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MADRAS RECORD OFFICE.

Government of Madras.

Medical DEPARTMENT.

G.O. No. <u>2330</u>	Press Mis.
Dated <u>27/7</u>	18 <u>80</u>

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GOVERNMENT OF MADRAS.
JUDICIAL DEPARTMENT.

27th September 1880, No. 2333.

Bills—Legislative.

Read the following paper :—

No. 115. *From D. FITZPATRICK, Esq., Secretary to the Government of India, Legislative Department, to the Chief Secretary to Government, dated Simla, 13th September 1880, No. 954.*

I am directed to forward, herewith, forty copies of the papers noted on the margin, and to request that His Excellency the Governor in Council will favor the Government of India with an expression of his opinion, and with the opinions of the Honorable the Judges of the High Court, the Judges of the Small Cause Court, and of such officers and other persons as His Excellency in Council may think fit to consult on the provisions of the Bill.

2. I am also to request that the Bill and Statement may be published in the *Fort St. George Gazette* in English, and in such other languages as His Excellency in Council may deem proper, and that the dates of such publication may be communicated in your reply.

3. The reply to this letter should be sent in by the 7th November 1880.

No. 116. ORDER THEREON, 27th September 1880, No. 2333.

A copy of the Bill and Statement will be forwarded to the Honorable the Judges of the High Court, and the Judges of the Small Cause Court, Madras, as requested, and also to the gentlemen named in the margin, for the favor of their opinions, which should be communicated by the 20th proximo.

2. The Bill and Statement were published as a Supplement to the *Fort St. George Gazette* of the 14th instant in English. Translation into the Vernaculars is considered unnecessary.

(True Extract.)

Acting Under Secy. to Govt.

To the Honorable the Judges of the High Court, with covering letter, " the Judges of the Small Cause Court, " E. F. Webster, Esq., Collector of Tanjore, " W. M. Scharlieb, Esq., " J. H. S. Branson, Esq., " M.R.Ry. A. L. V. Ramana Pantulu Garu, Sub-Judge of Madura,	} with copy of Bill, &c.
---	--------------------------

Exd. J. Wright.

R. D.

22 SEP 80

No. 954

FROM

D. FITZPATRICK, ESQUIRE,

Secretary to the Government of India,

LEGISLATIVE DEPARTMENT,

TO

The Chief Secretary to the Govt of Madras.

Dated Simla, the 13th September, 1880.

SIR,

I AM directed to forward herewith *forty* copies of the papers *Bill to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency Towns. Statement of Objects and Reasons of the above Bill.* noted on the margin, and to request that *His Excellency the Governor in Council* will favour the Government of India in *this Department* with an expression of *his* opinion, and with the opinions of the *Honble the Judges of the High Court, the Judges and of the Small Cause Court and of such officers and other persons of such selected officers (not exceeding in number) as His Excellency in Council* may think fit to consult, on the provisions of the Bill.

2. I am also to request that the Bill and Statement may be published in the *Fort Saint George* Gazette in English, and in such other languages as *His Excellency in Council* may deem proper, and that the dates of such publication may be communicated in your reply.

3. The reply to this letter should be sent in by the *17th November*, 1880.

I have the honour to be,

SIR,

Your obedient Servant,

D. Fitzpatrick
Secretary to the Government of India.

Govt. of 1880 Madras.

JUDICIAL.

THE HONORABLE THE JUDGES

OF THE HIGH COURT,

&c, &c, &c.

Dated September, 27th.

Recd.

G.O., 27th September 1880, No. 2663.

SEPTEMBER.
Nos. 115-116.

Bill—Legislative—A copy of the Bill and Statement to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency Towns forwarded to the Honorable the Judges of the High Court, the Judges of the Small Cause Court, Madras, and certain gentlemen for opinion.

Counsel and attorney, and suspension of execution in cases of sickness, &c., have been retained, and it may be a question whether further modifications of the general law, for example, as regards the payment of expenses of witnesses (Code, sections 160 to 162), should not be introduced.

10. In the chapter relating to the recovery of small tenements, several amendments have been introduced, but they are merely such as are necessary in order to make the meaning of the original law clearer, or such as the working of the similar law in England has shewn to be desirable. Thus, the limitation of the operation of the chapter to cases in which the possession has commenced, either in a tenancy or in permissive occupancy, is clearly in accordance with the intention of the authors of the law, and though all doubt on this point was, as far as the Court at Calcutta is concerned, precluded by a decision of the Supreme Court there, in the year 1851, the circumstance, mentioned in one of the communications received, that another High Court has taken the directly opposite view, shows the necessity of making the law more distinct.

11. The words "the value or the rent" in section 91. of Act IX of 1850 were copied from section 122 of the English County Courts Act, 9 & 10 Vic., c. 122, where they were probably used *per incuriam*. Their effect, according to the construction put upon them in a well-known case, is, that property of great value—*e.g.*, extensive buildings erected on a plot of land held at a rent below Rs. 1,000—might be brought within this very summary jurisdiction. The Bill provides that there shall be no jurisdiction if the annual value at a rack-rent exceeds Rs. 1,000.

12. The chapter on insolvency-jurisdiction is completely new. The introduction of a chapter of this sort has been advocated by the Government of Bengal, the Calcutta High Court and the present Chief Justice of Madras, with a view to relieving the High Courts of a mass of petty work with which they are at present burthened to the great detriment of more important business. There has been some difference of opinion as to the way in which the insolvency-jurisdiction should be divided between the High Court and the Small Cause Court. The principle of division adopted by the Bill, which assigns to the Small Cause Court all cases of non-traders, leaving to the High Court only the cases of traders, is that proposed by the Calcutta High Court; and it seems to be the most convenient, as it is, as a rule, in the latter class of cases only that questions of difficulty and importance arise in this country. The great mass of non-trading insolvents consists of Government clerks who have lived beyond their means, and the settlement of whose affairs is, generally speaking, only too simple a matter, there being in the majority of cases little or no assets to recover or distribute.

13. It might seem at first sight that the simplest mode of providing for the exercise of this jurisdiction would have been by transferring to the Small Cause Court a portion of the jurisdiction conferred on the Judges of the High Court under 11 & 12 Vic., c. 21; but an examination of that Statute will show that in some particulars its operation extends beyond the limits of British India, and there would accordingly, looking to the restricted powers of the Indian legislature, be a difficulty in moulding it to suit the case. This being so, it has been thought best to fall back upon the more limited provisions of the Civil Procedure Code, which appear to be sufficient in the simple and comparatively unimportant class of cases we have to deal with.

The official assignee under 11 & 12 Vic., c. 21, will be Receiver in all cases under this chapter.

14. The chapter on testamentary and intestate jurisdiction has been introduced with a view to relieving the High Court, and at the same time providing a cheap and expeditious mode of obtaining probate or letters of administration in the case of estates of less than Rs. 1,000 in amount or value.

15. The seventy-second section, which prohibits the bringing of a suit to enforce a decree of a Small Cause Court, affirms what has been held by the Calcutta High Court in a recent case to be the existing law.

16. The Bill, it will be observed, though it comprises certain subjects not provided for by the existing Acts, contains a much smaller number of sections than they do. This is due chiefly to the omission of matters provided for by the sections of the Code of Civil Procedure which it is proposed to apply, or by the general law; but partly also to the omission of certain matters,—*e.g.*, the security to be given by ministerial officers, and the mode of keeping the accounts of the Court—which, in accordance with the practice of recent years, are left to be dealt with by the Executive Government, in accordance with the ordinary departmental rules.

SIMLA;

WHITLEY STOKES.

The 2nd August, 1880.

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P. 4. 27 Sept/80: 2333

Handwritten notes and signatures in the left margin, including "The Bill to amend the Small Cause Court Act, 1850" and "The Bill to amend the Small Cause Court Act, 1850".

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

ANNEXURE

TO

Bill to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns.

(Statement of Objects and Reasons.)

STATEMENT OF OBJECTS AND REASONS.

THE Courts now known as the Courts of Small Causes in the Presidency-towns were established by a Charter of George the Second, dated 8th January, 1753, and would accordingly appear to be the oldest Courts at present existing in British India.

