

THE BURMA COURTS ACT, 1872.

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ACT No. VII OF 1872.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL..

(Received the assent of the Governor General on the 5th April 1872).

An Act to consolidate and amend the Law relating
to the Courts in British Burma.

WHEREAS it is expedient to consolidate and amend the law relating to the Courts in British Burma; It is hereby enacted as follows:—

Preamble.

PART I.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Burma Courts Act, 1872:"

Short title.

It extends to all the territories under the Chief Commissioner of British Burma;

Extent.

and shall come into force on the passing thereof.

Commence-
ment.

2. All suits, appeals, applications or proceedings, instituted previous to the passing of this Act in any Court, other than the Courts of the Chief Commissioner and the Recorders of Rangoon and Maulmain, respectively, shall be heard and disposed of by the Courts in which they were instituted.

Pending suits
to be disposed
of by Courts
in which in-
stituted.

3. From the date of the passing of this Act the Court of the Chief Commissioner and the Courts of the Recorders of Rangoon and Maulmain, as established by Act XXI of 1863, shall cease to exist.

Abolition of
certain
Courts.

4. All

Transfer of suits pending in Courts of Chief Commissioner and Recorders.

4. All suits, appeals, applications or proceedings pending in the Court of the Chief Commissioner shall be transferred to the Court of the Judicial Commissioner; those pending in the Court of the present Recorder of Rangoon shall be transferred to the Court of the Recorder of Rangoon to be established under this Act; and those pending in the Court of the Recorder of Maulmain shall, if they are of a civil nature, be transferred to the Court of the Judge of the Town of Maulmain, and if they are of a criminal nature, to the Court which has jurisdiction under this Act.

Repeal of Acts.

5. The Acts mentioned in the schedule hereto annexed are hereby repealed to the extent mentioned in the third column thereof.

CHAPTER II.

LAW TO BE ADMINISTERED.

Certain decisions to be according to Native law.

6. 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 Buddhist law in cases where the parties are Buddhists,

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 custom having the force of law in British Burma.

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.

Law to be administered in Court of Recorder of Rangoon.

7. Except as provided in section six all questions of fact, law and equity arising in suits before the Recorder of Rangoon shall be dealt with and determined

1872.]

Burma Courts.

mined according to the law administered by the High Court at Fort William in Bengal, in the exercise of its ordinary original civil jurisdiction.

CHAPTER III.

CONSTITUTION AND POWERS OF COURTS.

8. The Courts mentioned in the first column of the subjoined table shall ordinarily have such civil jurisdiction respectively, in the adjudication of suits arising within their local jurisdiction, as is specified in the second column thereof:

Civil jurisdiction of Courts.

Name of Court.	Extent of Jurisdiction.
(1.) The Court of the Extra Assistant Commissioner of the third class.	Powers of a Civil Court where the amount or value of the subject-matter of the suit does not exceed rupees five hundred.
(2.) The Court of the Extra Assistant Commissioner of the second and first class, and the Assistant Commissioner.	Powers of a Civil Court where the amount or value of the subject-matter of the suit does not exceed rupees three thousand.
(3.) The Court of the Deputy Commissioner.	<p>Powers of a Civil Court in all suits, whatever be the value or the amount of the subject-matter thereof.</p> <p>Powers of a District Judge.</p> <p>Power to hear appeals from decrees and orders in original suits and proceedings of the Courts of grades (1) and (2), where such appeal is allowed by law.</p> <p>Power to direct the business in the Courts of grades (1) and (2) to be distributed among such Courts in such way as he thinks fit.</p>
(4.) The Court of the Judge of the Town of Maulmain.	<p>Powers of a District Judge.</p> <p>Powers of a Civil Court, whatever be the amount or value of the subject-matter of the suit.</p> <p>Powers of a Court of Small Causes, where the amount or value of the subject-matter of the suit does not exceed rupees one thousand.</p>
(5.) The Court of the Commissioner.	<p>Power to withdraw any suit or appeal instituted in any Court within the local limits of his jurisdiction, except a Court of Small Causes, or the Court of the Judge of the Town of Maulmain, and try such suit or appeal himself or refer it for trial to any subordinate Court of competent jurisdiction as to the amount or value of the subject-matter thereof.</p> <p>Power to hear appeals from decrees and orders in original suits and proceedings of the Court of grade (3), where such appeal is allowed by law.</p>
(6.) The Court of the Judicial Commissioner.	<p>Powers of a High Court, in relation to all Courts in British Burma, including Small Cause Courts, except the Court of the Recorder of Rangoon, and the Court of Small Causes of Rangoon.</p> <p>Power to remove and try any suit, appeal or other proceeding instituted in any subordinate Court, except a Court of Small Causes, or to refer it to any Court of competent jurisdiction as to the value or amount of the subject-matter thereof.</p> <p>Power to hear appeals from decrees and orders in original suits and proceedings of the Court of the Commissioner, where such appeal is allowed by law.</p>

