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THE
PARALLEL CODES OF CIVIL PROCEDURE
1882 & 1908.

WITH

NOTES SHOWING THE CHANGES, THE REASONS THEREFOR, AND THE
IMPORTANT DECISIONS WHICH HAVE GIVEN RISE TO THEM,
TOGETHER WITH ABSTRACTS AND TABLE OF CONTENTS
SHOWING THE CORRESPONDING PROVISIONS
AND FORMS OF BOTH CODES.

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Notes:—This section deals with the doctrine of *lis pendens*. The wording of the sections, old and new, is almost the same. The words "for the same relief" are not found in the new section.

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

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

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

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

Explanation IV.—A decision is final within the meaning of this section when it is such as the Court making it could not alter (except on review) on the application of either party or reconsider of its own motion. A decision liable to appeal may be final within the meaning of this section until the appeal is made.]

Explanation V.—Where persons litigate *bona fide* in respect of a private

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

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

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

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

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

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

Explanation VI.—Where persons litigate *bona fide* in respect of a public

right claimed in common for themselves and others, all persons interested in such right shall, for the purpose of this section, be deemed to claim under the persons so litigating.

Explanation VI.—Where a foreign judgment is relied on, the production of the judgment duly authenticated is presumptive evidence that the Court which made it had competent jurisdiction, unless the contrary appear on the record; but such presumption may be removed by proving [the] want of jurisdiction.

right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

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

* 12. Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.

Notes:—This section treats of *res judicata*. Though the applicability of the doctrine of *res judicata* to certain proceedings is not open to doubt, the Select Committee recognized that a 'proceeding' does not come within the language of the section; and yet this point is not expressly dealt with and no express reference to 'proceeding' is made in this section on the ground that it is likely to lead to difficulties; [vide *Golul Mendar v. Padmanand Singh*, I. L. R. 29 Cal. 707, (1902), (P. C.)] The words 'of jurisdiction' occurring in the old section are omitted as being superfluous. Explanations I and II of the new section are new. In the Bill as originally drafted the word 'former' was replaced by the word 'another' as being more in conformity with Indian decisions; but it was again restored and Expl. I was inserted on the suggestion of Sir Bhashyam Iyengar to remove a conflict of authority as to the meaning of the expression 'former suit.' Expl. II is intended to affirm the view that the competence of the jurisdiction of a Court does not depend on the right of appeal from its decision. Expl. IV of the old section as to what is a 'final decision' has been omitted on the ground that it is liable to misconstruction and that the law is well established apart from it. Expl. III of the new section corresponds to Expl. I of the old section, Expl. IV to Expl. II, Expl. V to Expl. III and Expl. VI to Expl. V. The words 'of public right' are introduced in Expl. VI of the new section to give due effect to suits relating to public nuisances enacted in s. 91 *infra*. S. 14 of the New Code corresponds to Ex. I. VI of the old section but the language has been altered; and s. 12 of the New Code is newly added on account of the transfer of some of the provisions of the Old Code to Rules.

When foreign judgment no bar to suit in British India.

14. No foreign judgment shall operate as a bar to a suit in British India—

13. A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—

(a) where it has not been pronounced by a Court of competent jurisdiction;

(b) where it has not been given on the merits of the case;

(a) if it has not been given on the merits of the case;

(b) if it appears on the face of the proceedings to be founded on

(c) where it appears on the face of the proceedings to be found-

29. The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis and promissory-notes.

Joinder of parties liable on same contract.

O. 1, R. 6. The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis and promissory-notes.

Joinder of parties liable on same contract.

Notes:—R. 6 which reproduces old s. 29 is confined to suits on contracts.

O. 1, R. 7. *Where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties.*

When plaintiff in doubt from whom redress is to be sought.

Notes:—Now. Adapted from R. S. C. O., 16, r. 7. The rule is applicable only to a case where the plaintiff is in doubt.

30. Where there are numerous parties having the same interest in one suit, one or more of such parties may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of all parties so interested. But the Court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such parties either by personal service or (if from the number of parties or any other cause such service is not reasonably practicable) by public advertisement, as the Court in each case may direct.

One party may sue or defend on behalf of all in same interest.

O. 1, R. 8. (1) Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested. But the Court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

One person may sue or defend on behalf of all in same interest.

Notes:—O. 1, r. 8 (1) corresponds to old s. 30 and r. 8 (2) to para 4 of old s. 32. The word 'persons' is substituted in the rule for the word 'parties' occurring in the old section. The phrase 'for the benefit of' has, on the suggestion of the Advocate General of Madras, been added from the English R. S. C. O. 16, r. 9, which reads 'having the same interest in one cause or matter.' The rule requires community of interest amongst numerous persons. Leave of the Court should be obtained. As to whether it should be before instituting the suit, or whether it may be granted thereafter, the Courts are in conflict. The Madras, Bombay and Allahabad High Courts have taken the latter view, whereas the High Court of Calcutta adheres to the former view; [vide *Srinivasa v. Raghava*, I. L. R. 23 Mad. 28, (1900), *Fernandez v. Rodrigues*, I. L. R. 21 Bom. 781, (1897), *Baldeo v. Bir Gir*, I. L. R. 22 All. 269, (1900), and *Oriental Bank v. Gobind*, I. L. R. 1 Cal. 604, (1883)].

31. No suit shall be defeated by reason of the misjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Suit not to fail by reason of misjoinder.

O. 1, R. 9. No suit shall be defeated by reason of the misjoinder or non-joinder of parties and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Misjoinder and non-joinder.

Within one month after such notification has been published, such provisions shall apply accordingly, and the rules so made shall have the force of law.

The Local Government may, from time to time, alter or cancel any such notification.]

Notes:—Cl. (c) of the old section relating to Presidency Small Cause Courts has not been reproduced. See headnotes at p. 252 *supra*.

Suits relating to Public Matters.

*91. (1) In the case of a public nuisance the Advocate-General, or two or more persons having obtained the consent in writing of the Advocate-General, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.

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

Notes:—This section is new and it gives a right of action where there was none under the Old Code, (see headnotes at p. 253 *supra*); and now actions for Public Nuisance may be brought, either by the Advocate-General or with his consent, irrespective of any special damage.

CHAPTER XL.

OF SUITS RELATING TO PUBLIC CHARITIES.

539. In case of any alleged breach of any express or constructive trust created for public charitable or religious purposes, or whenever the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General [acting *ex officio*] or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate-General, may institute a suit in the High Court or the District Court within the local limits of whose [civil] jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree—

- (a) appointing new trustees [under the trust];
- (b) vesting any property in the trustees [under the trust];

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

- *(a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;