

# THE PROVINCIAL SMALL CAUSE COURTS ACT, 1887

(IX OF 1887)

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**TEXT**

**<sup>1</sup>THE PROVINCIAL SMALL CAUSE COURTS ACT, 1887**

**(IX of 1887)**

*[24<sup>th</sup> February, 1887]*

**An**

**Act**

*to consolidate and amend the law relating to Courts of Small Causes* <sup>2</sup>[ \* \* \* \* \* ].

**WHEREAS** it is expedient to consolidate and amend the law relating to Courts of Small Causes <sup>3</sup>[ \* \* \* \* \* ];

It is hereby enacted as follows:—

**CHAPTER I**

**PRELIMINARY**

**1. Title, extent and commencement.**— (1) This Act may be called the Provincial Small Cause Courts Act, 1887.

(2) It extends to <sup>4</sup>[the whole of Pakistan]; and

(3) It shall come into force on the first day of July, 1887.

<sup>5</sup>**2. Construction.**— \* \* \* \* \*

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<sup>1</sup> For statement of objects and reasons, see Gazette of India, 1886, Pt. V, p.8; for report of the select committee, see *ibid.*, 1887, Pt. IV, p.33; and for proceedings in council, see *ibid.*, 1885 Supplement, pp.8 and 9, and *ibid.*, 1887, P. VI, p.25. This act has been declare to be in force in Baluchistan by the British Baluchistan Laws Regulation, 1913 (II of 1913), s.3. It has also been extended to the leased areas of Baluchistan, see the Leased Areas (laws) order, 1950 (G.G.O. III of 1950); and applied in the Federated Areas of Baluchistan, see Gazette of India, 1937, Pt. I, p.1499. This Act repealed in its application to Karachi by the Karachi Small Causes Court Act, 1929 but came into force by the Provincial Small Cause Courts (Amendment) Ordinance, 1962 (LI of 1962), s.7 (w.e.f. 7.6.1962).

<sup>2</sup> Omitted the words “established beyond the Presidency-towns” by the Adaptation of Central Acts and Ordinances Order, 1949 (G.G.O. No. 4 of 1949), w.e.f. 28.3.1949, Article 3 and Schedule; and published in the Gazette of Pakistan (Extraordinary), pages 233-283.

<sup>3</sup> Omitted the words “established beyond the local limits for the time being of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William in Bengal and at Madras and Bombay” by the Adaptation of Central Acts and Ordinances Order, 1949 (G.G.O. No. 4 of 1949), w.e.f. 28.3.1949, Article 3 and Schedule; and published in the Gazette of Pakistan (Extraordinary), pages 233-283.

<sup>4</sup> Substituted for “all the Provinces and the Capital of the Federation ” by the Central Laws (Statute Reform) Ordinance, 1960 (XXI of 1960), w.e.f 14.10.1955, s.3 and the second Schedule; and published in the Gazette of Pakistan (Extraordinary), dated 9.6.1960, pages 725-845.which had been substituted for “the whole of British India” by the Adaptation of Central Acts and Ordinances Order, 1949 (G.G.O. No. 4 of 1949), w.e.f. 28.3.1949, Article 3(2) and 4; and published in the Gazette of Pakistan (Extraordinary), pages 223-283.

<sup>5</sup> Repealed partly by the Amending Act, 1891 (XII of 1891), s.2 and Schedule I, and partly by the Repealing Act, 1938 (I of 1938), s.2 and Schedule.

- 3. Savings.—** Nothing in this Act shall be construed to affect—
- (a) any proceedings before or after decree in any suit instituted before the commencement of this Act; or
  - (b) the jurisdiction of a Magistrate under any law for the time being in force with respect to debits or other claims of a civil nature, <sup>6</sup>[ \* \* \* \* \* ], or of village-munsifs under the Dekkhan Agriculturists' Relief Act, 1879<sup>7</sup>; or
  - (c) any local law or any special law other than the Code of Civil Procedure<sup>8</sup>.

**4. Definition.—** In this Act, unless there is something repugnant in the subject or context, "Court of Small Causes" means a Court of Small Causes constituted under this Act, and includes any person exercising jurisdiction under this Act in any such Court.

## CHAPTER-II

### CONSTITUTION OF COURTS OF SMALL CAUSES

**5. Establishment of Courts of Small Causes.—** (1) The <sup>9</sup>[Provincial Government] <sup>10</sup>[ \* \* \* \* \* ] may, by order in writing, establish a Court of Small Causes at any place within the territories under its administration <sup>11</sup>[ \* \* \* \* \* ].

(2) The local limits of the jurisdiction of the Court of Small Causes shall be such as the <sup>12</sup>[Provincial Government] may define, and the Court may be held at such place or places within those limits as the <sup>13</sup>[Provincial Government] may appoint.

<sup>14</sup>**6. Judge.—** When a Court of Small Causes has been established there shall be appointed, by order in writing, a Judge of the Court:

Provided that if the Provincial Government so direct, the same person shall be the Judge of more than one such Court.]

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<sup>6</sup> Omitted the words "or of village-munsifs or village-panchayats, under the provisions of the Madras Code" by the Adaptation of Central Acts and Ordinances Order, 1949 (G.G.O. No. 4 of 1949), w.e.f. 28.3.1949, Article 3 and Schedule; and published in the Gazette of Pakistan (Extraordinary), pages 233-283.

