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An Act for establishing High Courts of Judicature in *India*. [6th *August* 1861.]

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

High Courts may be established in the several Presidencies of India.

1. It shall be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at *Fort William* in *Bengal* for the *Bengal* Division of the Presidency of *Fort William* aforesaid, and by like Letters Patent to erect and establish like High Courts at *Madras* and *Bombay* for those Presidencies respectively, such High Courts to be established in the said several Presidencies at such Time or respective Times as to Her Majesty may seem fit, and the High Court to be established under any such Letters Patent in any of the said Presidencies shall be deemed to be established from and after the Publication of such Letters Patent in the same Presidency, or such other Time as in such Letters Patent may be appointed in this Behalf.

Constitution of High Courts.

2. The High Court of Judicature at *Fort William* in *Bengal* and at the Presidencies of *Madras* and *Bombay* respectively shall consist of a Chief Justice and as many Judges, not exceeding Fifteen, as

Her Majesty may from Time to Time think fit and appoint, who shall be selected from—

1st. Barristers of not less than Five Years standing; or,

2d. Members of the Covenanted Civil Service of not less than Ten Years standing, and who shall have served as Zillah Judges, or shall have exercised the like Powers as those of a Zillah Judge for at least Three Years of that Period; or,

3d. Persons who have held Judicial Office not inferior to that of Principal Sudder Ameen or Judge of a Small Cause Court for a Period of not less than Five Years; or,

4th. Persons who have been Pleaders of a Sudder Court or High Court for a Period of not less than Ten Years, if such Pleaders of a Sudder Court shall have been admitted as Pleaders of a High Court:

Provided that not less than One Third of the Judges of such High Courts respectively, including the Chief Justice, shall be Barristers, and not less than One Third shall be Members of the Covenanted Civil Service.

Certain existing Judges herein named to be the First Judges of the High Court.

3. Provided always, That the Persons who at the Time of the Establishment of such High Court in any of the said Presidencies are Judges of the Supreme Court of Judicature and permanent Judges of the Court of Sudder Dewanny Adawlut or Sudder Adawlut of the same Presidency shall be and become Judges of such High Court without further Appointment for that Purpose; and the Chief Justice of such Supreme Court shall become the Chief Justice of such High Court.

Tenure of Office of High Courts.

4. All the Judges of the High Courts established under this Act shall hold their Offices during Her Majesty's Pleasure: Provided that it shall be lawful for any Judge of a High Court to resign such Office of Judge to the Governor General of *India* in Council or Governor in Council of the Presidency in which such High Court is established.

Precedence of Judges of High Courts.

5. The Chief Justice of any such High Court shall have Rank and Precedence before the other Judges of the same Court, and such of the other Judges of such Court as on its Establishment shall have been transferred thereto from the Supreme Court shall have Rank and Precedence before the Judges of the High Court not transferred from the Supreme Court, and, except as aforesaid, all the Judges of each High Court shall have Rank and Precedence according to the Seniority of their Appointments, unless otherwise provided in their Patents.

Salaries, &c. of Judges of

6. Any Chief Justice or Judge transferred to any High Court from the Supreme Court shall receive the like Salary and be entitled to the like

like Retiring Pension and Advantage as he would have been entitled to for and in respect of Service in the Supreme Court, if such Court had been continued, his Service in the High Court being reckoned as Service in the Supreme Court; and, except as aforesaid, it shall be lawful for the Secretary of State in Council of *India* to fix the Salaries, Allowances, Furloughs, Retiring Pensions, and (where necessary) Expenses for Equipment and Voyage of the Chief Justices and Judges of the several High Courts under this Act, and from Time to Time to alter the same: Provided always, that such Alteration shall not affect the Salary of any Judge appointed prior to the Date thereof. the High Courts.

