1901.

ASSAM SECRETARIAT.

HOME—A.

Progs., February 1901, Nos. 1-26.

A Bill to amend the law relating to civil appeals as contained in the Code of Civil Procedure.

A. S. P. O. (Progs.) No. 543—7+7—29-4-1901.

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ASSAM SECRETARIAT.

HOME—A.

FEBRUARY.

Nos. 1-26.

A Bill to amend the law relating to civil appeals as contained in the Code of Civil Procedure.

REFERENCES TO FORMER CASES.

Department, date and Nos., or File No. and year.	Brief Title of File.
Home, A, Jan. 1898, Nos. 72-91.	Proposed amendment of the law of appeals in civil suits.

X-2—71.

REFERENCES TO LATER CASES.

Department, date and Nos.	Brief Title of File.

(To be continued on back, if necessary.)

KEEP-WITHS PRINTED.

Notes and orders.

KEEP-WITHS NOT PRINTED.

Unimportant papers.

LIST OF PAPERS.

No. 1.—From the Government of India, Home Department, No. 1108, dated the 23rd July 1900.
No. 2.—Enclosure.
No. 3.—Memorandum to the Judge, Assam Valley Districts, District Judge, Sylhet and Cachar, Nos. 80L. & L.—3378-80J, dated the 10th August 1900.
No. 4.—From the District Judge, Sylhet, No. 1283, dated the 12th December 1900.
No. 5.—Enclosure.
No. 6.—From the Judge, Assam Valley Districts, No. 2218, dated the 13th December 1900.
No. 7.—Enclosure.
No. 8.—From the District Judge, Cachar, No. 4242, dated the 13th December 1900.
No. 9.—Enclosure.
No. 10.—Telegram to the Judge, Assam Valley Districts, No. 5278J., dated the 17th December 1900.
No. 11.—From the Judge, Assam Valley Districts, No. 2296, dated the 20th December 1900.
Nos. 12-13.—Enclosures.
No. 14.—To the Judge, Assam Valley Districts, No. 70T., dated the 1st January 1901.
No. 15.—Enclosure.
No. 16.—To the District Judges, Cachar and Sylhet, No. 71-72T., dated the 1st January 1901.
No. 17.—From the District Judge, Sylhet, No. 43, dated the 5th January 1901.
No. 18-19.—Enclosures.
No. 20.—From the District Judge, Cachar, No. 5317, dated the 11th January 1901.
No. 21.—Enclosure.
No. 22.—From the Judge, Assam Valley Districts, No. 101, dated the 16th January 1901.
No. 23.—Enclosure.
No. 24.—To the Government of India, Home Department, No. 11L. & L.—162T, dated the 28th January 1901.
Nos. 25-26.—Enclosures.

K. W.

HOME—A, FEBRUARY 1901.

Nos. 1-26.

A Bill to amend the Law relating to civil appeals as contained in the Code of Civil Procedure.

FROM THE SECRETARY TO THE GOVERNMENT OF INDIA, HOME DEPARTMENT, No. 1108, DATED THE 23RD JULY 1900.

Forwards a draft Bill to amend the law relating to civil appeals as contained in the Code of Civil Procedure, and asks for opinions on the provisions made therein.

Special Officer,

We may first ask Judges, Assam Valley Districts, Sylhet and Cachar, for an expression of their opinion after consulting Sub-Judges and leading pleaders, as was done in the first instance.* Draft put up.

* Page 2 of Home, A, Jan. 1898, Nos. 72-91.

Rajendra—3rd August 1900.

T. C.—4th August 1900.

6th August 1900. T. E.

Chief Commissioner,

Perusal of the Bill.

7th August 1900. L. J. K.

A { I do not know whether the endorsement circulating papers for opinion has issued or not.

If not, please omit any reference to consulting any one. The officers concerned will exercise their discretion in that matter.

Then invite particular attention to the statement called for in paragraph 5 of the Government of India letter. The statistics required should be carefully compiled.

Add that the report called for should reach this office not later than the 15th November.

8th August 1900. H. J. S. C.

Special Officer,

A of Chief Commissioner's note, dated the 8th August 1900 above,—The endorsement (draft) referred to has not yet issued.

Revised draft for approval.

Tarini—9th August 1900.

Rebati—9th August 1900.

10th August 1900. T. E.

[Memorandum to the Judge, Assam Valley Districts, District Judges, Sylhet and Cachar, Nos. 80L.&L.—3378-80J., dated the 10th August 1900.]

FROM THE JUDGE OF THE ASSAM VALLEY DISTRICTS, No. 1681, DATED THE 25TH AUGUST 1900.—[NOT PRINTED.]

Asks for 6 spare copies of our memorandum No. 80L.&L.—3378-80J., dated the 10th August 1900, and of its enclosure.

Special Officer,

The memorandum referred to is in manuscript. Six copies of enclosures may be supplied.

Draft for approval.

Tarini—29th August 1900.

C. G.—29th August 1900.

30th August 1900. T. E.

[To the Judge, Assam Valley Districts, No. 89L. & L.—3725J., dated the 30th August 1900.—(Not printed)].

[Reminder to the Judge, Assam Valley Districts, District Judges, Sylhet and Cachar, Nos. 80L.&L.—4815-17J., dated the 16th November 1900.]

FROM THE OFFG.-JUDGE, ASSAM VALLEY DISTRICTS, No. 2167, DATED THE 28TH NOVEMBER 1900.—[NOT PRINTED.]

Says that he will submit his opinion on the Bill to amend the law relating to civil appeals on receipt of certain information asked for from the High Court.

Special Officer,

It will be seen from our memorandum No. 80L. & L.—3378-80J., dated the 10th August 1900, that the replies from all the three Judges were due on the 15th November last. We have received reply from none of the officers yet. They all were reminded on the 16th November 1900. Government of India asked that the reply should be sent in by the end of the present calendar year, *vide* paragraph 8 of India's No. 1108, dated the 23rd July 1900.

Tarini—1st December 1900.

We may perhaps request the Judge, Assam Valley Districts, to submit his report by the 15th December, at the latest, special reminders being sent to Judges, Sylhet and Cachar.

C. G.—1st December 1900.

Secretary,

As proposed.

1st December 1900. T. E.

2nd December 1900. L. J. K.

Special Officer,

Draft and reminders for approval.

By what date should we ask for replies to the reminders to be sent ? 15th December may do.

Rebati—3rd December 1900.

C. G.—3rd December 1900.

3rd December 1900. T. E.

[Special reminder to the District Judge, Sylhet, No. 80L. & L.—5133J., dated the 3rd December 1900.—Not printed.]

[Special reminder to the District Judge, Cachar, No. 80L. & L.—5134J., dated the 3rd December 1900.]

[To the Judge, Assam Valley Districts, No. 111L. & L.—5135J., dated the 3rd December 1900.]

FROM THE OFFG.-JUDGE, ASSAM VALLEY DISTRICTS, No. 2218, DATED THE 13TH DECEMBER 1900.

Submits his opinion on the Bill to amend the law relating to civil appeals.

Special Officer,

India ask for a reply by the end of this month. We finally asked for the opinion of the Judge, Assam Valley Districts, and the District Judges, Sylhet and Cachar, to reach us to-day. Report has come only from the Judge, Assam Valley Districts, which again is incomplete in respect of the statement called for in paragraph 5 of India's letter.

For orders.

Rebati—15th December 1900.

C. G.—15th December 1900.

Secretary,

Wire to Commissioner for the statement, and to Sylhet and Cachar for their reports.

15th December 1900. T. E.

As proposed.

16th December 1900. L. J. K.

FROM THE OFFG.-DISTRICT JUDGE, SYLHET, No. 1283, DATED THE 12TH DECEMBER 1900.

Submits his report on the Bill to amend the law relating to civil appeals.

Assistant Secretary,

Draft telegrams for approval.

