

ACT No. I OF 1895.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 4th January, 1895.)

An Act to amend the Presidency Small Cause Courts Act, 1882.

WHEREAS it is expedient to amend the Presidency Small Cause Courts Act, 1882; It is hereby enacted as follows:—

1. (1) This Act may be called the Presidency Small Cause Courts Act, 1895; and Title and commencement.

(2) It shall come into force on the first day of April, 1895.

2. In section 6 of the Presidency Small Cause Courts Act, 1882, hereinafter referred to as "the said Act," after the words "Code of Civil Procedure" the following shall be added, namely:— Amendment of section 6, Act XV, 1882.

"and to be a Court subordinate to the High Court within the meaning of section 6 of the Legal Practitioners Act, 1879."

3. (1) For the proviso to the first paragraph of section 7 of the said Act the following shall be substituted, namely:— Amendment of section 7, Act XV, 1882.

"Provided that no person shall be appointed to be a Judge of such Court, or be authorised to exercise the powers of a Judge of such Court, unless he is—

(a) an advocate of a High Court of Judicature established under the Indian High Courts Act, 1861, or

(b) a vakil or attorney of any such High Court, or

(c) a Judge

(c) a Judge of a Court of Civil Judicature of not less than five years' standing:

and that not less than one-third of the persons so appointed, including the Chief Judge, shall be advocates of one of the said High Courts."

(2) The last paragraph of section 7 of the said Act is hereby repealed.

4. After section 8 of the said Act the following shall be inserted, namely:—

"8A. During any absence of the Chief Judge the Local Government may appoint any of the Judges of the Court who may be qualified for the appointment of Chief Judge to perform the duties of Chief Judge, and may appoint some other duly qualified person to act as a Judge of the said Court until the Chief Judge has returned from such absence, and during any absence of a Judge of the said Court the Local Government may appoint a duly qualified person to act as a Judge of the said Court, and every person so appointed shall be authorized to perform the duties of a Judge of the said Court until the return of the absent Judge or until the Local Government shall see cause to cancel the appointment of such acting Judge."

5. For section 9 of the said Act the following shall be substituted, namely:—

"9. (1) The High Court may from time to time, by rules having the force of law,—

(a) prescribe the procedure to be followed and the practice to be observed by the Small Cause Court either in supersession of or in addition to any provisions which were prescribed with respect to the procedure or practice of

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Insertion of new section after section 7, Act XV, 1882.

Performance of duties of absent Judge.

Substitution of new section for section 9, Act XV, 1882, and temporary continuance of existing procedure and practice.

Procedure and practice of Small Cause Court.

the Small Cause Court on or before the thirty-first day of December, 1894, in or under this Act or any other enactment for the time being in force, and

(b) cancel or vary any such rule or rules.

“Rules made under this section may provide, among other matters, for the exercise by one or more of the Judges of the Small Cause Court of any powers conferred on the Small Cause Court by this Act, or any other enactment for the time being in force.

“(2) The law, and any rules and declarations made, or purporting to be made, thereunder, with respect to procedure or practice, in force or treated as in force in the Small Cause Court on the thirty-first day of December, 1894, shall be in force, unless and until cancelled or varied by rules made by the High Court under this section.”

6. To section 14 of the said Act the following shall be added, namely:—

Addition to section 14, Act XV, 1882.

“*Explanation.*—For the purposes of this section an application for possession under section 41 shall be deemed to be a suit.”

7. To section 18 of the said Act the following proviso shall be added immediately before the first Explanation, namely:—

Addition to section 18, Act XV, 1882.

“Provided that where the cause of action has arisen wholly within the local limits aforesaid, and the Court refuses to give leave for the institution of the suit, it shall record in writing its reasons for such refusal.”

8. After section 18 of the said Act the following shall be added, namely:—

Addition to section 18, Act XV, 1882.

“18A. The Small Cause Court may allow a plaintiff at or before the first hearing of a suit in which a

Plaintiff may abandon suit against defendant resident out of jurisdiction.

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joint and several liability is alleged on a cause of action arising either wholly or in part within the local limits of the jurisdiction of the Court to abandon the suit as against any defendant who does not reside or carry on business or personally work for gain within such local limits, and to sue for a decree against such defendants only as do so reside, carry on business or personally work for gain."

