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appreciation of conflicting oral evidence, and oral evidence is a thing District Munsifs are most prone to despise. For them the nice indications afforded by gestures and demeanour, and expressive pauses and silence and the like are wholly without significance, and credit is ordinarily by them attached to, or withheld from, a man's statement in consideration of his reputed character, or social position, or of the fineness of his cloth, or of the *a priori* probabilities of the case, rather than in consideration of the demeanour and conduct of the man whilst undergoing examination. A good illustration of the truth of this is afforded by a late Proceeding of the High Court reprimanding a Munsif for hearing two suits at one and the same time.

13. In the next place it is matter of notoriety that in Mofussil Courts of all grades, but particularly in those of the lowest, perhaps nothing is more common than to place the burden of proof on the wrong shoulders, and by so doing arrive at a radically erroneous judgment. In appealable cases errors of this sort cause at the least great delay and expense, but in small causes they are, of course, fatal.

14. Lastly, it seems to me that a Native Judge stationed in a remote village, where there is nothing in the shape of public opinion, and reporters are unknown, must, in the very nature of things, be exposed to so great pressure on the part of the more wealthy and powerful residents in his neighbourhood, that he can hardly be expected to decide non-appealable causes without bias or partiality between rich and poor, strong and weak. Superstition, caste feeling, sympathy, every thing must tend to influence him in favor of the stronger party, whilst there is nothing in the shape of supervision and control to keep him right in his Small Cause work. However desirous to do right, he will probably succumb gradually to the manifold influences brought to bear on his judgments by numerous dishonest and greedy suitors. And it must be remembered in connexion with this part of the subject that Small Cause Courts, when presided over by incompetent Judges, naturally offer special attractions to one who wishes to gratify spite against another, through the procedure followed in them being so rapid. All that is necessary for such a one to do is to wait till his enemy goes abroad for a few days, then file a suit against him, and procure substituted service of notice thereof by affixing a copy of the notice to his house. Judgment *ex parte* follows as of course within a week or a few days; and whenever it may be deemed to be expedient, execution may be had by suddenly arresting the person of the judgment-debtor. And in such case it will be quite problematic whether the unfortunate deferdant will be able to procure the setting aside of the fraudulent decree.

15. For these reasons I think that the District Munsifs of this Presidency are, as a body, wholly unfit at present to be trusted with the power of hearing and determining small causes, and, therefore, Small Cause jurisdiction ought to be taken away from them as a body, and conferred only on a few of the most able and trustworthy of them, who may happen to be posted at stations where their assistance seems to be specially required.

16. But many officers appear to be of opinion that, however weighty may be the objections to District Munsifs exercising Small Cause jurisdiction, still they are quite out-weighted by the great good resulting from justice being brought to

every man's door, and I must now address myself to a brief consideration of this argument. And first, is it a fact that justice is brought to every man's door by giving jurisdiction over small causes to District Munsifs? That it enables certain suitors to get decrees in nearer places than if they were constrained to travel to the Small Cause Court of their district, is no doubt true. But apart from the consideration that decrees are not always just, the question remains, is it a fact that a plaintiff residing at a place, say, five miles distant from a Court of a District Munsif, and thirty-five miles distant from that of the Court of Small Causes of his district, necessarily has less trouble in getting a decree for, say, Rupees 25 in the former than in the latter Court? My experience would lead me to answer the question unhesitatingly in the negative. In a properly-managed Court of Small Causes, presided over by a competent European Judge, the scrutiny and registration of the plaint, the issue of notice to the defendant, and the hearing of the cause, proceed with mechanical precision, and a plaintiff knows exactly, in most cases, with how great an expenditure of time and labor he can attain his end. He will make his arrangements with certainty on leaving his village, and return to his work at the expected time without fail. And the whole business will cost, perhaps, two or three days' absence from his village, when he can best spare the time. And his witnesses will lose only three days' labor, or perhaps not more than two, being released from attendance at Court on the very day on which they first appear. But in a District Munsif's Court, presided over by a native, mechanical regularity is generally a thing unknown. Work is done when convenient, without regard to time and existing arrangements. If a small cause plaint is filed to-day, it may be scrutinized to-day, or after ten days, or not at all. The notice to defendant may go out to-morrow, or after a fortnight. When the cause ought to be called up, in all probability other work will be going on, and it will be inconvenient to stay that work, and so the small cause will stand over. In such case the witnesses will be sent home and told to come next day; when the same thing will happen again, and in the end perhaps the parties and witnesses on either side will have to walk to, and from, the Munsif's Court half a dozen times, and lose ten days' work in the course of hearing a petty cause. I feel convinced that there is no exaggeration in all this, and that, in point of fact, it is often less troublesome to a suitor to come thirty or forty miles to the Court at Combaconum, than to go to his Munsif's Court only five or six miles from his door.

17. Although several officers of experience, whom I have consulted on the point, have expressed opinions favorable to the retention of the existing Small Cause jurisdiction of District Munsif's Court, I feel persuaded that none of them would deny the truth of what I have just advanced. And, however averse they may be to seeing remote, outlying tracts of country deprived of the assistance at present afforded by the Courts of the Munsifs, I cannot believe they would prefer to see a suit arising at a distance of, say, ten or twelve miles from a Court of Small Causes disposed of hastily by a District Munsif.

18. My second suggestion, therefore, is to deprive the District Munsifs of each district where there is a Court of Small Causes of jurisdiction over all small causes arising within a distance of, say, forty or fifty miles from that Court.

19. And then comes the question, what is to be done with the jurisdiction of the Village Munsifs over suits not exceeding Rupees 10 in value? My impression is that, in most cases, the Courts presided over by those officers are very considerably worse than useless, and ought to be abolished as nuisances. But as they are at all events institutions, venerable from age, and cannot often do much harm, perhaps the time for their abolition has not yet arrived. But at all events their jurisdiction should be confined rigidly to its proper limits, and the spectacle of a rude, village official exercising important jurisdiction in a town like Combaconum ought to be no more seen. I would, therefore, suggest, in the third place, that all Munsifs of villages exceeding, say, 1000 in population, should be deprived of their civil jurisdiction. Were these three suggestions carried into effect, the file of the Court of Small Causes at Combaconum would rise at once to between four and five thousand cases per annum. And no doubt other Courts of Small Causes would gain a corresponding increase of work, if the Small Cause jurisdictions of the inferior Courts in their vicinity were abolished.

20. Another important question now presents itself for consideration, and that is, whether the jurisdiction of the Courts of Small Causes should be raised from Rupees 500 to Rupees 1,000. When the Judge of the Court of Small Causes at Negapatam asked for an extension of his jurisdiction, the Judges of the High Court, with the exception of the Acting Chief Justice, were strongly averse to the proposed measure. They expressed an opinion to the effect that the summary proceedings of the Courts of Small Causes were only suited to petty claims, and that the present limit, *viz.*, Rupees 500, is the very utmost to which they should be made applicable. "It is undeniable," they thought, "that a cleverly-concocted suit would be more likely to succeed in a Court of Small Causes than in one where the more tedious but safer course of the regular procedure is observed." And they added, "the consequences of an erroneous decision will, of course, be more mischievous the greater the amount at stake: many a family would be irretrievably ruined by a decree for Rupees 1,000."

21. Now, with the greatest deference to the high authority from which these opinions have emanated, I cannot but observe that they appear to me to be founded in misconception, and to involve a fallacy. My experience of the working of the Courts of Small Causes leads me to believe that a false claim is by no means more likely to succeed in a Court of Small Causes than in one of the so-called regular Courts. But on the contrary the rapidity of the procedure in the Small Cause Court is rather antagonistic to the chicanery of one who prefers a false claim, in that he has not time to meet a genuine and simple defence by a cleverly-concocted replication. As soon as the defendant makes answer, the plaintiff must then and there reply; the issues are settled in five minutes; and the final hearing commences. And as far as regularity of procedure goes, the procedure observed in a properly-managed Court of Small Causes is every bit as regular as that observed in other Courts: the only difference being that, as there is no appeal, the Judge himself takes notes of the oral evidence, instead of having it recorded *in extenso* in the vernacular.

22. In all other respects a Court of Small Causes and an ordinary Court conduct a suit in precisely the same manner: and the only reason why the former can

get through its work so rapidly at times is that most of the suits brought before it are not defended at all, and those that are defended are most of them such as involve only the very simplest questions of fact. The High Court would appear to have been unaware of these facts, and to have imagined the hearing of a suit in a Court of Small Causes is of necessity a hasty, informal proceeding. Perhaps it will be well, therefore, to observe here that the Courts of Small Causes guide themselves strictly by the provisions of the Code of Civil Procedure, and omit no steps of importance in conducting an investigation.

23. The following brief sketch of a suit as conducted in a Court of Small Causes at Combaconum will perhaps not be out of place here. On the morning of Monday, the 10th January, we will suppose, a plaintiff institutes a suit by presenting a plaint. He does this by dropping his plaint, together with any documents on which he relies, in the petition-box. At noon precisely a clerk unlocks the petition-box, and takes out the contents. The plaint and its accompaniments are at once scrutinized in the office, and if there is nothing informal or otherwise objectionable about the plaint, the plaint is at once registered, and a day fixed by the head clerk for the hearing, and the process fees having been collected from the plaintiff, a notice is issued the same day about 4 P.M. to the defendant, and a serving-officer starts with it before sunset. The day fixed for the hearing will be about the 22nd January, being so calculated as to allow seven clear days to the defendant within which to prepare himself. But should it subsequently appear that more time is necessary, more time will be allowed. If the plaint is in any way informal or objectionable on the face of it, or if there is any doubt as to the existence of a cause of action, or as to the suit being barred by lapse of time, or as to the sufficiency of the stamps, or what not, the head clerk will not register it, but will at once submit it for the orders of the Judge, which, as a rule, will be passed on the following Court day. Upon the day fixed for the hearing, upon the appearance of the parties in person or by their Pleaders, the plaint is read out and explained to the defendant or his Pleader, and his plea or pleas recorded. If he does not confess judgment, his answer is duly considered, together with the plaintiff's reply thereto, if any, and an issue or issues are framed. The plaintiff or defendant, as the case may be, is then called upon to open his case; all his evidence, oral and documentary, is taken; then come the opening and evidence of the other side; then, if necessary, a reply on the case is permitted; and eventually the issue or issues are decided and judgment immediately passed.

24. The proceedings are, therefore, in all respects regular and formal, and if a miscarriage of justice at any time occurs, it is not owing to the defective nature of the investigation. With regard to the supposed safety ensured by "the more tedious but safer course of the regular procedure," I can only say I believe it to be wholly non-existent. As the Small Cause Court Judge has to rely solely on his own exertions, and knows that a mistake made by him in recording or appreciating a part of the evidence may be fatal, he will naturally be more than usually careful in all that he does, and determine to master the facts of the case.

25. The opinion that "the consequences of an erroneous decision will, of course, be more mischievous, the greater the amount at stake: many a family

would be irretrievably ruined by a decree for 1,000 Rupees," would appear to be met by the observation that in Southern India, as well as in most parts of the world, many a family would be irretrievably ruined by a decision for Rupees 500, or even Rupees 50; and that as a rule the victims of false suits are men so poor that they cannot afford to lose so much as twenty or thirty rupees. If any families are in fact ruined by erroneous decisions in Courts of Small Causes, they are probably families of *Parakudies* and other predial slaves sued for very small sums of money by cruel landholders, who stand well with the Munsifs of their respective districts.

26. I am decidedly of opinion that in some Courts the jurisdiction might very properly be raised to 1,000 Rupees, though unquestionably Government should exercise a careful discretion in selecting Courts in which to make an experiment in this direction, and the result of the experiment should be carefully watched before raising the jurisdiction of other Courts.

