*a*) any debt due to the Government ;

(*b*) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party ; or

(*c*) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party ; or

(*d*) any liability under an order for maintenance made under section 488 of the Code of Criminal Procedure.

(*2*) Save as otherwise provided by sub-section (*1*), an order of discharge shall release the insolvent from all debts provable in insolvency.

(*3*) An order of discharge shall be conclusive evidence of the insolvency and of the validity of the proceedings therein.

(*4*) An order of discharge shall not release any person who at the date of the presentation of the petition was a partner or co-trustee with the insolvent or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

PART III.

ADMINISTRATION OF PROPERTY.

Proof of Debts.

Debts provable in insolvency.

46. (*1*) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or breach of trust shall not be provable in insolvency.

(*2*) A person having notice of the presentation of any insolvency petition by or against the debtor shall not prove for any debt or liability contracted by the debtor subsequently to the date of his so having notice.

(*3*) Save as provided by sub-sections (*1*) and (*2*), all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged an insolvent or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable in insolvency.

(*4*) An estimate shall be made by the official assignee of the value of any debt or liability provable as aforesaid which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value :

Provided that if in his opinion the value of the debt or liability is incapable of being fairly estimated, he shall issue a certificate to that effect, and thereupon the debt or liability shall be deemed to be a debt not provable in insolvency.

Explanation.—For the purposes of this section " liability " includes any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the debtor, and generally it includes any express or implied engagement, agreement or undertaking to pay, or capable of resulting in the payment of, money, or money's worth, whether the payment is, as respects amount, fixed or unliquidated ; as respects time, present or future, certain or dependent on any contingency or contingencies ; as to mode of valuation, capable of being ascertained by fixed rules, or as matter of opinion.

Mutual dealings and set-off.

47. Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively :

Provided that a person shall not be entitled under this section to claim the benefits of any set-off against the property of an insolvent in any case where he had at the time of giving credit to the insolvent notice of the presentation of any insolvency petition by or against him.

Rules as to proof of debts.

48. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the Second Schedule, the rules in that Schedule shall be observed.

Priority of debts.

49. (*1*) In the distribution of the property of the insolvent there shall be paid in priority to all other debts—

(*a*) all debts due to the Government or to any local authority ;

(*b*) all salary or wages of any clerk, servant or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition, not exceeding three hundred rupees for each such clerk, and one hundred rupees for each such servant or labourer ; and

(*c*) rent due to a landlord from the insolvent : provided the amount payable under this clause shall not exceed one month's rent.

(2) The debts specified in sub-section (*1*) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(*3*) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub-section (*1*) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them.

(*4*) In the case of partners the partnership property shall be applicable in the first instance in payment of the partnership debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property ; and where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.

(5) Subject to the provisions of this Act, all debts proved in insolvency shall be paid rateably according to the amounts of such debts respectively and without any preference.

(*6*) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts proved in the insolvency.

Rent due before adjudication.

50. After an order of adjudication has been made no distress for rent due before such order shall be made upon the goods or effects of the insolvent, unless the order be annulled, but the landlord or party to whom the rent may be due shall be entitled to prove in respect of such rent.

Property available for Payment of Debts.

Relation of assignee's title.

51. The insolvency of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to and to commence at—

(*a*) the time of the commission of the act of insolvency on which an order of adjudication is made against him, or

(*b*) if the insolvent is proved to have committed more acts of insolvency than one, the time of the first of the acts of insolvency proved to have been committed by the insolvent within three months next preceding the date of the presentation of the insolvency petition :

Provided that no insolvency petition or order of adjudication shall be rendered invalid by reason of any act of insolvency committed anterior to the debt of the petitioning creditor.

Description of insolvent's property divisible amongst creditors.

52. (*1*) The property of the insolvent divisible amongst his creditors, and in this Act referred to as the property of the insolvent, shall not comprise the following particulars, namely :—

(*a*) property held by the insolvent on trust for any other person ;

(*b*) the tools (if any) of his trade and the necessary wearing apparel, bedding, cooking vessels, and furniture of himself, his wife and children, to a value, inclusive of tools and apparel and other necessaries as aforesaid, not exceeding three hundred rupees in the whole,

(*2*) Subject as aforesaid, the property of the insolvent shall comprise the following particulars, namely :—

(*a*) all such property as may belong to or be vested in the insolvent at the commencement of the insolvency or may be acquired by or devolve on him before his discharge ;

(*b*) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or before his discharge ; and

(*c*) all goods being at the commencement of the insolvency in the possession, order or disposition of the insolvent in his trade or business by the consent and permission of the true owner under such circumstances that he is the reputed owner thereof :

Provided that things in action other than debts due or growing due to the insolvent in the course of his trade or business shall not be deemed goods within the meaning of clause (*c*) :

Provided also that the true owner of any goods which have become divisible among the creditors of the insolvent under the provisions of clause (*c*) may prove for the value of such goods.

Effect of Insolvency on Antecedent Transactions.

Restriction of rights of creditor under execution.

53. (*1*) Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the official assignee, except in respect of assets realized in the course of the execution by sale or otherwise before the date of the order of adjudication and before he had notice of the presentation of any insolvency petition by or against the debtor.

(*2*) Nothing in this section shall affect the right of a secured creditor in respect of property against which a decree is executed.

(*3*) A person who in good faith purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the official assignee.

Duties of Court executing decree as to property taken in execution.

54. Where execution of a decree has issued against any property of a debtor which is saleable in execution, and before the sale thereof notice is given to the Court executing the decree that an order of adjudication has been made against the debtor, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the official assignee, but the costs of the execution shall be a first charge on the property so delivered, and the official assignee, may sell the property or an adequate part thereof for the purpose of satisfying the charge.

Avoidance of voluntary transfer.

55. Any transfer of property, not being a transfer made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be void against the official assignee.

Avoidance of preference in certain cases.

56, (*1*) Every transfer of property, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the official assignee.

(*2*) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the insolvent.

Protection of *bona fide* transactions

57. Subject to the foregoing provisions with respect to the effect of insolvency on an execution and with respect to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate in the case of an insolvency—

(*a*) any payment by the insolvent to any of his creditors ;

(*b*) any payment or delivery to the insolvent ;

(*c*) any transfer by the insolvent for valuable consideration ; or

(*d*) any contract or dealing by or with the insolvent for valuable consideration :

Provided that any such transaction takes place before the date of the order of adjudication and that the person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor.

Realization of Property.

Possession of property by official assignee.

58. (*1*) The official assignee shall, as soon as may be, take possession of the deeds, books and documents of the insolvent and all other parts of his property capable of manual delivery,

(*2*) The official assignee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the insolvent, be in the same position as if he were a receiver of the property appointed under the Code of

Civil Procedure, and the Court may on his application enforce such acquisition or retention accordingly.

(*3*) Where any part of the property of the insolvent consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office or person, the official assignee may exercise the right to transfer the property to the same extent as the insolvent might have exercised it, if he had not become insolvent.

(*4*) Where any part of the property of the insolvent consists of things in action, such things shall be deemed to have been duly transferred to the official assignee.

(5) Any treasurer or other officer, or any banker, attorney or agent of an insolvent, shall pay and deliver to the official assignee all money and securities in his possession or power as such officer, banker, attorney or agent, which he is not by law entitled to retain as against the insolvent or the official assignee. If he fails so to do, he shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the official assignee.

Seizure of property of insolvent.

59. (*1*) The Court may grant a warrant to any prescribed officer of the Court or any police-officer above the rank of a constable to seize any part of the property of an insolvent in the custody or possession of the insolvent or of any other person, and with a view to such seizure to break open any house, building or room of the insolvent where the insolvent is supposed to be, or any building or receptacle of the insolvent where any of his property is supposed to be.

(*2*) Where the Court is satisfied that there is reason to believe that property of the insolvent is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search-warrant to any such officer as aforesaid who may execute it according to its tenor.

Appropriation of portion of pay or other income to creditors.

60. (*1*) Where an insolvent is an officer of the Army or Navy [* * * * *][1], or an officer or clerk or otherwise employed or engaged in the civil service of the Government, the official assignee shall receive for distribution amongst the creditors so much of the insolvent's pay or salary liable to attachment in execution of a decree as the Court may direct.

(*2*) Where an insolvent is in the receipt of a salary or income other than as aforesaid, the Court may, at any time after adjudication and from time to time, make such order as it thinks just for the payment to the official assignee, for distribution among the creditors, of so much of such salary or income as may be liable to attachment in execution of a decree, or of any portion thereof.

Vesting and transfer of property.

61. The property of the insolvent shall pass from official assignee to official assignee, and shall vest in the official assignee for the time being during his continuance in office, without any transfer whatever.

[1] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

Disclaimer of onerous property.

62. (*1*) Where any part of the property of an insolvent consists of land of any tenure burdened with onerous covenants, of shares or stocks in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the official assignee may, notwithstanding that he may have endeavoured to sell or have taken possession of the property, or exercised any act of ownership in relation thereto, but subject always to the provisions hereinafter contained in that behalf, by writing signed by him, at any time within twelve months after the insolvent has been adjudged insolvent, disclaim the property :

Provided that, where any such property has not come to the knowledge of the official assignee within one month after such adjudication as aforesaid, he may disclaim the property at any time within twelve months after he has first become aware thereof.

(*2*) The disclaimer shall operate to determine, as from the date thereof, the rights, interest and liabilities of the insolvent and his property in or in respect of the property disclaimed, and shall also discharge the official assignee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the insolvent and his property and the official assignee from liability, affect the rights or liabilities of any other person.

Disclaimer of leaseholds.

63. Subject always to such rules as may be made in this behalf, the official assignee shall not be entitled to disclaim any leasehold interest without the leave of the Court ; and the Court may, before or on granting such leave require such notices to be given to persons interested, and impose such terms, as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements and other matters arising out of the tenancy, as the Court thinks just.

Power to call on official assignee to disclaim.

64. The official assignee shall not be entitled to disclaim any property in pursuance of section 62 in any case where an application in writing has been made to the official assignee by any person interested in the property requiring him to decide whether he will disclaim, and the official assignee has for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the Court, declined or neglected to give notice that he disclaims the property ; and in the case of a contract, if the official assignee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

Power for Court to rescind contract.

65. The Court may, on the application of any person who is, as against the official assignee, entitled to the benefit or subject to the burden of a contract made with the insolvent, make an order rescinding the contract on such terms as to payment by or to either party of damages for the

non-performance of the contract, or otherwise, as to the Court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the insolvency.

Power for Court to make vesting order in respect of disclaimed property.

66. (*1*) The Court may, on the application of any person either claiming any interest in any disclaimed property, or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any transfer for the purpose:

Provided always, that where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the insolvent, whether as under-lessee or as mortgagee, except upon the terms of making such person subject to the same liabilities and obligations as the insolvent was subject to under the lease in respect of the property at the date when the insolvency petition was filed, and any under-lessee or mortgagee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there is no person claiming under the insolvent who is willing to accept an order upon such terms, the Court shall have power to vest the insolvent's interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the insolvent, to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances and interests created therein by the insolvent.

(*2*) The Court may, if it thinks fit, modify the terms prescribed by the foregoing proviso so as to make a person in whose behalf the vesting order may be made subject only to the same liabilities and obligations as if the lease had been assigned to him at the date when the insolvency petition was filed and (if the case so requires) as if the lease had comprised only the property comprised in the vesting order.

Persons injured by disclaimer may prove.

67. Any person injured by the operation of a disclaimer under the foregoing provisions shall be deemed to be a creditor of the insolvent to the amount of the injury, and may accordingly prove the same as a debt under the insolvency.

Duty and powers of official assignee as to realization.

68. (*1*) Subject to the provisions of this Act, the official assignee shall, with all convenient speed, realize the property of the insolvent, and for that purpose may—

(*a*) sell all or any part of the property of the insolvent;

(*b*) give receipts for any money received by him;

and may, by leave of the Court, do all or any of the following things, namely :—

(*c*) carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same ;

(*d*) institute, defend or continue any suit or other legal proceeding relating to the property of the insolvent ;

(*e*) employ a legal practitioner or other agent to take any proceedings or do any business which may be sanctioned by the Court ;

(*f*) accept as the consideration for the sale of any property of the insolvent a sum of money payable at a future time or fully paid shares, debentures or debenture stock in any limited company subject to such stipulations as to security and otherwise as the Court thinks fit ;

(*g*) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts or for the purpose of carrying on the business ;

(*h*) refer any dispute to arbitration, and compromise all debts, claims and liabilities, on such terms as may be agreed upon ;

(*i*) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold.

(*2*) The official assignee shall account to the Court and pay over all monies and deal with all securities in such manner as is prescribed or as the Court directs.

Distribution of Property.

Declaration and distribution of dividends.

69. (*1*) The official assignee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

(*2*) The first dividend (if any) shall be declared and be distributed within one year after the adjudication, unless the official assignee satisfies the Court that there is sufficient reason for postponing the declaration to a later date.

(*3*) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and be payable at intervals of not more than six months.

(*4*) Before declaring a dividend, the official assignee shall cause notice of his intention to do so to be published in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the insolvent's schedule who has not proved his debt.

(*5*) When the official assignee has declared a dividend, he shall send to each creditor who has proved a notice showing the amount of the dividend, and when and how it is payable, and, if required by any creditor, a statement in the prescribed form as to the particulars of the estate.

Joint and separate properties.

70. Where one partner in a firm is adjudged insolvent, a creditor to whom the insolvent is indebted jointly with the other partners in the firm or any of them shall not receive any dividend out of the separate property of the insolvent until all the separate creditors have received the full amount of their respective debts.

Calculation of dividends.

71. (*1*) In the calculation and distribution of dividends, the official assignee shall retain in his hands sufficient assets to meet—

(*a*) debts provable in insolvency and appearing from the insolvent's statements or otherwise to be due to persons resident in places so distant that in the ordinary course of communication they have not had sufficient time to tender their proofs ;

(*b*) debts provable in insolvency the subject of claims not yet determined ;

(*c*) disputed proofs or claims ; and

(*d*) the expenses necessary for the administration of the estate or otherwise.

(2) Subject to the provisions of sub-section (*1*), all money in hand shall be distributed as dividends.

Right of creditor who has not proved debt before declaration of a dividend.

72. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the official assignee any dividend or dividends which he may have failed to receive, before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

Final dividend.

73. (*1*) When the official assignee has realized all the property of the insolvent, or so much thereof as can, in his opinion, be realized without needlessly protracting the proceedings in insolvency, he shall, with the leave of the Court, declare a final dividend ; but, before so doing, he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him but not proved that, if they do not prove their claims, to the satisfaction of the Court, within the time limited by the notice, he will proceed to make a final dividend without regard to their claims.

(2) After the expiration of the time so limited, or, if the Court on application by any such claimant grants him further time for establishing his claim, then on the expiration of that further time, the property of the insolvent shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

No suit for dividend.

74. No suit for a dividend shall lie against the official assignee, but, where the official assignee refuses to pay any dividend, the Court may, on the application of the creditor who is aggrieved by such refusal, order him to pay it, and also to pay out of his own money interest thereon at such rate as may be prescribed for the time that it is withheld, and the costs of the application.

Power to allow insolvent to manage property, and allowance to insolvent for maintenance or service.

75. (*1*) Subject to such conditions and limitations as may be prescribed, the official assignee may appoint the insolvent himself to superintend the management of the property of the insolvent or of any part thereof, or to carry on the trade (if any) of the insolvent, for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the official assignee may direct.

(2) Subject as aforesaid, the Court may, from time to time, make such allowance as it thinks just to the insolvent out of his property for the support of the insolvent and his family, or in consideration of his services if he is engaged in winding up his estate, but any such allowance may at any time be varied or determined by the Court.

Right of insolvent to surplus.

76. The insolvent shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as provided by this Act and of the expenses of the proceedings taken thereunder.

PART IV.

OFFICIAL ASSIGNEE.

Appointment and removal of official assignee of insolvents' estates.

77. (*1*) The Chief Justice may from time to time appoint substantively or temporarily such person as he thinks fit to the office of official assignee of insolvents' estates and such person or persons as he thinks fit to the office of deputy official assignee and may, with the concurrence of a majority of the other Judges of the Court, remove the person for the time being holding any of the said offices for any cause appearing to the Court sufficient.

(*1A*) Subject to rules made under section 112, the deputy official assignee shall have all the powers and shall discharge all the duties and in exercise of such powers and in the discharge of such duties shall be subject to all the liabilities of the official assignee under this Act.

(*2*) The official assignee and the deputy official assignee shall give such security and shall be subject to such rules and shall act in such manner as may be prescribed.

Power to administer oath.

78. The official assignee may, for the purpose of affidavits verifying proofs, petitions or other proceedings under this Act, administer oaths.

Duties as regards the insolvent's conduct.

79. (*1*) The duties of the official assignee shall have relation to the conduct of the insolvent as well as to the administration of his estate.

(*2*) In particular it shall be the duty of the official assignee—

(*a*) to investigate the conduct of the insolvent and to report to the Court upon any application for discharge, stating whether there is reason to believe that the insolvent has committed any act which constitutes an offence under this Act or under sections 421 to 424 of the Penal Code in connection with his insolvency, or which would justify the Court in refusing, suspending or qualifying an order for his discharge;

(*b*) to make such other reports concerning the conduct of the insolvent as the Court may direct or as may be prescribed ; and

(*c*) to take such part and give such assistance in relation to the prosecution of any fraudulent insolvent as the Court may direct or as may be prescribed.

Duty to furnish list of creditors.

80. The official assignee shall, whenever required by any creditor so to do and on payment by the creditor of the prescribed fee, furnish and send to the creditor by post a list of the creditors showing in the list the amount of the debt due to each of the creditors.

Remuneration.

81. (*1*) Such remuneration shall be paid to the official assignee as may be prescribed.

(*2*) No remuneration whatever beyond that referred to in sub-section (*1*) shall be received by the official assignee as such.

Misfeasance.

82. The Court shall call the official assignee to account for any misfeasance, neglect or omission which may appear in his accounts or otherwise, and may require the official assignee to make good any loss which the estate of the insolvent may have sustained by reason of the misfeasance, neglect or omission.

Name under which to sue or be sued.

83. The official assignee may sue and be sued by the name of " the official assignee of the property of , an insolvent," inserting the name of the insolvent, and by that name may hold property of every description, make contracts, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

Office vacated by insolvency.

84. If an order of adjudication is made against the official assignee, he shall thereby vacate the office of official assignee.

Discretionary powers and control thereof.

85. (*1*) Subject to the provisions of this Act and to the directions of the Court, the official assignee shall, in the administration of the property of the insolvent and in the distribution thereof amongst his creditors, have regard to any resolution that may be passed by the creditors at a meeting.

(*2*) The official assignee may, from time to time, summon meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution at any meeting, or the Court may direct, or whenever requested in writing to do so by one-fourth in value of the creditors who have proved.

(*3*) The official assignee may apply to the Court for directions in relation to any particular matter arising under the insolvency.

(*4*) Subject to the provisions of this Act, the official assignee shall use his own discretion in the management of the estate and its distribution among the creditors.

Appeal to Court.

86. If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the official assignee, he may appeal to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just.

Control of Court.

87. (*1*) If the official assignee does not faithfully perform his duties and duly observe all the requirements imposed on him by any enactment, rules or otherwise, with respect to the performance of his duties, or if any complaint is made to the Court by any creditor in regard thereto, the Court shall enquire into the matter and take such action thereon as may be deemed expedient.

(*2*) The Court may at any time require the official assignee to answer any enquiry made by it in relation to any insolvency in which he is engaged, and may examine him or any other person on oath concerning the insolvency.

(*3*) The Court may also direct an investigation to be made of the books and vouchers of the official assignee.

PART V.

COMMITTEE OF INSPECTION.

Committee of inspection

88. The Court may, if it so thinks fit, authorize the creditors who have proved to appoint from among the creditors, or holders of general proxies or general powers-of-attorney from such creditors, a committee of inspection for the purpose of superintending the administration of the insolvent's property by the official assignee.

Provided that a creditor, who is appointed a member of a committee of inspection, shall not be qualified to act until he has proved.

Control of committee of inspection over official assignee.

89. The committee shall have such powers of control over the proceedings of the official assignee as may be prescribed.

PART VI.

PROCEDURE.

Powers of the Court.

90. (*1*) In proceedings under this Act the Court shall have the like powers and follow the like procedure as it has and follows in the exercise of its ordinary original civil jurisdiction :

Provided that nothing in this sub-section shall in any way limit the jurisdiction conferred on the Court under this Act.

(*2*) Subject to the provisions of this Act and rules, the costs of and incidental to any proceeding in the Court shall be in the discretion of the Court.

(*3*) The Court may at any time adjourn any proceedings before it upon such terms, if any, as it thinks fit to impose.

(*4*) The Court may at any time amend any written process or proceeding under this Act upon such terms, if any, as it thinks fit to impose.

(*5*) Where by this Act or by rules the time for doing any act or thing is limited, the Court may extend the time either before or after the expiration thereof, upon such terms, if any, as the Court thinks fit to impose.

(*6*) Subject to rules, the Court may in any matter take the whole or any part of the evidence either *viva voce* or by interrogatories, or upon affidavit, or by commission.

(*7*) For the purpose of approving a composition or scheme by joint debtors the Court may, if it thinks fit, and on the report of the officia assignee that it is expedient so to do, dispense with the public examination of one of the joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.

Consolidation of petitions.

91. Where two or more insolvency petitions are presented against the same debtor or against joint debtors, or where joint debtors file separate petitions, the Court may consolidate the proceedings or any of them on such terms as the Court thinks fit.

Power to change carriage of petition.

92. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor is indebted in the amount required by this Act in the case of a petitioning creditor.

Continuance of proceedings on death of debtor.

93. If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

Power to stay proceedings.

94. The Court may, at any time for sufficient reason, make an order staying the proceedings under an insolvency petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court thinks just.

Power to present petition against a partner.

95. Any creditor whose debt is sufficient to entitle him to present an insolvency petition against all the partners in a firm may present a petition against any one or more partners in the firm without including the others.

Power to dismiss petition against some respondents only.

96. Where there are more respondents than one to a petition, the Court may dismiss the petition as to one or more of them without prejudice to the effect of the petition as against the other or others of them.

Separate insolvency petitions against partners.

97. Where an order of adjudication has been made on an insolvency petition against or by one partner in a firm, any other insolvency petition against or by a partner in the same firm shall be presented in or transferred to the Court in which the first-mentioned petition is in course of prosecution; and such Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

Suits by official assignee and

98. (*1*) Where a partner in a firm is adjudged insolvent, the Court may authorize the official assignee to continue or commence and carry on any suit

or other proceedings in his name and that of the insolvent's partner ; and any release by the partner of the debt or demand to which the proceeding relates shall be void. insolvent's partners.

(*2*) Where application for authority to continue or commence any suit or other proceedings has been made under sub-section (*1*), notice of the application shall be given to the insolvent's partner and he may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the proceeding, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the Court directs.

99. (*1*) Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm : Proceedings in partnership name.

Provided that in that case the Court may, on application by any person interested, order the names of the persons who are partners in the firm, or the name of the person carrying on business under a partnership name, to be disclosed in such manner and verified on oath or otherwise, as the Court may direct.

(*2*) In the case of a firm in which one partner is an infant, an adjudication order may be made against the firm other than the infant partner.

100. (*1*) A warrant of arrest issued by the Court may be executed in the same manner and subject to the same conditions as a warrant of arrest issued under the Code of Criminal Procedure may be executed. Warrants of Insolvency Courts.

(*2*) A warrant to seize any part of the property of an insolvent, issued by the Court under section 59, sub-section (*1*), shall be in the form prescribed, and sections 77 (*2*), 79, 82, 83, 84 and 102 of the said Code shall, so far as may be, apply to the execution of such warrant.

(*3*) A search-warrant issued by the Court under section 59, sub-section (*2*), may be executed in the same manner and subject to the same conditions as a search-warrant for property supposed to be stolen may be executed under the said Code.

PART VII.

LIMITATION.

101. The period of limitation for an appeal from any act or decision of the official assignee or from an order made by an officer of the Court empowered under section 6 shall be twenty days from the date of such act, decision or order, as the case may be. Limitation of appeals.

PART VIII.

PENALTIES.

102. An undischarged insolvent obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an undischarged insolvent shall, on conviction by a Magistrate, be punishable Undischarged insolvent obtaining credit.

with imprisonment for a term which may extend to six months, or with fine, or with both.

Punishment of insolvent for certain offences.

103. Any person adjudged insolvent who—

(*a*) fraudulently with the intent to conceal the state of his affairs or to defeat the objects of this Act,

(i) has destroyed or otherwise wilfully prevented or purposely withheld the production of any books, paper or writing relating to such of his affairs as are subject to investigation under this Act, or

(ii) has kept or caused to be kept false books, or

(iii) has made false entries in or withheld entries from, or wilfully altered or falsified, any book, paper or writing relating to such of his affairs as are subject to investigation under this Act, or

(*b*) fraudulently with intent to diminish the sum to be divided amongst his creditors or of giving an undue preference to any of the said creditors,

(i) has discharged or concealed any debt due to or from him, or

(ii) has made away with, charged, mortgaged or concealed any part of his property of what kind soever,

shall on conviction be punishable with imprisonment for a term which may extend to two years.

Disqualifications of insolvent.

103A. (*1*) Where a debtor is adjudged or readjudged insolvent under this Act, he shall, subject to the provisions of this section, be disqualified from—

(*a*) being appointed or acting as a Magistrate;

(*b*) being elected to any office of any local authority where the appointment to such office is by election, or holding or exercising any such office to which no salary is attached; and

(*c*) being elected or sitting or voting as a member of any local authority.

(*2*) The disqualifications which an insolvent is subject to under this section shall be removed, and shall cease if—

(*a*) the order of adjudication is annulled under sub-section (*1*) of section 21, or

(*b*) he obtains from the Court an order of discharge, whether absolute or conditional, with a certificate that his insolvency was caused by misfortune without any misconduct on his part.

(*3*) The Court may grant or refuse such certificate as it thinks fit.

Procedure on charge under section 103.

104. (*1*) Where the Court is satisfied, after such preliminary inquiry, if any, as it thinks necessary, that there is ground for inquiring into any offence referred to in section 103 and appearing to have been committed by the insolvent, the Court may record a finding to that effect and make a complaint

of the offence in writing to a Magistrate of the first class having jurisdiction, and such Magistrate shall deal with such complaint in the manner laid down in the Code of Criminal Procedure.

(*2*) Any complaint made by the Court under sub-section (*1*) may be signed by such officer of the Court as the Court may appoint in this behalf.

Criminal liability after discharge or composition.

105. Where an insolvent has been guilty of any of the offences specified in section 102 or section 103, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

PART IX.

SMALL INSOLVENCIES.

Summary administration in small cases.

106. (*1*) Where the Court is satisfied by affidavit or otherwise, or the official assignee reports to the Court, that the property of an insolvent is not likely to exceed in value three thousand rupees or such other less amount as may be prescribed, the Court may make an order that the insolvent's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications, namely :—

(*a*) no appeal shall lie from any order of the Court, except by leave of the Court ;

(*b*) no examination of the insolvent shall be held except on the application of a creditor or the official assignee ;

(*c*) the estate shall, where practicable, be distributed in a single dividend ;

(*d*) such other modifications as may be prescribed with the view of saving expense and simplifying procedure :

Provided that nothing in this section shall permit the modification of the provisions of this Act relating to the discharge of the insolvent.

(*2*) The Court may at any time, if it thinks fit, revoke an order for the summary administration of an insolvent's estate.

PART X.

SPECIAL PROVISIONS.

Exemption of corporation, etc., from insolvency proceedings.

107. No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force.

Administration in insolvency of estate of person

108. (*1*) Any creditor of a deceased debtor whose debt would have been sufficient to support an insolvency petition against the debtor, had he been alive, may present to the Court within the limits of whose ordinary original civil jurisdiction the debtor resided or carried on business for the greater part

dying insolvent.

of the six months immediately prior to his decease a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor under this Act.

