

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1639	Press
		Mis.
Dated	16-12	1872.

Not to be folded or roughly handled

JUDICIAL DEPARTMENT.

No. 1639.

FROM

THE HON. W. HUDLESTON,
Chief Secretary to the Government of Fort St. George,

TO

THE SECRETARY TO THE GOVERNMENT OF INDIA,
LEGISLATIVE DEPARTMENT.

SIR,

I am directed to acknowledge the receipt of your letters of 16th October and 11th December 1872, on the subject of the Bill relating to the Civil Courts of this Presidency.

2. In reply, I am directed to forward extract from a Note on the Bill by the Advocate-General, and copy of remarks on it by two of the Honourable Judges of the High Court, and to state that this Government agree generally in Mr. Justice Innes' remarks, especially as regards the valuation of the subject matter of suits, and the power of issuing circulars conferred on District Judges by Section 27 of the Bill.

3. As regards the power of the High Court to suspend Subordinate Judges, referred to in paragraph 4 of your letter of the 16th October, I am to remark that the objection of this Government contemplated the case of such Judgeships being held by Covenanted Civilians, but, as the exercise of the power in such cases is likely to be very exceptional, the Governor in Council does not desire to press the objection.

4. I am also to observe that as the object of the Bill, as set forth in the preamble, is to *consolidate* and amend the law relating to all Civil Courts in this Presidency, excepting those in the Agency Tracts of Ganjam and Vizagapatam, the non-inclusion in the Bill of the provisions of Madras Act I. of 1868 regarding the administration of Civil Justice on the Neilgherry Hills, might possibly give rise to doubts as to whether, after the Bill becomes law, those provisions would not be considered as superseded by the Consolidating Act; and in order to preclude such doubts, I am directed to suggest that a section be inserted, after Section 2, expressly saving the provisions above referred to.

5. The opportunity may also be taken to make certain verbal alterations in Act I. of 1868, which are rendered necessary by the proposed change in the designation of the Courts now called Zillah Courts and Principal Sadr Amins' Courts. This may be done by introducing a section into the Bill after Section 8, similar in wording to Section 29.

6. A draft of the two sections above suggested is subjoined.

7. With reference to your letter of the 11th instant, I am to state that the Governor in Council sees no objection to Clause 9 of the Bill, requiring Judges

and Munsifs to make declarations before entering on their official duties, being omitted.

I have the honour to be,
Sir,
Your most obedient servant,

FORT ST. GEORGE,
16th December 1872.

Chief Secretary.

Draft.

Section 2 A.—Except as provided in Section 8 A, nothing in this Act shall be taken to affect any of the provisions contained in Act No. I. of 1868, passed by the Governor of Fort St. George in Council, which relate to the administration of Civil Justice on the Neilgherry Hills.

Section 8 A.—Sections 1, 8, 9, 10, and 12 of Act No. I. of 1868, passed by the Governor of Fort St. George in Council, shall be read as if for the words "Civil" and "Zillah" used therein in reference to a Civil or Zillah Judge or Court, the word "District" was substituted; and as if for the words "Principal Sadr Amin" the words "Subordinate Judge" were substituted.

A.

Note by the Honourable the Advocate-General on the Madras Civil Courts' Bill, 1872.

In Section 7.—Last paragraph, line 2, after "published" add "in the Fort St. George Gazette and." This is the present practice.

Section 10.—Add "The seals at present in use shall be deemed to have been prescribed by the Local Government."

Section 12.—If the number of District Munsifs in each district is fixed by the Local Government (Section 4) and the place where each is to hold his, (5), ought not the Local Government to fix their local jurisdiction?

Section 3, Clause 2.—In last line but one "amount or value."—Hitherto the "value" of suits for land has been computed (for the purpose of ascertaining jurisdiction) under Regulation VI. of 1816, Section 11. When this Regulation was passed, Regulation III. of 1802, Section 3, was in force, and that section defined "annual produce" as practically meaning the aggregate sums payable by the under-farmers or ryots. The "value" will now, I presume, be computed under the Court Fees' Act; this will have the effect of greatly raising the standard of the value of land in suit, and it would, accordingly, appear undesirable to raise the jurisdiction of the District Munsif from 1,000 Rupees to 2,500 Rupees. Rupees 1,000 under the new valuation will give quite as important jurisdiction as Rupees 2,500 would give under the old valuation.

Section 15.—Here and in Section 9 it would be well to add "The provisions of the Oaths, Act No. VI. of 1872 shall apply to such oath or solemn declaration," as it does not appear certain that that Act is prospective in its effects.

Section 16.—After "abolished" in last line, add "or has been modified by any local or personal custom having the force of law."

Section 22.—At present ministerial officers, suspended or removed, have an appeal to the High Court. Surely it is somewhat harsh to remove this safeguard against an oppressive or corrupt exercise of power.

Section 26.—This appointment should, however, be subject to the restrictions stated in Section 7.

Section 27, line 4, "He may issue," &c. This will be taken as indicating that the District Judge is to issue "circulars," a result much to be deprecated as certain to lead to conflict and confusion.

There should be a section to the effect that nothing in the Act is to affect the provisions of Regulation IV. of 1816, or Regulation V. of 1816 (Village Munsifs and Panchayets.)

IN SCHEDULE I.

Regulation III. of 1802.—Section 11 might conveniently be re-enacted, or a provision similar to Act IV. of 1872 (Punjab Laws' Act), Section 21, would do. The object was gained by Section 42 of Act XX. of 1866 (Registration), but that section was omitted from the new Registration Act VIII. of 1871. It would very properly find a place in this Bill.