They have, from time to time, undergone many changes, their constitution having been re-modelled, their jurisdiction extended and their procedure amended by various enactments and orders, in particular by Acts IX of 1850 and XXVI of 1864, which placed them on a footing closely resembling that of the English County Courts; but they have been left to a great extent untouched by the important legislation by which, in recent years, the procedure of the other Civil Courts in this country has been reformed.

The result of this is that they have become somewhat antiquated and do not fit in with the rest of the Indian judicial system; that their powers and procedure are, in many particulars, defective, and that though, owing to the efficient manner in which they have been worked, they have generally given satisfaction, questions have often to be discussed in them which, to use the words of a late Small Cause Court Judge, now on the bench of the Madras High Court, "are totally foreign to the people who resort to them, and some of which have only an historic interest even in England."

2. The need of completely revising the law relating to these Courts was pointed out many years ago by Mr. Fagan and Mr. Boulnois, two of the ablest Judges who have presided in the Calcutta Small Cause Court; and in the year 1868, a Bill was drafted for this purpose by Mr. Pitt Kennedy, but further action in the matter has been, from time to time, postponed pending the consideration of certain proposals regarding the jurisdiction and powers of the Courts. These proposals have now been fully discussed; as near an approach to unanimity regarding them as can well be hoped for has been attained, and the present Bill has accordingly been prepared to consolidate and amend the entire law.

3. The most important change introduced by it lies in the extension of the pecuniary limit of the jurisdiction from Rs. 1,000 to Rs. 2,000. This extension was asked for by the Calcutta Trades Association as far back as 1867. It has since then been much discussed, and has the approval of the Governments of Madras, Bombay and Bengal, of the High Court of Madras, and, subject to a limitation, of the High Court at Calcutta. The only opposition to it comes from the fact that it appears to proceed, not so much from any objection to the principle of the extension, as from a fear that it will not be acceptable to the public. It is hoped that after the Bill has been published, an opinion will be formed.

The Bill, it will be observed, is drawn so as to extend the jurisdiction in all classes of suits, and would have excepted actions of tort; but it has been thought well to avoid, if possible, making any distinctions of this sort, which, to persons of the class who resort to the Small Cause Court and their advisers, would, it is feared, occasion difficulties.

4. Assuming that the pecuniary limit of the jurisdiction is to be raised as proposed, the question arises whether any appeal should be allowed in suits above Rs. 1,000; or whether the present system of allowing a new trial in the High Court on a point of law is sufficient. On the one hand, it is urged that allowing an appeal is, especially as it involves the taking of notes of evidence and the writing of judgments, inconsistent with the summary procedure of the Small Cause Court; that the hearing of cases carried on simultaneously with the ordinary Small Cause Court work, and that the existence of a power to appeal would render litigation needlessly protracted and expensive.

On the other hand, the importance of providing a check on the trial of questions of fact in suits of the higher value is insisted on, and it is pointed out that, in two at least of the Presidency-towns, the practice of taking notes of evidence in all contested cases already prevails. The Bill as at present drawn does not provide for an appeal, but the Select Committee, to which it is proposed to refer it, will, no doubt, consider whether in suits above Rs. 1,000 an appeal should not be allowed.

THE PRESIDENCY SMALL CAUSE COURTS BILL, 1880.

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5. The next question which presents itself in connection with the jurisdiction of the Court is that as to the classes of suits which the Court should be empowered to hear. It has been thought best, both with a view to relieve the High Courts as far as possible, and in order to avoid, as far as may be, the doubts and difficulties which attend the construction of provisions of this sort, to draw the Bill so as to give the Small Cause Court jurisdiction in suits of all descriptions with certain specified exceptions.

6. The most important of these exceptions is that of suits for the recovery of immoveable property. It appears from the records of the Legislative Department that those who framed Act IX of 1850 intended that its 25th section should confer jurisdiction on the Small Cause Courts in such suits; but there has been a considerable difference of opinion as to the actual effect of that Act and of its amending Act (XXVI of 1864) in this particular.

The High Courts of Calcutta and Bombay have held that the Small Cause Courts were given jurisdiction in the suits in question by the 25th section of Act IX of 1850. The Bombay High Court has held, further, that a like jurisdiction was conferred in suits up to Rs. 1,000 by the Act of 1864, while the Judges of the Calcutta Small Cause Court held that their jurisdiction in such suits was not extended by that Act. The Madras High Court has held that neither Act conferred any such jurisdiction. To this it should be added that in Calcutta the jurisdiction, though held to exist up to Rs. 500, is, for some reason which has not been fully explained, but little resorted to.

The Madras and Bombay authorities and the majority of the Calcutta High Court are in favour of giving the jurisdiction. The Bengal Government, the officers consulted by it (including the Judges of the Calcutta Small Cause Court) and four of the Judges of the Calcutta High Court are against it. The Bill, as has been already stated, does not give it, and it is manifest that if it were to be given, special provisions relating to it would need to be introduced. An appeal should certainly be given; proper provision would have to be made for execution, and probably some rules would, as suggested both from the Calcutta and Madras High Courts, be required to limit the operation of the decisions as *res judicatae*.

Other cases in which the Bill proposes to withhold jurisdiction from the Small Cause Courts are suits against the Secretary of State in Council; suits for partition, foreclosure, redemption; suits for the specific performance or the rescission of contracts relating to immoveable property; administration-suits; suits to obtain an injunction; suits to enforce a trust.

7. One point more remains to be noticed in connection with the jurisdiction of the Courts.

Act IX of 1850, in conferring jurisdiction on the Courts up to a value of Rs. 500, confines its exercise to cases of defendants selling or carrying on business within the local limits. Act XXVI of 1864, on the other hand, in conferring jurisdiction between the values of Rs. 500 and Rs. 1,000, gives an alternative ground for its exercise, namely, the circumstance of the cause of action having arisen within the local limits. It has been urged by most of the authorities consulted that the basis of the jurisdiction should be the same in cases of all values. On the other hand, fears have been expressed by some that a power to institute a suit of the lower value against a defendant residing at a distance might be liable to abuse unless some limitation were imposed. The correct view of the matter seems to be that taken by the Judges of the Madras High Court, and Mr. Busteed, namely, that in this particular no distinction should be made between the High Court and the Small Cause Court, and accordingly the Bill has been drawn so as to place the jurisdiction of the Small Cause Court in this respect on precisely the same footing as that on which the jurisdiction of the High Court is placed by the Letters Patent.

8. The want of any power to execute the decree of a Small Cause Court against immoveable property, except by the ordinary process of instituting a suit upon such decree in the High Court, has for many years past been complained of as involving an undue hardship to plaintiffs, and in some places, particularly in Madras, driving them to institute their suits in the High Court instead of in the Small Cause Court. The objections that exist to giving the Small Cause Courts jurisdiction in suits to execute their decrees against immoveable property, and it is accordingly proposed by the Bill (section 24) to empower the Court to send its decrees for execution to the High Court or to a mufassal Court, in the same way as the mufassal Small Cause Courts do under section 20 of Act XI of 1865. The only serious opposition to this proposal comes from the High Court at Bombay, and it rests mainly on the political or economical objections which of late years have been so frequently urged against the sale of immoveable property in execution of decrees—objections which, however weighty they may be in the mufassal, where the land is the only means of livelihood of the mass of the people, and is in fact the basis of society, have little or no force in the cases that occur in the presidency-towns.

9. Section 21 of the Bill and the schedule make the Code of Civil Procedure the foundation of the procedure of the Small Cause Courts in the presidency-towns, as it is of those in the mufassal; but the special provisions of the existing Acts regarding Court-fees, fees to

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BILL

TO

Consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns.

WHEREAS it is expedient to consolidate and amend the law relating to the Courts of Small Causes established in the towns of Calcutta, Madras and Bombay; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

- Short title. 1. This Act may be called "The Presidency Small Cause Court Act, 1881"; and it shall come into force on the first day of July, 1881.
- Commencement.

But nothing herein contained shall affect the provisions of the Army Discipline and Regulation Act, 1879, section 144.

2. On and from the day on which this Act comes into force the enactments specified in the first Schedule hereto annexed shall be repealed to the extent mentioned therein.

But all Courts constituted and appointments made under any of the said enactments shall, as far as may be, be deemed to have been respectively constituted and made under this Act.