(2) Upon the prescribed notice being given to the legal representative of the deceased debtor, the Court may, upon proof of the petitioner's debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in insolvency of the deceased debtor's estate, or may upon cause shown dismiss the petition with or without costs.

(3) A petition for administration under this section shall not be presented to the Court after proceedings have been commenced in any Court of justice for the administration of the deceased debtor's estate; but that Court may in that case, on proof that the estate is insufficient to pay its debts, transfer the proceedings to the Court exercising jurisdiction in insolvency under this Act, and thereupon the last-mentioned Court may make an order for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

Vesting of estate and mode of administration.

109. (1) Upon an order being made for the administration of a deceased debtor's estate under section 108, the property of the debtor shall vest in the official assignee of the Court, and he shall forthwith proceed to realize and distribute the same in accordance with the provisions of this Act.

(2) With the modification hereinafter mentioned, all the provisions of Part III, relating to the administration of the property of an insolvent, shall, so far as the same are applicable, apply to the case of such administration order in like manner as to an order of adjudication under this Act.

(3) In the administration of the property of the deceased debtor under an order of administration, the official assignee shall have regard to any claims by the legal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate; and those claims shall be deemed a preferential debt under the order, and be payable in full, out of the debtor's estate, in priority to all other debts.

(4) If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the official assignee after payment in full of all the debts due from the debtor together with the costs of the administration and interest as provided by this Act in case of insolvency, such surplus shall be paid over to the legal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

Payments or transfer by legal representative.

110. (1) After notice of the presentation of a petition under section 108 no payment or transfer of property made by the legal representative shall operate as a discharge to him as between himself and the official assignee.

(2) Save as aforesaid nothing in section 108 or section 109 or this section shall invalidate any payment made or act or thing done in good faith by the legal representative, or by a District Judge acting under the powers conferred on him by section 54 of the Administrator General's Act, before the date of the order for administration.

111. The provisions of sections 108, 109 and 110 shall not apply to any case in which probate or letters of administration to the estate of a deceased debtor have been granted to the Administrator General. Saving of jurisdiction of Administrator General.

PART XI.

RULES.

112. (*1*) The High Court may from time to time make rules[1] for carrying into effect the objects of this Act. Rules.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for and regulate—

(*a*) the fees and percentages to be charged under this Act and the manner in which the same are to be collected and accounted for and the account to which they are to be paid;

(*b*) the investment, whether separately or collectively, of unclaimed dividends, balances and other sums appertaining to the estates of insolvent debtors whether adjudicated insolvent under this or any former enactment; and the application of the proceeds of such investment;

(*c*) the proceedings of the official assignee in taking possession of and realizing the estates of insolvent debtors;

(*d*) the remuneration of the official assignee;

(*e*) the receipts, payments and accounts of the official assignee;

(*f*) the audit of the accounts of the official assignee;

(*g*) the payment of the remuneration of the official assignee, of the costs, charges and expenses of his establishment, and of the costs of the audit of his accounts out of the proceeds of the investments in his hands;

(*h*) the payment of the costs incurred in the prosecution of fraudulent debtors and in legal proceedings taken by the official assignee under the direction of the Court out of the proceeds aforesaid;

(*i*) the payment of any civil liability incurred by the official assignee acting under the order or direction of the Court;

(*j*) the proceedings to be taken in connection with proposals for composition and schemes of arrangement with the creditors of insolvent debtors;

(*k*) the intervention of the official assignee at the hearing of applications and matters relating to insolvent debtors and their estates;

(*kk*) the filing of lists of creditors and debtors and the affording of assistance to the Court by a petitioning debtor;

(*l*) the examination by the official assignee of the books and papers of account of undischarged insolvent debtors;

(*m*) the service of notices in proceedings under this Act;

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[1] *See* the High Court Rules and Orders.

(*n*) the appointment, meetings and procedure of committees of inspection;

(*o*) the conduct of proceedings under this Act in the name of a firm;

(*p*) the forms to be used in proceedings under this Act;

(*q*) the procedure to be followed in the case of estates to be administered in a summary manner;

(*r*) the procedure to be followed in the case of estates of deceased persons to be administered under this Act;

(*s*) the distribution of work between the official assignee and his deputy or deputies.

Sanction to rules.

113. Rules made under the provisions of this Part shall be subject to the previous sanction of the President of the Union.

Publication of rules.

114. Rules so made and sanctioned shall be published in the Gazette, and shall thereupon have the same force and effect with regard to proceedings under this Act as if they had been enacted in this Act.

PART XII.

SUPPLEMENTAL.

Exemption from duty of transfers, etc., under this Act.

115. (*1*) Every transfer, mortgage, assignment, power-of-attorney, proxy paper, certificate, affidavit, bond or other proceedings, instrument or writing whatsoever before or under any order of the Court, and any copy thereof, shall be exempt from payment of any stamp or other duty whatsoever.

(*2*) No stamp-duty or fee shall be chargeable for any application made by the official assignee to the Court under this Act, or for the drawing and issuing of any order made by the Court on such application.

The Gazette to be evidence.

116. (*1*) A copy of the Gazette containing any notice inserted in pursuance of this Act shall be evidence of the facts stated in the notice.

(*2*) A copy of the Gazette containing any notice of an order of adjudication shall be conclusive evidence of the order having been duly made, and of its date.

Swearing of affidavits.

117. Any affidavit may be used in a Court having jurisdiction under this Act if it is sworn—

(*a*) in the Union of Burma, before—

(i) any Court or Magistrate, or

(ii) any officer or other person appointed to administer oaths under the Code of Civil Procedure;

(*b*) in England, before any person authorized to administer oaths in His Britannic Majesty's High Court of Justice, or in the Court of Chancery of the County Palatine of Lancaster, or before any Registrar of a Bankruptcy Court, or before any officer of a

Bankruptcy Court authorized in writing in that behalf by the Judge of the Court, or before a Justice of the Peace for the county or place where it is sworn ;

(*c*) in Scotland, or in Ireland before a Judge Ordinary, Magistrate or Justice of the Peace ; and

(*d*) in any other place, before a Magistrate or Justice of the Peace or other person qualified to administer oaths in that place (he being certified to be a Magistrate or Justice of the Peace, or qualified as aforesaid, by a [British or Burman][1] Minister or [British or Burman][1] Consul or [British or Burman][1] Political Agent or by a notary public).

Formal defect not to invalidate proceedings.

118. (*1*) No proceeding in insolvency shall be invalidated by any formal defect or by any irregularity unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that Court.

(*2*) No defect or irregularity in the appointment of an official assignee or member of a committee of inspection shall vitiate any act done by him in good faith.

[2]**119.** * * * *

Certain provisions to bind the Government.

120. Save as herein provided, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge shall bind the Government.

121. * * * *

Lapse and credit to Government of unclaimed dividends.

122. Where the official assignee has under his control any dividend which has remained unclaimed for fifteen years from the date of declaration, or such less period as may be prescribed, he shall pay the same to the account and credit of the Government unless the Court otherwise directs.

Claims to monies credited to Government under section 122.

123. Any person claiming to be entitled to any monies paid to the account and credit of the Government under section 122 may apply to the Court for an order for payment to him of the same ; and the Court, if satisfied that the person claiming is entitled, shall make an order for payment to him of the sum due :

Provided that, before making an order for the payment of a sum which has been carried to the account and credit of the Government, the Court shall cause a notice to be served on such officer as the President of the Union may appoint in this behalf, calling on the officer to show cause, within one month from the date of the service of the notice, why the order should not be made.

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

[2] Omitted by Act II, 1945.

Access to insolvent's books.

124. (*1*) No person shall, as against the official assignee, be entitled to withhold possession of the books of accounts belonging to the insolvent or to set up any lien thereon.

(2) Any creditor of the insolvent may, subject to the control of the Court, and on payment of such fee, if any, as may be prescribed, inspect at all reasonable times, personally or by agent, any such books in the possession of the official assignee.

Fees and percentages.

125. Such fees and percentages shall be charged for and in respect of proceedings under this Act, as may be prescribed.

Courts to be auxiliary to each other.

126. The High Court shall make such orders and do such things as may be necessary to give effect to the Bankruptcy Act, 1914, and the Burma Insolvency Act. 4 & 5 Geo 5, c. 59.

THE FIRST SCHEDULE.

(*See* section 26.)

MEETINGS OF CREDITORS.

Meetings of creditors.

1. The official assignee may at any time summon a meeting of creditors, and shall do so whenever so directed by the Court or by the creditors by resolution at any meeting or whenever requested in writing by one-fourth in value of the creditors who have proved.

Summoning of meetings.

2. Meetings shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or, if he has not proved, at the address given in the insolvent's schedule, or such other address as may be known to the official assignee.

Notice of meetings.

3. The notice of any meeting shall be sent off not less than seven days before the day appointed for the meeting and may be delivered personally or sent by prepaid post letter, as may be convenient. The official assignee may, if he thinks fit, also publish the time and place of any meeting in any local newspaper or in the Gazette.

Duty of insolvent to attend if required.

4. It shall be the duty of the insolvent to attend any meeting which the official assignee may, by notice, require him to attend, and any adjournment thereof. Such notice shall be either delivered to him personally or sent to him at his address by post at least three days before the date fixed for the meeting.

Proceedings not to be avoided for non-receipt of notice.

5. The proceedings held and resolutions passed at any meeting shall, unless the Court otherwise orders, be valid notwithstanding that any creditor has not received the notice sent to him.

6. A certificate of the official assignee that the notice of any meeting has been duly given shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed. Proof of issue of notice.

7. Where on the request of creditors the official assignee summons a meeting, there shall be deposited with the written request the sum of five rupees for every twenty creditors for the costs of summoning the meeting, including all disbursements: Provided that the official assignee may require such further sum to be deposited as in his opinion shall be sufficient to cover the costs and expenses of the meeting. Costs of meeting.

8. The official assignee shall be the chairman of any meeting. Chairman.

9. A creditor shall not be entitled to vote at a meeting unless he has duly proved a debt provable in insolvency to be due to him from the insolvent, and the proof has been duly lodged one clear day before the time appointed for the meeting. Right to vote.

10. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained. No vote in respect of certain debts.

11. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to vote only in respect of the balance, if any, due to him after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence. Secured creditor.

12. When a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the insolvent is liable, such bill of exchange, note, instrument or security must, subject to any special order of the Court made to the contrary, be produced to the official assignee before the proof can be admitted for voting. Proof in respect of negotiable instruments.

13. It shall be competent to the official assignee, within twenty-eight days after a proof estimating the value of a security has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated. Power to require creditor to give up security.

14. If one partner in a firm is adjudged insolvent, any creditor to whom that partner is indebted jointly with the other partners in the firm or any of them may prove his debt for the purpose of voting at any meeting of creditors and shall be entitled to vote thereat. Proof by partner.

15. The official assignee shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or Power of official assignee to admit or reject proof.

rejected, he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

Proxy.

16. A creditor may vote either in person or by proxy.

Instrument of proxy.

17. Every instrument of proxy shall be in the prescribed form and shall be issued by the official assignee.

General proxy.

18. A creditor may give a general proxy to his attorney or to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

Proxy to be deposited one day before date of meeting.

19. A proxy shall not be used unless it is deposited with the official assignee one clear day before the time appointed for the meeting at which it is to be used.

Official assignee a proxy.

20. A creditor may appoint the official assignee to act as his proxy.

Adjournment of meeting.

21. The official assignee may adjourn the meeting from time to time and from place to place, and no notice of the adjournment shall be necessary.

Minute of proceedings.

22. The official assignee shall draw up a minute of the proceedings at the meeting and shall sign the same.

THE SECOND SCHEDULE,

(*See* section 48)

PROOF OF DEBTS.

Proofs in ordinary cases.

Time for lodging proof.

1. Every creditor shall lodge the proof of his debt as soon as may be after the making of an order of adjudication.

Mode of lodging proof.

2. A proof may be lodged by delivering or sending by post in a registered letter to the official assignee an affidavit verifying the debt.

Authority to make affidavit.

3. The affidavit may be made by the creditor himself or by some person authorized by or on behalf of the creditor. If made by a person so authorized, it shall state his authority and means of knowledge.

Contents of affidavit.

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The official assignee may at any time call for the production of the vouchers.

5. The affidavit shall state whether the creditor is or is not a secured creditor. Affidavit to state if creditor holds security.

6. A creditor shall bear the cost of proving his debt unless the Court otherwise specially orders. Cost of proving debts.

7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors at all reasonable times. Right to see and examine proofs.

8. A creditor in lodging his proof shall deduct from his debt all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash. Deduction to be made from proof.

Proof by secured creditors.

9. If a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realized. Proof where security realized.

10. If a secured creditor surrenders his security to the official assignee for the general benefit of the creditors, he may prove for his whole debt. Proof where security is surrendered.

11. If a secured creditor does not either realize or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed. Proof in other cases.

12. (*1*) Where a security is so valued the official assignee may at any time redeem it on payment to the creditor of the assessed value. Valuation of security.

(*2*) If the official assignee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the official assignee, or as, in default of agreement, the Court may direct. If the sale is by public auction, the creditor, or the official assignee on behalf of the estate, may bid or purchase :

Provided that the creditor may at any time, by notice in writing, require the official assignee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the official assignee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it ; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the official assignee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

Amendment of valuation.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the official assignee or the Court that the valuation and proof were made *bonâ fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court shall order, unless the official assignee shall allow the amendment without application to the Court.

Refund of excess received.

14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he has received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money for the time being available for dividend any dividend or share of dividend which he has failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

Amendment where security subsequently realized.

15. If a creditor after having valued his security subsequently realizes it, or if it is realized under the provisions of rule 12, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

Exclusion from sharing in dividend.

16. If a secured creditor does not comply with the foregoing rules, he shall be excluded from all share in any dividend.

Limit of receipt.

17. Subject to the provisions of rule 12, a creditor shall in no case receive more than sixteen annas in the rupee and interest as provided by this Act.

Taking Accounts of Property Mortgaged, and of the Sale thereof.

Inquiry into mortgage, etc.

18. Upon application by any person claiming to be a mortgagee of any part of the insolvent's real or leasehold estate, and whether such mortgage is by deed or otherwise, and whether the same is of a legal or equitable nature, or upon application by the official assignee with the consent of such person claiming to be a mortgagee as aforesaid, the Court shall proceed to inquire whether such person is such mortgagee, and for what consideration and under what circumstances; and if it is found that such person is such mortgagee, and if no sufficient objection appears to the title of such person to the sum claimed by him under such mortgage, the Court shall direct such accounts and inquiries to be taken as may be necessary for ascertaining the principal, interest and costs due upon such mortgage, and of the rents and profits, or dividends,

interest or other proceeds received by such person or by any other person by his order or for his use in case he has been in possession of the property over which the mortgage extends, or any part thereof, and the Court, if satisfied that there ought to be a sale, shall direct notice to be given in such newspapers as the Court thinks fit when and where, and by whom and in what way, the said premises or property, or the interest therein so mortgaged, are to be sold, and that such sale be made accordingly, and that the official assignee (unless it is otherwise ordered) shall have the conduct of such sale ; but it shall not be imperative on any such mortgagee to make such application. At any such sale the mortgagee may bid and purchase.

Conveyance.

19. All proper parties shall join in the conveyance to the purchaser, as the Court directs.

Proceeds of sale.

20. The monies to arise from such sale shall be applied, in the first place, in payment of the costs, charges and expenses of and occasioned by the application to the Court, and of such sale and the commission (if any) of the official assignee, and in the next place in payment and satisfaction, so far as the same extend, of what shall be found due to such mortgagee for principal, interest and costs, and the surplus of the sale monies (if any) shall then be paid to the official assignee. But if the monies to arise from such sale are insufficient to pay and satisfy what is so found due to such mortgagee, then he shall be entitled to prove as a creditor for such deficiency, and receive dividends thereon rateably with the other creditors, but so as not to disturb any dividend then already declared.

Proceedings on inquiry.

21. For the better taking of such inquiries and accounts, and making a title to the purchaser, all parties may be examined by the Court upon interrogatories or otherwise as the Court thinks fit, and shall produce before the Court upon oath all deeds, papers, books and writings in their respective custody or power relating to the estate or effects of the insolvent as the Court directs.

Periodical Payments.

Periodical payments.

22. When any rent or other payment falls due at stated periods, and the order of adjudication is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day.

Interest.

Interest.

23. (*1*) On any debt or sum certain whereon interest is not reserved or agreed for, and which is overdue when the debtor is adjudged an insolvent and

which is provable under this Act, the creditor may prove for interest at a rate not exceeding six per centum per annum—

(*a*) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication ; or

(*b*) if the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment, to the date of such adjudication.

(*2*) Where a debt which has been proved in insolvency includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

Debt payable at a Future Time.

Debt payable in future.

24. A creditor may prove for a debt not payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting therefrom only a rebate of interest at the rate of six per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

Admission or Rejection of Proofs.

Admission or rejection of proof.

25. The official assignee shall examine every proof and the grounds of the debt, and in writing admit or reject it in whole or in part, or require further evidence in support of it. If he rejects a proof, he shall state in writing to the creditor the grounds of the rejection.

Court may expunge proof improperly received.

26. If the official assignee thinks that a proof has been improperly admitted, the Court may, on the application of the official assignee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

Power for Court to expunge or reduce proof

27. The Court may also expunge or reduce a proof upon the application of a creditor if the official assignee declines to interfere in the matter, or in the case of a composition or a scheme upon the application of the insolvent.

THE BURMA INSOLVENCY ACT.

CONTENTS.

Sections.

1. * * * *
2. Definitions.

PART I.

CONSTITUTION AND POWERS OF COURT.

3. Insolvency jurisdiction.
4. Power of Court to decide all questions arising in insolvency.
5. General powers of Courts.

PART II.

PROCEEDINGS FROM ACT OF INSOLVENCY TO DISCHARGE.

Acts of Insolvency.

6. Acts of insolvency.
7. Petition and adjudication.
8. Exemption of corporation, etc., from insolvency proceedings.
9. Conditions on which creditor may petition.
10. Conditions on which debtor may petition.
11. Court to which petition shall be presented.
12. Verification of petition.
13. Contents of petition.
14. Withdrawal of petitions.
15. Consolidation of petitions.
16. Power to change carriage of proceedings,
17. Continuance of proceedings on death of debtor.
18. Procedure for admission of petition.
19. Procedure on admission of petition.
20. Appointment of interim receiver.
21. Interim proceedings against debtor.
22. Duties of debtor.
23. Release of debtor.

Sections.

24. Procedure at hearing.
25. Dismissal of petition.
26. Award of compensation.

Order of Adjudication.

27. Order of adjudication.
28. Effect of an order of adjudication.
29. Stay of pending proceeding.
30. Publication of order of adjudication.

Proceedings consequent on Order of Adjudication.

31. Protection order.
32. Power to arrest after adjudication.
33. Schedule of creditors.
34. Debts provable under the Act.

Annulment of Adjudication.

35. Power to annul adjudication of insolvency.
36. Power to cancel one of concurrent orders of adjudication.
37. Proceedings on annulment.

Compositions and Schemes of Arrangement.

38. Compositions and schemes of arrangement.
39. Order on approval.
40. Power to re-adjudge debtor insolvent.

Discharge

41. Discharge.
42. Cases in which Court must refuse an absolute discharge.
43. Adjudication to be annulled on failure to apply for discharge.
44. Effect of order of discharge.

PART III.

ADMINISTRATION OF PROPERTY.

Method of Proof of Debts.

45. Debt payable at a future time.
46. Mutual dealings and set-off.
47. Secured creditors.
48. Interest.

Sections.

49. Mode of proof.
50. Disallowance and reduction of entries in schedule.

Effect of Insolvency on Antecedent Transactions.

51. Restriction of rights of creditor under execution.
52. Duties of Court executing decree as to property taken in execution.
53. Avoidance of voluntary transfer.
54. Avoidance of preference in certain cases.
54A. By whom petitions for annulment may be made.
55. Protection of *bonâ fide* transactions.

Realization of Property.

56. Appointment of receiver.
57. Power to appoint official receivers.
58. Powers of Court if no receiver appointed.
59. Duties and powers of receiver.
59A. Power to require information regarding insolvent's property.
60. Special provisions in regard to immoveable property.

Distribution of Property.

61. Priority of debts.
62. Calculation of dividends.
63. Right of creditor who has not proved debt before declaration of a dividend.
64. Final dividend.
65. No suit for dividend.
66. Management by and allowance to insolvent.
67. Right of insolvent to surplus.
67A. Committee of inspection.

Appeal to Court against Receiver.

68. Appeal to Court against receiver.

PART IV.

PENALTIES.

69. Offences by debtors.
70. Procedure on charge under section 69.
71. Criminal liability after discharge or composition.
72. Undischarged insolvent obtaining credit.
73. Disqualifications of insolvent.

PART V.

SUMMARY ADMINISTRATION.

Sections.

74. Summary administration.

PART VI.

APPEALS.

75. Appeals.

PART VII.

MISCELLANEOUS.

76. Costs.
77. Courts to be auxiliary to each other.
78. Limitation.
79. Power to make rules.
80. Delegation of powers to official receivers.
81. Power of President to bar application of certain provisions to certain Courts.
82. Saving.

SCHEDULE I.—DECISIONS AND ORDERS FROM WHICH AN APPEAL LIES TO THE HIGH COURT UNDER SECTION 75 (*2*).

SCHEDULE II.—PROVISIONS OF THE ACT APPLICATION OF WHICH MAY BE BARRED BY THE PRESIDENT.

THE BURMA INSOLVENCY ACT.

[INDIA ACT V, 1920.] (25th February, 1920.)

1. * * * *

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "creditor" includes a decree-holder, "debt" includes a judgment-debt, and "debtor" includes a judgment-debtor ;

(*b*) * * * *

(*c*) "prescribed" means prescribed by rules made under this Act ;

(*d*) "property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit ;

(*e*) "secured creditor" means a person holding a mortgage, charge or lien on the property of the debtor or any part thereof as a security for a debt due to him from the debtor ; and

(*f*) "transfer of property" includes a transfer of any interest in property and the creation of any charge upon property.

(*2*) Words and expressions used in this Act and defined in the Code of Civil Procedure and not hereinbefore defined shall have the same meanings as those respectively attributed to them by the said Code.

PART I.

CONSTITUTION AND POWERS OF COURT.

Insolvency jurisdiction.

3. (*1*) The District Courts shall be the Courts having jurisdiction under this Act:

Provided that the President of the Union may, by notification in the Gazette, invest any Court subordinate to a District Court with jurisdiction in any class of cases, and any Court so invested shall within the local limits of its jurisdiction have concurrent jurisdiction with the District Court under this Act.

(*2*) For the purposes of this Act, a Court of Small Causes shall be deemed to be subordinate to the District Court.

Power of Court to decide all questions arising in insolvency.

4. (*1*) Subject to the provisions of this Act, the Court shall have full power to decide all questions, whether of title or priority, or of any nature whatsoever, and whether involving matters of law or of fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

(2) Subject to the provisions of this Act and notwithstanding anything contained in any other law for the time being in force, every such decision shall be final and binding for all purposes as between, on the one hand, the debtor and the debtor's estate and, on the other hand, all claimants against him or it and all persons claiming through or under them or any of them.

(*3*) Where the Court does not deem it expedient or necessary to decide any question of the nature referred to in sub-section (*1*), but has reason to believe that the debtor has a saleable interest in any property, the Court may without further inquiry sell such interest in such manner and subject to such conditions as it may think fit.

General powers of Courts.

5. (*1*) Subject to the provisions of this Act, the Court, in regard to proceedings under this Act, shall have the same powers and shall follow the same procedure as it has and follows in the exercise of original civil jurisdiction.

(*2*) Subject as aforesaid, the High Court and District Courts, in regard to proceedings under this Act in Courts subordinate to them, shall have the same powers and shall follow the same procedure as they respectively have and follow in regard to civil suits.

PART II.

PROCEEDINGS FROM ACT OF INSOLVENCY TO DISCHARGE.

Acts of Insolvency.

Acts of insolvency.

6. A debtor commits an act of insolvency in each of the following cases, namely :—

(*a*) if, in the Union of Burma or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally ;

(*b*) if, in the Union of Burma or elsewhere, he makes a transfer of his property, or of any part thereof, with intent to defeat or delay his creditors ;

(*c*) if, in the Union of Burma or elsewhere, he makes any transfer of his property, or of any part thereof, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent ;

(*d*) if, with intent to defeat or delay his creditors,—

(i) he departs or remains out of the Union of Burma,

(ii) he departs from his dwelling-house or usual place of business or otherwise absents himself,

(iii) he secludes himself so as to deprive his creditors of the means of communicating with him ;

(*e*) if any of his property has been sold in execution of the decree of any Court for the payment of money ;

(*f*) if he petitions to be adjudged an insolvent under the provisions of this Act ;

(*g*) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts ; or

(*h*) if he is imprisoned in execution of the decree of any Court for the payment of money.

Explanation.—For the purposes of this section the act of an agent may be the act of the principal.

Petition.

Petition and adjudication.

7. Subject to the conditions specified in this Act, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

Explanation.—The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication.

8. No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force. Exemption of corporation, etc., from insolvency proceedings.

9. (*1*) A creditor shall not be entitled to present an insolvency petition against a debtor unless— Conditions on which creditor may petition.

(*a*) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and

(*b*) the debt is a liquidated sum payable either immediately or at some certain future time, and

(*c*) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.

(*2*) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent, or give an estimate of the value of the security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

10. (*1*) A debtor shall not be entitled to present an insolvency petition, unless he is unable to pay his debts and— Conditions on which debtor may petition.

(*a*) his debts amount to five hundred rupees ; or

(*b*) he is under arrest or imprisonment in execution of the decree of any Court for the payment of money ; or

(*c*) an order of attachment in execution of such a decree has been made, and is subsisting, against his property.

(*2*) A debtor in respect of whom an order of adjudication, whether made under the Rangoon Insolvency Act or under this Act, has been annulled owing to his failure to apply, or to prosecute an application for, his discharge, shall not be entitled to present an insolvency petition without the leave of the Court by which the order of adjudication was annulled. Such Court shall not grant leave unless it is satisfied either that the debtor was prevented by any reasonable cause from presenting or prosecuting his application, as the case may be, or that the petition is founded on facts substantially different from those contained in the petition on which the order of adjudication was made.

11. Every insolvency petition shall be presented to a Court having jurisdiction under this Act in any local area in which the debtor ordinarily resides or carries on business, or personally works for gain, or if he has been arrested or imprisoned, where he is in custody : Court to which petition shall be presented.

Provided that no objection as to the place of presentment shall be allowed by any Court in the exercise of appellate or revisional jurisdiction

unless such objection was taken in the Court by which the petition was heard at the earliest possible opportunity, and unless there has been a consequent failure of justice.

Verification of petition.

12. Every insolvency petition shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure for signing and verifying plaints.

Contents of petition.

13. (*1*) Every insolvency petition presented by a debtor shall contain the following particulars, namely :—

(*a*) a statement that the debtor is unable to pay his debts ;

(*b*) the place where he ordinarily resides or carries on business or personally works for gain, or, if he has been arrested or imprisoned, the place where he is in custody ;

(*c*) the Court (if any) by whose order he has been arrested or imprisoned, or by which an order has been made for the attachment of his property, together with particulars of the decree in respect of which any such order has been made ;

(*d*) the amount and particulars of all pecuniary claims against him, together with the names and residences of his creditors so far as they are known to, or can, by the exercise of reasonable care and diligence be ascertained by him ;

(*e*) the amount and particulars of all his property, together with—

(i) a specification of the value of all such property not consisting of money ;

(ii) the place or places at which any such property is to be found ; and

(iii) a declaration of his willingness to place at the disposal of the Court all such property save in so far as it includes such particulars (not being his books of account) as are exempted by the Code of Civil Procedure, or by any other enactment for the time being in force, from liability to attachment and sale in execution of a decree ;

(*f*) a statement whether the debtor has on any previous occasion filed a petition to be adjudged an insolvent, and (where such a petition has been filed)—

(i) if such petition has been dismissed, the reasons for such dismissal, or

(ii) if the debtor has been adjudged an insolvent, concise particulars of the insolvency, including a statement whether any previous adjudication has been annulled and, if so, the grounds therefor.

