

ACT No. I OF 1863.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 15th January 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.*

WHEREAS it is expedient to define the limits of the jurisdiction of the Courts of Civil Judicature in British Burmah; and whereas it is also expedient that the Code of Civil Procedure should have effect throughout British Burmah subject to certain alterations and provisos, and that provision should be made for extending the operation of certain Acts to the said Territory; It is enacted as follows:—

Preamble.  
Pegu Civil Code repealed.

I. The Code called the Civil Code of the Province of Pegu is hereby repealed.

II. There shall be six grades of Courts in British Burmah, which shall be in addition to any Recorders' Courts, Courts of Small Causes, or other Courts established under any Act which may be hereafter passed, namely:—

1. The Court of the Extra Assistant of the third class, or the Myooke's Court.

2. The Court of the Extra Assistant of the second class, or the Tseekay's Court.

3. The Court of the Assistant Commissioner, and the Court of the Extra Assistant of the first class.

4. The

Act No. I of 1863.

4. The Court of the Deputy Commissioner.
5. The Court of the Commissioner, and
6. The Court of the Chief Commissioner.

III. The Court of the Extra Assistant of the third class, or the Myooke's Court, shall have power to receive, try and determine suits of every description not exceeding 500 Rupees in value or amount.

Jurisdiction of Court of Extra Assistant of 3rd class, or Myooke's Court.

IV. The Court of the Extra Assistant of the second class, or the Tseekay's Court, shall have power to receive, try and determine suits of every description not exceeding 3,000 Rupees in value or amount.

Jurisdiction of Court of Extra Assistant of 2nd class, or Tseekay's Court.

V. The Court of the Assistant Commissioner and the Court of the Extra Assistant of the first class shall have power to receive, try and determine suits of every description not exceeding 5,000 Rupees in value or amount.

Jurisdiction of Court of Assistant Commissioner and of Court of Extra Assistant of 1st class.

VI. The Court of the Deputy Commissioner shall have power to receive, try and determine suits of every description exceeding 5,000 Rupees in value or amount, and appeals from the decisions and, where an appeal is allowed by the Code of Civil Procedure, from the orders of the Courts of the Extra Assistants of the third class or the Myookes' Courts, of the Courts of the Extra Assistants of the second class or the Tseekays' Courts, and of the Courts of the Assistant Commissioners and Extra Assistants of the first class, in the District of such Deputy Commissioner.

Jurisdiction of Court of Deputy Commissioner.

VII. The Court of the Commissioner shall have power to hear and determine appeals from the original decisions, and, where an appeal is allowed by the Code of Civil Procedure or by this Act, from the orders passed by the Courts of the Deputy Commissioners in the Division of such Commissioner. The Commissioner may also receive a second appeal from the decisions of the Courts of the Deputy Commissioners in his Division passed in regular appeal reversing or modifying the decision of the Court

Jurisdiction of Court of Commissioner.

of

ACT No. I OF 1863.

of original jurisdiction, on a point material to the merits of the case, if on a perusal of the grounds of appeal and of the judgments of the Courts below, copies of which judgments shall be filed with the petition of appeal, a further consideration of the case shall appear to him to be requisite for the ends of justice. The decision of the Commissioner on such second appeal, whether, for confirming, modifying or reversing the decision of the lower Appellate Court, shall be final, and no special appeal shall be allowed in such case to the Chief Commissioner from the decision either of the Deputy Commissioner passed in regular appeal, or of the Commissioner of the Division passed on such second appeal. The rejection of an appeal by the Commissioner on a second appeal shall have the same effect as a confirmation of the decree of the lower Court.

VIII. The Court of the Chief Commissioner shall, except as provided in the last preceding Section and in Section XVIII of this Act, have power to hear and determine special appeals from the decisions passed in regular appeal by the Deputy Commissioners and by the Commissioners of Divisions.

Jurisdiction of Court of Chief Commissioner.

IX. Every suit shall be instituted in the Court of the lowest grade competent to try it.

X. It shall be lawful for the Deputy Commissioner to withdraw any suit instituted in any Court subordinate to such Deputy Commissioner, and to try such suit himself or to refer it for trial to any other Court subordinate to his authority and competent in respect of the value of the suit to try the same. And it shall be lawful for the Chief Commissioner or for the Commissioner of a Division to order that the cognizance of any suit or appeal which shall be instituted in any Court subordinate to such Chief Commissioner or Commissioner, shall be transferred to any other Court subordinate to his authority and competent in respect of the value of the suit or appeal to try the same.

Transfer of suits.