<sup>7</sup> XVII of 1879.

<sup>8</sup> XIV of 1882. Now the Code of Civil Procedure, 1908 (V of 1908).

<sup>9</sup> Substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937, w.e.f. 1.4.1937, Article 4 and Table of General Adaptations.

<sup>10</sup> Omitted the words "with the previous sanction of the Governor General in Council." by the Decentralization Act, 1914 (IV of 1914), s.2 and the Schedule; and published in the Gazette of India, dated 24.2.1914.

<sup>11</sup> Omitted the words "beyond the local limits for the time being of the ordinary original civil jurisdiction of a High Court of Judicature established in a Presidency-town" by the Adaptation of Central Acts and Ordinances Order, 1949 (G.G.O. No. 4 of 1949), w.e.f. 28.3.1949, Article 3 and Schedule; and published in the Gazette of Pakistan (Extraordinary), pages 233-283.

<sup>12</sup> Substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937, w.e.f. 1.4.1937, Article 4 and Table of General Adaptations.

<sup>13</sup> Substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937, w.e.f. 1.4.1937, Article 4 and Table of General Adaptations.

<sup>14</sup> Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937, w.e.f. 1.4.1937, Article 3 and the Schedule I.

**7. Appointment of times of sitting in certain circumstances.—** (1) A Judge who is the Judge of two or more such Courts may, with the sanction of the District Court, fix the times at which he will sit in each of the Courts of which he is Judge.

(2) Notice of the times shall be published in such manner as the High Court from time to time directs.

**8. Additional Judges.—** <sup>15</sup>[(1) If the Provincial Government so direct, there may be appointed, by order in writing, Additional Judges of a Court of Small Causes or of two or more such Courts.]

(2) <sup>16</sup>[An Additional] Judge shall discharge such of the functions of the Judge of the Court or Courts as the Judge may assign to him, and in the discharge of those functions shall exercise the same powers as the Judge.

(3) The Judge may withdraw from <sup>17</sup>[an Additional] Judge any business pending before him.

(4) When the judge is absent, the <sup>18</sup>[senior] Additional Judge may discharge all or any of the functions of the Judge.

<sup>19</sup>**9. Suspension and removal of Judges.—** \*\*\*\*\*]

**10. Power to require two Judges to sit as a bench.—** The <sup>20</sup>[Provincial Government], after consultation with the High Court, may, by order in writing, direct that two Judges of Courts of Small Causes or a Judge and an Additional Judge of a Court of Small Causes shall sit together for the trial of such class or classes of suits or applications cognizable by a Court of Small Causes as may be described in the order.

**11. Decisions in case heard by a bench.—** (1) If two Judges, or a Judge and an Additional Judge, sitting together under the last foregoing section, differ as to a question of law or usage having the force of law, or in construing a document the construction of which may affect the merits, they shall draw up and refer, for the decision of the High Court, a statement of the facts of the case and of the point on which they differ in opinion, and the provisions of Chapter XLVI of the Code of Civil Procedure<sup>21</sup> shall apply to the reference.

(2) If they differ on any matter other than a matter specified in sub-section (1) the opinion of the Judge who is senior in respect of date of appointment as

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<sup>15</sup> Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937, w.e.f. 1.4.1937, Article 3 and the Schedule I.

<sup>16</sup> Substituted for the words "the Additional" by the Repealing and Amending Act, 1915 (XI of 1915), s.2 and the first Schedule; and published in the Gazette of India, dated 22.9.1915.

<sup>17</sup> Substituted for the words "the Additional" by the Repealing and Amending Act, 1915 (XI of 1915), s.2 and the first Schedule; and published in the Gazette of India, dated 22.9.1915.

<sup>18</sup> Inserted by the Repealing and Amending Act, 1915 (XI of 1915), s.2 and the first Schedule; and published in the Gazette of India, dated 22.9.1915.

<sup>19</sup> Omitted by the Government of India (Adaptation of Indian Laws) Order, 1937, w.e.f. 1.4.1937, Article 3 and the Schedule I.

<sup>20</sup> Substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937, w.e.f. 1.4.1937, Article 4 and Table of General Adaptations.

<sup>21</sup> XIV of 1882. See now ss.113, 115 and the first Schedule, Order XXLVI of the Code of Civil Procedure, 1908 (V of 1908).

judge of a Court of Small Causes, or, if one of them is an Additional Judge then the opinion of the Judge sitting with him, shall prevail.

(3) For the purposes of sub-section (2), a Judge permanently appointed shall be deemed to be senior to an officiating Judge.

**12. Registrar.**— <sup>22</sup>[(1) There may be appointed to a Court of Small Causes an officer to be called the Registrar of the Court.]

(2) Where a Registrar is appointed, he shall be the Chief Ministerial Officer of the Court.

(3) The <sup>23</sup>[Provincial Government] may, by order in writing, confer upon a Registrar, within the local limits of the jurisdiction of the Court, the jurisdiction of a Judge of a Court of Small Causes for the trial of suits of which the value does not exceed twenty rupees.

(4) The Registrar shall try such suits cognizable by him as the Judge may, by general or special order, direct.

