

# Caste questions, Pleadings

MAHARASHTRA

India

## Caste questions, Pleadings

### Act 2 of 1827

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Caste questions, PleadingsBombay Regulation 2 of 1827[Dated 1st January, 1827]A Regulation for defining the constitution of Courts of Civil Justice, and the powers and duties of the Judges and offices thereof.

### Chapter I

#### [Supreme Court of Sadr Adalat]

#### 1. to 15 Repealed Act XII of 1873

### Chapter II

#### Of Zilla Courts Inclusive of the Subsidiary Courts of the Assistant Judges

#### 16. to 20. [Appointment of Judge; his Court; his seal; his oath; acting Judge.] Repealed Act XIV of 1869.

#### 21. Caste Questions. - First.

- The jurisdiction of the Civil Court shall extend to the cognizance of all original suits and complaints between Natives and others not British-born subjects, respecting the right to moveable or immovable property, rents, Government-revenues, debts, contracts, marriage, succession, damages for injuries and generally of all suits and complaints of a civil [nature] [Section 21, clause first (except so much as prohibits interference of the Civil Courts in caste-questions), was repealed by Act 10 of 1861 and Act 14 of 1869.]; it being understood that no interference on the part of the Court in caste-questions is hereby warranted, beyond the admission and trial of any suit instituted for the recovery of damages on account of an alleged injury to the caste and character of the

plaintiff, arising from some illegal act or unjustifiable conduct of the other party. Second to Seventh. - [Provisos as to admission of suits; jurisdiction over British born subjects.] Repealed Acts X of 1861 and XIV of 1869.

**22. to 33. [Jurisdiction; superintendence of inferior Courts; complaints against public officers; control of civil jail; subordination to higher Courts; appointment of Judges; oaths; duties; law officers; nazir; sherishtadar; record-keeper; administration of oaths]. Repealed Act XIV of 1869.**

Chapters III and IV [Appointment, Removal and Punishment of Officers of Courts; Courts of Commissioners for deciding civil suits]

**34. to 44. Repealed Act XIV of 1869.**

## **Chapter V**

**[Courts for Recovery of Debts due by British Subjects.]**

**45.**

, 46. Repealed Act X of 1861.

## **Chapter VI**

**[Of Pleders] [See also sections 13 [except clauses (a), (b), (c), (d), and (f), 34, 36 and 40 of the Legal Practitioners Act, 1879 (18 of 1879) which have been extended to the State of Bombay.]**

**47. Authorised pleaders to hold sanads. - First.**

- [Persons] [This word was substituted for the words 'Natives or others' by the Adaptation of Laws Order, 1950.] may be authorised to practice in each Court as pleaders [(vakils)] [Cf. Act 1 of 1846, Sections 4 and 5.] on behalf of parties in any judicial proceeding, being qualified by sanad according to the rules in the succeeding section. Persons allowed to act. - Second. - No persons shall be allowed to act in any such proceeding except such pleaders, or the parties themselves or their recognised agents [\* \* \*] [Portion repealed by Act 12 of 1873 is omitted.] Third. - [Exception as to Court of Commissioner.] Repealed Act I of 1846. Government pleader may hold general vakalatnama. - Fourth. - In matters to which [Government] [This word was substituted for the words 'the Crown or the Federal Railway Authority' by the Adaptation of Laws Order, 1950.] is a party, it shall be lawful for a pleader to act on a general vakalatnama, to be issued by the officer under whose control the said matters are conducted, provided a duplicate be deposited in the Zila Court of the district in which he practises.

#### **48. Number of pleadings unlimited.- First.**

- [The number of pleadings shall not be limited, but any person duly qualified and of unexceptionable character shall be entitled to a sanad of appointment.] [Cf. Act 1 of 1846, sections. 4 and 5.] Second. - [Qualifications; appointment how made.] Repealed Act I of 1846. Sanads to be furnished. - Third. - [Each pleader, on being found qualified, shall be furnished with a sanad, under the seal of the Court of Sadr Diwani Adalat. in the form of Appendix J.] [Cf. Act 1 of 1846, sections 4 and 5.]

#### **49. Practice of pleadings how regulated.**

- The pleadings in the Zila Courts shall practise each in such particular Court or Courts as may be assigned to them by the Zila Judge, or indiscriminately in all the Courts of the respective Zila, if it be not found necessary to appropriate the pleadings to particular Courts.

#### **50. Pleadings to file vakalatnama. - First.**

- A pleader shall not be allowed to act In any suit or proceeding until he has obtained from the party, and filed in Court, a power of attorney (vakalatnama) according to the form contained in Appendix K, appointing him pleader in the cause.[Second. - Retaining fee to be paid to pleader. [Cf. Act 1 of 1846, Sections 7 and 8.] - If a party engages a pleader to act in his behalf, he shall present him with eight annas as a retaining fee, for which the pleader shall grant him a written acknowledgement, specifying the date of payment; and; if the said retaining fee be not offered, the pleader shall demand it, and abstain from all proceeding until it be delivered]. Third. - Penalty for failure to perform engagement. - If, after receiving the retaining fee, a pleader shall engage with, or act for, the other party, or refuse or omit to act on behalf of his client, he may be punished by a fine not exceeding rupee five hundred: or, if the matter in litigation be less than rupees two hundred and fifty, then not exceeding twice the amount of the sum in dispute between the parties: or, if the circumstances are of an aggravated nature, may be suspended or dismissed [\* \* \*] [The words and figures 'under the rules contained in section 56 of this Regulation' were repealed by the Amending Act, 1895 (16 of 1895).] Fourth. - Court empowered to fine. - The fine may be inflicted by the Court in which the suit relative to which the failure of duty occurred may be pending [\* \* \*] [Words repealed by Act 12 of 1873 are omitted. Cf. Act 1 of 1846. Sections 10 and 12.]