Provided

Provided that, where a Small Cause Court is established within the local limits of the jurisdiction of the Courts (1), (2) and (3), the said Courts shall not take cognizance of any suit cognizable by such Court of Small Causes.

9. The Judicial Commissioner shall be deemed to have and to have had the powers of a High Court in criminal matters in relation to all Courts in Burma, except that of the Recorder of Rangoon, and of Magistrates within the local limits of the ordinary civil jurisdiction of the said Recorder :

Powers of
Judicial Com-
missioner in
criminal mat-
ters;

The Commissioner shall be deemed to have and to have had the powers of a Sessions Judge :

of Commis-
sioner,

The Judge of the Town of Maulmain shall have the powers of a Sessions Judge.

and of Judge
of Maulmain.

10. The Governor General in Council shall fix, and may from time to time vary, the number of Courts of each grade to be established under this Act.

Power to fix
number of
Courts.

11. The Chief Commissioner shall, with the previous sanction of the Governor General in Council, fix, and may with the like sanction from time to time vary, the local limits of the jurisdiction of any Court mentioned in section eight.

Chief Com-
missioner to
fix local ju-
risdiction of
Courts.

12. All existing Courts, corresponding to the Courts mentioned in section eight, and the presiding officers and the local limits thereof, shall be deemed to have been respectively established, appointed and fixed under this Act.

Confirmation
of existing
Courts and
presiding
officers.

13. Every Court mentioned in section eight shall—

Seal to be
used.

(1) use a seal of such form and dimensions as are for the time being prescribed by the Chief Commissioner ;

(2) be held at such place or places as may from time to time be directed by the Chief Commissioner ; or, in the absence of any such direction, at any place within the local jurisdiction of the Court which the presiding officer thinks fit.

Place for
holding
Court.

14. The general superintendence over all the Courts of the first five grades mentioned in section eight is vested in, and the said Courts shall be subordinate to, the Judicial Commissioner ; and, subject to such general superintendence, the Commissioner shall

Superintend-
ence over
Courts.

have

have control over the Courts of the Deputy Commissioners within his Division, and the Deputy Commissioner over all the Courts of the first and second grades within his district.

List of holidays.

15. Subject to the orders of the Chief Commissioner, the Judicial Commissioner shall prepare a list of days to be observed in each year as close holidays in his Court and the Courts subordinate to him.

Special Jurisdiction.

Chief Commissioner may give special jurisdiction.

16. The Chief Commissioner may invest any Assistant Commissioner, or Extra Assistant Commissioner of the first or second class, with power to try suits of which the amount or value does not exceed five thousand rupees.

Chief Commissioner may invest certain Courts with powers of Judge of Court of Small Causes.

17. The Chief Commissioner may invest any presiding officer of the Courts of grades (2) and (3) mentioned in section eight with the powers of a Judge of a Court of Small Causes, to hear and determine suits of a nature cognizable by a Court of Small Causes; and of such value or amount as he thinks fit, not exceeding five hundred rupees.

Any Court so invested shall, in the exercise of the powers so conferred, be governed by the provisions of the law for the time being in force regulating the procedure of Courts of Small Causes.

Exercise, by Chief Commissioner, of powers of Local Government.

18. The Chief Commissioner may exercise the powers conferred on the Local Government by section seven of Act XI of 1865.

Exercise by one Court, within limits of another of same grade, of powers of latter.

19. The Chief Commissioner may empower the presiding officer of any Court mentioned in section eight to exercise the powers which might be exercised by the presiding officer of any other Court of the same grade, within the local limits of the jurisdiction of the latter Court.

Procedure.

Procedure when subject-matter of suit is situate within jurisdiction of different Courts.

