

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1267	Press
		~~Mis.~~
	10-4	
Dated	2-10-	1918

Not to be folded or roughly handled

Fort St. George, Judicial Consultation, 6th October 1857.

No. 10. Read the following letter from R. B. CHAPMAN, Esq., Officiating Under Secretary to Government of India; to H. FORBES, Esq., Acting Secretary to the Government of Fort Saint George, dated the 4th September 1857, No. 1493.

SIR,

Home Dept. I AM directed to forward for the information of the Right Honorable the Governor in Council the accompanying copy of a Despatch from the Honorable the Court of Directors, No. 33 of 1857, dated the 13th May, having reference principally to that provision in the New Special Appeal Law (Clause 1, Section V, Act No. XVI. of 1853) which enables parties to present their petitions of Appeal in the Court from which the Appeal is made, together with a copy of a communication this day made to the Government of Bengal on the subject.

(Signed) R. B. CHAPMAN,
Offg. Under Secy. to the Govt. of India.

JUDICIAL DEPARTMENT.

No. 33 of 1857.

OUR GOVERNOR GENERAL OF INDIA IN COUNCIL.

Para. 1.—The first of the letters noted in the margin, relates to a reference made by the Sudder Court at Calcutta, as to whether your orders of the 22nd March last, debar the extra Judges from taking part in the executive or deliberative business of the Court. We approve of your reply, directing that the extra Judges be employed exclusively upon the arrears, for the disposal of which they were especially appointed.

Letter dated 11th December (No. 105) 1856.
" dated 19th December (" 106) "
" dated 31st December (" 109) "
Duties of the extra Judges in the Sudder Court at Calcutta
Arrears of business in the Sudder Court at Agra, and appointment of two extra Judges
Arrears of business in the Sudder Court at Bombay, and appointment of 2 extra Judges.

2. The other communications inform us of the great arrears of business in the Sudder Courts at Agra and Bombay, and of the temporary appointment of two additional Judges to each of these Courts, as a measure absolutely necessary for the disposal, within a reasonable time, of the heavy files of cases pending before them. It thus appears that within the period of a year, nine additional Judges have been appointed to the Sudder Courts in the Presidencies of Bengal and Bombay, in the proportion of five to the Calcutta, two to the Agra, and two to the Bombay Court.

3. The circumstances under which the increase is required are fully set forth in the papers transmitted to you with the applications from the Governments of Agra and Bombay, dated respectively 30th October and 17th November 1856. In the case of the Agra Court, it is the state of the file of applications for the admission of Special Appeals which alone renders necessary the grant of additional assistance; and the same reason operates, to a great extent, in the case of the Sudder Court at Bombay, as it did also in that of the Court at Calcutta.

4. With the papers transmitted by the Lieutenant Governor of Agra, is an elaborate Minute by Mr. Harington, Judge of the Sudder Court, in which that Gentleman enters into a careful examination of the operation of the New Special Appeal Law, contained in Act XVI of 1853, which came into force on the 1st January 1854. He shews that the business of the Court in this particular department of its labors has greatly increased, and he expresses his opinion, concurred in by the other Judges of the Court, that the option given by the Act to parties desirous of preferring a Special Appeal to the Sudder Court, to present their petitions in the Court from the decision of which the appeal is made, "is extremely mischievous and injurious in its tendency." Mr. Peacock entirely dissents from the opinion of the Sudder Court, and considers that if it be right to allow a Special Appeal at all,

Number of Applications for the admission of Special Appeals.			Pendings at close of the year.
Year	Instituted		
1851 ...	687 ...	...	140
1852 ...	868 ...	...	143
1853 ...	879 ...	...	135
1854 ...	1,226 ...	...	264
1855 ...	1,340 ...	...	782
1856 6 months	912 ...	...	1,112

Fort St. George, Judicial Consultation, 6th October 1857.

every facility should be given to dissatisfied parties to prefer their Appeals; and that relief to the Sudder Court, by rules which operate to deter suitors from appealing, could be afforded only at the expense of Justice. In these views you have expressed your concurrence.

5. We cordially give our assent to the general proposition involved in Mr. Peacock's remarks, that every facility to present their applications should be given to parties seeking redress in our Courts of Justice. We think that in regard to first Appeals from the decisions of the Courts of original jurisdiction, in which the Appellate Court determines questions both of law and of fact, the rule which allows a party to file his petition of Appeal either in the Court of Appellate or of original jurisdiction, is a sound one; but we also think that there are classes of cases in which the principal may admit of a practical qualification, and that the application, for the admission of Special Appeals is of that nature.

