

THE CODE OF CIVIL PROCEDURE, 1908

¹ACT NO V OF 1908

[21st March, 1908]

An Act to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; It is hereby enacted as follows:—

PRELIMINARY

1. Short title, commencement and extent.— This Act may be cited as the Code of Civil Procedure, 1908.

(2) It shall come into force on the first day of January, 1909.

²[(3) It extends to the whole of Pakistan.]

³[(4) The primary objective of this Code is to enable the Courts to—

- (a) deal the cases justly and fairly;
- (b) encourage parties to alternate dispute resolution procedure if it considers appropriate;
- (c) save expends and time both of Courts and litigants; and
- (d) enforce compliance with provision of the Code.]

2. Definitions. In this Act, unless there is anything repugnant in the subject or context,—

(1) “Code” includes rules:

(2) “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties which regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint ⁴[the determination of any question within section 144 and an order under rule 60, 98, 99, 101, or 103 of Order XXI], but shall not include—

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

¹For statement of Objects and Reasons, see Gazette of India, 1907 Pt.V,p.179; for Report of the Select Committee, see *ibid.*, 1908, Pt.V, p. 35; and for Proceedings in Council, see *ibid.*, 1907, Pt. VI. P. 135 and *ibid.*, 1908, pp.8, 12 and 212.

All references in the Act to His Majesty in Council shall be construed as references to the Federal Court, see the Federal Court (Enlargement of Jurisdiction) Act, 1949 (1 of 1950), s.6.

The Act has been extended and shall be deemed to have been so extended on the 14th October, 1955, to the whole of Pakistan by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s.3 and 2nd Sch.

This Act has been amended in the Punjab by the Punjab Relief of Indebtedness Act, 1934 (Punjab 7 of 1934), Pt. VIII.

It has been extended by notification under ss.5 and 5A of the Scheduled Districts Act, 1874 (14 of 1874), to the following scheduled Districts:—

(1) The Province of Sindh: Bombay Government Gazette, Extraordinary, 1909, Pt. I and Gazette of India, 1909, Pt. I, p.32.

(2) Scheduled District in the Punjab: Gazette, of India, 1909, Pt. I, P. 33.

(3) The Districts of Peshawar, Hazara, Kohat, Bannu and Dera Ismail Khan composing the N.W.F.P., : *ibid.*, Pt. II, p. 80.

It has been declared to be in force in Balochistan by the British Balochistan Laws Regulation, 1913 (II of 1913), s. 3 and First Schedule.

It has also been extended to the Leased Areas of Balochistan, see the Leased Areas (Laws) Order, 1950 (G.G.O.3 of 1950); and applied in the Federated Areas of Balochistan, see Gaz. of India 1937, pt. I, p. 1499.

It has been applied to Phulera in the Excluded Area of Upper Tanawal to the extend the Act is applicable in the N.W.F.P., see N.W.F.P (Upper Tanawal) (Excluded Area) Laws Regulation, 1950.

It has also been extended to the Excluded Area of Upper Tanawal other than Phulera by the N.W.F.P. (Upper Tanawal) Excluded Area) Laws Regulation, 1950 and declared to be in force in that area with affect from the 1st June, 1951, see N.W.F.P Gazette, Extraordinary, dated the 1st June, 1951.

The Act has, with certain modification, been applied to the Provincially Administered Tribal Areas of Chitral, Dir, Kalam, Swat and Malakand Protected Area by N.W.F.P Regulation No. 1 of 1974.

²Subs. by the Central Laws (Statute Reform) Ordinance, No. XXI of 1960, s. 3 and 2nd Sch. (with effect from the 14th October, 1955), for the Original sub-section (3), as amended by A.O., 1949.

³Ins. by Act No. VII of 2020, s. 2.

⁴Subs. by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch., for “and the determination of any question within section 47 or section 144”.

Explanation.— A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final:

(3) “decree-holder” means any person in whose favour a decree has been passed or an order capable of execution has been made:

(4) “district” means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a "District Court"), and includes the local limits of the ordinary original civil jurisdiction of a High Court:

(5) “foreign Court” means a Court situate beyond the limits of ³[Pakistan] which has no authority in ¹[Pakistan] and is not established or continued by ²[the ³[Federal Government] ⁴***]:

(6) “foreign judgment” means the judgment of a foreign Court:

(7) “Government Pleader” includes any officer appointed by the ²[Provincial Government] to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader:

(8) “Judge” means the presiding officer of a Civil Court:

(9) “judgment” means the statement given by the Judge of the grounds of a decree or order:

(10) “judgment-debtor” means any person against whom a decree has been passed or an order capable of execution has been made:

(11) “legal representative” means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued:

(12) “mesne profits” of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits but shall not include profits due to improvements made by the person in wrongful possession:

(13) “moveable property” includes growing crops:

(14) “order” means the formal expression of any decision of a Civil Court which is not a decree:

(15) “pleader” means any person entitled to appear and plead for another in Court, and includes an advocate, a vakil and an attorney of a High Court:

(16) “prescribed” means prescribed by rules:

¹Subs. by Ordinance, No. XXI of 1960, s.3 and 2nd Sch. (with effect from the 14th October, 1955), for “the Provinces and the Capital of the Federation” which had been subs. by Adaptation Order, 1949.

²Subs. by Adaptation Order, 1937.

³Subs. by Federal Adaptation Order, 1975 Art. 2 and Table.

⁴The words “or the Crown Representative” omitted by Adaptation Order, 1949.

(17) “public officer” means a person falling under any of the following descriptions, namely:—

- (a) every Judge;
- ¹[(b) every person in the service of Pakistan;]
- (c) every commissioned or gazetted officer in the military, ²[naval or air] forces of ³[Pakistan while in the service of the State] ;
- (d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the Court, and every person especially authorised by a Court of Justice to perform any of such duties;
- (e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;
- (f) every officer of ⁴[the Government] whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;
- (g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of ⁴[the Government], or to make any survey, assessment or contract on behalf of ⁴[the Government], or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interest of ³[the Government], or to make, authenticate or keep any document relating to the pecuniary interests of ⁴[the Government] or to prevent the infraction of any law for the protection of the pecuniary interests of ³[the Government]; and
- (h) every officer in the service or pay of ⁴[the Government], or remunerated by fees or commission for the performance of any public duty:

(18) “rules” means rules and forms contained in the First Schedule or made under section 122 or section 125:

(19) “share in a corporation” shall be deemed to include stock, debenture stock, debentures or bonds: and

(20) “signed”, save in the case of a judgment or decree, includes stamped.

⁵**[3. Subordination of Courts.** For the purposes of this Code, the hierarchy and sub-ordination of Civil Courts shall be the same as prescribed in the West Pakistan Civil Courts Ordinance, 1962 (W.P. Ordinance No. II of 1962).]

¹Subs. by the Federal Laws (Revision and Declaration) Ordinance, No. XVII of 1981, s.3 and Second Sch., for sub-clause (b). The words in crotchets [Civil Service of Pakistan] which were amended by Ordinance 21 of 1960, s. 3 and 2nd sch. and Adaptation Order, 1949.

²Subs. by the Amending Act No. XXXV of 1934, s.2 and Sch.

³The words “His Majesty while serving under the Crown” as amended, by Act No. XXXV of 1934, s.2 and Sch. and Adaptation Order, 1937, have been subs. by Adaptation Order, 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956.)

⁴Subs. by Adaptation Order, 1961, Art. 2 and Sch., (with effect from the 23rd March, 1956), for “the Crown” which had been subs., by Adaptation Order, 1937.

⁵Subs. by Act No. VII of 2020, s. 3.

4. Savings.—(1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a land-holder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

5. Application of the Code to the Revenue Courts.—(1) Where any Revenue Courts are governed by the provisions of this Code in those matters of procedure upon which any special enactment applicable to them is silent, the ¹[Provincial Government] ²[* * *] may, by notification in the ¹[official Gazette], declare that any portions of those provisions which are not expressly made applicable by this Code shall not apply to those Courts, or shall only apply to them with such modifications as the ¹[Provincial Government] ³[* * *] may prescribe.

(2) “Revenue Court” in subsection (1) means a Court having jurisdiction under any local law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceeding of a civil nature.

⁴**[6. Pecuniary Jurisdiction.**—Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject matter of which exceeds the pecuniary limits, if any, of its ordinary jurisdiction].

7. ⁵[* * * * *]

8. [*Presidency Small Cause Courts.*] *Omitted by A.O., 1949.*

PART I SUITS IN GENERAL JURISDICTION OF THE COURTS AND *Res Judicata*

9. Courts to try all civil suits unless barred. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

¹Subs. by Adaptation Order, 1937.

²The words “with the previous sanction of the G.G. in C.” omitted by the Devolution Act No. XXXVIII of 1920, s.2 and 1st Sch., Pt. I.

³The words “with the sanction aforesaid” omitted by Act No. XXXVIII of 1920, s.2 and 1st Sch., Pt. I.

⁴Subs. by Act XIX of 2023, s.2.

⁵Omitted by Act VII of 2020, s. 5.

Explanation.— A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

10. Stay of suit. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in ¹[Pakistan] having jurisdiction to grant the relief claimed, or in any Court beyond the limits of ¹[Pakistan] established or continued by ²[the ³[Federal Government] ⁴* * *] and having like jurisdiction, or before ⁵[the Supreme Court].

Explanation.— The pendency of a suit in a foreign Court does not preclude the Courts in ¹[Pakistan] from trying a suit founded on the same cause of action.

11. Res Judicata. No Court shall try suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.— The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.— For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.— The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.— Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.— Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.— Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

¶[12. Bar to further suit.— (1)] Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.

¹Subs. by the Central laws (Statute Reform) Ordinance, No. XXI of 1960, s. 3 and 2nd Sch. (with effect from the 14th October, 1955).

²Subs. by Adaptation Order, 1937.

³Subs. by Federal Adaptation Order, 1975. Art.2 and Table.

⁴The words "or the Crown Representative" omitted by Adaptation Order, 1949.

⁵Subs. by Adaptation Order, 1961, Art. 2 and Sch. (with effect from the 23rd March 1956).

⁶S.12 was renumbered as sub-section (1) of that section by the Code of Civil Procedure (Amdt.) Ordinance, No. X of 1980, s. 2

¹[(2) Where a person challenges the validity of a judgment, decree or order on the plea of fraud, mis-representation or want of jurisdiction, he shall seek his remedy by making an application to the Court which passed the final judgment, decree or order and not by a separate suit.]

13. When foreign judgment not conclusive. A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—

- (a) Where it has not been pronounced by a Court of competent Jurisdiction ;
- (b) Where it has not been given on the merits of the case;
- (c) Where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of ²[Pakistan] in cases in which such law is applicable;
- (d) Where the proceedings in which the Judgment was obtained are opposed to natural justice ;
- (e) Where it has been obtained by fraud ;
- (f) Where it sustains a claim founded on a breach of any law in force in ²[Pakistan].

14. Presumption as to foreign judgment. The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign Judgment, that such Judgment was pronounced by a Court of competent Jurisdiction, unless the contrary appears on the record ; but such presumption may be displaced by proving want of jurisdiction.

PLACE OF SUING

15. Court in which suits to be instituted. Every suit shall be instituted in the Court of the lowest grade competent to try it.