20. Where a suit is brought for immoveable property situate within the local jurisdiction of different Courts included in the same Division, application for authority to proceed with the same shall be made to the Commissioner of the Division:

If

If the said Courts belong to different Divisions, the application shall be made to the Judicial Commissioner, through the Commissioner of the Division in which the Court wherein the suit was instituted is included :

If either of the said Courts is the Court of the Recorder of Rangoon, the application shall be made to the Chief Commissioner.

21. No presiding officer of any Court mentioned in section eight shall, unless with the consent of the parties or the direction of the Chief Commissioner, try any suit or appeal in which he is a party or personally interested, or any appeal against a decree or order passed by himself ; 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, unless the parties apply that he proceed with the case himself, transmit the record to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference :

The superior Court shall thereupon try the case itself, or transfer it for trial to any subordinate Court of competent jurisdiction as to the amount or value of the subject-matter of the suit.

In the event of an appeal being preferred to the Judicial Commissioner from a judgment or order passed by him in any other capacity, or in which he has any personal interest, he shall, unless the parties apply that he proceed with the case himself, report the fact to the Chief Commissioner, who shall either direct the Judicial Commissioner to try the case himself or transfer it to the Court of the Recorder of Rangoon.

Appointment and Removal.

22. The presiding officers of all the Courts except that of the Extra Assistant Commissioner of the third class shall be appointed by the Governor General in Council.

The

The Extra Assistant Commissioner of the third class shall be appointed and may be removed by the Chief Commissioner.

Suspension and removal of presiding officers.

23. The presiding officer of any Court under this Act may, for any misconduct, be suspended or removed by the Governor General in Council.

The presiding officer of any Court except the Courts of the Judicial Commissioner and the Recorder of Rangoon may, for any misconduct, be suspended by the Chief Commissioner, but shall not be removed without the sanction of the Governor General in Council.

Appointment of ministerial officers of Courts.

24. The ministerial officers of the Courts of grades (1) and (2) mentioned in section eight shall be appointed by the Deputy Commissioner within whose local jurisdiction such Courts are situate.

The ministerial officers of all other Courts shall be appointed by the presiding officers thereof ;

provided that the appointment of every ministerial officer of a Court subordinate to the Judicial Commissioner, whose monthly salary exceeds fifty rupees, shall be subject to the sanction of the Judicial Commissioner.

Power to fine, suspend or remove such officers.

25. Every Court of the grades (1) and (2) mentioned in section eight may fine in an amount not exceeding one month's salary any of its ministerial officers who is guilty of misconduct or neglect in the performance of the duties of his office.

The Deputy Commissioner, subject to the general control of the Commissioner, may on appeal or otherwise reverse or modify any such order; and may of his own motion remove, suspend from office, or fine up to the amount of one month's salary, any ministerial officer of a Court subordinate to him.

The presiding officer of any of the Courts of grades (4), (5) and (6) mentioned in section eight and of any Court of Small Causes, may remove or suspend the ministerial officers of his Court, or fine them in an amount not exceeding one month's salary; but every such removal or suspension of an officer whose salary exceeds fifty rupees per month shall be subject to the review of the Judicial Commissioner.

26. Any

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

Recovery of fines.

27. The Chief Commissioner shall have a power of general control over all appointments and removals of ministerial officers under this Act.

General control of Chief Commissioner over appointments and removals of ministerial officers.

Civil Appeals.

28. The memorandum of appeal must, when the 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.

Time allowed for presenting appeals to Commissioner.

29. The Chief Commissioner may direct that the civil appellate jurisdiction of any Commissioner shall be transferred to the Judicial Commissioner, either wholly or in respect of a particular suit or class of suits, and either for a specified time or until further orders. The Chief Commissioner may also at any time direct that any appellate jurisdiction which has been so transferred to the Judicial Commissioner shall revert to the Commissioner from whom it was so transferred.

Transfer of civil appellate jurisdiction to Judicial Commissioner.

30. The Appellate Court may confirm the decision of the Lower Court without summoning the respondent if, upon perusal of the judgment of the Lower Court and of the petition of appeal in the presence of the appellant or his pleader, there appear to the Appellate Court to be no reason to alter the decision appealed from.

Confirmation of decision of Lower Court without summoning respondent.

31. When in the trial of any civil appeal, the Appellate Court entertains a doubt in regard to a question of law or usage having the force of law, or as to the construction of a document, or as to the admissibility of any evidence affecting the merits of the case, such Court may draw up a statement of the point as to which it is in doubt, and refer it, with the Court's own opinion, for the decision of the Judicial Commissioner.

