

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	<i>11</i>	Presse Mis.
<i>197-118</i> Dated	<i>26-11</i>	19 <i>11</i>

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
25th March 1865.*

No. 147. Read the following letter from A. P. HOWELL, Esq., Under Secretary to the Government of India, to the Honorable A. J. ARBUTHNOT, Chief Secretary to the Government of East India Company, dated from William, the 3rd March 1865, No. 2013.

Home Department
Judicial.

I am directed to transmit, for the information,

From Government of Bombay, dated 22nd February 1865.
From the Advocate General, Calcutta, dated 22nd February 1865.

accompanying copy
noted on the margin, regarding the jurisdiction of Courts of Small Causes
Military Offices

From the Honorable H. L. ANDERSON, Chief Secretary to the Government of Bombay
- E. C. BAYLEY, Esq., Secretary to the Government of India, dated 1st March 1864, No. 3227.

I am directed by the Honorable the Governor in Council to forward, for the consideration of the Government of India, copies of the correspondence quoted in the margin, relative to the jurisdiction of the Bombay Court of Small Causes over Military Offices
Mofussil

Transfer from the Military Dept., dated 30th April 1863.
Do. do. do. dated 7th July 1863.
Letter from the Government Solicitor, dated 3rd August 1864, No. 317, with enclosure.
Letter from the Adjutant General of the Army, dated 15th September 1864, No. 1723, with enclosures.

2. The question involved is one of considerable importance, and as the opinion of the Judges of the Small Cause Court is at variance, on the main point, with that held by the Advocate General, His Excellency in Council is induced to forward the correspondence to the Government of India, in order that the opinion of the Advocate General of Bengal may be taken, and that it may be considered whether legislation is required.

From Colonel P. K. SKINNER, Judge Advocate General of the Army, to Colonel W. F. MARRIOTT, Secretary to the Government of Bombay, in the Military Department; dated Mahableshwur, 22nd April 1863, No. 169.

The Commander-in-Chief has directed me to request that you will be so good as to submit the accompanying papers to His Excellency the Honorable the Governor in Council. They refer to a decree, passed in March last, by the Court of Small Causes in Bombay, against Captain LaTouche, of the Bombay Staff Corps, lately quartered at Dhoolia, who, by his Counsel, applied for a new trial, on the ground that the Court had not jurisdiction in the matter.

2. According to the report of the case in the Newspapers, an extract of which forms one of the accompanying papers, the judgment delivered has decided that the jurisdiction of the Court of Small Causes in Bombay extends to all Military Cantonments throughout the Presidency, for such is clearly the result of the judgment; and the grounds on which this decision is based are the following, namely:—

That the jurisdiction of the Court over the defendant, and the class of persons described in the Act of Parliament,* is not bound by that Act; for that Act does not take away the jurisdiction which the Court, as then constituted, possessed, and Act IX of 1850, as pointed out by the plaintiff's Advocate, extends the jurisdiction of the old Court of Requests over all persons described in Section 28, with the exception of persons exempted by Section 35; and as the persons mentioned in the Act of Parliament are among the exemptions, they and the defendant among them must be held to be within jurisdiction of this Court.

* (20 and 21, Victoria Chapter 66).

3. With regard to the jurisdiction of the Court of Small Causes not being bound by the Act of Parliament (20 and 21 Victoria, Chapter 66), it was argued by the Counsel for the plaintiff—"that the Act which gives jurisdiction to the Court of Small Causes in Bombay was passed

25th March 1865.

on the 21st of January last, decided that Section 66 of 12 and 43 Victoria, Chapter 23, (re-enacted in Section 67 of Act 20 and 21 Victoria, Chapter 66) is still in force. This decision was given in a case where Cowasjee Nowrosjee was plaintiff, and the Reverend Mr. Ross, defendant; when it was decided that Mr. Ross, being a resident within the limits of the Military Cantonment of Poona, was not amenable to the jurisdiction of the Court of Small Causes, with reference to the cause of action which was under the value of Rupees 400.

10. The Law laid down in the case under consideration, with respect to the jurisdiction of the Court of Small Causes in Bombay over Military Cantonments in the Mofussil, appears to be so opposed to the Law that has hitherto prevailed in respect of Military Courts of Requests, that an authoritative decision on this point is urgently required.

The 30th April 1864.

Transferred to the Judicial Department, with a decision of this point by higher Judicial authority.

(Signed) W. F. MARRIOTT,

From Colonel P. K. SKINNER, Judge Advocate General of the Army, to Colonel W. F. MARRIOTT, Secretary to the Government of Bombay, in the Military Department, No. 271, dated Poona, the 30th June 1863.

