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(2) Date of repair 13.10.87
(3) Initials of the Referencer M

TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Judicial DEPARTMENT

G.O. No. 2128-9
B.P. No.

Press.
Mis.

Dated 5-10-1888

198

Not to be folded or roughly handled.

31/10/88
5th OCTOBER 1888, No. 2128, JUDICIAL.

GOVERNMENT OF MADRAS.
JUDICIAL DEPARTMENT.

Read—the following papers:—

From the Registrar of the High Court of Judicature, Appellate Side, to the Chief Secretary to Government, dated Madras, 18th September 1888, No. 2469.

With reference to G.O., dated the 4th instant, No. 1881, Judicial, forwarding, for the opinion of the Honorable the Judges, a Bill to amend the Code of Civil Procedure and the Presidency Small Cause Courts Act, 1882, I am directed to state as follows:—

2. The Honorable Mr. Justice Kernan considers the proposed changes will be very useful, but that some of them may cause the time of the Small Cause Judges to be taken up by applications, in order to carry out the extended powers. His Lordship thinks also that the power to attach movables before judgment is absolutely necessary.

3. The Honorable Mr. Justice Muttusami Aiyar thinks that the proposed addition to section 589 is an improvement of the existing procedure and that the substitution of new schedules for the second schedule to the Code of Civil Procedure and the second schedule of Act XV of 1882 is also desirable.

4. The Honorable the Chief Justice concurs in the opinions of the Honorable Justices Kernan and Muttusami Aiyar.

5. The Honorable Justices Parker and Wilkinson have no remarks to offer, and the Honorable Mr. Justice Shephard has not recorded any observations on the Bill.

(Signed) T. M. HORSTALL,
Registrar.

Telegram from the Acting Chief Judge, Court of Small Causes, to the Under Secretary to Government, dated Madras, 27th September 1888.

Attention just called to Bill, Civil Code, by post card. Will submit report in few days.

From the Acting Chief Judge, Court of Small Causes, to the Chief Secretary to Government, dated Madras, 1st October 1888, No. 770.

I have the honor to report that Mr. Handley, the Chief Judge of this court, was unable, before proceeding to England, to consider the Bill to amend the Code of Civil Procedure and the Presidency Small Cause Courts Act, 1882, and my attention was not drawn to the subject until I received a post card from Mr. Cardew on 27th September 1888.

2. Having considered the Bill and the Statement of Objects and Reasons, I beg now to state my opinion in obedience to G.O., dated 4th September 1888, No. 1881, Judicial. The main object of the Bill is to remove doubts as to the applicability, or otherwise, of the provisions of the Debtors' Act (VI of 1888) to the Courts of Small Causes; and this object is so fully carried out by the remodelling of the schedules appended to the Code and to the Presidency Small Cause Courts Act that I have nothing to suggest on this question itself.

3. It occurs to me, however, to mention that there are a few sections of the Civil Procedure Code which are far from being free from doubt. For example, the High Courts of Calcutta and Bombay have expressed different views in respect of section 257-A. The High Court of Bombay held that the agreement referred to in the section in question is so absolutely void that it cannot be recognized in the proceedings for the execution of the decree, and cannot even be made the subject of a separate regular suit—VIII, Indian Law Report, 538, Bombay Series; IX, *idem*, 176. On the other hand, the Calcutta High Court held that the voidability of the agreement does not attach itself to separate regular suits—XI, Indian Law Report, Calcutta Series, 671. Again, section 270 leaves it doubtful whether the attachment of negotiable instruments by actual seizure therein provided for is applicable only to instruments in the possession of judgment-debtors, or is applicable also to those in the possession of strangers as well.

4. It will be of great advantage to courts to have doubts, such as these, removed, in order to avoid unnecessary discussion as cases arise; but, as the object of the present Bill is apparently limited to one special purpose alone, I am afraid that the legislature may not be inclined to extend their consideration to other important points in dealing with the proposed enactment.

(Signed) W. M. SCHARLIEB,
Ag. Chief Judge.

