

ACT NO. XXXVII OF 1867.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 3rd October 1867).

An Act for transferring appeals from the Court of the Financial, to the Court of the Judicial, Commissioner of Oudh, and for other purposes.

WHEREAS it is expedient to enable appeals to be transferred from time to time from the Court of the Financial Commissioner of Oudh to the Court of the Judicial Commissioner of that province; and whereas it is also expedient to provide for the decision of certain questions arising before either of such Commissioners by a Court composed of both of them; It is hereby enacted as follows :—

I.—Transfer of Appeals by Financial Commissioner.

1. Whenever the state of business in the Court of the Financial Commissioner of Oudh is such that he cannot dispose of the same with reasonable despatch, he may cause a list of the appeals, whether regular or special, which he may wish to transfer for decision to the Court of the Judicial Commissioner of Oudh, to be prepared and sent to the Chief Commissioner of Oudh, and such Chief Commissioner may, if he think fit, order all or any of such appeals to be transferred accordingly.

2. In all appeals so transferred, the said Judicial Commissioner shall proceed as if they had been originally presented in his Court; and his orders thereon shall have the same effect to all intents and purposes as if they had been made by the said Financial Commissioner.

II.—Appeals before Financial and Judicial Commissioners.

3. Whenever any appeal, whether regular or special, shall have come before the said Financial Commissioner or the said Judicial Commissioner, if the Commissioner before whom such appeal shall have come desires to obtain the opinion of the other Commissioner

Hearing before Financial and Judicial Commissioners sitting together.

Financial Commissioner may prepare and send list of appeals for transfer.

Procedure of Judicial Commissioner in cases transferred.

Commissioner

Commissioner on any question of fact or of law arising on such appeal, he may record a memorandum to that effect, and on receipt of a copy of such memorandum, the other Commissioner shall sit, as soon as may be practicable, with the Commissioner recording the memorandum, in the Court of such Commissioner, and assist in disposing of the said question, subject to the provisions hereinafter contained.

Reference to High Court.

4. In case there shall be a difference of opinion between the two Commissioners, the following course shall be pursued (that is to say) :—

Provision for difference of opinion.

(1.)—If the difference of opinion be on any question of fact in the finding of the lower Court, the finding shall be upheld ;

(2.)—If the difference of opinion be on a point of law or of usage having the force of law, the ruling of the lower Court shall be upheld, unless one of the Commissioners shall be of opinion that the point should be referred to the High Court of Judicature of the North-Western Provinces of the Presidency of Bengal, in which case the Commissioners shall state the point as to which they differ, and forward the statement with their respective opinions thereon to such High Court.

5. The Commissioners may proceed in the case notwithstanding such reference, and may pass a decree contingent on the opinion of the High Court on the point referred ; but no execution shall be issued in any case in which a reference shall have been made, until the receipt of such opinion.

Decree contingent on result of reference to High Court, North-Western Provinces.

6. Cases referred under this Act shall be heard by three Judges of the said High Court, and shall be determined according to the opinion of the majority of such Judges.

Referred cases to be heard by three Judges.

7. The parties to such cases may appear, plead and act in the said High Court in person or by an Advocate or Vakil of such High Court ; and the High Court, when it shall have heard and considered the case, shall transmit a copy of its opinion, under the seal of the Court and the signature of the proper officer, to the Commissioners making the reference.

Appearance of parties on reference.

8. Costs,

Costs of reference. 8. Costs, if any, consequent on such reference, shall be costs in the suit.

III.—Points arising in Criminal Cases.

Decision of points arising in criminal cases before Judicial Commissioner. 9. Whenever any appeal shall have been presented to the said Judicial Commissioner under the Code of Criminal Procedure;

Or whenever any sentence of death shall have been referred to him for confirmation;

Or whenever any case shall have come before him as a Court of revision;

If he desires to obtain the opinion of the said Financial Commissioner on any question of fact or of law arising on such appeal, reference, or case,

The provisions contained in Sections three, four, five, six and seven of this Act shall, *mutatis mutandis*, apply:

Provided that, if there be a difference of opinion on any question of fact, the case may, but if the difference involve the confirmation, commutation or reversal of a sentence of death or of transportation the case shall, be referred in manner aforesaid to the said High Court.