For references see Act V of 1871, s. 1, Act XVIII of 1879, s. 3. All references to any enactment hereby repealed made in Acts passed prior to the day on which this Act comes into force, shall be read, so far as may be practicable, as if made to this Act or the corresponding provisions hereof.

3. In Act No. XXIII of 1850 (*for securing the Land-Revenue of Calcutta*), section 3, the words "as provided by the said Act" shall be repealed; and for each of the expressions "a Commissioner of the Court for the recovery of small debts referred to in the said Act," and "the said Commissioners", the words "the Judges of the Court of Small Causes at Calcutta" shall be substituted.

In the Code of Civil Procedure, section 8, after the word and figures "Chapter XXXIX", the words and figures "and by the Presidency Small Cause Court Act, 1881", shall be inserted.

4. In this Act, "the Small Cause Court" means the Court of Small Causes constituted under this Act in the town of Calcutta, Madras or Bombay, as the case may be.

CHAPTER II.

CONSTITUTION AND OFFICERS OF THE COURT.

5. There shall be in each of the towns of Calcutta, Madras and Bombay a Court to be called the Court of Small Causes of Calcutta, Madras or Bombay, as the case may be.

6. The Small Cause Court shall be deemed to be a Court subject to the superintendence of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be, within the meaning of the Letters Patent, respectively dated the 28th day of December, 1865, for such High Courts and within the meaning of the Code of Civil Procedure.

7. Subject to the control of the Governor in Council, the Local Government may, from time to time, by notification in the official Gazette, appoint so many persons as it thinks fit to be Judges of the Small Cause Court, of whom one at least shall be a Barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland.

The Local Government may, by a like notification, suspend and, with the previous sanction of the Governor General in Council, remove any Judge so appointed.

8. The senior in appointment of the Judges who are Barristers or Advocates shall be called the Chief Judge, and shall be the first of the Judges in rank and precedence.

The other Judges shall have rank and precedence according to the seniority of their appointment as such Judges: provided that a Judge permanently appointed shall be deemed senior to an officiating Judge.

9. Except as herein or by any other law otherwise provided, the Small Cause Court may, with the previous sanction of the High Court, make rules to provide, in such manner as it thinks fit, for the exercise by one or more of its Judges of any powers conferred on the Small Cause Court by this Act, or by any other law for the time being in force.

Act XXVI of 1864, s. 14. 10. Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof.

Act XI of 1865, s. 83. 11. Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question the opinion of the majority shall prevail; and if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or in his absence the senior Judge so differing, shall have the casting voice.

Act XVII of 1875, s. 10 (b). (Cf. Act IX of 1850, s. 24.) 12. The Small Cause Court shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government.

Act IX of 1850, ss. 13-15. 13. The Small Cause Court may, from time to time, appoint a chief clerk and, subject to the control of the Local Government, as many additional clerks, bailiffs and other ministerial officers as may be necessary for the administration of justice by the Court and for the exercise and performance of the powers and duties conferred and imposed on it by this Act or any other law for the time being in force.

Cf. Act IX of 1850, ss. 14-16. Act XVII of 1877, s. 23. 14. The officers so appointed shall exercise such powers and discharge such duties of a ministerial nature as the Small Cause Court (subject to the control of the High Court) may, from time to time, by rules to be made in this behalf, direct.

Act XVII of 1875, s. 70. 15. The Small Cause Court may suspend or remove any officer so appointed; but the removal of any officer drawing a monthly salary of one hundred rupees or upwards shall be subject to the orders of the Local Government.

Act IX of 1850, ss. 9 and 17. 16. No Judge or other officer appointed under this Act shall, during his continuance as such Judge or officer, either by himself or as a partner of any other person, practise or act, either directly or indirectly, as an Advocate, Attorney, Vakil, or other legal practitioner, or be concerned, either on his own account or for any other person, or as the partner of any other person, in any trade or profession.

Any such Judge or officer so practising, acting or concerned shall be deemed to have committed an offence under section 163 of the Indian Penal Code.

Provided that nothing herein contained shall be deemed to prohibit any such Judge or officer from being a member of any company incorporated or registered under Royal Charter, Letters Patent, Act of Parliament or Act of any British Indian Legislature.

CHAPTER III.

JURISDICTION IN RESPECT OF SUITS.

Act IX of 1850, s. 6. 17. The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for

the time being of the ordinary original civil jurisdiction of the High Court.

16. Subject to the exceptions in section seven- Act IX of 1850, ss. 25 and 32. Suits in which Court shall have jurisdiction to try all suits of a civil nature: Cf. Act X of 1877, s. 11.

Provided that the amount or value of the subject-matter does not exceed two thousand rupees: 19 & 20 Vic. c. 106, s. 24. Cf. 18.

Provided also that the cause of action has arisen either wholly, or, in case the leave of the Small Cause Court has been first obtained, in part, within the local limits of its jurisdiction, or that the defendant, at the time of the commencement of the suit, dwells, or carries on business, or personally works for gain, within such limits. Letters Patent of 1863, s. 12.

Explanation.—When in any suit the sum claimed is, by an admitted set-off of any sum claimed by the defendant from the plaintiff, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit.

Suits in which Court has no jurisdiction. 17. The Small Cause Court shall have no jurisdiction— Act IX of 1850, s. 25.

(a) in suits concerning the assessment or collection of the revenue; Sec 5 Bom. H. C. Rep. (O. C. J.) 1.

(b) in suits against the Secretary of State for India in Council;

(c) in suits concerning any act ordered or done by the Governor General in Council or the Local Government, or by the Governor General or a Governor, or by any Member of the Council of the Governor General, or of the Governor of Madras or Bombay, in his official capacity, or by any person by order of the Governor General in Council or Local Government;

(d) in suits concerning any act ordered or done by any Judge or judicial officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court or of any such Judge or judicial officer;

(e) in the suits specified in section sixteen, clauses (a) to (d) of the Code of Civil Procedure;

(f) in suits for the specific performance or the rescission of contracts relating to any right to or interest in immoveable property;

(g) in suits for an account of property and its due administration under the decree of the Court;

(h) in suits for damages for libel or slander, adultery or breach of promise of marriage;

(i) in suits for the restitution of conjugal rights;

(j) in suits to enforce a trust;

(k) in suits to obtain an injunction;

(l) in suits on any judgment of a High Court; 19 & 20 Vic. c. 108, s. 27.

(m) in suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force.

Act XXVI of 1864, s. 3.

18. When the parties to a suit which, if the amount or value of the subject-matter thereof did not exceed two thousand rupees, would be cognizable by the

Court may by consent try suits beyond pecuniary limits of jurisdiction.

Small Cause Court, have entered into an agreement in writing that the Small Cause Court shall have jurisdiction to try such suit, the Court shall have jurisdiction to try the same, although the amount or value of the subject-matter thereof may exceed two thousand rupees.

Every such agreement shall be filed in the Small Cause Court, and when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit.

19. All suits to which an officer of the Small Cause Court is a party, except suits in respect of claims to property taken in

Act IX of 1850, s. 100. Suits by and against officers of Court.

execution of its process, or the proceeds or value thereof, may be brought in the High Court at the election of the plaintiff as if this Act had not been passed.

20. If any suit cognizable by the Small Cause Court is instituted in the

Act IX of 1850, s. 102. Costs in suits in High Court for certain wrongs committed by officers of Small Cause Court.

High Court in respect of any wrong committed by an officer of the Small Cause Court under colour of its process, and the plaintiff obtains no greater damages than the sum of two thousand rupees, no costs shall be allowed him unless the Judge who tries the case certifies in writing that the suit was a fit one to be instituted in the High Court.

20. If any suit cognizable by the Small Cause Court other than the suits mentioned in section nineteen is instituted in the High Court, and if in such suit

Act IX of 1850, s. 101: Act XXVI of 1864, s. 9. Costs when plaintiff sues in High Court in other cases cognizable by Small Cause Court.

the plaintiff obtains a decree, in the case of a suit founded on contract for an amount or value of less than two thousand rupees, and in the case of any other suit for an amount or value of less than three hundred rupees,

no costs shall be allowed to the plaintiff;

and if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs as between attorney and client:

Provided that the foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court for any of the following reasons (that is to say):—

(a) because of the difficulty, novelty or general importance thereof, or of some erroneous course of decisions in like cases in the Small Cause Court; or

(b) because of there being any question to be determined in such suit, upon which question claims or demands exceeding in aggregate value or amount two thousand rupees are dependent; or

(c) because of the suit depending upon the title to immovable property exceeding in value two thousand rupees.

