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Judicial DEPARTMENT.

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Fort St. George, Judicial Consultation, 8th February 1859.

No. 49. Read the following letter from C. F. CHAMIER, Esq., Acting Register to the Court of Sudder Udalt; to T. PYCROFT, Esq., Chief Secretary to Government, dated 14th January 1859, No. 5.

SIR,

1. I am directed by the Judges of the Sudder Udalt to acknowledge the receipt of Extract from the Minutes of Consultation under date the 21st Ultimo, referring for any remarks the Judges might have to offer, a copy of a Bill for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts.

2. The Judges find that the proposed Bill does nothing towards simplification of the mode of procedure for the Courts contemplated by it, it being designed that the general Code of procedure now under the consideration of the Legislature shall be applicable to these as to all other Courts. This Code, as pointed out by the Judges in their communication of the 4th December 1858, falls short of reaching to the measure of simplicity prevailing in the procedure of the County Courts in England and the Small Cause Courts under the jurisdiction of the Supreme Courts in India, in two important particulars; namely, it requires that the points for proof shall be laid down before the oral evidence can be put in, and that the statements of the witnesses shall be taken down in writing *in extenso*. Thus the new Code will not allow of the disposal of a contested suit in one hearing, or ordinarily, when it comes to its final hearing, in one day. The Judges have advocated the adoption of the Small Cause procedure prevailing elsewhere, in its integrity, for all the Courts; and they therefore cannot but hope that it will be applied to the class of Courts now in question, if it be resolved to establish them.

3. What the Bill under consideration will effect is the giving the Government the power to create additional Courts, with jurisdiction in personal suits not exceeding Rupees 500 in value; and the making the decisions of these Courts, and those of any of the existing Courts to which the Bill may be made to apply, final where such suits may be for value not exceeding Rupees 50.

4. In their communication of the 4th August 1858, respecting the re-constitution of the Courts in this Presidency, the Judges showed that if the system of the County and existing Small Cause Courts were adopted, so far from requiring an addition to the number of the Civil tribunals in the Presidency, a large reduction in number might be made; that is, that 30 Courts could under such facile system of procedure do the work of the existing 195 Courts. It is not therefore an addition to the number of the Courts that is wanted here, but a thorough simplification of their procedure.

5. The Judges see objections to the provision in the Bill that the decisions of the Small Cause Courts shall be final in suits not exceeding Rupees 50 in value. Such a sum is a fortune to the vast majority of the inhabitants of this Presidency; and the interests of the poor, it appears to the Judges, should be guarded equally with those of the rich. What the number of such suits will be their returns do not enable the Judges to declare precisely, but the materials they have show that they will embrace a very large proportion of the litigation of the country. In their communication of the 4th December 1858, on the subject of the new Code of Civil procedure, the Judges pointed out that in this Presidency one suit in 63 fell without the value of Rupees 500; and that one in 11 was for real property. This would give a proportion of about 57 out of 63 suits, or 19 in 21, which would fall within the jurisdiction of the proposed Small Cause Courts. In their communication of the 19th October 1854, when the then Draft Act for constituting Small Cause Courts was in question, the Judges showed that 9-10ths of the suits for simple debts disposed of by the District Moonsiffs, that is 9-10ths of suits in value up to Rupees 1,000, were for sums not exceeding Rupees 100.

6. Mr. Harington in his annexure observes that the success of his measure "would necessarily depend mainly upon the Agency employed." The Judges feel no such confidence in the existing Agency as to make them think it at all safe to commit to them the decision of the great bulk of the litigation of the country, unchecked by appeal; and they feel assured that in this distrust the people themselves largely partake; and that the measure, in lieu of being considered by them one for their advantage, will be much objected to by them.

Fort St. George, Judicial Consultation, 8th February 1859.

No. 50. ORDER THEREON, No. 163 ; dated 8th February 1859.

Ordered that the following letter be despatched.

(Signed) T. PYCROFT,
Chief Secretary.

No. 51. To the Member for Madras of the Legislative Council of India, Calcutta, dated Fort Saint George, 8th February 1859, No. 164.

SIR,

Your letter of the 4th December last, with its enclosures, viz., copy of "A Bill for the establishment of Courts of Small Causes, beyond the local limits of the jurisdiction of the Supreme Courts of Judicature, established by Royal Charter," and the annexure thereto, having been referred to the Sudder Udalt for any remarks they might have to offer, the Judges have submitted a report under date the 14th January, copy of which I have now the honor to furnish.

2. The Governor in Council concurs with the Judges in considering the proposed procedure too cumbersome. It is very desirable, as pointed out by the Sudder, that the procedure should be as simple as that of the English County Courts and the Small Cause Courts in the Presidency towns in this country.

3. The jurisdiction up to Rupees 50, might safely be entrusted to the District Moonsiffs at once; while a little experience will prove that it may be properly extended in their hands. On this point the Government are at issue with the Sudder Court.

4. The Rupees 500 jurisdiction the Government would vest in the present Civil Judges, whose Courts are situated generally in the chief town of the District. Thus the system would have a fair trial, and without any charge on the finances.

(Signed) T. PYCROFT,
Chief Secretary.

Scheme of the Lieutenant Governor of Bengal for the Constitution of the Civil and higher Criminal Courts.

The Lieutenant Governor of Bengal, in modification of Mr. Harington's scheme for the Constitution of Civil Courts, proposes that a Court of Small Causes shall be established at the Sudder Station of every District, and at every considerable Town or City in the interior where the expenses attendant upon the establishment of a Court of that description are likely to be covered by the Institution fee, or by the sale of Judicial stamps in cases falling within its jurisdiction.