16. Suits to be instituted where subject-matter situate. Subject to the pecuniary or other limitations prescribed by any law, suits—

- (a) for the recovery of immoveable property with or without rent or profits,
- (b) for the partition of Immoveable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immoveable property,
- (d) for the determination of any other right to or interest in immoveable property,
- (e) for compensation for wrong to immoveable property,
- (f) for the recovery of moveable property actually under distraint or attachment,

¹Sub-section (2) added by the Code of Civil Procedure (Amdt.) Ordinance, No. X of 1980, s.2.

²Subs. by the Central Laws (statute Reform) Ordinance, No. XXI of 1960, s.3 and 2nd Sch. (with effect from the 14th October, 1955).

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate,¹[, or, in the case of suits referred to in clause (c), at the place where the cause of action has wholly or partly arisen]:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immoveable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate¹[,or, in the case of suit referred to in clause (c), at the place where the cause of action has wholly or partly arisen], or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.— In this section "property" means property situate in²[Pakistan].

17. Suits for immoveable property situate within jurisdiction of different Courts. Where a suit is to obtain relief respecting, or compensation for wrong to, immoveable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

18. Place of institution of suit where local limits of jurisdiction, of Courts are uncertain.— (1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immoveable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its Jurisdiction :

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise Jurisdiction.

(2) Where a statement has not been recorded under subs-section (1), and an objection is taken before an appellate or revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the appellate or revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto and there has been a consequent failure of Justice.

19. Suits for compensation for wrongs to person or moveables. Where a suit is for compensation for wrong done to the person or to moveable property, if the wrong was done within the local limits of the Jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the Jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

¹Ins. by the Code of Civil Procedure (Amdt.) Ordinance, No. XLIV of 1962, s.6.

²Subs. by the Central Laws (Statute Reform) ordinance, No. XXI of 1960, s.3 and 2nd Sch. (with effect from the 14th October, 1955).

Illustrations

- (a) A, residing in ¹[Karachi], beats B in ²[Quetta]. B may sue A either in ²[Quetta] or ¹[Karachi].
- (b) A, residing in ¹[Karachi] publishes in ²[Quetta] statements defamatory of B. B may sue A either in ²[Quetta] or in ¹[Karachi].

20. Other suits to be instituted where defendants reside or cause of action arises. Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

- (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain ; or
- (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution ; or
- (c) the cause of action, wholly or in part, arises.

Explanation I.— Where a person has permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

Explanation II.— A corporation shall be deemed to carry on business at its sole or principal office in ¹[Pakistan] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations

- (a) A is a tradesman in ²[Lahore]. B carries on business in ¹[Karachi], B, by his agent in ²[Lahore], buys goods of A and requests A to deliver them to the ¹[Pakistan International Airways]. A delivers the goods accordingly in ²[Lahore]. A may sue B for the price of the goods either in ²[Lahore] where the cause of action has arisen, or in ¹[Karachi], where B carries on business.
- (b) A resides at ¹[Murree], B at ²[Lahore], and C at ¹[Karachi], A, B and C being together at ¹[Bahawalpur], B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C ¹[Bahawalpur,] where the cause of action arose. He may also sue them at ²[Lahore], where B resides, or at ¹[Karachi],

¹Subs. by the Central Laws (Statute Reform) Ordinance, No. XXI of 1960, s.3 and 2nd Sch. (with effect from the 14th October, 1955).

²Subs. by the Federal Laws (Revision and Declaration) Ordinance, No. XXVII of 1981, s.3 and 2nd Sch.

where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

21. Objections to jurisdiction. No objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

22. Power to transfer suits which may be instituted in more than one Court. Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed.

23. To what Court application lies.— (1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.

(2) Where such Courts are subordinate to different appellate Courts but to the same High Court, the application shall be made to the said High Court.

(3) Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate.

24. General power of transfer and with drawl.— (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage—

- (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or
- (b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and
 - (i) try or dispose of the same ; or
 - (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same ; or
 - (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section, Courts of Additional and Assistant Judges shall be deemed to subordinate to the District Court.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

¹[24A. Appreance of parties on transfer of suits, etc.]— (1) Where any suit is transferred under section 22, or any suit, appeal or other proceeding is transferred or withdrawn under sub-section (1) of section 24 on the application of a party, the Court ordering the transfer or withdrawal shall fix a date for the appearance of the parties before itself, if the suit, appeal or other proceeding is to be tried or disposed of by itself, or before the Court to which the case is so transferred.

¹S.24A ins. by the Code of Civil Procedure (Amdt.) Ordinance, No. XLIV of 1962, s.7.

(2) Where any suit, appeal or other proceeding is transferred from one Court to another, otherwise than on the application of a party, the parties thereto shall appear before the Court from which the suit, appeal or other proceedings is to be transferred, on the day already fixed for their appearance before that Court, and such Court shall then communicate the order of transfer to such parties and direct them to appear before the Court to which the suit, appeal or other proceeding is to be transferred, either on the same day, or on such earliest day as may be reasonable having regard to the distance at which the other Court is located.]

¹25. [Power of Provincial Government to transfer suits.] Omitted by the Central Laws (Statue Reform) Ordinance, 1960 (XXI of 1960), s.3 and 2nd Sch. (with effect from the 14th October, 1955).

INSTITUTION OF SUITS

²[26. **Institution of suit.**—Every suit shall be instituted by presentation of a plaint or in such other manner as may be prescribed.]

²[26A-26D. * * * * *]

SUMMONS AND DISCOVERY

27. Summons to defendants. Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim ²[* * *] and may be served in manner prescribed.

²[27A. * * * * *]

28. Service of summons where defendant resides in another Province.—(1) A Summons may be sent for service in another Province to such Court and in such manner as may be prescribed by rules in force in that Province.

(2) The Court to which such summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue together with the record (if any) of its proceedings with regard thereto.

³[29. **Service of foreign summonses.** Summonses ²[and other processes] issued by any Civil

¹S. 25 was amended by Adaptation Order, 1937.

²Subs. and Omitted by Act No. XIX of 2023, s.3.

³Provisions of s.29 have been applied to—

(i)the Civil Courts in the Federation of Malaya in so far as the Chief Commissioner's Province of Baluchistan and the Capital of the Federation are concerned, *see* Gaz. of P., 1949, Pt. I, P.258 and *ibid.*, Pt. II A, P. 68

(ii)all Civil and Revenue Courts of India; and service by any Civil or Revenue Court of India of any summons issued under the Code of Civil Procedure, 1908, by a Court of the Province of Sind shall be deemed to be valid, *see* Sind Government Gazette, Extraordinary, dated 3rd July, 1952. Pt. I, P. 437.

(iii)all Civil and Revenue Courts in India and Service by such Courts of any summons issued under the said Code by a Court in the N.W.F.P, Baluchistan or Karachi shall be deemed to be valid service, *see* N.W.F.P Government Gazette, 1952, Pt. I, P. 248 and Gaz., of P. 1952, Pt. I, P. 119 and *ibid.*, Pt. VI, p. 126.

(iv)all Civil and Revenue Courts in India; and that service by such Courts of any summons issued under the said Code by a Court in Khairpur State shall be deemed to be valid service, *see* Khairpur State Gazette, Ext., 1952, dated the 18th September, 1952.

(v)all Civil and Revenue Courts in India; and service by such Courts of any summons issued under the said Code by a Court in the Bahawalpur State shall be deemed to be valid service, *see* Bahawalpur Govt. Gazette, dated the 2nd October, 1952.

(vi)all Civil and Revenue Courts of India; and service by any civil or Revenue Court in India, within whose jurisdiction the person to be served resides of any summons issued by a Court under the said Code shall be deemed to be valid service, *see* Punjab Gazette, Ext., 1951, dated the 1st September, 1951, p. 1743.

(vii)all Civil and Revenue Courts in the Union of Burma, in respect of Baluchistan; and service by such Courts of any summons issued under the said Code by a Court in Baluchistan shall be deemed to be valid service *see* Gaz. of P., Ext., 1954, p. 1873.

(viii)all Civil and Revenue Courts in the Union of Burma, in respect of Karachi; and service by such Courts of any summons issued under the said Code by a Court in Karachi shall be deemed to be valid service, *see* Gaz. of p., Extra., 1954, p. 1997.

(ix)all Civil and Revenue Courts of the Union of Burma; and service by such Courts of Summonss issued under the said Code by A Court in East Bengal shall be deemed to be valid service, *see* Dacca Gazette, Ext., dated 18th October, 1954, Pt. I, p. 3053.

(x)all Civil and Revenue Courts of the Union of Burma; and service by such Courts of any summons issued under the said Code by a Court in the N.W.F.P, shall be deemed to be valid service, *see* N.W.F.P, Gazette, 1954, Pt. I, p. 523.

(xi)all Civil and Revenue Courts of the Union of Burma; and service by such Courts of any summons issued under the said Code by a Court in the Province of Punjab, shall be deemed to be valid service, *see* Gaz. of Punjab, 1954, Pt. I, p. 843.

(xii)all Civil and Revenue Courts of the Union of Burma; and service by such Courts of any summons issued under the said Code by a Court in the Province of Sind, shall be deemed to be valid service, *w.e.f.* 18th October, 1954, *see* Gaz. of Sind, 1954, pt I, p. 940.

(xiii)all Civil and Revenue Courts in the Federal Republic of Germany; and service by such Courts of summons issued under the said Code by a Court in Baluchistan shall be deemed to be valid service, *see* Gaz. of P. 1955, Pt. I, p. 126.

(xiv)the summonses issued by any Civil or Revenue Courts in Pakistan may be sent to the Courts in the Union of Burma and served as if they had been issued by such Courts, *see* Gaz of 1955, P.I, p. 143.

(xv)service by any Court situated in Pakistan, of any summons issued by a Court of the Union of Burma shall be deemed to be valid service, *see* Gaz. of P., 1955, Pt. I, p. 143.

(xvi)all Civil and Revenue Courts in the Federal Republic of Germany an services by such Courts of any summons issued under the said Code by a Court in Karachi, shall be deemed to be valid service, with effect on and from the 1st June, 1955, *see* Gaz. Of P., 1955, Pt. VI, p. 102.

(xvii)all Civil and Revenue Courts in the Federal Republic of Germany; and service by such Courts of any summons issued under the said Code by a Court in the Province of East Bengal shall be deemed to be valid service *see* Dacca Gazette, 1955, Pt. I, p. 1051.

(xviii)all Civil Courts in Switzerland and the service by such Courts of any summons issued under the Code (C.Pr.C.) by a Court in the Province of W. Pakistan shall be deemed to be valid service, *see* W.P. Gaz., 1959, Ext. p. 843.

²Ins. by the Code of Civil Procedure (Amdt.) Act, 1940 (34 of 1940).

or Revenue Court situate ¹[outside ²[Pakistan]] may be sent to the Courts ¹[in ²[Pakistan]] and served as if they ³[were summonses] issued by such Courts:

⁴[Provided that the Courts issuing such summonses ⁵[or processes] have been established or continued by the authority of the ⁶[Federal Government] ⁷[* * *] or that the Provincial Government ⁸[of the Province in which such summonses or processes are] to be served has by notification in the official Gazette declared the provisions of this section to apply to ⁹[such Courts].]

