

ACT NO. XV. OF 1853.

*Passed by the Governor General of India in Council, on the
28th October 1853.*

*An Act for the amendment of Procedure in cases of regular appeal to
the Sudder Courts in the presidency of Fort William in Bengal.*

WHEREAS it is desirable to simplify and shorten the procedure in regular appeals to the Courts of Sudder Dewanny Adawlut in the said Presidency ; It is enacted as follows :—

I. Act IV. 1850, and Sections II., III. and IV. Act XXX. 1850, are hereby repealed, except as to appeals presented before the passing of this Act.

II. *Clause 1st.*—Every petition of regular appeal in a case appealable to either of the said Sudder Courts shall be presented to the Court in which the decision was passed within six weeks from the day of the decision. Such petition of appeal shall, except in cases of petitions under Section XIII. of this Act, contain only notice that the party, being dissatisfied with the decision, is desirous of appealing from it.

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Clause 2nd.—The Sudder Court may extend the time for presenting such petition of appeal to the lower court, upon being satisfied that there is sufficient cause for such extension of time. The application for such extension of time may be made directly to the Sudder Court, or through the intervention of the lower court, at the option of the applicant.

III. On presentation of a petition of regular appeal to the Court, in which the decision was passed, notice thereof to the respondent, as well as a proclamation to the same effect, shall immediately issue from that Court ; and a copy of the proclamation shall be forthwith fixed up in some conspicuous part of the Court House of the said Court. If the notice cannot be personally served, the proclamation shall at once be fixed upon the door of the respondent's dwelling-house, or in some conspicuous place in the village or place where he usually resides ; or in cases in which the respondent shall not have a fixed residence within the jurisdiction of the Company's Courts, the proclamation may be fixed upon the door of his house of business or cutcherry, or the notice may be served on his known local agent. In case the proclamation cannot be fixed or the notice served in the manner above-mentioned, the proclamation shall be fixed up in such other place, if any, as the said last mentioned Court shall direct. The nazir shall make a return to the Court stating when and where the notice and proclamation have been served or fixed up. The return of the nazir shall be filed in Court and shall form part of the record of the case, and such return shall be published by fixing up the same in some conspicuous part of the Court House of the lower court.

IV. *Clause 1st.*—The Rule in Section XI. Regulation VI. 1793, which directs copies of all original papers transmitted to the Sudder Court with the record of an appealed case to be made out and deposited in the Court in lieu of the originals, is hereby modified, and it shall be necessary to copy, authenticate and deposit only the exhibits in the case, and also any other papers of importance, including the pleadings, or any parts of them which either of the parties shall require to be copied, authenticated and deposited in the lower court previously to their being transmitted to the Sudder Court.

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Clause 2nd.—If either of the parties require any papers to be copied, authenticated and deposited, such party shall either by himself or his pleader or authorized agent give notice in writing thereof to the lower court, before the expiration of fourteen days from the time of the publication of the return of the nazir as aforesaid. Such notice shall specify the papers which the party requires to be copied, authenticated and deposited.

Clause 3rd.—Either party may by himself or his pleader or authorized agent before the presentation of an appeal give notice in writing to the lower court, specifying any papers or documents which he requires to be copied, authenticated and deposited, in the event of an appeal being preferred.

V. The petition of appeal together with the record of the lower court shall be certified to the Sudder Court as soon as conveniently may be after the presentation of the petition of appeal. Provided that the same shall not be certified within the time allowed to the parties for specifying the papers which they desire to be copied, authenticated and deposited.

VI. On arrival of the appeal record at the Sudder Court, notice shall be affixed in the Court House of the said Court, requiring the appellant to file, within six weeks from the date thereof, his grounds of objection to the decision of the court below. Within the said space of six weeks the appellant shall file in the said Sudder Court his grounds of objection to the decision.

VII. *Clause 1st.*—On the filing of the grounds of objection by the appellant, notice shall be affixed in the Court House of the Sudder Court requiring the respondent to file his grounds of objection, if any, to the appeal or to the decision of the lower court within four weeks from the date of such notice.

