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PART VI.

BILLS OF 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 9th January 1896:—

No. 3 of 1896.

A Bill to amend the Code of Civil Procedure.

WHEREAS it is expedient to amend the Code of Civil Procedure; It is hereby enacted as follows:—

1. (1) This Act may be called the Civil Procedure Amendment Act, 1896; and
Title and commencement.

(2) It shall come into force on the first day of March 1896.

2. For the first paragraph of section 195 the Amendment of section following shall be substituted, namely:—
195, Act XIV, 1882.

“195. In any *ex parte* suit, in any non-contentious proceeding and upon an application in any suit or proceeding, evidence may be given by affidavit, but the Court may order the attendance for cross-examination of the declarant.”
Evidence in certain suits.

3. In section 235, after the words “or by the attachment of his property,” the following shall be inserted:—
Amendment of section 235.

“or by the attachment and sale of his property.”

Substitution of new section for section 239.

“289. The proclamation shall be made in manner prescribed by section 274 and shall, whenever the decree-holder shall so apply, be made simultaneously with the attachment. A copy of such proclamation shall be served upon the judgment-debtor in the manner prescribed for the service of summons or upon his pleader if he shall have appointed any in the execution proceeding.”
Mode of making proclamation.

“The Local Government may make provision and rules for the advertisement of the property, if of the value of one hundred rupees and upwards, in a local Gazette for each district or group of districts. When such provision and rules shall have been made for any district or group of districts, the property shall be advertised in the local Gazette of such district or group, and costs of the advertisement shall be deemed to be costs of the sale. But, until such provision and rules shall have been made, the Court may direct that the property shall be advertised in the local official Gazette or in a local newspaper, the costs of such advertisement being costs of the sale.”

Addition of new chapter after section 653.

5. After section 653 the following sections shall be added:—

“CHAPTER L.

“SUPPLEMENTAL PROVISIONS.

“654. In any suit for the institution of which a previous notice is necessary under any law in force, if the defendant Applications for stay of proceedings in certain suits.

shall raise a question regarding the service or legality of notice, the plaintiff may apply that the proceedings in the suit be stayed for such period as may give the defendant time not less than the time for which he is entitled to have notice.

“655. The Court shall, upon such application, stay proceedings in the suit for such period as may give the defendant time not less than the time for which he is entitled to have notice.

“Upon the expiration of such period, the defendant may elect either to make a fresh defence to the action or to confess judgment and place at the disposal of the Court for delivery to the plaintiff the property or money claimed.

“656. If the defendant shall confess judgment and place at the disposal of the Court the property or money claimed, the Court shall not award any costs against him.

“If the defendant shall make a defence, the Court shall not allow any question regarding, or depending upon, the service or legality of notice to be raised in the suit, but shall decide the other points, if any, in issue between the parties. If the Court shall decide in favour of the plaintiff, it shall provide that its decree shall take effect from such date as may be just under the circumstances of the case.”

STATEMENT OF OBJECTS AND REASONS.

THE amendments which this Bill proposes to make in the Code of Civil Procedure are not only expedient, but some of them seem to be absolutely necessary.

I. The first amendment is of section 195, under which evidence by affidavit could be given upon applications. The amendment will enable the Court to receive evidence by affidavit in *ex parte* suits and non-contentious proceedings. In the High Court, evidence by affidavit is received in non-contentious proceedings for the grant of probate or letters of administration. There is no reason why evidence by affidavit may not be given in all *ex parte* suits and non-contentious proceedings, subject always to the discretion of the Court to require the attendance of the declarants for cross-examination.

II. The next two amendments may be considered together. At present there is no provision in the Procedure Code for the simultaneous issue of the process of attachment and proclamation as there is in section 163 of the Bengal Tenancy Act. The amendments will enable the decree-holder to apply for the attachment and sale of the debtor's property and for the simultaneous issue of the processes thereof and save the cost and delay of successive service.

The next provision is for the service of proclamation upon the judgment-debtor. The framers of the Procedure Code were probably of opinion that proclamation upon the property was a sufficient notice to him. But the service of such proclamation is often a matter of considerable doubt and controversy and, even when *bonâ fide* made, would not apprise the judgment-debtor of the intended sale, if he did not reside in the neighbourhood. The Civil Procedure Amendment Act, 1894, renders it almost indispensable that the judgment-debtor should have notice of sale in order that he might take steps for setting it aside within thirty days from its date by depositing the amount due under the decree and 5 per cent. compensation for the purchaser.

