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THE STATUTE
LAW OF MARRIAGE IN INDIA

Being a complete Commentary on Acts relating to Marriage and cognate subjects.

BY

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To

The Honourable

Mr. Justice Kanwar Dalip Singh,

B.A., Bar.-at-Law,

OF

THE HIGH COURT OF JUDICATURE

AT LAHORE,

AS A TOKEN OF THE AUTHOR'S REGARD.

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PREFACE.

This Commentary on the Acts relating to the law of Marriage in India is a twin to my other volume, " Statute Law of Divorce in India." The number of important Acts covered by it renders unnecessary an apology for bringing it out. They are of interest and applicability to all communities in India, and are not always so easily available as major Acts on other subjects. The Special Marriage Act and the Child Marriage Restraint Act are of general application. The Hindu Widows' Re-marriage Act concerns the largest community, while the Anand Marriage Act is of importance to an important community like the Sikhs. The Indian Christian Marriage Act which is the biggest enactment relating to Marriage Law in India covers marriages of all Christians, European or Indian. The Marriage Validation Act validates certain marriages to which one party only was a Christian. The Indian Foreign Marriage Act, which gives effect to the Foreign Marriages Order in Council, 1903, is vital to the European British subjects marrying in India. Lastly the Married Women's Property Act, though its applicability is restricted to Christian subjects of His Majesty, is one of the protectors of the material interests of the weaker sex.

While speaking of the Indian Christian Marriage Act mention may be made of one distinction which is an important one, but which is sometimes lost sight of or not understood by persons not well acquainted with its provisions. On referring to section 5 of that Act it will be seen that marriages may be performed either in the presence of a Marriage Registrar or before a Minister of Religion. That minister may be a person licensed under the Act to solemnize marriages or may be a minister of religion only. In the former case he shall follow the provisions of Part III of the Act ; in the latter the Act does not lay down any procedure for him, for as stated in section 5 such officers will solemnize marriages according to the rules, rites, ceremonies, and customs of the Church of which they are ministers. But in both cases, *i. e.*, whether the minister has been licensed under the Act or not, he is bound to register any marriage performed by him. The procedure for such registration is given in Part IV.

Part V of the Act lays down the procedure for solemnization of marriages by or in the presence of Marriage Registrars.

As regards Indian Christians the Act permits a simple and summary method of marriage, *viz.*, by grant of certificates of marriage, for which procedure is prescribed in Part VI.

The Hindu and Mohammadan marriages are not regulated by any enactment of the legislature and are governed by the personal laws of those communities. The ideals behind those marriages are essentially different ***inter se***, and from the background behind a Christian marriage, but it is a sign of the times that by the inevitable process of interaction between widely dissimilar ideals and conceptions others arise which are more suited than any of them individually to the existing state of society, its ideas of morality, and the social values of the day. To quote only one striking illustration of this healthy process of mutual contact and natural selection

among social customs and systems, although polygamy is permitted by both Hindu and Mohammadan systems of marriage law, in practice it is among both communities to-day an exception and monogamy the rule. In his masterly contribution, entitled "The Indian ideal of Marriage," to Keyserling's "Book of Marriage," Sir Rabindra Nath Tagore says :—"Self-segregation for any society is no longer practicable in this age, for, while it may be possible to prevent the man on this side of the sea from crossing to the other, what about preventing those on the other side from coming over here ? So have alien ideas, alien systems, alien customs, breaking in through her embankments, dashed upon India in a multitudinous flood, making visible breaches in all the habits and beliefs which were the pillars of her social system."

On the other hand, the high spiritual plane on which the Hindu system has always treated marriage, almost severing it from the material world, cannot but have affected and inspired the other systems in vogue, and changed their outlook on marriage generally. Modern civilization is more and more a product of all systems and institutions, and leaves less and less scope for water tight compartments.

"Under whatever point of view the institution of marriage is considered," says Bentham, "nothing can be more striking than the utility of that noble contract, the tie of society, and the basis of civilization. It has drawn woman from the severest and most humiliating servitude; it has distributed the mass of the community into distinct families ; it has created a domestic magistracy; it has formed citizens: it has extended the views of men to the future, through affection for the rising generation ; it has multiplied social sympathies. To perceive all its benefits, it is only necessary to imagine for a moment what men would be without that institution."

In the opinion of Professor Edwin S. Budell of Massachusetts, "married men live longer and are less likely to end up in the work house than bachelors." "Marriage," says he, "is the best insurance in the world—insurance against crime, insanity, poverty, premature death."

"The contract of marriage" according to the great judge and jurist Lord Robertson, "is the most important of all human transactions. It is the very basis of the whole fabric of civilized society. " No wonder, that the rights, duties, and obligations, arising from so important a contract, should not be left to the discretion or caprice of the contracting parties, but should be reguluted, in many important particulars, by the laws of every civilized country. And such laws must be considered as forming a most essential part of the public law of the country."

If the pages that follow help in any small measure to explain and elucidate the law on the delicate but vital subject of Marriage, the author thinks he shall have been amply repaid for his labours. In this hope this book is offered to the Bench and Bar in India.

Delhi,
January, 1936.

H. C. M.

The Special Marriage Act, III of 1872.

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Special Marriage Act 1872

ACT No. III OF 1872

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

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 :—

Short title.—"The Special Marriage Act, 1872," *see* the Indian Short Titles Act, 1897 (14 of 1897), General Acts, Vol. IV. There was no Statement of Objects and Reasons; the Bill as introduced was published in the *Gazette of India*, 1868, p. 1403; for the Report of the Select Committee dated 21st December, 1871, *see ibid*, 1871, Pt. V. p. 519; for discussions in Council, *see ibid*, 1868, Supplement, pp. 890 and 1197; *ibid*, 1871, Extra Supplement, pp. 16 and 42; *ibid*, 1872, Supplement, pp. 2, 57, 193 and 261.

Object and History of the Act.—The following extracts taken from the speech of Sir James Stephen on the Bill in the Legislative Council w show the necessity that was felt for some legislation of the kind embodied in the Act, and the genesis of the Act as it finally emerged from the hands of the legislature. They will also give an idea of the part played by Sir Henry Maine and after him by Sir James Stephen in evolving this useful, almost indispensable, piece of legislation and placing it on the statute book. "A religious body called the Brahmo Samaj, which has been for many years in existence has for sometime past acquired a considerable degree of prominence and importance in most of the great cities of India. It is interesting on many accounts; but, above all, because Brahmoism is at once the most European of Native religions and the most living of all Native versions of European religion. One of the points on which the Brahmoes have most closely followed English views and one of the most important points in their whole system is the matter of marriage. Brahmoes in common with Englishmen, believe that marriage should be the union for life in all common cases of one man with one woman; and the most numerous body of the Brahmoes go a step further, and are of opinion that marriage should be regarded in the light of a contract between a mature man and mature woman, of a suitable age, and not as a contract by which parents unite together children in their infancy. Besides this the Brahmoes agree in objecting to some of the ceremonies by which Hindus celebrate marriages on the ground that they are idolatrous. There are however two classes of Brahmoes, the Adi-Brahma-Samaji, or the Conservative Brahmoes, and the Progressive Brahmoes. The Progressive Brahmoes have broken far

more decisively with Hinduism than the Conservatives. As regards marriage, the difference between the two parties appears to be this, the marriage ceremonies adopted by the Progressive Brahmoes depart more widely from the Hindu Law than those which are in use amongst the Adi-Brahmoes. The Adi-Brahmoes indeed contend that by Hindu Law, their ceremonies though irregular would be valid. The Progressive Brahmoes admit that by Hindu Law their marriage would be void. Moreover, the Progressive Brahmoes are opposed both to infant marriage and polygamy far more decisively than the Conservative party. The former, in particular, adopt the European view, that marriage is a contract between the persons married; the latter retain the native view, that the father can give away his daughter as he thinks right when she is too young to understand the matter. In this state of things the Progressive Brahmoes took the opinion of Mr. Cowie, then Advocate-General, as to the legal validity of their marriages. That opinion was unfavourable to the validity of the marriages in question. Upon this the Brahmo community represented to Lord Lawrence's Government that they suffered under a great disability by reason of the existence of a state of the law which practically debarred them from marriage unless they adopted a ceremonial to which they had conscientious objections. The marriage law of British India, as he understood and as it then was may be shortly described as follows:—By the Bengal Civil Courts Act, which consolidates and re-enacts the old Regulations, and by corresponding Regulations in Madras and Bombay, the Courts are to decide, in questions regarding marriage in which the parties are Hindus, according to Hindu law; if the parties are Muhummadans, according to Muhammadan law, and, in cases, not specially provided for, according to justice, equity, and good conscience. Custom always has, in most part of India, the force of law in this matter, although the exacte legal ground on which its force stands, differs to some extent in different parts of the country. There are also a variety of Acts of Parliament and Acts of the Indian Legislature, which regulates marriages between Christians, Europeans and Natives, and between Parsis. As the Brahmoes were neither Muhammadans, nor Parsis, nor Christians no other mode of marriage was expressly provided for them by law, and the inference was drawn that they were unable to marry at all. This being so, it was necessary that a remedy had to be provided for the Brahmoes. The only question was, what remedy would be appropriate? The most obvious remedy would have been no doubt, to give the members of the Brahmo Samaj a Bill legalizing marriages between members of that body only. But the then legislature felt that there was a great difficulty in the way of doing so. The sect in question was deficient in stability. It was new, and, like all new religious bodies endowed with considerable degree of vitality; its doctrines and discipline were in a very indefinite state. To give a legal *quasi*-corporate existence, for such a purpose as the regulation of marriage, to such a body, would have been very difficult, especially in view of the fact that, it had already within a few years of its establishment, broken into two sections, differing from each other upon this very subject of marriage, amongst other things. There was another objection to such a measure. The Government were obliged to treat marriage, to a certain extent, denominationally, by the fact that, in this country, law and religion are so closely connected together, but such a system is most inconvenient, and ought not to be carried further than is absolutely necessary. The Government could hardly assume a more invidious

position than that of undertaking to give a new form of marriage to every new sect which did not happen to like the old ones, and of deciding, at the same time, whether a particular body of men did or did not constitute a new sect of sufficient importance for such a purpose. There is, again, this further difficulty about a denominational system of marriage. How are we to deal with the case of mrariages between people of different denominations? What is to happen if a Brahmo wants to marry a Positivisit? Are we to have a Bill for Brahmoes: a Bill for Positivists; a Bill for half and half couples. If so, when a few more sects have been established, and when a Bill has to be framed on the principle of providing for the combinations of a number of things taken two together, our statute book, will become a regular jungle of Marriage Acts. Under these circumstances, Sir Henry Maine proposed to make the Brahmo question the opportunity for passing a measure of the most comprehensive nature. He proposed to pass an Act to legalize marriage between certain Natives of India not professing the Christian Religion, and objecting to be married in accordance with the rites of the Hindu, Muhammadan, Buddhist, Parsi, or Jewish religion.' He introduced the Bill on the 18th November, 1868, in a speech of characteristic interest and ability, and it was circulated to the Local Governments for opinions. The answers of the Local Governments were received in due course, and were laid before me on my arrival in India at the end of 1869. They were unfavourable to the Bill proposed, and stated the grounds upon which it was objected to so fully as to supply the Government with all the information necessary to enable them to deal with the subject finally. All the grounds of objection may, I think, be reduced to one, namely, that the Bill, as drawn and circulated, would introduce a great change into Native law, and involve interference with Native social relations. On a full and repeated consideration of the whole subject, the Government were unanimously of opinion that this objection ought to prevail. We thought that the Bill, as drawn by Sir Henry Maine, would involve an interference with Native law which we did not consider justifiable under all the circumstances of the case. The Hindu law and religion on the subject of marriage (I need not at present refer to Muhammadanism) are one and the same thing; that they must be adopted as a whole, or renounced as a whole; that if a man objects to the Hindu law of marriage, he objects to an essential part on the Hindu religion, ceases to be a Hindu, and must be dealt with according to the laws which relate to persons in such a position. As a matter of strict law, there can be no doubt of the power of the Legislative Council to sweep away or to alter to any extent the whole fabric of Hindu or Muhammadan law, just as it has the legal power to do many other things which no one of ordinary sense or humanity would for a moment think of. Our objections towards these systems of law is a moral obligation and must be construed accordingly. This obligation has been justly appreciated and acted upon by successive generations of Indian statesmen; and its true nature can be shortly expressed as follows:— "Native laws should not be changed by direct legislation, except in extreme cases, though they may and ought to be moulded by the Courts of Justice, so as to suit the changing circumstances on society. "Laws relating to such subjects as marriage have their root in the every deepest feelings, and in the whole history, of a nation: nor is it easy to imagine a more tyrannical or a more presumptuous abuse of superior force, than that which would be involved in any attempt to bring the views and practices of one nation, upon such subjects, into harmony with those of other nations, whose institutions and

characters have been cast in a totally different mould. I should feel as little sympathy for an attempt to turn Hindus into Englishmen by Acts of the Legislative Council, as for attempts to turn Englishmen into Hindus by Act of Parliament. Sir James Stephen then proceeded to consider the question whether the Bill as originally framed by Sir H. Maine constituted an interference with Hindu Law, and to state the reasons which led him to think that it did. He then laid before the Council the Bill which was subsequently passed as Act III of 1872. Even this Bill as framed by Sir James Stephen evoked much adverse criticism from the Native community, but it was made into Law in spite of such adverse reception from those whom the law was intended to affect.

Scope and applicability of the Act.—*See* under section 2.

Analysis of the Act—Under this Act marriages may be celebrated upon the followings conditions :—(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. The section contains two provisos, the first of which declares that no such law or custom, other than one relating to consanguinity or affinity, shall prevent them from marrying, and the second states that 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-grand-father or great-great-grand-mother, or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor, of the other. Section 18 declares what law is to apply to issue of marriages under this Act. According to the section "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 also apply to them. Section 3 provides for the appointment of Marriage Registrars under the Act. Sections 4—11 lay down the procedure to be adopted before a marriage can be solmnized under the Act. Under section 4 one of the parties to the intended marriage is to give notice to the Registrar. Under section 5 such notice is to be filed by the Registrar, and a copy of it entered in the Marriage Notice Book. Section 6 declares that any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in section 2. Section 7 lays down the procedure to be followed by the Registrar on receipt of the objection. The person objecting to the intended marriage may file a suit in any Civil Court having local jurisdiction (other than a Court of Small Causes) for a declaration that such marriage would contravene some one or more of the conditions prescribed in section 2. Section 8 states that the certificate of filing of suit is to be lodged with the Registrar. Section 9 gives the Court power to inflict a fine on the person objecting when the objection is not reasonable and *bona fide*,

Section 10 provides for a declaration to be signed by the parties and witnesses. It states as follows :—Before the marriage is solemnized, the parties and the three witnesses shall, in the presence of the Registrar, sign a declaration in the form contained in the second schedule in 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. Section 11 states how the marriage is to be solemnized, under it; 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)." Section 12 declares the place where marriage under the Act may be solemnized. Sections 13—16 deal with certain misceilaneous matters, which are not of much importance. Section 17 delcares that the Indian Divorce Act shall apply to all marriages contracted under this Act, and any such marriage may be declared null or dissolved in the manner therein provided, and for the causes therein mentioned, or on the ground that it contravenes some one or more of the conditions prescribed in clause (1), (2), (3) or (4) of section 2 of this Act. Section 19 makes three important provisions, *viz.*, (1) that nothing in this Act contained shall affect the validity of any marriage not solemnized under its provisions, (2) that this Act is not to be deemed directly or indirectly to affect the validity of any mode of contracting marriage, (3) that 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. Section 21 provides a penalty for signing declarations or certificates containing false statement with the knowledge of, or belief in, their falsity.

Amendments of 1923.—The Special Marriage Act, 1872, was amended in important particulars by the Special Marriage Amendment Act, XXX of 1923. In the Preamble the words "and for persons who profess the Hindu, Buddhist, Sikh or Jaina religion" were inserted. In section 2 the words "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" were similarly inserted. The necessary change in the form of declaration given in second Schedule was made by insertion of similar words. Sections 22 to 26 which are new were also added by that Act. The effect of this wholesale amendment of the Act is to make its provisions available to a Hindu, Buddhist, Sikh, or Jaina who wants to intermarry with a person belonging to any out of those four religions, different from his own, without renouncing his own religion. The parties need not, however, necessarily belonging to different religions to be able to use the provisions of the Act. Persons belonging to the same religion may as well marry under the Act if they are prepared to accept the legal results which follow such union, as laid down in sections 15 to 26 of the Act. It may be noted that the Amendment Act of 1923 is not retrospective. (A. I. R.,1928 Bom. 74.)

Local extent.

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

Commencement.—Rep. Act XVI of 1874

Act III of 1872 has been declared in force in the Santhal Parganas by the Santhal Parganas Settlement Regulation (III of 1872), section 3, as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), Bihar and Orissa Code, Vol. I, Ed. 1917, page 777 and 833; in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), section 3, Baluchistan Code, 1914, page 711; in Angul and Khondmals by the Angul Laws Regulation, 1913 (3 of 1913), section 3, B. and O. Code, Vol. I, Ed. 1917, page 863. It has been declared, by notification under section 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), General Acts, Vol. II, to be in force in the following Scheduled Districts, namely:—The Districts of Hazaribagh, Lohardaga (now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44) and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum—*see Gazette of India*, 1881, Pt. I, p. 504. (The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894). The United Provinces Tarai—*see Gazette of India*, 1876, Pt. I, p. 505.

Conditions upon which marriages under Act may be celebrated.

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 Buddhsit, 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 :—

(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 maraiage between them illegal.

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

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

Scope and applicability of the Act.—The effect of section 2 as it now stands is that while any couple *one or both* members of which is a Mahammadan, Christian, Parsi or Jew can *not* marry under this Act, the following religions can marry as well as intermarry among themselves under it—*viz*, Hindus, Buddhists, Sikhs and Jains. Thus a Hindu can marry a Hindu (of any caste), a Buddhist, a Sikh, or a Jain. A Buddhist can marry a Sikh or a Jain ; and a Sikh can marry a Jain.

Civil Marriages.—Marriages entered into under the provisions of this Act are commonly known as " Civil Marriages."

" Or between persons each of whom.....or Jaina religion".—These words were inserted by the Special Marriage (Amendment) Act, XXX of 1923.

Amending Act, XXX of 1923—Scope.—The Amending Act, XXX of 1923, is not retrospective. Succession to parties married under the Special Marriage Act before that amendment is governed by their personal law and not by the Indian Succession Act of 1925. (A. I. R. 1928 Bom. 74=108 I. C. 492).

Declaration to be made by parties and its effect.—See section 10.

Brahmos.—A Hindu by becoming a Brahmo does not cease to be a Hindu. (1923 Cal. 265=49 I. C. 1069).

Brahmo Marriage is monogamous.—A person having already a wife living is not competent, according to the tenets of the Progressive Brahmo faith, to contract a valid marriage with another woman. (28 Bom. 597).

Marriage by Hindu male with Christian woman in England—Validity of.—Where a Hindu male marries a Christian woman in England in Christian form, it is a valid Christian marriage in spite of the Indian domicile of the husband. (*Sainapatti* v. *Sainapatti*, A. I. R. 1932 Lah. 116=136 I. C. 262).

Inter-caste marriages among Hindus.—Strict Hindu Law does not allow marriages between two different castes of Hindus, but *Anuloma* marriages (*i. e.*, a marriage between a higher caste man and a lower caste woman) have been held to be valid by the Bombay High Court in 46 Bom. 871 and 55 Bom. 1, and by the Madras High Court in 52 Mad. 160. On the other hand the Allahabad High Court has held them to be invalid, in 28 All. 458. The Punjab Chief Court upheld the marriage of a Kshatria man with a Vaish woman, in 57 P. R. 1909. *Pratiloma* marriages (*i. e.*, a marriage between a lower caste man and a higher caste woman) have been held by the High Courts to be

invalid unless sanctioned by custom. *See* in this connection 16 I. C. 133, a judgment of the Bombay High Court in which Chandravarkar, J. has discussed the question at length. Of course, inter-caste marriages among Hindus can take place under the present Act, but they would be governed by the provisions of the Act both in regard to their way of solemnization and their legal effect on the rights of parties, and not by Hindu Law.

Effect of a civil marriage on legal rights of parties.—*See* sections 22 to 26 of the Act, which were all comparatively recently added by the Special Marriage (Amendment) Act, XXX of 1923.

Property inherited by Hindu widow from first husband, whether forfeited on her second marriage.—Where a Hindu widow inherited the property of her husband, taking therein the estate of a Hindu widow, and afterwards married a second husband, not a Hindu, in the form provided by Act III of 1872, having first made a declaration, as required by section 10 of the Act, that she was not a Hindu; *held*, by the majority of the Full Bench, (Prinsep J. dissenting), that by her subsequent marriage she forfeited her estate in her first husband's property in favour of the next heir, for all rights which any widow may have in her deceased husband's property by inheritance to her husband are expressly determined by section 2, Act XV of 1856, on her second marriage. (19 Cal. 289 F. B.).

Appointment of Marriage Registrars.

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

For notifications appointing Registrars under this section *see* the various Local Rules and Orders.

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 Government, to be called the "Marriage Notice Book under Act III of 1872," and such book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

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 clause (1), (2), (3) or (4) of section 2.

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

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 clause (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 can 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 clause (1), (2), (3) or (4) of section 2, such marriage may be solemnized.

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

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 *bona fide*, inflict a fine not exceeding one thousand rupees, on the person objecting, and award it, or any part of it, to the parties to the intended marriage.

Declaration by parties and witnessse.

10. Before the marriage is solemnized, the parties and three witnesses shall, in 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.

Effect of Declaration.—A mere declaration under this Act does not amount to renunciation of the personal law of the parties. (A. I. R. 1928 Bom.

74=108 I. C. 492.) For example, a declaration by a Hindu under this Act does not amount to an abjuration of Hinduism for all purposes but is merely a statement for purposes of the Act itself. (49 Cal. 1069=1923 Cal. 265=70 I. C. 463.) A Hindu widow inherited the property of her husband, taking therein the estate of a Hindu widow. She afterwards married a second husband, not a Hindu, in the form provided by Act III of 1872, having first made a declaration, as required by section 10 of that Act, that she was not a Hindu. *Held*, by the majority of the Full Bench (Prinsep J., *dissenting*) that by her second marriage she forfeited her interest in her first husband's estate in favour of the next heir, all rights which any widow may have in her deceased husband's property by inheritance to her husband being expressly determined by section 2 of Hindu Widow's Marriage Act (XV of 1856) upon her remarriage. (19 C. 289.)

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 Local Government may prescribe the conditions under which such marriages may be solemnized at places other than the Registrar's office, and the additional fees to be paid thereupon.

For rules framed under this section *see* the various Local Rules and Orders.

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 Act III of 1872," in the form given in the third schedule to this Act, and such certificate shall be signed by the parties to the marriage and the three witnesses.

