M.R.O. 1—38,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1064	Press ~~Mis.~~
164-165		
Dated	22-8-	N 6860

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
22nd August 1860.

No. 164. Read the following Memorandum :—

MEMORANDUM.

The Registrar of the Sudder Court has the honor to forward three copies of the Circular of the Judges, under date the 17th instant, on the subject of Act VIII of 1859, as desired by the Proceedings of Government, dated 5th October 1859, No. 1,354.

(Signed) C. F. CHAMIER,
Registrar.

SUDDER COURT,
20th August 1860.

To the Chief Secretary to Government, Fort Saint George.

No. 165. To the Secretary to the Government of India, dated Fort Saint George, 22nd August 1860, No. 1,064.

In continuation of my letter of the 23rd ultimo, No. 921, I am directed to forward, for submission to the Government of India, copy of a Circular issued by the Sudder Adalat in respect to Act VIII, 1859.

Proceedings of the Sudder Court, 17th August 1860.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

CIRCULAR.

Proceedings of the Sudder Court, 17th August 1860.

CONSTRUCTIONS OF ACT VIII OF 1859.

Question.

In the event of a suit being dismissed for default, owing to the plaintiff's non-payment of Process Batta, or his neglect to file a supplemental plaint, can the plaintiff bring a fresh suit under the provisions of Section 110 of the Act; or must the new suit be brought under Act XXIX of 1841?

Answer.

With reference to the first of these questions the Judges resolve to cancel their construction of the 25th February last, and, in pursuance of the provisions of Section 381, to lay it down as a general rule of practice that no plaint shall be entered in the Register of Civil Suits (Section 38) until the plaintiff has deposited the Batta requisite for serving a summons on the defendant.

With regard to the second question the Judges observe that the provisions of the Act which allow the amendment of plaints, are Sections 29, 31, and 32. Whenever the Court may allow a plaint to be amended under any of these sections, a time should be fixed, and the plaint should be rejected if not amended within such time. Section 36 provides that the rejection of a plaint under Sections 29 and 31 shall not preclude the plaintiff from bringing a fresh suit. If a plaint be rejected under Section 32, though time may have been allowed for its amendment, no fresh suit can be brought in respect of the same cause of action. Act XXIX of 1841, is no longer in force.

Does the prohibition contained in the Circular of the 16th April, against Moonsiffs corresponding direct with Officers Commanding Corps, and other authorities, extend also to authorities within the said Moonsiff's jurisdiction, such as the Collector or his assistants, particularly in cases where parties who have obtained decrees may require to have Puttahs issued in their names?

It is not the province of the Courts to assist a suitor in the transaction of his business in the Collector's office. The communications of the District Moonsiffs on other subjects, except in matters either trivial or emergent, should be made through the Civil Judge.

What is to be done if an appellant fails to deposit the Batta requisite to serve the notice upon the respondent?

The date of presentment should be endorsed on the memo. of appeal, but it should not be entered in the Register of Appeals, (Sec. 341) until such Batta has been deposited.

Can notices be forwarded to respondents by post?

Section 345 provides that notices shall be served on respondents in the same way as a summons upon a defendant. They can only therefore be forwarded by post, where under similar circumstances the Act would have permitted the transmission of a summons to a defendant by that means.

May a District Moonsiff forward processes to the Civil Judge of another zillah for service, without the intervention of the Civil Judge to whom he is subordinate?	Yes. There is no limitation in Sections 59 and 158. Any one Court may transmit a summons to any other Court for service. Where, however, a Moonsiff has to procure service of a summons upon an officer or soldier, or upon a person residing within the limits of the jurisdiction of the Supreme Court, he should forward the summons to the Civil Judge.
Are all sums levied as penalty, &c., under Section 130 by the District Moonsiff, to be forwarded by them under Section 131 direct to the Collector, or through the Civil Judge?	The latter Section contains no instructions that any one Court is to remit the money through another. Each Court is to deal with the Collector direct; but the Collector may appoint some other than himself to receive the money.
If the order passed by a Subordinate Court in execution of a decree, under Section 246, be repugnant to its terms, or to any law or regulation in force, has the decree-holder the right of appeal to the higher Court?	The Section in question distinctly says that the order passed "shall not be subject to appeal," and that the party can only right himself by a suit preferred within a year.
Is Regulation I of 1832, still in force, and are orders passed thereunder appealable?	As the Regulation does not relate to procedure, but merely provides punishment for fraudulent acts, it is not superseded by Act VIII of 1859.
Section 119 provides that no appeal shall lie from a judgment passed *ex parte*. When application for execution is made, the party summoned pleads that he is not the right party. Can a Court then annul or set aside or decline to execute the decree under summary procedure without giving notice to the plaintiff, and can plaintiff or the opposite party appeal against the order that may be passed?	If the person appearing under the warrant, plead that he never was defendant in the suit, or that though called by the same name he is not the individual referred to in the plaint and judgment, the Court must enquire into the plea, after notice to the decree-holder, and pass such order as may appear just and proper. If the plea be substantiated, the judgment cannot, of course, be enforced against him. The order passed will, under Section 364, not be subject to appeal.
When a person is directed by the Appellate Court to be made plaintiff or defendant in a suit, is the supplemental plaint to be filed in the Appellate or Lower Court; and if the former, is it to be drawn up on plain paper, where the original suit has been instituted in a District Moonsiff's Court, or upon stamped paper?	The Act does not contemplate such a thing as a supplemental plaint. It will be sufficient, without the use of stamps, to note down the necessary particulars to enable the Court to frame the fresh issue, and have it tried.
If it appear to the Civil Judge, on the face of any order passed by the Moofty Sudder Ameen or a District Moonsiff, from which no appeal is expressly provided, that it is contrary to the provisions of the Act, can the Civil Judge receive a summary appeal from the aggrieved party, and point out the irregularity to the officer who passed the order, and who in some cases refuses to correct the error on its being pointed out by the party?	There can be no other appeal but what the Act specifically provides; but the Civil Judge is at liberty to point out to any of the tribunals subordinate to him, any irregularity observable on their proceedings, which they may have committed, and to caution them against a recurrence of the same.
Can a pleader who was employed in an appeal suit before the Civil Court, appear on behalf of the same party, without being furnished with a fresh power of attorney, for the purpose of appealing against an order passed by the lower Court relative to the execution of the decree passed in the said appeal suit?	The Pleader's office in the appeal suit ended when the decree therein was passed, and a fresh Vakalutnamah is necessary to empower him to appeal from the order in question.

The Civil Judges should be careful not to occupy the time of the Court with questions which may be easily solved by an attentive reading of the Act, nor with merely hypothetical cases.

(True Extract).

C. F. CHAMIER,

Registrar.

To

The

Bo. Dispd 24th

No. 1064

The Secretary to the Govt. of India

Sir

In continuation of my letter of the 23d ult. No. 924, I am directed to forward for submission to the Govt. of India, copy of a Circular issued by the Sudder Adalat in respect to Act VIII – 1859.

Proceedings of the Sudder Court, 17th Augt. 1860.

Fort St. George, 22d August 1860.

I have &c

Rec 21st Oct

Rec'd 31st Oct

Rec'd 22 August

Judicial 1860 Sept

From

The Registrar

Circuit Court (Queens)

Forwards 3 Copies

164 & 165

Sub. No. 1365