— I think also that Clauses 2, 3, 4, 5, and 6 of Section 16 might be repealed, as that subject is provided for by Acts XXVII. of 1860 and XIX. of 1841.

— *Section XXI.* should be repealed.

Regulation XII. of 1802 should be repealed, and such parts of Regulation XIII. of 1802 as it is desirable to preserve embodied in the Act. It might be referred to in Section 22.

Regulation II. of 1820, publishing 53 Geo. III., Cap. 155, Section 106, might be repealed. Section 105 was repealed by the Criminal Procedure Code.

IN SCHEDULE II.

Act VII. of 1843.—Repeal Sections 26 and 44, which were accidentally omitted from the repealing schedule of the Criminal Procedure Code, and Section 47, which will be unnecessary under that Act. The Governor in Council can invest that official with what criminal powers he pleases.

(Signed) H. S. CUNNINGHAM,

From the Acting Registrar of the High Court of Judicature at Madras, Appellate Side, to the Chief Secretary to Government, Fort St. George, dated Madras, 28th November 1872, No. 2049.

With reference to your letter to the Chief Justice, dated 16th November 1872, No. 1486, transmitting copy of a letter from the Government of India, Legislative Department, together with a copy of the Madras Civil Courts' Bill (as amended by the Select Committee and in Council), and a note by the Advocate-General, and requesting to be favoured with any observations which the Judges may wish to offer on the provisions of the Bill in its present form, I am instructed to forward transcripts of the observations made by Mr. Justice Innes and Mr. Justice Kernan. The other Judges do not desire to offer any remarks.

Mr. Justice Innes.—I desire to offer the following remarks on the Madras Civil Courts' Bill, 1872:—

Section 3, Clause 2.—The word "present" is redundant, as it is not, I conceive, contemplated to authorize the Local Government, without the sanction of the Governor-General in Council, to increase the number of District Courts, whether *present* or *future*.

Section 11.—Clause 3 requires the addition, I think, of the following words, "as the local limits of every such Civil Court respectively."

Section 12.—The Advocate-General thinks it would be preferable for the Local Government to have the power of modifying the local jurisdiction of the District Munsifs. It has the power at present, but practically the Local Government merely endorses the opinion of the High Court as to any modification of local jurisdiction found necessary. It will save time and correspondence to allow such alterations to be made by the High Court as the section provides. Indeed it would be more convenient also for the High Court to have the power of fixing the *place* at which a District Munsif should hold his Court, and I would recommend a modification of Section 5 in this respect. I would alter 5 as follows:—

"The Local Government may fix, and from time to time alter, the place at which any District or Subordinate Judge's Court established or continued under this Act shall be held. And the High Court may fix, and from time to time alter, the place at which any District Munsif's Court established or continued under this Act shall be held."

Section 13.—The Advocate-General is mistaken, I think, in his opinion of the effect of the proposed new valuation as regards land.

The old valuation for ascertaining the jurisdiction as to land was to find the annual produce, and this was explained to mean to find what was the aggregate sum payable by the under-farmers or ryots. If the valuation is made according to the Court Fees' Act, it will be in the case of zemindary or similarly held land ten times the revenue, in the case of ryotwary land five times the revenue, and in the case of land held on quit-rent or rent free, fifteen times the net profits.

Either of these valuations would fix a higher value on land than what would be assigned to it by the valuation prescribed by Section 3, Regulation III. of 1802, and in most cases I take it the new valuation would be twice or three times as high as the old. Thus assuming the new valuation to be three times as much as the old, a suit that would previously be valued at 1,000 Rupees and would thus be within the Munsif's jurisdiction, would by the new valuation appear as a suit of 3,000 Rupees value, and would be altogether excluded from the Munsif's jurisdiction. The fact seems to be that, if land is to be valued for jurisdiction under the Court Fees' Act, it will be necessary to give the District Munsifs a very much more extended jurisdiction in point of value than what is assigned in the Bill. Great inconvenience no doubt is experienced by the Courts in having to make two separate valuations of suits, one for jurisdiction and the other for the stamp fee, and it is highly desirable that this double valuation should be got rid of, and I quite agree with the suggestion in the letter of the Secretary to the Government of India as to the propriety of the addition to Section 14 of the Bill of the rule prescribing that the valuation for jurisdiction shall be made in the manner provided by the Court Fees' Act.

With this addition I would leave the section as it stands. It must be left to experience to determine whether the nominal increase of jurisdiction to 2,500 Rupees will be more than nominal in suits for land. Should it not be so, the increased jurisdiction contemplated may be conferred by future legislation.

My attention has been attracted to the second clause of Section 14 providing that "when the amount or value of the subject matter of the suit exceeds 5,000 Rupees the appeal shall lie to the High Court." The appeal has hitherto been to the Court of the Civil Judge. I see no objection to this provision. Of late years many of the zillahs have been without Subordinate Judges and Principal Sadr Amins; and the Judges in such zillahs, under Section 45 of Act VII. of 1843, have exercised the combined jurisdictions of Subordinate Judges and Zillah Judges. The consequence has been that a large proportion of the regular appeals to the High Court from the Zillah Court have been appeals in suits which would have been originally cognizable by Subordinate Judges of amounts varying from over 1,000 Rupees to 10,000 Rupees.

