Proceedings of the Madras Government, Judicial Department,
20th September 1861.

No. 130. Read the following letter from the Honorable the Judges of Her Majesty's Supreme Court, Madras; to the Honorable the Governor in Council, &c., &c., &c., Fort Saint George, dated 6th September 1861.

We have the honor to acknowledge the receipt of your letter of the 28th August last, forwarding at the request of the Clerk of the Legislative Council copies of a Bill to extend Act XXIII., 1840, for an expression of our opinions on the Bill as amended.

In reply we beg to state our approval of the object of the Bill both as regards the extending provision contained (consistently with the recital) in the 1st Clause and the new procedure to which the 2nd Clause is directed.

With reference to the manner in which the 1st Clause provides for carrying out in practice the extension of Act XXIII of 1840, we do not think it necessary to offer any opinion. But with respect to the 2nd Clause we beg to say that we do not approve of the practical mode of proceeding as provided in that Clause.

It is we think objectionable on the ground (amongst others) that it involves the necessity of a double enquiry as to the propriety of allowing service of process out of the jurisdiction of the Court from which it issues. We think this quite unnecessary and very inexpedient, considering that the Clause has reference to the jurisdiction respectively of Supreme Courts exercising co-ordinate functions and equally discretionary powers and regulated substantially by the same legal principles and rules.

We think the propriety of allowing the service of the process should be left absolutely to the discretionary power of the Court issuing such process and that every proper safeguard will be thereby as fully secured.

We return a copy of the Bill sent to us and beg leave to enclose for consideration a Draft Clause framed substantially, as we think the enactment ought to be, for carrying out practically the new procedure.

(Signed) C. H. SCOTLAND.
(,,) A. BITTLESTON.

DRAFT CLAUSE.

Any of the Courts established by Royal letters patent in any part of the Territories, &c., or any Judge thereof may upon motion in Court or application at Chambers supported by affidavits of a cause of action or complaint within the jurisdiction and of the circumstances connected with the Defendant's absence out of the jurisdiction, order and direct that any process at common law or in equity or on the Ecclesiastical side, may be served within the local jurisdiction of any other such Court upon such terms and in such manner and at such time, for appearance or otherwise as to such Court or Judge shall seem just and reasonable, and a copy of such order signed by the Judge or under the seal of the Court granting the same shall be annexed to the process and shall be a sufficient authority to the Sheriff or other proper Officer of the Court within the jurisdiction of which the process is to be served for the service thereof and the same when served as directed by the said order shall be deemed good service and thereupon it shall and may be lawful for the Court out of which the process issued to proceed upon such service as fully and effectually as if it had been duly made within the jurisdiction of such Court.

No. 131. To the Clerk of the Legislative Council of India, Calcutta, dated Fort Saint George, 20th September 1861, No. 1,183.

In reply to your letter, 10th ultimo, No. 95, requesting that the opinions of the Judges of Her Majesty's Supreme Court may be obtained on the amended Bill to extend Act XXIII., 1840, I am directed to transmit to you a copy of a letter, dated 6th instant, from Sir C. H. Scotland and Sir A. Bittleston, together with a copy of the Draft Clause alluded to in it.

(Signed) J. D. SIM,
Secretary to Government.

Exd. F. Cartledge.

[The amendments in the Bill are printed in italics. The words in the margin are those proposed to be omitted.]

AMENDED BILL.

A

BILL

TO

Extend[1] *Act XXIII of* 1840 *(for executing within the local limits of the jurisdiction of Her Majesty's Court legal process issued by Authorities in the Mofussil.)*

[1] to the Straits Settlement

[2] to the Straits Settlement

WHEREAS it is expedient to extend[2] *the provisions of* Act XXIII of 1840 *(for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by Authorities in the Mofussil)*: It is enacted as follows:—

Preamble.

I. The said Act XXIII of 1840 shall be read as if the words "any Court of Judicature established by Royal Charter *or by Royal Letters Patent*" were mentioned therein, instead of the words "Supreme Courts of Calcutta, Madras, and Bombay."

Extension of Act.

Provided that no writ, warrant, or other process shall be endorsed under the said Act by any Court of Judicature of the Settlement of Prince of Wales' Island, Singapore, and Malacca so as to compel the attendance beyond the limits of the jurisdiction of such Court of Judicature of any person living within such limits, unless special grounds be proved to the satisfaction of the Judge of such Court to whom such endorsement shall

Proviso.

be applied for, in support of the application, which grounds shall be recorded in the endorsement of the writ, warrant, or other process.

Service of process issued by one Supreme Court, to commence a suit or action, within the local jurisdiction of another Supreme Court.

II. Any Summons, Bill in Equity, or other process issued to commence a suit or action at common Law or in Equity or on the Ecclesiastical Side by any Supreme Court or Court established by Royal Letters Patent in any part of the territories that are or shall be vested in Her Majesty by the Statute 21 and 22 Vic. c. 106 entitled "An Act for the better Government of India", may be served within the local jurisdiction of any other such Court if endorsed for service by a Judge of such other Court as hereinafter provided. The Summons, Bill in Equity, or other process intended for service shall be accompanied by a certificate annexed thereto, signed by a Judge of the Court from which the same is issued, stating some special cause why such Summons, Bill in Equity, or other process should be served within the jurisdiction of some other such Court as aforesaid, and application shall be made to a Judge of such other Court, on production of such Summons, Bill in Equity, or other process, and of such certificate, prior to such service thereof. On such application being made, it shall be in the discretion of such Judge to require proof by affidavit or otherwise that it is proper to allow such service, and on hearing such proof such Judge shall either endorse the Summons, Bill in Equity, or other process for service, or shall endorse thereon the reason for not ordering the service thereof. If such Summons, Bill in Equity, or other process be not endorsed for service as aforesaid, it shall not be served under this Act.

When endorsed for service it shall be served in the same manner as if it had originally issued out of the Court in which such endorsement is made.

Legislative Council of India.

Execution of Mofussil Process.

A

BILL

TO

Extend Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by Authorities in the Mofussil.)

As amended by the Select Committee, and presented with their Report to the Council on the 3rd August 1861.

Price 2 Annas.

Printed at the Albion Press.

Judicial - N

No. 1183.

The Clerk of the Legislative Council
of India Calcutta.

Sir

In reply to your letter, 10th ult. No. 95, requesting that the opinions of the Judges of the Supreme Court may be obtained on the amended bill to extend Act XXIII - 1840, I am directed to transmit to you a copy of a letter, dated 5th Sept., from Sir C. A. Scotland & Sir A. Wilkinson, together with a copy of the draft-clause alluded

alluded to in it.

Fort Saint George,
20th September 1861

Group No 2

Judicial & Pol. Depart.

No 1183

To

The Clerk of the Legislative
Council of India
Calcutta

Dated 21st September 1864.

130-131