Clause 2nd.—Within the said space of four weeks, the respondent shall file any grounds of objection which he has to the appeal, or which relate to such parts of the decision as are involved in the appeal.

Clause 3rd.—If the respondent shall desire to object to any part of the decision of the lower court not involved in the appeal, he may present

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sent a separate petition of appeal to the Sudder Court within the said space of four weeks, or within such further time as the said Sudder Court shall allow for that purpose.

Clause 4th.—The respondent shall in such case file with his petition of appeal his grounds of objection to that part of the decision to which his appeal relates, otherwise his appeal shall not be received.

VIII. *Clause 1st.*—At the expiration of the time allowed to the respondent for filing his grounds of objection and for filing a separate petition of appeal in the Sudder Court, the record shall be deemed complete and the case ready to be called up for decision on any day which the Sudder Court may notify, unless the respondent within such time file a separate petition of appeal in the Sudder Court.

Clause 2nd.—If the respondent file a separate petition of appeal in the Sudder Court, notice shall be fixed up in the Court House of the Sudder Court to the effect that the respondent has filed such separate appeal, and the notice shall require the appellant to file any grounds of objection which he may have thereto, within the space of four weeks from the date of the notice.

Clause 3rd.—Within such space of four weeks the appellant may file any grounds of objection which he has to such appeal, or which relate to that part of the decision which is involved in the respondent's appeal. At the expiration of the time allowed for filing such grounds of objection by the appellant, the record shall be deemed complete, and the case ready to be called up for decision on any day which the Sudder Court shall notify for that purpose.

Clause 4th.—If the appeal of either party be dismissed or withdrawn, the appeal of the other may be heard alone; otherwise the two appeals and the proceedings thereon shall form one record, unless the Sudder Court shall otherwise order.

IX. The respondent shall not be allowed to present a separate petition of appeal in the Sudder Court, if he shall previously have presented a petition of appeal to the lower court.

X. *Clause 1st.*—All grounds of objection which shall be filed by either the appellant or the respondent, shall be stated distinctly and concisely

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concisely without any argument or narrative of facts, and shall be numbered consecutively, and except in the cases herein-after-mentioned, shall be on paper bearing the stamp duty prescribed by Article 9, Schedule B, Regulation X. 1829.

Clause 2nd.—The Sudder Court may extend the time for filing grounds of objection either by an appellant or respondent upon special application for that purpose, and upon sufficient reasons being shown to the satisfaction of the said Court for such extension of time. In such case the objections may be filed within such extended time.

XI. Either party may, by leave of the Sudder Court or any judge thereof, at any time before the hearing, amend his grounds of objection or add grounds of objection to those filed, upon such terms and conditions, and within such time as the said Court or judge may order. The said Court may also, upon the hearing of any appeal, allow either party to amend his grounds of objection; or to add further grounds, or to urge and be heard by himself or his pleader in support of any objection not included in his grounds of objection, upon such terms and conditions as to postponement of the cause, and as to the payment of costs or otherwise, as the Court shall think just, to prevent the opposite party or his pleader from being taken by surprise or otherwise. Without such leave of the Court, neither party shall be allowed to urge or be heard in support of any objection not included in his grounds of objection filed. But the Court shall not be confined to such grounds of objection on deciding the cause.

XII. *Clause 1st.*—The Sudder Court may call up for hearing and decision on any day the Court shall notify, and without regard to the place in which the case stands in the general list of appeals, any grounds of objection filed by the respondent or the appellant to the appeal of the opposite party, and the Sudder Court may hear and decide upon such grounds of objection before calling the case up for decision upon the grounds of objection to the decision of the lower court.

Clause 2nd.—If the grounds of objection filed by the appellant, and respondent, shall be upon points of law only, and shall not raise any question of fact, the Sudder Court may order the case to be called up for hearing and decision on any day which the said Court shall notify, without

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without regard to the place in which it stands in the general list of appeals pending in the said Court.