If the difference in valuation for ascertaining jurisdiction now proposed be adopted, suits for Rupees 5,000 for land will represent suits which, under the present mode of valuation, are of a much lower value. Whether the effect of this will be to increase the number of regular appeals to the High Court must, of course, be a matter of experiment; but assuming that a suit for land of 5,000 Rupees under the new valuation represents a suit of 1,500 or 2,000 Rupees under the present valuation, the right to appeal direct to the High Court in suits for land over 5,000 Rupees will tend to place the zillahs, in which there may be Subordinate Judges and Principal Sadr Amins, on a footing as regards appeals to the High Court, in suits for land with zillahs in which hitherto or for some time past officers with such original jurisdiction have been wanting. It will not, however, have this effect in suits other than for land.

As to Section 16, I think it is a mistake to embody an important portion of the substantive law in an Act for the constitution of the Civil Courts. If, however, it is to retain its place in the Bill, I agree with the Advocate-General that there should be the addition he suggests after Clause 1, as follows, "or has been modified by custom having the force of law." I have omitted the words "local or personal."

Section 17, Clause 3, I would modify as follows, "when any such suit, proceeding, or appeal comes before any such officer, he shall report the circumstances to the Court to which he is subordinate."

It is not necessary to require the transmission of the record.

As to *Section 22*, I think experience has fully shown how very undesirable it is to allow finality to the orders of a District Judge in the dismissal of his ministerial servants. I think there should be an appeal to the Local Government.

The second clause of *Section 27* is of a most mischievous character. Under this clause a Judge, with a fancy for inventing forms and circulars, may bring all the Courts in the district to a standstill by imposing upon them duties of a kind never contemplated by law. The High Court has hitherto been able to restrain a tendency of this kind, and it is scarcely conceivable that it can be contemplated to give it the sanction of law. I would either omit the clause or let it stand as follows:—

"He may issue directions for the guidance of the subordinate Courts with respect to such matters as are provided for by law, or by the rules promulgated by the High Court, provided that such directions are in accordance with such law or such rules."

Mr. Justice Kernan.—I agree generally in Mr. Justice Innes' remarks, and especially in those on Clause 2, Section 14, and on Clause 2, Section 27.

(True Copies.)

(Signed) H. WIGRAM,
Acting Registrar, Appellate Side.

Exd. J. Wright:

1872.

LEGISLATIVE DEPARTMENT.

From
The Chief Secretary to Govt. of Madras,
Fort St. George,
To
The Secretary to the Govt. of India,
Legislative Department.

Dated 16th December 1872.

Recd.

No. 1639.

Enclosure.

Forwarding, with observations, extract from a Note by the Advocate-General on the Bill relating to the Civil Courts of the Madras Presidency, and a copy of remarks on it by two of the Honourable Judges of the High Court.

A

BILL

TO

Consolidate and amend the law relating to the Civil Courts of the Madras Presidency subordinate to the High Court.

[AS AMENDED BY THE SELECT COMMITTEE AND IN COUNCIL.]

WHEREAS it is expedient to consolidate and amend the law relating to the Civil Courts of the Madras Presidency subordinate to the High Court; It is hereby enacted as follows:—

PART I.—PRELIMINARY.

1. This Act may be called
Short title. "The Madras Civil Courts' Act, 1872":

It extends to all the territories for the time being under the government of the Governor of Fort St. George in Council; except the Tracts respectively under the jurisdiction of the Agents for Ganjam and Vizagapatam.

And it shall come into force on the first day of January, 1873.

2. On and from that day the enactments mentioned in the first Schedule hereto annexed shall be repealed to the extent specified in the third column of such Schedule.

PART II.—ESTABLISHMENT AND CONSTITUTION OF CIVIL COURTS.

3. The number of District (heretofore designated Zila) Courts to be established or continued under this Act, shall be fixed and may, from time to time, be altered, by the Local Government:

Provided that no increase to the present number of such Courts shall be made by such Government without the previous sanction of the Governor General in Council.

4. The number of Subordinate Judges and District Munsifs to be appointed under this Act for each District, shall be fixed and may, from time to time, be altered by the Local Government:

Provided that no addition to the present number of such officers shall be made by such Government without the previous sanction of the Governor General in Council.

5. The Local Government may fix and, from time to time, alter the place at which any Court under this Act shall be held.

3. The number of District Courts to be established or continued under this Act, shall be fixed and may, from time to time, be altered, by the Local Government:

Provided that no increase to the present number of such Courts shall be made by such Government without the previous sanction of the Governor General in Council.

And it shall come into force on the first day of January, 1873.

6. Whenever the office of Judge of a District Court, or Subordinate Judge under this Act, is vacant,

or whenever the Governor General in Council has sanctioned an addition to the number of District Judges or Subordinate Judges under the provisions of section three or section four,

the Local Government shall appoint to the office such duly qualified person as it thinks proper.

7. Whenever the office of a District Munsif under this Act is vacant,

or whenever the Governor General in Council has sanctioned an addition to the number of District Munsifs under the provisions of section four,

the High Court shall appoint to the office such person as it thinks fit:

Provided that he possesses the qualifications for the time being required by the rules in the behalf which the High Court, with the sanction of the Local Government, are hereby empowered to make and alter.

Every appointment made under this section shall be published in the local Gazette in the same manner as appointments made by the Local Government.

The Local Government may, for good and sufficient reason, annul any appointment made under this section.

8. The present Zila Courts, Principal Sadr Amins, and District Munsifs, shall be respectively the first "District Courts," "Subordinate Judges," and "District Munsifs" under this Act.