Transmission of certified copies of entries in marriage-certificate book to the Registrar-General of Births, Deaths and Marriages.

13-A. The Registrar shall send to the Registrar-General of Births, Deaths and Marriages for the territoties within which his district is situate, at such intervals as the Local Government from time to time directs, a true copy certified by him, in such form as the Local Government from time to time pre-

scribes, of all entries made by him in the said marriage-certificate book since the last of such intervals.

Section 13-A was inserted by section 29 of the Births, Deaths, and Marriages Registration Act (VI of 1886). The words "Local Government" were substituted for "Governor-General in Council" by Act XXXVIII of 1920. As to the duty of the Registrar-General to make and keep indexes of the certified copies sent to him under this section *see* section 7 of the Births Deaths and Marriages-Registration Act.

Orders.—In exercise of the powers conferred by section 13-A of Act III of 1872 (to provide a form of marriage in certain cases), and section 8-A of the Parsi Marriage and Divorce Act, 1865, the Governor-General in Council is pleased to issue the following orders:—Copies of entries in the Marriage Certificate Book prescribed in section 13 of Act III of 1872 and in the Register of Marriages referred to in section 6 of the Parsi Marriage and Divorce Act, 1865, which Registrars (Except the Registrar appointed by the Chief Justice of the High Court of Judicature at Bombay under Act XV of 1865,) under these Acts are required to send to the Registrars-General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1886, shall be certified in the form set forth in the following schedule, and shall be sent at intervals of three months, on or as nearly as possible after the 1st January, April, July and October in each year. Should no entries be made in a Marriage Certificate Book, or a Register of Marriages, as the case may be, during the preceding three months, a certificate to this effect shall be sent to the Registrar-General concerned.

SCHEDULE.

Form of Certificate of truth of copies of entries in Marriage Certificate Book under Act III of 1872 (or Register of Marriages under the Parsi Marriage and Divorce Act, 1865, as the case may be) to be sent to Registrar-General.

Certified that the above, which contains entries from No. regarding to No. regarding—is a true copy of all the entries in the Marriage Certificate Book under Act III of 1872 (or Register of Marriages under Act XV of 1865, as the case may be) kept by me for the three months ending the day of 18 .

Dated the of

(*Signature*)

Registrar of Marriages under Act III of 1872 (or Registrar under the Parsi Marriage and Divorce Act, 1865, as the case may be) for (local area).

See Gazette of India, Supplement, 1889, p. 921.

14. The Local Government shall prescribe the fees to be paid to the Registrar for the duties to be discharged by him under this Act.

Fees.

The Registrar may, if he think fit, demand payment of any such fee before solemnization of the marri-

age or performance of any other duty in respect of which it is payable.

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

For scales of fees to be paid to Registrars of Marriages, *see* the various Local Rules and Orders.

Penalty on married person marrying again under Act.

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

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 Indian Penal Code for the offence of marrying again during the lifetime of a husband or wife, whatever may be the religion which he or she professed at the time of such second marriage.

Indian Divorce Act to apply.

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

"Want of guardian's consent."—Where the girl is below 21, and there is absence of consent by her father the marriage is null and void (55 Cal. 628 S. B. = 1929 Cal. 631 = 119 I. C. 369.) In this case the omis, sion in the application prescribed in schedule 2, as to the statement of actual age of the parties, and whether or not each party is of the age of 21- has been pointed out and necessary amendments have been suggested.

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. [*Registry of marriages contracted before passing of Act.*] *Rep. Act XII of 1876.*

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 Indian Penal Code.

Burden of proof.—The burden of proving that the declaration made by the deponent under the Act was false lies heavily upon the prosecution. (*Walter* v. *Emperor*, 148 I. C. 689=A. I. R. 1934 Oudh 155.)

Formal renunciation by a born Christian not necessary.—The offence contemplated in section 21 only deals with the declaration of a profession of want of belief in the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jain religion at the time when the declaration is made. A person may be born to parents professing one of these religions and may even have been practising the tenets of one of them up to the time of his marriage, but if at the time when he contracts a marriage under the Act, he makes a declaration that he does not profess any of these religions, then it cannot be said against him that, because he was born in the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jain religion, and had not formally renounced any of these religions before he made his declaration, he is guilty of an offence under section 21 of the Special Marriage Act, read with section 199, Penal Code. The declaration does not amount to an abjuration for all purposes of the personal law of the declarant, but merely as a statement for purposes of the Act itself. (*Walter* v. *Emperor*, 148 I. C. 689=A. I. R. 1934 Oudh 155.)

22. 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.

Effect of certain marriages on coparcenary.

Sections 22 to 26.—These sections have been comparatively recently added to the Act by the Special Marriage (Amendment) Act, XXX of 1923, and prescribe the effect of a Civil Marriage on the legal rights of parties to it.

Sections 22—26—If retrospective—Sections 22 to 26, added by the Amendment Act (XXX of 1923), to the Special Marriage Act (1872), are not retrospective and do not affect the rights of off-spring of marriages contracted under the old law of 1872; the Act is a substantive law affecting the status and rights of property. (*Punyabrata Das* v. *Monmohan Ray*, A. I. R. 1934 Pat. 427).

Property inherited by Hindu widow from first husband, whether forfeited on her second marriage.—*See* under section 2 above.

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, 1850, applies :

Rights of succession in certain cases of marriage under Act.

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.

THE CASTE DISABILITIES REMOVAL ACT (XXI OF 1850)

An Act for extending the principle of section 9, Regulation VII, 1832, of the Bengal Code throughout the Territories subject to the Government of the East India Company.

Preamable—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 throughout the territories subject to the government of the East India Company ; 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 now in force within the territories subject to the Government of the East India Company 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 in the Courts of the East India Company, and in the Courts established by Royal Charter within the said territories.

Succession to the property of parties married under Act.

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 Indian Succession Act, 1865.

Scope—if retrospective—"Who marries"—Effect of—Section 24 added to the Special Marriage Act of 1872, by the amending Act of 1923, only applies to persons who marry under the Act subsequent to the amending Act. The words "who marries" in section 24 clearly shows that the marriage contemplated is one after the date of the coming into force of the newly added section 24. In other words, section 24 cannot have any retrospetive effect and will not apply to persons who solemnised their marriage under the Special Marriage Act before its amendment in 1923. (*Thukru Bai* v. *Attanar*, 69 M. L. J. 81). The words "who marries" in section 24 of the Amended Special Marriage Act (1923), mean "who shall marry hereafter,' namely from the date of the enactment which brought that section into existence, and cannot mean "who has married under Act hereby amended." Therefore a person who has married under the old Act does not cease to be governed by his personal law; and his offspring are governed not by the date of the death of the father which might occur after the new Acts but by the date of the marriage which took place under the old Act. (*Punyabrata Das* v. *Monmohan Ray*, A. I. R. 1934 Pat. 427.)

Person marrying under Act not to have right of adoption.

25. No person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act shall have any right of adoption.

Adoption by father of person marrying under Act.

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.

FIRST SCHEDULE

(*See section* 4.)

NOTICE OF MARRIAGE.

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

I hereby give you notice that a marriage under Act III of 1872 is intended to be had, within three calendar months from the date hereof,

between me and the other party herein named and described (that is to say) :—

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

Witness my hand, this day of 187 .
(*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 Act III of 1872, render a marriage between us illegal :

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

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

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

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

DECLARATION TO BE MADE BY THE BRIDE.

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

1. I am at the present time unmarried

2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion *[*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 Act III of 1872, render a marriage between us illegal :

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

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

6. I am aware that, if any statement in this declaration is false, and 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, K L. [*three witnesses*].

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

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

M N, the father [*or* guardian] of the above-named *A B* (*or C D, as the case may be*).] (*Countersigned*) *E F*,
Registrar of Marriages under Act III of 1872
for the District of

Dated the *day of* 18 .

THIRD SCHEDULE

(*See section* 13.)

REGISTRAR'S CERTIFICATE.

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

(*Signed*) *E F*,
Registrar of Marriages under Act III of 1872
for the District of

(*Signed*) *A B, C D,*
G H, I J, K L, [*three witnesses*].

Dated the *day of* 18 .

FOURTH SCHEDULE

[*Repealed by Act XII of* 1876.]

*These words were inserted by section 5 of the Special Marriage (Amendment) Act, 1923 (XXX of 1923).

The Child Marriage Restraint Act, 1929

ACT NO. XIX OF 1929. [*1st October, 1929*

An Act to restrain the solemnisation of child marriages.

WHEREAS it is expedient to restrain the solemnisation of child marriages; It is hereby enacted as follows :—

Short title, extent and commencement.

1. (*1*) This Act may be called The Child Marriage Restraint Act 1929.

(*2*) It extends to the whole of British India, including British Baluchistan and the Sonthal Pargans.

(*3*) It shall come into force on the 1st day of April, 1930.

"Sarda Act"—This Act is popularly known as the "Sarda Act" after the name of Mr. Har Bilas Sarda who was the author of the Bill.

Act not ultra vires.—Where in a prosecution for a Hindu child marriage the accused pleaded that the Act was *ultra vires*; *held*, that so far as the Hindus were concerned the changes introduced in the Select Committee were not such as to render inadequate the previous sanction of the Governor-General and render the Act invalid. (Macpherson, J.) *Musammat Jalsi Kuar* v. *Emperor*. (A. I. R. 1933 Pat. 471 = 146 I. C. 298).

"It extends to the whole of British India"—Applicability to subjects of Native States.—The Child Marriage Restraint Act is applicable to all offences committed under the Act in British India, though the offenders are foreigners or subjects of Native States. (Lort Williams and Jack JJ.) (*Superintendent and Remembrancer of Legal Affairs, Bengal*, v. *Radha Kishen Agarwala*; 39 C. W. N. 656).

Definitions.

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

(*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 solemnised; and

(*d*) "minor" means a person of either sex who is under eighteen years of age.

Punishment for male adult below twenty-one years of age marrying a child.

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 above 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 solemnising a child marriage.

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.

Scope.—Section 5 contemplates strangers and excludes those who are punishable under section 3 or 4 and section 6, that is the bridegroom or the parent or guardian. Where a person settles the match and gives his daughter in marriage to the bridegroom he is guilty of promoting the marriage. But the father of the bride or bridegroom does not take any part in the actual solemnization of the marriage, his duty stops with the secular act of making a gift of the daughter. His case is covered by section 6. (*Ganpat Rao* v. *Emperor*, A. I. R. 1932 Nag. 174).

Sentence—Priest.—The Courts are not at liberty to treat the Act as a legislative imposture. In order to make it effective the Court should pass e deterrent sentence on the priest or other celebrant without whose aid the Act could not have been infringed. (Macpherson, J.) (*Musammat Jalsi Kuar* v. *Emperor*, 1933 Pat. 471=146 I. C. 295).

Marriage conducted on certificate of person less qualified than Civil Surgeon—Sufficiency.—Where a marriage of a girl under 14 is conducted on the authority of a certificate from a person who holds less qualification than that of a Civil Surgeon that the girl is not under 14, the persons concerned are guilty and their action is not in good faith as they ought to have gone to Civl. Surgeon to obtain certificate. The existence of the certificate so obtained is a matter which may be taken into account in considering whether imprisonment or fine should be ordered. (*Jwala Prasad* v. *Emperor*, A. I. R. 1934 All, 331=148 I. C. 351).

Venue of trial.—For the purposes of section 5 of the Child Marriage Restraint Act it is only the marriage ceremony that has to be considered. It if quite immaterial where, when or by whom the tilak ceremony is performed, The marriage cannot be properly called a "consequence" of the tilak ceremony, Therefore, the offence, under section 5, of the Child Marriage Restraint Act, or performing, conducting or directing a child marriage, must, under section 177, Criminal Procedure Code, be enquired into by a Court within whose jurisdiction the marriage is performed. (*Matuk Deo Narain Singh* v. *Vinayak Prasad Singh*, 150 I. C. 993=A. I. R. 1934 All. 829 (1)).

Punishment for parent or guardian concerned in a child marriage.

6. (*1*) Where a minor contracts a child marriage, any peason 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 solemnised, or negligently fails to prevent it from being solemnised, 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 :

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 solemnised.

"When a minor contracts a child marriage."—Both parties minor —This expression is wide enough to cover a case of a marriage to which both parties are minors as well as one to which one party is a minor. (*Ganpat Rao* v. *Emperor*, A. I. R. 1932 Nag. 174).

Injunction restraining a marriage against law—Disobedience to.— Before the Court commits a party to prison under Order 39, Rule 2 (3) of the Code of Civil Procedure for an alleged disobedience to a temporary injunction restraining him from giving a girl in marriage in contravention of the Child Marriage Restraint Act, the party should be given an opportunity of establishing his plea that he received no notice of the order. (*Basanta Kumar Das* v. *Nagendra Nath Pal*. A. I. R. 1932 Cal. 719=137 I. C. 425).

Imprisonment not to be awarded for offences under section 3.

7. Notwithstanding anything contained in section 25 of the General Clauses Act, 1897, or section 64 of the Indian 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, 1898, no Court other than that of a Presidency Magistrate or a District Magistrate shall take cognizance of, or try, any offence under this Act.

Summary procedure.—A trial under this Act may be summary, as it is permitted by section 260 (*1*) (*a*), Criminal Procedure Code, as the offences charged come under the heading "offences not punishable with imprisonment for a term exceeding six months" And the mere provision in section 18 that the trial is to take place in the Court of the District Magistrate does not meanthat

the trial should not be summary. (*Jwala Prasad* v. *Emperor*, 148 I. C. 351=A. I. R. 1934 All. 331).

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 solemnisation of the marriage in respect of which the offence is alleged 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, 1898, 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.

Preliminary inquiry obligatory—Provision is mandatory.—Under section 10 of this Act a Court taking cognizance of an offence under the Act is bound to hold a preliminary inquiry before taking further action and failure to comply with this provision which is mandatory is an illegality which vitiates the proceedings. (*Mangal Ram* v. *Kitlu*, 12 Lah. 883=A. I. R. 1931 Lah. 56=130 I. C. 781). A Court taking cognizance of an offence under the Child Marriage Restraint Act is bound to hold a preliminary inquiry before issuing summonses for the attendance of the accused. (*Crown* v. *Chand Mal Gonika*, 15 Lah. 63=A. I. R. 1934 Lah. 155.)

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 payment of any compensation which the complainant may be directed to pay under section 250 of the Code of Criminal Procedure, 1898; 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, 1898, and Chapter XLII of that Code shall apply accordingly.

Complaint by Magistrate.—Where the complaint is made by a judicial officer, he cannot be required to execute the bond described in section 11. (*Sukha Sahu* v. *Emperor*, 13 Pat. L. T. 791.)

Bond of complainant—Dispensing with—Record of reasons.—The provision contained in section 11 (*1*), Child Marriage Restraint Act, is imperative and failure of a Magistrate to record any reason for not requiring the complainant to execute a bond is a material irregularity which cannot be cured by section 537, Criminal Procedure Code, (*Kaluram Daga* v. *Emperor*, A. I. R. 1933 Cal. 433=143 I. C. 279.)

Hindu Widows' Re-marriage Act, 1856.

ACT NO. XV OF 1856. [25TH JULY, 1856.

An Act to remove all legal obstacles to the marriage of Hindu widows.

Preamble.

WHEREAS it is known that, by the law as administered in the Civil Courts established in the territories in the possession and under the Government of the East India Company, 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 consciences:

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:—

Scope of the Act.—"Our Legislature has on principle been slow to interfere with the marriage laws of India; and in the legalizing of widow marriage, its interference was not gratuitous, but was sought by the Hindus themselves. Pandit Iswar Chandra Vidyasgar pointed out in his celebrated tract that the re-marriage of widows was not unauthorised by the sastras; and his opinion was accepted by a considerable body of his educated countrymen; and it was to meet their wishes that the Legislature felt induced to pass Act XV of 1856. This we learn from the preamble to this Act." (Gooroodas Banerjee's Marriage and Stridhana, Tagore Law lectures for 1878, 2nd Ed., 1896, page 256). The following remarks on the provisions of the Act by Justice Gooroodas Banerjee may also be noted. The Act does not give any rules for determining the eligibility of parties for marriage. It is clearly its intention that this matter should be governed by the ordinary rules of Hindu Law. But these rules are not sufficient to meet every point which might arise in

connection with the re-marriage of widows. Thus, one of these rules of selection requires that the parties to marriage should be of different *gotras*; but what is to be regarded as the *gotra* of a widow—the *gotra* of her father, in which she was born or that of her deceased husband, to which she has been transferred by marriage? *Vidyasagara* maintains that her father's *gotra* is to be deemed the *gotra* of a widow for the purposes of her re-marriage, and, considering that her father or some other paternal relation is still her guardian in marriage, I think that view is in accordance with the intention of the Act. Again, the ordinary rules about prohibited degrees do not prohibit the marriage of a man with the mother of his wife, however repugnant to our feelings it may be No express rule for the prohibition of such marriage is, however, necessary in the Hindu Law, as it prohibits widow marriage altogether. But now that widow marriage has been legalised, the want of such prohibition may be deemed a defect in the law in theory, though, in practice, the universal feeling of repugnance to such improper unions would be sufficient to supply the place of prohibitory rules" (*Ibid*, pages 259—263.) "The prohibition against second marriages of women, either after divorce or upon widowhood, has no foundation either in early Hindu law or custom. Passages of the Vedas quoted by Dr. Mayr sanction the re-marriage of widows. And the second marriage of women who have left their husbands for justifiable cause, or who have been deserted by them, or whose husbands are dead, is expressly sanctioned by the early writers." Mayr; Narada, xii; Mayne's Hindu Law and Usage, 7th Ed, page 112. But at some later period the practice of widows re-marrying seems to have fallen out of use. It is probable that the change of usage on this point arose from the influence of Brahmanical opinion, marriage coming to be looked upon as a sort of sacrament, the effect of which was indelible. Mayne's Hindu law, 7th Ed., 1906, page 113. In Southern India, including Cochin and Travancore, "the re marriage of widows is not forbidden by either religious or caste custom to the majority of the population. The prohibition exists among the Brahmans and among castes desirous of obtaining a high relative position by close observance of Brahmanical customs, but the restriction is entirely foreign to Dravidian ideas." (Census of 1891, XIII, 128; Mysore Census of 1871, page 71, of 1891, XXV 226, 229.) "We shall probably not be far wrong, if we assume that the marriage of widows is permitted and practised by about 60 per cent. of the total population." (Census of 1891, XIII, 148—151, General Report, 264.) The Act is not retrospective in its operation (1926 Bom. 381=94 I. C. 704). The Act applies to all Hindu widows irrespective of caste regulations concerning re-marriage. (17 I. C. 133.) In the Bombay Presidency widows of gotraja sapindas are allowed to succeed in certain cases as representing their deceased husbands, but if such a widow has re-married she will not be so entitled to succeed. (45 Bom. 1247).

"With certain exceptions."—The words of this preamble show clearly, to my mind, to whom the Act applies, that is to say (upon the narrowest view), to all Hindu widows other than those referred to under the words 'with certain exceptions,' who could without the aid of the Act marry according to the custom of their caste. With the latter class of widows we have no concern in the present case. (19 C. 289 (293). (Per Wilson, J.) For a fuller discussion of this point, however, *see* under section 2.

Authority of caste to declare marriage void.—Courts of law will not recognize the authority of a caste to declare a marriage void, or to give permission to a woman to re-marry. (1 Bom. 347).

Applicability to the Punjab.—In the Punjab to which the Hindu Law is to be applied in furnishing the rule of decision under clause (*b*) of section 5 of the Punjab Laws Act, 1872, Act XV of 1856, must receive full effect as being a legislative exposition of the Hindu Law. But this is quite consistent with the view that the Act does not alter or abolish any custom regarding succession or marriage which is not at variance with section 1 of the Act, and which, that Act apart, is the rule of decision prescribed by clause (*a*) of section 5 of the Punjab Laws Act." (46 P. R. 1891.) Among the Jat population of the Punjab, not only a widow, but a wife who has been deserted or put away by her husband, may marry again, and will have all the rights of a lawful wife. (Punjab Customary Law.) Although divorce is not recognised *eo nomine* by Hindu Jats, it is in no way repugnant to the tribal law, by which they are governed in such matters, that a man who takes a wife should have the power of repudiating her, and that, when so repudiated, she should be free to marry another man. (33 P. R. 1896).

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.

Scope.—Section 1 declares that 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. But the Act does not alter or abolish any custom regarding succession or marriage which is not at variance with section 1 of the Act. (46 P. R. 1891).

"Or betrothed".—Betrothal is a revocable promise of marriage not constituting actual marriage though such revocation would be improper if without a just cause. "The betrothment generally precedes marriage, but is not a necessary part of the nuptial rite." "Betrothment is a promise by the father or other guardian of the bride in favour of the bridegroom, to give him the bride in marriage. After betrothal, and separated from it by a variable interval, there comes the marriage ceremony." (Gooroodas Banerjee's Marriage and Stridhana, 2nd Edition, 1896, p. 83.) "As provided by the Specific Relief Act (Act I of 1877), section 21, clasue (*b*), and explained by the illustrations to that clause, a contract of betrothal cannot be specifically enforced. But though specific performance cannot be enforced, the party injured by the breach of a contract of betrothal is entitled to recover compensation for any pecuniary damages that might have been sustained, and also for any injury to character or prospects in life which may naturally arise in the usual course of things from such breach." (Gooroodas Banerjee's Marriage and Stridhana, Tagore Law Lectures for 1878, 2nd edition, 1896, p. 86.)

Karewa among Khatris in Punjab.—In 61 P. R. 1905 which was a case among Khatris of Amritsar it was held that although a woman who accepts the position of a mere concubine or *dharel* acquires thereby no

legal status as a wife, a re-marriage in the *Karewa* form of a Khatrani widow with a Khatri is valid and legal under section 1 of the Hindu Widows Re-marriage Act, and it is not open to the Courts to discuss the matter as if determined by custom. The issue of such marriage was held to be legitimate. Similarly in 49 P. R. 1903 which was a case of *Karewa* marriage among Khatris of Lahore District it was held that where the parties to a marriage are alleged to have gone through a form of marriage with the full intention of constituting their union into a full and complete legal marriage claiming to take advantage of the clear provisions of law in favour of such unions contained in the Hindu Widows Re-marriage Act, no interpretation of law and no custom forbidding re-marriage is altogether relevant to show that the marriage is invalid.

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.

