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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Preliminary 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 4th July 1872:—

We, the undersigned, the members of the Select Committee to which the 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 was referred, have the honor to report that we have considered the Bill and the papers noted in the margin.

From Officiating Secretary to Chief Commissioner, Oadh, No. 344, dated 22nd January 1872, and enclosures.

We have expressly excluded matters of criminal jurisdiction from the operation of the proposed Act.

Section three of the Bill, as introduced, speaks of appeals from final decrees or orders made on repeal or *revision* under the law relating to appeals. We have struck out the words italicised.

Act II. of 1863, section two, provides an appeal from interlocutory judgments. We have, therefore, struck out the word 'final' in the fifth paragraph of section three of the Bill as introduced.

We have provided (section four) that the amount or value of the subject-matter of appeals shall be computed according to the rules prescribed by the Court Fees' Act, 1870, sections seven and eight. An analogous rule is prescribed by Bengal Regulation XVI. of 1797, section three.

We have provided for the case of the period fixed for applications, under the proposed Act, expiring when the Court is closed, and for admitting, in proper cases, such applications after the prescribed period. Similar provisions are made in the new Limitation Act IX. of 1871, section five.

We have followed in sections seven and eight the rules of the High Courts at Fort William and Bombay, and we have authorised the exclusion from the transcript of the record of formal documents, of papers which the parties agree to exclude, and of unnecessary accounts. This is in accordance with the present practice, and, so far as regards formal documents, follows the rule prescribed by clause 2 of the order of the Privy Council, dated 13th June 1853.

Sections ten, eleven, and twelve are modelled on rules of the High Court at Fort William.

In section thirteen we have authorised the Court, on receiving security for the performance of the decree of the Privy Council, to give any direction that it thinks fit respecting the subject-matter of the appeal.

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In section nineteen we have empowered the High Courts to make rules regulating all matters connected with the enforcement of the proposed Act.

In section twenty we have made the amendments of Bengal Regulation III. of 1828, section four, and Bombay Regulation XIX. of 1827, section eight, necessitated by the proposed repeals.

Lastly, we have saved (section twenty-one) the exercise of Her Majesty's pleasure in receiving or rejecting appeals to Her in Council.

We have made many changes in the wording and arrangement of the Bill, and, before proceeding further with it, we recommend that it be published, with this preliminary report, in the *Gazette of India*, and sent for consideration to the various Local Governments and High Courts.

(Signed) A. HOBHOUSE.

J. STRACHEY.

SIMLA,
The 4th July 1872. }

THE PRIVY COUNCIL APPEALS

BILL, 1872.

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SCHEDULE.

A Bill to consolidate and amend the law relating to appeals to the Privy Council from decrees of the Civil Courts.

[AS AMENDED BY THE SELECT COMMITTEE.]

Whereas it is expedient to consolidate and amend the law regulating the admission of appeals to Her Majesty in Council from certain judgments, decrees, and orders of the Civil Courts; It is hereby enacted as follows:—

I.—PRELIMINARY.

1. This Act may be called "The Privy Council Appeals Act, 1872:"
- Short title.
- It extends to the whole of British India, but it does not apply to any matter of criminal jurisdiction;
- Extent.
- And it shall come into force on the passing thereof.
- Commencement.
2. The enactments specified in the schedule hereto annexed are repealed to the extent mentioned in the third column thereof.
- Repeal of enactments.

II.—ADMISSION OF APPEALS.

3. Subject to such rules as may, from time to time, be made by Her Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained—

an appeal shall lie to Her Majesty in Council,

(a) from any final judgment, decree, or order made on appeal by a High Court or other Court of final appellate jurisdiction,

(b) from any final judgment, decree, or order made by a High Court in the exercise of original civil jurisdiction, and

(c) from any other judgment, decree, or order when the High Court declares that the case is a fit one for appeal to Her Majesty in Council.

4. In each of the cases mentioned in clauses (a) and (b) of section three, the amount or value of the subject-matter in dispute must be ten thousand rupees or upwards, or the judgment, decree, or order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value.

Such amount or value shall be computed according to the rules prescribed by the Court Fees Act, 1870, sections seven and eight.

5. Whoever desires to present an appeal under this Act, must apply by petition to the Court whose judgment, decree, or order is complained of.

6. Such application must ordinarily be made within six months from the date of the judgment, decree, or order aforesaid.

Time within which application must be made.

But if that period expires when the Court is closed, the application may be made on the day that the Court re-opens.

And where the applicant satisfies the Court that he had sufficient cause for not applying within the period so prescribed, the Court may admit his application within such other period as, under the circumstances of the case, it considers reasonable.

7. Every petition under section five must (among other things) pray for a certificate either that as regards amount or value the case fulfils the requirements of section four, or that it is a fit one for appeal to Her Majesty in Council.