(2) Every insolvency petition presented by a creditor or creditors shall set forth the particulars regarding the debtor specified in clause (*b*) of sub-section (*1*), and shall also specify—

(*a*) the act of insolvency committed by such debtor, together with the date of its commission ; and

(*b*) the amount and particulars of his or their pecuniary claim or claims against such debtor.

Withdrawal of petitions.

14. No petition, whether presented by a debtor or by a creditor, shall be withdrawn without the leave of the Court.

Consolidation of petitions.

15. Where two or more insolvency petitions are presented against the same debtor, or where separate petitions are presented against joint debtors, the Court may consolidate the proceedings or any of them, on such terms as the Court thinks fit.

Power to change carriage of proceedings.

16. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of a petitioning creditor.

Continuance of proceedings on death of debtor.

17. If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued so far as may be necessary for the realization and distribution of the property of the debtor.

Procedure for admission of petition.

18. The procedure laid down in the Code of Civil Procedure with respect to the admission of plaints shall, so far as it is applicable, be followed in the case of insolvency petitions.

Procedure on admission of petition.

19. (*1*) Where an insolvency petition is admitted, the Court shall make an order fixing a date for hearing the petition.

(*2*) Notice of the order under sub-section (*1*) shall be given to creditors in such manner as may by prescribed.

(*3*) Where the debtor is not the petitioner, notice of the order under sub-section (*1*) shall be served on him in the manner provided for the service of summons.

Appointment of interim receiver.

20. The Court when making an order admitting the petition may, and where the debtor is the petitioner ordinarily shall, appoint an interim receiver of the property of the debtor or of any part thereof, and may direct him to take immediate possession thereof or of any part thereof, and the interim receiver shall thereupon have such of the powers conferrable on a receiver appointed under the Code of Civil Procedure as the Court may direct. If an interim receiver is not so appointed, the Court may make such appointment at any subsequent time before adjudication, and the provisions of this section shall apply accordingly.

Interim proceedings

21. At the time of making an order admitting the petition or at any subsequent time before adjudication the Court may either of its own motion

against debtor.

or on the application of any creditor make one or more of the following orders, namely :—

(*1*) order the debtor to give reasonable security for his appearance until final orders are made upon the petition, and direct that in default of giving such security he shall be detained in the civil prison ;

(*2*) order the attachment by actual seizure of the whole or any part of the property in the possession or under the control of the debtor, other than such particulars (not being his books of account) as are exempted by the Code of Civil Procedure, or by any other enactment for the time being in force, from liability to attachment and sale in execution of a decree ;

(*3*) order a warrant to issue with or without bail for the arrest of the debtor, and direct either that he be detained in the civil prison until the disposal of the petition, or that he be released on such terms as to security as may be reasonable and necessary :

Provided that an order under clause (*2*) or clause (*3*) shall not be made unless the Court is satisfied that the debtor, with intent to defeat or delay his creditors or to avoid any process of the Court,—

(i) has absconded or has departed from the local limits of the jurisdiction of the Court, or is about to abscond or to depart from such limits, or is remaining outside them, or

(ii) has failed to disclose or has concealed, destroyed, transferred or removed from such limits, or is about to conceal, destroy, transfer or remove from such limits, any documents likely to be of use to his creditors in the course of the hearing, or any part of his property other than such particulars as aforesaid.

Duties of debtor.

22. The debtor shall on the making of an order admitting the petition produce all books of account, and shall at any time thereafter give such inventories of his property, and such lists of his creditors and debtors and of the debts due to and from them, respectively, submit to such examination in respect of his property or his creditors, attend at such times before the Court or receiver, execute such instruments, and generally do all such acts and things in relation to his property as may be required by the Court or receiver, or as may be prescribed.

Release of debtor.

23. (*1*) At the time of making an order admitting the petition or at any subsequent time before adjudication, the Court may, if the debtor is under arrest or imprisonment in execution of the decree of any Court for the payment of money, order his release on such terms as to security as may be reasonable and necessary.

(*2*) The Court may at any time order any person who has been released under this section to be re-arrested and re-committed to the custody from which he was released.

(*3*) At the time of making any order under this section, the Court shall record in writing its reasons therefor.

Procedure at hearing.

24. (*1*) On the day fixed for the hearing of the petition, or on any subsequent day to which the hearing may be adjourned, the Court shall require proof of the following matters, namely :—

(*a*) that the creditor or the debtor, as the case may be, is entitled to present the petition :

Provided that, where the debtor is the petitioner, he shall, for the purpose of proving his inability to pay his debts, be required to furnish only such proof as to satisfy the Court that there are *primâ facie* grounds for believing the same and the Court, if and when so satisfied, shall not be bound to hear any further evidence thereon ;

(*b*) that the debtor, if he does not appear on a petition presented by a creditor, has been served with notice of the order admitting the petition ; and

(*c*) that the debtor has committed the act of insolvency alleged against him.

(*2*) The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon.

(*3*) The Court shall, if sufficient cause is shown, grant time to the debtor or to any creditor to produce any evidence which appears to it to be necessary for the proper disposal of the petition.

(*4*) A memorandum of the substance of the examination of the debtor and of any other oral evidence given shall be made by the Judge, and shall form part of the record of the case.

Dismissal of petition.

25. (*1*) In the case of a petition presented by a creditor, where the Court is not satisfied with the proof of his right to present the petition or of the service on the debtor of notice of the order admitting the petition, or of the alleged act of insolvency, or is satisfied by the debtor that he is able to pay his debts, or that for any other sufficient cause no order ought to be made, the Court shall dismiss the petition.

(*2*) In the case of a petition presented by a debtor, the Court shall dismiss the petition if it is not satisfied of his right to present the petition.

Award of compensation.

26. (*1*) Where a petition presented by a creditor is dismissed under sub-section (*1*) of section 25, and the Court is satisfied that the petition was frivolous or vexatious, the Court may, on the application of the debtor, award against such creditor such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the debtor for the expense or injury occasioned to him by the petition and the proceedings thereon, and such amount may be realized as if it were a fine.

(2) An award under this section shall bar any suit for compensation in respect of such petition and the proceedings thereon.

Order of Adjudication.

Order of adjudication.

27. (1) If the Court does not dismiss the petition, it shall make an order of adjudication, and shall specify in such order the period within which the debtor shall apply for his discharge.

(2) The Court may, if sufficient cause is shown, extend the period within which the debtor shall apply for his discharge, and in that case shall publish notice of the order in such manner as it thinks fit.

Effect of an order of adjudication.

28. (1) On the making of an order of adjudication, the insolvent shall aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors.

(2) On the making of an order of adjudication, the whole of the property of the insolvent wherever situate shall vest in the Court or in a receiver as hereinafter provided, and shall become divisible among the creditors, and thereafter, except as provided by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable under this Act shall during the pendency of the insolvency proceedings have any remedy against the property of the insolvent in respect of the debt, or commence any suit or other legal proceeding, except with the leave of the Court and on such terms as the Court may impose.

(3) For the purposes of sub-section (2), all goods being, at the date of the presentation of the petition on which the order is made, in the possession, order or disposition of the insolvent in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof, shall be deemed to be the property of the insolvent.

(4) All property which is acquired by or devolves on the insolvent after the date of an order of adjudication and before his discharge shall forthwith vest in the Court or receiver, and the provisions of sub-section (2) shall apply in respect thereof.

(5) The property of the insolvent for the purposes of this section shall not include any property (not being books of account) which is exempted by the Code of Civil Procedure, or by any other enactment for the time being in force, from liability to attachment and sale in execution of a decree.

(6) Nothing in this section shall affect the power of any secured creditor to realize or otherwise deal with his security, in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

(7) An order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made.

Stay of pending proceeding.

29. Any Court in which a suit or other proceeding is pending against a debtor shall, on proof that an order of adjudication has been made against

him under this Act, either stay the proceeding, or allow it to continue on such terms as such Court may impose.

Publication of order of adjudication.

30. Notice of an order of adjudication, stating the name, address and description of the insolvent, the date of the adjudication, the period within which the debtor shall apply for his discharge, and the Court by which the adjudication is made, shall be published in the Gazette and in such other manner as may be prescribed.

Proceedings consequent on Order of Adjudication.

Protection order.

31. (*1*) Any insolvent in respect of whom an order of adjudication has been made may apply to the Court for protection, and the Court may on such application make an order for the protection of the insolvent from arrest or detention.

(*2*) A protection order may apply either to all the debts of the debtor or to any of them as the Court may think proper, and may commence and take effect at and for such time as the Court may direct, and may be revoked or renewed as the Court may think fit.

(*3*) A protection order shall protect the insolvent from being arrested or detained in prison for any debt to which such order applies, and any insolvent arrested or detained contrary to the terms of such an order shall be entitled to his release:

Provided that no such order shall operate to prejudice the rights of any creditor in the event of such order being revoked or the adjudication annulled.

(*4*) Any creditor shall be entitled to appear and oppose the grant of a protection order.

Power to arrest after adjudication.

32. At any time after an order of adjudication has been made, the Court may, if it has reason to believe on the application of any creditor or the receiver that the debtor has absconded or departed from the local limits of its jurisdiction with intent to avoid any obligation which has been, or might be, imposed on him by or under this Act, order a warrant to issue for his arrest, and, on his appearing or being brought before it, may, if satisfied that he was absconding or had departed with such intent, order his release on such terms as to security as may be reasonable or necessary, or, if such security is not furnished, direct that he shall be detained in the civil prison for a period which may extend to three months.

Schedule of creditors.

33. (*1*) When an order of adjudication has been made under this Act, all persons alleging themselves to be creditors of the insolvent in respect of debts provable under this Act shall tender proof of their respective debts by producing evidence of the amount and particulars thereof, and the Court shall,

by order, determine the persons who have proved themselves to be creditors of the insolvent in respect of such debts, and the amount of such debts, respectively, and shall frame a schedule of such persons and debts :

Provided that, if, in the opinion of the Court, the value of any debt is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt shall not be included in the schedule.

(*2*) A copy of every such schedule shall be posted in the Court-house.

(*3*) Any creditor of the insolvent may, at any time before the discharge of the insolvent, tender proof of his debt and apply to the Court for an order directing his name to be entered in the schedule as a creditor in respect of any debt provable under this Act, and not entered in the schedule, and the Court, after causing notice to be served on the receiver and the other creditors who have proved their debts, and hearing their objections (if any), shall comply with or reject the application.

Debts provable under the Act.

34. (*1*) Debts which have been excluded from the schedule on the ground that their value is incapable of being fairly estimated and demands in the nature of unliquidated damages arising otherwise than by reason of a contract or a breach of trust shall not be provable under this Act.

(*2*) Save as provided by sub-section (*1*), all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged an insolvent, or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable under this Act.

Annulment of Adjudication.

Power to annul adjudication of insolvency.

35. Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent have been paid in full, the Court shall, on the application of the debtor, or of any other person interested, by order in writing, annul the adjudication, and the Court may, of its own motion or on application made by the receiver or any creditor, annul any adjudication made on the petition of a debtor who was, by reason of the provisions of sub-section (*2*) of section 10, not entitled to present such petition.

Power to cancel one of concurrent orders of adjudication.

36. If, in any case in which an order of adjudication has been made, it shall be proved to the Court by which such order was made that insolvency proceedings are pending in another Court against the same debtor, and that the property of the debtor can be more conveniently distributed by such other Court, the Court may annul the adjudication or stay all proceedings thereon.

Proceedings on annulment.

37. (*1*) Where an adjudication is annulled, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the Court or receiver shall be valid ; but, subject as aforesaid, the property of the debtor who was adjudged insolvent shall vest in such person as the Court may

appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such conditions (if any) as the Court may, by order in writing, declare.

(*2*) Notice of every order annulling an adjudication shall be published in the Gazette and in such other manner as may be prescribed.

Compositions and Schemes of Arrangement.

Compositions and schemes of arrangement.

38. (*1*) Where a debtor, after the making of an order of adjudication, submits a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, the Court shall fix a date for the consideration of the proposal, and shall issue a notice to all creditors in such manner as may be prescribed.

(2) If, on the consideration of the proposal, a majority in number and three-fourths in value of all the creditors whose debts are proved, and who are present in person or by pleader, resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors.

(*3*) The debtor may at the meeting amend the terms of his proposal if the amendment is, in the opinion of the Court, calculated to benefit the general body of creditors.

(*4*) Where the Court is of opinion, after hearing the report of the receiver, if a receiver has been appointed, and after considering any objections which may be made by or on behalf of any creditor, that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the Court shall refuse to approve the proposal.

(*5*) If any facts are proved on proof of which the Court would be required either to refuse, suspend or attach conditions to the debtor's discharge, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than six annas in the rupee on all the unsecured debts provable against the debtor's estate.

(*6*) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of an insolvent.

(*7*) In any other case the Court may either approve or refuse to approve the proposal.

Order on approval.

39. If the Court approves the proposal, the terms shall be embodied in an order of the Court, and the order of adjudication shall be annulled, and the provisions of section 37 shall apply, and the composition or scheme shall be binding on all the creditors so far as relates to any debt due to them from the debtor and provable under this Act.

Power to re-adjudge debtor insolvent.

40. If default is made in the payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit,

re-adjudge the debtor insolvent and annul the composition or scheme, but without prejudice to the validity of any transfer or payment duly made or of anything duly done under or in pursuance of the composition or scheme. When a debtor is re-adjudged insolvent under this section, all debts provable in other respects which have been contracted before the date of such readjudication shall be provable in the insolvency.

Discharge.

Discharge.

41. (*1*) A debtor may, at any time after the order of adjudication, and shall, within the period specified by the Court, apply to the Court for an order of discharge, and the Court shall fix a day, notice whereof shall be given in such manner as may be prescribed, for hearing such application, and any objections which may be made thereto.

(2) Subject to the provisions of this section, the Court may, after considering the objections of any creditor and, where a receiver has been appointed, the report of the receiver—

(*a*) grant or refuse an absolute order of discharge ; or

(*b*) suspend the operation of the order for a specified time ; or

(*c*) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired property.

Cases in which Court must refuse an absolute discharge.

42. (*1*) The Court shall refuse to grant an absolute order of discharge under section 41 on proof of any of the following facts, namely :—

(*a*) that the insolvent's assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible ;

(*b*) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency ;

(*c*) that the insolvent has continued to trade after knowing himself to be insolvent ;

(*d*) that the insolvent has contracted any debt provable under this Act without having at the time of contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it ;

(*e*) that the insolvent has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities ;

(*f*) that the insolvent has brought on, or contributed to, his insolvency by rash and hazardous speculations, or by unjustifiable

extravagance in living, or by gambling, or by culpable neglect of his business affairs ;

(*g*) that the insolvent has, within three months preceding the date of the presentation of the petition, when unable to pay his debts as they became due, given an undue preference to any of his creditors ;

(*h*) that the insolvent has on any previous occasion been adjudged an insolvent or made a composition or arrangement with his creditors ;

(*i*) that the insolvent has concealed or removed his property or any part thereof, or has been guilty of any other fraud or fraudulent breach of trust.

(*2*) For the purposes of this section, the report of the receiver shall be deemed to be evidence, and the Court may presume the correctness of any statement contained therein.

(*3*) The powers of suspending, and of attaching conditions to, an insolvent's discharge may be exercised concurrently.

Adjudication to be annulled on failure to apply for discharge.

43. (*1*) If the debtor does not appear on the day fixed for hearing his application for discharge or on such subsequent day as the Court may direct, or if the debtor does not apply for an order of discharge within the period specified by the Court, the order of adjudication shall be annulled, and the provisions of section 37 shall apply accordingly.

(*2*) Where a debtor has been released from custody under the provisions of this Act and the order of adjudication is annulled under sub-section (*1*), the Court may, if it thinks fit, re-commit the debtor to his former custody, and the officer in charge of the prison to whose custody such debtor is so re-committed shall receive such debtor into his custody according to such re-commitment, and thereupon all processes which were in force against the person of such debtor at the time of such release as aforesaid shall be deemed to be still in force against him as if no order of adjudication had been made.

Effect of order of discharge.

44. (*1*) An order of discharge shall not release the insolvent from—

(*a*) any debt due to the Government.

(*b*) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party ;

(*c*) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party ; or

(*d*) any liability under an order for maintenance made under section 488 of the Code of Criminal Procedure.

(*2*) Save as otherwise provided by sub-section (*1*), an order of discharge shall release the insolvent from all debts provable under this Act.

(*3*) An order of discharge shall not release any person who, at the date of the presentation of the petition, was a partner or co-trustee with the insolvent, or was jointly bound or had made any joint contract with him or any person who was surety for him.

PART III.

ADMINISTRATION OF PROPERTY.

Method of Proof of Debts.

Debt payable at a future time.

45. A creditor may prove for a debt not payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting therefrom only a rebate of interest at the rate of six per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

Mutual dealings and set-off.

46. Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively.

Secured creditors.

47. (*1*) Where a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realized.

(*2*) Where a secured creditor relinquishes his security for the general benefit of the creditors, he may prove for his whole debt.

(*3*) Where a secured creditor does not either realize or relinquish his security, he shall, before being entitled to have his debt entered in the schedule, state in his proof the particulars of his security, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

(*4*) Where a security is so valued, the Court may at any time before realization redeem it on payment to the creditor of the assessed value.

(*5*) Where a creditor, after having valued his security, subsequently realizes it, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

(*6*) Where a secured creditor does not comply with the provisions of this section, he shall be excluded from all share in any dividend.

Interest.

48. (*1*) On any debt or sum certain whereon interest is not reserved or agreed for, and which is overdue when the debtor is adjudged an insolvent, and which is provable under this Act, the creditor may prove for interest at a rate not exceeding six per centum per annum—

(*a*) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication ; or,

(*b*) if the debt or sum is payable otherwise, from the time when a demand in writing has been made, giving the debtor notice that

interest will be claimed from the date of the demand until the time of payment, to the date of such adjudication.

(*2*) Where a debt which has been proved under this Act includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

Mode of proof

49 (*1*) A debt may be proved under this Act by delivering, or sending by post in a registered letter, to the Court an affidavit verifying the debt.

(*2*) The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers (if any) by which the same can be substantiated. The Court may at any time call for the production of the vouchers.

Disallowance and reduction of entries in schedule.

50. (*1*) Where the receiver thinks that a debt has been improperly entered in the schedule, the Court may, on the application of the receiver and after notice to the creditor, and such inquiry (if any) as the Court thinks necessary, expunge such entry or reduce the amount of the debt.

(*2*) The Court may also, after like inquiry, expunge an entry or reduce the amount of a debt upon the application of a creditor where no receiver has been appointed, or where the receiver declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

Effect of Insolvency on Antecedent Transactions.

Restriction of rights of creditor under execution.

51. (*1*) Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the receiver except in respect of assets realized in the course of the execution by sale or otherwise before the date of the admission of the petition.

(*2*) Nothing in this section shall affect the rights of a secured creditor in respect of the property against which the decree is executed.

(*3*) A person who in good faith purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the receiver.

Duties of Court executing decree as to property taken in execution.

52. Where execution of a decree has issued against any property of a debtor which is saleable in execution and before the sale thereof notice is given to the Court executing the decree that an insolvency petition by or against the debtor has been admitted, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the receiver, but the costs of the suit in which the decree was made and of the execution shall be a first charge on the property so delivered, and the receiver may sell the property or an adequate part thereof for the purpose of satisfying the charge.

Avoidance of voluntary transfer.

53. Any transfer of property not being a transfer made before and in consideration of marriage or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration shall, if the transferor is adjudged insolvent on a petition presented within two years after the date of the transfer, be voidable as against the receiver and may be annulled by the Court.

Avoidance of preference in certain cases.

54. (*1*) Every transfer of property, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money, in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the receiver, and shall be annulled by the Court.

(2) This section shall not affect the rights of any person who in good faith and for valuable consideration has acquired a title through or under a creditor of the tnsolvent.

By whom petitions for annulment may be made.

54A. A petition for the annulment of any transfer under section 53, or of any transfer, payment, obligation or judicial proceeding under section 54, may be made by the receiver or, with the leave of the Court, by any creditor who has proved his debt and who satisfies the Court that the receiver has been requested and has refused to make such petition.

Protection of *bond fide* transactions.

55. Subject to the foregoing provisions of this Act with respect to the effect of insolvency on an execution, and with respect to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate in the case of an insolvency—

(*a*) any payment by the insolvent to any of his creditors ;

(*b*) any payment or delivery to the insolvent ;

(*c*) any transfer by the insolvent for valuable consideration ; or

(*d*) any contract or dealing by or with the insolvent for valuable consideration :

Provided that any such transaction takes place before the date of the order of adjudication, and that the person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor.

Realization of Property.

Appointment of receiver.

56. (*1*) The Court may, at the time of the order of adjudication, or at any time afterwards, appoint a receiver for the property of the insolvent, and such property shall thereupon vest in such receiver.

(2) Subject to such conditions as may be prescribed, the Court may—

(*a*) require the receiver to give such security as it thinks fit duly to account for what he shall receive in respect of the property ; and

(*b*) by general or special order, fix the amount to be paid as remuneration for the services of the receiver out of the assets of the insolvent.

(*3*) Where the Court appoints a receiver, it may remove the person in whose possession or custody any such property as aforesaid is from the possession or custody thereof :

Provided that nothing in this section shall be deemed to authorize the Court to remove from possession or custody of property any person whom the insolvent has not a present right so to remove.

(*4*) Where a receiver appointed under this section—

(*a*) fails to submit his accounts at such periods and in such form as the Court directs, or

(*b*) fails to pay the balance due from him thereon as the Court directs, or

(*c*) occasions loss to the property by his wilful default or gross negligence,

the Court may direct his property to be attached and sold, and may apply the proceeds to make good any balance found to be due from him or any loss so occasioned by him.

(*5*) The provisions of this section shall apply, so far as may be, to interim receivers appointed under section 20.

Power to appoint official receivers

57. (*1*) The President of the Union may appoint such persons as he thinks fit (to be called " official receivers ") to be receivers under this Act within such local limits as he may prescribe.

(*2*) Where any official receiver has been so appointed for the local limits of the jurisdiction of any Court having jurisdiction under this Act, he shall be the receiver for the purpose of every order appointing a receiver or an interim receiver issued by any such Court, unless the Court for special reasons otherwise directs.

(*3*) Any sum payable under clause (*b*) of sub-section (*2*) of section 56 in respect of the services of an official receiver shall be credited to such fund as the President of the Union may direct.

(*4*) Every official receiver shall receive such remuneration out of the said fund or otherwise as the President of the Union may fix in this behalf, and no remuneration whatever beyond that so fixed shall be received by the official receiver as such.

Powers of Court if no receiver appointed.

58. Where no receiver is appointed, the Court shall have all the rights of, and may exercise all the powers conferred on, a receiver under this Act.

Duties and powers of receiver.

59. Subject to the provisions of this Act, the receiver shall, with all convenient speed, realize the property of the debtor and distribute dividends among the creditors entitled thereto, and for that purpose may—

(*a*) sell all or any part of the property of the insolvent ;

(*b*) give receipts for any money received by him ;

and may, by leave of the Court, do all or any of the following things, namely :—

(*c*) carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same ;

(*d*) institute, defend or continue any suit or other legal proceeding relating to the property of the insolvent ;

(*e*) employ a pleader or other agent to take any proceedings or do any business which may be sanctioned by the Court ;

(*f*) accept as the consideration for the sale of any property of the insolvent a sum of money payable at a future time subject to such stipulations as to security and otherwise as the Court thinks fit ;

(*g*) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts ;

(*h*) refer any dispute to arbitration, and compromise all debts, claims and liabilities, on such terms as may be agreed upon ; and

(*i*) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold.

Power to require information regarding insolvent's property.

59A. (*1*) The Court, if specially empowered in this behalf by an order of the President of the Union, or any officer of the Court so empowered by a like order, may, on the application of the receiver or any creditor who has proved his debt, at any time after an order of adjudication has been made, summon before it in the prescribed manner any person known or suspected to have in his possession any property belonging to the insolvent, or supposed to be indebted to the insolvent, or any person whom the Court or such officer, as the case may be, may deem capable of giving information respecting the insolvent or his dealings or property, and the Court or such officer may require any such person to produce any documents in his custody or power relating to the insolvent or to his dealings or property.

(*2*) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court or such officer at the time appointed, or refuses to produce any such document, having no lawful impediment made known to and allowed by the Court or such officer, the Court or such officer may, by warrant, cause him to be apprehended and brought up for examination.

(*3*) The Court or such officer may examine any person so brought before it or him concerning the insolvent, his dealings or property, and such person may be represented by a legal practitioner.

Special provisions in regard to immoveable property.

60. (*1*) In any local area in which a declaration has been made under section 68 of the Code of Civil Procedure, and is in force, no sale of immoveable property paying revenue to the Government or held or let for agricultural purposes shall be made by the receiver; but, after the other property of the insolvent has been realized, the Court shall ascertain—

(*a*) the amount required to satisfy the debts proved under this Act after deducting the monies already received;

(*b*) the immoveable property of the insolvent remaining unsold ; and

(*c*) the incumbrances (if any) existing thereon ;

and shall forward a statement to the Collector containing the particulars aforesaid; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by paragraphs 2 to 10 of the Third Schedule to the said Code as he thinks fit, and subject to the provisions of those paragraphs so far as they are applicable, and shall hold at the disposal of the Court all sums that may come to his hands by the exercise of such powers.

(*2*) Nothing in this Act shall be deemed to affect any provisions of any enactment for the time being in force prohibiting or restricting the execution of decrees or orders against immoveable property; and any such provisions shall be deemed to apply to the enforcement of an order of adjudication made under this Act as if it were such a decree or order.

Distribution of Property.

Priority of debts.

61. (*1*) In the distribution of the property of the insolvent, there shall be paid in priority to all other debts—

(*a*) all debts due to the Government or to any local authority ; and

(*b*) all salary or wages, not exceeding twenty rupees in all, of any clerk, servant or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition.

(*2*) The debts specified in sub-section (*1*) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(*3*) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub-section (*1*) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them.

(*4*) In the case of partners, the partnership property shall be applicable in the first instance in payment of the partnership debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property ; and where there is a surplus of the p artnership property, it shall be dealt with as

part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.

(*5*) Subject to the provisions of this Act, all debts entered in the schedule shall be paid rateably according to the amounts of such debts respectively and without any preference.

(*6*) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts entered in the schedule.

Calculation of dividends.

62. (*1*) In the calculation of dividends, the receiver shall retain in his hands sufficient assets to meet—

(*a*) debts provable under this Act and appearing, from the insolvent's statements or otherwise, to be due to persons resident in places so distant that in the ordinary course of communication they have not had sufficient time to tender their proofs ;

(*b*) debts provable under this Act, the subject of claims not yet determined ;

(*c*) disputed proofs or claims ; and

(*d*) the expenses necessary for the administration of the estate or otherwise

(*2*) Subject to the provisions of sub-section (*1*), all money in hand shall be distributed as dividends.

Right of creditor who has not proved debt before declaration of a dividend.

63. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid, out of any money for the time being in the hands of the receiver, any dividend or dividends which he may have failed to receive before that money is applied to the payment of any future dividend or dividends ; but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

Final dividend.

64. When the receiver has realized all the property of the insolvent or so much thereof as can, in the opinion of the Court, be realized without needlessly protracting the receivership, he shall declare a final dividend ; but before so doing, he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified but not proved, that if they do not prove their claims within the time limited by the notice he will proceed to make a final dividend without regard to their claims. After the expiration of the time so limited, or if the Court, on application by any such claimant, grants him further time for establishing his claim, then on the expiration of such further time, the property of the insolvent shall be divided among the creditors entered in the schedule without regard to the claims of any other persons.

