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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 19th March 1872, and was referred to a Select Committee, with instructions to make their report thereon in two months :—

Bill No. 6 of 1872.

A Bill to consolidate and amend the law relating to the admission of appeals to Her Majesty in Council from judgments and orders of the Civil Courts.

WHEREAS it is expedient to consolidate and amend the law by which the admission of appeals to Her Majesty in Council from certain judgments and orders of the Civil Courts throughout British India is regulated; it is hereby enacted as follows:—

1. This Act shall be called "The Privy Council's Appeals Act, 1872."

Short title.

It extends to the whole of British India, but shall not apply to suits tried by a High Court in any of the Presidency Towns in the exercise of its ordinary original jurisdiction;

Extent.

and shall come into force on the passing thereof.

Commencement.

2. The several enactments specified in the schedule hereto annexed are repealed to the extent mentioned in the third column thereof.

Repeal of enactments.

3. If any person desires to prefer an appeal to Her Majesty in Council

from any final judgment, decree, or order made on appeal or revision by any

High Court or other Court of final appellate jurisdiction in India under the law for the time being in force relating to appeals,

or from any final judgment, decree, or order made by a High Court in the exercise of its original jurisdiction, in any suit in which the amount or value of the subject-matter in dispute exceeds ten thousand rupees, or such amount as may be fixed as the limit for such appeals from time to time by the orders of Her Majesty in Council,

or in which such judgment, decree, or order involves directly or indirectly any claim, demand, or question to or respecting property the amount or value of which is not less than ten thousand rupees, or such other amount as aforesaid,

or from any other final judgment, decree, or order made either on appeal or otherwise when the High Court declares that the case is a fit one for appeal to Her Majesty in Council,

and the application for the admission of the appeal is presented within six months from the date of the judgment, decree, or order appealed from,

the Court shall admit such appeal subject to such rules and orders as may be made from time to time by Her Majesty in Council in regard to the disposal of such appeals.

4. When the High Court or other Court as aforesaid has admitted any such appeal as is mentioned in the last preceding

section, it shall forthwith cause notice of such appeal having been made to be given to the opposite party in the suit to which the appeal relates.

5. If application be made to that effect, the

Court may either direct the judgment or order against which an appeal has been preferred to be enforced, sufficient security being taken for the performance of such decree or order as Her Majesty in Council may make on the appeal; or it may direct, on like security being given, that no injunction for the enforcement of the judgment or order shall be issued pending the result of the appeal, or that if any such injunction has been issued, its execution shall, so far as may be practicable, be suspended.

6. In either case, the Court shall require the appellant to give security for the payment of such costs as it may think likely to be incurred by the appeal, within such period, not exceeding six months from the date of the judgment or order appealed from, as to it may seem fit.

7. Any person who desires to prefer an appeal to Her Majesty in either of the cases hereinbefore mentioned, may present a petition to the High Court or other Court as aforesaid for the purpose of obtaining security from the opposite party for staying execution of the judgment, decree, or order against which he is about to appeal, within six months from the date of such judgment, decree, or order.

8. If at any time during the pendency of such appeal the security taken is from any cause shown to be inadequate, the Court which has admitted such appeal may, on the application of the opposite party, require further security; and may, in default of such further security being given, if the original security was furnished by the appellant, enforce

Appellant may petition for security from opposite party for staying execution.

Court may require further security when that first given is insufficient.

Appellant to give security for costs.

the judgment, decree, or order against which an appeal has been made as if no such security had been given; if the original security was given by the respondent, the Court shall, so far as may be practicable, compel him to deliver the property to which the appeal relates, and such property shall be dealt with according to the rules in force applicable to such case.

9. In every appeal under this Act, the Court shall certify and transmit to Her Majesty in Council under the seal of the Court two correct copies of all

evidence, proceedings, judgments, decrees, and orders taken, held, or made in the suit or case appealed, so far as the same are relevant to the matters of appeal, together with a copy of the reasons recorded by such Court for or against the judgment, decree, or order against which the appeal has been preferred. The expense of preparing the said copies, and of translating so much of the original documents as are not in that language, shall be defrayed by the party prosecuting the appeal; and the amount required to cover such expense shall be deposited by the appellant within the period allowed for furnishing security for the costs of the appeal;

Deposit of costs by appellant. Until such deposit is made, the appeal shall not be admitted.

No appeal until deposit made.

Execution of decrees of Queen in Council.

