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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 Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 4th July, 1878, and was referred to a Select Committee:—

Bill No. 5 of 1878.

*A Bill to amend the Code of Civil Procedure.*

For the purpose of amending the Code of Civil Procedure; It is hereby enacted as follows:—

1. In Section 4, the words and figures "the Punjáb Courts Act, 1865," and "the Panjáb Appeals Act, 1873," shall be omitted; and after the words "local law," in each of the places where they occur, the words "now or hereafter in force" shall be inserted.

2. In section 43, for the words "arising out of," the words "which the plaintiff is entitled to make in respect of" substituted; and in the same section, paragraphs one and two, and section 50, clause (f), for the words "his claim," the words "the thing which he is entitled to claim" shall be substituted.

3. To section 51 the following proviso shall be added (namely):—

"Provided that if the plaintiff, by reason of absence or for other good cause, is unable to sign the plaint, it may, with the permission of the Court, be signed on his behalf by his duly authorized agent."

4. In sections 51 and 393, for the word "subscribed," the word "signed" shall be substituted; in section 115, for the word "subscribed" (in each of the places where it occurs) and the word "subscribing," the words "signed" and "singing" shall be respectively substituted; and in section 403, for the words "subscribed" and "subscription," the words "signed" and "singing" shall be respectively substituted.

5. To the last paragraph of section 52 the following words shall be added (namely): "or unless the Court is satisfied that the verification has been signed by the person purporting to make it."

6. In section 58, for the words "has filed," the words "causes to be filed" shall be substituted.

7. In section 69, for the word "residence," the word "abode" shall be substituted.

8. In section 82, paragraph two, after the words "Where the," the words "defendant resides within the jurisdiction of the Court and the" shall be inserted.

9. In section 136, after the word "discovery" (in each of the places in which it occurs), the word "production" shall be inserted.

10. In section 168, for the words "may issue," the words "shall issue" shall be substituted.  
Amendment of section 168.
11. In section 199, after the words "as to," the words "pronouncing judgment and" shall be inserted.  
Amendment of section 199.
12. In section 211, for the words "land or other," the words "the recovery of immoveable" shall be substituted; and in section 212, before "immoveable," the words "the recovery of" shall be inserted.  
Amendment of sections 211 and 212.
13. In section 229, for the words "Native Prince or State in India," the words "Foreign Prince or State" shall be substituted.  
Amendment of section 229.
14. In section 246, explanation II, after the words "assignor as," the words "in respect of judgment-debts due" shall be inserted.  
Amendment of section 246.
15. In section 264, after the words "the same," the words "and not bound by the decree" shall be inserted.  
Amendment of section 264.
16. In section 268, last paragraph, for the words "property attached may be sold," the words "Court may, on the application of the decree-holder, sell the property attached" shall be substituted.  
Amendment of section 268.
17. In section 295, first proviso, after the words "shall not," the words "as such" shall be inserted.  
Amendment of section 295.
18. In section 329, for the words "obstruction or resistance," the words "resistance or obstruction" shall be substituted.  
Amendment of section 329.
19. In section 332, first paragraph, for the word "defendant," the word "judgment-debtor" shall be substituted.  
Amendment of section 332.
20. In section 335, for the first paragraph, the following shall be substituted (namely):—  
Amendment of section 335.
- "If the purchaser of any such property is resisted or obstructed by any person, other than the judgment-debtor, claiming in good faith a right to the present possession thereof, or if in delivering possession thereof any person is dispossessed, the Court, on the complaint of the purchaser or the person so dispossessed, shall enquire into the matter of the resistance, obstruction or dispossession, as the case may be, and pass such order thereon as it thinks fit."
21. In section 339, for the words "proper officer of the Court," the words "officer in charge of the jail" shall be substituted; and from the proviso to section 341, the word "third" shall be omitted.  
Amendment of sections 339 and 341.
22. In sections 362 and 363, for the words "cause of action," the words "right to sue" shall be substituted.  
Amendment of sections 362 and 363.
23. In section 366, paragraph one, after the word "If," the words "within the time limited by law" shall be inserted; and for the words "Court may," the words "Court shall, on the application of the defendant," shall be substituted.  
Amendment of section 366.
24. In section 406, for the word "shall," the words "may if he thinks fit" shall be substituted.  
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25. In section 413, for the word "Refusal," the words and figures "An order of refusal made under section 409" shall be substituted.  
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Amendment of sections 424, 428 and 429.
27. In section 483, after the words "portion of his property," the words "within the jurisdiction" shall be inserted.  
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28. In section 484, after the word "suit," the words "or that he has with such intent quitted the jurisdiction of the Court, leaving therein property belonging to him" shall be inserted.  
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29. In section 497, clause one, after the word "injunction," the words "which it has granted" shall be inserted.  
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30. In section 544, for the words "decree and," the words "decree, and thereupon" shall be substituted.  
Amendment of section 544.
31. In section 588, clause (e), for the words and letters "clauses (b) and (d), the words and letters "clauses (b) and (c)" shall be substituted: after clause (f), the following clause shall be inserted (namely): "(f) orders rejecting applications under section 108, for an order to set aside a decree *ex parte*:" to clause (h) the following words shall be added (namely): "and orders under section 170, for the sale of attached property:" and from clause (j), the following words shall be omitted (namely): "of the same nature with appealable orders made in the course of a suit."  
Amendment of section 588.
32. In section 638, for the figures and word "16 and 17," the figures and word "16, 17 and 19" shall be substituted.  
Amendment of section 638.
33. In section 648, for the first eighteen words the following words shall be substituted (namely): "If any Court desires to arrest any person residing, or attach any property."  
Amendment of section 648.
34. In section 652, after the words "connected with," the words "its own procedure or" shall be inserted.  
Amendment of section 652.

