M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 1334 Press Mis.

Dated 15 — 10 — 19 1880.

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Not to be folded or roughly handled

1B

Proceedings of the Madras Government, Judicial Department,
15*th October* 1860.

No. 100. Read the following Memorandum :—

MEMORANDUM.

The Registrar of the Sudder Court has the honor to forward 3 copies of the Circular of the Judges, under date the 1st instant, on the subject of Act VIII of 1859, as desired by the Proceedings of Government, dated 5th October 1859, No. 1,354.

SUDDER COURT,
REGISTRAR'S OFFICE,
5th October 1860.

(Signed) C. F. CHAMIER,
Registrar.

To the Chief Secretary to Government.

No. 101. To the Secretary to the Government of India, dated Fort Saint George, 15th October 1860, No. 1,334.

Proceedings of the Sudder Court, 1st October 1860.

In continuation of my letter, 25th ultimo, No. 1,233, I am directed to forward, for submission to the Government of India, copy of a Circular issued by the Sudder Court, in respect to Act VIII, 1859.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

CIRCULAR.

Proceedings of the Sudder Court, 1st October 1860.

CONSTRUCTIONS OF ACT VIII OF 1859, *being the substance of Circulars issued by the Judges up to the end of September, and of rulings of the other Sudder Courts, in which they concur.*

Section 5. District Moonsiffs are competent to receive and try suits for sums of money or other personal property under ten rupees in value.

A District Moonsiff is competent to try a suit instituted against the Collector, arising out of an act done in his official capacity.

Section 9. Where a separate trial is ordered a fresh plaint should be taken, but if the original stamp be sufficient to cover the whole claim, such additional plaint may be written on plain paper.

Section 17, Clauses 1 and 2. No person can be allowed to make applications or appearances, as the recognized agent of a party, unless the party himself be ordinarily residing *out of the Court's jurisdiction*, and the agent hold a *general power* of attorney.

Section 21. Females, who are entitled to the privilege granted by this Section, are not liable to arrest so long as they remain in their zenánas.

Section 26, Clause 4. The valuation of suits for land is to be made on one year's produce, inclusive of the assessment, but exclusive of the expenses of cultivation.

Section 27. The verification of the plaint need not be made by the plaintiff in Court.

Section 28. Persons competent to subscribe and verify plaints on behalf of plaintiffs, are those who are able to depose to the facts of the case, and have a knowledge of the circumstances forming the ground of action, which the plaintiff cannot possess; as, for instance, shopmen employed in the sale of the goods of their employers, and the like; not mookteyárs, or other such agents.

The plaint in such cases may be brought already subscribed and verified; but will be liable to rejection, if there should be no cause for allowing any person other than the plaintiff to perform those acts, or if the person by whom they may have been performed should not be considered competent for the purpose.

If the plaintiff be absent, the plaint need not invariably be verified by his authorized agent, but may be verified by any one personally acquainted with the facts of the case.

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 rejected if not amended within such time. (Vide remarks upon Section 336).

Section 33. If want of jurisdiction be discovered after the defendant has been summoned and examined by the Court, the plaint cannot be returned, but the plaintiff may be allowed, under Section 97, to withdraw his suit.

Section 36. An appeal will not lie under this Section in cases where the Court of First Instance has had the parties before it and given a decision, though only on some preliminary point. The only course for any party dissatisfied with the decision in such cases is to prefer a regular appeal against it.

Section 38. Where a plaint is considered admissible, it is to be received, and the date of presentation noted thereon; but it is not to be entered in the Register of civil suits until the plaintiff has deposited the Batta requisite for serving a summons on the defendant.

Section 39. Where the document is one requiring to be stamped, and bears no stamp or an insufficient stamp, no copy of it can be received until the penalty due on the original has been paid.

Section 41. In the summons to be issued to the defendant, the Court must be guided by the nature of the plaintiff's claim. Thus, in simple cases, the summons would be for the final disposal of the suit, while in complicated cases it might be, where deemed advisable, for the settlement of issues only.

Section 52. Where a suit is instituted in a District Moonsiff's Court against the Government, the summons should be served on the Government pleader of the Civil Court.

Section 54. Where it is alleged that the defendant has refused to sign the acknowledgment, the due service of the summons may be proved by the deposition of the serving officer.

As a general rule no attestation should be required; but it will be in the discretion of the Court in any particular case to require it; as, for example, where a second summons has to be issued, under Section 112, in consequence of there being no satisfactory proof of the first having been duly served. Vide remarks upon Section 111.

Section 57. If a defendant be out of the way on account of business, or on any bonâ fide ground, the suit against him should stop; but if the plaintiff be able to satisfy the Court that the defendant's absence is fraudulent, a special service should be substituted for the one ordinarily provided.