9. Every Judge of a District Court, Subordinate Judge, or District Munsif appointed after this Act comes into force, shall, previously to entering on the duties of his office, make and subscribe a solemn declaration according to the form in the second Schedule to this Act annexed.

10. Every Court under this Act shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government.

PART III.—JURISDICTION.

11. The Local Government shall fix and may, from time to time, vary the local limits of the jurisdiction of any District Court or Subordinate Judge under this Act:

Provided that where more than one Subordinate Judge is appointed to any district, the Judge of the District Court may assign to each such Subordinate Judge the local limits of his particular jurisdiction within such district.

The present local limits of every Civil Court (other than the High Court) shall be deemed to be fixed under this Act.

12. The High Court shall fix and may, from time to time, modify the local jurisdiction of District Munsifs.

13. The jurisdiction of a District Court or a Subordinate Judge extends, subject to the rules contained in the Code of Civil Procedure, to all original suits and proceedings of a civil nature.

The jurisdiction of a District Munsif extends to all like suits and proceedings not otherwise exempted from his cognizance, of which the amount or value in dispute does not exceed two thousand five hundred rupees.

14. Regular or special appeals, or appeals under Madras Regulation XI of 1832, section nine, shall, when such appeals are allowed by law, lie from the decrees and orders of a District Court to the High Court.

Appeals from the decrees and orders of Subordinate Judges and District Munsifs shall, when such appeals are allowed by law, lie to the District Court, except when the amount or value of the subject-matter of the suit exceeds rupees five thousand, in which case the appeal shall lie to the High Court:

Provided that whenever a Subordinate Judge's Court is established in any District at a place remote from the station of the District Court, the High Court may, with the previous sanction of the Local Government, direct that appeals from the decrees or orders of District Munsifs within the local limits of the jurisdiction of such Subordinate Judge be preferred in the Court of the latter:

Provided also, that the District Judge may remove to his own Court, from time to time, appeals so preferred, and dispose of them himself, or may, subject to the orders of the High Court, refer any appeals from the decrees and orders of District Munsifs preferred in the District Court to any Subordinate Judge within the District.

15. Every Court established under this Act may require a witness or party to any suit or other proceeding pending in such Court to take such oath or make such solemn declaration as is prescribed by the law for the time being in force.

16. Where in any suit or proceeding it is necessary for any Court under this Act to decide any question regarding succession, inheritance, marriage or caste, or any religious usage or institution, the Muhammadan law in cases where the parties are Muhammadans,

in the Fort St. George Gazette

in the Fort St. George Gazette

8A @ 100 below

*Regn II 1802 & 13
VI 1827 & 4
VI 1816 & 9*

The seals at present in use shall be deemed to have been prescribed by the Local Government

+ When the subject matter of any suit or proceeding is land, a house, or a garden, its value shall for the purposes of this Act, be fixed in the manner provided by the Court of Sessions, 1870, Section 7, clause V.

+ Sec VII of 1870

such as Civil Court

the provisions of the Act

Sections 4, 8, 9, 10 & 12 of Act I of 1868 provide that the word "Civil" shall be read as if for the words "Civil" and "Zila" used therein in reference to a Civil Judge, and the word "District" used therein in reference to a District Judge, shall be read as if for the words "Civil" and "Zila" respectively.

and the Hindú law in cases where the parties are Hindús, shall form the rule of decision, unless such law has by legislative enactment been altered or abolished, *or has been modified by custom having the force of law*

In cases where no specific rule exists, the Court shall act according to justice, equity, and good conscience.

17. No Judge of a District Court, Subordinate Judge or District Munsif, shall try any suit to or in which he is a party or personally interested, or shall adjudicate upon any proceeding connected with, or arising out of, such suit.

No Judge of a District Court and no Subordinate Judge shall try any appeal against a decree or order passed by himself in another capacity.

When any such suit, proceeding, or appeal comes before any such officer [he shall forthwith transmit the whole record of the case to the Court to which he is immediately subordinate, together with a report of the circumstances attending the transmission.]

The superior Court shall thereupon dispose of the case in the manner prescribed by the Code of Civil Procedure, section six.

Nothing in the last preceding clause of this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

PART IV.—MISCONDUCT OF JUDGES.

18. Any Judge of a District, Court, Subordinate Judge, or District Munsif may, for any misconduct, be suspended or removed by the Local Government.

19. The High Court may, whenever it sees urgent necessity for so doing, suspend a Subordinate Judge pending the orders of the Local Government.

The High Court shall immediately report the circumstances of such suspension, and the Local Government shall make such order thereon as it thinks fit.

20. The High Court may suspend any District Munsif, who is alleged to have misconducted himself, or may appoint a commission for enquiring into his alleged misconduct.

The provisions of Act No. XXXVII of 1850 (for regulating enquiries into the behaviour of public servants) shall apply to enquiries under this section, the powers conferred by that Act on the Government being exercised by the High Court.

On receiving the report of the result of any such enquiry, the High Court may, if it think fit, remove the Munsif from office, or suspend him, or reduce him to a lower grade.

21. The District Judge may suspend from office, whenever he sees urgent necessity for so doing, any District Munsif under his control.

Whenever a District Judge exercises the power conferred by this section, he shall forthwith send to the High Court a full report of the circumstances of the case, together with the evidence, if any, and the High Court shall make such order thereon as it thinks fit.

PART V.—MINISTERIAL OFFICERS.

22. The ministerial officers of the District Courts shall be appointed, and may be suspended or removed, by the Judges of such Courts, whose orders in such matters shall be final.

