

MADRAS RECORD OFFICE.

Government of Madras.

Inrail DEPARTMENT.

G.O. No.	953	Press Mis.
Dated	20. 6. 19	1860

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
20th June 1866.*

No. 153. Read the following letter from the Under Secretary to the Government of India, to the Secretary to Government, Fort Saint George; dated Simla, 25th May 1866, No. 1211.

Home Department.

Letter from Registrar High Court, Calcutta, No. 3657, dated 23rd December 1864, and enclosure.
To Secretary of State, No. 2 of 1865, dated 5th January.
From Secretary of State, No. 18 of 1866, dated 17th April, and enclosure.

I am directed to forward, for communication to the Judges of the High Court at Madras, a copy of the Documents noted on the margin.

JUDICIAL—JAN. 5, 1866.

From the Registrar of the High Court of Judicature at Fort William in Bengal, to the Secretary to the Government of India, Home Department,—No. 3657, dated the 23rd December 1864.

In continuation of the Officiating Registrar's letter, No. 1903, dated 21st June last (paragraph 7),

PRESENT.
The Honorable J. P. Norman, Officiating Chief Justice.

and in compliance with the request conveyed in paragraph 7 of General Order, No. 3946, dated 4th August 1862, I have the honor, by direction

of the High Court, to submit, herewith, suggestions, in the form of draft Rules, a Code of Rules for appeals to the Judicial Committee of Her Majesty's Privy Council.

DRAFT RULES

Respecting appeals from the High Courts to the Privy Council prepared for transmission to the Privy Council, as suggestions for a Code of Rules for the regulation of appeals in accordance with the request contained in the 37th and 38th paragraphs of the letter addressed by the Secretary of State for India to His Excellency the Right Honorable the Governor General of India in Council, dated London, the 14th May 1862.

WHEREAS by certain Letters Patent under the hand and Seal of Her Majesty Queen Victoria made in pursuance of an Act of Parliament passed in the twenty-fourth and twenty-fifth years of the Reign of Her Majesty instituted an Act for establishing High Courts of Judicature in India and by which a High Court of Judicature has been established at Fort William in Bengal for the Bengal Division of the Presidency of Fort William, &c., it has been ordained that any person may appeal to Her said Majesty her heirs or successors from any final judgment decree or order of the said High Court of Judicature made on appeal and from any final judgment decree or order made in the exercise of original jurisdiction by a majority of the full number of Judges as therein is mentioned. Provided that in either case the sum or matter in issue is above the amount or value of Rupees 10,000 or in case such judgment decree or order shall involve directly or indirectly any claim demand a question to or respecting property amounting to or of the value of Rupees 10,000; and from any other final judgment decree or order made either in appeal or otherwise as aforesaid when the High Court shall declare that the case is a fit one for appeal to Her said Majesty her heirs or successors in her or their Privy Council and that it should be lawful for the said Court in its discretion on the motion or if the said High Court should not be sitting then for any Judges of the High Court upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment decree order or sentence of the said High Court in any such proceedings as aforesaid not being of Criminal jurisdiction to grant permission to such party to appeal against the same to Her Majesty her heirs or successors in her or their Privy Council subject to the same rules regulations and limitations as are therein expressed respecting appeals from final judgments decree orders and sentences and that from any judgment order or sentence of the said High Court made in the exercise of original Criminal jurisdiction or in any Criminal case when any point or points of law have been reserved for the opinion of the said High Court in manner therein provided by any Court which has exercised original jurisdiction it should be lawful for the persons aggrieved by such judgment order or sentence to appeal to Her Majesty her heirs or successors in her or their Privy Council provided the said High Court should declare that the case is a fit one for appeal and under such

conditions as the High Court may establish or require subject in all cases to such rules and orders as Her said Majesty should by the advice of Her Privy Council thereafter make in that behalf, &c.

I. Every person who may desire to appeal against any such judgment decree order or sentence is required to present his petition of appeal to the High Court within six calendar months from the date on which the judgment decree order or sentence appealed against may have been passed; and no appeal shall be allowed by the High Court unless the petition of appeal is presented within such time as aforesaid. Provided always that if the said High Court on the application of the appellant shall have admitted a review or after hearing the appellant shall have ordered the respondent to be summoned for the purpose of deciding whether a review shall be admitted, the judgment of the Court so far as regards the point on which such review shall have been sought shall be denied to have been final from that date only on which the Court shall have decided whether it will reverse or vary the decision or adhere to its original judgment.

II. Forthwith after the presentation of the petition of appeal notice thereof shall be served on the respondent as to appeals in Civil cases.