6. The grounds on which a Special Appeal is admissible, are set forth in Section 4, Act XVI, of 1853, and they are such as, in the great majority of cases, cannot be correctly estimated by the principals in the cause. The Sudder Court is prohibited from reversing, altering, or remanding any decision "upon the ground that the decision of any question of fact is contrary to, or not warranted by, the evidence duly taken in the cause, or any probability deduced from the record." The applicant is bound to set forth distinctly the grounds of objection to the decision appealed, and unless these be of a special and relevant character, the application is useless, and ought never to have been made. The remedy then of a Special Appeal for the correction of error in the judgment of the lower Court, is one, of which it may be safely predicated that it can be properly resorted to only under professional advice. On the one hand, access to the highest Court of the Country is allowed to a suitor who can show that the judgment given against him is contrary to Law, but on the other hand, provision is made for the protection of the Appellate Court against the waste of its time in hearing ungrounded and irrelevant applications. The working of this provision is, indeed, very much in the hands of the parties to the litigation in the inferior Courts; but we do not think there is any hardship in guarding the Sudder Court against its unlimited abuse, by requiring that persons desirous of preferring Special Appeals should carry them directly to that Court, instead of presenting them to the Lower Court, where the application is made either upon no advice at all, or upon the advice of practitioners over whom the Sudder Court have little or no control.

7. Mr. Harington states that in the Agra Sudder Court, a Petition of Special Appeal is rarely disposed of in less than eighteen months, during which the successful party in the lower Court is kept in a state of suspense as to the issue of the case which has been decided in his favor, and the petitioner to the Sudder Court, unable, in many instances, to induce a pleader of the Court to undertake his cause, either remains in attendance during that time, to have his application rejected at last, or, after a fruitless waste of time and money, returns to his home only to have his case struck off the file during his absence. Mr. Peacock, admitting these evils, thinks it would only be adding to them to compel the applicant to proceed to the station of the Sudder Court to present his petition there, instead of presenting it to the Zillah Court; but Mr. Harington's argument manifestly is, that were a Special Appeal application allowed to be presented only to the Sudder Court, where the Vakeels are far more experienced and respectable, and more capable of giving their client sound advice, and were the temptation to appeal afforded to unsuccessful parties by the presence of an office ready at hand to receive their applications, and of comparatively irresponsible pleaders ready to draw them up, withdrawn, many of the persons who now travel to Agra for the purpose of prosecuting an Appeal, which they have been induced to make without due reflection or proper advice, would never have left their homes at all on so fruitless an errand.

8. By the letters to which we replied in our Despatch of the 3rd December (No. 49) 1856, we were informed that of the applications for the admission of Special Appeals presented to the deciding Court, and forwarded to the Sudder Court at Calcutta, nearly 85 per cent. were rejected. Mr. Harington states that of the total number brought on the file of the Agra Court, nearly 80 per cent. are rejected. The remaining cases are admitted to trial for the purpose of testing the correctness of the judgment of the Lower Court, which ultimately is in many instances affirmed; and we entertain little doubt that the cases in which the judgment is reversed would have found their way to the Sudder Court in the absence of any such privilege as that

Fort St. George, Judicial Consultation, 6th October 1857.

now allowed to the appealing party to present his petition to the Court which passed the appealed decision.

9. It thus appears that under the existing facilities for the presentation of Special Appeals, the vast majority of such applications are either preferred in utter ignorance of the restricted grounds on which the Appeal is legally admissible, or are vexatious proceedings for the purpose of postponing a settlement of proved claims, and of harassing the adverse party. We do not think that the Government is called upon to incur the expense of nearly doubling the number of Judges in the highest Court of Appeal, for the purpose of disposing of applications of which not more than 15 or 20 per cent. are allowed to be carried beyond the initiatory step of a first ex-parte hearing, nor do we think that it can raise the Court of last resort in public estimation, or conduce to its proper influence, to be placed in a position in which it is compelled to arrest in limine 80 or 85 per cent. of any class of cases on its files, and to refuse to allow the parties to be brought before it.

10. Instead of occupying the time of the Sudder Court with hearing groundless applications for the admission of Special Appeals, it would, as it appears to us, be preferable to the plan now pursued to adopt the recommendation of the Indian Law Commissioners, by fixing the minimum value of the property in a first or regular Appeal, triable by the Sudder Court at a point considerably below that at which it stands at present, and abolishing the Special Appeal. But whatever may be the conclusion arrived at on this point, we cannot give our consent to repeated additions to the number of Judges on the Sudder Bench, for the disposal of business which is constantly accumulating on its files, under the operation of measures condemned by practical men, but upheld by the Government on grounds which though generally sound, do not appear to us, for the reasons stated, to be applicable to the particular case now under consideration.