23. The ministerial officers of the Courts of the Subordinate Judges and District Munsifs shall be appointed and may be suspended or removed from office, by such Subordinate Judges and District Munsifs, respectively, subject to the approval or confirmation of the District Judge within whose jurisdiction such Courts are situate.

24. Every appointment under this part shall be made subject to such rules as the Local Government prescribes on this behalf.

PART VI.—MISCELLANEOUS.

25. In the event of the death of the District Judge,

or of his being incapacitated by illness or otherwise for the performance of his duties,

or of his absence from the station in which his Court is held,

the senior Subordinate Judge of the District shall, without interruption to his ordinary duties, assume charge of the Judge's office, and shall discharge such of the current duties thereof as are connected with the filing of suits and appeals, the execution of processes and the like,

and shall continue in charge of the office until the same is resumed or assumed by an officer duly appointed thereto.

26. The Judge of the District Court, or occurrence within his district of any vacancy in the office of District Munsif may, adding the orders of the High Court thereon, appoint such person as he thinks fit to act in such office;

and he shall at once report to the High Court the occurrence of every such vacancy and such appointment.

Investiture of Judge of District Court with general control over Civil Courts.

27. The general control over all the Civil Courts in any District is vested in the Judge of the District Court.

He may issue such directions for the guidance of the subordinate Courts with respect to any matters not provided for by law as he may think necessary, and the said Courts shall obey such directions.

28. The Local Government may by notification in the official *Gazette* invest, within such local limits as it shall, from time to time, appoint,

any Subordinate Judge with the jurisdiction of a Judge of the Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of rupees five hundred,

and any District Munsif with the same jurisdiction up to the amount of rupees fifty,

and may, by like notification, whenever it thinks fit, withdraw such jurisdiction from the Subordinate Judge or Munsif so invested.

29. Section fifty-one of Act No. XI of 1865 shall be read as if for the words "Principal Sudder Ameen" the words "Subordinate Judge" were substituted.

30. The High Court may permit the Civil Courts under its control to adjourn from time to time for periods not exceeding in the aggregate two months in each year.

Such matters as are provided for by law or by the rules promulgated by the High Court, provided that such directions are in accordance with such law or such rules (if any).

THE FIRST SCHEDULE

Enactments Repealed.

I.—MADRAS REGULATIONS.

Number and year of Regulation.	Title of Regulation.	Extent of repeal.
Regulation II of 1802	A Regulation for establishing and defining the Jurisdiction of the Courts of Adawlut, or Courts of Judicature, for the Trial of Civil Suits in the first instance, in the British Territories immediately subject to the Presidency of Fort St. George.	So much as has not been repealed.
Regulation III of 1802	A Regulation for receiving, trying and deciding suits or complaints declared cognizable in the Courts of Adawlut established in the several zillahs immediately subject to the Presidency of Fort St. George.	The unrepealed part of section seven. The unrepealed part of the first clause of section sixteen.
Regulation III of 1816	A Regulation for rescinding Regulation VI of 1806, and for authorizing the Courts of Sudder and Foujdarry Adawlut to sanction the occasional Adjournment of the Civil and Criminal Courts under the Presidency of Fort St. George.	So much as has not been repealed.
Regulation VI of 1816	A Regulation for reducing into one Regulation the Rules which have been passed regarding the Office of Native Commissioners; for modifying and extending their Powers in the Trial and Decision of Civil Suits; and for authorizing them, under the designation of District Moonsifs, to discharge certain additional Duties.	So much as has not been repealed.
Regulation VII of 1816	A Regulation for authorizing District Moonsifs to assemble District Punchayets for the Adjudication of Civil Suits for Real and Personal Property, without limitation as to Amount or Value, within their respective jurisdictions; and for defining the Powers and Authority to be vested in such District Punchayets.	The whole.
Regulation II of 1821	A Regulation for extending the Jurisdiction of the Registers, Sudder Ameens, and District Moonsifs, and for the more effectual checking of Abuses by District Moonsifs.	So much as has not been repealed.
Regulation VII of 1827	A Regulation for constituting the Office of Native Judge.	The whole.
Regulation II of 1828	A Regulation for improving the Administration of Justice by District Moonsifs in certain respects.	So much as has not been repealed.
Regulation I of 1829...	A Regulation for amending the Rules in force relative to the Trial of Appeals, and for the better securing of Impartiality in the Administration of Justice.	So much as has not been repealed.

THE FIRST SCHEDULE,—concluded.

Enactments Repealed.

I.—MADRAS REGULATIONS,—concluded.

Number and year of Regulation.	Title of Regulation.	Extent of repeal.
Regulation III of 1833	A Regulation for conferring upon Sudder Ameens jurisdiction in Criminal Cases, and for extending the Civil Jurisdiction of Registers, Sudder Ameens, and District Moonsifs.	So much as has not been repealed.

II.—ACTS.

Number and year of Act.	Title of Act.	Extent of repeal.
Act No. VII of 1843 ...	An Act for abolishing the provincial Courts of Appeal and Circuit in the Presidency of Fort St. George, and for establishing new Zillah Courts to perform their functions; for establishing Courts constituted according to Regulations I. and II. and Regulations VII. and VIII. of 1827, in place of the existing Civil and Criminal Zillah Courts, and for extending the Civil jurisdiction of such Courts.	The whole Act, except sections twenty-six, forty-four and forty-seven.
Act No. IX of 1844 ...	An Act for authorizing the institution of Suits in the Courts of Principal Sudder Ameens and Sudder Ameens.	So much as has not been repealed.
Madras Act No. IV of 1863.	An Act for investing certain Courts in the Presidency of Fort St. George, either wholly or in part, with the jurisdiction exercised by Courts of Small Causes established under Act XLII. of 1860.	The whole.
Madras Act No. I of 1865.	An Act to provide for the alteration of the stations of Zillah Courts and limits of Districts or Zillahs in the Madras Presidency.	The whole Act, except so much of section one as empowers the Governor in Council of Fort St. George to alter the limits of existing districts.