27. My opinion on this point is concurred in by the Judges of the following Courts of Small Causes, viz., Vellore, Masulipatam, Negapatam, and Cuddalore, and by the Acting Judge of the Civil Court of Tanjore, as also by the Officiating Collector of the Kistna District, and the Acting Judge of Tanjore. In fact of the officers I have consulted only one or two have objected to the extension of the jurisdiction of the Courts of Small Causes, and I believe if the Judges and Collectors of the Presidency generally were consulted, they would almost unanimously recommend the extension.

28. Mr. Wilkins, an officer of great experience, has written to me as follows on this point:—

"The advantages offered by a Court of Small Causes cannot be too highly estimated when compared with the tedious, inconvenient, and expensive process attending suits of other Courts before a claimant recovers his dues. I have had, and still have, many suits referred to me on appeal pending for four or five years which might have been disposed of by a Court of Small Causes in a fortnight, and the execution of the decree within as short a period: whereas in the present cases, after all the trouble and expense in obtaining a final decree in his favor, a creditor has every chance of being frustrated in his attempt to obtain execution, by the length of time the debtor will have had in concocting means for securing his property against attachment. This is no imaginary representation, but what has often fallen within my observation, and been complained of most bitterly.

"It is needless for me to enter into detail on the several causes of the Law's delay in the progress of original suits, particularly before a District Munsif, in consequence of the large number of suits generally on his file, and the tardy process of examination by the defendant; repeated attempts of defendants to obtain postponement for the presentation of their statements, their documents, and lists of witnesses; the obstacles in the production of witnesses on account of the unwillingness to attend, the difficulty of getting over the examination on account of the tardy process of waiting it down within the time previously calculated, and the necessary adjournment of cases."

29. My fourth suggestion, therefore, is to try at once the experiment of raising the jurisdiction of one or two Courts to Rupees 1,000. I am not in a position

to say what effect such extension of jurisdiction would produce on the file of any Court; but I imagine it would not be very large, first, because bonds for sums exceeding Rupees 500 are not very often executed; and, secondly, because when they are executed, they are usually instruments creating interests in valuable immovable property as well as mere pecuniary obligations, and are, therefore, sued upon in Courts competent to deal with such interests. Probably a hundred suits of more than Rupees 500 value would be the very largest number brought in any one Mofussil Court of Small Causes in a year.

30. The next thing requiring consideration, and it is one of the highest importance, is whether it would not be advisable to make the experiment, at all events in one district, of giving full effect to the intention of the Legislature expressed in the Small Cause Court Act, by creating a group of Small Cause Courts, to be presided over by an efficient Judge, and periodically visited by a Judge of the first class, viz., a Zillah Judge. Up to the present moment the Small Cause Court system proper has never been tried in this Presidency; and Government now proposes to abolish the existing Small Cause Courts, and revert to the old Subordinate Court system, without having had any opportunity of judging whether or no the Small Cause Court system is good or bad for this Presidency. In the Proceedings of the Legislative Council, recorded in the second Supplement to the *Fort St. George Gazette* of the 17th January 1865, will be found a speech of the Hon. Mr. Maine, which explains at some length the principle on which Small Cause Courts are founded, and I would humbly recommend Government to consider the arguments and propositions therein contained before deciding on so grave a question as the abolition of the present Courts of Small Causes.

31. Mr. Maine's belief appears to have been that it is quite practicable to confer upon the people of this country the inestimable boon of cheap and speedy justice in ordinary cases, if care be taken to appoint honest, sensible, and capable Small Cause Court Judges; and that the general supervision ordinarily exercised by Courts of Appeal may be sufficiently supplied in the case of Small Cause Courts by periodical visitations by Zillah Judges. At the close of his speech he is reported to have said: "I think it very desirable that Small Cause Courts should be under supervision; but far the best mode of supervision appears to me to be the bringing of a second mind to bear on the business of the Court. I, therefore, attach very high importance to the provisions of the Bill for the appointment of Judges extraordinary. Under these provisions, the Local Government may invest any Judicial Officer or person of legal learning with the power of assisting occasionally, or periodically, in the conduct of the jurisdiction of a Small Cause Court. Ordinarily, this person so empowered will doubtless be the Zillah Judge. The report of such a Judge extraordinary, on the manner in which the business of the Court is conducted, will carry with it a supervision not less effective and more consistent with principle than any appeal whatsoever."

32. The principle laid down by Mr. Maine apparently was adopted by the Legislature; and Act XI. of 1865, usually called the Small Cause Court Act, provides, amongst other things, for the appointing Judges to preside over groups of two or more Courts, and the appointment of extraordinary Judges for limited periods, or for specific periods in each year only. And my fifth suggestion, there-

fore, is to try the effect of carrying out the intention of the Legislature by constituting a group of Courts in the Tanjore District, say at Negapatam, Combaconum, and Tanjore, appointing a single Judge to preside over them, and appointing the Zillah Judge of Tanjore extraordinary Judge, under Section 15 of the Act, for specific periods in each year, for the purpose of supervising, aiding, and reporting on the working of the three Courts. Were the Zillah Judge periodically to supervise the work of the regular Judge, the latter would undoubtedly be made to be very careful, and to do his best to keep his Courts in proper working order; whilst the differences of opinion that would arise, from time to time, between the two officers, would tend to bring to notice and procure the correction of various irregularities and errors in law and practice. The experiment would not necessarily be expensive, because, although the cost of three Registrars with appropriate establishments would have to be provided for, there would be only one Judge where there are now two, and the Zillah Judge's remuneration for periodically visiting the Courts and sitting as extraordinary Judge would not exceed 400 or 500 Rupees per mensem during a few weeks in the year. The salaries of three Registrars at, say, Rupees 250 per mensem would amount to Rupees 9,000 per annum, and the extra clerks required would not cost more than Rupees 3,000 or thereabouts per annum. By abolishing the posts of Head and Deputy Head Clerks at Combaconum and Negapatam enough funds would be released to provide for eight or ten extra clerks, and with these and a few more and the Registrars and the existing establishments at Combaconum and Negapatam there would be sufficient establishments for the three new Courts. It seems unnecessary here to enter fully into particulars with respect to these establishments; but it is well to show that they would not be more costly than the two they would supersede.

33. In suggesting the advisability of making this experiment, I must explain what work I think the Registrars should do. If the file of the Court at Combaconum were to rise, as shown above, to over 4,000 causes per annum, and that of the Court at Tanjore nearly equalled it, and that of the Court at Negapatam rose in an equal degree, there would be about 12,000 suits for the Judge and extraordinary Judge to get through in the course of a year. And as the latter would only sit for a month or six weeks, or at the most two months in each year, and when he sat, would sit with the Judge, practically the whole work would fall on one Judge. It is clear that he could not get through it without assistance, and this would have to be given him by his three Registrars, invested under Section 40 of the Act with the powers of a Judge. They would be competent to try all suits of a value not exceeding Rupees 20, or about half of all the suits now disposed of by the District Munsifs, and all those now disposed of by the Village Munsifs of towns. And being constantly under the direct supervision and instruction of the Judge, they would naturally do this part of their work much better than if they were independent Judges. Moreover, as it would be their regular and proper work, they would do it with far more carefulness and pleasure than District Munsifs do their Small Cause work. In the next place the Registrars would do the great bulk of the execution work under Section 39, subject of course to revision by the Judge. Then they would do the Judicial work connected with the reception and rejection of plaints, under Section 37; receive and enter up

judgments by confession under Section 28; record agreements to compromise and notices of withdrawal on satisfaction had; and perform various ministerial and quasi-judicial duties under Section 36. Again, if the work of any Court should happen to grow excessive at any time, the Registrar of it, if a competent man, might be appointed an extraordinary Judge for a limited period to clear the file. Lastly, the Registrars should, I think, be the clerks of the Court under Section 41 in order to save expense. Their duties would, therefore, be numerous, onerous, and important, and their salaries, to be adequate, should not fall short of Rupees 250 per mensem. They should hold a good position, and ordinarily be selected from amongst the most promising of the younger Munsifs.

34. If this radical change in the constitution of the Courts were effected, it would, of course, be impossible for the Judges to undertake any Principal Sadr Amin work. Their time would be fully occupied. But the question remains whether the Judges or any of them should continue to do additional work as Principal Sadr Amins, if the present system should be maintained. Certain officers appear to object to being saddled with Principal Sadr Amin work, thinking that it interferes with their legitimate Small Cause work. But after giving the subject very full consideration, I have come to the conclusion that, with proper management, Principal Sadr Amin work can be done in addition to Small Cause work, without in any way interfering with the proper performance of the latter. Where both kinds of work are mixed up together, and done without method and order, no doubt inconvenience will be felt from time to time. The hearing of a tedious suit on the Principal Sadr Amin's side of the Court may extend over two or three days, and necessitate the postponement of twenty or thirty small causes; or a pressure of Small Cause work may compel the Judge to postpone one or two important suits. And the preparation of decrees and judgments may be delayed occasionally. But if the Judge makes two sides to his Court, and keeps the business of each quite distinct, no inconvenience of any kind need arise. In the Court at Combaconum, Mondays, Wednesdays, and Saturdays are Small Cause Court days, and ordinarily nothing but Small Cause work is done on them, though of course the Small Cause Court Petition-box is open daily, and, if anything urgent needs to be attended to, the rule will be relaxed in favor of petitioners. Tuesdays, Thursdays, and Fridays are Principal Sadr Amin side days, and on them ordinarily no Small Cause work is done. By this arrangement it has been found that confusion and inconvenience are altogether avoided; and, whilst the average duration of small causes on the file does not exceed twelve days, that of suits on the Principal Sadr Amin side has been reduced to six months. And miscellaneous Civil petitions of all kinds are disposed of ordinarily in one or two days. I am, therefore, of opinion that where the number of small causes disposed of in any Court is insufficient fully to occupy the Judge's time, he can do additional work on the Principal Sadr Amin side with great advantage both to the State and to himself. For the training to be had in a Court of Small Causes, where the Judge is invested with the powers of a Principal Sadr Amin, is in almost all respects equal to that afforded by a Civil Court, the work being almost identically the same in the two Courts. On the other hand, if Government should not see fit to try the experiment above recommended—an experiment which, in my humble opinion, is

imperatively called for—I would respectfully suggest that the existing Court of Small Causes are unnecessary, and may conveniently be replaced by subordinate Courts, as proposed by Government. The latter Courts, by their constitution, are better adapted than Courts of Small Causes to assist the Civil and Session Courts, and they can do Small Cause work in addition to their proper work as well as Courts of Principal Sadr Amins now do it.

35. I now come to a very different question. Hitherto I have made suggestions touching matters that can be dealt with without legislative interference; certain matters need to be considered which cannot be dealt with except by the Legislature. And first with regard to Section 6 of the Act, which declares what kind of suits shall be cognizable by Courts of Small Causes, there can be no question it seems to me that it is unnecessarily full of difficulty and ambiguity, and ought to be replaced without loss of time by something more intelligible to ordinary minds. The Section runs as follows, viz. :—

The following are the suits which shall be cognizable by Courts of Small Causes, viz., claims for money due 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 of the sum of 500 Rupees, whether on balance of account or otherwise; provided that no action shall lie in any such Court.

(Here follow the exceptions.)