With reference to my letter, No. 169, of the 22nd April 1863, respecting the jurisdiction claimed by the Court of Small Causes in Bombay, within Military Cantonments in the Mofussil, I have the honor to forward, by desire of His Excellency the Commander-in-Chief, the annexed extract from the Mutiny Act of this year (1863), from which it will be seen that the provision relating to Military Courts of Requests has been re-enacted for the whole of Her Majesty's European Army serving in India.

I beg respectfully to state that no reply has yet been received to my letter, No. 169, of the 22nd of April last.

Extract from Section 103 of the Mutiny Act, 1863.

"In all places in India where any body of Her Majesty's Forces may be serving, situate beyond the jurisdiction of any Courts of Requests or other Courts for enforcing small demands, established at the cities of Calcutta, Madras and Bombay, respectively, actions of debt, and all personal actions against Officers, or against persons licensed to act as sutlers, or other persons amenable to the provisions of this Act, not being Soldiers, shall be cognizable before a Court of Requests composed of Military Officers, and not elsewhere, provided the value in question shall not exceed Rupees 400, and that the defendant was a person of the above description when the cause of action arose, which Court the Commanding Officer of any Camp, Garrison, or Cantonment, is hereby authorized and empowered to convene."

(True Extract).

(Signed) P. K. SKINNER, Colonel,
Advocate Genl. of the Army.

The 7th April.

Referred to the Judicial Department, the previous letter having been so referred on 30th April.

(Signed) W. F. MARRIOTT, Colonel,
Secy. to the Govt. of India, Mily Dept.

From J. P. BICKERSTETH, Esq., Solicitor to Government, to the Honorable H. L. ANDERSON, Chief Secretary to the Government of Bombay; No. 317, dated Bombay, the 3rd August 1864.

I have the honor to return the papers forwarded with the Under Secretary's letter, No. 1321, dated 18th May 1863, and to annex a copy of the Opinion I have obtained from the Advocate General, as to the jurisdiction of the Bombay Court of Small Causes over Military Officers.

5. The jurisdiction given by Act IX of 1850 to the Court of Small Causes in Bombay, is set down in Section 5—"The jurisdiction of the several Courts, holden under this Act, shall extend over the whole district now within the jurisdiction thereof respectively, and over such further districts as may, from time to time, be declared by proclamation of the Governor in Council, provided that no proclamation for extending the district of any of the said Courts be made without the previous sanction of the Governor General of India in Council."

6. Up to the period of passing Act IX of 1850, the Court of Requests in Bombay had no jurisdiction in Military Cantonments in the Mofussil, and Act IX of 1850 contemplates no more extended jurisdiction to the Court of Small Causes than the Court of Requests possessed, unless, by the previous sanction of the Governor General of India in Council, the jurisdiction of the Court were extended by proclamation of the Governor in Council. But no such proclamation has yet extended the jurisdiction of the Court of Small Causes in Bombay to Military Cantonments in the Mofussil.

7. It is argued, moreover, by the plaintiff's Counsel that the words which give jurisdiction to the Court of Small Causes are contained in the 28th Section of Act IX of 1850, "and that nothing can be more comprehensive than the words 'all persons,' who answer to the definition which follow them." The following is the Section referred to, and it seems to be inapplicable to the defendant, who does not appear to have been either residing within the district of the Court, or carrying on business there when the cause of action arose:—Section 28 declares that—"All persons shall be deemed within the jurisdiction of the Court, who dwell or carry on their business or work for gain within the district of the Court at the time of bringing the action, or who did so dwell, or carry on their business or work, therein, at the time when the cause of action arose, or within six months before the time of bringing the action for causes of action which arose within the same time."

8. Following the argument of the plaintiff's Counsel, the judgment delivered by the Court sets forth that the jurisdiction of the Court of Small Causes in Bombay extends "over all persons described in Section 28, with the exception of the persons exempted by Section 35." But it will be observed, by referring to Section 35, that the persons exempted are persons generally resident at the place where the Court of Small Causes is held; and who, if not specially exempted, would undoubtedly be amenable to the jurisdiction of the Court. The persons exempted are—"The Governor General and Members of the Supreme Council of India; the Governor and Members of Council of the Presidencies of Fort William in Bengal, Fort Saint George, and Bombay, respectively; and the Chief Justices and Judges of the several Supreme Courts established therein by Royal Charter." But whence the authority in this Section for the Court of Small Causes in Bombay to establish jurisdiction over Military Cantonments in the Mofussil?

