

ACT No. XXIV OF 1866.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 11th July 1866).

An Act to amend the procedure of the High Court of Judicature for the North-Western Provinces of the Presidency of Fort William.

WHEREAS it is expedient to amend the procedure of the High Court of Judicature for the North-Western Provinces of the Presidency of Fort William in the exercise of its Original Criminal, and its Civil, Intestate and Testamentary Jurisdictions ; It is hereby enacted as follows :—

1. In this Act, unless there be something repugnant in the subject or Interpretation Clause. the context—

“ High Court” denotes Her Majesty’s High Court of Judicature for the North-Western Provinces of the Presidency of Fort William :

“ Lieutenant-Governor.” “ Lieutenant-Governor” denotes the Lieutenant-Governor for the time being of the said Provinces :

“ Magistrate.” “ Magistrate” denotes any person exercising any of the powers of a Magistrate under the Code of Criminal Procedure :

“ Registrar.” “ Registrar” includes, besides such Officer, any Officer specially appointed by the Lieutenant-Governor to discharge the functions given by this Act to the Registrar :

Number Gender. Words in the singular include the plural, and words denoting the masculine gender include females.

2. Any Justice of the Peace or Magistrate within or without the said Provinces, before whom any European British subject shall be brought for an offence committed within the said Provinces, or for an offence which under or by virtue of any law or order

Charge to be delivered with record of preliminary enquiry.

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order made or issued by the Governor General of India in Council shall have been made triable by the High Court, and who shall commit or hold to bail such person for trial shall, together with the record of the preliminary enquiry and all recognizances and other documents, and any weapon or article of property connected with the case, and translations into English of any writings not in that language, deliver to the Registrar of the High Court a written instrument of charge signed by him stating for what offence such person is so committed or held to bail.

3. The High Court, or any Officer specially authorized by the High Court in this behalf, shall consider the charge, and may, if it appear necessary or expedient so to do, amend, alter or add to the same. The charge, with such amendments, alterations or additions, if any, shall be recorded in the High Court, and the person charged shall be entitled to have a copy of such charge with such amendments, alterations or additions (if any) gratis.

High Court to consider, and, if it will, to amend, alter or add to the charge.

Charge with amendments, alterations or additions (if any) to be recorded.

4. The person charged shall also, if he demands them at a reasonable time before the trial, be furnished with copies of the depositions of the witnesses upon whose depositions he has been so committed or held to bail, on payment of a reasonable sum for the same, not exceeding one anna for each folio of ninety words.

Accused to have copies of examinations.

5. Upon charges recorded as aforesaid, persons committed to custody or held to bail shall be deemed to have been brought before the High Court in due course of law, and (subject to the provisions contained in the Code of Criminal Procedure as to the amendment and alteration of charges, and subject also to the provisions of the next following Section) shall be tried upon the charges so recorded.

Effect of charge.

6. When any such charge shall have been recorded in the High Court as aforesaid, and shall at any time before the commencement of the trial of the person charged appear to the High Court to be clearly unsustainable, an entry to that effect may be made on the charge by a Judge of the Court. Such entry shall have the effect of staying proceedings upon the charge, but shall not operate as an acquittal of the person charged, unless and until three years from the time of making the entry shall have elapsed, at the expiration

High Court may order an unsustainable charge not to be proceeded with.

Effect of such order.

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expiration of which period, if no fresh charge have been brought on the same matter, he shall be considered as having been acquitted.

7. The High Court shall ordinarily hold its sittings at such place as the Lieutenant-Governor shall direct in that behalf: but the High Court or any Division of the High Court may from time to time, with the approval of the Lieutenant-Governor, hold sittings at such other places in the said Provinces as shall seem convenient. Due notice shall be given beforehand in the Official Gazette of all sittings intended to be held for the trial of cases in the exercise of the original Criminal jurisdiction of the Court.

Places of holding sittings.