The second paragraph of the amended section 289 enables the Local Government to provide and make rules for the advertisement of property in a local Gazette which should be in the language of the district and advertise all land-sales by public auction whether by order of Civil Courts or Revenue-authorities. The ancient primitive method of proclamation by beat of drum is wholly inadequate, and requires to be supplemented by advertisement in a local Gazette always open and available to the land-buying public.

III. The rule of giving notice prior to the institution of suits seems to be wholly unsuited to this country, where its tendency is clearly mischievous and to seriously handicap justice. It raises an artificial preliminary issue between the parties and puts the real issues in the background. It is a lamentable sight to see suits thrown out under the rule. The supplemental provisions which it is proposed to add will take off its sting, and will, while giving the defendant every advantage which he has under the rule, save suits from dismissal without trial upon the merits. The Court will now say to him: “You say you are entitled to six months' notice and such notice has not been given. Well we will stay the suit for you for six months. All this time the property will remain in your possession, and all this time you will have for considering and maturing your defence, if you think fit to make any. If you have no good defence, you can confess judgment and place the property in the hands of the Court for delivery to the plaintiff, and then there will be no costs against you. In fact, you will have everything that you may fairly claim, short of getting a dismissal of the suit without trial and a field day with witnesses over the question of notice.”

The 9th January 1896.

(Signed) M. M. Roy.

S. HARVEY JAMES,
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 9th January 1896:—

No. 4 of 1896.

A Bill to amend the Indian Registration Act, 1877, and the Indian Evidence Act, 1872.

111 of 1877. WHEREAS it is expedient to amend the Indian I of 1872. Registration Act, 1877, and the Indian Evidence Act, 1872; It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Short title and com- Registration Act Amend- mentment Act; and

(2) It shall come into force on the first day of January 1897.

2. In section 33 (a), for the words "and authenticated by the Registrar or Sub-Registrar within whose district or

Amendment of sec- tion 33, Act III, 1877.

sub district the principal resides," the following shall be substituted, namely:—

"authenticated by any Registrar or Sub-Registrar."

Insertion of new sec- 3. The following shall tion after section 47 of said be inserted after section Act. 47, namely:—

"47A. But, if more than one document be executed by the same executant in respect of the same property, the document first registered shall take effect against any document subsequently registered, though executed on a prior date."

4. In section 90 of the Indian Evidence Act, I of 1872.

Amendment of sec- after the words "whero tion 90, Act I, 1872. any document purport- ing or proved to be thirty years old," the following shall be inserted, namely:—

"or any document registered under the Indian Registration Act and more than twelve years old."

STATEMENT OF OBJECTS AND REASONS.

Section 33 (a) of the Indian Registration Act, 1877, as it now stands and as it is ordinarily construed, is productive of great inconvenience and hardship. It frequently happens that the principal has to execute a power-of-attorney for the registration of a document when he is away from his residence or home and is for a time in another sub-district on business or for other cause. There is no good reason why he may not execute it before the sub-registrar of such sub-district and get it authenticated by him. The law makes it incumbent upon the executant to execute his power-of-attorney before a registering officer. He will never authenticate without being satisfied of the executant's identity. This acts as a sufficient safeguard, and the further provision which it is proposed to omit is an unnecessary restriction.

2. Section 47A, which it is proposed to add, is a very important and necessary provision. The present law, section 47, leaves a wide door open for the commission of fraud. A executes a transfer of his property to B, and does not immediately register the deed. The law allows four months, which may be extended under certain circumstances to eight months, for its registration, and, if executed out of British India, the registration may be deferred for years at the option of the parties. There is nothing to prevent A from again transferring the property to C within the time allowed for registering the first deed. If C made any enquiry in the registry office, he would obtain no information of the execution of the prior deed, and would be easily taken in. Under the present law, if the transfer in favour of B be afterwards registered, it will take effect against the deed in favour of C. In such cases there is generally some kind of understanding between the vendor and the first transferee. But it is very difficult to prove collusion between them, and the result of litigation between the rival purchasers generally is that the vendor sells his property twice over, and the second purchaser is completely sold. This should not be. The section proposed to be added will, by giving priority to prior registration, prevent the commission of such fraud. There is a similar provision in the English Statute Law, 7 Anne, 20, and 38 & 39 Vict., c. 87, s. 28.

