M.R.O. 1—38,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1437	Press Mis.
253-254 Dated	30-?- ~~M~~ 1864	

6/7

Not to be folded or roughly handled

Read again letter from the 1st Judge of the Madras Court of Small Causes, dated 10th May 1864, No. 23, and recorded in Proceedings, 16th May, No. 709.

No. 253. Read also the following letter from P. P. HUTCHINS, Esq., Acting Registrar of the High Court of Judicature at Madras, Appellate Side; to J. D. SIM, Esq., Secretary to Government, Fort Saint George, dated 6th July 1864, No. 50.

The Chief Justice and Judges of the High Court have carefully considered the views of the 1st Judge of the Madras Court of Small Causes, as expressed in his letter which accompanied the Chief Secretary's communication of the 16th of May last, No. 709, and they now direct me to state for the information of the Government, the particular provisions of the Code of Civil Procedure which should, in their opinion, be declared applicable to the Court of Small Causes.

2. It should be mentioned in the first place, that the Chief Justice and Judges do not concur with Mr. Steele in thinking that the power vested in Government by Section 15, Act XXVI of 1864 is limited to those provisions of the Civil Procedure Code which are consistent with Act IX of 1850. Section 205, for instance, Mr. Steele thinks, cannot be legally applied to the Small Cause Court, although he considers its application most desirable. Section 15, Act XXVI of 1864 enacts not only that any part or parts of the Procedure Code, but that the *whole* Code may be extended to a Court of Small Causes, provided only that no right of appeal or review shall in any case be given, and that thereupon the Procedure prescribed in the said Code, or in the part or parts thereof so extended, *shall be the Procedure followed in such Court.* The manifest meaning of these words is, that, excepting only the right of appeal and review, the Procedure Code may be substituted for the present procedure of the Small Cause Court either in whole or in part.

3. But although there seems no room to doubt the power of Government to extend Section 205 or any other Section of the Code to the Small Cause Court, the expediency of such extension is open to question. A majority of the Judges are decidedly opposed to that Court being vested with the power of attaching immoveable property. It is at all events thought inadvisable that this should be effected at present by a declaration under Section 15. The question how far the provisions relating to executions generally should be applied, will doubtless be considered when the revised draft Code of Procedure comes under discussion.

4. The other Sections of the Code to which Mr. Steele adverts are placed in two groups, the one relating to the filing of written statements and production of documents, the other to the appearance of parties and appointment of Commissions. The Judges doubt the expediency of introducing the practice of settling issues and filing written statements. The still simpler Procedure of Act IX of 1850 seems better suited to the class of cases with which the Small Cause Court has ordinarily to deal, and with complex questions of account, set off, and the like, the power of adjournment already possessed, affords every requisite security against surprise. Any alteration of the Procedure in this respect should be left for consideration when, as before observed, the draft Code come under discussion. Holding this opinion, the Judges are unable to recommend the adoption of Sections 24, 120, 122, 123, 124, 128 and 129, as proposed in Mr. Steele's 5th paragraph.

which their opinion

5. The Sections relating to the appearance of parties and the examination of absent witnesses appear unobjectionable. These are enumerated in the 4th paragraph, where mention is also made of Sections 35, 180, 181 and 182. Section 35 cannot properly be adopted without Section 97 to which it expressly refers, and the application of the latter Section would be mischievous. Sections 180 and 181 authorize the appointment of Commissions for local investigations and the adjustment of accounts. It is observed that in the proposed new Code of Civil Procedure the clauses relating to local investigation are marked as applicable to Small Cause Courts, but not those relating to the settlement of accounts. At present the Judges are not disposed to advise the adoption of either of these Sections. Section 182 may properly be made applicable so far as it relates to Commissions for taking evidence. Among the Sections, therefore, which are enumerated in the 4th paragraph of Mr. Steele's letter, the Judges recommend the adoption of Sections 16 to 20, 103, 115, 175, 177, 178, and 179, and also of 182 with the limitation above mentioned.

6. There are, moreover, some other Sections, not adverted to by Mr. Steele, which, in the opinion of the Judges, may with advantage be declared applicable. These are Sections 50 and 51, which are connected with Section 17 already noticed, and Sections 99 to 106, relating to the death, marriage or insolvency of any of the parties to a suit.

No. 254. ORDER THEREON, 30th September 1864, No. 1439.

The Governor in Council will defer disposing of the papers above recorded until he has before him the views of the High Court and of the subordinate judicial functionaries on the revised Code of Civil Procedure, on which their opinions have been called for, and in which Sections, which it is proposed to make applicable to Courts of Small Causes, are especially noted.

(True Extract.)

Secretary to Government.

To the Honorable the Judges of the High Court.

Exd. T. Cartledge,

Judl. Department.

No. 1352

From

The Registrar of the High Court of Judicature at Madras. Appellate Side

Dated 6th July 1864.

For Orders.

The revised Civil Procedure Code has recently been sent by the Govt of India for the opinion of this Court of the High Court and of the subordinate Judicial authorities - In that Code the Sections which it is proposed to make applicable to Small Cause Courts are to be [illegible]

Referring to the above Proceedings

above recorded until

he has before him the

papers may be got, be considered by first when they have been before the Courts of the High Court's Jurisdiction. - Original Jurisdiction of the Original C.P. Code. - Is not to be supposed that under S XV Act XXVI - 1862 the Govt would abrogate the application of any part of the Original C.P. Code & Small Cause Courts -

I could see why the Execution of judgments of the S.C. Court should not be effected by the original property and both of which are now vested

in that Court is superseded by the new C.P. Code - See Sect CCXVIII of the new Code corresponding with Sect CCV of the repealed one

11/7/64 JP

above recorded until

To the

Exd. T

Judicial Department.

P. 140 / 16 5 69

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PROCEEDINGS of the MADRAS GOVERNMENT.

Read again letter from the 1st Judge of the Madras Court of Small Causes dt 10 May 1864. No 23. & recorded in Pub. 18th June. No. 709.
Read also the following letter from the Acting Registrar High Court, A. S.

1/16 July 1864. No 501

Order thereon. 30th September 1864 v
No. 1439.

The Governor in Council will defer disposing of the papers above recorded until he has before him the views of the High Court and of the subordinate judicial functionaries on the revised Code of Civil Procedure on which their opinions have

have been called for
and which Sections
which it is proposed
to make applicable to
Courts of Small Causes
are especially noted.

6, To the Hon'ble the Judges } Delhi 5/10
of the High Court }
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Secret Legal 1864. Department.

No. 1435.

PROCEEDINGS *of* GOVERNMENT.

Dated 30th September 1864

Read 11th Oct 64

253 & 254

Rec'd 5th/64