<sup>24</sup>[(5) \* \* \* \* \* ]

<sup>25</sup>[**13. Other ministerial officers.**— \* \* \* \* \* ]

**14. Duties of ministerial officers.**— (1) The ministerial officers of a Court of Small Causes shall, in addition to any duties mentioned in this Act, or in any other enactment for the time being in force, as duties which are or may be imposed on any of them, discharge such duties of a ministerial nature as the Judge directs.

(2) The High Court may make rules consistent with this Act, and with any other enactment for the time being in force, conferring and imposing on the ministerial officers of a Court of Small Causes such powers and duties as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed are to be exercised and performed.

### CHAPTER III

#### JURISDICTION OF COURTS OF SMALL CAUSES

**15. Cognizance of suits by Courts of Small Causes.**— (1) A Court of Small Causes shall not take cognizance of the suits specified in the second schedule as suits excepted from the cognizance of a Court of Small Causes.

(2) Subject to the exceptions specified in that schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of

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<sup>22</sup> Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937, w.e.f. 1.4.1937, Article 3 and the Schedule I.

<sup>23</sup> Substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937, w.e.f. 1.4.1937, Article 4 and Table of General Adaptations.

<sup>24</sup> Omitted by the Government of India (Adaptation of Indian Laws) Order, 1937, w.e.f. 1.4.1937, Article 3 and the Schedule I.

<sup>25</sup> Omitted by the Government of India (Adaptation of Indian Laws) Order, 1937, w.e.f. 1.4.1937, Article 3 and the Schedule I.

which the value does not exceed <sup>26</sup>[two thousand] rupees shall be cognizable by a Court of Small Causes.

(3) Subject as aforesaid <sup>27</sup>[and subject to any directions which the Provincial Government may give in this respect, the High Court,] may by order in writing, direct that all suits of a civil nature of which the value does not exceed <sup>28</sup>[five thousand] rupees shall be cognizable by a Court of Small Causes mentioned in the Order.

**16. Exclusive jurisdiction of Courts of Small Causes.—** Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable.

## CHAPTER-IV

### PRACTICE AND PROCEDURE

**17. Application of the Code of Civil Procedure.—** (1) <sup>29</sup>[The procedure prescribed in the Code of Civil Procedure, 1908<sup>30</sup>, shall, save in so far as is otherwise provided by that Code or by this Act], be the procedure followed in a Court of Small Causes in all suits cognizable by it and in all proceedings arising out of such suits:

Provided that an applicant for an order to set aside a decree passed ex parte or for a review of judgement shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree or in pursuance of the judgement, or give <sup>31</sup>[such security for the performance of the decree or compliance with the judgment as the Court may, on a previous application made by him in this behalf, have directed].

(2) Where a person has become liable as surety under the proviso to sub-section (1), the security may be realized in manner provided by section <sup>32</sup>[145] of the Code of Civil Procedure, <sup>33</sup>[1908].

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<sup>26</sup> Substituted for the words "one thousand" by the Provincial Small Cause Courts (West Pakistan Amendment) Ordinance, 1966 (VIII of 1966), w.e.f 31.3.1966, s.2; and published in the Gazette of West Pakistan (Extraordinary), pages 711-712.

<sup>27</sup> Substituted for the words "the Provincial Government" by the Provincial Small Cause Courts (West Pakistan Amendment) Ordinance, 1966 (VIII of 1966), w.e.f 31.3.1966, s.2; and published in the Gazette of West Pakistan (Extraordinary), pages 711-712. which had been substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937, w.e.f. 1.4.1937, Article 4 and Table of General Adaptations.

<sup>28</sup> Substituted for the words "two thousand" by the Provincial Small Cause Courts (West Pakistan Amendment) Ordinance, 1966 (VIII of 1966), w.e.f 31.3.1966, s.2; and published in the Gazette of West Pakistan (Extraordinary), pages 711-712.

<sup>29</sup> Substituted for the words beginning with "The procedure" and ending with the words "are applicable" by the Small Cause Courts (Attachment of Immovable Property) Act, 1926 (I of 1926), s.2; and passed by the Indian Legislature and received the assent of the Governor General on 24.2.1926.

<sup>30</sup> V of 1908.

<sup>31</sup> Substituted for "security to the satisfaction of the Court for the performance of the decree or compliance with the judgment, as the Court may direct" by the Provincial Small Cause Courts (Amendment) Act, 1935 (IX of 1935), s.2; and passed by the Indian Legislature and received the assent of the Governor General on 28.9.1935.

<sup>32</sup> Substituted for the figure "253" by the Small Cause Courts (Attachment of Immovable Property) Act, 1926 (I of 1926), s.2; and passed by the Indian Legislature and received the assent of the Governor General on 24.2.1926.

**18. Trial of suits by Registrar.**— (1) Suits cognizable by the Registrar under section 12, sub-sections (3) and (4), shall be tried by him and decrees passed therein shall be executed by him, in like manner in all respects as the Judge might try the suits, and execute the decrees, respectively.

(2) The Judge may transfer to his own file, or to that of the Additional Judge if an Additional Judge has been appointed, any suit or other proceeding pending on the file of the Registrar.

**19. Admission, return and rejection of plaints by Registrar.**— (1) When the Judge of a Court of Small Causes is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may admit a plaint, or return or reject a plaint for any reason for which the Judge might return or reject it.