From the Acting Advocate-General, to the Chief Secretary to Government,
dated Madras, 1st October 1888.

With reference to G.O., dated the 4th September 1888, No. 1831, Judicial Department, I have no suggestions to make on the Bill to amend the Code of Civil Procedure and the Presidency Small Cause Courts Act, 1882.

2. The proposed alterations in the schedules to the Code of Civil Procedure and the Presidency Small Cause Courts Act are few, and have become necessary in consequence of the passing of Acts VI and VII of 1888.

(Signed) J. H. SPRING-BRANSON,
Acting Advocate-General.

Order—dated 5th October 1888, No. 2128, Judicial.

The Government of India will be addressed.

(True Extract.)

J. E. PRICE,
Ag. Chief Secretary.

Govt. of (1888) Madras.
JUDICIAL.

Issued

Recd.

Engl.

G.O. 5th October 1888, No. 2128.

OCTOBER.

Acts and Bills.

Recording opinions of certain authorities on the Bill to amend the Code of Civil Procedure and the Presidency Small Cause Act, 1882, and directing that the Government of India be addressed.

5th OCTOBER 1888, No. 2129, JUDICIAL.

JUDICIAL DEPARTMENT.

LETTER—From
THE CHIEF SECRETARY TO THE GOVERNMENT OF
FORT ST. GEORGE,

To
THE SECRETARY TO THE GOVERNMENT OF INDIA,
LEGISLATIVE DEPARTMENT.

SIR,

I am directed to acknowledge the receipt of your letter, No. 1476, dated the 25th August 1888, requesting to be furnished with the opinion of this Government, of the Honorable the Judges of the High Court, and of selected officers on the provisions of a Bill to amend the Code of Civil Procedure and the Presidency Small Cause Act, 1882. It was added that the reply to this letter should be sent in by the 15th September 1888.

2. In reply, I am to forward Proceedings of Government of this date, No. 2128, recording the opinions of the Honorable the Judges of the High Court and other officers on the Bill in question, and to say that His Excellency the Governor in Council has no objection to the provisions of the Bill. It was published in English in the *Fort St. George Gazette* on the 11th September.

3. I am to observe that your letter, dated the 25th August, was not received until the 1st of September and that it was, therefore, impossible to furnish a reply within the date mentioned. It appears, however, from the abstract Proceedings of the Council of the Governor-General for making Laws and Regulations that the Bill was passed into law on the 20th September. It would be convenient if, in future, a longer period can be allowed between the date of a letter from the Legislative Department calling for opinion on a Bill and the date fixed for reply. For important measures, at least, two months would be necessary.

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

OCTACANUND,
5th October 1888.

Ag. Chief Secretary.

Esq. A. D. Xavier.

1888.
JUDICIAL DEPARTMENT.

From the Government of
Fort St. George.

Issued

Recd.

Encl.

Letter, 5th October 1888, No. 2129.

OCTOBER.

Acts and Bills.

Forwarding, with remarks, copy of Proceedings,
recording opinions of certain authorities on the
Bill to amend the Code of Civil Procedure and the
Presidency Small Cause Act, 1882.

No. 2409. High Court of Judicature,
Madras, 18 September 1888.

From

J. M. Horsfall Esquire,
Registrar of the High Court
of Judicature, Appellate Side,
Madras.

To

J. H. Price Esquire,
Siding Chief Secretary
to Government,
Fort Saint George.

Sir,

With reference to the letter dated
the 4th instant, No. 1884, Judicial,
forwarding for the opinion of the
Honorable the Judges, a Bill to
amend the Code of Civil Procedure
and the Presidency Small Cause
Courts Act, 1882, I am directed to
state as follows—

The Honorable Mr. Justice
Kerran considers the proposed changes
will be very useful but that some
of them may prove the hindrance of
the Small Cause Judges to be taken
up by applications, in order to
carry out the intended purpose.

His Lordship thinks also that the power to ~~attach~~ moveables before Judgment is absolutely necessary.

