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DEPARTMENT.

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MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1980 Press ~~Mis.~~

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Dated 6.12.1882 ~~19~~ .

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Proceedings of the Madras Government, Judicial Department,
6th December 1862.

No. 49. Read the following Minute by the Honorable W. A. MOREHEAD, dated 25th October 1862.

From all that I can learn, the Small Cause Courts lately established are doing their work well and generally giving satisfaction. One complaint I have heard; and when the Courts were established I expected that such would be made. It is, that the District Munsiffs no longer where the small Cause Courts exist, exert their summary jurisdiction up to 20 Rupees. The inconvenience thus caused is great consequent on the distances the parties have to travel. To obviate this evil, and to carry out still further, and with greater facilities, the advantages of this mode of dealing summarily with money debts. I would strongly urge upon Government the propriety of passing an Act, vesting all District Munsiffs with summary jurisdiction up to 50 Rupees. In the Act I would also provide that the Government might, when it saw fit, extend this power to 100 Rupees.

2. We advised the Supreme Government that it was our desire to increase the summary jurisdiction of the District Munsiffs; but this was not acceded to. As the law now stands, this Government can of its own accord under Section 42 of the East India Council Act, deal with this question as it deems best. I would therefore strongly urge upon Government the desirableness of carrying out the measure I have suggested, by passing an Act to enable it to do so. There is another point connected with the Small Cause Courts that has often occurred to me as one that would prove beneficial, as regards this Presidency; and one that would tend greatly to relieve Government of the heavy cost of creating new and distinct Small Cause Courts. It is, to empower the Government by law, to invest any judicial officer with power to exercise the functions of a Small Cause Court. To do this, would be no novelty. The old Supreme Court had this power, and I never heard that it did not work well. I would not allow Courts other than those presided over by District Munsiffs to deal with suits under 50 or 100 Rupees. By the above course, at once, in all the large or rather in the capital town of any District a Small Cause Court would be established. I am pretty certain that if our District Munsiffs have even summary jurisdiction allowed them up to 50 Rupees, much of the litigation of the country will be under this power disposed of by them; and if it were extended to Rupees 100, the effect on the files of the District Munsiffs would be very marked. When it is found how this extended jurisdiction works, and the effect it produces is ascertained, the Government will then be in a position to determine how far it is necessary to maintain so many District Munsiff's Courts as we now have. I myself feel confident that very many of them will be no longer needed.

(Signed) W. A. MOREHEAD.

There is one point that it is perhaps well that I should mention; and that is, with reference to the character for integrity generally possessed by the District Munsiffs as a class. Some years ago I recorded it as my opinion that the District Moonsiffs of the Presidency were deserving of trust, and that as a body they were honest and intelligent. I have since then carefully watched them, and the result has been that the above opinion has been strengthened and confirmed. I therefore feel no hesitation in stating that, as respects ability and honesty, the District Munsiffs can safely be entrusted with the extended powers I have proposed.

(Signed) W. M.

No. 50. ORDER THEREON, 6th December 1862, No. 1,980.

His Excellency the Governor in Council concurs in the opinion expressed in the foregoing Minute as to the expediency of investing District Moonsiffs with jurisdiction similar to that exercised by Courts of Small Causes, in all suits for money or other personal property, the amount or value of which shall not exceed Rupees 50. He also considers that the Government should have the power of investing all Civil Judges, Subordinate Judges, and Principal Sudder Ameens with Small Cause Court jurisdiction up to Rupees 500.

2. The proposal to extend to Rupees 50 the final jurisdiction, which is at present exercised by the District Moonsiffs of this Presidency in money suits up to Rupees 20, has been more

amount

than once advocated by this Government, first in their letter of the 26th October 1854, submitting their opinion on a draft Act for the establishment of Small Cause Courts which had been introduced into the Legislative Council at Calcutta; and again in their letter of the 8th February 1859. In the latter communication it was recommended that Small Cause Court jurisdiction up to Rupees 500 should be given to every Zillah Judge. More recently these recommendations were repeated in the letter to the Government of India of the 2nd March 1861. Sir Barnes Peacock, the present Chief Justice of the High Court at Caclutta, is,* it would appear, a supporter of the measure so far as regards extending the final jurisdiction of the District Moonsiffs. Mr. J. B. Norton when consulted on the subject as Government Pleader in 1854† was also in favor of it, and Mr. Walter Elliot in 1859‡ recommended that their final jurisdiction should be extended to Rupees 100, at the same time expressing his concurrence in Mr. Morehead's opinion as to the general character for integrity enjoyed by the Moonsiff's of this Presidency. Mr. Morehead's opinion on this point is stated in his present Minute and more fully in one recorded by him in 1859.§ The late Sudder Court took a different view and objected to any extension of the final jurisdiction of this class of judicial Officers.