He is of opinion that these Courts should generally be presided over by European Judges who might be either Members of the Covenanted Civil Service or Uncovenanted European Officers or Lawyers, though he would not exclude Natives; and he would assign such a salary to the office as would induce men of superior qualifications to offer themselves as candidates for it. He would give the Courts which he proposes to establish, the same amount of jurisdiction as is now possessed and exercised by the Courts of Small Causes at Calcutta, Madras, and Bombay, and he would not allow any appeal from their decisions, though he would permit the presiding Judges to refer any point of law to the Sudder Court upon which they might entertain doubts, or which they might be required by either of the parties to the suit to refer.

He would leave cases in which the amount or value of the claim did not exceed the sum of three hundred Rupees, and which might not be cognizable by the Court of Small Causes where such Court existed, or by the Revenue Courts under the Bill lately introduced by the Honorable Member for Bengal, to be disposed of as at present by the District Moonsiffs with a regular appeal in all cases to the Zillah Court from their decisions; and where no Court of Small Causes existed, he would make the District Moonsiff dispose of the cases cognizable by that class of Courts within the above limit and with a regular appeal from their decisions in every case, however simple in character, and however small might be the value or amount of the claim.

For the trial of original suits exceeding in value or amount the sum of three hundred Rupees but not exceeding the sum of ten thousand Rupees, as well as for the trial of appeals from the decisions of the Moonsiffs, he would constitute a Zillah Court to consist of two or more Judges whom he would designate First and Second Judge, &c. The First Judge to be a Covenanted Servant and to represent the present Zillah Judge; the other Judge; or Judges to be either Covenanted Servants, Lawyers, or Natives. The First Judge should distribute the original suits between himself and the other Judge or Judges, and in cases which he might reserve for decision by himself, he should be at liberty to call in the other Judge or one of the other Judges, to assist him in disposing of the case; he should also have power to call up any case from any subordinate

Court, and to decide it himself or to make it over for decision to the other Judge or one of the other Judges of the Court. If the First Judge and only one of the other Judges sat together for the trial of an original suit, and they should not be able to agree as to the decision to be passed, the case should be referred for the decision of the Provincial Court which will be noticed presently. Appeals from the decisions of the Moonsiffs should be heard by the First and Second Judges of the Zillah Court sitting together; and in the event of their differing in opinion, if the opinion of the First Judge should be for upholding the judgment, the decision of the Lower Court should be affirmed, otherwise the case should be referred as above to the Provincial Court.

The Lieutenant Governor of Bengal would constitute Provincial Courts with jurisdiction over six or eight Districts for the trial of original suits of the value or amount of ten thousand Rupees, and of regular appeals from the decisions of the Zillah Courts. He is of opinion that these Courts should ordinarily consist of four Judges who might be either members of the Covenanted Civil Service or Lawyers. He proposes that one of the Judges should always be on Circuit, the duty being taken by the four Judges in turn. The three Judges present with the Court should sit together for the trial of original suits and appeals; though, in the event of the unavoidable absence of one of their number, the remaining two should be considered sufficient to constitute a Court; and should they not be able to agree as to the decision to be passed, the case should be referred to the Sudder Court for decision.

The Lieutenant Governor of Bengal would retain the Sudder Court which would ordinarily consist of three Judges, one of whom might be a Judge of the Supreme Court or a Barrister of a certain standing. The Sudder Court would hear special appeals on points of law or usage from the decisions of the Zillah Courts in regular appeals against the decisions of the Moonsiffs, and from the decisions of the Provincial Courts whether in original suits or in regular appeals; but a special appeal should be allowed only where the Court which passed the decision appealed against, or any of the Judges who took part in the trial of the suit, certified the case, on the application of either of the litigating parties, as a fitting one for the admission of a special appeal. The Sudder Court would also dispose of points of law referred to them by the Courts of Small Causes, as well as of cases in which two Judges of the Court below had sat together but could not agree as to the decision to be passed.

Criminal appeals from the orders of the Magistrates should be heard by the Provincial Court under the restrictions existing before Act XXXI of 1841 was passed; and when only two Judges should sit to hear such appeals, if they should not agree as to the sentence or order to be passed, the order of the Court below should not be disturbed.

Commitments to the Sessions should be disposed of by the Judge of the Provincial Court on circuit and by the First Judge of the Zillah Court sitting together, and their decision should be final on the facts in all cases in which the sentence passed was short

of death. In cases in which a capital sentence might be proposed, the proceedings should be referred for the orders of the Sudder Court. In the event of the Circuit Judge of the Provincial Court and of the First Judge of the Zillah Court not being able to agree as to the sentence to be passed, the case should be referred to a second Judge of the Provincial Court at the Sudder Station.

The Commissioner or Commissioners of the Districts included within the jurisdiction of the Provincial Court should be ex-officio-judges of that Court to assist it in disposing of commitments, and they should go on circuit and dispose of commitments to the Sessions sitting with the First Judge of the Zillah Court in the same manner and subject to the same rules as a Judge of the Provincial Court when engaged on circuit duty.

The Judge of the Provincial Court on circuit should receive appeals from the orders of the Magisterial authorities, and should have power to reject the same if he saw no reason to question the correctness of the order of the Court below. If it should appear to him that the proceedings of that Court called for revision, he should certify them to the Provincial Court; and if the appellant was in jail, he should be at liberty to order his enlargement on bail, pending the decision of the Provincial Court, whenever he saw good and sufficient cause for so doing; but this power should be very sparingly exercised.

The Sudder Court should hear appeals from sentences of the Lower Criminal Courts on points of law and practice, and they should exercise a general supervision and control over the proceedings of all the subordinate Civil and Criminal Courts as they do at present.

The 10th May 1858.