30. Power to order discovery and the like. Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,—

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence ;
- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid ;
- (c) order any fact to be proved by affidavit.

31. Summons to witness. The provisions in sections 27, 28 and 29 shall apply to summonses to give evidence or to produce documents or other material objects.

32. Penalty for default. The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may—

- (a) issue a warrant for his arrest ;
- (b) attach and sell his property ;
- (c) impose a fine upon him not exceeding ¹⁰[two thousand] rupees ;
- (d) order him to furnish security for his appearance and in default commit him to ¹⁰[* * *] prison.

JUDGMENT AND DECREE

33. Judgment and decree. The Court, after the case has been heard, shall pronounce judgment, and on such judgment ¹¹[* * *] a decree shall follow.

¹Subs. by the Adaptation of Central Acts and Ordinances Order, 1949 (Order No. 4 of 1949) Art. 3 and Sch.

²Subs. by the Central Laws (Statute Reform) Ordinance, No. XXI of 1960, s.3 and 2nd Sch. (w. e. f the 14th October, 1955).

³Subs. by the Code of Civil Procedure (Amdt.) Act No. XXXIV of 1940, s. 2(1) (a) (ii).

⁴Subs. by Adaptation Order, 1937.

⁵Ins. by Act No. XXXIV of 1940, s. 2 (1) (b) (i).

⁶Subs. by Federal Adaptation Order, 1975, Art. 2 and Table.

⁷The words “or of the Crown Representative” omitted by Adaptation Order, 1949.

⁸Subs. by Act No. XXXIV of 1940, s.2 (1) (b) (ii) The substitution with the omission of the words “or processes” is to be deemed to have taken effect on the 1st day of April, 1937.

⁹Subs. *ibid.* s. 2 (1) (b) (iii) The substitution is to be deemed to have taken effect on the 1st April, 1937.

¹⁰Subs. & omitted by Act XIV of 1994, s. 6.

¹¹Omitted by Act No. XIX of 2023, s. 7.

INTEREST

34. Interest.— (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.

¹**[34A. Interest on public dues.**— (1) Where the Court is of opinion that a suit was instituted with intent to avoid the payment of any public dues payable by the plaintiff or on his behalf, the Court may, while dismissing such suit, make an order for payment of interest on such public dues at the rate of two per cent, above the prevailing bank rate.

(2) Where the court is of opinion that the recovery of any public dues from the plaintiff was unjustified, the Court may, while disposing of the suit, make an order for payment of interest on the amount recovered at the rate of two per cent, above the prevailing bank rate.

Explanation.— In this section,—

- (a) “bank rate” means the bank rate determined and made public under the provisions of the State Bank of Pakistan Act, 1956 (XXXIII of 1956) ; and
- (b) “public dues” includes the dues of any bank owned by the Federal Government or of any corporation or undertaking owned or controlled by the Federal Government or a Provincial Government or of any local authority.]

²**[34B. Interest, etc. on dues of banking company.**— Where and in so far as a decree is for payment of money due to a banking company in repayment of a loan advanced by it, the Court shall, in the decree, provide for interest or return, as the case may be, on the judgment debt from the date of decree till payment—

- (a) in the case of interest-bearing loans, for interest at the contracted rate or at the rate of two per cent above the bank rate, whichever is the higher ;
- (b) in the case of loans given on the basis of mark-up in price, lease, hire-purchase or service charges, for the contracted rate of mark-up, rental, hire or service charges, as the case may be, or at the latest rate of the banking company for similar loans, whichever is the higher ; and
- (c) in the case of loans given on the basis of participation in profit and loss, for return at such rate, not being less than the annual rate of profit for the preceding six months paid by the banking company on term deposits of six months accepted by it on the basis of participation in profit and loss, as the court may consider just and reasonable in the circumstances of the case, keeping in view

¹New section 34A was ins. by the Code of Civil Procedure (Amdt.) Ordinance, No. X of 1980) s.3.

²Section 34B ins. by the Code of Civil Procedure (Amdt.) Ordinance, No. LXIII of 1980, s. 2.

the profit-sharing agreement entered into between the banking company and the judgement debtor when the loan was contracted.

Explanation.— In this section in clause (a), “bank rate” has the same meaning as in section 34A.].

COSTS

¹[35. Costs.— (1) Subject to such conditions and limitations, as may be prescribed, and to the provisions of any law for the time being in force,—

- (i) a party to any proceedings shall, before the announcement of final order, judgment or decree, file in the prescribed form, detail of actual costs of litigation, including but not limited to court fee, stamp fee, fee paid to counsel and all other ancillary or incidental expenses thereto;
- (ii) the Court shall award the actual costs of litigation under clause (i) to the successful party with markup not exceeding the prescribed limit per annum, as notified by the State Bank of Pakistan, at the time of passing the order, judgement or decree;
- (iii) the costs other than those mentioned in clause (i) shall be in the discretion of the Court; and
- (iv) the Court shall have full power to determine out of what property such costs are to be paid and recovered and to give all necessary directions for the purpose aforesaid.

(2) The fact the Court has no jurisdiction in respect of the proceedings shall be no bar to the exercise of such powers under this section.

35A. Adjournment costs.— If, on the date fixed for hearing in any proceedings, a party to the proceedings or any other person, despite service of notice, fails to appear or comply with any order of the Court or mandatory provision of the Code or any other law for the time being in force, seeks an adjournment for such purpose, the Court shall, for sufficient cause and reasons to be recovered, grant such adjournment on the condition that such party or person shall pay to the other party, costs of adjournment which shall not be less than five thousand Rupees per adjournment or such higher amount as may be prescribed from time to time:

Provided that if the Court is satisfied that the adjournment being sought is on account of unavoidable reasons beyond the control of the party concerned, which reasons shall be recorded by the Court, the Court may grant adjournment without imposing adjournment cost:

Provided further that if the Court finds that there is a tendency of seeking repeated adjournments by any party on such grounds, the Court may not grant adjournment without imposing the adjournment costs as the Court may deem fit.

35B. Special costs.— (1) If in any proceedings, the Court finds that any averment made by any party is false or vexatious to the knowledge of such party, the Court shall award special costs to the opposite party against whom such averment has been made.

¹Subs. by Act No. XVII of 2017, s. 2.

(2) The amount of any special costs awarded under sub-section (1) shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence.

35C. General provisions as to costs.— The Government shall not be liable to costs under section 35, 35A and 35B.

Explanation.— In sections 35, 35A and 35B, the expression “proceedings” includes suit, appeal, review, revision, execution or any other proceedings and any matter incidental thereto.]

PART II EXECUTION GENERAL

36. Application to orders. The provisions of this Code relating to the execution of decrees shall, so far as they are applicable, be deemed to apply to the execution of orders.

37. Definition of Court which passed a decree. The expression “Court which passed a decree,” or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,—

- (a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and
- (b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have Jurisdiction to try such suit.

COURTS BY WHICH DECREES MAY BE EXECUTED

38. Court by which decree may be executed. A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

39. Transfer of decree.— (1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,—

- (a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or
- (b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or
- (c) if the decree directs the sale or delivery of immoveable property situate outside the local limits of the Jurisdiction of the Court which passed it, or
- (d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

40. Transfer of decree to Court in another Province. Where a decree is sent for execution in another Province, it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that Province.

41. Results of execution proceeding to be certified. The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure.

¹**42. Powers of Court in executing transferred decree.—**(1) The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

²(2) Without prejudice to the generality of the foregoing provision, the Court executing a decree sent to it shall have the following powers, namely:—

- (a) power under section 39 to transfer the decree to another Court, if necessary;
- (b) Power under sub-section (1) of section 50 to permit execution to proceed against the legal representatives, of a deceased judgment debtor ;
- (c) power under section 152 to correct clerical or arithmetical errors ;
- (d) power under rule 16 of Order XXI to recognise the assignment of a decree ;
- (e) power under sub rule (2) of rule 50 of Order XXI to grant leave to a decree holder to proceed against a person not already recognised as a partner in a firm in an execution proceeding against the firm ;
- (f) power under clause (b) of sub-rule (1) of rule 53 of Order XXI to give notice of attachment of decree passed by another Court.]

43. Execution of decrees passed by British Courts in places to which this Part does not extend or in foreign territory. Any decree passed by a Civil Court established in any ³[area in Pakistan] to which the provisions relating to execution do not extend, ⁴[* * *] may, if it cannot be executed within the jurisdiction of the Court by which it was passed, be executed in manner herein provided within the jurisdiction of any Court in ⁵[Pakistan].

⁶**44. [Omitted]**

¹S. 42 renumbered as sub-section (1) of that section by the Code of civil Procedure (Amdt.) Ordinance, No. XLIV of 1962, s. 10.

²Sub-section (2) added *ibid*.

³Amended by Adaptation Order, 1949 and the Central Laws (Statute Refrom) Ordinance, No. XXI of 1960, s.3 and 2nd Sch. (with effect from the 14th October, 1955).

⁴The words “or by Court established or continued by the authority of the Federal Government in any Acceding State,” omitted by the Federal Laws (Revision and Declration) Ordinance, No. XXVII of 1981, s. 3 and Second Sch.

⁵Subs. by the Central Laws (Statute Reform) Ordinance, No. XXI of 1960, s. 3 and 2nd Sch. (w. e. f the 14th October, 1955).

⁶Omitted by the Federal Laws (Revision and Declaration) Ordinance, No. XXVII of 1981, s. 3 and Second Schedule.

¹[44A. Execution of decrees passed by Courts in the United Kingdom and other reciprocating territory.—(1) Where a certified copy of a decree of any of the superior Courts of the United Kingdom or any reciprocating territory has been filed in a District Court, the decree may be executed in ²[Pakistan] as if it had been passed by the District Court.

(2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.

Explanation 1.— “Superior Courts”, with reference to the United Kingdom, means the High Court in England, the Court of Session in Scotland, the High Court in Northern Ireland the Court of Chancery of the County Palatine of Lancaster and the Court of Chancery of the County Palatine of Durham.

Explanation 2.— “Reciprocating territory” means ³[the United Kingdom and such other country or territory as] the ⁴[Federal Government] may, from time to time, by notification in the ⁵[official Gazette], declare⁶ to be reciprocating territory for the purposes of this section; and “superior Courts”, with reference to any such territory, means such Courts as may be specified in the said notification.

Explanation 3.— “Decree”, with reference to a superior Court, means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, and

- (a) with reference to superior Courts in the United Kingdom, includes Judgments given and decrees made in any Court in appeals against such decrees or Judgments, but
- (b) in no case includes an arbitration award, even if such award is enforceable as a decree or Judgment.]

¹S. 44A ins. by the Code of Civil Procedure (Amdt.) Act No. VIII of 1937. s. 2.

²Subs. by the Central Laws (Statute Reform) Ordinance, No. XXI of 1960, s. 3 and 2nd Sch. (w. e. f the 14th October, 1955).

³Subs. by the Civil and Criminal Procedure Codes (Amdt.) Ordinance, No. LXVII 1962, s. 3.

⁴Subs. by Federal Adaptation Order, 1975, Art. 2 and Table.

⁵Subs. by Adaptation Order, 1937.

⁶The Central Govt. has declared Fiji to be a reciprocating territory and the Supreme Court of Fiji to be a Superior Court of the territory for the purposes of this section, see Gaz. of P., 1949, Pt. I, p. 275.