35. In the first schedule to the said Code, column third, opposite *Amendment of schedule I.* "XI of 1865," for the figures and word "11, paragraph 2," the figures and word "11, 19, paragraph 2," shall be substituted; and opposite "V of 1866," after the word "inclusive," the words "and the schedule" shall be inserted.

36. In this Act the words "section" and "sections" respectively mean section and sections of the Code of Civil Procedure.

#### STATEMENT OF OBJECTS AND REASONS.

The new Code of Civil Procedure, Act X of 1877, has now been eight months in operation, and the object of this Bill is to make some amendments which have proved to be necessary or expedient.

Section 4 of the Code saves "any local law prescribing a special procedure for suits between landlord and tenant." It has been held that the local laws here referred to are only local laws in force when the Code was passed. The result, of course, is to debar the local legislatures from dealing with such suits. The Bill accordingly amends section 4 so as to save clearly all such laws, whether passed before or after the date of the Code.

Doubt has been felt whether (notwithstanding the provisions of section 36) the plaint may, in case of the plaintiff's absence, be subscribed on his behalf by his duly authorized agent. The Bill amends section 51 so as to preclude this doubt.

Section 52 of the Code declares that the Court "shall examine" witnesses to the verification of plaints under section 51, unless the person making the verification is present. This rule can hardly be obeyed when, for example, the plaint is verified in Calcutta and the suit is to be instituted in Madras. The Bill accordingly relieves the Court from this duty when it is satisfied that the verification has been signed by the person purporting to make it.

Section 229 of the Code provides for the execution in British India of decrees of Courts established by the authority of the Governor General in Council "in the territories of any Native Prince or State in India." It has been held that Courts such as that of the Resident at Mandalay are not

within the operation of this section. The Bill accordingly substitutes for "Native Prince or State in India" the words "Foreign Prince or State."

The High Court at Fort William has pointed out that section 335 of the Code does not provide for the case in which property has been sold in execution of a decree and in delivering possession a person claiming a right to the present possession is dispossessed. The Bill amends section 335 so as to meet this case.