No suit for dividend.

65. No suit for a dividend shall lie against the receiver ; but where the receiver refuses to pay any dividend, the Court may, on the application of

any creditor who is entered in the schedule, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

Management by and allowance to insolvent.

66. (*1*) The Court may appoint the insolvent himself to superintend the management of the property of the insolvent or of any part thereof, or to carry on the trade (if any) of the insolvent for the benefit of the creditors, and in any other respect to aid in administering the property in such manner and on such terms as the Court may direct.

(*2*) The Court may, from time to time, make such allowance as it may think just to the insolvent out of his property for the support of himself and his family, or in consideration of his services if he is engaged in winding up his estate ; but any such allowance may, at any time, be varied or determined by the Court.

Right of insolvent to surplus.

67. The insolvent shall be entitled to any surplus remaining after payment in full of his creditors with interest as provided by this Act, and of the expenses of the proceedings taken thereunder.

Committee of inspection.

67A. (*1*) The Court may, if it thinks fit, authorize the creditors who have proved their debts to appoint a committee of inspection for the purpose of superintending the administration of the insolvent's property by the receiver.

(*2*) The persons appointed to a committee of inspection shall be creditors who have proved their debts or persons holding general powers-of-attorney from such creditors.

(*3*) The committee of inspection shall have such powers of control over the proceedings of the receiver as may be prescribed.

Appeal to Court against Receiver.

Appeal to Court against receiver.

68. If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the receiver, he may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just:

Provided that no application under this section shall be entertained after the expiration of twenty-one days from the date of the act or decision complained of.

PART IV.

PENALTIES.

Offences by debtors.

69. If a debtor, whether before or after the making of an order of adjudication,—

(*a*) wilfully fails to perform the duties imposed on him by section 22, or to deliver up possession of any part of his property which is divisible among his creditors under this Act, and which is for the

time being in his possession or under his control, to the Court or to any person authorized by the Court to take possession of it, or

(*b*) fraudulently with intent to conceal the state of his affairs or to defeat the objects of this Act,—

(i) has destroyed or otherwise wilfully prevented or purposely withheld the production of any document relating to such of his affairs as are subject to investigation under this Act, or

(ii) has kept or caused to be kept false books, or

(iii) has made false entries in or withheld entries from or wilfully altered or falsified any document relating to such of his affairs as are subject to investigation under this Act, or

(*c*) fraudulently with intent to diminish the sum to be divided among his creditors or to give an undue preference to any of his creditors,—

(i) has discharged or concealed any debt due to or from him, or

(ii) has made away with, charged, mortgaged or concealed any part of his property of any kind whatsoever,

he shall be punishable on conviction with imprisonment which may extend to one year.

Procedure on charge under section 69.

70. Where the Court is satisfied, after such preliminary inquiry, if any, as it thinks necessary, that there is ground for inquiring into any offence referred to in section 69, and appearing to have been committed by the insolvent, the Court may record a finding to that effect and make a complaint of the offence in writing to a Magistrate of the first class having jurisdiction, and such Magistrate shall deal with such complaint in the manner laid down in the Code of Criminal Procedure.

Criminal liability after discharge or composition.

71. Where an insolvent has been guilty of any of the offences specified in section 69, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

Undischarged insolvent obtaining credit.

72. (*1*) An undischarged insolvent obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an undischarged insolvent shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

(*2*) Where the Court has reason to believe that an undischarged insolvent has committed the offence referred to in sub-section (*1*), the Court, after making any preliminary inquiry that may be necessary, may send the case for trial to the nearest Magistrate of the first class, and may send the accused in custody or take sufficient security for his appearance before such Magistrate ; and may bind over any person to appear and give evidence on such trial.

Disqualifications of insolvent.

73. (*1*) Where a debtor is adjudged or re-adjudged insolvent under this Act, he shall, subject to the provisions of this section, be disqualified from—

(*a*) being appointed or acting as a Magistrate ;

(*b*) being elected to any office of any local authority where the appointment to such office is by election, or holding or exercising any such office to which no salary is attached ; and

(*c*) being elected or sitting or voting as member of any local authority.

(*2*) The disqualifications which an insolvent is subject to under this section shall be removed, and shall cease if—

(*a*) the order of adjudication is annulled under section 35, or

(*b*) he obtains from the Court an order of discharge, whether absolute or conditional, with a certificate that his insolvency was caused by misfortune without any misconduct on his part.

(*3*) The Court may grant or refuse such certificate as it thinks fit, but any order of refusal shall be subject to appeal.

PART V.

SUMMARY ADMINISTRATION.

Summary administration.

74. When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise that the property of the debtor is not likely to exceed in value five hundred rupees, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications, namely :—

(i) unless the Court otherwise directs, no notice required under this Act shall be published in the Gazette ;

(ii) on the admission of a petition by a debtor, the property of the debtor shall vest in the Court as a receiver ;

(iii) at the hearing of the petition, the Court shall inquire into the debts and assets of the debtor and determine the same by order in writing and it shall not be necessary to frame a schedule under the provisions of section 33 ;

(iv) the property of the debtor shall be realized with all reasonable despatch and thereafter, when practicable, distributed in a single dividend ;

(v) the debtor shall apply for his discharge within six months from the date of adjudication ; and

(vi) such other modifications as may be prescribed with the view of saving expense and simplifying procedure :

Provided that the Court may at any time direct that the ordinary procedure provided for in this Act shall be followed in regard to the debtor's estate, and thereafter the Act shall have effect accordingly.

PART VI.

APPEALS.

Appeals.

75. (*1*) The debtor, any creditor, the receiver or any other person aggrieved by a decision come to or an order made in the exercise of insolvency jurisdiction by a Court subordinate to a District Court may appeal to the District Court, and the order of the District Court upon such appeal shall be final:

Provided that the High Court, for the purpose of satisfying itself that an order made in any appeal decided by the District Court was according to law, may call for the case and pass such order with respect thereto as it thinks fit:

Provided further, that any such person aggrieved by a decision of the District Court on appeal from a decision of a subordinate Court under section 4 may appeal to the High Court on any of the grounds mentioned in sub-section (*1*) of section 100 of the Code of Civil Procedure.

(*2*) Any such person aggrieved by any such decision or order of a District Court as is specified in Schedule I, come to or made otherwise than in appeal from an order made by a subordinate Court, may appeal to the High Court.

(*3*) Any such person aggrieved by any other order made by a District Court otherwise than in appeal from an order made by a subordinate Court may appeal to the High Court by leave of the District Court or of the High Court.

(*4*) The periods of limitation for appeals to the District Court and to the High Court under this section shall be thirty days and ninety days respectively.

PART VII.

MISCELLANEOUS.

Costs.

76. The costs of any proceeding under this Act, including the costs of maintaining a debtor in the civil prison, shall, subject to any rules made under this Act, be in the discretion of the Court in which the proceeding is had.

Courts to be auxiliary to each other.

77. All Courts having jurisdiction in insolvency and the officers of such Courts, respectively, shall severally act in aid of and be auxiliary to each other in all matters of insolvency, and an order of a Court seeking aid with a request to another of the said Courts shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by the order, such jurisdiction as either of such Courts could exercise in regard to similar matters within their respective jurisdictions.

Limitation.

78. (*1*) The provisions of sections 5 and 12 of the Limitation Act shall apply to appeals and applications under this Act, and for the purpose of the said section 12 a decision under section 4 shall be deemed to be a decree.

(*2*) Where an order of adjudication has been annulled under this Act, in computing the period of limitation prescribed for any suit or application

for the execution of a decree [other than a suit or application in respect of which the leave of the Court was obtained under sub-section (*2*) of section 28] which might have been brought or made but for the making of an order of adjudication under this Act, the period from the date of the order of adjudication to the date of the order of annulment shall be excluded :

Provided that nothing in this section shall apply to a suit or application in respect of a debt provable but not proved under this Act.

Power to make rules.

79. (*1*) The High Court may, with the previous sanction of the President of the Union, make rules for carrying into effect the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide--

(*a*) for the appointment and remuneration of receivers (other than official receivers), the audit of the accounts of all receivers and the costs of such audit,

(*b*) for meetings of creditors,

(*c*) for the procedure to be followed where the debtor is a firm,

(*d*) for the procedure to be followed in the case of estates to be administered in a summary manner, and

(*e*) for any matter which is to be or may be prescribed.

(*3*) All rules made under this section shall be published in the Gazette and shall, on such publication, have effect as if enacted in this Act.

Delegation of powers to official receivers.

80. (*1*) The High Court, with the like sanction, may from time to time direct that, in any matters in respect of which jurisdiction is given to the Court by this Act, the official receiver shall, subject to the directions of the Court, have all or any of the following powers, namely :—

(*a*) * * * *

(*b*) to frame schedules and to admit or reject proofs of creditors ;

(*c*)—(*d*) * * *

(*e*) to make interim orders in any case of urgency ; and

(*f*) to hear and determine any unopposed or *ex-parte* application.

(*2*) Subject to the appeal to the Court provided for by section 68, any order made or act done by the official receiver in the exercise of the said powers shall be deemed the order or act of the Court.

Power of President to bar application of certain provisions to certain Courts.

81. The President of the Union may, by notification in the Gazette, declare that any of the provisions of this Act specified in Schedule II shall not apply to insolvency proceedings in any Court or Courts having jurisdiction under this Act.

Saving.

82. Nothing in this Act shall affect the Rangoon Insolvency Act.

SCHEDULE I.

[*See* section 75 (*2*).]

DECISIONS AND ORDERS FROM WHICH AN APPEAL LIES TO THE HIGH COURT UNDER SECTION 75 (*2*).

Section.	Nature of decision or order.
4	Decision of questions of title, priority, etc., arising in insolvency.
25	Order dismissing a petition.
26	Order awarding compensation.
27	Order of adjudication.
33	Orders regarding entries in the schedule.
35	Order annulling adjudication.
37	Order declaring the conditions on which the debtor's property shall revert to him on annulment of adjudication.
41	Order on application for discharge.
50	Order disallowing or reducing entries in the schedule.
53	Order annulling a voluntary transfer.
54	Decision that a transfer of property is a preference in favour of a creditor.

SCHEDULE II.

(*See* section 81.)

PROVISIONS OF THE ACT APPLICATION OF WHICH MAY BE BARRED BY THE PRESIDENT OF THE UNION.

Provisions of the Act.	Subject.
Sections.	
26	Award of compensation.
28, sub-section (*3*).	Reputed property of an insolvent.
34	Debts provable under the Act.
38	Compositions and schemes of arrangement.
39	
40	
42, sub-sections (*1*) and (*2*).	Obligation to refuse absolute discharge.
45	Method of proof of debts.
46	
47	
48	
49	
50	
51	Effect of insolvency on antecedent transactions.
52	
53	
54	
55	
61 [except clause (*a*) of sub-section (*1*) and sub section (*4*)].	Priority of debts.
62	Dividends.
63	
64	
65	
66	Management by and allowance to insolvent.
72	Penalty for obtaining of credit by undischarged insolvent.

PART XXV—ARBITRATION.

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THE ARBITRATION (PROTOCOL AND CONVENTION) ACT.

[INDIA ACT VI, 1937.] (19th January, 1939.)

Preamble. WHEREAS India [1] was a State signatory to the Protocol on Arbitration Clauses set forth in the First Schedule, and to the Convention on the execution of Foreign Arbitral Awards set forth in the Second Schedule, subject in each case to a reservation of the right to limit its obligations in respect thereof to contracts which are considered as commercial under the law in force in British India ;

AND WHEREAS it is expedient, for the purpose of giving effect to the said Protocol and of enabling the said Convention to become operative in [the Union of Burma] [2] to make certain further provisions respecting the law of arbitration ;

It is hereby enacted as follows :—

Commencement and operation. 1. The provisions of this Act shall have effect only from such date [3] as the President of the Union may, by notification, appoint in this behalf, and the President of the Union may appoint different dates for the coming into effect of different provisions of this Act.

Interpretation. 2. In this Act " foreign award " means an award on differences relating to matters considered as commercial under the law in force in [the Union of Burma][2] made after the 28th day of July, 1924,—

(*a*) in pursuance of an agreement for arbitration to which the Protocol set forth in the First Schedule applies, and

(*b*) between persons of whom one is subject to the jurisdiction of some one of such Powers as the President of the Union, being satisfied that reciprocal provisions have been made, may, by notification [4] in the Gazette, declare to be parties to the Convention set forth in the Second Schedule, and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid, and

(*c*) in one of such territories as the President of the Union, being satisfied that reciprocal provisions have been made, may, by like notification, declare to be territories to which the said Convention applies,

and for the purposes of this Act an award shall not be deemed to be final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made

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[1] Burma, being at the time a part of India, is party to this pre-separation Protocol.

[2] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

[3] Sections 2 and 4 to 10 have been declared to be in force from the 19th January, 1939 ; *see Burma Gazette*, 1938, Part 1, page 1089.

[4] For such a notification, *see Burma Gazette*, 1938, Part I, page 1089.

Stay of proceedings in respect of matters to be referred to arbitration.

3. Notwithstanding anything contained in the Arbitration Act or in the Code of Civil Procedure, if any party to a submission made in pursuance of an agreement to which the Protocol set forth in the First Schedule applies and which relates to matters considered as commercial under the law in force in [the Union of Burma],[1] or any person claiming through or under him, commences any legal proceedings in any Court against any other party to the submission or any person claiming through or under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time after appearance and before filing a written statement or taking any other steps in the proceedings, apply to the Court to stay the proceedings ; and the Court, unless satisfied that the agreement or arbitration has become inoperative or cannot proceed, or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred, shall make an order staying the proceedings.

Effect of foreign awards.

4. (*1*) A foreign award shall, subject to the provisions of this Act, be enforceable in [the Union of Burma][1] as if it were an award made on a matter referred to arbitration in [the Union of Burma].[1]

(*2*) Any foreign award which would be enforceable under this Act shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in [the Union of Burma],[1] and any references in this Act to enforcing a foreign award shall be construed as including references to relying on an award.

Filing of foreign award in Court.

5. (*1*) Any person interested in a foreign award may apply to any Court having jurisdiction over the subject-matter of the award that the award be filed in Court.

(*2*) The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

(*3*) The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

Enforcement of foreign award.

6. (*1*) Where the Court is satisfied that the foreign award is enforceable under this Act, the Court shall order the award to be filed and shall proceed to pronounce judgment according to the award.

(*2*) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award.

Conditions for enforcement of foreign awards.

7. (*1*) In order that a foreign award may be enforceable under this Act it must have—

(*a*) been made in pursuance of an agreement for arbitration which was valid under the law by which it was governed,

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

(*b*) been made by the tribunal provided for in the agreement or constituted in manner agreed upon by the parties,

(*c*) been made in conformity with the law governing the arbitration procedure,

(*d*) become final in the country in which it was made,

(*e*) been in respect of a matter which may lawfully be referred to arbitration under the law of [the Union of Burma],[1]

and the enforcement thereof must not be contrary to the public policy or the law of [the Union of Burma].[1]

(*2*) A foreign award shall not be enforceable under this Act if the Court dealing with the case is satisfied that—

(*a*) the award has been annulled in the country in which it was made, or

(*b*) the party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case, or was under some legal incapacity and was not properly represented, or

(*c*) the award does not deal with all the questions referred or contains decisions on matters beyond the scope of the agreement for arbitration :

Provided that if the award does not deal with all questions referred the Court may, if it thinks fit, either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it as the Court may think fit.

(*3*) If a party seeking to resist the enforcement of a foreign award proves that there is any ground other than the non-existence of the conditions specified in clauses (*a*), (*b*) and (*c*) of sub-section (*1*), or the existence of the conditions specified in clauses (*b*) and (*c*) of sub-section (*2*), entitling him to contest the validity of the award, the Court may, if it thinks fit, either refuse to enforce the award or adjourn the hearing until after the expiration of such period as appears to the Court to be reasonably sufficient to enable that party to take the necessary steps to have the award annulled by the competent tribunal.

Evidence.

8. (*1*) The party seeking to enforce a foreign award must produce—

(*a*) the original award or a copy thereof duly authenticated in manner required by the law of the country in which it was made ;

(*b*) evidence proving that the award has become final ; and

(*c*) such evidence as may be necessary to prove that the award is a foreign award and that the conditions mentioned in clauses (*a*), (*b*) and (*c*) of sub-section (*1*) of section 7 are satisfied.

(*2*) Where any document requiring to be produced under sub-section (*1*) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

other manner as may be sufficient according to the law in force in [the Union of Burma].[1]

9. Nothing in this Act shall— Saving.

(*a*) prejudice any rights which any person would have had of enforcing in [the Union of Burma][1] any award or of availing himself in [the Union of Burma][1] of any award if this Act had not been passed, or

(*b*) apply to any award made on an arbitration agreement governed by the law of [the Union of Burma].[1]

10. The High Court may make rules [2] consistent with this Act as to— Rule-making powers of the High Court.

(*a*) the filing of foreign awards and all proceedings consequent thereon or incidental thereto ;

(*b*) the evidence which must be furnished by a party seeking to enforce a foreign award under this Act ; and

(*c*) generally, all proceedings in Court under this Act.

THE FIRST SCHEDUDE.

PROTOCOL ON ARBITRATION CLAUSES.

The undersigned, being duly authorized, declare that they accept, on behalf of the countries which they represent, the following provisions :

1. Each of the Contracting States recognizes the validity of an agreement whether relating to existing or future differences between parties subject respectively to the jurisdiction of different Contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.

Each Contracting State reserves the right to limit the obligation mentioned above to contracts which are considered as commercial under its national law. Any Contracting State which avails itself of this right will notify the Secretary-General of the League of Nations in order that the other Contracting States may be so informed.

2. The arbitral procedure, including the constitution of the Arbitral Tribunal, shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.

The Contracting States agree to facilitate all steps in the procedure which require to be taken in their own territories, in accordance with the provisions of their law governing arbitral procedure applicable to existing differences.

3. Each Contracting State undertakes to ensure the execution by its authorities and in accordance with the provisions of its national laws of arbitral awards made in its own territory under the preceding articles.

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

[2] For such rules, *see Burma Gazette*, 1939, Part IV, page 44.

4. The Tribunals of the Contracting Parties, on being seized of a dispute regarding a contract made between persons to whom Article 1 applies and including an Arbitration Agreement whether referring to present or future differences which is valid in virtue of the said article and capable of being carried into effect, shall refer the parties on the application of either of them to the decision of the Arbitrators.

Such reference shall not prejudice the competence of the judicial tribunals in case the agreement or the arbitration cannot proceed or becomes inoperative.

5. The present Protocol, which shall remain open for signature by all States, shall be ratified. The ratification shall be deposited as soon as possible with the Secretary-General of the League of Nations, who shall notify such desposit to all the Signatory States.

6. The present Protocol will come into force as soon as two ratifications have been deposited. Thereafter it will take effect, in the case of each Contracting State, one month after the notification by the Secretary-General of the deposit of its ratification.

7. The present Protocol may be denounced by any Contracting State on giving one year's notice. Denunciation shall be effected by a notification addressed to the Secretary-General of the League, who will immediately transmit copies of such notification to all the other Signatory States and inform them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying State.

8. The Contracting States may declare that their acceptance of the present Protocol does not include any or all of the undermentioned territories: that is to say, their colonies, overseas possessions or territories, protectorates or the territories over which they exercise a mandate.

The said States may subsequently adhere separately on behalf of any territory thus excluded. The Secretary-General of the League of Nations shall be informed as soon as possible of such adhesions. He shall notify such adhesions to all Signatory States. They will take effect one month after the notification by the Secretary-General to all Signatory States.

The Contracting States may also denounce the Protocol separately on behalf of any of the territories referred to above. Article 7 applies to such denunciation.

THE SECOND SCHEDULE.

CONVENTION ON THE EXECUTION OF FOREIGN ARBITRAL AWARDS.

Article 1.—In the territories of any High Contracting Party to which the present Convention applies, an arbitral award made in pursuance of an agreement, whether relating to existing or future differences (hereinafter called

"a submission to arbitration") covered by the Protocol on Arbitration Clauses opened at Geneva on September 24th, 1923, shall be recognized as binding and shall be enforced in accordance with the rules of the procedure of the territory where the award is relied upon, provided that the said award has been made in a territory of one of the High Contracting Parties to which the present Convention applies and between persons who are subject to the jurisdiction of one of the High Contracting Parties.

To obtain such recognition or enforcement, it shall, further, be necessary :

(*a*) That the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto ;

(*b*) That the subject-matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon ;

(*c*) That the award has been made by the Arbitral Tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure ;

(*d*) That the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition, appeal or *pourvoi en cassation* (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending ;

(*e*) That the recognition or enforcement of the award is not contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon.

Article 2.—Even if the conditions laid down in Article 1 hereof are fulfilled, recognition and enforcement of the award shall be refused if the Court is satisfied :

(*a*) That the award has been annulled in the country in which it was made ;

(*b*) That the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case ; or that, being under a legal incapacity, he was not properly represented ;

(*c*) That the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if it thinks fit, postpone such

recognition or enforcement or grant it subject to such guarantee as that authority may decide.

Article 3.—If the party against whom the award has been made proves that, under the law governing the arbitration procedure, there is a ground, other than the grounds referred to in Article 1 (*a*) and (*c*), and Article 2 (*b*) and (*c*), entitling him to contest the validity of the award in a Court of Law, the Court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

Article 4.—The party relying upon an award or claiming its enforcement must supply, in particular:

(1) The original award or a copy thereof duly authenticated, according to the requirements of the law of the country in which it was made;

(2) Documentary or other evidence to prove that the award has become final in the sense defined in Article 1 (*d*), in the country in which it was made;

(3) When necessary, documentary or other evidence to prove that the conditions laid down in Article 1, paragraph 1 and paragraph 2 (*a*) and (*c*), have been fulfilled.

A translation of the award and of the other documents mentioned in this Article into the official language of the country where the award is sought to be relied upon may be demanded. Such translations must be certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to be relied upon.

Article 5.—The provisions of the above Articles shall not deprive any interested party of the right of availing himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

Article 6.—The present Convention applies only to arbitral awards made after the coming into force of the Protocol on Arbitration Clauses, opened at Geneva on September 24th, 1923.

Article 7.—The present Convention, which will remain open to the signature of all the signatories of the Protocol of 1923 on Arbitration Clauses, shall be ratified.

It may be ratified only on behalf of those Members of the League of Nations and non-Member States on whose behalf the Protocol of 1923 shall have been ratified.

Ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who will notify such deposit to all the signatories.

Article 8.—The present Convention shall come into force three months after it shall have been ratified on behalf of two High Contracting Parties. Thereafter, it shall take effect, in the case of each High Contracting Party, three months after the deposit of the ratification on its behalf with the Secretary-General of the League of Nations.

Article 9.—The present Convention may be denounced on behalf of any Member of the League or non-Member State. Denunciation shall be notified in writing to the Secretary-General of the League of Nations, who will immediately send a copy thereof, certified to be in conformity with the notifications, to all the other Contracting Parties, at the same time informing them of the date on which he received it.

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it and one year after such notification shall have reached the Secretary-General of the League of Nations.

The denunciation of the Protocol on Arbitration Clauses shall entail, *ipso facto*, the denunciation of the present Convention.

Article 10.—The present Convention does not apply to the Colonies, Protectorates or territories under suzerainty or mandate of any High Contracting Party unless they are specially mentioned.

The application of this Convention to one or more of such Colonies, Protectorates or territories to which the Protocol on Arbitration Clauses opened at Geneva on September 24th, 1923, applies, can be effected at any time by means of a declaration addressed to the Secretary-General of the League of Nations by one of the High Contracting Parties.

Such declaration shall take effect three months after the deposit thereof.

The High Contracting Parties can at any time denounce the Convention for all or any of the Colonies, Protectorates or territories referred to above. Article 9 hereof applies to such denunciation.

Article 11.—A certified copy of the present Convention shall be transmitted by the Secretary-General of the League of Nations to every Member of the League of Nations and to every non-Member State which signs the same.

THE ARBITRATION ACT, 1944.

CONTENTS.

CHAPTER I.

Introductory.

Sections.

1. Short title.
2. Definitions.

CHAPTER II.

Arbitration without intervention of a Court.

Sections.

3. Provisions implied in arbitration agreement.
4. Agreement that arbitrators be appointed by third party.
5. Authority of appointed arbitrator or umpire irrevocable except by leave of Court.
6. Arbitration agreement not to be discharged by death of party thereto.
7. Provisions in case of insolvency.
8. Power of Court to appoint arbitrator or umpire.
9. Power to party to appoint new arbitrator or, in certain cases, a sole arbitrator.
10. Provisions as to appointment of three or more arbitrators.
11. Power to Court to remove arbitrators or umpire in certain circumstances.
12. Power of Court where arbitrator is removed or his authority revoked.
13. Power of arbitrator.
14. Award to be signed and filed.
15. Power of Court to modify award.
16. Power to remit award.
17. Judgment in terms of award.
18. Power of Court to pass interim orders.
19. Power to supersede arbitration when award becomes void or is set aside.

CHAPTER III.

Arbitration with intervention of a Court where there is no suit pending.

20. Application to file in Court arbitration agreement.

CHAPTER IV.

Arbitration in Suits.

21. Parties to suit may apply for order of reference.
22. Appointment of arbitrator.
23. Order of reference.
24. Reference to arbitration by some of the parties.
25. Provisions applicable to arbitrations under this Chapter.

CHAPTER V.

General.

26. Application of Chapter.
27. Power of Arbitrators to make an interim award.
28. Power to Court to enlarge time for making award.
29. Interest on awards.

Sections,

30. Grounds for setting aside award.
31. Jurisdiction.
32. Bar to suits contesting arbitration agreement or award.
33. Arbitration agreement on award to be contested by app
34. Power to stay legal proceedings where there is an arbi ment.
35. Effect of legal proceedings on arbitration.
36. Power of Court, where arbitration agreement is orderec to a particular difference, to order that a provision mal a condition precedent to an action shall not apply to st
37. Limitations.
38. Disputes as to arbitrator's remuneration or costs.

CHAPTER VI.

Appeals.

39. Appealable orders.

CHAPTER VII.

Miscellaneous.

40. Small Cause Court not to have jurisdiction over arbitrations save arbitrations in suits before it.
41. Procedure and powers of Court.
42. Service of notice by party or arbitrator.
43. Power of Court to issue processes for appearance before arbitrator.
44. Power to High Court to make rules.
45. Government to be bound.
46. Application of Act to statutory arbitrations.
47. Act to apply to all arbitrations.
48. Saving for pending references.
49. * * * *

THE FIRST SCHEDULE.

Implied conditions of arbitration agreements.

THE SECOND SCHEDULE.

Powers of Court.

THE THIRD SCHEDULE.

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THE ARBITRATION ACT, 1944.

[BURMA ACT IV, 1944.] (1st March, 1946.)

WHEREAS it is expedient to consolidate and amend the law relating to arbitration in [the Union Burma ;][1]

* * * *[2]

It is hereby enacted as follows :—

CHAPTER I.

Introductory.

Short title.

1. (*1*) This Act may be called the Arbitration Act, 1944.

[2](*2*) * * * *

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) " arbitration agreement " means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not ;

(*b*) " award " means an arbitration award ;

(*c*) " Court " means a civil Court having jurisdiction to decide the questions forming the subject-matter of the reference if the same had been the subject-matter of a suit, but does not, except for the purpose of arbitration proceedings under section 21, include a Small Cause Court ;

(*d*) " legal representative " means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting ;

(*e*) " reference " means a reference to arbitration.

CHAPTER II.

Arbitration without intervention of a Court.

Provisions implied in arbitration agreement.

3. An arbitration agreement, unless a different intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule in so far as they are applicable to the reference.

Agreement that arbitrators be appointed by third party.