THE SECOND SCHEDULE

Form of declaration to be administered to persons appointed to the office of Judge, Subordinate Judge, or District Munsif.

I, A. B., appointed to the office of ——— of ———, do solemnly declare that, in the trial and determination of all suits which may come under my cognizance and in the execution of all the other duties of my office, I will act according to the best of my abilities and judgment, without partiality, favour, or affection; that I will not, directly or indirectly, receive, or knowingly allow any other person to receive, any money, effects or property, on account of any suit that may come before me for decision or on account of any public duty which I may have to execute. I will strictly adhere to all the rules prescribed for my guidance, and I will, in all respects, truly and faithfully execute the trust reposed in me.

Government of India.

LEGISLATIVE DEPARTMENT.

A
BILL

TO

Consolidate and amend the law relating
to the Civil Courts of the Madras Pre-
sidency subordinate to the High Court.

[AS AMENDED BY THE SELECT COMMITTEE
AND IN COUNCIL.]

(Price four annas.)

A 417
Note by the Honble. the Advocate
General on the Madras Civil Courts
Bill, 1872.

In section 7. Last para. line 2. after
"published" add "in the Fort Saint George
Gazette and". This is the present practice.

Section 10. Add. "The seals at present in
use shall be deemed to have been prescribed
by the Local Government."

Section 12. If the number of District
Muniffs in each District is fixed
by the Local Government (section 4) and the
place where each is to hold his (5), ought
not the Local Government to fix their
local jurisdiction?

Section 3 clause 2. In last line but one
"amount or value":—thither to the "value" of
suits for land has been computed (for the
purpose of ascertaining jurisdiction) under

Regulation II

Regulation VI of 1816, section 11. When this Regulation was passed, Regulation II of 1802 section 3 was in force, and that section defined "annual produce" as practically meaning the aggregate sums payable by the under farmers or ryots. The "value" will now, I presume, be computed under the Court Fees Act: this will have the effect of greatly raising the ^{at the} standard value of land in suit, and it would, accordingly, appear undesirable to raise the jurisdiction of the District Munsif from 1000 Rs to 2500. Rs. 1000 under the new valuation will give quite as important jurisdiction as Rupees 2500 would give under the old valuation.

Section 15. Here and in section 9 it would be well to add. "The provisions of the Oaths Act No. VI of 1872 shall apply to ^{such} oath or solemn declaration," as it

which does not contain the words "local or personal"

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it does not appear certain that that Act is prospective in its effects.

Section 16. After "abolished" in last line, add "or has been modified by any local or personal custom having the force of law."

Section 22. At present ministerial officers suspended or removed, have an appeal to the High Court. Surely it is somewhat harsh to remove this safeguard against an oppressive or corrupt exercise of power.

Section 26. This appointment should, however, be subject to the restrictions stated in section 7.

Section 27. line 4. "He may issue &c." This will be taken, as indicating that the District Judge is to issue "circulars," a result much to be deprecated, as certain to lead to conflict and confusion.

the District Judge has proposed a slight amendment

There

There should be a section to the effect that nothing in the Act is to affect the provisions of Regulation IV of 1816 or Regulation V of 1816. (Village Muncifs and Panchayets.)

In Schedule I.

Regulation III of 1802. Section XI might conveniently be re-enacted; or a provision similar to Act IV of 1872 (Punjab Laws Act) section 21 would do. The object was gained by section 42 of Act XX of 1866, (Registration), but that section was omitted from the new Registration Act VIII of 1871. It would very properly find a place in this Bill.

— I think also that clauses 2, 3, 4, 5 and 6 of section 16 might be repealed, as that subject is provided for by Act XXVII of 1860 and XIX of 1841.

— Section XXI. should be repealed.

Regulation XII

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Regulation XII of 1802 should be repealed, and such parts of Regulation XIII of 1802 as it is desirable to preserve, embodied in the Act. It might be referred to in section 22.

Regulation II of 1820. publishing 53 Geo. III. Cap 155. Section 106 might be repealed. Section 105 was repealed by the Criminal Procedure Code.

In Schedule II.

Act VII of 1843. Repeal sections 26 & 44, which were accidentally omitted from the repealing schedule of the Criminal Procedure Code, and section 47 which will be unnecessary under that Act. The Governor in Council can invest that official with what criminal powers he pleases.

Report for
the
Hon. the
Secretary
of the
Legislative
Council
Go 15/12/72 No 1639

105
Mr Justice Innes:— I desire to offer
the following remarks on the Madras
Civil Courts Bill, 1872.
Section 3, Clause 2. The word "present"
is redundant, as it is not I
conceive contemplated to authorize
the Local Government without the
sanction of the Governor General in
Council to increase the number
of District Courts whether present
or future.

Section 11, clause 3 requires the addi-
tion I think of the following words,
"as the local limits of every such
Civil Court respectively."