Principle and Scope.—Act XV of 1856 was intended to remove all doubts about the legality of marriage of widows, and thereby to allow people to act in accordance with the dictates of their conscience without being troubled by anxiety as to the legitimacy of the children of such connection and the status of the wife. (6 N. L. R. 103) But to be fair to all parties concerned, section 2 enacted that the rights, of the widow re-married, in her husband's property by inheritance to him or to his lineal successors would upon such re marriage cease as if she had then died. (*Ibid.*) Though not expressly yet impliedly, the legislature meant that the marriage, which is a sacrament under the Hindu system, became dissolved, thereby effecting a severance of the connection with the husband, when the widow by re-marriage passed into the family of another person. (*Ibid*) The principle on which a widow takes the life-interest in the property of her deceased husband, when there is no male heir, is that she is a surviving portion of her husband (*see Smriti Chandrika* Ch. XI, section 1, sub-section 4). And where the rule as to re-marriage is relaxed and a second marriage is permitted, it cannot be supposed that the law which these castes follow would permit of the re-married widow retaining the property in the absence of all basis for the continuance of the fiction upon which the right to enjoyment is found. (1 Mad. 226). Apart from the Act, under the Hindu Law a widow's right to succession is based on the ground that she is half of the body of her deceased husband and that she is capable of conferring spiritual benefits on him. When she re-marries she ceases to be half of the body of her late husband or to be able to confer spiritual benefits on him and she becomes the wife and half of the body of her new husband. (3 P. L. T. 561). Independently of

this Act, the re-marriage of a widow has always entailed a forfeiture of her late husband's estate and no inconvenience or anomaly is, therefore, the result of regarding section 2 as applicable to all Hindu widows whomsoever. On the other hand, there is a clear gain of convenience in subjecting all widows alike to the same rules. (*Ibid.*) It is the practice of a wife or a widow among the Sudras castes of the Deccan on re-marriage to give up all property to her former husband's relations, except what had been given her by her own parents. (1 Mad. 226) The Hindu widow's estate must be taken to be an estate during widowhood. This view has been recognized in the Hindu Widows' Marriage Act (XV of 1856), section 2, which declares that a widow re-marrying loses all her rights in her deceased husband's estate. It is also recognized in cases where the marriage of Hindu widows is allowed by custom. (*Murugayi* v. *Veeramakali*, 1 Mad. 226.) *See* also the case *cited* in West and Buhler's Digest of Hindu Law, Bk. 1, ch. 2, S. 7, Q. 1 (3rd Ed.) p. 429). "The widow's right of succession is based, according to the *Dayabhaga*, on the ground that she is half the body of her deceased husband, and is capable of conferring by her acts spiritual benefit on him The widow takes her husband's estate, not because of past relationship, not because she was the wife of the deceased, but because of the continuing relationship because she is still the *patni* (wife) of the deceased. This is abundantly clear from Chapter XI, section I of the *Dayabhaga*, and in particular from paragraph 2 of that section ; and, if that is so, it follows, as a necessary consequence, that the estate of a Hindu widow can last only so long as she continues to be the wife and half the body of her deceased husband ; that is, only so long as the relationship, by reason of which she inherits, continues, and the estate must be held to determine when she must cease to be the wife of her late husband and half his body by marrying another person. It is the general rule of the Hindu Law, as stated by the Privy Council in *Moniram Kolita* v. *Keri Kolitani*, 5 Cal. 776 (783) "that an estate once vested by succession or inheritance is not divested by any act or incapacity which, before succession, would have formed a ground for exclusion from inheritance," and it was held not to have been established that the estate of a widow formed an exception to the rule. But it is equally clear that there were grounds, which, under the Hindu Law, caused a forfeiture of a vested estate. Change of religion did so before Act XXI of 1850 and the Regulations that preceded it. Degradation from caste had the same effect as was pointed out by the privy Council in the case above referred to at page 792. It is an important question whether a second marriage is a circumstance, like those just mentioned, which determines a widow's estate. We cannot expect to find express texts on this point in the usual authorities on Hindu Law, because second marriage was a thing they did not contemplate; we cannot expect more than an indication of the view they took of the nature of a widow's estate. The view is clearly expressed in the text of *Vrihaspathi* which *Jimutavahana* makes the basis of his reasoning on this subject of a widow's estate (*Dayabhaga* XI. I) "of him whose wife is not deceased half the body survives. How then should another take his property while half his person is alive ?" This is difficult to reconcile with a right in a widow who ceases to be the wife or half of the body of her late husband, and becomes the wife and half of the body of another man, to keep the estate of her late husband. The view that on principle a second marriage determines a widow's estate is strengthened by the fact that where second marriages were sanctioned by custom, the further rule seems almost always to have followed, that such re-marriage entailed a forfeiture of the first husband's estate. (*See* the cases cited in Mayne's Hindu Law, section 512, and in West and Buhler, Bk. I., ch, 3, S. 72-a, 3rd ed., p. 429); and again the adoption of the rule of

forfeiture on second marriage in the Hindu Widow's Re-marriage Act (XV of 1856) seems to be an indication that the Legislature considered that rule to be in accordance with the principles of Hindu Law. If, therefore, we had to decide this point upon the principles of Hindu Law, and without reference to express legislative enactments, we should be disposed to hold that the widow's estate was determined by her marrying a second time and we do not think this would be in any way inconsistent with what was held in *Mouiram Kolita* v. *Keri Kolitani*, 5 C. 766, namely, that a widow's estate is not forfeited by unchastity during widowhood; for there seems to be a very broad distinction between misconduct on the part of a widow, as a widow, and her ceasing to be a widow." (19 Cal. 289 (292)—Per *Wilson, J.*)

Remarriage under custom.—Whether entails forfeiture.—"Though re-marriage under Act XV of 1856 would deprive a widow of her rights in her husband's estate, the question may arise, how far section 2 of the Act would affect the rights of a Hindu widow re-marrying according to the custom of her caste, tribe or sect, which sanctions such re-marriage independently of Act XV of 1856. But the question is practically of little importance as is generally found that, wherever the marriage of widows is allowed by custom, their rights to the estate of their deceased husbands are taken away by the same custom. (Gooroodas Banerjee's Marriage and Stridhana, Tagore Law Lectures for 1878, 2nd Ed., p. 261 262.) A Hindu widow after her re-marriage forfeits her deceased husbands estate even though there is a custom of remarriage in her cast. And this is in accordance with the principle of Hindu Law that a Hindu widow is part of her husband, so to speak, and continues his existence for the purpose of representing the property of which he died possessed. (5 I. C. 710.) "The learned counsel on both sides in the argument before us admitted that the preamble to the Act was at variance with its enacting clauses. The preamble evidently favours the view that the Act was not intended for all classes of Hindu widows. It recognizes the fact that there were certain exceptions to the custom prohibiting the re marriage of widows, and it goes on to state that, with a view to relieve persons who were inclined to disapprove the customary prohibition, the Act was promulgated. The enacting clauses, however, observe no such reserve, and the words used are as general as they can well be, and there is no special section preserving to the castes in which re-marriage was permitted full recognition of their customary rights. "It appers to me that this variation between the preamble and the enacting clauses was not the result of any oversight, but that the Legislature deliberately used the more general words in section 2 of the Act, because it found that, while the custom of prohibiting re-marriage obtained in certain castes, and did not obtain in others, in the matter of forfeiture by the widow of all interest in her first husband's estate, there was no such divergence. So far as the Presidency is concerned, this is obvious from the information collected by Government, and published in Steel's Law and Customs of Indian castes. At pages 364-65 the names of the castes in the Dekkhan, among whom Pat marriage were allowed or forbidden, are given, and at page 424, mention is made of the castes in which, when a widow performed Pat, her husband's relatives succeeded to her husband's estate. This last list includes some sixty castes, the great *Kunbi* caste to which the parties here belong, and all castes which are usually engaged in agriculture and manual industry. There is not a single caste mentioned in which any custom to the contrary prevailed. If with this information before it, the Legislature enacted sections 2, 3, 4 in very general terms, thinking thereby to declare what was in fact a genera

practice, it cannot be said that any new disability was created thereby. The words used in the preamble are no doubt to some extent misleading. As far as section 2 is concerned, the law has only declared what was an universal practice, and this fact must have been present to the mind of the Legislature, and explains the omission of all qualifying words." (22 Bom. 321 (330, 331), *Per Ranade J.*). The wording of this preamble has given room for the contention that only widows not previously allowed to re-marry were intended to be affected by the enacting sections. In fact the words in the enacting sections could hardly have been more general or explicit. (16 C. P. L. R. 99.) There is, however, a clear conflict of opinion among the different High Courts in India on this point, *viz.*, whether a widow who is entitled to re marry by the custom of the caste to which she belongs forfeits her interest in her previous husband's estate by such marriage.

It has been consistently held by the Allahabad High Court that she *does not, vide*, 11 All. 330; 20 All. 476; 29 All. 122; 31 All. 161; 32 All. 489; 49 All. 203; 1930 All. 593; 55 All. 24 = 1932 All. 617. F. B.). The Oudh Court in 3 Luck. 610; 5 luck. 689; 1921 Oudh 130, 1921 Oudh 233, and 121 I. C. 899 and the Sind Court in 1924 Sind 17 have held the same view. The Lahore High Court in 1931 Lah. 103 also seems to be inclined towards the same view. On the other hand it has been held by other High Courts that a widow *does forfeit* her rights by such re-marriage, that section 2 of this Act in view of its clear words covers such cases, and any custom repugnant to it may be considered to have been swept away thereby. (See 22 Bom. 321; 22 Cal. 589: 50 Cal 727; 1 Mad. 226; 1929 Mad. 765; 1 Pat. 706; 9 C. P. L. R. 47; 16 C. P. L. R. 99; 11 N. L. R. 116.) "The whole point is whether the provisions of the Hindu Widow's Re-marriage Act, 1856, apply to the case of a re-marriage where such marriage is allowed by the *custom* of the caste. If they do, a widow by re-marriage forfeits all interest in her husband's property whether it be (1) by inheritance to her husband, or (2) by way of maintenance out of his property. If they do not, she does not forfeit either of those rights. The Allahabad High Court holds the latter view. The other High Courts hold the former view, and they have accordingly decided that a widow on re-marriage forfeits her interest in the estate inherited by her from her first husband, even though the marriage is allowed by the custom of the caste. No case has arisen in those Courts as to the right of such a widow to maintenance out of the property of her first husband; but it is clear that if such a case did arise, the right would be negatives." (Mulla's Principles of Hindu Law, section 563). Referring to the Allahabad View Banerji J. observed as follows in 32 All 489:—"This has been the course of rulings in this Court, and although personally we may have hesitation in accepting the view adopted in those rulings, we think we are bound by the uniform course of decisions in this Court, and must therefore hold that section 2 of Act XV of 1856 is inapplicable to a case like this." It may be noted that in 1 Pat. 706 which is considered an authority against the Allahabad view it was held that that since under both Hindu Law and status law a Hindu widow loses her estate on re-marriage, even where certain classes of Hindus recognise widow re-marriage either by custom or as a tenet of their sect it is necessary to establish *affirmatively* that this recognitian carries with it the right to retain the deceased husband's estate, for to do so is both against the general rule of Hindu Law and against the provisions of the statute. It is respectfully submitted that this intermediate view of the law is more sound than either of

the two extreme views. In a recent Patna case, *Nawab Singh* v. *Gauri Shankar Mahto* (A. I. R. 1935 Patna 58=154 I. C. 875) it was held that a Hindu widow, when she re-marries loses the estate which she had inherited from her deceased Hindu husband even though, in the particular sect to which she belongs the re-marriage of a widow is permitted.

Re-marriage under Special Marriage Act.—Hindu widow inherited the property of her husband, taking therein the estate of a Hindu widow. She afterwards married a second husband, not a Hindu, in the form provided by Act III of 1872, having first made a declaration, as required by section 10 of the Act, that she was not a Hindu. The question was whether, by that marriage, she forfeited her interest in her first husband's estate in favour of the next heir. *Held* by the Full Bench (*Prinsep, J.*, dissenting), that under section 2 of Act XV of 1856, she forfeited her interests in the property of her deceased husband. (19 C. 289 F. B. *Overruling* 3 W. R. 206). *Prinsep, J.*, (dissenting) *held* that section 2 of the Act was not of general application to all Hindu widows re-marrying, but was limited only to the cases privided for by the Act, *viz.*, Hindu widows re-marrying as Hindus under Hindu law as provided by the Act.

Outcaste Hindu widow.—An outcaste Hindu widow does not cease to be a Hindu, and if she re-marries the provisions of the Act would apply. (54 I. C. 820).

Change of religion.—Does a Hindu window who has ceased to be a Hindu before her re-marriage, *e. g.*, by conversion to Muhammadanism, forfeit her rights to her husband's property? Yes, according to the Calcutta, Madras, and Patna decisions. (19 289 Cal. F. B.; 41 Mad. 1078 F. B.; 1 Pat. 706.) No, according to the Allahabad decisions. (35 All. 466.) In 41 Mad. 1078 it was held by the Full Bench (*Sheshagiri Aiyar, J., dissenting*) that a Hindu widow, who becomes a Muhammadan and marries a Muhammadan forfeits by her re-marriage her interest in her first husband's estate. Per *Chief Justice* (*Phillips J. concurring*) :—The above conclusion may be supposed on two grounds, first, according to Hindu Law and independently of section 2 of Act XV of 1856 the widow of a Hindu forfeits her husband's estate on re-marriage; second, on a proper construction of section 2 of Act XV of 1856 widows of a Hindu who re-marry after conversion forfeit their estate by virtue of that section A recent Bombay judgment in *Raghunath* v. *Lakshmibai* reported as 37 Bom. L. R. 150=A. L. R. 1935 Bom. 59 laid down as follows: The expression "any widow" in section 2 of the Hindu Widows' Re-marriage Act includes all widows who being Hindus became widows and is wide enough to cover the case of such a widow re-marrying a Hindu or a member of other religion. A Hindu widow who, therefore, becomes a convert to Mahomedanism and then marries a Mahomedan forfeits whatever interest she has in her husband's property. Section 2 would apply to her notwithstanding her renunciation of faith and subsequent marriage with a non-Hindu. Where, however, a Hindu Woman became a widow and afterwards embraced Mohammadanism and married a Mohammedan, and where afterwards her Hindu sister devised property to her by will, *held* the right of the devise to the property was not affected. (1925 Mad. 861=87 I. C. 621.) Similarly when the devisee dies leaving a sister who has also embraced Islam after her widowhood and married a Mohammedan the latter sister can succeed to her property. (*Ibid*).

Unchastity.—If a widow becomes unchaste after inheriting the property of her husband she does not by reason of such unchastity forfeit the interests which have become vested in her by right of inheritance. (32 I. C. 338.) Only a re-marriage can have this legal effect. Mere unchastity without proof of re-marriage does not entail forfeiture under section 2. Where a Hindu widow is alleged to have been married in Bramha form but all that was proved was that she was living with another man and gave a birth to a child as the result of intercourse with him, *held* that section 2 has no application. (1930 Oudh 425=128 I.C. 71.)

Effect on Gifts.—It is clear that re-marriage of a widow cannot effect absolute gifts made to her as such property is not the estate of her husband. Thus where the father-in-law makes a gift to his widowed daughter-in-law, the latter's re-marriage does not determine her rights in the property in the absence of words limiting the period of enjoyment to her widowhood. (1924 Mad. 600=84 I. C. 148.)

No revival of widow's forfeited rights.—It would frustrate the object of the Legislature to hold that the rights thus lost would revive if in the fortuitous sequence of events the succession to the husband again opened out by reason of the next heir after the widow happening to be a female and that female dying in the life-time of the widow.

Succession to son.—"Section 2, which is a very important one, may call for some explanation. In the first place, its language is not free from ambiguity, and a literal construction involves an anomaly. Thus, suppose that a Hindu dies, leaving a son and a widow. The son takes his estate, and the widow in entitled only to maintenance. Upon the death of the son, in the absence of any nearer heir, his mother would succeed to the property which he inherited from his father. If now the mother were to remarry, this section would clearly divest her of the property, and her son's next heir would take it. *But suppose that the mother had re-married previous to her son's death*: Would she be entitled to succeed to the property in the case? This question arose before the High Court of Bengal in the case of *Akorah Sooth* v. *Boreani*. (11 W. R. 82.) Mr. Justice Kemp answered it in the affirmative, holding (upon a literal construction of the section) that, at the time of her re-marriage, the widow had no rights in her deceased husband's property by inheritance to him or his lineal successor, which could cease and determine, and that, under the saving clause in section 5, she does not by re-marriage forfeit any right, which she may sebsequently acquire over it. But his colleague Mr. Justice E. Jackson differed from him and in delivering judgment said: "But it is said that the widow had no such rights at the time of her re-marriage, and such rights did not, therefore, cease and determine; that the law, in fact, alludes only to such property as the widow had inherited before her re marriage. I think that the words of the Act bear a more extended signification and that 'upon the re-marriage' should not be read as at the date of such re-marriage but with reference to such re-marriage. All rights which the widow has in her deceased husband's property, by inheritance to him or to his lineal successor, ceases by reason of her re-marriage, and in consequence of her re-marriage, as if she had then died; and, thereupon, that is, when her right has ceased the next heir shall inherit. The policy of the law appears to me to be one which is generally acknowledged in all society, and which is, perhaps, more especially required to be put in force in Hindw society, *viz.*, that the widow by re-marriage shall not take her

late husband's property away from his family, and into the hands of her new husband." On appeal under section 15 of the Letters Patent, the decision of Mr. Kemp was upheld; but Mr. Justice Louis Jackson observed,—"The words of section 2 are somewhat embarrassing, and the impression left on my mind is, that the Legislature had an intention which it has failed to carry out in words. I can hardly suppose that the Legislature intended a Hindu widow to be capable of inheriting the property of her son, she having previously re-married; when, if she had re-married while in the enjoyment of such property, she would heve been by such re-marriage entirely divested of that property. But it is not our province to set aside the clear meaning of the words of the Legislature merely for the purpose of getting rid of apparent inconsistencies." (*Ibid*, pp. 259-261.) (Gooroodas Banerjee's Marriage and Stridhana, Tagore Law Lectures for 1878, 2nd Ed., 1896, p. 259.) "In the second place, you will observe, that it is only with reference to the property of her deceased husband, that marriage deprives a widow of her rights; so that, if her son acquires any other property besides that inherited from his father, her right to such acquired property, as heir to her son would not be affected by her remarriage." (*Ibid*) p. 261. After and notwithstanding re-marriage, a Hindu widow might inherit future interest in the family of her former husband, *e. g.*, she may succeed as heir to the estate of her son by a first marriage *who has died after her second marriage.* (11 N. L. R. 116=31 I. C. 290.) A widow's connection with the family of her husband is through and by means of her marriage. When that tie is dissolved, the connection is also dissolved and the legal consequences dependent on it can no longer come into existence. A mother stands on an altogether different footing. She succeeds her son because he is part of her body. This connection through body or blood cannot be put an end to by the mother re-marrying. She remains a mother despite re-marriage, and succeeds as such under section 3 of Ch. II of the *Mitakshara.* (6 N L. R. 103.) Section 2 of the Act does not proclude a Hindu widow who has re-married during her son's life-time from inheriting his property after his death. (28 M. 425) The object of the Act was to remove all legal obstacles to the marriage of Hindu widows. Looking to the words of section 2, it is apparent that it was not the intention of the legislature to deprive a Hindu widow, upon her re-marriage, of any right or interest which she had not at the time of her re-marriage. (*Ibid.*) The position, therefore, may be summed up as follows:—Where after the re-marriage of a widow her son dies and the question is of her right of succeeding to him the Act must be held not to affect her rights of succession. (29 Bom. 91 F. B.; 28 Mad. 425; 7 Lah. 543; 1922 Cal. 140; 1924 Pat. 233=74 I. C. 815.) A re-married Hindu widow succeeds to the property of her son by her first husband whether or not the Act applies. (1922 Cal. 140=79 I. C. 1048.) A Hindu widow forfeits on re-marriage all rights and interests which may have vested in her by inheritance to her husband, or his lineal successors, She also loses the estate inherited by her before such re-marriage from her son by her first husband. But inspite of such re-marriage she is competent to succeed as heir to the estate of her son by the first marriage where such estate developes after her second marriage. (31 I. C. 290.) (For the contrary view, however, *see* 6 N. L. R. 171 where both the Bombay and Madras views were dissented from.)

Succession to daughter—Succession to gotraja sapindas—Succession to mother-in-law.— She is also entitled to succeed to her daughter by hers first husband even after her re-marriage. (1924 Bom. 360=80 I. C. 512). However, a re-married Hindu widow is not entitled to inherit as a *gotraja sapinda* to the relations of her first husband. (45 Bom. 1247=63 I. C. 947 =1921 Bom. 57.) A Hindu governed by the *Mitakshara* died leaving a widow and his mother. Soon after his death, his widow re-married, and in consequence of such re-marriage, his property passed to his mother, as his next heir. *Held* that on the death of the mother during the lifetime of the widow, the property passed to the nearest *gotraja sapinda* of her deceased son, and not to the widow as next reversion.

Son's widow entitled to maintenance—But not after her re-marriage.—A, a Hindu governed by the Mitakshara Law, died leaving a daughter B, and two predeceased sons' widows, C and D. After A's death the daughter B, and the two widows, C and D, to settle family differences executed an *ekrarnamah* and divided the property left by A into three equal shares, the property in C's share being a house, which she let out to a tenant. Subsequently the widow C re-married. The present suit was brought by the by the widow C for declaration of title to, and for possession to the house and for arrears of rent. Plaintiff alleged that by the family arrangement (*viz.*' the *ekrarnamah*), she got an absolute estate, whereas defendants pleaded that she had got only a life-interest by way of maintenance, which interest too was forfeited on her re-marriage. *Held* per *Sanderson, C. J.*—The widow by her re-marriage forfeited all her interest in the estate. Though the plaintiff belonged to a caste which by custom allowed the re-marriage of a widow, that in itself would not pravent her from forfeiting her right to maintenance out of the deceased husband's property. The deceased husband having had an interest in the ancestral property out of which she would be maintained during his life, the obligation to maintain her out of that property continued after his death, when the property passed by survivorship, and the property passed to the defendant No, 3 (the daughter) subject to the plaintiff's right to maintenance. It does not much matter whether section 2 of the Widow's Re-marriage Act applies or not because this section is practically a statement of the Hindu Law as it existed apart from the Act so far as it related to the forfeiture of a widow's interest on her re-marriage.

Re-married widow ceases to represent her husband's estate—Even where re-marriage permitted by custom.—One P executed a mortgage in favour of the plaintiff. On P's death leaving him surviving his mother (S) and widow (C), the plaintiff brought a suit on the mortgage against the widow (C) after she had re-married according to custom, and he got a decree in execution of which the plaintiff purchased the mortgaged property and got symbolical possession. The plainttff subsequently brought an ejectment suit against the mother (S). *Held* that as, at the time when the suit was instituted to enforce the mortgage, the widow had ceased to be the widow of the deceased mortgagor, she did not represent the estate of the mortgagor, and the decree and sale in executian were not binding upon the mother of the deceased mortgagor, who was his legal representative at the time. (5 I. C. 710.)