4. The parties to an arbitration agreement may agree that any reference thereunder shall be to an arbitrator or arbitrators to be appointed by a person designated in the agreement either by name or as the holder for the time being of any office or appointment.

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

[2] Omitted *ibid.*

Authority of appointed arbitrator or umpire irrevocable except by leave of Court.

5. The authority of an appointed arbitrator or umpire shall not be revocable except with the leave of the Court, unless a contrary intention is expressed in the arbitration agreement.

Arbitration agreement not to be discharged by death of party thereto.

6. (*1*) An arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

(*2*) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.

(*3*) Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

Provisions in case of insolvency.

7. (*1*) Where it is provided by a term in a contract to which an insolvent is a party that any differences arising thereout or in connection therewith shall be referred to arbitration, the said term shall, if the receiver adopts the contract, be enforceable by or against him so far as it relates to any such differences.

(*2*) Where a person who has been adjudged an insolvent had, before the commencement of the insolvency proceedings, become a party to an arbitration agreement, and any matter to which the agreement applies is required to be determined in connection with, or for the purposes of, the insolvency proceedings, then, if the case is one to which sub-section (*1*) does not apply, any other party to the agreement or the receiver may apply to the Court having jurisdiction in the insolvency proceedings for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement, and the Court may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

(*3*) In this section, the expression "receiver" includes the Official Assignee.

Power of Court to appoint arbitrator or umpire.

8. (*1*) In any of the following cases—

(*a*) where an arbitration agreement provides that the reference shall be to one or more arbitrators to be appointed by consent of the parties, and all the parties do not, after differences have arisen, concur in the appointment or appointments ; or

(*b*) if any appointed arbitrator or umpire neglects or refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied, and the parties or the arbitrators, as the case may be, do not supply the vacancy ; or

(*c*) where the parties or the arbitrators are required to appoint an umpire and do not appoint him, any party may serve the other parties or the arbitrators, as the case may be, with a written

notice to concur in the appointment or appointments or in supplying the vacancy.

(*2*) If the appointment is not made within fifteen clear days after the service of the said notice, the Court may, on the application of the party who gave the notice and after giving the other parties an opportunity of being heard, appoint an arbitrator or arbitrators or umpire, as the case may be, who shall have like power to act in the reference and to make an award as if he or they had been appointed by consent of all parties.

Power to party to appoint new arbitrator or, in certain cases, a sole arbitrator.

9. Where an arbitration agreement provides that a reference shall be to two arbitrators, one to be appointed by each party, then, unless a different intention is expressed in the agreement,—

(*a*) if either of the appointed arbitrators neglects or refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place ;

(*b*) if one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for fifteen clear days after the service by the other party of a notice in writing to make the appointment, such other party having appointed his arbitrator before giving the notice, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent :

Provided that the Court may set aside any appointment as sole arbitrator made under clause (*b*) and either, on sufficient cause being shown, allow further time to the defaulting party to appoint an arbitrator or pass such other order as it thinks fit.

Explanation.

The fact that an arbitrator or umpire, after a request by either party to enter on and proceed with the reference, does not within one month comply with the request may constitute a neglect or refusal to act within the meaning of section 8 and this section.

Provisions as to appointment of three or more arbitrators.

10. (*1*) Where an arbitration agreement provides that a reference shall be to three arbitrators, one to be appointed by each party and the third by the two appointed arbitrators, the agreement shall have effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the two arbitrators appointed by the parties.

(*2*) Where an arbitration agreement provides that a reference shall be to three arbitrators to be appointed otherwise than as mentioned in sub-section (*1*), the award of the majority shall, unless the arbitration agreement otherwise provides, prevail.

(*3*) Where an arbitration agreement provides for the appointment of more arbitrators than three, the award of the majority, or if the arbitrators are equally divided in their opinions, the award of the umpire shall, unless the arbitration agreement otherwise provides, prevail.

Power to Court to remove arbitrators or umpire in certain circumstances.

11. (*1*) The Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award.

(*2*) The Court may remove an arbitrator or umpire who has misconducted himself or the proceedings.

(*3*) Where an arbitrator or umpire is removed under this section, he shall not be entitled to receive any remuneration in respect of his services.

(*4*) For the purposes of this section, the expression "proceeding with the reference" includes, in a case where reference to the umpire becomes necessary, giving notice of that fact to the parties and to the umpire.

Power of Court where arbitrator is removed or his authority revoked.

12. (*1*) Where the Court removes an umpire who has not entered on the reference or one or more arbitrators (not being all the arbitrators), the Court may, on the application of any party to the arbitration agreement, appoint persons to fill the vacancies.

(*2*) Where the authority of an arbitrator or arbitrators or an umpire is revoked by leave of the Cou rt, or where the Court removes an umpire who has entered on the reference or a sole arbitrator or all the arbitrators, the Court may, on the application of any party to the arbitration agreement, either—

(*a*) appoint a person to act as sole arbitrator in the place of the person or persons displaced, or

(*b*) order that the arbitration agreement shall cease to have effect with respect to the difference referred.

(*3*) A person appointed under this section as an arbitrator or umpire shall have the like power to act in the reference and to make an award as if he had been appointed in accordance with the arbitration agreement.

Powers of arbitrator.

13. The arbitrators or umpire shall, unless a different intention is expressed in the agreement, have power to—

(*a*) administer oath to the parties and witnesses appearing ;

(*b*) state a special case for the opinion of the Court on any question of law involved, or state the award, wholly or in part, in the form of a special case of such question for the opinion of the Court ;

(*c*) make the award conditional or in the alternative ;

(*d*) correct in an award any clerical mistake or error arising from any accidental slip or omission ;

(*e*) administer to any party to the arbitration such interrogatories as may, in the opinion of the arbitrators or umpire, be necessary.

Award to be signed and filed.

14. (*1*) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

(*2*) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so

directed by the Court, and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.

(*3*) Where the arbitrators or umpire state a special case under clause (*b*) of section 13, the Court, after giving notice to the parties and hearing them, shall pronounce its opinion thereon and such opinion shall be added to, and shall form part of the award.

Power of Court to modify award.

15. The Court may by order modify or correct an award—

(*a*) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred ; or

(*b*) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision ; or

(*c*) where the award contains a clerical mistake or an error arising from an accidental slip or omission.

Power to remit award.

16. (*1*) The Court may from time to time remit the award or any matter referred to arbitration to the arbitrators or umpire for reconsideration upon such terms as it thinks fit—

(*a*) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration and such matter cannot be separated without affecting the determination of the matters referred ; or

(*b*) where the award is so indefinite as to be incapable of execution ; or

(*c*) where an objection to the legality of the award is apparent upon the face of it.

(*2*) Where an award is remitted under sub-section (*1*) the Court shall fix the time within which the arbitrators or umpire shall submit their decision to the Court :

Provided that any time so fixed may be extended by subsequent order of the Court.

(*3*) An award remitted under sub-section (*1*) shall become void on the failure of the arbitrators or umpire to reconsider it and submit their decision within the time fixed.

Judgment in terms of award.

17. Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow, and no appeal shall lie from

such decree except on the ground that it is in excess of, or not otherwise in accordance with the award.

Power of Court to pass interim orders.

18. (*1*) Notwithstanding anything contained in section 17, at any time after the filing of the award, whether notice of the filing has been served or not, upon being satisfied by affidavit or otherwise that a party has taken or is about to take steps to defeat, delay or obstruct the execution of any decree that may be passed upon the award, or that speedy execution of the award is just and necessary, the Court may pass such interim orders as it deems necessary.

(*2*) Any person against whom such interim orders have been passed may show cause against such orders, and the Court, after hearing the parties, may pass such further orders as it deems necessary and just.

Power to supersede arbitration when award becomes void or is set aside.

19. Where an award has become void under sub-section (*3*) of section 16 or has been set aside, the Court may by order supersede the reference and shall thereupon order that the arbitration agreement shall cease to have effect with respect to the difference referred.

CHAPTER III.

Arbitration with intervention of a Court where there is no suit pending.

Application to file in Court arbitration agreement.

20. (*1*) Where any persons have entered into an arbitration agreement before the institution of any suit with respect to the subject-matter of the agreement or any part of it, and where a difference has arisen to which the agreement applies, they or any of them, instead of proceeding under Chapter II, may apply to a Court having jurisdiction in the matter to which the agreement relates that the agreement be filed in Court.

(*2*) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs and the remainder as defendant or defendants, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

(*3*) On such application being made the Court shall direct notice thereof to be given to all parties to the agreement other than the applicants, requiring them to show cause within the time specified in the notice why the agreement should not be filed.

(*4*) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed by the parties, whether in the agreement or otherwise, or, where the parties cannot agree upon an arbitrator, to an arbitrator appointed by the Court.

(*5*) Thereafter the arbitration shall proceed in accordance with, and shall be governed by, the other provisions of this Act so far as they can be made applicable.

CHAPTER IV.

Arbitration in suits.

Parties to suit may apply for order of reference.

21. Where in any suit all the parties interested agree that any matter in difference between them in the suit shall be referred to arbitration, they may at any time before judgment is pronounced apply in writing to the Court for an order of reference.

Appointment of arbitrator.

22. The arbitrator shall be appointed in such manner as may be agreed upon between the parties.

Order of reference.

23. (*1*) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall in the order specify such time as it thinks reasonable for the making of the award.

(*2*) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this Act, deal with such matter in the suit.

Reference to arbitration by some of the parties.

24. Where some only of the parties to a suit apply to have the matters in difference between them referred to arbitration in accordance with, and in the manner provided by, section 21, the Court may, if it thinks fit, so refer such matters to arbitration (provided that the same can be separated from the rest of the subject-matter of the suit) in the manner provided in the section, but the suit shall continue so far as it relates to the parties who have not joined in the said application and to matters not contained in the said reference as if no such application had been made, and an award made in pursuance of such a reference shall be binding only on the parties who have joined in the application.

Provisions applicable to arbitrations under this Chapter.

25. The other provisions of this Act shall, so far as they can be made applicable, apply to arbitrations under this Chapter:

Provided that the Court may, in any of the circumstances mentioned in sections 8, 9, 11 and 12, instead of filling up the vacancies or making the appointments, make an order superseding the arbitration and proceed with the suit, and where the Court makes an order superseding the arbitration under section 19, it shall proceed with the suit.

CHAPTER V.

General.

Application of Chapter.

26. Save as otherwise provided in this Act, the provisions of this Chapter shall apply to all arbitrations.

Power of arbitrators to make an interim award.

27. (*1*) Unless a different intention appears in the arbitration agreement, the arbitrators or umpire may, if they think fit, make an interim award.

(*2*) All references in this Act to an award shall include references to an interim award made under sub-section (*1*).

Power to Court to enlarge time for making award.

28. (*1*) The Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time the time for making the award.

(*2*) Any provision in an arbitration agreement whereby the arbitrators or umpire may, except with the consent of all the parties to the agreement, enlarge the time for making the award, shall be void and of no effect.

Interest on awards.

29. Where and in so far as an award is for the payment of money the Court may in the decree order interest from the date of the decree at such rate as the Court deems reasonable to be paid on the principal sum as adjudged by the award and confirmed by the decree.

Grounds for setting aside award.

30. An award shall not be set aside except on one or more of the following grounds, namely :—

(*a*) that an arbitrator or umpire has misconducted himself or the proceedings ;

(*b*) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under section 35 ;

(*c*) that an award has been improperly procured or is otherwise invalid.

Jurisdiction.

31. (*1*) Subject to the provisions of this Act, an award may be filed in any Court having jurisdiction in the matter to which the reference relates.

(*2*) Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all questions regarding the validity, effect or existence of an award or an arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the Court in which the award under the agreement has been, or may be, filed, and by no other Court.

(*3*) All applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the Court where the award has been, or may be, filed, and to no other Court.

(*4*) Notwithstanding anything contained elsewhere in this Act, or in any other law for the time being in force, where in any reference any application under this Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration proceedings and all

subsequent applications arising out of that reference and the arbitration proceedings shall be made in that Court and in no other Court.

Bar to suits contesting arbitration agreement or award.

32. Notwithstanding any law for the time being in force, no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be set aside, amended, modified or in any way affected otherwise than as provided in this Act.

Arbitration agreement or award to be contested by application.

33. Any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the Court and the Court shall decide the question on affidavits :

Provided that where the Court deems it just and expedient, it may set down the application for hearing on other evidence also, and it may pass such orders for discovery and particulars as it may do in a suit.

Power to stay legal proceedings where there is an arbitration agreement.

34. Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time before filing a written statement or taking any other steps in the proceedings, apply to the judicial authority before which the proceedings are pending to stay the proceedings ; and if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, such authority may make an order staying the proceedings.

Effect of legal proceedings on arbitration.

35. (*1*) No reference or award shall be rendered invalid by reason only of the commencement of legal proceedings upon the subject-matter of the reference, but when legal proceedings upon the whole of the subject-matter of the reference have been commenced between all the parties to the reference and a notice thereof has been given to the arbitrators or umpire, all further proceedings in a pending reference shall, unless a stay of proceedings is granted under section 34, be invalid.

(*2*) In this section the expression " parties to the reference " includes any persons claiming under any of the parties and litigating under the same title.

Power of Court, where arbitration agreement is ordered

36. Where it is provided (whether in the arbitration agreement or otherwise) that an award under an arbitration agreement shall be a condition precedent to the bringing of an action with respect to any matter to which the agreement applies, the Court, if it orders (whether under this Act or any other

law) that the agreement shall cease to have effect as regards any particular difference, may further order that the said provision shall also cease to have effect as regards that difference.

not to apply to a particular difference, to order that a provision making an award a condition precedent to an action shall not apply to such difference.

India IX, 1908.

37. (*1*) All the provisions of the Limitation Act shall apply to arbitrations as they apply to proceedings in Court. Limitations.

(*2*) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, a cause of action shall, for the purpose of limitation, be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

India IX, 1908.

(*3*) For the purposes of this section and of the Limitation Act, an arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other parties thereto a notice requiring the appointment of an arbitrator, or where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring that the difference be submitted to the person so named or designated.

(*4*) Where the terms of an agreement to refer future differences to arbitration provide that any claims to which the agreement applies shall be barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by the agreement, and a difference arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may, on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(*5*) Where the Court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration agreement shall cease to have effect with respect to the difference referred, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act for the commencement of the proceedings (including arbitration) with respect to the difference referred.

India IX, 1908.

38. (*1*) If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him the Court may, on an application in this behalf, order that the arbitrator or umpire shall deliver the award to the applicant on payment into Court by the applicant of the fees Disputes as to arbitrator's remuneration or costs.

demanded, and shall, after such inquiry, if any, as it thinks fit, further order that out of the money so paid into Court there shall be paid to the arbitrator or umpire by way of fees such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

(*2*) An application under sub-section (*1*) may be made by any party to the reference unless the fees demanded have been fixed by written agreement between him and the arbitrator or umpire, and the arbitrator or umpire shall be entitled to appear and be heard on any such application.

(*3*) The Court may make such orders as it thinks fit respecting the costs of an arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them.

CHAPTER VI.

Appeals.

Appealable orders.

39. (*1*) An appeal shall lie from the following orders passed under this Act (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order :—

An order—

(i) superseding an arbitration ;
(ii) on an award stated in the form of a special case ;
(iii) modifying or correcting an award ;
(iv) filing or refusing to file an arbitration agreement ;
(v) staying or refusing to stay legal proceedings where there is an arbitration agreement ;
(vi) setting aside or refusing to set aside an award :

Provided that the provisions of this section shall not apply to any order passed by a Small Cause Court.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to [His Britannic Majesty in Council].[1]

CHAPTER VII.

Miscellaneous.

Small Cause Court not to have jurisdiction over arbitrations save arbitrations in suit before it.

40. A Small Cause Court shall have no jurisdiction over any arbitration proceedings or over any application arising thereout save on application made under section 21.

[1] The words in brackets should have been amended to 'the Sup. eme Court'.

41. Subject to the provisions of this Act and of rules made thereunder :— Procedure and powers of Court.

India V, 1908

(*a*) the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court, and to all appeals, under this Act, and

(*b*) the Court shall have, for the purpose of, and in relation to, arbitration proceedings, the same power of making orders in respect of any of the matters set out in the Second Schedule as it has for the purpose of, and in relation to, any proceedings before the Court :

Provided that nothing in clause (*b*) shall be taken to prejudice any power which may be vested in an arbitrator or umpire for making orders with respect to any of such matters.

42. Any notice required by this Act to be served, otherwise than through the Court by a party to an arbitration agreement or by an arbitrator or umpire shall be served in the manner provided in the arbitration agreement, or if there is no such provision, either— Service of notice by party or arbitrator.

(*a*) by delivering it to the person on whom it is to be served, or

(*b*) by sending it by registered post in a letter addressed to that person at his usual or last known place of abode or business in the Union of Burma.

43. (*1*) The Court shall issue the same processes to the parties and witnesses whom the arbitrator or umpire desires to examine as the Court may issue in suits tried before it. Power of Court to issue processes for appearance before arbitrator.

(*2*) Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the reference, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitrator or umpire as they would incur for the like offences in suits tried before the Court.

(*3*) In this section the expression " processes " includes summonses and commissions for the examination of witnesses, and summonses to produce documents.

44. The High Court may make rules consistent with this Act as to— Power to High Court to make rules.

(*a*) the filing of awards and all proceedings consequent thereon or incidental thereto ;

(*b*) the filing and hearing of special cases and all proceedings consequent thereon or incidental thereto ;

(*c*) the staying of any suit or proceedings in contravention of an arbitration agreement;

(*d*) the forms to be used for the purposes of this Act;

(*e*) generally, all proceedings in Court under this Act.

Government to be bound.

45. The provisions of this Act shall be binding on the Government.

Application of Act to statutory arbitrations.

46. The provisions of this Act, except sub-section (*1*) of section 6 and sections 7, 12, 36 and 37, shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as this Act is inconsistent with that other enactment or with any rules made thereunder.

Act to apply to all arbitrations.

47. Subject to the provisions of section 46, and save in so far as is otherwise provided by any law for the time being in force, the provisions of this Act shall apply to all arbitrations and to all proceedings thereunder:

Provided that an arbitration award otherwise obtained may, with the consent of all the parties interested, be taken into consideration as a compromise or adjustment of a suit by any Court before which the suit is pending.

Saving for pending references.

48. The provisions of this Act shall not apply to any reference pending at the commencement of this Act, to which the law in force immediately before the commencement of this Act, shall, notwithstanding any repeal effected by this Act, continue to apply.

[1]**49.** * * * *

THE FIRST SCHEDULE.

(*See* section 3.)

Implied conditions of Arbitration Agreements.

1. Unless otherwise expressly provided, the reference shall be to a sole arbitrator.

2. If the reference is to an even number of arbitrators, the arbitrators shall appoint an umpire not later than one month from the latest date of their respective appointments.

3. The arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow.

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[1] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

4. If the arbitrators have allowed their time to expire without making an award or have delivered to any party to the arbitration agreement or to the umpire a notice in writing stating that they cannot agree, the umpire shall forthwith enter on the reference in lieu of the arbitrators.

5. The umpire shall make his award within two months of entering on the reference or within such extended time as the Court may allow.

6. The parties to the reference and all persons claiming under them shall, subject to the provisions of any law for the time being in force, submit to be examined by the arbitrators or umpire on oath or affirmation in relation to the matters in difference, and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings and documents within their possession or power respectively, which may be required or called for, and do all other things which during the proceedings on the reference, the arbitrators or umpire may require.

7. The award shall be final and binding on the parties and persons claiming under them respectively.

8. The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to, and by, whom, and in what manner, such costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof and may award costs to be paid as between legal practitioner and client.

THE SECOND SCHEDULE.

(*See* section 41.)

Powers of Court.

1. The preservation, interim custody or sale of any goods which are the subject-matter of the reference.

2. Securing the amount in difference in the reference.

3. The detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein, and authorizing for any of the aforesaid purposes any person to enter upon or into any land or building in the possession of any party to the reference, or authorizing any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

4. Interim injunctions or the appointment of a receiver.

5. The appointment of a guardian for a minor or person of unsound mind for the purposes of arbitration proceedings.

THE THIRD SCHEDULE.[1]

* * * *

[1] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

PART XXVI—SPECIFIC RELIEF.

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THE SPECIFIC RELIEF ACT.

CONTENTS.

PART I.

Preliminary.

Sections.

1-2. * * * *

3. Interpretation clause.
Words defined in Contract Act.

4. Savings.

5. Specific relief how given.

6. Preventive relief.

7. Relief not granted to enforce penal law.

PART II.

Of Specific Relief.

CHAPTER I.

OF RECOVERING POSSESSION OF PROPERTY.

(*a*) *Possession of Immoveable Property.*

8. Recovery of specific immoveable property.

9. Suit by person dispossessed of immoveable property.

(*b*) *Possession of Moveable Property.*

10. Recovery of specific moveable property.

11. Liability of person in possession, not as owner, to deliver to person entitled to immediate possession.

CHAPTER II.

OF THE SPECIFIC PERFORMANCE OF CONTRACTS.

(*a*) *Contracts which may be specifically enforced.*

Sections.

12. Cases in which specific performance enforceable.
13. Contracts of which the subject has partially ceased to exist.
14. Specific performance of part of contract where part unperformed is small.
15. Specific performance of part of contract where part unperformed is large.
16. Specific performance of independent part of contract.
17. Bar in other cases of specific performance of part of contract.
18. Purchaser's rights against vendor with imperfect title.
19. Power to award compensation in certain cases.
20. Liquidation of damages not a bar to specific performance.

(*b*) *Contracts which cannot be specifically enforced.*

21. Contracts not specifically enforceable.

(*c*) *Of the Discretion of the Court.*

22. Discretion as to decreeing specific performance.

(*d*) *For whom Contracts may be specifically enforced.*

23. Who may obtain specific performance.

(*e*) *For whom Contracts cannot be specifically enforced.*

24. Personal bars to the relief.
25. Contracts to sell property by one who has no title, or who is a voluntary settler.

(*f*) *For whom Contracts cannot be specifically enforced, except with a Variation.*

26. Non-enforcement except with variation.

(*g*) *Against whom Contracts may be specifically enforced.*

27. Relief against parties and persons claiming under them by subsequent title.
27A. Specific performance in case of part performance of contract to lease.

(h) Against whom Contracts cannot be specifically enforced.

Sections.

28. What parties cannot be compelled to perform.

(i) The Effect of dismissing a Suit for Specific Performance.

29. Bar of suit for breach after dismissal.

(j) Awards and Directions to execute Settlements.

30. Application of preceding sections to awards and testamentary directions to execute settlements.

CHAPTER III.

OF THE RECTIFICATION OF INSTRUMENTS.

31. When instrument may be rectified.
32. Presumption as to intent of parties.
33. Principles of rectification.
34. Specific enforcement of rectified contract.

CHAPTER IV.

OF THE RESCISSION OF CONTRACTS.

35. When rescission may be adjudged.
36. Rescission for mistake.
37. Alternative prayer for rescission in suit for specific performance.
38. Court may require party rescinding to do equity.

CHAPTER V.

OF THE CANCELLATION OF INSTRUMENTS.

39. When cancellation may be ordered.
40. What instruments may be partially cancelled.
41. Power to require party for whom instrument is cancelled to make compensation.

CHAPTER VI.

OF DECLARATORY DECREES.

42. Discretion of Court as to declarations of status or right. Bar to such declaration.
43. Effect of declaration.

CHAPTER VII.

OF THE APPOINTMENT OF RECEIVERS.

Sections.

44. Appointment of receivers discretionary.
Reference to Code of Civil Procedure.

CHAPTER VIII.

OF THE ENFORCEMENT OF PUBLIC DUTIES.

45. Power to order public servants and others to do certain specific acts.
Exemptions from such power.
46. Application how made.
Procedure thereon.
Order in alternative.
47. Peremptory order.
48. Execution of, and appeal from, orders.
49. Costs.
50. Bar to issue of *mandamus*.
51. Power to frame rules.

PART III.

Of Preventive Relief.

CHAPTER IX.

OF INJUNCTIONS GENERALLY.

52. Preventive relief how granted.
53. Temporary injunctions.
Perpetual injunctions.

CHAPTER X.

OF PERPETUAL INJUNCTIONS.

54. Perpetual injunctions when granted.
55. Mandatory injunctions.
56. Injunction when refused.
57. Injunction to perform negative agreement.

THE SPECIFIC RELIEF ACT.

[INDIA ACT I. 1877.] (1st May, 1877.)

PART I.

Preliminary.

1-2. * * * *

Interpretation clause.

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

"obligation" includes every duty enforceable by law;

"trust" includes every species of express, implied or constructive fiduciary ownership;

"trustee" includes every person holding, expressly, by implication or constructively, a fiduciary character.

Illustrations.

(*a*) *Z* bequeaths land to *A*, "not doubting that he will pay thereout an annuity of Rs. 1,000 to *B* for his life." *A* accepts the bequest. *A* is a trustee within the meaning of this Act for *B*, to the extent of the annuity.

(*b*) *A* is the legal, medical or spiritual adviser of *B*. By availing himself of his situation as such adviser, *A* gains some pecuniary advantage which might otherwise have accrued to *B*. *A* is a trustee for *B*, within the meaning of this Act, of such advantage.

(*c*) *A*, being *B*'s banker, discloses for his own purpose the state of *B*'s account. *A* is a trustee, within the meaning of this Act, for *B*, of the benefit gained by him by means of such disclosure.

(*d*) *A*, the mortgagee of certain leaseholds, renews the lease in his own name. *A* is a trustee, within the meaning of this Act, of the renewed lease, for those interested in the original lease.

(*e*) *A*, one of several partners, is employed to purchase goods for the firm. *A*, unknown to his co partners supplies them, at the market-price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. *A* is a trustee for his co-partners, within the meaning of this Act, of the profit so made.

(*f*) *A*, the manager of *B*'s indigo-factory, becomes agent for *C*, a vendor of indigo-seed and receives, without *B*'s assent, commission on the seed purchased from *C* for the factory. *A* is a trustee, within the meaning of this Act, for *B*, of the commission so received.

(*g*) *A* buys certain land with notice that *B* has already contracted to buy it. *A* is a trustee, within the meaning of this Act, for *B*, of the land so bought.

(*h*) *A* buys land from *B*, having notice that *C* is in occupation of the land. *A* omits to make any inquiry as to the nature of *C*'s interest therein. *A* is a trustee, within the meaning of this Act, for *C*, to the extent of that interest.

"settlement" means any instrument (other than a will or codicil as defined by the Succession Act), whereby the destination or devolution of successive interests in moveable or immoveable property is disposed of or is agreed to be disposed of;

Words defined in Contract Act.

and all words occurring in this Act, which are defined in the Contract Act, shall be deemed to have the meanings respectively assigned to them by that Act.

Savings.

4. Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

(*a*) to give any right to relief in respect of any agreement which is not a contract;

(*b*) to deprive any person of any right to relief, other than specific performance, which he may have under any contract ; or

(*c*) to affect the operation of the Registration Act on documents.

Specific relief how given.

5. Specific relief is given—

(*a*) by taking possession of certain property and delivering it to a claimant ;

(*b*) by ordering a party to do the very act which he is under an obligation to do ;

(*c*) by preventing a party from doing that which he is under an obligation not to do ;

(*d*) by determining and declaring the rights of parties otherwise than by an award of compensation ; or

(*e*) by appointing a receiver.

Preventive relief.

6. Specific relief granted under clause (*c*) of section 5 is called preventive relief.

Relief not granted to enforce penal law.

7. Specific relief cannot be granted for the mere purpose of enforcing a penal law.

PART II.

Of Specific Relief.

CHAPTER I.

Of recovering Possession of Property.

(*a*) *Possession of Immoveable Property.*

Recovery of specific immoveable property.

8. A person entitled to the possession of specific immoveable property may recover it in the manner prescribed by the Code of Civil Procedure.

Suit by person dispossessed of immoveable property.

9. If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may by suit recover possession thereof, notwithstanding any other title that may be set up in such suit.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against the Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(*b*) *Possession of Moveable Property.*

Recovery of specific moveable property.