[Deputy Commissioner of Sylhet's and District Judge of Cachar's report has since been received.]

Rebati—17th December 1900.

C. G.—17th December 1900.

17th December 1900. H. C.

[Telegram to the Judge, Assam Valley Districts, No. 5278J., dated the 17th December 1900.]

FROM THE DEPUTY COMMISSIONER (AS DISTRICT JUDGE), CACHAR, No. 4242, DATED THE 13TH DECEMBER 1900.

Submits his report on the Bill to amend the law of civil appeal.

Assistant Secretary,

On a careful perusal of paragraph 5 of India's letter with sections 584 and 586 of the Civil Procedure Code and section 584 as amended in draft Bill, it will be evident that the statement wanted by

India should be in some such form as the one we have drawn up below :

Statement showing the institution and disposal of second appeals in suits of specified value preferred to the High Court from the decisions in first appeals of the District Judge, the Additional Judge, and the Subordinate Judges of during the years 1897, 1898 *and* 1899.

	A.	B.	I.	II.		III.		IV.		
Year.	Number of unclassed second appeals preferred to the High Court in suits the value of the subject-matter of which does not exceed Rs. 200.	Number of second appeals in small causes preferred to the High Court in small causes, the value of the subject-matter of which exceeds Rs. 500, but does not exceed Rs. 1,000.	Number of second appeals rejected summarily under section 551, Civil Procedure Code.	Second appeals rejected or dismissed after hearing.		Second appeals partly accepted after hearing, *i.e.*, decided in modification of claim.		Second appeals wholly accepted after hearing, *i.e.*, decreed in full.		Remarks.
				Number.	Percentage (of column 5 on column 2 or 3).	Number.	Percentage (of column 7 on column 2 or 3).	Number.	Percentage (of column 9 on column 2 or 3).	
1	2	3	4	5	6	7	8	9	10	11
1897 ...	a [k*]	Blank.	c [m*]	e [o*]	$\frac{e}{a} \times 100$ in decimals.	g [q*]	$\frac{g}{a} \times 100$ in decimals.	i [s*]	$\frac{i}{a} \times 100$ in decimals.	In $(a+b-c-d-e-f-g-h-i-j)$ cases not disposed of.
	Blank.	b [l*]	d [n*]	f [p*]	$\frac{f}{b} \times 100$ in decimals.	h [r*]	$\frac{h}{b} \times 100$ in decimals.	j [t*]	$\frac{j}{b} \times 100$ in decimals.	
1898 ...	...	...	...	...	...	...	...	...	...	
1899 ...	...	...	...	...	...	...	...	...	...	

* *N.B.*—Figures showing such second appeals which were pending from previous years, but were disposed of by the High Court during 1897, 1898, and 1899, should be separately shown in [ ] in columns 2, 3, 4, 5, 7 and 9, but should be left out of calculation in striking percentages.

The note appended to the form directs separate inclusion of figures for pending second appeals disposed of. This has not been contemplated by India, but is required for the sake of precision and of the removal of a possible difficulty in the practical preparation of a statement like the one required. We have also shown by symbols the method of filling in the form.

The Sylhet statement appears to be incorrect in so far as it embodies figures for *all* second appeals, whereas what India want is that the statement would show the effect of the proposed modification of the law with the object of restricting the right of appeal. The figures listed in the statement should, therefore, as shown in columns 2 and 3 of the form put up, relate to suits in which appeals could be and were preferred in the past three years under the existing law, but which would be excluded under the Bill.

The Cachar statement is entirely wrong, as it is based on figures for first appeals disposed of by the District Judge while India require a statement of second appeals to the High Court

No statement has as yet been received from the Judge, Assam Valley Districts, in reply to our telegram of the 17th December.

Should the form put up be approved, we may send copy to District Judges, Sylhet and Cachar, and ask for revised statements and replies, which latter also as submitted are not quite accurate, as they are based on incorrect statements. A copy of the form, if approved, should also be sent to Judge, Assam Valley Districts. [Civil Justice Report does not furnish full material for the statement.]

India asked for reply by the end of this calendar year.

Rebati—21st December 1900.

From the Offg.-Judge, Assam Valley Districts, No. 2296, dated the 20th December 1900.

Says that the statement required by India will be submitted on receipt of necessary information from the Registrar, Calcutta High Court.

Assistant Secretary,

Commissioner's letter received after the office note below was written. This, however, does not affect the suggestion therein submitted.

Rebati—21st December 1900.

The specimen statement exactly answers what is wanted by India, but the statements already received are of no use. It will take some time if the correct statistics are to be obtained, and we may perhaps ask for India's permission to submit our reply by the end of January 1901.

C. G.—21st December 1900.

Secretary,
21st December 1900. H. C.

Secretary,
As the Chief Commissioner has already expressed* his views on this question, it is perhaps unnecessary to wait for the Assam Valley districts statement. The proposed legislation would not affect Assam to any great extent, and the weight of opinion seems to be against it.

* Page 17, Home, A, Jan. 1898, Nos. 72-91.

24th December 1900. L. J. K.

Chief Commissioner,
I am afraid India will not be content without the statistics they have asked for. The statements forwarded by the District Judges, Sylhet and Cachar, do not give the information required, while the Judge, Assam Valley Districts, has sent no statement, explaining that he has not yet obtained the figures from the Registrar of the High Court, whom he had asked to furnish them. India's instructions for preparing the statement are not very lucid, *e.g.*, it is not clear whether they want the number of appeals of each description preferred, or the number decided in each year. I think, however, that a statement in the form* which I have drawn up would furnish them with all the information they require, and in view of the very small number of second appeals preferred from Assam, it ought to be possible to obtain this information from the records of the Subordinate Judges' courts.

* Enclosure to letter No. 70T., dated the 1st January 1901, to Judge, Assam Valley Districts.

We may say in reply to the Judge, Assam Valley Districts, that you do not understand why it should be necessary to refer to the Registrar of the High Court for the information called for by the Government of India, and we may point out that the form of statement annexed to Mr. Melitus' letter of the 14th September to the Registrar, would not furnish the information required. (India want to know what proportion of the second appeals of each class *which would be excluded under the Bill,* were rejected summarily or after hearing, or wholly or partly accepted.) We say that the statistics called for in paragraph 5 of India's letter may conveniently be exhibited in the form of a statement, and it would seem to you that with the very small number of second appeals preferred from the Assam Valley, it ought to be possible to obtain all the necessary information from the records of the Subordinate Judges' courts. We may request the Judge to take steps to have this information collected, and to submit it to this office, in the form of the statement annexed, with the least possible delay.

In reply to the District Judges, Sylhet and Cachar, we may point out that the statements forwarded by them do not furnish the information required, and we may ask them, in similar terms, for a statement in the same form.

30th December 1900. F. J. M.

Yes.

Please do as proposed. This is a very troublesome matter.

31st December 1900. H. J. S. C.

Secretary,
Drafts for approval. (The Government of India wanted a reply to their letter No. 1108, dated the 23rd July 1900, by the end of December 1900. We may perhaps send an *ad interim* reply?)

M. Nandi—31st December 1900.

Issue. We can send an *ad interim* reply to India when they takid.

31st December 1900. F. J. M.

[To the Judge, Assam Valley Districts, No. 70T., dated the 1st January 1901.]

[To the District Judges, Sylhet and Cachar, Nos. 71-72T., dated the 1st January 1901.]

FROM THE OFFG.-DISTRICT JUDGE, SYLHET, No. 43, DATED THE 5TH JANUARY 1901.

Submits certain statistics regarding the second appeals preferred during the last three years from the Sylhet district.

FROM THE DISTRICT JUDGE, CACHAR, No. 5317, DATED THE 11TH JANUARY 1901.