Grant of succession certificate to widow.—In granting succession certificate, the possibility of a widow marrying again is not to be taken into

account. After re-marriage, of course, she will not be granted such certificate.

Alienations by widow—Effect of re-marriage on.—If the alienation was for legal necessity at a time when the widow had not re-married, the purchaser has obviously acquired a good title, and the reversioners are not entitled to succeed. If, on the other hand, the transfer was without legal necessity, then, the purchaser would have a good title till the death of the widow, natural or *civil*. And as re-marriage effects her civil death so far as her first husband is concerned, the purchaser's title also ceases on her re-marriage, and the next reversioners are entitled to succeed to the property at once. An alienation made by a Hindu widow which is not for purposes binding on the reversioners, is good only during her widowhood, and only to the extent of her limited interest as widow. Such alienation ceases to be binding on the reversioners on her re-marriage, the widow's life interest also lapsing on that event. (8 I. C. 269.) An alienation made by a Hindu widow without any justifying necessity will not bind the reversioner, even during her lifetime, if she marries. (12 M. L. T. 158=15 I. C. 602.) An alienation by a Hindu widow of the property of her deceased husband for purposes not binding on the estate ceases to be effective on her remarriage, even if such re-marriage be permitted by the custom of her caste and the next reversioner is entitled, on her re-marriage, to possession of the property as against the alienee. There is no analogy as regards the rights of the alienee between surrender and remarriage. (4 L. W. 967=1931 M. W. N. 1257.) There is no analogy between a Hindu widow alienating without legal necessity a part of her husband's immoveable property and then adopting a son, and a widow thus alienating and then re-marrying. (8 C. L. J. 542.) In the former case, the alienation is valid till the death of the widow, and the adopted son cannot sue to recover possession of the property till her death. (*Ibid.*) But, in the latter case, as the very fact of the re marriage operates as her death in the eye of the law so far as her husband's estate is concerned, the purchaser's title ceases on the re-marriage at once; and the next reversioners are entitled to sue for the recovery of the property without waiting till the time of the widow's natural death. (*Ibid.*)

Reversioners entitled to immediate possession.—A Hindu widow's right to retain property inherited from her husband ceases on her re-marriage and the reversioners are entitled to immediate possession of the properties on her re-marriage. (15 I. C. 602.) Where a married widow who had forfeited her rights in her deceased husband's property, was permitted by some arrangement with the next reversioner to retain possession of such property, *held* that on the death of the next reversioner his heirs were entitled to sue for the possession of the property, and that they were not bound by the said arrangement. (1 Agra 140.)

Limitation.—Where a widow to whom, Act XV of 1856 applies lawfully re-marries, the re-marriage at once extinguishes her widow's estate in the property of her first husband, and the presumptive interest of the nearest reversioner vests under section 2 of that Act. By her re-marriage, the woman, *as the widow of her first husband*, incurs civil death, and her subsequent possession of the property would be that of another person in the eye of the law, namely, the wife of the second husband. Time begins to run against the reversioner for recovery of possession. Under Arts. 141 and 143, Limitation Act, from the date other re-marriage. (11 N. L. R. 88=29 I. C. 612.)

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.

Scope.—Section 3 provides for the guardianship of the children of the deceased husband on the re-marriage of his widow. When a Hindu widow remarries, if no provision has been made for the guardianship of her deceased husband's child, who has property of his own sufficient for his support and education during his minority, such child should ordinarily be regarded by the Court as a child "who has neither father nor mother" within the meaning of section 3 of Act XV of 1856. In such a case, a proper male relative of the deceased father would presumably be the child's guardian in preference to his remarried mother; and the Court's power to appoint him, which is no doubt discretionary, should ordinarily be exercised, failing good cause shown to the contrary. (4 All. 195). But the Court may, on giving notice to the relatives mentioned in section 3, appoint the mother herself as guardian if it is best for the minor to do so. (10 M. L. J. 309). There is nothing in Hindu Law itself to make it obligatory upon the Court to remove a Hindu widow from the guardianship of her minor sons by her first husband merely because she has remarried. Section 3 of Act XV of 1856 deprives a Hindu widow of her preferential right to act as a guardian of her children by her first marriage, but it

does not compel the Court to remove her from such guardianship. The Court under that section has a discretion to remove a Hindu widow from the office of guardian of children of her first marriage when she has remarried. But the exercise of such discretion must be regulated from the point of view of the welfare of the infants. The disability imposed on the Hindu widow by section 3 of Act XV of 1856 does not apply to cases where re-marriage is recognised by the caste to which the widow belongs. Any circumstances which would disqualify a person from being appointed a guardian would also justify the removal of such person from guardianship. (38 Cal. 862).

The Proviso.—The proviso preserves the right of the remarried mother to the guardianship of her children when they have no property of their own even from the interference of the Court except in cases where a grandfather or grandmother or male relative of the dead father has given any security for the support and education of the children. (10 B. L. R. 1134). Where a Hindu widow who has re-married or any other person has been expressly appointed by the will of the deceased husband as the guardian of his child, and where such child has sufficient property of its own for its support and education during minority, then such child should ordinarily be regarded as a child "who has neither father or mother" within the meaning of section 3 of the Act. (4 All. 195.) And in such a case a proper male relative of the deceased father would presumably by the child's guardian in preference to his re-married mother; and the Court's power to appoint him, which is no doubt discretionary, should ordinarily be exercised failing good cause shown to the contrary. (*Ibid.*)

"Unless the proposed guardian shall have given Security,"—Where the condition mentioned in the proviso exists security by the proposed guardian for the support and proper education of the child while a minor is imperative, and sentimental considerations should not be permitted to prevail contrary to the will of the infant's mother and against what is for the welfare of the minor while of tender age. (15 Lah. 28=A. I. R. 1933 Lah. 817).

Re-marriage under custom—Under Hindu Law the mother is, after the father, the natural and legal guardian of her children and does not lose her right by re-marriage in cases where such re-marriage is recognised as valid by custom. Even under the Hindu Widow's' Remarriage Act the mother is not considered to be absolutely disqualified and may, in appropriate cases, be appointed as guardian, though not in her own natural rights, but where it is for the welfare of the minor to do so. (15 Lah. 28=A. I. R. 1933 Lah. 817.) A Hindow widow does not by the mere fact of her re-marriage lose her right of guardianship, in any case where re-marriage is recognized by the custom of the caste to which she belongs. (Mulla's Hindu Law, section 523.) Where there is no such custom recognizing re-marriage her case for guardianship of her minor children would be governed by sections 3 and 5 of the Hindu Widow's Remarriage Act, 1856.

Testamentary Guardianship.—In the absence of any clause in a will appointing a widow as guardian of property, that the guardianship shall cease on her remarrige, she does not become legally disqualified by re-marriage. Section 5 of Act expressly provides that a Hindu lady shall not by reason of her re-marriage, forfeit any right to which she would otherwise be

entitled. Testamentary guardianship comes within the scope of her rights. (18 I. C. 133.)

Adoption.—A Hindu widow cannot, after re-marriage, adopt a son to her first husband. (24 Bom. 89, 94; 23 Bom. L. R. 482=62 I. C. 318.)

Giving in adoption.—Under Hindu Law, in the absence of any express or implied prohibition from her deceased husband a widow may give her son in adoption. It has been held by the High Court of Bombay that a widow has no power *after her re-marriage* to give in adoption her son by her first husband, unless she has been expressly authorised by him to do so. (24 Bom. 89.) In a later case however the same High Court expressed the opinion that re-marriage did not deprive a widow of her right to give such son in adoption. (33 Bom. 107.) It was held in 24 Bom. 89 that a Hindu widow contracting a re marriage has no power to give in adoption her son by her first husband. The reason given was that the right to give a boy in adoption is right of disposition, a portion of *patria potestas*, which comes to the widow by reason of her connection with her deceased husband's estate, and being a part of the rights and interests she acquires as a widow, it is included within the provisions of sections 2 and 3 of the Act, and is not a reservation which the Act concedes to the widow. In 33 Bom. 107, the adoption of the plaintiff was challenged on the ground that he was owing to his mother's re-marriage, an orphan in the eye of the law at the time of the adoption ceremony without any parent capable of giving in adoption. The question of the right of such a re-married mother to give her son by the first husband had thus to be considered and the same High Court held as follows :—

Apart from special legislation it is the maternal relationship of the mother that justifies the gift of adoption by her. According to the texts, the right of the female parent to give her son in adoption results from the maternal relation and is not derived by delegation from her husband. The contention based on the effect of the Hindu Widow Remarriage Act as depriving a remarried widow of all rights resulting from her first marriage was untenable, since, assuming that the mother has by Hindu Law a right to give her son in adoption, the said Act affords no indication of an intention to deprive her of it. Section 5 of the Act says that a widow except as in the three preceding sections provided, shall not by reason of her re-marriage forfeit any property or any right to which she would otherwise be entitled. The right of guardianship which, under the provision of section 3 (one of the sections excepted in section 5) may under certain conditions be transferred from the mother to one of the other relations of the child, does not carry with it the right to give in adoption, for that is a right which can only be exercised by a parent. (33 Bom. 107.)

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.

Scope.—Section 4 says that this Act shall not affect the law as to inheritence by childless widows. "By the Law of the Bengal school, the daughter's right of succession to her father's property being founded on her offering funeral oblations by means of her son, a daughter who is a sonless widow is not entitled to inherit to her father. But the re marriage of a widow being now legal, no daughter, though a childless widow at her father's death, can be said to have become a childless widow for ever. She may marry and have male issue; so that, unless she is passed the age of child-bearing, she would come under the description of a daughter likely to have male issue; and accordingly, it might be argued that she would be entitled to inherit. It is in anticipation of such an argument that section 4 of the Act provides that, if a woman is a childless widow, and incompetent to inherit by reason of her being so at the time when the succession opens, the provisions of this Act shall not be construed to give her an heritable right. But a widowed daughter, by re-marrying before her father's death, would, under the provisions of section 5 of the Act, be entitled to inherit her father's estate along with other married daughters.

Saving of rights of widow marrying, except as provided in sections 2, 3 and 4.

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 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.

Succession to son.—*See* under section 2.

Adoption and going in adoption.—*See* under section 4.

Caste usages not affected.—The section was clearly not intended to repeal the usage of Hindu temples or of religious or *quasi* religious institutions controlling and regulating their management and prescribing rules as to the place where offerings are to be made and persons from whom they are to be accepted. (13 Mad. 293). Thus where a Brahmin who had married a widow was obstructed by the defendants from entering the inner shrine of a temple on account of his re-marriage, and where he sued the defendants for a declaration that he was entitled to enter the inner shrine as a Brahmin, and for an injunction and damages, *held* that the question to be determined was not a question of the plaintiff's *legal status* since a Brahmin widow is at liberty to re-marry under Act XV of 1856, but it was a question of *caste status* in respect of a caste institution; and that there was nothing in the Act which could apply to the determination of this question. (13 Mad. 293.)

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 marrige shall be declared invalid on the ground that such words, ceremonies, or engagements are inapplicable to the case of a widow.

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

The usual marriage ceremonies are necessary for re-marriage. —To prove the re-marriage of a Hindu widow the same religious rites and ceremonies that are necessary to constitute her first marriage valid should be shown to have been observed in her re-marriage. Where, therefore, a Hindu widow had been validly married in the Brahma form but the observance of the aforesaid rites and ceremonies was not established as regards the re-marriage. *Held*, that the validity of the re-marriage was not established. (193 Oudh 426.) In 49 P. R. 1903 which was a case between Khatris of Lahore District, it was held that section 6 is an enabling and not a disabling section, and it could not be held that no marriage by a Khatri widow would be valid unless carried out with all the ceremonies usual in the case of a Khatri girl on her first marriage. To hold this would be to repeal Act XV of 1856 as regards high caste Hindus, for a Hindu widow could never get the ceremony of marriage performed on her behalf in such a manner. A *Karewa* marriage between a Khatri and a Khatrani widow if recognized by custom is valid under section 1 of the present Act, and the issue of such marriage is legitimate and capable of inheriting property. (61 P. R. 1905.) The plaintiffs, as the collaterals of a deceased *Khatri*, claimed the latter's estate against the defendants, whom they alleged to be the illegitimate sons of the deceased on the ground that the mother of the defendants was a widow, at the time of her alleged marriage with the deceased, and that no legal marriage had been contractad between her and the deceased. It was found that the defendant's mother was a *Khatrani* widow and that a marriage by the *chadar andazi* form (a form of marriage obtaining in the tract of the country in which the parties resided) was gone through by the parties. *Held*, the marriage was, apart from the custom, legal and valid under Act XV of 1856, and the defendants, as the offspring of such marriage, were legally entitled to inherit to the deceased. (4 P. R. 1905.) Of course a woman who accepts the position of a mere *dharel* or concubine acquires thereby no legal status as a wife. (61 P. R. 1905.)

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.

Consent to re-marriage of minor widow.

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 :

Proviso.

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 marriage of a minor widow is not valid, unless there has been consent of the persons enumerated in section 7 the Act. But if the first marriage has been consummated, then the consent of the minor widow herself is sufficient. (12 I. C. 623.) Where parties had gone through such ceremonies as they could reasonably arrange for, and clearly and unequivocally expressed their intention to enter into the marriage relation with each other and to live together as husband and wife and did in fact thereafter live as husband and wife; but it was not affirmatively proved that the girl was of full age to consent and that the proper consent of responsible persons was fully given, *held* there was no valid marriage and the suit for custody could not be maintained. (49 P. R. 1903.)

Consent of mother-in-law—Not sufficient.—Hindu Law like other systems of law does not invest a mother-in-law with the power to give her widowed daughter-in-law in marriage. Even section 7, Act XV of 1856, does not mention the name of mother-in-law among persons who are authorized to give their consent to the marriage of a widow; she does not possess this right even though the widow is under her guardianship. (1929 Lah. 713.)

Anand Marriage Act, 1909.

ACT No. VII OF 1909.

[*Passed by the Governor-General of India in Council.*]
(Received the assent of the Governor-General on the 22nd October 1909).

An Act to remove doubts as to the validity of the marriage ceremony common among the Sikhs called Anand.

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

Reasons for the passing of the Act.—The Anand Marriage Act, 1909, was passed in order to remove all doubts as to the validity of the marriage ceremony common among the Sikhs called "Anand." This form of marriage had been long practised among the Sikhs, but it was apprehended that there were good reasons to believe that, in the absence of a validating enactment, doubts might be thrown upon it, and the Sikhs might have had to face great difficulties in the future, and incur heavy expenses on suits instituted in the Civil Courts. It was also apprehended that, in the absence of such a law, some judicial officers might be uncertain as to the validity of this orthodox Sikh custom. It was, therefore, thought desirable that all doubts should be set at rest for the future, by passing this enactment, which merely validates an existing rite and involves no new principles. (*See* Statement of Objects and Reasons.)

Short title and extent.

1. (1) This Act may be called Anand Marriage Act, 1909; and

(2) It extends to the whole of British India.

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.

Exemption of certain marriages from Act.

3. Nothing in this Act shall apply to—

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

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

Saving of marriages solemnized according to other ceremonies.

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

Scope.—The Anand Marriage Act is an enabling and not a disabling Act, and it does not follow that because that Act does not apply the marriage is not a valid one. (*Mst. Ram Rakhi* v. *Daulat Ram*, A. I. R. 1926 Lah. 31 =90 I. C. 1056.)

Non-validation of marriages within prohibited degrees.

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.

The Indian Christian Marriage Act.

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The Indian Christian Marriage Act, 1872

ACT NO. XV OF 1872. [18th July, 1872.

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

Preamble.

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

Genesis of the Act.—In the earliest times, the law that was applied to the English settlers in India was the Marriage Law as it obtained in England at the time of their settlement. But the circumstances of settlement in a foreign country necessitated certain modifications in the English laws of Marriage. In order to suit the law to the change of place and time, statutes of the Imperial Parliament and also Acts of the Indian Legislature have been passed from time to time. Changes also were necessitated in the English Law, when it was sought to be applied to the Native Christian inhabitants of the country. The English Law as so changed was from time to time declared in the form of Indian enactments. The Law prior to 1850 is laid down by Sir Erskine Perry in *Maclean* v. *Gristall* (Perry's O. C. 75). Priests were never necessary in the days of the East India Company. They could not be had, and Collectors and Judges acted as their substitutes. (*See* the Argument of Wedderburn in 14 M. 342 (346)). This Act is based on 14 and 15 Vict. Chapter 40 and 58 Geo. III, Chapter 84 (both Statutes related to marriages in India and are now no longer in force) and Acts V of 1852 and V of 1865, both of which were repealed by this Act.

"There was a distressing degree of uncertainty as to the validity of many marriages solemnized since 1857, and that a great deal of fraud with regard to the performance of a sham marriage ceremony by persons having no special qualifications but pretending to be qualified has passed unpunished. In 1854 it was brought to the notice of the Government, that a person who had once been a school master but had never been ordained to the ministry in any way, professed to have authority to marry, and did perform the ceremony of marriage between several couples of Native Christians in the Backergunge District. Similar practices had been found to have prevailed in other districts, but as the person officiating did not profess to be a Marriage Registrar but only to have authority to marry, and as according to the view of the law the marriages thus solemnized were legal, and the persons referred to therefore as witnesses did assist in rendering the marriages effectual, it was found impossible to punish him for his imposition. It was felt by the Government of India to be time to put an end to the uncertainty which then surrounded the question and which, on so important a subject as the validity of marriages, ought not to be allowed to continue for a day longer than could be avoided. One ground upon which it was supposed that the Legislature in India left the question unsettled for some year prior to 1872, was that a law effectually dealing with the subject of Christian marriage must to some extent effect, or interfere with the provisions of the English Statute of 1851, which it was then beyond the power of the Legislative Council as then constituted, to touch.

The difficulty was removed as the Indian Councils Acts contained no restriction upon the interference with the Act of Parliament passed in the year above mentioned, and the proposed change was quite within the competency of the Council as was constituted, after the Indian Councils Act. The only effectual mode of dealing with the question appeared to be to pass a law declaring that after the passing of the proposed Christian Marriage Act no marriage between persons, both or one of whom shall profess the Christian religion, shall be valid in law unless it be celebrated in one of the modes expressly declared and recognized by law (*see* sections 4 and 5 of the Act). There was then no hardship in thus declaring the law in 1872. For the Marriage Acts of 1851-52 had been previously for over 10 years in operation. Their provisions were generally well-known throughout India and the facilities for contracting marriage under those Acts had been rendered great by the appointment of Registrars at every place of any importance, both in the British Dominions and in those foreign States in alliance with Great Britain. In regard to past marriages it was proposed to declare that all marriages previously contracted in the presence of persons not in Holy Orders, if not otherwise invalid, should be deemed good and valid. This was the course which had been adopted on occasions on which Parliament has prescribed a stricter rule for the future than that which had previously existed, or had been supposed to exist in regard to marriages." (*Mr. Ritchie speaking during proceedings in Council.*)

The Act is only concerned with the 'forms in which the marriage is to be solemnized and does not deal with objections to the validity of the marriage. (54 Bom. 288=1930 Bom. 105.) The Bill provided for the collation into one enactment of the provisions of the Sts. 14 and 15 Vic. c. 40 and the Indian Acts V of 1852 and V of 1865, with such alterations of wording and arrangement as were incidental to the process of consolidation. It further comprised three substantial amendments of the then existing law. Many of the difficulties which the Christian Marriage Act XV of 1872 was intended to avoid were produced by the manner in which the several Acts that were sought to be consolidated by that measure (*viz.*, Act V of 1852; Act V of 1865; Sts. 14 and 15 Vic. C. XL; 58 Geo. Cap. 84) were pieced together and by the uncertainty which arose from the cross references to one another contained in them. Hence the present consolidating Act. *See* the speech of Mr. Stephen in the Legislative Council on the 19th October 1871.

Mr. Ritchie, to whom the task of drafting the Christian Marriage Bill and getting it passed in the Legislative Council was entrusted, while explaining the object of the Bill said:—"The object of the Bill is to put an end to the state of uncertainty which now exists in regard to marriages in India of persons, one or both of whom are of the Christian religion, but which are solemnized in any of the modes expressly recognized by the law as valid. These modes are three in number, two of them being generally applicable to all persons of whatever denomination of the Christian religion, and one being applicable only to a particular class. The first consists in the performance of the marriage ceremony by a clergyman in Holy orders, according to the sense in which the English Law understands that term, that is a celrgyman who has been episcopally ordained. No particular rite or religious ceremony is legally requisite to this form of marriage, but the presence of a clergyman in Orders at the time of the mutual promise to become man and wife is essential. The clergyman need not be of the same

religious denomination as either of the parties. But the clergyman of denomination which does not recognise episcopacy, and who has not been ordained by a Bishop confers no special privilege by his presence, and stands on the same footing in this respect as a layman. This was the only form of marraige recognised by the English Common Law as valid, as was decided in 1844, in the House of Lords in the well-known case of the *Queen* v. *Mills*. In 1848 it was provided by an Act of Parliament (58 Geo. III, c. 84) that marriages between persons one or both of whom were of the Church of Scotland solemnized by ordained ministers of that church as by law established or by a chaplain of the East India Company in India should be of the same force and effect as if they were solemnized by ordained clergyman of Church of Englad according to the rites and ceremonies of the Church of England. The privilege was subsequently extended by the Legislative Council to ordained Ministers of the Church of Scotland other then Government Chaplains (*see* Act XXIV of 1860). Uuntil the reign of Queen Victoria no other positive law regarding the solemnization of marriages existed in India. But there was a general impression in consequence of Lord Stowell's famous decision in *Dirlymple* v. *Darlymple*, that the presence of a Clergyman in Orders required by the English Marriage Act was not essential to the validity of a marriage in any part of the British Dominions beyond the operation of these Acts : and that a simple contract of marriage in words showing that it was to take effect at once would suffice. The House of Lords in *Mills case* decided upon the opinion of the English Judges, that the English Common Law of marriage as above stated obtained in Ireland, though the Marriage Act did not extend there, and that the presence of ordained Clergyman in Orders was thus essential. In consequence of the doubt thus thrown upon the validity of the marriages in India the absence of a Clergyman in Orders, the Statute 14 and 15 Vict. c. 40 commonly called the Indian Marriage Act was passed. This was followed by Act V of 1852 which gave effect to the provisions of the Statute. Under these Acts, marriages in the presence of a Marriage Registrar were legalized. No religious ceremony was necessary, but it was optional to the parties to go through any religious ceremony they please. The Act of Parliament legalized all past marriages solemnized in India by persons not in Holy Orders, not being otherwise invalid, by declaring them valid in law to all intents and purposes. But the doubt which existed as to the validity of such marriages at Common Law was not cleared up in regard to marriages contracted after the Statute. For it was provided that "nothing in the Act shall invalidate any marriage which might be solemnized in India by any person in Holy Orders, or under the Statute of the George III already cited, or any other marriage which under the law in force for the time being in India might have been there solemnized if the Act had not been passed, provided that the Governor-General in Council might provide by laws and Regulations for the registration of such marriages." The doubt thus left open as to marriages contracted since 1851 still existed in 1872. On the one hand Sir Erskine Perry when Chief Justice of Bombay, and Doctor Lushington, as Dean of the Arches, had held that the principle laid down in *Queen* v. *Mills* could not be applied to a country such as India or Australia in which on the first introduction of English laws and institutions, there were clergymen in Holy Orders before whom marriage could be celebrated (*see* the case of *Malcolm* v. *Cristall*, Perry's Oriental Cases 75; Indian Decisions, Old Series, Vol. IV, page 69) and the House of Lords by

passing a Divorce Bill founded on Sir Erskine Perry's decision, has, to some extent, though by no means conclusively, sanctioned that view. On the other hand the Court of Exchequer had held that the decision in question extended to invalidate a marriage performed between British subjects in Beyrout solemnized before a British clergyman not in Orders. And the Statute of 1848, and the Act of 1860, in favour of marriages performed by Ministers of the Scotch Church, seemed to show that the legislatures both in England and in India considered that the English Common Law applied to Indian marriages. It was almost impossible to determine which of these views was correct though it might be the former was right in principle."