3. With regard to registered documents of a certain age, say, twelve years, when they are past the age of being questioned by suit, it is desirable that the Civil Court should have the power to use them as evidence without formal proof of execution. Prudent men of business generally rely and act upon registered documents without such formal proof. Why should not the Civil Court be at liberty to dispense with it, when it thinks fit to do so? If, however, a registered document be seriously impugned or be the subject of an issue in the cause, the Court will doubtless go into evidence upon it. This is exactly what the amendment provides. The expression "may presume" is thus defined in the Indian Evidence Act:—

"Whenever it is provided by this Act that the Court 'may presume' a fact, it may either regard such fact as proved, unless or until it is disproved, or may call for proof of it."

This presumption applies at present to all documents more than thirty years old, although they may have never seen the light until produced in Court. It is proposed to extend this presumption to registered documents of a less age but having a greater guarantee of authenticity by reason of registration. The proposed amendment, while it will simplify the procedure of the Court and save the recording of a lot of formal evidence, seems to be necessary in the interests of justice for the protection of purchasers at auction-sales, who have to depend chiefly upon certified copies of deeds from the registry office and find it extremely difficult to obtain evidence of their execution.

The 9th January 1896.

(Signed) M. M. Roy.

S. HARVEY JAMES,
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 16th January 1896:—

No. 5 of 1896.

A Bill to amend the Excise Act, 1881.

XXII of 1881. WHEREAS it is expedient to amend the Excise Act, 1881 (hereinafter called "the said Act"); It is hereby enacted as follows:—

I. In section I of the said Act for the words Amendment of section 1, "British Burma" the Act XXII, 1881. words "the whole of Burma (inclusive of Upper Burma)" shall be substituted.

2. For the heading to Chapter II of the said Act the following shall be substituted, namely:—
Substitution of new head- Act the following shall be ing to Chapter II, Act substituted, namely:—
XXII, 1881.

"PRODUCTION OF SPIRIT AND FERMENTED LIQUOR."

Repeal of section II, Act 3. Section II of the XXII, 1881. said Act is repealed.

4. After Chapter II of the said Act the following Chapter shall be added, namely:—

"CHAPTER II A.

CULTIVATION, IMPORT, EXPORT, TRANSPORT AND WAREHOUSING OF INTOXICATING DRUGS.

II. (1) In Burma, the cultivation of hemp and the preparation of intoxicating drugs are prohibited except under, and in accordance with, a license granted by such officer as the Local Government may from time to time appoint in this behalf.

(2) In the other territories to which this Act extends, the Local Government, with the previous sanction of the Governor General in Council, may, from time to time by notification in the local official Gazette, in respect of the whole or any part of the territories administered by it,

(a) prohibit, absolutely or except under, and subject to the conditions of, a license granted by such officer as the Local Government may from time to time appoint in this behalf, the cultivation of the hemp plant and the production or preparation of intoxicating drugs from the hemp plant so cultivated, and place the cultivation of the hemp plant and the production or preparation and storage of such intoxicating drugs as aforesaid under such supervision as may be deemed necessary to secure payment of the duty (if any) imposed under this Act;

(b) restrict and regulate in such manner as may be prescribed the collection by any person of the spontaneous growth of the hemp plant and the preparation of intoxicating drugs from the spontaneous growth so collected; and

(c) prohibit, absolutely or otherwise than by certain specified routes, the importation of intoxicating drugs.

(3) The Local Government, with the previous sanction of the Governor General in Council, may from time to time by a like notification, withdraw or vary any prohibition, restriction or regulation imposed under sub-section (2).

IIA. The Local Government, with the previous sanction of the Governor General in Council, may, from time to time by notification in the local official Gazette,—

(a) impose such duty, not exceeding one hundred rupees per acre, as it may think fit, on the cultivation of hemp;

(b) impose such duty, not exceeding twenty rupees per ser, as it may think fit, on intoxicating drugs produced or prepared in, or imported into, or exported from, or transported from place to place within, any of the territories to which this Act extends, or any part thereof; and

may, in like manner, alter or abolish any duty imposed under this section.

IIB. The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, establish bonded or other warehouses for the storage of intoxicating drugs and direct that, subject to such conditions (if any) as it may, from time to time, impose, the levy of the duty (if any) payable under section IIA on intoxicating drugs stored in such warehouses shall be postponed until such time as may by rule be fixed in this behalf.

IIC. (1) In Burma no person shall have in his possession any intoxicating drugs except under, and in accordance with the terms of, a general exemption granted by the Local Government, or a license granted by such officer as the Local Government may, from time to time, appoint in this behalf.

(2) In the other territories to which this Act extends, no person shall have in his possession any larger quantity of any intoxicating drugs than that specified in section 3, clause (k), in respect of such drugs unless he is permitted to collect, cultivate, manufacture or sell the same.