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Minute by the Legislative Councillor for the North-Western Provinces on the constitution of the Civil Courts of those Provinces, dated 27th April 1858.

IN compliance with the desire expressed by the Select Committee on the Bills for simplifying the procedure in the Civil Courts of the Honorable the East India Company, I have prepared a sketch of the Courts of Civil Judicature which I would propose for the North Western Provinces of the Bengal Presidency; and I have now the honor to submit the same* for the consideration of the Committee, with the following remarks which, I hope, the Committee will find useful in determining upon the practicability of the scheme suggested by me, and upon the expediency of its adoption, with any modifications which may appear to them advisable.

For the trial and decision of original suits, there can, I think, be no doubt that we must continue to look chiefly, if not entirely, to Native or Uncovenanted Agency, while from the comparatively small number of Europeans and Eurasians now in the country, who are qualified to act as Judges in our Mofussil Courts, a very large proportion of the members of that Agency must of necessity, if for no other reason, be natives of India, either Hindoos or Mahomedans, anything that may have taken place during the last few months in the North-Western Provinces notwithstanding.

It is scarcely necessary for me to mention that, for several years past, the original jurisdiction in Civil suits in the Presidency of Bengal has been almost entirely in the hands of the Native or Uncovenanted Judges; for although the Zillah or District Judges are required, by a Circular of the Sudder Courts, from time to time to call up original suits to their own files, and to decide them themselves, in order that, by preparing and adjudicating a certain number of cases as Courts of first instance, they may make themselves practically acquainted with the working of this part of our Judicial system, the number of cases primarily disposed of by these Officers is so small that they can hardly be said to take any share, deserving of notice, in the administration of Civil Justice, so far as the actual decision of original suits is concerned.

Nor is it possible under the rules by which the Civil Courts are obliged to regulate their proceedings, particularly as regards the attendance and examination of witnesses, for the Zillah Judges, who are also Sessions Judges and Judges of Criminal appeals sometimes in two or more Districts which they are expected to visit periodically, to decide on their merits any large number of original suits. Not knowing when a commitment may be made to them in their capacity of Sessions Judges, or how long the trial of a commitment, when made, may last, they can seldom appoint a day for the attendance and examination of the witnesses in a Civil suit with any

*Will be circulated hereafter.

certainly that they will be able to hold sittings in the Civil Court on that particular day without prejudice to the Criminal work pending before them, while their duties, both as Civil and Criminal Judges, are generally so arduous that they can scarcely afford the great length of time which the preparation, trial, and decision of an original suit ordinarily occupies, as compared with an appealed case.

As a class, our Uncovenanted Judges have, I think, discharged their duties in a highly satisfactory and creditable manner, and I see no reason to believe that they do not possess in a fair degree the confidence of the public. This remark, of course, applies chiefly to that part of the Bengal Presidency in which the whole of my official career, extending over a longer period than that during which the present system has been in operation, has been passed.

It is generally admitted that a great improvement has taken place in our Native Judges within the last ten or fifteen years, and I think we may fairly hope that this improvement will be progressive, particularly if proper care be taken in first appointments to the Mofussil Bench and in subsequent promotions to the higher grades, and if the Government fulfil the pledge, long since given, of increasing the salaries of this very deserving class of public officers, and of placing their emoluments and those of their Establishments on a footing which shall be in some measure commensurate with their position, duties, and responsibilities. That such is very far from being the case at present, especially as regards the Moonsiffs, by whom about nine-tenths of the entire Civil work of the country is performed, is so generally acknowledged that I will not occupy the time of the Committee by dwelling further on the subject.

Assuming then that the Uncovenanted Judges, after a full trial, have shewn themselves quite equal to the duties required of them, I would leave the original jurisdiction in Civil suits chiefly in their hands, though I have made provision for the divisional Courts which I propose to constitute, exercising concurrent original jurisdiction with the Courts of the Principal Sudder Ameen, or, as I propose to call them, Upper District Courts, in suits of the value of ten thousand Rupees and upwards, in which suits, by whatever Court tried, an appeal will lie to the Queen in Council, provided that the matter in dispute in appeal amounts to the sum above mentioned. I would also allow the Divisional Courts to call up and decide themselves any original suit, whatever may be its value, in which there may be particular reasons for their so doing—such, for instance, as a suit between Hindoos and Mahomedans, involving a question of religion or a religious dispute. This is the utmost extent of original jurisdiction which can, in my opinion, be fairly thrown upon the Divisional Courts whose duties, according to my scheme, will be chiefly of an appellate character. I may here incidentally mention that I do not think that any appeal should be allowed to the Sudder Court, upon the facts, from decisions passed by the Divisional Courts in original suits. Considering that such decisions will proceed from two or more old and experienced Judges before whom the witnesses will be examined, and who will thus have an opportunity of observing

their demeanor (advantages which will not be enjoyed by the Sudder Court, should a regular appeal be allowed to them in original suits decided by the Divisional Courts), the decisions of the Divisional Courts upon the facts should, I think, satisfy reasonable men, and I would therefore make them final, though I would allow a special appeal from the decisions of those Courts, upon the same grounds, and subject to the same rules, as I propose to allow a special appeal from their decisions in regular appeals.

