(1) பக்கங்களின் எண்ணிக்கை 74

(2) புதுக்கித் திருப்பிய நாள் 5-88

(3) ஆதாரங்குறிப்பவர் சுருக்கொப்பம்

தமிழ்நாடு ஆவணக் காப்பகம்.

தமிழ்நாடு அரசு

Judicial துறை

அரசாணை எண். 2228-27 அச்சகம்
மு. கோப்புத் தாள் எண். பலவகை

R No. (156-163)

நாள் : 31-10-1878 198—

படிக்கவோ கண்டபடி கையாளவோ கூடாது

எண். எ-1—18,008—15-8-27.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

31st October 1878, No. 2228.

Bills—Legislative.

Read the following papers:—

No. 156. *From T. WEIR, Esq., Acting Registrar of the High Court of Judicature at Madras, Appellate Side, to the Acting Chief Secretary to Government, dated 16th October 1878, No. 1679.*

With reference to the letter of the Chief Secretary, dated 7th August 1878, No. 1586, I am directed to transmit copies of Minutes on the Bill to amend the Code of Civil Procedure, recorded by Mr. Justice Innes (Officiating Chief Justice), Mr. Justice Kernan, and Mr. Justice Muttusami Aiyar, and I am to state that the Judges will be pleased if the Minutes are forwarded as expeditiously as possible to the Government of India in the Legislative Department.

2. I am to add that the Chief Justice and Mr. Justice Forbes have recorded no opinion on the Bill.

ENCLOSURE No. 1.

Minutes on the Bill to amend the Code of Civil Procedure.

MR. JUSTICE INNES, *Officiating Chief Justice.*—Notwithstanding the amendment of the appeal clauses in Section 588 so as to admit of appeals in some cases in which as the Code at present stands there is no appeal, there will be many cases still remaining in which there being no appeal there will be no means of redress except under Section 622, and this section is not large enough. This arises from the limited juridical meaning of the word jurisdiction.

If a Court has cognizance of the subject matter of the proceeding before it but has proceeded to a decision illegally (as for instance without proper notice to the parties), it still cannot be said to have had no jurisdiction to pass the final order. There is of course a remedy by application for review, but a Court which has thought itself right is very apt to continue to think so. I think it would be better to add to Section 622 the words "or to have acted illegally or with material irregularity in the exercise of its jurisdiction" between the words "so vested" and the words "may pass." I trust that if the legislature have any doubt of the necessity of this alteration, they will not reject the proposed amendment without a reference to the other High Courts. The want of it is much felt here.

MR. JUSTICE KERNAN.—Experience satisfies me that the Lower Appellate Courts' decisions on appeals from appellate orders (especially Judges) should be open, on questions of law only, to a second appeal.

This is particularly the case as to orders in execution when the question is whether execution is barred by limitation.

I suggest an amendment to that effect.

MR. JUSTICE MUTTUSAMI AIYAR.—When Section 82 is amended as proposed a doubt may arise whether the Court serving the summons issued by another Court is competent to order substituted service with respect to the same. I would so alter the section as to make it quite clear.

2. Section 588 allows no appeal where a District Munsif refuses to execute a decree or orders the execution of a decree on the ground that the application for execution is or is not barred when the reverse is really the case, and it is a great hardship to suitors that there should be no means of amending *final* orders which are clearly illegal. I would give the right of appeal generally in the case of all orders which are not merely interlocutory but final. I would further amend Section 622 so as to give power to the High Court to revise illegal orders passed with reference to a matter within jurisdiction.

NOTE.—This section is open to much abuse. A judgment-debtor at Madras, who is a party to a small cause suit at Agra, may be arrested at Madras and taken to Agra though the amount of the debt may be small. An order for arrest was actually passed once by the Small Cause Court at Madras from a Small Cause Court in the North-West Provinces. A similar application was unsuccessful at Madras for the arrest of a debtor in Tanjore in connection with proceedings in the Small Cause Court at the former station. I would therefore amend the section as to make it applicable to decrees for above a certain sum, Rupees 500 or Rupees 1,000.

(Signed) T. WEIR,
Acting Registrar, Appellate Side.

No. 157. *From T. WEIR, Esq., Acting Registrar of the High Court of Judicature at Madras, Appellate Side, to the Acting Chief Secretary to Government, dated Madras, 15th October 1878, No. 1717.*

In continuation of my letter of the 16th instant, No. 1679, I am directed by the Officiating Chief Justice to forward the accompanying copy of the judgment of the High Court in Civil Miscellaneous Petition, No. 281 of 1878 (for transmission to the Government of India in the Legislative Department), as illustrating the operation of Section 622 of the Code of Civil Procedure (Act X of 1877) as it at present stands, as commented on in his minute which accompanied my letter.

ENCLOSURE No. 1.

IN THE HIGH COURT OF JUDICATURE AT MADRAS,

Monday, the Seventh day of October, one thousand eight hundred and seventy-eight.

PRESENT:

The Hon. Mr. Justice INNES.
" Justice MUTTUSAMI AIYAR.

Civil Miscellaneous Petition, No. 281 of 1878.

Pattabhi Chetty, Petitioner.

Petition under Section 622 of the Civil Procedure Code against the Order of the District Munsif of Erode, dated 2nd September 1878, passed on Miscellaneous Petition; No. 325 of 1878.

This petition coming on for hearing, the Court delivered the following

JUDGMENT.—In this case the District Munsif had jurisdiction over the proceedings arising out of the petition of Lakshmidevi Ammal, and cannot therefore be said to have had no jurisdiction to make the order complained of. Nor, in failing to send a notice to the present petitioner of the proceedings in Lakshmidevi Ammal's petition, can he be said to have failed to exercise a jurisdiction which he ought to have exercised because his jurisdiction in its proper sense was to deal with the proceedings and dispose of the petition, and he did so.

His proceedings were however very irregular, and the irregularity has possibly led to injustice. He should not have ordered the dispossession of petitioner without giving him an opportunity of opposing the petition. We shall point this out to the District Munsif, and he will have an opportunity of reviewing his order.

(A true Copy.)

(Signed) T. WEIR,
Acting Registrar, Appellate Side.

No. 158. *From E. BARCLAY, Esq., Government Solicitor, Madras, to the Chief Secretary to Government, dated 10th August 1878, No. 339, forwarding the opinion of the Advocate-General:—*

OPINION.