10. The orders or decrees of Her Majesty in Council when duly certified shall be enforced and executed subject to the directions of the High Court or other Court as aforesaid, by the Judge by whom the suit was originally tried in the manner and according to the rules and laws applicable to the execution of original orders or decrees made by such Judge.

11. Any person who desires to enforce or obtain the execution of any such decree or order made in appeal as aforesaid, shall present a petition to the Court which made the first decree or order appealed from, and the said petition shall be accompanied by a certified copy of the decree or order made in appeal and sought to be enforced or executed.

12. An appeal shall lie from any decree or order made by such last mentioned Court relating to the enforcement or execution of any such decree or order made in appeal as hereinbefore mentioned, in the same manner and subject to the same rules as an appeal from a decree or order made upon a petition for the enforcement or execution of the decree or order first appealed from.

SCHEDULE.

ENACTMENTS REPEALED.

Number and year of enactment.	TITLE.	Extent of repeal.
Bengal Regulation XVI. of 1797.	A Regulation respecting Appeals from the Court of Sudder Dewanny Adawlut to His Most Excellent Majesty and His Most Honourable Privy Council.	The whole.
„ V. of 1803.	A Regulation for empowering the Sudder Dewanny Adawlut to try Appeals from the Decisions of the Provincial Court of Appeal established in the Provinces ceded by the Nawaub Vizier to the Honourable the English East India Company; and for extending the Jurisdiction of the Sudder Dewanny Adawlut over the said Provinces, and all the Civil Courts established therein.	The whole.
Madras Regulation VIII. of 1818.	A Regulation prescribing the Rules under which Appeals may be preferred to the King's Most Excellent Majesty in His Privy Council, from the Decisions of the Court of Sudder Adawlut at Fort Saint George.	The whole.
Bombay Regulation IV. of 1827.	A Regulation prescribing the Forms of Proceeding of the Courts of Law in Civil Suits and Appeals, and Rules for the Trial of the same.	Section 100.
Act II. of 1844	An Act respecting the expenses of preparing Copies of Proceedings in Appeals.	The whole.
Act XXV. of 1852 . . .	An Act for the execution of decrees made in appeal by Her Majesty in Council, or by the Courts of Sudder Dewanny Adawlut and of the Zillah and City Judges in the Presidency of Fort William in Bengal.	So much as is not repealed.
Act II. of 1863	An Act to regulate the admission of Appeals to Her Majesty in Council from certain Judgments and Orders in Provinces not subject to the General Regulations.	The whole.

STATEMENT OF OBJECTS AND REASONS.

The law relating to the admission and transmission of appeals from the judgments and orders of the Civil Courts in India to Her Majesty in Council is distributed over the following enactments, namely—

Bengal Regulation XVI. of 1797 and Regulation V. of 1803..	} In force in the Regulation Territories.
Madras Regulation VIII. of 1818	
Bombay Regulation IV. of 1827, Section 100	
Act II. of 1844	
Act XXV. of 1852.....	} In force in the Non-Regulation Provinces.
And Act II. of 1863	

The chief object of the Bill is to reduce into one Act the provisions of these several enactments, with such alterations of a purely verbal character or of arrangement as are incidental to the work of consolidation.

In consequence of the recent alteration of the law relating to appeals in Oudh—an alteration which is likely to be extended soon to British Burmah—it has become necessary also to provide for the admission of appeals from the decrees and orders of Courts of final jurisdiction under the law for the time being in force relating to appeals, as the existing rules of procedure in respect of the admission of appeals to the Privy Council apply only to appeals from the decrees or orders of the Courts of highest civil jurisdiction.

(Signed) F. R. COCKERELL.

The 8th March 1872.

H. S. CUNNINGHAM,

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

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations, on the 19th March 1872, and was referred to a Select Committee with instructions to make their report thereon in two months:—

Bill No. 7 of 1872.

A Bill to consolidate and amend the Law relating to the Redemption and Foreclosure of Mortgages.

WHEREAS it is expedient to consolidate and amend the law relating to the redemption and foreclosure of mortgages in the territories in which the Bengal Regulations are directly or indirectly in force; It is hereby enacted as follows:—

Short title. 1. This Act may be called "The Mortgage Procedure Act, 1872;"

It extends to the territories subject to the control of the Lieutenant-Governors of Bengal, the North-Western Provinces, and the Panjab, respectively, and to Oudh and the Central Provinces; and it shall come into force on the passing thereof;

2. The enactments mentioned in the schedule hereto annexed are repealed to the extent specified in the third column thereof.

