

Relevant Extract of the Code of Civil Procedure, 1908.

3. Subordination of Courts. For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court.

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

7. Provincial Small Cause Courts. The following provisions shall not extend to Courts constituted under the Provincial Small Cause Courts Act, 1887 (IX of 1887), 5* * * or to Courts exercising the jurisdiction of a Court of Small Causes 6[under the said Act], that is to say,___

- (a) so much of the body of the Code as relates to__
 - (i) suits excepted from the cognizance of a Court of Small Causes;
 - (ii) the execution of decrees in such suits;
 - (iii) the execution of decrees against immoveable property; and

- (b) the following sections, that is to say,___
 - section 9,
 - sections 91 and 92,
 - sections 94 and 95 1[so far as they authorise or relate to__

 - (i) orders for the attachment of immoveable property,
 - (ii) injunctions,
 - (iii) the appointment of a receiver of immoveable property, or
 - (iv) the interlocutory orders referred to in clause (e) of section 94] and sections 96 to 112 and 115.

26. Institution of Suits. Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

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

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

96. Appeal from original decree.___ (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court.

- (2) An appeal may lie from an original decree passed exparte.
- (3) No appeal shall lie from a decree passed by the Court with the consent of parties.

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

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

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

[102. No second appeal in certain cases. No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes and in any other suit when the amount or value of the subject-matter of the original suit does not exceed the amount or value as the Provincial Government may by law determine.]

103. Power of High Court to determine issues of fact. In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue of fact necessary for the disposal of the appeal 3[which has not been determined by the lower appellate Court or which has been wrongly determined by such Court by reason of any illegality, omission, error or defect such as is referred to in subsection (1) of section 100].

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

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

- (a) from the decree or order of one Judge of a High Court 1* * *, or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, where such Judges are equally divided in opinion and do not amount in number to a majority of the whole of the Judges of the High Court at the time being ; or
- (b) from any decree from which under section 102 no second appeal lies.

[114. Review.] (1) Subject as aforesaid, any person considering himself aggrieved__

- (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed by this Code, or
- (c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

(2) Nothing contained in subsection (1) shall apply to a review of any judgment pronounced or any order made by the Supreme Court.]

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

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

- (a) the service of summonses, notices and other processes by post or in any other manner either generally or in any specified areas, and the proof of such service;
- (b) the maintenance and custody, while under attachment, or livestock and other moveable property, the fees payable for such maintenance and custody, the sale of such livestock and property, and the proceeds of such sale;
- (c) procedure in suits by way of counterclaim, and the valuation of such suits for the purposes of jurisdiction;
- (d) procedure in garnishee and charging orders either in addition to, or in substitution for, the attachment and sale of debts ;

- (e) procedure where the defendant claims to be entitled to contribution or indemnity over against any person whether a party to the suit or not;
- (f) summary procedure__
 - (i) in suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising on a contract express or implied; or
 - on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or
 - on a guarantee, where the claim against the principle is in respect of a debt or a liquidated demand only; or
 - on a trust; or
 - (ii) in suits for the recovery of immoveable property, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for nonpayment of rent, or against persons claiming under such tenant;
- (g) procedure by way of originating summons;
- (h) consolidation of suits, appeals and other proceedings;
- (i) delegation to any Registrar, Prothonotary or master or other official of the Court of any judicial, quasi judicial and non judicial duties; and
- (j) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of Civil Courts.

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

151. Saving of inherent powers of Court. Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