36. The first difficulty in this enactment is the meaning of the expression "or other contract." From its position in relation to the words "or bond" it would seem at first sight to mean, "or other written engagement to pay money in the nature of a bond." But it may also mean "or other express agreement written or unwritten," or it may be taken to be large enough to include all contracts known to the English law as "implied." It is, of course, of the last importance that this point should be clearly understood by Small Cause Court Judges and others, or suitors may be referred by Courts of Small Causes to the regular Courts, and by them referred to Courts of Small Causes, and in the end wholly fail to get redress after twice paying a heavy Stamp duty. As an instance of the difficulty experienced in dealing with this expression, I may cite a case which arose in the Combaconum Court. A man sued another for contribution. The defendant pleaded first no jurisdiction in a Court of Small Causes to hear and determine a suit for contribution. In argument it appeared that, in Calcutta, a Divisional Bench had ruled that such a suit would not lie in a Court of Small Causes, but shortly afterwards another Divisional Bench had ruled that it would, and the question subsequently came up for decision before a full Bench, which decided in a lengthy judgment that such a suit would not lie, because it was not based on a contract, but on eternal principles of justice, and with suits based on such principles a Court of Small Causes had nothing to do. Not being satisfied with the reasons on which this judgment was founded, I stated a case for the opinion of the Madras High Court, stating my opinion that, in the contemplation of the Act, a suit for contribution was in fact based on an implied contract, as understood by the English law, but that no suit based on an implied contract was cognizable by a Mofussil Court of Small Causes. This reference was made nearly a year ago, but it has not been disposed of yet.

37. The next expression "rent" is almost as unsatisfactory, because a definition of rent applicable to the complex system of land tenures prevailing in this Presidency is no where to be found. For example take the ordinary case of what is called a *Melvarem* proprietor entering into a convention with a *Parakudi*, according to the terms of which the latter is to sow and cultivate a piece of land, and at harvest time the crop is to be divided in a certain manner by or under the supervision of the former's bailiffs. Does the former receive rent from, or make an allowance to, the latter?

38. The next expression "personal property" is not very clear. For example can it in any circumstances include standing crops where the owner is a Hindu? or the house of a Hindu where the soil belongs to a stranger?

39. Then the term "damages" is full of difficulty. If used in one sense it will make almost every suit for money cognizable by a Court of Small Causes, because where a man seeks to recover a sum of money he almost always seeks to recover it as damages on account of the breach of an existing obligation. If used in another sense, it will give jurisdiction only over suits for damages suffered by reason of the commission of a thing called a tort.

40. Immediately after this we have a group of expressions which certainly need explanation, "debt, damage, or demand." The first of them is intelligible only by the light of the Roman law, whilst most of the expressions used in the Section appear to be borrowed from the English. The second causes difficulty because being in the singular it must be taken to be something different from the plural word "damages" used previously. And "demand" is to some extent ambiguous, because it may or may not include the costs incurred by the plaintiff in conducting his suit.

41. Next comes the question, can a Hindu sue in a Court of Small Causes to recover his share of a joint estate, when it consists of personal property, such as jewels, money, &c., and the share vested in him by reason of his birth, and he has not inherited from his father? If he has inherited from his father, or any other who has died intestate, an action to recover his share will not lie in a Court of Small Causes.

42. Such are some of the difficulties caused by Section 6 of the Act, and no doubt others have occurred, or will hereafter occur, in connexion with the subject of the jurisdiction of Courts of Small Causes. And in order to improve the working of these Courts, my sixth suggestion is to recast that Section, and enact something that will show with precision what suits these Courts shall and shall not entertain.

43. Section 21 provides that all decisions and orders of the Court shall be final, and it does not appear whether they are to be final in the sense of non-appealable, or whether they are also non-revisable under the provisions of the Code of Civil Procedure. There is a ruling of the Madras High Court to the effect that this Section does not take away the general revisionary powers conferred by the Code; but it still remains doubtful to what extent those powers are modified, and it would be well if the thing were made clear.

44. Section 34 seems to require alteration. As shown above the Legislature contemplated the appointment of the Zillah Judge as extraordinary Small Cause Court Judge, and if so, it would appear to be improper that, when the ordinary and

the extraordinary Judge differ in opinion about a matter of fact, the former should have a casting voice.

45. There are no doubt other provisions in the Act contained that require reconsideration, but it is not necessary for me to search for them now. It would have been sufficient to have called attention to the most important of them, those giving jurisdiction, in order that if Government thinks proper a recommendation may be submitted to the Imperial Government to direct a regular inquiry to be made into the necessity of amending the Act.

46. In conclusion, I think it advisable to call the attention of Government to the fact, perhaps unknown to them, that the litigation in the Courts of Small Causes is wholly directed by a class of unrecognised legal practitioners, who are irresponsible to, and unchecked by, any authority. In Combaconum, and probably elsewhere, these men are called Attornies. The Vakeels or Pleaders of the Court are entirely under their power; and all kinds of villainy are attempted by them, I fear not always unsuccessfully, which the Vakeels, if willing, are quite unable to repress. It is generally believed that the Vakeels arrange everything relating to the conduct of suits personally with their clients, but I am informed on authority that I cannot doubt that this is altogether a mistake; and that all such arrangements are invariably made with Attornies, who allow the Vakeels to do nothing but appear and plead. Whilst the Vakeels are attending in Court, the Attornies go about the country in all directions, hunting up clients and concocting suits. The most successful of them have formed extensive connexions; keep agents in all the larger villages; and are surrounded by numerous retainers, prepared to swear to anything in behalf of anybody. And as long practice has made these Attornies familiar with the practice and mechanism of the law, they are looked up to by all as powerful legal advisers and coadjutors, and exercise an unbounded influence for evil. The business of the Vakeels depends altogether upon the good pleasure of the Attornies, and it is impossible to help suspecting that the former are often corrupted by the latter, and lend themselves to infamous schemes, through sheer inability to resist the pressure put upon them. This being so, I would suggest, in conclusion, that Government should institute an inquiry into the general position and conduct of the Attornies practising in each district, and if it be found that they are as powerful and unscrupulous as they are believed to be in Combaconum, then that steps should be taken to bring them under control by recognising a certain number of them for each Court in the Presidency, and preventing the Vakeels from taking cases from any but recognised Attornies. Small causes are almost invariably conducted by Vakeels in the Mofussil, and a superior class of Vakeels is gradually springing up to meet the increased demand for legal honesty and ability. It is, therefore, very undesirable that justice should continue to be tampered by the efforts of a set of thoroughly unscrupulous men, who cannot be punished in any way for their misdeeds.

No. 124-B. ORDER THEREON, 13th February 1875, No. 331.

In their letter, dated 25th January 1867, No. 831, Home Department, the Government of India called the attention of this Government to the fact that eight Judges

* Viz., seven at Rupees 1,400.
one " 700.

of Small Cause Courts in this Presidency, costing in salaries Rupees 10,500* per mensem, decided, as was shown by the Administration Report for 1864-65, 8,266 suits, while it appeared from correspondence before them that nine Small Cause Judges in Bengal, costing only Rupees 8,300 per mensem, disposed of 24,698 suits in the year; so that, although the cost of eight such Judges in Madras was one-fourth more than nine similar Judges in Bengal, the work turned out by the former was only a little more than one-third that turned out by the latter. These facts, they pointed out, suggested some inquiry as to whether it was not possible to cause reductions in the Small Cause Courts of this Presidency.

2. This letter was accompanied by a memorandum from Mr. (now Sir John) Strachey on the inadequacy of the salaries drawn by the Uncovenanted Judges employed in Bengal and the North-West Provinces. It appears from paragraph 18 of this memorandum, that it was considered that the salaries of the Principal Sadr Amins, now styled Subordinate Judges, should range from Rupees 500 to Rupees 800 per mensem, and that the average salary of this class of Judges should not be less than Rupees 600.

3. This letter of the Government of India, and the accompanying memorandum by Mr. Strachey, were forwarded to Sir Adam Bittleston, then Acting Chief Justice of the High Court of Madras, with the view of eliciting the opinion of the Honorable the Judges of the High Court on the subject. In reply, the Government were informed that Mr. Justice Collett was willing to undertake

the task of revising the Small Cause Courts of this Presidency, but that he could not commence it before the following year. Upon this, the Government selected Mr. Nelson, who was then Acting Registrar of the High Court, but had had experience as a Small Cause Judge, to undertake the duty at once, with the permission of the Chief Justice.

4. Mr. Nelson submitted a voluminous report on the 5th February 1863, which it is not the purpose of Government to discuss in these Proceedings, but it may be noted that, instead of a saving, Mr. Nelson's proposals involved an increased cost of Rupees 24,482 per annum. This increased cost provided only for improving the position of the servants of the Courts, and had nothing to do with the Judges themselves. This part of the question may, therefore, be dismissed, with the remark that, in the letter of this Government dated 28th January 1869, No. 112, the Government of India were informed that the subject of revision of Small Cause Court Establishments was under consideration, and that the views of this Government would be submitted after consulting Mr. Justice Innes, who had formerly reported on the establishments attached to the several Courts other than the High Court.

5. It was intended afterwards, on Mr. Justice Innes expressing his concurrence with Mr. Nelson in respect to the establishments attached to the Small Cause Courts, to report the opinion of this Government to the Government of India on the working of these Courts; but the intention was waived for the time, and

Mr. Nelson was called upon by the Proceedings of this Government, dated 30th July 1869, No. 1247, to report on the Courts themselves. His reply was communicated in his letter of the 27th January 1870, No. 215, in which he went into an elaborate report on the character and working of the Small Cause Courts; but the chief feature of his scheme was directed to the discovery of additional work for them, by depriving all Subordinate Judges and District Munsifs, and even Village Munsifs, of Small Cause powers, and confining such powers to the Small Cause Courts proper, whose jurisdiction was to be uniformly raised to suits of the value of 1,000 Rupees, while they were to try suits of the smallest value also. In other words, a costly agency was to take the place of inexpensive and popular institutions.

6. The question has been lying over for a considerable time, but the Government have not lost sight of it. They have long felt that the position of the Subordinate Judges and District Munsifs called for improvement, and that their adaptation to the requirements of the people was capable of being more extensively utilized, while the Covenanted Civilians (now three only) who preside over the Small Cause Courts could be more usefully employed in the ordinary branches of the administration.

7. The history of these Small Cause Courts may be briefly stated. Formerly, under Regulations I. and II. of 1827, there were Subordinate Courts of Civil and Criminal jurisdiction in several districts, which were presided over by Covenanted Civilians, generally of about fifteen years' standing. When the present Small Cause Courts were about to be established, these experienced men became Judges of these Courts for the recovery of petty debts, losing all their former extended jurisdiction. Dealing principally with mere petty debts, to say nothing of the absence of criminal jurisdiction, is by no means so suitable a preparation, as the ordinary line of the service, for the exercise of the civil and criminal powers of a District and Session Judge, while it is absolutely none whatever for the duties of a Collector and Magistrate. The system is unfair to the young officers concerned, as they cannot become good public servants under such a training; and it is unfair to suitors who certainly do not obtain the best men available. It occurs to the Government that the persons best adapted for this very special kind of work are the experienced Native officials of the Principal Sadr Amin or Subordinate Judge class. For junior Civilians, the best opportunity of acquiring a thorough knowledge of the people and country is to be found in the position of Assistants and Head Assistants to experienced District Officers. It is notorious that many of the ablest District Judges are men who have worked for years among the people as Revenue Officers and Magistrates, especially with the enlarged powers now conferred upon the higher grades of the Magistracy by the Criminal Procedure Code.

8. There were, it is observed, originally eight Courts of Small Causes in the Mofussil. These were reduced to six; and of these six, that at Tellicherry has recently been abolished, so that now there are but five Courts of Small Causes, viz., at Combaconum, Cuddalore, Madura, Vellore, and Masulipatam. The Judge of the Court at the last-named station is an Uncovenanted Officer who was formerly a

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*Proceedings of the Madras Government, Judicial Department,
13th February 1875.*

Principal Sadr Amin and he draws 700 Rupees a-month only. The four other Judges draw 1,400 Rupees a-month. Of these latter, three are Covenanted Officers; and the fourth, viz., Mr. Cross at Negapatam, does not belong to the Covenanted Service. It occurs to the Government that the Court of Masulipatam may now be converted into a Subordinate Court, and that the four Small Cause Courts at Cumbaconum, Cuddalore, Madurai, and Vellore may be abolished.