Scope of the Act.—Having regard to the history of the legislation on the subject the Indian Christian Marriage Act must be held to apply to Christian Marriages only. The Act, however, does not prohibit even a professing Christian from marrying otherwise than under the Act if he wishes to do so. (*per Walsh J.* in 40 All. 393.)

"The law relating to the solemnization, etc."—There was little doubt that the intention of the Bill, as introduced, was simply to deal with the forms and ceremonies of marriage; it was to be what it called itself—A Bill to regulate the law for the *solemnization* of marriage, not a Bill to regulate the Marriage Law This has nothing to do with the essence of the contract. (*See Gazette of India*, 1872, Suppt., page 805.) Where priestly interference predominates, as in a Hindu or Jewish marriage the solemnization is accompanied by minute ceremonials. Where the contractual element is greater as in the Mahomedan Law, there is the necessity for the presence of witness, for words of proposal and acceptance, and for rules as to the capacity of the parties to make the contract (These incidents indicate the intensely contractual nature of the Mahomedan Marriage). In cases where the state interference predominates we find existing state rule as to the models in which the marriage is to be solemnized are to be entered, as to persons among whom marriages are prohibited on the ground of consanguinity, affinity or otherwise, and as to the persons competent to solemnize and register marriages. "In Scotland, the law far too accommodating, exacts no formality whatever. A mutual declaration of marriage, in the presence of a witness, is enough to render the contract valid; and therefore it is that English minors, impatient of restraint, hasten to relieve themselves by an off-hand marriage at a village on Scotch frontier, called Gretna Green." (Bentham's Theory of Legislation, 235.)

"Persons professing the Christian religion."—The words "person who professes the Christian religion" as used in Act XV of 1872 mean in our opinion not only adults who profess that religion, but also their children, who are in law presumed to follow their father's religion. (18 M. 230 (238))

Polygamous marriage after renunciation of Christianity.—Polygamy cannot possibly be recognised as a legal institution among any class of Christians in this country. A man cannot be suffered to put off his status as he puts off his clothes and to get rid of the consequences of his action while holding one status by merely professing his preference for another. A marriage under the Christian Marriage Law undissolved by death or divorce is a bar to a subsequent marriage in any form. (*Maung Kyaik* v. *Ma Gye*, U. B. R.

1897—1901, Vol. II, 488). In this case it was held that the appellant could not claim the liberty of having more wives than one as a Buddhist under the Buddhist Marriage Law so long as he remained bound by a Christian marriage and his wife was alive. A simple declaration of faith is not sufficient to settle the question of a man's status; the only plain and certain index that can guide a judicial tribunal in matters like this is canduct. (*Ibid.*)

Analysis of the Christian Marriage Act, 1872.—The Indian Christian Marriage Act (XV of 1872) was passed on the 18th July 1872, for the purpose of consolidating and amending the law relating to the solemnization in India of the marriages of persons professing the Christian religion. It consists of 88 sections and is divided into eight parts. The first three sections deal with the preliminary portion, *viz.*, the short title and extent of the Act. Part I (Ss. 4—9) deals with the person by whom marriages may be solemnized. Part II (Ss. 10-11) deals with the time and place at which marriage under the Act may be solemnized. Part III (Ss. 12-26) deals with the marriages solemnized by Ministers of religion licensed under the Act. Part IV (Ss. (27—37) deals with the registration of marriages solemnized by Ministers of religion. Part V. (Ss. 38—59) deals with marriages solemnized by, or in the presence of a Marriage Registrar. Part VI (Ss. 60—65) deals with the marriage of Native Christians. Part VII (Ss. 66—76) lays down certain penalties for offences committed under the Act. Part VIII (Ss. 77—88) deals with certain miscellaneous matters not dealt with in the previous portions of the Act.

PRELIMINARY.

Short title. 1. This Act may be called The Indian Christian Marriage Act, 1872.

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

[*Commencement.*] *Repealed by the Repealing Act*, 1874 (*XVI of* 1874.)

Extent.—At the time, only Act V of 1852 extended to the territories of Native Princes in alliance with Her Majesty, and there was great doubt as to the validity of a marriage solemnized between the Christian subjects of Her Majesty in Native States otherwise than in the presence of a Marriage-Registrar appointed under that Act, even if the marriage be solemnized by an ordained clergyman of any of the established churches, and in conformity with the ceremonies and customs of such churches. The Bill was framed to remove this doubt by extending the entire law relating to Christian marriages to Native States in alliance with Her Majesty. The Act has been declared in force in Upper Burma generally (except in Shan States) by the Burma Laws Act, XIII of 1898, section 4 (1), and Sch. I, in the Hill District of Arakan by the Arakan Hill District Laws Regulation, IX of 1874, section ; in British Baluchistan by the Baluchistan Laws Regulation, I of 1890, section 3 ; and in the Sonthal Parganas by the Southal Parganas Settlement Regulation, III of 1872, as amended by the Sonthal Parganas Justice and Laws Regulation, III

of 1899. It has also been extended by notification under section 3 of the Scheduled Districts Act to the following Scheduled Districts, namely :—the Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbum and the Kolhan in the District of Singbhum; and the North-Western Provinces of Tarai. The District of Lohardaga, now called the Ranchi District, included at this time the Palaman District, which was separated in 1894.

Enactments repealed.

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

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

For clause *xxiv* of section 19 of the Court Fees Act 1870, the following shall be substituted :—

"*xxiv.* Petitions under the Indian Christian Marriage Act, 1872, sections 45 and 48."

Interpretation-clause.

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

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

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

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

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

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

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

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

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

"Registrar-General of Births, Deaths and Marriages" means a Registrar-General of Births, Deaths and

Marriages appointed under the Births, Deaths and Marriages Registration Act, 1886.

"Minor".—This definition is only for the purposes of this Act. *Cf.* same in the Majority Act, the Succession Act, the Divorce Act, etc.

"Christians" and "Native Christians"—In *Maha Ram* v. *Emperor*, (40 All. 393) Knox J. observed as follows:—"Section 3 of the Christian Marriage Act interprets the expression 'Native Christian'. The meaning given to this latter expression is different from the meaning given by the Act to the expression 'Christian'. It includes the Christian descendants of natives of India converted to Christianity as well as such converts. If the legislature contemplated applying section 68 to Christians, *i.e.*, persons professing the Christian religion and had wished to comprehend within it a Christian descendant of a native of India, it would have been easy to provide for this in section 68. That no such provision was made confines section 68 strictly to persons who at the time of marriage were persons professing the Christian religion."

"Registrar-General" etc.—The ninth definition was added by the Births, Deaths and Marriages Registration Act, 1886.

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.

Part I provides for the persons by whom marriage may be solemnized. Section 4 is very important. It declares that 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 section 5; (*i.e.*) it may be solemnized in India by (*a*) any person who has received episcopal ordination according to the rules, rites, ceremonies and customs of the Church of which he is a minister, (*b*) by any Clergyman of the Church of Scotland according to the rules, rites, ceremonies and customs of the Church of Scotland, (*c*) by any Minister of Religion licensed under this Act, (*d*) by or in the presence of a Marriage Registrar appointed under this Act or (*e*) by any person licensed under this Act to grant certificates of marriage between Native Christians. Section 4 further declares that any such marriage solemnized otherwise than in accordance with the above said provisions shall be void. Sections 6 to 9 deal with the grant and revocation of licences to solemnize marriages, the appointment of Marriage Registrars and Marriage Registrars in Native States, and also with the licensing of persons to grant certificates of marriage between Native Christians.

"Marriage."—The word "marriage," means the voluntary union for life of one man and one woman to the exclusion of all others, as understood in Christian countries. (Brown and Powles on Divorce, 7th Ed., 1905, p. 89. *Hyde* v. *Hyde*, L.R. 1 P. and D. 130.)

"One or both of whom is or are Christian."—The section permits the marriage of a Christian with a person who is not a Christian. [*See* U. B. R. (1897—1901), vol. II, 488 (491.)]

"Shall be solemnized."—Section 4 of the Divorce Act does not preclude the Court from considering the provisions of sections 4 and 5 of the Christian Marriage Act and declaring a particular marriage void as not having been solemnized in accordance therewith. (47 I. C. 544.)

High Court's Jurisdiction to declare a marriage illegal.—The various grounds on which the Court can give a decree of nullity under the Divorce Act refer to cases where there has been a marriage validly performed. Questions arise under sections 4 and 5, Christian Marriage Act, when the marriage has not been validly performed. There is a clear distinction between a decree of nullity of a valid marriage and a declaration that the marriage itself is illegal and void. There can therefore be no doubt that there is jurisdiction in the High Court to hear and decide questions under the Christian Marriage Act. (*Alfred Robert Jones* v. *Mt. Titli.* 55 All. 185.)

Age of cousent.—There is nothing either in the Divorce Act or in the Christian Marriage Act as regards the age of consent for a Christian marriage. Under section 7, Divorce Act, the Indian High Courts have to act according to the principles and rules of English Courts. Therefore in India the age of consent for a Christian marriage will be determined according to the law in England at the time of the marriage. (*Young J. Goodal* v. *Goodal*, **55** All. 243.)

Marriage by Hindu male with Christian woman in England—Validity of.—Where a Hindu male marries a Christian woman in England in Christian form, it is a valid Christian marriage inspite of the Indian domicile of the husband. (*Sainapatti* v. *Sainapatti*, A. I. R. 1932 Lah. 116=136 I. C. 262.)

Divergence of personal law of parties.—Rule applicable.—Where there is a divergence between the personal laws applicable to the parties, the proper principles to act on are that the *lex loci contractus quoad solemintates* determine the validity of a marriage and *lex domicili* the question of the capacity of the paries to marry. (34 I. C: 159.)

Domicile and place of celebration.—A marriage may be good by the law of the parties' domicile though bad by the law of the place of celebration. (*Gasper* v. *Gonsalves*, 13 Bom. L. R. 109.) The following rule laid down by Lord *Campbell, Chancellor, in Brook* v. *Brook are worthy of being noted*:—"While the forms of the contract, the rites and ceremonies, proper or indispensable, for its due celebration, are to be governed by the law of the place of contract, or of celebration, the essentials of the contract depend upon the *lex domicilii*, the law of the country in which the parties are domiciled at the time of marriage, and in which the matrimonial residence is contemplated." Hence if the incapacity of the parties is such that no marriage could be solemnized between them, or not without the consent, or agency of other parties, as that of parents or guardians, and the parties, without changing, or intending to change their domicile, go into some other country, where no such restriction or limitation exists, and there enter into the formal relation, with a view to return and dwell in the country where such marriage is prohibited by positive law, it is but fair to say, that a proper self-respect would seem to require, that the attempted evasion should not be allowed to prevail. But

where the evasion only extends to certain formalities, there is no objection, in favour of the greater convenience of the rule, to recognize the validity of the marriage thus defectively celebrated according to the law of the place of domicile. It seems to us that this qualification of the rule, as to the general binding force of the law of the place of celebration of marriage will enable us to steer clear of most of the embarrassments attending the question, and at the same time to reconcile most, if not at all, of the conflict in the opinions of the leading jurists upon the subject. (*See* Story's Conflict of Laws, 6th Ed., pp. 199, 200.)

Mixed marriage celebrated by the Catholic Church—Want of banns—Effect.—A mixed marriage celebrated by the Catholic Church otherwise valid, is not invalidated for want of banns. (*Alfred Robert Jones*, 56 All. 428 = A. I. R. 1934 All. 273.)

Marriage of Christians becoming converts to Mahommedanism.—It is doubtful whether a marriage according to Mahommedan rites between a married Christian man and a Christian woman both of whom became Mahommedan in order to effect the marriage is valid. (*Helen Skinner* v. *Sophia Evelina Orde*, 10 B. L. R. 125 P. C.=14 M. I. A. 309.)

Change of religion after marriage.—Where a Christian marriage was followed by a Mahommedan marriage, and where the personal status of the deceased husband was at the time of his death, that of a Mahommedan and the plaintiff's personal status was that of his wife under the same law, she was entitled to a share in his estate, notwithstanding his will, which purported, but under Mahommedan Law was inoperative, to exclude her from all participation in his estate. *Quære.*—Whether in the case of spouses resident in India (where religious creed affects the rights incidental to marriage, *e.g.*, divorce), a change of religion, made honestly, after marriage, with the assent of both spouses, without any intent to commit a fraud upon the law, will have the effect of altering those rights. (*Robert Skinner* v. *Charlotte Skinner*, 25 Cal. 537 P. C.=28 I.A. 34.)

Persons by whom marriages may be solemnized.

5. Marriages may be solemnized in India—

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

(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 the Act to grant certificates of marriage between Native Christians.

Scope.—Rules in section 5 refer to those things which must be done before the ceremony of marriage can be performed. The section deals only with the necessary preliminaries to the ceremony, the ceremony itself and the person who performs it. It has nothing to do with Canon law. (*Young, J.*) (*Alfred Robert Jones* v. *Mt. Titli*, 55 All. 185). The word "solemnized" in section 5 of the Christian Marriage Act means "celebrated" and deals with the ceremony only, and the words "rules, rites, ceremonies and customs of the church" in section 5 mean only the rules, etc., as to ritual and do not include rules or customs as to the capacity of the parties. (*Consterdine* v. *Smaine*, 47 I. C. 544.) Section 5 of the Christain Marriage Act deals only with the ceremony and the person who may perform it, and not with the capacity of the persons on whom it is performed or with the capacity of the person who performs it, save that he should have received episcopal ordination. (*Ibid*). However, one incident of a valid marriage is the legality of the form and ceremony of marriage. These are regulated in England by 4 Geo. 4, c. 76, and 6 and 7 Will. 4, c. 85, and *in India by the present Acts.*

Canon Law—Applicability to Christians domiciled or resident in India.—The law governing marriages between Christians who are either domiciled or residents in this country is the law of the community to which the parties belong. (*Conally* v. *Conally*, 133 I. C. 175=1931 Pat. 213.)

Marriage opposed to rules of Church—Validity of.—The distinction advanced in a contention that though a marriage carried out in complete disregard of the rules of the Church to which the parties to the marriage belonged, may be gravely unlawful, it would nevertheless, according to the canon law of the Roman Church, be valid is a distinction unknown to civil law. (*Young, J.*) *Alfred Robert Jones* v. *Mt. Titli*, 55 All. 185.)

Parts II to VI of the Act.—While Part II applies to all persons authorised to solemnize marriages under section 5 of this Act, Part III applies only to Ministers of Religion licensed under this Act. Similarly Part IV applies to Marriage Registrars and Part VI to persons licensed to grant certificates of marriages to Native Christians. "Persons who have received episcopal ordination" or Clergymen of the Church of Scotland are the only officers for whom the Act does not lay down any procedure for as stated in section 5 such officers will solemnize marriages according to the rules, rites, ceremonies, and customs of the Church of which they are Ministers. Non-compliance with the provisions of these Parts may have the effect stated in section 4 of the Act

English Law.—"To render a marriage legal if contracted in England ti is requisite, unless the parties to it are either Jews or Quakers, in whose favour special statutory provisions have been enacted, that it should be solemnized by a duly ordained clergyman of the Established Church, or by some duly authorized person under the Marriage Act, 1898, after due publication of banns, or after the parties have obtained a *Special Licence*, an *Ordinary's Licence*, a *Superintendent-Registrar's Licensce*, or a *Superintendent-Registrar's Certificate* authorising its celebration." (Browne and Powles on Divorce, 7th Ed, 1905, p. 91) Marriage among Christians in England must be solemnized in a *Parish Church* or public *Chapel, or the Superintendent-Registrar's office*, or in some other *building registered* for the solemnization of marriages except when solemnized by special licence. (Brown and Powles on Divorce, 7th Ed., 1905, p.92.)

Generally speaking marriage can be affected in England in four ways:—

(*i*) By banns.

(*ii*) By common licence.
(*iii*) By special licence.
(*iv*) By a Registrar's certificate.
(*a*) With licence.
(*b*) Without licence.

(*See* Dixon on Divorce, 4th Ed., p. 33.) "Licences are granted by the Archbishops of Canterbury and York, according to their rights, and the several other bishops, for the marriage of persons within their respective dioceses, one of whom shall be president at the time within the diocese of the bishop in whose name such licence shall be granted." (Browne and Powles on Divorce, 7th Ed., 1905, p. 96.) "The distinction between a special licence and an ordinary one is, that by the former only the parties may be married at any time in any church or chapel or *other meet and convenient place*; it is granted by the Archbishop of Canterbury alone, and his proper officers" (*See* 4 Geo. 4, c. 76, section 20; 6 and 7 Will. 4, c. 85, section 1; 25 Hen. 8.) A marriage is valid, though celebrated without banns or licence first had and obtained unless both parties were aware of the irregularity at the time of the ceremony. (*Greaves* v. *Greaves*, L. R., 2 P. and D. 423.) (*a*) All such requisites as "banns" licence, etc., et. are formal. (*Rex.* v. *Wroxton*, 4 B. and Ad. 641.) (*b*) A marriage is void only when they are deficient, and known to be waving by both parties to the marriage. (*Rex* v. *Wroxton*, 4 B. and Ad. 641.) (*c*) "On the other hand, all such requisites as being free to contract, not being within the prohibited degrees of *consanguinity* or *affinity*, *consent*, *mental competence physical capacity* to perform the duties of matrimony are essential, and the marriage is void by English law, wherever solemnized, whenever they are wanting, if the parties to it are domiciled in England." (Browne and Powles on Divorce, 7th Ed., 1905, pp. 93, 94.) (*d*) And this is so, although the marriage may be perfectly legal in the country in which it was solemnized. (*Brook* v. *Brook*, 9 H. L. Cas. 193. (*Ibid.*) (*e*) Void and voidable marriages entered into by parties incapable of marriages, on grounds affecting society—as where blood relations, too nearly akin intermarry, or where one of the parties commits bigamy, and so wrongs the other parties, who is ignorant of the previous marriage—are void *ab initio*. (*See* Dixon on Divorce, pp. 33, 34.) Under English law, to constitute a valid marriage the parties must be capable and the form, place, and time must be according to the following statutes. (4 Geo. 4, c. 76; 6 and 7 Will. 4, c. 85; 49 and 50 Vict. c. 14, S. 1; 57 and 58 Vict. c. 58) All persons may marry according to the Laws of England unless they labour under the following *disabilities* :—(*i*) Prior marriage, (*ii*) Insanity, (*iii*) Fraud or coercion, (*iv*) Consanguinity or affirmity. (1 Blackstone, 434.) A legal marriage can only be contracted by single persons—under which term are included widowers, widows, and divorced persons—not being within the prohibited degrees of *consanguinity* or *affinity*, both of whom are *consenting* and of sound mind, and able to perform the duties of matrimony. (Browne and Powles on Divorce, 7th Ed., 1905, p. 92.) The mode of entering into the marriage contract in England has been dealt with by a variety of statutes, of which the following are the most important. (*i*) 4 Geo. 4, c. 76 and 6 and 7 Will. 4, c. 85, amended the law relating to marriages in England generally. (*ii*) 12 and 13 Vict. c. 68 and 31 and 32 Vict. c. 61 facilitate marriages of British subjects resident in foreign countries, and establish the validity of certain consular marriages which were in doubt. (*iii*) 23 Vict. c. 18 and 35 Vict. c. 10 relate to the marriages of Quakers.

(*iv*) The Registration Acts, 6 and 7 Will. 4, c. 86 and 19 and 20 Vict. c. 119, provide (*inter alia*) for civil marriage at the different registry offices. (*v*) 42 and 43 Vict. c. 29 removes doubts as to the validity of certain marriages of British subjects on board Her Majesty's ships, (*vi*) 47 and 48 Vict. c. 20 establishes the validity of certain marriages of members of the Greek Church in England. (*vii*) 49 Vict. c. 3 and 51 and 52 Vict. c. 23, remove doubts concerning the validity of certain other marriages. (*viii*) 49 Vict. c. 14 extends the hours within which marriage may be lawfully solemnized to 3 p.m. (*ix*) In 1889, "An Act to remove doubts as to the validity of certain marriages, solemnized in Basutoland and British Bechuanaland," or, shortly, "The Basuto and British Bechuanaland Marriage Act, 1889" (52 and 53 Vict. c. 38), and in 1890 and 1891 two statutes numbered respectively 53 and 54 Vict. c. 47 and 54 and 55 Vict. c. 74, were passed relating to foreign marriages. *N. B.*—Both these last statutes, however, are repealed by the Foreign Marriage Act, 1892 (55 and 56 Vict. c. 23), entitled "An Act to consolidate enactments relating to the marriage of British subjects outside the United Kingdom." (*x*) The Marriage Act 1898 (61 and 62 Vict. c. 58), permits marriages to be celebrated in Non-conformist chapels, subject to certain conditions, without the presence of a Registrar. The Marriage Act, 1899 (62 and 63 Vict. c. 27), removes doubts as to the validity of certain marriages in England and Ireland where one of the parties has not been resident in the same country as the other, and there have been certain irregularities in the publications of banns. (*Ibid.*) The Marriages Legalization Act, 1901 (1 Edw. 7 C. 23), and the Marriages Legalization Act, 1903 (3 Edw. 7, C. 26) legalize and render valid marriages already solemnized in certain chapels and places to which some doubts had previously existed. (*Ibid.*)

Grant and revocation of licences to solemnize marriages.

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

This section was substituted for the original section 6 by the Indian Christian Marriage (Amendment) Act, II of 1891, which also validated the licences granted under former Acts.

Marriage Registrars.

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

Senior Marriage Registrar.

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

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.

Magistrate when to be Marriage Registrar.