CHAPTER IV.

PROCEDURE IN SUITS.

21. The chapters and sections of the Code of Civil Procedure specified in the second schedule hereto annexed shall extend (so far as they are applicable) to the Small Cause Court; and the procedure prescribed thereby shall be the procedure followed in the Court in all suits cognizable by it, except where such procedure is inconsistent with the procedure prescribed by any specific provisions of this Act.

22. Except in cases of set-off under the Code of Civil Procedure, section 111, no written statement shall be received unless required by the Court.

23. Save as is hereinafter specially provided, every decree and order of the Small Cause Court in a suit shall be final and conclusive between the parties; but the Court may, on application of either party, made within eight days from the date of the decree or order in any suit, order a new trial to be held upon such terms as it thinks reasonable, and may in the meantime stay the proceedings:

Provided that the applicant at the time of making the application pays into court the amount, if any, payable by him under such decree or order.

24. If the judgment-debtor under any decree of the Small Cause Court has not within the local limits of its jurisdiction moveable property sufficient to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution—

(a) in the case of execution against immovable property situate within such local limits—to the High Court;

(b) in all other cases—to any Civil Court within whose general jurisdiction such judgment-debtor, or any moveable or immovable property of such judgment-debtor, may be found.

The procedure prescribed by the Code of Civil Procedure for the execution of decrees by Courts other than those which made them shall be the procedure followed in such cases.

25. Whenever any judgment-debtor who has been arrested in execution of a decree of the Small Cause Court offers security to the satisfaction of such Court for payment of the amount which he has been ordered to pay and the costs, the Court may order him to be discharged.

26. Whenever it appears to the Small Cause Court that any judgment-debtor under its decree is unable, from sickness or

(Cf. Act XI of 1865, s. 20.)

Act IX of 1850, s. 52.

Act IX of 1850, s. 66.

Act IX of 1850, s. 71. (see I.L.R. 5 Cal. 294.)

other sufficient cause, to pay the amount of the decree, or, if such Court has ordered the same to be paid in instalments, the amount of any instalment thereof, it may, from time to time for such time and upon such terms as it thinks fit, suspend the execution of such decree.

Act IX of 1850, s. 42.

27. In any suit in which the defendant appears and does not admit the claim, and the suit is dismissed, the Small Cause Court may order the plaintiff to pay to the defendant by way of satisfaction for his trouble and attendance, such sum as it, in its discretion, thinks fit. Any such order may, in default of payment of the amount payable thereunder, be enforced by the defendant against the plaintiff as if the same were a decree of the Court.

Compensation payable by plaintiff to defendant in certain cases.

CHAPTER V.

JURISDICTION WITH REGARD TO THE RECOVERY OR POSSESSION OF IMMOVABLE PROPERTY.

Act IX of 1850, s. 91.

19 & 20 Vic. c. 50.

28. When any person has had possession of any immovable property situate within the local limits of the Small Cause Court's jurisdiction and of which the annual value at a rack-rent does not exceed one thousand rupees, as the tenant, or by permission, of another person, or of some person through whom such other person claims;

and such tenancy or permission has been determined or been withdrawn;

and such tenant or occupier or any person holding under or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

such other person (hereinafter called the applicant) may apply to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

Act IX of 1850, s. 94.

29. The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure for the service of a summons on a defendant.

Act IX of 1850, ss. 92, 93.

19 & 20 Vic. c. 108, s. 50.

30. If the occupant does not appear at the time appointed, and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section thirty-one, be entitled to an order addressed to a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court may think fit to name in such order.

Explanation.—If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section.

31. Any such order shall justify the bailiff to whom it is addressed in entering after the hour of six in the morning and before the hour of six in the afternoon upon the property named therein, with such assistants as he thinks necessary, and giving possession of such property to the applicant: and no suit or prosecution shall be maintainable against any Judge or officer of the Small Cause Court by whom any such order as aforesaid was issued, or against any bailiff or other person by whom the same was executed, or by whom any such summons as aforesaid was served for the issue, execution or service of any such order or summons, by reason only that the applicant was not entitled to the possession of the property.

Such order to justify bailiff entering on property and giving possession. Act IX of 1850, s. 93.

Bar to proceedings against Judge or officer for issuing, &c., order or summons. Act IX of 1850, s. 95.

Applicant, if entitled to possession, not to be deemed trespasser for any error in proceedings; error, defect or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser; but any person aggrieved may bring a suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect or irregularity:

32. When the applicant, at the time of applying for any such order as aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed, on account of any error, defect or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser; but any person aggrieved may bring a suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect or irregularity:

Occupant may sue for compensation. Act IX of 1850, s. 96.

Provided that, when no such damage is proved, the suit shall be dismissed; and that, in any case in which such damage is proved but the amount of the compensation assessed by the Court does not exceed ten rupees, the Court shall award to the plaintiff no more costs than compensation, unless the Judge who tries the same certifies that in his opinion full costs should be awarded to the plaintiff.

33. Nothing herein contained shall be deemed to protect any applicant obtaining order when not entitled to property under this chapter from a suit by any person deeming himself aggrieved thereby, when such applicant was not at the time of applying for such order as aforesaid entitled to the possession of such property.

And when the applicant was not, at the time of applying for any such order as aforesaid, entitled to the possession of such property, the issue of any such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant.

34. Whenever on an application being made under this chapter the occupant binds himself, with two sureties, in a bond for such amount as the Small Cause Court thinks reasonable, to bring a suit against the applicant, the issue of any such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant.

Application for order of applying for any such order as aforesaid, entitled to the possession of such property, the issue of any such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant. Act IX of 1850, s. 97.

35. In all proceedings under this chapter, the Small Cause Court shall, as far as may be, and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the Code of Civil Procedure.

Applications under this chapter may be made by paupers in accordance with the provisions of Chapter XXVI of the said Code, as if such applications were suits by paupers within the meaning of the said chapter.

36. Recovery of the possession of any immovable property under this chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto.

37. The Small Cause Court shall have power to entertain applications for declarations of insolvency under the provisions of Chapter XX of the Code of Civil Procedure in respect of all judgment-debtors who reside, or are in custody, within the local limits of its jurisdiction and do not carry on any trade or business comprised in the third schedule hereto annexed.

38. In addition to the cases specified in section thirty-seven, any person who is in insolvent circumstances and who resides within the local limits of the jurisdiction of the Small Cause Court and does not carry on any trade or business comprised in the said schedule may apply to the Court to be declared insolvent.

All the provisions of the said chapter relating to applications by judgment-debtors shall apply, so far as the same may be applicable, *mutatis mutandis*, to applications by such persons.

39. The person for the time being appointed under the 11th & 12th of Victoria, Chapter twenty-one, section fourteen, to be the official assignee under the

able, having regard to the value of the property and the probable costs of the suit next hereinafter mentioned, to institute without delay a suit in the High Court for compensation for trespass against the applicant, and to pay all the costs of such suit in case he does not prosecute the same or in case judgment therein is given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suit is disposed of.

If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section thirty.

35. In all proceedings under this chapter, the Small Cause Court shall, as far as may be, and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the Code of Civil Procedure.

Applications under this chapter may be made by paupers in accordance with the provisions of Chapter XXVI of the said Code, as if such applications were suits by paupers within the meaning of the said chapter.

36. Recovery of the possession of any immovable property under this chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto.

CHAPTER VI.

INSOLVENCY JURISDICTION.

37. The Small Cause Court shall have power to entertain applications for declarations of insolvency under the provisions of Chapter XX of the Code of Civil Procedure in respect of all judgment-debtors who reside, or are in custody, within the local limits of its jurisdiction and do not carry on any trade or business comprised in the third schedule hereto annexed.

38. In addition to the cases specified in section thirty-seven, any person who is in insolvent circumstances and who resides within the local limits of the jurisdiction of the Small Cause Court and does not carry on any trade or business comprised in the said schedule may apply to the Court to be declared insolvent.

All the provisions of the said chapter relating to applications by judgment-debtors shall apply, so far as the same may be applicable, *mutatis mutandis*, to applications by such persons.

