

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 709

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140.141

Dated 16 - 5 - 1864

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*Proceedings of the Madras Government, Judicial Department,
16th May 1861.*

No. 140. Read the following letter from L. U. STEELE, Esq., First Judge of the Madras Court of Small Causes; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras, 10th May 1864, No. 23.

In reply to the communication of Government, dated the 19th ultimo, in the Judicial Department, No. 552, requesting the Judges of the Madras Court of Small Causes to state their views as to what portions of the Code of Civil Procedure ought to be applied as the Procedure of the Court of Small Causes on the Act enlarging its jurisdiction coming into force, I have the honor to offer the following suggestions.

2. In my letter to Government, intimating my approval of the proposal of extending the jurisdiction of the Madras Court of Small Causes, I suggested the expediency of applying the Code of Civil Procedure in a modified way to the Court, in case of an increase of the limit of the jurisdiction; but I did so on grounds which from the especial provisions of the new Act itself, and from other reasons to which I will immediately advert cannot now apply. I was of opinion that the two objects to be attained by the application of the Code would be: first, to enable the Small Cause Court to try cases with as little expense to the suitors and with as satisfactory results as are attendant on those cases that are tried in the High Court at present, though within the jurisdiction of the Small Cause Court; and, secondly, that the cases to which the new Act would apply should be tried in reference to a Procedure better calculated for the elucidation of truth and the due administration of justice than what would be afforded by adhering to and applying the present system to the enlarged jurisdiction. One of these objects cannot, for the present at least, be secured at all, and the other only to a very limited extent. I pointed out in my letter that a certain class of cases, such as that where there were no real defences, could be decided in the High Court at a less expense to the suitors than what would attend the institution of cases of the same class in the Small Cause Court. The reason of this was that a final decision could be obtained in those cases in the High Court upon the first hearing, and the amount of fees only necessary to be expended for that purpose would be almost inconsiderable when compared with the expense of a second hearing before the same tribunal, and less than the institution fees of the Small Cause Court in cases of the same amounts. Now the application of the Code of Civil Procedure to the Small Cause Court cannot effect in the least this state of things by reason of the provisions of the Act extending the jurisdiction of the Court. To this Act is annexed a Table of fees which must be adhered to in all cases irrespective of the nature of the suits, the time occupied in their trial, the defences set up, or even if there are no defences at all. It comes then to this that the High Court is enabled to hold out greater inducements than the Small Cause Court in reference to the class of cases under consideration. The new Table fixes the amount of the fees at as low a rate as is consistent with the nature of the litigation, the efficient working of the Court, and its expenses considered as a State establishment. My object in noticing these facts is to show that, whereas I proposed the application of the Code as one way of remedying the matters to which I have referred, its application now cannot accomplish the result. However, as I mentioned in my former letter such a state of things is so defective as to render it necessary that a remedy should be applied. I understand now that this end is likely to be attained by provisions intended to be embodied in a revised Code which is to be presented to the Supreme Legislature. When this revised Code shall have become law, the Small Cause Court will be then, in this respect, on a satisfactory footing; and the fact of not being able to apply at present the Code of Civil Procedure to meet this defect, is therefore only a matter of temporary consideration.

3. The application of parts of the Code for the purpose of having the cases, to which the new Act gives jurisdiction, tried by a process better calculated to ensure satisfactory results, is a matter of some difficulty, and requires very serious consideration. The chief difficulty consists in this, under the new Act a power is given to the Local Governments to apply the whole or part or parts of the Code to the Courts of Small Causes. Now I conceive that means, and can mean only, that its application shall be only consistent with the provisions of the Small Cause Court Act itself. If any inconsistency should exist in the provisions of both Acts, those of the Small Cause Court, I am of opinion, should prevail. The provisions of both Acts differ materially, not alone

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in reference to the parts of the Code relating to appeals and reviews of judgment, but also as to the institution and trial of original suits; and it is only in regard to the latter that the Code could be, as a matter of course, applied at all. Then comes the question, can any of the provisions which could be applied, be applied with advantage. I am inclined to think that, regard being had only to the evolving of truth and the better trial of cases, only a few can be made available. There are at the same time various provisions in the Code which, if they could be applied and I think they cannot because of the manifest differences in the two Acts, would conduce to the better administration of justice in the Court. Let me give an illustration. Under the Code all suits are commenced by filing a Plaint. Then the defendant is summoned, either for the settlement of issues or for the final disposal of the suit. At the first hearing written statements are received upon which either issues are framed, or the suit is then disposed of. It will be perceived that the great advantage of these proceedings is putting the Court and the respective parties to the suit in possession before-hand of the leading points of the questions at which the litigants are at issue, and to enable the Court to frame proper issues for the trial of those questions. Now if this system could be applied to the Small Cause Court as to those cases hitherto exclusively within the jurisdiction of the High Court it would be most desirable; but I am of opinion that that cannot be done by reason of some of the provisions of the Small Cause Court Act. These provisions require that all suits under the Act shall be commenced by the issue of a summons, in which is fixed a day for trial. On the day named in the summons the defendant appears in Court and is called on to answer the suit brought against him, and on his answering the case is to be decided in a summary way without any formal joinder of issue. As these are the specific provisions of the Legislature, I apprehend they must be adhered to notwithstanding a general power is given to apply the Code of Civil Procedure. I, however, propose that some Sections of the Code which I will enumerate presently be applied, as tending to afford as far as possible a satisfactory trial in cases coming under the operation of the recent Act. These Sections, I conceive, are not inconsistent with the Act itself and may accordingly be so applied.

