

THE  
**PUNJAB COURTS ACT**  
AND  
LETTERS PATENT  
BY  
**TWO VAKILS**

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**THE PUNJAB COURTS ACT**  
**AND**  
**Letters Patent**

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**LETTERS PATENT**

WITH  
COPIOUS NOTES

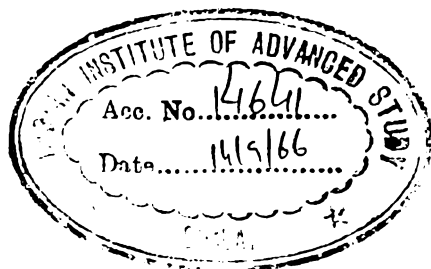
BY  
**TWO VAKILS**



**The University Book Agency,**  
LAW PUBLISHERS,  
Kacheri Road, LAHORE.

Price Re. 1]8

Published by Mr. Shiv Das Khanna B.A.  
for  
THE UNIVERSITY BOOK AGENCY.  
Kacheri Road, Lahore.



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THE INDIAN PRINTING WORKS,  
Kacheri Road, Lahore.

## Preface.

We are afraid that we have not worked out an elaborate commentary on the Punjab Courts Act and Letters Patent. For throughout the book our aim has been to make it *concise* and *readable*.

For hasty reference a *bare print* of the Punjab Courts Act is also given.

TWO VAKILS.

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# THE PUNJAB COURTS ACT, 1918.

PUNJAB ACT, VI OF 1918.

(As amended by Punjab Acts, IV of 1919 and IX of 1922 and supplemented by India Act, IX of 1919.)

PASSED BY THE LIEUTENANT-GOVERNOR OF THE PUNJAB IN COUNCIL.

*(Received the assent of His Honour the Lieutenant-Governor of the Punjab on the 30th May, 1918 and that of His Excellency the Viceroy and Governor-General on the 12th June, 1918, and was first published in the Gazette of the 12th July, 1918.)*

An Act to validate all things done under the Punjab Courts Act, 1914, as amended by Punjab Act IV of 1914, to repeal the said Acts or so much of them as may be valid and to enact a law relating to Courts in the Punjab, which is free from the defect described in the preamble.

WHEREAS it appears that the Punjab Courts Act, 1914, as assented to by the Lieutenant-Governor on the 15th January 1914 and by the Governor-General on 27th April 1914 and as published in the *Punjab Gazette* on 22nd May 1914 included a clause, namely, clause (b) of sub-section (1) of, section 39 which had not been passed by the Legislative Council of the Lieutenant-Governor, and whereas doubts have arisen as to the validity of things done under the said Act and the amending Act, Punjab Act IV of 1914 :

And whereas it is expedient to validate all things done under the said Acts, to repeal the said Acts or so much of them as may be valid, and to enact a law relating to Courts

in the Punjab, which is free from the defect above described, it is hereby enacted as follows :—

### PART I.

Short title and extent      **1.** (1) This Act may be called the Punjab Courts Act, 1918.

(2) It extends to the Punjab.

Definitions.      **2.** In this Act—the expression “ the Punjab Courts Act, 1914 ”, means what was published as the Punjab Courts Act, 1914, in Part V of the *Punjab Gazette* dated 22nd May 1914 : and the expression “ Punjab Act IV of 1914 ” means what was published as Punjab Act IV of 1914, in Part V of the *Punjab Gazette* dated 20th November 1914.

Enactment of Provisions relating to Courts in the Punjab.      **3.** (1) (a) The provisions contained in Part II of this Act are hereby enacted, and shall be deemed to have had effect on and from the first day of August 1914.

(b) The Punjab Courts Act, 1914, and Punjab Act, IV of 1914, or so much of them as may be valid, are repealed on and from the first day of August 1914.

(2) All things done under the Punjab Courts Act, 1914, as amended by Punjab Act, IV of 1914, shall be deemed to be in every way as valid as if the Punjab Courts Act, 1914, as amended by Punjab Act, IV of 1914, had been of full force and effect on and from the first day of August, 1914 :

Provided, *firstly*, that any appeal which may have been decided by the Chief Court in the exercise of jurisdiction purporting to be exercised under section 39 (1) (b) of the Punjab Courts Act, 1914,

Proviso.

shall be deemed to have been validly decided, and shall not be called in question by reason of anything contained in this Act:

And, *secondly*, that any appeal which before the commencement of this Act has been presented to the Chief Court under Section 39 (1) (b) of the Punjab Courts Act, 1914, and which should not have been so presented if the said subsection had run as set out in section 39 of Part II of this Act shall if it has not been decided be transferred by the said Court for disposal to the District Court having jurisdiction:

And, *thirdly*, that any appeal which would have lain to the Chief Court under section 39 (1) (b) of the Punjab Courts Act, 1914, but which lies to the District Court under the provisions of this Act, and which if presented to the Chief Court at the commencement of this Act would be within time, shall be deemed to be presented within time if presented to the District Court within sixty days from the commencement of this Act.

## PART II.

### CHAPTER I.

#### PRELIMINARY.

1. \* \* \* \*

2. The enactments specified in the Schedule are hereby repealed to the extent mentioned in the fourth column thereof.

Definitions 3. In this part, unless there is something repugnant in the subject or context,—

(1) "Small cause" means a suit of the nature cognizable by a Court of Small Causes under the Provincial Small Cause Courts Act, 1887.;

India Act IX of 1877.

1887.;

## NOTES.

**Small Cause Suit.**—Under the Provincial Small Cause Courts Act, a Court of Small Causes can take cognizance of all kinds of suits except those which are given in Schedule II of that Act. Therefore all cases except those mentioned in the said Schedule may be described as suits of the nature of Small Causes. In deciding whether or not a particular suit is a Small Cause one the provisions of Schedule II of the said Act must be construed strictly. Thus it has been held by the Allahabad High Court that only such suits are barred by the Provincial Small Cause Courts Act as are actually covered by the words of the different articles of Schedule II of the Act and not those which are in substance like the suits described therein. 1.

The following are the suits excepted from the cognizance of Courts of Small Causes by Schedule II of the Provincial Small Cause Courts Act.

(1) A suit concerning an act or order purporting to be done or made by the Governor-General in Council or a Local Government, or by the Governor-General or a Governor, or by a Member of the Council of the Governor-General, or of the Governor of Madras or Bombay or Fort William in Bengal, in his official capacity, or concerning an act purporting to be done by any person by order of the Governor-General in Council or a Local Government.

(2) A suit concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court or of a judicial officer acting in the execution of his office.

(3) A suit concerning an act or order purporting to be done or made by any other officer of the Government in his official capacity or by a Court of Wards or by an officer of a Court of Wards in the execution of his office.

## NOTES.

The above noted three articles refer to suits concerning official acts. While article 1 refers to acts done by certain officers of the Executive

1. 50 A. 428 Per Dalal J.

2. 97 P. R. 1894.

Government in their executive or administrative capacity article 2 is intended to cover acts done under the orders of a Court. 1 Article 3 refers to acts of those executive officers who are not mentioned in article 1. The word "act" as used here does not include a mere omission or neglect of duty but connotes some distinct act purporting to be done by a Government officer under the authority of his office and reasonably falling within the scope of such authority. 2

(4) A suit for the possession of immoveable property or for the recovery of an interest in such property.

#### NOTES.

The phrase "immoveable property" has been defined in section 3 (25) General Clauses Act as including land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth. Standing trees are immoveable property within the meaning of this article. 3 Title deeds of immoveable property though they are evidence of an interest in immoveable property are however themselves moveable property and therefore a suit for recovery of such deeds is a suit of the nature of Small Causes. 4

(5) A suit for partition of immoveable property.

(6) A suit by a mortgagee of immoveable property for the foreclosure of the mortgage or for sale of the property or by a mortgagor of immoveable property for the redemption of the mortgage.

#### NOTES.

The only suits contemplated by this article are those for sale, foreclosure and redemption. Suits for recovery of possession on the basis of a mortgage are beyond the scope of this article and are covered by article 4 *supra*. 5

(7) A suit for the assessment, enhancement, abatement or apportionment of the rent of immoveable property.

1. 13 B. 78; 1 C. W. N. 140.
2. 97 P. R. 1894; 91 P. L. R. 1902; 37 M. 533.
3. 9 I. C. 133.
4. 6 Lah. 33.
5. 17 I C 522; 24 P. R. 1890.

(8) A suit for the recovery of rent, other than house rent, unless the Judge of the Court of Small Causes has been expressly invested by the Local Government with authority to exercise jurisdiction with respect thereto.

NOTES.

**Rent.**—The word 'rent' as used here is intended to be understood in the ordinary sense of a return in money or kind for the enjoyment of specific property held by one person from or under another and does not include damages for the use and occupation of land by a trespasser <sup>1</sup>

**House Rent.**—Shop rent has been held to be house rent for purposes of this section <sup>2</sup>

(9) A suit concerning the liability of land to be assessed to land revenue.

(10) A suit to restrain waste.

(11) A suit for the determination or enforcement of any other right to or <sup>†</sup>interest in immoveable property

NOTES.

To attract the application of this article it is not enough that the question of the right of immoveable property be incidentally in issue, on the other hand the direct object of the suit must be to establish or enforce such right. <sup>3</sup> The article will not apply where there is nothing in the prayer that requires the determination or enforcement of any right or interest in immoveable property and consequential relief prayed for is for recovery of money. Thus a suit for recovery of interest on mortgage money has been held to be a suit triable by a Court of Small Causes. <sup>4</sup>

(12) A suit for the possession of an hereditary office or of an interest in such an office including a suit to establish an exclusive or periodically recurring right to discharge the functions of an office.

1. 78 I. C. 383.
2. 107 I. C. 273.
3. 119 P. R. 1894; 80 P. R. 1896
4. 66 I. C. 285.

(13) A suit to enforce a payment of the allowance or fees respectively, called *Malikana* and *hakk* or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immoveable property or in an hereditary office or in a shrine or other religious institution.

## NOTES.

The article applies to claims made against the person primarily liable to pay the cesses and dues.<sup>1</sup> Therefore a suit against a person who has improperly collected such dues from persons primarily liable to pay them is not within the ambit of the article and may be tried by a Court of Small Causes.<sup>2</sup> To attract the application of the Section it is necessary that cesses and dues must be payable by reason of plaintiff's interest in immoveable property. If the claim is based on a contract or custom the article will not apply and the suit would be a simple money suit and as such triable by a Small Cause Court.<sup>3</sup>

(14) A suit to recover from a person to whom a compensation has been paid under the Land Acquisition Act, 1870, the whole or any part of the compensation.

(15) A suit for the specific performance or rescission of a contract.

## NOTES.

A suit to avoid purchase on the ground of fraud and to recover damages cannot be said to be a suit for specific performance and is cognizable by a Court of Small Causes.<sup>4</sup> Similarly a suit by a vendor for recovery of the balance of purchase money from the vendee is not a suit for specific performance within the meaning of article 15 and is not excluded from the cognizance of a Court of Small Causes.<sup>5</sup>

(16) A suit for the rectification or cancellation of an instrument.

(17) A suit to obtain an injunction.

1. 3 L 369.
2. 92 I. C. 779.
3. 19 M. 329; 159 P. L. R. 1911.
4. 49 P. R. 1909.
5. 73 I. C. 125.

(18) A suit relating to a trust, including a suit to make good out of the general estate of a deceased trustee, the loss occasioned by a breach of trust and a suit by a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.

(19) A suit for a declaratory decree not being a suit instituted under Section 283 or 332 of the Code of Civil Procedure.

#### NOTES.

The article is applicable only to suits for declaratory decrees properly so called and not suits in which declaration is merely introductory to the real relief prayed for.<sup>1</sup> But where the prayer for declaration is the main relief sought the provisions of this article would apply and the suit would be outside the jurisdiction of a Small Cause Court.<sup>2</sup>

(20) A suit instituted under Section 284 or section 332, Civil Procedure Code.

(21) A suit to set aside an attachment by a Court or a Revenue authority or a sale, mortgage, lease or other transfer by a Court or a Revenue authority or by a guardian.

(22) A suit for property which the plaintiff has conveyed while insane.

(23) A suit to alter or set aside a decision, decree or order of a Court, or of a person acting in judicial authority.

(24) A suit to contest an award.

(25) A suit upon a foreign judgment as defined in the Code of Civil Procedure or upon a judgment obtained in British India.

(26) A suit to compel a refund of assets improperly distributed under section 295, Civil Procedure Code.

(27) A suit under the Indian Succession Act, 1865, Section 320 or Section 321 or under the Probate and Administration Act, 1881, Section 139 or Section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.

1 8 M. L. J. 149

2. 38 I. C. 248.



(28) A suit for a legacy or for the whole or a share of a residue bequeathed by a testator or for the whole or a share of the property of an intestate.

(29) A suit—

(a) for a dissolution of partnership or for the winding up of the business of a partnership after its dissolution;

(b) for an account of partnership transactions; or

(c) for a balance of partnership account, unless the balance has been struck by the parties or their agents.

(30) A suit for an account of property and for its due administration under decree.

(31) Any other suit for an account including a suit by a mortgagor, after the mortgagee has been satisfied to recover surplus collections received by the mortgagee and a suit for profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant.

#### NOTES.

This article contemplates cases in which plaintiff claims an account of monies which defendant has received and to an account of which the plaintiff is entitled because the moneys received belonged to him.<sup>1</sup> Whether or not a suit is one for accounts depends upon the relation in which the parties stand to each other and upon the nature of the investigation required to afford the relief to the plaintiff.<sup>2</sup> It is only when the relationship of the parties is such that the plaintiff can demand account and the defendant is bound to render account that the suit can be said to be one for account within the meaning of this article.<sup>3</sup>

(32) A suit for a general average loss or for salvage.

#### NOTES.

General average is a contribution made by all parties concerned in a sea adventure towards a loss occasioned by the voluntary sacrifice of the

1 23 C. 824 F. B. 94 P. B. 1900.

2 10 I. C. 883.

3. 28 I. C. 955; 88 I. C. 876.

property of some of the parties in interest for the benefit of all. Salvage is defined as the compensation allowed to persons who voluntarily assist in saving a ship or the cargo from peril (Webster's Dictionary)

(33) A suit for compensation in respect of collusion between ships.

(34) A suit on a policy of insurance or for the recovery of any premium paid under any such policy.

(35) A suit for compensation—

(a) for loss occasioned by the death of a person caused by actionable wrong ;

(b) for wrongful arrest, restraint or confinement ;

(c) for malicious prosecution ;

(d) for libel ;

(e) for slander ;

(f) for adultery or seduction ;

(g) for breach of contract of betrothal or promise of marriage ;

(h) for inducing a person to break a contract made with the plaintiff ;

(i) for obstruction of an easement or division of a water course.

(ii) for an act which is, or save for provisions of Chapter IV of the Indian Penal Code would be an offence punishable under Chapter XVII of the said Code ;

(j) for illegal, improper, or excessive distress, attachment or search or for trespass committed in or damage caused by the illegal or improper execution of any distress, search or legal process ;

(k) for improper arrest under Chapter XXXIV of the Code of Civil Procedure or in respect of the issue of an injunction wrongfully obtained under Chapter XXXV of that Code ; or

(d) for an injury to the person in any case not specified in the foregoing sub-clauses of this Clause.

## NOTES.

The word compensation as used in this article has the same meaning as it has in Section 73, Contract Act.<sup>1</sup>

The word watercourse in its ordinary sense means the bed or channel through which a stream of water flows but in its legal sense it denotes the stream itself as it flows in the channel.<sup>2</sup>

A suit to recover the value of fruit removed from a tree or value of a tree alleged to have been cut and removed by the defendant from the plaintiff's field or the value of a silver given to make ornaments and misappropriated is covered by clause (ii) of the Act and is therefore excepted from the cognizance of a Court of Small Causes.<sup>3</sup>

(36) A suit by a Muhammadan for exigible (*mu'ajjal*) or deferred (*muwaajjal*) dower.

(37) A suit for restitution of conjugal rights, for the recovery of a wife, for the custody of a minor or for a divorce.

(38) A suit relating to maintenance.

(39) A suit for arrears of land revenue, village expenses or other sums payable to the representative of a village community or to his heir or other successor in title.

(40) A suit for profits payable by the representative of a village community or by his heir or other successor in title after payment of land revenue, village expenses and other sums.

(41) A suit for contribution by a sharer in joint property in respect of a payment made by him of money due from a co-sharer or by a manager of joint property or a member of an undivided family in respect of a payment made by him on account of the property or family.

<sup>1</sup> 30 P. E. 1889.

<sup>2</sup> 71 P. R. 1896.

<sup>3</sup> 67 I. C. 305; 79 I. C. 138; 75 I. C. 928.

(42) A suit by one of several joint mortgagors of immoveable property for contribution in respect of money paid by him for the redemption of the mortgaged property.

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

(43-A) A suit to recover property obtained by an act which is, or save for the provisions of Chapter IV of the Indian Penal Code would be an offence punishable under Chapter XVII of the said Code.

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

(ID) "Land Suit" means a suit relating to land as defined in Section 4 (1) of the Punjab Tenancy Act, 1887, or to any right of India Act, XVI or interest in such land. of 1887.

#### NOTES.

Section 4 (1) Punjab Tenancy Act defines land as follows:—

"Land" means land which is not occupied as the site of any building in a town or village and is occupied or has been lot for agricultural or for purposes subservient to agriculture, or for pasture and includes the sites of buildings and other structures on such land.

This definition of land expressly excludes all sites of buildings in a village or a town. In its wider meaning the site of any building would include the courtyard of a building or the compound of a house.<sup>1</sup> Whether the site of a building or structure or other piece of land would be land as defined above or not depends upon whether it is being used for agricultural purposes or for purposes subservient to agriculture or for pasture or not. The words "agricultural purposes" must be construed in their ordinary sense and refer to tilling and cultivation for purposes of crops. In their widest sense the words may include grazing but it is by no means necessary that all land held for grazing purposes is land held for agricultural purposes.<sup>2</sup>

1. 11 P. R. 1890.

2. 15 I. C. 743.

**Time for applying test.**—There has been difference of opinion as to whether the test supplied by the definition given in section 4, Punjab Tenancy Act, should be satisfied at the date of the institution of the suit or at the time of the accrual of cause of action. The following passage is quoted in extenso from the Punjab Tenancy Act by Pindi Das and Ram Lal and will pay perusal:—“There is a conflict of authority as to the time at which a particular piece of land should satisfy the test laid down in this section to make it land within the meaning of this section. In 20 P. R. 1894 it had been held that in applying the definition to a land suit the time to be looked at is the time when the suit is instituted. But in a later ruling<sup>1</sup> it has been laid down that the true principle in determining whether a suit is a land suit or not is to have regard to the character and use of the land at the time immediately before the cause of action has arisen. The latter view has also been adopted in a still later judgment of the Chief Court<sup>2</sup> where it has been observed that the character and use of the land immediately before the cause of action has arisen determines the nature of the suit and the use to which the defendant may have devoted the land after the cause of action has arisen is immaterial. But in 129 P. W. R. 1908, a view similar to one adopted in 20 P. R. 1894, has been expressed. The Hon’ble Judges observe ‘That the property being undoubtedly land at the time of the suit the contention that the suit was not a land suit because the ‘land was unculturable at the time of arising of cause of action must be over-ruled.’ While it is true that the words ‘has been let’ do not include any and every previous letting of the land, but a letting which subsists at the time with reference to which the definition is to be applied, it is equally true that the use to which the defendant may have devoted the land after the cause of action has arisen is immaterial as determining the nature of the suit brought to contest his wrongful appropriation of the land. Though 20 P. R. 1894 appears to support the view that the actual condition of the land at the time when the suit was brought is to be taken into consideration, it is no authority, for holding that the question as to the nature of the suit is to be decided arbitrarily by a defendant according to the nature of the wrongful act which affords the cause of action against him. The reconciliation between the two extremes may be effected by

1. 31 P. R. 1901.

