

THE



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Separate paging is given to this Part, in order that it may be filed as a separate compilation.

PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to amend the Law of Partition, was presented to the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 16th February 1893 :—

WE, the undersigned, Members of the Select Committee to which the Bill to amend the Law of

Memorandum by Mr. P. R. Desai, Pleader, District Court, Ratnágiri, dated 8th April 1892 [Paper No. 1].

From Chief Commissioner, Coorg, No. 787—50-92, dated 3rd June 1892 [Paper No. 2].

From Secretary, Sujan Samaj, Benares, No. 23—S.S., dated 31st May 1892 [Paper No. 3].

From Registrar, High Court, Calcutta, No. 1721, dated 18th June 1892 [Paper No. 4].

From Secretary for Berar to Resident, Hyderabad, No. 179, dated 28th June 1892, and enclosures

[Papers No. 5].

From Governor-General's Agent in Baluchistan, No. 3706, dated 29th June 1892 [Paper No. 6].

From Officiating Secretary to Chief Commissioner, Central Provinces, No. 4495, dated 6th July 1892

[Paper No. 7].

From Secretary to Chief Commissioner, Assam, No. 3082 J., dated 9th July 1892, and enclosures

[Papers No. 8].

From Secretary to Government, Bombay, No. 3998, dated 25th July 1892, and enclosures [Papers No. 9].

From Junior Secretary to Chief Commissioner, Burma, No. 329—L-9, dated 15th July 1892, and

enclosures [Papers No. 10].

From Chief Secretary to Government, Madras, No. 1479, dated 12th August 1892, and enclosures

[Papers No. 11].

From Officiating Secretary to Government, North-Western Provinces and Oudh, No. 761—VII.-247 B., dated 25th August 1892, and enclosures [Papers No. 12].

From Secretary, British Indian Association, dated 22nd August 1892 [Paper No. 13].

From Chief Commissioner, Ajmere Merwara, No. 1003, dated 28th September 1892, and enclosures

[Papers No. 14].

From Secretary to Government, Bengal, No. 677 J.-D., dated 27th September 1892, and enclosures

[Papers No. 15].

From Junior Secretary to Government, Punjab, No. 88, dated 23rd January 1893, and enclosures

[Papers No. 16].

From Babu Piyarimohan De, Halisahar, 24-Parganas, dated 23rd January 1893 [Paper No. 17].

interested" in section 2 that the section is not intended to include mortgages or others having only a special interest in the property.

3. In section 3, we have completed sub-section (1) by inserting words requiring the Court to offer to sell the share in question to the shareholders undertaking to buy, and we have added a new sub-section (3) making a shareholder, who fails to buy after applying for leave so to do, liable to pay the costs incidental to his application.

4. We have made section 5 somewhat more elastic by only requiring the Court to be *of opinion* that the sale or purchase will be beneficial before complying with a request or undertaking under the section.

5. Clauses (a) and (b) of section 7 have been altered so as to bring sales under a decree or order of the Recorder of Rangoon, whose Court has a procedure in such matters similar to that of the High Courts at Calcutta, Madras and Bombay, within the former clause.

6. We have omitted sections 8 and 9 of the Bill as introduced, as they appear to us to be superfluous.

7. In section 8 (formerly section 10) we have, in deference to a suggestion made by the High Court at Calcutta, put an order for sale under section 3 as well as one under sections 2 and 4 on the footing of a decree under the Code.

8. The first words of section 9 (formerly section 11) have been recast so as to make what was the intention of the section more clear.

9. Section 10 (formerly section 12) has been revised with the object of extending the benefit of the proposed Act to pending suits which may be at any stage prior to the final approval of the partition by the Court.

10. The publication ordered by the Council has been made as follows:—

In English.

<i>Gazette.</i>	<i>Date.</i>
Gazette of India	26th March 1892.
Fort Saint George Gazette	5th April 1892.
Bombay Government Gazette	31st March 1892.
Calcutta Gazette	30th March 1892.
North-Western Provinces and Oudh Government Gazette ..	2nd April 1892.
Punjab Government Gazette	7th April 1892.
Central Provinces Gazette	2nd April 1892.
Burma Gazette	9th April 1892.
Assam Gazette	9th April 1892.
Coorg District Gazette	2nd May 1892.
Sind Official Gazette	19th May 1892.