III. All applications for certificates to be made by the High Court either as to the value of the property in dispute or the fitness of the case for appeal shall be made on notice to the parties who may attend and oppose the granting of the same either in person or by their Counsel or Vakeels, and every such certificate shall be filed with the petition.

IV. The certificate of the High Court or of any Judge thereof that the sum or matter at issue is above the amount or value of Rupees 10,000 or that the judgment decree or order under a claim demand or question to or respecting property amounting to or of the value of Rupees 10,000 shall be deemed conclusive of the fact and shall not be liable to be questioned on appeal by any party to the suit.

V. The appellant shall together with his petition or separately but within six calendar months from the date of the decision appealed against deposit with the Registrar of the High Court in the Appellate Branch except in cases of appeals from the Original Jurisdiction and in such latter cases with the Registrar of the Original Jurisdiction for the costs to be incurred in translating the papers and transmitting them to England the sum of Rupees 1000. If such deposit be not made within the period aforesaid the appeal shall be struck out.

VI. With the petition of appeal the appellant shall give security for the due prosecution of the appeal and the payment of all such costs as may be awarded by Her Majesty in Council to the respondent to the extent of Rupees 4000 and may either deposit cash or Government Securities to that amount or enter into a recognizance with two sureties to be approved of by the High Court or if he intend to give real property as security he shall be required to file the usual security bond *duly registered*,* provided

that if on inquiry by the proper Officer such security appears to be insufficient, the Court may call upon the appellant to deposit Rupees 4000 in Government Securities or cash within six weeks from the date of the service of such order upon his Vakeel and in default in making any such deposit as may be required as aforesaid the appeal will be struck out.

VII. In cases of extraordinary magnitude and importance the High Court may, if it think necessary, require of the appellant security for the costs of the appeal to a larger amount which shall in no case exceed Rupees 10,000.

VIII. Forthwith after the completion of such security as aforesaid the High Court shall declare the appeal admitted and give notice thereof to the appellant and to the respondent respectively.

IX. And whereas in and by the said Letters Patent it is ordained that in all cases of appeal made from any judgment order sentence or decree of the said High Court to Her said Majesty her heirs and successors in her or their Privy Council the said High Court shall certify and transmit to Her said Majesty her heirs and successors a true and correct copy of all evidence proceedings judgment decrees and orders had or made in such cases appealed so far as the same have relation to the matter of such appeal such copies to be certified under the seal of the said High Court. For the purpose of enabling the said High Court duly to transmit such copies as aforesaid the appellant

shall file with his petition a list specifying the portions of the evidence and proceedings which he may desire to have translated transcribed and transmitted to the Registrar of the Privy Council. In all Criminal cases and ordinarily in Civil cases the entire record exclusive of merely formal documents will be transcribed or translated and transmitted. But in Civil cases it shall be competent to either party to the cause to apply for a list of the papers which make up the record of the case and within one month after the presentation of the petition of appeal may indicate any documents which he may consider immaterial to any question to be determined upon the appeal. If the parties are agreed as to the documents to be omitted such documents will not be translated or transcribed, but in the case of the parties differing as to the proposed omissions the matter may be brought before a Judge of the High Court for his determination.

X. Within two weeks after the date of any final notification to the Registrar specifying the papers to be translated the proper Officer of the Court shall certify by estimation whether the deposit made by the appellant will be sufficient to meet the expenses and if not what further deposit will be necessary. The certificate will be laid before a Judge sitting in the Miscellaneous Department who will call on the appellant within a time to be limited by his order to pay into Court the amount so certified and in default the appeal shall stand dismissed. If the cost is less than Rupees 1000 the surplus shall be returned by the Registrar to the appellant as soon as the amount thereof can be ascertained without further order.

XI. Within ten days after the translations shall be ready and the security has been accepted by order of the Court whichever shall last happen or when the transcript is printed in this country within ten days after the expiration of such further time as shall be required for printing the transcripts one of the Registrars of the said High Court shall transmit a true and correct copy of all the evidence proceedings judgments decrees and orders had or made in the cases appealed so far as the same have relation to the matter of the appeal to the Registrar of the Privy Council certified under the seal of the said High Court and shall also certify and transmit a copy of the reasons given by the Judges of such Court for or against the judgment or determination appealed from. The transcript shall be accompanied by a correct index of all the papers documents and exhibits in the cause.

When the parties to the appeal think fit to have the transcript printed in India they shall be at liberty to do so provided that copies printed in folio shall be transmitted at their expense to the Registrar of the Privy Council. When the transcript or the evidence has been printed or partly printed in India the Registrar or Deputy Registrar of the Court in its Original or Appellate Jurisdiction shall certify the same to be correct on two copies thereof by signing his name on every printed sheet and by affixing the Seal of the Court to the said copies.

