

THE



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## PART VI.

### BILLS OF THE GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 1st August 1871, and was referred to a Select Committee with instructions to make their report thereon in six weeks:—

Bill No. 19 of 1871.

OUDH CIVIL COURTS BILL, 1871.

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## SCHEDULE.

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*A Bill to consolidate and amend the law relating to the Civil Courts in Oudh.*

Whereas it is expedient to consolidate and amend the law relating to the Civil Courts in Oudh;  
Preamble.  
It is hereby enacted as follows:—

## CHAPTER I.—Preliminary.

- Short title. 1. This Act may be called "The Oudh Civil Courts Act, 1871."
- It applies to all Civil Courts in Oudh, except Small Cause Courts established under Act No. XI. of 1865;
- Extent of Act.
- and shall come into force at the expiration of one month from the passing thereof.
- Commencement.
- Any appeals which may be pending at such time in Courts other than those by which they are made cognizable by this Act, shall be transferred to the Courts by which they are so cognizable, and the said Courts shall hear and dispose of appeals so transferred as if they had been instituted in the manner directed by this Act.
- Transfer of pending appeals.
- Disposal of such appeals.
- Interpretation-clause. 2. In this Act—  
"Assistant Commissioner" shall include an Extra Assistant Commissioner; and  
"Division" shall mean the local jurisdiction of the Court of the Commissioner.  
'Division.'
3. The Acts and orders mentioned in the schedule hereto annexed are repealed to the extent specified in the third column of such schedule.
- Repeal of enactments.

## CHAPTER II.—Constitution of Civil Courts.

4. There shall be eight Grades of Courts in Oudh. grades of Courts in Oudh, namely—
- (1) The Court of the Tahsildár of the second class;
  - (2) The Court of the Tahsildár of the first class;
  - (3) The Court of the Assistant Commissioner of the third class;
  - (4) The Court of the Assistant Commissioner of the second class;
  - (5) The Court of the Assistant Commissioner of the first class;
  - (6) The Court of the Deputy Commissioner;
  - (7) The Court of the Commissioner;
  - (8) The Court of the Judicial Commissioner;

Provided that the Local Government shall have the power of abolishing any of the said grades from time to time as to it may seem fit.

5. The Local Government shall fix, and may from time to time vary, the number of Courts of each grade to be established under this Act.

6. Whenever the office of Judicial Commissioner, Commissioner, Deputy Commissioner, Assistant Commissioner, or Tahsildár is vacant, or an increase to the number of any of such offices is required, the Local Government shall appoint such person as it thinks fit to fill such vacancy or additional office.

7. All existing Courts of the grades mentioned in section four and the presiding officers thereof shall be deemed to have been respectively established and appointed under this Act.

8. The general control over all the subordinate Civil Courts in any division is vested in the Commissioner, subject to the superintendence of the Judicial Commissioner.

Court under this Act to be deemed a Civil Court under Code of Civil Procedure.

9. Every Court under this Act shall

- (1) be a "Civil Court" within the meaning of the Code of Civil Procedure;
- (2) use a seal of such form and dimensions as are for the time being prescribed by the Local Government; and
- (3) be held at such place or places as may be from time to time directed by the Local Government.

10. The presiding officer of every Court under this Act, appointed after the passing thereof, shall, previously to entering on the duties of his office, make and subscribe a solemn declaration according to the following form:

Declaration of office.

"I, A. B., appointed to the office of , do solemnly declare that, in the trial and determination of all suits which may come under my cognizance, and in the execution of all the other duties of my office, I will act according to the best of my abilities and judgment without partiality, favour, or affection; that I will not directly or indirectly receive or knowingly allow any other person to receive on my behalf, any money, effects, or property, on account of any suit that may come before me for decision, or on account of any public duty which I may have to execute.

I will strictly adhere to all the rules prescribed for my guidance, and I will, in all respects, truly and faithfully execute the trust reposed in me.

(Signed) A. B.,

Judicial Commissioner (or Commissioner) or Deputy (or Assistant Commissioner) (or Tahsildár)."

Such declaration shall be made—

by a Judicial Commissioner or Commissioner, either before his predecessor in such office, or before the local Deputy Commissioner;

by a Deputy Commissioner, either before his predecessor in office, or the senior Assistant Commissioner stationed at the head quarters of the district;

by the presiding officer of any Court subordinate to that of the Deputy Commissioner, before the Deputy Commissioner.

CHAPTER III.—*Jurisdiction.*

11. The Local Government shall fix, and may from time to time vary, the local limits of the jurisdiction of any Civil Court under this Act.

Local Government to fix the local jurisdiction of any Civil Court.

The present local limits of the jurisdiction of every Civil Court shall be deemed to be fixed under this Act.

Existing local jurisdiction preserved.

*Original.*

12. The Courts mentioned in the first column of the subjoined table shall have jurisdiction in the adjudication of suits of every description to the extent specified in the second column thereof:

The Court of—	When the amount or value of the suit does not exceed—
(1). The Tahsildár of the second class.	(1.) One hundred rupees.
(2). The Tahsildár of the first class.	(2.) Three hundred rupees.
(3). The Assistant Commissioner of the third Class.	(3.) Five hundred rupees.
(4). The Assistant Commissioner of the second Class	(4.) One thousand rupees.
(5). The Assistant Commissioner of the first Class.	(5.) Five thousand rupees.