9. By the abolition of these four Courts, which might be conveniently carried out from the commencement of the next official year, there will be available a fund of Rupees 67,200, or including establishments Rupees 87,792 per annum, from which to provide for any Courts that may be substituted for them, should the High Court consider such an arrangement necessary, and for improving the position of the most deserving of the present Native Subordinate Judges and District Munsifs, and their establishments. The Honorable the Chief Justice and Judges of the High Court will be requested to favor the Government with an early communication of their views on the subject, in order that the sanction of the Government of India may be obtained to the changes that may be determined upon.

(True Extract.)

D. F. CARMICHAEL,
Acting Chief Secretary.

To the Honorable the Judges of the High Court.

83/9
Judicial Department

Memorandum regarding the papers
relative to the working of the Courts of
Small Causes in the Provinces, remaining
undisposed of.

Pres. date 1st March 1867
No. 314.

I have the
pleasure to
acknowledge
the receipt of
the papers
in Council.

W. H. P.

In January 1867
the Govt. of India observed
that the charge for eight
Judges of Small Cause
Courts amounted to Rs.
10,500 per mensem, and
that it appeared from
the Administration Re-
port of the Madras Presi-
dency for 1864-65, that
8288 suits were decided
by the Judges in 1864. From
correspondence before them
it appeared that, nine
Judges of certain Small
Cause Courts in Bengal,
drawing Rs 8,300 per mensem
disposed

disposed of 24,698 suits
in 1854-55, and they added,

"While the cost of
eight judges in District
Small Cause Courts in
Madras is one-fourth
more than that of seven
similar judges in Bengal,
the worth of the former
in their Courts is little
more than one-third of
the latter."

"The duties of Prin-
cipal Sadr Amins may
be said to be performed
to a larger extent than
in Bengal, by some of
the Small Cause Court
Judges in Madras, but
in hopes before this can
be allowed for, it would
be necessary to compare
the work relatively
to strength of the Dis-
trict Small Court Judges,
and

* By J. Strachey Esq. re-
garding the salaries of the
Uncommissioned Judges of the
Civil Courts in Bengal
and in the North Western
Provinces dated 15 January
1856.

and the Principal Sadr
Amins' Courts in Madras,
and Bengal. The figures
in the Administration Re-
port of the Madras Presidency,
and in the Memorandum
noted in the margin, of
which a copy is herewith
forwarded, seem to show
that at least the Appellate,
or most responsible part
of the work of Principal
Sadr Amins is heavier
in Bengal both absolutely
and in proportion to strength.
These facts would seem
to suggest inquiry, which
may, perhaps, show that
reduction in the Madras
Small Cause Court is
possible; it appears, at
any rate, that these
Courts are more costly
than in Bengal, while
their work is lighter,
and

and His Excellency informs
would be glad to receive
the remarks of the Judges
Govt on the subject."

2. This letter with the
Memorandum referred to was
sent to the Honble the
Judge of the High Court
for any remarks which
it might occur to them to
offer on the subject.

Letter of 18th March 1866 No. 327

3. The Chief Justice re-
plied on the 21 August 1867,
stating that Mr Justice
Collett was willing to
comply with the wish of
Government in regard
to the revision of the
Courts of Small Causes
in the provinces, but
that judicial duties,
would render it imprac-
ticable for him to under-
take the revision for
some

Order of 3rd Sept. 1867 No. 18 & 19.

Letter to Chief Justice
of 3rd Sept. 1867 No. 1415

Order of Govt of 28 Jan'y
1869 No. 202 & 204.

Some time, adding,

"I may be permitted
to add that the work
is of slight importance,
compared to that which
Mr Justice James has
recently completed, and
might at once, I would
suggest, be entrusted to
a subordinate Judicial
Officer, who has had
some experience of the
procedure in the Courts
of Small Causes."

4. Mr J. H. Nelson who
was then Acting Registrar
of the High Court, was
accordingly requested to
undertake the duty.

5. Mr Nelson submitted
his report on the 5th February
1868, with a tabular
statement showing the
additions necessary to
the

the establishments of Courts
of small Causes at

Cochin (a)

(a) salary 1500

Cuddalore (a)

(b) salary 700

Masulipatam (b)

(c) abolished.

Nagapatam (c)

Pellor (a)

Madura, and (a)

Tellicherry, involving

an additional charge of

Rs. 24,182.

7. This report was
submitted to Mr Justice
Lush for his views, and
the Govt of India were
informed in letter dated
23rd January 1869 No. 112
that a report on the
revision of the salaries
of Courts of small Causes
was under the consideration
of Govt, and that on the
receipt of Mr Justice
Lush's reply, the views
of this Govt on the question
would be submitted.

Mr

Letter to Chief Justice of
23rd July 1869 No. 111.

* Mr. Mr. Lush, then, Mr. Lush
Lush.

Order of 30th July 1869 No. 1247.

X. to be old S. J. with civil
and criminal business, but not.

8. Mr Justice Lush
replied under date the
18th February 1869, stating that
he approved generally of
Mr Nelson's recommendation.

9. A draft of letter
was then prepared for sub-
mission to the Govt of India,
but was withheld, and
Mr Nelson was asked to
submit any suggestions
which he might have to
offer to improve the working
of the Courts in question, and
he was informed that it
was the intention of the
Government to recommend
the re-establishment of
Subordinate Judges' Courts
with a small Cause ju-
risdiction super-added,
and that they would be
unwilling, except on very
strong

strong grounds, to interfere
with the Small Cause
jurisdiction now exercised
by District Magistrate.

10. Mr. Nelson sub-
mitted his suggestions
on the 27 January 1870, and
it still remains undi-
posed of.

The matter before stands
thus.

1st a complaint from B. I.
of the heavy cost & scanty outturn
of our Small Cause Courts, as
compared with Bengal.

2^d This Govt. appoints a Com-
missioner to inquire; and he
reports an increased cost of
24,482 per annum!

3^d On this, the subject is allowed
to drop - January 1870.

The history of these Small Ct
is this -

We had formerly in several
districts a Subordinate Judge -

a man of the Civil Service, gene-
rally of about 15 years

standing - the last
15/7/74.

I am inclined
to think that Mr. Combridge's
suggestions on the subject
of Court of Small Causes
are well worthy of
consideration and that
an appreciable saving
might be effected with
a view to improving the
position of the District
Judicial Service which
has so long been an
admitted desideratum.

Mr. James's proposals
were adopted by the
Government of Madras
in 1867 and the Govt. of
India was asked to
allow

allow that revision
at an increased cost
of a little over 2 lakhs
of Rupees including some
addition to the Ministry's
Bench. I cannot find
that the reference
was answered - but
we may assume that
whatever there is now
necessary is ^{to be} done
now. So it has to be
added the reconstruction
of the Ministerial service
of Lord of Small Causes.

I do not think
that Mr. Kelam's suggestions
proposals need be noticed
except so far as they relate
to the latter matters. —
Mr. James has endorsed
his proposal in this respect.
The main difficulty

seems to be that in so
far as the reduction proposed
by Mr. Carmichael affects
Covenanted service we
should not be allowed
to count it as savings.
If I am wrong, the saving
would be considerable
and I would offer to make
it.

Another point is the
Principal Sadr Ameen
jurisdiction which I
think should be maintained.

With a view to again
raising the question
I would ask the High
Court to pronounce on
the scheme which is
Mr. Carmichael might
be asked to elaborate
fully in detail & also
whether any modification
of Mr. James's scheme
suggested

Suggested itself in
the direction of reduction
during the years which
have intervened

28/12 1912

Practically the
same to us as
a re-organization

of our judicial ex-
isting elements. Ex-

cept in Madison
itself, the old sys-

tem of uniting
Civil & Criminal

jurisdiction in the
same officer seems

to be the best -
J. S.

29. 12.

12

§ 3? 3 - City of Lincoln, Nebraska

Saving: by abolishing 4 S.C. Ct at 1500^{W.}
and establishing 4 at 500 W. - per annum } 48,000

Question. How this saving sh^d be utilized?

We might ask the H. Ct - whether creating
the unlimited jurisdiction of Sub Judges
the extended (to 2500 from 1000) jurisdiction
of Dist. Judges - the salaries of these officials
sh^d not be raised.

There would be 15 Sub Judges - at 500^{W.}

By raising them by 200 a month each = 36,000
+ Or - 74200 : 84 100 - month = 26,400

There are 110 Dist. Judges on
salaries ranging from 300 to 200.
in 3 classes 300 - 250 - 200.

20 of the least worked sh^d get 50 W. each 12,000
+ Or, under the alternative, 36 sh^d get 50 W. extra. 48,000

Note. James & Malcoms joint proposal come to 2 1/4 cases a year
for improving Estab^t. Court fees - revenue.

Suggested itself in

1st Civil & Criminal powers.

(a) He took suits of the classes of value between a Munsif's & a Civil Judge's jurisdiction - he also took such appeals as the Civil Judge handed over to him.

(b) He had higher powers than the Magistrate, who was then badly off in his respects & lower than the Session Judge. He was besides a kind of Grand Jury: all cases committed to the Sessions were filtered through his Ct.

When S.C. Cts were about to be established, these experienced men became Judges of these Cts - losing all their ancient jurisdiction.

It was a great mistake, & it is worse now. 1st It cannot be said that it is good as a training for the office of District Judge - a parcel of petty shopkeeper cases, and no criminal jurisdiction!

2nd. The promotion is so rapid that men hardly get these posts now. It is unfair to them; they can't become good public servants under it; and it is unfair to the public. The real people for these 'pied-poudre' Courts are the experienced Native Officials of the Principal Sub-division description - who will gladly do the work for from 700 Rs. to 1000 in the most obnoxious districts.

Turn our young Europeans, I dare, into the ordinary Mofussil pastures. The best District Judges are the men who have knocked about for years among the people, as Magistrates of Districts.

The Madras system of Carleens for S.C. Judges is unique; it came about from a natural desire to find places for our old Subordinate Judges, when they were otherwise likely to be left out in the cold, from changes in the system.

18.6.1877-4.

Small Courts Comd.
 Read and approved of by the Council, Nos 111 and 112.
 124 Read by the Council From

The Honorable Mr. Justice Innes.

To The Honorable R. S. Ellis, C. S.

Chief Secretary to Government.

Honorable Sir,

In complying with the desire of His Excellency the Governor in Council as expressed in the letter of the Chief Secretary of the 23rd ultimo, I have the honor to state that I approve generally of the recommendations of Mr. Nelson in his report on the salaries and establishments of the Courts of Small Causes in this Presidency.

2. Of these Courts some have already the additional duties appertaining to the Courts of Principal Sader Amud and others as appears from Mr. Nelson's report are soon likely to have them and I do not think that 150 Rupees a month is in excess of a proper salary for the Head Clerk or

1250/1869

1869 Sept 1

Ben. Dufurtee Amud

Sept 1869

No 358

Mr. Justice Innes

Justice Innes's views on
 the establishment of
 the Small Courts
 in this Presidency

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Registrar of such Courts. - 65 Rs to the
Kargir is also I think moderate, con-
sidering the very large amount of work
which this officer has to perform, and
40 Rs to the Record-keeper is certainly
moderate.

3. If it be the case that the
"sober and respectable men" required
to fill the lowest Vernacular clerks' ships
in Small Cause Courts should also
be "middle aged." 20 Rs is perhaps the
lowest they could live upon to enable
them to appear decently dressed, but
I am inclined to think that there is
often an advantage in having younger
men in the lowest offices, as they are
more apt at learning their duty.

