

MADRAS RECORD OFFICE.

Government of Madras.
Judicial
~~Political~~ DEPARTMENT.

G.O. No. 1768

Press

~~Mis.~~

Dated

21. 12. 1888

Not to be folded or roughly handled

Fort St. George, Judicial Consultation, 21st December 1853.

No. 47. Read the following letter from H. FORBES, Esq., Member of the Legislative Council for Madras; to T. PYCROFT, Esq., Chief Secretary to the Government of Fort Saint George, dated Fort William, the 4th December 1858.

SIR,

I have the honor to enclose, to be submitted to the Right Honorable the Governor in Council, a copy of a Bill brought into the Legislative Council by the Member for the North Western Provinces, for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter.

It is quite unnecessary for me to draw attention to the great importance of this measure, and I have only to request that any observations which the Government may wish to make upon it may reach me before the date on which the Select Committee may submit their Report, viz., the 1st of March 1859.

No. 48. ORDER THEREON, No. 1768; dated 21st December 1858.

Ordered to be communicated to the Court of Sudder Udalt for any remarks they may have to offer.

(Signed) T. PYCROFT,
Chief Secretary.

STATEMENT OF OBJECT AND REASONS.

THE subject of establishing Courts of Small Causes in those parts of the Country where they do not already exist, was fully considered and discussed during the progress through a Committee of the whole Council, of the Bill "for the more easy recovery of small debts and demands," which has been before the Council from the time it was appointed in 1854, being one of the Bills transferred to it from the former Legislature, and the very favorable reception which that Bill, as originally framed, met with may, I think, be regarded as affording sufficient proof of the desire which prevails throughout the Country for Courts exercising what is understood by Small Cause jurisdiction, and of the benefits which would be conferred upon the people at large by the establishment of such Courts. Considering it unnecessary, therefore, to say more in respect to the accompanying Bill, in so far as it relates merely to the object of supplying a want which, by general admission, is universally felt, I propose in this paper to confine myself to a brief statement of the manner in which it appears to me that the Courts contemplated in that Bill should be constituted.

The Bill, to which I have already referred, was drawn up by Mr. Mills and myself when engaged, under the orders of the Supreme Government, in preparing a Code of Civil Procedure for the use of the Courts of the East India Company in the three Presidencies, and the principle which we advocated was the gradual establishment of Courts of Small Causes, as fitting instruments could be found for occupying the post of Judge in them, those places being selected in the first instance in which the want of Courts of that description was most felt, such as the Sudder Stations of the different Districts, and the large Towns and Cities in the interior.

The reasons which induced Mr. Mills and myself to recommend the proceeding cautiously and by degrees in the introduction of so important a measure, the success of which would necessarily depend mainly upon the agency employed, instead of at once extending the system, proposed to be introduced, to all parts of the Country, were fully detailed in the letter with which we submitted the Draft of the Act prepared by us for the consideration of the Supreme Government. This letter was published, and a copy of it will be found amongst the papers laid before the Council in connection with the Bill (page 33).

The Select Committee, to whom the Bill was referred, did not agree with Mr. Mills and myself. They recommended, and their recommendation was adopted by the Committee of the whole Council, that every Moonsiff's Court in each of the Presidencies of Bengal, Madras, and Bombay, should be constituted a Court of Small Causes for the trial of summary actions, and should exercise summary jurisdiction.

The Bill, as thus amended, did not proceed at once to a third reading according to the usual course, but was ordered to be republished for general information, and with a view to elicit the opinions of the public on the alterations made in Committee.

The result of the republication of the Bill is before the Council, and it is so strongly in favor of the view entertained by Mr. Mills and myself, and against the amendment proposed by the Select Committee and adopted by a Committee of the whole Council, that I think it must be regarded as conclusive upon the point, and, accordingly, in drawing up the accompanying Bill, I have reverted to the original proposition, and have provided for the gradual introduction of a system of Courts of Small Causes by the establishment of separate Courts, when the extent of judicial business, which will fall within the cognizance of Courts of that description, promises to afford sufficient employment for the Judges who will be appointed to them, and, where such is not the case, by investing with small cause jurisdiction the Judges of any of the existing Courts subordinate to the District or Zillah Courts, who may be considered by the Sudder Courts qualified in all respects to be intrusted with it.