39. The person for the time being appointed under the 11th & 12th of Victoria, Chapter twenty-one, section fourteen, to be the official assignee under the

said statute, shall in all cases over which jurisdiction is conferred on the Small Cause Court by this chapter be the Receiver for the purposes of chapter XX of the Code of Civil Procedure, and may retain as a remuneration for the performance of his duties as such Receiver the commission which may be allowed to a Receiver under that chapter.

40. An appeal shall lie to the High Court from New.

Appeal to the High Court from orders under sections 351, 352, 353 and 357 of Code. all orders of the Small Cause Court passed under sections 351, 352, 353 or 357 of the same Code in exercise of the jurisdiction conferred by this chapter.

The procedure prescribed by section 530 of the same Code for appeals from orders shall, so far as may be, apply to such appeals.

41. Notwithstanding anything to the contrary

Bar of jurisdiction of High Court in cases falling under this chapter. contained in the 11th & 12th of Victoria, Chapter twenty-one, the High Court shall not entertain any application for a declaration of insolvency in cases in which such application might be made under this Act.

But the High Court may in its discretion, on the application of any person concerned, direct that in any case under this chapter which but for this Act would have been cognizable by it under the said Statute, the proceedings in the Small Cause Court shall be closed; and thereupon any person entitled to present a petition under the said Statute may present the same as if this Act had not been passed.

CHAPTER VII.

TESTAMENTARY AND INTESTATE JURISDICTION.

42. The local limits of the jurisdiction of the

Local limits of jurisdiction of Court to be deemed a District and Court to be deemed a District Judge under Acts X of 1865 and XXI of 1870. Small Cause Court shall be deemed a District, and the Court shall be deemed a District Judge, within the meaning of the Indian Succession Act, 1865, and the Hindu Wills Act, 1870, for the purpose of granting probate and letters of administration in cases in which the assets of the deceased person, exclusive of trust-property, but without deducting debts owing by him, are less than one thousand rupees.

Every application for probate or letters of administration under this section shall state the amount of the said assets to the best of the applicant's knowledge or belief.

43. The application for probate or letters of administration if made and

Application to be conclusive as to jurisdiction. verified in manner mentioned in the Indian Succession Act, 1865, shall be conclusive for the purpose of authorizing the grant of probate or letters of administration.

and no such grant shall be impeached by reason that the assets of the deceased person, exclusive of trust-property, but without deducting debts owing by the deceased, did in fact exceed one thousand rupees, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

44. The procedure of the Small Cause Court Procedure in cases under this chapter shall be, under this chapter, as far as may be practicable, in accordance with the procedure prescribed for the District Judge by the said Acts respectively.

Every order made by the Small Cause Court under this Chapter shall have the same effect and be subject to the like appeal as an order made by the District Judge under the said Acts respectively.

And all the provisions of the said Acts respectively relating to the grant and revoking of probate or letters of administration shall, *mutatis mutandis*, apply to the grant and revoking of probate or letters of administration under this chapter.

CHAPTER VIII.

REFERENCES TO HIGH COURT.

Act XI of 1865, s. 32. 45. If two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under chapter V of this Act, and differ in their opinion as to any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits,

Act XXVI of 1864, s. 4. or if in any suit or any such proceeding, in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises, and either party so requires,

(Ordinary references provided for by Ch. XLVI, P. Code.) the Small Cause Court shall draw up a statement of the facts of the case, and refer such statement, under section 617 of the Code of Civil Procedure, for the opinion of the High Court, and shall either reserve judgment or give judgment contingent upon such opinion.

Act XXVI of 1864, s. 8. 46. When judgment is given under section forty-five contingent upon the opinion of the High Court, the party against whom such judgment is given shall at once furnish security, to be approved by the Small Cause Court, for the costs of the reference to the High Court and for the amount of such judgment:

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into court, and the same has been paid accordingly.

Act IX of 1880, ss. 18 & 20. Act XXVI of 1864, s. 11. Unless such security as aforesaid is at once furnished, the party against whom such contingent judgment has been given shall be deemed to have submitted to the same.

CHAPTER IX.

FEES AND COSTS.

Institution-fee.

47. A fee not exceeding—

(a) when the amount or value of the subject-matter does not exceed five hundred rupees, the sum of two annas in the rupee on such amount or value,

(b) when the amount or value of the subject-matter exceeds five hundred rupees, the sum of one anna in the rupee on such amount or value,

shall be paid on the institution of every suit or every proceeding under Chapter V of this Act; and no plaint or application shall be received in any such suit or proceeding until such fee has been paid.

48. The fees specified in the third and fourth columns of the fourth Schedule hereto annexed shall be paid previous to the issue in any such suit or proceeding of the processes to which the said columns respectively relate by the persons on whose behalf such processes are issued, when the amount or value of the subject-matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column of the said Schedule.

49. Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.

50. The Small Cause Court may, whenever it thinks fit, receive and register applications under chapter V of this Act presented by poor persons without payment of the fee mentioned in section forty-seven, or on a part-payment of such fee.

51. The Local Government may, from time to time, by notification in the official Gazette, vary the amount of the fees payable under section forty-seven or section forty-eight:

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

52. The fees chargeable under the Court Fees Act, 1870, in a District Court in respect of proceedings under Chapter XX of the Code of Civil Procedure shall be levied in respect of all proceedings in the Small Cause Court under Chapter VI of this Act, and the fees so chargeable in respect of proceedings relating to the grant of probate or letters of administration under the Indian Succession Act, 1865, or the Hindu Wills Act, 1870, shall be levied in respect of all proceedings in the Small Cause Court under Chapter VII of this Act.

53. The expense of employing an advocate, vakil, attorney, or other legal practitioner incurred by any party, shall not be allowed as costs in any suit or

shall be levied in respect of all proceedings in the Small Cause Court under Chapter VI of this Act, and the fees so chargeable in respect of proceedings relating to the grant of probate or letters of administration under the Indian Succession Act, 1865, or the Hindu Wills Act, 1870, shall be levied in respect of all proceedings in the Small Cause Court under Chapter VII of this Act.

53. The expense of employing an advocate, vakil, attorney, or other legal practitioner incurred by any party, shall not be allowed as costs in any suit or

in any proceeding under Chapter V of this Act, in the Small Cause Court, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable.

The Small Cause Court may from time to time by general rules determine the cases in which such expenses shall be allowed.

54. Nothing contained in this chapter shall affect the provisions of sections 3, 5 or 25 of the Court Fees Act, 1870, sections 3, 5 or 25 of the Court Fees Act, 1870.

CHAPTER X.

MISCONDUCT OF MINISTERIAL OFFICERS.

55. The Small Cause Court may, by order fine, in an amount not exceeding one month's salary any clerk, bailiff or other ministerial officer of the Court who is guilty of misconduct or neglect in the performance of the duties of his office, and such fine may be deducted from his salary.

56. If any clerk, bailiff or other ministerial officer of the Small Cause Court, who is employed as such in the execution of any order or warrant, loses, by neglect, connivance or omission, an opportunity of executing such order or warrant, he shall be liable, by order of the Small Cause Court, on the application of the person injured by such neglect, connivance or omission, to pay such sum, not exceeding in any case the sum for which the said order or warrant was issued, as in the opinion of the Court represents the amount of the damage sustained by such person thereby.

57. If any clerk, bailiff or other ministerial officer of the Small Cause Court is charged with extortion or default while acting under colour of its process, or with not duly paying or accounting for any money levied by him under its authority, the Court may inquire into such charge, and may make such order for the repayment or payment of any money so extorted, or of any money so levied as aforesaid, and of damages and costs, by such officer, as it thinks fit.

58. For the purposes of any inquiry under this chapter, the Small Cause Court shall have all the powers of summoning and enforcing the attendance of witnesses and compelling the production of documents which it possesses in suits under this Act.

59. Any order under this chapter for the payment or repayment of money may, in default of payment of the amount payable thereunder, be enforced by the person to whom such amount is payable, as if the same were a decree of the Small Cause Court in his favour.

CHAPTER XI.

CONTEMPT OF COURT.