When a judgment-debtor is imprisoned and the District Court is situate at a long distance from the jail, some inconvenience has been caused by the requirement of section 339 of the Code that the monthly payment of subsistence-money should be made to the proper officer of the Court. For such officer the Bill substitutes the officer in charge of the jail.

Section 588 of the Code has been amended so as to provide an appeal where an application under section 108 to set aside a decree *ex parte* has been rejected. An appeal is also given against orders for sale of attached property under section 170. And from clause (j), the words "of the same nature with appealable orders made in the course of a suit" have been omitted. The result will be to restore the first of the two appeals given in effect by Act XXIII of 1861, section 11, against all orders determining any question relating to the execution of a decree.

Section 652 of the Code empowers the High Courts to make subsidiary rules to regulate the procedure of the subordinate Courts. But it gives no power to make like rules for the High Courts themselves. In the case of the chartered High Courts, this omission is harmless; for the matter is sufficiently provided for elsewhere. But in the case of other High Courts (as defined in Act I of 1868), the omission has been found to cause inconvenience, and section 652 has been accordingly amended.

The other amendments (some of which are merely corrections of clerical or typographical errors) do not require special notice.

(Signed) WHITLEY STOKES.

SIMLA;  
The 1st June 1878. }

D. FITZPATRICK,  
Secy. to the Govt. of India.

[Published with the "Bombay Government Gazette" on the 18th July 1878.]

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2. In section 43, for the words "arising out of," the words "which the plaintiff is entitled to make in respect of" shall be substituted; and in the same section, paragraphs one and two, and section 50, clause (f), for the words "his claim," the words "the thing he is which entitled to claim" shall be substituted.

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Definition of "section."

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Section 52 of the Code declares that the Court "shall examine" witnesses to the verification of plaints under section 51, unless the person making the verification is present. This rule can hardly be obeyed when, for example, the plaint is verified in Calcutta and the suit is to be instituted in Madras. The Bill accordingly relieves the Court from this duty when it is satisfied that the verification has been signed by the person purporting to make it.

Section 229 of the Code provides for the execution in British India of decrees of Courts established by the authority of the Governor General in Council "in the territories of any Native Prince or State in India." It has been held that Courts such as that of the Resident at Mandalay are not within the operation of this section. The Bill accordingly substitutes for "Native Prince or State in India" the words "Foreign Prince or State."

The High Court at Fort William has pointed out that section 335 of the Code does not provide for the case in which property has been sold in execution of a decree and in delivering possession a person claiming a right to the present possession is dispossessed. The Bill amends section 335 so as to meet this case.

When a judgment-debtor is imprisoned and the District Court is situate at a long distance from the jail, some inconvenience has been caused by the requirement of section 339 of the Code that the monthly payment of subsistence-money should be

made to the proper officer of the Court. For such officer the Bill substitutes the officer in charge of the jail.

Section 588 of the Code has been amended so as to provide an appeal where an application under section 108 to set aside a decree *ex parte* has been rejected. An appeal is also given against orders for sale of attached property under section 170. And from clause (j), the words "of the same nature with appealable orders made in the course of a suit" have been omitted. The result will be to restore the first of the two appeals given in effect by Act XXIII. of 1861, section 11, against all orders determining any question relating to the execution of a decree.

Section 652 of the Code empowers the High Courts to make subsidiary rules to regulate the procedure of the subordinate Courts. But it gives no power to make like rules for the High Courts themselves. In the case of the chartered High Courts, this omission is harmless; for the matter is sufficiently provided for elsewhere. But in the case of other High Courts (as defined in Act I. of 1868), the omission has been found to cause inconvenience, and section 652 has been accordingly amended.

The other amendments (some of which are merely corrections of clerical or typographical errors) do not require special notice.

(Signed) WHITLEY STOKES.

SIMLA;  
The 1st June 1878. }

D. FITZPATRICK,  
Secy. to the Govt. of India.