* See Report of Select Committee of the Legislative Council at Calcutta on the Bill for the establishment of Courts of Small Causes, dated the 23rd April 1859.

† See letter dated 13th June 1854, recorded in Consultation 1st August 1854.

‡ Extract Minutes Consultation, 1st February 1859.

§ Extract Minutes Consultation 25th January 1859.

3. Meanwhile the arrears on the files of the Mofussil Courts are enormously increasing. On the 1st January of this year the number of Original suits pending on the files of the Courts of this Presidency was 1,66,180, of which 1,40,146 were on the files of the District Munsiffs; and in the course of the correspondence which took place regarding the establishment of the new Small Cause Courts it was shown that in two Districts "it would take some two years and a half to decide the suits actually pending without taking into account those which might be afterwards instituted." The new Small Cause Courts are probably doing something towards the removal of this unsatisfactory state of things, but nothing in comparrison‖ with what would be effected by extending the summary jurisdiction of the District Moonsiffs, and conferring Small Cause Court powers on the higher Judicatories. And as Mr. Morehead observes, the abolition of the final jurisdiction up to Rupees 20 in the case of those Moonsiffs whose Courts are situated within the territorial jurisdiction of the new Small Cause Courts, is a serious inconvenience to suitors residing at a distance from the latter Courts.

‖ N.B.—In 1853 out of 60,623 suits disposed of, 50,940 suits were for the recovery of property valued at less than Rupees 100. The late returns furnished by the Sudder Court do not give any information on this point, but the proportion is probably much the same as it was in 1853.

4. In these Districts, as the law now stands, all persons having money debts to recover from 1 Rupee to 500 are compelled to resort to the Small Cause Court, the head quarter of which may be some 50 or 60 miles distant from their homes, while there may be a Moonsiff's Court at their doors, presided over by an Officer with whose decisions they would be perfectly well satisfied. The arrangement under which the Courts of Small Causes sit periodically at out-stations, is of course attended in many cases by serious delay and consequent inconvenience.

5. In regard to conferring Small Causes Court jurisdiction on Civil and Subordinate Judges and Principal Sudder Ameens, the Governor in Council thinks it will be preferable that the Government should take power to do this, rather than that the jurisdiction in question should be conferred on all these Courts by the Act. In most Districts it will be more convenient that only one of the principal Courts should act as a Small Cause Court.

6. A Bill to give effect to the measures now resolved on will be introduced into the Council for making Laws and Regulations at an early date.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Exd. T. McMootry.

is great, but apprehension has
[illegible] that Courts to Judges
have to hear. To obviate
this evil it is proposed that
Courts should be established
with Small Causes Jurisdiction
not exceeding Rs 500 in value
which would chiefly take money debts
Suits. Thereby keep above
Govt. the Functions of Courts
an Act be passed the D.-de-taille
Small Causes Jurisdiction up
to Rs 50 in value - in that Act
should also provide that

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Exd. T. McMootry.

the Govt. might where it have
but a small Civil Jurisdiction
in place -

It was adjusted that Sub-Courts
should not deviate to such small
Civil Causes many Jurisdictions
of the D.-de-taille but that was
left regulated to - as the
Circumstances would suit Govt
Courts of its own accord under
Sect 42 of the Civil Judicial
Council Act - Leaving to his
Discretion as it deems best
Suitable Measures Promptly
& every Districts made

[illegible] Court has demanded
[illegible] of carrying out the
measure I have in part
by passing
Court to [illegible] is another point
Court it is [illegible] to the Small Cause
Court which has also occa-
sioned to me as one Court would
[illegible] as capacity
his Residency - and one
would [illegible] Collector
Court of the Zillah [illegible]
[illegible] to accommodate the Court
It is to [illegible] the Court
[illegible] to invest - any Judicial
Officer

to discuss the functions
of a S. C. C. to the Civil and
Criminal Courts - with the
Zillah Court [illegible]
Court and Civil Court
[illegible] with [illegible]
Court at out-stations - Courts
of this Kind to be provided
only by Law - to deal with all
Suits under 50 Rs. [illegible]
[illegible] to [illegible] -
[illegible] to [illegible] at
[illegible] as the Collector
of any District - a Judge

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5

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Pros of Defendant
Judicial. 1862 Deptt.