8. The Governor-General in Council may, by notification in the *Gazette of India*, appoint any Christian, either by name or as holding any office for the time being, to be a Marriage Registrar in respect of any district or place within the territories of any Native Prince or State in alliance with Her Majesty.

Marriage Registrars in Native States.

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

9. The Local Government or (so far as regards any Native State) the Governor-General in Council may grant a 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.

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

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

PART II.

TIME AND PLACE AT WHICH MARRIAGES MAY BE SOLEMNIZED.

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

Time for solemnizing marriage.

Provided that nothing in this section shall apply to—

Exceptions.

(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.

Part II.—Part II deals with the time and place at which marriages may be solemnized. Section 10 declares that *every marriage under this Act* shall be solemnized between the hours of six in the morning and seven in the evening; but an exception is made in the case of (1) a Clergyman of the Church of England acting under a special licence, (2) a Clergyman of the Church of Rome receiving a general or a special licence to solemnize marriages at other hours than those fixed above and (3) a Clergyman of the Church of Scotland acting according to the rules, rites, ceremonies and customs of his Church. Section 11 declares that 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, except in cases where no such church exists within five miles' distance from such place or where he has received a special licence to solemnize marriages at other places.

Hours for solemnizing marriages in England.—The hours during which marriages may now be solemnized in England are regulated by 49 Vict. c. 14, and are between 8 A.M and 3 P.M. (Browne and Powles on Divorce, 7th Ed., 1905, p. 111.) Marriages by special licence may be solemnized at any hour. (Hanwick's Marriage Laws of England, Chap. 1, pp. 3—12.)

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

Place for solemnizing marriage.

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

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

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

Fee for special licence.

Section 11.—This provision is in amplification of that contained in clause (1) of section 5. The place where the marriage may be solemnized

depends on the licence or certificate. With a special licence the ceremony may be performed at any time in any church, chapel, or *other meet and convenient place.* (Browne and Powles on Divorce, 7th Ed., 1905, p. 110.) A marriage solemnized in a vestry belonging to and forming part of the church is a good marriage. (*Wing* v. *Taylor*, 2 S. and T. 278.)

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.

Part III.—Part III deals with marriages solemnized by Ministers of Religion licensed under this Act and the formalities to be observed prior to their solemnization. It prescribes certain formalities regarding notice, declaration, witnesses, etc., to be observed before a marriage could be solemnized. Part III relates to marriages solemnized by Ministers of Religion licensed under this Act, and does not apply to marriages solemnized by persons who have received Episcopal ordination. (19 M. 273 (279) 280.) The Act authorises a person Episcopally ordained to solemnize a marriage according to the rules, rites and ceremonies and custom of the Church of which he is a Minister. (19 M. 273 (281).)

Section 12 provides that notice of the intended marriage must be given to the Minister of Religion by one of the persons intending marriage, and also states the particulars to be mentioned in the notice. Section 13 provides for the publication of such notice. Sections 14, 15 and 16 deal with the procedure to be adopted by the Minister of Religion on receipt of such notice. Section 17 provides that the Minister of Religion shall on application by, or on behalf of, the person giving notice, and upon one of the

persons intending marriage making a declaration personally before the Minister that he or she believes that there is no lawful impediment to the said marriage, and that, when either or both of the parties is or are a minor or minors, the necessary consent of the parents or guardian as provided for in section 19 had been obtained or that there is no person resident in India having authority to give such consent, as the case may be—the Minister of Religion shall, when the above declaration has been made, issue a certificate that such notice has been given and that such declaration has been made (sections 17 and 18). Section 19 provides that the father if living of a minor, or if he be dead, the guardian of the person of such minor, and if there be no such guardian, the mother, must give his or her consent to the marriage of the minor—except in cases where no person authorized to give such consent is resident in India. Every person whose consent to a marriage is required as stated above may prohibit by notice in writing to the Minister, the issue of the certificate mentioned in section 17, by such Minister (section 20).

Section 21 prescribes the procedure to be adopted by the Minister on receipt of the prohibitory notice from the parent or guardian of the minor. Section 22 prescribes the procedure to be adopted in the issue of certificate in case of the minority of either of the persons intending marriage. Section 23 provides for certain precautions to be taken by the Minister before issuing the certificate to Native Christians. These precautions are intended to make sure that the Native Christian parties to the intended marriage are cognizant of the nature and effect of the act they contemplate. Section 24 provides for the form of the certificate. Section 25 states that after the issue of the certificate by the Minister, marriage may be solemnized in the presence of two witnesses besides the Minister between the persons therein described according to such form or ceremony as the Minister thinks fit to adopt. Section 26 states that such certificate would be void if the marriage be not solemnized within two months after the date of the issue of the certificate; and after the said period of two months no person should proceed to solemnize the said marriage until a new notice has been given and a certificate thereof issued.

"**The time during which each has dwelt there.**"—The period of residence under the English Law is to be taken as proved, and no evidence to the contrary can be received in any suit touching the validity of the marriage. *See* Browne and Powles on Divorce, 7th Ed., 1905 page 97.

Publication of Banns.—Sections 12 to 16 deal with what is known in England as publishing banns of a marriage. Where parties have been married without any publication of banns at all, the marriage would be null and void. *See* Browne and Powles on Divorce, 7th Ed., 1905 page 101. All parts of a baptismal name ought to be set forth, as composing altogether the name and legal description of the party. *See* Dixon on Divorce, 4th Ed. 1908, page 43. Where the man was published by his Christian name only instead of by his Christian and surname the marriage is void. (*Midgley* v. *Wood*, 30 L. J. P. 57). A man cannot change his Christian name. *See* Dixon on Divorce, 4th Ed , page 43. But he can change his surname in various ways, as by royal license, or by use and reputation. (*Ibid*). A man may change his name by use and reputation, and if by use and reputation, he has acquired a

new name, he is not indictable for using a new name in signing a notice for the purpose of procuring his marriage." (Browne and Powles on Divorce, 7th Ed., 1905, page 102.) Where a petitioner, having obtained a decree dissolving her marriage with the respondent, subsequently re-married him after publication of banns, in which she was described by her married name, she having in the interval usually passed by her maiden name—*Held* the marriage was valid and binding. (*Fendall* v. *Goldsmid*. 2 P. D. 263). The circumstances must be very exceptional to render a marriage celebrated in the actual names of the parties, invalid. *See* Dixon on Divorce, 4th Ed, page 43. It could only be, where the woman has so far obtained another name by repute as to obliterate the original name. (*Fendall* v. *Goldsmid*, 2 P. D. 264.)

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 is 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 India having authority to give such consent, as the case may be.

Scope.—"What precautions are not necessary to prevent a rash engagement in a case in which repentance will be useless? Surely, this right of contracting a marriage ought not to be allowed at an age earlier than that at which the individual is entrusted with the management of his property. It is absurd that a man should be able to dispose of himself

for life, at an age when he cannot sell a piece of land of the value of ten crowns."

Minors.—Want of age, or minority, is not a disability. Marriage between minors is not void on that account, though it be without the consent of guardians. The statute requires consent, but does not now invalidate a marriage solemnized without it. (4 Geo. 4 c. 76, sections 16, 17, c. 4, section 10+; *R.* v. *Birmingham*, 8 B. & C. 35.) *N. B.*—Section 19, *infra*. 'In case of minors whose care and guardianship is vested in the Court, the leave of the Court must, under all circumstances be obtained by any one desiring to marry one of its wards and will only be given when the marriage is a suitable one for the ward. Seton, Decrees, 5th Ed., page 755. (*Brown* v. *Collins* (1883), 25 Ch. D. 61).

Consent of father, or guardian, or mother.

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

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

In England also by 4 Geo. 4, c. 76, section 16, the consent of parents and guardians is required to the marriage of a minor," unless there shall be no person authorized to give such consent." (*Holmes* v. *Simmons*, L. R., 1 P. & D. 523).

Protest by father or guardian.—*See* section 44.

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 satified 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 certificate 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.

At least two witnesses—"The statutory and rubrical provisions, which require that two witnesses should be present at a marriage, and should sign the register, are merely directory." (Browne and Powles on Divorce, 7th Ed., 1905, page 100.) "A marriage solemnized in the presence of one witness only is therefore a good marriage." (*Wing* v. *Taylor*, 2 S and T. 278).

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.

Marriage after the prescribed time—English Law—"Although 4 Geo. 4, c. 76, section 9, requires marriages by banns to be solemnized within three months after the complete publication of banns, a marriage will not be held invalid because the parties have married after the prescribed time if they have not done so knowingly and wilfully." (*Reg* v. *Clarke*, 10 Cox. C. C. 474 ; 16 L. T. 429).

PART IV.

REGISTRATION OF MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION.

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

Marriages when to be registered.

Part IV.—Part IV deals with the registration of marriages solemnzied by Ministers of Religion. Section 27 declares that all marriages solemnized under this Act, except marriages solemnized by or in the presence of a Marriage Registrar under part V, and Marriages of Native Christians under Part VI of the Act, should be registered in the manner prescribed by sections 28—37. As to the establishment of general registry offices of births, deaths, and marriages, *see* the Births, Deaths and Marriages Registration Act, 1886.

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.

Registration of marriages solemnized by clergymen of Church of England.

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.

Quarterly returns to Archdeaconry.

Such quarterly returns shall contain all the entries of marriages contained in the said register from the first day of January

Contents of returns.

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 Curch of Rome shall be registered by the person and according to the form directed to that behalf by the Roman Catholic Bishop of the Diocese or Vicariate in which such marrirge is solemnized,

and shall 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) in a marriage-register-book to be kept by him for that

purpose, according to the form contained in the fourth schedule hereto annexed, and also in a certificate attached to the marriage-register-book as a counterfoil.

Entries of such marriages to be signed and attested.

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

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

Correction of errors.—*See* section 78.

Certificate to be forwarded to Marriage Registrar, copied and sent to Registrar-General.

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

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

and shall send all the certificates which he has received during the month, with such number and signature or initials added thereto as are hereinafter required, to the Registrar-General of Births, Deaths and Marriages.

Copies of certificates to be entered and numbered.

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

Registrar to add number of entry to certificate, and send to Registrar-General.

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

Registration of marriages between Native Christians under Part I or III. Custody and disposal of register-book.

37. When any marriage between Native Christians is solemnized under Part I or Part III of this Act, the person solemnizing the same shall, instead of proceeding in the manner provided by sections 28 to 36, both inclusive, register the marriage in a separate register-book, and shall keep it safely until it is filled, or if he leaves the district in which he solemnized the marriage before the said book is filled, shall make over the same to the person succeeding to his duties in the said district.

Whoever has the control of the book at the time when it is filled shall send it to the Marriage Registrar of the district, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall send it to the Registrar-General of Births, Deaths, and Marriages, to be kept by him with the records of his office.

PART V.

MARRIAGES SOLEMNIZED BY, OR IN THE PERSENCE 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 intend-

ing 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.

Part V.—Part V deals with marriages solemnized by or in the presence of a Marriage Registrar. Provision is made in this part for notice of the intended marriages to be given to the Marriage Registrar (section 38), the publication of the notice (section 39), the procedure to be observed after receipt of the notice (section 40) and the issue of certificate under the hand of the Marriage Registrar (section 41). Section 42 prescribes the form of oath to be made before the grant of the certificate mentioned above. Section 44 provides for the necessity of the consent of the father or guardian in case of any or both of the parties being a minor or minors, in term similar to those of section 19, and also provides for the power of protesting, given to such father or guardian, against the issue of the certificate. Section 45 gives the parties to the intended marriage in cases where such father or guardian is insane or unjustly with-holds consent, the right to present a petition to the High Court or the District Court for a declaration that the marriage is a proper marriage.

English Law.—When a marriage is contemplated—other than by licence or banns—upon production of the registrar's certificate one of the parties shall give notice, in the form of Schedule A annexed to the English Act, or to the like effect, to the Superintendent Registrar of the district within which the parties shall have dwelt for not less than seven days, or if they have dwelt in different districts, then to the registrar of each, containing their full and correct names, addresses, and descriptions, the time they resided in the district, the church or building where they are to be married, and that one or other of them has dwelt in the place specified a month and upwards if it is so.

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.

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

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

and shall also forthwith enter a true copy of all such notices in a book to be furnished to him for that purpose by the Local Government, and to be called the "Marriage Notice-Book ;"

and the Marriage Notice-Book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

41. If the party by whom the notice was given request the Marriage Registrar to issue the certificate next hereinafter mentioned, and if one of the parties intending marriage has made oath as hereinafter required, the Marriage Registrar shall issue under his hand a certificate of such notice having been given and of such oath having been made :

Certificate of notice given and oath made.

Proviso.

Provided—

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

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

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

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

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

Oath before issue of certificate.

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

(*b*) that both the parties have, or (where they have dwelt in the districts of different Marriage Registrars) that the party making such oath has, had their, his or her

usual place of abode within the district of such Marriage Registrar,

and, where either or each of the parties is a minor,—

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

Oath—As to the meaning of "oath" *see* the General Clauses Act, section 3, clause 36, and section 4. "Oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing

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

43. When one of the parties intending marriage is a minor, and both such parties are at the time resident in any of the towns of Calcutta, Madras and Bombay, and are desirous of being married in less than fourteen days after the entry of such notice as aforesaid, they may apply by petition to a Judge of the High Court, for an order upon the Marriage Registrar to whom the notice of marriage has been given, directing him to issue his certificate before the expiration of the said fourteen days required by section 41.

Order on petition.

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

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

Consent of father or guardian.

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

Protest against issue of certificate.

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.

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.

Effect of protest.

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,

Petition where person whose consent is necessary is insane or unjustly withholds consent.

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

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

Procedure on petition.

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

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

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

Cf. sections 20 and 21. In the case of marriages performed by Ministers of Religion no such provision is made by the Act. *See* also section 43 below.

"District Judge".—As to who shall be District Judge under this Act *see* section 85.

Petition when Marriage Registrar refuses certificate.

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

Procedure on petition.

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

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

Cf. Sections 21 and 22. In the case of marriages performed by Ministers of Religion, no such provision is made by the Act.

Petition when Marriage Registrar in Native State refuses certificate.

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

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

Marriage between a Christian and a divorced Jewess.—Where a Jewess was divorced according to the Jewish law, a Christian desiring to marry her gave notice to the Registrar under the provisions of this Act. The Registrar having refused to solemnize the marriage, the Court on application ordered the Registrar to receive and publish the notice and, upon compliance with the provisions of section 41 of the Act, take all such steps as are necessary for the solemnization of the marriage. (16 C. W. N. 417=15 I. C. 398).

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 Re-

gistrar shall apply by petition, where his district is within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or, if such district be not within any of the said towns, then to the District Judge.

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

and if, upon such examination, it appears that the person forbidding the issue of such certificate is not authorized by law so to do, such judge of the High Court or District Judge, as the case may be, shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

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

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

Whenever a Marriage Registrar appointed under section 8 to act within any Native State is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall send a statement of all the circumstances of the case, together with all documents relating thereto, to the Governor-General in Council.

Procedure on reference.

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

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

No such provision is made by the Act with regard to marriages solemnized by Ministers of Religion.

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 a Judge of the High Court or the District Judge, under section 45 or 46, 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 Local Government shall furnish to every Marriage Registrar a sufficient number of forms of certificate.

Solemnization of marriage after issue of certificate.

51. After the issue of the certificate of 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 Registrar 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]."

"Each of the persons shall say to the other &c."—The repetition of the words of the marriage service is necessary. When the hands of the parties are joined together, and the clergyman pronounces them to be man and wife, they are married if they understand that, by that act, they have agreed to cohabit together, and with no other person. (*Harrod* v. *Harrod*, 1 K. & Johns, 4.)

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

52. Whenever a marriage is not solemnized within two months after the copy of the notice has been entered by the Marriage Registrar, as required by section 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 it 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 marriage-register-book.

"Shall forthwith register the marriage."—"Where the legality of a marriage was in question, it was decided that, even if the marriage was not registered at all, yet if the fact of marriage could be proved, the non-registration would not affect its validity." (*Woods* v. *Woods*, 2 Curt. 521.)

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 Native States shall send certificates.

56 The Marriage Registrars in Native States shall send the certificates mentioned in section 54 to such officers as the Governor-General in Council from time to time, by notification in the *Gazette of India*, appoints in this behalf.

Note.—*Cf.* section 24 (2) of the Births, Deaths and Marriages Registration Act, 1886. The Commissioner of Ajmer-Merwara has been appointed under this section for the Rajputana States; the Agent to the Governor-General, Central India, for States in Central India; the Registrar-General of Births, Deaths and Marriages, Madras, for the Mysore State; and the First Assistant to the Resident for the Hyderabad State.

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.

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 certificated.

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.

Part VI.—"The object of Part VI which has been added to the Bill since it was framed by Mr. Ritchie, is to meet the cases of the numerous classes of Native Christians scattered over the British Territories in India. These classes number several thousand persons, the majority of whom are far away from Clergymen in Holy Orders or Ministers of the Church of Scotland, or Marriage Registrars, and their Pastors are frequently natives like themselves. It is impossible to expect from these classes of Native Christians, marriages solemnized in the regular manner prescribed in the previous sections. The point is one which ought not to be left in uncertainty and in order effectually to clear up the doubts that now exist, legislation of some kind would seem to be required. Moreover, assuming the legality of marriages between Native Christians, resting simply on the verbal declaration of the parties thereto, some provision of law would appear to be absolutely necessary for the registration of such marriages and for affording easy means of establishing the same. It is considered that the provisions contained in Part VI of the Bill, as it is now drawn, will do all that is really required in respect to the solemnization of the marriages of Native Converts to Christianity who may be prevented by distance or any other cause from availing of the other provisions of the Bill, and that while the Part in question makes sufficient provision for the due regulation of such marriages, for preserving an official record of the same, and for preventing abuses, it will be found to afford to all classes of Native-Christians, a simple, convenient, and inexpensive mode of solemnizing their marriages, and of establishing the marriage when proof may be required either in respect to the succession to property or otherwise." Assuming the legality of marriages between Native Christians, resting simply on the verbal declaration of the parties thereto, some provision of law appeared to be absolutely necessary for the registration of such marriages and for affording easy means of establishing the same. It was considered that the provisions contained in Part VI would do all that was really required in respect to the solemnization of the marriages of Native converts to Christianity who might be prevented by distance or any other cause from availing of the other provisions of the Act; and while the Part in question makes sufficient provision for the due regulation of such marriages, for preserving an official record of the same, and for preventing abuses, it was also intended to afford to all classes of Native Christians, a simple, convenient, and inexpensive mode of solemnizing their marriages, and of establishing the marriage when proof may be required either in respect to the succession to property or otherwise. One of the conditions essential to the granting of a certificate of Marriage under the Part, is that the parties should not stand to each other within the prohibited degrees of affinity or consanguinity.

"Between Native Christians."—As to the validation of past marriages solemnized under Part VI between persons of whom one only was a Native Christian, and penalty for solemnizing such marriages under Part VI in future, *see* the Marriages Validation Act, II of 1892.

The Proviso—Minors.—The most important amendment made by this Act was in regard to marriages between Native-Christians, either of whom was a minor. The framers of the then existing law, actuated by the desire of making the forms of marriage between Native-Christians of the poorer and uneducated classes as simple and unexpensive as possible, dispensed with all notices, and required only that the persons intending marriage should be of a specified age,—which in the case of both male and female, was considerably below that which constituted majority even amongst the natives of this country—and that they should not stand in relation to each other within the prohibited degrees of consanguinity and affinity—apparently as prescribed by the English canon, though this was not expressly specified to be such. The practical effect of this was to deprive Native-Christian parents of that control over the action of their children in the very important matter of contracting marriages which the law or custom gave to parents of all countries and creeds. This result of the enactment of Part V of Act V of 1865 w as in all probability overlooked by the legislature of that year. Further, several leading men of the Native-Christian community submitted a memorial to the Government on the subject, pointing out the extreme hardship inflicted on them by the legislation referred to, with which memorial the Government was in entire sympathy. To this grievance, a remedy was provided for by section 54 of the Bill. That section was intended to restore the power of control of which Native-Christian parents had been deprived by the then existing law, without introducing the notices and forms unsuited to the poorer and uneducated classes, and which was the special object of past legislation to avoid. *See* Speech by the Hon. Mr. Cockerell in introducing the Christian Marriage Bill on the 19th October, 1871.

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. (1) Every person licensed under section 9 shall keep in English, or in the vernacular language in ordinary use in the district or State in which the marriage was solemnized, and in such form as the Local Government by which he was licensed may from time to time prescribe, a register-book of all marriages solemnized under this Part in his pre-

sence, and shall deposit in the office of the Registrar-General of Births, Deaths and Marriages for the territories under the administration of the said Local Government, in such form and at such intervals as that Government may prescribe, true and duly authenticated extracts from his register-book of all entries made therein since the last of those intervals.

(2) Where the person keeping the register-book was licensed as regards a Native State by the Governor-General in Council, references in sub-section (1) to the Local Government therein mentioned shall be read as references to the Local Government to whose Registrar-General of Births, Deaths and Marriages certified copies of entries in registers of births and deaths are for the time being required to be sent under section 21, sub-section (2), of the Births, Deaths and Marriages Registration Act, 1886.

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. Saving of certain marriages.

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

"Act No. XXV of 1864."—Act XXV of 1864 was repealed by Act V of 1865, which was repealed by the present Act.

Roman Catholic Marriages.—A marriage between British subjects according to the rites of the Roman Catholic Church in the British Dominions

is valid anywhere, if there be no established church there. (*James* v. *James and Smyth*, 51 L. J. Mat. 24.)

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 Indian Penal Code with imprisonment of either description for a term which may extend to three years and, at the discretion of the Court, with fine.

Part VII.—Part VII (sections 66—76) makes provision for the infliction of certain penalties for offences under this Act, such as false oath or declaration, false notice or certificate for procuring marriage (section 66), forbidding by false personatiton issue of certificate by Marriage Registrar (section 67); solemizing marriage without due authority (section 68); solemnzing marriage out of proper time and without witnesses (section 69); solemnizing without notice or within fourteen days after notice, marriage of minor (section 70); issuing certificate or marrying without publication of notice; marrying after expiry of notice, etc., (section 71); issuing certificate after expiry of notice, or in case of minor, within fourteen days after notice, or against authorized prohibition (section 72); issuing certificate or marrying without publishing notice or after expiry of certificate, etc., by persons authorised to solemnize marriages (other than the Clergyman of the Church of England, Scotland, or Rome) (section 73); granting of certificate by unlicensed persons pretending to be licensed (section 74); and destroying or falsifying a register-book (section 75); section 76 lays down a period of 2 years after the commission of this offence as the period of limitation within which prosecutions under the Act are to be commenced.

