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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to render it permissive to the Members of the Memon Community to declare themselves subject to Muhamadan Law was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 21st March, 1898:—

We, the undersigned, Members of the Select Committee to which the Bill to render it permissive

- to the members of the Memon Community to declare themselves subject to Muhamadan Law was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report, with the Bill annexed thereto.
2. When this Bill was before us last year, the result of our discussion was a reference to the Government of Bombay to obtain, if possible, further information as to the wishes of the Memon Community at large with regard to the proposed measure. The reply of that Government is contained in its letter No. 8465, dated 19th November 1897, printed in Papers No. 17, referred to in the margin above. It will be seen from their reply that the inquiry addressed to the Memon Community has elicited from what is understood to be a large majority of the community an opinion adverse to the proposals of the Bill as introduced.
3. Under these circumstances we cannot recommend that the Bill should be proceeded with in its present form. The petitioners suggest that the proposals of the Bill should be reversed and that the
- From High Court, Calcutta, No. 791, dated 31st March, 1896 [Paper No. 1].
 From Agent to Governor General in Baluchistan, No. 3114, dated 20th April, 1896 [Paper No. 2].
 From Chief Commissioner, Assam, No. 72-L & L.—1371-J., dated 17th April, 1896 [Paper No. 3].
 From Chief Commissioner, Coorg, No. 669, dated 2nd June, 1896 [Paper No. 4].
 From Government of Madras, No. 988, dated 10th June, 1896 [Paper No. 5].
 From Resident, Hyderabad, No. 189, dated 18th July, 1896, and enclosures [Papers No. 6].
 From Chief Commissioner, Burma, No. 481-L.—10, dated 17th July, 1896, and enclosures [Papers No. 7].
 From Government, North-Western Provinces and Oudh, No. 853-VII-804—B., dated 24th July, 1896, and enclosures [Papers No. 8].
 From Government, Punjab, No. 883, dated 28th July, 1896, and enclosures [Papers No. 9].
 From Government, Bombay, No. 5404, dated 7th August 1896, and enclosures [Papers No. 10].
 From Chief Commissioner, Central Provinces, No. 5536, dated 17th August, 1896, and enclosures [Papers No. 11].
 From Chief Commissioner, Ajmere-Merwara, No. 993-090, dated 20th August, 1896, and enclosures [Papers No. 12].
 From Government, Bengal, No. 4839-J., dated 25th August, 1896, and enclosures [Papers No. 13].
 Note by the Hon'ble Pandit Bishambar Nath, dated 17th December, 1896 [Paper No. 14].
 Note by the Hon'ble B. M. Sayani, dated 6th January, 1897 [Paper No. 15].
 Note by the Hon'ble Nawab Amiruddeen Ahmad Khan, C. I. E., Bahadur, Fakahruddoulah, Chief of Loharu, dated 8th February, 1897 [Paper No. 16].
 From Government of India, Legislative Department, to Government, Bombay, No. 448, dated 26th February, 1897, and enclosures; from Government, Bombay, No. 8465, dated 19th November, 1897, and enclosures [Papers No. 17].
 Note by the Hon'ble Rai Bahadur Pandit Suraj Kaul, C.I.E., dated 12th January, 1898 [Paper No. 18].

Muhammadian law should apply to the whole of the community with the reservation that Memons who do not desire to follow the Muhammdan law of succession should make a declaration to that effect.

4. The Bill, as framed, requires Memons, who do desire to follow the Muhammdan law of succession, to make a declaration to that effect. We agree that if the majority of the community are on one side, it is the minority who should except themselves by specific declaration. On the other hand, it would be hardly fair that Memons who wish to abide by their ancient family customs should be obliged to declare themselves not to be orthodox Muhammdans. It seems to us that perhaps legislation on new lines might be preferable and that the Government of Bombay might be further consulted. The proposal we submit for consideration is that the Muhammdan law of intestate succession should be declared applicable to the whole of the Memon Community, but that complete liberty of testamentary disposition should be reserved. This proposal will require careful consideration and elucidation; in the first place as to whether it would in itself be acceptable to the Memons as a solution of the difficulty; in the second place as to the bearing of existing decisions on the customary law of the Memons. We are not sure how far the Courts would be prepared to hold, without definite legislation on the point, that the property held by Memons is held by them on such terms as to be capable of being disposed by will.