2. 75 P. W. R. 1910.

“holding that ordinarily the time for applying the test is the time when the cause of action arises. But when the character of the land has changed in the meanwhile otherwise than by a deliberate attempt on the part of the defendant the time for applying the definition is the time of the institution of the suit and not that of the accrual of cause of action.”

**Land Suits.**—The following have been held to be land suits:—

1. A suit relating to a share in a well used for irrigating agricultural land.<sup>1</sup>
2. Suit relating to watercourse used for agricultural purposes.<sup>2</sup>
3. A suit for land occupied as a fruit garden unless it be the courtyard or compound of a house.<sup>3</sup>
4. A suit for land on which well is sunk which well is used for agricultural purposes.<sup>4</sup>
5. Suit for the user of water of a perennial stream for agricultural purposes.<sup>5</sup>
6. A suit for possession of unculturable land outside the *abadi* of a village attached to a well and used for stacking *Bhusa* and *Khurlis*.<sup>6</sup>
7. A suit for a share of produce of *abiana*.<sup>7</sup>
8. A suit to establish title with reference to a mortgage deed of land and to declare it not to be subject to attachment.<sup>8</sup>
9. A suit for compulsory registration of a deed effecting mortgage of land.<sup>9</sup>
10. A suit to restore land used for pasturing cattle to its original condition.<sup>10</sup>

1. 40 P. R. 1893.
2. 1 P. R. 1892 F. B.
3. 111 P. R. 1890.
4. 62 P. R. 1891.
5. 111 P. R. 1898.
6. 12 P. R. 1907.
7. 180 P. L. R. 1901.
8. 64 P. R. 1902.
9. 43 P. R. 1896.
10. 31 P. R. 1901.

11. A suit by a reversioner to restrain from cutting down trees standing on reversionary land.<sup>1</sup>

12. A suit for *Ghair mumkin* land which is not included in the *Abadi* and is not also burdened with any share of the land revenue assessed upon the village.<sup>2</sup>

13. A claim to trees standing on occupancy land.<sup>3</sup>

**Suits which are not land suits.**

1. A suit for a right to the use of water of a canal for irrigating land independently of a share in the land occupied by the canal.<sup>4</sup>

2. A claim relating to water mill.<sup>5</sup>

3. A suit for a tank used for watering cattle and excavating earth to prepare bricks.<sup>6</sup>

4. A village tank over which the landlord gives a right to grow water nuts (*Sangharas*).<sup>7</sup>

5. A suit for possession of a half share in an orchard, *i.e.*, in the fruit trees.<sup>8</sup>

6. Suit for land held as a grove whether on payment of rent or otherwise.<sup>9</sup>

7. Suit for land reserved as graveyard.<sup>10</sup>

8. A claim to a part of a public road on which a wall is built as a boundary to an agricultural field.<sup>11</sup>

9. A suit for allotment of a specific plot in partition proceedings on the ground that the plaintiff was entitled to it for having planted trees on it.<sup>12</sup>

1 32 P. L. R. 1903

2 O. A. 1190 of 1906.

3 52 P. B. 1906

4 1 P. B. 1892.

5 39 P. L. R. 1912; 77 P. B. 1904.

6 48 P. B. 1898.

7 31 L. C. 294.

8 15 P. B. 1892 F. B

9 35 A. 280.

10 26 P. B. 1892

11 42 P. B. 1900

12 4 P. B. 1908.

10. A suit for recovery of land bearing a *Khasra* number and charged with the payment of revenue and situate within the municipal limits of a town and on which a building had been erected.<sup>1</sup>

11. A suit for setting aside deed of adoption and for declaration of a title as heir.<sup>2</sup>

12. A suit for Income arising from land.<sup>3</sup>

13. Suit to recover price of the materials of a house and for possession of a small building site.<sup>4</sup>

14. Suit for Proprietor's share in standing crop.<sup>5</sup>

15. Suit regarding Right to recover mortgage money.<sup>6</sup>

III. "Unclassed suit" means a suit which is neither a small cause nor a land suit; and-

#### NOTES.

An Unclassed suit has been defined to be a suit which is neither a small case nor a land suit. The same thing may be expressed in other words but in somewhat clearer manner by saying that all suits other than land suits exempted from the cognizance of the Small Cause Courts are unclassified suits. Thus if from the list of suits exempted from the Court of Small Causes under section 3, Clause (I) land suits were to be eliminated, the rest of the suits would be unclassified suits.

(IV) "Value" used with reference to a suit means the amount or value of the subject matter of the suit.

#### NOTES.

"Value of the subject matter of the suit."

Value of a suit for purposes of jurisdiction is regulated and governed by the averments in the plaint and, has no reference to the defence set up by the defendant.<sup>7</sup> *Prima facie* it is the claim or subject matter of the claim as

1 50 P. R. 1894.

2 40 P. R. 1905.

3 307 P. L. E. 1913.

4 60 P. R. 1900.

5 14 F. R. 1905.

6 12 P. L. R. 1911.

7 65 P. R. 1891; 10 A. 529; 37 M. 420; 17 C. 680.



estimated by the plaintiff that determines jurisdiction of a Court and that determination having given the jurisdiction, that jurisdiction continues whatever might be the result of the suit.<sup>1</sup> This includes *bona fide* mistakes by the plaintiff, but the plaintiff is not competent to oust the jurisdiction by making unwarrantable additions to the claim which cannot be entertained.<sup>2</sup> The jurisdiction determined by the averments in the plaint continues whatever the event of the suit may be. It is the *bona fide* nature of the claim and not the decree that determines jurisdiction.<sup>3</sup> For purposes of an appeal whether from a decree in a regular suit or from an order passed in execution of such decree, the value is the valuation of the original suit in which the decree was passed and not the actual amount affected by the order sought to be appealed.<sup>4</sup>

(For a comprehensive survey of the law regulating valuation of suits and appeals the reader should refer to some standard commentary on the Suits Valuation Act, *e.g.*, by Pindi Dass-Ram Lal or M. N. Basu).

1. 8 B. 31.

2. *Ibid.*

3. 37 M. 420; 63 P. B. 1891; 8 B. 31.

4. 30 M. 212; 32 B. 356.

**CHAPTER III.**

## THE SUBORDINATE CIVIL COURTS.

## CLASSES OF COURTS.

18. Besides the Courts of Small Causes established under the Provincial Small Cause Courts Act, 1887, and the Courts established under any other enactment for the time being in force, there shall be the following classes of Civil Courts, namely:—

- Classes of Courts.
- (1) The Court of the District Judge ;
  - (2) The Court of the Additional Judge ; and
  - (3) The Court of the Subordinate Judge.

\*                    \*                    \*                    \*

## NOTES.

**Courts established under any other enactment.**—Such Courts are High Court established by Letters Patent of His Majesty and Revenue and Criminal Courts established under the Land Acts and the Code of Criminal Procedure respectively.

**District Judge.**—The definition of “ District Judge ” has been given in Section 50 *infra* and runs as follows :—“ District Judge ” shall mean the Judge of a principal Civil Court of original jurisdiction but shall not include the High Court in the exercise of its ordinary or extraordinary original Civil jurisdiction.

**Additional Judge.**—Additional Judge means the Additional District Judge and the powers and functions of an Additional Judge are given in Section 21 *infra*.

**Subordinate Judge.**—There are four classes of the Subordinate Judges:—

- (1) Subordinate Judges 1st Class exercising jurisdiction without limit as to the valuation of suits.

- (2) Subordinate Judges 2nd Class exercising jurisdiction in suits of which the value does not exceed Rs. 5,000.
- (3) Subordinate Judges 3rd Class exercising jurisdiction in cases of which the value does not exceed Rs. 2,000.
- (4) Subordinate Judges 4th Class exercising jurisdiction in cases of which the value does not exceed Rs. 1,000.1

Besides the above noted classes the Hon'ble Judges of the High Court have been pleased to confer the power of a Subordinate Judge:—

(a) upon every person temporarily or permanently holding the office of Assistant Commissioner or Extra Assistant Commissioner for the purpose of exercising jurisdiction in cases the value of which does not exceed Rs. 500;

(b) upon every person temporarily or permanently holding the office of Tahsildar for a purpose of exercising jurisdiction in cases the value of which does not exceed Rs. 100.2

19 (1) For the purposes of this Part the Local Government shall divide the territories under its administration into civil districts,

(2) The Local Government may alter the limits or number of those districts.

20. The Local Government shall appoint as many persons as it thinks necessary to be District Judges, and post one such person to each district as District Judge of that district:

Provided that the same person may, if the Local Government thinks fit, be appointed to be District Judge of two or more districts.

21 (1) When the business pending before any District Judge requires the aid of an Additional Judge or Judges for its speedy disposal, the Local

Additional Judges.

1. *Vide* High Court Notification No. 4, dated the 9rd January 1923

2. *Vide* High Court Notification No 10, dated the 3rd January 1923

Government may appoint such Additional Judges as may be necessary.

(2) An Additional Judge so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to him, and in the discharge of those functions he shall exercise the same powers as the District Judge,

#### NOTES.

**Assignment of functions.**—The transfer of a part-heard case by the District Judge to an Additional Judge for disposal is a sufficient assignment of functions within the meaning of this section.<sup>1</sup> There is nothing in the Section or in the Act to suggest that the assignment must necessarily be in writing and a verbal assignment is equally valid though an assignment in writing is preferable and more desirable.<sup>2</sup>

**Additional Judge—status of.**—For purposes of regulating the business the Court of Additional Judge is subordinate to that of the District Judge. Thus it is competent to the District Judge to transfer a case from or to the Court of an Additional Judge under Section 24, Civil Procedure Code.<sup>3</sup> But so far as exercise of judicial functions in respect of functions assigned is concerned the Court of the Additional Judge is not a subordinate Court but a Court of co-ordinate jurisdiction with that of the District Judge. Thus the appeal from the decision of an Additional Judge who has never been gazetted as a Subordinate Judge lies to the High Court and not to the Court of the District Judge even though the value of the suit be less than Rs. 5,000.<sup>4</sup> Where, however, a Subordinate Judge has been invested with the powers of an Additional Judge, he exercises all the powers of a District Judge in respect of those functions assigned to him by the District Judge under this Section and there cannot be the least doubt that when he passes a decree or an order in the exercise of original jurisdiction over cases only assigned to him an appeal against it would lie to the High Court and not to the District Judge.<sup>5</sup> But where such an officer hears and decides a case which has not been made over

1. 3 P. B. 1915

2. 35 P. U. B. 1916.

3. 3 P. B. 1915

4. 46 P. B. 1919.

5. 38 P. B. 1917.

to him under this Section, he must be deemed to have decided as a Sub-Judge and not as an Additional Judge and an appeal from his decree or order would lie to the District Judge and not the High Court where the value of the suit does not exceed Rs. 5,000.<sup>1</sup>

**22 (1)** The Local Government may after consultation with the High Court fix the number of Subordinate Judges to be appointed and when there is a vacancy in that number may, subject to the rules, if any, made under sub-section (2) appoint such person as is nominated by the High Court to the said vacancy.

(2) The Local Government may, after consultation with the High Court, make rules as to the qualifications of persons to be appointed Subordinate Judges.

**23.** Repealed by section 5 of Punjab Act, IX of 1922.

**24.** The Court of the District Judge shall be deemed to be the District Court or principal Civil Court of original jurisdiction in the district.

**25.** Except as otherwise provided by any enactment for the time being in force, the Court of the District Judge shall have jurisdiction in original civil suits without limit as regards the value.

**26.** The jurisdiction to be exercised in original civil suits as regards the value by any person appointed to be a Subordinate Judge, shall be determined by the High Court either by including him in a class or grade, or otherwise as it thinks fit.

#### NOTES.

For classes of Subordinate Judges and their respective pecuniary jurisdictions see notes under section 18.

27. (1) The local limits of the jurisdiction of a Subordinate Judge shall be such as the High Court may define.

*local* (2) When the High Court posts a Subordinate Judge to a district, ~~local~~ the limits of the district shall, in the absence of any to the contrary, be deemed to be the local limits of his jurisdiction.

28. (1) The Local Government may, after consultation with the High Court, appoint any person to be an Honorary Subordinate Judge, and the High Court may confer on such Judge all or any of the powers conferable under this Act on a Subordinate Judge with respect to particular classes of suits or with respect to suits generally in any local area.

(2) The Local Government may direct any uneven number of persons invested with powers of the same description and exercisable within the same local area under this section to sit together as a bench; and those powers shall, while the direction remains in force, be exercised by the bench so constituted, and not otherwise.

(3) The decision of the majority of the members of a bench constituted under this section shall be deemed to be the decision of the bench.

(4) Persons on whom powers are conferred under this section and the benches constituted under this section shall be deemed for the purpose of this Part, to be Subordinate Judges

#### NOTES.

No benches of Honorary Subordinate Judges under clause (2) of this section have yet been notified.

29. The High Court may, by notification in the official Gazette, confer, within such local limits as it thinks fit upon any Subordinate Judge, the jurisdiction of a Judge of a Court of small Causes under the Provincial Small Cause Courts

Act, 1887, for the trial of suits, cognizable by such Courts, up to such value not exceeding five hundred rupees as it thinks fit, and may withdraw any jurisdiction so conferred.

30 (1) The High Court may by general or special order authorise any Subordinate Judge to take cognizance of, or any District Judge to transfer to a Subordinate Judge under his control any of the proceedings next hereinafter mentioned or any class of those proceedings specified in such order.

(2) The proceedings referred to in sub-section (1) are the following, namely:—

(a) Proceedings under the Indian Succession Act, 1865, and the Probate and Administration Act, 1881, which cannot be disposed of by District Delegates.

(b) Repealed by Government of India Act IV of 1926.

(3) The District Judge may withdraw any such proceedings taken cognizance of by or transferred to a Subordinate Judge and may either himself dispose of them or transfer them to a Court under his control competent to dispose of them.

(4) Proceedings taken cognizance of or transferred to a Subordinate Judge as the case may be under this section shall be disposed of by him, subject to the rules applicable re-like proceedings when disposed of by the District Judge.

## NOTES.

All Subordinate Judges of first and second class have been invested with the functions of a District Court under section 26 of (1) Succession Certificate Act for purpose of that Act.<sup>1</sup> Similarly all Subordinate Judges of first class have been invested with insolvency jurisdiction under the Provincial Insolvency Act.<sup>2</sup>

**31.** (1) The High Court may fix the place or places at which any Court under this Part is to be had.

Place of sitting  
of Court.

(2) The place or places so fixed may be beyond the legal limits of the jurisdiction Court.

(3) Except as may be otherwise provided by any order under this section, a Court under this Part may be held at any place within the local limits of its jurisdiction.

**32.** (1) Any District Judge may be suspended or re-moved from office by the Local Government.

Suspension and  
removal.

(2) Any subordinate Judge may be suspended from office by the High Court subject to the confirmation of the Local Government, and removed from office by the Local Government on the report of the High Court.

**33.** Subject to the general superintendence and control of the High Court, the District Judge shall have control over all the Civil Courts under the Part within the local limits of his jurisdiction.

Control of  
Court.

**34.** Notwithstanding anything contained in the Code of Civil Procedure, every District Judge may by written order direct that any civil business cognizable by his Court and the Courts under

Power to  
distribute  
business.

1. Punjab Government Notification No. 7-1, dated 15th July 1914.
2. Punjab Government Notification No. 780, dated 15th July 1914.



his control shall be distributed among Courts in such manner as he thinks fit:

Provided that no direction issued under this section shall empower any Court to exercise any powers or deal with any business beyond the limits of its jurisdiction.

## NOTES.

**Distribution of business.**—Power given to the District Judge under this section is meant for administrative convenience and does not touch the jurisdiction of Courts. The object of the section is not to restrict the jurisdiction of the Courts but to regulate the distribution of civil business between several Courts within a district having jurisdiction to entertain it. Thus where a judicial officer competent to hear the cases within the local limits of the district is directed to hear cases arising in a particular part of the district only, he is still competent to hear cases from the rest of the district notwithstanding the direction to the contrary.<sup>1</sup>

35. (1) The ministerial officers of the District Courts and Courts of Small Causes shall be appointed, and may be suspended or removed by the Judges of those Courts, respectively.

Ministerial  
officers of Sub-  
ordinate Courts.

(2) The ministerial officers of all Courts controlled by a District Court, other than Courts of Small Causes, shall be appointed, and may be suspended or removed by the District Court.

(3) Every appointment under this section shall be subject to such rules as the High Court may prescribe in this behalf, and in dealing with any matter under this section, a Judge of a Court of Small Causes shall act subject to the control of the District Court.

(4) Any order passed by a District Judge under this section shall be subject to the control of the High Court.

**36 (1)** A District Court or any Court under the control of District Court may fine, ~~an~~ an amount not exceeding one month's salary, any ministerial officer of the Court for misconduct or neglect in the performance of his duties.

Power to fine  
ministerial  
officers.

(2) The District Court may, on appeal or otherwise, reverse or modify any order made under sub-section (1) by any Court under its control, and may of its own motion fine up to the amount of one month's salary any ministerial officer of any Court under its control.

**37.** A District Court may, with the previous sanction of the High Court delegate to any Subordinate Judge in the district the power conferred on a District Court by sections 33, 34 and 35 of this Part and section 24 of the Code of Civil Procedure, to be exercised by the Subordinate Judge in any specified portion of the districts, subject to the control of the District Court.

Delegation of  
District Judge's  
powers.  
India Act V of  
1908

#### NOTES.

The power to transfer cases under section 24, Civil Procedure Code, can be delegated by the District Judge to a Sub-Judge. But the Court of a Junior Sub-Judge is not subordinate to that of the Senior Sub-Judge within the meaning of section 24, Civil Procedure Code, and the latter cannot therefore transfer a case to the former under section 24, (1) (a), Civil Procedure notwithstanding that the District Judge has delegated his powers of transfer to him.<sup>1</sup>

**38 (1)** Save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of a District Judge or Additional Judge exercising original jurisdiction shall lie to the High Court.

Appeals from  
District Judges  
or Additional  
Judge

(2) An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which, if

1. L 153.

the decree or order had been made by the District Judge, an appeal would not lie to that Court.