9. It appears to be conclusive against such jurisdiction,—*Firstly*, that it has never been extended by Government Proclamation in the Presidency to the Military Cantonments in the Mofussil; and *Secondly*, that the High Court of Judicature has, by a Precept (copy of which is now before me) read and recorded in the Small Cause Court, Poona,

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determine whether it is physically possible or not for the party to comply with such summons or process, nor do I think that the Zillah Judge acted otherwise than rightly in executing the decree of the Small Cause Court. I think the decree is final and conclusive between the parties, the Rule *Nisi* for a new trial having been discharged.

(Signed) A. J. LEWIS,

Advocate General of Bombay.

From Lieutenant Colonel T. STOUR, Adjutant General of the Army, to the Advocate General of the Government of Bombay, Judicial Department, No. 1723, dated Poona, the 15th September 1864.

The Commander-in-Chief requests that the enclosed papers may be laid before the Honorable the Governor in Council in the Judicial Department.

2. According to the opinion of the Honorable the Advocate General, it would seem that the Small Cause Court of Bombay has exceeded its jurisdiction in attempting to deal with Military Officers, who, in the exercise of their duty, are not resident in Bombay.

3. When its first decision on this matter was appealed against for want of jurisdiction, satisfaction was denied to the Military Officer on two grounds,—*firstly*, because he had not originally pleaded the want of jurisdiction of the Court; and *secondly*, because, in the opinion of the full Court, the Small Cause Court of Bombay had jurisdiction.

4. It thus appears that, as regards the latter plea, the Small Cause Court is opposed to the Honorable the Advocate General.

5. With respect to the Officer who was thus affected by the decision, and his not having appeared in the Small Cause Court to plead non-jurisdiction, it is sufficient to say that he was in the exercise of his duty many hundred miles from Bombay, and it is unreasonable to suppose that he could so appear, he being protected by Acts of Parliament.

6. But the question is not whether the Officer was right or wrong in not appearing to plead, but whether a Judge of the Small Cause Court has the jurisdiction which is denied by the Advocate General.

"In all places where the said Company's Forces now are, or may be employed, or where any body of Her Majesty's Forces may be serving with the Forces of the said Company, situate beyond the jurisdiction of any Court of Requests or other Courts for enforcing small demands established at the Cities of Calcutta, Madras, and Bombay, respectively, actions of debts and all personal actions against Officers, or against persons licensed to act as sutlers, or other persons amenable to the provisions of this Act, not being soldiers, shall be cognizable before a Court of Requests composed of Military Officers, and not elsewhere, provided the value in question shall not exceed four hundred Company's Rupees, and that the defendant was a person of the above description when the cause of action arose."

7. Sir William Mansfield remarks that it would seem that unless measures are taken by Government, through the medium of the Judges of the High Court, a precedent will have been established by the Small Cause Court of Bombay which is subversive of the rule laid down in Act 20 and 21 Victoria, Chapter 66, Section 67, (as per margin), and the Military Act, Section 103 for 1863 (not yet promulgated).

8. It appears to His Excellency in vain to wait for another instance. The illegality, as declared by the Honorable the Advocate General, has been committed by the Small Cause Court, and we shall be no further advanced, if the illegality again take place, and if we again seek the opinion of the Advocate General.

From the Major General Commanding the Poona Division of the Army, to the Judge Advocate General of the Army,—No. 139, dated Mahableshwar, the 18th April 1863.

I do myself the honor to lay before you correspondence from the Officer Commanding Poona Horse, regarding a decree passed by the Court of Small Causes, Bombay, in March last, against Captain La Touche, of the Staff Corps, lately quartered at Dhoolia, but now at Galna, and to request you will do me the favor to give me your opinion as to whether the provisions of Section 66 of 12 and 13 Victoria, Chapter 43, or 20 and 21 Victoria, Chapter 66, Section 67, are still in force, as regards residents of Military Cantonments.

Captain La Touche has appended the facts of his case as published in the *Bombay Times* Newspaper, from which it would appear that Officers are amenable to the Civil Courts. However,

the 5th Section. As no objection, however, was raised to the jurisdiction of the Small Cause Court on the above Sections, I suppose the facts were such as did not allow of such objection being raised.

3. On the application in the Small Cause Court, for a new trial in this case, it was stated on behalf of the plaintiff, that the Small Cause Court was excluded from all jurisdiction, by reason of the provisions contained in the 67th Section of Act 20 and 21 Victoria, Chapter 66. That Section (the 67th) enacts as follows:—"In all places where the said Company's Forces now are or may be employed, or where any body of Her Majesty's Forces may be serving with Forces of the said Company, situate beyond the jurisdiction of any Court of Requests, or other Courts for enforcing small demands, established at the Cities of Calcutta, Madras, and Bombay, respectively, actions of debts and all personal actions against Officers, or against persons licensed to act as sutlers, or other persons amenable to the provisions of this Act, not being soldiers, shall be cognizable before a Court of Requests composed of Military Officers and not elsewhere, provided the value in question shall not exceed Company's Rupees 400, and that the defendant was a person of the above description when the cause of action arose."