5. We regret that there should be further delay in this matter, but we think it is better for the community itself that the law should be clear and unambiguous, so that there may be no further occasion to resort to the Legislature.

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

In English.

<i>Gazette.</i>			<i>Date.</i>
Gazette of India...	...	...	21st March 1896.
Fort Saint George Gazette ...	...	...	7th April 1896.
Bombay Government Gazette ...	...	...	26th March 1896.
Calcutta Gazette ...	...	...	25th March 1896.
North-Western Provinces and Oudh Government Gazette	...	...	28th March 1896.
Punjab Government Gazette	...	...	2nd April 1896.
Burma Gazette ...	...	...	4th April 1896.
Central Provinces Gazette ...	...	...	28th March 1896.
Assam Gazette ...	...	...	4th April 1896.
Coorg District Gazette ...	...	...	1st April 1896.
Sind Official Gazette ...	...	...	7th May 1896.

In the Vernaculars.

<i>Province.</i>			<i>Language.</i>	<i>Date.</i>
Madras ...	...	...	Hindustani ...	21st April 1896.
Bombay ...	...	...	Marathi ...	2nd July 1896.
			Gujarathi ...	2nd July 1896.
			Kanarese ...	2nd July 1896.
Bengal ...	...	...	Bengali ...	28th April 1896.
			Hindi ...	5th May 1896.
			Uriya ...	14th May 1896.
North-Western Provinces and Oudh ...	...	...	Urdu ...	2nd May 1896.
Punjab ...	...	...	Urdu ...	7th May 1896.
Burma ...	...	...	Burmese ...	13th June 1896.
Central Provinces ...	...	...	Hindi ...	3rd June 1896.
Assam ...	...	...	Bengali ...	9th May 1896.
Sindh ...	...	...	Sindhi ...	7th May 1896.

(Signed) J. WOODBURN.
 („) M. D. CHALMERS.
 („) R. M. SAYANI.
 („) C. C. STEVENS.
 („) H. E. M. JAMES.

The 19th March 1898.

A Bill to render it permissive to the members of the Memon Community to declare themselves subject to Muhammadan Law.

WHEREAS there is in the Presidency of Bombay and elsewhere a class of persons known as Memons, and questions have from time to time arisen as to the law by which such persons are in certain particulars governed;

And whereas some of such persons consider that they are, or desire that they should be, governed in those particulars by the Muhammadan law as established in the Hanafi School;

And whereas it is expedient to provide a procedure whereby the applicability of that law to such persons in those particulars may be placed beyond dispute;

It is hereby enacted as follows:—

Title, extent and commencement. 1. (1) This Act may be called the Memons Act, 1896; and

(2) It shall come into force at once.

2. (1) When any Memon who has attained his majority has declared, in any manner next hereinafter provided, that he desires to be governed by the Muhammadan law as established in the Hanafi School, that law shall thereupon, any custom to the contrary notwithstanding, apply to him, and to his children (if any), being minors at the time of such declaration or born thereafter, and to all property of which he or they shall then be or thereafter become absolutely entitled, in each part of British India, in the same particulars and to the same extent as it applies in the same part of British India to other Muhammadans and their property.

(2) No declaration made as aforesaid shall be capable of being revoked.

3. A declaration to take effect under section 2 shall be made by a written instrument signed by the

declarant and in the form set forth in the schedule or in a like form, and shall,—

(a) if made in any part of British India in which the Indian Registration Act, 1877, is for the time being in force, be registered under that Act during the lifetime of the declarant; and,

(b) if made elsewhere, be executed before, and authenticated by, a notary public or a Court, Judge, Magistrate, British Consul or Vice-Consul or representative of Her Majesty or of the Government of India.

4. When declarations under the foregoing

provisions have been made by two successive generations of by a Memon and by any one of his sons, the Muhammadan law as established in the Hanafi School shall thereupon, any custom to the contrary notwithstanding, apply to all the lineal descendants of such son in the same manner and to the same extent as to other Muhammadans governed by it in the same part of British India.

5. Nothing in this Act shall be construed—

(1) to prevent any person being or becoming subject to any form of the Muhammadan law in any manner other than that herein provided, or

(2) to affect the rights of any member of a declarant's family other than such children and lineal descendants as are referred to in sections 2 and 4.

