

ACT No. XXIII OF 1861.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(Received the assent of the Governor General on the 28th August 1861.)

An Act to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter.)

WHEREAS it is expedient to amend Act VIII of 1859 *(for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)* and to consolidate the Acts previously passed for the amendment of the said Act ; It is enacted as follows :—

Preamble.

1. Sections 23, 33, 193, 215, 274, 283, 332, 339, 358, 375, and 381 of Act VIII of 1859, Act IV of 1860 *(to amend Act VIII of 1859)*, Section X Act XLII of 1860 *(for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter)*, and Act XLIII of 1860 *(to amend Act VIII of 1859)*, are hereby repealed.

Acts repealed.

2. Every process required to be issued under Act VIII of 1859, shall be served at the expense of the party at whose instance it is issued, unless otherwise specially directed by the Court ; and the sum required to defray the costs of such service shall be paid into the Court before the process is issued, within a period to be fixed by the Court issuing the process.

Cost of serving process.

Requisite sum to be paid into Court within a certain time before process is issued.

3. If it appear to the Court in any case relating to land or other immoveable property that such land or other property is not situate within the limits of the jurisdiction of the Court, or in any other case that the cause of action did not arise, and that the defendant is not dwelling or personally working for gain, within such limits, the Court shall return the plaint to the plaintiff in order to its being presented in the proper Court.

Plaint to be returned, if it appear to the Court that it has not jurisdiction.

ACT No. XXIII of 1861.

4. If in any suit there are more defendants than one, and at the date of the institution of the suit all the defendants shall not reside within the jurisdiction of the Court in which the suit is brought, but one or more of the defendants shall reside within such jurisdiction, the suit shall not be rejected by reason of all the defendants not residing within the jurisdiction of the Court in which the suit is brought, but the District Court, if the suit is pending in any Court subordinate to such Court, or the Sudder Court, may order that the suit be heard in any Court subordinate to such Sudder or District Court, and competent in respect of the value of the suit to try the same.

In what Court a suit against several defendants may be brought.

5. If on the day fixed for the defendant to appear and answer to a suit, it shall be found that the summons to the defendant has not been served in consequence of the failure of the plaintiff to deposit, within the time allowed, the sum required to defray the cost of issuing the summons, the Court may order that the suit be dismissed. Provided that no such order shall be passed, although the summons shall not have been served upon the defendant, if on the day fixed for the defendant to appear and answer he shall have entered an appearance by a pleader or by a duly authorized Agent when he is allowed to appear by Agent, or shall be in attendance in person.

Procedure on discovery, on the day fixed for defendant to appear and answer, that usual notice has not been served in consequence of failure of plaintiff to deposit the cost of issuing the same.

6. The provisions of the last preceding Section shall apply to appeals also.

Provisions of last Section to apply to appeals also.

7. Whenever a suit is dismissed under the provisions of Section 5 of this Act, the plaintiff shall be at liberty to institute a fresh suit, unless precluded by the rules for the limitation of actions, or if the plaintiff shall satisfy the Court within the period of thirty days from the date of the order dismissing the suit, that there was a sufficient excuse for his not making the deposit required within the time allowed, the Court may order a fresh summons to issue upon the plaint already filed.

Procedure in case of dismissal of suit under Section 5.

8. When a person arrested under a warrant in execution of a decree for money shall, on being brought before the Court, apply for his discharge on either of the grounds mentioned in Section 273 of Act VIII of 1859; the Court shall examine the applicant in the presence of the plaintiff or his pleader, as to his then circumstances and as to his future means of payment, and shall call upon the plaintiff

Procedure on application for discharge by a person arrested in execution of a decree for money.

ACT No. XXIII of 1861.

to show cause why he does not proceed against any property of which the defendant is possessed and why the defendant should not be discharged; and should the plaintiff fail to show such cause, the Court may direct the discharge of the defendant from custody. Pending any enquiry which the Court may consider it necessary to make into the allegations of either party, the Court may leave the defendant in the custody of the Officer of the Court to whom the service of the warrant was entrusted, on the defendant depositing the fees of such Officer, which shall be at the same daily rate as the lowest rate charged in the same Court for serving process; or if the defendant furnish good and sufficient security for his appearance at any time when called upon while such enquiry is being made, his surety or sureties undertaking in default of such appearance to pay the amount mentioned in the warrant, the Court may release the defendant on such security.