IID. The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the local official Gazette, make rules consistent with this Act,—

(a) to regulate the time, place and manner of payment of the duties (if any) imposed under section IIA,

(b) to carry into effect the provisions of section II, section IIB and section IIC, or any of them, and

(c) generally, to carry into effect the provisions of this Chapter.

III. The Chief Revenue-authority may, with

Power for chief Revenue-authority to regulate the possession or transport of intoxicating drugs for supply to vendors.

persons possessing or transporting intoxicating drugs for the supply of the licensed vendors of such drugs."

5. In section 13 of the said Act, for the words "power hereinafter conferred" the words "powers conferred by this Act" shall be substituted.

6. In section 20 of the said Act the words from "and the grant" to the end of the section are repealed.

7. For the heading to Chapter IV of the said Act the following shall be substituted, namely:—

"POSSESSION OF SPIRIT AND FERMENTED LIQUOR."

Repeal of section 22, Act XXII, 1881.

Substitution of new heading to Chapter V, Act XXII, 1881.

Repeal of section 22, Act XXII, 1881.

Substitution of new heading to, section 23 A, Act XXII, 1881.

(2) To the same section the following paragraph shall be added, namely:—

"When any duty is imposed under this section, the Governor General in Council may by rule prescribe the time, place and manner of payment of the same."

the previous sanction of the Local Government, from time to time, make rules to regulate the grant of licenses or passes to persons possessing or transporting intoxicating drugs for the supply of the licensed vendors of such drugs."

8. Section 22 of the said Act is repealed.

9. For the heading to Chapter V of the said Act the following shall be substituted, namely:—

"IMPORT OF SPIRIT AND FERMENTED LIQUOR."

10. (1) In section 23A of the said Act the words "or intoxicating drug" are repealed.

11. In section 36, clause (d), of the said Act, the words "or intoxicating drug" wherever they occur, are repealed.

12. For section 38 of the said Act the following shall be substituted, namely:—

"38. (1) Any person, who in contravention of any provision of Chapter IIA or any rule thereunder, or without payment of such duty (if any) as may for the time being be payable in pursuance of a notification under section II A,

A repeal of part of section 36, clause (d), Act XXII, 1881.

Substitution of new section for section 38, Act XXII, 1881.

namely:—

(a) cultivates hemp, or

(b) collects the spontaneous growth of the hemp plant, or

(c) prepares any intoxicating drug, or

(d) possesses any intoxicating drug, or

(e) imports, exports or transports any intoxicating drug,

shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(2) Any intoxicating drug in respect of which an offence has been committed under this section, together with the vessel containing the same and any animals and conveyances used in carrying it, shall be liable to confiscation."

13. In section 41 of the said Act, for the words and figures "liquor or drug, in contravention of section 21 or section 22," the words and figures "or liquor, in contravention of section 21," shall be substituted, and for the words "liquor or drug," where they next occur, the words "or liquor" shall be substituted.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to amend the Excise Act (XXII of 1881) so as to enable the Government to tax and regulate the traffic in hemp drugs in accordance with the recommendations of the Hemp Drugs Commission in so far as they have been approved by the Government of India.

2. It is proposed by sections 3 and 4 of the Bill to substitute for section II of the Act a separate chapter, in which are brought together, in an amended and amplified form, those provisions which have special reference to the cultivation of the hemp plant and traffic in intoxicating drugs. In this chapter power is taken to prohibit, absolutely or except under license, the cultivation of the hemp plant and the production of intoxicating drugs or to restrict and regulate the collection of the spontaneous growth of the hemp plant. Power is also taken to impose locally an acreage duty on cultivation and a duty on the preparation, importation, exportation and transportation of intoxicating drugs. The Government is at the same time empowered to prohibit, absolutely or otherwise than by prescribed routes, the importation of intoxicating drugs, and to establish bonded or other warehouses for the storage of such drugs, postponing until such time as may be fixed by rule the levy of the duty (if any) payable on them when so stored. Provision is further made for the framing of rules for regulating the time and place of payment of duty and, generally, for carrying out the provisions above referred to.

3. The remaining sections purport to make merely consequential amendments, principally with the object of collecting as much as possible in one place the provisions of the Act affecting the production, possession, importation, exportation and transportation of intoxicating drugs. It will be observed that the form used throughout is permissive.

The 14th January 1896.

(Signed) J. WESTLAND.

S. HARVEY JAMES,
Secretary to the Government of India.