## NOTES.

**Appeal.**—The word appeal has neither been defined in this Act nor in the Code of Civil Procedure. In Wharton's Law Lexicon it has been defined as "the interval of a case from an inferior to a superior Court for the purpose of testing the soundness of the decision of the inferior Court." For all intents and purposes, an appeal may be said to be equivalent to an allegation that the decree is wrong and that the reasons which led to the decree are, as stated in the lower Court's judgment, insufficient.<sup>1</sup> It would follow from the definition of appeal stated above and is a well established principle that an appeal is the continuation of the proceedings in the original Court, and that proceedings in the appellate Court are in the nature of a rehearing. The theory regarding appeal is that the suit is continued in the Court of appeal and reheard there.<sup>2</sup>

**Requisites of appeal.**—The requisites of a valid appeal are (1) that no one can appeal from a judgment or decree unless he was a party to the action or was treated as such or is the legal representative of a party or has privity of estate, title or interest apparent on the face of the record, (2) that the appellant has an interest in the subject matter of the suit, and (3) that the appellant is prejudicially affected by the decree complained of.<sup>3</sup>

**Right of appeal.**—Right of appeal is creation of the statute and a party has no right to appeal unless he can show that the statute confers on him such a right.<sup>4</sup> Such a right must be given expressly and not by mere implication.<sup>5</sup> The right of appeal is governed by the law prevailing at the date of the institution of the suit and not by the law which prevails at the decision of the suit or the filing of appeal for as already explained above an appeal is only a continuation of the suit in the higher Court.<sup>6</sup>

1. 6 N. W. P. H. C. R. 19.
2. 40 M. 1; 24 M. L. J. 117; 12 P. W. R. 1919.
3. 11 C. L. J. 580.
4. 38 I. C. 818; 40 C. 21.
5. 40 C. 21.
6. 111 I. C. 6—1928 A. 487.

**Onus.**—In an appeal the *onus* is on the appellant to show that the judgment of the Court below is wrong.<sup>1</sup> To discharge this burden it is not enough to show that the decision of the Court below might have been different but it must be shown that it ought to have been necessarily different. Therefore where all that the appellant can show is nicely balanced calculations which lead to the equal possibility of the judgment on either side being right, he cannot be said to have discharged the *onus*.<sup>2</sup>

**Presentation of appeal.**—In case of first appeals ~~the memo of appeal~~ should be accompanied by a copy of the decree appealed against and the judgment on which it is based (Order XLI, rule, 1 Civil Procedure Code) and in case of second appeals the memo should be accompanied not only by the decree and the judgment of the lower appellate Court but the judgment of the trial Court too. (*Vide* rule 2, order XLI framed by the High Court).

**Power to dispense with copies.**—Copy of the decree appealed against must necessarily be filed with the memo of appeal and an appellate Court has no power to dispense with it,<sup>3</sup> But when an appeal against a decree is pending no copy of decree need be filed in the *cross appeal*.<sup>4</sup> It is, however, ~~within the competence of the Court to dispense with~~ a copy of the judgment on which the decree appealed against is based. (*Vide* Order XLI, rule 1 Civil Procedure Code). In case of second appeals the High Court is competent to dispense with a copy of the judgment. But such a power should ordinarily be exercised at the first hearing.<sup>5</sup> Such a power may be exercised expressly or by implication. Thus where a memo of appeal stated that the copy of the judgment would be given afterwards but the appeal was admitted on presentation and a notice was ordered to be issued to the respondent, it must be held that the Court had dispensed with the copy of judgment.<sup>6</sup>

**Copy of judgment on preliminary issues.**—Formerly there was a conflict of authority so far as the Lahore High Court was concerned as to whether or not it was necessary to file a copy of the judgment on a

1 106 P. R. 1917.

2 65 I. C. 305 (P. C.); 90 I. C. 566.

3 7 Lah. 539. 100 I. C. 80.

4 27 P. L. R. 745.

5 105 I. C. 653.

6 104 I. C. 545.

preliminary issue when a copy of the final judgment had been filed with the memo. of appeal. The conflict has, however, been set at rest by a recent pronouncement of a Full Bench of the said High Court holding that it was not necessary to do so.<sup>1</sup>

**Save as otherwise provided for.**

**Appeal from decree or order**—A decree is ordinarily appealable. But only those orders are appealable which have been so declared by Section 104 and Order XLIII, Rule 1, Civil Procedure Code. A decree passed by consent of the parties has been made unappealable<sup>2</sup>. Similarly no appeal is allowed from a decree passed on an award except in so far as the decree is in excess of or not in accordance with the award.<sup>3</sup> But a decree which is based on an award which is a nullity is open to appeal, *e. g.*, where there is no legal appointment of arbitrators.<sup>4</sup> Though no appeal lies from a decree passed on consent, an order recording a compromise is appealable even though a decree may have been passed.<sup>5</sup> Decrees made under Provincial Small Cause Courts Act are not open to appeal.

**Preliminary and final decree.**—A party who has failed to appeal against a preliminary decree cannot attack its correctness in his appeal from the final decree.<sup>6</sup> Nor can a person appeal against the preliminary decree alone after the final decree has been passed.<sup>7</sup> But there is nothing in law to bar a person from preferring a joint or single appeal against preliminary as well as final decree if he is within limitation. Where an appeal is filed from a preliminary decree and during the pendency of this appeal a final decree is passed but is not appealed against, if the appeal from the preliminary decree is accepted the final decree also is swept away with it.<sup>8</sup>

**Shall lie to High Court.**—The significance of the word “shall” is that it is the duty of the appellate Court to entertain an appeal if so provided in the statute. It is an appellant’s right to obtain a decision in his favour if the grounds are made out and the appellate Court is bound

1. 115 I. C. 753-1929. Lah 481-I. B. 1929. Lah. 417.
2. S. 96 (3) C. P. C.
3. O. A. 529 of 1927
4. 28 P. R. 1916 11: P. W. R. 1916.
5. 86 P. R. 1914.
6. S. 97, C. P. C.
7. 107 I. C. 610.
8. 93 I. C. 851.

to give effect to the provisions of law, though it may work hardship in certain cases.<sup>1</sup>

**Additional Judge.**—An appeal from the decision of an Additional Judge who has never been gazetted as a Subordinate Judge lies to the High Court and not to the Court of the District Judge whatever the value of the suit may be.<sup>2</sup> But when a Subordinate Judge has been invested with the powers of an Additional Judge he exercises his powers of Additional Judge in respect of those functions only which have been assigned to him by the District Judge. In other cases he is deemed to be exercising his powers as a Subordinate Judge. Therefore in cases under the former class the appeal would lie to the High Court irrespective of the valuation of the suit and in cases over which jurisdiction is exercised as a Subordinate Judge the appeal would lie to the High Court if the value of the suit exceeds Rs. 5,000. In other cases the forum of appeal would be the Court of the District Judge.<sup>3</sup>

**Power of appellate Court.**—An appellate Court has all the powers of an original Court.<sup>4</sup> It may dismiss an appeal for default for appellant's failure to appear on the date of hearing or failing to pay the process fee in time.<sup>5</sup> It may restore an appeal dismissed in default.<sup>6</sup> Similarly it may hear an appeal *ex-parte* on defendant's failure to appear on the date fixed or may rehear him on his showing that he was prevented by a sufficient cause from appearing on the appointed date.<sup>7</sup> It may adjourn a hearing and implead as parties persons appearing to be interested in the result of the appeal.<sup>8</sup> It may remand a case to the trial Court for decision on merits if it was decided by that Court on a preliminary issue or may frame fresh issues and refer to the trial Court for findings on them.<sup>9</sup> It has wide powers to admit further evidence.<sup>10</sup> But as a rule it will not admit further evidence unless the Court from whose decree the appeal is filed has refused to admit evidence which should have been admitted or

1. 66 P. R. 1904
2. 46 P. R. 1919.
3. 38 P. R. 1917.
4. S. 107, C. P. C.
5. Order XXI, rules 17, 18 C. P. C.
6. Order XXI, rule 19.
7. Order XXI, rule 21.
8. Order XXI, rule 20, C. P. C.
9. Order XXI, rules 23, 25.
10. 89 I C 721.

it requires any document to be produced or a witness to be examined to enable it to pronounce judgment.<sup>1</sup> It is not competent to a Court of appeal to set up a new case for a party in appeal.<sup>2</sup> Consequently it has been held that it is a material irregularity on the part of the Court to decide the case on a point not raised in the pleadings or framed into an issue.<sup>3</sup>

**Abatement of appeal.**—When a party dies and his legal representatives are not brought on the record within time the appeal abates automatically and it is not necessary that a formal order should be made stating that the appeal has abated.<sup>4</sup> The expression legal representatives means and includes one person as well as several persons according as they represent the whole interest of the deceased. Therefore where one of the legal representatives of the deceased is not impleaded the appeal abates in its entirety.<sup>5</sup> But where the applicant makes a *bona fide* application to bring on the record all the legal representatives known to him so far as he could ascertain them after exercise of due care and industry, he must be deemed to have sufficiently complied with the provisions of law.<sup>6</sup> Where, however, the legal representatives of the deceased are already on the record in another capacity no application need be made and the appeal will not abate.<sup>7</sup> The introduction of the representatives of a deceased party at any stage of the suit, *e. g.*, in an interlocutory application for production of books is an introduction for all stages.<sup>8</sup> It is settled law that the failure to bring the legal representatives of a *pro forma* party on the record will not result in the abatement of entire suit or appeal.<sup>9</sup> If a party on whose behalf leave to sue or be sued has been given under Order 1, rule 8 Civil Procedure Code, dies and his legal representatives are not brought on the record the suit or appeal does not abate.<sup>10</sup> But it will certainly abate if any of those whom leave has been granted dies and his legal representative is not impleaded a party.<sup>11</sup> Where several appellants appeal on a ground common to them all and one or some of them die and his or their legal represent-

1. Order XLI, rule 27, C. P. C.

2. 120 P. L. R. 1913.

3. 146 P. L. R. 1912.

4. 7 Lah. 78

5. 100 I. C. 418.

6. 7 Lah. 428.

7. 7 Lah. 399.

8. 104 P. R. 1917 P. C.

9. 1925 Lah. 651; 1926 Lah. 444; 104 P. R. 1917 P. C.; 108 I. C. 419; 29 P. L. R. 81

10. 1 Lah. 528.

11. 1 Lah. 528.

atives are not brought on the record within proper time the appeal will not abate but will proceed in its entirety.<sup>1</sup>

**Setting aside abatement.**—An application for bringing the legal representatives of deceased party on the record made after the expiry of limitation period may be treated as an application for setting aside abatement under rule 9 of Order XXII, Civil Procedure Code.<sup>2</sup> Mere ignorance regarding the fact of death has been held to be no ground for setting aside abatement.<sup>3</sup> Similarly the fact that the parties lived at a very long distance and the illiteracy of the applicant have been declared to be insufficient grounds for setting aside of abatement.<sup>4</sup> When the applicant is represented by a counsel time will not be extended unless very strong grounds are made out.<sup>5</sup> When, however, it was shown that the deceased respondent had no fixed residence and appellants were living at a long distance in a Native State, the time was extended and abatement set aside.<sup>6</sup> A *bona fide* mistake due to an error in the copy of the judgment or decree has been held to be excusable.<sup>7</sup> Though generally speaking ignorance of law is no excuse for delay in making application for bringing on record the legal representative of a deceased party it has nevertheless been held that delay due to ignorance that limitation for such applications has been curtailed by law is excusable.<sup>8</sup>

**Extent of abatement.**—The death of the one of the respondents does not necessarily result in the abatement of the appeal in its entirety. It would depend entirely upon the nature of the suit and if the suit having regard to its frame and character could proceed in the absence of the deceased there is no reason why the appeal should not ordinarily proceed against the surviving respondents.<sup>9</sup> Whether there is a partial or total abatement of appeal depends upon the nature of the consequences that follow the abatement as against the deceased party.<sup>10</sup> Therefore where in an appeal against several respondents one of them dies

1. 84 P. R. 1918; 1926 Lah. 564—94 I. C. 530.

2. 74 I. C. 17; 1928 Lah. 746.

3. 60 P. R. 1917; 67 P. R. 1919; 89 I. C. 162.

4. 80 I. C. 694; 1923 Lah. 239; 1924 Lah. 461; 1923 Lah. 132.

5. 1922 Lah. 30;

6. 5 Lah. 70

7. 41 I. C. 37

8. 41 P. R. 1915; 75 I. C. 283.

9. 1928 Lah. 572.

10. 1927 Lah. 98.



and his representatives are not impleaded the appeal would abate in its entirety if the success of the appeal would result in two conflicting decisions regarding the same subject matter.<sup>1</sup> If the interests of all the respondents are indivisible, the abatement is total even if the legal representative of only one of the respondents are not brought on record after his death.<sup>2</sup> ~~But~~ <sup>It</sup> when the liability of the respondents is joint and several the failure to bring on record the legal representatives of a deceased respondent will cause only a partial abatement.<sup>3</sup> As already stated the death of a *pro forma* party in an appeal will not result in the total abatement of appeal.<sup>4</sup>

**Appeal from abatement.**—An order dismissing a suit or appeal on the ground of its total abatement in consequence of a party's failure to bring on the record the legal representatives of a deceased party is a decree and is therefore appealable.<sup>5</sup> But an order simply deciding whether a certain person is or is not the legal representative of the deceased party is not open to appeal.<sup>6</sup> Where a Court in the exercise of its discretion extends time for bringing legal representatives of a deceased party on record the appellate Court will not interfere with the exercise of such discretion.<sup>7</sup>

**Cross-objections.**—~~Where an appeal abates, cross-objections are also swept away with it.~~<sup>8</sup>

**Execution proceedings—Death of Decree-holder.**—Where during the pendency of an execution proceedings the decree-holder dies, his legal representative cannot apply to the Court to be brought on the record of the pending application. He must put in a fresh execution application.<sup>9</sup> But if the decree-holder dies during the *pendency of an appeal* from execution proceedings the procedure relating to appeals would apply and his legal representatives can apply to be brought on the record of such appeal.<sup>10</sup>

1. 72 I. C. 2.

2. 1922 Lah. 84—65 I. C. 725

3. 1924 Lah. 348—72 I. C. 670.

4. 1925 Lah. 651—92 I. C. 261

5. 128 P. R. 1916 F. B.; 1928 Oudh 362; 1923 Cal 184.

6. 1926 Lah. 181.

7. 1924 Lah. 339—72 I. C. 424.

8. 110 I. C. 910.

9. 49 A. 509 F. B.

10. 1928 Mad. 772.

**Effect of appeal on execution proceedings.**—Under the Indian system of law an original decree is not suspended simply because an appeal has been preferred against it.<sup>1</sup> Nor is the mere fact of an appeal being filed against a decree a sufficient ground for the appellate Court to order stay of the execution of such decree.<sup>2</sup>

**Stay of execution.**—After an appeal has been filed it is only the Court of appeal that can stay execution and the executing Court has no jurisdiction under section 151 Civil Procedure Code to do the same.<sup>3</sup> No stay of execution can be ordered if no execution is pending.<sup>4</sup> Nor would a stay application lie when the decree has been fully executed.<sup>5</sup>

**Grounds for stay of execution.**—As a rule every decree-holder is entitled to reap the fruits of his decree as early as possible and therefore there must be cogent reasons for depriving him of such fruits even temporarily.<sup>6</sup> Consequently it has been repeatedly laid down that an order for stay of execution should not be made unless the Court is satisfied that the failure to do so will result in substantial loss to the judgment-debtor.<sup>7</sup> Merely putting in an affidavit containing a bare statement that substantial loss will accrue to the judgment-debtor will not suffice.<sup>8</sup> The bare fact that the decree-holder is a woman possessed of no property is not a sufficient ground for staying execution as the judgment-debtor's interest can be safeguarded by ordering security for restitution being furnished by the decree-holder.<sup>9</sup> Ordinarily where a decree for possession of immoveable property is under appeal, the disturbance of *status qua ante* does result in a substantial loss to the party in possession.<sup>10</sup> Therefore where an appeal is pending from a pre-emption decree, the vendee appellant would as a rule be granted a stay of execution.<sup>11</sup> But the execution of the decree as to costs awarded need not be stayed.<sup>12</sup> Similarly where an appeal is filed from a preliminary decree passed on the foot

1. Order XLI, rule 5, C. P. C.; 46 C. 670 P. C.
2. Order XLI, rule 5, C. P. C.
3. 1924 Lah. 602.
4. 63 I. C. 897; 25 B. 583.
5. 102 I. C. 11; 79 I. C. 1.
6. 61 I. C. 827.
7. 2 Lah. 61; 61 I. C. 897; 61 I. C. 77.
8. 61 I. C. 77.
9. 107 I. C. 780.
10. 99 I. C. 767.
11. 99 I. C. 767.
12. 1926 Lah. 605.

of a mortgage all further proceedings in the trial Court should be stayed until the disposal of the appeal.<sup>1</sup> In an appeal from decree in a suit under order 21, rule 63, Civil Procedure Code, for a declaration that certain property is not liable to attachment and sale in execution of a decree, the Court of appeal should as a rule stay execution of that decree as otherwise it would be difficult for the claimant appellant to recover the property in the event of his succeeding in the appeal.<sup>2</sup> Where an appeal is pending from a preliminary decree in a suit for dissolution a partnership and for accounts it is desirable to stay execution proceedings for otherwise the pending appeal would become useless.<sup>3</sup>

**Stay of execution sale.**—Where an appeal has been filed against a decree and the judgment-debtor applies for the stay of sale of immoveable property in the execution of the decree appealed against, the Court is bound to stay the sale on such terms as to giving security or otherwise as it thinks fit.<sup>4</sup> Such an order staying the sale takes effect from the time it is pronounced and not from the time of its official communication to the lower Court.<sup>5</sup> It must however be remembered that the mere fact that a stay of sale of immoveable property has been ordered on furnishing a particular security and that such security has been furnished does not prevent the execution of the decree in accordance with law either against the person or moveable property of the judgment-debtor.<sup>6</sup>

**Appeal.**—An order under Order XLI, rule 6, Civil Procedure Code, regarding stay of sale is appealable as a decree.<sup>7</sup>

**Letters Patent.**—The order of a Judge in Chambers refusing to stay the execution of a decree, an appeal against which is pending in the High Court is a judgment within the meaning of Clause 10 of the Letters Patent Lahore High Court and is as such open to appeal.<sup>8</sup>

1. 107 I. O. 486.
2. 15 I. C. 878.
3. 77 I. C. 327; 29 P. L. R. 262.
4. 108 I. 272; 1924 Lah. 631—75 I. C. 615.
5. 41 I. O. 752; 33 C. 927.
6. 93 I. C. 397.
7. 102 I. O. 25.
8. 77 I. C. 327.

39. (1) Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall lie --

Appeals from  
Subordinate  
Judges.

(a) to the District Judge where the value of the original suit in which the decree or order was made did not exceed five thousand rupees; and

(b) to the High Court in any other case.

(2) Where the function of receiving any appeals which lie to the District Judge under sub-section (1) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge.

(3) The High Court may by notification direct that appeals lying to the District Court from all or any of the decrees or orders passed in an original suit by any Subordinate Judge shall be preferred to such other Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly and the Court of such other Subordinate Judge shall be deemed to be a District Court for the purposes of all appeals so preferred.

#### NOTES.

**Value of the original suit.**—Value of a suit is to be regulated and governed by the averments in the plaint and has no reference to the defence set up by the defendant.<sup>1</sup> *Prima facie* it is the claim or subject matter of the claim as estimated by the plaintiff that determines the jurisdiction of a Court and that determination having given the jurisdiction, the jurisdiction continues whatever might be the result of the suit.<sup>2</sup> The value placed by the plaintiff on the subject matter of the suit and not the value as found by the Court determines the forum of appeal unless it appears that the true value

1. 10 A 524, 40 C. L. J. 150; 5 Pat 631

2. 8 B. 81; 6 Pat 597.

has been mis-stated in the plaint either purposely or through gross negligence.<sup>1</sup> Therefore where a plaintiff *bona fide* valued his suit at Rs. 7,500 but the lower Court held the value to be less than Rs. 5,000 and the plaintiff contesting that finding preferred an appeal to the High Court it was held that the value of the suit did not mean the value found by the Court and that the appeal had been rightly preferred to the High Court.<sup>2</sup> In an appeal by a defendant it is not open to the plaintiff respondent to question the correctness of valuation put by himself in the plaint and to urge that taking the correct valuation into consideration the appeal did not lie in that Court.<sup>3</sup>

(For valuation in different classes of suits the student should refer to some good commentary on the Suits Valuation Act).