Certain Courts of Pakistan have been declared to be superior Courts for the purpose of Part I of the Foreign Judgments (Reciprocal Enforcement) Act, 1933 (23 Geo. 5, ch. 13), see Gaz. of P., 1953, Pt. I, pp. 143-44

The Central Government has declared the Colony of Singapore to be a reciprocating territory, and the Supreme Court of Singapore to be a superior Court of the territory for the purpose of this section. see Gaz. of P. 1954, Pt. I, p. 106.

Certain Courts in Pakistan have been declared to be superior Court for the purpose of section 5 of the Reciprocal Enforcement of Judgment Ordinance of Singapore, see Gaz. of P., 1954, Pt. I, p. 296.

The Central Government has declared the Australian Capital Territory to be a reciprocating territory, and the Supreme Court of Australian Capital Territory to be a superior Court of the territory for the purposes of this section, see Gaz. of P., 1957, Pt. I, p. 174.

The Central Government has declared “New Zealand including the Cook Islands (including Nive) and the Trust Territory of Western Samoa” to be a reciprocating territory, and the Supreme Court of New Zealand to be a superior Court of that territory, for the purposes of this section (with effect from 7th August, 1958), see Gaz. of 1958 Pt. I, p. 455.

The Central Government has declared the Northern Territory of Australia to be reciprocating territory, and the Supreme Court of the said territory to be a superior Court of the territory for the purposes of this section, see Gaz. of P., 1959, Pt. I, p. 425.

45. ¹[Omitted]

46. Precepts.—(1) Upon the application of the decree-holder the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept.

(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree :

Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.

QUESTIONS TO BE DETERMINED BY COURT EXECUTING DECREE

47. Questions to be determined by the Court executing decree.—(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) The Court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit or a suit as a proceeding and may, if necessary, order payment of any additional court-fees.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation.—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed, are parties to the suit.

LIMIT OF TIME FOR EXECUTION

²48. Execution barred in certain cases.—(1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of ³[six years] from—

- (a) the date of the decree sought to be executed, or,
- (b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

(2) Nothing in this section shall be deemed—

¹Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (XXVII of 1981), s. 3 and Second Schedule.

²This section has been amended in its application to Sind by the Sind Rural Credit and Land Transfer Act No. XLIX of 1947, s. 18.

³Subs. by the Law Reforms Ordinance, No. XII of 1972, s. 2 and Sch.

- (a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of ¹[six years], where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within ¹[six years] immediately before the date of the application ;or
- (b) to limit or otherwise affect the operation of article ²[183 of the First Schedule to the Limitation Act, 1908 (IX of 1908).]

TRANSFEREES AND LEGAL REPRESENTATIVES

49. Transferee. Every transferee of a decree shall hold the same subject to the equities (if any) which the Judgment-debtor might have enforced against the original decree-holder.

50. Legal representative.— (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of ; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

PROCEDURE IN EXECUTION

51. Powers of Court to enforce execution. Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—

- (a) by delivery of any property specifically decreed;
- (b) by attachment and sale or by sale without attachment of any property ;
- (c) by arrest and detention in prison ;
- (d) by appointing a receiver ; or
- (e) in such other manner as the nature of the relief granted may require:

³[Provided that, ⁴[* * *] 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,—

¹Subs. by the Law Reform Ordinance, No. XII of 1972, s. 2 and Sch.

²Subs. by the Code of Civil Procedure (Amdt.) Act No. XXXIV of 1940, s. 3.

³Proviso and Explanation were ins. by the Code of Civil Procedure (Amdt.) Act No. XXI of 1936, s. 2.

⁴The words and commas, “where the decree is for the payment of money,” were omitted by the Code of Civil Procedure (Amdt.) Ordinance, No. X of 1980, s. 4.

- (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 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.]

52. Enforcement of decree against legal representative.— (1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.

53. Liability of ancestral property. For the purposes of section 50 and section 52, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

54. Partition of estate of separation of share. Where the decree is for the partition of an undivided estate assessed to the payment of revenue to ¹[the Government], or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates.

ARREST AND DETENTION

55. Arrest and detention.— (1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court ²[which may make an order for his detention in prison to suffer simple imprisonment for a period not exceeding one year] :

¹Amended by Adaptation Order, 1961, Art. 2 (with effect from the 23rd March, 1956), to read as above.

²Subs. by Ordinance, X of 1980, s. 5.

Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise:

Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorised to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found:

Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgement-debtor and who according to the customs of the country does not appear in public, the officer authorised to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest:

Provided, fourthly, that, where the decree in execution of which a judgment-debtor is arrested, is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The ¹[Provincial Government] may, by notification in the ¹[official Gazette], declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the ¹[Provincial Government] in this behalf.

²[(3) A judgment-debtor detained in prison under sub-section (1) shall not, merely by reason of undergoing such imprisonment, be discharged from his liability under the decree, but he shall not be liable to be re-arrested under the decree in execution of which he was so detained in prison.]

56. Prohibition of arrest or detention of women in execution of decree for money. Notwithstanding anything in this Part, the Court shall not order the arrest or detention in the ²[*] prison of a woman in execution of a decree for the payment of money.

³[**57. Subsistence Allowance.**] *Omitted by the Code of Civil Procedure (Amdt.) Ordinance, 1980 (X of 1980), s. 7.*

²[58. Release from detention.]— Every person detained in prison in execution of a decree shall be released from such detention, before the expiry of the period of detention, if—

- (a) the amount mentioned in the warrant for his detention is paid to the officer in charge of the prison ; or
- (b) the decree against him is otherwise fully satisfied ; or
- (c) the person on whose application he has been detained so requests:

¹Subs. by Adaptation Order, 1937.

²Subs., omitted and amended by Ordinance, X of 1980, ss. 5, 6, 8.

³Amended by Adaptation Order, 1937.

Provided that he shall not be released from such detention without the order of the Court.]

¹59. [Release on ground of illness.] Omitted by the Code of Civil Procedure (Amdt.) Ordinance, 1980 (X of 1980), s. 9.

ATTACHMENT

60. Property liable to attachment and sale in execution of decree.— (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment-debtor or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf :

Provided that the following particulars shall not be liable to such attachment or sale, namely:—

- (a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman ;
- (b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;
- (c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him ;
- (d) books of account ;
- (e) a mere right to sue for damages ;
- (f) any right of personal service ;
- (g) stipends and gratuities allowed to ²[pensioners of the Government], or payable out of any service family pension fund notified³ in the ⁴[official Gazette] by ⁴[the ⁵[Federal Government] or the Provincial Government] in this behalf, and political pensions ;

¹Amended by Adaptation Order, 1937.

²Amended by Adaptation Order, 1961, Art. 2 (*with effect from the 23rd March, 1956*), to read as above.

³For such Notification, see Gazette of India, 1909 Pt. I, p.5.

⁴Subs. by Adaptation Order, 1937.

⁵Subs. by Federal Adaptation Order, 1975, Art. 2 and Table.

¹[(h) the wages of labourers and domestic servants, whether payable in money or in kind ; ²[* * *] ;

²[(i) salary to the extent of the first hundred rupees and one-half of the remainder:

Provided that where such salary is the salary of a ³[servant of the State] or a servant of a railway ⁴[*] or local authority, and the whole or any part of the portion of such salary liable to attachment has been under attachment, whether continuously or intermittently for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months and, where such attachment has been made in execution of one and the same decree, shall be finally exempt from attachment in execution of that decree ;]]

(j) the pay and allowances of persons to whom the ⁵[⁶[Pakistan Army Act, 1952 (XXXIX of 1952)], ⁷[* * *] applies],⁸[or of persons other than commissioned officers to whom the ⁹[Pakistan Navy Ordinance, 1961, (XXXV of 1961), applies] ;

(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act,¹[1925 (XIX of 1925)], for the time being applies in so far as they are declared by the said Act not to be liable to attachment;

¹[(l) any allowance forming part of the emoluments of any ³[servant of the State] or of any servant of a railway ⁴[*] or local authority which the ¹⁰[appropriate Government] may by notification¹¹ in the ¹³[official Gazette] declare to be exempt from attachment, and any subsistence grant or allowance made to ¹³[any such servant] while under suspension ;]

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest ;

(n) a right to future maintenance ;

(o) any allowance declared by ¹⁴[any Pakistan law] to be exempt from liability to attachment or sale in execution of a decree ; and

¹Subs. and Ins. by Act, IX of 1937, s. 2.

²Subs. and omitted by Act, V of 1943, s. 2.

³Subs. by Adaptation Order, 1961, Art. 2 and Sch., (with effect from the 23rd March, 1956).

⁴Omitted by Ordinance, XLIV of 1962, s. 13.

⁵Subs. by Adaptation Order, 1937.

⁶Subs. by Ordinance, XXI of 1960, s. 3 and 2nd Sch., (with effect from the 14th October, 1955).

⁷Omitted by Adaptation Order, 1949.

⁸Ins. by the amending Act, (XXXV of 1934), s. 2 and Sch.

⁹Subs. by Ordinance, XXVII of 1981, s. 3 and Second Sch.

¹⁰Subs. by Adaptation Order, 1937.

¹¹For notification exempting certain allowances payable to any public officers in the service of the Central Government, or any servant of a Federal Railway or of a cantonment authority or of the port authority of a major port, for attachment, see G. of I. Judicial Department Notification No. 186/37, dated 2nd October, 1940, published in the supplement to Gen. R. & O., Pt. II, Vol. VI, p.253.

¹²Subs. by Adaptation Order, 1937.

¹³Subs. by Act V of 1943, s. 2.

¹⁴Amended by Adaptation Order, 1937, and Adaptation Order, 1949, to read as above.

- (p) where the judgment-debtor is a person liable for the payment of land-revenue, any moveable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

¹[Explanation 1].—The particulars mentioned in clauses (g), (h), (i), (j), (l) and (o) are exempt from attachment or sale whether before or after they are actually payable, ¹[and in the case of salary other than salary of a ²[servant of the State] or a servant of a railway ³[*] or local authority the attachable portion thereof is exempt from attachment until it is actually payable].

¹[Explanation 2.— In clauses (h) and (i), “salary” means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (l), derived by a person from his employment whether on duty or on leave.]

⁴[Explanation 3.— In clause (l) “appropriate Government” means—

- (i) as respects any ⁵[person] in the service of the ⁶[Federal Government], or any servant ⁶[of railway or] ³[* * *] of a cantonment authority or of the port authority of a major port, the ⁶[Federal Government] ;

⁷[* * * * *]

- (iii) as respects any other ²[servant of the State] or a servant of any ⁸[* * *] local authority, the Provincial Government.]

(2) Nothing in this section shall be deemed—

⁹[*] to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land, [*]³

⁹[* * * * *]

THE PAKISTAN CODE

¹Subs., re-numbered by Act No. IX of 1937, s. 2.

²Subs. by Adaptation Order, 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956),

³Omitted by Ordinance, No. XLIV of 1962, s. 13.

⁴Ins. by Adaptation Order, 1937.

⁵Subs. by Act 5 of 1943, s.2.

⁶Subs. by Federal Adaptation Order, 1975, Art. 2 and Table.

⁷Omitted by Adaptation Order, 1949.