(2) The Judge may, of his own motion or on the application of a party, return or reject a plaint which has been admitted by the Registrar, or admit a plaint which has been returned or rejected by him:

Provided that where a party applies for the return or rejection or the admission of a plaint under this sub-section, and his application is not made at the first sitting of the Judge after the day on which the Registrar admitted, or returned or rejected the plaint, the Judge shall dismiss the application unless the applicant satisfies him that there was sufficient cause for not making the application at that sitting.

**20. Passing of decrees by Registrar on confession.**— (1) If, before the date appointed for the hearing of a suit, the defendant or his agent duly authorized in that behalf appears before the Registrar and admits the plaintiff's claim, the Registrar may, if the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, pass against the defendant, upon the admission, a decree which shall have the same effect as a decree passed by the Judge.

(2) Where a decree has been passed by the Registrar under sub-section (1), the Judge may grant an application for review of judgment, and re-hear the suit, on the same conditions, on the same grounds and in the same manner as if the decree had been passed by himself.

**21. Execution of decrees by Registrar.**— (1) If the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may, subject to any instructions which he may have received from the Judge or, with respect to decrees or orders made by an Additional Judge, from the Additional Judge, make any order in respect of applications for the execution of decrees and orders made by the Court of which he is Registrar, or sent to that Court for execution, which the Judge might make under this Act.

(2) The Judge, in the case of any decree or order with respect to the execution of which the Registrar has made an order under sub-section (1) or the Additional Judge, in the case of any such decree or order which has been made by himself and with respect to which proceedings have not been taken by the Judge under this sub-section, may, of his own motion, or on application made by a party

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<sup>33</sup> Added by the Small Cause Courts (Attachment of Immovable Property) Act, 1926 (I of 1926), s.2; and passed by the Indian Legislature and received the assent of the Governor General on 24.2.1926.

within fifteen days, from the date of the order of the Registrar or of the execution of any process issued in pursuance of that order, reverse or modify the order.

(3) The period of fifteen days mentioned in sub-section (2) shall be computed in accordance with the provisions of the Indian Limitation Act, 1877<sup>34</sup>, as though the application of the party were an application for review of judgement.

**22. Adjournment of cases by chief ministerial officer.**— When the Judge of a Court of Small Causes is absent and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar or other chief ministerial officer of the Court may exercise from time to time the power which the Court possesses of adjourning the hearing of any suit or other proceeding, and fix a day for the further hearing thereof.

**23. Return of plaints in suits involving question of title.**— (1) Notwithstanding, anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or disproof of a title to immovable property or other title which such a Court cannot finally determine, the Court may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the title.

(2) When a Court returns a plaint under sub-section (1), it shall comply with the provisions of the second paragraph of section 57 of the Code of Civil Procedure<sup>35</sup> and make such order with respect to costs as it deems just, and the Court shall, for the purposes of the Indian Limitation Act, 1877<sup>36</sup>, be deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction.

**24. Appeal from certain orders of Courts of Small Causes.**— Where an order specified in <sup>37</sup>[clause (ff) or clause (h) of sub-section (1) of section 104 of the Code of Civil Procedure, 1908<sup>38</sup>,] is made by a Court of Small Causes, an appeal therefrom shall lie to the District Court, <sup>39</sup>[on any ground on which an appeal from such order would lie under that section.]

**25. Revision of decrees and orders of Courts of Small Causes.**— The High Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit.

<sup>40</sup>[**26. Amendment of the second schedule to the Code of Civil Procedure.**— \* \* \* \* \*]

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<sup>34</sup> XV of 1877. Now the Limitation Act, 1908 (IX of 1908).

<sup>35</sup> XIV of 1882. See now the First Schedule, Order VII, rule 10 of the Code of Civil Procedure, 1908 (Act VI of 1908).

<sup>36</sup> XV of 1877. Now the Limitation Act, 1908 (IX of 1908).

<sup>37</sup> Substituted for the words and figures "section 588, clause (29) of the Code of Civil Procedure (V of 1908)" by the Civil Procedure (Amendment) Act, 1922 (IX of 1922), s.5; and published in the Gazette of India, dated 5.3.1922.

<sup>38</sup> V of 1908.

<sup>39</sup> Added by the Civil Procedure (Amendment) Act, 1922 (IX of 1922), s.5; and published in the Gazette of India, dated 5.3.1922.

<sup>40</sup> Repealed by the Presidency Small Cause Courts Law Amendment Act, 1888(X of 1888), s.4.

**27. Finality of decrees and orders.**— Save as provided by this Act, a decree or order made under the foregoing provisions of this Act by a Court of Small Causes shall be final.

<sup>41</sup>**[27A. Application for distress warrant.**— (1) Any person claiming to be entitled to arrears of rent of any house or premises situate within the local limits of the Court's jurisdiction of which the annual rent does not exceed <sup>42</sup>[two thousand rupees or, where the Court is empowered under sub-section (3) of section 15, five thousand rupees], may apply to the Court for a distress warrant.

(2) The application shall be supported by an affidavit or affirmation to the effect of Form A given in the Third Schedule.

(3) Nothing in this section shall apply to—

(a) any rent due to Government;

(b) any rent which has been due for more than twelve months before the application mentioned in sub-section (1) is made.