40. (1) A District Judge may transfer any appeals pending before him from the decrees or orders of Subordinate Judges to any other Subordinate Judge under his administrative control competent to dispose of them.

Power to transfer to a Subordinate Judge appeals from other Subordinate Judges.

(2) The District Judge may withdraw any appeals so transferred, and either hear and dispose of it himself or transfer it to a Court under his administrative control competent to dispose of it.

(3) Appeals transferred under this section shall be disposed of subject to the rules applicable to like appeals when disposed of by the District Judge.

(4) The powers conferred by this section shall be exercised subject to such general or special orders as may from time to time be issued in this behalf by the High Court.

1. 13 A. 320; 47 A 534; 489 I. O 407.  
 2. 23 C. 536.  
 3. 2 P. R. 1915.

V. 31  
 41. (1) An appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the following grounds, namely:—

Second appeals

- (a) the decision being contrary to law or to some custom or usage having the force of law ;
- (b) the decision having failed to determine some material issue of law or custom or usage having the force of law ;
- (c) a substantial error or defect in the procedure <sup>India Act V of 1908.</sup> provided by the Code of Civil Procedure, 1908, or by any other law for the time being in force which may possibly have produced error of defect in the decision of the case upon the merits.

(2) An appeal may lie under this section from an appellate decree asse<sup>and</sup> *ex-parte*.

(3) Notwithstanding anything in sub-section (1) of this section, no appeal shall lie to the High Court from a decree passed in appeal by any Court subordinate to the High Court regarding the validity or the existence of any custom or usage unless the Judge of the Lower Appellate Court has certified that the custom or usage is of sufficient importance, and that the evidence regarding it is so conflicting or uncertain that there is such substantial doubt regarding its validity or existence as to justify such appeal :

Provided that an application under sub-section (3) of this section shall not be received after the expiration of thirty days from the date on which the decree of the Lower Appellate Court was passed, unless the applicant satisfies the

Judges that he had sufficient cause for not presenting it within that period.

Provided also that in computing the period for an appeal under sub-section (1) of this section the time during which the application under this sub-section has been pending shall be excluded.

NOTES.

**Second Appeal.**—The competency of a second appeal is not dependant on the question whether the decision of the Lower Appellate Court is based on a finding of fact or on a finding of law, for even when a decision is based on a finding of fact a second appeal will lie on one of the grounds mentioned in clauses 1 (b) and (c) of this section. Whether or not an appeal lies depends on the nature and value of the suit, a second appeal being barred by Section 42 (2) of the Act only in a suit of the nature cognizable by a Court of Small Causes where the amount or value of the subject matter of the suit does not exceed Rs. 500. Section (1) merely restricts the grounds on which a second appeal can be entertained to those mentioned in Section 41.1

**Grounds of second appeal.**—A second appeal is competent only on one or more of the three following grounds :—

(1) The decision of the Lower Appellate Court being contrary to law or a custom or usage having the force of law.

(2) The lower Appellate Court's failure to decide some material issue of law or custom or usage having the force of law:

(3) Substantial error or defect in the procedure prescribed by Civil Procedure Code or some other enactment affecting the merits of the case.

**“Contrary to law etc.”**—The term ‘law’ is not used here in its restricted sense meaning only *statute* law but in a comprehensive sense denoting general law.<sup>2</sup> The expression ‘contrary to law’ applies

1. 3 Lah. 218--68 I. C. 849 F. B. Per Martineau J.

2. 20 C. 93.

to a case where the Court wrongly applies the law to the facts found correctly, *i. e.*, without error or defect in procedure or fails or refuses to apply the law to the case.<sup>1</sup> The expression usage having the force of law means a local or family usage as distinguished from the general law.<sup>2</sup> A local usage or custom being in its nature such as might affect not only parties to the particular litigation and their privies but whole bodies of people, stands on a footing similar to a matter of law derived from other sources than usage.<sup>3</sup>

**Finding of fact.**—~~A finding of fact by the first appellate Court based upon legal evidence is final and cannot be assailed in second appeal provided there is no error or defect in the procedure.~~<sup>4</sup> This is so even if the finding is grossly erroneous and inexcusable provided always that there is legal evidence to support it however meagre it may be.<sup>5</sup> It has however been authoritatively laid down by their lordships of the Privy Council that an inference from facts found and the legal conclusions drawn from them are questions of law and therefore open to second appeal.<sup>6</sup> Questions of law and fact are sometimes difficult to disentangle. But it is settled law that the proper legal effect of a proved fact is essentially a question of law.<sup>7</sup> For instance the question regarding adverse possession is a mixed question of law and fact and although a Court of second appeal is bound to accept as conclusive a finding on a question of fact, yet the question whether from the fact found an inference that possession is adverse can be drawn is a question of law which can be assailed in second appeal.<sup>8</sup> But it must be remembered that where more inferences than one are legally open to a Court the High Court cannot in second appeal refuse to be bound by that drawn by the lower appellate Court.<sup>9</sup> A finding not based on direct evidence but on circumstantial is nevertheless a finding of fact binding on a Court of second appeal.<sup>10</sup> Where, however, there is no legal evidence whether direct or circumstantial to support a finding of fact, it is liable to be challenged and

1. 11 C. W. N. 794, 1127.
2. 20 C. 93
3. 29 M. 24.
4. 18 C. 23 P. C.; 21 C. 504 P. C.; 46 C. 189 P. C.; 101 I. C. 859 P. C.; 98 I. C. 876; 112 P. R. 1916; 89 P. R. 1917; 1927 Lah. 574.
5. 18 C. 23 P. C.; 103 I. C. 215. 112 P. R. 1916; 87 P. R. 1917.
6. 19 C. 253 P. C.; 20 C. 93 P. C.; 8 Lah. 573 P. C.; 46 C. 189 P. C.
7. 46 C. 189 P. C.
8. 60 I. C. 298; 19 C. 253 P. C.; 98 I. C. 161.
9. 97 I. C. 293; 21 B. 91
10. 70 I. C. 27.



set aside in second appeal.<sup>1</sup> Thus where a finding of fact is based on the admission of a party of which there is no trace on the record a second appeal would be competent.<sup>2</sup> Similarly a finding of fact which proceeds on erroneous assumptions and unwarranted conjectures can not be said to be a legal finding and is not binding on a Court of second appeal.<sup>3</sup> Take for instance the finding as to the ancestral nature of a property. Such a finding is clearly a finding of fact. Where such a finding is based either on no evidence whatever or has been arrived at on purely conjectural grounds it can be gone into and examined by a Court of second appeal.<sup>4</sup> Where a finding is based partly on conjectural grounds and partly on legal evidence and it is doubtful what weight the lower appellate Court would have attached to the rest of the evidence if it had avoided those erroneous assumptions, it can be set aside in second appeal.<sup>5</sup> Likewise a finding of fact based partly on inadmissible evidence can not be maintained.<sup>6</sup> Similarly a finding based on evidence which has been misunderstood or misread is open to challenge in second appeal.<sup>7</sup> Where a finding of fact contradicts another finding of fact it is open to attack in second appeal.<sup>8</sup> A finding of fact to be binding on a Court of second appeal must be a judicial decision reached on a consideration of the whole of the evidence and where it appears that all the available evidence has not been considered, the High Court will interfere with such finding in second appeal.<sup>9</sup> Thus where the lower appellate Court ignored an important piece of evidence bearing directly on the question of fact, regarding which it gave the finding the court set aside such a finding in second appeal.<sup>10</sup> Similarly where the Court of first appeal excludes from consideration a document on the erroneous ground that it is not admissible, the finding will be interfered with in second appeal.<sup>11</sup> It is not however necessary for a Court of first appeal to refer in detail to every piece of evidence on record. So long as its judgment leaves no doubt that all available evidence has been given due weight, its findings

1. 47 C. 107 P. O. 17 Cal. 875 P. O. 29 B. 1. P. O.
2. 108 I. C. 102.
3. 106 I. C. 862; 29 P. L. R. 410 103 I. C. 235; 8 Lah 30.
4. 8 L. 30; 64 I. C. 428; 45 I. C. 800.
5. 103 I. C. 235.
6. 2 Lah 271; 103 I. C. 264.
7. 61 I. C. 65.
8. 108 I. C. 521.
9. 60 I. C. 375. 1 R. 135; 38 I. C. 256; 103 I. C. 191.
10. 88 I. C. 586.
11. 108 I. C. 191.

on questions of fact can not be attacked in second appeal.<sup>1</sup> The question of value or weight to be attached to evidence is not a question that can be gone into in second appeal. Therefore it has been held that a mere alleged error in weighing evidence is no ground for second appeal.<sup>2</sup> Similarly a finding of fact can not be attacked in second appeal on the ground of insufficiency of evidence.<sup>3</sup> A finding even though it be one of fact can be set aside the second appeal on the grounds of its being indefinite or vague.<sup>4</sup>

### Questions of Law.

1. **Adverse possession.**—As already stated the question of adverse possession is mixed question of law and fact. The question whether from the facts found adverse possession is deducible is one of law.<sup>5</sup>

2. **Abandonment.**—When the question of abandonment is one of inference from facts found it is one of law, otherwise it is a question of fact.<sup>6</sup>

3. **Construction of document.**—The expression as applied to a document includes two things, namely (1) the meaning of the words and (2) their legal effect, The meaning of the words is in all cases a question of fact but the legal effect of the words when the document is a document of title is a question of law.<sup>7</sup> But misconstruction of a document which is not a document of title is not a question of law.<sup>8</sup> The question as to what construction has to be placed on a document on which the decision of the case to a large extent hinges is a question of law.<sup>9</sup>

4. **Costs.**—A second appeal on the question of costs alone is competent when the lower appellate Court has exercised its discretion regarding costs arbitrarily and not according to the general principles.<sup>10</sup>

1. 65 I. C. 475.
2. 46 O. 189; 46 I. C. 237; 72 P. B. 1016.
3. 68 I. C. 500.
4. 40 I. C. 496.
5. 19 O. 258 P. C; 60 I. C. 298.
6. 32 C. W. N. 1111; 3 LLJ. 445.
7. 80 I. C. 264; 90 I. C. 1047.
8. 67 I. C. 436.
9. 100 I. C. 577.
10. 15 A. 333; 100 I. C. 598.

5. **Dues.**—The question as to the nature of the dues is a question of law and not of fact.<sup>1</sup>

6. **Necessity.**—In a suit challenging an alienation on the score of want of necessity is both a question of fact and a question of law according to the circumstances of each case. For instance whether money borrowed to carry on a trade is for a necessary purpose or not is a question of law.<sup>2</sup> But the question whether the alienor in fact needed money for a particular necessary purpose is one of fact.<sup>3</sup>

7. **Onus.**—Wrong allocation of burden of proof is a question of law where *onus* is the determining factor in the case.<sup>4</sup>

8. **Resjudicata.**—Plea of *res judicata* is a question of law and can be a good ground for second appeal.<sup>5</sup>

9. **Presumption, failure to raise.**—Failure to raise a presumption of fact under Section 114, Evidence Act, is a good ground for second appeal.<sup>6</sup>

10. **Sufficient Cause.**—Whether or not there is sufficient cause to extend time under Section 5, Limitation Act, is a question of law.<sup>7</sup>

11. **Town or village.**—Whether the collection of houses is a town or a village is a question of law.<sup>8</sup>

12. **Shop.**—In a pre-emption case the question whether or not a property which is the subject matter of pre-emption is shop, is one of law.<sup>9</sup>

13. **Special damage.**—In a case of obstruction of public road, the question of special damage has been held to be a question of law.<sup>10</sup>

14. **Wilful neglect.**—If the question for determination is whether the facts found are sufficient to establish wilful neglect the question is one of law.<sup>11</sup> In other cases it would be one of fact.<sup>12</sup>

1. 1927 Lah. 259.
2. 19 P. R. 1915.
3. 110 P. R. 1915.
4. 1 Lah. 429.
5. 47 I. C. 685.
6. 25 A. L. J. 838.
7. 71 P. W. R. 1908.
8. 8 Lah. 857.
9. 69 P. R. 1915.
10. 60 I. C. 211.
11. 1928 Lah. 774.
12. 94 I. C. 848.

15. **Permanent Tenancy.**—The question whether or not a tenancy is permanent is a question of law as it depends upon inference to be drawn from certain facts.<sup>1</sup>

16. **Omission to examine witnesses.**—It is a substantial error or defect in procedure on the part of the lower appellate Court to refuse to examine the witnesses tendered.<sup>2</sup>

17. **Overlooking relief.**—There is a good ground for second appeal if the Court of first appeal overlooks the relief claimed in the plaint.<sup>3</sup>

18. **Change of suit.**—Permitting a plaintiff to change the nature of the suit constitutes question of law.<sup>4</sup>

19. **Raising point suo motu.**—When the Court of first appeal disposes of the case on a point taken *suo motu* without giving the parties opportunity to meet that point, a second appeal would lie on the ground of defect or error in procedure.<sup>5</sup>

20. **Judgment not legal.**—When the judgment of the lower appellate Court is based upon irrelevant matters a second appeal would lie.<sup>6</sup>

21. **Misconceiving case.**—A second appeal is allowed when the first appellate Court has misconceived the question of fact which was really for trial.<sup>7</sup>

22. **Ignoring rule of procedure.**—When the lower appellate Court has ignored the well-established principle that in a Court of appeal the *onus* is on the appellant to show that the judgment of the trial Court is wrong, second appeal would be allowed.<sup>8</sup>

23. **Recording evidence in appeal.**—It is an error or defect in procedure to admit fresh evidence in appeal without recording reasons for it or without the consent of the opposite party.<sup>9</sup>

1. 8 Lah. 578 P. O.

2. 20 O 740.

3. 21 W. R. 340 P. O.

4. 4 C. 46.

5. 43 I C. 488.

6. 23 C. 179.

7. 46 I. A. 140, 47 O. 107.

8. 106 P. R. 1917.

9. 81 I C. 999.

24. **Ex-parte appeal without notice**—When the lower appellate Court decides an appeal *ex-parte* without notice to the respondent, the decision will be reversed in second appeal.1.1

### Findings of facts.

The following are findings of fact and are not therefore liable to be challenged in second appeal.

1. **Ancestral nature of property**—Question whether or not a certain property is *ancestral*.2
2. **Adoption**.—The finding that an adoption has been proved.
3. **Bona fide**.—The question of *bona fide* or *mala fides* is a question of fact.3
4. **Benami transaction**.—A finding as to whether a transaction is a *benami* or not.4
5. **Dedication**.—The question whether the property in dispute is a Dharamsala and has been dedicated to public, religious or charitable purposes.5
6. **Fraud**.—Whether a transaction is a fraudulent preference or not is a question of fact.6 But whether the facts found justify an inference of fraud is a question of law.7
7. **Collusion**.—The question of collusive nature of a suit.8
8. **Immorality**.—The finding that a woman is leading an immoral life.9
9. **Jointness of family**.—The finding as to jointness or separation of a Hindu family.10

1. 3 Lah. 357.
2. 64 I. O. 428; 8 Lah 30.
3. 92 I. C. 602.
4. 76 I. C. 1049.
5. 1 P. R. 1919.
6. 107 I. O. 490.
7. 16 I. O. 811.
8. 3 LLJ 86.
9. 91 I. O. 797.
10. 1926 Lah. 443

10. **Legitimacy.**--A finding as to legitimacy.<sup>1</sup>

11. **Nuisance.**--A finding as to presence or absence of nuisance.<sup>2</sup>

12. **Negligence.**--A finding as to the presence or otherwise of negligence.<sup>3</sup>

13. **Intention.**--A finding as to the intention of parties is invariably one of fact.<sup>4</sup>

14. **Waiver.**--The question whether or not there has been a waiver is one of fact.<sup>5</sup>

15. **Badni transaction.**--The finding as to the *badni* or wagering nature of a contract is one of fact.<sup>6</sup>

16. **Status.**--A finding as to a party's status as tenant is one of fact.<sup>7</sup>

**Remand, appeal from.**--No right of appeal is provided from a remand under Section 151, Civil Procedure Code, or under Order XLI, rule 25, Civil Procedure Code. The validity of such an order can be impugned in second appeal against any decision which may subsequently be passed by the lower appellate Court.<sup>8</sup> But an appeal from an order of an appellate Court remanding a case under Order XLI, rule 23, Civil Procedure Code, does lie in all cases except those in which absolutely no right of second appeal against the appellate decree is given in the body of the Code or by any other law.<sup>9</sup> In the above noted case the test to determine whether a particular remand under Order XLI, rule 23, Civil Procedure Code, is open to appeal or not has been laid down by Sir Shadi Lal C. J. in the following words:--"Suppose the Court instead of making an order of remand passed a decree on the strength of the adjudication contesting the order of remand would there be a second appeal from that X decree? If a second appeal would lie from the decree then the order of remand is appealable otherwise not". Right of appeal is determined by what the Court purported to do and not by what

1. 60 I. C. 875.

2. 45 I. C. 428.

3. 107 I. C. 702.

4. 3 Lah. 389; 63 I. C. 746; 36 P. R. 1916.

5. 59 I. C. 607.

6. 73 I. C. 1032.

7. 22 P. L. R. 162.

8. 6 L. L. J. 153; 48 M. 713; 3 B. 490; 6 Pat. 160, 381.

9. 3 Lah. 218 F. B.

the Court ought to have done. Therefore where a remand purports to be made under Order XLI, rule 23, though it should have been made under rule 25 or Section 151, Civil Procedure Code, an appeal is competent.<sup>1</sup> When the appellate Court orders a remand without stating under which provision of law it is made it should be deemed to have been made under Order XLI, rule 23 and not under Section 151, Civil Procedure Code, Such a remand would, therefore, be appealable.<sup>2</sup>

**New plea in second appeal.**—Where a plea was not taken in either of the courts below it will not be permitted to be raised for the first time in second appeal.<sup>3</sup> But a pure question of law arising out of the findings of the Courts below and which can be decided without further evidence may be allowed to be taken for the first time in second appeal.<sup>4</sup> For instance the plea of *res judicata* being a question of law may be raised and entertained in second appeal even if it was not taken up in either of the Courts below.<sup>5</sup>

**Sub-section (3), object of.**—The object of the legislature by enacting this sub-section is to make exception in matters of second appeal regarding a question of custom or usage of sufficient importance and to allow an appeal on evidence also.<sup>6</sup> In a second appeal the question of custom must be confined to that set out in the certificate granted by the District Judge.<sup>7</sup>

**Certificate of custom, grant of.**—The certificate contemplated by this sub-section should be granted only when the lower appellate Court can certify that the evidence regarding custom is so conflicting or uncertain that there is such a substantial doubt regarding its existence or validity as to justify a second appeal.<sup>8</sup> Where there is absolutely no evidence regarding custom no certificate can be granted under this sub-section.<sup>9</sup> When a certificate does not comply with the requirements of this sub-section it is invalid and will be ignored.<sup>10</sup> Rejecting an application for

1. 107 I. C. 284; 1928 Lah. 753

2. 106 I. C. 842; 44 All. 176, 492.

3. 1923 Lah 53; 20 I. C. 22.

