

ACT NO. XIV OF 1891.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 21st March, 1891.)

An Act to amend the constitution of the Court of the Judicial Commissioner of Oudh, and alter the Law with respect to Second Appeals and other matters in that Province.

WHEREAS it is expedient to amend the constitution of the Court of the Judicial Commissioner of Oudh, and alter the Law with respect to Second Appeals and other matters in that Province; It is hereby enacted as follows:—

1. (1) This Act may be called the Oudh Courts Act, 1891.

Title and commencement.

(2) It extends to all the territories for the time being administered by the Chief Commissioner of Oudh; and

(3) It shall come into force on the first day of April, 1891.

2. Act IV of 1885 (*to provide for the temporary appointment from time to time of an Additional Judicial Commissioner for Oudh*) is hereby repealed:

But the Additional Judicial Commissioner holding office under that Act immediately before the commencement of this Act shall be deemed to have been appointed under this Act.

3. In this Act, unless there is something repugnant in the subject or context, the expressions "High Court" and "Chief Justice" mean the High Court of Judicature for the North-Western Provinces and the Chief Justice of that Court, respectively.

Definitions.

4. (1) The Local Government, with the previous sanction

Appointment of Additional

Judicial Commissioner.

sanction of the Governor General in Council, shall, by notification in the official Gazette, appoint such person as it thinks fit to be an Additional Judicial Commissioner, and to exercise jurisdiction, as such Additional Judicial Commissioner, in the Court of the Judicial Commissioner of Oudh.

(2) A person so appointed shall hold his office during the pleasure of the Local Government.

Jurisdiction of Additional Judicial Commissioner.

5. (1) Subject to the other provisions of this Act, an Additional Judicial Commissioner shall exercise such jurisdiction of the Judicial Commissioner under any enactment for the time being in force as the Local Government may prescribe, but only in such cases as the Judicial Commissioner may direct.

(2) The Judicial Commissioner may withdraw from the Additional Judicial Commissioner, and himself hear and dispose of, any case with respect to which he may have directed the Additional Judicial Commissioner to exercise jurisdiction and of which the hearing before the Additional Judicial Commissioner has not been commenced.

Law applicable to Additional Judicial Commissioner.

6. Subject to the other provisions of this Act, every enactment for the time being applicable to the Judicial Commissioner shall apply to the Additional Judicial Commissioner when exercising any jurisdiction under the last foregoing section, as if he were the Judicial Commissioner.

Confirmation of capital sentences by a bench.

7. (1) The Court of the Judicial Commissioner of Oudh, consisting of the Judicial Commissioner and the Additional Judicial Commissioner, shall, for the purpose of section 377 of the Code of Criminal Procedure, 1882, be deemed to be a High Court consisting X of 1882. of two Judges.

(2) When any such case as is referred to in that section of the Code is heard before the Judicial Commissioner and the Additional Judicial Commissioner, and they are divided in opinion, they shall submit the case, with their opinions thereon, to the High Court to be laid before such Judge, or such bench of two or

more

more Judges, of that Court as the Chief Justice may appoint.

(3) Such Judge or bench, after such examination and hearing as he or it thinks fit, shall deliver his or its opinion in writing and cause a copy thereof under the signature of the Registrar of the High Court to be transmitted to the Judicial Commissioner, and the Judicial Commissioner and the Additional Judicial Commissioner sitting together shall, on receipt of the copy, proceed to dispose of the case in conformity with the opinion of the Judge or bench.

(4) When the Chief Justice has appointed a bench of two or more Judges of the High Court under sub-section (2), and the Judges differ as to the opinion to be delivered, communicated and followed under sub-section (3), the opinion to be so delivered, communicated and followed shall be—

- (a) if there is a majority of the Judges, the opinion of the majority, and
- (b) if the Judges are equally divided, the opinion of the senior Judge.