4. The Judge of the Small Cause Court was of opinion that the 67th Section was not a bar to the Small Cause Court entertaining jurisdiction; whether that decision was correct or not appears to me to depend on the fact whether, when the cause of action arose, Captain La Touche was a person of the description mentioned in the above quoted Section. So far as I can collect from the printed Statement, it appears to me that at the time the action was brought, and when the cause of action arose, Captain La Touche was attached to the 1st Regiment of Poona Horse stationed at Dhoolia, in the Province of Khandeish, and was employed or serving in a place beyond the jurisdiction of the Court of Requests, or other Courts for enforcing small demands established in Bombay, and that the demand for which he was sued was below the value of Rupees 400. I think, therefore, he was entitled to the protection of the 67th Section, and could only be sued before a Court of Requests composed of Military Officers, and not elsewhere.

5. Captain La Touche was evidently wrong in not appearing to the summons issued against him by the Small Cause Court, and pleading his exemption from the jurisdiction under the 67th Section;—an order of a Court of Justice cannot be treated as a nullity. A party must appear to state why he objects to it, and I think the ex-parte verdict given against Captain La Touche, in consequence of his not appearing to the summons, was right; but I think the Rule *Nisi* for a new trial ought not to have been discharged, but made absolute.

6. With reference to the 3rd paragraph of the Officiating Under Secretary's Memorandum, dated 18th May 1863, I would observe that when any summons or process of the Small Court requires to be served out of the District, the 29th Section makes it imperative on the Magistrate or Judge, to whom such summons or process is exhibited, to endorse it; and that it is not for him to

2. I understand from Captain LaTouche that he received a summons, on the 2nd February, to be present on the 12th February in Bombay. Captain LaTouche could not have been present in that time, and he has under his command (18) eighteen out-posts in Khandeish, and is the only European Officer of the Poona Horse there.

3. I understand from Captain LaTouche that the Small Cause Court have ordered execution, through the Judge's Office at Dhoolia, to the effect that, if Captain LaTouche did not at once pay up, he was to be seized and imprisoned for (150) one hundred and fifty days. Under these circumstances, he is forced to pay, though he still conceives the Court have no jurisdiction.

4. Should this Court have power to summons an Officer from Dhoolia, I presume they have equal power as regards any other Station. The inconvenience likely to be suffered, both by the Public Service and Officers themselves, if this power extends to Jacobabad, Nusseerabad, or other distant Stations, is likely to be very great.

From Captain C. D. U. LATOUCHE, Poona Horse, to the Adjutant, Poona Horse, Seroor,—
No. 26, dated Camp Galna, the 6th April 1863.

I have the honor to request you will do me the favor of submitting the following circumstance to the Commandant, with the request the same may be forwarded to the Major General, and the decision of superior authority obtained in the matter.

2. A Bombay tradesman, Cowasjee Ardaseer Furdoonjee, instituted a suit against me in the Bombay Court of Small Causes; and on the 3rd February 1863, I was, at Dhoolia; served with a summons to attend before the Court. In returning it, I pointed out, on the back, that, being a Military Officer and on Military employ, and serving out of the jurisdiction of that Court, I was not amenable to it; quoting, in support of the above, Acts 12 and 13 Victoria, Chapter 43.

3. Under the impression that the plea set forward by me would be allowed, and the case thrown out of Court, I took no steps to defend the action, which I should have done, had I been on the spot, or the case been brought before a Military Court of Requests.

4. I, however, subsequently learnt that the case had been decided against me, and directed Messrs. Faithful and Keir to apply to have the decision set aside, on the grounds that I was not amenable to the jurisdiction of the Court. From the accompanying extract from the *Times of India*, of the 17th ultimo, it will be perceived that the Court over-ruled the above, on the grounds

• Act IX of 1850.

that the Act* constituting their Court was subsequent to the Act quoted by me.

5. I am, however, still of opinion that, as a Military Officer, I am not amenable to the jurisdiction of the Court of Small Causes, and in this I am upheld by a decision of the High Court, in a case† which appears analogous to mine. In this the High Court ruled that Section 66 of Acts 12 and 13 Victoria, Chapter———“is still in force.”