Submits certain statistics regarding second appeals preferred in 1897, 1898, *and* 1899 *from the Cachar district.*

FROM THE OFFG.-JUDGE, ASSAM VALLEY DISTRICTS, No. 101, DATED THE 16TH JANUARY 1901.

Submits certain statistics regarding second appeals preferred to the High Court during 1897, 1898, *and* 1899 *from the Assam Valley districts.*

Assistant Secretary,
District Judge of Sylhet's letter No. 43, *dated the 5th January* 1901.—The figures in columns 2 and 3 of Secretary's form are evidently intended to be inclusive of figures in columns 4 and 5 respectively. The Sylhet statements, which excluded the figures in columns 4 and 5 from those entered in columns 2 and 3, respectively, have been corrected accordingly.

District Judge of Cachar's letter No. 5317, *dated the* 11*th January* 1901.—Cachar statement corrected in respect of apparent clerical errors.

Judge of Assam Valley Districts' No. 101, *dated the* 16*th January* 1901.—Assam Valley statement appears correct.

We have prepared two consolidated statements for the province from the above, which are put up. So far about statistics called for by India. Some general remarks on the proposed Bill will be found in

Mr. Porteous' letter of 13th December 1900, Mr. Newbould's letter of 12th December 1900, and Judge of Cachar's letter of 13th December 1900.

India's letter of 23rd July 1900 has to be replied to now.

Rebati—19th January 1901.

Separate figures for each district and Assam Valley districts may be seen in the rough statement,*

* See K. W.—Not printed.

if necessary.

C. G.—21st January 1901.

Secretary,
21st January 1901. H. C.

Secretary,
21st January 1901. L.J. K.

Chief Commissioner,

The statement compiled from the figures now supplied by the Judges shows that the average number of second appeals annually preferred to the High Court from Assam for the three years 1897, 1898, 1899, was 70, *viz.*, 9 in Small Cause Court cases and 61 others. The average number decided annually has been 40, or two Small Cause Court appeals and 38 others. Of the 40 second appeals annually decided on the average, 33, *viz.*, 2 Small Causes Court appeals and 31 others, would be excluded by the proposals of the Government of India.

Out of 101 second appeals decided by the High Court during the three years, which would be excluded by the proposals of the Government of India (*viz.*, 7 Small Cause Court and 94 other appeals), 81 (7 Small Cause Court and 74 others) were rejected.

The opinions of the officers consulted are summarised below :

Mr. Porteous, Officiating Judge of the Assam Valley Districts, says that on general grounds, considering the executive training of both Judge and Deputy Commissioners in the Assam Valley districts, he is of opinion that it would be a most unwise step to limit in any way the opportunities of appeal at present enjoyed. Mr. Porteous has forwarded an opinion by the Government Pleader of Gauhati, who also thinks it undesirable to limit second appeals to the High Court, the first appeals in most cases being heard by Deputy Commissioners, who have little experience of civil judicial work. With regard to paragraph 6 of the Government of India's letter, the Government Pleader is of opinion that much delay would be saved if it were made optional for litigants to appeal direct to the High Court in cases of values from Rs 2,000 to Rs. 5,000. With regard to paragraph 7 of the letter, he thinks that orders under sections 113 and 120 of the Civil Procedure Code, might with advantage be excluded from the list of orders from which an appeal lies to the High Court in section 588 of the Code.

This would require amendment of section 21 (1), Chapter III of the Bengal, North-West Provinces, and Assam Civil Courts Act, 1887.

24-1-1901. F. J. M.

Mr. Newbould, Officiating District Judge of Sylhet is of opinion that the number of second appeals from his district is so small that there is no ground for recommending legislation with a view to further reducing it. Considering the proportion of decided cases in which appeals were wholly or partly successful, it does not appear to him that there has been any great abuse of the right of second appeal. The results of second appeals in Small Cause Court cases would seem to support the proposal to raise the money limit of value of suits of this class in which a second appeal lies, but the total number of such appeals is so small that it would be unsafe to draw any conclusion from their results. Mr. Newbould is not in favour of distinguishing between concurrent and conflicting decrees in limiting the right of second appeal, but he supports the proposal to make it compulsory instead of discretionary for the High Courts to follow the procedure described in section 551 of the Civil Procedure Code in all second appeal cases. With regard to the suggestion made in paragraph 6 of the Government of India's letter, he thinks that the law might advantageously be altered, so that in suits the subject matter of which exceeds a certain value, the second appeal might be filed in the district court or in the High Court at the option of the appellant. Mr. Newbould makes no suggestion on the proposal contained in paragraph 7 of India's letter.

The Deputy Commissioner and District Judge of Cachar (Mr. Cuming) says that, so far as that district is concerned, the restriction of second appeals proposed in the second clause of the amended section 584 of the draft Bill may not cause much hardship to litigants, but he thinks it will cause hardship in districts where the number of appeals is large. He is in favour of the proposal that in cases of concurrent decrees second appeals should not be allowed except by special leave of the High Court. He expresses no opinion on the other proposals. In reply to India, we may say that you have consulted the Judge of the Assam Valley Districts and the District Judges of Sylhet and Cachar, and we may give a summary of their replies as above. We may go on to say that it will be seen from the annexed statement containing the statistics called for by the Government of India that the number of second appeals to the High Court from Assam is small, and that if the appeals which would be excluded under the draft Bill are deducted, the number left is quite insignificant. You adhere to the view which you have already expressed, that it would be unfortunate and injudicious to restrict in any way the right of appeal in Assam [and the three officers holding the appointment of District Judge in the province are also not in favour of the proposed restrictions]* You have no objection, however, to the proposal of the Hon'ble Judges of the Calcutta High Court to amend section 551 of the Civil Procedure Code, so as to make it compulsory for the High Courts to observe the procedure prescribed in that section in cases of appeals presented under section 584 of the Code.

*[ ] We need not repeat this.
25-1-01. H. J. S. C.

With regard to paragraph 6 of India's letter* [you may be disposed to give your support to the suggestion of the Government Pleader, Gauhati], that it should be made optional for litigants to appeal direct to the High Court in cases of values exceeding Rs. 2,000, but not exceeding Rs. 5,000, and fear

*( )Say that I am very doubtful of the expediency of the proposal to make it.
25-1-01. H. J. S. C.

that any such provision in the law would operate to the advantage of wealthy and to the prejudice of poorer suitors.

We do not know whether the High Court would be able to support such a proposal in view of the extra burden of appellate work which it might entail upon the court; but so far as this province is concerned, the number of direct appeals to the High Court would not be considerable.

Holding on general grounds that there should be no restriction of the existing right of appeal in civil cases, you will probably not be prepared to suggest any reduction in the list of orders from which an appeal lies, as given in section 588 of the Code.

24th January 1901. F. J. M.

Please reply as proposed, but I should like to see fair draft.

25th January 1901. H. J. S. C.

Secretary,

A draft for approval.

M. Nandi—26th January 1901.

Chief Commissioner,

26th January 1901. F. J. M.

Approved.

27th January 1901. H. J. S. C.

[To the Secretary to the Government of India, Home Department, No. 11L.&L.—162T., dated the 28th January 1901.]

Recorded by—S. Bose—7th Feb. 1901. R. M. De—8th Feb. 1901.

Exd. by—A. G. B.

ASSAM SECRETARIAT.

HOME—A.

February 1901.

A Bill to amend the law relating to civil appeals as contained in the Code of Civil Procedure.

No. 1108 .

FROM

J. P. HEWETT, ESQ., C.S.I., C.I.E.,
Secretary to the Government of India,

TO

The Hon'ble the Chief Commr: of Assam

Home Department.
Judicial.

Simla, the 23rd July 1900.

SIR,

I AM directed to refer to the correspondence ending with your letter* upon the subject of the amendment of the law of civil appeal in this country. It will be within your recollection that in my letter No. 5-Judicial / 370—400, dated the 30th March 1897, certain suggestions were put forward for consideration with a view to restricting within reasonable limits the enormous, and apparently increasing, number of appeals in civil suits which are lodged under the existing law.