With reference to the Order of Government, dated the 7th August 1878, No. 1586, Judicial Department, I think the alterations contained in the Bill to amend the Code of Civil Procedure will all of them tend to improve the Code, and that several of them are necessary.

2. I would suggest that Section 555 relating to the procedure on hearing appeals may be reconsidered either now or at some future time. In accordance with the practice of the House of Lords and Privy Council and under the late Code, I think it is more convenient to give the appellant the right to begin in every case. It frequently happens that the respondent is not called upon to support the decision.

MADRAS,
10th August 1878.

(Signed) P. O'SULLIVAN,
Advocate-General.

No. 159. *From H. WIGRAM, Esq., Officiating District Judge of South Malabar, to the Chief Secretary to Government, dated Calicut, 23rd August* 1878, *No.* 326.

I have the honor to reply to G.O., Judicial Department, dated 7th August 1878, No. 1586, forwarding for report a Bill to amend the Code of Civil Procedure.

2. The amendments proposed in Sections 52, 335, and 339 of the Code appear to be essential. I think that Section 588 of the Code should give a right of appeal from any order rejecting a plaint passed under Section 54, and I would further like to see a right of appeal from orders passed under Sections 231 and 232. I am aware that there was no right of appeal under the old Code of Civil Procedure, but my attention has been called on more than one occasion to some very arbitrary decisions of inferior Courts under these sections. I fully approve of restoring the right of appeal from an order refusing to set aside an *ex parte* decree. It seems open to argument whether under the present Code a defendant who has been made *ex parte* cannot appeal from the decree. There is no prohibition against such appeal as there was in Section 119 of the old Code of Civil Procedure although another remedy is provided by Section 108, and probably this was intended to be the sole remedy. If an appeal lies from a decree passed *ex parte* against a defendant then under Section 591 he could object to ~~an order passed under Section 108 refusing to set aside~~ the *ex parte* decree. This matter might be made clear by the amending Act.

3. In Section 10 of the Bill the proclamation under Section 168 is to be made compulsory. I would suggest that a form of proclamation be given in the schedule. In Section 22 of the Bill certain verbal amendments are made in Sections 362 and 363. Why not also in Section 361?

No. 160. *From W. WILSON, Esq., Acting Director of Revenue Settlement, to the Chief Secretary to Government, dated Satyamangalam, 24th August* 1878, *No.* 2088-24.

I have the honor, with reference to G.O., No. 1586, dated 7th current, to subjoin a few remarks on the Bill to amend the Code of Civil Procedure.

Section 2.—The section is much better as it stands. The expression "the thing which the plaintiff is entitled to claim" imports that the plaintiff really has a title, whereas it is perfectly possible that a plaintiff may claim a thing that he is not entitled to at all; if any change be made it had better run "which the plaintiff *considers himself entitled* to claim." The expression "arising out of" is sufficiently definite and has the sanction of age. The proposed substitute "which the plaintiff is entitled to make" is a somewhat pedantic straining after a greater accuracy of expression which after all it fails to attain. No one *could* be "entitled to claim" anything that did not "arise out of" his cause of action.

Section 3.—Is the "duly *authorized* agent" of this Section the "*recognised* agent" of Sections 36 and 37 of the Code? If he is, the amendment is unnecessary. If he is not, the Bill had better define what a "duly authorized agent is." Having reference to Sections 37 and 51 of the Code, could a *Pleader* be *authorized* by a plaintiff to sign a plaint as his "duly authorized agent." Is the authority confined to the signature of the plaint? If it is, a Pleader authorized to sign the plaint and retained to conduct the case would have to countersign as Pleader his signature, as "duly authorized agent."

A Pleader's countersignature on a plaint is intended to serve some purpose—some sort of guarantee for the honesty and genuineness of the claim, or whatever else the purpose may be—will the purpose of countersignature be fulfilled if a Pleader can countersign his own signature?

Section 6.—The proposal to substitute "causes to be filed" for "has filed" in Section 58 of the Code is certainly not an improvement; the word "filed" is used in paragraph 58 not in the technical sense of *admission*, but in the popular sense of *presented*; the expression "causes to be filed" points rather to the technical sense of *admission*; a matter generally decided at the settlement of issues, not on the presentation of a plaint.

Section 7.—I do not know any difference between "abode" and "residence" except that the one is Saxon, the other Latin; but the expression "place of abode" is more common perhaps than "place of residence," just as "resides" and "residing" are more common than "abides" and "abiding;" it is hardly worth while to bring in a Bill to amend the Code in a matter so unimportant.

Section 11.—For the to-be-inserted words "pronouncing judgment and" read "pronouncing judgment *in open Court* and".

Section 18.—I do not think that the question whether "resistance" should follow or precede "obstruction" is of sufficient importance to justify the introduction of a Bill to amend the Code of Civil Procedure.

Section 29.—Amend "*the* injunction" of the Code by "*an* injunction which it has granted."

No. 161. *From J. W. REID, Esq., District Judge of North Malabar, to the Chief Secretary to Government, dated Tellicherry, 27th August* 1878, *No.* 196.

As directed in Order of Government, dated 7th August 1878, No. 1559, Judicial Department, I have the honor to submit my observations on the Bill to amend the Code of Civil Procedure (1878).

2. The observations are submitted in two parts—one concerning only the Sections touched by the above Bill; the other being supplemental observations on other Sections of Code of Civil Procedure not touched by the Bill.

3. As I am in doubt whether the Government intended me to make any observations on the Sections of the Code of Civil Procedure not touched by the Bill, I send the second portion as supplemental observations so that each may, if necessary, be treated separately.

ENCLOSURE No. 1.

Observations on Bill to amend the Code of Civil Procedure (1878).

Section 51.—In the original part and in the proviso would it not be well to insert after "plaintiff" the words "or his recognized agent." The proviso appears to be a good addition.

The amendments and additions proposed in Sections 13, 51, 303, 52, 58, 67, 82, 199, 211, 220, 264, 268, 295, 342, 335, 339, 341, 362, 363, 366, 406, 413, 424, 483, and 484 appear more or less necessary or expedient.

The alterations in 588 (2) and *f* are much needed.

ENCLOSURE No. 2.

Supplemental Observations on Act X of 1877.