9. If the Court shall at any time think it necessary for the ends of justice to examine any person other than a party to the suit and not named as a witness by a party to the suit, the Court may, of its own accord, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession on a day to be appointed, and may examine such person as a witness. The costs of summoning such person, if not deposited by either party to the suit, shall be paid by the Collector under an order of the Court, and shall be costs in the suit, and shall be paid out of any money recovered on account of costs in the suit, whether at the instance of the Government or of either party, before any other costs in the suit are paid.

10. When the suit is for a sum of money due to the plaintiff, the Court may, in the decree, order interest at such rate as the Court may think proper to be paid on the principal sum adjudged from the date of suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the date of suit; with further interest on the aggregate sum so adjudged and on the costs of the suit from the date of the decree to the date of payment.

11. All questions regarding the amount of any mesne profits which by the terms of the decree may have been reserved for adjustment in the execution of the decree, or of any mesne profits or interest which may be payable in respect of the subject-matter of a suit between the date of the institution of the suit and execution of the decree, as well as questions

How questions regarding amount of mesne profits and interest and sums paid in satisfaction of decrees, &c., are to be determined.

tions

ACT No. XXIII OF 1861.

tions relating to sums alleged to have been paid in discharge or satisfaction of the decree or the like, and any other questions arising between the parties to the suit in which the decree was passed and relating to the execution of the decree, shall be determined by order of the Court executing the decree, and not by separate suit, and the order passed by the Court shall be open to appeal. Provided that if upon a perusal of the petition of appeal and of the order against which the appeal is made, the Court shall see no reason to alter the order, it may reject the appeal, and it shall not be necessary in such case to issue a notice to the respondent before the order of rejection is passed.

12. An appeal from an order passed in execution of a decree which shall have been rejected as inadmissible under Section 364 of Act VIII of 1859, or which would have been inadmissible before the passing of this Act, but which is rendered admissible by this Act, may be admitted on an application in writing to the Court which rejected the appeal, or by which the appeal, had it been admissible before the passing of this Act, would have been cognizable, provided the application be preferred within ninety days from the date of the passing of this Act. The application may be written on the Stamp paper prescribed for petitions in the Court to which it is presented when a Stamp on petitions is required.

Appeals from orders rejected under Section 364 Act VIII of 1859, may be admitted on application.

Application to be on Stamp paper.

13. When a decree is passed in any suit of the nature and amount cognizable by Courts of Small Causes constituted under Act XLII of 1860, the Court passing the decree, whether such Court be a Court constituted as aforesaid, or any other Court, may, at the same time that it passes the decree, on the verbal application of the party in whose favor the decree is given, direct immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court passing the decree, or against the personal property of the judgment-debtor within the same limits. If the warrant be directed against the personal property of the judgment-debtor, it may be general against any personal property of the judgment-debtor wherever it may be found within the local limits of the jurisdiction of the Court, or special against any personal property belonging to the judgment-debtor within the same limits, which shall be indicated by the judgment-creditor.

In suits of the nature and amount cognizable by Small Cause Courts, Court may on verbal application of the judgment-creditor direct immediate execution either against the person or property of judgment-debtor.

ACT No. XXIII OF 1861.

14. When the land sold in execution of a decree is a share of a Putteedaree Estate paying revenue to Government as defined in Section II Act I of 1841 (*for facilitating the collection of the Revenue of Government and defining the interest intended to be conveyed by public sales for the realization of arrears of the Public Revenue in Putteedaree Estates*), if the lot shall have been knocked down to a stranger, any co-sharer other than the judgment-debtor, or any other member of the coparcenary, may claim to take the share sold at the sum at which the lot was knocked down.

Co-sharer of a share of a Putteedaree Estate sold in execution of decree may claim to take the share at the sale price.

