

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 490	Press
26-27	Mis.
26-27	
Dated 21.4.1860	19

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Not to be folded or roughly handled

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

No. 26. Read the following Memorandum:—

MEMORANDUM.

The Registrar of the Sadr Court has the honor to forward 3 copies of the Circular of the Judges, under date the 16th instant, on the subject of Act VIII of 1859, as desired by the Proceedings of Government, dated 5th October 1859, No. 1354.

19th April 1860.

(Signed) C. F. CHAMIER,
Registrar.

To the Chief Secretary to Government.

No. 27. To the Secretary to the Government of India, dated Port Saint George, 21st April 1860, No. 490.

Proceedings of the Sadr Court, 16th April 1860.

In continuation of my letter, 4th instant, No. 412, I am directed to forward, for submission to the Government of India, copy of a Circular issued by the Sadr Adalat in respect to Act VIII, 1859.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

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C I R C U L A R.

*Extract from the Proceedings of the Sudder Court, under date
the 16th April 1860.*

CONSTRUCTIONS OF ACT VIII OF 1859.

Questions.

Answers.

Can District Moonsiffs receive and try suits for money, or personal property, not exceeding Rs. 10?

Yes.

When a separate trial is ordered under Section 9, is a fresh plaint to be received as regards the cause of action ordered to be so tried? If so, is institution fee to be paid on such plaint?

A separate plaint should be taken, in order that the record of each case may be complete in itself: but, if the original stamp be sufficient to cover the whole claim, such additional plaint may be written on plain paper.

When a document is unstamped and a copy of it is put in under Section 39, is penalty to be levied on the original?

Where the document is one requiring to be stamped, no copy of it can be received until the penalty due on the original has been paid.

Is a Commissioner appointed under Section 181, to be remunerated? and if he is, at what rate?

The following Section (182), provides that the expenses of the commission shall be paid into Court before the order issues. 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, and whether voluminous or otherwise; the time required from their investigation; and the qualifications of the Commissioner, a higher remuneration being necessarily payable, if a professional person be appointed.

Can District Moonsiffs receive pauper suits for the recovery of property worth 1,000 rupees, under Section 297; or should they be received by the Sub-Court in the manner in force before the promulgation of the said enactment, and referred to the Moonsiffs? A pauper suit of the current year for real property worth rupees 296-8-2 has been referred to a District Moonsiff from the Sub-Court: how is the District Moonsiff to act regarding it?

District Moonsiffs are competent to entertain pauper suits to the amount of their ordinary jurisdiction. In the case referred to, the District Moonsiff should procure the attendance of the petitioner, and proceed as if the application had been originally presented before him.

In pauper suits, is the plaintiff required to provide beforehand the expenses of witnesses as laid down in Section 151?

Yes.

Section 163 provides that on non-attendance of a witness on whom summons may have been served, the Court may order such person to be apprehended and brought before the court; but there is no provision for fine or other penalty for want of punctuality in attending to the process of the court by summons; and as the being brought before the court by a peon entails in the estimation of the great majority of the people no disgrace, and the prospect of being thus brought before the court for non-attendance on the date named in the summons would therefore not weigh against other private inducements to the party summoned to defer attendance where punctuality would be inconvenient to him, how is a punctual attendance of witnesses to be enforced?

Section 247 prescribes that any claim or objection that may be made shall be to the Court attaching the property; but if such attachment be made by a District Moonsiff, how is a claim or objection on the part of the Collector to be brought before such Court, there being no Government Vakeel attached to it?

Supposing the claim to be otherwise within his jurisdiction, can a District Moonsiff, under Section 6, receive, try, and determine a suit, against the Collector, arising out of an act done in his official capacity, notwithstanding that certain Regulations declare that such suits are to be instituted in the (Zillah Court) Subordinate Court?

Is the "application" referred to in Section 238 intended to mean the letter of the Court which transmits the decree to that court in whose jurisdiction execution is intended to be made; or does it signify an application for execution on the part of the judgment creditor in the usual way in person or by vakeel?

Should the application made in a Zillah Court, under Section 238, for the execution of decrees passed by a Moonsiff of another jurisdiction, be on stamp or plain paper. If the former, of what value should the stamp be?

Is the whole or half the amount of stamp duty to be refunded in suits wherein summonses have been issued to the defendant for final disposal, and compromise has been entered into before the examination of any witness?

The punishment of witnesses who intentionally omit to attend a Court of justice, after being duly summoned, is provided for in the Penal Code. Until that Code becomes law, the only course will be to order the apprehension of the witness failing to comply with the summons; such further process being served at the expense of the party on whose behalf the witness is required to be examined.

It may be done through any one of the pleaders practising in such Court.

Yes.

It 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.

It should be on plain paper, as if made to the Moonsiff who passed the decree.

The plaintiff, in such a case, would be entitled to receive back the full amount of stamp duty paid on the plaint. It is only where the suit is adjusted after actual settlement of the issues, and before the examination of any witness, that the plaintiff can obtain merely one-half of such duty.

Are or are not District Moonsiffs competent to address letters *direct* to Officers Commanding Corps, the Sheriffs at the several Presidencies, and other authorities, to whom they may have occasion to forward notices or other processes, for service on parties concerned in suits depending before them, as well as to issue warrants of commission for the examination of witnesses therein, without the intervention of the Civil Court.

District Moonsiffs should correspond with other public authorities only through the Civil Judge.

(True Extract.)

C. F. CHAMIER,

Registrar.

To

The Civil Judge of

Sept 25

Sir.

N^o 490.

She sent to the Govt. of India.

Sir. In continuation of my letter
4th Inst. N^o 412, I am directed to
forward for submission to the
Govt. of India, copy of a Circular
Proceedings of the
Sadr Court, 16 April 1860. Adalat in respect
to Act VIII - 1859.

Yours sincerely
27 April 1860

J. J.

Dr. 301-1000
Dr. 301-1000

See 100, 100, 100
See 100, 100, 100

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