60. When any such offence as is described in Act X of 1872, s. 435, section 175, 178, 179, 180 Act IV of 1877, s. 205, or 228 of the Indian Penal Code is committed in the view or presence of the Small Cause Court, the Court may cause the offender to be detained in custody; and, at any time before the rising of the Court on the same day, may, if it thinks fit, take cognizance of the offence, and sentence the offender to fine not exceeding two hundred rupees, and in default of payment to imprisonment in the civil Jail for a term which may extend to one month unless such fine is sooner paid.

61. In every such case the Court shall record the facts constituting the offence, the statement (if any) made by the offender, and the finding and sentence. If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court when interrupted or insulted was sitting, and the nature of the interruption or insult offered.

62. If the Court considers that a person accused of any of the offences referred to in section sixty and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or if the Court is for any other reason of opinion that the case should not be disposed of under section sixty, the Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Presidency Magistrate, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, may forward him under custody to such Magistrate.

Such Magistrate shall deal with the accused person in the manner provided by the Presidency Magistrates Act, 1877; and may sentence the offender to punishment, as provided in the section of the Indian Penal Code under which he is charged.

63. When the Court has, under section sixty or section sixty-two, sentenced an offender to punishment, or forwarded him to a Presidency Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may in its discretion discharge the offender, or remit the punishment on his submission to the order or requisition of the Court, or on apology being made to its satisfaction.

Act X of 1872, ss. 356-364: 64. If any witness before the Small Cause Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, the Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to answer or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section sixty or sixty-two.

Draft Code of Criminal Procedure, s. 287. 65. Any person deeming himself aggrieved by an order under section sixty or section sixty-four may appeal to the High Court, and the provisions of the Presidency Magistrates Act, 1877, relating to appeals, shall, so far as may be, apply to appeals under this section.

CHAPTER XII.

MISCELLANEOUS.

Cf. Act XVII of 1875. See s. 37 of Act IX of 1850. 66. All questions other than questions relating to procedure or practice which arise in suits or other proceedings under this Act in the Small Cause Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

Act X of 1877, s. 636. 67. Notices to produce documents, summonses to witnesses, and all other processes issued in the exercise of any jurisdiction conferred on the Small Cause Court by this Act except summonses to defendants and writs of execution, may, if the Court by general or special order so directs, be served by the attorneys in the suit, or by persons employed by them in this behalf, or by such other persons as the Court, from time to time, by rule or order, directs.

Act XVII of 1875, s. 69. 68. The Small Cause Court shall keep such registers, books and accounts, and submit to the High Court such statements and returns, as may, subject to the approval of the Local Government, be prescribed by the High Court.

Act XI of 1865, s. 53. Letters Patent, s. 43. 69. The Small Cause Court shall comply with such requisitions as may from time to time be made by the Local Government or High Court. Court to furnish records, &c., called for by Local Government or High Court. Court for records, returns and statements in such form and manner as such Government or Court, as the case may be, thinks fit.

Act X of 1875, s. 71. (Cf. Act IX of 1850.) 70. The Small Cause Court shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the Local Government.

Such list, when it has received such approval, shall be published in the local official Gazette, and the said holidays and vacations shall be observed accordingly.

71. The Governor General and Members of his Council, the Governors of Fort St. George and Bombay and the members of their respective Councils, the Lieutenant-Governor of Bengal, and the Chief Justices and Judges of the High Courts established under the 24th & 25th of Victoria, chapter 104, shall not be liable to arrest by order of any Court constituted under this Act.

No suit to lie upon decree of Court. 72. No suit shall lie on I. L. R. 5, any decree of the Small Cause Court. Calc., p. 294.

73. Any person ordered by the Small Cause Place of imprison- Court to be imprisoned may ment. be imprisoned in such place as the Local Government, from time to time, appoints in this behalf.

74. If any person against whom any suit is Act IX of Tender in suit for any- brought for anything pur- 1850, s. 111. thing done under Act. porting to be done by him under this Act, has, before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover.

75. All prosecutions for anything purporting Act IX of Limitation of prosecu- to be done under this Act 1850, s. 111. tions. must be commenced within three months after the offence is committed.

THE FIRST SCHEDULE.

(See section 2.)

ENACTMENTS REPEALED.

A.—Charters of the Supreme Courts.

Date.		Extent of repeal.
26th March, 1774	Charter of the Supreme Court at Fort William,	Clause 21.
26th December, 1800.	Charter of the Supreme Court at Madras,	Clause 47.
8th December, 1823.	Charter of the Supreme Court at Bombay,	Clause 59.

B.—Acts of the Governor General in Council.

Number and year.	Subject or short title.	Extent of repeal.
IX of 1850...	For the more easy recovery of small debts and demands in Calcutta, Madras and Bombay.	So much as has not been repealed.
XX of 1857...	To amend Act (XI) of 1850.	The whole.
XXVI of 1864	To extend the jurisdiction of the Courts of Small Causes at Calcutta, Madras and Bombay, and to provide for the appointment of an increased number of Judges of these Courts.	So much as has not been repealed.
X of 1877 ...	The Code of Civil Procedure.	Section eight, para. 2.

C.—Act of the Governor of Bombay in Council.

Number and year.	Subject.	Extent of repeal.
VI of 1864 ...	For the better regulation of the diet-money of persons imprisoned by the Bombay Court of Small Causes.	So much as has not been repealed.

THE SECOND SCHEDULE.

(See section 27.)

PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT.

PRELIMINARY: Section 2, Interpretation clause.

CHAPTER I.—Of the Jurisdiction of the Courts and *Res Judicata*, except section 11.

CHAPTER II.—Of the Place of Suing, except sections 15, 16 and 17, 18, 19, 20, paragraph 4, and sections 22 to 24 (both inclusive).

CHAPTER III.—Of Parties and their Appearances, Applications and Acts, except section 37, last paragraph.

CHAPTER IV.—Of the Frame of the Suit, except section 42 and section 44, rule a.

CHAPTER V.—Of the Institution of Suits, except section 57, clause (b).

CHAPTER VI.—Of the Issue and Service of Summons, except section 86.

CHAPTER VII.—Of the Appearance of the Parties and Consequence of Non-appearance.

CHAPTER VIII.—Of Written Statements and Set-off, except sections 110, 112 and 113.

CHAPTER IX.—Of the Examination of the Parties by the Court, except section 119.

CHAPTER X.—Of Discovery and the Admissions &c., of Documents, except, in the proviso to section 121, the words "and that no defendant shall deliver interrogatories for the examination of the plaintiff, unless such defendant has previously tendered a written statement, and such statement has been received and placed on the record."

CHAPTER XI.—Settlement of Issues, sections 150 and 151.

CHAPTER XII.—Disposal of the Suit at the first hearing, except section 154 and section 153, second paragraph.

CHAPTER XIII.—Of Adjournments.

CHAPTER XIV.—Of the Summoning and Attendance of Witnesses.

CHAPTER XV.—Of the Hearing of the Suit and Examination of Witnesses, except sections 182 to 191 (both inclusive).

CHAPTER XVI.—Of Affidavits.

CHAPTER XVII.—Of Judgment and Decree, except sections 204, 207 and 211 to 214 (both inclusive).

CHAPTER XVIII.—Of Costs.

CHAPTER XIX.—Of the Execution of Decrees, sections 223 to 236 (both inclusive), 239 to 262 (both inclusive), 266 (so far as relates to the attachment of moveable property or decrees therefor), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 303 (both inclusive), 323 to 333 (both inclusive), 336 to 343 (both inclusive).

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CHAPTER XLVI.—Of Reference to and Revision by High Court.

CHAPTER XLIX.—Miscellaneous, sections 640 to 645 (both inclusive), 647 to 652 (both inclusive).

THE THIRD SCHEDULE

(See sections 37 and 38.)

PERSONS EXCLUDED FROM INSOLVENCY JURISDICTION OF COURT.