#### **51. First. - [Representative character of pleader.] Repealed Act X of 1861.**

Second. - Pleader to give receipts to client for papers and to return them when required. Penalty for misconduct. - It shall be incumbent on a pleader, at the time of receiving any accounts, writings or documents from his client, to give a written receipt for them, and to restore them when required, under penalty of a fine not exceeding rupees one hundred, to be levied under the [\* \* \*] [The words 'rules contained in the' were repealed by the Amending Act, 1895 (16 of 1895).] last clause of the preceding section: or, if the circumstances be of an aggravated nature, of suspension or [dismissal] [The word 'dismissal' was substituted for the word 'dismission', by the Amending Act, 1895 (16 of 1895).] [\* \* \*] [The words and figures 'according to section 56 of this Regulation' are repealed, by the

Amending Act, 1895 (16 of 1895).]

## **52. [ Fees in original suits. - First. [Section 52 is modified by Sections 6 and 7 of Act 1 of 1846.]**

- Each pleader employed in prosecuting or defending an original suit shall be entitled to a percentage on the amount sued for, according to the rates specified in Appendix L, as a remuneration for his trouble in acting in behalf of his client, until the decree in the suit is passed, and thereafter until such decree is fulfilled.]Second. - In Appeals. - The remuneration to a pleader employed in prosecuting or defending an appeal, regular or special, shall be the same as is above prescribed in the case of an original suit.Third. - Private agreement not barred. - The above rules shall not prevent an express agreement being entered into between pleader and client, for either a larger or smaller sum than the established fee.Fourth. - Pleader to have excess when costs awarded against other party exceed amount agreed upon. - But, if a larger sum than was agreed for between a pleader and client is awarded in costs against the other party, the pleader, notwithstanding his agreement with his own client, shall be entitled to the excess when recovered.Fifth. - [Recovery of fees.] Repealed Act XII of 1873.

## **53. First. - [Half-fees.] Repealed Act XII of 1873.**

Second. - Several pleaders may be engaged, but without prejudice to opposite party. - Either party may engage two or more pleaders to conduct his suit or defence, but the party found liable in costs will not be answerable for more than the established fee of one pleader on behalf of the other party.Third. - Client may withdraw his vakalatnama but pleader not to withdraw without his consent of order of Court. - It shall be competent to a party at any time to withdraw the authority vested in a pleader to act in his behalf, on giving the Court notice in writing to that effect; but it shall not be competent to a pleader to withdraw from acting in behalf of his client without his consent or the special permission of the Court.Fourth. - [Fees in certain cases.] Repealed Act XII of 1873.

## **54. Pleader's absence to be reported. Penalty for absence without notice. - First.**

- If a pleader is unable to attend the Court in consequence of indisposition or other necessary cause, he shall notify the same to the Court in writing, in which case proceeding in the suit shall be stayed for such time as the Court deems reasonable, to enable the party to transfer by endorsement or otherwise his power-of-attorney (either temporarily or until the suit is determined) to another pleader; and any pleader absenting himself without written notice as above prescribed may be punished by fine not exceeding rupees one hundred, to be adjudged by the Court in which the failure of duty occurred, and levied as the amount of a decree by the same [\* \* \*] [Words repealed by Act 12 of 1873 are omitted.]Second. - Stay of proceedings on resignation or death. - In case of the resignation, dismissal or death of a pleader, proceedings in the suit shall in like manner be stayed [\* \* \*] [Words repealed by Act 12 of 1873 are omitted.]

## 55. [Fees in certain cases.] Repealed Act I of 1846.

## 56. Pleadings liable to suspension or dismissal without prejudice to private action for damages.

- A pleader accused of a criminal offence, or guilty of misbehaviour or neglect of duty, shall be liable to be suspended or dismissed [\* \* \*] [The words and figures 'under the rules regarding Commissioners, contained in the third clause of section 38 of this Regulation' were repealed by the Amending Act. 1895 (16 of 1895).]; but nothing herein contained shall prevent a party from instituting an action for damages against his pleader, when he may consider himself injured by his acts or omissions. Appendices A to I [Repealed Acts XII of 1876, X of 1873, XII of 1873 and VI of 1866.] Appendix J (See section 48, clause third) Form of Sanad Granted to A Pleader To. A. B., inhabitant of - In conformity with the provisions of Regulation II, A. D. 1827, you, A. B., are hereby appointed to the office of Pleader in the Court of you will not be liable to be removed from your situation during your good behaviour, while you discharge your duty with zeal and integrity, under the rules contained in the Regulations which now are or hereafter may be in force. By order of the Sadr Diwani Adalat. (Signed by the Registrar) The Pleader's fees is Appendix K (See section 50, clause first) Form of Power of Attorney to enable a Pleader to act in a suit In the Court of..... Suit for Rs..... Plaintiff. against..... Defendant. I ... plaintiff (or defendant, as the case may be) do hereby authorise to appear and act as Pleader for me in the above suit. Witness my hand, his ..... day of..... 19 .....

(Signed or the mark of) [ The plaintiff or Defendant.

Appendix L (See section 52, clause first) Statement showing the fees to which Pleadings are entitled for acting throughout ordinary suits when there is no specific Agreement

in suits for not more than Rs. 2,000	three per cent.
in suits for from Rs. 2,000 to 10,000 inclusive- on Rs. 2,000 as above, and on the remainder	two per cent.
in suits for from Rs. 10,000 to 20,000 inclusive- on Rs. 10,000 as above, and on the remainder	one per cent.
in suits for more than Rs. 20,000- on that sum as above, and on the remainder	half per cent.