

# MADRAS RECORD OFFICE.

Government of Madras.

*Judicial* DEPARTMENT.

|              |                        |                 |
|--------------|------------------------|-----------------|
| G.O. No.     | 385                    | Press           |
|              |                        | <del>Mis.</del> |
| <u>53-54</u> |                        |                 |
| Dated        | 29 <sup>th</sup> March | 1860            |

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,  
for the month of March 1860.*

No. 53. Read the following Memorandum.

The Registrar of the Sadr Court has the honor to forward 3 copies of the Circular of the Judges under date the 19th instant, on the subject of Act VIII of 1859, as desired by the Proceedings of Government dated 5th October 1859, No. 1354.

SADR COURT, }  
21st March 1860. }

(Signed) C. F. CHAMIER,  
Registrar.

To the Chief Secretary to Government.

No. 54. To the Secretary to the Government of India, dated Fort Saint George, 29th March 1860, No. 385.

In continuation of my letter, 16th instant, No. 326, I am directed to forward, for submission to the Government of India, the accompanying copy of a Circular issued by the Sadr Adalat in respect to Act VIII, 1859.

Proceedings of the Sadr Court, 19th March 1860.

(Signed) T. PYCROFT,  
Chief Secretary.

## CIRCULAR.

*Extract from the Proceedings of the Sudder Court, under date  
the 19th March 1860.*

CONSTRUCTIONS OF ACT VIII OF 1859.

### Questions.

### Answers.

Sec. 28. What persons may be deemed competent, for the purpose of subscribing and verifying plaints, on behalf of plaintiffs who are unable to do so themselves?

Persons able to depose to the facts of the case, and having a knowledge of the ground of action which the plaintiff *cannot* possess; as, shopmen employed in the sale of the goods of their employers, and the like:—not mooktears, or other such agents.

Are such persons to perform those acts by permission of the Court previously obtained?

The plaint in such cases may be brought already subscribed and verified; but will be liable to rejection, if there should be no good 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.

Secs. 41 and 345. Can written answers be permitted to be filed by defendants in original suits, and by respondents in appeal, as heretofore?

No answer, *i.e.*, written replication, can be received either from a defendant or a respondent. The only pleadings allowed are, the plaint, and memorandum of regular or special appeal. Under Section 120, a defendant may, at the first hearing, put in a written statement of *his own case*, but under Section 122, no such statement could be received from a respondent.

Are the provisions of the Act, which authorize the Courts to call for written statements from parties, and to examine the parties or their vakeels in original suits, applicable in appeal suits?

Written statements of the parties' respective cases can, under Section 122, only be called for prior to the final judgment of the Court of original jurisdiction. Power to examine the parties or their pleaders, is expressly given to the appellate court by Section 358.

Secs. 54 and 111. By what means is a Court to satisfy itself that a defendant has refused to acknowledge the service of a summons, or that a summons has actually been served on him?

By the examination of the serving officer on solemn affirmation. The evidence of such officer, if clear and positive, will generally be sufficient proof 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 effected, the Court may direct a second summons to be issued under Section 112.

Is the serving officer to be required to serve such process in the presence of any witnesses?

Section 333 allows one month for regular appeals from appealable decrees, while Section 377 allows three months for applications for review of decrees. Is it by this intended that a party, having applied for review of a decree, but without success, cannot afterwards prefer a regular appeal from that decree?

At the time of issuing summons to defendant under Section 41, by what means is the Court to determine "whether the summons shall be for the settlement of issues only, or for the final disposal of the suit," as directed in that Section?

With reference to Sections 41 and 109 of the Act, can a defendant in an original suit, on his appearance in Court, either in person or by an authorized pleader, according to the summons issued to him, be furnished with a copy of the plaint in order to his giving written answer to the same; or is he, immediately on his appearance, to be orally examined by the Court in answer to the plaint, and is such examination to be taken down in writing in the manner prescribed by Section 125?

It is provided by Section 119 that "no appeal shall lie from a judgment passed *ex parte* against a defendant, who has not appeared." Can defendants in original suits pending at the time the Act came into operation, prefer regular appeals against judgments (in such suits) passed *ex parte*, subsequently to the date on which the Act came into operation?

Is the officer deputed to attach property consisting of goods, chattels or other moveable property, precluded by Section 233 from placing such property after attachment in the possession of a surety offered by either party, according to the practice hitherto observed; and if it is intended by the provision of the said Section that such property should after attachment be invariably brought to Court for the purpose of being kept in the custody of the Nazir or other officer, what is to be done in cases where the property attached is situated at a great distance from the Court, and consists of cattle or other articles of such a description as renders their conveyance to Court difficult and expensive?

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 in consequence of there being no satisfactory proof of the first having been duly served.