Provido. Provided that the claim be made on the day of sale, and that the claimant fulfil all the conditions of the sale.

15. The Court, on receiving any application for execution of a decree containing the particulars mentioned in Section 212 of Act VIII of 1859, or such of them as may be applicable to the case, shall enter a note of the application and the date on which it was made in the Register of the suit. If it shall be shown to the Court that the particulars do not correspond with the original decree, the Court shall either return the application for correction to the person making it, or shall, with the consent of such person, cause the necessary correction to be made. If the application be admitted, the Court shall order execution of the decree according to the nature of the application.

Procedure on receiving application for execution of decree.

16. When in any case pending before any Court any witness or other person shall appear to the Court to have been guilty of an offence described in Section 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, or 210 of the Indian Penal Code, the Court may commit such person to take his trial for the offence before the Court of Session, or after making such preliminary enquiry as may be necessary, may send the case for investigation to any Magistrate having jurisdiction to try or commit for trial the accused person for the offence charged, and such Magistrate shall thereupon proceed according to law.

Procedure when certain offences under Chapter XI of the Penal Code are committed in any case pending before any Court.

17. The Court may send the person accused in custody or take sufficient bail for his appearance before the Magistrate and may bind over any person to appear and give evidence before the Magistrate.

Court may take bail and bind over witnesses to give evidence.

18.

ACT No. XXIII OF 1861.

18. When the commitment is made by the Court, the Court shall frame a charge in the manner provided in Chapter XIII of the Code of Criminal Procedure, and shall transmit the same with the order of commitment and the record of the case to the Magistrate, and such Magistrate shall bring the case together with the witnesses for the prosecution and defence before the Court of Session.

19. When in any case pending before any Court there shall appear to the Court sufficient ground for sending for investigation to the Magistrate, a charge described in Section 463, 471, 475, or 476 of the Indian Penal Code, which may be preferred in respect to any deed or paper offered in evidence in the case, the Court may send the person accused in custody to the Magistrate or take sufficient bail for his appearance before the Magistrate. The Court shall send to the Magistrate the evidence and documents relevant to the charge, and shall bind over any person to appear and give evidence before such Magistrate. The Magistrate shall receive such charge and proceed with it under the rules for the time being in force.

20. If the person accused or any one of the persons accused in any case falling under Section 16 or Section 19 of this Act is a European British subject, the Court shall send such person in custody or take sufficient bail for his appearance before an Officer empowered to commit or hold to bail persons charged with offences for trial before a Supreme Court of Judicature, and such Officer shall proceed according to law.

21. When any such offence as is described in Section 175, 178, 179, 180, or 228 of the Indian Penal Code is committed in the view or presence of any Court, it shall be competent to such Court to cause the offender, whether he be a European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day to take cognizance of the offence; and to adjudge the offender to punishment by fine not exceeding two hundred Rupees, or by imprisonment in the Civil Jail for a period not exceeding one month unless such fine be sooner paid. In every such case the Court shall record the facts constituting the contempt, with any statement the offender may make, as well as the finding and sentence. If the Court, in any case, shall consider that a person accused of any offence above referred to should be imprisoned, or that a fine exceeding two hundred Rupees should be imposed upon him, such Court, after recording

ACT No. XXIII of 1861.

ording the facts constituting the contempt, and the statement of the accused person as before provided, shall forward the case to a Magistrate, or, if the accused person be a European British subject, to a Justice of the Peace, and shall cause bail to be taken for the appearance of such accused person before such Magistrate or Justice of the Peace, or if sufficient bail be not tendered shall cause the accused person to be forwarded under custody to such Magistrate or Justice of the Peace. If the case be forwarded to a Magistrate, such Magistrate shall proceed to try the accused person in the manner provided for trials before a Magistrate, and it shall be competent to such Magistrate to adjudge such offender to punishment, as provided in the Section of the Indian Penal Code under which he is charged. If the case be forwarded to a Justice of the Peace, such Justice of the Peace shall enquire into the circumstances, and shall have the same powers of punishing the offender as are vested by the Statute 53 George III, c. 155, s. 105, in a Justice of the Peace for the punishment of an assault, and may deal with the offender in the same manner as is provided in that behalf in the said Statute. If such Justice of the Peace shall consider the offence to require a more severe punishment than a Justice of the Peace is competent to award under the said Statute, he may commit the offender to a Supreme Court of Judicature.