10. A person entitled to the possession of specific moveable property may recover the same in the manner prescribed by the Code of Civil Procedure.

Explanation 1.—A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled.

Explanation 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

Illustrations.

(*a*) *A* bequeaths land to *B* for his life, with remainder to *C*. *A* dies. *B* enters on the land, but C, without *B*'s consent, obtains possession of the title-deeds. *B* may recover them from *C*.

(*b*) *A* pledges certain jewels to *B* to secure a loan. *B* disposes of them before he is entitled to do so. *A*, without having paid or tendered the amount of the loan, sues *B* for possession of the jewels. The suit should be dismissed, as *A* is not entitled to their possession whatever right he may have to secure their safe custody.

(*c*) *A* receives a letter addressed to him by *B*. *B* gets back the letter without *A*'s consent. *A* has such a property therein as entitles him to recover it from *B*.

(*d*) *A* deposits books and papers for safe custody with *B*. *B* loses them and *C* finds them, but refuses to deliver them to *B* when demanded. *B* may recover them from *C*, subject to *C*'s right, if any, under section 168 of the Contract Act.

(*e*) *A*, a warehouse-keeper, is charged with the delivery of certain goods to *Z*, which *B* takes out of *A*'s possession. *A* may sue *B* for the goods.

Liability of person in possession, not as owner, to deliver to person entitled to immediate possession.

11. Any person having the possession or control of a particular article of moveable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases :—

(*a*) when the thing claimed is held by the defendant as the agent or trustee of the claimant ;

(*b*) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed ;

(*c*) when it would be extremely difficult to ascertain the actual damage caused by its loss ;

(*d*) when the possession of the thing claimed has been wrongfully transferred from the claimant.

Illustrations.

of clause (*a*)—

A, proceeding to Europe, leaves his furniture in charge of *B* as his agent during his absence. *B*, without *A*'s authority, pledges the furniture to *C*, and *C*, knowing that *B* had no right to pledge the furniture, advertises it for sale. *C* may be compelled to deliver the furniture to *A*, for he holds it as *A*'s trustee.

of clause (*b*)—

Z has got possession of an idol belonging to *A*'s family, and of which *A* is the proper custodian. *Z* may be compelled to deliver the idol to *A*.

of clause (*c*)—

A is entitled to a picture by a dead painter and a pair of rare China vases. *B* has possession of them The articles are of too special a character to bear an ascertainable market-value. *B* may be compelled to deliver them to *A*.

CHAPTER II.

OF THE SPECIFIC PERFORMANCE OF CONTRACTS.

(*a*) *Contracts which may be specifically enforced.*

Cases in which specific performance enforceable.

12. Except as otherwise provided in this Chapter, the specific performance of any contract may in the discretion of the Court be enforced—

(*a*) when the act agreed to be done is in the performance, wholly or partly, of a trust ;

(*b*) when there exists no standard for ascertaining the actual damage caused by non-performance of the act agreed to be done ;

(*c*) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief ; or

(*d*) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

Explanation.—Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immoveable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer moveable property can be thus relieved.

Illustrations.

of clause (*a*)—

[1]*A* holds certain stock in trust for *B*. *A* wrongfully disposes of the stock. The law creates an obligation on *A* to restore the same quantity of stock to *B*, and *B* may enforce specific performance of this obligation.

of clause (*b*)—

A agrees to buy, and *B* agrees to sell, a picture by a dead painter and two rare China vases. *A* may compel *B* specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

of clause (*c*)—

A contracts with *B* to sell him a house for Rs. 1,000. *B* is entitled to a decree directing *A* to convey the house to him, he paying the purchase-money.

In consideration of being released from certain obligations imposed on it by its Act of Incorporation, a railway-company contract with *Z* to make an archway through their railway to connect lands of *Z* severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road and also to construct a siding and a wharf as specified in the contract. *Z* is entitled to have this contract specifically enforced for his interest in its performance cannot be adequately compensated for by money ; and the Court may appoint a proper person to superintend the construction of the archway, road, siding and wharf.

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[1] This illustration has no effect in areas to which the Trusts Act applies.

A contracts to sell, and *B* contracts to buy, a certain number of railway-shares of a particular description. *A* refuses to complete the sale. *B* may compel *A* specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder which cannot otherwise be procured.

A contracts with *B* to paint a picture for *B*, who agrees to pay therefor Rs. 1,000. The picture is painted. *B* is entitled to have it delivered to him on payment or tender of the Rs. 1,000.

of clause (*d*)—

A transfers without endorsement, but for valuable consideration, a promissory note to *B*. *A* becomes insolvent, and *C* is appointed his assignee. *B* may compel *C* to endorse the note, for *C* has succeeded to *A*'s liabilities and a decree for pecuniary compensation for not endorsing the note would be fruitless.

Contract of which the subject has partially ceased to exist.

13. Notwithstanding anything contained in section 56 of the Contract Act, a contract is not wholly impossible of performance because a portion of its subject-matter, existing at its date, has ceased to exist at the time of the performance.

Illustrations.

(*a*) *A* contracts to sell a house to *B* for a lakh of rupees. The day after the contract is made the house is destroyed by a cyclone. *B* may be compelled to perform his part of the contract by paying the purchase money.

(*b*) In consideration of a sum of money payable by *B*, *A* contracts to grant an annuity to *B* for *B*'s life. The day after the contract has been made, *B* is thrown from his horse and killed. *B*'s representative may be compelled to pay the purchase-money.

Specific performance of part of contract where part unperformed is small.

14. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

Illustrations.

(*a*) *A* contracts to sell *B* a piece of land consisting of 100 acres. It turns out that 98 acres of the land belong to *A*, and the two remaining acres to a stranger, who refuses to part with them. The two acres are not necessary for the use or enjoyment of the 98 acres nor so important for such use or enjoyment that the loss of them may not be made good in money. *A* may be directed at the suit of *B* to convey to *B* the 98 acres and to make compensation to him for not conveying the two remaining acres ; or *B* may be directed, at the suit of *A*, to pay to *A*, on receiving the conveyance and possession of the land, the stipulated purchase-money less a sum awarded as compensation for the deficiency.

(*b*) In a contract for the sale and purchase of a house and lands for two lakhs of rupees, it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit and include it in the decree for specific performance, or may confine its decree to the house.

Specific performance of part of contract where part unperformed is large.

15. Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the

plaintiff relinquishes all claim to further performance, and all right to compensation either for the deficiency, or for the loss or damage sustained by him through the default of the defendant.

Illustrations.

(*a*) *A* contracts to sell to *B* a piece of land consisting of 100 acres. It turns out that 50 acres of the land belong to *A*, and the other 50 acres to a stranger, who refuses to part with them. *A* cannot obtain a decree against *B* for the specific performance of the contract; but if *B* is willing to pay the price agreed upon, and to take the 50 acres which belong to *A*, waiving all right to compensation either for the deficiency or for loss sustained by him through *A*'s neglect or default, *B* is entitled to a decree directing *A* to convey those 50 acres to him on payment of the purchase-money.

(*b*) *A* contracts to sell to *B* an estate with a house and garden for a lakh of rupees. The garden is important for the enjoyment of the house. It turns out that *A* is unable to convey the garden. *A* cannot obtain a decree against *B* for the specific performance of the contract, but if *B* is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all right to compensation either for the deficiency or for loss sustained by him through *A*'s neglect or default, *B* is entitled to a decree directing *A* to convey the house to him on payment of the purchase-money.

Specific performance of independent part of contract.

16. When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

Bar in other cases of specific performance of part of contract.

17. The Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections.

Purchaser's rights against vendor with imperfect title.

18. Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this Chapter) has the following rights:—

(*a*) if the vendor or lessor has subsequently to the sale or lease acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(*b*) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence;

(*c*) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a conveyance from the mortgagee;

(*d*) where the vendor or lessor sues for specific performance of the contract, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest of the vendor or lessor in the property agreed to be sold or let.

Power to award compensation in certain cases.

19. Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

Explanation.—The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

Illustrations.

of the second paragraph—

A contracts to sell a hundred maunds of rice to *B*. *B* brings a suit to compel *A* to perform the contract or to pay compensation. The Court is of opinion that *A* has made a valid contract and has broken it, without excuse, to the injury of *B*, but that specific performance is not the proper remedy. It shall award to *B* such compensation as it deems just.

of the third paragraph—

A contracts with *B* to sell him a house for Rs. 1,000, the price to be paid and the possession given on the 1st January, 1942. *A* fails to perform his part of the contract, and *B* brings his suit for specific performance and compensation, which is decided in his favour on the 1st January, 1943. The decree may, besides ordering specific performance, award to *B* compensation for any loss which he has sustained by *A*'s refusal.

of the *Explanation*—

A, a purchaser, sues *B*, his vendor, for specific performance of a contract for the sale of a patent. Before the hearing of the suit the patent expires. The Court may award *A* compensation for the non-performance of the contract, and may, if necessary, amend the plaint for that purpose.

A sues for the specific performance of a resolution passed by the directors of a public company, under which he was entitled to have a certain number of shares allotted to him, and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may, under this section, award *A* compensation for the non-performance.

Liquidation of damages not a bar to specific performance.

20. A contract, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same.

Illustration.

A contracts to grant *B* an under-lease of property held by *A* under *C*, and that he will apply to *C* for a licence necessary to the validity of the under-lease, and that, if the licence is not procured, *A* will pay *B* Rs. 10,000, *A* refuses to apply for the licence and offers to pay *B* the Rs. 10,000. *B* is nevertheless entitled to have the contract specifically enforced if *C* consents to give the licence.

(*b*) *Contracts which cannot be specifically enforced.*

Contracts not specifically enforceable.

21. The following contracts cannot be specifically enforced :—

(*a*) a contract for the non-performance of which compensation in money is an adequate relief ;

(*b*) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms ;

(*c*) a contract the terms of which the Court cannot find with reasonable certainty ;

(*d*) a contract which is in its nature revocable ;

(*e*) a contract made by trustees either in excess of their powers or in breach of their trust ;

(*f*) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers ;

(*g*) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date ;

(*h*) a contract of which a material part of the subject-matter, supposed by both parties to exist, has, before it has been made, ceased to exist.

And, save as provided by the [Arbitration Act, 1944],[1] no contract to refer present or future differences to arbitration shall be specifically enforced ; but if any person who has made such a contract [other than an arbitration agreement to which the provisions of the said Act apply] [2] and has refused to perform it sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

Illustrations—

to (*a*)—

A contracts to sell, and *B* contracts to buy, a lakh of rupees in the four per cent. loan of the Government of India :

A contracts to sell, and *B* contracts to buy, 40 chests of indigo at Rs. 1,000 per chest :

In consideration of certain property having been transferred by *A* to *B*, *B* contracts to open a credit in *A*'s favour to the extent of Rs. 10,000, and to honour *A*'s drafts to that amount :

The above contracts cannot be specifically enforced, for in the first and second both *A* and *B*, and in the third *A*, would be reimbursed by compensation in money.

to (*b*)—

A contracts to render personal service to *B* :

A contracts to employ *B* on personal service :

A, an author, contracts with *B*, a publisher, to complete a literary work :

B cannot enforce specific performance of these contracts.

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[1] Substituted by Act IV, 1944, Third Schedule, which has now been omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

[2] Inserted *ibid.*

A contracts to buy *B*'s business at the amount of a valuation to be made by two valuers, one to be named by *A* and the other by *B*. *A* and *B* each name a valuer, but before the valuation is made *A* instructs his valuer not to proceed :

By a charter-party entered into in Calcutta between *A*, the owner of a ship, and *B*, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Rangoon, and two-thirds on delivery of the cargo in London :

A lets land to *B* and *B* contracts to cultivate it in a particular manner for three years next after the date of the lease ;

A and *B* contract that, in consideration of annual advances to be made by *A*, *B* will for three years next after the date of the contracts grow particular crops on the land in his possession and deliver them to *A* when cut and ready for delivery :

A contracts with *B* that, in consideration of Rs 1,000 to be paid to him by *B*, he will paint a picture for *B* :

A contracts with *B* to execute certain works which the Court cannot superintend :

A contracts to supply *B* with all the goods of a certain class which *B* may require :

A contracts with *B* to take from *B* a lease of a certain house for a specified term, at a specified rent, "if the drawing-room is handsomely decorated," even if it is held to have so much certainty that compensation can be recovered for its breach :

A contracts to marry *B* :

The above contracts cannot be specifically enforced.

to (*c*)—

A, the owner of a refreshment-room, contracts with *B* to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. *A* refuses to perform his contract. The case is one for compensation and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

to (*d*)—

A and *B* contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. This contract cannot be specifically performed, for, if it were so performed, either *A* or *B* might at once dissolve the partnership.

to (*e*)—

A is a trustee of land with power to lease it for seven years. He enters into a contract with *B* to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced.

The directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

Two trustees, *A* and *B*, empowered to sell trust-property worth a lakh of rupees, contract to sell it to *C* for Rs. 30,000. The contract is so disadvantageous as to be a breach of trust. *C* cannot enforce its specific performance.

The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property—and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

to (*f*)—

A company existing for the sole purpose of making and working a railway contract for the purchase of a piece of land for the purpose of erecting a cotton mill thereon. This contract cannot be specifically enforced.

to (*g*)—

A contracts to let for twenty-one years to *B* the right to use such part of a certain railway made by *A* as was upon *B*'s land and that *B* should have a right of running carriages over the whole line on certain terms, and might require *A* to supply the necessary engine-power, and that *A* should during the term keep the whole railway in good repair. Specific performance of this contract must be refused to *B*.

to (*h*)—

A contracts to pay an annuity to *B* for the lives of *C* and *D*. It turns out that, at the date of the contract, *C*, though supposed by *A* and *B* to be alive, was dead. The contract cannot be specifically performed.

(*c*) *Of the Discretion of the Court.*

Discretion as to decreeing specific performance.

22. The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so ; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance :—

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

Illustrations.

(*a*) *A*, a tenant for life of certain property, assigns his interest therein to *B*. *C* contracts to buy, and *B* contracts to sell, that interest. Before the contract is completed, *A* receives a mortal injury from the effects of which he dies the day after the contract is executed. If *B* and *C* were equally ignorant or equally aware of the fact, *B* is entitled to specific performance of the contract. If *B* knew the fact, and *C* did not, specific performance of the contract should be refused to *B*.

(*b*) *A* contracts to sell to *B* the interest of *C* in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that *C*'s interest is worth nothing. In fact, the value of *C*'s interest depends on the result of certain partnership accounts, on which he is heavily in debt to his partners. This indebtedness is known to *A*, but not to *B*. Specific performance of the contract should be refused to *A*.

(*c*) *A* contracts to sell, and *B* contracts to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. *B* does not know of this circumstance, and *A* conceals it from him. Specific performance of the contract should be refused to *A*.

(*d*) *A*'s property is put up to auction. *B* requests *C*, *A*'s attorney, to bid for him. *C* does this inadvertently and in good faith. The persons present, seeing the vendor's attorney bidding, think that he is mere puffer and cease to compete. The lot is knocked down to *B* at a low price. Specific performance of the contract should be refused to *B*.

II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

Illustrations.

(*e*) *A* is entitled to some land under his father's will on condition that if he sells it within twenty-five years, half the purchase-money shall go to *B*. *A*, forgetting the condition, contracts, before the expiration of the twenty-five years, to sell the land to *C*. Here the enforcement of the contract would operate so harshly on *A* that the Court will not compel its specific performance in favour of *C*.

(*f*) *A* and *B*, trustees, join their beneficiary, *C*, in a contract to sell the trust-estate to *D*, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase-money is not nearly enough to discharge those incumbrances, though, at the date of the contract, the vendors believed it to be sufficient. Specific performance of the contract should be refused to *D*.

(*g*) *A*, the owner of an estate, contracts to sell it to *B*, and stipulates that he, *A*, shall not be obliged to define its boundary. The estate really comprises a valuable property, not known to either to be part of it. Specific performance of the contract should be refused to *B* unless he waives his claim to the unknown property.

(*h*) *A* contracts with *B* to sell him certain land, and to make a road to it from a certain railway station. It is found afterwards that *A* cannot make the road without exposing himself

to litigation. Specific performance of the part of the contract relating to the road should be refused to *B*, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.

(*i*) *A*, a lessee of mines, contracts with *B*, his lessor, that at any time during the continuance of the lease *B* may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to *B*.

(*j*) *A* contracts to buy certain land from *B*. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to *B*.

(*k*) *A* contracts with *B* to buy from *B*'s manufactory and not elsewhere all the goods of a certain class used by *A* in his trade. The Court cannot compel *B* to supply the goods, but if he does not supply them *A* may be ruined, unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to *B*.

The following is a case in which the Court may properly exercise a discretion to decree specific performance :—

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

Illustration.

A sells land to a railway company, who contract to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the contract to execute the works should be decreed in favour of *A*.

(*d*) *For whom Contracts may be specifically enforced.*

Who may obtain specific performance.

23. Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by—

(*a*) any party thereto ;

(*b*) the representative in interest, or the principal, of any party thereto : provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed ;

(*c*) where the contract is a settlement on marriage or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder ;

(*d*) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman ;

(*e*) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant ;

(*f*) a reversioner in remainder, where the agreement is such a covenant and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach ;

(*g*) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation ;

(*h*) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company.

(*e*) *For whom Contracts cannot be specifically enforced.*

Personal bars to the relief.

24. Specific performance of a contract cannot be enforced in favour of a person—

(*a*) who could not recover compensation for its breach ;

(*b*) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed ;

(*c*) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract ; or

(*d*) who, previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made and was then in force.

Illustrations—

to clause (*a*)—

A, in the character of agent for *B*, enters into an agreement with *C* to buy *C*'s house. *A* is in reality acting not as agent for *B* but on his own account. *A* cannot enforce specific performance of this contract.

to clause (*b*)—

A contracts to sell *B* a house and to become tenant thereof for a term of fourteen years from the date of the sale at a specified yearly rent. *A* becomes insolvent. Neither he nor his assignee can enforce specific performance of the contract.

A contracts to sell *B* a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. *A*, without *B*'s consent, fells the trees. *A* cannot enforce specific performance of the contract.

A, holding land under a contract with *B* for a lease, commits waste, or treats the land in an unhusbandlike manner. *A* cannot enforce specific performance of the contract.

A contracts to let, and *B* contracts to take, an unfinished house, *B* contracting to finish the house and the lease to contain covenants on the part of *A* to keep the house in repair. *B* finishes the house in a very defective manner ; he cannot enforce the contract specifically though *A* and *B* may sue each other for compensation for breach of it.

to clause (*c*)—

A contracts to let, and *B* contracts to take, a house for a specified term at a specified rent. *B* refuses to perform the contract. *A* thereupon sues for, and obtains, compensation for the breach. *A* cannot obtain specific performance of the contract.

Contracts to sell property by one who has no title or who is a voluntary settler.

25. A contract for the sale or letting of property, whether moveable or immoveable, cannot be specifically enforced in favour of a vendor or lessor—

(*a*) who, knowing himself not to have any title to the property, has contracted to sell or let the same ;

(*b*) who, though he entered into the contract believing that he had a good title to the property, cannot, at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt ;

(*c*) who, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the subject-matter of the contract.

Illustrations.

(*a*) *A*, without *C*'s authority, contracts to sell to *B* an estate which *A* knows to belong to *C*. *A* cannot enforce specific performance of this contract, even though *C* is willing to confirm it.

(*b*) *A* bequeaths his land to trustees, declaring that they may sell it with the consent in writing of *B*. *B* gives a general prospective assent in writing to any sale which the trustees may make. The trustees then enter into a contract with *C* to sell him the land. *C* refuses to carry out the contract. The trustees cannot specifically enforce this contract, as in the absence of *B*'s consent to the particular sale to *C*, the title which they can give *C* is, as the law stands, not free from reasonable doubt.

(*c*) *A*, being in possession of certain land, contracts to sell it to *Z*. On inquiry it turns out that *A* claims the land as heir of *B*, who left the country several years before, and is generally believed to be dead, but of whose death there is no sufficient proof. *A* cannot compel *Z* specifically to perform the contract.

(*d*) *A*, out of natural love and affection, makes a settlement of certain property on his brothers and their issue, and afterwards enters into a contract to sell the property to a stranger. *A* cannot enforce specific performance of this contract so as to override the settlement and thus prejudice the interests of the persons claiming under it.

(*f*) *For whom Contracts cannot be specifically enforced, except with a Variation.*

Non-enforcement except with variation.

26. Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases (namely) :—

(*a*) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it ;

(*b*) where by fraud, mistake of fact, or surprise the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff ;

(*c*) where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part which adds to the contract, but which he refuses to fulfil ;

(*d*) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce ;

(*e*) where the parties have, subsequently to the execution of the contract, contracted to vary it.

Illustrations.

(*a*) *A*, *B* and *C* sign a writing by which they purport to contract each to enter into a bond to *D* for Rs. 1,000. In a suit by *D*, to make *A*, *B* and *C* separately liable each to the extent of Rs. 1,000, they prove that the word "each" was inserted by mistake ; that the intention was that they should give a joint bond for Rs. 1,000. *D* can obtain the performance sought only with the variation thus set up.

(*b*) *A* sues *B* to compel specific performance of a contract in writing to buy a dwelling-house. *B* proves that he assumed that the contract included an adjoining yard, and the contract was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the contract, except with the variation set up by *B*.

(*c*) *A* contracts in writing to let to *B* a wharf, together with a strip of *A*'s land delineated in a map. Before signing the contract, *B* proposed orally that he should be at liberty to substitute for the strip mentioned in the contract another strip of *A*'s land of the same dimensions, and to this *A* expressly assented. *B* then signed the written contract. *A* cannot obtain specific performance of the written contract, except with the variation set up by *B*.

(*d*) *A* and *B* enter into negotiations for the purpose of securing land for *B* for his life, with remainder to his issue. They execute a contract, the terms of which are found to confer an absolute ownership on *B*. The contract so framed cannot be specifically enforced.

(*e*) *A* contracts in writing to let a house to *B*, for a certain term, at the rent of Rs. 100 per month, putting it first into tenantable repair. The house turns out to be not worth repairing, so, with *B*'s consent, *A* pulls it down and erects a new house in its place, *B* contracting orally to pay rent at Rs. 120 per mensem. *B* then sues to enforce specific performance of the contract in writing. He cannot enforce it except with the variations made by the subsequent oral contract.

(*g*) *Against whom Contracts may be specifically enforced.*

27. Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against— Relief against parties and persons claiming under them by subsequent title.

(*a*) either party thereto;

(*b*) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract ;

(*c*) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant ;

(*d*) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation ;

(*e*) when the promoters of a public company have, before its incorporation, entered into a contract, the company : provided that the company has ratified and adopted the contract and the contract is warranted by the terms of the incorporation.

Illustrations—

to clause (*b*)—

A contracts to convey certain land to *B* by a particular day. *A* dies intestate before that day without having conveyed the land. *B* may compel *A*'s heir or other representative in interest to perform the contract specifically.

A contracts to sell certain land to *B* for Rs. 5,000. *A* afterwards conveys the land for Rs. 6,000 to *C*, who has notice of the original contract. *B* may enforce specific performance of the contract as against *C*.

A contracts to sell land to *B* for Rs. 5,000. *B* takes possession of the land. Afterwards *A* sells it to *C* for Rs. 6,000. *C* makes no inquiry of *B* relating to his interest in the land. *B*'s possession is sufficient to affect *C* with notice of his interest, and he may enforce specific performance of the contract against *C*.

A contracts, in consideration of Rs. 1,000, to bequeath certain of his lands to *B*. Immediately after the contract *A* dies intestate, and *C* takes out administration to his estate. *B* may enforce specific performance of the contract against *C*.

A contracts to sell certain land to *B*. Before the completion of the contract, *A* becomes a lunatic and *C* is appointed his committee. *B* may specifically enforce the contract against *C*.

o clause (*c*)—

A, the tenant for life of an estate, with remainder to *B*, in due exercise of a power conferred by the settlement under which he is tenant for life, contracts to sell the estate to *C*, who has notice of the settlement. Before the sale is completed, *A* dies. *C* may enforce specific performance of the contract against *B*.

A and *B* are joint tenants of land, his undivided moiety of which either may alienate in his lifetime, but which, subject to that right, devolves on the survivor. *A* contracts to sell his moiety to *C* and dies. *C* may enforce specific performance of the contract against *B*.

Specific performance in case of part performance of contract to lease.

27A. Subject to the provisions of this Chapter, where a contract to lease immoveable property is made in writing signed by the parties thereto or on their behalf, either party may, notwithtsanding that the contract, though required to be registered, has not been registered, sue the other for specific performance of the contract if,—

(*a*) where specific performance is claimed by the lessor, he has delivered possession of the property to the lessee in part performance of the contract ; and

(*b*) where specific performance is claimed by the lessee, he has, in part performance of the contract, taken possession of the property, or, being already in possession, continues in possession, in part performance of the contract, and has done some act in furtherance of the contract :

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

This section applies to contracts to lease executed after the first day of April, 1930.[1]

(*h*) *Against whom Contracts cannot be specifically enforced.*

What parties cannot be compelled to perform.

28. Specific performance of a contract cannot be enforced against a party thereto in any of the following cases :—

(*a*) if the consideration to be received by him is so grossly inadequate with reference to the state of things existing at the date of the contract, as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff ;

(*b*) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention or unfair practices, of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled ;

(*c*) if his assent was given under the influence of mistake of fact, misapprehension or surprise : Provided that, when the contract provides for compensation in case of mistake, compensation may

[1] The date on which the Transfer of Property (Amendment) Supplementary Act, 1929 (India Act XXI, 1929), which added section 27A to this Act, came into force.

be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced.

Illustrations—

to clause (*c*)—

A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to *B* of his testator's property. *B* cannot insist on the sale being completed.

A directs an auctioneer to sell certain land. *A* afterwards revokes the auctioneer's authority as to 20 acres of this land, but the auctioneer inadvertently sells the whole to *B*, who has no notice of the revocation. *B* cannot enforce specific performance of the agreement.

(*i*) *The Effect of dismissing a Suit for Specific Performance.*

29. The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be.

Bar of suit for breach after dismissal.

(*j*) *Awards and Directions to execute Settlements.*

30. The provisions of this Chapter as to contracts shall, *mutatis mutandis*, apply to awards and to directions in a will or codicil to execute a particular settlement.

Application of preceding sections to awards and testamentary directions to execute settlements.

CHAPTER III.

OF THE RECTIFICATION OF INSTRUMENTS.

31. When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not truly express their intention, either party, or his representative in interest, may institute a suit to have the instrument rectified; and if the Court find it clearly proved that there has been fraud or mistake in framing the instrument, and ascertain the real intention of the parties in executing the same, the Court may in its discretion rectify the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

When instrument may be rectified.

Illustrations.

(*a*) *A*, intending to sell to *B* his house and one of three godowns adjacent to it, executes a conveyance prepared by *B*, in which, through *B*'s fraud, all three godowns are included. Of the two godowns which were fraudulently included, *B* gives one to *C* and lets the other to *D* for a rent, neither *C* nor *D* having any knowledge of the fraud. The conveyance may, as against *B* and *C*, be rectified so as to exclude from it the godown given to *C*; but it cannot be rectified so as to affect *D*'s lease.

(*b*) By a marriage settlement *A* the father of *B*, the intended wife, covenants with *C*, the intended husband, to pay to *C*. his executors, administrators and assigns, during *A*'s

life, an annuity of Rs. 5,000. *C* dies insolvent and the official assignee claims the annuity from *A*. The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for *B* and her children, may rectify the settlement and decree that the assignee has no right to any part of the annuity.

Presumption as to intent of parties.

32. For the purpose of rectifying a contract in writing, the Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement.

Principles of rectification.

33. In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

Specific enforcement of rectified contract.

34. A contract in writing may be first rectified and then, if the plaintiff has so prayed in his plaint and the Court thinks fit, specifically enforced.

