M.R.O. 1—30,000—16-12-40

# MADRAS RECORD OFFICE.

---

## Government of Madras.

Judicial DEPARTMENT.

G.O. No. 547 Press ~~Mis.~~

28.47

Dated 12 – 8 – ~~19~~ 1857

**_Not to be folded or roughly handled_**

## *Fort St. George, Judicial Consultation,* 12*th May* 1857.

No. 48. Read the following letter from the Judges of the Madras Court of Small Causes; to the Chief Secretary to Government, dated 30th April 1857, No. 29.

Sir,

1. In accordance with the orders contained in the Minutes of Consultation, under date the 25th March 1857, we have to express our opinion that the decrease in the number of Suits in the Madras Court of Small Causes, during the year 1856, has been occasioned partly, by the introduction of measures calculated to discourage Suits founded on false or untenable grounds, and the setting up false defences, and partly by other causes hereinafter mentioned.

2. The cause which apparently has operated to the greatest extent, in diminishing the number of Suits, has been the putting into force a rule of Court which had been allowed to become a dead letter, by which Plaintiffs not taking out their Summonses in person, are obliged by their agents to file in writing, the particulars of their demands, signed by themselves. This rule was enforced on the 1st June 1856, and its effect was most marked and decided: for the first 4 days of its operation the number of Summonses issued was on each day respectively 21, 29, 43, 44, and since that time the number has averaged about 65 per diem, instead of 90, the average number before the enforcement of the rule.

3. It may not appear very obvious, how the enforcement of so salutary a rule should have the effect of discouraging suits founded upon false or untenable grounds. We know, however, that there is a particular class of men well known by the name of Summons Coolies, who get their livelihood by acting as agents for taking out Summonses in the Small Cause Court, and whose interest is to take out as many Summonses as possible. We are informed and believe that these men are in the habit of soliciting business in the most open and public manner, and it is easy to imagine how a suitor while in a fit of spiteful feeling, may be egged on by those persons, to authorize the institution of a suit founded on false or untenable grounds, by simply yielding to solicitation, without doing any formal act to express his assent.

4. Under the present practice, the suitor has a longer time for consideration, and is obliged to formally express his assent to the institution of a suit, by signing his name to a declaration in writing, by which he irrevocably binds himself to a certain statement; to the cautious native, such an act when the statement is incorrect, has much the semblance of forgery, and he shrinks from committing himself. It is only however partly to the operation of the rule in the above mode, that we attribute the great decrease of suits since its enforcement as doubtless its novelty and its natural effect upon indolent suitors, has also contributed to the result, but we hope in the course of time the objections to it will diminish.

5. Since the end of April 1856, we have also exercised the power we possess by Act 9 of 1850, Section 42, of awarding costs to Defendants, for their trouble and attendance, when sued maliciously, and without probable cause: such power had been allowed to remain dormant for several years, to the manifest encouragement of unfounded suits.

6. We also now make a distinction previously not practised, between honest and dishonest Defendants. A dishonest Defendant, we adjudge to pay the debt forthwith, and to suffer a lengthened term of imprisonment. To an honest Defendant, we give time for payment, and a short period of imprisonment. This tends to diminish the number of suits materially, as a Defendant now is deterred from making a dishonest defence, and satisfies the demand, or makes an arrangement, without putting the Plaintiff to bring his action: under the former practice, the Defendant might have taken the chance of a dishonest defence succeeding, without any risk of unpleasant consequences, if unsuccessful.

7. The practice of allowing suitors to produce a single leaf of their cadjan accounts, has also been put a stop to, and the whole bundle is required to be produced, this prevents a suitor from producing accounts prepared for the occasion, which previously he had every facility of doing, for although it is not quite so easy to ascertain whether a cadjan leaf belongs to a bundle, as whether a leaf belong to a book from which it professes to have been torn, yet there are tolerably certain indicia to the practised eye, by which its authenticity can be determined, and this change evidently diminishes the facility of getting up cases, and thereby disencourages unfounded suits.

## *Fort St. George, Judicial Consultation, 12th May 1857.*

8. Up to last year, no indictment for perjury committed in the Small Cause Court, or in its predecessor the Commissioner's Court, had ever been preferred, and perjury had been constantly committed, under a sense of long impunity. An indictment however was preferred last year for perjury committed in the Small Cause Court, and although from want of a public prosecutor it failed, still it has had some effect, in making persons more cautious in committing the offence, although it is unfortunately still too common.

9. By a comparatively recent decision of the Privy Council, the English Statute of limitation, has been declared to be applicable to Hindoos and Mahomedans within the limits of the local jurisdiction of the Supreme Court in India. Up to the beginning of May 1856, such new ruling of the law had not been acted upon, and its being brought into operation, in the Small Cause Court has manifestly had the effect of precluding Plaintiffs from bringing actions on old standing claims, which previously they were at liberty to do.

10. The new Police Act has also operated to diminish the number of suits in the Small Cause Court, as thereby the Magistrates have a power of giving compensation to the amount 100 Rupees, in causes of assault and of awarding maintenance to deserted wives.

11. It is finally respectfully submitted, although for obvious reasons we reluctantly make use of the argument, that the cause of the diminution of the suits in the Madras Small Cause Court, may be partly owing to its satisfactory working under recent improvements: for the object of all Courts whether Civil or Criminal, is to cause men to respect their mutual rights, and the act of not paying a just debt, is a moral although not a criminal offence, and if it were found that on any new arrangements being carried out in a Criminal Court, the number of causes brought before it was diminished, it might fairly be assumed that it was doing its duty well, and efficiently, and the reasoning it is submitted, is equally applicable to a Civil Court.

(Signed) RICHARD BURGASS,
( „ ) J. Y. FULLERTON,
( „ ) W. H. ROSE,
*Judges.*

No. 49. ORDER THEREON, No. 547; dated 11th May 1857.

The Right Honorable the Governor in Council is perfectly satisfied with the reasons adduced by the Judges for the falling off in the number of Suits instituted in the Madras Court of Small Causes during the past year. He fully appreciates their endeavours to suppress groundless litigation.

(Signed) E. MALTBY,
*Acting Chief Secretary.*

Exd. F. Cartledge.

---

Judicial Department

No 547

Extract from the Minutes of Consultation
Dated 11th May 1857

Read the following Letter from the Judges of the Madras Court of Small Causes.

(Here enter 30th April /57 No 29)

The Right Hon'ble the Governor in Council is perfectly satisfied with the reasons adduced by the Judges for the falling off in the number of suits instituted in the Madras Court of Small Causes during the past year. He fully appreciates their endeavours to suppress groundless litigation.

(Sigd) E. Maltby
Ag Chief Secy

Copy to Judges of Small Cause Court
Desp'd 14th

Judl. Lr to Cy. d/ 20 Octr.
No. 26 of 1857.
Para 29.
Rept. Lim No. 5 of 1858 P. 27

In Sy brns: 12 may

Judicial 1857 Department

547

Extract from the Minutes
of Consultation

Dated 11th May 1857.

J.C. 1618
3/3/57

2

4849

C H May