SECTION 2, "DECREE."—It will be seen that Section 562 provides as an alternative that the Appellate Court may remand the case * * with directions to readmit the suit under its original number in the register and to proceed to investigate the suit on its merits, and pass a decree therein. In such cases if the Court give to a party the costs, its order remanding the case should be called a decree for it is the order in which result of the decision of the appeal is embodied, and

also it will require to be executed. In the Chapter on execution I recommend in Sections 223 *et alia* the insertion of word after "*decree*" of "*or order*." But the "order" of the Appellate Court will be a "decree" under the above definition, for it will be the final result of the decision of the Appellate Court, for there is no provision for the case coming back to the Appellate Court except on a fresh appeal. As the use in Section 2 of the word "remanding" shows that the order under 562 is intended, while in Section 566 the word used is "refer." I would omit the clause (viz., last in definition of decree, Section 2) now objected to. It was in Bill III, but I did not notice its bearing then.

SECTION 2, "DECREE-HOLDER."—As in many summary proceedings parties not decree-holders in the sense of the words in this section have relief given them which they require the Court to enforce, *e.g.*, costs awarded, would it not be better to define "decree-holder" as any person in whose favor a Court has by its decree or order given some relief which the Court can enforce by execution of that decree or order.

SECTION 45.—I would alter the first paragraph of this section as follows:—"The Court may at any time before the first hearing, of its own motion or on the application of the defendant or at any stage of the suit of its own motion or if the parties agree, order separate trials, &c." Cases may arise wherein as the evidence is taken the expediency of splitting up the suit into separate suits may appear.

SECTIONS 121 to 127 I think quite unnecessary and difficult to work. Such interrogatories may be the means of getting up collusive evidence which has not undergone the tests of cross-examination or allowed the Judge to have the opportunity of seeing the demeanour of the witness, and will give opportunities for false personation, and the answers may be studied pleadings instead of evidence. The morality of the natives is too retrograde to admit of this machinery doing as much good as will counterbalance the probable evil.

SECTIONS 132 and 133.—For "Pleader's office or some other convenient place" read "the Court."

SECTION 176.—I agree with Mr. Carr in his remarks on Section 164 of Bill III. I would suggest instead of present clause (b) "(b) without such limits and within the limits of the original jurisdiction of the District Court to which the Court issuing the summons is subordinate."

SECTION 213.—I would suggest that the opportunity be taken to repeal Section 265 of the Contract Act. Natives do not understand the idea of winding up a partnership as is done in England, and if a man withdraws from a partnership and wants the balance he may consider due to him, the machinery provided by an ordinary suit in the ordinary Court, not necessarily the District Court, is quite sufficient, and the Munsifs and Subordinate Judges are quite competent to decide what is necessary and give the relief required. The superior education of the present Munsifs quite renders it unnecessary to take any jurisdiction out of their hands.

SECTION 233.—I would insert after the words "a decree" the words "or order requiring execution," and after the words in first paragraph "which passed it" the words "or in case of decrees or orders passed in appeal by the Court of first instance:" or perhaps it would be more simple to declare a decree in the meaning of Chapter XIX to be "any decree or order requiring execution." Then after the words "which passed it" I would add "or in case of decree in appeal, the Court of first instance."

SECTION 287*c*.—Before "liable" write "said to be."

SECTION 308.—Why not appropriate the forfeited deposit in part satisfaction of the decree? What right has Government to it?

SECTION 312.—For clearness sake I would at end of this section give a proviso. "Provided that such a suit may be brought by a member of an impartible coparcenary alleging fraud or negligence against a judgment-debtor if he is the head of such family." Most Hindus in Malabar and more than half the Mopla Mahomedans in North Malabar are members of such coparceneries.

SECTION 373, LAST PARAGRAPH.—The Court ought to be allowed the discretion to permit one or more of several plaintiffs to withdraw without consent of the others making such order regarding costs in its decree as the ultimate decision may render just.

SECTION 416.—I do not see the necessity of this alteration of the law as to suits against Government. Except in cases where the interest involved is not one with which the Collector of the district has exclusively to do such suits should be brought against the Collector. He will of course report such cases to the Board of Revenue or Government.

SECTION 555.—Appellant ought in all cases to begin.

SECTION 588.—Ought not the insolvents to be allowed the right to appeal generally against any orders passed under Chapter XX?

(Signed) J. W. REID,
District Judge.

No. 162. ORDER THEREON, 31st October 1878, No. 2228.

Ordered that the foregoing papers, on the subject of the Bill to amend the Code of Civil Procedure, be forwarded for the consideration of the Government of India, with reference to their Secretary's letter, dated 19th July 1878, No. 1049, Legislative Department.

Mr. E. F. Webster.
M.R.R. P. Srinavassa Rao.
" G. Muttusami Chettiar.

2. It is observed that the officers named in the margin have not as yet replied to G.O., dated 7th August 1878, No. 1556.

(True Extract.)

Acting Chief Secretary.

Exd. J. Wright.

5/22.28

JUDICIAL DEPARTMENT.

Bills—Legislative.

No. 2229.

FROM

C. G. MASTER, Esq.,
Acting Chief Secretary to the Government of Fort St. George,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
LEGISLATIVE DEPARTMENT.

SIR,

I am directed by His Grace the Governor in Council to forward, for the consideration of the Government of India, in reply to your letter, dated 10th July 1878, No. 1049, the accompanying copy of papers containing the opinion of three of the Judges of the High Court of Madras, and the views of the Advocate-General and certain other officers consulted, on the provisions of the Bill to amend the Code of Civil Procedure.

2. The authorities consulted not only offer their opinion on the amendments proposed in the Bill, but suggest certain other amendments in further improvement of the Code itself; and the High Court furnish copy of a judgment recently passed by them, in illustration of the working of Section 622 of the Code as it stands, which is commented on in the minute of the Officiating Chief Justice.

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

OOTACAMUND,
31*st October* 1878.

Acting Chief Secretary.

Wright.

1873.

JUDICIAL DEPARTMENT.

From

The Acting Clerk of Council to the
Govt. of Fort St. George.

To

The Secretary to the Govt. of India
Legislative Department.

Dated 21st October 1873.

Inclosed

Encl.

No. 1229.

Title—Legislative—Amendment of Law conferring certain powers on the subject (Act 9 of 1871 to amend the Code of Civil Procedure).

Petition No XI of 1876.

2229

To

His Grace,
The Duke of Buckingham and Chandos
Governor and President in Council
Fort Saint George.

The humble Petition of Frederick William Engledew a Convict in the European Prison at Coimbatore.

Most Respectfully Sheweth.

That your Graces Petitioner was convicted at the Criminal Sessions of the High Court of Judicature at Madras held before the Honorable Sir Charles Innes in November 1876 of Cheating by personation and was sentenced to be kept in penal servitude for seven years.