4. With regard to Peons the rules
which I proposed in my report on
the revision of the establishments of
the Regular Courts were the minimum.
I quite agree with Mr. Nelson as to

the shabby appearance of the Peons
of the present day as compared with
what they used to be. No doubt this
is owing to the inadequacy of the
present pay to attract a better class
of men such as those who formerly
filled these posts, and to enable
those who now fill them to dress
respectably. I am not prepared to
say that 10 Rs a month is more
than what ought to be given, but I
think that the peons in the
Small Cause Courts should be on
the same footing in regard to pay
as those of the Courts of the Principal
Sadr Amine and that the scale which
may be ultimately fixed upon for
the pay of the Peons of these Courts
should be adopted for the Small
Cause Courts.

5. I quite agree with Mr. Nelson
in principle as to the impropriety

of allowing any of our Courts to remain
unfurnished. Not having had experience
in a Court of Small Causes, I can scarcely
form an opinion as to whether the
list of furniture proposed by Mr. Nelson
is open to criticism. But I should
think that as the Court Houses
were not built as Courts of Small
Causes and are not on any uniform
plan the furniture which might be
required for any one Court would generally
differ from what was required in
another, and that the difference in
the amount of work coming before
the several Courts would render it
unintelligible to fix any uniform scale
upon which provision should be made
for the custody of records and papers.
I should therefore be disposed to
think that the latter course would
be to ascertain from each Judge the
particulars

8/18 }
particular furniture suitable for his
Court and actually required for it.
I do not think that the
Government should provide the Courts
of Small Causes with manuals, com-
mentaries or Digests, except such as
the Government may have purchased
and have on hand. With this exception
I would limit the supply of law books
to the Regulations and Acts of the
Indian and Madras Governments
and the Reports of the High Court.
Every Judge has the books which
Mr. Nelson proposes that the Govern-
ment should supply and I cannot
see that the Government should be
called upon to place in the Courts
the books which the Judge or
the pleaders may require for
reference and which may be
readily brought to the Courts

when likely to be required.

I am quite unable to judge whether the strength of establishments proposed by Mr. Nelson for the Courts is below or above what is required, and I have therefore confined my observations to points which were within my experience.

I have the honour to be,

Honorable Sir,

Your Most Obedient Servant,

W. H. D. S.

Madras
18th February 1869

2d span Part of Govt. dated 30 July 1869, No. 1247

Proceedings of the Madras Government, Judicial Department
March 1870.

No. 1247 Read the following letter from J. H. NELSON, Esq., of the Madras Civil Service, to the Chief Secretary to Government, Fort Saint George, dated Combaconum, 27th January 1870, No. 245.

Agreeably to the Order of Government, No. 1247, of the 30th July 1869, I have the honour to submit certain suggestions touching the mode of improving the working of the Courts of Small Causes in the Mofussil.

2. The first point to which I would direct the attention of Government in connexion with the subject, is the amount of the Small Cause work at present performed by the Courts of Small Causes in the Presidency. With its peculiar mechanical powers, a Mofussil Court of Small Causes should be disposing of from twenty to forty suits per diem with the greatest ease.

3. The county Court Judges in England, I believe, dispose each of about 10,000 suits per annum, and the Judges of the Calcutta and Madras Courts of Small Causes have got through a similar amount of work when necessary. And as far as appears, there is no reason why a Mofussil Small Cause Court should not do as much. But when the quarterly statements are looked at, it is seen that only one or two of these Courts dispose of more than 2000 small causes per annum, whilst one or two dispose of less than 1000.

4. It is true that most of these Courts do, in addition, some work on the Principal Sudder Ameen's side, and thereby relieve to some extent the files of the ordinary Courts. But this additional work is given to them only because they have not enough of their own proper work to occupy a quarter of their time, and is something quite apart from their peculiar sphere of action. They were instituted for the purpose of doing a particular kind of work in a

particular manner: and because, for certain reasons, that kind of work for the most part does not come to them, they are set to do another kind of work. The Court of Small Causes at Combaconum, for example, has disposed of but 653 small causes during the year 1869, and 457 during the preceding, although situated in one of the most rich and populous tracts of the South of India, and although the regularity of its proceedings has been such as to offer every inducement to possible suitors. This is certainly a strange state of things. And unless it can be radically altered, there would seem to be no propriety in continuing the existence of this Court.

5. I trust, however, that I shall be able to show that this state of things may be radically altered without difficulty, and that in point of fact there would be a very considerable amount of work for the Small Cause Court at Combaconum to do, if only it were allowed to do what is to be done in the way of Small Cause work.

6. In the first place by reason of the Court of Small Causes being deprived of jurisdiction over suits of a less value than Rupees 50, the District Moonsiff of Combaconum, sitting at a distance of a few yards from the Small Cause Court Judge, disposed of no less than 884 small causes in the course of last year. There the Village Moonsiff of Combaconum, who is, of course, an uneducated man, wholly ignorant of the principles of the law and procedure, disposed in the same period of about 900 small causes of a value not exceeding Rupees

10. And again the District Moonsiff of Valangaman, a rich village six miles distant from Combaconum, disposed of 655 more small causes, sitting in the town of Combaconum close to the Court of Small Causes. Last year, therefore,

there were four independent Small Cause Judges sitting in Combaconum at the same time: and now and again, whilst the most highly paid and presumably most able of those Judges had actually nothing to do, the lowest of them in rank and ability was disposing of several cases per diem. Had the Small Cause Court alone done the work done jointly by these four Courts, its file last year would have been increased by no less than 2400 and odd causes, that is by nearly four times as many causes as it disposed of; and would have reached the respectable figure 3000 and odd.

7. I have heard of reasons for thinking that the District Moonsiffs of the Tanjore Zillah as a body should not be deprived of their Small Cause jurisdiction, but I have heard of none for thinking that those of Combaconum and Valangaman should not be deprived of work that they cannot possibly do with so great advantage to the public as the Court of Small Causes. Whilst the fact that an uneducated Village Moonsiff is entrusted with the disposal of 900 small causes in a town like Combaconum, under the very shadow of an expensive Court of Small Causes, seems to me to call for immediate interference on the part of Government.

8. My first suggestion, therefore, is to deprive the tribunals above mentioned of jurisdiction over small causes, in order to make the Combaconum Court of Small Causes what it assuredly ought to be, the one Court of Small Causes for a particular area of country: and, in like manner, to deprive of unnecessary jurisdiction all other District and Village Moonsiffs' Court sitting in the immediate vicinity of Courts of Small Causes.

9. The next question is, whether any other Court or Courts should, in like manner, be deprived of existing jurisdic-

tion, for the purpose of increasing that of the Courts of Small Causes at Combaconum and elsewhere. With respect to this point Government have expressed in their order calling for this report their unwillingness "except on very strong grounds to interfere with the Small Cause jurisdiction now exercised by District Moonsiffs." And it, therefore, becomes my duty to endeavour to show whether or no strong grounds do exist for such interference.

10. Judging partly from what I have seen and heard of the work done by various District Moonsiffs in this Presidency, and partly from my own experience of the nature of the work that ordinarily comes up for disposal by a Court of Small Causes, and that experience ranges over upwards of four years, I have not the least hesitation in stating my belief that, as a body, the District Moonsiffs of this Presidency are not fit to be trusted with the power of hearing and determining non-appealable suits of any kind, still less those that come under the head of small causes.

11. My reasons for coming to this conclusion are these. In the first place when suits of small value are defended, and Pleaders employed in the conduct of them, almost as many and as difficult questions of law will arise for adjudication as during the progress of ordinary suits of high values: and where there is no appeal from the decision of such questions, it follows, as a matter of course, that the officer called upon to decide them should be a man of considerable legal learning and ability, or he will not be equal to his work. Probably no Judicial Officer, who has ever presided for any time over a Court of Small Causes, will be disposed to doubt that more or less difficult questions of law constantly arise in hearing small causes, particularly in respect to

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the subject of jurisdiction: but in order to illustrate my argument, it will be well to bring to the notice of Government a few questions that have lately arisen in the Court of Small Causes at Combaconum, and probably in other Courts of a similar kind also. One was whether an instrument in the nature of a lease executed by a Madras Mirassidar in favour of his tenant needs to be stamped. Another was whether several tenants, who according to custom have jointly signed an agreement to pay a lump rent for their village, but according to custom expect and are expected to pay each only for his own proper holding, can be sued severally on the joint agreement. A third was whether a person being the receiver of a property can recover rent due on certain instruments executed to, and in favour of, one who has been *de facto* proprietor thereof. A fourth was whether a plaintiff can prove the passing from him of a consideration other than that set out in the instrument sued on by him. A fifth—and this is still undivided after having been pending before the High Court for nearly a year—was whether any suit based on the breach of an implied contract will lie in a Court of Small Causes. Questions like these are, it will be seen at once, of considerable difficulty and importance, and I take it that few or no District Moonsiffs are competent finally to decide suits on their unaided determination of such questions. But as it is, District Moonsiffs have to decide such questions every day, and their decisions are not appealable. It may be said that the law has provided to some extent for this difficulty by giving the Courts the power of referring all questions of law to the High Court; but, for obvious reasons, this is but an imperfect remedy. It requires much acumen to see the difficulty and importance of a

question raised, and preparing a case for the consideration of the High Court costs no little time and labour, so that practically comparatively few references are made by the District Moonsiffs.

12. In the next place in a large percentage of small causes tried on the merits the correct determination of the issues depends wholly on the correct appreciation of conflicting oral evidence, and oral evidence is a thing District Moonsiffs are most prone to despise. For them the nice indications afforded by gestures, and demeanour, and expressive pauses and silence and the like, are almost wholly without significance, and credit is ordinarily by them attached to, or withheld from, a man's statement in consideration of his reputed character, or social position, or of the fineness of his cloth, or of the *a priori* probabilities of the case, rather than in consideration of the demeanour and conduct of the man whilst undergoing examination. A good illustration of the truth of this is afforded by a late Proceeding of the High Court reprimanding a Moonsiff for hearing two suits at one and the same time.

13. In the next place it is matter of notoriety that, in Mofussil Courts of all grades, but particularly in those of the lowest, perhaps nothing is more common than to place the burden of proof on the wrong shoulders, and by so doing arrive at a radically erroneous judgment. In appealable cases errors of this sort cause at the least great delay and expense, but in small causes they are of course fatal.

14. Lastly, it seems to me that a Native Judge stationed in a remote village, where there is nothing in the shape of public opinion, and reporters are unknown, must, in the very nature of things, be exposed to so great pressure on the part of the more wealthy and powerful residents in his neighbourhood,

that he can hardly be expected to decide non-appealable causes without bias or partiality between rich and poor, strong and weak. Superstition, caste feeling, sympathy, every thing must tend to influence him in favour of the stronger party, whilst there is nothing in the shape of supervision and control to keep him right in his Small Cause work. However desirous to do right, he will probably succumb gradually to the manifold influences brought to bear on his judgments by numerous dishonest and greedy suitors. And it must be remembered in connexion with this part of the subject that Small Cause Courts, when presided over by incompetent Judges, naturally offer special attractions to one who wishes to gratify spite against another, through the procedure followed in them being so rapid. All that is necessary for such a one to do is to wait till his enemy goes abroad for a few days; then file a suit against him, and procure substituted service of notice thereof by affixing a copy of the notice to his house. Judgment *ex parte* follows as of course within a week or a few days; and whenever it may be deemed to be expedient, execution may be had by suddenly arresting the person of the judgment debtor. And in such case it will be quite problematic whether the unfortunate defendant will be able to procure the setting aside of the fraudulent decree.