8. It shall be lawful for the High Court to direct that all European British subjects committed or bailed for trial within certain specified districts, or during certain specified periods of the year, shall be tried at the usual place of sitting of the Court, or to direct that they shall be tried at a particular place named; and also to order that such European British subjects shall, if not bailed, be committed for intermediate custody to a particular jail being one of the jails appointed by the Government for the reception of such prisoners.

High Court may order European British subjects committed in certain districts in certain seasons of the year, to be tried at a particular place and confined in a particular jail.

9. If the trial shall be directed to take place at the usual place of sitting of the Court, or if no general direction shall have been given under the last preceding Section, the Justice of the Peace or Magistrate shall bind over the person charged to appear and take his trial at such usual place of sitting, or shall commit him to the jail at such place. If the High Court shall direct that the person charged be tried elsewhere than in its usual place of sitting, the Justice of the Peace or Magistrate shall bind him over to appear and take his trial in the place directed, or (as the case may be) shall, if necessary, cause him to be removed to the Criminal jail of or nearest to the place at which such person is directed to be tried, and the Officer in charge of such Criminal jail shall keep such person in safe custody until discharged in due course of law. The High Court may direct that the person charged shall be admitted to bail, or that the bail required by the Justice of the Peace or Magistrate shall be reduced.

Procedure on direction of High Court as to trial.

Trials under Section 2. to be by Jury.

10. All trials under Section 2 of this Act shall be by Jury.

11. Whenever

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11. Whenever the High Court shall have given notice of its intention to hold sittings at any place for the exercise of its original Criminal jurisdiction, the Court of Session at such place shall take and cause to be taken the measures prescribed by Sections 336 to 340, both inclusive, of the Code of Criminal Procedure for the summoning of Jurors; and in addition to the persons so summoned as Jurors, the said Court of Session shall, if it shall think needful after communication with the Commanding Officer, cause to be summoned such number of Commissioned and Non-Commissioned Officers in the Military Service, resident within ten miles of its place of sitting, as the Court shall consider to be necessary to make up the Juries required for the trial of European British subjects charged with offences before the High Court as aforesaid. All Commissioned and Non-Commissioned Officers so summoned shall be liable to serve on such Juries notwithstanding anything contained in the Code of Criminal Procedure. But no Commissioned or Non-Commissioned Officer shall be summoned whom his Commanding Officer shall desire to have excused on the ground of urgent military duty, or for any other special military reason. The Juries for the trial of European British subjects as aforesaid, shall be formed in the manner required by the Code of Criminal Procedure and by this Act from the persons summoned under the said Sections of the Code of Criminal Procedure, and from the Commissioned and Non-Commissioned Officers summoned as aforesaid, or, if no such Officer have been summoned, then solely from the persons summoned under the same Sections.

12. If any European British subject charged as aforesaid, shall so require before the Jury shall be empanelled, the majority of the Jurors shall consist of Europeans or Americans, or both Europeans and Americans.

13. On every trial of an European British subject under this Act, the Jury shall consist of twelve persons, and unanimity or a majority of not less than nine with the concurrence of the presiding Judge, shall be necessary for a verdict of guilty. In default of such unanimity or of such majority and concurrence, the prisoner shall be acquitted.

14. So much of Section 380 of the Code of Criminal Procedure as requires the confirmation by the Sudder Court of sentences of death passed by a Court of Session, and so much of the same Section as requires from the Court a statement of the grounds on which a person convicted of an offence made punishable by

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by death by the Indian Penal Code has been sentenced to a punishment other than death, shall not apply to sentences by the High Court passed in the exercise of its original Criminal jurisdiction.

15. So much of the 26th Chapter of the Code of Criminal Procedure as requires judgment to be passed by a Criminal Court in any particular form, and as requires that the sentence or finding shall be recorded in any particular form, shall not apply to judgments, sentences or findings in trials before the High Court, acting in the exercise of its original Criminal jurisdiction, but the High Court shall pass judgment and shall record or cause to be recorded the sentence and finding in such form as it shall think proper.

Portion of 26th Chapter of Criminal Procedure Code not to apply to sentences of High Court.