2. That Petitioner has now served one half of his sentence in rigorous imprisonment, and has otherwise fulfilled all the conditions necessary to render him eligible for the high privilege of a License for those who had served not less than one half of their term of imprisonment in Prison. That Petitioner during his incarceration has been uniformly industrious and zealous in the performance of whatever work was allotted to him.

3. That your Graces Petitioner respectfully submits his personal and general qualifications. Over and above his legal eligibility for useful service as a License Prisoner in the Settlement at Port Blair. He is an European.

1

European, is 28 years of age, in robust health and
trained from his childhood to jungle life in the Bhpore
Province, and is also Colloquially conversant with
Hindustani, Canarese, and Lumbarnie languages. At
the time of his conviction and for two years prior, he was
engaged in the Cultivation of his own Coffee plantation at
Bommpoor in the Nuggerabad District, and his practical
experience in bringing jungle lands into subjection, and
in the road making for belonging thereto, will probably
render him exceptionally fit for overlooking Convict
operations of a kindred nature in the Port Blair or
Nicobar Settlements, and,

4th Your Petitioner humbly prays that your Grace

humble Petitioner for the term solicited, as a fit and proper
subject to be entrusted with the privilege of holding a
Licence for the portion of his sentence remaining unex-
pired on the date whereon such Licence may be
granted; and your Graces humble Petitioner,

As in duty bound
Shall ever pray.

Richard William Inglis

Submitted through undersigned.

Ootacamund
Europn Convoy Office
11th November 1870.

J. Munro Col.
Superintendent European Convicts
and Joint Magistrate.
Ootacamund

Nominal Roll of Convict ex "Frederick William Eugleden"

Name.	Sentence	Date of Sentence.	Adjudicating Court.	Ages.	State of health.	Conduct on Rail.	Recommended for ticket of leave by Lieutenant.	Remarks and previous Conviction.
Stealing. Stealing Clothes in a Dwelling House and disorderly conduct during the passage	4 Years Penal Servitude.	5th November 1876.	High Court Maitland.	20 Years	Good	Very Good	Nil.	No previous Convictions.

Lieut. Master

Surgeon Superintendent

Dated at Newcastle 1878.

Recd:

Transcribed
European Prison Office
11th Nov. 1878.

Col.

Superintendent European Prisons.

FROM CIRCULATION WITH
ALTERATIONS.

Jud.l DEPARTMENT.

No.

From The Offg. Insp.r Genl Jails.

Dated 14 Nov.r 78, No. 232.

Rec.d Nov.r 16 Nov.r 76.

Write Madras, Ltr 11 and 14 Nov.r 76.

FOR ORDERS.

The prisoner T. W. Engle-
deer mentioned at the foot(a) Nov.r
Sessns of the High Court in 1876,
of cheating, sentenced to 4 years
Penal Servitude. The Superin.t
Report of the trial is put up.

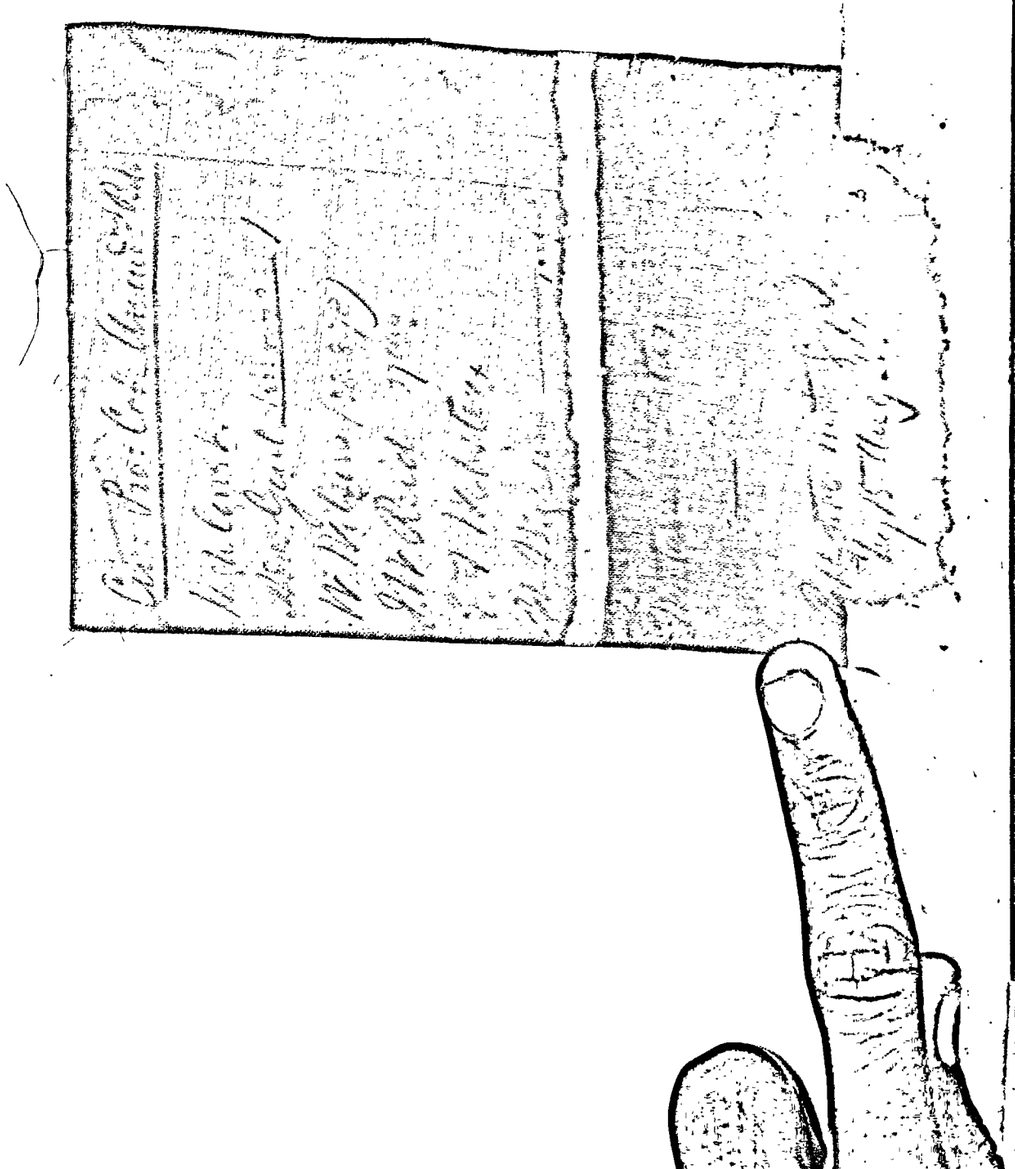
He asks to be sent apparently
to Port Blair as a "licensed pri-
soner" to superintend convicts.
W.S.