4. There is another consideration to be regarded in reference to applying parts of the Code, besides the one arising from the increase of the jurisdiction. I refer to the general jurisdiction of the Court itself which has been augmented by a provision in the new Act. The altered jurisdiction would require in my opinion additional machinery to have it effectively carried out. I think the Sections of the Code which I enumerate below would provide this additional machinery. Under the old Act the jurisdiction of the Court depended on, and was wholly governed by, the fact of the defendant in the suit dwelling or carrying on business, or working for gain within the District of the Court. By the new Act the fact of the cause of action arising within the local limits of the Court, gives jurisdiction. The result is that whereas many cases that were hitherto excluded from the cognizance of the Court will in future be brought within its operation; and in those cases the parties to the suit may not be resident in Madras either at the time of the cause of action arising, or at the time of the institution of the suit. The old Act provides no machinery for the purpose of carrying out a jurisdiction of the kind. It is silent on the subject. Now it is evident that powers should be given for the appointment of recognized and responsible agents, for obtaining security for costs for staying proceedings, pending dispute to legal representation and to the issuing commissions for the examination of absent suitors and their witnesses. I therefore propose that Sections 16, 17, 18, 19, 20, 35, 103, 115, 175, 177, 178, 179, 180, 181, and 182, should be applied. I think these provisions by a judicious application of them in practice contain nearly all the powers necessary to carry out the enlarged jurisdiction, and to ensure a substantial administration of justice.

5. As the parts of the Code providing for the commencement of the suit by Plaint and the framing of issues cannot, as I conceive, be applied, I would propose that on the day of hearing fixed in the summons in all cases in which the new Act gives jurisdiction, written statements may be tendered and filed in the Court, and if the cases to which they refer should upon

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their being read, appear complicated or involving many questions of law, the Court may in its discretion direct an adjournment. Power is already given to the Judges in the Small Cause Court Act to adjourn a case at any stage it thinks proper. By this means the parties to the suit and the Court would have an opportunity of becoming informed, to some extent before-hand, of the general matters in dispute. If this were done there would be less ground for complaint on account of surprise or of any of the parties being unprepared to meet the case before the Court. I would also suggest that all documents intended to be used at the hearing should be produced, and where necessary with Court's translations, at the time the written statements are tendered. To carry out these objects, I propose that Sections 24, 120, 122, 123, 124, 128, and 129 be adopted and left to be applied in the discretion of the Judges.

6. There is another matter which I consider it right to bring to the notice of His Excellency the Governor in Council. Under the Small Cause Court Act execution of the judgments of the Courts as to property can be only had against goods and chattles, whereas the High Court has a power of seizing land and immoveable property. Now that the Small Cause Court will have jurisdiction in cases that hitherto were exclusively within the jurisdiction of the higher tribunal, it will be a great hardship to execution creditors to be deprived, as they must be in many cases of the fruits of their judgments by not being able to attach immoveable property; and this hardship will be felt to a greater extent in all cases from the time the new Act takes effect, by reason of the alteration of the general jurisdiction of the Court than it was felt heretofore. For as the cause of action arising within the District of the Court gives jurisdiction, the parties to the suit, as I before mentioned, may be resident out of the jurisdiction, but may have immoveable property, and only such property within the District of the Court, but which cannot be touched by a judgment creditor. In many cases of this kind, I am inclined to think that suitors would prefer resorting to the High Court, though at the risk of losing their costs, if the defect is not remedied. The only remedy that could be applied would be, in my opinion, a Legislative provision. No doubt if Section 205 of the Procedure Code could be applied it would meet the difficulty; but I am not prepared to propose its application, because I think it could not be done legally, being inconsistent with the provisions of the Small Cause Court Act.

7. I have given the matter referred to me by Government my best consideration. I have been guided in doing so by the principle that the existing state of things ought to be altered as little as possible as the Court has been of late, considering the many difficulties with which it has to contend, especially since the amalgamation of the late Supreme and Sudder Courts, working satisfactorily. I have only proposed alterations in the system in force in those cases which almost necessarily require alteration from the extension and augmentation of the jurisdiction.

8. In conclusion, I suggest that the before-mentioned Sections of the Code of Civil Procedure, namely, Nos. 16, 17, 18, 19, 20, 24, 35, 103, 115, 120, 122, 123, 124, 128, 129, 175, 177, 178, 179, 180, 181 and 182, shall be declared applicable.

9. I may add that I have considered the subject in communication with Mr. Cower, the Second Judge, and he concurs in my views.

No. 141. To the Honorable Sir C. H. SCOTLAND, Knight, Chief Justice of Her Majesty's High Court of Judicature, Madras, dated Fort Saint George, 16th May 1864, No. 709.

With reference to Mr. Chamier's letter of the 12th ultimo, No. 28, I am directed to send you the annexed copy of a letter from the First Judge of the Small Cause Court, dated 10th May 1864, No. 23, on the subject of the extension to that Court of parts of the Code of Civil Procedure; and to request that the Governor in Council may now be favored with your own opinion and that of your Honorable Colleagues, with reference to my letter of the 8th ultimo, No. 494.

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

Exd. J. Tulloch.

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N^o 709

The Honble Sir Colley Harman Scotland, K^t.

Chief Justice of
H. M. High Court of Judicature
Madras.

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my letter of the 3rd Ult. N^o 494.

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Lucius Robt. Separk

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to the people

the United States of America

Highly respected

Madam

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