8. Any of the following proceedings, namely :—

- (a) an appeal from an original decree or order of a District Judge or Additional Judge,
- (b) an appeal which, under section 18, sub-section (1), of the Oudh Civil Courts Act, 1879, as amended by the North-Western Provinces and Oudh Act, 1890, lies from a decree or order of a Subordinate Judge to the Judicial Commissioner,
- (c) any other appeal, whether civil or criminal, or any application or other matter, with respect to which appeal, or application or other matter, the Judicial Commissioner or the Additional Judicial Commissioner, as the case may be, before whom it is pending, has certified under his hand that it should in his opinion be heard by two Judges,

Hearing of other cases by a bench.

XIII of 1879.

XX of 1890.

shall

shall be heard by the Judicial Commissioner and the Additional Judicial Commissioner sitting together :

Provided, with respect to clauses (a) and (b), as follows, namely :—

- (i) that the amount or value of the subject-matter of the suit in the Court of first instance was ten thousand rupees or upwards, and the amount or value of the matter in dispute on appeal to the Judicial Commissioner is the same sum or upwards, or
- (ii) that the decree or order appealed from involves, directly or indirectly, some claim or question to, or respecting, property of like amount or value.

Rules in case
of difference
of opinion.

9. Whenever in any case before the Judicial Commissioner and the Additional Judicial Commissioner sitting together, other than a case for which provision is made in section 7 of this Act, a difference of opinion arises, the following rules shall be observed :—

- (a) If the case is a civil case, then, unless the Judicial Commissioner and the Additional Judicial Commissioner concur in a decision reversing or varying the decree or order under their consideration, such decree or order shall be upheld :

Provided that if the difference of opinion is on a question of law or of custom having the force of law or as to the construction of any document or the admissibility of any evidence, and either the Judicial Commissioner or the Additional Judicial Commissioner is of opinion that the question should be referred to the High Court, the Judicial Commissioner and the Additional Judicial Commissioner shall jointly state the question and forward such statement, with their respective opinions on the question, to the High Court.

- (b) If the case is a criminal case, then the Judicial Commissioner and the Additional Judicial Commissioner

Commissioner shall jointly state the question as to which they differ, and forward such statement, with their respective opinions on the question, to the High Court.

10. (1) On receiving a statement forwarded in any case under the last foregoing section, the High Court, by a bench constituted by two or more Judges as the Chief Justice may determine, shall decide the question referred therein and transmit to the Judicial Commissioner a copy of its judgment under the signature of its Registrar, and the Judicial Commissioner and the Additional Judicial Commissioner sitting together shall, on receipt of the copy, proceed to dispose of the case in conformity with the decision of the High Court.

Procedure reference under last foregoing section.

(2) When the Judges differ as to the decision of any such question, the decision to be given, communicated and followed under sub-section (1) shall be—

(a) if there is a majority of the Judges, the decision of the majority, and

(b) if the Judges are equally divided, the decision of the senior Judge.

(3) It shall not be necessary for any party to the case to be present in the High Court, either personally or otherwise, when the question referred comes before that Court for decision.

(4) The costs, if any, consequent on the statement of the question for the decision of the High Court shall be costs in the case.

XIII of 1879.

11. (1) Section 21 of the Oudh Civil Courts Act, 1879, respecting the admission of second appeals in certain cases by the Judicial Commissioner, is hereby repealed.

Repeal of, and amendment of, certain portions of Act XIII, 1879.

(2) The following portions of that Act are also hereby repealed, namely, section 2; the proviso to section 6; section 22; section 25; section 26; section 39; and the schedule.

(3) For the last paragraph of section 23 of the same Act the following shall be substituted, namely:—

“ In the event of an appeal being preferred from a judgment

judgment or order passed by a Judicial Commissioner or an Additional Judicial Commissioner in any other capacity, or in which he has any personal interest, the case shall be heard by the Additional Judicial Commissioner or the Judicial Commissioner, as the case may be."