XII. If leave to appeal is prayed by any party against whom any judgment decree or order have been made for the delivery of any property or the payment of any sum of money or the performances of any duty the Court may direct that the judgment decree order or sentence appealed against shall be carried into execution either wholly or in part or that the whole or any part of the income of such property shall be paid to the respondent pending the appeal; if the respondent will give security to the satisfaction of the High Court for the restitution of such property or money in accordance with any judgment or sentence which may be pronounced or made by Her Majesty in Her Privy Council and until such security shall have been given the execution of the judgment decree order or sentence shall be stayed.

XIII. If however the appellant establishes to the satisfaction of the High Court that justice requires that pending such appeal execution shall be stayed the High Court may order the execution of such judgment decree order or sentence to be suspended pending such appeal of the appellant give security to the satisfaction of the said High Court for the immediate performance of any judgment or sentence which may be pronounced or made upon such appeal by Her Majesty in Council.

XIV. Any party offering real property as security shall be required to file the usual security bond duly registered and the parties to the security shall specify distinctly the origin and ground of the title asserted by the party, and lay before the Court clear data by which the value of the property may be tested within one week from the date of such application, the Registrar or De-

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puty Registrar of the Court will cause a proceeding to be drawn up and signed by a Judge of the High Court calling on the Judge of the District in whose jurisdiction the lands given as security may be, or if the property be situate within the local limits of the ordinary original jurisdiction of the High Court, on the Registrar of the High Court in its Original or Appellate Jurisdiction who may call for proof by affidavit or by any Judge of the High Court to certify to the sufficiency of the security after due inquiry and hearing such objections as may be urged within such period as the Court shall appoint.

XV. Should any security be discovered to be bad after having been admitted by the Court, and before the transcript shall have been transmitted to the Registrar of the Privy Council, the appellant shall be called upon to furnish further security and to satisfy the Court that the same is good within three calendar months, or in default of doing so, to deposit in Court the amount of security required within a further period of three calendar months, and in default of doing so his appeal shall be struck off the file of the Court, and he will be considered to have forfeited all right of appeal.

XVI. In cases in which the papers have not been transmitted to England deeds of compromise or agreement filed by the parties may be admitted by the High Court. In cases in which the papers have been transmitted to England any deeds of compromise or agreement must be forwarded to England, in order that the case may be struck off the file of pending appeals.

XVII. Within six calendar months after the arrival of the transcript at the Council office, the appellant or his agent prosecuting the appeal shall be at liberty to call on the Registrar of the Privy Council to cause the transcript or such part thereof as may be necessary for the hearing of the case, and all such parts thereof as the respondent or his agent may require to be printed the appellant paying the cost of preparing a copy for the printer at a rate not exceeding one shilling per brief sheet and likewise the cost of printing, and in default of the appellant or his agent taking effectual steps for the prosecution of the appeal within such time the appeal shall stand dismissed without further order and a report of the dismissal shall be made to the Judicial Committee by the Registrar of the Privy Council at their Lordships' next sitting.

XVIII. One hundred copies of each transcript printed in England shall be struck off whereof thirty copies are to be delivered to the agents of each side and forty copies kept for the use of the Judicial Committee. If the transcripts be printed in India no expense for copying or printing the transcript will be incurred or allowed in England.

XIX. Where the decision is likely to turn exclusively on a question of law the agents of the parties with the sanction of the Registrar of the Privy Council may submit such question of law to the Lords of the Judicial Committee in the form of a special case and print such parts only of the transcript as may be necessary for the discussion of the same provided that nothing herein contained shall prevent the Lords of Judicial Committee from ordering a full discussion of the whole case if they think fit and that in order to promote such arrangements and the simplification of the matter in dispute the Registrar of the Privy Council may call the agents of the parties before him and having heard them and examined the transcript may report to the Committee as to the nature of the proceedings.

XX. In the event of the printed case of the appellant not being lodged in the Council Office within nine calendar months from the date of such arrival the respondent shall be entitled to move to dismiss the appeal for want of prosecution, and in the event of the respondent not bringing on his case within one year from the date of the arrival of the transcript the appellant shall be entitled to have the case heard *ex-parte*.

XXI. Any appeal admitted in England shall be considered to be abandoned and withdrawn unless some proceedings shall be taken in England within two years after the arrival of the transcript.