**27B. Application to discharge or suspend warrant.**— (1) The debtor or any other person alleging himself to be the owner of any property seized under a distress warrant under section 27A may, at any time within five days or such extended time as the Court may grant for reasons recorded in writing from such seizure, apply to the Court to discharge or suspend the warrant, or to release a distrained article and the Court may discharge or suspend such warrant or release such article accordingly, upon such terms as it thinks just and the Court may, in its discretion, give reasonable time to the debtor to pay the rent due from him.

(2) Upon any such application, the costs attending it and attending the issue and execution of the warrant shall be in the discretion of the Court and shall be paid as the Court directs.]

## CHAPTER-V

### SUPPLEMENTAL PROVISIONS

**28. Subordination of Courts of Small Causes.**— (1) A Court of Small Causes shall be subject to the administrative control of the District Court and to the superintendence of the High Court, and shall-

(a) keep such registers, books and accounts as the High Court from time to time prescribes, and

(b) comply with such requisitions as may be made by the District Court, the High Court or the <sup>43</sup>[Provincial Government] for records, returns and statements in such form and manner as the authority making the requisition directs.

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<sup>41</sup> Inserted by the Provincial Small Causes Courts (Amendment) Ordinance, 1962 (LI of 1962), w.e.f. 7.6.1962, s.3; and published in the Gazette of Pakistan (Extraordinary), pages 980-983.

<sup>42</sup> Substituted for "one thousand rupees or, where the Court is empowered under sub-section (3) of section 15, two thousand rupees" by the Provincial Small Cause Courts (West Pakistan Amendment) Ordinance, 1966 (VIII of 1966), w.e.f. 31.3.1966, s.3; and published in the Gazette of West Pakistan (Extraordinary), pages 711-712.

<sup>43</sup> Substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937, w.e.f. 1.4.1937, Article 4 and Table of General Adaptations.

(2) The relation of the District Court to a Court of Small Causes, with respect to administrative control, shall be the same as that of the District Court to a Civil Court of the lowest grade competent to try an original suit of the value of five thousand rupees in that portion of the territories administered by the <sup>44</sup>[Provincial Government] in which the Court of Small Causes is established.

<sup>45</sup>**28-A. Power of District Court to withdraw and transfer causes.**—(1) Where a District Court is satisfied that any particular suit cannot be adequately tried by a Court of Small Causes it may withdraw such suit from that Court and-

- (i) try or dispose of that suit itself, or
- (ii) transfer such suit to another Court subordinate to the District Court.

(2) Where any suit is so withdrawn, the District Court or the Court to which such suit is transferred shall try and dispose of the same as if such suit were not cognizable by a Court of Small Causes.]

**29. Seal.**— A Court of Small Causes shall use a seal of such form and dimensions as are prescribed by the <sup>46</sup>[Provincial Government].

**30. Abolition of Courts of Small Causes.**— The <sup>47</sup>[Provincial Government] may, by order in writing, abolish a Court of Small Causes.

**31. Saving of power to appoint Judge of Court of Small Causes to other office.**— (1) Nothing in this Act shall be construed to prevent <sup>48</sup>[the appointment of] a person who is a Judge or Additional Judge of a Court of Small Causes to be also a Judge of any other Civil Court or to be a Magistrate of any class or to hold any other public office.

(2) When a judge or Additional Judge is so appointed, the ministerial officers of his Court shall subject to any rules which the <sup>49</sup>[Provincial Government] may make in this behalf, be deemed to be ministerial officers appointed to aid him in the discharge of the duties of the other office.

**32. Application of Act to Courts invested with jurisdiction of Court of Small Causes.**— (1) So much of Chapters III and IV as relates to—

- (a) the nature of the suits cognizable by Courts of Small Causes,
- (b) the exclusion of the jurisdiction of other Courts in those suits,
- (c) the practice and procedure of Courts of Small Causes,

<sup>44</sup> Substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937, w.e.f. 1.4.1937, Article 4 and Table of General Adaptations.

<sup>45</sup> Inserted by the Provincial Small Causes Courts (Amendment) Ordinance, 1962 (LI of 1962), w.e.f. 7.6.1962, s.4; and published in the Gazette of Pakistan (Extraordinary), pages 980-983.

<sup>46</sup> Substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937, w.e.f. 1.4.1937, Article 4 and Table of General Adaptations.

<sup>47</sup> Substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937, w.e.f. 1.4.1937, Article 4 and Table of General Adaptations.

<sup>48</sup> Substituted for "the Local Government from appointing" by the Government of India (Adaptation of Indian Laws) Order, 1937, w.e.f. 1.4.1937, Article 3 and the Schedule I.

<sup>49</sup> Substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937, w.e.f. 1.4.1937, Article 4 and Table of General Adaptations.

- (d) appeal from certain orders of those Courts and revision of cases decided by them, and
- (e) the finality of their decrees and orders subject to such appeal and revision as are provided by this Act,

applies to Courts invested by or under any enactment for the time being in force with the jurisdiction of a Court of Small Causes so far as regards the exercise of that jurisdiction by those Courts.

(2) Nothing in sub-section (1) with respect to Courts invested with the jurisdiction of a Court of Small Causes applies to suits instituted or proceedings commenced in those Courts before the date on which they were invested with that jurisdiction.

**33. Application of Act and Code to Court so invested as to two Courts.—** A Court invested with the jurisdiction of a Court of Small Causes with respect to the exercise of that jurisdiction, and the same Court with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure<sup>50</sup>, be deemed to be different Courts.