* Madras, No. 928, dated the 17th June 1898.
Bombay, No. 2630, dated the 6th April 1898.
Bengal, No. 2177-J., dated the 6th April 1898.
North-Western Provinces and Oudh, No. 1091, dated the 2nd December 1897.
Central Provinces, No. 8632, dated the 10th November 1897.
Assam, No. 153-L. & L.—303-J., dated the 25th January 1898.
Coorg, No. 1040-E.—2, dated the 29th July 1897.
Hyderabad, No. 299, dated the 12th October 1897.
High Court, No. 2102, dated the 2nd September 1897.

2. The Government of India have now considered the voluminous replies which have been received to that reference. These show that the evil of a protracted system of civil appeals is recognized by most of the Local Governments and High Courts, and that, as suggested in the letter of the 30th March 1897, the interests of the litigants themselves as well as those of the Courts and of the Government require that steps should be taken in the direction indicated. After a full consideration of all the criticisms which have been offered on the suggestions previously put forward, the Governor General in Council has come to the conclusion that the present right of appeal from original decrees need not be restricted, but that the existing provisions regarding second, or special, appeals are too wide and should be curtailed.

3. The Government of India, as at present advised, would continue to limit the grounds on which second appeals can be brought before the High Courts to those mentioned in section 584 of the Code of Civil Procedure, *viz.*:—

(*a*) the decision being contrary to some specified law or usage having the force of law;

(*b*) the decision having failed to determine some material issue of law or usage having the force of law;

(*c*) a substantial error or defect in the procedure as prescribed by the Code or any other law, which may possibly have produced error or defect in the decision of the case upon its merits.

But the Governor General in Council thinks that the cases in which a second appeal can be brought on these grounds should be further limited (1) by extending the provisions of section 586 † of the Code, so as to prescribe that no second appeal shall lie in any suit of the nature cognizable in a Small Cause Court when the amount or value of the subject matter does

† No second appeal shall lie in any suit of the nature cognizable in a Court of Small Causes, when the amount or value of the subject matter of the original suit does not exceed Rs. 500.

not exceed Rs. 1,000, or in any other suit of any other nature when the amount or value does not exceed Rs. 200, and (2) by making a distinction between concurrent and conflicting decrees; and providing that when the original decree is reversed or varied by the first Appellate Court, a second appeal should be allowed subject to the money limit suggested above, but that when there are two concurrent decrees, a second appeal should not be allowed in any case except by leave of the High Court, and then only on an important question of law or usage having the force of law which in the opinion of the Court requires further consideration.

4. The Governor General in Council is also in favour of a suggestion which has been made by the Honourable Judges of the Calcutta High Court, *viz.*, to amend section 551 of the Code of Civil Procedure, which gives the Appellate Court power, if it thinks fit, to dismiss an appeal summarily, so as to make it compulsory instead of discretionary for the High Courts to observe the procedure prescribed in the section in cases of appeals presented under section 584 of the Code.

5. A draft Bill* amending Chapter XLII of the Code of Civil Procedure has been prepared to give effect to the suggestions contained in the last two paragraphs. The Government of India desire, before considering the question of its introduction in the Council of the Governor General for making Laws and Regulations, to obtain the opinions of the Local Governments and Administrations, the High Courts, and a few selected officers and bodies or persons whose advice will be of weight, upon its provisions, with any alternative proposals they may desire to put forward if they do not accept those in the draft Bill. The Government of India require a few well-considered opinions from reliable and experienced persons who are competent to judge of the questions at issue, and it should not, in their opinion, be necessary to consult very many persons. The reply should be accompanied by a statement showing by reference to the figures for the last three years for which statistics are available (1) how the proposal contained in the second clause of amended section 584 of the draft Bill, to restrict second appeals by money limits, will affect—(*a*) the number of unclassed second appeals; (*b*) the number of appeals in small causes, and (2) what proportion of the number of (*a*) and (*b*), respectively, finally decided in each of the last three years, which would be excluded under the Bill, were respectively (i) rejected under section 551 of the Code, (ii) rejected after hearing, (iii) partly accepted after hearing, or (iv) wholly accepted after hearing.

* Attached.

6. There are two other proposals on which the Government of India desire to receive the opinions of the Local Government
The first is the proposal, that, as far as possible, an appeal direct to the High Court should be substituted for a second appeal. The first appeal would be decided by a Bench of two Judges and with its decision litigation on the subject matter of the suit would, so far as the appellate jurisdiction of the High Court is concerned, be closed. It has been urged that, while this arrangement would save much time and delay, it would be more satisfactory to the Judges to dispose of a case on first appeal than on second appeal. Such an amendment could not be embodied in the Code of Civil Procedure, but would require to be effected in the various Civil Courts Acts in force throughout the different Provinces. The Governor General in Council would be glad to learn the opinion of the Local Governments and the High Courts as to how far this suggestion is capable of being adopted without over-burdening the High Courts or involving litigants in excessive expenditure.

7. It has also been suggested by the Calcutta High Court that section 588 of the Code, which provides that an appeal shall lie from certain orders under the Code therein mentioned, but from no others, might with advantage be amended, so as to reduce the list of orders from which an appeal lies. The orders from which an appeal now lies fall under twenty-nine heads, and the Governor General in Council will be glad of suggestions from Local Governments and High Courts as to the manner in which they might be reduced.

8. I am to ask that the replies may be sent to this office by the end of the present calendar year.

I have the honour to be,

SIR,

Your most obedient Servant,

J. P. HEWETT,

Secretary to the Government of India.

G. C. Press, Simla.—No. 953 H. D.—19-7-00.—355.

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A

BILL

TO

Amend the law relating to Civil Appeals as contained in the Code of Civil Procedure.

WHEREAS it is expedient to amend the law relating to civil appeals as contained in the Code of Civil Procedure; It is hereby enacted as follows:— XIV of 1882.

Short title and commencement.

1. (*1*) This Act may be called the Civil Procedure Code (Appeals) Amendment Act, 1900; and

(*2*) It shall come into force at once.

Substitution of new Chapter for Chapter XLII, Act XIV of 1882.

2. For Chapter XLII of the Code of Civil Procedure, the following Chapter shall be substituted, namely:— XIV of 1882.

"584. (*1*) Unless when otherwise provided by this Code or by any other law, a second appeal shall lie to the High Court from decrees passed in appeal by any Court subordinate to a High Court on any of the following grounds, namely:—

Second appeals to High Court in certain cases.

(*a*) the decision being contrary to some specified law or usage having the force of law;

(*b*) the decision having failed to determine some material issue of law or usage having the force of law;

(*c*) a substantial error or defect in the procedure as prescribed by this Code or any other law, which may possibly have produced error or defect in the decision of the case upon the merits.

(*2*) No second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, unless the amount or value of the subject-matter of the suit exceeds one thousand rupees or the decree involves directly some claim to or question respecting property exceeding such value, or in any other suit unless the amount or value of the subject-matter of the suit exceeds two hundred rupees or the decree involves directly some claim to or question concerning property exceeding such value, or

(*3*) No second appeal shall lie in any suit in which the decree of the Appellate Court does not vary or reverse, otherwise than as to costs, the decree of the Court below, unless, on application made to it, the High Court certifies that there is an important question of law or custom involved, and that such question requires further

6)

consideration, in which case the High Court shall not reverse or modify the decision of the Court below except in so far as such decision involves the question of law or custom in respect of which the application has been admitted.

Explanation.—A question of procedure is not a question of law or custom within the meaning of this sub-section.

(*4*) No application under sub-section (*3*) shall be admitted after the expiration of ninety days from the date of the decree in respect of which the application is made, unless the applicant satisfies the High Court that he had sufficient cause for not making the application within that period, and in computing such period the provisions of the Indian Limitation Act, 1877, shall be deemed to apply.