Minute by the Honble
W. A. Morshead

9/26 3 Octr. 1862

No. 2165

Records his opinion as to the working of the recently established Small Cause Courts, and proposes the extension of the powers of the District Moonsiffs

49.

Memorandum for Orders.

Minute by the Honorable Mr Morehead dated 25 October 1862

In this Minute Mr Morehead proposes that an Act should be passed by the local legislature vesting the District Moonsiffs of this Presidency with a summary jurisdiction, similar to that exercised by the Courts of Small Causes, in suits for the recovery of debts up to Rs 50. He suggests that the Act should provide for the Govt extending this jurisdiction in the case of District Moonsiffs up to Rs 100 at its discretion, and for them investing all other judicial Officers in the provinces with Small Cause Court jurisdiction up to a certain amount

amount. In the latter case he does not in his Minute specify the amount; but in the course of conversation on the subject of his Minute he told me he would invest all Civil Judges, Subordinate Judges and Principal Sudder Ameens with Small Cause Court jurisdiction up to Rs 500.—

2. The proposal to extend to Rs 50 the final jurisdiction which is at present exercised by the District Moonsiffs of this Presidency in money suits up to Rs 20, has been more than once advocated by this Govt, first in their letter of the 26 October 1854 submitting their opinion on a Draft Act for the Establishment of Small Cause Courts which had been introduced into the Legislative Council at Calcutta; and again in their letter of the

the 8th February 1859. In the latter communication it was recommended that Small Cause Court jurisdiction up to Rs 500 should be given to every Zilla Judge. More recently these recommendations were repeated in the letter to the Govt of India of the 2d March 1861. Sir Barnes Peacock, the present Chief Justice of the High Court at Calcutta, is, it would appear, a supporter of the measure so far as regards extending the final jurisdiction of the District Moonsiffs. Mr J. B. Norton when consulted on the subject as Govt Pleader in 1854 was also in favor of it, and Mr Walter Elliot, in 1859# recommended that their final jurisdiction should be extended to Rs 100, at the same time expressing his concurrence in Mr Morehead's opinion as to the general character for integrity enjoyed by the Moonsiffs of this Presidency. Mr Morehead's opinion on this point is stated in his present Minute and more fully in one recorded by him in 1859.

Mr

* See Report of Select Committee of the Legislative Council at Calcutta on the Bill for the better Regulation of Courts of Small Causes dated the 23d April 1859

† See Letter dated 13th June 1854 recorded in Consultations 27th Sept 1854.

S. in C. 9th Feby 1859

¥ S. in C. 22d January 1859

Mr Strange takes a different view and objects to any extension of the final jurisdiction of this class of judicial Officers.

3. Meanwhile the arrears on the files of the Mofussil Courts are enormously increasing. On the 1st January of this year the number of original suits pending on the files of the Courts of this Presidency was 166,100 of which 110,446 were on the files of the District Moonsiffs - and in the course of the correspondence which took place regarding the establishment of the new Small Cause Courts it was shewn that in two Districts "it would take some two years & a half to decide the suits actually pending without taking into account those which might be afterwards instituted

N.B.

In 1853 out of 60,623 suits disposed of 50942 suits were for the recovery of property valued at less than Rs 100. The late returns furnished by the Sudder Court do not give any information on this point, but the proportion is probably much the same as it was in 1853.

+ Not only have the final jurisdiction been taken away but their jurisdiction altogether in all suits cognizable by the S.C. Courts

instituted." The new Small Cause Courts are probably doing something towards the removal of this unsatisfactory state of things, but nothing in comparison with what would be effected by extending the final jurisdiction of the District Moonsiffs, and conferring Small Cause Court powers on the higher Judicatories. And as Mr Morehead observes the abolition of the final jurisdiction up to Rupees 20 in the case of those Moonsiffs whose Courts are situated within the territorial jurisdiction of the new Small Cause Courts is a serious inconvenience to Suitors residing at a distance from the latter Courts.