The party will not be deprived of his right of appeal, provided he present his memorandum within the period allowed for appealing, in reckoning which the time embraced between the date of the application for review and that of the order thereon, will be deducted.

By a consideration of 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.

The defendant will be entitled, under the general rules relating to the furnishing of copies, to obtain at any time a copy of the plaint; and, at the first hearing of the suit, to tender a written statement of *his own* case, but not an answer to the plaintiff's case. No further time can be allowed for putting in such written statement (Section 122); but the Court may call for one at any time before final judgment. The defendant may also be examined orally, or not, at the discretion of the Court; the substance of the examination, if any be taken, being reduced to writing.

Yes: their rights are clearly reserved to them under Section 387.

Moveable property found in the defendant's possession, and attached by actual seizure, cannot be left in the charge of a third party. But where such property may be of a description difficult to remove, the Nazir's subordinate 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 Sections 242 and 249, to order the sale of the property so attached. If the particular property to be attached be previously known, the Court may issue simultaneously processes of attachment and sale, under Section 250.

When a claim to property under attachment is disallowed after investigation under Section 246, is the Court to keep the property in abeyance for the period of one year, in expectation of a regular suit being brought by the claimant; and if a suit be brought by him within that period, is the property to be continued under attachment till the final disposal of that suit in original appeal and special appeal; or may the Court sell the property immediately upon the claim being disallowed, if it see no other objection so to do?

Are the objections which a respondent may, under Section 348, take to the decision of the Lower Court upon the hearing of an appeal, to be filed by him on stamp paper, or are such objections to be taken down in writing by the Appellate Court in the form of an examination?

Is a plaintiff whose claim is dismissed by a Court of original jurisdiction upon any preliminary point, without investigation of the merits of the case, precluded by Section 351 from preferring a summary appeal to the Appellate Court against such dismissal, on stamp paper prescribed for petitions?

If it appear to the Appellate Court, on the hearing of an appeal, that a person or persons interested in the subject matter of the suit, have not been made parties to it by the lower court, and that the original decree has, in consequence, become so defective that a satisfactory judgment cannot be pronounced in appeal without such person or persons being included in the suit either as plaintiffs or defendants, what course is the appellate court to adopt to remedy the defect, it being precluded by Section 352 from remanding the suit to the lower court in such cases?

Is it imperative upon courts to regulate their procedure in strict conformity with the provisions of Act VIII of 1859, with regard to suits which were pending before them at the time when the Act came into operation, if such procedure will not deprive the parties in those suits of their right in reference to the procedure of the suits, whether of appeal or otherwise?

Can the moofy sudder ameen and district moonsiffs receive pauper suits with reference to Section 297?

Are the district moonsiffs to continue to forward the monthly statement of decrees *executed*, as laid down in Sudder Udalt Circular Order 31st May 1854?

The primary object of the concluding Clause of Section 246, 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.

Objections in writing cannot be received. They must be taken *orally at the hearing*, and should be noted down by the Judge, and set forth in the judgment among the points for determination (Section 359).

An appeal of the nature referred to lies only where the plaint is rejected for some defect appearing on the face of it, &c., (Section 36). In all cases where the original Court has had the parties before it, and given a decision, though only on some preliminary point, the only course for any party dissatisfied with such decision, is to prefer a regular appeal against it.

As the Appellate Court cannot dismiss a suit, but is required to give a conclusive judgment in every case, the proper course will be 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 and refer an issue for trial by the lower court, under Section 354.

Yes. This is expressly laid down in Section 388.

Yes.

The Circular Order is superseded by chapter IV of the Act. The statement therefore will not in future be required.

The practice regarding the valuation of suits for land is not uniform in this district. The valuation is fixed either on the amount of assessment only, or on one year's produce, inclusive of the assessment, but exclusive of the expenses of cultivation. Which is correct?

Can a District Moonsiff, under Section 149, require, without application to the Collector, the production of any public document by a talook servant, summoned by him as a witness?

The latter is the correct method of calculation.

Subordinates in public offices should not be summoned to produce official papers. Application should be made, under Section 138, to the *Head of the Department* to which such papers appertain, requesting him to send them for the Court's inspection. In the case referred to in the question, the Collector would be the proper person to apply to.

(True Extract).

C. F. CHAMIER,

Registrar.

To

The Civil Judge of

Sup. 81-  
Sut.

N<sup>o</sup>: 385.

The Secretary to the Govt. of India

Sir - In continuation of my letter, 16. Instant N<sup>o</sup>: 326. I am directed to forward, for submission to the Govt. of India, the accompanying copy of the Proceedings of the Sadar Court, 19. March, 1860. Circular issued by the Sadar Adalat in respect to Act VIII - 1859.

Fort St. George &  
29 March 1860.

JR

Dec 14 1850

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Hull 1850

Notes

See the Register of  
the Atlantic Coast

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