Reference to Judicial Commissioner.

32. The

Procedure on such reference.

32. The Judicial Commissioner shall, after considering the point so referred, send a ruling thereon to the Court by which the reference was made; and such Court shall, on the receipt of such ruling, proceed to dispose of the case in conformity therewith.

Costs of reference.

The costs, if any, consequent on any such reference to the Judicial Commissioner, shall be costs in the appeal out of which the reference arose.

When Judicial Commissioner may receive second appeal.

33. If in any suit the decision of the Deputy Commissioner or of the Commissioner, passed in 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 judgments of the subordinate Courts, a further consideration of the case appears to him to be requisite for the ends of justice.

When decision of first Appellate Court to be final.

34. If the Court of first appeal confirms the decision of the Court of original jurisdiction on a matter of fact, such decision shall be final.

Reference to Judicial Commissioner when decision of Lower Court confirmed on certain points.

35. If the Court of first appeal confirms the decision of the Court of original jurisdiction on a question of law or custom having the force of law, or the construction of any document, or the admissibility of any evidence affecting the merits of the case, the party aggrieved by such decision may apply to such Court to draw up a statement of the point as to which he considers such Court to have made an incorrect ruling and to submit it to the Judicial Commissioner.

Such application shall not be admitted, unless it is made within the period and after payment of the fee prescribed by law for petitions of appeal.

If the Court consider that there is a question of law or custom having the force of law, or as to the construction of a document or admissibility of evidence affecting the merits of the case, it shall make a statement of the same and of such facts only of the case as are necessary to explain it, and shall submit such statement, together with the record of the case, to the Judicial Commissioner.

If the Court refuses to make such statement, it shall record in writing its reasons for so refusing.

36. The

36. The Judicial Commissioner shall, with as little delay as possible, proceed to try the case referred, as if it were an appeal instituted in his Court, except that it shall not be necessary for the parties to be present: the Judicial Commissioner shall send a copy of his judgment to the Court by which the case was submitted, and the said Court shall dispose of the case in conformity with such judgment.

Procedure of
Judicial
Commissioner
thereupon.

37. When the Judicial Commissioner entertains any doubt as to the decision to be passed on any appeal made or case referred under this Act, he may make a reference to the High Court of Fort William in Bengal, and shall send the record of the said appeal or case and all the proceedings connected therewith to the said Court.

Reference by
Judicial Com-
missioner to
High Court.

The procedure prescribed by section thirty-six shall as nearly as possible be followed by the High Court in the disposal of references made under this section.

Procedure
thereupon.

38. The provisions of section thirty-two as to the adjustment of costs, shall apply to cases referred under sections thirty-five and thirty-seven.

Provisions as
to costs to
apply.

PART II.

CHAPTER IV.

COURT OF THE RECORDER OF RANGOON.

39. There shall be a Court, to be called the Court of the Recorder of Rangoon.

Court of
Recorder of
Rangoon.

The Recorder shall be appointed by the Governor General in Council, and shall be a Barrister of not less than five years' standing, and shall hold his office during the pleasure of the Governor General in Council.

Appointment
of Recorder.

He shall hold his Court ordinarily in the Town of Rangoon; but the Chief Commissioner may direct him on any particular occasion to hold his Court either at Akyab or Maulmain for the trial of Civil suits or appeals transferred to him, or Criminal cases in which European British subjects are concerned.

Place of hold-
ing Court.

He shall use a seal of such form and dimensions as are for the time prescribed by the Chief Commissioner.

Seal to be
used.

Civil

Civil Jurisdiction.

Local limits of ordinary civil jurisdiction of Recorder.

40. The present local limits of the jurisdiction of the Recorder of Rangoon shall be the local limits of the ordinary civil jurisdiction of the Recorder appointed under this Act; but the Chief Commissioner may from time to time, with the previous sanction of the Governor General in Council, vary such limits.

Civil jurisdiction of Recorder.

41. The Court of the Recorder shall have jurisdiction in the adjudication of suits of every description, except those which are cognizable by a Court of Small Causes, if, in the case of immoveable property, the subject-matter of the suit is situate, or if, in all other cases, the defendant at the time of the commencement of the suit dwells or carries on business or personally works for gain, within the limits mentioned or referred to in section forty. Where such immoveable property is situate partly within the local jurisdiction of the Recorder and partly within the jurisdiction of some other Court, the Chief Commissioner shall determine by what Court the suit shall be tried.

