

## ACT NO. IX OF 1918.

[PASSED BY THE INDIAN LEGISLATIVE COUNCIL.]

*(Received the assent of the Governor General on the 21st March, 1918.)*

An Act to consolidate and amend the law to provide for the special protection in respect of civil and revenue litigation of Indian soldiers serving under war conditions.

**W**HEREAS it is expedient to consolidate and amend the law to provide for the special protection in respect of civil and revenue litigation of Indian soldiers serving under war conditions; It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Soldiers (Litigation) Act, 1918. Short title and extent.

(2) It extends to the whole of British India, including British Baluchistan.

2. In this Act,—

Definitions.

“Court” means a Civil or Revenue Court;

“Indian soldier” means any person subject to VIII of 1911. the Indian Army Act, 1911;

“prescribed” means prescribed by rules made under this Act; and

“proceeding” includes suit and appeal.

3. An Indian soldier shall be deemed to be serving under war conditions—

Circumstances in which Indian soldier shall be deemed to be serving under war conditions.

(a) during the continuance of the present war and for six months thereafter,

(i) when he is serving out of India,

(ii) when

- (ii) when he is under orders to proceed on field service,
  - (iii) when the unit to which he belongs is mobilised, or
  - (iv) when, in the opinion of the prescribed authority, such soldier by reason of the state of war now existing is precluded from obtaining leave of absence to enable him to attend a Court as a party to any proceeding therein, and
- (b) after the expiration of that period, when he is serving in any place, and such service has been declared, by notification of the Governor General in Council in the Gazette of India, to be service under war conditions.

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 an Indian soldier who is serving under war conditions, he shall state the fact in his plaint, application or appeal.

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

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

Notice to be given in case of unrepresented Indian soldier.

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

Postponement of proceedings.

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 such soldier is serving under war conditions

conditions,

and that a postponement of the proceeding as against such soldier is necessary in the interests of justice, such Court shall thereupon postpone the proceeding as against such soldier for the prescribed period, or, if no period has been prescribed, for such period as it thinks fit.

8. If, after issue of a notice under section 6, the prescribed authority either certifies that such soldier is not serving under war 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 such notice that such postponement is necessary, the Court may, if it thinks fit, continue the proceeding.

Court may proceed when no certificate received within certain period.

9. When any document is produced before any Court by or on behalf of an Indian soldier who is a party to any proceeding in such Court purporting to be signed by his Commanding Officer and to the effect that such soldier—

Postponement of proceedings against Indian 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 out of India, 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 out of India,

the Court shall postpone the proceeding as against such soldier 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 Indian soldier whilst such soldier was serving under war conditions, such soldier may apply to the Court which passed the same for an order to set it aside, and, if he satisfies the Court that default after the 5th of May, 1915, has been made in complying with the provisions of section 4 or 6, the Court shall, or in any other case if the interests of justice require such a

Power to set aside decrees and orders passed against an Indian soldier serving under war conditions.

course

course, the Court, subject to such conditions (if any) as it thinks fit to impose, may make an order setting aside the decree or order as against such soldier :

Provided that—

- (a) any such application shall be made within three months from the date on which such soldier ceased to serve under war conditions ;
- (b) no decree or order shall be set aside on any such application, unless notice thereof has been served on the opposite party ; and
- (c) when the decree or order is of such a nature that it cannot be set aside as against such soldier only, it may be set aside as against all or any of the parties against whom it has been made.

(2) The provisions of section 5 of the Indian Limitation Act, 1908, shall apply to applications under this section. IX of 1908.

Modification of law of limitation in the case of Indian soldier serving under war conditions.

11. In computing the period of limitation prescribed by the Indian Limitation Act, 1908, or any other law for the time being in force for any suit, appeal or application to any Court in which the plaintiff, appellant or applicant is an Indian soldier, the time during which such soldier has been serving under war conditions, since the 4th of August, 1914, shall be excluded. IX of 1908.

Power of Court to refer question as to whether service was under war conditions or not.

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

Rule-making power.

13. The Local Government, after consulting the High Court may, by notification in the local official gazette, make rules—

- (a) prescribing the manner and form in which any notice or certificate under this Act shall be given, and the authorities to whom such notices shall be given, and by whom the powers under this Act shall be exercised ;

(b) the

- (b) the period for which proceedings or any class of proceeding shall be suspended under this Act; and
- (c) generally providing for any matters incidental to the purposes of this Act.

14. The Governor General in Council may, by notification in the Gazette of India, direct that all or any of the provisions of this Act shall apply to any other class of persons in the service of His Majesty specified in such notification in the same manner as they apply to Indian soldiers, and upon such notification such provisions shall apply accordingly.

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

15. The Indian Soldiers (Litigation) Act, 1915, is hereby repealed.

Repeal of Act XII of 1915.

XII of 1915.