† Small Cause Court, Poona, 21st January 1860 :—
Plaintiff Cowasjee Nowrajee versus defendant, Reverend M.
M. Cline,—Rupees 240.

6. Again, although the Act constituting the Court of Small Causes is subsequent to the Act quoted by me, yet as Victoria Chapter 43 was re-published in separate General Orders, only so late as 1857, I considered the Act was still in force. I would also submit that Section 6 of Act XLII of 1860 is as much applicable to the Bombay Court of Small Causes as to those in the Mofussil,—all Courts of Small Causes being now subordinate to the High Court, the ruling of this Section appears applicable to the present case.

7. By the decision arrived at in the present instance by the Judges of the Bombay Court of Small Causes, an Officer is liable to be summoned to Bombay, at the pleasure of any unprincipled tradesmen, from even the most distant part of the Presidency, thereby obliging him to incur either the expense of a long journey, or legal assistance; or, on the other hand, allowing the case to be given against him. In the present instance, it bears most unjustly on myself; and I, therefore, solicit the assistance of higher authority to have the present ruling of the Court of Small Causes set aside.

IN THE BOMBAY COURT OF SMALL CAUSES.—No. 1813 of 1864.

COWASJEE ARDASEER FURDOONJEE Plaintiff, versus, C. D. U. LATOUCHE Defendant.

I do hereby certify that satisfaction of the judgment passed by the Court in the above Cause on the fourteenth day of February 1863, and of an order for further costs given on the tenth day of March instant, has not been obtained by execution otherwise within the jurisdiction of the said Court.

Given under the Seal of this Court this twelfth day of March 1863.

(Signed) J. C. V. JOHNSON,

Acting Clerk of the Court.

Military Department,—No. 2252, dated Bombay, the 19th August 1864.

Letter from the Judge Advocate General of the Army, No. 169, dated 22nd April 1863, submits correspondence relative to a decree passed by the Court of Small Causes, Bombay, against Captain LaTouche, of the Bombay Staff Corps, while stationed at Dhoolia, and solicits decision on the question of jurisdiction of that Court over Military Cantonments in the Mofussil.

Letter from the Government Solicitor, No. 317, dated 3rd August 1864,—forwards Opinion by the Advocate General on the question raised.

RESOLUTION.—Copy of the Opinion to be sent to the Judge Advocate General.

(Signed) W. F. MARRIOTT, Lieut.-Col.

Secy. to Govt. of Bombay, Mily. Dept.

Court of Small Causes.—Tuesday the 10th March 1863.

Before a full Court.

COWASJEE ARDASEER FURDOONJEE, versus, C. D. U. LATOUCHE.

Important decision as to jurisdiction.

Mr. G. S. Judge for plaintiff; Mr. Campbell, Mr. Keir, for defendant.

This was a motion for a new trial on the ground, as stated in Mr. Keir's affidavit, that “this Court had no jurisdiction in this action, under the 66th Section of Act XLIII of 12 and 13 Victoria.”

The facts of the case are as follows :—The plaintiff, who is a Parsee shop-keeper, sued the defendant, who is a Captain in H. M.'s Bombay Staff Corps, attached to the 1st Regiment of Poona Horse, stationed at Dhoolia, in the Province of Khandeish, to recover the sum of Rupees 307-2-0 being the balance of an account adjusted and signed by the defendant. On the 14th February 1863, the case came on for hearing before the 1st Judge, when the defendant not appearing, an *ex-parte* verdict was given in favor of the plaintiff for the whole amount claimed.

On the 24th February 1863, Mr. Keir appeared and applied to the Court, on behalf of the defendant, for a Rule *Nisi*, to show cause why the judgment should not be set aside, and a new

the application was allowed to stand.

Was

took

of the Court, was too late.

2nd.—That Marsden *versus* Wardle was not appeared at the trial and pleaded to

3rd.—That the Act of Parliament jurisdiction of this Court

In support of his objection, Mr. Judge pointed down that—“shall be granted the same on

and argued that, as defendant had not applied till ten days after the trial, he was too late.