**34. Modification of Code as so applied.—** Notwithstanding anything in the last two foregoing sections,—

- (a) when in exercise of the jurisdiction of a Court of Small Causes, a Court invested with that jurisdiction sends a decree for execution to itself as a Court having jurisdiction in suits of civil nature which are not cognizable by a Court of Small Causes, or
- (b) when a Court, in the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, send, a decree for execution to itself as a Court invested with the jurisdiction of a Court of Small Causes, the documents mentioned in section 224 of the Code of Civil Procedure<sup>51</sup> shall not be sent with the decree unless in any case the Court, by order in writing, requires them to be sent.

**35. Continuance of proceedings of abolished Courts.—** (1) Where a Court of Small Causes, or a Court invested with the jurisdiction of a Court of Small Causes, has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to the case, whether before or after decree, which, if the Court had not ceased to have jurisdiction, might have been had therein, may be had in the Court which, if the suit out of which the proceeding has arisen were about to be instituted, would have jurisdiction to try the suit.

(2) Nothing in this section applies to cases for which special provision is made in the Code of Civil Procedure<sup>52</sup> as extended to Courts of Small Causes or in any other enactment for the time being in force.

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<sup>50</sup> XIV of 1882. Now the Code of Civil Procedure, 1908 (V of 1908).

<sup>51</sup> XIV of 1882. See now the First Schedule, Order XXI, rule 6, of the Code of Civil Procedure, 1908 (V of 1908).

<sup>52</sup> XIV of 1882. Now the Code of Civil Procedure, 1908 (V of 1908).

<sup>53</sup>[36. Amendment of Indian Limitation Act.—\*\*\*\*\*]

**37. Publication of certain orders.**— All orders required by this Act to be made in writing by the <sup>54</sup>[Provincial Government] shall be published in the official Gazette.

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<sup>53</sup> Repealed by the Limitation Act, 1908 (IX of 1908).

<sup>54</sup> Substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937, w.e.f. 1.4.1937, Article 4 and Table of General Adaptations.

## THE FIRST SCHEDULE

<sup>55</sup>[ENACTMENTS REPEALED.]

## THE SECOND SCHEDULE

### SUITS EXCEPTED FROM THE COGNIZANCE OF A COURT OF SMALL CAUSES.

(See section 15)

- <sup>56</sup>[(1) a suit concerning any act done or purporting to be done by or by order of the <sup>57</sup>[Federal Government], the <sup>58</sup>[Government] Representative or the Provincial Government];
  - (2) a suit concerning an act purporting to be done by any person in pursuance of a judgement or order of a Court or of a judicial officer acting in the execution of his office;
  - (3) a suit concerning an act or order purporting to be done or made by any other officer of the Government in his official capacity, or by a Court of Wards, or by an officer of a Court of Wards in the execution of his office;
  - (4) a suit for the possession of immovable property <sup>59</sup>[other than a suit for ejectment of a tenant unless, any other Court or officer has exclusive jurisdiction in the matter] or for the recovery of an interest in such property;
  - (5) a suit for the partition of immovable property;
  - (6) <sup>60</sup>[except in the case of simple mortgage,] a suit by a mortgagee of immovable property for the foreclosure of the mortgage or for the sale of the property, or by a mortgagor of immovable property for the redemption of the mortgage;
  - (7) a suit for the assessment, enhancement, abatement or apportionment of the rent of immovable property;
- <sup>61</sup>[(8) \* \* \* \* \*]

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<sup>55</sup> Repealed by the Amending Act, 1891 (XII of 1891), s.2 and schedule I; and published in the Gazette of India, dated 21.3.1891.

<sup>56</sup> Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937, w.e.f. 1.4.1937, Article 3 and the Schedule I.

<sup>57</sup> Substituted for "Central Government" by the Federal Adaptation of Laws Order, 1975 (P.O. No. 4 of 1975), w.e.f. 1.8.1975, Article 2 and Table of General Adaptations; and published in the Gazette of Pakistan (Extraordinary), pages. 435-467.

<sup>58</sup> Substituted for "Crown" by the Central Laws (Adaptation) Order, 1961 (P.O. No. 1 of 1961), w.e.f. 23.3.1956, Article 2 and Table; and published in the Gazette of Pakistan (Extraordinary), dated 24.1.1961, pages.102-174.

<sup>59</sup> Inserted by the Provincial Small Causes Courts (Amendment) Ordinance, 1962 (LI of 1962), w.e.f. 7.6.1962, s.5; and published in the Gazette of Pakistan (Extraordinary), pages 980-983.

<sup>60</sup> Inserted by the Provincial Small Causes Courts (Amendment) Ordinance, 1962 (LI of 1962), w.e.f. 7.6.1962, s.5; and published in the Gazette of Pakistan (Extraordinary), pages 980-983.

<sup>61</sup> Omitted by the Provincial Small Causes Courts (Amendment) Ordinance, 1962 (LI of 1962), w.e.f. 7.6.1962, s.5; and published in the Gazette of Pakistan (Extraordinary), pages 980-983.