Q.M.

A very bad case of
swindling - I would reject

Sec.y

Sec.y 78.



Copies of the
Enclosure, Sent
to Government

FOR ORDERS.

Cert:
Number of
Convictions

C 3/12 17/—

№ 232. Office of the Insp.r Genl. of Jails
Coimbatore 11th November 1878

From H. R. Grimes Esquire
Offg: Inspector General of Jails
Coimbatore.

To C. G. Master Esquire
Offg: Chief Secy: to Government
Fort Saint George

Sir,

I have the honor to forward the enclosed petition addressed to His Grace the Governor in Council by convict Frederick William Engleden at present confined in the European Prison at Ootacamund.

2. The prisoner was convicted by the High Court Madras of cheating, cheating by personation and dishonestly inducing delivery of property and was sentenced

sentenced to 14 years Penal servitude
on the 6th November 1876.—

3. The usual nominal roll of
the prisoner is herewith forwarded.—

I have the honor to be,
Sir.
Your Most Obedient Servant—
Henry Clynes
Offg. Inspector General of Jails

1879 No. 1

No. 156

From,

T. Weir Esquire,
Acting Registrar of the
High Court of Judicature
Madras.

To,

C. G. Master Esquire,
Acting Chief Secretary
to Government.

Sir,

With reference to the letter of the Chief Secretary, dated 7th August 1878, No. 1584, I am directed to transmit copies of Minutes on the Bill to amend the Code of Civil Procedure recorded by Mr. Justice Innes (Officiating Chief Justice) Mr. Justice Kernan and Mr. Justice Muttusami Ayyar, and I am to state that the Judges will be pleased if the Minutes are

forwarded

From
The Officiating Registrar
of the
High Court of Judicature
Madras.

To
The Hon'ble C. G. Master
Secretary to Government
Legislative Department

Sir,

I have the honor to forward herewith a Petition addressed to the Governor in Council by Mr. Frederick William Robertson, an Uncovenanted Servant of Government, praying that he may be allowed to proceed to England on Furlough on Medical Certificate.

2. I am directed to request that the Petition may be submitted to the Governor in Council with the recommendation of the Judges.

I have &c.
(Sd) T. Weir
Offg. Registrar

19 Aug. 78 No. 256

The Officiating Chief Justice and Justices Innes, Kernan and Muttusami Ayyar present.

Mr. Robertson's Petition for leave to proceed to England on Furlough on Medical Certificate.

Ordered that the Petition be submitted to Government with the recommendation of the Judges.

(Sd) T. Weir
Offg. Registrar

17.12.78

forwarded as expeditiously as possible to the Government of India in the Legislative Department.

I am to add that the Chief Justice and Mr. Justice Forbes have recorded no opinion on the Bill.

I have the honor to be,
Sir,
Your Most Obedient Servant.

High Court of Judicature, Madras
October 1878.

Acting Registrar,
Appellate Side.

15
11
2229.

Minutes on the Bill to amend the Code of Civil Procedure.

Mr Justice Dunne, officiating Chief Justice:— Notwithstanding the amendment of the Appeal clauses in Section 588 so as to admit of Appeals in some cases in which as the Code at present stands there is no Appeal, — there will be many cases still remaining in which there being no Appeal there will be no remedy of redress by exception under Section 622, and this Section is not large enough. This arises from the limited Judicial meaning of the word jurisdiction.

If a Court has cognizance of the subject matter of the proceeding before it but has proceeded to a decision illegally, (as for instance without

Judicial Dept. 18th Oct. 1878.
Chief Justice's Office.

Memo

The Acting Registrar
of the High Court
of Judicature
at Madras

To

The Hon'ble Chief Secretary
to Government

Dated 16th October 1878
Received 19th — 1878
Endorsed 1.

Transmitting Opinion of Minute on the Bill to amend the Code of Civil Procedure recommended by the Hon'ble Chief Justice, Hon'ble Justice Kernan and Hon'ble Justice Dunne and requesting that the same may be returned with the Government Order thereon.

N 15-6

without proper notice to the parties) it still cannot be said to have had no jurisdiction to pass the final order. There is of course a remedy by application for review, but a Court without jurisdiction might itself right in every application to continue to think so. I think it would be better to add to declare that the words "or to have acted illegally or with material irregularity in the exercise of its jurisdiction" in section 115 be omitted and the words "or has failed to exercise a jurisdiction so vested" be substituted. I trust that if the legislature have any doubt of the necessity of this alteration, they will not reject the proposed amendment without a reference to the other High Courts. The remedy of it is much felt here.

Mr Justice Ranade:— Experience satisfies me that the lower Appellate Courts decisions, on appeals from appellate orders (especially Judges) should be open, on questions of law only, to a second appeal.

This is particularly the case as to orders in execution where the question is whether execution is barred by limitation.

I suggest an amendment to that effect.

Mr Justice Muttuswami Aiyar:— Where section 82 is amended as proposed, a doubt may arise whether the Court serving the summons issued by another Court is competent to order substituted service with respect to the Land. Should so allow the section or to make it quite clear.

2. Section 588 allows no appeal where a District Munsiff refuses to execute a decree or orders, the execution of a decree on the ground that the application for execution is or is not barred when the reverse is really the case, and it is a great hardship to suitors that there should

be

be an one case of proceeding final order which are clearly illegal should give the right of appeal generally in like cases of all orders which are not merely interlocutory but final. Should further amend the claim 622 so as to give power to the High Court to review illegal orders so appealed with reference to an action civil or criminal.

Rejoinder – That the decision complained of was given by the Subordinate Court at Galle and not by the Supreme Court as erroneously stated in the petition of appeal. That the appellant was duly heard by the Subordinate Court before the decision complained of was given. That the Subordinate Court has power to grant relief in the case of illegal orders. That the Supreme Court has no power to review the decisions of the Subordinate Courts in the exercise of their civil jurisdiction. That the Supreme Court has no power to grant relief in the case of illegal orders. That the Supreme Court has no power to review the decisions of the Subordinate Courts in the exercise of their civil jurisdiction.