7. Upon the happening of a Vacancy in the Office of Chief Justice, and during any Absence of a Chief Justice, the Governor General in Council or Governor in Council, as the Case may be, shall appoint One of the Judges of the same High Court to perform the Duties of Chief Justice of the said Court until some Person has been appointed by Her Majesty to the Office of Chief Justice of the same Court, and has entered on the Discharge of the Duties of such Office, or until the Chief Justice has returned from such Absence; and upon the happening of a Vacancy in the Office of any other Judge of any such High Court, and during any Absence of any such Judge, or on the Appointment of any such Judge to act as Chief Justice, it shall be lawful for the Governor General in Council or Governor in Council, as the Case may be, to appoint a Person, with such Qualifications as are required in Persons to be appointed to the High Court, to act as a Judge of the said High Court, and the Person so appointed shall be authorized to sit and to perform the Duties of a Judge of the said Court until some Person has been appointed by Her Majesty to the Office of Judge of the same Court, and has entered on the Discharge of the Duties of such Office, or until the absent Judge has returned from such Absence, or until the Governor General in Council or Governor in Council as aforesaid shall see Cause to cancel the Appointment of such acting Judge. Provision for Vacancy of the Office of Chief Justice or other Judge.

8. Upon the Establishment of such High Court as aforesaid in the Presidency of *Fort William* in *Bengal* the Supreme Court and the Court of Sudder Dewanny Adawlut and Sudder Nizamut Adawlut at *Calcutta* in the same Presidency shall be abolished: Abolition of Supreme Courts and Sudder Courts.

And upon the Establishment of such High Court in the Presidency of *Madras* the Supreme Court and the Court of Sudder Adawlut and Foujdarry Adawlut in the same Presidency shall be abolished:

And upon the Establishment of such High Court in the Presidency of *Bombay* the Supreme Court and the Court of Sudder Dewanny Adawlut

Adawlut and Sudder Foujdarry Adawlut in the same Presidency shall be abolished:

And the Records and Documents of the several Courts so abolished in each Presidency shall become and be Records and Documents of the High Court established in the same Presidency.

Jurisdiction and Powers of High Courts.

9. Each of the High Courts to be established under this Act shall have and exercise all such Civil, Criminal, Admiralty, and Vice-Admiralty, Testamentary, Intestate, and Matrimonial Jurisdiction, original and appellate, and all such Powers and Authority for and in relation to the Administration of Justice in the Presidency for which it is established, as Her Majesty may by such Letters Patent as aforesaid grant and direct, subject, however, to such Directions and Limitations as to the Exercise of original Civil and Criminal Jurisdiction beyond the Limits of the Presidency Towns as may be prescribed thereby; and, save as by such Letters Patent may be otherwise directed, and subject and without Prejudice to the Legislative Powers in relation to the Matters aforesaid of the Governor General of *India* in Council, the High Court to be established in each Presidency shall have and exercise all Jurisdiction and every Power and Authority whatsoever in any Manner vested in any of the Courts in the same Presidency abolished under this Act at the Time of the Abolition of such last-mentioned Courts.

High Courts to exercise same Jurisdiction as Supreme Courts.

10. Until the Crown shall otherwise provide under the Powers of this Act, all Jurisdiction now exercised by the Supreme Courts of *Calcutta*, *Madras*, and *Bombay* respectively over Inhabitants of such Parts of *India* as may not be comprised within the local Limits of the Letters Patent to be issued under this Act establishing High Courts at *Fort William*, *Madras*, and *Bombay*, shall be exercised by such High Courts respectively.

Existing Provisions applicable to Supreme Courts to apply to High Courts.

11. Upon the Establishment of the said High Courts in the said Presidencies respectively all Provisions then in force in *India* of Acts of Parliament, or of any Orders of Her Majesty in Council, or Charters, or of any Acts of the Legislature of *India*, which at the Time or respective Times of the Establishment of such High Courts are respectively applicable to the Supreme Courts at *Fort William* in *Bengal*, *Madras*, and *Bombay* respectively, or to the Judges of those Courts, shall be taken to be applicable to the said High Courts, and to the Judges thereof respectively, so far as may be consistent with the Provisions of this Act, and the Letters Patent to be issued in pursuance thereof, and subject to the Legislative Powers in relation to the Matters aforesaid of the Governor General of *India* in Council.

12. From

Provision as to pending Proceedings in abolished Courts.

12. From and after the Abolition of the Courts abolished as aforesaid in any of the said Presidencies, the High Court of the same Presidency shall have Jurisdiction over all Proceedings pending in such abolished Courts at the Time of the Abolition thereof, and such Proceedings, and all previous Proceedings in the said last-mentioned Courts, shall be dealt with as if the same had been had in the said High Court, save that any such Proceedings may be continued, as nearly as Circumstances permit, under and according to the Practice of the abolished Courts respectively.