In support of his second objection, Mr. Judge pointed out to the Court that the present case differed from that of Marsden *versus* Wardle, upon which the defendant's Advocate relied, inasmuch as the defendant in that case appeared and pleaded to the jurisdiction, whereas in this case the defendant did not appear; and, therefore, Marsden *versus* Wardle was not a case in point. It had, however, been clearly laid down by V. C. Kindersley in the case of “Filkin *versus* Herbert,” Jurist N. S., Vol. VIII., page 90, that even a Secretary of State, made defendant, cannot refuse to appear, on the ground that the Court had no jurisdiction over him, and that he could only be proceeded against in a petition of right. “It is not” (said the Vice Chancellor) “for any private individual to say, ‘I object to appear,’ ‘I will not obey the command,’ ‘I will not submit myself to the authority of the Court because it has no jurisdiction’; I think it was ‘the duty of the defendant to have appeared, and then to have raised the question by way of demurrer.’” As, therefore, in that case, the defendant was not allowed his plea to the jurisdiction, because he had not appeared and urged it at the proper time; so neither in this case is he entitled to urge it now, because he did not appear and urge it at the trial. Granting, however, for the sake of argument, that the defendant is in time and is entitled to urge his plea to the jurisdiction now, the Act of Parliament quoted by his Advocate does not take away the jurisdiction of this Court. In the first place, the words “and not elsewhere,” contained in the sentence “all personal actions against officers, &c., shall be cognizable before a Court of Requests composed of Military Officers and not elsewhere,” upon which the defendant's Advocate so strongly relies, cannot be held to be applicable to any Courts but those existing at the time of passing the Act, and certainly not to Courts to which jurisdiction is so specially given as it is to this Court. Now the Act which gives jurisdiction to this Court was passed in 1850, a year after the Act relied upon; and, therefore, the words “and not elsewhere” cannot apply to it. Again, the words which give jurisdiction to this Court over persons are contained in the 28th Section of Act IX of 1850, and are “all persons shall be deemed within the jurisdiction of the Court who. &c.”; and then follows a description of the persons who shall be deemed within the jurisdiction. Now what can be more comprehensive than the words “all persons” who answer the descriptions which follow them? If, then, the defendant answers any of those descriptions, he is clearly within the jurisdiction of this Court, even though he was exempted by the Act of Parliament from the jurisdiction of this Court, as constituted at the time when the Act of Parliament was passed; for this Court is the Court of Requests held under the authority of a certain Charter, Acts of Parliament, and Acts of the Legislative Council of India, at the time when the Act of Parliament relied on was passed; and Act IX of 1850 was enacted for the express purpose of extending the jurisdiction of that Court of Requests, as appears from the Preamble and the 1st Section of Act IX of 1850, and the defendant does come under one of the descriptions above referred to, namely, that of dwelling

fore, that it ought

heard in support of the Rule, and after reiterating the arguments used on the words “and not elsewhere” contained in the Act of Parliament, Mr. Judge pointed out to the Court from having jurisdiction over the persons described in that Act, because this Court was the same Court of Requests as then existed, with extended jurisdiction as to amount and other matters. Moreover, as since the Act, which extended its jurisdiction, the Court of Requests of the Act of Parliament which took away its jurisdiction, it could be held to have given

He then submitted that the Rule must be made absolute.

His Honor the 1st Judge then delivered the judgment of the Court as follows:—The case of Marsden *versus* Wardle, cited by the defendant's Advocate, is not a case in point, for in that case defendant appeared and pleaded to the jurisdiction; while in this case, he did not appear at the trial. The case of *Whitehouse*, I. H. and N. 32, and the case of Filkin *versus* Herbert, 8 Jurist, 90, cited by the plaintiff's Advocate, are applicable to this case. In the first of these cases it was held that “a person who, having been served with writ of summons under the 14th Section of the Common Law Procedure Act of 1852, and not having appeared, a Judge's order was made that the plaintiff should be at liberty to proceed, judgment was signed on the 28th November 1855. The defendant, on the 12th March, applied to set aside the order, on the ground that the case of action did not rise within the jurisdiction of the Court,—Martin B., that the judge's order was not void, and the defendant not having come within a reasonable time, the Rule was refused. The other Barons concurred in this decision;—and in the second case it was clearly laid down by the learned Vice Chancellor, as stated by the plaintiff's Advocate, that it is incumbent upon a defendant to appear and urge his plea to the jurisdiction. We are, therefore, of opinion that, as the defendant did not appear at the trial and urge his plea to the jurisdiction, he is not entitled to embody it now in an application for a new trial. But even if he were in time, we are of opinion that the jurisdiction of this Court over the defendant, and the class of persons described in the Act of Parliament quoted by the defendant's Advocate, is not bound by that Act, for that Act does not take away any jurisdiction which this Court, as then constituted, possessed; and Act IX of 1850, as pointed out by the plaintiff's Advocate, extends the jurisdiction of the old Court of Requests over all persons described in Section 28, with the exception of the persons exempted by Section 35; and as the persons mentioned in the Act of Parliament is not among the exemptions, they, and among them the defendant, must be held to be within the jurisdiction of this Court. The Rule must, therefore, be discharged with cost.