22. When any person has been sentenced to punishment under the last preceding Section, for refusing or omitting to do anything which he was lawfully required to do, it shall be competent to the Court to discharge the offender, or to remit the punishment, on the submission of the offender to the order or requisition of such Court.

23. Except when otherwise expressly provided in this or any other Regulation or Act for the time being in force, an appeal shall lie from the decrees of the Courts of original jurisdiction to the Courts authorized to hear appeals from the decisions of those Courts. If the appeal lie to the Sudder Court, it shall be heard and determined by a Court consisting of two or more Judges of that Court. If, when the Court consist of only two Judges, there is a difference of opinion upon the evidence in cases in which it is competent to the Court to go into the evidence, and one Judge concur in opinion with the Lower Court as to the facts, the case shall be determined accordingly: if in a Court so constituted there is a difference of opinion upon a point of law, the Judges shall state the point upon

Discharge of an offender on his submission.

Appeal to lie from all decrees, except when expressly prohibited.

Appeal to Sudder Court to be heard by two or more Judges.

ACT No. XXIII OF 1861.

upon which they differ, and the case shall be re-argued upon that question before one or more of the other Judges and shall be determined according to the opinion of the majority of the Judges of the Sudder Court by whom the appeal is heard.

24. The sureties for the appearance of any person under Section 76 of the said Act VIII of 1859, may at any time apply to the Court in which they became such sureties to be discharged from their engagements. On such application being made the Court shall summon such person to attend, or if it shall think fit may issue a warrant in the first instance for his appearance. On the appearance of such person pursuant to the summons or warrant or on his voluntary surrender, the Court shall direct the recognizances of the sureties to be discharged, and shall call upon such person to find other sureties and thereupon proceedings shall be had under Sections 77 and 78 of the said Act.

Procedure in case of application by sureties to be discharged.

25. If the application for the admission of a special appeal be not written on a Stamp paper of the prescribed value, or if it be not drawn up in the manner laid down in Section 374 of Act VIII of 1859, or if it do not state any ground on which a special appeal will lie under the provisions of Section 372 of the said Act, the Court may reject the application, or may return it to the party for the purpose of being corrected. The order for rejecting the application or for returning it to the party may be passed by a single Judge of the Court. When the application is correctly drawn up, it shall be registered in a book to be kept for that purpose, which shall be in the form contained in the Schedule D. of the said Act, and the case shall proceed in all other respects as a regular appeal, and shall be subject to all the rules hereinbefore provided for such appeals, so far as the same may be applicable.

Application for the admission of a special appeal informally drawn up, how to be dealt with.

26. No appeal shall lie from any order or decision passed in any suit instituted under Section XV Act XIV of 1859 (*to provide for the limitation of suits*), nor shall any review of any such order or decision be allowed.

No appeal from order or decision under Section 15 Act XIV of 1859.

27. No special appeal shall lie from any decision or order which shall be passed on regular appeal after the passing of this Act by any Court subordinate to the Sudder Court, in any suit of the nature cognizable in Courts of Small Causes under Act XIII of 1860 (*for the establishment of Courts of Small Causes beyond the*

No special appeal from decision of any Court subordinate to the Sudder Court in certain suits.

ACT No. XXIII OF 1861.

the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter), when the debt, damage, or demand for which the original suit shall be instituted shall not exceed five hundred Rupees ; but every such order or decision shall be final.

28. If in any suit in which an order or decision is made final under the last preceding Section, any question of law, or usage having the force of law, or the construction of a document affecting the merits of the case shall arise, on which the Court trying such suit shall entertain reasonable doubts, the Court may, either of its own motion or on the application of either of the parties to the suit, draw up a statement of the case and submit such statement with its own opinion for the decision of the Sudder Court.