Upon receipt of such petition the Court shall direct notice to be served on the opposite party to show cause, within one month of the date of the service of the notice, why the said certificate should not be granted.

8. If such certificate be refused, the petition shall be dismissed.

But if the certificate be granted, the Court shall require the applicant to give security and deposit within two weeks of the grant,

(a) to give security for the costs of the respondent, and

(b) to deposit the amount required to defray the expense of translating, transcribing, printing, indexing, and transmitting to Her Majesty in Council two correct copies of the whole record of the suit, except

(1) formal documents directed to be excluded by any order of Her Majesty in Council in force for the time being;

(2) papers which the parties agree to exclude; and

(3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included.

9. When such security has been given and deposit made to the satisfaction of the Court, the Court shall

(a) declare the appeal admitted,

(b) give notice thereof to the appellant and respondent, respectively,

(c) transmit to Her Majesty in Council, under the seal of the Court, two correct copies of the said record, except as aforesaid,

(d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor, and paying the reasonable expenses incurred in preparing them, and

(e) give to either party an authenticated copy of any local Regulation, Act, or Ordinance which he may require in the appeal.

10. At any time before the admission of the appeal, the Court may, upon cause shown, revoke the acceptance of any such security and make further directions thereon.

11. If at any time after the admission of the appeal, but before the transmission of the record, except as aforesaid, to Her Majesty in Council, such security appears inadequate,

or further payment is required for the purpose of translating, transcribing, printing, indexing, or transmitting the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

If the appellant fail to comply with such order, the proceedings shall be stayed,

and the appeal shall not proceed without an order in this behalf of Her Majesty in Council,

and in the meantime execution of the judgment, decree, or order appealed against shall not be stayed.

12. When the record, except as aforesaid, has been transmitted to Her Majesty in Council, the appellant may obtain a refund of the balance, if any, of the amount which he has deposited under section eight.

III.—PROCEEDINGS PENDING APPEALS.

13. The Court admitting any appeal under this Act, may

(a) direct the judgment, decree, or order appealed against to be enforced, or

(b) direct that no order for enforcing such judgment, decree, or order shall be issued pending the appeal, and that, if any such order has been issued, it shall, so far as it has not been executed, be suspended, or

(c) give any other direction respecting the subject-matter of the appeal that it thinks fit.

14. But the Court shall give no such direction unless and until the party applying therefor furnishes such security as it

thinks fit for the due performance of the decree or order which Her Majesty in Council may make on the appeal.

15. If at any time during the pendency of the appeal the security so furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

In default of such further security being found, if the original security was furnished by the appellant, the Court may issue an order enforcing the judgment, decree, or order appealed against as if he had furnished no such security.

And if the original security was furnished by the respondent, the Court, so far as may be practicable, shall compel him to deliver up the pro-

perty forming the subject-matter of the appeal, and such property shall be dealt with according to the rules applicable to the case.

IV.—EXECUTION OF DECREES OF HER MAJESTY IN COUNCIL.

16. The decrees or orders 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, and in the manner and according to the rules applicable to the execution of his original decrees or orders.

17. Whoever desires to enforce or obtain the execution of any such decree or order of Her Majesty in Council, shall present a petition to the Court which made the first judgment, 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.

18. 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 of Her Majesty in Council, 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 judgment, decree, or order first appealed from.

V.—MISCELLANEOUS.

19. The High Court may, from time to time, make rules consistent with this Act to regulate—

- (a) the service of notices under section seven,
- (b) the amount and nature of the security required under sections eight and eleven,
- (c) the testing of such security,
- (d) the estimate of the cost of transcribing the record,
- (e) the preparation, examination, and certifying of such transcript,
- (f) the revision and authentication of translations;

(g) the preparation of indices to transcripts of records and of lists of the papers not included therein; and all other matters connected with the enforcement of this Act.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

All rules heretofore made and published by any High Court relating to appeals to Her Majesty in Council shall, so far as they are consistent with this Act, be deemed to have been made and published hereunder.

20. The rules and restrictions referred to in Bengal Regulation III. of 1828, section four, clause five, shall be deemed to be the rules and restrictions applicable to appeals under this Act from the decisions of the High Court of Judicature at Fort William in Bengal.

And Bombay Regulation XIX. of 1827, section eight, shall be construed as if for Regulation IV., A.D. 1827, the words and figures 'the Privy Council Appeals Act, 1872' were substituted.

21. Nothing herein contained shall be understood to bar the full and unqualified exercise of Her Majesty's pleasure in receiving or rejecting appeals to Her Majesty in Council.

SCHEDULE.

(See Section 2.)

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 one hundred.
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 has not been 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.

WHITLEY STOKES,

Secretary to the Government of India.