SCHEDULE.

FORM OF DECLARATION.

I, *A. B.*, son of *C. D.*, being a Memon and of the age of not less than years, hereby declare that I desire to be governed, to the extent provided by the Memons Act, 1896, by the Muhammadan law as established in the Hanafi School.

J. M. MACPHERSON,

Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to further amend the Petroleum Act, 1886, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 21st March 1898 :—

We, the undersigned, Members of the Select Committee to which the Bill to further amend the Petroleum Act, 1886,

From Chief Commissioner, Central Provinces, No. 9042, dated 23rd November 1897 [Paper No. 1].
 From High Court, Calcutta, No. 2803, dated 2nd December 1897 [Paper No. 2].
 From Chief Commissioner, Ajmere-Merwara, No. 23-C.—690, dated 13th December 1897 [Paper No. 3].
 From Chief Commissioner, Coorg, No. 2043, dated 27th December 1897 [Paper No. 4].
 From Messrs. Graham & Co., Calcutta, dated 18th December 1897, and enclosures [Papers No. 5].
 From Agent to Governor General in Baluchistan, No. 8550, dated 28th December 1897 [Paper No. 6].
 From Government, North-Western Provinces and Oudh, No. 4175—VI-682-C., dated 28th December 1897, and enclosures [Papers No. 7].
 From Government, Burma, 147—L.-5, dated 6th January 1898, and enclosures [Papers No. 8].
 From Resident, Hyderabad, No. 6, dated 5th January 1898, and enclosures [Papers No. 9].
 From Government, Punjab, No. 54, dated 11th January 1898, and enclosures [Papers No. 10].
 From Government, Bombay, No. 312, dated 14th January 1898 [Paper No. 11].
 From Government, Madras, No. 119, dated 19th January 1898, and enclosures [Papers No. 12].
 From Chief Commissioner, Assam, No. 16-L. & L.—505-J., dated 14th February 1898, and enclosures [Papers No. 13].
 From Government, Bengal, No. 352-Marine, dated 12th February 1898, and enclosures [Papers No. 14].

was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report, with the Bill as amended by us annexed hereto.

2. We have made a verbal alteration in clause (c) of the definition of "pe-

roleum" in accordance with a suggestion of the Bombay Government.

3. We have in clause 3 added a new sub-section (4) to section 4 of the Act so as to provide for the previous publication of notifications altering tests. This will enable any persons affected thereby to make any representations they may wish to the Government before a new or altered test is brought into operation.

4. It was suggested to us that provision should be made for the exemption of certain kinds or qualities of liquid fuel from the operation of the Act, but such a provision is unnecessary, as under section 22 of the Act the Local Government has power to do this by notification when it is satisfied that it can be done with propriety.

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

In English.

<i>Gazette.</i>	<i>Date.</i>
Gazette of India	7th November 1897.
Fort Saint George Gazette	23rd November 1897.
Bombay Government Gazette	18th November 1897.
Calcutta Gazette	24th November 1897.
North-Western Provinces and Oudh Government Gazette	20th November 1897.
Punjab Government Gazette	18th November 1897.
Burma Gazette... ..	4th December 1897.
Central Provinces Gazette	20th November 1897.
Assam Gazette	4th December 1897.
Coorg District Gazette	1st December 1897.
Sind Official Gazette	2nd December 1897.

In the Vernaculars.

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
Bombay	Kanarese	16th December 1897.
	Marathi	23rd December 1897.
	Gujarathi	23rd December 1897.
Bengal	Bengali	7th December 1897.
	Hindi	14th December 1897.
Burma	Burmese	11th December 1897.
Assam	Bengali	18th December 1897.

6. 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.

(Signed) J. WOODBURN.
 (") M. D. CHALMERS.
 (") JOY GOBIND LAW.
 (") F. A. NICHOLSON.
 (") ALLAN ARTHUR.

No. II.

A Bill to further amend the Petroleum Act, 1886.

WHEREAS it is expedient to further amend the Petroleum Act, 1886; It is hereby enacted as follows:—

Short title and commencement.

1. (1) This Act may be called the Petroleum Act, 1898; and

(2) It shall come into force at once.