No appeal from Recorder's Court in certain cases.

42. There shall be no appeal from the decree or order of the Recorder, passed in any original suit or proceeding, where the amount or value of the subject-matter thereof does not exceed three thousand rupees.

When appeal to lie to High Court.

Where such amount or value exceeds three thousand rupees, and is less than the amount for which an appeal will lie to Her Majesty in Council under the law for the time being in force regulating such appeals, an appeal shall lie to the High Court of Judicature at Fort William in Bengal.

Assessors in civil suits.

43. For the trial of civil suits under this Act, the Recorder may constitute one or more persons assessor or assessors of the Court. Such person or persons shall attend during the trial of the suit, and shall deliver his or their opinion or opinions in writing, to be recorded on the proceedings. But the decision of the case shall rest with the Recorder. No officer of the Recorder's Court shall be appointed an assessor under this section.

If

If any such assessor is appointed at the desire of the parties to a suit or either of them, such parties or party shall deposit such sum as the Recorder decides to be reasonable compensation to such assessor for his time and trouble. Such sum shall be recoverable as costs in the case.

Remuneration to assessor or appointed at desire of suitor.

44. The Recorder shall, within the local limits of his ordinary civil jurisdiction, exercise the powers of a District Judge; and he shall also exercise the powers of a District Judge under Act IV of 1869 (*The Indian Divorce Act*) throughout British Burma.

Miscellaneous jurisdiction.

45. The Recorder shall, in respect of the Court of Small Causes in Rangoon, exercise the powers of a High Court.

Recorder's powers in respect of Small Cause Court, Rangoon.

46. The Recorder may, if he thinks fit, grant a new trial in any suit tried by him, if, in suits relating to land or other immoveable property, such new trial be applied for within three months from the date of the decision; and, in all other cases, if it be applied for within thirty days from the date of the decision: Provided that nothing hereinbefore contained shall interfere with the power of the Recorder to allow a review of judgment, under the Code of Civil Procedure, if such review be applied for within the period allowed by the said Code for making such applications: Provided also that, in any case in which the Recorder thinks it necessary to do so, he may, before granting a new trial or a review, require the party applying for the same to give sufficient security for the due compliance with the terms of the decree or order which it is sought to set aside or review.

Grant of new trial on application within given time.

And review of judgment.

Security from applicant for either.

47. If in any suit, any question of law or usage having the force of law, or the construction of a document affecting the merits of the decision, arises, on which the Recorder entertains any doubt, the Recorder may, either of his own motion, or on the application of the parties to the suit or either of them, draw up a statement of the case, and submit such statement, with his own opinion, for the decision of the High Court of Judicature at Fort William in Bengal.

In case of doubt as to certain questions, statement of case may be submitted for decision of High Court.

48. The

And decree may be passed contingent thereon; but, pending receipt, execution not to issue.

48. The Recorder may proceed in the case, notwithstanding a reference to the said High Court, and may pass a decree contingent upon the opinion of the High Court on the point referred; but no execution shall be issued in any case, in which a reference has been made to the High Court, until the receipt of the order of that Court.

Full bench to deal with cases referred.

49. Cases referred under section forty-seven for the opinion of the High Court shall be dealt with by a bench of two or more Judges of that Court.

And parties may appear in person, or by Advocate, &c.

50. The parties to the case may appear and be heard in the High Court in person, or by an Advocate or Pleader; but they shall not be bound so to appear; and the High Court, when it has heard and considered the case, shall transmit a copy of its judgment, under the seal of the Court and the signature of the proper officer of the Court, to the Recorder, who shall, on the receipt thereof, proceed to dispose of the case conformably to the decision of the High Court.

Transmission of judgment of High Court, and proceeding thereupon.

Costs of reference to High Court.

Costs, if any, consequent on the reference of a case for the opinion of the High Court, shall be costs in the suit.

Transfer of suits to Recorder's Court.

51. The Chief Commissioner may direct the transfer to the Recorder's Court of any suit or appeal which may have been instituted in any Court in British Burma other than the said Recorder's Court. Every case so transferred shall be tried and determined by the Recorder in the same manner as if he had originally had jurisdiction in such case and it had been instituted in his Court.

Trial of such suits.

Disposal of suit where Recorder is interested.