16. When any person has been convicted of an offence before a Judge of the High Court, acting in the exercise of its original Criminal jurisdiction, the Judge, if he think proper, may reserve for the decision of a Court consisting of such Judge and one or more other Judge or Judges of the High Court any question of law or of the admissibility of evidence which has arisen in the course of the trial of such person. If the Judge reserve no such question, he shall forward the prisoner with a copy of his sentence and a warrant for the execution of the same to the Magistrate or other Officer in charge of the jail of the district or place in which the trial was held, and on the receipt of the warrant such Magistrate or other Officer shall proceed as provided in Section 385 of the Code of Criminal Procedure. If the Judge reserve any question of law or of the admissibility of evidence, the person convicted shall, pending the decision thereon, be remanded to jail. If the decision of the High Court be adverse to the person convicted, the Court shall send a copy of its sentence and a warrant for the execution of the same to the Magistrate or other Officer in charge of the jail to which the prisoner shall have been remanded, and such Magistrate or other Officer shall proceed as provided in the same Section.

Power to reserve for High Court any question of law or evidence.

Procedure where no such question is reserved.

17. Save as is hereinbefore otherwise provided, the Code of Criminal Procedure shall apply to the constitution and formation of Juries for the purpose of trials before the High Court, acting in the exercise of its original Criminal jurisdiction, and to trials before such Court, and to sentences by such Court, and to the carrying into execution of such sentences.

Save as aforesaid Code of Criminal Procedure to apply to Juries, trials, sentences and executions under this Act.

18. The

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18. The operation of the following Sections of Act No. VIII of 1859, namely, Sections 184, 185, 186 and 359, relating to the manner in which the judgments of the Courts of Civil Judicature are to be recorded, and so much of the same Act as extends the provisions of the same Sections to the orders of the Courts of Civil Judicature not being judgments or decrees, is hereby suspended in the High Court; and the High Court, and every Division Court and Judge thereof, shall record their and his judgments and the orders passed by them and him respectively in such manner as the High Court shall by any general rule or rules from time to time direct.

Parts of Act VIII of 1859 suspended in High Court.

High Court to record its judgments and orders as it shall by rule direct.

19. The High Court may by its own rules fix the time within which appeals from or applications for review of any judgments, orders or decrees made by any Division Court, or by any Judge or Judges of the said High Court in the exercise of its original jurisdiction, shall be preferred.

Court may fix time for appealing from judgments, &c., of its own Judges or Division Courts.

20. Whenever it shall appear necessary to a Judge of the High Court that a decree made in the exercise of the original Civil jurisdiction of the said Court ought to be enforced before the amount of the costs incurred in the suit can be ascertained by taxation, the Judge may order that the decree shall be executed forthwith except as to so much thereof as relates to the costs, and, as to so much thereof as relates to the costs, that the same may be executed as soon as the amount of the costs shall be ascertained by taxation. The High Court may appoint the Registrar to be Taxing Officer.

Execution may issue in certain cases before the amount due for costs has been ascertained, and execution for costs may issue subsequently when their amount is ascertained.

21. Whenever anything is directed by the said Act No. VIII of 1859 to be done by or through a Pleader, the High Court, or any Judge thereof in the exercise of its original Civil jurisdiction, may authorize such act to be done by or through an Attorney-at-law of the High Court: Provided that no Attorney shall be authorized under the provisions of this Section to plead in the High Court or in any Division Court for any other person.

Court in the exercise of its original Civil jurisdiction may, in certain cases, authorize acts required by the Code of Civil Procedure to be done by a Pleader, to be done by an Attorney.

Proviso.

22. The

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22. The procedure in all cases which shall be brought before the High Court in the exercise of its original Testamentary and Intestate Procedure, shall be regulated as far as the circumstances of the case will admit by the rules of procedure laid down in the Indian Succession Act, 1865, whether the Act itself applies to the case or not, and in cases to which such rules are inapplicable the procedure shall be regulated by the Code of Civil Procedure.

23. This Act shall be called "The High Court (North-Western Provinces) Act, 1866."

Short Title.