Addition to
section
Act XV,
1882.
Return of
plaint.

9. To section 19 of the said Act the following shall be added, namely:—

"19A. Whenever the Court finds that for want of jurisdiction it cannot finally determine the question at issue in the suit, it may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the question. When the Court so returns a plaint, it shall comply with the provisions of the second paragraph of section 57 of the Code of Civil Procedure and make such order with respect to costs as it may think just, and the Court shall for the purposes of the Indian Limitation Act, 1877, be deemed to have been unable to entertain the suit by reason of defect of jurisdiction. When a plaint so returned is afterwards presented to a High Court, credit shall be given to the plaintiff for the amount of the court-fee paid in the Small Cause Court in respect of the plaint in the levy of any fees which according to the practice of the High Court are credited to the Government."

Amendment
of section 21,
Act XV,
1882.

10. In section 21 of the said Act, after the words "or value thereof" the words "and all suits whereof the amount or value of the subject-matter exceeds one thousand rupees" shall be inserted.

Amendment
of section 22,
Act XV,
1882.

11. In section 22 of the said Act, for the words "two thousand" the words "one thousand" shall be substituted.

Repeal of
Act XV,
1882, section
23, and second
schedule.

12. Section 23 of and the second schedule to the said Act are hereby repealed.

13. For

13. For Chapter VI of the said Act the following shall be substituted, namely :—

Substitution of new Chapter for Chapter VI, Act XV, 1882.

“CHAPTER VI.

“NEW TRIALS AND APPEALS.

“37. Save as otherwise provided by this Chapter or by any other enactment for the time being in force, every decree and order of the Small Cause Court in a suit shall be final and conclusive.

General finality of decrees and orders of Small Cause Court.

“38. Where a suit has been contested, the Small Cause Court may, on the application of either party, made within eight days from the date of the decree or order in the suit (not being a decree passed under section 522 of the Code of Civil Procedure), order a new trial to be held, or alter, set aside or reverse the decree or order, upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings.

New trial of contested cases.

“*Explanation.*—Every suit shall be deemed to be contested in which the decree is made otherwise than by consent of or in default of appearance by the defendant.

“39. (1) In any suit instituted in a Small Cause Court in which the amount or value of the subject-matter exceeds the sum of one thousand rupees, the defendant or any one of the defendants may, before the day fixed by the summons for the appearance of the defendant or within eight days after the service of the summons on him, whichever period shall last expire, apply *ex parte* on an affidavit setting forth the facts on which he relies for his defence to a Judge of the High Court for an order removing the cause into the High Court.

Removal of certain causes into High Court.

“(2) Unless the Judge is of opinion that the application has been made solely for the purpose of delay, the applicant shall be entitled to such order as of right, but it shall be lawful for the Judge, if he shall think fit, in and by such order to require the applicant to give security to a reasonable amount to

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be specified in the order for the payment of any costs which may become payable by him to the plaintiff in respect of the said suit, and such Judge may also, if he shall think fit, declare that the removal directed by such order shall be conditional upon the completion of such security within a reasonable time to be prescribed in the order.

“(3) If the applicant fail or neglect to complete the required security (if any) within the prescribed time (if any), the said order shall be discharged and the suit shall proceed in the Small Cause Court as if such order had never been made.

“(4) If the plaintiff in any case which has been removed under this section into the High Court has abandoned a portion of his claim in order to be able to bring the suit within the jurisdiction of a Small Cause Court, he shall be permitted to revive the portion of his claim so abandoned.

Rules with respect to suits removed under the last foregoing section.

“40. (1) When a suit has been removed into the High Court under the last foregoing section it shall be heard and disposed of by such Court in the exercise of its original jurisdiction, and the said Court shall have all the same powers and jurisdiction in respect thereof as if it had been originally instituted in such Court.

“(2) In every suit so removed as aforesaid, the affidavit filed under section 39, sub-section (1), shall be treated as a written statement of the defendant tendered under section 110 of the Code of Civil Procedure unless the Court shall otherwise order.

XIV of 1882.

“(3) In every suit so removed as aforesaid credit shall be given to the plaintiff for the amount of the court-fee paid in the Small Cause Court in respect of the plaint in the levy of any fees which according to the practice of the High Court are payable to the Government.”