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THE SOLDIERS LITIGATION ACT

[INDIA ACT IV, 1925.] (1st April, 1925.)

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Definitions.

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

- (a) "Court" means a civil or revenue Court ;
- (b) "Burman soldier" means any person subject to the Burma Army Act ;
- (c) "prescribed" means prescribed by rules made under this Act ; and
- (d) "proceeding" includes any suit, appeal or application.

Circumstances in which Burman soldier shall be deemed to be serving under special conditions.

3. For the purposes of this Act, a Burman soldier shall be deemed to be or as the case may be, to have been serving—

- (a) under special conditions—when he is or has been serving under war conditions, or overseas, or at any place [outside the Union]¹ ;
- (b) under war conditions—when he is or has been, at any time during the continuance of any hostilities declared by the President of the Union by notification in the Gazette to constitute a state of war for the purposes of this Act or at any time during a period of six months thereafter,—
 - (i) serving out of the Union of Burma,
 - (ii) under orders to proceed on field service,
 - (iii) serving with any unit which is for the time being mobilised, or
 - (iv) serving under conditions which, in the opinion of the prescribed authority, preclude him from obtaining leave of absence to enable him to attend a Court as a party to any proceeding, or when he is or has been at any other time serving under conditions service under which has been declared by the President of the Union by notification in the Gazette to be service under war conditions ; and
- (c) overseas—when he is or has been serving in any place the journey between which and the Union of Burma is ordinarily undertaken wholly or in part by sea.

Particulars to be furnished in plaints, applications or appeals to Court.

4. If any person presenting any plaint, application or appeal to any Court has reason to believe that any adverse party is a Burman soldier who is serving under special conditions, he shall state the fact in his plaint, application or appeal.

Power of Collector to intervene in case of unrepresented Burman soldier.

5. If any Collector has reason to believe that any Burman soldier, who ordinarily resides or has property in his district and who is a party to any proceeding pending before any Court, is unable to appear therein, the Collector may certify the facts in the prescribed manner to the Court.

Notice to be given in case of unrepresented Burman soldier.

6. If a Collector has certified under section 5, or if the Court has reason to believe, that a Burman soldier, who is a party to any proceeding pending before it, is unable to appear therein, and if the soldier is not represented by any person duly authorised to appear, plead or act on his behalf, the Court shall suspend the proceeding, and shall give notice thereof in the prescribed manner to the prescribed authority :

¹ Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

Provided that the Court may refrain from suspending the proceeding and issuing the notice if—

- (a) the proceeding is a suit, appeal or application instituted or made by the soldier, alone or conjointly with others with the object of enforcing a right of pre-emption, or
- (b) the interests of the soldier in the proceeding are, in the opinion of the Court, either identical with those of any other party to the proceeding and adequately represented by such other party or merely of a formal nature.

7. If, on receipt of a notice under section 6, the prescribed authority certifies in the prescribed manner to the Court in which the proceeding is pending that the soldier in respect of whom the notice was given is serving under special conditions, and that a postponement of the proceeding in respect of the soldier is necessary in the interests of justice, the Court shall thereupon postpone the proceeding in respect of the soldier for the prescribed period, or, if no period has been prescribed, for such period as it thinks fit.

Postponement of proceedings.

8. If, after issue of a notice under section 6, the prescribed authority either certifies that the soldier is not serving under special conditions or that such postponement is not necessary, or fails to certify, in the case of a soldier resident in the district in which the Court is situate, within two months or, in any other case, within three months from the date of the issue of the notice, that such postponement is necessary, the Court may, if it thinks fit, continue the proceeding.

Court may proceed when no certificate received.

9. When any document purporting to be signed by the commanding officer of a Burman soldier who is a party to any proceeding is produced by or on behalf of the soldier before the Court in which the proceeding is pending and is to the effect that the soldier—

Postponement of proceedings against Burman soldier on leave.

- (a) is on leave of absence for a period not exceeding two months, and is on the expiration of his leave to proceed on service under special conditions, or
- (b) is on sick leave for a period not exceeding three months, and is on the expiration of his leave to rejoin his unit with a view to proceeding on service under special conditions,

the proceeding in respect of such soldier may, in any case such as is referred to in the proviso to section 6, and shall in any other case, be postponed in the manner provided in section 7.

10. (1) In any proceeding before a Court in which a decree or order has been passed against any Burman soldier whilst he was serving under war conditions or under any special conditions, the soldier may apply to the Court which passed the decree or order for an order to set aside the same, and, if the Court, after giving an opportunity to the opposite party of being heard, is satisfied that the interests of justice require that the decree or order should be set aside as against the soldier, the Court shall, subject to such conditions, if any, as it thinks fit to impose, make an order accordingly.

Power to set aside decrees and orders passed against a Burman soldier serving under war or special conditions.

(2) No such application shall be entertained unless it is made within two months from the expiry of the first period of thirty days after the date of the decree or order, or where the summons or notice was not duly served on the applicant, after the date on which the applicant had knowledge of the decree or order, during no part of which the soldier was serving under special conditions:

Provided that the provisions of section 5 of the Limitation Act shall apply to such applications.

(3) When the decree or order in respect of which an application under subsection (1) is made is of such a nature that it cannot be set aside as against the soldier only, it may be set aside as against all or any of the parties against whom it has been made.

(4) Where a Court sets aside a decree or order under this section, it shall appoint a day for proceeding with the suit, appeal or application, as the case may be.

Modification of law of limitation where Burman soldier serving under war or special conditions is a party.

11. In computing the period of limitation prescribed by the Limitation Act, or any other law for the time being in force, for any suit, appeal or application to any Court any party to which is or has been a Burman soldier, the time during which the soldier has been serving under war conditions [since the 3rd day of September 1939]¹ shall be excluded :

Provided that this section shall not apply in the case of any suit, appeal or application instituted or made with the object of enforcing a right of pre-emption.

Power of Court to refer question as to whether service was under war or other special conditions.

12. If any Court is in doubt whether, for the purposes of section 10 or section 11, any Burman soldier is or was at any particular time serving under war or other special conditions, it may refer the point for the decision of the prescribed authority, and the certificate of that authority shall be conclusive evidence on the point.

Rule-making power.

13. The President of the Union, after consulting the High Court, may, by notification in the Gazette, make rules to provide for all or any of the following matters, namely :—

- (a) the manner and form in which any notice or certificate under this Act shall be given ;
- (b) the period for which proceedings or any class of proceedings shall be postponed under section 7 ;
- (c) the persons who shall be the prescribed authorities for the purposes of this Act ;
- (d) any other matter which is to be or may be prescribed ; and
- (e) generally, any matters incidental to the purposes of this Act.

Power to apply the provisions of the Act to other persons in the service of the Government.

14. The President of the Union may, by notification in the Gazette, direct that all or any of the provisions of this Act shall apply to any other class of persons in the service of [the Government]¹ specified in such notification in the same manner as they apply to Burman soldiers.

¹ Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.