29. The Court may proceed in the case notwithstanding a reference to the Sudder Court, and may pass a decree contingent upon the opinion of the Sudder Court on the point referred ; but no execution shall be issued in any case in which a reference shall be made to the Sudder Court until the receipt of the order of that Court.

30. Cases referred for the opinion of the Sudder Court shall be dealt with by two or more Judges of that Court.

31. The Sudder Court shall fix an early day for the hearing of the case, and shall notify the same by a proclamation to be fixed up in the Court-house of that Court.

32. The parties to the case may appear and be heard in the Sudder Court in person or by pleader.

33. The Sudder Court, when it has heard and considered the case, shall transmit a copy of its judgment under the seal of the Court and the signature of the Register, to the Court by which the reference was made ; and such Court shall, on the receipt thereof, proceed to dispose of the case conformably to the decision of the Sudder Court.

ACT No. XXIII OF 1861.

Costs of reference to
Sudder Court.
the suit.

34. Costs, if any, consequent on the reference of a case for the opinion of the Sudder Court, shall be costs in

35. The Sudder Court may call for the record of any case decided on appeal by any Subordinate Court in which no further appeal shall lie to the Sudder Court, if such Subordinate Court shall appear in hearing the appeal to have exercised a jurisdiction not vested in it by law, and the Sudder Court may set aside the decision passed on appeal in such case by the Subordinate Court, or may pass such other order in the case as to such Sudder Court may seem right.

Sudder Court may call for record of lower Appellate Court, and set aside its decision, though no appeal shall lie to the Sudder Court.

36. When an order is made for the execution of a decree against which an appeal has been preferred, it shall be lawful for the Court which pronounced the decree to require security to be given for the restitution of any property which may be taken in execution of the decree or of the value thereof, and for the due performance of the decree or order of the Appellate Court. The Appellate Court may in any such case direct the Court which pronounced the decree to take such security.

Security may be taken when execution is required of a decree which has been appealed against.

37. Unless when otherwise provided, the Appellate Court shall have the same powers in cases of appeal which are vested in the Courts of original jurisdiction in respect of original suits.

Appellate Court to have same powers as Courts of original jurisdiction.

38. The procedure prescribed by Act VIII of 1859 shall be followed as far as it can be in all miscellaneous cases and proceedings which after the passing of the Act shall be instituted in any Court.

Procedure prescribed by Act VIII of 1859, to be followed in all future miscellaneous cases and proceedings.

39. When under the provisions of Section 385 of the said Act, the Act is extended to any part of the Territories not subject to the General Regulations of Bengal, Madras, and Bombay, it shall be lawful for the Government to which the territory is subordinate to declare that the Act shall take effect therein subject to any restriction, limitation, or proviso which it may think proper. In such case the restriction, limitation, or proviso shall be inserted in the declaration or notification of such extension. When the Act is extended by the Local Government to any territory subordinate

Extension of Act to Non-Regulation Provinces.

ACT No. XXIII OF 1861.

subordinate to such Government, and such extension is made subject to any restriction, limitation, or proviso, the previous sanction of the Governor-General of India in Council shall be requisite.

40. The Sudder Court shall have power to make and issue general rules for regulating the practice and proceedings of that Court and the Courts subordinate to it, and also to frame forms for every proceeding in the said Courts for which it shall think necessary that a form be provided, for keeping all books, entries, and accounts to be kept by the officers, and for the preparation and submission of any statements to be prepared and submitted by such Courts, and from time to time to alter any such rule or form ; provided that such rules and forms be not inconsistent with the provisions of this Act or of any other law in force. Any rules framed under this Section shall be published in the Official Gazette.

Sudder Court to make general rules for regulating proceedings, &c.

Interpretation of "Pleader."

41. The word "Pleader" as used in this Act shall include the words "Counsel" and "Advocate."

Short Title.

42. Act VIII of 1859 shall be called the Code of Civil Procedure.

Sections 16 to 22 of this Act when to take effect.

43. Sections 16, 17, 18, 19, 20, 21, and 22 of this Act shall not take effect until the date on which the Indian Penal Code and the Code of Criminal Procedure shall come into operation.

Construction.

44. This Act shall be read and taken as part of Act VIII of 1859.