In the matter of the application of Don Simon Perera Wijesinha Mudaliyar of Galle for a writ in the nature of a writ of certiorari to bring up the proceedings and order of the Court of Requests of Galle dated the 22nd day of December 1899 in case No. 15,222 of the said Court.

Don Simon Perera Wijesinha Mudaliyar of Galle ... Petitioner

And

Don Thomas Perera Wijesinha Mudaliyar of Galle ... Respondent

The petition of appeal of the above-named petitioner appellant abovenamed showeth as follows:

1. That on the 22nd day of December 1899 the Court of Requests of Galle made order in case No. 15,222 of the said Court that the petitioner appellant abovenamed should pay to the respondent abovenamed the sum of Rupees 500 with interest thereon at the rate of 9 per centum per annum from the date of the decree till payment in full and costs of suit.

2. That the petitioner appellant abovenamed is aggrieved by the said order and is desirous of appealing therefrom to Her Majesty the Queen in Her Privy Council.

3. That the said order is a final order within the meaning of section 5 of the Charter of Justice.

4. That the petitioner appellant abovenamed has duly applied to this Court for conditional leave to appeal from the said order and has given security in the sum of Rupees 500 as required by section 7 of the Charter of Justice.

5. That the petitioner appellant abovenamed has duly applied to this Court for final leave to appeal from the said order and has given security in the sum of Rupees 1,000 as required by section 7 of the Charter of Justice.

Acting Registrar
Appellate Side.

Dr. D. Thomas Perera

No. 1719 5:8

From,

T. Weir Esquire,
Acting Registrar of the
High Court of Judicature at Madras.

To.

C. G. Master Esquire,
Chief Secretary
to Government.

Sir,

In continuation of my letter of the 16th Instant No. 1699 I am directed by the Officiating Chief Justice to forward the accompanying Copy of the Judgment of the High Court in Civil Miscellaneous Petition No. 281 of 1878 (for transmission to the Government of India in the Legislative Department) as illustrating the operation of Section 622 of the Code of Civil Procedure (Act X of 1877) as it at present stands, as commented on in his minute which accompanied my letter.

I have the honor to be,
Sir
Your most Obedient Servant

High Court of
Judicature Madras
18th October 1878

Acting Registrar,
Appellate Side.

Enclosure. 1

In a letter from the Acting Registrar of the High Court Appellate Side dated 18th October 1878 No. 1719

Rec. No. 2946 and 47

680

In the High Court of Judicature at Madras.

Monday, the Seventh day of October, One thousand eight hundred and Seventy-eight.

Present

The Honorable Mr. Justice Innes.

The Honorable Mr. Justice Muttusami Ayyar.

Civil Miscellaneous Petition No. 281 of 1878

Pattabhi Chetty ——— Petitioner

Petition, under Section 622 of the Civil Procedure Code, against the Order of the District Munsif of Erode dated 2nd September 1878 passed on Miscellaneous Petition No. 325 of 1878.

This Petition coming on for hearing the Court delivered the following

Judgment:- In this case the District Munsif had jurisdiction over the proceedings arising out of the Petition

of

S.C.P. Civil Appellate Side

From

The Acting Registrar of the High Court of Judicature at Madras

To

The Chief Secretary to Government

Dated 18th October 1878

Received 19th October 1878

No. 3777

Forwarding Copy of the Judgment of the Hon'ble the High Court in Civil Miscellaneous Petition No. 281 of 1878 for transmission to the Secretary of State for India in Council.

Paid Rs. 0-8-0 Postage

of Lakshmidevi Ammal and passed therefore he said to have had no jurisdiction to make the order complained of. Nor in failing to send a notice to the present Petitioner of the proceedings in Lakshmidevi Ammal's petition, can he be said to have failed to exercise a jurisdiction which he ought to have exercised because his jurisdiction in the proper sense was to deal with the proceedings and disposal of the Petition, and he did do.

His proceedings were however very irregular, and the irregularity has possibly led to injustice. He should not have ordered the dispossession of Petitioner without giving him an opportunity of opposing the petition. We shall remit this suit to the District Munsif, and he will have an opportunity of reviewing his order.

(A true copy)

Acting Registrar,
Appellate Side.

No. 339. 8 P

Madras, 19th August 1878.

Expiry only

From

Ernest Barclay
Government Solicitor
Madras

To

The Honorable D. F. Carmichael
Chief Secretary to Government
Ootacamund

Sir,

1. I have the honor to acknowledge receipt of the Order of Government dated 9th August 1878, No. 1586, Judicial Department, requesting an expression of opinion of the Advocate General relative to the proposed Bill to amend the Code of Civil Procedure Act X of 1877.

2. I submitted the matter for the consideration of the Advocate General and I now forward herewith a copy of his opinion.

I have the honor to be
Sir,
Your most Obedient Servant
Ernest Barclay
Government Solicitor.

Law letter from the Acting Registrar of the High Court of Judicature at Madras dated 19th October 1878

Read 23rd October 1878

Judicial 1878 Despatches
From
The Government Solicitor
Madras
To
The Chief Secretary to Govt
Ootacamund

Dated 19th & 22nd August

No. 339.

Forwards copy of the Advocate General's opinion relative to the provisions of Bill to amend the Code of Criminal Procedure Act X of 1877.

9

No 1/4
No 7/4

Opinion.

With reference to the Order of Government of the 4th Inst. in Council dated 14th August 1878 No 1586 Judicial Department & Statistics the Memorials contained in the Petition of the Bailiff of Civil Procedure with all of them Lands to institute Suits under the Code and Rules of Court and to enforce Decrees under the Code and Rules of Court are necessary?

Answer. Yes. Except that part of Sec. 555 relating to the Procedure on hearing Appeals among Mohammedans which may at some future time be considered by the Judges of the Chief Court of Lands and Civil Courts and under the Code Minors after majority to give the Defendant the right to begin an enquiry. If Requisitions that the Respondent to such Appeal agrees to withdraw the decision.

Signed/ C. O'Sullivan.
Advocate General.

Madras 19th August 1878.

True Copy
Lieut Blacker
Government Solicitor.

Enclosure in Letter from the Government Solicitor to the Chief Secretary to Government, dated 19th August 1878, No. 334.

L. 26/4 22/8/78.

No 326. 100

Calicut 23rd August 1878.