13. The Deputy Commissioner shall have power to try and determine suits of any amount or value, and may direct the business in the Court subordinate to him to be distributed among such Courts in such way as he shall think fit: Provided that no Court shall try any suit in which the amount or value of the claim shall exceed its proper jurisdiction.

14. The Commissioner may withdraw any suit instituted in any Court subordinate to him, and try such suit himself or refer it for trial to any other such Court competent in respect of the value or amount of the suit to try the same.

Power of Commissioner to withdraw suit or refer it for new trial.

15. Section twelve of Act VIII. of 1859 shall be read subject to the following modification, namely:

Modification of section twelve, Act VIII. of 1859.

(1) When the suit is for immoveable property situate within the local jurisdiction of different District Courts included in the same division, the application for authority to proceed with the suit shall be made to the Commissioner of such division.

(2) When the said Courts belong to different divisions, the application shall be made to the Commissioner of the division in which the district wherein the suit was instituted is included.

16. No suit cognizable by a Court of Small Causes shall be heard or determined in any other Court having any jurisdiction within the local limits of the jurisdiction of such Court of Small Causes.

Suit cognizable by Court of Small Causes not to be heard in any other Court.

*Appellate.*

17. (1).—Appeals from the decrees and orders in original suits and proceedings of the Courts (1), (2), (3), and (4), mentioned in section four shall, when such appeals are allowed by law, lie to the Deputy Commissioner.

Appeals.

(2.) Appeals from such decrees and orders of the Courts (5) and (6) mentioned in section four, when such appeals are allowed by law, shall lie to the Commissioner.

(3.) An appeal from any such decree or order passed by the Commissioner shall, when such appeal is allowed by law, lie to the Judicial Commissioner.

18. The Commissioner may withdraw any appeal instituted in any Deputy Commissioner subordinate to him, and try the appeal himself or refer it for trial to the Court of any other Deputy Commissioner in his division.

Power of Commissioner to withdraw appeal or refer it for new trial.

19. If the decision of a Deputy Commissioner or a Commissioner passed in regular appeal, reverse or modify the decision of the Court of original jurisdiction, the Judicial Commissioner may receive a second appeal, if, on a perusal of the grounds of appeal and of copies of the judgment of the subordinate Court, a further consideration of the case appear to him to be requisite for the ends of justice.

When Judicial Commissioner may receive second appeal.

Nothing in this section shall be deemed to affect the right of special appeal under section three hundred and seventy-two, Act VIII. of 1859, where an order passed in regular appeal confirms the decree or order of the Court of first instance.

Saving of right of special appeal under Act VIII. of 1859.

20. The memorandum of appeal must, when period within which appeal lies to the Commissioner, be presented within six weeks, the period being reckoned from and exclusive of the day on which the decision or order appealed against was passed, and also exclusive of such time as may be requisite for obtaining a copy of such decision or order, and in all other cases within the periods fixed by the Code of Civil Procedure:

#### Special Jurisdiction.

21. In any district in which a settlement of the land-revenue is in progress, all suits of whatever description arising in such district relating solely to the title or succession to land, or to the possession of land, or to any right in respect of any land, shall, during the continuance of such settlement and for such further period thereafter as the Local Government by notice to be published in the local official Gazette, may appoint, be cognizable, in the first instance, in the Courts of Revenue, and in the last resort upon appeal by the Judicial Commissioner.

22. The Local Government may, for the adjudication of such cases, invest any officer with the powers of a Court of first appeal, and to fix the time within which appeals should be preferred.

23. The proceedings of the Courts of first instance and of appeal shall be regulated by the Code of Civil Procedure, subject to the restrictions, limitations, and provisos with which the said Code was extended to Oudh, as contained in the declaration of the Governor General in Council bearing date the sixth August 1861, and by this Act.

24. No suit relating to any tenure which shall be cognizable in any Revenue Court under this Act, shall be barred under the law for the time being in force relating to the limitation of suits, if the cause of action shall have arisen on or after the thirteenth day of February 1844: Provided that this section shall not apply to any suit instituted under the Oudh Rent Act, No. XIX. of 1868.

#### CHAPTER IV.—Miscellaneous.

25. Where, in any suit or proceeding, it is necessary for any Court under this Act to decide any question regarding succession, inheritance, marriage, or caste or any religious usage or institution, the Muhammadan law in cases where the parties are Muhammadans, and the Hindú law in cases where the parties are Hindús, shall form the rule of decision, except in so far as such law has by legislative enactment been altered or abolished, or is opposed to any local custom.

In cases not provided for by the former part of this section or by any other law for the time being in force, the Court shall act according to justice, equity, and good conscience.

26. No presiding officer of any Court having jurisdiction under this Act shall try any suit or appeal in which he is interested, or any appeal against a decree or order passed by himself in another capacity; or shall adjudicate upon any proceeding connected with, or arising out of, such suit or appeal.