15. For these reasons I think that the District Moonsiffs of this Presidency are, as a body, wholly unfit at present to be trusted with the power of hearing and determining small causes, and, therefore, Small Cause jurisdiction ought to be taken away from them as a body, and conferred only on a few of the most able and trustworthy of them, who may happen to be posted at stations where their assistance seems to be specially required.

16. But many officers appear to be of opinion that, however weighty may be the objections to District Moonsiff's exercising Small Cause jurisdiction, still they are quite out-weighed by the great good resulting from justice being brought to every man's door, and I must now address myself to a brief consideration of this argument. And first, is it a fact that justice is brought to every man's door by giving jurisdiction over small causes to District Moonsiffs? That it enables certain suitors to get decrees in nearer places than if they were compelled to travel to the Small Cause Court of their district, is no doubt true. But apart from the consideration that decrees are not always just, the question remains, is it a fact that a plaintiff residing at a place, say, five miles distant from a Court of a District Moonsiff, and thirty-five miles distant from that of the Court of Small Causes of his district, necessarily has less trouble in getting a decree for, say, Rupees 25 in the former than in the latter Court? My experience would lead me to answer the question unhesitatingly in the negative. In a properly-managed Court of Small Causes presided over by a competent European Judge, the scrutiny and registration of the plaint; the issue of notice to the defendant, and the hearing of the cause, proceed with mechanical precision, and a plaintiff knows exactly, in most cases, with how great an expenditure of time and labour he can attain his end. He will make his arrangements with certainty on leaving his village, and return to his work at the expected time without fail. And the whole business will cost, perhaps, two or three days' absence from his village, when he can best spare the time. And his witnesses will lose only three days' labour, or perhaps not more than two, being released from attendance at Court on the

very day on which they first appear. But in a District Moonsiff's Court presided over by a native, mechanical regularity is generally a thing unknown. Work is done when convenient, without regard to time and existing arrangements. If a small cause plaint is filed to-day, it may be scrutinized to-day or after ten days, or not at all. The notice to defendant may go out to-morrow, or after a fortnight. When the cause ought to be called up, in all probability other work will be going on; and it will be inconvenient to stay that work; and so the small cause will ~~be~~ ^{be} ~~over~~ ^{over}. In such case the witnesses will be sent home and told to come next day; when the same thing will happen again, and in the end perhaps the parties and witnesses on either side will have to walk to, and from, the Moonsiff's Court half a dozen times, and lose ten days' work in the course of hearing a petty cause. I feel convinced that there is no exaggeration in all this, and that, in point of fact, it is often less troublesome to a suitor to come thirty or forty miles to the Court at Combaconum, than to go to his Moonsiff's Court only five or six miles from his door.

17. Although several officers of experience, whom I have consulted on the point, have expressed opinions favourable to the retention of the existing Small Cause jurisdiction of District Moonsiffs' Court, I feel persuaded that none of them would deny the truth of what I have just advanced. And however averse they may be to seeing remote, outlying tracts of country deprived of the assistance at present afforded by the Courts of the Moonsiffs, I cannot believe they would prefer to see a suit arising at a distance of, say, ten or twelve miles from a Court of Small Causes disposed of hastily by a District Moonsiff.

18. My second suggestion, therefore, is to deprive the District Moonsiffs of each district where there is a Court of Small Causes of jurisdiction over all small causes arising within a distance of, say, forty or fifty miles from that Court.

19. And then comes the question, what is to be done with the jurisdiction of the Village Moonsiffs over suits not exceeding Rupees 10 in value? My impression is that, in most cases, the Courts presided over by those officers are very considerably worse than useless, and ought to be abolished as nuisances. But as they are at all events institutions, venerable from age, and cannot often do much harm, perhaps the time for their abolition has not yet arrived. But at all events their jurisdiction should be confined rigidly to its proper limits, and the spectacle of a rude, village official exercising important jurisdiction in a town like Combaconum ought to be no more seen. I would, therefore, suggest, in the third place, that all Moonsiffs of villages exceeding, say, 1000 in population should be deprived of their civil jurisdiction. Were these three suggestions carried into effect, the file of the Court of Small Causes at Combaconum would rise at once to between four and five thousand cases per annum. And no doubt other Courts of Small Causes would gain a corresponding increase of work, if the Small Cause jurisdictions of the inferior Courts in their vicinity were abolished.

20. Another important question now presents itself for consideration, and that is, whether the jurisdiction of the Courts of Small Causes should be raised from Rupees 500 to Rupees 1000. When the Judge of the Court of Small Causes at Negapatam asked for an extension of his jurisdiction, the Judges of the High Court, with the exception of the Acting Chief Justice, were strongly averse to the proposed measure. They expressed

an opinion to the effect that the summary proceedings of the Courts of Small Causes were only suited to petty claims, and that the present limit, viz., Rupees 500, is the very utmost to which they should be made applicable. "It is undeniable," they thought, "that a cleverly-concocted suit would be more likely to succeed in a Court of Small Causes than in one where the more tedious but safer course of the regular procedure is observed." And they added, "the consequences of an erroneous decision will, of course, be more mischievous the greater the amount at stake: many a family would be irretrievably ruined by a decree for Rupees 1000."

21. Now, with the greatest deference to the high authority from which these opinions have emanated, I cannot but observe that they appear to me to be founded in misconception, and to involve a fallacy. My experience of the working of the Courts of Small Causes leads me to believe that a false claim is by no means more likely to succeed in a Court of Small Causes than in one of the so-called regular Courts. But on the contrary the rapidity of the procedure in the Small Cause Court is rather antagonistic to the chicanery of one who prefers a false claim, in that he has not time to meet a genuine and simple defence by a cleverly-concocted replication. As soon as the defendant makes answer, the plaintiff must then and there reply; the issues are settled in five minutes; and the final hearing commences. And as far as regularity of procedure goes, the procedure observed in a properly-managed Court of Small Causes is every bit as regular as that observed in other Courts: the only difference being that, as there is no appeal, the Judge himself takes notes of the oral evidence instead of having it recorded *in extenso* in the vernacular.

22. In all other respects a Court of Small Causes and an ordinary Court conduct a suit in precisely the same manner: and the only reason why the former can get through its work so rapidly at times is that most of the suits brought before it are not defended at all, and those that are defended are most of them such as involve only the very simplest questions of fact. The High Court would appear to have been unaware of these facts, and to have imagined the hearing of a suit in a Court of Small Causes is of necessity a hasty, informal proceeding. Perhaps it will be well, therefore, to observe here that the Courts of Small Causes guide themselves strictly by the provisions of the Code of Civil Procedure, and omit no steps of importance in conducting an investigation.

23. The following brief sketch of a suit as conducted in a Court of Small Causes at Combaconum will perhaps not be out of place here. On the morning of Monday, the 10th January, we will suppose, a plaintiff institutes a suit by presenting a plaint. He does this by dropping his plaint, together with any documents on which he relies, in the petition-box. At noon precisely a clerk unlocks the petition-box, and takes out the contents. The plaint and its accompaniments are at once scrutinized in the office, and if there is nothing informal or otherwise objectionable about the plaint, the plaint is at once registered and a day fixed by the head clerk for the hearing, and the process fees having been collected from the plaintiff, a notice is issued the same day about 4 p.m. to the defendant, and a serving officer starts with it before sunset. The day fixed for the hearing will be about the 22nd January, being so calculated as to allow seven clear days to the defendant within which to prepare himself. But

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should it subsequently appear that more time is necessary, more time will be allowed. If the plaint is in any way informal or objectionable on the face of it, or if there is any doubt as to the existence of a cause of action, or as to the suit being barred by lapse of time, or as to the sufficiency of the stamps, or what not, the head clerk will not register it, but will at once submit it for the orders of the Judge, which as a rule will be passed on the following Court day. Upon the day fixed for the hearing, upon the appearance of the parties in person or by their Pleaders, the plaint is read out and explained to the defendant or his Pleader, and his plea or pleas recorded. If he does not confess judgment, his answer is duly considered, together with the plaintiff's reply thereto, if any, and an issue or issues are framed. The plaintiff or defendant as the case may be is then called upon to open his case; all his evidence oral and documentary is taken; then come the opening and evidence of the other side; then if necessary a reply on the case is permitted; and eventually the issue or issues are decided and judgment immediately passed.

24. The proceedings are, therefore, in all respects regular and formal, and if a miscarriage of justice at any time occurs, it is not owing to the defective nature of the investigation. With regard to the supposed safety ensured by "the more tedious but safer course of the regular procedure," I can only say I believe it to be wholly non-existent. As the Small Cause Court Judge has to rely solely on his own exertions, and knows that a mistake made by him in recording or appreciating a part of the evidence may be fatal, he will naturally be more than usually careful in all that he does, and determine to master the facts of the case.

25. The opinion that "the consequences of an erroneous decision will, of course, be more mischievous, the greater the amount at stake: many a family would be irretrievably ruined by a decree for 1000 rupees," would appear to be met by the observation that in Southern India, as well as in most parts of the world, many a family would be irretrievably ruined by a decision for Rupees 500, or even Rupees 50; and that as a rule the victims of false suits are men so poor that they cannot afford to lose so much as twenty or thirty rupees. If any families are in fact ruined by erroneous decisions in Courts of Small Causes, they are probably families of *Parakudias* and other predial slaves sued for very small sums of money by cruel landholders, who stand well with the Moonsiffs of their respective districts.

26. I am decidedly of opinion that in some Courts the jurisdiction might very properly be raised to 1000 rupees though unquestionably Government should exercise a careful discretion in selecting Courts in which to make an experiment in this direction, and the result of the experiment should be carefully watched before raising the jurisdiction of other Courts.

27. My opinion on this point is concurred in by the Judges of the following Courts of Small Causes, viz., Vellore, Masulipatam, Negapatam, and Cuddalore, and by the Acting Judge of the Civil Court of Tanjore, as also by the Officiating Collector of the Kistna District, and the Acting Judge of Tanjore. In fact of the officers I have consulted only one or two have objected to the extension of the jurisdiction of the Courts of Small Causes, and I believe if the Judges and Collectors of the Presidency generally were consulted, they would

almost unanimously recommend the extension.

28. Mr. Wilkins, an officer of great experience, has written to me, as follows, on this point:—

"The advantages offered by a Court of Small Causes cannot be too highly estimated when compared with the tedious, inconvenient, and expensive process attending suits of other Courts before a claimant recovers his dues. I have had, and still have, many suits referred to me on appeal pending for four or five years which might have been disposed of by a Court of Small Causes in a fortnight, and the execution of the decree within as short a period: whereas in the present cases, after all the trouble and expense in obtaining a final decree in his favour, a creditor has every chance of being frustrated in his attempt to obtain execution, by the length of time the debtor will have had in concocting means for securing his property against attachment. This is no imaginary representation, but what has often fallen within my observation, and been complained of most bitterly.

"It is needless for me to enter into detail on the several causes of the law's delay in the progress of original suits, particularly before a District Moonsiff in consequence of the large number of suits generally on his file, and the tardy process of examination by the defendant; repeated attempts of defendants to obtain postponement for the presentation of their statements, their documents and lists of witnesses; the obstacles in the production of witnesses on account of the unwillingness to attend, the difficulty of getting over the examination on account of the tardy process of waiting it down within the time previously calculated, and the necessary adjournment of cases."

29. My fourth suggestion, therefore, is to try at once the experiment of raising the jurisdiction of one or two Courts to Rupees 1000. I am not in a position to say what effect such extension of jurisdiction would produce on the file of any Court; but I imagine it would not be very large, first, because bonds for sums exceeding Rupees 500 are not very often executed; and, secondly, because when they are executed, they are usually instruments creating interests in valuable immovable property as well as mere pecuniary obligations, and are, therefore, sued upon in Courts competent to deal with such interests. Probably a hundred suits of more than Rupees 500 value would be the very largest number brought in any one Mofussil Court of Small Causes in a year.