2. In section 3 of the Petroleum Act, 1886, Substitution of new definition of 'petroleum' in section 3, Act XII, 1886.

(1) the following shall be substituted, namely:—

“(1) 'petroleum' includes also—

(a) the liquids commonly known by the names of rock oil, Rangoon oil, Burma oil, kerosine, paraffin oil, mineral oil, petroline, gasoline, benzol, benzoline and benzine;

(b) any inflammable liquid which is made from petroleum, coal, schist, shale, peat or any other bituminous substance, or from any product of petroleum; and

(c) any liquid or viscous mixture having in its composition any of the liquids aforesaid:

but it does not include any oil ordinarily used for lubricating purposes and having its flashing point at or above two hundred degrees of Fahrenheit's thermometer:”

3. To section 4 of the said Act the following Addition of new sub-sections shall be added, sections to section 4, Act XII, 1886. namely:—

“(3) The Governor General in Council may, by notification in the official Gazette, alter or add to the schedule to this Act by prescribing new or varied tests, and directions for preparing and using them; and all references in this Act to the schedule, when altered or added to, shall be construed as referring to the schedule as so altered or added to for the time being.

(4) The provisions of section 23 of the General Clauses Act, 1897, shall apply to notifications under sub-section (3) as if they were rules or orders required to be made after previous publication.”

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

of 1886.

of 1886

X of 1897.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 21st March 1898:—

No. 3 OF 1898.

A Bill to amend the Indian Contract Act, 1872.

IX of 1872. WHEREAS it is expedient to amend the Indian Contract Act, 1872, by better defining the law relating to undue influence; It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Short title, com- Contract Act (1872) Amend- mencement and appli- ment Act, 1898. cation.

(2) It shall come into force on the day of 1898; and

(3) It shall apply to every contract in respect of which any suit is instituted after the commencement of this Act.

IX of 1872. 2. Section 16 of the Indian Contract Act, 1872, is hereby repealed, and the following section is substituted therefor, namely:—

Substitution of new sections for section 16, Act IX of 1872.

“16. (1) A contract is said to be induced by ‘undue influence’ where the parties to the contract do not contract on a footing of equality, but one of the parties is in a position to dominate the other, and uses that position to obtain an unfair advantage over the other or to make him consent to terms to which he would not otherwise have consented.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate another—

(a) where he holds a real or apparent authority over the other or where there is a fiduciary relation between the parties, or

(b) where he makes a contract with a person who is naturally feeble-minded or whose mental capacity is temporarily or permanently affected by reason of age, illness, mental or bodily distress, or other special circumstances.

(3) Where a person who is in a position to dominate another enters into a contract with him, the burden of proving that such contract is fair and reasonable and was not induced by undue influence shall lie upon such person.

Illustrations.

(a) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(c) A, an agriculturist, borrows of B, the money-lender of his village, or of the family or community to which he belongs, a sum of money and executes a bond therefor. It appears in evidence that A was deeply involved at the time of the transaction, or that he or some of the members of his family had previously thereto had monetary dealings with B, so as to render it difficult for him to have recourse to any other money-lender or to avail himself of the open market. It lies on B to prove that the transaction was a fair and reasonable one, and was not induced by undue influence.”

3. In section 19 of the said Act the words “undue influence” are hereby repealed, and after the same section the following section is hereby inserted, namely:—

“19A. Where a contract is induced by undue influence, it may be set aside either absolutely or upon such terms and conditions as to the Court may seem just.

Power to Court to set aside contract induced by undue influence.

Illustrations.

(a) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(b) A, a money-lender, advances Rs. 100 to B, an agriculturist, and by undue influence induces B to execute a bond for Rs. 200 with interest at 12 per cent. per month. The Court may set the bond aside, but may order B to repay the Rs. 100 with such interest as may seem just.”

4. (1) Section 74, paragraph one, of the said Act is hereby repealed and the following paragraph is substituted therefor, namely:—

“74. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or the penalty stipulated for.”

(2) After illustration (c) to the said section the following illustrations shall be added, namely:—

(a) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent. at the end of six months, with a stipulation that in case of default interest shall be payable at the rate of 75 per cent. from date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.

(e) A, who owes money to B, a money-lender, undertakes to repay him by delivering to him 10 mannds of grain on a certain date and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 mannds. This is a stipulation by way of penalty and B is only entitled to reasonable compensation in case of breach.