IN THE COURT OF REQUESTS.—Poona, the 21st January 1860.

COWASJEE NOWROWJEE, Plaintiff, Reverend M. M. Ross, Defendant.

Claim, Rupees 240.—On the case being called, the Vakeel of the plaintiff appeared, and defendant does not appear.

Read and recorded a Precept of 1863, dated 19th instant, from the High Court of Bombay, directed to the Acting Judge, in reply to a reference made on the 20th October last. In

*Proceedings of the Madras Government, Judicial Department,
25th March 1865.*

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Court has and 13 V. Chapter 4
The Plaintiff, being a resident within the limits of the Military
is not within the jurisdiction of the Court of Small Causes, in resp
under Rupees 400, being of the value of Rupees
of said cause amenable
the Court of Requests, composed of Officers, to be examined
above stated.

by the Hon. Sir Mathew Richard
of Bombay, and is signed by the Registrar, and sealed with the seal of the High Court.

In pursuance of this Precept, the Court transfers the original plaint to the Brigadier Com-
manding Poona Division of the Army, for the purpose of being disposed of according to Law.
Vakeel is informed accordingly.

(Signed) OROBA CANOBA.

Major General M. SMITH, Commanding the Poona Division of the Army, to the Judge
Advocate General of the Army,—No. 145 of 1863.

In continuation of my letter, No. 139, of the 18th instant, I do myself the honor of
transmitting further correspondence in the matter of the Bombay Small Cause Court *versus* Cap-
tain LaTouche, of the Poona Horse, received this day, and I shall feel much obliged if you will
attach it to the papers already in your possession.

From Captain R. B. MOORE, Commanding Poona Horse, to the Deputy Judge Advocate General,
Poona Division of the Army, Mahabeshwur,—No. 106, dated Camp Seroor, the 18th
April 1863.

I had the honor to address you in letter, No. 103, dated 12th instant, regarding a decree of
the Small Cause Court in Bombay against Captain LaTouche; I enclose further correspondence
from that Officer, on the same subject. Under the ordinary marches, I could not have relieved
Captain LaTouche in less than 17 days from date of relief, leaving Seroor, he could not have
been, therefore, relieved in sufficient time to admit of his attending before the Court in Bombay on
their summons, which reached him on 2nd February, directing his attendance on the 12th Febru-
ary in Bombay.

Had Captain LaTouche not paid the full amount of the decree, he would, under the
enclosed order from the Court, have been imprisoned; and the Detachments in Khandeish for
some time would have been without a European Officer.

3. When no longer required, may I beg the favor of your returning the enclosed papers from
the Bombay Court of Small Causes, viz., No. 1313 of 1863, being an order from the Small Cause
Court (directing payment or imprisonment), and a Certificate from the Acting Clerk of the
Court.

From Captain LATOUCHE, 2nd in Command, Poona Horse, to the Adjutant Poona Horse,
Seroor,—No. 27, dated Galna, the 13th April 1863.

In continuation of my letter, No. 26, I have now the honor to forward a Decree, No. 1313, of
1863, which was duly served on me, and on which I was arrested on the morning of the 9th
instant.

2. I believe I am right in stating that it is generally the rule for the recovery of a debt
to raise an execution on the goods, &c., of the defendant. Had this course been pursued in
my case, I should have allowed it; and on a favorable decision being passed on my case by the
High Court, I should have sued for damages. This, however, was not permitted; as, on reference
to the decree, it will be perceived that in default of payment, I was sentenced to five months' im-
prisonment, which, had I undergone even a portion, would have placed my Commission in
jeopardy.

3. I have, under these circumstances, paid the money, though under protest; the sum
being some 150 (one hundred and fifty) Rupees over and above that due to the plaintiff. I,
however, mention the above, not only to show the great animus exhibited, but also the extreme

(Signed) N. SPENCER.

Ind. 10

FREEDHUR BAPPOO.

From H. COWIE, Esq., Advocate General, to the Under Secretary to Government of India,
Home Department, dated the 22nd February 1865.

I have now the honor to reply to your letter, No. 6683, of 19th December, relative to a
question referred by the Government of Bombay, as to the jurisdiction of the Court of Small
Causes of Military Officers in the Mofussil.