XV of 1877.

(*5*) In computing the period of limitation prescribed for an appeal under this section the time during which the applicant has been making an application under sub-section (*4*), including the day on which the application was made and the day on which the proceedings therein ended, shall be excluded.

(*6*) The court-fee leviable on an application under sub-section (*3*) shall be that leviable under the Court-fees Act, 1870, on a memorandum of appeal.

VII of 1870.

"585. An appeal may lie under section 584 from an appellate decree passed *ex parte*.

Appeals from *ex parte* appellate decrees.

"586. No second appeal shall lie except as provided for in section 584.

No other second appeals.

"587. The provisions contained in Chapter XLI shall apply, as far as may be, to appeals under this Chapter and to the execution of decrees passed in such appeals:

Provisions as to second appeals.

Provided that the High Court shall, in the case of all such appeals, follow the procedure prescribed by section 551."

No. 3.

No. 80L. & L.—3378-80J., dated Shillong, the 10th August 1900.

Memo. by—The Offg. Secretary to the Chief Commissioner of Assam.

Copy of letter from the Government of India, Home Department, No. 1108, dated the 23rd July 1900, and enclosure, forwarded to the Judge, Assam Valley Districts, District Judge, Sylhet, and District Judge, Cachar, for favour of an expression of his opinion. Particular attention is invited to the statement called for in paragraph 5 of the letter from the Government of India. The statistics required should be carefully compiled.

2. The report called for should reach this office not later than the 15th November 1900.

No. 4.

No. 1283, dated Sylhet, the 12th December 1900.

From—B. B. Newbould, Esq., I.C.S., Offg. District Judge of Sylhet,

To—The Secretary to the Chief Commissioner of Assam.

I have the honour to acknowledge receipt of your memorandum No. 80L. & L.—3378-80J., dated the 10th August 1900, forwarding, for an expression of my opinion, copy of letter from the Government of India, Home Department, No. 1108, dated the 23rd July 1900, and enclosure.

2. I have also to acknowledge receipt of your subsequent reminders, and to express regret for the delay in replying, which is due to my having been engaged in an unusually heavy sessions since the commencement of November.

3. The statistics called for in your memorandum under reply are submitted herewith.

4. From this statement it appears that the number of second appeals that have been prepared against the decisions of courts in this district is so small that there does not appear to be any grounds for recommending legislation with a view to reducing the cases in which a second appeal should lie. Considering also the proportion of decided cases in which appeals were wholly or partly successful, it does not appear that there has been in this district any great abuse by litigants of the right of second appeal. As regards appeals in small causes only, the decided appeals would seem to show that the proposal to limit the cases of this class in which a second appeal shall lie to those in which the amount or value of the subject-matter exceeds Rs. 1,000, would be unobjectionable. As, however, only 24 such appeals have been presented during the three years 1897—99 and only six of these have been decided, it is unsafe to base any conclusion on such small figures.

5. I cannot agree with the suggestion that there should be a distinction made between concurrent and conflicting decisions limiting the right of second appeal It cannot be denied that some District Judges are wanting in experience of civil appellate work, and it seems to me that there might be a tendency for an inexperienced Judge to confirm the decision of a lower court more often than he should, because, knowing himself to be inexperienced, he regards this as the safe course.

6. The proposal in paragraph 4 of the letter from the Government of India to make it compulsory instead of discretionary for the High Courts to follow the procedure prescribed by section 551 in the case of all second appeals, is in my opinion one which would be very effective in reducing the evil of a protracted system of appeals. I do not think that any reasonable objection can be raised to this alteration of the law, the advantages of which are obvious.

7. As regards the proposal in paragraph 6, it would, I think, be advantageous that appeals in cases in which a second appeal was likely to be presented should be heard by the High Court in the first instance. This might be provided for by altering the law, so that in suits the subject-matter of which is over a certain value, the appeal could be filed in either the District Court or the High Court, as the appellant preferred. If it is decided to curtail the existing provisions regarding second appeals, a provision of this kind would remove some of the more serious objections which might otherwise be raised against the curtailment. I cannot make any suggestion from my own experience on the proposal contained in paragraph 7, to reduce the list of orders contained in section 588 against which an appeal lies under the present law.

H. 5-7. Amendment of law relating to civil appeals.

No. 5.

Statement showing the institution and disposal of second appeals preferred to the High Court from the decisions in first appeals, decided by the District Judge, Subordinate Judge, and Additional Subordinate Judge of Sylhet during the last three years, *viz.*, 1897, 1898, and 1899.

Year.	(*a*) Number of unclassed second appeals preferred to the High Court.	(*b*) Number of second appeals in small causes preferred to the High Court.	I. Number of appeals rejected sumarily under section 551 of the Civil Procedure Code.	II. Number of appeals rejected or dismissed after hearing on merits.		III. Number of appeals partly accepted after hearing on merits, *i.e.*, decided in modification of the claim.		IV. Number of appeals wholly accepted or decreed in full after hearing on merits.		Remarks.
				No.	Percentage.	No.	Percentage.	No.	Percentage.	
1	2	3	4	5	6	7	8	9	10	11
1897 ...	30	...	...	28	93·3	1	3·3	1	3·3	
	...	2	...	2	100	...	...	...	...	
1898 ...	69	...	...	38	80·8	1	2·1	8	17·02	Result of the remaining 32 not known up to date.
	...	14	...	4	100	...	...	...	...	
1899 ...	38	...	...	...	...	...	...	1	100	Result of the remaining 45 not known up to date.
	...	8	...	...	...	...	...	...	...	

N.B.—As far as the result of second appeals has been communicated to this court and the Subordinate Judges' court, the percentage in decided cases has been shown in this statement in each of the columns marked II, III, and IV.

No. 6.

No. 2218, dated Gauhati, the 13th December 1900.

From—A. PORTEOUS, Esq., I.C.S., Offg. Judge of the Assam Valley Districts,

To—The Secretary to the Chief Commissioner of Assam.

With reference to your memorandum No. 80L. & L.—3378-80, dated the 10th August 1900, forwarding copy of letter No. 1108, dated the 23rd July 1900, from the Secretary to the Government of India in the Home Department, together with a Bill to amend the law relating to civil appeals as contained in the Code of Civil Procedure, and inviting opinions on the provisions of the Bill, I have the honour to send herewith copy of a note dated the 11th September 1900 on the proposed Bill, made by Babu Kali Charan Sen, B.L., the Government Pleader at Gauhati, together with a copy of Mr. Melitus' remarks thereon, and to say that, owing to my want of familiarity with the subject and to the absence of certain figures called for by my predecessor from the Registrar of the High Court, I regret I am not in a position to offer an opinion of any value on the subject.

I can only state on general grounds that, considering the executive training of both Judge and Deputy Commissioners in the Assam Valley, I should consider it a most unwise step to limit in any way the opportunities of appeal at present enjoyed in the Assam Valley districts.

No. 7.

Opinion on the Bill to amend the law relating to civil appeals by Babu Kali Charan Sen, B.L.

The proposed change in the present law with regard to second appeals to High Court will have very little effect so far as Assam is concerned.

There are very few second appeals from Assam, and if the law is amended as proposed, the number of second appeals to High Court will be further reduced. In the present condition of judicial administration of this Valley, I do not think it desirable to limit second appeals to High Court. As a matter of fact, with the exception of the appeals decided by the Judge, all other appeals of this Valley are tried by the Deputy Commissioners, who are vested with powers of Sub-Judge, and most of these officers have little or no experience in civil cases. In Bengal, Munsifs of experience

and merit are appointed as Sub-Judges, and they devote their whole time to civil judicial work. The Deputy Commissioners of this province have very little time to train themselves up in judicial matters.