XI. If the suit be for land or other immoveable property situate within the limits of different Districts within the same Division, the suit may be brought in any Court otherwise competent to try it within the jurisdiction of which any portion of the land or other immoveable property in suit is situate, but in such case the Court in which the suit is brought shall apply to the Commissioner of the Division for authority to proceed with the same. If the suit is brought in any Court subordinate

Suits for immoveable property situate in different Districts.

subordinate

ACT No. I OF 1863.

subordinate to the Court of the Deputy Commissioner, the application shall be submitted to the Commissioner of the Division through the Deputy Commissioner to whom such Court is subordinate.

XII. If the Districts within the limits of which the property is situate, are subject to different Commissioners, the application shall be submitted to the Commissioner to which the District, in which the suit is brought, is subject, and the Commissioner to which such application is made may, with the concurrence of the Commissioner to which the other District is subject, give authority to proceed with the suit.

Suits for immoveable property situate in Districts subject to different Commissioners.

XIII. Except when otherwise provided in any Regulation or Act for the time being in force, an appeal shall lie from the decisions of the Courts of original jurisdiction to the Courts authorized by this Act to hear appeals from the decisions of those Courts.

Appeal to lie from all decisions except when expressly prohibited.

XIV. The Memorandum of appeal prepared in the form and containing the particulars mentioned in the Code of Civil Procedure shall be presented in the Court empowered to hear the appeal, within the period hereinafter specified, unless the appellant shall show sufficient cause to the satisfaction of such Court for not having presented the Memorandum of appeal within such period, that is to say, within thirty days if the appeal lie to the Court of a Deputy Commissioner, and six weeks if the appeal lie to a Commissioner of a Division. The period shall be reckoned from and exclusive of the day on which the judgment appealed against was pronounced, and also exclusive of such time as may be requisite for obtaining a copy of the decree from which the appeal is made. Appeals from orders, when such appeal is allowed by the Code of Civil Procedure or by this Act, shall be presented within the same period as appeals from decisions.

Memorandum of appeal to be presented to the Appellate Court within specified time.

XV. In cases of appeal preferred to a Deputy Commissioner under Section VI, or to a Commissioner under Section VII of this Act, it shall not be necessary to summon the Respondent in the first instance, and if upon the perusal of the judgment of the Court below, of the whole or any part of the record of the original suit, and of the petition of appeal in the

Deputy Commissioner and Commissioner may confirm decision of lower Court appealed from without summoning the respondent.

ACT No. I OF 1863.

the presence of the Appellant or of his duly constituted Agent, the Deputy Commissioner or the Commissioner, as the case may be, shall see no reason to alter the decision appealed from, it shall be competent to him to confirm the same recording his reasons for rejecting the appeal. In such case the Deputy Commissioner or the Commissioner shall cause the order for confirmation to be made known to the respondent through the Court from whose decision the appeal was made.

XVI. Applications for a second appeal under Section VII of this Act shall be preferred in the manner and within the period prescribed in Section XIV for regular appeals to the Commissioner of a Division, and if the Commissioner shall see fit to admit any such second appeal, it shall be heard and determined in every respect as an ordinary regular appeal.

XVII. Applications for the admission of a special appeal, which the Chief Commissioner is empowered by Section VIII of this Act to receive and determine, may be on any of the grounds specified in Section 372 of the Code of Civil Procedure. The application shall be presented within ninety days reckoned from and exclusive of the day on which the judgment of the lower Appellate Court was pronounced, and also exclusive of such time as may be requisite for obtaining a copy of the decree appealed against, unless the applicant shall show sufficient cause to the satisfaction of the Chief Commissioner for not having presented the application within such period. The application shall be subject to all the conditions, whether as regards Stamp duty, remission of a portion thereof when the application is made in *formâ pauperis*, or otherwise, contained in the said Code in cases of application for the admission of a special appeal to the Sudder Court.

XVIII. No special appeal shall lie from any decision or order which shall be passed in regular appeal by any Court after the passing of this Act, in any suit of the nature cognizable in Courts of Small Causes under Act XLII of 1860, when the debt, damage, or demand for which the original suit shall be instituted shall not exceed the sum of five hundred Rupees.

XIX. If

ACT No. I of 1863.

XIX. If in any case of regular appeal in which under the last, preceding Section no special appeal is allowed, or in any case of second appeal admitted under Section VII of this Act, any question of law or usage having the force of law, or the construction of a document affecting the merits of the case shall arise, on which the Court trying the appeal shall entertain reasonable doubts, the Court may, either of its own motion or on the application of either of the parties to the appeal, draw up a statement of the case, and submit such statement with its own opinion for the decision of the Chief Commissioner. The provisions contained in Sections 29 to 34 of Act XXIII of 1861 (*to amend Act VIII of 1859, for simplifying the procedure of the Courts of Civil Judicature not established by Royal Charter*) shall be applicable to the statement so submitted, and the Chief Commissioner shall proceed in the case under the rules contained in the said Sections for the direction of the Sudder Court so far as the same are applicable.