⁸Omitted by Federal Adaptation Order, 1975, Art. 2 and Sch. (with effect from the 14th August, 1973).

⁹Rep. by Act No. X of 1914, s. 3 and 2nd Sch.

61. Partial exemption of agricultural produce. The ¹[Provincial Government]² * * * may, by general or special order published in the ³[official Gazette, declare that such portion of agricultural produce, or of any class of agricultural produce, as may appear to the ¹[Provincial Government] to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgment-debtor and his family, shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

62. Seizure of property in dwelling-house.— (1) No person executing any process under this Code directing or authorizing seizure of moveable property shall enter any dwelling-house after sunset and before sunrise.

(2) No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the person executing any such process has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe any such property to be.

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to such woman that she is at liberty to withdraw ; and, after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

63. Property attached in execution of decrees of several Courts.— (1) Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, of the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

(2) Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.

64. Private alienation of property after attachment to be void. Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

Explanation.— For the purposes of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.

SALE

65. Purchaser's title. Where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

¹Subs. by Adaptation Order, 1937.

²Rep. by Act No. XXXVIII of 1920, s. 2 and Sch. Pt. I.

³Subs. by Adaptation Order, 1937.

66. Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff.— (1) No suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

¹[67. Power for Provincial Government to make rules as to sales of land in execution of decrees for payment of money.— (1) The ²[Provincial Government] ³[* * *], may, by notification in the ²[official Gazette], make rules for any local area imposing conditions in respect of the sale of any class of interests in land in execution of decrees for the payment of money, where such interests are so uncertain or undetermined as, in the opinion of the ²[Provincial Government], to make it impossible to fix their value.

¹[(2) When on the date on which this Code came into operation in any local area, any special rules as to sale of land in execution of decrees were in force therein, the ²[Provincial Government] may, by notification in the ²[official Gazette], declare such rules to be in force, or may, ³[* * *] by a like notification, modify the same.

Every notification issued in the exercise of the powers conferred by this sub-section shall set out the rules so continued or modified.]

DELEGATION TO COLLECTOR OF POWER TO EXECUTE DECREES AGAINST IMMOVEABLE PROPERTY

68. Power to prescribe rules for transferring to Collector execution of certain decrees. The ²[Provincial Government] may, ³[* * *], declare, by notification in the ²[official Gazette], that in any local area the execution of decrees in cases in which a Court has ordered any immoveable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immoveable property, shall be transferred to the Collector.

69. Provisions of Third Schedule to apply. The provisions set forth in the Third Schedule shall apply to all cases in which the execution of a decree has been transferred under the last preceding section.

70. Rules of procedure.— (1) The ²[Provincial Government] may make rules consistent with the aforesaid provisions—

- (a) for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for retransmitting the decree from the Collector to the Court ;

¹Re-numbered by Act No. I of 1914, s. 3.

²Subs. by Adaptation Order, 1937.

³Omitted by Act No. XXXVIII of 1920, s.2 and First Sch., Pt.I.

- (b) conferring upon the Collector or any gazetted subordinate of the Collector all or any of the powers which the Court might exercise in the execution of the decree if the execution thereof had not been transferred to the Collector ;
- (c) providing for orders made by the Collector or any gazetted subordinate of the Collector, or orders on appeal with respect to such orders, being subject to appeal to, and revision by, superior revenue-authorities as nearly as may be as the orders made by the Court, or orders made on appeal with respect to such orders, would be subject to appeal to, and revision by, appellate or revisional Courts under this Code or other law for the time being in force if the decree had not been transferred to the Collector.

(2) Jurisdiction of Civil Courts barred. A power conferred by rules made under sub-section (1) upon the Collector or any gazetted subordinate of the Collector, or upon any appellate or revisional authority, shall not be exercisable by the Court or by any Court in exercise of any appellate or revisional jurisdiction which it has with respect to decrees or orders of the Court.

71. Collector deemed to be acting judicially. In executing a decree transferred to the Collector under section 68 the Collector and his subordinates shall be deemed to be acting judicially.

72. Where Court may authorise Collector to stay public sale of land.—(1) Where in any local area in which no declaration under section 68 is in force the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the Court may authorise the Collector to provide for such satisfaction in the manner recommended by him instead of proceeding to a sale of the land or share.

(2) In every such case the provisions of sections 69 to 71 and of any rules made in pursuance thereof shall apply so far as they are applicable.

DISTRIBUTION OF ASSETS

73. Proceeds of execution sale to be rateably distributed among decree-holders.—(1) Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons :

Provided as follows:—

- (a) where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not be entitled to share in any surplus arising from such sale;
- (b) where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold ;
- (c) where any immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale ;
secondly, in discharging the amount due under the decree ;

thirdly, in discharging the interest and principal monies due on subsequent incumbrances (if any) ; and

fourthly, rateably among the holders of decrees for the payment of money against the judgment debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in this section affects any right of ¹[the Government].

RESISTANCE TO EXECUTION

²[74. **Resistance to execution.**— (1) Where the Court is satisfied that the holder of a decree for the possession of property or a purchaser of property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or any other person on his behalf and that such resistance or obstruction was without any just cause, the Court may, at the instance of the decree-holder or the purchaser, order the judgment-debtor or such other person to undergo simple imprisonment for a term which may extend to thirty days and may further direct that the decree-holder or the purchaser be put into possession of the property.

(2) Notwithstanding anything contained in sub-section (1), where a judgment-debtor or any other person resists or obstructs the execution of a decree, the Court may direct the officer in charge of the police-station within whose jurisdiction the judgment-debtor or such other person resides or where the property to which the decree relates is situate to provide the necessary police assistance for the execution of the decree.]

PART III

INCIDENTAL PROCEEDINGS

COMMISSIONS

75. Power of Court to issue commissions. Subject to such conditions and limitations as may be prescribed, the Court may issue a commission—

- (a) to examine any person ;
- (b) to make a local investigation ;
- (c) to examine or adjust accounts ; or
- (d) to make a partition.

³[75A. * * * * *]

¹The original words "the Government" were first subs. by Adaptation Order, 1937, and then amended by A.O., 1961, Art. 2 (w. e. f 23rd March, 1956).

²Subs. by the Code of Civil Procedure (Amdt.) Ordinance, 1980 (X of 1980), s. 10.

³Omitted by Act XIX of 2023, s.8.

76. Commission to another Court. — (1) A commission for the examination of any person may be issued to any Court (not being a High Court) situate in a Province other than the Province in which the Court of issue is situate and having jurisdiction in the place in which the person to be examined resides.

(2) Every Court receiving a commission for the examination of any person under sub-section (1) shall examine him or cause him to be examined pursuant thereto, and the commission, when it has been duly executed, shall be returned together with the evidence taken under it to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order.

77. Letter of request. In lieu of issuing a commission the Court may issue a of letter of request to examine a witness residing at any place not within ¹[Pakistan].

78. Commissions issued by foreign Courts. ²[Subject to such conditions and limitations as may be prescribed,] the provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by ²[or at the instance of] —

- (a) Courts situate beyond the limits of ¹[Pakistan] and established or continued by the authority of ³[* * *] ⁴[the ⁵[Federal Government] ⁶* * *], or

⁷[* * * * *]

- (c) Courts of any State or country outside Pakistan.].

PART V

SUITS IN PARTICULAR CASES

SUITS BY OR AGAINST ⁸[THE GOVERNMENT] OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY

⁹[79. Suits by or against the Government. — ¹⁰[* * *] In a Suit by or against the ¹¹[Government] the authority to be named as plaintiff or defendant, as the case may be, shall be—

- (a) in the case of a suit by or against the ⁵[Federal Government], ¹²[Pakistan];
- (b) in the case of a suit by or against a Provincial Government, the Province ; and

¹³[* * * * *]

¹Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (XXI of 1960), s. 3 and 2nd Sch. (w. e. f. the 14th October, 1955).

²Ins. by the Code of Civil Procedure (Amdt.) Act, 1932 (X of 1932), section 2.

³Omitted by the Central Laws (Adaptation) Order, 1961 (P.O No.1 of 1961), Art. 2 and Sch. (w. e. f. the 23rd march, 1956).).

⁴Subs. by Adaptation Order, 1937.

⁵Subs. by F.A.O. 1975, Art. 2 and Table.

⁶The words “or of the Crown Representative” omitted by Adaptation Order, 1949.

⁷Clause (b) as amended by A.O., 1949 and Act 10 of 1932, s.2, has been omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (XXVII of 1981), s.3 and Second Sch.,

⁸The original words “the Government” were first subs. by Adaptation Order, 1937, and then amended by Adaptation Order, 1961, Art. 2 (w. e. f. the 23rd March, 1956) to read as above.

⁹Subs. by Adaptation Order, 1937, for the original s.79.

¹⁰The words and figures “Subject to the provisions of sections 179 and 185 of the Government of India Act, 1935,” omitted by the Federal Laws (Revision and Declaration) Act, 1951, (XXVII of 1951), s.3 and 2nd Sch.

¹¹Subs. by Adaptation Order, 1961, Art. 2. (w. e. f. the 23rd March, 1956).

¹²The original words “the Governor-General in Council before the establishment of the Federation of India, and thereafter, the Federation” have successively been amended by Adaptation Order, 1949, Act 26 of 1951, s.3 and 2nd Sch. and the Code of Civil Procedure (Amdt.) Ordinance, 1962 (XLIV of 1962), s. 14.

¹³Cl. (c) omitted by Adaptation Order, 1949.

¹[80. Notice.— (1) A suit may be instituted against the Government or against a Public officer, in respect of any act purporting to be done by such public officer in his official capacity, after the expiration of two months next after notice in writing has been delivered to or left at the office of, —

- (a) in the case of a suit against the ²[Federal Government], a Secretary to that Government;
- (b) (i) in the case of a suit against the Provincial Government other than a suit relating to the affairs of a Railway, a Secretary to that Government or the Collector of the District; and
- (ii) in the case of a suit against the ³[Federal Government] relating to the affairs of a Railway, the General Manager of the Railway concerned,

and in the case of a public officer, delivered to him or left at his office stating the cause of action, the name, description of place of residence of the plaintiff and the relief which he claims ; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) Where any such suit is instituted without delivering or leaving such notice as aforesaid or before the expiration of the said period of two months or where the plaint does not contain a statement that such notice has been so delivered or left, the plaintiff shall not be entitled to any costs if settlement as regards the subject-matter of the suit is reached or the Government or the public officer concedes the plaintiff's claim, within the period of two months from the date of the institution of the suit :

Provided that in a suit instituted without such notice, the Court shall allow not less than three months to the Government to submit its written statement.]

81. Exemption from arrest and personal appearance. In a suit instituted against a public officer in respect of any act purporting to be done by him in his official capacity—

- (a) the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a decree, and,
- (b) where the Court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt him from appearing in person.

82. Execution of decree. — (1) Where the decree is against ⁴[the Government] or against a public officer in respect of any such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied ; and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the ⁵[Provincial Government].

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such report.

⁶[SUITS BY ALIENS AND BY OR AGAINST FOREIGN RULERS, AMBASSADORS AND ENVOYS]

83. When aliens may sue.— (1) Alien enemies residing ⁷[in Pakistan] with the permission of the ⁸[Federal Government], and alien friends, may sue in the Courts ⁹[in the Provinces], as if they were ¹⁰[citizens of Pakistan].