Section 59. Judicial *processes* requiring to be executed within another jurisdiction are to be forwarded by post at the expense of the parties on whose motion they are issued, whether the Court issuing them is or is not authorized by law to frank covers. But no such process is to be issued until the party provides the requisite postage stamps, both for its transmission and return, in addition to the regulated charge for serving the process.

District Moonsiffs may transmit processes direct to any Civil Court for service by that Court, and also to any other Court, without the intervention of any Civil Court.

Provided, however, that where a District Moonsiff has to procure service of a process on an officer or soldier, or on a person residing within the limits of the jurisdiction of the Supreme Court, he is to forward the process through the Civil Judge.

All *correspondence* beween the Moonsiffs and other public authorities, whether within the same zillah or otherwise, is to be carried on through the Civil Judge; provided that in matters either trivial or emergent, a District Moonsiff may correspond direct with any local authority.

It is not the province of the Courts to assist a suitor in the transaction of his business in the Collector's office. No correspondence with the revenue authorities, therefore, will be necessary respecting the issue of puttahs to persons to whom lands may have been decreed.

Section 73. The Act does not admit of any supplemental plaint. It will be sufficient for the Court to note in its order the name and description of the person to be made a party, and to direct that a notice be issued to him accordingly.

Section 84. The offence of resistance to the process of a District Moonsiff is punishable as heretofore, under Section V, Act XIX of 1855.

Section 90. If any thing more than the setting aside of the order for execution be required, a new suit against the holder of the fraudulently obtained decree will be necessary.

Section 98. If the date fixed in a summons for the appearance of a defendant be for the final disposal of a suit, and the suit be compromised before such date, the plaintiff will be entitled to receive back the full amount of stamp duty paid on the plaint.

Refund of stamp duty can only be made on the adjustment or compromise of original suits, and not in appeals.

Section 110. A plaintiff whose suit has been dismissed under this Section, cannot apply to the Court under Section 119, which is only applicable to cases in which judgment has been given against a plaintiff by default for non-appearance.

Section 111. The evidence of the serving officer, if clear and positive, will generally be sufficient poof of service to justify the Court in proceeding to hear the suit *ex parte*. But where it may leave a doubt on the mind of the Court whether the service was really effected, the Court may direct a second summons to be issued under the following Section.

Section 119. Defendants in original suits pending on the date the Act came into operation can, under Section 387, be allowed to prefer regular appeals against judgments passed *ex parte* against them subsequent to such date.

The provisions of this Section are not applicable to suits dismissed under Section 110.

Section 120. No *answer*, i.e., written replication, can be received from a defendant. But, under this Section, a defendant may, at the first hearing, put in a written statement of *his own case.*

No further time can be allowed for putting in such statement; but the *Court* may call for one at any time before final judgment.

Section 133. No petition on stamped paper is required for the filing of exhibits.

Section 138. Subordinates in public offices cannot be summoned to produce official papers. Application should be made to the Head of the Department, to which such papers appertain, requesting him to send them for the Court's inspection. Applications for Revenue papers must in all cases be made to the Collector of the District.

Section 151. In pauper suits, as in other suits, the plaintiff must pay into Court the expenses of his witnesses before the summons can be issued.

Section 154. The serving officer is to be provided with a separate copy of the summons for each of the witnesses.

Section 166. The expense of summoning a party at the Court's own instance should, in the first instance, be borne by the plaintiff, and charged among other costs in the suit.

Section 182. The scale of remuneration is left to the Court's discretion, and will depend upon the circumstances of each case, such as, the nature of the accounts whether simple or complicated, whether voluminous or otherwise, the time required for their investigation, and the qualifications of the Commissioner, a higher remuneration being necessarily payable, if a professional person be employed.

Section 187. The expenses of witnesses proving to have been summoned unnecessarily, should be cast upon the party summoning them.

Section 198. Any party to a suit before a District Moonsiff may obtain certified copies of the decree and judgment on providing the paper and regulated copyists' hire. If the value of the claim amounts to fifty rupees or more, the copy can only be granted on stamped paper (Vide Section 2, Schedule *B*, Act XXXVI of 1860).

Where a copy of a District Moonsiff's decree may by law be made on unstamped paper, any authenticated copy granted either by the District Moonsiff or by the Civil Judge must be made on such paper.

Section 215. All decrees, whether passed before or after the Act came into operation, must be executed under the provisions of the Act.

Section 221. If the person against whom it is sought to execute the decree, 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.

Section 229. The claim of the decree-holder is not required to be written upon the stamp required for a plaint.

Section 230. The application need not be written on the stamp required for a plaint.

Section 233. Moveable property found in the defendant's possession and attached by actual seizure, cannot be left in the charge of a surety. But where such property may be at a distance from the Court and of a description difficult to remove, the Ameen deputed to attach it may keep the same in his custody upon the spot; and on the receipt of his report, the Court may at once proceed, under Section 242, to order the sale of the property so attached.