The Royal Commissioners appointed in England to prepare a Code of Procedure for the Courts of Civil Judicature in this Country, state in their introductory notes that the Code proposed by them is intended to apply to all ordinary Civil Courts with the exception of the Courts of Small Causes at the Presidency Towns, and that the procedure laid down will, in the simpler class of suits, be equally expeditious and economical with that of the Courts of Small Causes just referred to, and they assign this as a reason for not considering it necessary to extend the system of Courts of Small Causes to the other principal Stations of the Country.

At the first glance, particularly to an unpractised eye, the Code sent out from England may appear altogether of too cumbrous a character for Courts exercising merely small cause jurisdiction, and such would no doubt be the case if it were intended that all the provisions of that Code should necessarily be followed in every suit, however small in amount, and however trifling in character, but the provisions to which the objection of inadaptation to Courts of the character of those which I am anxious to see established, however necessary for suits relating to real property and other suits of complexity and difficulty, will, I believe, rarely, if ever, be brought into operation in actions of debt and other cases of the simple character to which the Bill "for the more easy recovery of small debts and demands" was intended to apply, and considering that the Code of Civil Procedure received from England, as settled in Committee of the whole Council, contains sufficiently summary and simple rules for the disposal of cases of the description mentioned in the accompanying Bill, I propose that it should be observed in the trial of such cases, and, as a necessary consequence, I am of opinion that so much of the Bill "for the more easy recovery of small debts and demands" as relates to procedure alone, should be abandoned.

With regard to the reason assigned by Her Majesty's Commissioners for not considering it necessary to extend the system of Courts of Small Causes beyond the local limits of the jurisdiction of the Courts of Small Causes now existing at Calcutta, Madras, and Bombay, I deem it sufficient to remark that their proposition to give a final jurisdiction to all Courts without distinction in certain classes of cases in which the amount or value of the claim may not exceed the sum of fifty Rupees, is open to the same objections as the amendment introduced in Committee into the Bill "for the more easy recovery of small debts and demands," above alluded to.

The only other parts of the accompanying Bill which appear to call for special notice, are the Section which allows the Courts proposed to be constituted under it, to hold sittings at different places within the territorial limits of their respective jurisdictions, which will, I think, prove a convenient arrangement, particularly when the extent of jurisdiction is large, and the Section relating to appeals.

In limiting the final jurisdiction of the Courts constituted or invested with small cause jurisdiction under the Bill, to suits in which the amount or value of the property in dispute may not exceed the sum of fifty Rupees, I have followed Her Majesty's Commissioners in the Code of Procedure sent out from England, and the Honorable Member for Bengal in the Bill relating to the recovery of arrears of rent &c., brought in by him. On the first introduction of the system, I do not think it would be prudent or safe to go beyond that sum.

H. B. HARRINGTON.

The 30th October 1853.

Legislative Council of India.

Annexure

TO

Bill for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter.

Statement of object and reasons.

A

BILL

FOR

The establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter.

WHEREAS, with a view to the more easy recovery of small debts and demands, it is expedient to establish Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter at the several Presidencies of Calcutta, Madras, and Bombay; It is enacted as follows:—

I. It shall be lawful for the Executive Government of any of the said Presidencies or of any place, with the previous sanction of the Governor General in Council, to constitute Courts of Small Causes, with the required establishment of Officers, at any place within the limits of their respective Governments, for the trial of suits under this Act. Whenever any such Court may be so constituted, the Executive Government shall fix the territorial jurisdiction of such Court, and may, from time to time, alter the same as may appear proper.

Constitution of Small Cause Courts.

Limits of territorial jurisdiction to be fixed.

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II. It shall also be lawful for any such Executive Government to invest any Court subordinate to a District Court, now existing or which may hereafter be established within the limits of their respective Governments, with small cause jurisdiction for the trial of suits made cognizable by Courts of Small Causes constituted under this Act.