In the speech delivered by the Honorable Mr. Grant on the motion for the second reading of the Bill for simplifying the procedure of the Courts of Civil judicature of the East India Company in Bengal, I find him to have stated as follows:—"He had always felt that the great practical objection to our system was the deficiency of the Courts of original jurisdiction—their deficiency, not only where cases of small amount are tried, but also where cases of the greatest possible importance are tried. This Bill does not improve, or attempt to improve, our Courts of original jurisdiction in the least degree. It rather makes them worse. It leaves the Moonsiff's Court exactly what it is now, and it greatly enlarges the pecuniary limitation of his jurisdiction. It leaves the Court of the Principal Sudder Ameen exactly what it is now; and it leaves the Court of the Zillah Judge exactly what it is now. So far from improving the system of original jurisdiction in these two Courts, its practical effect would be to make it worse by throwing the whole original business on the inferior of the two Courts; whereas now the superior Court can try, and does try, some of the more important original suits. By throwing on the Zillah Judge alone the whole of the Zillah appeals, and thus overwhelming him with appeal business, the Bill would place it quite out of his power to try a single case in the first instance. This would make our existing system worse in that very part of it which is most defective and gives most dissatisfaction now, and which therefore it should be our chief endeavor to make as much better as we can."

The plan, however, sketched by the Honorable Member at the conclusion of the same speech for the improvement of our Civil Courts, appears to me only to provide a better agency for the trial of appeals and original suits of comparatively great importance, which bear but a very small proportion to the whole number of cases instituted, and makes no provision, so far as it has as yet been developed, for the improvement of the Courts which are considered by the Honorable Member most defective, particularly those of the lowest grade.

The Honorable Member proposes that there should be a Chief Judge of every Commissioner's Division, who should go on circuit to each District of his Division and, sitting in full Bench with the Zillah Judge and Principal Sudder Ameen, decide all original suits of great importance without any appeal on the facts; and that in the same manner the more important appeals from the lower Courts of each District should be tried by a Bench of more than one Judge, in which the Chief Judge of the Division should always preside.

But, in practice, I doubt whether this scheme would give satisfaction or be found to work well. The post of Chief Judge would require to be filled by an Officer of considerable standing and experience; in fact, looking to the position which it is proposed to assign to him, he should be above par. But the constant journeys which he would have to make at all seasons of the year (particularly when the number of Districts included in his division was large), the fatigue and exposure attendant thereupon, the expense to which he would be put in having to keep up two Establishments and in moving his furniture and equipages, the difficulty of finding suitable accommodation at the different Stations which he would have to visit (for he could not always throw himself upon the hospitality of friends, or it might be strangers, even if they were able and willing to receive him), and the constant separation from his family (supposing him, as would generally be the case, to have a family) whom he could not always take with him, would render the appointment not only a very unpopular but a very irksome one; and I fear that few men possessing the necessary qualifications of standing, experience, and ability, would be found, who would willingly accept the office, or who would heartily undertake its duties.

It may be argued that the objections which I have mentioned to the proposal of the Honorable Member of Council, are not of a character which the Government should allow to weigh in considering a large and general scheme affecting so important a department as the administration of Civil Justice in the whole of India, and that private feelings and the convenience of individuals must give way when duty and the public interests are found to be in the opposite scale. Now, in the abstract, this may be quite correct; but if the objections which I have stated have the effect of deterring the fittest men from accepting the appointment of Chief Judge of a Division, or of making them take the earliest opportunity of quitting it, then I submit that these objections partake rather of a public than a private character; and I contend that, in legislating for this country, the health, comfort, and convenience of our European functionaries whose continuance at their posts, with healthy bodies as well as sane minds, is often so important to the welfare of a District, are subjects not altogether beneath the attention of the Legislature.

But I may be told that the Commissioners of Revenue and Circuit pass several months of the year in visiting the different Districts of which their Divisions are composed, and that the appointment of Commissioner is one of the most popular in the Service. To this I reply that the Commissioners, at least in the North-Western Provinces, rarely travel in the hot weather, which they pass for the most part at the Sudder Stations of their respective divisions. After the rains have fairly broken up, and the weather has become dry and settled, they commence their Circuits which they generally bring to a close before the hot weather sets in. During this interval they are able to move about in tents, taking their families and public and private establishments with them; they can halt when and where they please, and make their marches as long or as short as they find convenient; the climate during the greater part of the time that they are

out is as fine as that of any country in the world, and their annual Circuit therefore is really a most agreeable and healthy occupation, and is usually looked forward to with much pleasure.

Another objection which I have to the scheme proposed by the Honorable Mr. Grant, is the great delay which it would very often impose on the suitors in the more important original suits and appeals in the decision of which it is intended that the Chief or itinerant Judge should take a prominent part, and which, though ripe for decision, might have to lie over for months, while that Officer was employed in clearing off arrears on the files of other districts.

The Commissionerships in the North-Western Provinces generally comprise six Zillahs or Districts. In each District, on the occasion of his periodical visit, the Chief Judge would probably find work sufficient to detain him for a couple of months. At this rate he would be able to visit each District of his Division only once a year, and for ten months of the year, the cases, whether original or in appeal, in the decision of which he was required to join, must lie over for the want of a competent tribunal to try them. This, I submit, would be a very serious evil.

I pass on to consider the Courts which I propose to constitute, together with the jurisdiction and duties which I would assign to each class.

The first or lowest grade of these is the Lower District Court, which I propose to substitute for the present Moonsiffs' and Sudder Ameen's Courts.

The abolition of the Court of the Sudder Ameen, as a distinct Court has, for some time, been only a question of time. Indeed, in many of the Districts in the North-Western Provinces, as vacancies have occurred in the office of Sudder Ameen, they have not been filled up, in consequence of the exceedingly small income of suits cognizable by that class of Judges, which it was found could easily be disposed of by the Principal Sudder Ameen. In the few Districts in which the office of Sudder Ameen has been continued, the greater part of the suits disposed of by the Officer holding the appointment, are within the competency of a Moonsiff to decide, and when such is the case, the Government are, to a great extent, paying a Sudder Ameen for doing Moonsiff's work.