4. 44 O. 47; 66 I. C. 466.

5. 47 I. C. 685.

6. 3 Lah. 218 F. B. Per Abdul Raof J.

7. 3 Lah 344.

8. 82 P. B. 1916; 6 Lah. 338.

9. 96 I. C. 895

10. 82 P. R. 1916.

grant of custom certification with the single word "refused" is not a sufficient compliance with the provisions of this section.<sup>1</sup>

**Certificc when necessary.**--A certificate of custom is absolutely essential when a question regarding the validity or existence of a custom is involved in the second appeal.<sup>2</sup> A finding that parties are governed by custom or personal law cannot be attacked in second appeal without the requisite certificate.<sup>3</sup> A mercantile usage is a custom within the meaning of this sub-section and a certificate is necessary to contest a decision in second appeal on a question of mercantile usage.<sup>4</sup> Similarly a question relating to the grazing rights claimed by the tenants of the village over the *shamilat* land by virtue of custom, is a question of custom as contemplated by this sub-section and cannot be taken up in second appeal without the necessary certificate.<sup>5</sup> Though ordinarily a question of burden of proof is a question of law, where it involves a question of custom it cannot be agitated in second appeal without a certificate.<sup>6</sup> The question whether a particular person is or is not a legal guardian of a minor under the customary law is pre-eminently a question of custom and requires a certificate to be agitated in second appeal.<sup>7</sup> A respondent, however, is competent to agitate a question of custom in second appeal without a certificate under this sub-section.<sup>8</sup>

**Certificate when not necessary.**--When the question involved in the second appeal is not the validity or existence of a custom but whether the validity or existence of a custom was a question properly before the Court of first appeal no certificate would be needed.<sup>9</sup> It is clear that no certificate would be required when the second appeal has been lodged on the ground that the lower appellate Court has failed to determine a particular issue involving question of custom for such a ground cannot be said to be directed against a decision regarding the validity or existence of a custom and is good ground for second appeal under Section 41 (1) (c).<sup>10</sup>

1. 69 I C 425.
2. 100 P. B. 1917; 66 I. C. 493; 2. Lah. 167; 80 I. C. 527; 2 Lah. 5.
3. 34 I C 219; 47 P. R. 1918.
4. 91 I. C. 506.
5. 68 I. C. 751.
6. 2 Lah. 167.
7. 2 L. L. J 399; 1925 Lah 239.
8. 76 I. C. 10.
9. 34 P. R. 1916.
10. 1928 Lah. 267; 22 P. R. 1916.



In such a case the Court of second appeal has power to remit the case for redecision on the point of custom.<sup>1</sup> In a suit for declaration that an alienation by a widow is not binding on his reversionary rights no question of custom can be said to be involved and a second appeal would be competent without a certificate.<sup>2</sup> Where the question of custom arising in a case is well established and the parties are not at issue as to its existence there can be necessity for a certificate.<sup>3</sup> Where a judgement of the lower appellate Court proceeds on a point which was neither raised in the pleadings nor put in issue and the determination of which was not essential for the decision of the case, no certificate need be filed with the memorandum of appeal in second appeal.<sup>4</sup>

**Remand.**—There can be no appeal without the requisite certificate from an order of remand passed under Order 41, rule 23, Civil Procedure Code, where the question involved is one of custom.<sup>5</sup> But no certificate would be needed where the remand is not of the whole case under the above provision of law but only certain issues involving a question of custom are remanded. “The provision as to certificate” observed Scott Smith J. in 5 L. 268. “was only intended to apply as a condition precedent to the filing of an appeal and not as a condition precedent to the challenging of a finding on a question of custom remanded to the lower appellate Court. Once an appeal has been legally instituted in this Court, the appellant can contest at the hearing any findings of the lower appellate Court (other than findings of fact) which are against him so long as he has taken exception to them is his grounds of appeal.”

**Revision.**—The legislature has left the granting or withholding of certificate regarding custom to the discretion of the lower appellate Court and so long as that Court exercises the jurisdiction thus conferred the High Court will not interfere in revision with the exercise of such discretion.<sup>5</sup> But when the lower appellate Court refuses to grant certificate on the erroneous ground that no question of custom arose, there is a failure

1. 22 P. R. 1916.
2. 92 I. C. 725.
3. 1924 Lah. 289.
4. 9 Lah. 95.
5. 73 I. C. 650.
6. 69 I. C. 425.

to exercise jurisdiction vested in the Court by law and the High Court will certainly interfere in revision.<sup>1</sup>

**Limitation.**--When an application for grant of certificate regarding custom is filed after the expiry of thirty days, the Court to whom such application is made before dismissing the application should consider whether or not there was sufficient time for not presenting it within time.<sup>2</sup> An appeal was taken to be within time where it was filed beyond time on account of delay in obtaining a certificate and the appellant explained her delay in applying for the certificate as due to the fact that she did not know that it was necessary to file such certificate until she was so informed by a lawyer at Lahore.<sup>3</sup>

**Sub-Section (1)**--This sub-section merely restricts the grounds on which a second appeal can be entertained to those mentioned in Section 41.<sup>4</sup>

**42. (1)** No second appeal shall lie except on the grounds mentioned in section 41.

Second appeal  
on no other  
grounds.

(?) No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes when the amount or value of the subject matter of the original suit does not exceed five hundred rupees.

No second appeal in certain suits.

**Sub-Section (2).**

**Suit nature cognizable by Courts of small Causes.**--These words refer to the nature of the suit and not to the forum. Therefore where a rent suit for Rs. 250 is filed before a second class Sub-Judge having small cause powers only upto Rs. 50 and a decree is passed which is confirmed in appeal, no second appeal would be competent as the suit was of the nature of small causes.<sup>5</sup>

1. 18 P. R. 1418 ; 67 I. O. 759.

2. 93 I. O. 952.

3. 1 Lah. 245.

4. 3 Lah. 218.

5. 51 B. 387.

**Execution proceedings.**—No second appeal is competent from an order passed in execution proceedings where the value of the suit which resulted in the decree was below Rs. 500 and the amount was of a small cause nature. 1

43.                   \*                   \*                   \*                   \*

Repealed by section 2 (4) of Punjab Act, IV of 1919.

V. J. **44.** The High Court may call for the record of any case which has been decided by any Court subordinate to it and in which no appeal lies thereto, **Revision.**

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 think fit.

NOTES.

**Ingredients of the Section :—**

- (1) Revisional power is possessed by the High Court and no other Court.
- (2) The use of the word ' may ' denotes that the exercise of revisional power is discretionary with the High Court.
- (3) Revision lies from a case which has been decided.
- (4) That the case must have been decided by a Court subordinate to the High Court.
- (5) That the case must not be appealable.

1. 1928 Lah. 718.

(6) The Subordinate Court must have erred in one of the following ways :--

- (i) It must have exercised a jurisdiction not vested in it by law ; or
- (ii) It must have failed to exercise jurisdiction vested in it by law ;  
or

(iii) It must have acted in the exercise of its jurisdiction *illegally or with material irregularity* :

**Jurisdiction, meaning of.**—The term jurisdiction must be understood in its broad legal sense signifying the power of administering justice according to the means which the law has provided and subject to the limitations imposed by the law on the judicial authority.<sup>1</sup> The term must not be confined to the territorial or pecuniary limits of the powers of a Court or to the nature of the class to which the case belongs. It implies in addition the questions of this kind, the presence or absence of a positive authority or power conferred by the law upon tribunals in cases which satisfy the other conditions referred to.<sup>2</sup>

**Revisional jurisdiction, nature and extent of.**—The revisional power of the High Court is not an inherent power but is one conferred by statute.<sup>3</sup> This power, as is clear from the use of the word 'may,' is discretionary in its nature and the High Court is not bound to exercise it in every case where a lower Court has erred on a point of jurisdiction. The High Court will not interfere unless the error on the point of jurisdiction has resulted in a failure of justice.<sup>4</sup> But once the Court assumes the revisional jurisdiction conferred by this section on any of the grounds specified therein, there is no limitation imposed upon the power of the Court as to the mode of disposal. The section is intended to arm the Court with the power of remedying injustice in cases not subject to appeal under certain specified circumstances and therefore where the grounds of the jurisdiction are established and a fit case shown for the exercise of its powers, there is nothing in the section to preclude the Court from disposing of the case itself because points of fact and not points of law are involved.<sup>5</sup>

1. 7 A. 845.

2. 8 A. 519.

3. 28 A. 554.

4. 36 P. R. 1902 ; 58 P. W. R. 1912 ; 2 L.C.J. 673.

5. 41 P. R. 1898 ; 2 P. R. 1907 ; 16 P. R. 1907.

"Case" definition -- The distinction between a 'case' and a 'suit' has been clearly brought out by Sir Shadi Lal, C. J., in 5 Lah. 288 F. B. and to quote his lordship *in extenso* will facilitate the clear understanding of the distinction. "It is beyond question" observed his Lordship, "that case is not synonymous with suit. While every suit is a case it cannot be said that every case is a suit. The word case is more comprehensive expression and includes not only a suit but other proceedings which cannot be described as a suit, *e.g.*, proceedings under the Guardians and Wards Act, Probate and Administration Act, Succession Certificate Act, Provincial Insolvency Act, Religious Endowments Act, etc. But can a branch of a suit be regarded as a case within the meaning of the section? I would answer the question in the negative. Their Lordships of the Privy Council have observed in 40 M. 793 P. C., that no definition is to be found in the Code of the word case. It cannot in their Lordships' view be confined to a litigation in which there is a plaintiff who seeks to obtain particular relief in damages or otherwise against a defendant who is before the Court. It must, they think, include an *ex-parte* application such as made in this case praying that persons in the position of trustees or officials should perform their trust or discharge their official duties"

**Interlocutory orders.**—There is a serious conflict of authority as to whether an interlocutory order is a case within the meaning of this section or section 115, Civil Procedure Code, which corresponds to it. The view of the Lahore High Court is that an interlocutory order does not constitute a case within the meaning of this section and is not therefore open to revision.<sup>1</sup> The reasoning for this view is that orders passed in a pending case are not orders passed in a case which has been decided by a Subordinate Court.<sup>2</sup> A distinction has, however, been drawn as regards orders passed on applications for setting aside *ex-parte* decrees for restoration of suits dismissed in default and they have been held to be open to revision.<sup>3</sup> The view of the Allahabad High Court is in accord with that of the Lahore High Court. But Bombay, Calcutta, Madras, Patna, and Rangoon High Courts hold the contrary view. Chief Court of Oudh and Judicial Commissioner's Court at Nagpur are also of the latter view.<sup>4</sup>

1 5 Lah. 288 F. B.

2 107 I. C. 396 per Tek Chand J.

3 7 Lah. 161; 98 I. C. 830.

4 43 A. 564 F. B.; 14 C. 768; 52 C. 128; 54 C. 1098; 7 B. 341 F. B. 46 M. 574; 44 I. C. 891 (Pat.); 1 R. 231; 111 I. C. 163 (Oudh) F. B.; 106 I. C. 57 (Nagpur)

**Instances of interlocutory orders.**

1. A refusal to issue *interrogatories* for the examination of witnesses does not amount to a case but is only an interlocutory order and therefore is not open to revision according to the view adopted by the Lahore High Court.<sup>1</sup>

2. An order of a Court refusing to *stay the trial* of a suit under Section 10, Civil Procedure Code, is not revisable as it is only an interlocutory order.<sup>2</sup>

3. An order *granting an application* to sue as *pauper* is an interlocutory order and therefore not open to revision.<sup>3</sup> But in some cases it has been held that an order *rejecting* such an application is open to revision.<sup>4</sup>

4. No revision lies from an order of *remand* as it is only an interlocutory order.<sup>5</sup>

5. A decision by a Court that it has jurisdiction to try a suit is an interlocutory order and therefore not open to revision.<sup>6</sup>

6. An order setting aside an award and directing that the suit shall proceed.<sup>7</sup>

**Wrongful assumption or refusal of Jurisdiction.**—This section enables the High Court, in a case in which no appeal lies, to call for the record of any case if the Court by which the case was decided appears to have acted in the exercise of jurisdiction not vested in it by law, or to have failed to exercise jurisdiction vested in it or to have exercised its jurisdiction illegally or with material irregularity or further enables it to pass such an order in the case as it may think fit. It will thus appear that the section applies to jurisdiction alone, the irregular exercise or non-exercise of it or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved.<sup>8</sup> When a Court entertains an objection under Order XXI,

1. 69 I. C. 417 (Lah.)

2. 4 L. L. J. 425, *Contra vide* 111 I. C. 163 (Oudh) F. B.

3. 87 P. R. 1912.

4. 98 I. C. 879 (Lah.); 105 I. C. 130; 52 M. L. J. 330 *Contra* 48 A. 493; 29 P. L. R. 229.

5. 119 P. R. 1912; 14 I. O. 793 (Lah.)

6. 5 Lah. 288 F. B.

7. 26 P. L. R. 253.

8. 40 M. 798 P. C.; 75 I. O. 487.

rule 58 in execution of a mortgage decree which objection cannot be raised owing to the fact that no attachment is necessary in execution of a mortgage decree, the Court assumes a jurisdiction not vested in it by law and the order is thus open to revision.<sup>1</sup> When a Court rejects objections to an execution sale on the ground that the auction purchaser was not brought on the record within 30 days, it refuses to exercise jurisdiction vested in it by law and the order is open to revision.<sup>2</sup> An erroneous dismissal of an appeal on the ground that the agent preferring it had no authority to do so under his power of attorney amounts to failure to exercise jurisdiction vested in the Court and is therefore revisable.<sup>3</sup> Similarly where a Court with all facts before it refuses to exercise its discretionary powers, its order is liable to reversal in revision.<sup>4</sup>

**Illegal or irregular exercise of jurisdiction.**—Where a Court has jurisdiction to decide the question before it and in fact decides it, it cannot be said to have acted in the exercise of its jurisdiction illegally or with material irregularity merely because it has come to an erroneous decision. The Courts have jurisdiction to decide wrong as well as right and their decisions cannot be challenged in revision.<sup>5</sup> Material irregularity implies only the committing of an error of procedure whilst acting illegally means something more. One thing is clear, namely, that, an irregularity is something less than an illegality and before the Court will interfere, it must be shown to be material, that is an irregularity which has prejudicially affected the merits of the case. (Woodroffe & Amir Ali's Civil Procedure Code).

#### Instances of illegal or irregular exercise of jurisdiction.

1. A wrong allocation of burden of proof is a material irregularity justifying interference in revision.<sup>6</sup>

2. Dismissal of a suit for non-appearance of parties on the day fixed for delivery of judgment,<sup>7</sup>

1. 58 P. E. 1918.

2. 108 I. C. 391.

3. 99 I. C. 960.

4. 10 P. R. 1914.

5. 11 C. 6 P. C.; 40 M. 793 P. C.; 103 I. C. 701; 9 L. 309; 107 I. C. 273.

6. 94 I. C. 117; 64 I. C. 91; 41 P. R. 1898 *Contra* 92 I. C. 46.

7. 100 I. C. 472.

- ✓ 3. Giving a finding based on no evidence on the record or based on conjectural grounds.<sup>1</sup>
- ✓ 4. Failure on the part of the Court to notice statements of witnesses on record.<sup>2</sup>
- ✓ 5. Ignoring important documentary evidence or putting on it a ~~perversely erroneous interpretation~~.<sup>3</sup>
- ✓ 6. Passing a decree on a compromise entered into by a guardian *and item* of a minor party without making an enquiry as to whether such compromise was beneficial to the minor or not.<sup>4</sup>
- ✓ 7. Failure on the part of a Court to take notice of the real point in the case and to give decision on it.<sup>5</sup>
- ✓ 8. An appellate Court setting up an entirely new case for a party.<sup>6</sup>
- ✓ 9. A Court commits a material irregularity when it proceeds on a misunderstanding of the pleadings.<sup>7</sup>
- ✓ 10. A Court commits material irregularity when by taking a wholly erroneous view of the frame of the case and by misunderstanding the plaintiff's case gives a wrong decision.<sup>8</sup>
- ✓ 11. Omission to consider a question of estoppel.<sup>9</sup>
- ✓ 12. Failure or refusal to determine a question of limitation.<sup>10</sup>
- ✓ 13. A Court of appeal commits material irregularity in the exercise of its jurisdiction if it goes outside the merits and considers a technical point not raised in the original pleading.<sup>11</sup>
- ✓ 14. An order refusing to set aside an award when the reference is made in a pending case is revisable.<sup>12</sup>

- 1. 96 I. C. 247; 50 I. C. 805.
- 2. 25 P. L. R. 1916.
- 3. 106 P. R. 1908.
- 4. 105 P. R. 1889.
- 5. 106 I. C. 226.
- 6. 98 I. C. 867.
- 7. 1927 I. a. h. 44.
- 8. 13 P. R. 1910.
- 9. 60 I. C. 716.
- 10. 101 P. R. 1916; 55 I. C. 55.
- 11. 14 I. C. 1008.
- 12. 111 I. C. 115.



✓ 15. A revision is competent against a decree passed on an award when the Court which passed the decree has committed an error in procedure or has misused the jurisdiction prescribed by Civil Procedure Code.<sup>1</sup>

✓ 16. Material irregularity on the part of the Court in dealing with objections to an award of arbitrators is a good ground for revision, though it is no ground for revision that the arbitrator himself has been guilty of some misconduct and that the Court has wrongly adjudicated upon the objections raised regarding that misconduct.<sup>2</sup> Thus failure to decide the objections raised against an award has been held to be material irregularity justifying interference in revision.<sup>3</sup>

✓ 17. It is a material irregularity on the part of the arbitrator to base an award on his private enquiry unless he has been given such power in the agreement.<sup>4</sup>

18. It is a material irregularity on the part of a Court to decide the objections to an award without giving the objector notice of the date fixed for hearing objections.<sup>5</sup>

19. An arbitrator is guilty of an illegality if he receives documents from one party and bases his award upon them without affording an opportunity to the other party of seeing those documents and of meeting the conclusions deducible therefrom.<sup>6</sup>

**Error of law.**—Mere error of law is no ground for revision unless a question of jurisdiction is involved therein. It is settled law that where a Court has jurisdiction to decide a question, it cannot be said to have acted illegally or with material irregularity in the exercise of its jurisdiction merely because it has come to a wrong decision.<sup>7</sup> For instance a Court has ample powers conferred on it by Order VI, rule 17, Civil Procedure Code, to allow amendment of pleadings and where it after examining the arguments advanced on both sides grants leave to amend the plaint the High Court will not interfere with its discretion in revisions even though its conclusion

1. 189 P. R. 1902 F. B.
2. 78 P. R. 1916.
3. 103 I. C. 604.
4. 1928 Lah. 558.
5. 64 I. C. 394.
6. 64 I. C. 363.
7. 11 C. 6 P. C.

may be wrong in law.<sup>1</sup> Similarly a Court has jurisdiction to decide the question of limitation and if it after applying its mind gives a wrong decision on the point there is no illegality or material irregularity justifying interference in revision.<sup>2</sup> Misconstruction of a document is either a question of law or of fact, but not a case of material irregularity justifying interference in revision.<sup>3</sup> It was held by the Punjab Chief Court that the mere fact that a Court has in its judgment noted a decision as governing the case while in fact that decision is not applicable is not a material irregularity.<sup>4</sup> But a contrary view was expressed in an earlier ruling of the same Court where it held that the misapplication of a ruling is a material irregularity.<sup>5</sup> The former opinion, however, seems to be more correct and has also the weight of authority. Interference in revision is not right where there is no irregularity in the proceedings or error in the procedure or a misuse of jurisdiction and the decree of the Court is passed in accordance with award.<sup>6</sup> The rejection or acceptance of an award is ordinarily not open to revision as the order disposes of a question of law and thus the order even if wrong cannot be called a material irregularity.<sup>7</sup> Dismissal of an application for the amendment of a decree is not a material irregularity justifying interference in revision.<sup>8</sup> But in a recent ruling reported as 103 I. C. 737 Mr. Justice Addison has held that to amend under Section 152, Civil Procedure Code, a decree which is in accordance with the judgment is a material irregularity and the order of amendment is open to revision.