I circulate herewith a bill which has been prepared by the Dy. Secretary for giving effect to Mr Morehead's recommendations. Its provisions are as follows

(1) To invest all District Moonsiffs

Moonsiffs with Small Cause Court jurisdiction in Suits "for Sums of Money or other personal property" up to Rs 50, with a proviso that it shall be competent to the Government further to extend the jurisdiction in the case of particular Officers to Rupees 100.

(b.) To invest every Judge of a Small Cause Court appointed under XLII of 1860, in addition to his special Small Cause jurisdiction, with the ordinary jurisdiction original and appellate of a Subordinate Judge

(c) To confer on every Civil Judge, Subordinate Judge, and Principal Sudder Ameen in Districts in which no small cause Court may have been created under Act XLII of 1860 the powers of a Small Cause Court of a character in all Suits cognizable by

+ It may be questioned whether under the present law Act XIV of 1864 S 1 & 2 will not confer the P. S. Ameen and Mag.e — whether any is wanted.

by such Courts up to Rs 500 — with a proviso that no suit which, with reference to the place of residence of the defendant and the amount sued for would fall within the final jurisdiction of a District Moonsiff, shall be cognizable by a higher Court. Power is also given, where there may be two or more Courts in the same District possessing the special jurisdiction conferred by Act XLII of 1860 to the Judge of the superior Court to transfer suits from one Court to another.

There are one or two points in the Bill which will require careful consideration in the Committee. Having regard to the adverse opinions entertained at Calcutta as regards to investing District Moonsiffs with final jurisdiction beyond Rs 50, I think it

of the Courts at the principal station should act as a Small Cause Court. That the Court should have the power of conferring the ordinary jurisdiction on the Small Cause Courts recently established is very desirable and in fact necessary; for should the present bill be passed a very large proportion of their present work will in future be done by the District Moonsiffs.

Should the Govt approve of these suggestions the bill might be modified accordingly or it might be left as it stands & the proposed alterations considered in Committee.

G R

18th November 62

How does it now?

I would modify

it now GP

yes HW

it is questionable whether it would be prudent to take power in the Bill for investing these Officers with the extended jurisdiction up to Rs 100 as suggested by Mr Morehead. This provision I apprehend, would materially add to the risk of the Governor General refusing his assent to the Bill if passed by the Madras Council; and it would hardly be desirable that the Govt. should exercise the power even if they should obtain it, for some years to come. Then in regard to investing all Small Cause Court Judges appointed under Act XXII of 1850 with the ordinary jurisdiction of a Subordinate Court, it would perhaps be preferable that the Govt should take power to do this rather than that the jurisdictions in question should be conferred on all three Courts by the Act. It might, in many districts be more convenient that only one

Yes - but see Mr Pycroft's remark in margin of preceding page (6)

GP

+ and all Civil Judges and Principal Sudder Amins with the special jurisdiction of a Small Cause Court

I think so - this means P S Amins that I should also put SC Juns out on R500 with an appeal - & then power to give it as in case of civil suits to Hs Majy's civil courts - which practically is all that can be needed

Yes We very probably

to S C jurisdiction in this I would go in for the S C jurisdiction at first - and let the larger measure lie over until it can be brought forward more fully

Bill
Appeal
Civil Court
Summary
Procedure

14

13
X

Judicial Deptt.

Proceedings of the Madras Govt.

Read the following Minute
by the Honble W. A. Morehead
(d.d. 25 October 1862)

Order thereon, 1st December 1862 No 1980

His Excellency the
Governor in Council concurs
in the opinion expressed in
the foregoing Minute as to
the expediency of investing
District Moonsiffs with juris-
-diction similar to that ex-
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or other personal property
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* Ex. Mins: Cons. 1st February 1859.

✓ Ex. Mins Cons. 22d. January 1859.

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Pro. Decr

Inclosed 1862 Depart.

No 1900.

Proceedings of Govt

D/6 Decr/62.

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