Power to High Courts to provide for Exercise of Jurisdiction by single Judges or Division Courts.

13. Subject to any Laws or Regulations which may be made by the Governor General in Council the High Court established in any Presidency under this Act may by its own Rules provide for the Exercise, by One or more Judges, or by Division Courts constituted by Two or more Judges of the said High Court, of the original and appellate Jurisdiction vested in such Court, in such Manner as may appear to such Court to be convenient for the due Administration of Justice.

Chief Justice to determine what Judges shall sit alone or in the Division Courts.

14. The Chief Justice of each High Court shall from Time to Time determine what Judge in each Case shall sit alone, and what Judges of the Court, whether with or without the Chief Justice, shall constitute the several Division Courts as aforesaid.

High Court to superintend and to frame Rules of Practice for subordinate Courts.

15. Each of the High Courts established under this Act shall have Superintendence over all Courts which may be subject to its appellate Jurisdiction, and shall have Power to call for Returns, and to direct the Transfer of any Suit or Appeal from any such Court to any other Court of equal or superior Jurisdiction, and shall have Power to make and issue General Rules for regulating the Practice and Proceedings of such Courts, and also to prescribe Forms for every Proceeding in the said Courts for which it shall think necessary that a Form be provided, and also for keeping all Books, Entries, and Accounts to be kept by the Officers, and also to settle Tables of Fees to be allowed to the Sheriff, Attorneys, and all Clerks and Officers of Courts, and from Time to Time to alter any such Rule or Form or Table; and the Rules so made, and the Forms so framed, and the Tables so settled shall be used and observed in the said Courts, provided that such General Rules and Forms and Tables be not inconsistent with the Provisions of any Law in force, and shall before they are issued have received the Sanction, in the Presidency of *Fort William*, of the Governor General in Council, and in *Madras* or *Bombay* of the Governor in Council of the respective Presidencies.

16. It

Her Majesty may establish a High Court in the North-western Provinces.

16. It shall be lawful for Her Majesty, if at any Time hereafter Her Majesty see fit so to do, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature in and for any Portion of the Territories within Her Majesty's Dominions in *India*, not included within the Limits of the local Jurisdiction of another High Court, to consist of a Chief Justice and of such Number of other Judges, with such Qualifications as are required in Persons to be appointed to the High Courts established at the Presidencies herein-before mentioned, as Her Majesty from Time to Time may think fit and appoint; and it shall be lawful for Her Majesty by such Letters Patent to confer on such Court any such Jurisdiction, Powers, and Authority as under this Act is authorized to be conferred on or will become vested in the High Court to be established in any Presidency herein-before mentioned; and, subject to the Directions of such Letters Patent, all the Provisions of this Act having reference to the High Court established in any such Presidency, and to the Chief Justice and other Judges of such Court, and to the Governor General or Governor of the Presidency in which such High Court is established, shall, as far as Circumstances may permit, be applicable to the High Court established in the said Territories, and to the Chief Justice and other Judges thereof, and to the Person administering the Government of the said Territories.

Other or supplemental Charters may be granted within Three Years after Establishment of a Court.

17. It shall be lawful for Her Majesty, if Her Majesty shall so think fit, at any Time within Three Years after the Establishment of any High Court under this Act, by Her Letters Patent to revoke all or such Parts or Provisions as Her Majesty may think fit of the Letters Patent by which such Court was established, and to grant and make such other Powers and Provisions as Her Majesty may think fit, and as might have been granted or made by such First Letters Patent, or without any such Revocation as aforesaid, by like Letters Patent to grant and make any additional or supplementary Powers and Provisions which might have been granted or made in the first instance.

Territorial Limits of Jurisdiction of Courts may be altered by Order in Council.

18. It shall be lawful for Her Majesty, from Time to Time by Her Order in Council, to transfer any Territory or Place from the Jurisdiction of One to the Jurisdiction of any other of the High Courts established under this Act, and generally to alter and determine the territorial Limits of the Jurisdiction of the said several Courts as to Her Majesty, with the Advice of Her Privy Council, may seem meet.

Interpretation of Terms.

19. The Word "Barrister" in this Act shall be deemed to include Barristers of *England* or *Ireland* or Members of the Faculty of

of Advocates in *Scotland;* and the Words "Governor General and Governor" shall comprehend the Officer administering the Government.

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