Ignorantia juris non-excusat.—Not applicable.—The maxim *ignorantia juris non-excusat* cannot be applied to a declaration, though in fact false, made under section 18 inasmuch as the declaration required by that section to be made is a declaration as to the belief only of the person making it, (16 All. 212). Further, in order to entail the penal consequences provided

for by this section, such false declaration must be made " intentionally." (*Ibid*). The facts of the above case were as follows :—The accused person, who was an Englishman and a member of the Church of England, was contemplating marriage with the sister of his deceased wife. With a view to procuring the solemnization of the intended marriage, a sworn declaration was made by Robinson and the lady he intended to marry, the material words of which were :—" Deponents further make oath and say (each as to his and her own belief), that there is no let or impediment of pre-contract, kindred or alliance, or any other lawful cause whatsoever, or any suit pending in any Ecclesiastical Court, to bar or hinder the said intended marriage." The defendant was brought into Court upon the allegation that at the time he made the said declaration he knew as a matter of fact that it was untrue. That he was aware that the person he intended to marry was the sister of his previous wife was beyond doubt ; but his defence was based on the statement that he was not aware at the time of making the declaration that such affinity constituted an impediment within the meaning of section 18 of this Act to bar or hinder the said marriage. Their Lordships after laying down the law that such a marriage would be illegal as being within the prohibited degrees went on to say :—" We have now to consider whether this is a case to which the doctrine of " *ignorantia juris non excusat*" can be held to apply. Section 66 of the Act No. XV of 1872 makes penal the "intentionally making a false oath." The alleged false declaration was made "to the best of the deponent's belief." The word "intentionally" would be superfluous if the law is taken to impute knowledge whether it in fact exists or not. The limitation "to the best of his belief" would be removed by holding that such belief or non-belief was immaterial. But section 18 of Act XV of 1872 imposes a declaration of belief only. It is in these words "that he or she believes that there is not any impediment of kindred, or affinity, or other lawful hindrance to the said marriage."

Proof.—"The standard of proof in a criminal trial is not the same as in an ordinary civil case. No conviction should be arrived at unless upon clear, cogent and coherent evidence which leaves upon the mind no substantial doubt." *Held* under the above circumstances the accused was not guilty. (16 All. 212 (215 and 216)).

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 Indian 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 according to the provisions of Act XXIV of 1855 (*to substitute penal servitude for the punishment of transportation in respect of European and American convicts*)

and shall also be liable to fine.

Scope.—This section was substituted for the original section 68 by Act II of 1891 (Repealing and Amending Act). No one except a person who *professes* the Christian religion comes under section 68 of the Act. Baptism of a person as an infant when he has no possibility of saying to the world what is the faith to which he belongs or the fact that when grown up he dresses like a Christian and attends a Christian school cannot make such a person professing the Christian religion within the meaning of the Act. On the other hand there is no express prohibition preventing even a person professing Christianity from marrying a non-Christian by a non-Christian ceremony. Nor does section 68 make it penal for a Christian to marry by a ceremony which is void under section 4 of the Act (40 All. 393=45 I. C. 519). The solemnizer of such marriage (*i. e.*, where one of the parties is a Christian) is of course liable under section 68. Thus a Hindu by religion performing a marriage according to the Hindu mode between two persons either of whom is a Christian commits an offence under section 68. (40 Mad. 1030 F. B.=41 I. C. 664). In 40 All. 393 just quoted two Christian priests of the sweeper class who were not persons authorised to solemnize marriages under section 5 of this Act solemnized a marriage between a *bhangi* boy and a *bhangi* girl, none of whom professed Christianity. The two priests were convicted of an offence under section 68 of this Act, and so was the husband under section 68 read with section 109, I. P. C. *Held*, that the conviction was bad as the husband was not a "Christian" at the time of the marriage, and that to the two priests section 68 did not apply because its applies to Christian marriages only. As to the meaning of "Christian" see under section 3 *supra*.

Marrying a Christian child.—The accused who was charged with having committed an offence under Indian Christian Marriage Act, section 68, was acquitted on its appearing that the Christian whose marriage he purported to solemnize was a child of the age of three years. The child had been baptized and her father was a Christian: *Held*, that the child was a person professing the Christian religion within the meaning of section 3 of the Indian Christian Marriage Act, and that the acquittal was wrong. (18 Mad. 230.)

"In the absence of a Marriage Registrar."—The lay trustee of a church in which the banns of marriage between Christians had been published, solemnized a marriage between them according to the rites of the Church of England. The Marriage-Registrar attended the ceremony in a private and unofficial capacity. The person who solemnized the marriage was not

of any of the classes of persons authorized to solemnize a marriage in the absence of a Marriage-Registrar and he was convicted of an offence under this section. *Held*, that the conviction was right. (14 M. 342). With regard to the contention that no offence has been committed, because a Marriage-Registrar was, in fact, present, it is clear that the Act means that the Registrar must be present *qua* Registrar and sections 38 to 59 provide that certain notices, publication of notices and other formalities shall take place before a marriage can be solemnised either by or in the presence of a Marriage-Registrar. It is not pretended that any of these provisions were complied with. Mr. Johnson did not attend as Registrar, but was in attendance merely as a relation of the bride for the purpose of giving her away; it is impossible to believe that under these circumstances the marriage has taken place in accordance with sub-section 4, section 5 of this Act." (14 Mad. 342 (360, 351). *Per* Collins, C. J.)

Abetment. Parties to marriage liable.—In the case of the persons being married, we consider a charge of abetment is sustainable as without their presence and aid the marriage could not possibly take place.

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;

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;

marrying after expiry of notice;

(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;

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

(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 the post or otherwise, a copy of such notice to the Senior Marriage Registrar of the district if there be more Marriage Registrars of the district than one, and if he himself be not the Senior Marriage Registrar;

issuing certificate against authorized prohibition.

(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,

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

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

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

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

shall be deemed to have committed an offence under section 166 of the Indian Penal Code.

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

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

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

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

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

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

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

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 the 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 authorizedly forbidden;

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 :

solemnizing marriage authorizedly forbidden.

or knowingly and wilfully solemnizes any marriage forbidden by any person authorized to forbid the same :

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

Scope.—Section 73 is a highly penal section, and must be constructed strictly and in favour of the liberty of the subject. (19 Mad 273 (284).) Section 73 does not require that a person who has received Episcopal ordination (and who is not one of the classes specially excepted by the section) should publish a notice of any marriage, which he intends to solemnize. (19 Mad. 273 (284).) S, an Episcopally-ordained Priest of the Syrian Church under the jurisdiction of the Patriarch of Antioch, solemnized two marriages according to Roman ritual without publishing or causing to be affixed the notices of such marriages required by part three of the Act. It was proved that used the Roman ritual with the sanction of his Bishop who was appointed by the Patriarch. *Held*, that S, having received Episcopal ordination was authorised to solemnize the marriages according to the rules, rites, ceremonies and customs of his church and that it was not shown that a marriage solemnized with the Roman ritual under the sanction of the Bishop of the Syrian Church was not solemnized according to the rules, rites, ceremonies and customs of the Syrian Church. (19 Mad. 273.) *See* also section 6 of Act II of 1892 which extends the present section to offences against that Act.

74. Unlicensed person granting certificate pretending to be licensed.

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.

Part VIII.—Other miscellaneous provisions of the Christian Marriage Act.—Part VIII (sections 77 to 88) deals with certain miscellaneous matters. Section 77 declares what matters need not be proved in respect of marriages in accordance with this Act. Section 78 provides for the correction of errors in entries in the registers of marriage. Section 79 provides for search and copies of entries in such registers. Section 80 provides that certified copies of entries in marriage registers, etc., to be evidence. Section 81 provides for the sending of certificates of certain marriages to the Secretary of State for India. Section 82 gives the Local Government

power to prescribe fees for receiving and publishing notices of marriages under the Act, issuing certificates of marriages, searching register books or certificates, giving copies of entries in such registers, etc., and also for certain other purposes. Power is also given to the Local Government, from time to time, to vary or remit such fees, either generally or in special cases as it may deem fit. The Local Government is also empowered to make rules in regard to the disposal of fees mentioned in section 82, the supply of register-books, and the preparation and submission of returns of marriages solemnized under this Act (section 83). Section 84 declares that the powers conferred on the Local Government by sections 82 and 83, so far as regards Native States, are to be exercised by the Governor-General in Council. Section 85 gives power to the Local Government to declare who shall be deemed to be District Judge in any place to which this Act applies. Section 86 gives the Governor-General in Council power to delegate its functions under this Act to some other officers. Section 87 declares that "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." Section 88 makes provision for the non-validation of marriages within the prohibited degrees.

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 has 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 on 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 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.

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

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 Governor-General in Council may desire that evidence shall be transmitted to England,

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

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

Local Government to prescribe fees.

82. Fees shall be chargeable under this Act for—

receiving and publishing notice 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 of copies thereof ;

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

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

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

Power to make rules.

83. The Local Government 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.

Power to prescribe fees and rules for Native States.

84. The powers conferred on the Local Government by sections 82 and 83 may, so far as regards Native States, be exercised by the Governor-General in Council.

Power to declare who shall be District Judge.

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

Powers and functions exercisable as regards Native States.

86. (1) The powers and functions exercisable by the Governor-General in Council under sections 6, 8, 9, 47, 48, 56 and 84 shall, so far as regards any Native State which is within the political charge of a Local Government, be exercised by that Local Government. The exercise under this section by any Local Government of powers and function under sections 6, 8, 9 and 56 shall be by notification in the local official Gazette.

(2) The powers and functions exercisable under this Act by the Governor-General in Council may be delegated to, and exercised by, such officers as he may from time to time appoint in this behalf.

This section was substituted by Act XXXVIII of 1920, Schedule I.

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.

Note.—The Christian Marriage Act is only concerned with the forms in which the marriage is to be solemnized and does not deal with objections to the validity of the marriage. (54 Bom. 288 = 1930 Bom. 105.)

"Personal Law."—The expression "personal law" in section 88 includes any personal law (apart from any personal law as to the form of the marriage) forbidding any of the parties to enter into a contract of marriage with the other. (54 Bom. 288 = 1930 Bom. 105.) A civil marriage before a Registrar between persons professing the Roman Catholic religion is valid in law. (*Ibid.*)

Prohibitions.—Marriages Void.—Marriages between persons in close relationship are to be prohibited independent of any Church canon or of any statutory prohibition. "That such a marriage is criminal and void by the law of nature, is a point universally conceded. And, by Nature, we understand those just and fit rules of conduct which the creator has prescribed to man as a dependent and social being and which are to be ascertained from the deduction of right reason though they may be more precisely known, and more explicity declared by Divine Revelation. (*See* Storys' Conflict of Laws 6th, Ed. 1865, pp. 7.—73.) For an instance, *see* the rule of the Hindu Law that marriage between two persons of the same *gotra* or *pravara* is prohibited. A marriage between parties who are Roman Catholics and related to each other as second cousins of the half blood is null and void as being within the prohibited degrees of consanguinity contained in Canon 1076. It is a recognised interpretation of the Canon that one common ancestor is sufficient to bring the parties within the prohibited degrees of consanguinity (*Conally* v. *Conally*, 133 I. C. 175 = 1931 Pat. 213.)

Presumption of validity.—Where a man and a woman intended to become husband and wife, and a ceremony of marriage is performed between them by a clergyman competent to perform a valid marriage, the presumption in favour of everything necessary to give validity to such marriage is one of exceptional strength, and, unless rebutted by evidence "strong, distinct, satisfactory and conclusive," must prevail. As according to the rule of the Church of Rome, a dispensation from the proper Ecclesiastical authority is necessary to give validity to a marriage between the man and the sister of his deceased wife, *held* that, where the parties were Roman Catholics intended to become husband and wife and a ceremony of marriage was performed between them by a clergyman competent to perform a valid marriage, the Court was bound to presume that a dispensation necessary to remove the obstacle to the marriage on the ground of affinity had been obtained. (12 Cal. 706 F.B.). The Courts in India will not disallow a Roman Catholic Christian of Indian domicile,

who has obtained the necessary dispensation, from marrying his deceased wife's sister, though by the law of the Church to which the latter belongs, she may be incapable of contracting the marriage. The husband's capacity renders the marriage valid in law. *Per Mitra, J.*—In India there is no *lex domicile*. There is no enactment absolutely forbidding the marriage of a domiciled British Indian subject with his deceased wife's sister. Among Hindus and Muhammadans the questions relating to marriage are governed by their personal laws. As regards the followers of other religions, the rules of equity, justice and good conscience, as found in the usages of the class to which they belong, would regulate the question regarding marriage. (*H. A. Lucas* v. *Theodoras Lucas*, 32, Cal. 187.)

SCHEDULE I.

(*See* sections 12 and 38.)

NOTICE OF MARRIAGE.

To a minister [*or* Registrar] of

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

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

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

(*Signed*) *JAMES SMITH.*

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

SCHEDULE II.

(*See* sections 24 and 50.)

CERTIFICATE OF RECEIPT OF NOTICE.

I,

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

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

and that the declaration, or oath required by section 17 or 41 of the Indian Christian Marriage Act, 1872, 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 *seventy-two.*

(*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 { *Calcutta.* / *Madras.* / *Bombay.*

I, _____, Registrar of the Archdeaconry of { *Calcutta,* / *Madras,* / *Bombay,* }

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

[*Signature of Registrar.*]

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

MARRIAGES solemnized at { *Allahabad,* / *Barrackpore,* / *Bareilly,* / *Calcatta, etc., etc.*

When Married.			Names of Parties.		Age.	Conditions.	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.
Year.	Month.	Day.	Christian.	Surname.									

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*	*Agra*	*William White*
				Martha	*Duncan*	17 *years*	*Spinster*	...	*Agra*	*John Duncan*

Married in the

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

CERTIFICATE OF MARRIAGE.

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

Married in the

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

SCHEDULE V.

(*See* Section 2.)

ENACTMENTS REPEALED

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

The Marriage Validation Act, 1892.

The Marriage Validation Act, 1892.

ACT No. II OF 1892.

[*Passed by the Governor-General of India in Council.*]

(Received the assent of the Governor-General on the 29th January, 1892.)

An Act to validate certain marriages solemnized under Part VI of the Indian Christian Marriage Act, 1872.

WHEREAS provision is made in Part VI of the Indian Christian Marriage Act, 1872, for the solemnization of marriages between persons of whom both are Native Christians, but not of marriages between persons of whom one only is a Native Christian ;

And whereas persons licensed under section 9 of the said Act have in divers parts of British India, through ignorance of the law, permitted marriages to be solemnized in their presence under the said Part between persons of whom one is a Native Christian and the other is not a Native Christian;

And whereas it is expedient that such marriages, having been solemnized in good faith, should be validated ;

It is hereby enacted as follows :—

Object and Scope.—This Act was passed in order to validate certain marriages solemnized under Part VI of the Christian Marriage Act, 1872. That Act provided for the solemnization of marriage between persons of whom both were Native Christians but not of marriages between persons of whom one only was a Native Christian ; but through ignorance of such provision of law marriages were permitted to be solemnized under Part VI of that Act between persons of whom one only was a Native Christian ; and it was deemed expedient that such marriages having been solemnized in good faith, should be validated It is to validate such marriages that this Act was passed. (*See* Statement of Objects and Reasons.) Further, this Act provides that, in case any of these invalid marriages have already been judicially pronounced void, such marriages should not be validated, as vested rights may have been acquired under the decisions thus given ; this validation will therefore only extend to marriages which, though invalid under the law, have up to the present time been regarded by the contracting parties as valid. The following extract from the proceedings in Council throws light on the object and scope of the Act—"Part VI of the Indian Christian Marriage Act is only intended for the solemnization of marriages between persons both of whom are Native Christians, but by a mistake apparently arising from ignorance of this provision some of the persons licensed to solemnize such marriages have solemnized thm between persons only one of whom was a Native Christian, and the result is that as the law at present stands these marriages are invalid ; but it has been generally felt that this has arisen out of a mere misconception of the law and that there was no intention on the part of any of the parties concerned to do otherwise than contract valid marriages. It was however felt desirable, while taking all the care we possibly can to prevent

any such irregularity in the future, that these persons—or rather their children—should not suffer by the error, and it was therefore proposed to validate these marriages in the past so far as may be practicable. I may here mention that, amongst the opinions offered with regard to the Bill, we find one from certain clergymen in the North-Western Provinces who consider that a marriage between a person who is a Native Christian and a person who is not a Native Christian is invalid in itself,—on what principle I do not know; but these gentlemen have thought fit to declare that they will disregard the validation which the Bill contemplates, and that if any of the persons whose marriage has been so validated should wish to set aside the marriage, and to contract a marriage which would be valid before the Church, they would consider it their duty to solemnize such second marriage. I can only say that, so far as the business of this Council is concerned, it is no part of our duty to offer advice to these gentlemen, but I think they should know that any such action on their part would probably bring them within the provisions of the Criminal law and render them liable to prosecution. (*The Speech of Sir A. Miller in the Legislative Council.*)

Commencement.

1. *Repealed by Act X of 1914, Schedule II.*

Definition.

2. In this Act the expression "Native Christian" has the same meaning as in the Indian Christian Marriage Act, 1872.

Validation of irregular marriages.

3. All marriages which have already been solemnized under Part VI of the Indian Christian Marriage Act, 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:

Provided that nothing in this section shall apply to any marriage which has been judicially declared to be null and void, or to any case where either of the parties has, since the solemnization of such marriage and prior to the commencement of this Act, contracted a valid marriage.

Scope. Under this section all marriages which had already been solemnized under Part VI of the Indian Christian Marriage Act, 1872, between persons of whom one only was a Native Christian, were to be as good and valid in law as if it had been solemnized between persons of whom both were Native Christians. "In one of the opinions on the Bill which have been referred to us we find that it has been stated by certain clergymen in Allahabad that 'the consensus of Christendom and the rule of the English Church do not admit the validity of a marriage between a person baptized and a person unbaptized;' and that should any Christian who has entered into such a union desire to forsake it they would encourage him to do so; and that if he wished subsequently 'to enter upon a Christian marriage valid before the Church' they would, if there were no special reasons for refusing, solemnize

it notwithstanding secular sanction to the previous union. The committee cannot of course presume to offer these gentlemen advice, but we deem it our duty to warn them that by such action they will apparently render themselves liable to a prosecution for abetment of an offence under Chapter XX of the Indian Penal Code." (*Report of the Select Committee.*)

Validation of records of irregular marriages.

4. Certificates of marriages which are declared by the last foregoing section to be good and valid in law, and register-books, and certified copies of true and duly authenticated extracts therefrom, deposited in compliance with the law for the time being in force, in so far as the register-books and extracts relate to such marriages as aforesaid, shall be received as evidence of such marriages as if such marriages had been solemnized between persons of whom both were Native Christians.

Scope. This section provides for the validation of records of irregular marriages.

Application of Act to marriages under Act V of 1865.

5. References in this Act to the Indian Christian Marriage Act, 1872, shall, so far as may be requisite, be construed as applying also to the corresponding portions of the Indian Marriage Act, 1865.

Indian Marriage Act, 1865.—This Act was repealed by the Indian Christian Marriage Act, 1872.

Penalty for solemnizing irregular marriages.

6. If any person licensed under section 9 of the said Act to grant certificates of marriage between Native Christians shall at any time after the commencement of this Act solemnize or affect to solemnize any marriage under Part VI of the said Act or grant any such 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 have been guilty of an offence prohibited by section 75 of the said Act, and shall be punishable accordingly.

Scope. This section enacts for the inflicting of a penalty for solemnizing irregular marriages *after* the passing of the Act.

Dispensation subsequent to marriage.—In certain circumstances a dispensation might be granted subsequent to the marriage itself provided that there was common consent of the parties to the marriage. (***Conally* v. *Conally*, 133 I. C. 175 = 1931 Pat. 215.**)

Indian Foreign Marriage Act, 1903.

ACT NO. XIV OF 1903.

[*Passed by the Governor-General of India in Council.*]

(Received the assent of the Governor-General on the 23rd October, 1903.)

An Act to give effect to the Foreign Marriages Order in Council, 1903.

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

Object and Scope of the Act.—The Indian Foreign Marriage Act, 1903, was passed in order to give effect to the Foreign Marriages Order in Council, 1903. The Foreign Marriages Order in Council, 1903, directed that, if a marriage officer proceeding under the British Foreign Marriage Act, 1892, (55 and 56 Vic., c. 23), was satisfied that such notice of an intended marriage had been given by a party dwelling in India as may be required by any law of the Governor-General in Council giving effect to that order, such notice shall be sufficient for the purposes of the Statute; and it was further explained that a law of the Indian Legislature should be deemed to give effect to the order if it provided, —"(1) That notice of a marriage intended to be solemnized under the Statute referred to may be given by one of the parties intending such marriage, who has had his or her usual place of abode for three consecutive weeks immediately preceding in some place in India to such Marriage-Registrar or other officer as may be designated by the law in this behalf, (2) that such notice shall be published either by proclamation of banns or in such other manner as the law may provide, and (3) that such Marriage-Registrar or other officer, unless he is aware of any impediment or objection which should obstruct the solemnization of the marriage, shall, on payment of such fee, if any, as the Law may fix, give a certificate that the said ntoice has been so given and published as aforesaid." The Foreign Marriage Act (XIV of 1903) was intended to give effect to that Order in Council. (*See* Statement of Objects and Reasons). The Act consists of only two sections. Section 1 deals with the short title, extent and application of the Act. Section 2 provides for notice of marriage intended to be solemnized. (55 and 56 Vic., c. 23.)

The following are the remarks of the Hon'ble Mr. Arundale in moving or leave to introduce the Bill : —"On several occasions difficulties have arisen n connection with the intended marriage of British subjects under the provisions of the Foreign Marriage Act and Foreign Marriages Order in Council, 1892, in cases where one of the parties has been resident in India.

"The Foreign Marriages Order in Council requires that in cases where one of the parties has not been resident within the district of the Marriage Officer, who is to celebrate the marriage, that party shall produce a certificate from the Marriage Officer of the place in which he or she has been resident, that proper notice has been given of the marriage; but these requirements of the Order in Council relate only to foreign countries and to the

United Kingdom, while no instructions are given concerning notice of marriage by persons resident in India.

"After some correspondence between the Secretary of State and the Government of India, an Order in Council was issued on the 12th March, 1903, to the following effect :—

1. The following further modifications of the requirements of the Foreign Marriage Act, 1892, as to residence and notice which appear to His Majesty to be consistent with the observance of due precautions against the solemnization of clandestine marriages shall have effect in cases where one only of the parties has dwelt within the district of the Marriage Officer and the other of such parties has dwelt in a Colony or in India, that is to say –

(i) If the Marriage Officer is satisfied that such notice has been given by the party dwelling in such Colony or in India as may be provided by any law in that Colony or of the Governor-General of India in Council (as the case may be), giving effect to this order ;

(ii) In any such case the oath, affirmation or declaration required by section 7 of the Foreign Marriage Act shall be made subject to the modifications thereof to which effect is given by article 6 of the Foreign Marriage Order in Council, 1892.