The principal objection urged to the abolition of the office of Sudder Ameen is that it will stop promotion and take away one of the very few rewards to which the Moonsiffs now look, and it is suggested that the loss of this motive to exertion will have an injurious effect. This objection, assuming it to have some foundation, may be obviated by making promotion to a higher salary dependent, not upon the occurrence of death or other vacancies, but upon good and faithful service for stated periods.

In addition to the Upper and Lower District Courts, I propose that the Government shall have power to establish Courts of Small Causes at the Sudder Stations and at the principal Towns of the several Districts, for the trial of suits in which no appeal is to be allowed; and to assign such jurisdiction to the Courts so established, as may appear proper: and that, where a Court of Small Causes is established, the jurisdiction of the Upper and Lower District Courts, in respect of cases arising within the local limits and falling within the cognizance of such Court, shall cease or be suspended.

In order to secure the necessary qualifications, and to enable the Government to select the men best fitted for the appointment, it will be desirable that the Small Cause Court Judges should receive a higher salary than the Judges of the Lower District Courts, which will make the office an object of ambition. The Judges of the Lower District Courts should be eligible to promotion to the Small Cause Courts, though not as of right, and, in like manner, the Judges of the Small Cause Courts should be eligible to promotion to the Upper District Courts.

One of the advantages to which I look from having a separate and distinct class of Courts for the trial of simple cases up to a certain amount, particularly at the Sudder Stations, is that the Judges presiding in those Courts will be subject to no interruptions, and having no other business to distract their attention, they will be able to devote their whole time to the cases brought before them, and to take them up and decide them as soon as they can be got ready for hearing. This is now done in the Court of Small Causes in Calcutta, and I believe that much of the popularity of that Court may be traced to the dispatch with which its proceedings are conducted.

I do not propose a different Code of Procedure for the Courts of Small Causes in the trial and decision of cases declared cognizable by those Courts, from that which is now under preparation for the Lower and Upper District Courts in cases of a similar description when tried by them. That Code is, I think, sufficiently simple, even for cases of the smallest amount; and a variety of Codes will only perplex the Judges and the people, and cause confusion.

The expense of the Courts of Small Causes which I am anxious to see established, may be urged as an objection to them. But I do not anticipate that their establishment will add much, if any thing, to the judicial charges of the country, as they will perform so large a quantity of the Civil work which the present Bill proposes to assign to the Moonsiffs' or Lower District Courts, that a much less number of Courts of the latter description will be required, particularly if what is called the Rent Bill, lately brought in by the Honorable Member for Bengal, and which proposes to transfer absolutely, from the Civil to the Revenue Courts, the original jurisdiction in all suits relating to arrears or exactions of rent, should pass into law.

I come now to the Divisional or second class of Courts proposed by me.

These Courts should, I think, be composed of the Zillah Judges of three adjoining Districts, who should ordinarily hold their Court at the principal or most central Station of the three Districts; though I propose that, when any special reason may exist, they may be authorized by the Executive Government to hold their Court at any other Station within their respective Divisions.

As already noticed, the duties of the Divisional Courts will be chiefly appellate, that is to say, they will hear all regular and miscellaneous appeals from the decisions of the Lower and Upper District Courts in their Division, in cases in which a regular or miscellaneous appeal may be admissible. They will also have a concurrent original jurisdiction with the Upper District Courts of their Division, in cases in which the amount or value of the claim may amount to ten thousand Rupees or upwards; and they will be at liberty to call up any case from any subordinate Court in their Division, whatever may be its amount or value, and to decide it themselves whenever any special reason may exist for their so doing. There will be no appeal from their decisions in original suits upon the facts, except to Her Majesty in Council in cases in which an appeal to England is allowed; but I would give a special appeal on points of law or usage having the force of law, from every decision of a Divisional Court, whether passed in an original suit, or in a regular or miscellaneous appeal from a decision of an Upper or Lower District Court, whenever the Judges of the Divisional Court who passed the decision, or any of them, may certify the case as a fitting one for a special appeal.

I think that it might also be advisable to give the Judges of the Lower and Upper District Courts, as well as the Judges of the Divisional Courts, the power of referring to the Sudder or Superior Court, questions of law or usage arising in cases before them on which they may entertain doubts, or which they may be requested by either party to the suit to refer; and I propose, therefore, to extend to those Courts, with the necessary modifications, the rule contained in Section LV of the Act (IX of 1850) for the more easy recovery of small debts and demands in Cal-

The Judges of the Court of Small Causes may, in their discretion, reserve any question of law or equity on which they entertain doubts, or which they shall be requested by either party to the suit to reserve for the opinion of the Judges of the Supreme Court, and shall give judgment contingent upon the opinion of the said Supreme Court on a case which they shall thereupon be entitled to state to the said Court. If only two Judges sit together, and shall differ in opinion, the question on which they differ shall be so referred.

cutta, Madras, and Bombay. I quote the Section in the margin for the convenience of reference. The last clause would be applicable when only two Judges of the Divisional Court sat together on the trial of an original

suit or an appeal, and differed in opinion upon any point in the case. Ordinarily, I intend that three Judges of the Divisional Courts should sit together for the trial of all original suits and appeals brought before those Courts; and in order to keep up this number during the temporary absence, on duty or otherwise, of one of the Zillah Judges without any additional expense to Government, I have provided that the Judge of the Upper District Court at the same Station as the Divisional Court, when possessed of the necessary qualifications, shall be eligible to a seat on the bench of the latter Court. But even with this provision, sickness or some other cause may occasionally reduce the num-

ber of Judges present in Court to two; but as it is not desirable that the work of the Court should be put a stop to on that account, I would declare two Judges competent to go on with the regular business when the attendance of a third Judge is not procurable. It is necessary, however, to make some provision as to what is to be done in the event of a difference of opinion arising when only two Judges are able to sit together, and I do not think that any fairer or better rule could be adopted than that contained in the concluding clause of the Section above quoted.