Illustration.

A contracts in writing to pay his attorney, *B*, a fixed sum in lieu of costs. The contract contains mistakes as to the name and rights of the client, which, if construed strictly, would exclude *B* from all rights under it. *B* is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

CHAPTER IV.

OF THE RESCISSION OF CONTRACTS.

When rescission may be adjudged.

35. Any person interested in a contract in writing[1] may sue to have it rescinded, and such rescission may be adjudged by the Court in any of the following cases, namely :—

(*a*) where the contract is voidable or terminable by the plaintiff;

(*b*) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff;

(*c*) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay.

When the purchaser or lessee is in possession of the subject-matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as such possessor.

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract, either so far as regards the party in default, or altogether, as the justice of the case may require.

[1] The words "in writing" are repealed by the Transfer of Property Act wherever that Act is in force.

Illustrations—

to (*a*)—

A sells a field to *B*. There is a right of way over the field of which *A* has direct personal knowledge, but which he conceals from *B*. *B* is entitled to have the contract rescinded.

to (*b*)—

A, an advocate, induces his client *B*, a Hindu widow, to transfer property to him for the purpose of defrauding *B*'s creditors. Here the parties are not equally in fault, and *B* is entitled to have the instrument of transfer rescinded.

Rescission for mistake.

36. Rescission of a contract in writing cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

Alternative prayer for rescission in suit for specific performance.

37. A plaintiff instituting a suit for the specific performance of a contract in writing [1] may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

Court may require party rescinding to do equity.

38. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER V.

OF THE CANCELLATION OF INSTRUMENTS.

When cancellation may be ordered.

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

If the instrument has been registered under the Registration Act, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

Illustrations.

(*a*) *A*, the owner of a ship by fraudulently representing her to be seaworthy, induces *B*, an underwriter, to insure her. *B* may obtain the cancellation of the policy.

(*b*) *A* conveys land to *B*, who bequeaths it to *C* and dies. Thereupon *D* gets possession of the land and produces a forged instrument stating that the conveyance was made to *B* in trust for him. *C* may obtain the cancellation of the forged instrument.

(*c*) * * * *

(*d*) *A* agrees to sell and deliver a ship to *B*, to be paid for by *B*'s acceptances of four bills of exchange, for sums amounting to Rs. 30,000, to be drawn by *A* on *B*. The bills are drawn and accepted, but the ship is not delivered according to the agreement. *A* sues *B* on one of the bills. *B* may obtain the cancellation of all the bills.

[1] The words "in writing" are repealed by the Transfer of Property Act wherever that Act is in force.

What instruments may be partially cancelled.

40. Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part and allow it to stand for the residue.

Illustration.

A draws a bill on *B*, who endorses it to *C* by whom it appears to be endorsed to *D*, who endorses it to *E*. *C*'s endorsement is forged. *C* is entitled to have such endorsement cancelled, leaving the bill to stand in other respects.

Power to require party for whom instrument is cancelled to make compensation.

41. On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER VI.

OF DECLARATORY DECREES.

Discretion of Court as to declaration of status or right.

42. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Bar to such declaration.

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Illustrations.

(*a*) *A* is lawfully in possession of certain land. The inhabitants of a neighbouring village claim a right of way across the land. *A* may sue for a declaration that they are not entitled to the right so claimed.

(*b*) *A* bequeaths his property to *B*, *C* and *D*, "to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children." No such children are in existence. In a suit against *A*'s executor, the Court may declare whether *B*, *C* and *D* took the property absolutely, or only for their lives, and it may also declare the interests of the children before their rights are vested.

(*c*) *A* covenants that, if he should at any time be entitled to property exceeding one lakh of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court may make the declaration.

(*d*) *A* alienates to *B* property in which *A* has merely a life interest. The alienation is invalid as against *C*, who is entitled as reversioner. The Court may in a suit by *C* against *A* and *B* declare that *C* is so entitled.

(*e*) The widow of a sonless Hindu alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity and was therefore void beyond the widow's lifetime.

(*f*) A Hindu widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(*g*) *A* is in possession of certain property. *B*, alleging that he is the owner of the property, requires *A* to deliver it to him. *A* may obtain a declaration of his right to hold the property.

(*h*) *A* bequeaths property to *B* for his life, with remainder to *B*'s wife and her children, if any, by *B*, but, if *B* die without any wife or children, to *C*. *B* has a putative wife, *D*, and children, but *C* denies that *B* and *D* were ever lawfully married. *D* and her children may, in *B*'s lifetime, institute a suit against *C* and obtain therein a declaration that they are truly the wife and children of *B*.

Effect of declaration.

43. A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

Illustration.

A, a Hindu, in a suit to which *B*, his alleged wife and her mother are defendants, seeks a declaration that his marriage was duly solemnized and an order for the restitution of his conjugal rights. The Court makes the declaration and order. *C*, claiming that *B* is his wife, then sues *A* for the recovery of *B*. The declaration made in the former suit is not binding upon *C*.

CHAPTER VII.

OF THE APPOINTMENT OF RECEIVERS.

Appointment of receivers discretionary.

44. The appointment of a receiver pending a suit is a matter resting in the discretion of the Court.

Reference to Code of Civil Procedure.

The mode and effect of his appointment, and his rights, powers, duties and liabilities, are regulated by the Code of Civil Procedure.

CHAPTER VIII.

OF THE ENFORCEMENT OF PUBLIC DUTIES.

Power to order public servants and others to do certain specific acts.

45. The High Court may make an order requiring any specific act to be done or forborne, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office whether of a permanent or a temporary nature, or by any corporation or inferior Court of Judicature :

Provided—

(*a*) that an application for such order be made by some person whose property, franchise or personal right would be injured by the forbearing or doing (as the case may be) of the said specific act ;

(*b*) that such doing or forbearing is, under any law for the time being in force, clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character;

(*c*) that in the opinion of the High Court such doing or forbearing is consonant to right and justice ;

(*d*) that the applicant has no other specific and adequate legal remedy; and

(*e*) that the remedy given by the order applied for will be complete.

Exemptions from such power.

Nothing in this section shall be deemed to authorize the High Court—

(*f*) to make any order binding on [* * * *][1] the President of the Union;

(*g*) to make any order on any other servant of the Government, as such, merely to enforce the satisfaction of a claim upon the Government; or

(*h*) to make any order which is otherwise expressly excluded by any law for the time being in force.

Application how made.

Procedure thereon.

46. Every application under section 45 must be founded on an affidavit of the person injured, stating his right in the matter in question, his demand of justice and the denial thereof; and the High Court may, in its discretion, make the order applied for absolute in the first instance, or refuse it, or grant a rule to show cause why the order applied for should not be made.

Order in alternative.

If, in the last case, the person, Court or corporation complained of shows no sufficient cause, the High Court may first make an order in the alternative, either to do or forbear the act mentioned in the order, or to signify some reason to the contrary and make an answer thereto by such day as the High Court fixes in this behalf.

Peremptory order.

47. If the person, Court or corporation to whom or to which such order is directed makes no answer, or makes an insufficient or a false answer, the High Court may then issue a peremptory order to do or forbear the act absolutely.

Execution of, and appeal from, orders.

48. Every order under this Chapter shall be executed, and may be appealed from, as if it were a decree made in the exercise of the ordinary original civil jurisdiction of the High Court.

Costs.

49. The costs of all applications and orders under this Chapter shall be in the discretion of the High Court.

Bar to issue of *mandamus*

50. Neither the High Court nor any Judge thereof shall hereafter issue any writ of *mandamus*.

Power to frame rules.

51. The High Court shall frame rules[2] to regulate the procedure under this Chapter; and, until such rules are framed, the practice of such Court as to applications for and grants of writs of *mandamus* shall apply, so far as may be practicable, to applications and orders under this Chapter.

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[1] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948, as amended by Judicial Department Notification No. 234, dated 17th November 1949.

[2] See the High Court Rules and Orders.

PART III.

Of Preventive Relief.

CHAPTER IX.

OF INJUNCTIONS GENERALLY.

Preventive relief how granted.

52. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

Temporary injunctions.

53. Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.

Perpetual injunctions.

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

CHAPTER X.

OF PERPETUAL INJUNCTIONS.

Perpetual injunctions when granted.

54. Subject to the other provisions contained in, or referred to by, this Chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II of this Act.

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely):—

(*a*) where the defendant is trustee of the property for the plaintiff;

(*b*) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(*c*) where the invasion is such that pecuniary compensation would not afford adequate relief;

(*d*) where it is probable that pecuniary compensation cannot be got for the invasion;

(*e*) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Explanation.—For the purpose of this section a trademark is property.

Illustrations.

(*a*) *A* lets certain lands to *B*, and *B* contracts not to dig sand or gravel thereout. *A* may sue for an injunction to restrain *B* from digging in violation of his contract.

(*b*) A trustee threatens a breach of trust. His co-trustees, if any, should, and the beneficial owners may, sue for an injunction to prevent the breach.

(*c*) The directors of a public company are about to pay a dividend out of capital[1] or borrowed money. Any of the shareholders may sue for an injunction to restrain them.[2]

(*d*) The directors of a fire and life-insurance company are about to engage in marine insurance. Any of the shareholders may sue for an injunction to restrain them.

(*e*) *A*, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(*f*) *A*, a trustee for *B*, is about to make an imprudent sale of a small part of the trust-property. *B* may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(*g*) *A* makes a settlement (not founded on marriage or other valuable consideration) of an estate on *B* and his children. *A* then contracts to sell the estate to *C*. *B* or any of his children may sue for an injunction to restrain the sale.

(*h*) In the course of *A*'s employment as an advocate, certain papers belonging to his client, *B*, come into his possession. *A* threatens to make these papers public, or to communicate their contents to a stranger. *B* may sue for an injunction to restrain *A* from so doing.

(*i*) *A* is *B*'s medical adviser. He demands money of *B* which *B* declines to pay. *A* then threatens to make known the effect of *B*'s communications to him as a patient. This is contrary to *A*'s duty, and *B* may sue for an injunction to restrain him from so doing.

(*j*) *A*, the owner of two adjoining houses, lets one to *B* and afterwards lets the other to *C*. *A* and *C* begin to make such alterations in the house let to *C* as will prevent the comfortable enjoyment of the house let to *B*. *B* may sue for an injunction to restrain them from so doing.

(*k*) *A* lets certain arable lands to *B* for purposes of husbandry, but without any express contract as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, *B* threatens to sow the lands with seed injurious thereto and requiring many years to eradicate. *A* may sue for an injunction to restrain *B* from sowing the lands in contravention of his implied contract to use them in a husbandlike manner.

(*l*) *A*, *B* and *C* are partners, the partnership being determinable at will. *A* threatens to do an act tending to the destruction of the partnership property. *B* and *C* may, without seeking a dissolution of the partnership, sue for an injunction to restrain *A* from doing the act.

(*m*) *A*, a Hindu widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir-expectant may sue for an injunction to restrain her.

(*n*) *A*, *B* and *C* are members of an undivided Hindu family. *A* cuts timber growing on the family property, and threatens to destroy part of the family house and to sell some of the family utensils. *B* and *C* may sue for an injunction to restrain him.

(*o*) *A*, the owner of certain houses in Rangoon, becomes insolvent. *B* buys them from the Official Assignee and enters into possession. *A* persists in trespassing on and damaging the houses, and *B* is thereby compelled, at considerable expense, to employ men to protect the possession. *B* may sue for an injunction to restrain further acts of trespass.

(*p*) The inhabitants of a village claim a right of way over *A*'s land. In a suit against several of them, *A* obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues *A* for obstructing his alleged right of way over the land. *A* may sue for an injunction to restrain them.

(*q*) *A*, in an administration-suit to which a creditor, *B*, is not a party, obtains a decree for the administration of *C*'s assets. *B* proceeds against *C*'s estate for his debt. *A* may sue for an injunction to restrain *B*.

(*r*) *A* and *B* are in possession of contiguous lands and of the mines underneath them.[3] *A* works his mine so as to extend under *B*'s mine and threatens to remove certain pillars which help to support *B*'s mine. *B* may sue for an injunction to restrain him from so doing.

(*s*) *A* rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, *B*. *B* may sue for an injunction restraining *A* from making the noise.

(*t*) *A* pollutes the air with smoke so as to interfere materially with the physical comfort of *B* and *C*, who carry on business in a neighbouring house. *B* and *C* may sue for an injunction to restrain the pollution.

(*u*) *A* infringes *B*'s patent. If the Court is satisfied that the patent is valid and has been infringed, *B* may obtain an injunction to restrain the infringement.

(*v*) *A* pirates *B*'s copyright. *B* may obtain an injunction to restrain the piracy unless the work of which copyright is claimed is libellous or obscene.

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[1] As to payment of interest out of capital by railway companies during construction, *see* the Railway Companies Act, Volume VII of this Code.

[2] But *see* section 3 of the Railway Companies Act under which a railway company is permitted to pay interest on its paid-up share capital out of capital under certain conditions and restrictions.

[3] As to the working of mines lying under land which has been acquired by Government, *see* the Land Acquisition (Mines) Act, Volume X of this Code.

(*w*) *A* improperly uses the trademark of *B*. *B* may obtain an injunction to restrain the user, provided that *B*'s use of the trademark is honest.

(*x*) *A*, a tradesman, holds out *B* as his partner against the wish and without the authority of *B*. *B* may sue for an injunction to restrain *A* from so doing.

(*y*) *A*, a very eminent man, writes letters on family topics to *B*. After the death of *A* and *B*, *C*, who is *B*'s residuary legatee, proposes to make money by publishing *A*'s letters. *D*, who is *A*'s executor, has a property in the letters, and may sue for an injunction to restrain *C* from publishing them.

(*z*) *A* carries on a manufactory and *B* is his assistant. In the course of his business *A* imparts to *B* a secret process of value. *B* afterwards demands money of *A*, threatening, in case of refusal, to disclose the process to *C*, a rival manufacturer. *A* may sue for an injunction to restrain *B* from disclosing the process.

Mandatory injunctions.

55. When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Illustrations.

(*a*) *A*, by new buildings, obstructs lights to the access and use of which *B* has acquired a right under the Limitation Act, Part IV. *B* may obtain an injunction, not only to restrain *A* from going on with the buildings, but also to pull down so much of them as obstructs *B*'s lights.

(*b*) *A* builds a house with eaves projecting over *B*'s land. *B* may sue for an injunction to pull down so much of the eaves as so project.

(*c*) In the case put as illustration (*i*) to section 54, the Court may also order all written communication made by *B*, as patient, to *A*, as medical adviser, to be destroyed.

(*d*) In the case put as illustration (*y*) to section 54, the Court may also order *A*'s letters to be destroyed.

(*e*) *A* threatens to publish statements concerning *B* which would be punishable under Chapter XXI of the Penal Code. The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to *B*'s property.

(*f*) *A*, being *B*'s medical adviser, threatens to publish *B*'s written communications with him, showing that *B* has led an immoral life. *B* may obtain an injunction to restrain the publication.

(*g*) In the cases put as illustrations (*v*) and (*w*) to section 54 and in illustrations (*e*) and (*f*) to this section, the Court may also order the copies produced by piracy, and the trademarks, statements and communications, therein respectively mentioned, to be given up or destroyed.

56. An injunction cannot be granted—

Injunction when refused.

(*a*) to stay a judicial proceeding pending at the institution of the suit in which the injuction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings ;

(*b*) to stay proceedings in a Court not subordinate to that from which the injunction is sought ;

(*c*) to restrain persons from applying to any legislative body ;

(*d*) to interfere with the public duties of any department of the Government, or with the sovereign acts of a foreign Government ;

(*e*) to stay proceedings in any criminal matter ;

(*f*) to prevent the breach of a contract the performance of which would not be specifically enforced ;

(*g*) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance ;

(*h*) to prevent a continuing breach in which the applicant has acquiesced ;

(*i*) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

(*j*) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court;

(*k*) where the applicant has no personal interest in the matter.

Illustrations.

(*a*) *A* seeks an injunction to restrain his partner, *B*, from receiving the partnership debts and effects. It appears that *A* had improperly possessed himself of the books of the firm and refused *B* access to them. The Court will refuse the injunction.

(*b*) *A* manufactures and sells crucibles, designating them as "patent plumbago-crucibles," though, in fact, they have never been patented. *B* pirates the designation. *A* cannot obtain an injunction to restrain the piracy.

(*c*) *A* sells an article called "Mexican Balm," stating that it is compounded of diverse rare essences, and has sovereign medicinal qualities. *B* commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying *A*'s Mexican Balm. *A* sues *B* for an injunction to restrain the sale. *B* shows that *A*'s Mexican Balm consists of nothing but scented hog's lard. *A*'s use of his description is not an honest one and he cannot obtain an injunction.

Injunction to perform negative agreement.

57. Notwithstanding section 56, clause (*f*), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement: provided that the applicant has not failed to perform the contract so far as it is binding on him.

Illustrations.

(*a*) *A* contracts to sell to *B* for Rs. 1,000 the good-will of a certain business unconnected with business premises, and further agrees not to carry on that business in Rangoon. *B* pays *A* the Rs. 1,000 but *A* carries on the business in Rangoon. The Court cannot compel *A* to send his customers to *B*, but *B* may obtain an injunction restraining *A* from carrying on the business in Rangoon.

(*b*) *A* contracts to sell to *B* the good-will of a business. *A* then sets up a similar business close by *B*'s shop and solicits his old customers to deal with him. This is contrary to his implied contract, and *B* may obtain an injunction to restrain *A* from soliciting the customers, and from doing any act whereby their good-will may be withdrawn from *B*.

(*c*) *A* contracts with *B* to sing for twelve months at *B*'s theatre and not to sing in public elsewhere. *B* cannot obtain specific performance of the contract to sing, but he is entitled to an injunction restraining *A* from singing at any other place of public entertainment.

(*d*) *B* contracts with *A* that he will serve him faithfully for twelve months as a clerk. *A* is not entitled to a decree for specific performance of this contract. But he is entitled to an injunction restraining *B* from serving a rival house as clerk.

(*e*) *A* contracts with *B* that, in consideration of Rs. 1,000 to be paid to him by *B* on a day fixed, he will not set up a certain business within a specified distance. *B* fails to pay the money. *A* cannot be restrained from carrying on the business within the specified distance.

PART XXVII—LEGAL PRACTITIONERS.

အပိုင်း ၂၇။ ။ရှေ့နေရှေ့ရပ်များဆိုင်ရာ။

THE BAR COUNCIL ACT.

[INDIA ACT XXXVIII, 1926.] (1st January, 1929.)[1]

Preliminary.

1. * * * *

2. In this Act, unless there is any thing repugnant in the subject or context,— Interpretation.

(*a*) " advocate " means an advocate entered in the roll of advocates of the High Court under the provisions of this Act ;

(*b*)—(*c*) * * * *

(*d*) " prescribed " means prescribed by rules made under this Act.

Constitution of Bar Council.

3. (*1*) For the High Court a Bar Council shall be constituted in the manner hereinafter provided. Constitution and incorporation of Bar Council.

(*2*) The Bar Council so constituted shall be a body corporate having perpetual succession and a common seal, with power to acquire and hold property, both moveable and immoveable, and contract, and shall by the name of the Bar Council of the High Court at Rangoon sue and be sued.

4. (*1*) The Bar Council shall consist of fifteen members, of whom— Composition of Bar Council.

(*a*) one shall be the Attorney-General ;

(*b*) four shall be persons nominated by the High Court, of whom not more than two may be Judges of that Court ; and

(*c*) ten shall be elected by the advocates of the High Court from amongst their number.

(*2*) Of the elected members of the Bar Council not less than five shall be persons who have for not less than ten years been entitled as of right to practise in the High Court.

(*3*) * * * *

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[1] Sections 2, 17, 18 and 19 came into force on the 9th September, 1926, the date of commencement of the Indian Bar Councils Act, 1926 (India Act XXXVIII, 1926).

Section 1 (*3*) of the Indian Bar Councils Act, 1926, authorized the Governor-General in Council to direct by notification that the other provisions of that Act or any portion thereof shall come into force in respect of any High Court on such date as he may, by notification, appoint. By a notification appearing in the Gazette of India, 1928, Part I, page 714, the rest of the Act was made applicable to the Rangoon High Court with effect from the 1st January, 1929.

[1](*4*) The Attorney-General shall be the Chairman of the Bar Council and a Vice-Chairman for the said Council shall be elected by the Council in such manner as may be prescribed.

5. * * * *

Power to make rules regarding constitution and procedure of Bar Council.

6. (*1*) Rules, consistent with this Act, may be made to provide for the following matters, namely :—

(*a*) the manner in which elections of members of the Bar Council shall be held ; the method of determining, in accordance with the provisions of sub-section (*2*) of section 4, the candidates who shall be declared to have been elected ; the manner in which the result of elections shall be published ; and the manner in which and the authority by which doubts and disputes as to the validity of an election shall be finally decided ;

(*b*) the terms of office of nominated and elected members of the Council ;

(*c*) the filling of casual vacancies in the Council ;

(*d*) the convening of meetings of the Council, and the quorum necessary for the transaction of business thereat ;

(*e*) the manner of election and the respective terms of office of the Chairman and of the Vice-Chairman ; and

(*f*) any matter incidental or ancillary to any of the foregoing matters.

(*2*) The first rules under this section shall be made by the High Court, but the Bar Council may thereafter, with the previous sanction of the High Court, add to, amend or rescind any rules so made.

(*3*) No election of a member or members to the Council shall be called in question on the ground that due notice thereof has not been given to any person entitled to vote thereat, if notice of the date fixed for the election has, not less than thirty days before that date, been published in the Gazette.

(*4*) Rules made under clause (*b*) of sub-section (*1*) may provide for the retirement of members from office by rotation and for the manner in which the order of such retirement shall be determined.

Power of Bar Council to make bye-laws.

7. The Bar Council may make bye-laws consistent with this Act and any rules made thereunder to provide for any of the following matters, namely :—

(*a*) the appointment of such ministerial officers and servants as the Bar Council may deem necessary, and the pay and allowances and other conditions of service of such officers and servants ; and

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

(*b*) the appointment and constitution of committees of the Council, the procedure of such committees, and the determination of the powers or duties of the Council which may be delegated to such committees.

Admission and enrolment of advocates.

Enrolment of advocates.

8. (*1*) No person shall be entitled as of right to practise in the High Court, unless his name is entered in the roll of the advocates of the High Court under this Act.

(*2*) The High Court shall prepare and maintain a roll of advocates of the High Court in which shall be entered the names of—

(*a*) all persons who were, as advocates or pleaders, entitled as of right to practise in the High Court immediately before the 1st January, 1929[1], in respect thereof; and

(*b*) all other persons who have been admitted to be advocates of the High Court under this Act:

Provided that such persons shall have paid in respect of enrolment the stamp-duty, if any, chargeable under the Burma Stamp Act, and a fee, payable to the Bar Council, which shall be ten rupees in the case of the persons referred to in clause (*a*), and in other cases such amount as may be prescribed.

(*3*) Entries in the roll shall be made in the order of seniority, and such seniority shall be determined as follows, namely:—

(*a*) all such persons as are referred to in clause (*a*) of sub-section (*2*) shall be entered first in the order in which they were respectively entitled to seniority *inter se* immediately before the 1st January, 1929[1]; and

(*b*) the seniority of any other person admitted to be an advocate of the High Court under this Act after that date shall be determined by the date of his admission or, if he is a barrister, by the date of his admission or the date on which he was called to the Bar, whichever date is earlier:

Provided that, for the purposes of clause (*b*), the seniority of a person who before his admission to be an advocate was entitled as of right to practise in another High Court shall be determined by the date on which he became so entitled.

(*4*) The respective rights of pre-audience of advocates of the High Court shall be determined by seniority:

Provided that the [Attorney-General][2] shall have pre-audience over all other advocates * * * * *[3].

(*5*) The High Court shall issue a certificate of enrolment to every person enrolled under this section.

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[1] Date of commencement of this Act.
[2] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.
[3] Omitted *ibid.*

(*6*) The High Court shall send to the Bar Council a copy of the roll as prepared under this section, and shall thereafter communicate to the Bar Council all alterations in, and additions to, the roll as soon as the same have been made.

(*7*) The Bar Council shall enter in the copy of roll all alterations and additions so communicated to it.

Qualification and admission of advocates.

9. (*1*) The Bar Council may, with the previous sanction of the High Court, make rules to regulate the admission of persons to be advocates of the High Court:

Provided that such rules shall not limit or in any way affect the power of the High Court to refuse admission to any person at its discretion.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules shall provide for the following matters, namely:—

(*a*) the qualifications to be possessed by persons applying for admission as advocates;

(*b*) the form and manner in which applications shall be made to the High Court for admission;

(*c*) the giving of notice by the High Court to the Bar Council of all such applications;

(*d*) the hearing by the High Court of any objection preferred on behalf of the Bar Council to the admission of any applicant;

(*e*) the charging of fees payable to the Bar Council in respect of enrolment; and

(*f*) the charging of annual subscriptions to be paid to the Bar Council after enrolment.

(*3*) Rules made under this section shall provide that no woman shall be disqualified for admission to be an advocate by reason only of her sex.

Misconduct.

Punishment of advocate for misconduct.

10. (*1*) The High Court may, in the manner hereinafter provided, reprimand, suspend or remove from practice any advocate of the High Court whom it finds guilty of professional or other misconduct.

(*2*) Upon receipt of a complaint made to it by any Court or by the Bar Council or by any other person that any such advocate has been guilty of misconduct, the High Court shall, if it does not summarily reject the complaint, refer the case for inquiry either to the Bar Council or, after consultation with the Bar Council, to the Court of a District Judge (hereinafter referred to as a District Court), and may of its own motion so refer any case in which it has otherwise reason to believe that any such advocate has been so guilty.

Tribunal of Bar Council.

11. (*1*) Where any case is referred for inquiry to the Bar Council under section 10, the case shall be inquired into by a committee of the Bar Council (hereinafter referred to as the Tribunal).

(*2*) The Tribunal shall consist of not less than three and not more than five members of the Bar Council appointed for the purpose of the inquiry by the Chief Justice of the High Court, and one of the members so appointed shall be appointed to be the President of the Tribunal.

Procedure in inquiries.

12. (*1*) The High Court shall make rules to prescribe the procedure to be followed by Tribunals and by District Courts, respectively, in the conduct of inquiries referred under section 10.

(*2*) The finding of a Tribunal on an inquiry referred to the Bar Council under section 10 shall be forwarded to the High Court through the Bar Council, and the finding of a District Court on such an inquiry shall be forwarded direct to the High Court which shall cause a copy thereof to be sent to the Bar Council.

(*3*) On receipt of the finding, the High Court shall fix a date for the hearing of the case and shall cause notice of the day so fixed to be given to the advocate concerned and to the Bar Council and to the [Attorney-General][1], and shall afford the advocate concerned and the Bar Council and the [Attorney-General][1] an opportunity of being heard before orders are passed in the case.

(*4*) The High Court may thereafter either pass such final orders in the case as it thinks fit or refer it back for further inquiry to the Tribunal through the Bar Council or to the District Court, as the case may be, and, upon receipt of the finding after such further inquiry, deal with the case in the manner provided in sub-section (*3*) and pass final orders thereon.

(*5*) In passing final orders the High Court may pass such order as regards the payment of the costs of the inquiry and of hearing in the High Court as it thinks fit.

(*6*) The High Court may, of its own motion or on application made to it in this behalf, review any order passed under sub-section (*4*) or sub-section (*5*) and maintain, vary or rescind the same, as it thinks fit.

(*7*) When any advocate is reprimanded or suspended under this Act, a record of the punishment shall be entered against his name in the roll of advocates of the High Court, and when an advocate is removed from practice his name shall forthwith be struck off the roll; and the certificate of any advocate so suspended or removed shall be recalled.

Powers of the Tribunal and Courts in inquiries.