Section 246. The object of the concluding portion of this Section is, not to keep the attachment open for the claimant, but to *limit the period within which he may bring a suit* to establish his right to the property attached. The order disallowing the claim not being subject to appeal, the Court may in its discretion proceed to sell the property.

Section 247. If property be attached by order of a District Moonsiff, any claim or objection which the Collector may have to make in respect of such property may be preferred through one of the pleaders practising in the Court of such District Moonsiff.

There is no provision in the Act under which a claim preferred to property attached by one Court can be called up by the Civil Judge and referred to another Court for investigation.

Regulation I of 1832, which does not relate to procedure, but provides punishment for certain fraudulent acts, is not superseded by the Code.

Section 248. Until the Government vests Collectors generally, or any Collector particularly, with the power of selling revenue-paying land in execution of decrees, the Courts are, under this Section, to effect such sales by means of their own officers.

Sections 278 to 281. The provisions of these Sections are applicable to all judgment debtors, whether placed in confinement prior or subsequent to the date on which the Act came into operation.

Section 280. The application should be prepared to the address of the Court under whose orders the person may be in confinement in execution of the decree; and should be received and forwarded to such Court, post free if necessary, by the judicial officer in charge of the jail.

Section 283. The construction put on a decree of the Privy Council by the Court executing the decree, regarding the award of mesne profits, does not render that Court's order liable to appeal.

Section 288. The "application" means an application by the decree-holder, either in person or by a pleader, to the Court to which the copy of the decree and certificate may have been transmitted.

Where an application is made to a Civil Court for execution of a decree passed by a Moonsiff of another District, it must be on a stamp if the claim amounts to fifty rupees or more, otherwise it may be on plain paper. (Vide Section 5, Schedule *B*, Act XXXVI of 1860, general exemptions).

Section 297. Moofty Sudder Ameens and District Moonsiffs are competent to receive and try pauper suits, without reference by the Civil Judge, where the value of the matter in dispute is within their jurisdiction.

Section 327. An application to give effect to a private award should be made to the Court having jurisdiction with reference to value, and should be brought on the file as a regular suit, but it should be on a stamp of the value required for miscellaneous petitions.

Section 333. No extension of the time limited for appealing can be granted for the purpose of putting in an appeal: any party desiring to present an appeal after the expiration of such limited time, is to put in a petition on the usual stamp, explaining the cause of delay and requesting the Court to receive his appeal.

The time limited for appealing from a decree begins to run from the date on which *judgment was pronounced*, and not, as before, from the date of sealing and signing the decree.

In calculating the time for appealing, the Courts are not to take the corresponding date in the Calendar month, but to reckon the *number of days* allowed by the Act.

If a party present an application for review of judgment within the time limited for appealing from the decree, the period occupied by the Court in disposing of such application will not be reckoned among the number of days limited by the Act for appealing, but will be added thereto; and a memorandum of appeal, presented within such extended period, will be received as put in within time.

Section 335. No memorandum of appeal can be received unless it be accompanied, *at the time of presentation*, by an authenticated copy of the decree appealed against.

The appellant is only required to produce with his memorandum of appeal, a copy of the *decree* appealed against, and need not produce copy of the judgment.

Section 336. The memorandum, if it be *rejected*, is of no further use, though an amended memorandum may be filed within the prescribed period. But if it be *returned* for correction, it may be filed again after the necessary amendments have been made in it. In the former case a fresh stamp will be requisite; but not in the latter. The same rule applies to plaints under Section 29.

Section 341. Every memorandum of appeal and application for the admission of a special appeal, presented in the prescribed form and within the time allowed, will be received and the date of presentment noted thereon; but no such appeals will be brought upon the Registers, unless the Batta requisite for serving notices upon the respondents be deposited within the time limited for appealing.

Section 342 As a general rule, security for costs is not to be demanded from appellants; but if, for special reasons, the Court see fit to demand it, a date is to be fixed within which it must be furnished, and the appeal is to be rejected if the security be not furnished within such date.

Section 343. On receiving intimation of the appeal being registered, the Lower Appellate Court is to serve the notice upon the respondent by one of its own peons; and, on the original notice being returned, is to transmit it to the Sudder Court accompanied by all material papers in the suit and an English list of such papers.

In transmitting to the Sudder Court all material papers in a special appeal, the Lower Appellate Court need not include the original or appeal judgments and decrees, as these must be produced by the special appellant; nor any merely formal papers, such as Vakalutnamahs, Notices, Proclamations, Summonses, Warrants, Security Bonds, Commissions for Examination of Witnesses, &c.

Where papers are sent to the Appellate Court, but neither party gives the notice contemplated in this Section, copies of them need not be made for deposit in the Lower Court.