If the Deputy Commissioners are relieved of their civil duties, and two or three Sub-Judges of experience are appointed to hear civil appeals and original cases of this valley, there cannot be any objection to vest them with final jurisdiction in cases of concurrent decrees.

Note.—This would never do: because the Munsifs would not be departmentally subordinate to the Sub-Judge and would not care for his approval or disapproval. The result will be that the Munsifs' work would be worse done than at present, and with greater delay. So long as the Munsifs are departmentally subordinate to Deputy Commissioners, it is best that Deputy Commissioners hear appeals and do Sub-Judge's work. Beside our civil work here is very simple. Our best Munsif is a promoted Sub-Deputy Collector. But there is no doubt that executive officers will sooner or later require to be relieved of their judicial work to give them time to attend properly to land revenue, labour emigration, and other important executive work, and the opportunity can then be taken to improve the judicial arrangement.—P. G. MELITUS—15th September 1900.

The amended section 584 (3) seems to be unnecessary in view of the proviso to section 587 of the Bill. If the provision of section 551 is made compulsory, then there does not appear to be any necessity for another application for permission. The discretion vested by section 584 (3) may well be exercised when admitting appeals under section 551, Civil Procedure Code.

Under section 584 (*b*) court fee leviable on an application under section 584 (3) shall be that leviable on a memorandum of appeal, but the section does not say if the appellant will have to pay another court when, after obtaining the required permission, he files his appeal petition. I think in such cases the appellant should not be required to pay court for a second time when filing his appeal after obtaining permission. With regard to paragraph 6 of the letter of the Secretary to the Government of India, I am of opinion that if it is made optional with the litigants to appeal direct to High Court in cases over certain value then it would save much time and delay. The present law makes it compulsory to appeal to High Court in cases over Rs. 5,000 in value. The law may be changed so as to make it optional to file appeal in High Court in cases of the value of Rs. 2,000 to Rs. 5,000.

As regards section 588, I think some of the clauses might with advantage be omitted, for instance, clause 10, orders under section 113 and 120 of the Civil Procedure Code.

No. 8.

No, 4242, dated Silchar, the 13th December 1900.

From—The Deputy Commissioner as District Judge of Cachar, Silchar,

To—The Secretary to the Chief Commissioner of Assam.

With reference to your memorandum No. 80L. & L.—3378-80, dated the 10th August 1900, forwarding a copy of India Government letter No. 1108 of 23rd July, with the enclosure, I have the honour to submit a statement showing the number of first appeals instituted and disposed of by the Deputy Commissioner as District Judge of Cachar during the three years 1897, 1898, and 1899, and to state that the average number of institutions of appeals in suits of Small Cause Court nature was only one, and that of unclassed appeals was 12·6.

2. It will also be seen from this statement that the total number of unclassed appeals disposed of during these three years, including cases pending from previous years was 67, of which 9 were rejected under section 551, 52 rejected after hearing and 6 only were wholly accepted after hearing; and in cases of the nature cognisable in a Small Cause Court all the appeals were rejected after hearing.

3. So far as this district is concerned, therefore, if the second appeals be restricted by money limits as proposed in the second clause of amended section 584 of the draft Bill, it may not cause much hardship to the litigants or affect the appeals of both classes to any appreciable extent, but, I think, it will very largely affect appeals in larger districts, where the number of cases is very large. I think, therefore, the proposal to restrict second appeals by money limits as suggested in the second clause of amended Section 584 of the draft Bill will cause hardship to the litigants.

4. But at the same time it is desirable in the interests of the litigants themselves that the growing tendency to protract litigation should be checked, and I think the object the Government of India have in view may to some extent be attained by so amending the law as not to allow second appeals in cases of concurrent decrees except by leave of the High Court, and on grounds mentioned in paragraph 3 of the Government of India's letter.

No. 9.

Statement showing the number of first appeals instituted and disposed of by the Deputy Commissioner as District Judge of Cachar during the years 1897, 1898, and 1899.

	Institution.	Disposal.				Institution.	Disposal.				Remarks.
	Number of appeals in suits of Small Cause Court nature of value exceeding Rs. 500.	Rejected under section 551.	Rejected after hearing.	Partly accepted after hearing.	Wholly accepted after hearing.	Number of unclassed appeals of value not exceeding Rs. 200.	Rejected under section 551.	Rejected after hearing.	Partly accepted after hearing.	Wholly accepted after hearing.	
1	2	3	4	5	6	7	8	9	10	11	12
1897	2	...	...	...	...	11	1	14	...	4	...
1898	...	...	2	...	...	16	4	30	...	...	...
1899	1	...	1	...	...	11	4	8	...	2	...

No. 10.

Telegram No. 5278J., dated 17th December 1900.

From—Secretary to Chief Commissioner, Assam, Shillong,

To—Judge, Assam Valley Districts, Gauhati.

Your No. 2218, 13th December. Kindly furnish urgently statement regarding civil appeals required by India.

No. 11.

Telegram No. 2296, dated 20th December 1900.

From—A. PORTEOUS, Esq., I.C.S., Offg. Judge, Assam Valley Districts, Gauhati,

To—Secretary to Chief Commissioner of Assam, Shillong.

With reference to your telegram of the 17th December 1900, on the subject of the proposed Bill to amend the law relating to civil appeals, I have the honour to forward, for perusal of the Honourable the Chief Commissioner, copy of this office letter No. 1824, dated the 14th September 1900, written by my predecessor to the address of the Registrar of the High Court for the statement now called for, and to say that it has not yet been received. A reminder has been issued for it, and it will be submitted on receipt.

No. 12.

No. 1824, dated Gauhati, the 14th September 1900.

From—P. G. MELITUS, Esq., C.I.E., I.C.S., Judge of the Assam Valley Districts,

To—The Registrar of the High Court of Judicature in Bengal, Calcutta.

In paragraph 5 of Mr. Hewetts' letter No. 1108, dated the 23rd July 1900, to the address of the Honourable the Chief Commissioner of Assam (a copy of which is

enclosed for ready reference) in which opinion has been invited on the proposed Bill to amend the law relating to civil appeals as contained in the Code of Civil Procedure the Government of India have called for a statement showing by reference to the figures of the last three years, how the proposed amendment will affect the number of unclassed appeals and appeals in small causes, etc. The Honourable the Chief Commissioner has requested me to prepare such a statement for the Assam Valley Districts. An attempt was made to have the statement (as per annexed form) prepared in my office, but it has been found that the printed reports and my office papers do not furnish materials required for the statement, and the information which I might obtain from the Sub-Judges of the division would probably not be reliable or complete. I have therefore been obliged to trouble you in the matter, and have the honour to request that, with the permission of the Honourable Judges, you will favour me by having a statement made out either in the annexed form or in any other form which may appear more suitable to you, giving the information referred to in paragraph 5 of the Government of India's letter so far as the Assam Valley Districts is concerned I shall take it as a favour if you will give the figures by districts, and send the statement as early as possible.

No. 13.

Statement of second appeals with their results preferred from the Assam Valley Districts during three years ending 1899.

Year and division.	Unclassed second appeals.						Appeals in small causes.						Remarks.
	Summarily rejected under section 551.	Rejected after hearing.	Partly accepted after hearing.	Wholly accepted after hearing.	Total.	Total number instituted and value Rs. 200 and below.	Summarily rejected under section 551.	Rejected after hearing.	Partly accepted after hearing.	Wholly accepted after hearing.	Total.	Total number instituted and value Rs. 1,000 and below.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14

No. 14.

No. 70T., dated Camp, Calcutta, the 1st January 1901.

From—The Secretary to the Chief Commissioner of Assam,

To—The Offg. Judge, Assam Valley Districts.