30. The next thing requiring consideration, and it is one of the highest importance, is whether it would not be advisable to make the experiment, at all events in one district, of giving full effect to the intention of the Legislature expressed in the Small Cause Court Act, by creating a group of Small Cause Courts, to be presided over by an efficient Judge, and periodically visited by a Judge of the first class, viz., a Zillah Judge. Up to the present moment the Small Cause Court system proper has never been tried in this Presidency; and Government now proposes to abolish the existing Small Cause Courts, and revert to the old Subordinate Court system without having had any opportunity of judging whether or no the Small Cause Court system is good or bad for this Presidency. In the Proceedings of the Legislative Council recorded in the second Supplement to the *Fort Saint George Gazette* of the 17th January 1865, will be found a speech of the Hon. Mr. Mayne, which explains at some length the

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principle on which Small Cause Courts are founded, and I would humbly recommend Government to consider the arguments and propositions therein contained before deciding on so grave a question as the abolition of the present Courts of Small Causes.

31. Mr. Mayne's belief appears to have been that it is quite practicable to confer upon the people of this country the inestimable boon of cheap and speedy justice in ordinary cases, if care be taken to appoint honest, sensible, and capable Small Cause Court Judges: and that the general supervision ordinarily exercised by Courts of Appeal may be sufficiently supplied in the case of Small Cause Courts by periodical visitations by Zillah Judges. At the close of his speech he is reported to have said:—"I think it very desirable that Small Cause Courts should be under supervision; but far the best mode of supervision appears to me to be the bringing of a second mind to bear on the business of the Court. I, therefore, attach very high importance to the provisions of the Bill for the appointment of Judges extraordinary. Under these provisions, the Local Government may invest any Judicial Officer or person of legal learning with the power of assisting occasionally or periodically in the conduct of the jurisdiction of a Small Cause Court. Ordinarily, this person so empowered will doubtless be the Zillah Judge. The report of such a Judge extraordinary, on the manner in which the business of the Court is conducted, will carry with it a supervision not less effective and more consistent with principle than any appeal whatsoever."

32. The principle laid down by Mr. Mayne apparently was adopted by the Legislature; and Act XI. of 1865, usually called the Small Cause Court Act, provides, amongst other things, for the appointing Judges to preside over groups

of two or more Courts, and the appointment of extraordinary Judges for limited periods, or for specific periods in each year only. And my fifth suggestion, therefore, is to try the effect of carrying out the intention of the Legislature by constituting a group of Courts in the Tanjore District, say at Negapatam, Combaconum, and Tanjore, appointing a single Judge to preside over them, and appointing the Zillah Judge of Tanjore extraordinary Judge under Section 15 of the Act for specific periods in each year, for the purpose of supervising, aiding, and reporting on the working of the three Courts. Were the Zillah Judge periodically to supervise the work of the regular Judge, the latter would undoubtedly be made to be very careful, and to do his best to keep his Courts in proper working order; whilst the differences of opinion that would arise, from time to time, between the two officers would tend to bring to notice and procure the correction of various irregularities and errors in law and practice. The experiment would not necessarily be expensive, because although the cost of three Registrars with appropriate establishments would have to be provided for, there would be only one Judge where there are now two, and the Zillah Judge's remuneration for periodically visiting the Courts and sitting as extraordinary Judge would not exceed four or five hundred rupees per mensem during a few weeks in the year. The salaries of three Registrars at, say, Rupees 250 per mensem, would amount to Rupees 9000 per annum, and the extra clerks required would not cost more than Rupees 3000 or thereabouts per annum. By abolishing the posts of head and deputy head clerks at Combaconum and Negapatam enough funds would be released to provide for eight or ten extra clerks, and with these and a few more and the Registrars and the existing establishments at Comba-

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conum and Negapatam, there would be sufficient establishments for the three new Courts. It seems unnecessary here to enter fully into particulars with respect to these establishments; but it is well to show that they would not be more costly than the two they would supersede.

33. In suggesting the advisability of making this experiment, I must explain what work I think the Registrars should do. If the file of the Court at Combaconum were to rise, as shown above, to over 4000 causes per annum, and that of the Court at Tanjore nearly equalled it, and that of the Court at Negapatam rose in an equal degree, there would be about 12,000 suits for the Judge and extraordinary Judge to get through in the course of a year. And as the latter would only sit for a month or six weeks, or at the most two months in each year; and when he sat, would sit with the Judge, practically the whole work would fall on one Judge. It is clear that he could not get through it without assistance, and this would have to be given him by his three Registrars, invested under Section 40 of the Act with the powers of a Judge. They would be competent to try all suits of a value not exceeding Rupees 20, or about half of all the suits now disposed of by the District Moonsiffs, and all those now disposed of by the Village Moonsiffs of towns. And being constantly under the direct supervision and instruction of the Judge, they would naturally do this part of their work much better than if they were independent Judges. Moreover as it would be their regular and proper work, they would do it with far more carefulness and pleasure than District Moonsiffs do their Small Cause work. In the next place the Registrars would do the great bulk of the execution work under Section 29, subject of course to revision by the Judge. Then

they would do the Judicial work connected with the reception and rejection of plaints, under Section 37; receive and enter up judgments by confession under Section 25; record agreements to compromise and notices of withdrawal on satisfaction had; and perform various ministerial and quasi-Judicial duties under Section 36. Again, if the work of any Court should happen to grow excessive at any time, the Registrar of it, if a competent man, might be appointed an extraordinary Judge for a limited period to clear the file. Lastly, the Registrars should, I think, be the clerks of the Court under Section 44, in order to save expense. Their duties would, therefore, be numerous, onerous, and important, and their salaries, to be adequate, should not fall short of Rupees 250 per mensem. They should hold a good position, and ordinarily be selected from amongst the most promising of the younger Moonsiffs.

34. If this radical change in the constitution of the Courts were effected, it would, of course, be impossible for the Judges to undertake any Principal Sudder Ameen work. Their time would be fully occupied. But the question remains whether the Judges or any of them should continue to do additional work as Principal Sudder Ameens, if the present system should be maintained. Certain Officers appear to object to being saddled with Principal Sudder Ameen work, thinking that it interferes with their legitimate Small Cause work. But after giving the subject very full consideration I have come to the conclusion that, with proper management, Principal Sudder Ameen work can be done in addition to Small Cause work without in any way interfering with the proper performance of the latter. Where both kinds of work are mixed up together, and done without method and order, no doubt inconvenience will be felt from time to time. The hear-

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ing of a tedious suit on the Principal Sudder Ameen's side of the Court may extend over two or three days, and necessitate the postponement of twenty or thirty small causes; or a pressure of Small Cause work may compel the Judge to postpone one or two important suits. And the preparation of decrees and judgments may be delayed occasionally. But if the Judge makes two sides to his Court, and keeps the business of each quite distinct, no inconvenience of any kind need arise. In the Court at Combaconum Mondays, Wednesdays, and Saturdays are Small Cause Court days, and ordinarily nothing but Small Cause work is done on them, though of course the Small Cause Court petition-box is open daily, and if any thing urgent needs to be attended to, the rule will be relaxed in favour of petitioners. Tuesdays, Thursdays, and Fridays are Principal Sudder Ameen side days, and on them ordinarily no Small Cause work is done. By this arrangement it has been found that confusion and inconvenience are altogether avoided; and whilst the average duration of small causes on the file does not exceed twelve days, that of suits on the Principal Sudder Ameen side has been reduced to six months. And miscellaneous Civil petitions of all kinds are disposed of ordinarily in one or two days. I am, therefore, of opinion that where the number of small causes disposed of in any Court is insufficient fully to occupy the Judge's time, he can do additional work on the Principal Sudder Ameen side with great advantage both to the State and to himself. For the training to be had in a Court of Small Causes, where the Judge is invested with the powers of a Principal Sudder Ameen, is in almost all respects equal to that afforded by a Civil Court, the work being almost identically the same in the two Courts. On the other

hand, if Government should not see fit to try the experiment above recommended, an experiment which, in my humble opinion, is imperatively called for, I would respectfully suggest that the existing Court of Small Causes are unnecessary, and may conveniently be replaced by subordinate Courts, as proposed by Government. The latter Courts, by their constitution, are better adapted than Courts of Small Causes to assist the Civil and Session Courts, and they can do Small Cause work in addition to their proper work as well as Courts of Principal Sudder Amcens now do it.

35. I now come to a very different question. Hitherto I have made suggestions touching matters that can be dealt with without Legislative interference; certain matters need to be considered which cannot be dealt with except by the Legislature. And first with regard to Section 6 of the Act, which declares what kind of suits shall be cognizable by Courts of Small Causes, there can be no question it seems to me that it is unnecessarily full of difficulty and ambiguity, and ought to be replaced without loss of time by something more intelligible to ordinary minds. The Section runs as follows, viz.:—

The following are the suits which shall be cognizable by Courts of Small Causes, viz., claims for money due 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 of the sum of five hundred rupees, whether on balance of account or otherwise; provided that no action shall lie in any such Court.

(Here follow the exceptions.)

36. The first difficulty in this enactment is the meaning of the expression "or other contract." From its

position in relation to the words "or bond" it would seem at first sight to mean "or other written engagement to pay money in the nature of a bond." But it may also mean "or other express agreement written or unwritten," or it may be taken to be large enough to include all contracts known to the English law as "implied." It is, of course, of the last importance that this point should be clearly understood by Small Cause Court Judges and others, or suitors may be referred by Courts of Small Causes to the regular Courts, and by them referred to Courts of Small Causes, and in the end wholly fail to get redress after twice paying a heavy Stamp duty. As an instance of the difficulty experienced in dealing with this expression, I may cite a case which arose in the Combaconum Court. A man sued another for contribution. The defendant pleaded first no jurisdiction in a Court of Small Causes to hear and determine a suit for contribution. In argument it appeared that in Calcutta a divisional bench had ruled that such a suit would not lie in a Court of Small Causes, but shortly afterwards another divisional bench had ruled that it would, and the question subsequently came up for decision before a full bench, which decided in a lengthy judgment that such a suit would not lie, because it was not based on a contract, but on eternal principles of justice, and with suits based on such principles a Court of Small Causes had nothing to do. Not being satisfied with the reasons on which this judgment was founded, I stated a case for the opinion of the Madras High Court, stating my opinion that, in the contemplation of the Act, a suit for contribution was in fact based on an implied contract, as understood by the English law, but that no suit based on an implied contract was

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cognizable by a Mofussil Court of Small Causes. This reference was made nearly a year ago, but it has not been disposed of yet.

37. The next expression "rent" is almost as unsatisfactory, because a definition of rent applicable to the complex system of land tenures prevailing in this Presidency is nowhere to be found. For example take the ordinary case of what is called a *Melvarem* proprietor entering into a convention with a *Parakuli*, according to the terms of which the latter is to sow and cultivate a piece of land, and at harvest time the crop is to be divided in a certain manner by or under the supervision of the former's bailiffs. Does the former receive rent from, or make an allowance to, the latter?

38. The next expression "personal property" is not very clear. For example can it in any circumstances include standing crops where the owner is a Hindoo? or the house of a Hindoo where the soil belongs to a stranger?

39. Then the term "damages" is full of difficulty. If used in one sense it will make almost every suit for money cognizable by a Court of Small Causes, because where a man seeks to recover a sum of money he almost always seeks to recover it as damages on account of the breach of an existing obligation. If used in another sense, it will give jurisdiction only over suits for damages suffered by reason of the commission of a thing called a tort.