**Second application for revision.**—A second application for revision is competent where the previous one has been dismissed in default.<sup>9</sup> But where the previous application was dismissed on merits the second application is not maintainable.<sup>10</sup>

1. 103 I. C. 701.
2. 93 I. C. 855; 103 I. C. 113.
3. 108 I. C. 373; 106 P. B. 1908; 20 P. B. 1911.
4. 18 P. L. B. 1915.
5. 45 P. B. 1909.
6. 9 P. B. 1913.
7. 117 P. B. 1916; 66 P. B. 1915.
8. 26 I. C. 808.
9. 110 I. C. 833; 54 P. B. 1901 F. B.
10. 64 P. B. 1901 F. B.

**Conversion of appeal into revision.**—Where in a case not open to appeal, an appeal is filed, the High Court is competent to treat the appeal as a revision.<sup>1</sup>

**Other remedy open.**—Ordinarily High Court will not interfere in revision where another remedy is open to the petitioner.<sup>2</sup> It is the general policy of law and usual practice of the High Court to interfere on the revision side in the interests of justice only in those cases where there is no other remedy or the remedy is so gambrous or expensive that to refer the appellant to it is tantamount to denying him the relief.<sup>3</sup> Thus it has been repeatedly laid down that an application for revision against an order does not lie when the order complained of may be made the subject of an appeal from the decree in the suit.<sup>4</sup> Thus an order directing the plaintiff to make up the deficiency in Court-fee by a certain date is not open to revision because if for non-compliance with the order the Court rejects the plaint, the order of the Court rejecting the plaint would amount to a decree and as such would be appealable.<sup>5</sup> An order under Order XXI, rules 98, 99, 101, Civil Procedure Code, is not open to revision because the party aggrieved has a right to bring a suit under Order XXI, rule 63 of the same Code.<sup>6</sup> But when the other remedy open to the aggrieved party is of a doubtful nature the High Court will not refuse to exercise its discretionary revisional jurisdiction.<sup>7</sup> Although ordinarily High Court will not interfere in revision where another remedy is open to the petitioner there is nothing in law which can prohibit it from interfering where grave injustice might have been done.<sup>8</sup>

**Delay.**—Where a petition for revision is filed after a long time from the date of the order complained and no satisfactory explanation is forthcoming for the delay, the High Court will not entertain the petition.<sup>9</sup>

**Cross-objection.**—A respondent in a revision petition is not entitled to file cross-objections.<sup>10</sup>

1. 45 P L R. 1915.
2. 21 P. R. 1898; 99 P. R. 1915.
3. 76 P. R. 1908
4. 64 P R. 1905.
5. 69 P.R. 1912; 120 P.E. 1919; 82 P R 1911.
6. 128 P.L.R. 1911.
7. 18 A. 143; 80 P.L.R. 1901
8. 67 I.C. 945.
9. 18 I.C. 795 Lah.
10. 14 I.C. 562 Lah.

**Ex-parte decree, setting aside of.**—It has been repeatedly held by the Lahore High Court that an order setting ~~aside~~<sup>aside</sup> an *ex-parte* decree is revisable.<sup>1</sup> Thus it has been laid down that where a Court entertains an application for setting aside an *ex-parte* decree after the expiry of the period of limitation it illegally assumes jurisdiction not vested in it by law.<sup>2</sup> But it is submitted that the soundness of this view is open to doubt. It is true that in such a case there is an illegal assumption of jurisdiction not vesting in Court but the law is well settled that the High Court will not interfere in revision when another remedy is open to the petitioner or when the order complained of can be attacked in appeal from the decree passed in the suit. Now in case where an *ex-parte* decree is set aside if the decision goes against the plaintiff he can in his grounds of appeal challenge the competency of the trial Court to set aside the *ex-parte* decree. Where the lower appellate Court on an appeal from an order refusing to set aside an *ex-parte* decree has misunderstood and misapplied the law it commits a material irregularity justifying interference in revision.<sup>3</sup>

**Suit dismissed in default, restoration of.**—It is well settled that an order restoring a suit dismissed in default is not an interlocutory and is therefore revisable.<sup>4</sup> But it must be remembered that suits or appeals dismissed for default can only be restored if sufficient cause is shown and the Courts in the absence of such sufficient cause being shown are precluded from invoking in aid their inherent powers under Section 151, Civil Procedure Code.<sup>5</sup> Where a Court restores a suit dismissed in default on an application made after the expiry of limitation it assumes jurisdiction not vested in it by law and its order restoring the suit would be set aside in revision.<sup>6</sup>

#### ✓ Sufficient Cause.

1. Where no notice is given to the plaintiff and his counsel about the adjournment there is sufficient reason for the restoration of the suit dismissed in default on such adjourned date.<sup>7</sup>

1. 7 Lab. 161; 1925 Lah. 689; 94 I. C. 117; 109 I. C. 82; 100 I. C. 936.
2. 100 I. C. 936; 109 I. C. 82; 94 I. C. 117; 1925 Lah. 689.
3. 75 I. C. 1020.
4. 107 I. C. 895.
5. 103 I. C. 425.
6. 86 I. C. 256, 616.
7. 96 I. C. 245.

- ✓ 2. Inability to attend on account of being an *indoor* patient is a sufficient cause for non-attendance and if the suit is dismissed in default it will be restored.<sup>1</sup>
- ✓ 3. Misjudgment on the part of a counsel as to when his case was probably going to be taken up, where there is no statement that he was engaged in some other case is not a sufficient cause for absence when the case is taken up.<sup>2</sup>
- ✓ 4. The mere fact that plaintiff's Pleader was engaged in another Court at the time is not sufficient ground for restoration.<sup>3</sup>
- ✓ 5. Dismissal of an application for restoration summarily without recording evidence and going into its merits is a material irregularity justifying interference in revision.<sup>4</sup>
- ✓ 6. Where a party is prevented from appearing in Court when his case is taken up for hearing, owing to the late arrival of a train, which under ordinary circumstances would have arrived in time to enable the plaintiff to appear duly, there is a sufficient cause for his non-appearance.<sup>5</sup>
- ✓ 7. When on his case being called up plaintiff runs away to call his counsel and on his returning within a few minutes finds his case dismissed in default there is a sufficient reason for the restoration of the suit.<sup>6</sup>
- ✓ 8. When the plaintiff attends the Court but fails to appear when he is called because he had gone to ease himself there is sufficient reason for his non-appearance and the suit if dismissed in default should be restored to file.<sup>7</sup>
- ✓ 9. Where a plaintiff comes from a long distance to attend and reaches the Court in time but owing to a mistake as to the Court room in which he had to appear fails to put in appearance and the suit is dismissed in default, there is sufficient ground for the restoration of the suit.<sup>8</sup>

1. 1926 Lah. 521.  
 2. 100 I.C. 793.  
 3. 101 I.C. 444.  
 4. 100 I.C. 617.  
 5. 98 I.C. 868.  
 6. 96 I.C. 821.  
 7. 96 I.C. 402.  
 8. 96 I.C. 881.

10. Where a person has been added as plaintiff by the Court, his non-appearance in pursuance of the orders of the Court cannot entail the consequence of ~~X~~ the dismissal of suit of the original plaintiff who really denied the right of the defaulting party to be added as plaintiff.<sup>1</sup>

11. Where a suit is called and dismissed in default in the plaintiff's absence and the latter appears shortly after and applies for restoration, the suit should be restored.<sup>2</sup>

**Summary dismissal.**—An application to restore a suit dismissed in default cannot be dismissed summarily. The Court must give the applicant an opportunity to substantiate his allegations in the application. Failure to do so is a material irregularity justifying interference in revision.<sup>3</sup>

**Restoration of an application for restoration or setting aside an ex-parte decree.**—Where an application for restoration of a suit dismissed in default or for setting aside an *ex-parte* decree is itself dismissed in default an application to restore such application is competent.<sup>4</sup>

**Pleader's absence.**—Where a suit is dismissed in default in the absence of both the plaintiff or appellant and his pleader, pleader's absence need not be satisfactorily explained if the plaintiff or appellant can give excuse for his own absence. If he can give a sufficient reason for his own absence he is entitled to the restoration of the suit.<sup>5</sup>

**Appeal and revision, difference between.**—In an appeal it is the right of the appellant to obtain an adjudication and one in his favour, if his grounds are made out, irrespective of the question whether substantial justice is or is not thereby dispensed in the case. A point of law or procedure may in a particular case work hardship, but in an appeal the Court is bound to give effect to it without regard to the circumstances. In cases of revision it is quite otherwise. No party has the right to obtain an adjudication and it is entirely within the discretion of the Court to interfere or not as it thinks fit. It will not interfere to perpetuate an injustice but only to promote the ends of justice. Suppose a just claim is really barred by time but is erroneously held not to be so by

1. 95 I.C. 865.

2. 77 I.C. 901.

3. 106 I.C. 821; 69 P.L.R. 1919; 27 P.L.R. 564; 100 I.C. 677.

4. 100 I.C. 313.

5. 34 P.L.R. 1910; 52 I.C. 926; 113 P.R. 1876.

the lower Court, or a forfeiture clause under a contract which would work great hardship in a particular instance, is erroneously held not to apply in such a case the Court of appeal would be obliged to enforce the law but a Court of revision would ordinarily refuse to act.<sup>1</sup>

**Revision under Punjab Courts Act and Provincial Small Cause Court Act.**—Section 115, Civil Procedure Code, is parallel to Section 44 of the Punjab Courts Act. Therefore the powers of revision under the two provisions of law are identical. But a revision under Civil Procedure Code or the Punjab Courts Act is vitally different from a revision under Section 25 of the Provincial Small Cause Court Act. The provisions of Section 115, Civil Procedure Code or 44, Punjab Courts Act do not furnish a safe guide for the exercise of revisional powers under Section 25 of the Provincial Small Cause Court Act. Powers of interference under Section 25 of the Provincial Small Cause Court Act are more plenary than under either the Civil Procedure Code or Punjab Courts Act. While any error of law or procedure in the judgment of the Small Cause Court confers revisional jurisdiction on the High Court under Section 25 of Provincial Small Cause Court Act, the interference under the other two Acts is only possible where there has been illegal assumption of jurisdiction or failure to exercise jurisdiction or illegality or material irregularity in the exercise of jurisdiction.<sup>2</sup> But revisional powers in either case are discretionary.<sup>3</sup>

**Revision under Provincial Insolvency Act.**—The provisions of Section 115, Civil Procedure Code, or Section 44 of the Punjab Courts Act cannot furnish any guide for the exercise of revisional powers under the Provincial Insolvency Act. The revisional powers of the High Court are described in Section 75 of the Act which is analogous to that of Section 25 of the Provincial Insolvency Act. Therefore the revisional powers under the two sections are identical in their scope and nature.

V 9/1  
**44-A.** (1) ~~The period of limitation for an appeal under~~  
 Period of Section 41 of this Part shall be ninety days from  
 limitation. the date of the decree appealed against,

1. 66 P. B. 1904 per Chatterji J.
2. 66 P. B. 1904; 21 B. 250
3. 21 B. 250; 19 P. B. 1901; 36 P. B. 1902.

(2) In computing this period and in all respects not herein specified the limitation of an appeal under the India Act IX of 1908. said section shall be deemed to be governed by the provisions of the Indian Limitation Act, 1908.

NOTES.

**Computing period of limitation.**—In computing the period of limitation of appeal the day on which the judgment complained of was promulgated has to be excluded. Moreover the time requisite for obtaining the copy of the decree appealed from and that of the judgment on which the decree is based shall be excluded (*vide* section 12, Indian Limitation Act, 1908). The time taken in obtaining a copy of the decree and that spent in obtaining a copy of the judgment must both be excluded except when these periods overlap each other and when in fact they overlap the time overlapped should be excluded only once.<sup>1</sup> Time requisite is determined not when the applicant chooses to take delivery of the copy but when the copy is ready for delivery provided he had notice that it would be ready on that date.<sup>2</sup> But where the copies are despatched by post, in accordance with the rules, the period intervening between their completion and despatch must also be excluded in computing the period allowed for an appeal.<sup>3</sup>

1. 8 M.L.J. 148; 12 I. C. 677.
2. 12 A. 79 and 108; 13 I. C. 850; 9 C. L. B. 293.
3. 8 Lah. 280.



## CHAPTER V.

### SUPPLEMENTARY PROVISIONS.

**45.** Except as otherwise provided by this Part, any powers that may be conferred by the High Court on any person under this part may be conferred on such person either by name or by virtue of office.

Mode of conferring powers.

**46.** Whenever any person holding an office in the service of Government who has been invested with any powers under this Part throughout any local area is transferred or posted at any subsequent time to an equal or higher office of the same nature within a like local area, he shall, unless the High Court, otherwise directs or has otherwise directed, exercise the same powers in the local area to which he is so transferred or posted.

Continuance of powers of officers.

**46-A.** The High Court may from time to time make rules consistent with this Act and any other enactment for the time being in force:—

Provisions regarding petition-writers.

- (a) declaring what persons shall be permitted to act as petition-writers in the Courts subordinate thereto;
- (b) regulating the issue of licenses to such persons, the conduct of business by them, and the scale of fees to be charged by them; and
- (c) determining the authority by which breaches of such rules shall be investigated and the penalties which may be imposed.

## NOTES.

**High Court's powers of superintendence.**—Though the rules relating to the petition-writers do not allow an appeal to the High Court from proceedings and orders held and made by the District Judges under those rules, the High Court is competent to deal with such proceedings and orders as there is nothing in the rules inconsistent with the retention by the High Court of its general powers of superintendence and control over Subordinate Civil Courts.<sup>1</sup>

**Grossly improper conduct, punishment for.**—To make a petition-writer liable to suspension or dismissal for grossly improper conduct it is necessary that he should be guilty of such conduct in his capacity of a petition-writer. Therefore a petition-writer who is writing or presenting a petition acts not in the exercise of his profession as a petition-writer but in his private capacity cannot be dismissed for grossly improper conduct under the rules relating to petition-writers.<sup>2</sup>

**47.** (1) Subject to such general orders as may be made by the local Government the High Court shall prepare a list of days to be observed in each year as holidays in the Civil Courts subordinate thereto.

(2) Every such list shall be published in the official Gazette.

## NOTES.

**Hearing cases on holidays.**—A proceeding held in a Civil Court on a holiday is not necessarily a nullity on that account. But if the Court wishes to hear the case on a Gazetted Civil holiday, it must do so with the consent of the parties concerned and cannot make them appear before itself without such consent. The exemption from appearance in Court on a Gazetted holiday is a privilege conferred by law and unless it has been waived by the person concerned no Court can of its own motion deprive him of it. Once the consent is given the Court's proceedings become

1. 42 P. R. 1888

2. *Ibid.*

legal and cannot be impeached. Nor can they be impeached except by the parties and only on the above grounds.<sup>1</sup>

**47-A.** All suits, appeals, revisions, applications, reviews, executions and other proceedings whatsoever whether Civil or Criminal pending in the Chief Court of the Punjab shall be continued and concluded in the High Court of Judicature at Lahore as if the same had been in such High Court; and the High Court of Judicature at Lahore shall have the same jurisdiction in relation to all such suits, appeals, revisions, reviews, executions, applications and other proceedings as if the same had been commenced and continued in such High Court.

**48.**

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Repealed by Section 2 (4) of Punjab Act, IV of 1919.

**49** (a) In Section 117 (2) of the Punjab Land Revenue Act, 1887, in clause (c) "Subordinate Judge" shall be substituted for "District Judge" and in clauses (d) and (e) "District Court" shall be substituted for "Divisional Court".

Amendment of the Punjab Land Revenue Act, Punjab Tenancy Act, and the Indian Court Fees Act.

(b) In section 99 (1) of the Punjab Tenancy Act, 1887, "District Judge" shall be substituted for "Divisional Judge".

(c) In section 7 (v) (b) of the Indian Court Fees Act, 1870, for the word "five" shall be substituted the word "ten".

<sup>1</sup> 55 P. F. 1898. See also 111 P. K. 1906.

**50.** For the definition of "District Judge" in section 2 (15) of the Punjab General Clauses Act, 1898, the following shall be substituted:—

Amendment of definition of District Judge in Punjab General Clauses Act, 1898, I of 1898.

"District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include the High Court in the exercise of its ordinary or extraordinary original civil jurisdiction.

**51.** In every enactment now in force, and in every appointment, order, rule, bye-law, notification of form made or issued thereunder all references to the Chief Court of the Punjab shall be construed when necessary as referring to the High Court of Judicature at Lahore.

Reference in existing enactments to Chief Court.

# LETTERS PATENT

Constituting the High Court of Judicature at Lahore for the Provinces of the Punjab and Delhi, dated the 31st March, 1919.

George the Fifth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, To all to whom these Presents shall come, greeting: Whereas by an Act of Parliament passed in the Fifth and Sixth years of our Reign and called the Government of India Act, 1915, it was amongst other things enacted that it should be lawful for Us by Letters Patent to establish a High Court of Judicature in any territory in British India whether or not included within the limits of the local jurisdiction of another High Court and to confer on any High Court so established any such jurisdiction powers and authority as were vested in or might be conferred on any High Court existing at the commencement of that Act.

And whereas the Provinces of the Punjab and Delhi are now subject to the jurisdiction of the Chief Court of the Punjab which was established by an Act of the Governor-General of India in Council, being Act No. XXIII of 1865, and was continued by later enactments and no part of the said provinces is included within the limits of the local jurisdiction of any High Court.

1. Now know ye that We, upon full consideration of the premises and of Our special grace, certain knowledge and mere motion, have thought fit to erect and establish, and by these presents

Establishment  
of High Court at  
Lahore.

We do accordingly for Us, Our heirs and successors, erect and establish, for the provinces of the Punjab and Delhi aforesaid, with effect from the date of the publication of these presents in the *Gazette of India* a High Court of Judicature, which shall be called the High Court of Judicature at Lahore and We do hereby constitute the said Court to be a Court of Record.

2. And We do hereby appoint and ordain that the High Court of Judicature at Lahore shall, until further or other provision be made by Us, or Our heirs and successors, in that behalf in accordance with section one hundred and one of the said recited Government of India Act, 1915, consist of a Chief Justice and six other Judges, the first Chief Justice being Sir Henry Adolphus Rattigan, Knight, and the six other Judges being William Chevis, Esquire, Henry Scott-Smith, Esquire, Shadi Lal, Esquire, Rai Bahadur, Walter Aubin leRossignol, Esquire, Leycester Hudson Lesli Jones, Esquire, and Alan Brice Broadway, Esquire, being respectively qualified as in the said Act is declared.

3. And We do hereby ordain that the Chief Justice and every other Judge of the High Court of Judicature at Lahore, previously to entering in the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Lieutenant-Governor of the Punjab may commission to receive it:—

“I, A. B., appointed Chief Justice (or a Judge) of the High Court of Judicature at Lahore do solemnly declare that I will faithfully perform, the duties of my office to the best of my ability, knowledge and judgment.”