Bankers, sharafs or banians, professional money-lenders :

sugar, indigo, tea, wool, silk or other manufacturers :

owners of cotton, jute, hide or other screws :

owners or farmers of fairs, markets or bázars :

ship-owners, dock-owners :

builders, auctioneers and pawnbrokers :

hotel-keepers, boarding-house keepers or lodging-house keepers :

letters-out of conveyances and cattle :

printers and publishers :

contractors, commission agents, bill-brokers and other brokers :

owners or lessors of theatres or other public places of amusement :

money-changers, grain-lenders :

dealers in horses, cattle or elephants :

persons using the trade of receiving other men's monies or estates into their trust or custody :

persons insuring ships or their freight or other matters against perils of the sea :

persons using the trade of merchandise by way of bargaining, exchange, bartering, commission, consignment or otherwise, in gross or by retail ; and

persons who, either for themselves or as agents or factors for others, seek their living by buying and selling, or buying and letting for hire, goods or commodities ; or by the workmanship or conversion of goods or commodities :

Provided that no person earning his livelihood solely by agriculture, and no common labourer or workman for hire, or member of a company, shall be deemed as such to be included in this schedule.

(21)
THE FOURTH SCHEDULE.
(See section 48.)
FEES FOR SUMMONSES AND OTHER PROCESSES.

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summonses.			Fee for other processes.		
Rs.	Rs.	Rs.	A.	P.	Rs.	A.	P.
0	10	0	2	0	0	2	0
10	20	0	4	0	0	4	0
20	50	0	8	0	0	8	0
50	100	1	0	0	1	0	0
100	200	1	4	0	2	0	0
200	300	1	8	0	3	0	0
300	400	1	12	0	4	0	0
400	500	2	0	0	5	0	0
500	600	2	4	0	6	0	0
600	700	2	8	0	7	0	0
700	800	2	12	0	8	0	0
800	900	3	0	0	9	0	0
900	1,000	3	4	0	10	0	0
1,000	1,100	3	8	0	11	0	0
1,100	1,200	3	12	0	12	0	0
1,200	1,300	4	0	0	13	0	0
1,300	1,400	4	4	0	14	0	0
1,400	1,500	4	8	0	15	0	0
1,500	1,600	4	12	0	16	0	0
1,600	1,700	5	0	0	17	0	0
1,700	1,800	5	4	0	18	0	0
1,800	1,900	5	8	0	19	0	0
1,900	2,000	5	12	0	20	0	0

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

A
BILL

TO

Consolidate and amend the law relating
to the Courts of Small Causes estab-
lished in the Presidency-towns.

(Mr. Stokes.)

STATEMENT OF OBJECTS AND REASONS.

THE Courts now known as the Courts of Small Causes in the Presidency-towns were established by a Charter of George the Second, dated 8th January, 1753, and would accordingly appear to be the oldest Courts at present existing in British India.

They have, from time to time, undergone many changes, their constitution having been re-modelled, their jurisdiction extended and their procedure amended by various enactments and orders, in particular by Acts IX of 1850 and XXVI of 1864, which placed them on a footing closely resembling that of the English County Courts; but they have been left to a great extent untouched by the important legislation by which, in recent years, the procedure of the other Civil Courts in this country has been reformed.

The result of this is that they have become somewhat antiquated and do not fit in with the rest of the Indian judicial system; that their powers and procedure are, in many particulars, defective, and that though, owing to the efficient manner in which they have been worked, they have generally given satisfaction, questions have often to be discussed in them which, to use the words of a late Small Cause Court Judge, now on the bench of the Madras High Court, "are totally foreign to the people who resort to them, and some of which have only an historic interest even in England."

2. The need of completely revising the law relating to these Courts was pointed out many years ago by Mr. Fagan and Mr. Boulnois, two of the ablest Judges who have presided in the Calcutta Small Cause Court; and in the year 1868, a Bill was drafted for this purpose by Mr. Pitt Kennedy, but further action in the matter has been, from time to time, postponed pending the consideration of certain proposals regarding the jurisdiction and powers of the Courts. These proposals have now been fully discussed; as near an approach to unanimity regarding them as can well be hoped for has been attained, and the present Bill has accordingly been prepared to consolidate and amend the entire law.

3. The most important change introduced by it lies in the extension of the pecuniary limit of the jurisdiction from Rs. 1,000 to Rs. 2,000. This extension was asked for by the Calcutta Trades Association as far back as 1867. It has since then been much discussed, and has the approval of the Governments of Madras, Bombay and Bengal, of the High Court of Madras, and, subject to a limitation to be presently referred to, of the High Court at Calcutta. The only opposition to it comes from the High Court at Bombay; and that opposition appears to proceed, not so much from any objection to the principle of the extension, as from a fear that it will not be acceptable to the public—a point on which we shall be better able to form an opinion after the Bill has been published.

The Bill, it will be observed, is drawn so as to extend the jurisdiction in all classes of suits cognizable by the Court. The Calcutta High Court would have excepted actions of tort; but it has been thought well to avoid, if possible, making any distinctions of this sort, which, to persons of the class who resort to the Small Cause Court and their advisers, would, it is feared, occasion difficulties.

4. Assuming that the pecuniary limit of the jurisdiction is to be raised as proposed, the question arises whether any appeal should be allowed in suits above Rs. 1,000; or whether the present system of allowing a new trial by the Court itself and a reference to the High Court on a point of law is sufficient. On this point the difference of opinion has been greater.

The Governments of Bombay and Bengal, the Calcutta High Court, and the Judges of the Small Cause Court at Bombay, are against admitting an appeal. The Government of Madras, the High Court there, and the Judges of the Small Cause Courts at Calcutta and Madras, are in favour of it; as was also Mr. Kennedy at the time he drew the Bill already referred to.

On the one hand, it is urged that allowing an appeal is, especially as it involves the taking of notes of evidence and the writing of judgments, inconsistent with the summary procedure of the Small Cause Court; that the hearing of cases subject to appeal could not conveniently be carried on simultaneously with the ordinary Small Cause Court work, and that the existence of a power to appeal would render litigation needlessly protracted and expensive.

On the other hand, the importance of providing a check on the trial of questions of fact in suits of the higher value is insisted on, and it is pointed out that, in two at least of the presidency-towns, the practice of taking notes of evidence in all contested cases already prevails. The Bill as at present drawn does not provide an appeal, but the Select Committee, to which it is proposed to refer it, will, no doubt, consider whether in suits above Rs. 1,000 an appeal should not be allowed.

(2)

5. The next question which presents itself in connection with the jurisdiction of the Court is that as to the classes of suits which the Court should be empowered to hear. It has been thought best, both with a view to relieve the High Courts as far as possible, and in order to avoid, as far as may be, the doubts and difficulties which attend the construction of provisions of this sort, to draw the Bill so as to give the Small Cause Court jurisdiction in suits of all descriptions with certain specified exceptions.

6. The most important of these exceptions is that of suits for the recovery of immoveable property. It appears from the records of the Legislative Department that those who framed Act IX of 1850 intended that its 25th section should confer jurisdiction on the Small Cause Courts in such suits; but there has been a considerable difference of opinion as to the actual effect of that Act and of its amending Act (XXVI of 1864) in this particular.

The High Courts of Calcutta and Bombay have held that the Small Cause Courts were given jurisdiction in the suits in question by the 25th section of Act IX of 1850. The Bombay High Court has held, further, that a like jurisdiction was conferred in suits up to Rs. 1,000 by the Act of 1864, while the Judges of the Calcutta Small Cause Court hold that their jurisdiction in such suits was not extended by that Act. The Madras High Court has held that neither Act conferred any such jurisdiction. To this it should be added that in Calcutta the jurisdiction, though held to exist up to Rs. 500, is, for some reason which has not been fully explained, but little resorted to.

The Madras and Bombay authorities and the majority of the Calcutta High Court are in favour of giving the jurisdiction. The Bengal Government, the officers consulted by it (including the Judges of the Calcutta Small Cause Court) and four of the Judges of the Calcutta High Court are against it. The Bill, as has been already stated, does not give it, and it is manifest that if it were to be given, special provisions relating to it would need to be introduced. An appeal should certainly be given; proper provision would have to be made for execution, and probably some rules would, as suggested both from the Calcutta and Madras High Courts, be required to limit the operation of the decisions as *res judicatae*.

Other cases in which the Bill proposes to withhold jurisdiction from the Small Cause Courts are suits against the Secretary of State in Council; suits for partition, foreclosure, redemption; suits for the specific performance or the rescission of contracts relating to immoveable property; administration-suits; suits to obtain an injunction; suits to enforce a trust.