XX. Applications to be allowed to appeal in *formâ pauperis* shall be written on Stamp paper of the value of one Rupee if the appeal lie to the Court of the Deputy Commissioner, and on Stamp paper of the value of two Rupees if the appeal lie to the Court of the Commissioner or to the Court of the Chief Commissioner, and shall be presented in the Court competent to receive the same within the period prescribed by this Act for the presentation of appeals from decisions, or when the application is made to the Chief Commissioner within the period prescribed by this Act for the presentation of an application for the admission of a special appeal.

XXI. Any person considering himself aggrieved by a decree of a Court of original jurisdiction from which no appeal shall have been preferred to a superior Court, or by a decree passed in appeal from which no second or special appeal shall have been admitted, or by a decree of the Court of the Chief Commissioner from which either no appeal shall have been preferred to Her Majesty in Council, or an appeal having been preferred, no proceedings in the suit shall have been transmitted to Her Majesty in Council, and who from the discovery of new matter or evidence which was not within his knowledge, or could not be adduced by him at the time when such decree was passed, or from any other good and

ACT No. I OF 1863.

and sufficient reason, may be desirous of obtaining a review of the judgment passed against him, may apply for a review of judgment by the Court which passed the decree. Such application shall be presented within the period of ninety days from the date of the decree sought to be reviewed, unless the applicant shall show good and sufficient reason for not presenting it within such period.

Time for presentation of application for review.

XXII. Act XIX of 1841 (*for the protection of moveable and immoveable property against wrongful possession in cases of successions*), Act XL of 1858 (*for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal*), and Act IX of 1861 (*to amend the law relating to Minors*) are hereby extended to British Burmah. All cases or proceedings arising under the said Acts or under Act XXXV of 1858 (*to make better provision for the care of the estates of Lunatics not subject to the jurisdiction of the Supreme Court of Judicature*) or Act XXVII of 1860 (*for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*) shall be received and determined by the Deputy Commissioner of the District subject to the provisions in the said Acts contained respectively as to jurisdiction and otherwise. All orders passed by the Deputy Commissioners in such cases or proceedings shall be open to appeal to the Commissioner of the Division, provided that no such appeal shall be allowed unless it be presented within thirty days from the date of the order appealed against, or unless the party making the appeal can show good and sufficient cause to the satisfaction of the Commissioner for not presenting the appeal within such period. The order of the Commissioner on any such appeal shall be final.

Extension of certain Acts to British Burmah.

Trial of cases or proceedings under the above and other Acts.

Appeal.

XXIII. Except as is in this Act otherwise provided, the proceedings in Civil suits of every description between party and party brought in the Courts of Civil Judicature in British Burmah mentioned in Section II of this Act, shall be regulated by the said Code of Civil Procedure, and, except as otherwise provided by this Act or by any Law which may hereafter be passed, by no other Law or Regulation.

Procedure of Civil Courts in British Burmah to be regulated by Code of Civil Procedure.

XXIV.

ACT No. I OF 1863.

XXIV. Act XIV of 1859 (*to provide for the limitation of suits*), as amended by Act XIV of 1862, is hereby extended to the Province of Pegu, and shall take effect therein from the date on which this Act comes into operation in British Burmah in supersession of any law of limitation in force in the said Province. Provided that all suits pending in any of the Civil Courts in the said Province upon the date upon which this Act comes into operation in British Burmah shall, so far as regards the provisions in this Section contained, be tried and determined as if this Act had not been passed. Provided also that Clause 15 of Section I of the said Act XIV of 1859 shall not apply to any claim to foreclosure arising under any deed or instrument of mortgage of immoveable property in Pegu executed before the date aforesaid, but every such claim arising under any such deed or instrument shall, so far as the law of limitation is concerned, be governed by the laws or rules of limitation now in force in that province.

Powers vested in Sudder Court to be exercised by the Chief Commissioner.

XXV. Except as otherwise provided in this Act, the powers vested in the Sudder Court by the Code of Civil Procedure, shall be exercised in British Burmah by the Chief Commissioner.

XXVI. Except as provided in Section XX of this Act, the Stamp Duties prescribed by Schedule B annexed to Act X of 1862 (*to consolidate and amend the law relating to Stamp Duties*) for Instruments and Writings in the Sudder Court and the Courts subordinate to the Sudder Court, shall be chargeable on Instruments and Writings in the Court of the Chief Commissioner and the several Courts subordinate to the Chief Commissioner.

XXVII. The local jurisdiction of a Deputy Commissioner shall be deemed a District for the purpose of this Act, and the Court of such Deputy Commissioner shall be deemed the District Court within the meaning of the Code of Civil Procedure.

Construction of District Court as used in Code of Civil Procedure.

Commencement of Act.

XXVIII. This Act shall come into operation on the 1st day of May 1863.