XXII. Copies of the judgments delivered by the Lords of the Judicial Committee of the Privy Council announcing the nature of the report they are about to make to Her Majesty shall be printed and will be regularly transmitted to the Judges of the Court from which the appeal is brought. The orders in Council by which the reports of the Lords of the Judicial Committee are

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carried into effect will be transmitted in the first instance to the Solicitors conducting the appeal in England and may be obtained by the parties on application to such Solicitors on the satisfaction of any lien therein for the costs and expenses incurred in the prosecution of the appeal.

XXIII. The said orders in Council on arriving in India shall be sent to the Court of the district in which the cause of action arose and shall be carried into effect in the same manner and under and subject to the same Rules as other decrees.

XXIV. In all cases when any appeal is struck off or dismissed for any default of the appellant the respondent shall recover his costs.

(Signed) H. T. PRINSEP,
Registrar.

HOME DEPARTMENT.

JUDICIAL.

No. 2 of 1865.

TO THE RIGHT HONORABLE SIR C. WOOD, BART., D. C. B.,

Secretary of State for India.

SIR,

In continuation of our letter, No. 40, dated the 7th July last, we have the honor to transmit

* No. 5627, dated 23rd December 1864.

the accompanying copy of a communication* from the Registrar of the High Court

at Calcutta, together with the Draft Rules therein referred to, respecting Appeals from the High Courts to Her Majesty's Privy Council.

We have, &c.,

(Signed) JOHN LAWRENCE.

(..) R. NAPIER.

(..) H. B. HARRINGTON.

(..) H. S. MAINE.

(..) C. E. TREVELYAN.

(..) W. GREY.

FORN WILLIAM,
The 5th January 1865.

From the Right Honorable the Secretary of State for India, to His Excellency the Right Honorable the Governor General of India in Council; dated India Office, London, 17th April 1866, No. 16.

The Despatch of your Excellency in Council, No. 2 of 1865, dated 5th January, forwarding Draft Rules received from the Judges of the High Court, for regulating appeals from High Courts in India to Her Majesty's Privy Council, has been laid before me in Council.

2. The Draft Rules, after consideration by me in Council, were forwarded to the Lord President of the Council, with a request that they might be submitted for Her Majesty's approval.

3. I now transmit to your Excellency in Council twenty printed copies of a letter from the Registrar of the Privy Council, stating the views of the Lord President on the proposed Code of Rules, after consultation with the Lords of the Judicial Committee.

4. I desire that copies of the Registrar's letter may be forwarded to the Judges of the High Courts of Calcutta and the North-Western Provinces. I also desire that copies may be forwarded to the Governments of Madras and Bombay, for the information of the Judges of the High Courts in those Presidencies.

INDIAN RULES.

Letter from the Registrar of the Privy Council, to the Under Secretary of State for India.
May 7th, 1866.

SIR,

WITH reference to the letter addressed by Sir Charles Wood on the 4th May 1865, to the Lord President of the Council, transmitting the draft Rules for regulating Appeals from the High Courts in India to Her Majesty in Council, and requesting that the same might be submitted for the approval of Her Majesty in Council, I am now directed by the Lord President to acquaint you,

for the information of Earl de Grey, that these Rules have been submitted to the Lords of the Judicial Committee for their consideration—a course which appeared to his Lordship to be the more necessary as the preamble of the draft declares that they are recommended to Her Majesty by the members of that judicial body.

2. The Lord President regrets that some delay has inevitably arisen from the full and careful consideration which their Lordships have given to the subject; but the result of the deliberations of their Lordships is that they are of opinion that it is not expedient that these Rules should be submitted to Her Majesty for her gracious approval, for the following among other reasons:—

3. In the year 1853, an Order in Council was passed by Her Majesty establishing certain general regulations for the conduct of all Appeals from Her Majesty's Colonies and Possessions abroad and from the territories of the East India Company. The provisions of that Order being still in force, they must be held to apply to the High Courts of Judicature, which have superseded the Courts of Justice existing in India in 1853, and the experience of thirteen years has satisfied their Lordships that the effect of these Regulations has been to improve and facilitate the administration of Her Majesty's Appellate Jurisdiction throughout the empire. Their Lordships therefore think it undesirable, without very strong and peculiar grounds, to establish by Order in Council exceptional Rules for Appeals from the Indian Courts of Justice, and if any improvement in the existing practice of the Appellate Court be required, they are of opinion that it should be applied to the entire jurisdiction of Her Majesty in Council, in order to maintain certainty and uniformity in the practice of the Court.