7. One point more remains to be noticed in connection with the jurisdiction of the Courts.

Act IX of 1850, in conferring jurisdiction on the Courts up to a value of Rs. 500, confines its exercise to cases of defendants dwelling or carrying on business within the local limits. Act XXVI of 1864, on the other hand, in conferring jurisdiction between the values of Rs. 500 and Rs. 1,000, gives an alternative ground for its exercise, namely, the circumstance of the cause of action having arisen within the local limits. It has been urged by most of the authorities consulted that the basis of the jurisdiction should be the same in cases of all values. On the other hand, fears have been expressed by some that a power to institute a suit of the lower value against a defendant residing at a distance might be liable to abuse unless some limitation were imposed. The correct view of the matter seems to be that taken by the Judges of the Madras High Court, and Mr. Bristed, namely, that in this particular no distinction should be made between the High Court and the Small Cause Court, and accordingly the Bill has been drawn so as to place the jurisdiction of the Small Cause Court in this respect on precisely the same footing as that on which the jurisdiction of the High Court is placed by the Letters Patent.

8. The want of any power to execute the decree of a Small Cause Court against immoveable property, except by the circuitous process of instituting a suit upon such decree in the High Court, has for many years past been complained of as involving an undue hardship to plaintiffs, and in some places, particularly in Madras, driving them to institute their suits in the High Court instead of in the Small Cause Court. The objections that exist to giving the Small Cause Courts jurisdiction in suits to recover immoveable property apply also to giving them power to execute their decrees against immoveable property, and it is accordingly proposed by the Bill (section 24) to empower the Court to send its decrees for execution to the High Court or to a mufassal Court, in the same way as the mufassal Small Cause Courts do under section 20 of Act XI of 1865. The only serious opposition to this proposal comes from the High Court at Bombay, and it rests mainly on the political or economical objections which of late years have been so frequently urged against the sale of immoveable property in execution of decrees—objections which, however weighty they may be in the mufassal, where the land is the only means of livelihood of the mass of the people, and is in fact the basis of society, have little or no force in the cases that occur in the presidency-towns.

9. Section 21 of the Bill and the schedule make the Code of Civil Procedure the foundation of the procedure of the Small Cause Courts in the presidency-towns, as it is of those in the mufassal; but the special provisions of the existing Acts regarding Court-fees, fees to

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(3)

Counsel and attorney, and suspension of execution in cases of sickness, &c., have been retained, and it may be a question whether further modifications of the general law, for example, as regards the payment of expenses of witnesses (Code, sections 160 to 162), should not be introduced.

10. In the chapter relating to the recovery of small tenements, several amendments have been introduced, but they are merely such as are necessary in order to make the meaning of the original law clearer, or such as the working of the similar law in England has shewn to be desirable. Thus, the limitation of the operation of the chapter to cases in which the possession has commenced, either in a tenancy or in permissive occupancy, is clearly in accordance with the intention of the authors of the law, and though all doubt on this point was, as far as the Court at Calcutta is concerned, precluded by a decision of the Supreme Court there, in the year 1851, the circumstance, mentioned in one of the communications received, that another High Court has taken the directly opposite view, shows the necessity of making the law more distinct.

11. The words "the value or the rent" in section 91 of Act IX of 1850 were copied from section 122 of the English County Courts Act, 9 & 10 Vic., c. 122, where they were probably used *per incuriam*. Their effect, according to the construction put upon them in a well-known case, is, that property of great value—e.g., extensive buildings erected on a plot of land held at a rent below Rs. 1,000—might be brought within this very summary jurisdiction. The Bill provides that there shall be no jurisdiction if the annual value at a rack-rent exceeds Rs. 1,000.

12. The chapter on insolvency-jurisdiction is completely new. The introduction of a chapter of this sort has been advocated by the Government of Bengal, the Calcutta High Court and the present Chief Justice of Madras, with a view to relieving the High Courts of a mass of petty work with which they are at present burthened to the great detriment of more important business. There has been some difference of opinion as to the way in which the insolvency-jurisdiction should be divided between the High Court and the Small Cause Court. The principle of division adopted by the Bill, which assigns to the Small Cause Court all cases of non-traders, leaving to the High Court only the cases of traders, is that proposed by the Calcutta High Court; and it seems to be the most convenient, as it is, as a rule, in the latter class of cases only that questions of difficulty and importance arise in this country. The great mass of non-trading insolvents consists of Government clerks who have lived beyond their means, and the settlement of whose affairs is, generally speaking, only too simple a matter, there being in the majority of cases little or no assets to recover or distribute.

13. It might seem at first sight that the simplest mode of providing for the exercise of this jurisdiction would have been by transferring to the Small Cause Court a portion of the jurisdiction conferred on the Judges of the High Court under 11 & 12 Vic., c. 21; but an examination of that Statute will show that in some particulars its operation extends beyond the limits of British India, and there would accordingly, looking to the restricted powers of the Indian legislature, be a difficulty in moulding it to suit the case. This being so, it has been thought best to fall back upon the more limited provisions of the Civil Procedure Code, which appear to be sufficient in the simple and comparatively unimportant class of cases we have to deal with.

The official assignee under 11 & 12 Vic., c. 21, will be Receiver in all cases under this chapter.

14. The chapter on testamentary and intestate jurisdiction has been introduced with a view to relieving the High Court, and at the same time providing a cheap and expeditious mode of obtaining probate or letters of administration in the case of estates of less than Rs. 1,000 in amount or value.

15. The seventy-second section, which prohibits the bringing of a suit to enforce a decree of a Small Cause Court, merely affirms what has been held by the Calcutta High Court in a recent case to be the existing law.

16. The Bill, it will be observed, though it comprises certain subjects not provided for by the existing Acts, contains a much smaller number of sections than they do. This is due chiefly to the omission of matters provided for by the sections of the Code of Civil Procedure which it is proposed to apply, or by the general law; but partly also to the omission of certain matters,—e.g., the security to be given by ministerial officers, and the mode of keeping the accounts of the Court—which, in accordance with the practice of recent years, are left to be dealt with by the Executive Government, in accordance with the ordinary departmental rules.

SIMLA;

The 28th August, 1880.

WHITLEY STOKES.

22 SEP 80

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

ANNEXURE

TO

Bill to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns.

(Statement of Objects and Reasons.)

Govt. C. B. Press, Simla.—No. 32 L. D.—2-9-80—120.

E PRESIDENCY SMALL CAUSE
COURTS BILL, 1880.

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No. 3180 *Judicial* DEPARTMENT.

From *Legislative Department, Govt. of India*

Dated *13th September 1880* P. 954 forwarding
Presidency Courts of small Causes Bill for opinion of
Govt. & others, & FOR ORDERS.

Note The Bill was published

in English with Gazette of
14th instant, & orders are
solicited whether its publication
in any other language is
necessary.

Also whether any other persons
besides the Judges named
are to be consulted on the Bill.

22/9/80 Jm

I think it is better to leave it to the
Judges to decide.
2/11
11/11
11/11
11/11

SECTIONS.

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SECTION

Presidency Small Cause
Cmts Bill

FOR ORDERS.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

READ the following

From Secy. of J. Legislative
Dept. ~~Sept. 13~~ dated 13th
Sept. 1880 No. 954.

Order 27 Sept. 1880 No. 23

A copy of the Bill and
Statement will be forwarded
to the Honble the Judges of the
High Court, and the Judges
of the Small Cause Court
Madras, as requested, and
also to the gentlemen named
in the margin, for the purpose
of their opinions, which should
be communicated by the 20th
prox.

1. E. F. Webster Esq.
Collector Puzos
2. W. M. Sharkey Esq.
Barrister at Law
3. H. S. Mansoor Esq.
Barrister at Law
4. S. K. V. Ramana Pantulu
Sub Judge Madras

The Bill and Statement were
published as a Supplement to
the Ind. St. George Gazette of

c24/9
R. 24/9

27/9/80 Jrs

with copy
of B. M. & C.
to Dept. of Ag. —

440-50

Presidency Small Cause
Govt. of {1880} Madras.
Cmts Bill

To *J. E. C.*

Dated 27th Sep 1880, No. 2333
Recd.

Nos. 115-116

Bills Lapse. Accep. of the
Bill & Statement & amendments
& revised the law relating to
the Court of Small Causes
established in the Presidency
forwarded to the Hon. the Judges of
the H.C. the Judges of the
In all Cases Court, Madras
& certain gentlemen for
opinion.