I concur with the Advocate General for Bombay in thinking that the Judges of
the Small Cause Court came to a wrong decision; but the reasons on which I found my conclu-
sion are somewhat different from those adverted to by Mr. Lewis in his Opinion; because, I take
it that the Small Cause Court found as a fact (though such finding is not very clearly expressed)
that, at the time the cause of action arose, Captain La Touche, the defendant, dwelt within the
local jurisdiction of the Court. If the Court are not to be considered as having found
this as a fact, the judgment is doubly erroneous, as in that case they must have rested the juris-
diction on the ground that the defendant did not plead to or dispute the jurisdiction. In a Court
of local and limited jurisdiction, the plaintiff must shew that the Court has cognizance of the
cause, or the defendant appears to dispute the jurisdiction or not. The English cases which
were referred to Superior Courts of general jurisdiction, and are wholly beside the
question involved in the present case; but, in saying this, I do not mean to be understood as at
all differing from Mr. Lewis, as regards the 5th paragraph of his opinion.

The Small Cause Court Act IX of 1850 was passed by the Governor General of India in
Council, under the Legislative powers conferred by 3 and 4 Will. 4, C. 85; and by the 43rd Sec-
tion of that Act, it was expressly provided that the Governor General in Council should not have
the power to make any law which should in any way repeal, vary, suspend, or affect any of the
provisions of the Mutiny Acts. The sole question, therefore, is what is the construction to be
put upon Section 67 of the 20 and 21 Vic., C. 66, and the corresponding Section of the existing
Mutiny Act.

4. The general object of these Sections, obviously, is to prevent Officers from being taken
away from their Military duties, at more or less distant stations, in order to defend claims of small
amount brought against them elsewhere. Now, when the East India Company's Mutiny Act
20 and 21 Vic., C. 66) was passed, on Officer stationed anywhere in the Bombay Presidency
might have been sued for a demand, however small, either in a Mofussil Civil Court (provided
the cause of action arose within the jurisdiction of such Court), or in the Bombay Court of
Small Causes (provided that the Officer at the time the cause of action arose dwelt within the

25th March 1865.

local jurisdiction of that Court), or in the Supreme Court (provided that the plaintiff would lose his costs if the case was one of which the Small Cause Court would have had cognizance).

establishment of the High Court has altered this state of things only to the extent that a cause of action which would not be tried in that Court, unless the cause of action arose within its local jurisdiction.

Therefore, in using the words "a

person of the above description when the

cause of action arose" ought, if possible, to be read in such a way as to exclude the resort to either of the three tribunals. To read these words as extending only to an Officer of the Presidency Small Cause Court.

Then the words "a person of the above description when the cause of action arose" ought, if possible, to be read in such a way as to exclude the resort to either of the three tribunals. To read these words as extending only to an Officer of the Presidency Small Cause Court.

6. I, therefore, think that the proviso at the end of the Section ought to be read as meaning an Officer who at the time of action brought dwells within the Military Cantonment. Indeed, the whole Section seems framed so as to point to the bringing of the action as the material point of time. Neither, in point of mere grammatical construction, can the words "of the above description" be properly referred to any thing but "Officers or other persons amenable to the provisions of this Act." Taking the whole Section together, it is clear that to be subject to a Military Court of Requests, the Officer must, at the time the action is brought, be resident within the limits of the "place;" but the Section means, I think, no more than this.

7. The reason of the proviso I take to be this—that a creditor's Civil rights and remedies against his Civilian debtor were not to be altered, or affected, by such debtor afterwards entering the Military service. Whereas, if the debtor is in such service when the debt is incurred, the creditor knowingly gives credit to a person who may thereafter be subject to be sued only in a Military Court.

8. Nothing can now be done in Captain La Touche's case, as the judgment has been passed and satisfied; but if a similar case occurs again, an application should, as soon as possible, be made to the High Court for a writ of prohibition, or to remove the case to that Court, under Section 54 of the Small Cause Court Act of 1850.

9. I return the enclosure received with your letter under reply.

No. 198

ORDER THEREON, 25th March 1865, No. 468.

Copy furnished to the Judges of the Madras Court of Small Causes, for information.

(True Extract).

Chief Secretary.

To the Judges of the Madras Court of Small Causes.

Exd. J. H. Burns.

524-4-
1824

With 1850s

Dec 11/85 - Dept 11
From
Undersecretary of War
Hono Dept
to 2075

Patent 37
New 14 - { New 175 -

See 25189/182650 of 1850

No 6
Feb 98/60

Remark for information
Cuban correspondence
regarding the jurisdiction
of the Court of Small Causes
Military Officer

No 468. 25th March 1865.
Copy furnished to the Judges of the Ma-
dras Court of Small Causes for in-
formation.

W.D.U.
The Judges of the Madras Court of
Small Causes { dep 3
" Military Department dep 4/5/65

To the Judges of the Madras Court of Small Causes.

Exd. J. H. Burns.