(2) No alien enemy residing ⁷[in Pakistan] without such permission, or residing in a foreign country, shall sue in any of such Courts.

¹The original s. 80 has successively been amended by A.O., 1937, the Code of Civil Procedure (Amdt.) Act, 1948 (VII of 1948), s. 2, Adaptation Order, 1949, Adaptation Order, 1961, Art. 2 (w. e. f. the 23rd March, 1956) and Ord. 44 of 1962, s.15. to read as above.

²Subs. by F.A.O., 1975, Art. 2 and Table.

³Subs. by F.A.O. 1975, Art. 2 and Sch. (with effect from the 14th August, 1973).

⁴Amended by A.O., 1961, Art. 2 (with effect from the 23rd march, 1956).

⁵Subs. by A.O., 1937.

⁶Subs. by the Code of civil Procedure (Amdt.) Ordinance, 1960 (22 of 1960), s.2, for "SUITS BY ALIENS AND BY OR AGAINST FOREIGN RULERS AND RULERS OF ACCEDING STATES" as amended by A.O., 1937 and the Federal Laws (Revision and Declaration) Act, 1951 (26 of 1951), s.4 and 3rd Sch.

⁷Subs. by A.O., 1949.

⁸Subs. by F.A.O., 1975, Art. 2 and Table.

⁹Subs. by A.O., 1949.

¹⁰Subs. by A.O., 1961, Art. 2 and Sch., (with effect from the 23rd March, 1956).

Explanation.— Every person residing in a foreign country the Government of which is at war with ¹[, or engaged in military operations against,] ²[Pakistan], and carrying on business in that country without a license in that behalf under the hand ³[* * *] of a Secretary to the ⁴[Federal Government] shall, for the purpose of sub-section (2), be deemed to be an alien enemy residing in a foreign country.

84. When foreign States may sue.— (1) A foreign State may sue in any Court ⁵[in the Provinces] :

Provided that such State has been recognized by ⁶[* * *] the ⁷[Federal Government]:

Provided, also, that the object of the suit is to enforce a Private right vested in the head of such State or in any officer of such State in his public capacity.

(2) Every Court shall take judicial notice of the fact that a foreign State has or has not been recognized by ⁶[* * *] the ⁷[Federal Government].

85. Persons specially appointed by Government to prosecute or defend for Ruler of foreign State.— ⁸[(1) Persons specially appointed by order of the ⁷[Federal Government] at the request of the Ruler of any foreign State, or at the request of any person competent, in the opinion of the ⁷[Federal Government], to act on behalf of such Ruler, to prosecute or defend any suit on his behalf, shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Ruler.]

⁹[* * * * *]

(2) An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of the ¹⁰[Ruler].

(3) A person appointed under this section may authorise or appoint persons to make appearances and applications and do acts in any such suit or suits as if he were himself a party thereto.

¹¹**86.** [Suits against Rulers.] Repealed by the State Immunity Ordinance, 1981 (VI of 1981), s.19.

86A. Suits against diplomatic agents.— (1) No proceeding in any Court shall lie against a diplomatic agent except in a case relating to—

¹Ins. by the code of Civil Procedure (Amdt.) Act, 1965 (19 of 1965), s.2.

²Subs. by A.O., 1949.

³The words “of one of His Majesty’s Secretaries of State or” omitted, *ibid.*

⁴Subs. by F.A.O., 1975, Art. 2 and Table.

⁵Subs. by A.O., 1949.

⁶The words “His majesty or by” omitted by A.O., 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956).

⁷Subs. by F.A.O., 1975, Art.2 and Table.

⁸Subs. and shall be deemed to have been so subs. on the 14th day of October, 1955, by the Code of Civil Procedure (Amdt.) Ordinance, 1960 (22 of 1960), s.3, for the existing sub-section (1), as amended by A.O., 1949 and the Central laws (Statute Reform) Ordinance, 1960 (21 of 1960), s.3 and 2nd Sch.

⁹The *Explanation* which had been ins. by A.O., 1937, omitted by A.O. 1949.

¹⁰Subs. and shall be deemed to have been so subs. on the 14th day of October, 1955, by Ordinance 22 of 1960, s.3.

¹¹This section was previously amended from time to time by various enactments.

- (a) any private immoveable property situated in Pakistan held by him in his private capacity and not on behalf of the sending State for the purpose of the mission ;
- (b) a succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
- (c) any professional or commercial activity exercised by the diplomatic agent in Pakistan outside his official functions.

(2) No measures of execution shall be taken in respect of a diplomatic agent except in cases which come under clauses (a), (b) and (c) of sub-section (1) and in which such measures can be taken without infringing the inviolability of his person or of his residence.

(3) The initiation of any proceedings in a Court by a diplomatic agent shall preclude him from invoking immunity from jurisdiction under this section in respect of any counter-claim directly connected with the principal claim.

(4) The immunity of a diplomatic agent under sub-section (1) or sub-section (2) may be waived by the sending State; and any such waiver shall be express.

(5) Waiver of immunity in respect of any proceedings shall not be held to imply waiver of immunity in respect of any measure of execution for which a separate waiver shall be necessary.

(6) In this section, 'diplomatic agent' in relation to a State means the head of the mission in Pakistan of that State and includes a member of the staff of that mission having diplomatic rank.]

¹**87.** [*Style of Rulers as Parties to suits.*] *Repealed by the State Immunity Ordinance, 1981 (VI of 1981), s. 19.*

²[* * *]

³**87A.** [*Application of sections 85 and 86 to Rulers of Acceding States, etc.*] *Omitted by the Code of Civil Procedure (Amdt.) Act, 1972 (II of 1972), s.2.*

THE PAKISTAN CODE INTERPLEADER

88. Where inter pleader suit may be instituted. Where two or more persons claim adversely to one another the same debt, sum of money or other property, moveable or immoveable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself :

Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted.

¹This section was previously amended by various enactments from time to time.

²The heading "SUITS AGAINST RULERS OF ACCEDING AND MERGED STATES" as ins. by Ord. 22 of 1960, s.6, has been omitted by the Code of Civil Procedure (Amdt.) Act, 1972 (2 of 1972), s.2.

³S.87A was ins. by ord. 22 of 1960, s. 6.

PART V
SPECIAL PROCEEDINGS
ARBITRATION

89. *[Arbitration.] Omitted by the Arbitration Act, 1940 (X of 1940), s. 49 and Third Schedule.*

¹**[89A. Alternate dispute resolution.]**— The Court may, where it considers necessary, having regard to the facts and circumstances of the case, with the object of securing expeditious disposal of a case, in or in relation to a suit, adopt with the consent of the parties alternate dispute resolution method, including mediation and conciliation].

SPECIAL CASE

90. Power to state case for opinion of Court. Where any persons agree in writing to state a case for the opinion of the Court, then the Court shall try and determine the same in the manner prescribed.

SUITS RELATING TO PUBLIC MATTERS

91. Public nuisances.— (1) In the case of a public nuisance the Advocate General, or two or more persons having ²[with the leave of the Court], may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

92. Public charities.— (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the ²[with the leave of the Court], may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the ³[Provincial Government] within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree—

- (a) removing any trustee ;
- (b) appointing a new trustee ;
- (c) vesting any property in a trustee ;
- (d) directing accounts and inquiries ;
- (e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust ;

¹Ins. by ord. 34 of 02, s. 2.

²Subs. by Act No. XLVIII of 2016, s.2.

³Subs. by A.O., 1937.

- (f) authorising the whole or any part of the trust-property to be let, sold, mortgaged or exchanged ;
- (g) settling a scheme ; or
- (h) granting such further or other relief as the nature of the case may require.

(2) ¹[* * *] ¹[No] suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub- section.

93. Exercise of powers of Advocate General. The powers conferred by sections 91 and 92 on the Advocate General may, ²[* * *] , be, with the previous sanction of the ³[Provincial Government], exercised also by the Collector or by such officer as the ³[Provincial Government], may appoint in this behalf.

PART VI

SUPPLEMENTAL PROCEEDINGS

94. Supplemental Proceedings. In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed,—

- (a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison ;
- (b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property ;
- (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold ;
- (d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property ;
- (e) make such other interlocutory orders as may appear to the Court to be just and convenient.

95. Compensation, for obtaining arrest, attachment or injunction on in sufficient grounds.— (1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section,—

- (a) it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds, or

¹Omitted and subs. by Act No. XLVIII of 2016, s.3.

²The words “outside the Presidency-towns” omitted by A.O., 1949.

³Subs. by A.O., 1937.

- (b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable ground for instituting the same,

the defendant may apply to the Court and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding ¹[ten] thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him :

Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction.

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

PART VII

APPEALS

APPEALS FROM ORIGINAL DECREES

²[96. Appeal from original decree.]— Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeal from the decisions of such Court.

(2) An appeal may lie from an original decree passed *ex-parte*.

(3) No appeal shall lie from a decree passed by the Court with consent of the parties.]

97. Appeal from final decree where no appeal from preliminary decree. Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

98. Decision where appeal heard by two or more Judges.— (1) where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed :

Provided that where the Bench hearing the appeal is composed of two judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal, including those who first heard it.

³[(3) Nothing in this section shall be deemed to alter or otherwise affect any provision of the letters patent of any High Court.]

¹Subs. by Act XIV of 1994, s.8.

²Subs. by Act XIX of 2023, s.9.

³Sub-section (3) ins. by the Repealing and Amending Act, 1928 (18 of 1928), s.2 and First Sch.

99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction. No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court.

APPEALS FROM APPEALATE DECREES

¹[100. Second appeal.]—(1) Save where otherwise expressly provided in the body of this Code or in any other law, for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to that High Court, on any of the following grounds, namely:—

- (a) the decision being contrary to law or to some usage having the force of law;
- (b) the decision having failed to determine some material issue of law or usage having the force of law; or
- (c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

101. Second appeal on no other grounds.—No second appeal shall lie except on the grounds mentioned in section 100.

102. No second appeal in certain cases.—No second appeal shall lie in any suit except when the amount or value of the subject matter of the original suit does not exceed the amount or value as may be prescribed.

103. Power of High Court to determine issues of fact.—In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue of fact necessary for disposal of the appeal which has not been determined by the lower appellate Court or which has been wrongly determined by such Court by reason of any illegality, omission, error or defect such as is referred to in sub-section (1) of section 100.]

THE APPEALS FROM ORDERS CODE

104. Orders from which appeal lies.—(1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders:—

²[* * * * *]

³[(f) an order under section 35A;

(ff) an order under section 47;]

⁴[(fff) an order under section 91 or section 92 refusing leave to institute a suit;]

¹Subs by Act No. XIX of 2023, s.10.

²Cls. (a) to (f) omitted by the Arbitration Act No. X of 1940, s. 49 and 3rd Sch.

³Subs. by Ord. 12 of 1972, s.2 and Sch., for cl. (ff) which was previously ins. by the Civil Procedure (Amdt.) Act No. IX of 1922, s. 3.

⁴Ins. by Act No. XLVIII of 2016, s.4.

- (g) an order under section 95;
- (h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;
- (i) any order made under rules from which an appeal is expressly allowed by rules:

¹[Provided that no appeal shall lie against any order specified in clause ²[(f)] save on the ground that no order, or an order for the payment of a less amount, ought to have been made.]