13. (*1*) For the purposes of any such inquiry as aforesaid, a Tribunal or a District Court shall have the same powers as are vested in a Court under the Code of Civil Procedure in respect of the following matters, namely :—

(*a*) enforcing the attendance of any person and examining him upon oath,

(*b*) compelling the production of documents, and

(*c*) issuing commissions for the examination of witnesses:

Provided that the Tribunal shall not have power to require the attendance of the presiding officer of any Court save with the previous sanction of the High Court or, in the case of an officer of a criminal or revenue Court, of the President of the Union.

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

[1](*1A*) Notwithstanding anything contained in any other law for the time being in force, no person shall, without the previous permission in writing of the President of the Tribunal or of the District Judge (as the case may be), publish any report or account of any inquiry before the Tribunal or the Court of the District Judge or the name of any Advocate whose alleged misconduct is the subject of any such inquiry.

(*2*) Every such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Penal Code ; and a Tribunal shall be deemed to be a civil Court for the purposes of sections 480, 482 and 485 of the Code of Criminal Procedure.

(*3*) For the purpose of enforcing the attendance of any person and examining him upon oath or of compelling the production of documents or of issuing commissions—

(*a*) the local limits of the jurisdiction of a Tribunal shall be those of the jurisdiction of the High Court ; and

(*b*) a Tribunal may send to any civil Court having jurisdiction in the place where the Tribunal is sitting any summons or other process for the attendance of a witness or the production of a document required by the Tribunal, or any commission which it desires to issue, and the civil Court shall serve such process or issue such commission, as the case may be, and may enforce any such process as if it were a process for attendance or production before itself.

(*4*) Proceedings before a Tribunal or a District Court in any such inquiry shall be deemed to be civil proceedings for the purposes of section 132 of the Evidence Act and the provisions of that section shall apply accordingly.

[1](*5*) A Tribunal or a District Judge before which any such inquiry is held shall also be deemed to be a Court subordinate to the High Court for the purposes of the Contempt of Courts Act.

Miscellaneous.

Right of advocates to practise.

14. (*1*) An advocate shall be entitled as of right to practise—

(*a*) in the High Court, and

(*b*) save as otherwise provided by sub-section (*2*) or by or under any other law for the time being in force, in any other Court [subordinate to the High Court] [2] in the Union of Burma and before any other Tribunal or person legally authorized to take evidence, and

(*c*) before any other authority or person before whom such advocate is by or under the law for the time being in force entitled to practise.

(*2*) Where rules have been made by the Bar Council under section 15, regulating the conditions subject to which advocates of other High Courts

[1] Inserted by Act XXXII, 1947.
[2] Inse ted by Act IX, 1951.

may be permitted to practise in the High Court, such advocates shall not be entitled to practise therein otherwise than subject to such conditions.

General power of Bar Council to make rules.

15. The Bar Council may, with the previous sanction of the High Court, make rules consistent with this Act to provide for and regulate any of the following matters, namely :—

(*a*) the rights and duties of the advocates of the High Court and their discipline and professional conduct ;

(*b*) the conditions subject to which advocates of other High Courts may be permitted to practise in the High Court ;

(*c*) the giving of facilities for legal education and training and the holding and conduct of examinations by the Bar Council ;

(*d*) the charging of fees payable to the Bar Council in respect of the enjoyment of educational facilities provided, or of the right to appear at examinations held, by the Bar Council ;

(*e*) the investment and management of the funds of the Bar Council ; and

(*f*) any other matter in respect of which the High Court may require rules to be made under this section.

Power to fix fees payable as costs.

16. The High Court shall make rules[1] for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate upon all proceedings in the High Court or in any Court subordinate thereto.

Indemnity against legal proceedings.

17. No suit or other legal proceeding shall lie against the Bar Council or any committee, Tribunal or member of the Bar Council for any act in good faith done or intended to be done in pursuance of the provisions of this Act or of any rule made thereunder.

Publication of rules.

18. All rules made under this Act shall be published in the Gazette.

[2]**19.** * * * *

THE LEGAL PRACTITIONERS ACT.

CONTENTS.

CHAPTER I.

PRELIMINARY.

Sections.

1-2. * * * *
3. Interpretation clause.
4. Women not to be disqualified by reason only of sex.
5. * * * *

[1] See the High Court Rules and Orders.
[2] Deleted by Act IX, 1951.

CHAPTER III.

OF PLEADERS.

Sections.

6. Power to make rules as to qualifications, etc., of pleaders.
Publication of rules.
7. Certificates to pleaders.
8. Pleaders on enrolment may practise in Courts and revenue-offices.
9. * * * *
10. No person to practise as pleader unless qualified.
11. * * * *
12. Suspension and dismissal of pleaders convicted of criminal offence.
13. Suspension and dismissal of pleaders guilty of unprofessional conduct.
14. Procedure when charge of unprofessional conduct is brought in subordinate Court or revenue-office.
Suspension pending investigation.
15. Power to call for record in case of acquittal under section 14.
16. * * * *

CHAPTER IV.

17—24. * * * *

CHAPTER V.

OF CERTIFICATES.

25. Fee for certificates.
26. Dismissed practitioners to surrender certificates.

CHAPTER VI.

OF THE REMUNERATION OF PLEADERS.

27. High Court and Financial Commissioner to fix fees in civil and revenue proceedings.
28—31. * * * *

CHAPTER VII.

PENALTIES.

32. On persons illegally practising as pleaders.
33. On suspended or dismissed pleader, etc., failing to deliver certificate.
34. On suspended or dismissed pleader practising during suspension or after dismissal.
35. Revision of fines.
36. Power to frame and publish lists of touts.

CHAPTER VIII.

MISCELLANEOUS.

Sections-

37. President to appoint examiners.
38. Exemption of advocates from provisions of Act.
39. * * * *
40. Pleaders not to be suspended or dismissed without being heard.
41. Definitions of " act " and " plead ".
42. Agreement for engagement of legal practitioner.
43. Right of legal practitioner to sue for fees.
44. Liability of legal practitioner to be sued.

FIRST SCHEDULE.

* * * *

SECOND SCHEDULE.

VALUE OF STAMPS FOR CERTIFICATES.

THE LEGAL PRACTITIONERS ACT.

[INDIA ACT XVIII, 1879.] (1st January, 1880.)[1]

CHAPTER I.

PRELIMINARY.

1-2. * * * *

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

" Judge " means the presiding judicial officer in every civil and criminal Court, by whatever title he is designated ;

" subordinate Court " means every Court subordinate to the High Court ;

" revenue-office " includes all Courts (other than civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents ;

" legal practitioner " means an advocate of the High Court or a pleader ;

" tout " means a person—

(*a*) who procures, in consideration of any remuneration moving from any legal practitioner, the employment of the legal

[1] Sections 1 and 2 of the Legal Practitioners Act, 1879 (India Act XVIII, 1879), came into force on the 1st January, 1880. By a notification issued under section 1, section 3 and Chapters II, III, V to VIII and the Second Schedule to the Act were extended to Lower Burma with effect from the 16th April, 1900 ; *see Burma Gazette*, 1900, Part I, page 320.

practitioner in any legal business ; or who proposes to any legal practitioner or to any person interested in any legal business to procure, in consideration of any remuneration moving from either of them, the employment of the legal practitioner in such business ; or

(*b*) who for the purposes of such procurement frequents the precincts of civil or criminal Courts or of revenue-offices, or railway stations, landing stages, lodging places or other places of public resort.

Women not to be disqualified by reason only of sex.

4. Notwithstanding anything contained in any enactment in force in the Union of Burma or any rule or order thereunder, no woman shall, by reason only of her sex, be disqualified from being admitted or enrolled as legal practitioner or from practising as such.

5. * * * *

CHAPTER III.

OF PLEADERS.

Power to make rules as to qualifications, etc., of pleaders.

6. The High Court may, from time to time, make rules consistent with this Act as to the following matters (namely) :—

(*a*) the qualifications, admission and certificates of proper persons to be pleaders of the subordinate Courts, and of the revenue-offices situate within the local limits of its appellate jurisdiction ;

(*b*) * * * *

(*c*) the fees to be paid for the examination and admission of such persons ; and

(*d*) suspension and dismissal of such pleaders.

Publication of rules.

All such rules shall be published in the Gazette, and shall thereupon have the force of law.

Certificates to pleaders.

7. On the admission, under section 6, of any person as a pleader, the High Court shall cause a certificate, signed by such officer as the Court, from time to time, appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in the Courts and the revenue-offices specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall, subject to any rules consistent with this Act which may, from time to time, be made by the High Court in this behalf, be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court, from time to time, appoints in this behalf.

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

On every such renewal, the certificate then in possession of such pleader shall be cancelled and retained by such Judge or officer.

Every certificate so renewed shall be signed by such Judge or officer, and shall continue in force up to the end of the current year.

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court.

Pleaders on enrolment may practise in Courts and revenue-offices.

8. Every pleader holding a certificate issued under section 7 may apply to be enrolled in any Court or revenue-office mentioned therein ; and, subject to such rules consistent with this Act as the High Court or the Financial Commissioner may, from time to time, make in this behalf, the presiding Judge or officer shall enrol him accordingly : and thereupon he may appear, plead and act in such Court or office and in any Court or revenue-office subordinate thereto.

9. * * * *

No person to practise as pleader unless qualified.

10. Except as provided by this Act or any other enactment for the time being in force, no person shall practise as a pleader in any Court unless he holds a certificate issued under section 7 and has been enrolled in such Court or in some Court to which it is subordinate.

11. * * * *

Suspension and dismissal of pleaders convicted of criminal offence.

12. The High Court may suspend or dismiss any pleader holding a certificate issued under section 7 who is convicted of any criminal offence implying a defect of character which unfits him to be a pleader.

Suspension and dismissal of pleader guilty of unprofessional conduct.

13. The High Court may also, after such inquiry as it thinks fit, suspend or dismiss any pleader holding a certificate as aforesaid—

(*a*) who takes instructions in any case except from the party on whose behalf he is retained, or some person who is the recognized agent of such party within the meaning of the Code of Civil Procedure, or some servant, relative or friend authorized by the party to give such instructions, or

(*b*) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or

(*c*) who tenders, gives or consents to the retention, out of any fee paid or payable to him for his services, of any gratification for procuring or having procured the employment in any legal business of himself or any other pleader, or

(*d*) who directly or indirectly procures or attempts to procure the employment of himself as such pleader through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or

(*e*) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or

(*f*) for any other reasonable cause.

Procedure when charge of unprofessional conduct is brought in subordinate Court or revenue-office.

14. If any such pleader practising in any subordinate Court or in any revenue-office is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the pleader at least fifteen days before the day so appointed.

On such day, or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the pleader, and shall proceed to adjudicate on the charge.

If such officer finds the charge established and considers that the pleader should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court; and the High Court may acquit, suspend or dismiss the pleader.

Suspension pending investigation.

Any District Judge, or with his sanction any Judge subordinate to him, any District Magistrate, or with his sanction any Magistrate subordinate to him, and any authority not inferior to a Collector, or with the Collector's sanction any revenue-officer subordinate to him, may, pending the investigation and the orders of the High Court, suspend from practice any pleader charged before him or it under this section.

Every report made to the High Court under this section shall—

(*a*) when made by any civil Judge subordinate to the District Judge, be made through such Judge;

(*b*) when made by a Magistrate subordinate to the District Magistrate, be made through the District Magistrate and the Sessions Judge;

(*c*) when made by the District Magistrate, be made through the Sessions Judge;

(*d*) when made by any revenue-officer subordinate to the Financial Commissioner, be made through such revenue-authorities as the Financial Commissioner may, from time to time, direct.

Every such report shall be accompanied by the opinion of each Judge, Magistrate or revenue-authority through whom or which it is made.

Power to call for record in case of acquittal under section 14.

15. The High Court, in any case in which a pleader has been acquitted under section 14 otherwise than by an order of the High Court, may call for the record and pass such order thereon as it thinks fit.

16. * * * *

CHAPTER IV.

17—24. * * * *

CHAPTER V.

OF CERTIFICATES.

Fee for certificates.

25. Every certificate, whether original or renewed, issued under this Act shall be written upon stamped paper of the value prescribed therefor in the Second Schedule hereto annexed and of such description as the President of the Union may, from time to time, prescribe :

Provided that a certificate issued on or after the first day of July in any year may be written on stamped paper of half the value so prescribed.

Dismissed practitioners to surrender certificates.

26. When any pleader is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or the Financial Commissioner (as the case may be) orders him to deliver the same.

CHAPTER VI.

OF THE REMUNERATION OF PLEADERS.

High Court and Financial Commissioner to fix fees in civil and revenue proceedings.

27. The High Court, and the Financial Commissioner as respects revenue-offices, shall fix and regulate the fees payable by a party in respect of the fees of his adversary's legal practitioner.

Tables of the fees so fixed shall be published in the Gazette.

28—31. * * * *

CHAPTER VII.

PENALTIES.

On persons illegally practising as pleaders.

32. Any person who practises in any Court in contravention of the provisions of section 10 shall be liable, by order of such Court, to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorizing him so to practise in such Court and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

He shall also be incapable of maintaining any suit for, or enforcing any lien with respect to any fee or reward for, or with respect to, anything done or any disbursement made by him as pleader, whilst he has been contravening the provisions of the said section.

On suspended or dismissed pleader, etc., failing to deliver certificate.

33. Any pleader failing to deliver up his certificate as required by section 26 shall be liable, by order of the Court, authority or officer to which or to whom, or according to whose orders, the delivery should be made, to a fine not exceeding two hundred rupees, and in default of payment to imprisonment in the civil jail for a term which may extend to three months.

On suspended or dismissed pleader practising during suspension or after dismissal.

34. Any pleader who, under the provisions of this Act, has been suspended or dismissed and who, during such suspension or after such dismissal, practises as a pleader in any Court or revenue-office, shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding five hundred rupees, and in default of payment to imprisonment in the civil jail for a term which may extend to six months.

Revision of fines.

35. Every order under section 32, 33 or 34 shall be subject to revision by the High Court where the order has been passed by a subordinate Court, and by the Financial Commissioner where the order has been passed by an officer subordinate to him.

Power to frame and publish lists of touts.

36. (*1*) The High Court and every District Judge, Sessions Judge and District Magistrate, every revenue-officer not being below the rank of a Collector of a district, (each as regards their or his own Court and the Courts, if any, subordinate thereto), may frame and publish lists of persons proved to their or his satisfaction, or to the satisfaction of any subordinate Court as provided in sub-section (*2A*), by evidence of general repute or otherwise, habitually to act as touts, and may, from time to time, alter and amend such lists.

Explanation.—The passing of a resolution, declaring any person to be or not to be a tout, by a majority of the members present at a meeting, specially convened for the purpose, of an association of persons entitled to practise as legal practitioners in any Court or revenue-office, shall be evidence of the general repute of such person for the purposes of this sub-section.

(*2*) No person's name shall be included in any such list until he shall have had an opportunity of showing cause against such inclusion.

(*2A*) Any authority empowered under sub-section (*1*) to frame and publish a list of touts may send to any Court subordinate to such authority the names of any persons alleged or suspected to be touts, and order that Court to hold an inquiry in regard to such persons ; and the subordinate Court shall thereupon hold an inquiry into the conduct of such persons and, after giving each such person an opportunity of showing cause as provided in sub-section (*2*), shall report to the authority which has ordered the inquiry the name of each such person who has been proved to the satisfaction of the subordinate Court to be a tout ; and that authority may include the name of any such person in the list of touts framed and published by that authority.:

Provided that such authority shall hear any such person who before his name has been so included appears before it and desires to be heard.

(*3*) A copy of every such list shall be kept hung up in every Court to which the same relates.

(*4*) The Court or Judge may, by general or special order, exclude from the precincts of the Court any person whose name is included in any such list.

(*5*) Every person whose name is included in any such list shall be deemed to be proclaimed as a tout within the meaning of section 13, clause (*e*).

(*6*) Any person who acts as a tout whilst his name is included in any such list shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII.

MISCELLANEOUS.

President to appoint examiners.

37. To facilitate the ascertainment of the qualifications mentioned in section 6, the President of the Union shall, from time to time, appoint persons to be examiners for the purposes aforesaid, and may, from time to time, make regulations for conducting such examinations.

Exemption of advocates from provisions of Act.

38. Except as provided by [sections 36, 41, 42, 43 and 44],[1] nothing in this Act applies to persons enrolled as advocates of the High Court under the Bar Council Act.

39. * * * *

Pleaders not to be suspended or dismissed without being heard.

40. Notwithstanding anything hereinbefore contained, no pleader shall be suspended or dismissed under this Act unless he has been allowed an opportunity of defending himself before the authority suspending or dismissing him.

Definitions of "act" and "plead."

[2] **41.** A legal practitioner shall not be deemed to "act" if he only pleads, or to "agree to act" if he agrees only to plead.

Agreement for engagement of legal practitioner.

[2] **42.** Any legal practitioner who acts or agrees to act for any person may by private agreement settle with such person the terms of his engagement and the fee to be paid for his professional services.

Right of legal practitioner to sue for fees.

[2] **43.** Any such legal practitioner shall be entitled to institute and maintain legal proceedings for the recovery of any fee due to him under the agreement, or, if no such fee has been settled, a fee computed in accordance with the law for the time being in force in regard to the computation of the costs to be awarded to a party in respect of the fee of his legal practitioner.

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[1] The words and figures within brackets were substituted by Act II, 1945.

[2] The Burma Laws (Adaptation) Act, 1940 (Burma Act XXVII, 1940), directed that the Legal Practitioners (Fees) Act, 1926 (India Act XXI, 1926), shall be inserted as sections 41, 42, 43 and 44 of this Act.

Sections 41 to 44 apply to advocates of the High Court also; *see* the definition of "legal practitioner" in section 2 (*a*) of the Legal Practitioners (Fees) Act, 1926 (India Act XXI of 1926).

Liability of legal practitioner to be sued.

[1] **44.** No legal practitioner who has acted or agreed to act shall, by reason only of being a legal practitioner, be exempt from liability to be sued in respect of any loss or injury due to any negligence in the conduct of his professional duties.

FIRST SCHEDULE.

* * * *

SECOND SCHEDULE.

VALUE OF STAMPS FOR CERTIFICATES.

(*See* section 25.)

For a certificate authorizing the holder to practise as a pleader--

(*a*) in the High Court and any subordinate Court—rupees fifty :

(*b*) in the Court of Small Causes at Rangoon [2]—rupees twenty-five :

(*c*) in all other subordinate Courts—rupees twenty-five :

(*d*) in the Courts of Subordinate Judges, Assistant Commissioners and Extra Assistant Commissioners, [3] in Courts of Small Causes outside Rangoon, and in all criminal Courts subordinate to the High Court—rupees fifteen :

(*e*) in any civil or criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

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[1] The Burma Laws (Adaptation) Act, 1940 (Burma Act XXVII, 1940), directed that the Legal Practitioners (Fees) Act, 1926 (India Act XXI, 1926), shall be inserted as sections 41, 42, 43 and 44 of this Act.

Sections 41 to 44 apply to advocates of the High Court also ; *see* the definition of "legal practitioner" in section 2 (*a*) of the Legal Practitioners (Fees) Act, 1926 (India Act XXI of 1926).

[2] Now the Rangoon City Civil Court.

[3] Now Officers of the Burma Civil Service (Senior Branch).

INDEX TO VOLUME XI.

အတွဲ ၁၁ ၏ အညွှန်း။

	PART အခိုင်း	PAGE စာမျက်နှာ
Administrator-General's Act	XXIII	265
Adoptions Act, Registration of Kittima	XXII-A	1
Anand Marriage Act	XXII-B	18
Arbitration Act	XXV	373
Arbitration (Protocol and Convention) Act...	XXV	366
Bar Council Act	XXVII	419
Burma Divorce Act	XXII-E	73
Burma Insolvency Act	XXIV	335
Caste Disabilities Removal Act	XXII-B	20
Child Marriage Restraint Act	XXII-F	143
Christian Marriage Act	XXII-E	43
Church of Scotland Kirk Session Act	XXII-E	42
Council Act, Bar	XXVII	419
Disposition of Property Act, Hindu	XXII-B	19
Dissolution Act, Native Converts, Marriage	XXII-E	101
Divorce Act, Burma	XXII-E	73
Divorce Act, Parsi Marriage and	XXII-D	27
Foreign Marriage Act	XXII-E	72
Gains of Learning Act, Hindu	XXII-B	21
Guardians and Wards Act	XXII-F	122
Hindu Disposition of Property Act	XXII-B	19
Hindu Gains of Learning Act	XXII-B	21
Hindu Inheritance (Removal of Disabilities) Act	XXII-B	20
Hindu Law of Inheritance Amendment Act	XXII-B	21
Hindu Widows' Re-marriage Act	XXII-B	16
Insolvency Act, Burma	XXIV	335
Insolvency Act, Rangoon	XXIV	286
Kazis Act...	XXII-C	22
Kirk Session Act, Church of Scotland	XXII-E	42
Kittima Adoptions Act, Registration of	XXII-A	1
Legal Practitioners Act	XXVII	425
Legal Representatives Suits Act	XXIII	284
Maintenance Orders Enforcement Act	XXII-F	139
Majority Act	XXII-F	121
Marriage Act, Anand	XXII-B	18
Marriage Act, Christian	XXII-E	43
Marriage Act, Foreign	XXII-E	72
Marriage Act, Special	XXII-F	109
Marriage and Divorce Act, Parsi	XXII-D	27
Marriage Dissolution Act, Native Converts'	XXII-E	101
Married Women's Property Act	XXII-F	118
Mussalman Wakf Validating Act	XXII-C	24
Native Converts' Marriage Dissolution Act	XXII-E	101
Parsi Marriage and Divorce Act	XXII-D	27

အတွဲ ၁၁ ၏ အညွှန်း။

	PART အပိုင်း	PAGE စာမျက်နှာ
Practitioners Act, Legal	XXVII	425
Property Act, Married Women's	XXII-F	118
Protocol and Convention Act, Arbitration	XXV	366
Rangoon Insolvency Act	XXIV	286
Registration of Kittima Adoptions Act	XXII-A	1
Relief Act, Specific	XXVI	390
Re-marriage Act, Hindu Widows'	XXII-B	16
Removal of Disabilities Act, Hindu Inheritance	XXII-B	20
Restraint Act, Child Marriage	XXII-F	143
Slavery Act	XXII-F	144
Special Marriage Act	XXII-F	109
Specific Relief Act	XXVI	390
Succession Act	XXIII	146
Suits Act, Legal Representatives	XXIII	284
Validating Act, Mussalman Wakf	XXII-C	24
Wakf Validating Act, Mussalman	XXII-C	24
Wards Act, Guardians and	XXII-F	122
Widows' Re-marriage Act, Hindu	XXII-B	16
Women's Property Act, Married	XXII-F	118
ဗုဒ္ဓဘာသာဝင်မိန်းမများ အထူးထိမ်းမြားမှုနှင့် အမွေဆက်ခံမှု အက်ဥပဒေ ...	၂၂-က	၂
မူစလင် လင်မယားကွာရှင်းရေးအက်ဥပဒေ	၂၂-ဂ	၂၅

ပ၊မ၊ဗ၊၀၊—အမှတ် ၂၉၊ တရားရေးဝန်ကြီးဌာန၊ ၀၀-၉-၅၉—၅,၀၀၀—၉။

CORRIGENDA

Page 18.—Section 2, marginal caption, *for* " mariages " *read* " marriages".

Page 33.—Section 29, sub-section (*3*), fourth line, *for* " to gether " *read* " together ".

Page 36.—Section 39, marginal caption, *for* " *pendent elite* " *read* " *pendente lite* ".

Page 37.—Section 49, penultimate line, *for* " suchichildren " *read* " such children ".

Page 47.—Section 3, second line, *for* " ontext " *read* " context ".

Page 83.—Section 25, first proviso, second line, *for* " orderd " *read* " ordered ".

Page 105.—Section 25, marginal caption, *for* " sui " *read* " suit ".

Page 113.—Footnote, first line, *for* " duty f " *read* " duty of ".

Page 120.—Part VI, head-line, *for* " OF DEVASTATION " *read* " OR DEVASTATION ".

Page 130.—Section 23, second and third lines, *for* " with guardianship " *read* " with the guardianship ".

Page 156.—Contents, against section 234, second line, *delete* " or, " at end of line.

Page 158.—Contents, against section 273, *for* " probatee " *read* " probate ".

Page 174.—Section 48, illustration (iv), last line, *for* " he " *read* " the ".

Page 177.—Section 61, illustration (vii), second line, *for* " intercessi n a d " *read* " intercession and ".

Page 178.—Section 65, illustration (vi), second line, *for* " sol ier " *read* " soldier ".

Page 183.—Section 83, marginal caption, *for* "restricte" *read* " restricted".

Page 191.—Section 108, marginal caption, *for* " undisposed " *read* " undisposed of ".

Page 192.—Section 111, illustration (iii), fourth line, *for* "l gacy " *read* " legacy ".

Page 196.—Section 119, illustration (vi), fourth line, *for* " di ested " *read* " divested ".

Page 199.—Section 126, marginal caption, *for* " Beq est " *read* " Bequest "; in first line, *for* " si void " *read* " is void " ; and in illustration (i) *for* " conditiont hat " *read* " condition that ".

Page 242.—Section 312, *substitute* a full-stop for the comma at end of section.

Page 246.—Section 337, illustration, second line, *for* " not bound " *read* " is not bound ".

Page 247.—Section 341, marginal caption, *for* " or life " *read* " for life ".

Page 269.—Section 2, *insert* a hyphen between clauses " (9) " and " (11) "

Page 273.—Section 19, second line, *insert* a comma after "revoked" and *delete* the comma after "Court".

Page 294.—Section 13, marginal caption, *for* "petitio" *read* "petition".

Page 320.—Section 90, sub-section (7), second line, *for* "officia" *read* "official".

Page 328.—Section 126, marginal caption, *for* "ourts" *read* "Courts".

Page 330.—The First Schedule, Rule 20, marginal caption *for* "a proxy" *read* "as proxy".

Page 354.—Section 54, sub-section (2), last line, *for* "tnsolvent" *read* "insolvent".

Page 400.—Section 20, marginal caption, *for* "per-ormance" *read* "performance".

Page 407.—Section 27, illustrations to clause (*b*), fifth line, *for* "enforee" *read* "enforce".

Page 418.—Section 56, illustration (*c*), fifth line, *for* "as" *read* "an".

Page 419.—Section 2, first line, *for* "any thing" *read* "anything".

Page 419.—Section 4, *delete* the line "(3) * * * *".

Page 420.—Section 4, sub-section (4), *re-number* this sub-section as sub-section (3).

Page 428.—Section 4, *insert* a small figure "1" as reference number before the number of the section.

ဒေမှားပြင်ချက်များ။

စာမျက်နှာ ၃။ ။ပုဒ်မ ၉၊ စာကြောင်းရေ ၁ တွင်၊ "ထိမ်းမြား" အစား၊ "ထိမ်းမြား" ဟုဘတ်ပါ။

စာမျက်နှာ ၅။ ။ပုဒ်မ ၁၆၊ စာကြောင်းရေ ၁ တွင်၊ "အတိုင်" အစား "အတိုင်း" ဟုဘတ်ဝါ။

စာမျက်နှာ ၆။ ။ပုဒ်မ ၂၀၊ ပုဒ်မခွဲ (၃) နောက်ဆုံးစာကြောင်းတွင်၊ "ထည်" အစား၊ "သည်" ဟုဘတ်ပါ။

စာမျက်နှာ ၇။ ။ပုဒ်မ ၂၃၊ စာကြောင်းရေ ၁ တွင်၊ "ဆိ(ခ်)သာသာ" အစား၊ "ဆိ(ခ်)ဘာသာ" ဟုဘတ်ပါ။

အညွှန်း၊ စာမျက်နှာ ၂။ ။နောက်ဆုံးစာကြောင်းတွင်၊ "မူစလင်" အစား၊ "မူဆလင်" ဟုဘတ်ပါ။