In the Vernaculars.

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
Madras	Kánarese	17th May 1892.
	Tamil	31st May 1892.
	Telugu	31st May 1892.
	Malayalam	31st May 1892.
Bombay... ..	Hindustáni	14th June 1892.
	Maráthi... ..	16th June 1892.
	Gujaráti	16th June 1892.
Bengal	Kánarese	18th June 1892.
	Bengali... ..	3rd May 1892.
	Uriya	12th May 1892.
North-Western Provinces and Oudh.	Hindi	17th May 1892.
	Urdu	16th July 1892.
	Hindi	3rd August 1892.
Central Provinces	Burmese	23rd April 1892.
Burma	Bengali... ..	14th May 1892.
Assam	Sindhi	19th May 1892.
Sindh		

11. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

RASHBEHARY GHOSE.
 PHIL. P. HUTCHINS.
 ALEX. EDW. MILLER.
 P. CHENTSAL RAO.
 G. H. P. EVANS.

The 15th February 1893.

No. II.

A Bill to amend the Law relating to Partition.

WHEREAS it is expedient to amend the law relating to partition; It is hereby enacted as follows:—

1. (1) This Act may be called the Partition Act, 1893.

(2) It extends to the whole of British India; and

(3) It shall come into force at once.

(4) But nothing herein contained shall be deemed to affect any local law providing for the partition of immoveable property paying revenue to Government.

2. Whenever in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the *shareholders* therein, or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the *shareholders*, the Court may, if it thinks fit, on the request of any of *such shareholders* interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.

3. (1) If, in any case in which the Court is requested under the last foregoing section to direct a sale, any other shareholder *applies for leave to buy at a valuation* the share or shares of the party or parties asking for sale, the Court shall order a valuation of the share or shares in such manner as it *may think fit and offer to sell the same to such shareholder at the price so ascertained*, and may give all necessary and proper directions in that behalf.

(2) If two or more shareholders *severally apply for leave to buy* as provided in sub-section (1), the Court shall *order a sale of* the share or shares to the shareholder who offers to pay the highest price above the valuation made by the Court.

(3) *If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay all costs of or incidental to the application or applications.*

4. (1) Where a share of a dwelling-house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the transfer of the share on payment of the purchase-money so fixed by the Court.

(2) If in any case described in sub-section (1) two or more members of the family undertake to

buy *such share*, but do not agree as between or among themselves with regard to the respective proportions in which they should buy, the Court shall follow the procedure prescribed by sub-section (2) of the last foregoing section.

5. In any suit for partition a request for sale may be made or an undertaking to buy given on behalf of any party under disability by any person authorized to act on behalf of such party in such suit, but the Court shall not be bound to comply with any such request or undertaking unless it is *of opinion* that the sale or purchase will be for the benefit of the party under such disability.

6. (1) On any sale under this Act any of the *shareholders* shall be at liberty to bid at the sale on such terms as to non-payment of deposit or as to setting off or accounting for the purchase-money or any part thereof instead of paying the same as to the Court may seem reasonable.

(2) If two or more persons, of whom one is a shareholder in the property, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the shareholder.

7. When any property is directed to be sold under this Act, the following procedure shall, as far as practicable, be adopted namely:—

(a) if the property be sold under a decree or order of the High Court of Calcutta, Madras or Bombay in the exercise of its original jurisdiction, or of the Court of the Recorder of Rangoon the procedure of such Court in its original civil jurisdiction for the sale of property by the Registrar;

(b) if the property be sold under a decree or order of any other Court, such procedure as the High Court may from time to time by rules prescribe in this behalf, and until such rules are made the procedure prescribed in the Code of Civil Procedure in respect of sales in execution of decrees. XIV of 18

8. Any order for sale made by the Court under section 2, 3 or 4 shall be deemed to be a decree within the meaning of section 2 of the Code of Civil Procedure. XIV of 18

9. In any suit for partition the Court may, if it shall think fit, make a decree for a partition of part of the property to which the suit relates and a sale of the remainder under this Act.

10. This Act shall apply to suits instituted before the commencement thereof, in which no scheme for the partition of the property has been finally approved by the Court.

J. M. MACPHERSON,
Offg. Secretary to the Government of India.