- (9) a suit concerning the liability of land to be assessed to land-revenue;
- (10) a suit to restrain waste;
- (11) a suit for the determination or enforcement of any other right to or interest in immovable property;
- (12) a suit for the possession of an hereditary office or of an interest in such an office, including a suit to establish an exclusive or periodically recurring right to discharge the functions of an office;
- (13) a suit to enforce payment of the allowance or fees respectively called *malikana* and *hakk*, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immovable property or in an hereditary office or in a shrine or other religious institution <sup>62</sup>[but nothing in this article shall apply to any claim for money based on contract in writing];
- (14) a suit to recover from a person to whom compensation has been paid under the Land Acquisition Act, 1870<sup>63</sup>, the whole or any part of the compensation;
- (15) a suit for the specific performance or rescission of a contract;
- (16) a suit for the rectification or cancellation of an instrument;
- (17) a suit to obtain an injunction;
- (18) a suit <sup>64</sup>[to enforce a trust], including a suit to make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust, and a suit by a co-trustee to enforce against the estate of a deceased trustee a claim for contribution;
- (19) a suit for a declaratory decree, not being a suit instituted under section 283 or section 332 of the Code of Civil Procedure<sup>65</sup>;
- <sup>66</sup>[(20) \* \* \* \* \*
- (21) a suit to set aside an attachment <sup>67</sup>[of immovable property] by a Court or a revenue- authority, or a sale, mortgage, lease or other transfer <sup>68</sup>[of immovable property] by a Court or a revenue-authority or by a guardian;
- (22) a suit for property which the plaintiff has conveyed while insane;
- (23) a suit to alter or set aside a decision, decree or order of a Court or of a person acting in a judicial capacity;
- (24) a suit to contest an award;

<sup>62</sup> Added by the Provincial Small Causes Courts (Amendment) Ordinance, 1962 (LI of 1962), w.e.f. 7.6.1962, s.5; and published in the Gazette of Pakistan (Extraordinary), pages 980-983.

<sup>63</sup> X of 1870. Now the Land Acquisition Act, 1894 (I of 1894).

<sup>64</sup> Substituted for "relating to a trust" by the Provincial Small Causes Courts (Amendment) Ordinance, 1962 (LI of 1962), w.e.f. 7.6.1962, s.5; and published in the Gazette of Pakistan (Extraordinary), pages 980-983.

<sup>65</sup> XIV of 1882. Now the Code of Civil Procedure, 1908 (V of 1908).

<sup>66</sup> Omitted by the Provincial Small Causes Courts (Amendment) Ordinance, 1962 (LI of 1962), w.e.f. 7.6.1962, s.5; and published in the Gazette of Pakistan (Extraordinary), pages 980-983.

<sup>67</sup> Inserted by the Provincial Small Causes Courts (Amendment) Ordinance, 1962 (LI of 1962), w.e.f. 7.6.1962, s.5; and published in the Gazette of Pakistan (Extraordinary), pages 980-983.

<sup>68</sup> Inserted by the Provincial Small Causes Courts (Amendment) Ordinance, 1962 (LI of 1962), w.e.f. 7.6.1962, s.5; and published in the Gazette of Pakistan (Extraordinary), pages 980-983.

<sup>69</sup>[(25) \* \* \* \* \*]

<sup>70</sup>[(26) \* \* \* \* \*]

- (27) a suit under the Indian Succession Act, 1865<sup>71</sup>, section 320 or section 321, or under the Probate and Administration Act, 1881<sup>72</sup>, section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets;
- (28) a suit for a legacy or for the whole or a share of a residue bequeathed by a testator, or for the whole or a share of the property of an intestate;
- (29) a suit---
- (a) for a dissolution of partnership or for the winding up of the business of a partnership after its dissolution;
  - (b) for an account of partnership transactions; or
  - (c) for a balance of partnership-account, unless the balance has been struck by the parties or their agents;
- (30) a suit for an account of property and for its due administration under decree;
- (31) any other suit for an account, including a suit by a mortgagor, after the mortgage has been satisfied, to recover surplus collections received by the mortgagee, and suit for the profits on immovable property <sup>73</sup>[,but not including suit for mesne profits,] belonging to the plaintiff which have been wrongfully received by the defendant;
- (32) a suit for a general average loss or for salvage;
- (33) a suit for compensation in respect of collision between ships;
- (34) a suit on a policy of insurance or for the recovery of any premium paid under any such policy;
- (35) a suit for compensation-
- (a) for loss occasioned by the death of a person caused by actionable wrong;
  - (b) for wrongful arrest, restraint or confinement;
  - (c) for malicious prosecution;
  - (d) for libel;
  - (e) for slander;
  - (f) for adultery or seduction;
  - (g) for breach of contract of betrothal or promise of marriage;

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<sup>69</sup> Omitted by the Provincial Small Causes Courts (Amendment) Ordinance, 1962 (LI of 1962), w.e.f. 7.6.1962, s.5; and published in the Gazette of Pakistan (Extraordinary), pages 980-983.

<sup>70</sup> Omitted by the Provincial Small Causes Courts (Amendment) Ordinance, 1962 (LI of 1962), w.e.f. 7.6.1962, s.5; and published in the Gazette of Pakistan (Extraordinary), pages 980-983.

<sup>71</sup> X of 1865. Now the Succession Act, 1925 (XXXIX of 1925).

<sup>72</sup> V of 1881. Now the Succession Act, 1925 (XXXIX of 1925).