11. We trust that there will be no occasion for the continuance of the temporary appointments now reported by you beyond the periods for which they were originally made.

We are, &c.,

LONDON, }
The 13th May 1857. }

(Signed) ROSS D. MANGLES,
(") F. CURRIE,
(") C. MILLS,

and other Directors.

From C. BEADON, Esq., Secretary to the Government of India; to A. R. YOUNG, Esq.,
Secretary to the Government of Bengal, dated the 4th September 1857, No. 1806.

SIR,

Home Dept. Adverting to the last paragraph of the letter from this Department, No. 293,
Judicial. dated the 2nd February 1857, I am directed to transmit for the information of the
Honorable the Lieutenant Governor, the accompanying copy of a Despatch No. 33 of 1857, dated
the 13th May, from the Honorable the Court of Directors, having reference principally to that
revision in the new Special Appeal Law (Clause 1, Section V, Act No. XVI of 1853,) which enables parties to present their petitions of Appeal in the Court from which the Appeal
made.

2. The Honorable Court condemn this provision of the law, and will not give their consent to repeated additions to the number of Judges on the Sudder Bench, for the disposal of business which is constantly accumulating on its files under the operation of measures condemned by practical men, but upheld by the Government on grounds which though generally sound do not appear to us for the reasons stated to be applicable to the particular case now under consideration."

3. Having given his best attention to the remarks made on this subject by the Honorable Court, the Governor General in Council feels that it is quite out of the question to ask the legislative Council to pass a law to reduce the number of Special Appeals by rendering it compulsory upon suitors in all cases to file their petitions of Special Appeal in the Sudder Court,

Fort St. George, Judicial Consultation, 6th October 1857.

instead of leaving them, as at present, the option of filing them in the Court of the District from whose decision the Appeal is sought to be made.

4. The effect of such a law would be to force a suitor residing in a District remote from the seat of Government to incur the expense and trouble of a journey to Calcutta, or to incur the expense of sending some one to Calcutta, or of employing a Calcutta Agent, to do what can be equally well done by filing his papers in his own District.

5. If no other insurmountable objections existed to such a system of procedure, the extreme want of equality in the operation of the system would, in the opinion of His Lordship in Council, be alone sufficient to condemn it. A suitor in the 24 Pargunnahs would suffer no inconvenience by the rule. A suitor in Assam would suffer so much inconvenience as would amount generally to a denial of justice, and at every intermediate place the inconvenience would vary with the distance.

6. But the Governor General in Council thinks it may be very easy to devise a rule which shall reduce the number of Special Appeals greatly, and nevertheless shall operate equally and justly.

7. His Lordship in Council is of opinion that a Special Appeal might be made admissible only upon the certificate of the Judge who pronounced the decision, or upon the certificate of a Vakeel of the Sudder Court, stating that the point or points taken are in his opinion such as to come within the scope of the Special Appeal Law, and that there is in his opinion ground for the admission of a Special Appeal. In either case the certificate should always be accompanied by a Statement signed by the Judge or Vakeel, setting forth the point or points taken, and the reasons for objecting to decree thereon. For the reasonableness of the opinion and the sufficiency and accuracy of the Statement, the certifying Judge or Vakeel should be responsible to the Sudder Court, and any Vakeel habitually giving unjustifiable certificates should be prohibited from giving certificates in future.

8. Such a plan, if properly worked by the Sudder Court, would, His Lordship in Council thinks, answer the object in view, and as all suitors would thus be required to do what could not be done in their own Districts, there would be nothing unreasonable in requiring all to employ an Agent in Calcutta.

9. In conclusion I am directed to request, that the Judges of the Sudder Court at Calcutta may be communicated with on the subject, and, should they consider the proposed plan feasible, that the Honorable the Lieutenant Governor, if he approve of the same, will be so good as to adopt the necessary measures for bringing under the consideration of the Legislative Council a Bill, to give effect to the above suggestion as a temporary measure of relief, to be in force until the passing of the new Code of Procedure in Civil cases.

COUNCIL CHAMBER, }
The 4th September 1857. }

(Signed) C. BEADON,
Secy. to the Govt. of India.

N. B.—A copy of the Honorable Court's Despatch and of this letter will be sent to Bombay, Madras and Agra for information.

(True Copies.)

(Signed) R. B. CHAPMAN,
Offg. Under Secy. to Govt. of India.

No. 11.

ORDER THEREON, No. 1267; dated 2nd October 1857.

Ordered to be communicated to the Court of Sudder Udalut.

(Signed) E. MALTBY,
Acting Chief Secretary.

[illegible]