2 A law enacted by the Legislature of a Colony or by the Governor-General of India in Council shall be deemed to give effect to this Order if it makes provision (in whatever terms expressed) as follows :

(i) That a notice of a marriage intended to be solemnized under the Foreign Marriage Act may be given by one of the parties intending such marriage who has had his or her usual place of abode for three consecutive weeks immediately proceeding in some place in that Colony or in India (as the case may be) to such Marriage Registrar or other officer as may be designated by the law in this behalf :

(ii) that such notice shall be published either by proclamation of bans or in such other manner as the law may provide ; and

(iii) that such Marriage Registrar or other officer, unless he is aware of any impediment or objection which should obstruct the solemnization of the marriage, shall, on payment of such fee, if any, as the law may provide, give a certificate that the said notice has been so given and published as aforesaid.

"This Bill which I beg for leave to introduce is intended to give effect to this Order in Council. It extends to the whole of British India, and applies to all British subjects and to all servants of the King, whether British subjects or not, in the territories or any Native Prince or State in India. The Bill is purely permissive and nothing in it affects a valid marriage solemnized outside its provisions." (*See* Proceedings of the Council of the Governor-General of India, dated 28th August, 1903.)

Short title, extent and application.

1. (*1*) This Act may be called the Indian Foreign Marriage Act, 1903 ;

(*2*) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas, the Shan States and the Pargana of Spiti ; and

(*3*) It applies also to all British subjects and to all servants of the King, whether British subjects or not, in the territories of any Native Prince or State in India.

Notice of marriage intended to be solemnized under 55 & 56 Vict., c. 23.

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—

(*a*) a Marriage Registrar appointed under the Indian Christian Marriage Act, 1872, where either of such parties is a person professing the Christian religion;

(*b*) a District Magistrate, Chief Presidency 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 af 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 Governor-General in Council 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.

Notification No. 341, dated the 11th August, 1904.—In exercise of the power conferred by sub-section 4 of section *2* of the Indian Foreign Marriage Act, 1903 (XIV of 1303), the Governor-General in Council is pleased to prescribe a fee of Rs. 5 for every certificate to the effect that notice under the Act has been given and published in accordance with the said section. A Marriage Registrar, District Magistrate, Chief Presidency Magistrate or Political Agent may, in his discretion, remit a part not exceeding three-fourths of the fee to any person who appears to him to be in indigent circumstances. Where the fee is received by any person, who is a Government servant and not a minister of religion, it shall be paid into a Government Treasury ; and where it is received by any other person it may be retained by him. (*See Gazette of India*, 1904, Pt. I, page 592.)

Married Women's Property Act, 1874.

ACT III OF 1874.

(Passed on 24th February, 1874.)

An Act to explain and amend the law relating to certain married women, and for other purposes.

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 of lives by persons married before or after that day.

And whereas by the Indian Succession Act, 1885, section 4, 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 :

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 herby enacted as follows :—

Object and Scope of the Act.—The object of the Legislature in passing the Indian Succession Act (X of 1865) and the Married Women's Property Act (III of 1874) was to assimilate the position of a married woman to that of anunmarried one, as far as regards her dealings with her own property. (11 B. 348.) (The Indian Succession Act, 1865, has now given place to the Indian Succession Act, 1925. *See* Part III of the latter Act, entitled " Marriage "). As stated in the preamble, the Act was passed in order to meet the following ends :—(1) to provide for the enjoyment of wages and earning by women married before the 1st day of January, 1866, and (2) to provide for the insurances on the lives by persons married before or after that day, (3) A third point the Act was intended to meet was this :—by the Indian Succession Act, 1865, section 4, it was 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 ; and by force of the said Act all women to whose marriages it applied were absolute owners of all property vested in, or acquired by them, and their husbands did not, by their marriage, acquire any

interest in such property, but the said Act did not protect such husbands from liabilities on account of the debts of their wives contracted before marriage, and it did not expressly provide for the enforcement of claims by or against such wives and these defects also the act was intended to remove. Section 4 of Act X of 1865, combined with section 7 of Act III of 1874 enables women married since the 1st of January, 1866, to possess and to sue and be sued in respect of such property as though they were unmarried. These sections do not, however, deal with their capacity to contract. Section 8 deals with that capacity, and applies to women married as well before as after the 1st of January, 1866, and provides that such women can contract as though they were unmarried at the date of the contract, but that on such contracts they will be liable only to the extent of their separate estate. Section 4 of Act X of 1865 is now section 20 of the Indian Succession Act, 1925, and is as follows :— " (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. (2) This section—(*a*) shall not apply to any marriage contracted before the first day of January, 1866 ; (*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."

" Absolute owner "—Indian Succession Act.—By using the words " absolute owner " in the preamble of Act III of 1874, the Legislature did not intend to make a declaration which would have the effect of extending the provisions of section 4 of the Indian Succession Act, 1865, but to describe its legal effects : the word " absolute " is used with reference to the husband not acquiring any interest in the property. (22 W. R. 175.) The Indian Succession Act 1865, section 4, cannot prevent the operation of a marriage settlement restraining a wife from anticipating or alienating property settled to her separate use, such restraint being created not by the marriage but by the settlement. (22 W. R. 175.) In this connection see Proviso (*a*) to section 8 below.

English Law.—*See* the Married Women's Property Act, 1882 (45 and 46 Vict., C. 75.)

I.—PRELIMINARY.

Short title.

1. This Act may be called the Married Women's Property Act, 1874.

Extent and application.

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

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 Governor-General in Council may from time to time, by order, either retrospectively from the

passing of this Act 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 Governor-General in Council may also revoke any such order, but not so that the revocation shall have any restropective effect.

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

[* * * * *]

Applicability of the Act.—This Act applies to the Christian subjects of His Majesty. It does not apply to persons who profess the Hindu, Muhammadan, Buddhist, Sikh or Jain religion. Thus it was held in 37 Bom. 471 that since Act III of 1874 does not apply to Hindus a Hindu wife cannot claim the benefit of its provisions. *See* however section 6 of the Act which now applies to these communities also (except Buddhists). The application of this Act extends to persons having an English domicile. (4 Cal. 140.) The Act applies to persons having an English as well as to those having an Indian domicile. (*Hippolite* v. *Stuart*, 12 Cal. 522).

"And the Governor-General in Council may.....exempt."—These words have reference to communities to which the Act applies. Governor-General in Council has no power to exempt the Hindu, Mohammadan, and Buddhist communities from the operation of the Act. (18 C. W. N. 1335).

Amendment.—The last para of this section shown by stars was repealed by Act XXXIX of 1925, Sch. IX and transferred to section 20 of that Act of which it now forms part, being more appropriate there.

3. [*Commencement.*] *Rep. by the Repealing Act*, 1876 (*XII of* 1876.)

No retrospective effect.—This Act has not retrospective effect, and is not intended to affect contracts made before and to alter the rights of persons or the obligations arising out of them. (22 W. R. 175.) Where a contract is made after this Act came into operation there will be a remedy against the separate property of the wife, although there is a clause against alienation or anticipation in the marriage settlement. (22 W. R. 175.)

II.—MARRIED WOMEN'S WAGES AND EARNINGS.

4. The wages and earnings of any married woman acquired or gained by her after the passing of this Act, in any employment, occupation or trade carried on by her and not by her husband,

Married women's earnings to be their separate property.

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.

"Carried on by her."—The principle that the wife is impliedly carrying on business as the agent of the husband is excluded by the provisions of Act, III of 1874. (4 Cal. 140.)

"And not by her husband."—Money received by a married woman out of the proceeds of her husband's business, or saved by her out of moneys given to her by him for household purposes, dress, or the like, and invested by her in her own name belongs to her husband. (*Barrack* v. *M'Culloch*, 3 Kay and J. 110.)

"And all savings."—The savings of a married woman's separate estate, like the income itself, become her separate estate in equity. (*Duncan* v. *Cashin*, 44 L. J. C. P. 225; L. R. 10 C. P. 554; 32 L. T. 497.) The savings of the income of lands settled to the separate use of a married woman, and chattels purchased by her out of such income, are *prima facie* her separate property. (*Pike* v. *Fitzgibbon*, 6 L. R. Ir. 486.)

Pin-money,—Maintenance—Alimony.—A feme covert who has pin-money, or a separate maintenance settled on her, may, by writing in nature of will, dispose of what she saves out of it, and such disposition shall bind the husband. (*Herbert* v. *Herbert*, Pre. Ch. 44; 1 Eq. Abr. 66.) A wife separated from her husband may make a gift of the saving of her separate allowance as a feme sole (*Gorge* v. *Lister* 2 Bro. P. C. 4,) or she may dispose of them by will (*Georges* v. *Chancie*, Toth 97). S. P., *Pridgeon* v. *Pridgeon*, 1 Ch. Ca. 118.) A married woman, divorced *a mensa et thoro*, bequeathed the savings of alimony by will: *Held*, that the legatee was entitled to such bequest, to the exclusion of the surviving husband. (*Moore* v. *Barber*, 5 Giff. 43; 34 L.J., Ch. 667.)

Gratuitous transfer to wife—Presumption.—Where a transaction is between husband and wife and there is no consideration passing towards the husband from the wife who takes the transfer the presumption is that property does not pass. The onus is on the transferee to show that title passed under the transfer. (*Amrit Kunwar* v. *Gur Charan Singh*, 147 I. C. 591 = A. I. R. 1934 All. 226.)

Presumption of advancement-Applicability in India.—The principle of English Law that when property is purchased in the name of a wife or a deposit is made in the wife's name, it would be presumed that the purchase or deposit was intended for her advancement does not hold good in India. A fixed deposit was in the following terms: "Mr. and Mrs. H repayable to either or survivor." There was no evidence of any gift of his interest by the husband to wife. *Held*, that Mrs. H. was not entitled to more than a half of the money deposited with the Bank. (1931 All 596 = 132 I. C. 573.)

See, however, the undernoted case in which it was *held* per Curiam that if a husband enters any shares in the names of himself and his wife, then it is an advancement for the benefit of the wife, absolutely if she survives her husband. Hence on the wife's survival, such shares are not property of

her deceased husband. The wife then is not liable to pay court-fees on the value of the shares. English cases considered. (*Deputy Commissioner Lucknow* v. *Aikman*, 9 Luck. 370 = A. I. R. 1934 Oudh 74 = 148 I. C. 247.)

III.—Insurances by Wives and Husbands.

Married women 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 insure 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, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the Presidency in which the office at which insurance was effected is situate, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing.

And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court, under Act No. XVII of 1864 (*to constitute an office of Official Trustee*), section 10.

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, in Madras, after the thirty-first day of December, 1913, or in any other part of British India after the first day of April, 1923:

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.

Object and scope.—Section 6 is in the interest of the wife and children, but its primary object is to enable a man to make provision for his wife and children by insuring his life for their benefit, without executing a separate deed of trust. The section enables a Hindu male to do something which, but for the section, he would not be able to do. The section dispenses with the necessity for a separate deed of trust. It does not affect the law of contract or the law of trusts as regards the persons entitled to enforce the contract under the policy. It is well known that the Legislature wanted to encourage those life insurance policies which make provisions for wife and children and not to subject such policies to the dangers to which they were subjected under the English decisions, Judges of English Courts being too much bound down by techanicalities and precedents. In introducing the Bill (*see* extra Supplement to 2nd August 1873 of the *Gazette of India*), Mr. Hobhouse said : "Some gentlemen connected with insurance offices in this country applied to the Government a short time ago stating that those provisions," *i.e.*, the provisions of the English Statute which overruled the English decisions, " were found exceedingly beneficial and that they did not see why they should not be applied to India. We now propose, therefore, to introduce an Act which should embody for India the same provisions as those which had been thought fit for the people of England." It will be found from this quotation that the religion of the parties had nothing to do with the introduction of these provisions in the Act, just as the "people of England" were sought to be benefited by the English Act, and protected against the English decision, so the people of India were sought to be protected by the introduction of this section 6 in the Married Women's Property Act. (37 Mad. 483 F. B.)

"On the face of it."—Section 6 of the Married Women's Property Act contemplates that in order that there may be a valid trust in favour of the wife or the wife and children of the assured, the policy must be expressed on the face of it to be for the benefit of them. The sum payable under an insurance policy was payable at death or at fifty-five to the insured, but in the event of his death before his wife, it was to go to the wife, and failing his wife, to the insured, his executors, etc. The insured having died before he reached fifty-five. *Held*, that the policy formed part of his estate, and the amount could be attached in execution of a decree against the deceased. (*Dinbai* v. *Bamansha*, 58 Bom. 513=152 I. C. 168=A. I. R. 1934 Bom. 296.)

"For the benefit of his wife, etc."—Meaning of.—The words of section 6 "for the benefit of his wife, or of his wife and children, or any of them" should be construed as "for the benefit of his wife or his children, or of his wife, and children, or any of them"—(Per *Chief*

Justice, in 37 M. 483 (F.B.)). A policy was taken out on the life of the assured for the benefit of his wife and children; *Held*, that his widow and children took as joint tenants. (Mellor's Policy Trusts, *In re*, 7 Ch. D. 525, *Explained*; Adam's Policy Trusts, *In re* 23 Ch. D. 525, *Dissented from*. Seyton, *In re Seyton* v. *Satterthwaite*, 56 L. J., Ch. 775; 34 Ch. D. 511.)

"For the benefit of his wife"—Intention of assured—No particular words necessary.—In order to constitute a trust "for the benefit of the wife" within the meaning of section 6 of the Married Women's Property Act, it is not necessary that the words "for the benefit of the wife" or other words equivalent thereto should appear in the policy of insurance. If on a reading of the words used in the policy it appears that the assured has intended, in the event of his death, that the policy should enure for the benefit of his wife, then the policy may be deemed to be for her benefit. Where by a policy of life insurance the insurer undertook to pay a specified amount upon the happening of a certain event "to the assured or his wife *A* if he predeceased her" and the insured having died his widow sued to recover the amount payable under the policy. *Held*, that the insurance policy fell within the language of section 6 of the Married Women's Property Act and a statutory trust having been created in favour of the widow she was entitled to claim the money. (Madhavan Nair, J., *Abhiramavalli Ammal* v. *The Official Trustee of Madras*, 55 Mad. 171.)

Policy for benefit of wife and children, if creates a trust. Right of beneficiary to enforce.—Where a Hindu male effected a policy of insurance on his own life expressed on the face of it to be for the benefit of his wife, or his wife and children or any of them, but payable to his executors, administrators and assigns, and died leaving a daughter; *held* by the Full Bench that section 6 of the Married Women's Property Act applied to the case, and by virtue thereof a trust was created in favour of the daughter, in regard to the policy amount, against which the creditors of the assured have no right to proceed. *Held* also, that the daughter was not entitled to enforce her claim against the Insurance Company or as against a creditor as (*i*) the Company was under a contractual obligation to pay the amount to the executor or administrator of the assured, (*ii*) the presumption of advancement of a daughter was rebutted by the words "for the benefit of his wife and children" the policy not being for the benefit of such of the children as were daughters. (37 Mad. 483.)

Wife claiming as nominee of husband.—The Act does not apply to the case where a wife claims to recover the money due to her under a policy of life insurance as the nominee of her deceased husband. A Hindu assured directed an Insurance Company to pay money due under his policy effected in 1910 to his wife as the nominee of the assured. The wife claimed the amount on the death of the assured contending that Women's Property Act applied and under section 6 of the Act a trust had beeen created in her favour. *Held*: that the wife was not entitled to the money as the Women's Property Act did not apply and there was no trust in her favour by virtue of section 6. (55 Cal. 1315.)

Wife convicted of husband's murder—Trust fails.—A husband insured his life for the benefit of his wife under the provisions of section 11 of the Married Women's Property Act, 1882 (45 and 46 Vict., c. 75.) He

died, and his wife was tried for and convicted of his murder: *Held*, that the effect of section 11 was to create a trust in favour of the wife in respect of the sum insured, but that inasmuch as it was against public policy for the wife to benefit by her own criminal act, the trust in her favour failed, and a resulting trust arose in favour of the deceased husband's estate, in respect of which his executors were entitled to recover the sum insured from the insurance company. (*Cleaver* v *Mutual Reserve Fund Life Association*, 61 L. J. Q. B. 128; (1892) 1 Q. B. 147; 65 L.T. 220; 40 W. R. 230 (Eng.))

Official Trustee. Form of suit.—The plaintiff's husband had insured his life for her benefit with a certain company at Calcutta. The business of the said company was subsequently taken over by the defendant company. The insured subsequently obtained a loan from the defendants and he later on surrendered his policy on receipt of a certain amount. After her husband's death the plaintiff sued to recover the insurance amount on the ground that a trust had been created in her favour. She stated that the Official Trustee had refused to move in the matter unless she furnished funds. *Held*, that the contract having been completed in Calcutta the proper person to sue was the Official Trustee of Bengal. *Held further*, section 59 of the Trusts Act had no application because it was not shown that the execution of the trust had become impracticable or that the Official Trustee had disclaimed trusteeship. (*Lakshmi Ammal* v. *Sun Life Assurance Co.* 57 Mad. 536 = 151 I. C. 112 = A. I. R. 1934 Mad. 264.)

Sub-Section (2).—This sub-section was added by Act XIII of 1923. Section 2, Act XIII of 1923, declared that the provision of section 6 of the Act of 1874 shall apply in the case of any policy effected by any Hindu in Madras after the 31st December 1913. It does not further enact that they shall not apply to policies effected before that. They are, therefore, clearly governed by the old Act. (52 Mad. 935.) "*This question of insurance was also considered as an important matter* falling to be dealt with by the Act, and the provisions under section 6 have nothing to do with the religion of the parties, but are beneficient provisions, the reasons for enacting which are applicable whether the husband who insures his life belongs to one religion or to another." (*Per Sadasiva Aiyar, J.* in 37 Mad. 483 F. B)

IV.—LEGAL PROCEEDINGS BY AND AGAINST MARRIED WOMEN.

Married woman 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 said Indian Succession Act, 1865, or of 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.

"Which is her separate property."—The separate property of a married woman (whose husband's domicile in English) is alone bound by all debts, obligations, and engagements incurred by her in the mangement of a business carried on by her alone. (4 C. 140.) An execution of any decree obtained against her in respect of such business should be limited to her separate property. (4 C. 140.) Plaintiff sued to recover from defendant, a married woman living apart from her husband, wages due for six months. It did not appear that the defendant had separate property. *Held* therefore, that the case was not one coming within the provisions of Act III of 1874, and that being so, that the defendant was not liable upon the contract which she purported to make with the plaintiff. (35 P. R. 1879.)

Wife's liability for post nuptial debts.

8. If a married woman (whether married before or after the first day of January, 1866) 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.*

"Whether married before or after 1st January, 1866."—In a suit against a woman married before 1865, in respect of her separate property, it is not necessary to make her husband a co-defendant. (10 C. L. R. 536.) The following observations of Wilson, J. may also be noted :—"Section 8 seems to be borrowed from the English Married Women's Property Act. If the section had stood alone, I should have had no doubt that she should be sued alone. The section is not, however, free from ambiguity, owing to the change from the language used in the proceeding section. On the whole, however, I am satisfied that its effect is to make the defendant liable to be sued alone." (10 C. L. R. 536)

"If any person enters into a contract with her."—No retrospective effect.—Section 8 of the Married Women's Property Act, 1874 does not apply to contracts made before the passing of the Act. (13 B.L.R. 383.)

The proviso.—Clause (b) of the proviso is old. Clause (a) was inserted by Act XXI of 1929.

Proviso (*a*).—Restraint on anticipation not affected.—Section 8 of the Married Women's Property Act does not affect the doctrine of what is known as "restraint on anticipation." (30 M. 378; 12 C. 522 *dissented from*). Section 8 was not intended to give married women the power of evading such restraint. (18 Mad. 19). The doctrine of restraint on anticipation established by Courts of Equity for the protection of married women during coverture is one which has always been recognized and enforced by Courts in India. (30 M. 378; 379, 380). It is expressed in section 10 of the Indian Transfer of Property Act as follows:—"*Provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Mohammadan, or Buddhist) so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.*" No doubt a donor cannot give property absolutely, and at the same time impose a restriction on the legatee's or donee's power of disposing of it or alienating it; but upon that law, Courts of Enquity engrafted an exception for the protection of married women from their husband's influence, which enabled a relation or friend to make an absolutely secure provision for a married woman, or a woman likely to marry, in whom he was interested. That exception gave effect to the expressed intention of a donor to restrain the donee during her marriage from alienating or anticipating the benefits of his bounty. The donee became incapable of alienating or anticipating the income, not because she was a married woman, but because the law gave effect to the intention of the donor while she was such. (11 B. 348). If the law allowed property to be settled on an *unmarried* woman without power of anticipation, a person dealing with her could not obtain a charge upon such property, not because she was a woman, but because the donor gave her property subject to that condition; and the law, *ex hypothesi*, enabled him to do so. In the case of a *married* woman, the law does allow property to be so settled, and the married woman is unable to charge it, not because she is a married woman, but because a condition against anticipation or alienation is validly attached to the property itself. It is like the pension of a military officer, only that his liability to charge arises from the will of the Legislature and not the expressed wish of the settlor. (*Ibid.*) Section 10 of the Transfer of Property Act recognises and renders enforceable conditions in restraint of anticipation and is not affected by section 8 of the Married Women's Property Act, which cannot be construed as authorising the attachment of property which, by the rule of substantive law embodied in section 10 of the Transfer of Property Act, is incapable of being transferred or charged by the beneficiary. (30 M. 378.) A creditor's right to be satisfied out of the separate property of a married woman is, in the case of post-nuptial debts, restricted to the property as to which there is no restraint on anticipation. (18 M. 19.) A decree under section 8 of this Act against the separate property of a married woman cannot be considered as passed against property which she is restrained from anticipating. (30 M. 378.) The income of property belonging to a married woman subject to a restraint on anticipation, accruing due after the date of a decree against such married women's separate property under section 8 of the Married Women's Property Act, is not liable to attachment in execution of such decree. (30 M. 378.)

Indian Succession Act.—Does not affect Restraint on anticipation.—In a suit against a husband and wife, and the trustees of the wife's marriage settlement, on two joint and several promissory notes given by

the husband and wife after their marriage but before the passing of the Married Women's Property Act (III of 1874), the plaintiff sought to render liable property settled on the marriage upon the wife for her separate use without power of anticipation. The marriage was contracted after the passing of the Indian Succession Act, 1865. *Held*, that section 4 of the Indian Succession Act, 1865, Act did not prevent the operation of the clause in the marriage settlement in restraint of anticipation. (13 B.L.R. 383.) *See* now section 20 of the Indian Succession Act, 1925.

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 to 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.

Scope.—Section 9 does not apply where either of the spouses was, at the time of the marriage, a Hindu. (*Per* Chief Justice, in 37 Mad. 483 F.B.).

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 of any loss to such estate arising from her neglect to get in any part of the property of the deceased.

GENERAL INDEX

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