

THE PRIVY COUNCIL APPEALS ACT, 1874.

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ACT NO. VI OF 1874.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 24th March
1874).*

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

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:—

Preamble.

I.—PRELIMINARY.

1. This Act may be called "The Privy Council Appeals Act, 1874:—"

Short title.

It extends to the whole of British India; but it does not apply to any matter of criminal, or admiralty, or vice-admiralty, jurisdiction: nor to appeals from orders and decrees of Prize-courts;

Extent.

And it shall come into force on the passing thereof.

Commencement.

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 The enactments specified in the schedule here-to annexed are repealed to the extent mentioned in the third column thereof.

Repeal of enactments.

3. In this Act, unless there be something repugnant in the subject or context, the expression "decree" includes also judgment and order.

'Decree' defined.

II.—ADMISSION OF APPEALS.

4. Subject to such rules as may, from time to time, be made by Her Majesty in Council regarding appeals from

When appeals lie to Queen in Council.

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 decree passed on appeal by a High Court or other Court of final appellate jurisdiction,

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

(c) from any decree, when the case, as hereinafter provided, is certified to be a fit one for appeal to Her Majesty in Council.

Value of subject-matter.

5. In each of the cases mentioned in clauses (a) and (b) of section four,

the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the matter in dispute on appeal to Her Majesty in Council must be the same sum or upwards,

or the decree must involve, directly or indirectly, some claim or question to, or respecting, property of like amount or value,

and where the decree appealed from affirms the decision of the Court immediately below the Court passing such decree, the appeal must involve some substantial question of law.

Bar of certain appeals.

6. Notwithstanding anything contained in section four,—

no appeal shall lie to Her Majesty in Council from the judgment of one Judge of a High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four, or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the High Court at the time being;

and no appeal shall lie to Her Majesty in Council from any decree which, under Act No. XXIII of 1861, section twenty-seven, is final.

7. Whoever

7. Whoever desires to appeal under this Act to Her Majesty in Council must apply by petition to the Court whose decree is complained of.

Application to Court whose decree is complained of.

8. Such application must ordinarily be made within six months from the date of such decree.

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.

9. Every petition under section seven must state the grounds of appeal, and pray for a certificate, either that as regards amount or value and nature, the case fulfils the requirements of section five, or that it is otherwise a fit one for appeal to Her Majesty in Council.

Certificate as to value or fitness.

Upon receipt of such petition, the Court may direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

10. If such certificate be refused, the petition shall be dismissed:

Refusal of certificate.

Provided that, if the decree complained of be a final decree passed by a Court other than a High Court, the order refusing the certificate shall be appealable within thirty days from the date of the order, to the High Court to which the former Court is subordinate.

11. If the certificate be granted, the applicant shall, within six months from the date of the decree complained of, or within six weeks from the grant of the certificate, whichever is the later date,

Security and deposit required on grant of certificate.

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

(b) deposit the amount required to defray the expense of translating, transcribing, indexing, and transmitting to Her Majesty in Council a correct copy 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;

(3) accounts,

- (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 ; and
- (4) such other documents as the High Court may direct to be excluded ;

and when the applicant prefers to print in India the copy of the record, except as aforesaid, he shall also, within the time mentioned in the first clause of this section, deposit the amount required to defray the expense of printing such copy.

Admission of appeal and procedure thereon.

12. When such security has been completed and deposit made to the satisfaction of the Court, the Court may

- (a) declare the appeal admitted, and
- (b) give notice thereof to the respondent, and shall then
- (c) transmit to Her Majesty in Council, under the seal of the Court, a correct copy of the said record, except as aforesaid, and
- (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.

Revocation of acceptance of security.

13. 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.

Power to order further security or payment.

14. If at any time after the admission of the appeal, but before the transmission of the copy 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 copy of 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

sufficient security, or to make, within like time, the required payment.

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

Failure to comply with order.

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

and in the meantime execution of the decree appealed against shall not be stayed.

16. When the copy of 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 eleven.

Refund of balance of deposit.

III.—PROCEEDINGS PENDING APPEALS.

17. Notwithstanding the admission of any appeal under this Act, the decree appealed against shall be unconditionally enforced, unless the Court admitting the appeal otherwise directs.

Powers of Court pending appeal.