52. When any suit or proceeding comes before the Recorder of Rangoon, in which he is a party or personally interested, he shall, unless the parties apply that he proceed with the case himself, report the fact to the Chief Commissioner, who shall either direct the Recorder to try the case himself, or transfer it to the Court of the Judicial Commissioner.

Jurisdiction of Judicial Commissioner in cases transferred.

The Judicial Commissioner shall have the same jurisdiction in the adjudication of cases so transferred, as the Recorder has in suits and proceedings cognizable by him under this Act, and the provisions of

sections

sections forty-six to fifty inclusive shall apply to such cases.

Criminal Jurisdiction.

53. The Recorder shall exercise the powers of a Court of Session, as defined in the Code of Criminal Procedure, within the local limits of his ordinary civil jurisdiction: Provided that sentences of death passed by him as a Court of Session, shall be subject to the confirmation of the Special Court.

Recorder to exercise powers of Session Court within his civil jurisdiction.

54. The Recorder shall exercise the powers exercisable by a High Court as a Court of Revision, in respect of the proceedings of Magistrates within the local limits of his ordinary civil jurisdiction.

And powers of revision of High Court as to proceedings of Magistrates.

55. The Recorder shall exercise the powers of a High Court for the trial of European British subjects; and all commitments of European British subjects on charges of offences committed within British Burma, which would, according to the law for the time being relating to Criminal Procedure, be made to a High Court, shall be made to his Court.

And powers of High Court as to European British subjects.

56. The proceedings on trials held by the Recorder for the trial of European British subjects, shall be regulated by the Code of Criminal Procedure:

Proceedings to be regulated by Code of Criminal Procedure.

Provided that European officers in the Military Service, Commissioned and Non-Commissioned, resident within ten miles of the place of sitting of the Court, shall be liable to serve as jurors for the trial of European British subjects.

Liability of Military officers to serve as jurors.

The Officer Commanding the Station where the Court of Session is about to be held shall, when required, send in to the Court a list containing the names of all officers liable to serve.

List of officers liable to serve.

The summons to any such officer to serve as a juror shall be sent through the Officer Commanding the Station; but no officer shall be excused from attendance, unless the Officer Commanding the Station shall certify in writing to the Court that the presence of the officer summoned is required elsewhere on urgent military duty: and in such certificate the

Officer summoned not excusable except for urgent military duty.

Commanding

Commanding Officer shall supply the name of some other officer for service upon the jury.

Sentence of death to be referred to High Court.

57. Sentences of death passed in the exercise of the powers conferred by section fifty-five shall not be carried out without the confirmation of the High Court at Fort William in Bengal, to whom such sentences shall be referred.

Advocates.

Licensing of Advocates, and rules regarding qualifications and admission.

58. No person shall be permitted to appear or act as the Advocate of any suitor in the Court of the Recorder, unless such person has been licensed thereto by the Recorder, either generally or specially; and the Recorder may make rules for the qualification and admission of proper persons to act as Advocates in his Court, and may from time to time cancel, vary or add to, any such rules: Provided that nothing in this section contained shall be deemed to prevent any person from appearing or acting as the agent for the Secretary of State for India in Council, or to prevent any suitor from appearing, pleading, or acting on his own behalf or on behalf of a co-suitor: Provided also that any person, who for the time being is an Advocate, Vakíl, or Attorney-at-law of any of the High Courts of Judicature in India, shall be entitled, without any such license, to act as an Advocate for any suitor in the Court of the Recorder.

Saving of agent for Secretary of State, &c.

And of Advocates, &c., of High Courts.

License may be suspended or withdrawn.

The Recorder may, for any sufficient reason, suspend or withdraw any license granted under this section. Any person aggrieved by such suspension or withdrawal may appeal to the High Court of Judicature at Fort William in Bengal.

Fees of Advocates, &c., subject to taxation.

59. The fees to be received by any Advocate, whether generally or specially licensed by the Recorder, or entitled to act in his Court as an Advocate for another person without a license under section fifty-eight of this Act, shall at all times be subject to the control and taxation of the said Recorder, and no fees shall be recoverable by any Advocate, except such fees as shall have been allowed by the Recorder on taxation.

Rules

Rules of the Court.