III. The following are the suits which shall be cognizable by Courts of Small Causes constituted under this Act, namely, claims for money due, whether on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage, or demand does not exceed in amount or value the sum of five hundred Rupees. Provided that no action shall lie in any such Court on a balance of partnership account, unless the balance shall have been struck by the parties or their agents; or for a share or part of a share under an intestacy, or for a legacy or part of a legacy under a will; or for any claim relating to arrears or exactions of rent, or to alleged illegal distrains for rent, for which claim or for any part whereof a summary suit could have been brought before an Officer of Government in the Revenue Department if commenced in due time; or for the recovery of damages on account of alleged personal injuries, unless special damage of a pecuniary nature shall have resulted from such injury.

IV. Every Court constituted under this Act shall use a seal, bearing the following inscription in English and in the language of the Court—"Court of Small Causes of Court to be a Court of Record, and to be generally subject to the Zillah Judge and Sudder Court." and every such Court shall be a Court of Record, and shall be subject to the general control and orders of the Judge of the District and of the Sudder Court.

V. The language to be used in the proceedings of the Courts constituted under this Act, shall be the same as that in use in the principal Court of Civil jurisdiction in the District in which such Courts are established.

VI. No person whatever shall, by reason of place of birth, or by reason of descent, be excepted from the jurisdiction of any Court of Small Causes constituted or invested with small cause jurisdiction under this Act; and any such Court shall be competent to hear and determine all claims cognizable by such Court, when the cause of action shall have arisen, or the defendant at the time of the commencement of the suit shall reside as a fixed inhabitant, or personally work for gain, within the local limits of the jurisdiction of such Court.

VII. Whenever a Court of Small Causes is constituted under this Act, all suits cognizable under the provisions of this Act not to be cognizable in any other Court.

sions of this Act, which shall arise within the limits of the jurisdiction of such Court, shall be heard and determined in such Court, and shall not be cognizable, except in the way of appeal, in any other Court. In like manner whenever any Court is invested with small cause jurisdiction under this Act, all suits cognizable under the provisions of this Act, which may arise within the limits of the jurisdiction of such Court, shall be heard and determined in accordance with the provisions of this Act.

VIII. Nothing in this Act shall be held to take away the jurisdiction which a Magistrate, or a person exercising the powers of a Magistrate, or an Assistant or a Deputy Magistrate, can now exercise in regard to debts or other claims of a Civil nature; or the jurisdiction which can be exercised by Village Moonsiffs or Village or District Punchayets under the provisions of the Madras Code, or by Punchayets under Regulation VII. 1827 of the Bombay Code, or by Military Courts of Request, or by a single Officer duly authorized and appointed under the rules in force in the Presidencies of Fort St. George and Bombay respectively, for the trial of small suits in Military Bazzars, in Cantonments, and Stations occupied by the troops of those Presidencies respectively, or by Punchayets in regard to suits against Military persons, according to the rules in force under the Presidency of Fort St. George.

Saving of jurisdiction of Magistrates &c—

of Village Moonsiffs and Village or District Punchayets in Madras—

of Military Courts of Request—

of Single Officers appointed to try small suits in Madras and Bombay—

and of Military Punchayets in Madras.

IX. Courts of Small Causes constituted under this Act shall be held at such place or places within the local limits of their respective jurisdictions as shall be appointed by the local Government to which such Courts are subordinate.

X. Whenever any such Court is directed to be held at more places than one within the local limits of its jurisdiction, the Judge of such Court, subject to the control of the Judge of the District, shall appoint the time at which the Court shall hold its sittings in every such place. Due notice of the time so appointed shall be given by a proclamation to be fixed up in some conspicuous place in the Court-house or other building in which the sittings of the Court are to be held.

XI. The procedure to be observed in the trial of cases cognizable under this Act, shall be that prescribed in Act (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter), and the provisions of that Act, unless otherwise herein provided, shall be applicable to cases tried under this Act.