Section 12. The Advocate General
thinks it would be preferable for the
Local Government to have the power
of modifying the local jurisdiction
of the District Munsifs. It has the
power at present, but practically

the Local Government merely endorses
the opinion of the High Court as to
any modification of local jurisdiction
found necessary. It will save time
and correspondence to allow such
alterations to be made by the High
Court as the section provides.
Indeed it would be more conveni-
-ent also for the High Court to
have the power of fixing the place
at which a District himself should
hold his court and I would
recommend a modification of section 5
in this respect. I would alter 5
as follows.

"The Local Government may fix
and from time to time alter the
place at which any District or sub-
-ordinate judge's court established
or continued under this act shall

be held. And the High Court may
fix and from time to time alter
the place at which any District
magistrate's court established or con-
-tinued under this act shall be
held."

Section 13. The advocate general
is mistaken I think in his opinion
of the effect of the proposed new
valuation as regards land.

The old valuation for ascertain-
-ing the jurisdiction as to land
was to find the annual produce,
and this was explained to mean
to find what was the aggregate
rent payable by the under-formers
or ryots. If the valuation is made
according

according to the Court fees Act
it will be in the case of ryotwari
-dary or similarly held land
ten times the revenue, in the
case of ryotwari land 5 times
the revenue, and in the case of
land held on quit rent or rent
free, fifteen times the net profits.

Either of these valuations
would fix a higher value on land
than what would be assigned to it
by the valuation prescribed by
Section III Regulation III of 1802, and
in most cases I take it the new
valuation would be twice or three
times as high as the old-

Thus

Thus assuming the new valuation
to be 3 times as much as the old
a suit that would previously be
valued at 1000 Rupees and would
thus be within the Munsif's juris-
diction, would by the new valuation
appear as a suit of 3000 Rupees value
and would be altogether excluded
from the Munsif's jurisdiction. The
fact seems to be that if the land
is to be valued for jurisdiction under
the Court Fees' Act it will be neces-
sary to give the District Munsifs
a very much more extended juris-
diction in point of value than
what is assigned in the Bill.
Great inconvenience no doubt is
experienced by the Courts in
having to make two separate
valuations of suits, one for jurisdiction

and the other for the Stamp fee,
and it is highly desirable that
this double valuation should
be got rid of, and I quite
agree with the suggestion in the
letter of the Secretary to the
Government of India as to the
propriety of the addition to Section
14 of the Bill of the rule pre-
scribing that the valuation for
jurisdiction shall be made
in the manner provided by
the Court Fees' Act.

With this addition I
would leave the section as it
stands. It must be left to

experience to determine whether
the nominal increase of juris-
- diction to 2,500 Rupees will be
more than nominal in suits for
land. Should it not be so, the
increased jurisdiction contemplated
may be conferred by future legis-
- lation.

My attention has been attracted
to the second clause of section
14 providing that "when the
amount or value of the subject
matter of the suit exceeds 5000 Rs
the appeal shall lie to the
High Court". The appeal has
hitherto been to the Court of
the Civil Judge. I see no objection

to this provision. Of late years many of the Zillahs have been without subordinate judges and Principal Sadr Amins; and the judges in such Zillahs under section 14 of Act VII of 1843 have exercised the combined jurisdictions of subordinate judges & Zillah judges. The consequence has been that a large proportion of the regular appeals to the High Court from the Zillah Courts have been appeals in suits which would have been originally cognizable by subordinate judges of amounts varying from over ^{Rs} 1,000 to 10,000 Rs.

If the difference in valuation for ascertaining jurisdiction now proposed be adopted, suits for Rs 5,000 for land will represent suits which under the present mode of valuation are of a much lower value. Whether the effect of this will

contemplated by will be to increase / has hitherto Regular appeals to the High Court of course be a matter of course by but assuming that a suit for an amount of 5000 Rs. under the new valuation represents a suit of 1500 or 2000 Rs. under the present valuation, the right to appeal direct to the High Court in suits for land over 5000 Rs. will tend to place the Zillahs, in which there may be subordinate judges and Principal Sadr Amins, on a footing as regards appeals to the High Court in suits for land with Zillahs in which hitherto or for some time past officers with such original jurisdiction have been wanting. It will not however have this effect in suits other than for land. As to section 16. I think it is a mistake to embody an important portion of the substantive law in an Act for the constitution of the Civil Courts. If, however, it is to retain its place in the Bill, I agree with the Advocate General that there should be the addition he

suggests after clause 1. as follows; -
"or has been modified by custom
"Having the force of law" I have
admitted the words 'local or personal'.
Section 17 clause 3. I would modify
as follows "when any such suit
proceeding or appeal comes before
any such officer, he shall report
the circumstances to the Court to
which he is subordinate."

It is not necessary to require
the transmission of the record.
As to Section 22. I think ex-
perience has fully shown how
very undesirable it is to allow
finality to the orders of a District
Judge in the dismissal of his
ministerial servants. I think
there should be an appeal
to the Local Government.

The second clause of Section
27 is of a most mischievous
character. Under this clause
a judge with a fancy for
inventing forms and circulars
may bring all the courts in the
District to a stand still by
imposing upon them duties

of a kind never contemplated by
law. The High Court has hitherto
been able to restrain a tendency
of this kind and it is scarce by
conceivable that it can be contem-
-plated to give it the sanction
of law. I would either omit
the clause or let it stand as
follows:-

"He may issue directions for
the guidance of the subordinate
courts with respect to such
matters as are provided for
by law or by the rules promul-
-gated by the High Court, pro-
-vided that such directions are
in accordance with such Law
or such Rules."