3. Any person who has, by conditional sale or otherwise, mortgaged any property desiring to redeem it, may deposit amount of debt within year after due date. Mortgagor of landed property, and is desirous of redeeming the same, may deposit the amount due on account of principal and interest (if any) in respect of such mortgage in the chief Civil Court of the district in which the mortgaged land is situated, at any time within one year from the latest date fixed for the repayment of the loan.

The Court shall receive such deposit and cause a written notice of the same to be delivered to the mortgagor.

The deposit so made shall be deemed to preserve to the mortgagor the right of redeeming his property, and if the land is in the possession of the mortgagor, the mortgagor shall be entitled to recover possession subject to such adjustment of accounts as may be required under the terms of the mortgage.

4. When any person in whose favour a deed of mortgage and conditional sale of landed property has been executed is desirous of foreclosing the mortgage and rendering the sale absolute, he may, on or after the expiration of the period stipulated for the repayment of the consideration for which the mortgage was executed, institute a suit in any Court of competent jurisdiction for the foreclosure of the mortgage.

5. If the Court makes a decree of foreclosure in such suit, the foreclosure shall be conditional on the non-payment by the mortgagor of such amount as the Court finds to be due by him to the mortgagee, within one year from the date on which the mortgagor received notice of the institution of the suit.

STATEMENT OF OBJECTS AND REASONS.

The procedure relating to the preservation of the right of redemption of mortgaged property and to foreclosure in force in the Bengal Presidency is prescribed by the Bengal Regulations I. of 1798, XXXIV. of 1803, and XVII. of 1806.

The object of the proposed legislation is (1st) to consolidate the law by which this procedure is regulated; and, (2nd) to amend the procedure by assimilating it in a certain measure to the English law on this subject.

(Signed) F. R. COCKERELL.

The 18th March 1872.

H. S. CUNNINGHAM,
Officiating Secretary to the Council of the
Governor General for making
Laws and Regulations.

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 5th March 1872 :—

We, the undersigned, the Members of the Select Committee of the Council of the Governor General of India for the purpose of making Laws and Regulations, to which the Bill to amend Act XII. of 1870 (the Native Passenger Ships Act) was referred, have the honour to report that we have considered the Bill and the papers noted in the margin, and beg to recommend the following alterations :—

Petition from certain Muhammalans of Calcutta and its suburbs, dated 9th November 1870.
 Memorial from certain ship-owners of Bombay.
 Opinion of the Advocate General, Bengal, dated 12th November 1870.
 Endorsement, Department of Agriculture, Revenue, and Commerce, No. 34, dated 14th July 1871, forwarding telegrams from Home Department, Nos. 5095 and 5124, dated 23rd and 22nd November 1870.
 From Officiating Secretary to Government, Home Department, No. 5615, dated 20th December 1870.
 From Advocate General, Calcutta, dated 9th January 1871.
 Circular from Home Department, Nos. 733 to 736, dated 7th January 1871.
 From Acting Chief Secretary to Government, Madras, No. 113, dated 19th April 1871, and enclosures.
 From Chief Secretary to Government, Bombay, No. 1541, dated 13th June 1871, and enclosure.
 From Officiating Under Secretary to Government, Bengal, No. 612, dated 28th February 1871, and enclosures.
 From Secretary to Chief Commissioner, British Burmah, No. 510-6, dated 27th February 1871.
 Note by Honourable F. S. Chapman, dated 5th December 1871.
 From Secretary to Government, Madras, No. 177, dated 18th December 1871, and enclosures.
 From Secretary to Government, Madras, No. 2, dated 5th January 1872.
 From Secretary to Government, Bengal, No. 163, dated 13th January 1872, and enclosures.
 Demi-official letter from Honourable F. S. Chapman, dated 10th January 1872, forwarding Resolution of the Government of Bombay (General Department), No. 52, dated 15th January 1872, and enclosures.
 From Secretary to Government, Bengal, No. 234, dated 18th January 1872, and enclosure.
 From Acting Chief Secretary to Government, Bombay, No. 424, dated 26th January 1872, and enclosures.
 Telegram from Chief Secretary to Government, Bombay, No. 425, dated 26th January 1872.
 From Secretary to Government, Bombay, No. 771, dated 15th February 1872, forwarding letter from Chamber of Commerce, dated 7th February 1872.