60. Upon the occurrence of any vacancy in the office of Recorder of Rangoon and during any absence of the Recorder, the Chief Commissioner may direct the Judicial Commissioner or any Commissioner to perform the duties of the Recorder; and the Judicial Commissioner or the Commissioner so directed shall thereupon be authorized to preside in the Court of the Recorder, and to exercise the jurisdiction of the Recorder until some person shall have been appointed by the Governor General in Council to fill or officiate in the office of the Recorder, and shall have entered upon the discharge of the duties of such office, or until the Recorder shall have returned from such absence.

Provision for discharge of duties of Recorder in case of vacancy in his office.

61. The ministerial officers of the Court of the Recorder of Rangoon shall be appointed by the Recorder, who may also remove or suspend them, or fine them in an amount not exceeding one month's salary; but the suspension or removal of any officer drawing a salary of one hundred rupees or upwards, shall be subject to the orders of the Chief Commissioner.

Appointment and removal of ministerial officers.

62. The Recorder shall keep such registers and books and accounts, and submit to the Chief Commissioner such statements and returns as may, subject to the approval of the Governor General in Council, be prescribed by the Chief Commissioner. The said Recorder shall also comply with such requisitions for information as are made by the Chief Commissioner, and generally, in matters not judicial, shall be subject to the control of the Chief Commissioner.

Registers, &c., to be kept, and returns to be submitted, by Recorder.

63. The Recorder may make and issue general rules for regulating the practice and procedure of his Court, and may prescribe forms for every proceeding therein for which he thinks that a form should be provided, and may from time to time alter any such rule or form; and the rules so made, and the forms so framed, shall be published in the local official Gazette, and after being so published shall be observed and used in the said Court: Provided

Power to make rules of practice.

that

that such rules and forms shall not be inconsistent with the Codes of Civil or Criminal Procedure or any other law for the time being in force, and shall, before they are published, have received the sanction of the Chief Commissioner.

Rules for service and execution of process, and table of fees for same.

64. The Recorder may, with the previous sanction of the Chief Commissioner, make, and may from time to time alter, rules to regulate the service and execution of the processes of his Court within the local limits of his jurisdiction; and may settle a table of fees to be allowed to the persons employed in such service or execution. All such rules and tables shall be published in the local official Gazette, and shall thenceforth have the force of law.

Publication of same.

Holidays and vacations.

65. The Recorder shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in his Court, and shall submit the same for the sanction of the Chief Commissioner.

Rules before made to be in force until others made under this Act.

Rules heretofore made to regulate the service and execution of process under Act XXI of 1863, or Act III of 1866, shall be deemed to be in force until superseded by rules made under this Act.

CHAPTER V.

SPECIAL COURT.

Constitution of Special Court.

66. The Special Court under this Act shall ordinarily be constituted by the Judicial Commissioner and the Recorder of Rangoon sitting together; but the Chief Commissioner may direct any Commissioner to sit in the Court as an additional Judge. Such Commissioner shall record his opinion in the case, and in case of a difference of opinion, the opinion of the majority shall be the decision of the Court.

Precedence in Special Court.

67. When the Judicial Commissioner and Recorder sit together as a Special Court, the senior officer, according to priority of appointment, shall have the precedence in the Court so formed.

Use of seal.

The Special Court shall use a seal of such form and dimensions as the Chief Commissioner from time to time directs.

68. The

68. The Judicial Commissioner and the Recorder of Rangoon may, in concurrence, and subject to the sanction of the Chief Commissioner, frame rules of practice for regulating the times and places of the sittings of the Special Court.

69. Appeals from orders and decrees passed by the Judge of the Town of Maulmain in civil suits and proceedings shall, where an appeal is allowed by law, be heard and determined by the Special Court. Such appeals shall be presented in the Court of the Judicial Commissioner.

70. If, in any civil suit or appeal, or in any criminal case or appeal, pending in the Court of the Judicial Commissioner or of the Recorder of Rangoon, the one Court wishes to obtain the opinion of the other on any question of fact or law, or usage having the force of law, or the construction of a document, or wishes to obtain the assistance of the other for the determination of the case pending before it, such Court shall record a memorandum to that effect; and after the receipt of a copy of such memorandum by the other Court, the Judicial Commissioner and the Recorder of Rangoon shall sit together as soon as may be convenient, and shall form a Special Court for the disposal of the said question or for the determination of the case.

71. The Chief Commissioner may direct that any civil suit or appeal, or any criminal case or appeal, pending in the Court of the Judicial Commissioner or of the Recorder of Rangoon, shall be tried before the Special Court.