40. Immediately after this we have a group of expressions which certainly need explanation, "debt, damage, or demand." The first of them is intelligible only by the light of the Roman law, whilst most of the expressions used in the Section appear to be borrowed from the English. The second causes difficulty because being in the singular it must be

taken to be something different from the plural word "damages," used previously. And "demand" is to some extent ambiguous, because it may or may not include the costs incurred by the plaintiff in conducting his suit.

41. Next comes the question, can a Hindoo sue in a Court of Small Causes to recover his share of a joint estate, when it consists of personal property, such as jewels, money, &c., and the share vested in him by reason of his birth, and he has not inherited from his father? If he has inherited from his father or any other who has died intestate, an action to recover his share will not lie in a Court of Small Causes.

42. Such are some of the difficulties caused by Section 6 of the Act, and no doubt others have occurred or will hereafter occur in connexion with the subject of the jurisdiction of Courts of Small Causes. And in order to improve the working of these Courts, my sixth suggestion is to recast that Section, and enact something that will show with precision what suits these Courts shall and shall not entertain.

43. Section 21 provides that all decisions and orders of the Court shall be final, and it does not appear whether they are to be final in the sense of non-appealable, or whether they are also non-revisable under the provisions of the Code of Civil Procedure. There is a ruling of the Madras High Court to the effect that this Section does not take away the general revisionary powers conferred by the Code; but it still remains doubtful to what extent those powers are modified, and it would be well if the thing were made clear.

44. Section 34 seems to require alteration. As shown above the Legislature contemplated the appointment of the Zillah Judge as extraordinary Small

Cause Court Judge, and if so, it would appear to be improper that when the ordinary and the extraordinary Judge differ in opinion about a matter of fact, the former should have a casting voice.

45. There are no doubt other provisions in the Act contained that require re-consideration, but it is not necessary for me to search for them now. It would have been sufficient to have called attention to the most important of them, those giving jurisdiction, in order that if Government thinks proper, a recommendation may be submitted to the Imperial Government to direct a regular inquiry to be made into the necessity of amending the Act.

46. In conclusion I think it advisable to call the attention of Government to the fact, perhaps unknown to them, that the litigation in the Courts of Small Causes is wholly directed by a class of unrecognised legal practitioners, who are irresponsible to, and unchecked by, any authority. In Combaconum, and probably elsewhere, these men are called Attornies. The Vakeels or Pleaders of the Court are entirely under their power: and all kinds of villainy are attempted by them, I fear not always unsuccessfully, which the Vakeels, if willing, are quite unable to repress. It is generally believed that the Vakeels arrange everything relating to the conduct of suits personally with their clients, but I am informed on authority that I cannot doubt, that this is altogether a mistake; and that all such arrangements are invariably made with Attornies, who allow the Vakeels to do nothing but appear and plead. Whilst the Vakeels are attending in Court, the Attornies go about the country in all directions, hunting up clients and concocting suits. The most successful of them have formed extensive connexions; keep agents in

all the larger villages; and are surrounded by numerous retainers, prepared to swear to any thing in behalf of any body. And as long practice has made these Attornies familiar with the practice and mechanism of the law, they are looked up to by all as powerful legal advisers and coadjutors, and exercise an unbounded influence for evil. The business of the Vakeels depends altogether upon the good pleasure of the Attornies, and it is impossible to help suspecting that the former are often corrupted by the latter, and lend themselves to infamous schemes, through sheer inability to resist the pressure put upon them. This being so, I would suggest, in conclusion, that Government should institute an inquiry into the general position and conduct of the Attornies practising in each district, and if it be found that they are as powerful and unscrupulous as they are believed to be in Combaconum, then that steps should be taken to bring them under control by recognising a certain number of them for each Court in the Presidency, and preventing the Vakeels from taking cases from any but recognised Attornies. Small causes are almost invariably conducted by Vakeels in the Mofussil, and a superior class of Vakeels is gradually springing up to meet the increased demand for legal honesty and ability. It is, therefore, very undesirable that justice should continue to be tampered by the efforts of a set of thoroughly unscrupulous men, who cannot be punished in any way for their misdeeds.

1947

Size of at R. 1400
at - 700

Ref. 1

Report for 1854-55, 826 suits,
while it appeared from
correspondence before them
that nine Small Cause
Judges in Bengal, costing
only Rs. 8,500 per annum,
disposed of 24,698 suits
in the year, so that although the cost of eight
such Judges in Madras
was one-fourth more than
nine similar Judges in
Bengal, the work turned
out by the former, was
only a little more than
one-third that turned out
by the latter. These facts
they pointed out, suggested
some inquiry as to whether
it was not possible to
cause reductions in the
Small Cause Courts of this
Presidency.

2. This letter was

10
accompanied by a Memorandum
from Mr. (now Sir
John) Strachey on the in-
adequacy of the salaries
drawn by the Unreserved
Judges employed in Bengal
and the North West Provinces.
It appears from para. 18
of this Memorandum, that
it was considered that the
salaries of the Principal
Subordinate Judges, now styled
Judges, should range from Rs. 500 to Rs.
800 per annum, and that
the average salary of this
class of Judges should not
be less than Rs. 600.

3. This letter of the Govt.
of India, and the accompany-
ing Memorandum by Mr.
Strachey were forwarded
to Sir Adam Biddleston,
then Acting Chief Justice
of the High Court of Madras,
with the view of eliciting
the

11
Vide letter to High Court
1st April 1857 No. 327

the opinion of the Honble. the
Judge of the High Court
on the subject. In reply,
the Govt. were informed
that Mr. Justice Collette
was willing to undertake
the task of revising the
Small Cause Courts of this
Presidency, but that he
could not commence it
before the following year.
Upon this the Govt. selected
Mr. Nelson who was then
Acting Registrar of the High
Court, but had had experience
as a Small Cause Judge,
to undertake the duty at
once, with the permission
of His Excellency.

4. Mr. Nelson submitted
a voluminous report on the
5th February 1868, which it is
not the purpose of Govt.
to further include in these
proceedings, than to state
that, instead of a saving,
the

From High Court, 21st Aug 1867

To High Court 3rd Sept 1867
No. 1415.

Mr. Nelson's proposals were
notably involved an increased
cost of Rs. 24,482 per annum.
This increased cost, however,
seemed to be contemplated
for improving the position
of the servants of the Courts,
and had nothing to do with
the Judges themselves. This
part of the description may,
therefore, be dismissed, with
the remark that, in the letter
to this Government dated
28th January 1867 No. 112, the
Government of India were
informed that the subject
of revision was under con-
sideration, and that the
views of this Govt. would
be submitted after consulting
Mr. Justice James, who had
formerly reported on the
establishments attached to
the several Courts other than
the High Court.

5. It was intended
afterwards,

Not. S. C. C. Settlement

afterwards, on Mr Justice
Limes expressing his con-
currence with Mr Nelson
in regard to the establish-
ments attached to the Small
Cause Courts, to report the
opinion of this Govt to the
Govt of India on the work-
ing of these Courts; but
the intention was waived
for the time, and Mr Nelson
was called upon by the
Proceedings of this Govt,
dated 30 July 1867 No 1247,
to report on the Courts them-
selves. His reply was
communicated in his letter
of the 27 January 1870 No 1248,
in which he went into
an elaborate report on the
character and working of
the Small Cause Courts;
but the chief feature of
his scheme was directed
to the discovery of ^{all} work
for

for them, by depriving all
Subordinate Judges and Dis-
trict Munsifs, ^{and} even Village
Munsifs, of Small Cause
powers, and confining such
powers to the Small Cause
Courts proper, whose juris-
diction was to be raised
to suits of the value of
1000 Rs, while they were
to try suits of the small-
est value also. In other
words, a costly Agency
was to take the place of
inexpensive and popular
institutions.

6. The question has been
lying over for a considerable
time, but the Govt have
not lost sight of it. They
have long felt that the po-
sition of the Subordinate
Judges and District Munsifs
called for improvement,
and that their adaptation
to the requirements of the
people

people was capable of being
more extensively employed,
while the Covenanted Civilian
(now the only) so, besides
over the Small Cause Courts
could be more usefully em-
ployed in the ordinary
branches of the Adminis-
tration.

7. The history of these
Small Cause Courts may
be briefly stated. Formerly,
under Regulations I & II of
1827, there were subordinate
Courts of civil and criminal
jurisdiction in several
Districts, which were pre-
sided over by Covenanted
Civilians, generally of about
15 years' standing. When the
present Small Cause Courts
were about to be establish-
ed, these experienced men
became judges of these Courts
for the recovery of petty debts,
losing

under Act X of 1830 which
was superseded by Act XI of 1832

losing all their former ex-
tended jurisdiction. dealing
principally into more petty
debts, today nothing of
the absence of Criminal
Jurisdiction, is by no means
so suitable a preparation,
as the ordinary line of the
Service, for the exercise of
the Civil and Criminal
powers of a District and
Session Judge, while it is
absolutely, none whatever
for the duties of a collector
and Magistrate. The sys-
tem is unfair to the
Young Officers concerned, as
they cannot become good
public servants under
such a training; and it
is unfair to others who
certainly do not obtain the
best men available. It
occurs to the Government
that the persons best
adapted

adapted for this kind of
work are the experienced
Native officials of the
Principal Sudr Amin or
Subordinate Sudr Clasper
for junior positions, the
best opportunity of acquiring
a thorough knowledge of
the people and country is
to be found in the position
of applicants, the experienced
District Officers and others
have found that many
of the ablest district judges
are men who have worked
for years among the people
as Revenue Officers and
Magistrates, especially with
the enlarged powers now
conferred upon higher grades
of the Magistracy by the
Criminal Procedure Code.

There were, it is
originally
obtained, 8 Courts of Small
Causes in the Presidency.
These

There were, indeed, 8, and
of these six, that at Bellary,
has recently been abolished,
so that now there are but
five Courts of Small Causes,
viz. at Simbhaloom, Cuddalore,
Madurai, Vellore and Masulipatam.
The judge of the Court
at the last named station,
is an Encumbered Officer
who was formerly a Prin-
cipal Sudr Amin and he
draws 700 Rs a month only.
The four other Judges draw
1000 Rs a month. Of these
latter, three are Encumbered
Officers; and the fourth,
viz. Mr. Goff at Masulipatam,
does not belong to the Gov-
ernment Service. It occurs to
the Government that the
Court of Masulipatam may
now be converted into a
Subordinate Court, and that
the four Small Cause Courts
at Simbhaloom, Cuddalore,
Madurai and Vellore may
be

4. 4. 4. 4. 4.

9. By the abolition of
 three four courts, which
 might be conveniently car-
 ried out from the Commence-
 ment of the next official
 year. There will be available
 a fund of Rs 67,200, or including
 establishments 87,792 per
 annum, from which to pro-
 vide for any Courts that
 may be substituted for
 them, should the High Court
 consider such an arrange-
 ment necessary, and for
 improving the position of
 the most deserving of the
 present Native Subordinate
 Judges and District Judges,
 and their establishments.
 She should the High Court
 and Judges of the High Court
 will be requested to favor
 the Government with an
 early communication of
 their views on the subject,
 in

in order that the sanction
of the Govt of India may
be obtained to the changes
that may be determined upon.

To the Honorable the Judges of the High Court

17-10-11
24-11-13
10-2-15

Bohl. of 1876 Bindings.

Journal

To
The Honble the Judges of
the High Court.

Dated 13th }
Recd. } Decy. 1878, No. 331.

Nos. 124 - 124 B.

Small Cause Courts. The object of
the High Court reported on the
convenience of abolishing the
Small Cause Courts in the
provinces, and substituting what
would be a superior of magistrates,
and improving the position
of the High Judges from whom
available. —