Clause 3rd.—If the grounds of objection filed shall raise questions of law and fact, and it shall appear to the Sudder Court that the decision of the law may render it unnecessary to determine any question of fact so raised, the Court may order the case to be called up for decision upon the law alone, in the first instance, in the manner pointed out in the last preceding Section, and if their decision of the case upon the law shall render it unnecessary to determine any question of fact, the said Court shall pass a final decision in the case, otherwise the Court shall determine the law only, and the case shall be afterwards set down in the list of regular appeals for hearing upon the question or questions of fact, and shall be determined in the same manner as any other regular appeal.

XIII. If any party to a regular suit be desirous of being admitted to appeal *in formâ pauperis* to the Sudder Court, the following procedure shall be adopted.

Clause 1st.—The appellant shall present his petition to the lower court according to the rules prescribed by Section II. of this Act. Provided that a petition to appeal *in formâ pauperis* against any decision passed before this Act shall come into operation, may be presented within three months from the day of the decision.

Clause 2nd.—Petitions of appeal by parties desirous to appeal *in formâ pauperis* shall contain a statement to that effect, and also a Schedule of the whole real and personal property belonging to the petitioner and the estimated value of such property, and shall be written on paper bearing the stamp duty of two Rupees per sheet.

Clause 3rd.—Upon the presentation of such petition, the notice to the respondent and the proclamation shall state that the appellant desires to appeal *in formâ pauperis*.

Clause 4th.—On arrival of the appeal record at the Sudder Court, the same procedure shall be adopted in that Court as in other cases of regular appeal, except that after the filing of the grounds of objection by the appellant, and before notice shall be given requiring the respondent to file his grounds of objection, the Sudder Court shall determine according

according to the rules now applicable to the determination of such cases, whether or not the appellant shall be allowed to appeal *in formâ pauperis*.

Clause 5th.—If the Sudder Court allow the petitioner to appeal *in formâ pauperis*, notice shall be given to the respondent to file his grounds of objection in the manner provided by Section VII. of this Act, and the same procedure shall be adopted subsequently thereto as in other cases of regular appeal under this Act. The rules and conditions now applicable to persons admitted by the Sudder Court to appeal *in formâ pauperis* shall continue in force except where the same are inconsistent with any of the provisions of this Act.

Clause 6th.—If the Sudder Court refuse to allow the petitioner to appeal *in formâ pauperis*, the said Court may make an order to the effect that the appellant upon filing a petition of appeal in that Court, upon paper stamped with the stamp duty required by Article 8, Schedule B, Regulation X. 1829, and upon re-filing his grounds of objection on paper stamped with the stamp duty required by Article 9 of the same Schedule, may proceed with the appeal according to the rules prescribed by this Act in the case of persons not appealing as paupers.

Clause 7th.—Upon such order being made, the appellant shall file his petition and re-file his objections upon paper stamped with the stamp duty required by Clause 5 of this Section, within two weeks from the date of such order, or within such further time as the said Court may allow for that purpose; otherwise the appeal shall stand dismissed.

Clause 8th.—Upon the re-filing of the grounds of objection according to the provisions of the last preceding Clause, notice of the order and of the re-filing of such objections shall be given to the respondent in the manner prescribed by Section VII. of this Act, and the respondent shall be required to file his grounds of objection, if any, according to the provisions of that Section. The procedure subsequent to such notice shall be according to the general provisions of this Act.

Clause 9th.—If an appellant shall petition to appeal *in formâ pauperis*, his grounds of objection may be written on plain paper.

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XIV. If an appellant shall be admitted to appeal or a respondent to defend *in formâ pauperis*, all grounds of objection subsequently filed by either party may be written on plain paper.

XV. No decision shall be reversed or altered, nor shall any case be remanded upon appeal to the Sudder Court on account of any error, defect or irregularity not productive of injury to either party, nor opposed to any express enactment contained in the general Regulations or Acts of Government.

XVI. This Act extends only to regular appeals which shall be presented after the passing of this Act in Civil cases appealable to either of the Sudder Courts in the Presidency of Fort William in Bengal.

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