(f) A undertakes to repay B a sum of Rs. 1,000 by five equal monthly instalments, with a stipulation that in default of payment of any instalment the whole shall become due. This stipulation is not by way of penalty and the contract may be enforced according to its terms."

STATEMENT OF OBJECTS AND REASONS.

THE intention of this Act is not to interfere with the freedom of contract where consent is free and parties contract on a footing of equality, but to give the Courts a wider discretion in dealing with certain inequitable contracts where at present their powers appear to be unduly limited.

Notes to Clauses.

Clause 1 (3).—As the proposed Act will not of itself invalidate any contract heretofore made but will merely confer an increased equitable jurisdiction on the Courts, it seems right that it should apply to all suits instituted after the commencement of the Act even though the contract which forms the subject of litigation was entered into before the commencement of the Act.

Clause 2.—The foundation of the existing rules as to undue influence is the fact that the parties do not contract on a footing of equality and therefore that the consent is not free. But the existing definition of "undue influence" in section 16 of the Indian Contract Act, 1872, is merely an enumeration of two common classes of cases of undue influence and not a statement of the principle on which those cases depend. The object of sub-section (1) is to state the general principle which governs the law of undue influence without confining it to the cases specifically enumerated.

It is obvious that the person who is in a position to exercise undue influence over another may or may not have exercised it in fact. But it seems right that, where the parties do not contract on a footing of equality, the party who is in a position to dominate the other should be called on to show that he has not taken advantage of his position. This is the object of sub-section (3), which will enable the Court to go behind the letter of the contract and inquire into the substantial fairness of the whole transaction.

Clause 3.—Where the Court finds as a fact that undue influence has been exercised, it is necessary to give it a wide discretion to do justice between the parties. If the contract has not been performed on either side, it will be sufficient for the Court to set it aside absolutely; but, where the contract has been performed partly by either or both of the parties, it is clear that, by merely setting aside the contract, the parties cannot be restored to their original position. It is therefore necessary to arm the Court with powers to impose terms and conditions so as to do complete justice in the case. The new clause 19A which it is proposed to add to the Indian Contract Act, 1872, is intended to effect this object.

Clause 4.—Section 74 of the Indian Contract Act, 1872, appears to have been intended to abolish the highly technical distinction of English law between penalty clauses and clauses stipulating for liquidated damages, but, owing to the language employed, divergent views have been taken by the Courts as to the cases covered by the section. It seems desirable that a liberal construction should be placed on the equitable powers intended to be conferred by the section and therefore the language of the section has been amplified so as to make it apply in terms to all stipulations by way of penalty, whether the penalty consists of a sum named or not.

The 15th March 1898.

(Signed) J. WOODBURN.

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

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 21st March 1898 :—

No. 4 of 1898.

A Bill to make provision for certain matters connected with Insolvency.

WHEREAS doubts have arisen as to the extent of the power to make rules conferred by sections 15 and 76 of the Indian Insolvency Act, 1848, and whereas it is expedient to remove those doubts, and to confirm certain rules which were made by the High Court of Judicature at Bombay on the thirty-first day of July 1878; it is hereby enacted as follows :—

1. (1) This Act may be called the Indian Short title and commence- Insolvency Rules Act, ment. 1898; and

(2) It shall come into force at once.

2. The power to make rules conferred by sections 15 and 76 of the Indian Insolvency Act, 1848, shall be deemed to include, and to have included, a power to make rules for the audit of the accounts of the official assignee, and for paying the costs of such audit and for paying the reasonable costs and charges of the official assignee, out of the funds in the hands of the official assignee.

3. The rules made, in exercise of the aforesaid power, by the High Court of Judicature at Bombay on the thirty-first day of July 1878 are hereby confirmed.

Confirmation of rules made on the 31st July 1878 by the Bombay High Court.

STATEMENT OF OBJECTS AND REASONS.

This Bill is intended to remove some doubts which have from time to time arisen as to the extent of the powers of a High Court to frame rules under sections 15 and 76 of the Indian Insolvency Act, 1848 (11 and 12 Vict., c. 21), and at the same time to validate and confirm certain rules which were made by the Bombay High Court in 1878 in pursuance of the said provisions.

The 18th March 1898.

(Signed) M. D. CHALMERS.

J. M. MACPHERSON,

Secretary to the Government of India.