<sup>73</sup> Inserted by the Provincial Small Causes Courts (Amendment) Ordinance, 1962 (LI of 1962), w.e.f. 7.6.1962, s.5; and published in the Gazette of Pakistan (Extraordinary), pages 980-983.

- (h) for inducing a person to break a contract made with the plaintiff;
  - (i) for obstruction of an easement or diversion of a water-course;
  - <sup>74</sup>[(ii) for an act which is, or, save for the provisions of Chapter IV of the Indian Penal Code<sup>75</sup>, would be, an offence punishable under Chapter XVII of the said Code;]
  - <sup>76</sup>[(j) for illegal, improper or excessive distress, attachment or search, or for trespass committed in, or damage caused by, the illegal or improper execution of any distress, search or legal process;]
  - (k) for improper arrest under Chapter XXXIV of the Code of Civil Procedure<sup>77</sup> or in respect of the issue of an injunction wrongfully obtained under Chapter XXXV of that Code; or
  - (l) for injury to the person in any case not specified in the foregoing sub-clauses of this clause;
- (36) a suit by a <sup>78</sup>[Muslim] for exigible (mu'ajjal) or deferred (mu'wajjal) dower;
  - (37) a suit for the restitution of conjugal rights, <sup>79</sup>[\* \* \* \*] for the custody of a minor, or for a divorce;
  - (38) a suit relating to maintenance <sup>80</sup>[,except where a claim for maintenance is based on contract in writing];
  - (39) a suit for arrears of land-revenue, village-expenses or other sums payable to the representative of a village-community or to his heir or other successor in title;
  - (40) a suit for profits payable by the Representative of a village-community or by his heir or other successor in title after payment of land-revenue, village expenses and other sums;
  - (41) a suit for contribution by a sharer in joint property in respect of a payment made by him of money due from a co-sharer, or by manager of a joint property, or a member of an undivided family in respect of payment made by him on account of the property of family;
  - (42) a suit by one of several joint mortgagors, of immovable property for contribution in respect of money paid by him for the redemption of the mortgaged property;

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<sup>74</sup> Inserted by the provincial Small Cause Courts (Amendment) Act, 1914 (VI of 1914), s.2; and published in the Gazette of India, dated 25.2.1914.

<sup>75</sup> XLV of 1860. Now the Pakistan Penal Code, 1860 (XLV of 1860).

<sup>76</sup> Inserted by the provincial Small Cause Courts (Amendment) Act, 1914 (VI of 1914), s.2; and published in the Gazette of India, dated 25.2.1914.

<sup>77</sup> XIV of 1882. Now the Code of Civil Procedure, 1908 (V of 1908).

<sup>78</sup> Substituted for "Muhammadan" by the Federal Adaptation of Laws Order, 1975 (P.O. No. 4 of 1975), w.e.f. 1.8.1975, Article 2 and Table of General Adaptations; and published in the Gazette of Pakistan (Extraordinary), pages. 435-467.

<sup>79</sup> Repealed the words "for the recovery of a wife" by the Repealing and Amending Act, 1914 (X of 1914), s.3 and Second Schedule; and published in the Gazette of India dated 17.3.1914.

<sup>80</sup> Added by the Provincial Small Causes Courts (Amendment) Ordinance, 1962 (LI of 1962), w.e.f. 7.6.1962, s.5; and published in the Gazette of Pakistan (Extraordinary), pages 980-983.

(43) a suit against the Government to recover money paid under protest in satisfaction of a claim made by a revenue-authority on account of an arrear of land-revenue or of a demand recoverable as an arrear of land-revenue;

<sup>81</sup>[(43A) a suit to recover property obtained by an act which is, or, save for the provisions of Chapter IV of the <sup>82</sup>Indian Penal Code (XLV of 1860), would be, an offence punishable under Chapter XVII of the said Code;]

(44) a suit the cognizance whereof by a Court of Small Causes is barred by any enactment for the time being in force.

<sup>83</sup>**[THIRD SCHEDULE**

(See section 27A)

In the Court of Small Cause \_\_\_\_\_

A.B.

(Plaintiff)

*versus*

C.D.

(defendant)

A.B. of \_\_\_\_\_, in the town of \_\_\_\_\_, makes oath (or affirms) and says that C.D. \_\_\_\_\_, of \_\_\_\_\_, is justly indebted to \_\_\_\_\_, in the sum of Rs. \_\_\_\_\_ for, arrears of rent of the house and premises No. \_\_\_\_\_, situate at \_\_\_\_\_, in the town of \_\_\_\_\_, due for \_\_\_\_\_ months, to wit, from \_\_\_\_\_ to \_\_\_\_\_, at the rate of Rs. \_\_\_\_\_ per mensem.

Sworn or affirmed before me the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_.

Judge (or Registrar.)]

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<sup>81</sup> Inserted by the provincial Small Cause Courts (Amendment) Act, 1914 (VI of 1914), s.3; and published in the Gazette of India, dated 25.2.1914.

<sup>82</sup> Now the Pakistan Penal Code, 1860 (XLV of 1860).

<sup>83</sup> Added by the Provincial Small Causes Courts (Amendment) Ordinance, 1962 (LI of 1962), w.e.f. 7.6.1962, s.6; and published in the Gazette of Pakistan (Extraordinary), pages 980-983.