2. We consider that the scope of Chapter. II. of the Bill might, with advantage, be enlarged so as to include—

1st, all sea-going vessels, without distinction, except ships-of-war or transports ;

2nd, all sea-going vessels which may depart from any port or place in British India, or in the dominions of Princes and States in India in alliance with Her Majesty, to any port or place whatever, whether in the Red Sea or elsewhere, and whether owned by or commanded by Native Indian subjects of Her Majesty or by others.

3. We propose to alter the definition of " Native Passenger Ships " so as to mean vessels carrying more than sixty Native passengers, and to provide that servants in attendance on their masters are not to be counted as Native passengers. By this alteration we consider we shall meet any objection which the Peninsular and Oriental, the British India, and other large and well regulated Steam Navigation Companies, might otherwise reasonably offer to being brought under the provisions of the Act.

4. We propose that the quantity of stored water shall not, even when the vessel is provided with a serviceable condenser, be less than at the rate of four gallons per head per week.

5. With a view to the case of ships owned by persons other than British subjects, we have provided that, when a Convention between the Indian and Turkish Governments has been entered into, to the effect that all Masters of Native Passenger Ships leaving a Turkish for an Indian port shall execute a bond binding them to touch at Aden and get a clean bill of health from that place, the Master of any such vessel arriving without such clean bill of health shall be liable forthwith to pay the full penalty of the bond.

6. We recommend that the Bill as thus amended be passed.

F. S. CHAPMAN.

J. F. STEPHEN.

R. STEWART.

J. R. BULLEN SMITH.

F. R. COCKERELL.

The 5th March 1872.

A Bill to Amend Act XII. of 1870 (the Native Passenger Ships Act).

WHEREAS it is expedient to amend Act XII. of 1870 (the Native Passenger Ships Act); It is hereby enacted as follows:—

1. Instead of Section 2, two of the said Act the following shall be read:

“2. This Act extends to British India and applies also to all subjects of Her Majesty within the dominions of Princes and States in alliance with Her Majesty, and to all Native Indian subjects of Her Majesty without and beyond British India.

“Nothing in this Act applies to any Ship-of-War or Transport belonging to or in the service of Her Majesty, or to any Ship-of-War belonging to any Foreign Prince or State, or to any ship under contract with the Government of any European State.”

2. Instead of the last paragraph of Section four of the said Act the following shall be read:

“The words ‘Native Passenger Ship’ mean a vessel, whether sailing or steam, carrying more than sixty passengers, being natives of Asia or Africa; provided that no person in attendance upon another person other than a native of India shall be deemed a passenger for the purposes of this Section.”

3. After Section twelve of the said Act, the following proviso shall be added:

“Provided that, in the case of Steam Ships, the officer aforesaid may, if under the circumstances of the case he thinks fit, reduce the space to be appropriated to passengers in the between-decks under the requirements of this Section, to a space containing at the least nine superficial and fifty-four cubical feet of space for every adult passenger on board.”

4. After Section twenty-one of the said Act the following proviso shall be added:

“Provided also that, in the case of Steam Ships provided with a condenser, the officer authorised in that behalf may, if under the circumstances of the case he thinks fit, reduce the amount of water to be provided under the requirements of this Section to an amount not less than four gallons to every week of the declared duration of the voyage for every passenger on board.”

5. After Section twenty-six of the said Act the following shall be read:—

26a. Whenever a Convention shall have been entered into between the Governor General of India in Council and the Turkish Government that every Master of a Native Passenger Ship leaving a Turkish port or place and bound for any port or place in British India, whether it be owned by a subject of Her Majesty or not, shall execute a bond binding him in a penalty to touch at Aden, and not to proceed thence without a clean bill of health obtained in the manner provided in Section twenty-five, any Master of any such ship, whether he be a subject of Her Majesty or not, who shall come into any port or place in British India without such clean bill of health, may be taken by the officer in charge of such port or place before any Magistrate having local jurisdiction, and on proof that such Master has come from a Turkish port or place such Magistrate shall presume that such bond was duly executed by such Master, and in default of production of such clean bill of health, shall presume that the penalty mentioned in such bond has been incurred, and may award the full amount or any part of such penalty against such Master, and, in default of payment of such penalty, may recover it as though it were a fine imposed under this Act.

Act to be read as part of Act XII. of 1870.

6. This Act shall be read as part of Act XII. of 1870.

H. S. CUNNINGHAM,

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