Mr. Justice Fernan: I agree
generally in Mr. Justice Innes'
remarks and especially in those
on clause 2, Section 14 and on
clause 2, Section 27.

(True Copy)

Dudman

Acting Registrar
Appellate Side.

Secy. to the Court

N^o 2049.

From

H. Wigram Esquire,
Acting Registrar of the High Court
of Judicature at Madras.

L

The Honorable W. Rudleston

Chief Secretary to
Government.

Honorable Sir,

With reference to your letter
to the Chief Justice dated 16th November
1872, No. 1486, transmitting copy of a letter from
the Government of India, Legislative Department,
together with a copy of the Madras Civil
Courts' Bill (as amended by the Select Committee
and in Council) and a note by the Advocate
General and requesting to be favored with any
observations which the Judges may wish to offer
on the provisions of the Bill in its present form,
I am instructed to forward transcripts of the
observations made by Mr. Justice James and Mr.
Justice ^{Justice} Heron. The other Judges do not desire to offer
any remarks.

I have the honor to be,
Honorable Sir,

Your most obedient Servant

H. Wigram

Acting Registrar,
Appellate Side.

High Court of Judicature,
Madras, 28th November 1872.

Sd/- V. V. V. V. V.

In a letter from
the High Court of
Judicature at Madras
dated 28th November
1872, No. 2049.

N^o 2202/72

dis 20/12

Judicial Department.

No. 1639.

To
The Secretary to the Government
of India,

Legislative Department.

Sir,
I am directed to acknowledge the receipt of ~~referring to your~~ letter of 16th October 1872, on the subject ~~transmitting copy of the~~ ^{2. In reply,} ~~annexed~~ Bill relating to the Civil Courts of this Presidency, and I am directed to forward extract from a note on the Bill by the Advocate General, and copy of remarks put by two of the Honble Judges of the High Court, and to state that this Govt. agree generally in Mr. Justice Smees' remarks, especially as regards the valuation of the subject-matter of suits, and

W.C.
H
L.S.

Judicial 1872. Department

No. 2202

For 1639
7/11/72
Received by the
High Court of Judicature
at Madras.

The Chief Secretary
to Government

Dated 28th November 1872
No. 2943

No. 2943
Sent to
Hon. Mr. Justice Smees
of the Madras High Court
by Mr. Justice Smees and Mr.
Justice Stearns on the
provision of the Madras
Civil Courts Bill (as
amended by the Select Com.
on the Bill) and in Council

213-2

and the power of issuing
circulars conferred on Dis-
trict Judges by Section
27 of the Bill.

23. As regards the
power of the High Court
to suspend subordinate
Judges, referred to in para.
4 of your letter, I am to
remark that the objection
of this Court contemplated
the case of ~~judgeships~~ being
held by Governmented Civilians,
but as the exercise of the
power in such cases is
likely to be very exceptional,
the Governor in Council
does not desire to press
the objection.

(LH)

24. I am also to observe
that as the object of the
Bill ^{as set forth in the Preamble} is to Consolidate and
Amend the Law relating to
all Civil Courts in this Pre-
sidency, excepting those in
the Agency tracts of Ganjam
and Vizagapatam, the
non-inclusion in the Bill
of the provisions of Madras
Act I. of 1868 regarding the
administration of Civil
justice on the Neilgherry
Hills, might possibly give
rise to doubts as to whether
after the Bill becomes law,
those provisions would not
be considered as superseded
by the Consolidating Act,
and in order to preclude
such doubts, I am directed
to suggest that a Section
be inserted, after Section 2,

expressly

Expressly saving the provisions above referred to Act I of 1868.

& 5. The opportunity may also be taken to make certain verbal alterations in Act I of 1868 which are rendered necessary by the proposed change in the designation of the Courts now called Zillah Courts and Principal Sudder Ameen Courts. This may be done by introducing a Section into the Bill after Section 8, similar in wording to Section 29.

6. A draft of the two Sections above suggested is subjoined -

7. With reference to your letter of the 11th instant, I am to state that the Gov^t in Council sees no objection to Clause 9 of the Bill, requiring Judges & Munsifs to make declarations of terms on their official duties, being omitted.

Fort St George
16 Decr/72

Draft

Section 2A - Except as provided in Section 8A, nothing in this Act shall be taken to affect any of the provisions ^{contained in} of Act N^o I of 1868 passed by the Governor of Fort St George in Council, which relate to the Administration of Civil Justice in the Neilgherry Hills.

Section 8A. Sections 1, 8, 9, 10 and 12 of Act N^o I of 1868 passed by the Governor of Fort St George in Council shall be read as if for the words "Civil" and "Zillah" used therein in reference to a Civil Judge or Court, the word "District" was substituted; and as if for the words "Principal Sudder Ameen" the words "Subordinate Judge" were substituted.

U.F.

Draft

U.F.

Exhibit A and B
to Resolution
of the Council
of the Government
of Madras
dated 11th Decr 1872

18 Department

No.

To

The Secretary to the
Government of
Department.

Dated

187

W. H. Langford

Secretary to the
Government of

Quebec

17-11-72

Q

DEPARTMENT

From
The Chief Secretary to Government,
Fort Saint George,

To
The Secretary to the Govt. of India,
Legislative Department.

Date 16 December 1872.

Recd.

No. 153.

Enclosure.

Nos. 84-85A.

^{with observations}
Forwarding Extract from
a Note by the Advocate
General on the Bill re-
lating to the Civil Courts
of the ^{Presidency} Presidency & copy
of remarks on it by two
of the Honble Judges of
the High Court