(2) No appeal shall lie from any order passed in appeal under this section.

105. Other orders.— (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand made after the commencement of this Code from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

³**106. What Courts to hear appeals.** Where an appeal from any order is allowed, it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court.]

GENERAL PROVISIONS RELATING TO APPEALS

107. Powers of Appellate Court.— (1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power—

- (a) to determine a case finally;
- (b) to remand a case;
- (c) to frame issues and refer them for trial;
- (d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

108. Procedure in appeals from appellate decrees and orders. The provisions of this Part relating to appeals from original decrees shall, so far as may be, apply to appeals—

- (a) from appellate decrees, and
- (b) from orders made under this Code or under any special or local law in which a different procedure is not provided.

¹Proviso ins. by the Civil Procedure (Amdt.) Act No. IX of 1922, s. 3.

²Subs. by the Federal Laws (Revision and Declaration) Ordinance, No. XXVII of 1981, s. 3 and Second Sch.

³Subs. by Act No. XIX of 2023, s. 11.

¹APPEALS TO THE ²[SUPREME COURT]

³[109. When appeals, lie to the Supreme Court. An appeal from a judgment, decree or final order of a High Court shall lie to the Supreme Court—

- (a) if the amount or value or the subject-matter of the dispute in the Court of first instance was and also in appeal is (unless varied by an Act of Parliament) fifty thousand rupees or upward and the judgment, decree or final order appealed from has varied or set aside the judgment, decree or final order of the Court immediately below; or
- (b) if the judgment, decree or final order involves, directly or indirectly, some claim or question respecting property of the like amount or value and the judgment, decree or final order appealed from has varied or set aside the judgment, decree or final order of the Court immediately below; or
- (c) if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution.]

⁴110. [Omitted].

111. Bar of certain appeals. Notwithstanding anything contained in section 109, no appeal shall lie to ⁵[the Supreme Court]:

- (a) from the decree or order of one Judge of a High Court ⁶[* * *], or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, where such Judges are equally divided in opinion and do not amount in number to a majority of the whole of the Judges of the High Court at the time being ; or
- ⁷[(b) from any decree from which, under section 102, no second appeal lies.]

⁸111A. [Omitted].

112. Savings.— ⁹[(1) Nothing contained in this Code shall be deemed—

- (a) to affect the powers of the Supreme Court under Article ¹⁰[191 of the Constitution or any other provision thereof] ; or
- (b) to interfere with any rules made by the Supreme Court, and for the time being in force, for the presentation of appeals to that Court, or their conduct before that Court.]

¹See also the Federal Court (Enlargement of Jurisdiction) Act No. I of 1950, s. 6 and the Privy council (Abolition of Jurisdiction) Act, 1950, s. 9.

²Subs. by Adaptation Order, 1961, Art. 2 and sch., (with effect from the 23rd March, 1956).

³The original s. 109 has successively been amended by the Central Laws (Statute Reform) Ordinance, No. XXI of 1960, s.3 and 2nd Sch. (with effect from the 14th October, 1955), Adaptation Order, 1961, Art.2 and Sch. (with effect from the 23rd March, 1956), and Federal Adaptation Order, 1975, Art.2 and Sch. (with effect from the 14th August, 1973), to read as above.

⁴Omitted by Federal Adaptation Order, 1975, Art. 2 and Sch. (with effect from the 14th August, 1973).

⁵Subs. by Adaptation Order, 1961, Art. 2 and Sch., (with effect from the 23rd March, 1956).

⁶Amended by Adaptation Order, 1937 and Act No. XIII of 1916. Sch., have been Omitted by Adaptation Order, 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956).

⁷Subs. by Act No. XIX of 2023, s.12.

⁸Omitted by the Federal Court Act, 1941 (XXI of 1941), s. 2.

⁹Subs. by Adaptation Order 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956).

¹⁰Amended by Adaptation Order, 1964, Art. 2 and Sch. and Federal Adaptation Order, 1975, Art. 2 and Sch. (with effect from the 14th August, 1973).

(2) Nothing herein contained applies to any matter of criminal or admiralty or vice-admiralty

jurisdiction, or to appeals from orders and decrees of Prize Courts.

PART VIII

REFERENCE, REVIEW AND REVISION

113. Reference to High Court. Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit.

¹**[114. Review.—** (1) Subject as aforesaid, any person considering himself aggrieved by a degree or order from which—

- (a) an appeal is allowed by this Code, but from which no appeal has been preferred; or
- (b) no appeal is allowed by this Code,

may apply for a review of judgment to the Court which passed the degree or made the order, and the Court may make such order thereon as it think fit.]

¹**[115. Revision.—** (1) A High Court may call for the record of any case which has been decided by any Court subordinate to that High Court and in which no appeal lies thereto, and if such subordinate Court appears—

- (a) to have exercised a jurisdiction not vested in it by law; or
- (b) to have failed to exercise a jurisdiction so vested; or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

Provided that where a person makes an application under this sub-section, he shall, in support of such application, furnish copies of the pleadings, documents and order of the subordinate Court and the High Court shall, except for reasons to be recorded, dispose of such application without calling for the record of the subordinate Court:

Provided further that such application shall be made within ninety days of the decision of the subordinate Court which shall provide a copy of such decision within three days thereof and the High Court shall dispose of such application within six months.

(2) A District Court may exercise the powers conferred on the High Court by sub-section (1) in respect of any case decided by a Court subordinate to that District Court in which no appeal lies and the amount or value of the subject-matter whereof does not exceed the limits of the appellate jurisdiction of the District Court.

(3) If an application under sub-section (1) in respect of a case within the competence of the District Court has been made either to the High Court or the District Court, no further such application shall be made to either of them.

(4) No proceedings in revision shall be entertained by the High Court against an order made under sub-section (2) by the District Court.]

¹Subs. by Act No. XIX of 2023, s. 13-14.

PART IX

SPECIAL PROVISION RELATING TO ¹[* *] HIGH COURTS

116. Part to apply only to certain High Courts. This Part applies only to High Courts ²[* * *]

117. Application of Code to High Courts. Save as provided in this Part or in Part X or in rules, the provisions of this Code shall apply to ¹[*] High Courts.

118. Execution of decree before ascertainment of costs. Where any ³* High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs;

and, as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

119. Unauthorised persons not to address Courts. Nothing in this Code shall be deemed to authorise any person on behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witnesses, except where the Court shall have in the exercise of the power conferred by its charter authorised him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys.

120. Provisions not applicable to High Court in original civil jurisdiction.— (1) The following provisions shall not apply to the High Court in the exercise of its original civil jurisdiction, namely, sections 16, 17 and 20.

⁴[* * * * *]

PART X

RULES

121. Effect of rules in First Schedule. The rules in the First Schedule shall have effect as if enacted in the body of this Code until annulled or altered in accordance with the provisions or this Part.

122. Power of certain High Courts to make rules. ⁴[The High Courts] ⁵[* * *] may, from time to time after previous publication, make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule.

¹Omitted by the Central Laws (Statute Reform) Ordinance, No. XXI of 1960, s.3 and 2nd Sch. (with effect from the 14th October, 1955).

²Amended by Adaptation Order., 1937 and Act No. XIII of 1916, Sch., have been omitted by Ordinance No. XXI of 1960. s.3 and 2nd Sch. (with effect from the 14th October, 1955).

³Sub-section (2) omitted by the Presidency-towns Insolvency Act No. III of 1909, s. 127 and Third Sch.

⁴Subs. by the Central Laws (Statute Reform) ordinance, No. XXI of 1960, s. 3 ad 2nd Sch. (with effect from the 14th October, 1955) and the Government of India Act, 1935'' as amended by Adaptation Order, 1937, Adaptation Order, 1949 and the Oudh Courts (Supplementary) Act No. XXXII of 1925, s.2 and Sch.

⁵Omitted by the Repealing and Amending Act No. XI of 1923, s. 3 and Second Sch. and subs. by the repealing and Amending Act No. XVIII of 1919, s. 2 and First Sch.

123. Constitution of Rules Committees in certain Provinces.— (1) A Committee, to be called the Rule Committee, shall be constituted at ¹[the town which is the usual place of sitting of each of the High Courts ²[* * *] ³[* * *] referred to in section 122].

(2) Each such Committee shall consist of the following persons, namely:—

- (a) three Judges of the High Court established at the town at which such Committee is constituted, one of whom at least has served as a District Judge or ⁴* * * a Divisional Judge for three years,

⁵[* * * * *]

- ⁵[(c) two advocates practising in that Court, and]

- (d) a Judge of a Civil Court subordinate to the High Court,

⁵[* * * * *]

(3) The members of each such Committee shall be appointed by the Chief Justice ⁶[* * *] who shall also nominate one of their member to be President:

Provided that, if the Chief Justice ⁶[* * *] elects to be himself a member of a Committee, the number of other Judges appointed to be members shall be two, and the Chief Justice ⁶[* * *] shall be the President of the Committee.

(4) Each member of any such Committee shall hold office for such period as may be prescribed by the Chief Justice ⁶[* * *] in this behalf; and whenever any member retires, resigns, dies or ceases to reside in the Province in which the Committee was constituted, or becomes incapable of acting as a member of the Committee, the said Chief Justice ⁶[* * *] may appoint another person to be a member in his stead.

(5) There shall be a Secretary to each such Committee, who shall be appointed by the Chief Justice ⁶[* * *] and shall receive such remuneration as may be provided in this behalf ⁷[by the Provincial Government].

124. Committee to report to High Court. Every Rule Committee shall make a report to the High Court established at the town at which it is constituted on any proposal to annul, alter or add to the rules in the First Schedule or to make new rules, and before making any rules under section 122 the High Court shall take such report into consideration.

⁸**125.** [Omitted].

¹Subs. by the Amending Act No. XIII 1916, s. 2 and Sch.

²Ins. by Act No. XXXII of 1925, s. 2 and Sch., were omitted by Adaptation Order, 1949.

³Omitted by Act No. XI of 1923, s. 2 and First Sch and previously subs by Act No. XVIII of 1919, s. 2 and First Sch.

⁴Subs. by s. 2 and First Sch. of Act No. XVIII of 1919, and were subsequently omitted by s. 3 and Second Sch. of Act No. XI of 1923.

⁵Clause (b) omitted, clause (c) subs., and clause (e) omitted by the Federal Laws (Revision and Declaration) Ordinance, No. XVII of 1981, s. 3 and Second Sch.

⁶Omitted by the Central Laws (Statute Reforms) Ordinance, No. XXI of 1960, s. 3 and 2nd Sch. (with effect from the 14th October, 1955).

⁷Subs. by Adaptation Order, 1937.

⁸Omitted by the Central Laws (Statute Reform) Ordinance, 1960 (XXI of 1960), S.3 and 2nd Sch. (with effect from the 14th October, 1955).

¹[126. Rules to be subject to approval. Rules made under the foregoing provisions shall be subject to the previous approval of the Government of the Province in which the Court whose procedure the rules regulate is situate or, if that Court is not situate in any Province, to the previous approval of the ²[Federal Government].

127. Publication of rules. Rules so made and ³[approved] shall be published in the ⁴[official Gazette * * *], and shall from the date of publication or from such other date as may be specified have the same force and effect, within the local limits of the jurisdiction of the High Court which made them, as if they had been contained in the First Schedule.