From,

H. Wigram, Esq,
Offg. District Judge
of South Malabar

Calicut

To,

The Honble D. F. Carmichael
Chief Secretary to Government
Judicial Department
Ootacamund

Sir,

I have the honour to reply to G.O Judicial Department dated 7th August 1878 No 1586 forwarding for report a Bill to amend the Code of Civil Procedure.

2. The amendments proposed in Sections 52. 335 and 339 of the Code appear to be essential. I think that Section 588 of the Code should give a right of appeal from any order rejecting a plaint passed under Section 54 and I would further like to see a right of appeal from orders passed under section 231 and 232. I am aware that there was no

right of appeal under the old Code of Civil Procedure but my attention has been called on more than one occasion to some inconsistency between decisions of inferior Courts under these sections. I fully approve of restoring the right of appeal from an order refusing to set aside an exparte decree. It seems open to argument whether under the present Code a Defendant who has been hit by exparte decree appeal from the decree. There is no provision against such appeal as there was in section 119 of the old Code of Civil Procedure allowing another remedy to provided by Section 108, and probably this may be subject to the same remedy. If an appeal lies from a decree passed exparte against a Defendant then under Section 591 he could object to an order passed under Section 108 refusing to set aside the exparte decree. This matter might be made clear by the proposed Act.

3 & Section 10 of the Bill the proclamation under section 168 is to be made compulsory. I would suggest that a form of proclamation in section 22 of the

Bill contains verbal amendments are made in Sections 362 and 363. Why not also in Section 361?

I have the honour to be,
Sir,
Your most obedient Servant,
[illegible]
Offg District Judge.

Encl

11

Revenue Settlement Office,
6th Circuit
Dindigul, Sathiyamangalam Taluk
24th August 1878

No. 2088/24

From,

W. Wilson Esquire
Acting Director of Rev. Settlement
Madras.

To.

The Honorable D. F. Carmichael
Chief Secretary to Government
Fort Saint George
Madras.

Sir,

I have the honor with reference to G. O. No. 1586 dated 7th Current, to subjoin a few remarks on the Bill to amend the Code of Civil Procedure.

Section 2. The Section is much better as it stands. The expression "the thing which the plaintiff is entitled to claim" imports that the plaintiff really has a title, whereas it is perfectly possible that a plaintiff may claim a thing that he is not entitled to at all; if any change be made it had better run "which the plaintiff considers himself entitled to claim". The expression "arising out of" is sufficiently definite and has the sanction of age — The proposed substitute "which the plaintiff is entitled to make" is a somewhat

countersignature be fulfilled if a pleader can countersign his own signature?

Section. 6. The proposal to substitute "causes to be filed" for "has filed" in section 58 of the Code is certainly not an improvement: the word "filed" is used in par 58 not in the technical sense of admission but in the popular sense of presented: the expression "causes to be filed" points rather to the technical sense of admission as matter generally decided at the settlement of issues not on the presentation of a plaint.

Section. 7. I don't know any difference between "abode" and "residence" except that the one is Saxon, the other Latin; but the expression "place of abode" is more common perhaps than "place of residence" just as "resides" and "residing" are more common than "abides" and "abiding": it is hardly worthwhile to bring in a Bill to amend the Code in a matter so unimportant.

Section. 11. For the to-be-inserted words "pronouncing judgment and"

read

"pronouncing judgment in open court and"

Section. 18. I do not think that the question whether "resistance" should follow or precede "obstruction" is of sufficient importance

"immediate striking off or premature striking off of a decision which will be held to attorney to mean cannot be "entitled to claim" any thing that has not "accrued" at the date of application.

Section 3. In the duly authorized agent of this section the "recognized agent" of section 36 and 37 of the Code is the amendment is necessary. There is not the bill had better define what a "duly authorized agent" is having reference to sections 37 and 38 of the Code, in cl - Pleader - he authorized by a Plaintiff to sign a plaint as his "duly authorized agent" is the authority confined to the signature of the plaint? If it is a pleader authorized to sign the plaint and retained to conduct the case would have to countersign as pleader his signature, as duly authorized agent.

No 199. Jellicherry 27 August 1878.

From,

J. W. Reid, Esquire,
District Judge of
North Malabar.

To,

The Honorable D. F. Carmichael,
Chief Secretary to Government
Judicial Department.
Fort St George.

Sir,

As directed in Order of Government dated 7th August 1878 No 1586. Judicial Department. I have the honor to submit my observations on the Bill to Amend the Code of Civil Procedure (1878)

2. The observations are submitted in two parts. One concerning only the sections touched by the above Bill. The other being supplemental observations on other sections of Code of Civil Procedure not touched by the Bill.

3. As I am in doubt whether the Government intended me to make any observations on the sections of the Code of Civil Procedure not touched by the Bill, I send the 2nd portion as supplemental observations so that each may, if necessary, be treated separately.

I have the honor to be,
Sir,
Your most obedient Servant,

J. W. Reid
District Judge.

to Bill to amend the Code of Civil Procedure.

Section 2

Amend

"The injunction" of the Code

by

substituting "an injunction" when it occurs

amended."

I have the honor &c

Sir

Your most obedient

Servant

to Bill

Acting Director of Revenue.

Judicial Dept. Copy Rec'd

From Board of Revenue

Date 29 Aug 1878

Rec'd 2 Sept 1878

No 2088

24

Acknowledging Mr Reid's

remarks on the

Bill to amend

the Code of Civil

Procedure

491

1892

Observations on Bill to Amend
the Code of Civil Procedure (1878)

Section 51. In the original part and in the proviso would it not be well to insert after "Plaintiff" the words "or his recognized Agent". The proviso appears to be a good addition.

The amendments and additions proposed in Sections 43. 51. 393. 52. 58. 69. 82. 199. 211. 229. 264. 268. 295. 33 335. 339. 341. 362. 363. 366. 406. 413. 424. 483. 484. appear more or less necessary or expedient.

The alterations in 588 (5) and j. are much needed.

(W Rees
District Judge.

Received 29th August 1892
Read 29th " "

Judicial Department
Sir,
I have the honor to transmit herewith a Bill intituled "An Ordinance to amend the Code of Civil Procedure of 1878"
I have the honor to be
Sir
Your most obedient servant
W Rees
District Judge.

important to give this title. instead of

Supplemental Observations on Act X of 1877.