4. And We do hereby grant, ordain and appoint that the High Court of Judicature at Lahore shall have and use as occasion may require, a Seal bearing a device and impression of Our Royal arms, within an exergue or label surrounding the same, with this inscription, "The Seal of the High Court at Lahore." And We Do further grant, ordain and appoint that the said seal shall be delivered to and kept in the custody of the Chief Justice and in case of vacancy of the office of Chief Justice or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice under the provisions of section one hundred and five of the Government of India Act, 1915; and We do further grant ordain and appoint that, whensoever the office of Chief Justice or of the Judge to whom the custody of the said seal be committed is vacant, the said High Court shall be, and is hereby, authorized and empowered to demand, seize and take the said seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her or their possession.

5. And We do hereby further grant, ordain and appoint that all writs, summonses, precepts, rules, orders and other mandatory process to be used, issued or awarded by the High Court of Judicature at Lahore shall run and be in the name and style of Us, or of Our heirs and successors, and shall be sealed with the seal of the said High Court.

6. And We do hereby authorize and empower the Chief Justice of the High Court of Judicature at Lahore from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed from time to time by the Lieutenant-Governor

Seal.

writs, etc. to  
issue in name of  
the Crown and  
under Seal.

Appointment of  
officers.

of the Punjab, to appoint so many and such clerks and other ministerial officers as may be found necessary for the administration of justice and the due execution of all powers and authorities granted and committed to the said High Court by these Our Letters Patent; and it is Our further will and pleasure, and do hereby, for Us, Our heirs and successors give, grant, direct and appoint, that all and every one of the officers and clerks to be appointed, as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice may, from time to time, appoint for each office and place respectively and as the Lieutenant-Governor of the Punjab, subject to the control of the Governor-General in Council, may approve of: Provided always, and it is Our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said court, so long as they hold their respective offices; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed from time to time by the Governor-General to Council, and to absent himself from the said limits during the term of such leave in accordance with the said rules.

*Admission of Advocates, Vakils and Attorneys.*

7. And We do hereby authorise and empower the High Court of Judicature at Lahore to approve, admit and enrol such and so many Advocates, Vakils and Attorneys as to the said High Court ~~may seem meet~~; and such Advocates, Vakils and Attorneys shall be and are hereby authorized to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors according as the said High Court may by its rules and directions determine and subject to such rules and directions.

Powers of High Court in admitting Advocates, Vakils and Attorneys.



## 8. And We do hereby ordain that the High Court of

Powers of High Court in making rules for the qualifications, etc. of Advocates, Vakils and Attorneys.

Judicature at Lahore shall have power to make rules from time to time for the qualification and admission of proper persons to be Advocates, Vakils and Attorneys-at-law of the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause, the said Advocates, Vakils or Attorneys-at-law, and no person whatsoever but such Advocates, Vakils or Attorneys shall be allowed to act or to plead for or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed to appear, plead or act on his own behalf or on behalf of a co-suitor.

## NOTES.

**To remove or to suspend from practice on reasonable cause.—**

An Advocate or Vakil may be struck off the rolls for an offence which has no relation whatsoever to his character as a legal practitioner, but the mere circumstance that he has been convicted of an offence does not make it imperative on the Court to remove or suspend him from practice. On the other hand it is not necessary that the act of a legal practitioner which is relied on for striking his name off the rolls, should have subjected him to anything like general infamy or imputation of bad character.1 A legal practitioner is an officer of Court and just as he enjoys special privileges he is subject to peculiar obligations not shared by ordinary citizens.2 Therefore though a legal practitioner may not like a particular measure of the legislature and is entitled to protest against it and agitate for its repeal by all lawful means, he is duty bound to obey it so long as it is the law of the land and an open defiance of it will render him liable to removal or suspension from the roll of Advocates or Vakils.3

**Procedure.—**~~Proceedings under this clause cannot be regarded as criminal in their character; they are sometimes described as quasi-criminal but only for the reason that they result in penalties.~~4 They are not of a criminal nature in the sense that the rules of procedure applicable to

1. 4 Lah. 271=76 I. C. 385 (Sp. B.)
2. *I id.*
3. *Ibid.*
4. *Ibid.*

a criminal trial such as filing of a written statement by the accused are applicable to them. Strictly speaking these proceedings are neither Civil suits nor Criminal prosecutions. The High Court exercises a special jurisdiction over legal practitioners in pursuance of the authority conferred upon it by the Letters Patent or an Act of the Legislature and has inherent power to apply such rules of procedure as may ensure a fair trial of the matter requiring adjudication. What is essential is that the parties concerned should have a proper notice and a reasonable opportunity to be heard.

*Civil Jurisdiction of the High Court.*

9. And We do further ordain that the High Court of  
 Extraordinary original Civil jurisdiction. Judicature at Lahore shall have power to remove, and to try and determine as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court subject to its superintendence, when the said High Court may think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court.

10. And We do further ordain that an appeal shall lie to  
 Appeals to the High Court from Judges of the Court. the said High Court of Judicature at Lahore from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of section 107 of the Government of India Act, or in the exercise of Criminal Jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, and that notwithstanding anything hereinbefore

provided an appeal shall lie to the said High Court, from a judgment of one Judge of the said High Court or one Judge of any Division High Court, pursuant to section 108 of the Government of India Act, made on or after the first day of February one thousand nine hundred and twenty-nine in the exercise of appellate jurisdiction in respect of decree or order made in the exercise of appellate jurisdiction by a Court to the superintendence of the said High Court, where the Judge who passed the judgment declares the case is a fit one for appeal : but that the right of appeal from other judgment of judges of the said High Court or such of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council, as hereinafter provided : ”

## NOTES.

Effect of changes. — The first amendments provided that an appeal shall lie from a judgment of one judge of the High Court only when such Judge certifies that the case is a fit one for appeal. The second amendment lays down that the law enacted by the first amendment shall be applicable to all appeals decided on or subsequent to first February 1929. The question may arise whether or not such certificate is necessary in respect of appeals decided before 1st February 1929 but after the 1st amendment came into force. The better <sup>view</sup> ~~now~~ is that no certificate is necessary in respect of such appeals when they arise out of suits instituted before 10th February 1928 as it is a well settled principle of law that the right of appeal is not a mere matter of procedure but is a vested right which inheres in a party from the commencement of the action in the Court of 1st instance. This view has the support of Calcutta and Madras High Court (1928 Lsh. 627. 55 M. L. J. notes of recent cases p. 37 32 C. W. N. 430 F. B.) But the Bombay High Court has expressed a contrary view (1928 B. 371). There can, however, be no manner of doubt that in appeals from suits instituted after 10th February 1928 a certificate would be necessary even if the appeal by the single Judge of the High Court is decided before 1st February 1929 but after 10th February 1928.

**Oral application for leave to appeal.**--An oral application to the Judge in Chambers who has disposed of the second appeal for a certificate that the case is fit one for appeal under this clause straight away at the hearing is not only competent but is preferable.<sup>1</sup>

**Application, to whom lies.**--It must be remembered that the certificate that the case is fit one for an appeal under this clause can be granted only by the Judge who has decided the appeal.<sup>2</sup>

**Judgment.**--The term judgment in this clause includes any interlocutory judgment which decides so far as the Court pronouncing it is concerned whether finally or temporarily any question materially in issue between the parties and directly affecting the subject matter in suit.<sup>3</sup> Therefore an order refusing stay of execution is a judgment within the meaning of this clause and as such open to a Letters Patent appeal.<sup>4</sup> Similarly the order of a single Judge making an *ad interim* order absolute is appealable as a judgment under this clause.<sup>5</sup>

**Grounds for appeal.**--It is not open to an appellant to take up a new point before the Letters Patent Bench. If the judgment of the Judge in Chambers is correct on all points taken up before him the Letters Patent Bench will not set aside the judgment.<sup>6</sup> But this does not mean that counsel before a Letters Patent Bench is bound to confine himself to arguments addressed to the Judge in Chambers.<sup>7</sup> Interference by a Judge in Chambers with a finding of fact by the first appellate Court is a good ground for a Letters Patent appeal.<sup>8</sup>

**Revision.**--The clause specially provides that no appeal is competent from an order of a single Judge passed in the exercise of his revisional jurisdiction.<sup>9</sup>

**Limitation.**--~~Limitation for appeal under the clause is 30 days.~~ No memorandum of appeal shall be entertained if presented after the expira-

1. 1928 B 371.
2. 1926 Rang. 1.
3. 1 Lah. 848.
4. *Ibid.*
5. 27 P. L. R. 109.
6. 89 I. C. 958 ; 55 I. C. 988.
7. 89 I. C. 958.
8. 5 L. L. J. 109.
9. 6 Lah. 250.

tion of 30 days from the date of the judgment or order appealed from unless a Judge in his discretion for good cause shown shall grant further time for the presentation of such memorandum of appeal(1). The time will not be extended under Section 4 of the Limitation Act if the 30th day expires on a holiday or on some day during the vacation(2). As copy of the judgment appealed from is not necessary from filing appeal under the clause any time spent in obtaining the copy of the order cannot be deducted in computing the period of Limitation for appeal.

11. And We do further ordain that the High Court of <sup>Appeal from other Civil Courts in the Provinces of the Punjab and Delhi.</sup> Judicature at Lahore shall be a Court of Appeal from the Civil Court of the Provinces of the Punjab and Delhi and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the Chief Court of the Punjab by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of judicature at Lahore by any law made by competent legislative authority for India.

12. And We do further ordain that the High Court of <sup>Jurisdiction as to Infants and Lunatics.</sup> Judicature at Lahore shall have the like power and authority with respect to the persons and estates of infants, idiots and lunatics within the provinces of the Punjab and Delhi as that which was vested in the Chief Court of the Punjab immediately before the publication of these presents.

*Law to be administered by the High Court.*

13. And We do further ordain that, with respect to the <sup>By the High Court in the exercise of extraordinary original civil jurisdiction.</sup> law or equity to be applied to each case coming before the High Court of Judicature at Lahore in the exercise of extraordinary original civil jurisdiction, such law or equity

1. *Vide* rules framed by the High Court regarding Letters Patent appeals.
2. 2 Lah. 127; 60 I. C. 737.

shall, until otherwise provided, be the law or equity which would have been applied to such case by any local Court having jurisdiction therein.

14. And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied by the High Court of Judicature at Lahore to each case coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

*Criminal Jurisdiction.*

15. And We do further ordain that the High Court of Judicature at Lahore shall have ordinary original criminal jurisdiction in respect of all such persons within the Provinces of Punjab and Delhi as the Chief Court of the Punjab had such criminal jurisdiction over immediately before the publication of these presents.

16. And We do further ordain that the High Court of Judicature at Lahore, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before in the due course of law.

17. And We do further ordain that the High Court of Judicature at Lahore shall have ~~extraordinary original criminal jurisdiction~~ over all persons residing in place within the jurisdiction of any Court subject to its superintendence, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any magistrate or other officer specially empowered by the Government in that behalf.

18. And We do further ordain that there shall be no appeal to the High Court of Judicature at Lahore from any sentence or order passed or made by the courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such court to reserve any point or points of law for the opinion of the said High Court.

No appeal from High Court exercising original jurisdiction. Court may reserve point law.

19. And We do further ordain that, on such point or points of law being so reserved as aforesaid, the High Court of Judicature at Lahore shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law and thereupon to alter the sentence passed by the court of original jurisdiction, and to pass such judgment and sentence as to said High Court may seem right.

High Court to review cases on points of law reserved by one or more Judges of the Court.

20. And We do further ordain that the High Court of Judicature at Lahore shall be a Court of Appeal from the Criminal Courts of the Provinces of the Punjab and Delhi and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the Chief Court of the Punjab by virtue of any law then in force or as may after that date be declared subject to appeal to the High Court of Judicature at Lahore by any law made by competent legislative authority for India.

Appeal from other Criminal Courts in the Provinces of the Punjab and Delhi.

21. And We do further ordain that the High Court of Judicature at Lahore shall be a court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges, or by any other officers

Hearing of referred cases and revision of Criminal trials.

in the Provinces of the Punjab and Delhi who were, immediately before the publication of these presents, authorized to refer cases to the Chief Court of the Punjab and to revise all such cases tried by any officer or Court possessing criminal jurisdiction in the provinces of the Punjab and Delhi, as were, immediately before the publication of these presents; subject to reference to, or revision by, the Chief Court of the Punjab.

**22.** And We do further ordain that the High Court of Judicature at Lahore shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer of Court.

High Court may direct the transfer of a case from one Court to another.

*Criminal Law.*

**23.** And We do further ordain that all persons brought for trial before the High Court of Judicature at Lahore either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a court of appeal, reference or revision charged with any offence for which provision is made by Act No. XLV of 1860 called the "Indian Penal Code," or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

Offenders to be punished under Indian Penal Code.

*Testamentary and Intestate Jurisdiction*

**24.** And We do further ordain that the High Court of Judicature at Lahore shall have the like power and authority as that which was immediately before the publication of these presents lawfully exercised within the Provinces of the Punjab and Delhi by the Chief Court of the Punjab in relation to the granting of

Testamentary and intestate jurisdiction.



probates of last wills and testaments and letters of administration of the goods, chattels, credits and all other effects whatsoever of persons dying intestate; Provided always that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India, by which power is given to any other Court to grant such probates and letters of administration.

*Matrimonial Jurisdiction.*

25. And We do further ordain that the High Court of Matrimonial jurisdiction. Judicature at Lahore shall have jurisdiction, within the Provinces of the Punjab and Delhi in matters matrimonial between Our subjects professing the Christian religion: Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court, not established by Letters Patent within the said Provinces, which is lawfully possessed of that jurisdiction.

*Powers of Single Judges and Division Courts.*

26. And We do hereby declare that any function which is hereby directed to be performed by the Single Judges and Division Courts. High Court of Judicature at Lahore, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court thereof, appointed or constituted for such purpose in pursuance of section one hundred and eight of the Government of India Act, 1915: and if such Division Court is composed of two or more Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges if there be a majority but if the Judges be equally divided, they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

It was held by a Letters Patent Bench of the Lahore High Court in 7 Lah. 179 that if the two Judges composing a Division Bench of the High Court differ in their opinion, the decision of the appeal is regulated by section 89 of the Code of Civil Procedure if the appeal is from a subordinate Court under the Code or any local or special statute, and in all other cases the decision is governed by the Letters Patent. Clause 26 of the Letters Patent has, however, been since amended so as to avoid any such occasion of equal division of opinion among the Judges composing a Bench.

*Civil Procedure.*

27. And We do further ordain that it shall be lawful <sup>Regulation of pro-  
ceedings.</sup> for the High Court of Judicature at Lahore from time to time to make rules and orders for regulating the practice of the Court and for the purpose of adopting as far as possible the provisions of the Code of Civil Procedure, being an Act, No. V of 1908, passed by the Governor-General in Council and the provisions of any law which has been or may be made, amending or altering the same, by competent legislative authority for India, to all proceedings in its testamentary, intestate and matrimonial jurisdiction, respectively.

*Criminal Procedure.*

28. And We do further ordain that the proceedings in all <sup>Regulation of pro-  
ceedings.</sup> criminal cases brought before the High Court of Judicature at Lahore shall be regulated by the Code of Criminal Procedure, being an Act, No. V of 1898, passed by the Governor-General in Council, or by such further or other laws in relation to criminal procedure as may have been or may be made by competent legislative authority for India.

*Appeals to Privy Council.*

29. And We do further ordain that any person or persons, <sup>Power to appeal in  
civil cases</sup> may appeal to Us, Our heirs or successors, in Our or their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment,

decree or order of the High Court of Judicature at Lahore made on appeal, and from any final judgment, decree or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court, from which an appeal does not lie to the said High Court under the provisions contained in the 10th clause of these presents : Provided in either case, that the sum or matter at issue is if the amount or value of not less than 10,000 rupees, or that such judgment, decree or order involves, directly or indirectly, some claim, demand or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgment, decree or order made either on appeal or otherwise as aforesaid, when the said High Court declares that the case is a fit one for appeal to Us, Our heirs or successors, in Our or their Privy Council; but subject always to such rules and order as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the Provinces of the Punjab and Delhi, except so far as the said existing rules and orders respectively are hereby varied; and subject also to such further rules and orders as We may, with that advice of Our Privy Council hereafter make in that behalf.

30. And We do further ordain that it shall <sup>be</sup> lawful for the High Court of Judicature at Lahore at its discretion, on the motion, or, if the said High Court be not sitting, then for any Judge of the said High Court upon the petition, of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree or order of the said High Court in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs and successors, in Our or their Privy Council, subject to the same rules, regulations and limitations as are herein expressed respecting appeals from final judgments, decrees and orders.

Appeal from interlocutory judgments.

31. And We do further ordain that from any judgment order or sentence of the High Court of Judicature at Lahore, made in the exercise of original criminal jurisdiction or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court, in manner provided by the 18th clause of these presents, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order or sentence to appeal to Us, Our heirs or successors, in Council, provided the said High Court declares that the case is a fit one for such appeal and that the appeal be made under such conditions as the said High Court may establish or require, but subject always to such rules and orders, as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the Provinces of the Punjab and Delhi.

32. And We do further ordain that, in all cases of judgment, decree, order or sentence of the High Court of Judicature at Lahore to Us, Our heirs or successors, in Our or their Privy Council, such High Court shall certify and transmit to Us, Our heirs or successors, in Our or their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees and orders had or made, in such cases appealed so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court. And that the said High Court shall also certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a copy of the reasons given by the Judges of such Court, or by any of such Judges, for or against the judgment or determination appealed against. And We do further ordain that the said High Court shall, in all cases of appeal to Us, Our heirs or successors conform to and execute, or cause to be executed such judgments and order as We, Our heirs or successors conform to and execute, or

Appeal in criminal cases.

Rule as to transmission of copies of evidence and other documents.

cause to be executed, such judgments and orders as We, Our heirs or successors, in Our or their Privy Council, may think fit to make in the premises, in such manner as any original judgment, decree or decretal orders, or other order or rule of the said High Court, should or might have been executed.

*Exercise of Jurisdiction elsewhere than at the usual place of sitting of the High Court.*

**33.** And We do further ordain that whenever it appears to the Lieutenant-Governor of the Punjab, subject to the control of the Governor-General in Council, convenient that the jurisdiction and power by these Our Letters Patent, or by or under the Government of India Act, 1915, vested in the High Court of Judicature at Lahore should be exercised in any place within the jurisdiction of any Court subject to the superintendence of the said High Court, other than the usual place of sitting of the said High Court, or at several such places by way of circuit, one or more Judges of the Court shall visit such place or places accordingly.

Special commission and circuits.

**34.** And We do further ordain that whenever any Judge or Judges of the High Court of Judicature at Lahore visit any place under the 33rd clause of these presents the proceedings in cases before him or them at such place shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.

Proceedings of Judges on special commission or circuit

*Delegation of Duties to Officers.*

**35.** The High Court of Judicature at Lahore may from time to time to make rules for delegating to any Registrar, Prothonotary or master or other official of the Court any judicial, quasi-judicial and non-judicial duties.

Powers to delegate duties

*Calls for records, etc., by the Government.*

36. And it is Our further will and pleasure that the High Court of Judicature at Lahore shall comply with such requisitions as may be made by the Governor-General in Council or by the Lieutenant-Governor of the Punjab for records, returns and statements, in such form and manner as he may deem proper.