In addition to their Civil duties, I propose that the Divisional Courts shall also be Courts of Circuit or Sessions within their respective Divisions for the trial of commitments made by the Magistrates and their subordinates in cases in which the final order may be beyond the competency of those Officers to pass, and for the disposal of Criminal appeals from their orders when an appeal is allowed. Appeals should, I think, be heard at the Station where the Divisional Court holds its sittings by the Court at large, three or two Judges (according to the number of Judges present in Court) sitting together; when only two Judges sit together, if one Judge should propose to reverse or modify, and the other to confirm the order or sentence appealed against, the order or sentence of the lower Court should not be disturbed. I would also allow the Divisional Court to call for the proceedings of any subordinate Court in any criminal case in which they may see cause to doubt the legality or propriety of the order or sentence, and to pass such order or sentence in the case as they may deem proper, provided that it should not be open to the Divisional Court to pass an order or sentence which the Magistrate could not have passed, and with the same provision as above when only two Judges of the Divisional Court are able to sit together and they cannot agree in opinion.

For the trial of the commitments made to the Divisional Courts in cases beyond the competency of the Magisterial Officers to dispose of, one of the Judges of the Divisional Court should proceed to the Station of the Magistrate or Joint Magistrate by whom the commitment was made, in the same manner as was done by the Courts and Commissioners of Circuit before the passing of Regulation VII of 1831. The Covenanted Judges of the Divisional Courts should take this duty in turn, and as they will have to visit only two Districts, which will generally not be distant from the Sudder Station more than a night's dawk, I can see no reason why the Judge whose turn it may be to proceed on Circuit should not visit both Districts and dispose of all commitments ready for trial during his month of duty, particularly as under the new Code of Criminal Procedure the powers of the Magistrates and their subordinates will be enlarged and commitments will be fewer in consequence. If this be done, the average time between commitment and trial under the system proposed by me will scarcely exceed what it is at present, and I cannot but think that the public service will benefit by the Sessions Judge and Magistrate not residing at the same Station, and by the Jail deliveries not being always held by the same Circuit or Sessions Judge. The sentences of the Sessions Court will undoubtedly carry more weight and give more satisfaction to the people and the Magisterial authorities than is the case at present, particularly in cases of appeal, and we shall get rid of much of that ill feeling which is now unhappily so common between the higher

and lower Criminal Courts. The commitments made by the Magistrate at the Station where the Divisional Court holds its sittings can be tried by one of the Covenanted Judges present with that Court.

The principal objection which I have heard to my proposition of uniting the Zillah Judges of three Districts in one common Court for the trial of appeals, is, that it will remove the subordinate Judges of the Districts in which, under my scheme, there will be no Zillah Judge, from that Officer's immediate control and supervision which, when properly and vigilantly exercised, ought to have, and no doubt has, a very important bearing upon the general efficiency, and, it may be, honesty of the Officers subjected thereto.

I am prepared to allow that there may be some force in this objection, but I would remark that it does not apply to all the Districts which will be included in the jurisdiction of the Divisional Courts, and that the distance to which the Zillah Judges of the Districts, to which the objection may be applicable, will be removed, is not so great as to place the subordinate Judges of those Districts altogether beyond the personal influence of their Covenanted superiors who will constantly visit the Sudder Station on Circuit. The proceedings moreover of the subordinate Courts will continue to be watched, as I believe they are at present, by the other Covenanted Civil Officers at the Station, and although there are now several Stations at which there is a Principal Sudder Ameen but no Zillah Judge, I believe I may say that the Principal Sudder Ameen at those Stations are not less efficient or less honest than the Officers who hold their Courts at the same Station and perhaps in the same Court-house as the Zillah Judge.

The constitution of a lower Appellate Court which shall command the confidence and respect of the Courts whose decisions will come before it in appeal, and of the public generally, is perhaps the most difficult part of the task on which the Select Committee are now engaged in their progress through the Code of Civil Procedure prepared by Her Majesty's Commissioners. No plan that I have heard has satisfied me, and I am not so presumptuous as to imagine that the Court which I have proposed, and for which I cannot claim even the merit of originality, will not be found open to many objections. But my proposition at least gets rid of the objection of the decision of a Judge, before whom the evidence is taken, being reversed by a single Judge who has not had that advantage, and of the still greater objection of the decision of an old and experienced Uncovenanted Judge being reversed by a single Covenanted Judge sitting, it may be, for the first time in his life in a Civil Court; and if proper care be taken in the selection of qualified persons for the Bench of the Divisional Courts, I cannot help thinking that they will work satisfactorily. I look forward also to Europeans being eventually declared subject to their jurisdiction for criminal offences, in which case it may be considered proper to make provision for one of the Members of the Court being an English Lawyer of a certain standing.

Over all the Courts will be the Sudder or Superior Court. The duties which I propose to assign to this Court may be gathered from the foregoing remarks. It will have

no original nor indeed any appellate jurisdiction upon the facts, even in cases of the largest amount or value, except when the Divisional Court may consist of only two Judges, and they may not be able to agree as to their decision. A special appeal will lie to the Sudder or Superior Court from all decisions passed by the Divisional Courts, whether in original suits or in regular or miscellaneous appeals, but only upon points of law or usage having the force of law, and then only when the Divisional Court or one of the Judges who took part in the decision may certify that the case is a fitting one for a special appeal. The Sudder or Superior Court will also have to decide the references which may be made to it by the subordinate Courts on points of law arising in cases before them on which they may entertain doubts, or which either of the parties to the suit may require to be referred. I presume, too, that it will not be considered proper to dispense with the present practice which requires a reference to the Sudder Court on its Criminal side in all cases of conviction in which the prisoner may be liable to a sentence of death or of transportation for life; but the whole of the duties as above, compared with the work of the Sudder Court as now constituted, will be very light, and three or four Judges would, I think, be found sufficient for their discharge with reasonable despatch. The Chief Judge of the Court might be one of the Judges of Her Majesty's Supreme Court.