1680

Section 2. "decree"

It will be seen that Section 562 provides as an alternative that the Appellate Court may remand the case x x with directions to re-admit the said suit to original number in the register and to proceed to investigate the suit on its merits, and pass a decree therein. In such cases if the Court give to a party the costs: its order remanding the case should be called a decree for it is the order in which result of the decision of the appeal is embodied. and also it will require to be executed. In the Chapter on execution I recommend in section 223 it the insertion of words "decree or order". But the "order" of the Appellate Court will be a "decree" under the above definition. for it will be the final result of the decision of the Appellate Court. for there is no provision for the case coming back to the Appellate Court except on a fresh appeal. As the use in Section 2 of the word "remanding" shews that the order under 562 is intended, while in section 566 the word used is "refer". I would omit the clause (right last in definition of decree Section 2) now objected to. It was in Bill III but I did not notice it bearing there.

Section 2. "decree-holder."

It is in many summary proceedings parties not decree-holders in the sense of the words in this section

In a letter from the Chief Judge of Chittagong, dated 27th August 1878, the Judge

Observations on Civil & Criminal Procedure (1877)

section has wholly given him which by regard to that
to appear e.g. could amended would it not be better to de-
fine above. divide as any person in whose favor a limit
has of it does or order given some which without to know
made by [illegible]

I would also to 1st paragraph of
the section as follows. the Court may at any time after
the first hearing, of its own motion or on the application
of the Defendant or at any stage of the suit of its own
motion or if the parties agree, order such Issue to be
tried may arise whether as the evidence is taken the
evidence of plaintiff and Defendant and such issue
may appear.

Section 176. I think quite unnecessary and difficult to work. Such interrogatories may be the means of getting up collusive evidence which has not undergone the test of cross-examination or allowed the Judge to have the opportunity of seeing the demeanour of the witness and will give opportunities for false personation and the answers may be studied pleadings instead of evidence. The morality of the natives is to retrograde to admit of this machinery doing as much good as will counterbalance the probable evil.

Section 178. For "pleaders office or some other convenient place" read "the Court."

Section 176. I agree with Mr Cate in his remarks on Section 164 of Bill III. I would suggest instead of present clause (6) (6) without such limit "and within the limits of the original jurisdiction of the District Court to which the Court issuing the summons is subordinate."

Section 213. I would suggest that the opportunity be taken to repeal Section 265 of the Contract Act. Natives do not understand the idea of winding up a partnership as is done in England and if a man withdraws from a partnership and wants the balance he may consider due to him, the machinery provided by an ordinary suit in the ordinary Court not necessarily the District Court is quite sufficient and the Munsifs and Subordinate Judges are quite competent to decide what is necessary and give the relief required. The superior education of the present Munsifs quite renders it unnecessary to take any jurisdiction out of their hands.

Section 223. I would insert after the words "a decree" the words "or order requiring execution" and after the words in 1st paragraph "which passed it" the words "or in case of decrees or orders passed on appeal, by the Court of first instance. or perhaps it would be more simple to declare a decree in the meaning

to do. Such suits should be brought against the Collector. He will of course report such cases to the Board of Revenue or Government.

Section 535

Section 538

Appellant ought to be allowed [illegible]
the right to appeal generally against any orders passed under Chapter XX?

District Judge

Appointment of Commissioners to enquire into the Claims of Persons who have suffered Losses by the Rebellion in Malabar.

Read the following Letters:

From the Sy. Secy. to Govt, Madras, 15 Oct. 1878, No. 1177
From ditto ditto 16 Oct. 1878, No. 1217.
From the Govt Salem, 19 Aug 1878, No. 339.
From the Offg. District Judge, South Malabar, 23 Aug 1878, No. 24.
From the Sy. to Govt Fort St. George, 24 Aug 1878, No. 2008/24.
From the District Judge, North Malabar, 27 Aug 1878, No. 199
Order 21 Oct 1878 No. 2228.

Ordered that the foregoing papers, on the subject of the Bill to amend the Code of Civil Procedure, be forwarded for the consideration of the Govt of India, with reference to their Legislative letter dated 19 July 1878, No. 1049, Legislative Dept.

2. It is likewise ordered that the officers named in the margin have not as yet replied to G.O. 7 Aug 1878, No. 1585.

To the Govt of India,
Legislative Dept.

Sir,

I am directed by His Excellency the Governor in Council to forward herewith, for the consideration of the Government of India, a Bill to amend the Code of Civil Procedure, and to request that it may be introduced into the Legislative Council of India at the next meeting thereof.

2. The Bill is accompanied by a letter from the Officiating District Judge of Malabar, dated 29 August 1878, No. 199/24, and by a Statement of Objects and Reasons.

3. The Bill is framed on the model of Act X of 1877 (Civil Procedure Code), and is intended to remedy certain defects which have been found to exist in the working of that Act.

4. The Bill has been published in the Fort St. George Gazette of 3 September 1878, and the Local Government has called for opinions upon it from the Judges of the High Court, the Board of Revenue, the Commissioner of Police, the Advocate General, the Law Officers of the Crown, the Collectors of Madras, Malabar, Salem, Coimbatore, Tanjore, Madura, Tinnevelly, Kistna, Nellore, Cuddapah, Bellary, Kurnool, and Vizagapatam, the Judges of the Civil Courts at Madras, Calicut, Salem, Coimbatore, Tanjore, Madura, Tinnevelly, Masulipatam, Nellore, Cuddapah, Bellary, Kurnool, and Vizagapatam, and the Sheriff of Madras.

5. The Bill has been published in the Madras Gazette, and the Local Government has called for opinions upon it from the Judges of the High Court, the Board of Revenue, the Commissioner of Police, the Advocate General, the Law Officers of the Crown, the Collectors of Madras, Malabar, Salem, Coimbatore, Tanjore, Madura, Tinnevelly, Kistna, Nellore, Cuddapah, Bellary, Kurnool, and Vizagapatam, the Judges of the Civil Courts at Madras, Calicut, Salem, Coimbatore, Tanjore, Madura, Tinnevelly, Masulipatam, Nellore, Cuddapah, Bellary, Kurnool, and Vizagapatam, and the Sheriff of Madras.

Mr. E. F. Webster.
M. R. R. P. Srinivasa Rao.
M. R. R. G. Muhammad Chetty.

With 50 spare copies of this Proceedings 9/11/78

37

Govt. of {187} Madras.

Judicial

To

Nos. 1536-163

Cont. of [illegible]

Judicial

[illegible]

[illegible] Legislature

Communication for consideration on Claim papers on the subject of the Bill to amend the Code of Civil Procedure