But the Court may, if it think fit, on any special cause shown by any party interested in the suit, or otherwise appearing to the Court—

(a) impound any moveable property in dispute, or any part thereof, or

(b) allow the decree appealed against to be enforced, taking such security from the respondent as the Court thinks fit for the due performance of any order which Her Majesty in Council may make on the appeal, or

(c) stay the execution of the decree appealed against, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed against, or of any order which Her Majesty in Council may make on the appeal, or

(d) place any party seeking the assistance of the Court under such conditions, or give such other direction respecting the subject-matter of the appeal, as it thinks fit.

18. If

Increase of security found inadequate.

18. 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 furnished as required by the Court, if the original security was furnished by the appellant, the Court may, on the application of the respondent, issue execution of the decree appealed against as if the appellant had furnished no such security,

And if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay all further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

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

Procedure to enforce orders of Queen in Council.

19. Whoever desires to enforce or to obtain execution of any order of Her Majesty in Council shall apply by petition, accompanied by a certified copy of the decree or order made in appeal and sought to be enforced or executed, to the Court from which the appeal to Her Majesty was preferred.

Such Court shall transmit the order of Her Majesty to the Court which made the first decree appealed from, or to such other Court as Her Majesty by her said order may direct, and shall (upon the application of either party) give such directions as may be required for the enforcement or execution of the same; and the Court to which the said order is so transmitted shall enforce or execute it accordingly, in the manner and according to the rules applicable to the execution of its original decrees.

Appeal against order relating to execution.

20. The orders made by the Court which enforces or executes the order of Her Majesty in Council relating to such enforcement or execution, shall be appealable in the same manner and subject to the same

same rules as the orders of such Court relating to the enforcement or execution of its own decrees.

21. To the first column of No. 169 of the second schedule annexed to the Indian Limitation Act, 1871, the following words shall be added (that is to say), "or any order of Her Majesty in Council."

Amendment
of Act IX of
1871, sche-
dule II,
No. 169.

V.—MISCELLANEOUS.

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

Power to
make rules.

- (a) the service of notices under section nine,
- (b) the grant or refusal of certificates, under sections ten and eleven, by Courts of final appellate jurisdiction subordinate to the High Court,
- (c) the amount and nature of the security required under sections eleven, fourteen and eighteen,
- (d) the testing of such security,
- (e) the estimate of the cost of transcribing the record,
- (f) the preparation, examination and certifying of such transcript,
- (g) the revision and authentication of translations,
- (h) 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 in the High Court and the Courts of final appellate jurisdiction subordinate thereto.

Publication
of rules.

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

Rules hereto-
fore made.

23. In

Recorder of
Rangoon.

23. In sections four and twenty-two, the expression 'High Court' shall be deemed to include also the Recorder of Rangoon, but not so as to empower him to make rules binding on Courts other than his own Court.

Construction
of Bengal
Regulation
III of 1828,
section 4,
clause 5.

24. 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.

Saving of
Her Majes-
ty's pleasure,

25. Nothing herein contained shall be understood—

(a) to bar the full and unqualified exercise of Her Majesty's pleasure in receiving or rejecting appeals to Her Majesty in Council, or otherwise howsoever, or

and of rules
for conduct of
business be-
fore Judicial
Committee.

(b) to interfere with any rules made by the Judicial Committee of the Privy Council and for the time being in force for the presentation of appeals to Her Majesty in Council, or their conduct before the said Judicial Committee.

SCHEDULE.

(See section 2.)

ENACTMENTS REPEALED.

Number and year of enactment.	Title or abbreviated Title.	Extent of repeal.
Bengal Regulation XVI of 1797.	<p style="text-align: center;">A.—REGULATIONS.</p> A Regulation respecting Appeals from the Court of Sudder Dewanny Adawlut to His Most Excellent Majesty and His Most Honourable Privy Council.	The whole.
Bengal Regulation 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, &c.	So much as has not been repealed.
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.	Ditto.
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	<p style="text-align: center;">B.—ACTS.</p> An Act respecting the Expenses of preparing Copies of Proceedings in Appeals.	The whole.

SCHEDULE—*concluded.*

Number and year of enactment.	Title or abbreviated Title.	Extent of repeal.
B.—ACTS— <i>contd.</i>		
Act XXV of 1852 ...	An Act for the execution of decrees made in appeal by Her Majesty in Council, &c.	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.
C.—STATUTES.		
13 George III, cap. 63.	An Act for establishing certain Regulations for the better Management of the Affairs of the East India Company, as well in India as in Europe.	Section eighteen.
37 George III, cap. 142	An Act for the better Administration of Justice at Calcutta, Madras and Bombay, &c.	Section sixteen.