

**JOINT/SELECT COMMITTEE
REPORTS OF LEGISLATIVE
ASSEMBLY - 1923**

The Code of Civil Procedure (Amendment) Bill

LEGISLATIVE DEPARTMENT.

WE, the undersigned, Members of the Select Committee to which the Bill further to amend the Code of Civil Procedure, 1908, was referred, Paper No. I (Opinions Nos. 1-15), have considered the Bill and the paper noted in the margin, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

Clause 2.—The majority of the opinions on the Bill point out that the result of excluding decrees for restitution from the scope of rule 32 of Order XXI is to make it impossible to execute any such decree in a case where the decree-holder is the husband. It would appear, however, that in fact the result would be to leave the question to be decided by the Court under section 51 of the Code under which, if no special conditions or limitations are prescribed for the execution of this class of decree, it would actually become lawful for the Court to order delivery of the person of the wife to the husband. We propose, therefore, to provide by an amendment of rule 32 (1) of Order XXI merely that decrees for restitution cannot be enforced by detention of either party in the civil prison. This will leave the attachment and sale of property as the only method by which such a decree can be executed against a wife.

Clause 3.—This clause as drafted effects merely the omission of sub-rule (1) of rule 33 of Order XXI and the substitution of certain words for the opening words of sub-rule (2). The question of the desirability of repeating the major portion of rule 33 does not, however, arise in view of the fact that we propose to retain sub-rule (1) with certain alterations which will make it clear that, once the Court has made up its mind to proceed under this rule, the operation of rule 32 will be barred. In this respect our re-draft of this clause follows the provisions of section 2 of the Matrimonial Causes Act, 1884 (47 and 48 Vic., Cap. 68). It also makes clear what was not provided for in the original draft, namely, that the order for periodical payments may be made either at the time of the passing of the decree or at any later stage.

2. The Bill was published in the Gazette of India dated the 1st October, 1921.

3. We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended.

W. M. HAILEY.

H. S. GOUR.

N. M. SAMARTH.

CAMPBELL RHODES.

K. AHMED.

DELHI:

The 20th February, 1923. }

(Words printed in italics indicate the amendments suggested by the Committee.)

A

BILL

*Further to amend the Code of Civil Procedure,
1908.*

WHEREAS it is expedient further to amend the Code of Civil Procedure, 1908; It is hereby enacted as follows:— V of 1908.

1. This Act may be called the Code of Civil Procedure (Amendment) Act, 192 .
Short title.

2. In sub-rule (1) of rule 32 of Order XXI in the First Schedule to the Code of Civil Procedure, 1908 (*hereinafter referred to as the said Order*), after the word "enforced" the following shall be inserted, namely:— V of 1908.

"in the case of a decree for restitution of conjugal rights, by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction".

3. In rule 33 of the said Order,—
Amendment of rule 33 of Order XXI in Schedule I, Act V of 1908.

(a) in sub-rule (1), after the words "passing a decree" the words "against a husband" shall be inserted, and for the words "shall not be executed by detention in prison" the words "shall be executed in the manner provided in this rule" shall be substituted; and

(b) in sub-rule (2), the words "and the decree-holder is the wife" shall be omitted.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

Report of the Select Committee on the
Bill further to amend the Code of
Civil Procedure, 1908, with the Bill
as amended.