When any such suit, appeal, or proceeding comes before any such presiding officer, he shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

The superior Court shall thereupon dispose of the case in the manner prescribed by section six, Act VIII. of 1859.

27. The presiding officer of any Court under this Act may, for any misconduct, be suspended or removed by the Local Government.

28. The ministerial officers of the Courts (1), (2), (3), (4), and (5) mentioned in section four shall be nominated and appointed by the presiding officers of those Courts, respectively, subject to the approval of the Deputy Commissioner within whose local jurisdiction such Courts are situate.

Every such Court may, by order, remove or suspend from office, or fine in an amount not exceeding one month's salary, any of its ministerial officers who is guilty of any misconduct or neglect in the performance of the duties of his office. And the Deputy Commissioner, subject only to the general control of the Commissioner, may on appeal or otherwise reverse or modify every such order.

29. The Deputy Commissioner, Commissioner, and Judicial Commissioner shall appoint the ministerial officers of their respective Courts, and, subject only to the general control of the Local Government, may remove or suspend such officers, or fine them in an amount not exceeding one month's salary.

30. Any fine imposed under this chapter shall, if the order imposing it so directs, be recovered from the offender's salary.

31. Act No. XIX. of 1868 shall be construed as if, for "Financial Commissioner" in sections eighty-four, ninety-three, ninety-four, and ninety-eight the words "Judicial Commissioner," and in section ninety-nine the words "Chief Commissioner" were substituted.

SCHEDULE.  
ACTS.

No. and year.	TITLE.	Extent of repeal.
Act XIV. of 1865 ..	An Act to define the jurisdiction of the Courts of Civil Judicature in the Central Provinces.	Section 25.
Act XVI. of 1865 ..	An Act to remove doubts as to the jurisdiction of the Revenue Courts in the Province of Oudh in suits relating to land, and to enlarge the period of limitation in such suits.	The whole.
Act XIII. of 1866 ..	An Act to exempt certain suits in Oudh from the operation of the rules of limitation in force in that Province.	The whole.
Act XXVII. of 1867.	An Act to empower Deputy Commissioners in the Central Provinces, the Panjáb, Oudh, and the Jhánsí Division to distribute the business in subordinate Courts.	So far as it relates to Oudh.
Act XI. of 1871 ....	An Act to abolish the Financial Commissionership of Oudh.	The whole.
<b>GOVERNMENT ORDERS.</b>		
No. 12, dated 4th February 1856 ..	.....	} So much as prescribes the constitution and jurisdiction of the Civil Courts in Oudh.
No. 3502, dated 6th October 1858. ...	.....	
Notification dated 6th August 1861 ....	.....	1st proviso.
Notification dated 3rd April 1871, 724 G.	.....	The whole.

STATEMENT OF OBJECTS AND REASONS.

THE Civil Courts in Oudh derive their present jurisdiction from the Central Provinces Courts' Act (XIV. of 1865) and the provision in the Civil Procedure Code, as extended to Oudh, which conferred on all Courts exercising appellate jurisdiction certain extraordinary powers of revision of the decisions of Subordinate Courts.

By Act XVI. of 1865, all suits relating to land in districts in which a settlement of the land revenue is in progress, are made exclusively cognizable by the Revenue Courts, and the special provision of that Act in regard to the limitation of a certain class of suits was subsequently modified by Act XIII. of 1866.

On the abolition of the office of Financial Commissioner, Act XI. of 1871 was passed, chiefly with the object of transferring the cognizance of special appeals in cases relating to land, which were theretofore instituted in the Court of that officer, to the Commissioners of Divisions.

Some confusion has resulted from the prevailing uncertainty as to how far these several enactments affected each other. For example, the provisions of Act XIV. of 1865 were intended to have the effect of setting aside the extraordinary powers of revision vested in the Appellate Courts by the Civil Procedure Code in the form in which it was applied to Oudh, yet that power has been steadily exercised by those Courts up to the present time.

The transfer of the special appellate jurisdiction of the Financial Commissioner to the Commissioners of Divisions was a temporary expedient, and

the permanent retention of that arrangement is undesirable.

For these reasons, it is now proposed to consolidate the existing law relating to the Civil Courts in Oudh, with some important modifications, in regard to their appellate jurisdiction.

The Bill provides for the abolition of the extraordinary power of revision heretofore exercised by the Appellate Courts, and substitutes therefor a second appeal on the merits of a case where the decision of the first Appellate Court reverses or modifies the order of the Court of first instance. Such second appeal will, in all cases, lie to the Judicial Commissioner.

The Bill contains also certain provisions in regard to the mode of appointment of Judicial officers, the oaths to be taken by such officers, the Court seal, the places where the Courts are to be held, the removal of Judicial officers for acts of misfeasance, and the control and discipline of the Courts' Ministerial Establishments, all of which corresponds generally with the provisions of the Bengal Civil Courts Act on the same subjects, and which are in the direction of consolidation and amplification, rather than amendment, of the existing law.

(Signed) F. R. COCKERELL.

*Simla, the 25th July 1871.*

H. S. CUNNINGHAM,

*Officiating Secretary to the Council of the  
Governor General for making  
Laws and Regulations.*