4. But, in fact, their Lordships observe that many of the Rules proposed to be established in this draft schedule are already in force, either under the Letters Patent constituting the High Courts, or under the Order in Council of the 10th April 1838 (which still regulates the appealable amount and the time for appealing in Indian cases), or under the General Order in Council of the 13th June 1853. This remark applies to the Rules numbered respectively I, IV, XII, XIII, XXII, XXIII, XXIV, XXVII; and as these Rules are already established by authority and practice, it appears to their Lordships to be unnecessary to re-enact them.

5. The draft schedule also contains certain Rules which would modify the practice of the Court. Thus Rule IX proposes to revert to the old practice of sending over the transcripts in duplicate, instead of the *one certified copy* established by Rule II of 1853—a change their Lordships think objectionable.

6. With reference to Rules XX and XXI relating to compromises, abatements, and revivors, their Lordships think the existing practice should be maintained, as confusion might arise if the Courts below were authorized to allow steps of this nature to be taken in India while the proceedings in the Appeal might be actually going on in England; and moreover, the subject is dealt with by the Imperial Statute 3 and 4 Wm. IV, Cap. 41, Section 23.

7. With regard to Rule X, relating to the preparation of transcripts for transmission to Europe, their Lordships think that some regulation of this nature may, with great propriety, be adopted by the High Courts of India in the exercise of their own authority, but that it is unnecessary that Her Majesty should give any further directions therein beyond those contained in Rule II of the Order in Council of 1853. It is undoubtedly an important part of the duties of the Officers of Courts from which appeals are brought, and of the Judges under whose authority these Officers act, to take care that the transcripts are prepared with all due diligence, and that they contain nothing of a merely formal or immaterial character. Some mode of proceeding calculated to reduce the bulk of the papers transmitted, and to arrange them with greater perspicuity, is much needed in the causes sent home from India; but their Lordships conceive that it may well be left to the High Courts of Judicature to take the necessary steps for this purpose, and they hope the attention of the Judges of those Courts will be directed to this subject.

8. With regard to provisions such as those contained in Rules XXV, XXVI, XXVIII, their Lordships remark that these provisions form part of the existing practice and usages of the Privy Council, but they do not think it necessary or expedient to reduce them to the form of Rules of Court by her Majesty's authority.

9. Of the provisions contained in Rules II, III, V, VI, VII, VIII, XI, XIV, XV, XVI, XVII, XVIII, XIX, and possibly others which have not been noticed above, their Lordships remark that these relate to the proceedings to be had in India falling within the jurisdiction of the High Courts, and may therefore be carried into effect by rules of those Courts. Their Lordships conceive that in framing such rules care should be taken not in any way to abridge or circumscribe the rights of appeal already conceded to suitors by anterior acts of the Crown. To such an objection Rules V and XI seem to their Lordships to be in some degree obnoxious. It also appears to them to be questionable whether the penalty to be imposed on the non-observance of any rule to be framed by the Courts in India, and enforced by them, ought to be the dismissal of an Appeal already admitted. The Appeal once admitted, it can only be properly dismissed by an Order of Her Majesty, made on the recommendation of the Judicial Committee. In the cases contemplated by Rules V and XI, it will always be open to the Respondent to move their Lordships to dismiss, for want of prosecution, the Appeal of a party who has failed to send home the transcript within a reasonable time.

10. It appears, therefore, to the Lords of the Judicial Committee that this draft contains some proposals which are superfluous, because they are already in force; some that are objectionable, because they are at variance with the general practice of the Privy Council; and some which, if desirable, may be introduced by the authority of the High Courts over their own proceedings.

11. The Lord President having received from the Lords of the Judicial Committee this expression of their opinion, will not recommend Her Majesty to approve the draft, but his Lordship desires me to address to you these observations for the consideration of the Secretary of State, and of the judicial authorities in India.

12. Should the Judges of the High Courts of India think it necessary, in pursuance of the terms of the Letters Patent by which they are constituted, to submit for the approval of Her Majesty in Council, rules to be framed by those Courts for the regulation of their own procedure in relation to Appeals, I am directed to add that the draft of such proposed rules would receive the attentive consideration of the Lords of the Council.

I have the honor to be,
Your obedient Servant,
(Signed) HENRY REEVE.

HERMAN MERIVALE, Esq.,
&c. &c. &c.

No. 154.

ORDER THEREON, 20th June 1866, No. 953.

Ordered, accordingly, that the papers received with the foregoing letter be communicated to the Honorable the Judges of the High Court.
(True Extract).

Acting Chief Secretary.

To the Honorable the Judges of the High Court.

Exd. J. H. Burns.

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20 June 1866 N° 953.

Ordered accordingly
that the Papers received
with the foregoing letter
be communicated to
the Honble the Judges
of the High Court.

WDM

N. J. D. S.

To the Honble J. of the H.C. dated 27/6