High Court to comply with requisitions from Government for records, etc.

*Powers of Indian Legislatures.*

And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor-General in Legislative Council and also of the Governor General in Council under section seventy-one of the Government of India Act, 1915; and also of the Governor-General in cases of emergency under section seventy-one of that Act, and may be in all respects mended and altered thereby.

Powers of Indian Legislatures preserved.

In WITNESS thereof We have caused these Our Letters to be made Patent.

WITNESS Ourselves at Westminster the 21st day of March in the Year of Our Lord one thousand nine hundred and nineteen and in the ninth Year of Our reign.

BY WARRANT under the King's Sign Manual.

(Signed) SCHUSTER.

*[Faint handwritten signature]*

*Canopus Lodge,*

*Sindh*

*1. 9. 36*  
*18. 9. 36*

**FOR HASTY REFERENCE BARE PRINT OF  
THE PUNJAB COURTS ACT'S,  
GIVEN BELOW.**

**PUNJAB ACT VI OF 1918.**

(As amended by Punjab Acts, IV of 1919 and IX of 1922 and  
supplemented by India Act, IX of 1919.)

PASSED BY THE LIEUTENANT-GOVERNOR OF THE PUNJAB IN COUNCIL.

*(Received the assent of His Honour the Lieutenant-Governor of the  
Punjab on the 30th May, 1918 and that of His Excellency the  
Viceroy and Governor-General on the 12th June, 1918,  
and was first published in the Gazette of the  
12th July, 1918.)*

An Act to validate all things done under the Punjab Courts Act, 1914, as amended by Punjab Act, IV of 1914, to repeal the said Acts or so much of them as may be valid and to enact a law relating to Courts in the Punjab, which is free from the defect described in the preamble.

WHEREAS it appears that the Punjab Courts Act, 1914, as assented to by the Lieutenant-Governor on the 15th January 1914 and by the Governor-General on 27th April 1914, and as published in the *Punjab Gazette* on 22nd May 1914, included a clause, namely, clause (b) of sub-section (1) of section 39 which had not been passed by the Legislative Council of the Lieutenant-Governor, and whereas doubts have arisen as to the validity of things done under the said Act, and the amending Act, Punjab Act IV of 1914 :

And whereas it is expedient to validate all things done under the said Acts, to repeal the said Acts or so much of them as may be valid, and to enact a law relating to Courts in the Punjab, which is free from the defect above described, it is hereby enacted as follows :—

**PART I.**

Short title and extent. **1. (1)** This Act may be called the Punjab Courts Act, 1918.

(2) It extends to the Punjab.

**2.** In this Act—the expression “the Punjab Courts Act, 1914,” means what was published as the Punjab Courts Act, 1914, in Part V of the *Punjab Gazette*, dated 22nd May 1914 : and the expression “Punjab Act IV of 1914” means what was published as Punjab Act IV of 1914, in Part V of the *Punjab Gazette*, dated 20th November 1914.

Enactment of Provisions relating to Courts in the Punjab.

**3.** (1) (a) The provisions contained in Part II of this Act are hereby enacted, and shall be deemed to have had effect on and from the first day of August 1914.

(b) The Punjab Courts Act, 1914, and Punjab Act, IV of 1914, or so much of them as may be valid, are repealed on and from the first day of August 1914.

(2) All things done under the Punjab Courts Act, 1914, as amended by Punjab Act, IV of 1914, shall be deemed to be in every way as valid as if the Punjab Courts Act, 1914, as amended by Punjab Act, IV of 1914, had been of full force and effect on and from the first day of August, 1914 :

Provided, *firstly*, that any appeal which may have been decided by the Chief Court in the exercise of jurisdiction purporting to be exercised under section 39 (1) (b) of the Punjab Courts Act, 1914, shall be deemed to have been validly decided, and shall not be called in question by reason of anything contained in this Act :

And, *secondly*, that any appeal which before the commencement of this Act has been presented to the Chief Court under Section 39 (1) (b) of the Punjab Courts Act, 1914, and which should not have been so presented if the said subsection had run as set out in section 39 of Part II of this Act shall if it has not been decided be transferred by the said Court for disposal to the District Court having jurisdiction :

And, *thirdly*, that any appeal which would have lain to the Chief Court under section 39 (1) (b) of the Punjab Courts Act, 1914, but which lies to the District Court under the



provisions of this Act, and which if presented to the Chief Court at the commencement of this Act would be within time, shall be deemed to be presented within time if presented to the District Court within sixty days from the commencement of this Act.

## PART II.

### CHAPTER I.

#### PRELIMINARY.

1. \* \* \* \*

2. The enactments specified in the Schedule are hereby repealed to the extent mentioned in the fourth column thereof.

Repeal

Definitions

3. In this part, unless there is something repugnant in the subject or context,—

(1) "Small cause" means a suit of the nature cognizable by a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 :

India Act, IX of 1887.

(2) "Land suit" means a suit relating to land as defined in section 4 (1) of the Punjab Tenancy Act, 1887, or to any right or interest in such land.

India Act XVI of 1887.

(3) "Unclassed suit" means a suit which is neither small cause nor a land suit : and

(4) "Value" used with reference to a suit means the amount or value of the subject matter of the suit.

## CHAPTER II

\* \* \* \*

### CHAPTER III.

#### THE SUBORDINATE CIVIL COURTS.

##### CLASSES OF COURTS.

18. Besides the Courts of Small Causes established under the Provincial Small Cause Courts Act, 1887, and the Courts established under any

Classes of Courts.

other enactment for the time being in force. there shall be the following classes of Civil Courts, namely:—

- (1) The Court of the District Judge ;
- (2) The Court of the Additional Judge ; and
- (3) The Court of the Subordinate Judge.

\* \* \* \*

19. (1) For the purposes of this Part the Local Government shall divide the territories under its administration into civil districts.

(2) The Local Government may alter the limits or number of these districts.

20. The Local Government shall appoint as many persons as it thinks necessary to be District Judges, and shall post one such person to each district as District Judge of that district :

Provided that the same person may, if the Local Government thinks fit, be appointed to be District Judge of two or more districts.

21. (1) When the business pending before any District Judge requires the aid of an Additional Judge or Judges for its speedy disposal, the Local Government may appoint such Additional Judges as may be necessary.

(2) An Additional Judge so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to him, and in the discharge of those functions he shall exercise the same powers as the District Judge.

22. (1) The Local Government may after consultation with the High Court fix the number of Subordinate Judges to be appointed and when there is a vacancy in that number may, subject to the rules, if any, made under sub-section (2) appoint such person as is nominated by the High Court to the said vacancy.

(2) The Local Government may, after consultation with the High Court, make rules as to the qualifications of persons to be appointed Subordinate Judges.

23.

\* \* \* \*

**24.** The Court of the District Judge shall be deemed to be the District Court or principal Civil Court of original jurisdiction in the district.

District Court to be principal Civil Court of original jurisdiction.

**25.** Except as otherwise provided by any enactment for the time being in force, the Court of the District Judge shall have jurisdiction in original civil suits without limit as regards the value.

Original jurisdiction of District Judge in suits.

**26.** The jurisdiction to be exercised in original civil suits as regards the value by any person appointed to be a Subordinate Judge, shall be determined by the High Court either by including him in a class or grade, or otherwise as it thinks fit.

Pecuniary limits of jurisdiction of Subordinate Judges

**27. (1)** The local limits of the jurisdiction of a Subordinate Judge shall be such as the High Court may define.

Local limits of jurisdiction.

(2) When the High Court posts a Subordinate Judge to a district, the local limits of the district shall, in the absence of any direction to the contrary, be deemed to be the local limits of his jurisdiction.

**28. (1)** The Local Government may, after consultation with the High Court, appoint any person to be an Honorary Subordinate Judge, and the High Court may confer on such Judge all or any of the powers conferable under this Act on a Subordinate Judge with respect to particular classes of suits or with respect to suits generally in any local area.

Special Judges and Benches

(2) The Local Government may direct any uneven number of persons invested with powers of the same description and exercisable within the same local area under this section to sit together as a bench; and those powers shall, while the direction remains in force, be exercised by the bench so constituted, and not otherwise.

(3) The decision of the majority of the members of a bench constituted under this section shall be deemed to be the decision of the bench.

(4) Persons on whom powers are conferred under this section and the benches constituted under this section shall be deemed for the purposes of this Part, to be Subordinate Judges

**29** The High Court may, by notification in the official Gazette, confer, within such local limits as it thinks fit upon any Subordinate Judge, the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, for the trial of suits cognizable by such Courts, up to such value not exceeding five hundred rupees as it thinks fit, and may withdraw any jurisdiction so conferred.

**30.** (1) The High Court may by general or special order authorise any Subordinate Judge to take cognizance of, or any District Judge to transfer to a Subordinate Judge under his control, any of the proceedings next hereinafter mentioned or class of those proceedings any specified in such order.

(2) The proceedings referred to in sub-section (1) are the following, namely:—

(a) Proceedings under the Indian Succession Act, 1865, and the Probate and Administration Act, 1881, which cannot be disposed of by District Delegates.

(b) Proceedings under the Guardians and Wards Act, 1890.

(3) The District Judge may withdraw any such proceedings taken cognizance of by or transferred to a Subordinate Judge and may either himself dispose of them or transfer them to a Court under his control competent to dispose of them.

(4) Proceedings taken cognizance of or transferred to a Subordinate Judge as the case may be under this section shall be disposed of by him, subject to the rules applicable to like proceedings when disposed of by the District Judge.

**31.** (1) The High Court may fix the place or places at Place of sitting which any Court under this Part is to be held.

(2) The place or places so fixed may be beyond the legal limits of the jurisdiction of the Court.

(3) Except as may be otherwise provided by any order under this section, a Court under this Part may be held at any place within the local limits of its jurisdiction.

**32.** (1) Any District Judge may be suspended or re-  
Suspension and removal moved from office by the Local Government.

(2) Any Subordinate Judge may be suspended from office by the High Court subject to the confirmation of the Local Government, and removed from office by the Local Government on the report of the High Court.

**33.** Subject to the general superintendence and control Control of Courts. of the High Court, the District Judge shall have control over all the Civil Courts under this Part within the local limits of his jurisdiction.

**34.** Notwithstanding anything contained in the Code of Civil Procedure, every District Judge may by Power to distribute business written order direct that any civil business cognizable by his Court and the Courts under his control shall be distributed among Courts in such manner as he thinks fit:

Provided that no direction issued under this section shall empower any Court to exercise any powers or deal with any business beyond the limits of its jurisdiction.

**35.** (1) The ministerial officers of the District Courts and Courts of Small Causes shall be appointed, and may be suspended or removed by the Judges Ministerial officers of Sub-ordinate Courts. of those Courts, respectively.

(2) The ministerial officers of all Courts controlled by a District Court, other than Courts of Small Causes, shall be appointed, and may be suspended or removed by the District Court.

(3) Every appointment under this section shall be subject to such rules as the High Court may prescribe in this behalf,

and in dealing with any matter under this section, a Judge of a Court of Small Causes shall act subject to the control of the District Court.

(4) Any order passed by a District Judge under this section shall be subject to the control of the High Court.

**36** (1) A District Court or any Court under the control of District Court may fine, in an amount not exceeding one month's salary, any ministerial officer of the Court for misconduct or neglect in the performance of his duties.

Power to fine ministerial officers.

(2) The District Court may, on appeal or otherwise, reverse or modify any order made under sub-section (1) by any Court under its control, and may of its own motion fine up to the amount of one month's salary any ministerial officer of any Court under its control.

**37.** A District Court may, with the previous sanction of the High Court delegate to any Subordinate Judge in the district the power conferred on a District Court by sections 33, 34 and 35 of this Part and section 24 of the Code of Civil Procedure, to be exercised by the Subordinate Judge in any specified portion of the districts, subject to the control of the District Court.

Delegation of District Judge's powers. India Act, V of 1908

#### CHAPTER IV.

##### APPELLATE AND REVISIONAL JURISDICTION IN CIVIL CASES.

**38.** (1) Save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of a District Judge or Additional Judge exercising original jurisdiction shall lie to the High Court.

Appeals from District Judges or Additional Judges

(2) An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which, if the decree or order had been made by the District Judge, an appeal would not lie to that Court.

**39.** (1) Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall lie—  
Appeals from Subordinate Judges.

(a) to the District Judge where the value of the original suit in which the decree or order was made did not exceed five thousand rupees; and

(b) to the High Court in any other case.

(2) Where the function of receiving any appeals which lie to the District Judge under sub-section (1) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge.

(3) The High Court may by notification direct that appeals lying to the District Court from all or any of the decrees or orders passed in an original suit by any Subordinate Judge shall be preferred to such other Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly and the Court of such other Subordinate Judge shall be deemed to be a District Court for the purposes of all appeals so preferred.

**40.** (1) A District Judge may transfer any appeals pending before him from the decrees or orders of Subordinate Judges to any other Subordinate Judge under his administrative control competent to dispose of them.  
Power to transfer to a Subordinate Judge appeals from other Subordinate Judges

(2) The District Judge may withdraw any appeals so transferred, and either hear and dispose of it himself or transfer it to a Court under his administrative control competent to dispose of it.

(3) Appeals transferred under this section shall be disposed of subject to the rules applicable to like appeals when disposed of by the District Judge.

(4) The powers conferred by this section shall be exercised subject to such general or special orders as may from time to time be issued in this behalf by the High Court.

**41.** (1) An appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the following grounds, namely :—

- Second appeals
- (a) the decision being contrary to law or to some custom or usage having the force of law ;
  - (b) the decision having failed to determine some material issue of law or custom or usage having the force of law ;
  - (c) a substantial error or defect in the procedure provided by the Code of Civil India Act, V of 1908. Procedure, 1908, or by any other law for the time being in force which may possibly have produced error of defect in the decision of the case upon the merits.

(2) An appeal may lie under this section from an appellate decree passed *ex-parte*.

(3) Notwithstanding anything in sub-section (1) of this section, no appeal shall lie to the High Court from a decree passed in appeal by any Court subordinate to the High Court regarding the validity or the existence of any custom or usage unless the Judge of the Lower Appellate Court has certified that the custom or usage is of sufficient importance, and that the evidence regarding it is so conflicting or uncertain that there is such substantial doubt regarding its validity or existence as to justify such appeal :

Provided that an application under sub-section (3) of this section shall not be received after the expiration of thirty days from the date on which the decree of the Lower Appellate Court was passed, unless the applicant satisfies the Judges that he had sufficient cause for not presenting it within that period.

Provided also that in computing the period for an appeal under sub-section (1) of this section the time during which the application under this sub-section has been pending shall be excluded.

**42.** (1) No second appeal shall lie except on the grounds mentioned in section 41.

Second appeal  
on no other  
grounds



(2) No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes when the amount or value of the subject matter of the original suit does not exceed five hundred rupees.

No second appeal in certain suits

**43.**

\* \* \* \*

**44.** The High Court may call for the record of any case which has been decided by any Court subordinate to it and in which no appeal lies thereto, and if such Subordinate Court appears:—

Revision.

- (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.

**44-A.** (1) The period of limitation for an appeal under Section 41 of this Part shall be ninety days from the date of the decree appealed against.

Period of limitation.

(2) In computing this period and in all respects not herein specified the limitation of an appeal under the said section shall be deemed to be governed by the provisions of the Indian Limitation Act, 1908.

India Act, IX of 1908.

## CHAPTER V.

### SUPPLEMENTARY PROVISIONS.

**45.** Except as otherwise provided by this Part, any powers that may be conferred by the High Court on any person under this part may be conferred on such person either by name or by virtue of office.

Mode of conferring powers.

**46.** Whenever any person holding an office in the service of Government who has been invested with any powers under this Part throughout any local area is transferred or posted at any subsequent

Continuance of powers of officers.

time to an equal or higher office of the same nature within a like local area, he shall, unless the High Court, otherwise directs or has otherwise directed, exercise the same powers in the local area to which he is so transferred or posted.

**46-A.** The High Court may from time to time make rules consistent with this Act and any other enactment for the time being in force:—

Provisions regarding petition-writers.

- (a) declaring what persons shall be permitted to act as petition-writers in the Courts subordinate thereto;
- (b) regulating the issue of licenses to such persons, the conduct of business by them, and the scale of fees to be charged by them; and
- (c) determining the authority by which breaches of such rules shall be investigated and the penalties which may be imposed.

**47.** (1) Subject to such general orders as may be made by the local Government the High Court shall prepare a list of days to be observed in each year as holidays in the Civil Courts subordinate thereto.

Control of list of holidays.

(2) Every such list shall be published in the official Gazette.

**47-A.** All suits, appeals, revisions, applications, reviews, executions and other proceedings whatsoever whether Civil or Criminal pending in the Chief Court of the Punjab shall be continued and concluded in the High Court of Judicature at Lahore as if the same had been in such High Court; and the High Court of Judicature at Lahore shall have the same jurisdiction in relation to all such suits, appeals, revisions, reviews, executions, applications and other proceedings as if the same had been commenced and continued in such High Court.

Provisions regarding pending proceedings

**48.**

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**49** (a) In Section 117 (2) of the Punjab Land Revenue Act, 1887, in clause (c) "Subordinate Judge" shall be substituted for "District Judge" and in clauses (d) and (e) "District Court" shall be substituted for "Divisional Court".

Amendment of the Punjab Land Revenue Act, Punjab Tenancy Act, and the Indian Court Fees Act.  
India Act XVII of 1897

(b) In section 99 (1) of the Punjab Tenancy Act, 1887, "District Judge" shall be substituted for "Divisional Judge".

India Act XVI of 1887.

(c) In section 7 (v) (b) of the Indian Court Fees Act, 1870, for the word "five" shall be substituted the word "ten".

India Act VII of 1870.

**50.** For the definition of "District Judge" in section 2 (15) of the Punjab General Clauses Act, 1898, the following shall be substituted:—

Amendment of definition of District Judge in Punjab General Clauses Act, 1898, I of 1898.  
Punjab Act I of 1898

"District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include the High Court in the exercise of its ordinary or extraordinary original civil jurisdiction.

**51.** In every enactment now in force, and in every appointment, order, rule, bye-law, notification or form made or issued thereunder all references to the Chief Court of the Punjab shall be construed when necessary as referring to the High Court of Judicature at Lahore.

Reference in existing enactments to Chief Court

## THE SCHEDULE.

*(See Section 2 of this Part.)*

1	2	3	4
Year.	Number.	Subject or short title.	Extent of repeal.

ACTS OF THE GOVERNOR-GENERAL  
IN COUNCIL.

1884	XVIII	The Punjab Courts Act..	The whole.
1888	XIII	Ditto ...	Do.
1895	XIX	Ditto ...	Do.
1899	XXV	Ditto ...	Do.

ACTS OF THE LIEUTENANT-GOVERNOR  
OF THE PUNJAB IN COUNCIL.

1909	I	Punjab Courts Amend- ment Act.	The whole.
1912	I	Ditto	Do.
1913	IV	Ditto	Do.

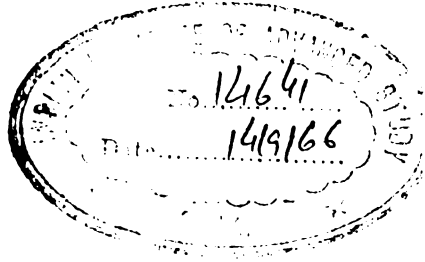
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