In reply to your letter No. 2296, dated the 20th December 1900, on the subject of the proposed Bill to amend the law relating to civil appeals as contained in the Code of Civil Procedure, I am directed to say that the Chief Commissioner does not understand why it should be necessary to refer to the Registrar of the High Court, Calcutta, for the information called for by the Government of India in Home Department letter No. 1108, dated the 23rd July 1900, I am to point out that the form of statement annexed to Mr. Melitus' letter of the 14th September 1900, addressed to the Registrar, would not furnish the statistics required, may conveniently be exhibited in a statement in the annexed form, and it would seem to the Chief Commissioner that in view of the very small number of second appeals preferred from the Assam Valley districts, it ought to be possible to obtain all the necessary information from the records of the Subordinate Judge's Courts, I am accordingly to request that you will be good enough to take steps to have this information collected, and to submit it with the least possible delay to this office in the form of the statement annexed, in which figures should be given for the last three years for which they are available.

H. 15-17. Amendment of law relating to civil appeals.

No. 15.

(*a*) *Unclassed second appeals.*

Year.	Number of unclassed second appeals.		Number of unclassed second appeals of value not exceeding Rs. 200.		Appeals shown in column 5 which were—							
	Preferred.	Decided.	Preferred.	Decided.	(i) Rejected under section 551 of the Civil Procedure Code.		(ii) Rejected after hearing.		(iii) Partly accepted after hearing.		(iv) Wholly accepted after hearing.	
					Number.	Percentage.	Number.	Percentage.	Number.	Percentage.	Number.	Percentage.
	2	3	4	5	6		7		8		9	

(*b*) *Second appeals in small causes.*

Year.	Number of second appeals in small causes.		Number of second appeals in small causes of value not exceeding Rs. 1,000.		Appeals shown in column 5 which were.							
	Preferred.	Decided.	Preferred.	Decided.	(i) Rejected under section 551 of the Civil Procedure		(ii) Rejected after hearing.		(iii) Partly accepted after hearing.		(iv) Wholly accepted after hearing.	
					Number.	Percentage.	Number.	Percentage.	Number.	Percentage.	Number.	Percentage.
1	2	3	4	5	6		7		8		9	

No. 16.

No. 71-72T., dated Camp, Calcutta, the 1st January 1901.

From—The Secretary to the Chief Commissioner of Assam,

To—The District Judge, $\frac{\text{Cachar}}{\text{Sylhet.}}$.

In reply to your letter No. $\frac{4242, \text{ dated the 13th December}}{1283, \text{ dated the 12th December}}$ 1900, on the subject of the proposed Bill to amend the law relating to civil appeals as contained in the Code of Civil Procedure, I am directed to point out that the statement forwarded by you does not furnish the information called for by the Government of India in the Home Department, letter No. 1108, dated the 23rd July 1900. These statistics may conveniently be exhibited in a statement in the annexed form, and I am to request that you will be good enough to submit with the least possible delay a statement in this form, containing statistics for the last three years for which the information is available.

No. 17.

No. 43, dated Sylhet, the 5th January 1901.

From—B. B. NEWBOULD, Esq., I.C.S., Offg. District Judge, Sylhet,

To—The Secretary to the Chief Commissioner of Assam (on tour).

I have the honour to acknowledge the receipt of your letter, No. 71-72T., dated the 1st January 1901, which reached my office to-day, and, as requested therein, I beg to submit in the form annexed to your letter under reply, a revised statement containing statistics for the last three years showing the result of second appeals, preferred to the High Court during the above period.

No. 18.

(a) Unclassed second appeals.

Year.	Number of unclassed second appeals.		Number of unclassed second appeals of value not exceeding Rs. 200.		Appeals shown in column 5 which were							
	Preferred.	Decided.	Preferred.	Decided.	(i) Rejected under section 551 of the Civil Procedure Code.		(ii) Rejected after hearing.		(iii) Partly accepted after hearing.		(i) Wholly accepted after hearing.	
1	2	3	4	5	6		7		8		9	
					Number.	Percentage.	Number.	Percentage.	Number.	Percentage.	Number.	Percentage.
1897	30	30	22	22	...	...	20	90·9	1	4·5	1	4·5
1898	69	47	59	39	...	...	31	79·4	1	2·5	7	17·9
1899	38	1	24	1	...	...	...	...	...	...	1	100·

No. 19.

B.—Second appeals in small causes.

Year.	Number of second appeals in small causes.		Number of second appeals in small causes of value not exceeding Rs. 1,000.		Appeals shown in column 5 which were—							
	Preferred.	Decided.	Preferred.	Decided.	(i) Rejected under section 551 of the Civil Procedure Code.		(ii) Rejected after hearing.		(iii) Partly accepted after hearing.		(iv) Wholly accepted after hearing.	
1	2	3	4	5	6		7		8		9	
					Number.	Percentage.	Number.	Percentage.	Number.	Per. centage.	Number.	Percentage.
1897	2	2	2	2	...	...	2	100	...	...	...	...
1898	14	4	13	4	...	...	4	100	...	...	...	...
1899	8	...	7	...	...	...	...	...	...	...	...	...

No. 20.

No. 5317, dated Silchar, the 11th January 1901.

From—A. H. CUMING, Esq., I.C.S., Deputy Commissioner, as District Judge, Cachar,

To—The Secretary to the Chief Commissioner of Assam.

With reference to your No. 71-72T., dated the 1st instant, I have the honour to submit a statement in the form therein enclosed showing the number of second appeals preferred and decided by the High Court during the year 1897, 1898, and 1899.

No. 21.

A.—Unclassed second appeals.

Year.	Number of unclassed second appeals.		Number of unclassed second appeals of value not exceeding Rs. 200.		Appeals shown in column 5 which were—							
	Preferred.	Decided.	Preferred.	Decided.	(i) Rejected under section 55 of the Civil Procedure Code.		(ii) Rejected after hearing.		(iii) Partly accepted after hearing.		(iv) Wholly accepted after hearing.	
1	2	3	4	5	6		7		8		9	
					Number.	Percentage.	Number.	Percentage.	Number.	Percentage.	Number.	Percentage.
1897	4	3	3	3	...	...	3	100	...	...	...	...
1898	4	2	4	2	...	...	2	100	...	...	...	...
1899	...	5*	...	5	...	...	3	60	...	...	...	...

* Of these 5 appeals 2 remanded by the High Court are not shown in any of the columns from 6 to 9.

B—Second appeals in small causes.

Year.	Number of second appeals in small causes.		Number of second appeals in small causes of value not exceeding Rs. 1,000.		Appeals shown in column 5 which were—							
	Preferred.	Decided.	Preferred.	Decided.	(i) Rejected under section 551 of the Civil Procedure Code.		(ii) Rejected after hearing.		(iii) Partly accepted after hearing.		(iv) Wholly accepted after hearing.	
1	2	3	4	5	6		7		8		9	
					Number.	Percentage.	Number.	Percentage.	Number.	Percentage.	Number.	Percentage.
1897	...	... 1	...	... 1	...	...	... 1	... 100	...	...	...	...
1898	...	...	...	...	...	...	...	...	...	...	...	...
1899	...	...	...	...	...	...	...	...	...	...	...	...

No. 22.

No. 101, dated Gauhati, the 16th January 1901.

From—A. PORTEOUS, Esq., I.C.S., Offg. Judge of the Assam Valley Districts,

To—The Secretary to the Chief Commissioner of Assam.

With reference to your letter No. 70T., dated the 1st January 1901, on the subject of the proposed Bill to amend the law relating to civil appeals as contained in the Code of Civil Procedure, I have the honour to submit herewith a statement in the form annexed to your letter under reply. The figures have been taken from a statement furnished by the Registrar of the High Court, Calcutta.

No. 23.

A—Unclassed second appeals.