XII. In suits tried under this Act, the decision of the Court shall be final, if the amount or value of the property in dispute shall not exceed the sum of fifty Rupees; but if it exceed that sum, an appeal shall lie from the decision to the District Court, and the

Decision in certain suits to be final.

Appeal to District Court if value of property in dispute exceed fifty Rupees.

Decision of District
Court final.

decision, of the District 10
Court upon the appeal,
if any, shall be final.

XIII. If in the trial of any suit under
this Act, whether origi-
nally or in appeal, any
question of law or usage
having the force of law or the construction 5
of a document affecting the merits of the
decision shall arise, on which the Court
may entertain reasonable doubts, the Court
may either of its own motion or on the 10
application of any of the parties to the
suit, draw up a statement of the case and
submit it, with its own opinion, for the de-
cision of the Sudder Court.

XIV. The Court may proceed in the
case, notwithstanding a
reference to the Sudder
Court, and may pass a
decree contingent upon 5
the opinion of the Sudder
Court on the point referred; but no execu-
tion shall be issued in any case in which a
reference may be made to the Sudder
Court, until the receipt of the order of that 10
Court.

XV. Cases referred for the opinion of
the Sudder Court shall
be dealt with by a full
bench of that Court.

XVI. The Sudder Court shall fix an
early day for the hear-
ing of the case, and shall
notify the same by a
proclamation to be fixed 5
up in the Court-house of that Court.

XVII. The parties to the case may
appear and be heard
in the Sudder Court in
person or by pleader.

Parties may appear
and be heard in person
or by pleader.

XVIII. The Sudder Court, when it has
heard and considered the
case, shall transmit a
copy of its judgment,
under the seal of the Court and the signa- 5
ture of the Register, to the Court by which
the reference was made; and such Court
shall, on the receipt thereof, proceed to dis-
pose of the case conformably to the decision
of the Sudder Court. 10

XIX. Each party shall bear his own
costs, if any, consequent
on the reference of a case
for the opinion of the Sudder Court.

XX. In cases decided under this Act,
in which no appeal is
allowed, or if allowed,
in which no appeal may
have been preferred, it shall be competent 5
to the Court which decided the case, to
grant one new trial if applied for within
the period of thirty days from the date of
the decision, unless the party making the
application can show just and reasonable 10
cause for not having preferred the same
within that period.

New trial.

Legislative Council of India.

Small Cause Courts.

(MOPUSSIL.)

A
BILL

FOR

The establishment of Courts of Small Causes
beyond the local limits of the jurisdiction of
the Supreme Courts of Judicature established
by Royal Charter.

(Prepared and brought in by Mr. Harington).
READ A FIRST TIME ON THE 30TH OCTOBER 1858.

Price 4 Annas.

Judicial Department

Extract from the Minutes of Consultation

Dated

Read the following letter
from the Commandant of the
Andaman Settlement Corps.

(Hue enter 14 Dec 58.)

The Governor in Council
sanctions the rates of pay pro-
posed, in the above communi-
cation, to be given to the Moons
&c of the Andaman Settlement
Corps.

2. Orders on the subjects
referred to in paras 2, 3 & 4 will
be issued hereafter.

WAB

Copy to Comd^t Andaman Settlement
" Asst General
" Civil Auditor.

12/17/68

Orders to be communicated to
the Court of Session & sent for
any remarks they may have
to offer.

J.P.

Wm. George
21 December 1858.

Copy to Session House
with the Bill. & to
Annexure } Sept 22^d

In dy. & cons: 21 Decr.
Judicial 1858 Sept 22^d

No 1705

Sept 10 22/60.
" 12 22/60."
Shack No. 1111. Low.

State of 18th Decr 1858.

With reference to the known
"modifications of Life". Since
as to the party & allowance for
to be granted to the children
delinquent copy consider it
would be preferable to give
the State given to the Oregon
State Constitution - the children
shall well (with a few ex-
-ceptions) be put on the
same footing as that of the
delinquent children in
other points.

439413

18 Decr
1810-