128. Matters for which rules may provide.— (1) Such rules shall be not inconsistent with the provisions in the body of this Code, but, subject thereto, may provide for any matters relating to the procedure of Civil Courts.

(2) In particular, and without prejudice to the generality of the powers conferred by sub-section (1), such rules may provide for all or any of the following matters, namely:—

- (a) the service of summonses, notices and other processes by post or in any other manner either generally or in any specified areas, and the proof of such service;
- (b) the maintenance and custody, while under attachment, of live-stock and other moveable property, the fees payable for such maintenance and custody, the sale of such live-stock and property, and the proceeds of such sale;
- (c) procedure in suits by way of counterclaim, and the valuation of such suits for the purposes of jurisdiction;
- (d) procedure in garnishee and charging orders either in addition to, or in substitution for, the attachment and sale of debts ;
- (e) procedure where the defendant claims to be entitled to contribution or indemnity over against any person whether a party to the suit or not;
- (f) summary procedure—
 - (i) in suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising on a contract express or implied; or

on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

on a guarantee, where the claim against the principle is in respect of a debt or a liquidated demand only; or

on a trust; or

¹Subs. by Adaptation Order, 1937, for s. 126 as amended by the Amending Act No. XIII of 1916, Sch.

²Subs. by Federal Adaptation Order, 1975, Art.2 and Sch. which had been subs. by Adaptation Order, 1961, Art. 2 (*with effect from the 23rd March, 1956*).

³Subs. by the Repealing and Amending Act No. XXVII of 1917, s. 2 and First Sch.

⁴Subs. by Adaptation Order, 1937, para 4 (1).

- (ii) in suits for the recovery of immoveable property, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for non-payment of rent, or against persons claiming under such tenant;
- (g) procedure by way of originating summons;
- (h) consolidation of suits, appeals and other proceedings;
- (i) delegation to any Registrar, Prothonotary or master or other official of the Court of any judicial, quasi-judicial and non-judicial duties; and
- (j) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of Civil Courts.

¹[(3) The High Court shall make rules, not inconsistent with the provisions of this Code, for case management and scheduling conferences binding the parties to follow the schedules and timelines prescribed therein.]

129. Power of ²[*] the High Courts to make rules as to their original civil procedure. Notwithstanding anything in this Code, any High Court ³[* * *] may make such rules not inconsistent with ⁴[its Letters Patent] to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code.

⁵**130.** [Omitted].

131. Publication of rules. Rules made in accordance with section 129 ⁶[* * *] shall be published in the ⁷[official Gazette * * *] and shall from the date of publication or from such other date as may be specified have the force of law.

PART XI MISCELLANEOUS

132. Exemption of certain women from personal appearance.— (1) Women who, according to the customs and manners of the country⁷ ought not to be compelled to appear in public shall be exempt from personal appearance in Court.

(2) Nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process in any case in which the arrest of women is not prohibited by this Code.

¹Ins. by Act No. VII of 2020, s. 16.

²Omitted by the Federal Laws (Revision and Declaration) Ordinance, No. XVII of 1981, s. 3 and Second Sch.

³Amended by Adaptation Order, 1937 and the Amending Act No. XIII of 1916, Sch., have been omitted by the Central Laws (Statute Reform) Ordinance, No. XXI of 1960, s.3 and 2nd Sch. (with effect from the 14th October, 1955).

⁴Subs. by Ordinance, No. XXI of 1960, s. 3 and 2nd Sch. (with effect from the 14th October, 1955).

⁵Omitted by Adaptation Order, 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956).

⁶Omitted by Adaptation Order, 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956).

⁷Subs. by Adaptation Order, 1937, para 4(1).

133. Exemption of other persons.— (1) The ¹[Provincial Government] may, by notification² in the ¹[official Gazette], exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption.

(2) The names and residences of the persons so exempted shall, from time to time, be forwarded to the High Court by the ¹[Provincial Government] and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

(3) Where any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

134. Arrest other than in execution of decree. The provisions of sections 55, 57 and 59 shall apply, so far as may be, to all persons arrested under this Code.

135. Exemption from arrest under civil process.— (1) No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court.

(2) Where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of Court while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

(3) Nothing in sub-section (2) shall enable a judgment-debtor to claim exemption from arrest under an order for immediate execution or where such judgment-debtor attends to show cause why he should not be committed to prison in execution of a decree.

³[135A. Exemption of members of Legislative bodies from arrest and detention under civil process.— (1) No person shall be liable to arrest or detention in prison under civil process—

- ⁶[(a) if he is member of a ⁴[*] Legislature ⁴[* * *] ⁵[* * *], during the continuance of any meeting of such Legislature ⁴[* * *];]
- (b) if he is a member of any committee of such ¹[Legislature ⁴* * *], during the continuance of any meeting of such committee;

⁶[* * * * *]

¹Subs. by Adaptation Order, 1937.

²For such notifications, see the different local Rules and Orders.

³S. 135A ins. by the Legislative Members Exemption Act, 1925 (23 of 1925), s.3.

⁴Omitted by Adaptation Order, 1949.

⁵Omitted by Adaptation Order, 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956).

⁶The original cl. (c) was first subs. by Adaptation Order, 1937 and then omitted by Adaptation Order, 1949.

and during the fourteen days before and after such meeting or sitting.

(2) A person released from detention under sub-section (1) shall, subject to the provisions of the said sub-section, be liable to re-arrest and to the further detention to which he would have been liable if he had not been released under the provisions of sub-section (1).]

136. Procedure where person to be arrested or property to be attached is outside district.—

(1) Where an application is made that any person shall be arrested or that property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

(2) The district Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment

(3) The Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him.

¹[* * * * *]

137. Language of subordinate Courts.—(1) The language which, on the commencement of this Code, is the language of any Court subordinate to a High Court shall continue to be the language of such subordinate Court until the ²[Provincial Government] otherwise directs.

(2) The ²[Provincial Government] may declare what shall be the language of any such Court and in what character applications to and proceedings in such Courts shall be written.

(3) Where this Code requires or allows anything other than the recording of evidence to be done in writing in any such Court, such writing may be in English; but if any party or his pleader is unacquainted with English a translation into the language of the Court shall, at his request, be supplied to him; and the Court shall make such order as it thinks fit in respect of the payment of the costs of such translation.

138. Power of High Court to require evidence to be recorded in English.—(1) The ³[High Court] may, by notification in the ²[official Gazette], direct with respect to any Judge specified in the notification, or failing under a description set forth therein, that evidence in cases in which an appeal is allowed shall be taken down by him in the English language and in manner prescribed.

(2) Where a Judge is prevented by any sufficient reason from complying with a direction under sub-section (1), he shall record the reason and cause the evidence to be taken down in writing from his dictation in open Court.

¹Amended by Adaptation Order, 1937, has been omitted by Adaptation Order, 1949.

²Subs. by Adaptation Order, 1937.

³Subs. by the Decentralization Act, No. IV of 1914, s.2 and Sch., Pt. I.

139. Oath on affidavit by whom to be administered. In the case of any affidavit under this Code—

- (a) any Court or Magistrate, or
- (b) any officer or other person whom a High Court may appoint in this behalf, or
- ¹(c) any officer appointed by any other Court which the ²[Provincial Government] has generally or specially empowered in this behalf,

may administer the oath to the deponent.

140. Assessors in causes of savages, etc.— (1) In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may, if it thinks fit, and shall upon request of either party to such cause, summon to its assistance, in such manner as it may direct or as may be prescribed, two competent assessors; and such assessors shall attend and assist accordingly.

(2) Every such assessor shall receive such fees for his attendance, to be paid by such of the parties as the Court may direct or as may be prescribed.

³**[141. Miscellaneous proceedings.—** The procedure provided in this Code with regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.]

142. Orders and notices to be in writing. All orders and notices served on or given to any person under the provisions of this Code shall be in writing.

143. Postage. Postage, where chargeable on a notice, summons or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed before the communication is made:

Provided that the ²[Provincial Government] ⁴[* * *] may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

144. Application for restitution.— (1) Where and in so far as a decree is varied or reversed, the Court of first instance shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal.

¹Gaz. Of P. 1956, Pt. 1. p. 294.

²Subs. by Adaptation Order, 1937.

³Subs. by Act No. XIX of 2023, s.15.

⁴Omitted by the Devolution Act, No. XXXVIII of 1920), s.2 and first Sch., Pt.I.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

145. Enforcement of liability of surety. Where any person has become liable as surety—

- (a) for the performance of any decree or any part thereof, or
- (b) for the restitution of any property taken in execution of a decree, or
- (c) for the payment of any money, or for the fulfillment of any condition imposed on any person, under an order of the Court in any suit or in any proceedings consequent thereon,

the decree or order may be executed against him, to the extent to which he has rendered himself personally liable, in the manner herein provided for the execution of decrees, and such person shall, for the purposes of appeal, be deemed a party within the meaning of section 47:

Provided that such notice as the Court in each case thinks sufficient has been given to the surety.

146. Proceedings by or against representatives. Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.

147. Consent or agreement by person under disability. In all suits to which any person under disability is a party, any consent or agreement, as to any proceeding shall, if given or made with the express leave of the Court by the next friend or guardian for the suit, have the same force and effect as if such person, were under no disability and had given such consent or made such agreement.

148. Enlargement of time. Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

149. Power to make up deficiency of court-fees. Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

150. Transfer of business. Save as otherwise provided, where the business of any Court is transferred to any other Court, the Court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred.

151. Saving of inherent powers of Court. Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court ¹[to be exercised after recording reasons] to make

¹Ins. by Act No. VII of 2020, s.18.

such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

152. Amendment of judgments, decrees or orders. Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

153. General power to amend. The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

154. ¹[Omitted].

155. ²[Omitted].

156. ³[Repeals.]

157. Continuance of orders under repealed enactments. Notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed, forms framed, appointments made and powers conferred under Act VIII of 1859 or under any Code of Civil Procedure or any Act amending the same or under any other enactment hereby repealed shall, so far as they are consistent with this Code, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under this Code and by the authority empowered thereby in such behalf.

158. Reference to Code of Civil Procedure and other repealed enactments. In every enactment or notification passed or issued before the commencement of this Code in which reference is made to or to any Chapter or section of Act VIII of 1859 or any Code of Civil Procedure or any Act amending the same or any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding Part, Order, section or rule.

⁴[159. Saving of proceedings.]— All proceedings instituted prior to the commencement of the Code of Civil Procedure (Amendment) Act, 2023 (Act of 2023) shall be deemed to be the proceedings of, and dealt in accordance with, the provisions of this Code which existed prior to the aforesaid commencement.

Explanation.— In this section, the expression “proceedings” includes suit, appeal, review, revision, execution applications or any other proceedings and any matter incidental thereto.]

¹Omitted by the Federal Laws (Revision and Declaration) Ordinance, No. XXVII of 1981, s.3 and Second Sch.

²Omitted by the Federal Laws (Revision and Declaration) Ordinance, No. XXVII of 1981, s.3 and Second Sch.

³Rep. by the Second Repealing and Amending Act No. XVII of 1914, s.3 and Second Sch.

⁴Subs. by Act No. XIX of 2023, s. 16.