

ACT NO. XXI OF 1936.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the
27th October, 1936.)

**An Act further to amend the Code of Civil Procedure,
1908, for certain purposes.**

v of 1908.

WHEREAS it is expedient further to amend the Code of Civil Procedure, 1908, for the purposes hereinafter appearing; It is hereby enacted as follows :—

1. This Act may be called the Code of Civil Procedure (Amendment) Act, 1936. Short title.

v of 1908.

2. To section 51 of the Code of Civil Procedure, 1908 (hereinafter referred to as the said Code), the following proviso shall be added, namely :— Addition of proviso to section 51, Act v of 1908.

“Provided that where the decree is for the payment of money execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied—

- (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,—
- (i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or
- (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property; or
- (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that

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- (c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation.—In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.”

Amendment of rule 37, Order XXI in the First Schedule, Act V of 1908.

3. In sub-rule (1) of rule 37 of Order XXI in the First Schedule to the said Code, for the word “ may ” the word “ shall ” shall be substituted, and to the sub-rule the following proviso shall be added, namely :—

“ Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.”

Repeal of rule 40, Order XXI in the First Schedule, Act V of 1908, and insertion of new rule in place thereof.

4. For rule 40 of Order XXI in the First Schedule to the said Code together with any alterations therein or additions thereto made under section 122 of the said Code the following rule shall be substituted, namely :—

Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.

“ 40. (1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution, and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.

(2) Pending the conclusion of the inquiry under sub-rule (1) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

(3) Upon

- (3) Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions of section 51 and to the other provisions of this Code, make an order for the detention of the judgment-debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest :

Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

- (4) A judgment-debtor released under this rule may be re-arrested.
- (5) When the Court does not make an order of detention under sub-rule (3), it shall disallow the application and, if the judgment-debtor is under arrest, direct his release."