Section 345. The notice issued under Section 345 is to the respondent only; appellants are required to take notice of all orders of the Court fixing dates for the hearing, or adjourned hearing, of appeals, without being served with any process.

It is not expressly laid down that notice of the day fixed for the hearing of the appeal, shall be affixed in the Appellate Court immediately upon the appeal being registered, and while the appellant may be presumed to be still in Court; but it is to be inferred that such was intended; the date being fixed according to the state of the file, and the hearing being afterwards adjourned, if necessary, to a subsequent date.

Notices to respondents, issued under this Section, are to be sent to the Lower Court for service; the Batta to be levied from the appellant being that laid down for such Lower Court, without any extra charge for postage.

Section 346. In cases where the appellant does not appear in person, or by a pleader, on the day fixed for the hearing, the appeal will nevertheless be decided on its merits, under the old law, if it was filed before the Act came into operation.

Section 347. If an appeal be dismissed for default of prosecution, and the Appellate Court, on application made, refuse to re-admit the appeal, its order is final.

Section 348. No written *answer* can be received from a respondent. And, under Section 122, no written statement of the respondent's case can be either received or called for by the Appellate Court.

Objections in writing cannot be received. They must be urged orally at the hearing, and should be noted down by the Judge, and set forth in the judgment among the points for determination in the appeal.

Section 351. If a case be remanded and re-investigated subsequently to this Code's coming into operation, the appeal from the decision must be governed by its provisions.

Section 353. The Appellate Court will be at liberty to call upon the Lower Court to explain, justify, or otherwise account for any part of its decree, or any omission appearing therein, and to take the reply into consideration in disposing of the appeal.

Section 354. It is competent to the Appellate Court under this Section to direct that any person having an interest in the subject matter of the suit inseparable from that of either of the parties, be made a plaintiff or defendant; and to frame an issue accordingly and refer the same for trial by the Lower Court.

In such cases it will be sufficient, without the use of stamps, for the Court to note down at the hearing the necessary particulars to enable it to frame the issue. The Lower Court in proceeding to try the issue will cause a notice to be served on the person, as provided by Section 23.

Section 364. There can be no other appeal but what the Act provides; and therefore though an order appear on the face of it to be contrary to the provisions of the Act, no appeal against it can be received; but the irregularity may be pointed out, and the officer cautioned against repeating it.

No appeal, unless it be expressly provided, will lie against an order passed in execution of a decree, though such order be repugnant to the terms of the decree or to some law or regulation in force at the time of its being passed.

Section 365. A pleader, who was retained in a suit, cannot appear for the same client in an appeal from an order passed in execution of the decree passed in such suit, unless he put in a fresh Vakalutnamah.

Section 366. In a case in which the order appealed from, and the petition of appeal, are of dates subsequent to the passing of this Code, it is not competent to the Court to hear the appeal in the presence of one of the parties, but all the forms of procedure required by Sections 344, 345, and 346 must be gone through.

Section 372. No special appeal lies from any order passed by a Lower Appellate Court on an appeal from an order of a Court of First Instance.

Section 373. No application for the admission of a special appeal can be received unless it be accompanied, *at the time of presentation*, by authenticated copies of the judgments and decrees of the Lower Appellate Court, and Court of First Instance.

Section 376. The Courts of each grade are competent to review their judgments, without the permission of the higher Court.

Where the error is one the correction of which cannot affect the interests of either party, the Court which passed the decree may of its own motion review its judgment, without any application from the parties.

No written application can be received for review of any *order*; but it will be in the discretion of the Court, on the verbal motion of one of the parties, to amend any evident error or omission in its order, upon previous notice to the party who would be affected by such amendment.

Section 387. In suits which were pending when the Act came into operation, the new procedure is generally to be followed, but if it be shown that any particular provision would deprive either party of any right in reference to the procedure of the suit which would otherwise have belonged to him, the former procedure may be resorted to, to save such right, and the subsequent proceedings be taken under the new procedure.

(True Extract.)

C. F. CHAMIER,

Registrar.

Dispt. 17
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No. 1334.

The Secretary to the Govt. of India.

Sir.

In continuation of my letter, 25th Ulto. No. 1233, I am directed to forward, for submission to the Govt. of India, copy of a circular issued by the Sudder Court, in respect to Sec. Proceedings of the Sudder Court, 1st Oct. '60.

VIII. - 1859.

Fort St. George,
15 October, 1860.

Rec'd 21st October 1859 Abstd 2.

Rec'd 4 Oct.

Judicial Office. Dept.

From

The Registrar of the
Probate Court Ireland.

Dated 3rd Oct. 1860.

3 copies

No. 1643.

Forwards 3 copies
of the Circular of the Judges
under date the 1st Inst. on
the Subject of Act 8 of 1859.

With a Letter.

C.O. Ber
No 13 ---