72. Any decree or sentence passed by a Special Court as above constituted on a reference made under section seventy, or in a case tried under section seventy-one, shall issue as, and be deemed to be, a decree or sentence of the Court from which the case was referred to the Special Court.

73. Any person convicted on a trial held by the Recorder of Rangoon as a Court of Session, may, where an appeal is allowed by law, appeal to the Special Court. Such appeal shall be presented in the Court of the said Recorder.

74. The

Powers of Court of Reference exercisable by Special Court.

74. The Special Court shall exercise the powers exercisable by a High Court as a Court of Reference, in respect of sentences of death passed by the Recorder of Rangoon, in cases tried by him as a Court of Session.

Rules as to finding of Special Court in case of difference of opinion arising.

75. Whenever, in cases tried by the Judicial Commissioner and Recorder of Rangoon sitting together as a Special Court without a Commissioner, a difference of opinion arises in such Court, the following rules shall be observed:—

(1.) If the difference of opinion arise in a civil appeal, and if either the Judicial Commissioner or Recorder of Rangoon concur in the ruling of the Court from whose decision the appeal has been made, such ruling shall be upheld. If the difference of opinion arise as to some point of law, or custom having the force of law, or the admissibility of evidence or construction of a document affecting the merits of the case, and if either the Judicial Commissioner or the Recorder of Rangoon be of opinion that the point should be referred to the High Court of Judicature at Fort William in Bengal, they shall state the point as to which they differ, and forward the statement with their respective opinions thereon to the High Court.

(2.) In all other cases, the point shall be referred to the High Court with a similar statement of opinions.

Decree may be passed contingent on opinion of High Court, but execution not to issue.

76. Where such reference is in a civil suit, the Special Court may proceed in the case notwithstanding such reference, and may determine the suit contingently on the opinion of the said High Court on the point referred; but no final execution shall be issued in any civil case in which a reference is made, until the receipt of such opinion.

Procedure of High Court on reference.

77. The High Court shall proceed to determine the point referred as if it were an appeal instituted in such Court, except that it shall not be necessary for the parties to appear either personally or by agent. A copy of the determination of the High Court shall be sent to the Court from which the case was referred to the Special Court, and such Court shall dispose of the case accordingly.

The

The costs, if any, consequent on the reference of the case for the opinion of the High Court, shall be in the suit or appeal. Costs of reference.

CHAPTER VI.

MISCELLANEOUS.

78. Instead of the last paragraph of section seven of Act XV of 1869, the following shall be read :— Amendment of section 7, Act XV of 1869.

“ For the purposes of this Act every jail in British Burma shall be deemed to be situate within the local limits of the appellate jurisdiction of the Judicial Commissioner; and the Recorder of Rangoon may issue orders, under this section or sections three or four, and may also issue commissions under Part III of this Act, in any jail in British Burma.”

79. No trial heretofore had by the Commissioner of Akyab as a Court of Session shall be deemed to have been invalid merely on the ground that such trial was not by jury. Saving of trials by Commissioner of Akyab as a Court of Session.

SCHEDULE.

Burma Courts. [ACT VI, 1872.]

SCHEDULE

ENACTMENTS REPEALED.

[See section 5.]

No. and Year.	Title.	Extent of repeal.
VIII of 1859 ...	An Act for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter.	Sections three hundred and seventy-two, three hundred and seventy-three and three hundred and seventy-four, so far as they relate to British Burma.
XXIII of 1861...	An Act to amend Act VIII of 1859 (<i>for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter.</i>)	Section twenty-three, section twenty-five and sections twenty-seven to thirty-four, both inclusive, so far as they relate to British Burma.
I of 1863 ...	An Act to define the jurisdiction and to regulate the procedure of the Courts of Civil Judicature in British Burmah, and to provide for the extension of certain Acts to the said Territory.	The whole.
XXI of 1863 ...	An Act to constitute Recorders' Courts for the Towns of Akyab, Rangoon and Moulmein, in British Burmah; and to establish Courts of Small Causes in the said Towns.	The whole.
XXIV of 1863 ...	An Act to amend Act I of 1863 (<i>to define the jurisdiction and to regulate the procedure of the Courts of Civil Judicature in British Burmah, and to provide for the extension of certain Acts to the said territory.</i>)	The whole.
III of 1866 ...	An Act to confer certain increased powers on the Registrars of the Recorders' Courts in British Burmah, and for other purposes.	The whole.