Year.	Number of unclassed second appeals.		Number of unclassed second appeals of value not exceeding Rs. 200.		Appeals shown in column 5 which were—								Remarks.
	Preferred.	Decided.	Preferred.	Decided.	(i) Rejected under section 551 of the Civil Procedure Code.		(ii) Rejected after hearing.		(iii) Partly accepted after hearing.		(iv) Wholly accepted after hearing.		
1	2	3	4	5	6		7		8		9		10
					Number.	Percentage.	Number.	Percentage.	Number.	Percentage.	Number.	Percentage.	Remanded under section 562.
1897	9	9	8	8	...	...	6	75·00	1	12·5	...	...	1—12·5.
1898	17	15	16	14	...	...	9	64·28	...	...	2	14·28	3—21·42—2 pending.
1899	14	...	10	...	...	...	...	...	...	...	...	...	1 „ „ 14

B—Second appeals in small causes.

Year.	Number of unclassed second appeals in small causes.		Number of second appeals in small causes of value not exceeding Rs. 1,000.		Appeals shown in column 5 which were—								Remarks.
	Preferred.	Decided.	Preferred.	Decided.	(i) Rejected under section 551 of the Civil Procedure Code.		(ii) Rejected after hearing.		(iii) Partly accepted after hearing.		(iv) Wholly accepted after hearing.		
1	2	3	4	5	6		7		8		9		10
					Number.	Percentage.	Number.	Percentage.	Number.	Percentage.	Number.	Percentage.	
1897	...	...	...	...	...	...	...	...	...	...	...	...	
1898	... 2	...	... 2	...	...	...	...	...	...	...	...	...	2 pending.
1899	...	...	...	...	...	...	...	...	...	...	...	...	

No. 24.

No. 11L. & L.—162T., dated Camp, Calcutta, the 28th January 1901.

From—The Secretary to the Chief Commissioner of Assam,

To—The Secretary to the Government of India, Home Department.

I am directed to acknowledge the receipt of your letter No. 1108, dated the 23rd July 1900, asking for the opinions of the Chief Commissioner and of selected officers and bodies or persons on the provisions of a draft Bill to amend the law relating to civil appeals as contained in the Code of Civil Procedure, as well as for a statement showing by reference to the figures for the last three years for which statistics are available (1) how the proposal contained in the second clause of amended section 584 of the draft Bill will affect (*a*) the number of unclassed second appeals, (*b*) the number of appeals in small causes; and (2) what proportion of the number of (*a*) and (*b*) respectively, finally decided in each of the last three years, which would be excluded under the Bill, were respectively (i) rejected under section 551 of the Code, (ii) rejected after hearing, (iii) partly accepted after hearing, or (iv) wholly accepted after hearing. You also asked for the opinion of the Chief Commissioner, on two other proposals (1) that the various Civil Courts Acts should be amended so as to substitute, as far as possible, an appeal direct to the High Court for a second appeal, and (ii) that Section 588 of the Code of Civil Procedure should be amended so as to reduce the list of orders from which an appeal lies.

2. In reply, I am to say that the Chief Commissioner has consulted the Judge of the Assam Valley Districts, and the District Judges of Sylhet and Cachar, and to submit, for the information of the Government of India the following summary of the opinions expressed by them.

Mr. Porteous, Officiating Judge of the Assam Valley Districts, says that on general grounds, considering the executive training of both Judge and Deputy Commissioners in Assam, he is of opinion that it would be a most unwise step to limit in any way the opportunities of appeal at present enjoyed. Mr. Newbould, Officiating District Judge of Sylhet, states that the number of second appeals from his district is so small that there is no ground for recommending legislation to further reduce it. Considering the proportion of decided cases in which appeals were wholly or partly successful, it does not appear to him that there has been any great abuse of the right of second appeal. The results of second appeals in small cause court cases from Sylhet would seem to support the proposal to raise the money limits of value of suits of this class in which a second appeal lies, but the total number of such appeals is so small that it would be unsafe to draw any conclusion from their results. Mr. Newbould is not in favour of distinguishing between concurrent and conflicting decrees in limiting the right of second appeal, but he supports the proposal to make it compulsory instead of discretionary for the high courts to follow the procedure described in section 551 of the Civil Procedure Code in all second appeal cases. With regard to the suggestion made in paragraph 6 of the Government of India's letter, he thinks that the law might advantageously be altered so that in suits, the subject matter of which exceeds a certain value, the second appeal might be filed in the District Court or in the High Court at the option of the appellant. The Deputy Commissioner and District Judge of Cachar (Mr. Cuming) says that so far as that district is concerned, the restriction of second appeals proposed in the second clause of the amended section 584 of the draft Bill may not cause much hardship to litigants, but he thinks it will cause hardship in districts where the number of appeals is large. He is in favour of the proposal that in cases of concurrent decrees, second appeals should not be allowed except by special leave of the high court.

3. It will be seen from the annexed statement containing the statistics called for by the Government of India in paragraph 5 of your letter under reply, that the number of second appeals to the High Court from Assam is small, and that if the appeals which would be excluded under the draft Bill are deducted, the number left is quite insignificant. Mr. Cotton adheres to the view which he has already expressed that it would be unfortunate and injudicious to restrict in any way the right of appeal in Assam. He has no objection, however, to the proposal of the Hon'ble Judges of the Calcutta High Court to amend section 551 of the Civil Procedure Code, so as to make it compulsory for the High Courts to observe the procedure prescribed in that section in cases of appeals presented under section 584 of the Code.

H. 24-26. **Amendment of law relating to civil appeals.**

4. With regard to paragraph 6 of your letter, I am to say that the Chief Commissioner is very doubtful of the expediency of the proposal to amend the Civil Courts Acts with a view to substituting direct appeals to the High Court for second appeals, and fears that any such provision in the law would operate to the advantage of wealthy and to the prejudice of poorer suiters.

It is a question how far this proposal would entail an extra burden of appellate work upon the court, but so far as this province is concerned, the number of direct appeals to the High Court would not be considerable.

5. Holding, as he does on general grounds, that there should be no restriction of the existing right of appeal in civil cases, Mr. Cotton is not prepared to suggest any reduction in the list of orders from which an appeal lies, as given in section 588 of the Code.

No. 25.

A.—Unclassed second appeals (Consolidated Table for Assam.)

Year.	Number of unclassed second appeals		Number of unclassed second appeals of value 10 exceeding Rs. 200.		Appeals shown in column 5 which were—								Remarks.
	Preferred.	Decided.	Preferred.	Decided.	(i) Rejected under section 551 of the Civil Procedure Code.		(ii) Rejected after hearing.		(iii) Partly accepted after hearing.		(iv) Wholly accepted after hearing.		
1	2	3	4	5	6		7		8		9		10
					Number.	Percentage.	Number.	Percentage.	Number.	Percentage.	Number.	Percentage.	
1897	43	42	33	33	...	...	29	87·87	2	6·06	1	3·03	One remanded by High Court.
1898	90	64	79	55	...	...	42	76·36	1	1·81	9	16·36	Three remanded by High Court.
1899	52	6	34	6	...	...	3	50·00	...	...	1	16·66	Two ditto ditto.

No. 26. *B.—Second appeals in small causes (Consolidated Table for Assam).*

Year.	Number of second appeals in small causes.		Number of second appeals in small causes of value not exceeding Rs. 1,000.		Appeals shown in column 5 which were—							
	Preferred.	Decided.	Preferred.	Decided.	(i) Rejected under section 551 of the Civil Procedure Code.		(ii) Rejected after hearing.		(iii) Partly accepted after hearing.		(iv) Wholly accepted after hearing.	
1	2	3	4	5	6		7		8		9	
					Number.	Per-centage.	Number.	Per-centage.	Number.	Per-centage.	Number.	Per-centage.
1897	2	2	2	2	...	...	2	100	...	...	...	...
1898	14	5	13	5	...	...	5	100	...	...	...	...
1899	10	...	9	...	...	...	...	...	...	...	...	...