I propose that the Sudder or Superior Court should strictly confine itself to the adjudication of the cases, Civil and Criminal, brought before it, and that it should have nothing to do with the supervision and control of the subordinate Courts.

This duty, in the Civil department, I would delegate to an Officer to be styled the Minister of Justice or Judicial Commissioner. As regards salary and position he should be on a footing with the Sudder Judges; he should be in no way subordinate to the Sudder Court, though of course he would communicate freely and unreservedly with the Judges of that Court, and the Government on all matters connected with his Office. All statements and returns, whether monthly, quarterly, or yearly, now submitted to the Sudder Court by the Zillah Judges for their own Courts and for the Courts subordinate to them, should be submitted to the Minister of Justice or Judicial Commissioner, and the annual reports and returns at present made by the Sudder Court to Government should be made by him. First appointments to the Mofussil Bench should be in the gift of the Minister of Justice or Judicial Commissioner, with whom should also rest the power of dismissal from the Office of Judge of a Lower District Court; and all promotions and dismissals in the higher grades should be made on his recommendation or after communication with him. He should pass from five to six months of every year, that is, from about October to April, in visiting as many of the subordinate Courts, European and Native, as possible; he should make himself acquainted with the Uncovenanted and Covenanted Judges, and sit with them in their Courts; he should converse freely with the people and with the Officers in other departments, and should hear and, as far as possible enquire on the spot into all complaints against the subordinate Judicial Officers or their establishments, and afford such redress as might be in his power, or when the remedy was beyond his power, he should bring the matter to the notice of Government for such

orders as it might deem necessary. I am of opinion that the greatest possible benefit would result from an appointment of this nature, and I shall be glad to find that my views are concurred in by the other Members of the Select Committee.

As connected with this subject, I venture to annex the following Extract from a Report submitted by me to the Government of the North-Western Provinces after making a tour of the Civil Courts under that Government very similar to what, I think, should be yearly made by the Minister of Justice or Judicial Commissioner whose appointment I am now advocating. The tour referred to was commenced on the 1st December 1854, and completed on the 2nd April following. During this interval I visited twenty six Districts and inspected the Courts of all the Zillah Judges, Principal Sudder Ameeris, and Sudder Ameeris, with four exceptions, as well as a large proportion of the Courts of the District Moonsiffs.

"Having now brought to a conclusion the remarks which have suggested themselves to me in connection with the special duty upon which I have lately been engaged, I will only further add that, although the results may not make any great show upon paper, I believe I may say that, upon the whole, the tour of inspection made by me during the last cold season was a useful one, and has been promotive of much benefit, and I venture to express a hope that any good effects with which it may have been attended will not be confined to the time occupied in its performance, but that they will prove of a more durable character.

"Of the great utility of such Circuits by a Judge of the Court I do not think that any doubt can be entertained, and it appears to me to be a matter of regret that they cannot be made more frequently. It is highly desirable, in my opinion, that a Sudder Judge should proceed every year on a tour of examination of the subordinate Courts, European and Native, though he should visit personally every Moonsiff's Court and be able to give more time to each Court than I was able to do. If the months of November, December, January, and February of each year were devoted to the duty, the whole of the North-Western Provinces might be visited once in three years, and several parts once in two years.

"This, of course, could not be done without the addition of a fourth Judge to the Court, at least for the months in which one of the Judges was employed on Circuit duty, as in the existing state of the law the absence of any one of the three Judges, who now compose the Court, puts a complete stop to the decision of regular and admitted special appeals, and otherwise cripples the Court, and the duties of the Court are too heavy to admit of its being left, though merely for a time, with only two Judges.

"Annual tours of inspection by the Judges of the Sudder Court, in the course of which the proceedings of the subordinate Judges would not only constantly come under revision, but a personal acquaintance be formed, at one time or another, with every Un-

covenanted Judge employed in these Provinces, would be attended with the great advantage that it would enable the Judges to ascertain from their own observation and from what they might hear from others, something of the personal character and qualifications of their subordinates, of which, at present, very little is known by the Court, and that little is chiefly derived from sources of information upon which full reliance cannot always be placed.

"I also believe that such tours would give confidence alike to the native community, and to the Uncovenanted Judges. They would show the people that the subordinate Judges, whose powers are now so extensive, and the integrity and efficiency of whose Courts are matters of personal interest to almost every native in India, are really brought within reach of the supervision of the highest Court in the country, and that their competency and mode of discharging their duties are cared for by that Court. They would infuse fresh vigour into the Native Judges and stimulate them to greater and, it may be, better directed exertions. They would encourage the well-disposed, and materially strengthen their hands. They would lead to the discovery of the inefficient, and would operate as a wholesome check upon the indolent, and upon such as were inclined to indulge in dishonest practices, and who could not but fear that occasion would be taken of the personal visit of a Sudder Judge by those who considered themselves aggrieved by their proceedings, to bring forward their complaints with a reasonable certainty that they would be heard, and (as far as might be) enquired into upon the spot, and that not only redress but retribution also would probably speedily follow; while, to all the Native Judges, they would afford an opportunity of urging to an Officer of very large powers, and who, from the high position which he holds, is looked up to with much respect, any thing that they might have to represent connected with their own position and prospects or with matters of general and public interest."

According, then, to my scheme there will be three classes of Courts for the trial of original suits, namely,—

1st. The Lower District Courts with jurisdiction in all suits in which the amount or value of the claim may not exceed one thousand Rupees;

2nd. The Upper District Courts with unlimited jurisdiction as to amount or value. (These Courts will also have concurrent jurisdiction with the lower District Courts at the Sudder Stations); and

3rd. Courts of Small Causes with jurisdiction in cases in which no appeal is allowed; and

Two classes of Courts for the trial of appeals, namely,

1st. The Divisional Courts for the trial of regular and miscellaneous appeals from the decisions of the Lower and Upper District Courts. (These Courts will also have con-

current jurisdiction with the Upper District Courts in suits in which the claim may amount to ten thousand Rupees and upwards and they will also be Courts of Circuit); and

2nd. The Sudder or Superior Court for the trial of special appeals on points of law or usage having the force of law from the decisions of the subordinate Courts, and for the determination of points of law or usage on which the lower Courts may entertain doubts or which the parties to the suit may require to be referred. There will also be a Minister of Justice or Judicial Commissioner for the supervision and control of all the Courts subordinate to the Sudder Court.

In conclusion I have to apologize to the Select Committee for the great length of these remarks, but I have thought it desirable that they should be made fully acquainted with the details of my scheme to enable them to form their own opinion as to its advantages or disadvantages; and after the subject has been discussed, for which I would beg to call an early meeting of the Committee, I will proceed, with the assistance of the Clerk of the Council, to draw up the Chapter relating to the constitution of the Courts in accordance with what may then be determined upon.

H. B. HARRINGTON.

The 27th April 1858.

to the friends of the cause

of the cause of the people

The Forster in his letter of the 4th ultimo
has requested that any observations w^h
he may have to offer on this very im-
portant subject may reach him within
the date on which the next Committee
may make their report viz by the 1st March
next.

The said it will be seen object to the
Bill - that the procedure under it is not
sufficiently simple - points for proof
have still to be given and evidence
recorded in order to.

26. 1. 59.

J.P.

I quite agree with the Tadder
as to the necessity of adopting the
simplest form of procedure.

Whether the small cause courts
proposed could be permitted to
have the extent of jurisdiction de-
scribed is a point on which I
cannot give a practical opinion.
There appear to be considerable differ-
ence of opinion as to the estimate
substantive for the maintenance of

business from when three months' notice
is to be retained.

An important ground is held to be
in favor of the retention proposed -
I believe that the time ought to come
when the maintenance at present - there would
be found - of parity paid - equal to the

justice

It is to be very glad
I have read that they would and I am the full
been the superintendent of the
joint action proposed by the Bill.

I agree with the Committee in thinking the
mode of procedure

2. there too numerous & not called
for by the present political state -

I consider that the D. de. may
with safety be entrusted with
the jurisdiction proposed by up to
50-100000 - & I am certain that
after this power has been for some
time exercised by them - no difficulty
of apprehension will be found to exist
to greatly & certainly it -

In respect to the 5000000000
2. I am sure that it is the present
Zillah & the districts of the
are generally situated in one of the
largest parts of the Zillah & the worst
of the district that I mean no other
lost in looking well

~~No. 113~~

1. Resolved that the foregoing
letter be communicated to
the Member of the Legislative
Council for Madras with
reference to his letter of the
4th Decr. Ult.

It

No. 113.

Ordered that the

letter be despatched.

To the Secy. of the
8th February 1854.

(To be signed by the Councillor
for Madras.)

W. W.

Sept 11th

Judicial Dept. 141

No. 164 of 1859.

Now be Chief Secy.
for the Genl.

To be Deputy Chief Commissioner for Madras.
Calcutta.

Sir,

Your letter of the 4th Decr.

East, with its enclosures, viz, Copy of
"A Bill for the establishment of Cts of Small
Causes beyond the local limits of the jurisdiction
of the Sup. Cts of Judicature
established by Royal Charter" & the
Annexure thereto, having been referred
to the Judicial Committee for any remarks
they might have to offer, the Judges have
submitted a Report under the date of the
14th January, copy of which I have
now the honour to forward to you.

2. The Com. in C. concurs with the Judges
in considering the proposed procedure
too cumbersome. It is very desirable, as
pointed out by the Judges, but the procedure
should be as simple as that of the English
County Courts & the Small Cause Courts in
the Presidency towns in this country.

3. The jurisdiction up to Rs 50 might safely be
entrusted to the District Magistrates at once;
while a little experience will prove that it may
be properly extended in their hands. On this
point the Govt are at issue with the Judicial Com.

4. The Rs 500 jurisdiction the Govt wish to vest in the
present Civil Judges, whose Courts are situated generally
in the chief towns of the district. Thus the expenses
will be a fair trial, & without any charge on the Government.

Copy to the Board of Directors of the Bank of India, 11th Decr.

At

Will

Secretary to the Board,
Judicial Department,
14th January, 1859.

Shew the honor to be,
Sir,
Yours most obedient servant,
W. H.

C. J. Charnock,
Acting Registrar.

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lost to the

28th to 31st May
1859.

In En: 8th February.

Procial 1859. Departs

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No. 114.

Mr. Menden, for all that,
the Legislative Council
of India

28th February 1859.

Feb. 783 - 20th May 1859 - 26th Feb.
20th July 1859 - 27th Feb.

Ordering the transmission
of a letter to the Hon. Secy
for Affairs of the Legist
-ature Council submitting
the Report of the Judge's
Court. What is in the Bill
for the Extension of the
limits of the Court beyond
the local limits of the
jurisdiction of the Supreme
Court.

49 @ 57.