3. The Honorable Mr. Justice Allhusami & J. J. J. think that the proposed addition to section 587 is an improvement of the existing procedure and that the substitution of new schedules for the second schedule to the Code of Civil Procedure and the second schedule of Act XX of 1882 is also desirable.

4. The Honorable the Chief Justice concurs in the opinion of the Honorable Justices Hornum and Allhusami & J. J. J.

5. The Honorable Justice Parker and Wilkinson have no remarks to offer and the Honorable Mr. Justice Sheppard has not recorded any observations on the Bill.

I have the honor to be,

Yours most obedient servant

Wm. Lushington

A. J. J.

in 1881 - 4-4-81

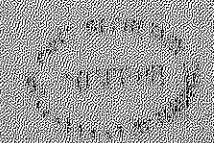
2128-9
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Judicial { 1888 } Department.

No.

From

THE REGISTRAR OF THE HIGH COURT
OF JUDICATURE AT MADRAS,
APPELLATE SIDE.



Dated 18 September } 1888.
Received 20

No. 2409

Sub-itting the opinions
of the Honble Mr. Justice
the Bill to amend the
Civil Procedure Code and the
Revenue and Land Revenue
Act 1881.

FOOTACAMUND MADRAS

23 27 15 35

Cardew Esq. S. Charlton

RECEIVED Secretary Government.

27 SEP 1888

Attention just
called to
Bill Civil
code by
post could
will submit
report in
few days.

S. Charlton

To		By		Date	
Mr.	Mrs.	Mr.	Mrs.	Mr.	Mrs.

Footacamund 27-9-88

Obedience to G. O. 4 September 1859 to 1861
judicial. The main object of the Bill
is to remove doubts as to the applica-
bility, or otherwise, of provisions of
the old law of 1835, to the Courts
of Small Causes, and this object is es-
sentially carried out by the remodelling of
the schedules appended to the Code and
to the Presidency Small Causes Courts
Act, that I have nothing to suggest
on this question itself.

It occurs to me, however, to men-
tion that there are a few sections of
the Civil Procedure Code which are far
from being free from doubt. For example
the High Courts of Calcutta and Bombay
have expressed different views in regard
of section 247. The High Court of Bombay
held that the agreement referred to in
the section in question, is a strictly
local one, and cannot be recognized in
the proceedings for the execution of the
decree, and cannot even be made the
subject

18 15/9
subject of a separate regular suit.

III I.L.R. 538 Bombay Series: II Calcutta 17
On the other hand, the Calcutta High
Court holds that the validity of the
agreement is not attached itself to a
separate suit. In the Calcutta
series, again, section 270 leaves it
doubtful whether the attachment of
negotiable instruments by actual
seizure therein provided for, is applicable
only to instruments in the possession
of judgment debtors, or is applicable
also to those in the possession of
strangers as well.

It will be of great advantage
to Courts to have doubts such as these
removed, in order to avoid unnecessary
discussion in cases arising, but as the
object of the present Bill is apparently
limited to one special purpose alone,
I am afraid that the Legislature
may not be inclined to extend their
consideration to other important
points

points in dealing with the proposed
enactment.
I have the honor to be,
Your most obedient servant,
J. B. Smith

2125-9
10

5840
Madras
1888

Madras Court of Small Causes

From

W. M. Sutherland Esq.
Acting Chief Justice
Court of Small
Causes, Madras.

To, J. F. Price Esq.
Acting Chief Secretary
to the Government
of Madras.

No 770

Dated 1st

Despatched October 1888

Received 3rd

Enclosure

etc

Forwarding Report on
Bill to amend the Code
of Civil Procedure and
the Presidency Small Cause
Court Act 1882.

Q

58
Madras 1st October 1888

From

The Honorable J. H. Spring Bantore
Acting Advocate General

To

J. F. Price Esq.

Acting Chief Secretary to Government
with the Governor
Stonehouse Hill

Sir

With reference to the Order of Govern-
ment dated the 4th September 1888, No 1881, Ju-
dicial Department, I have no suggestions to
make on the Bill to amend the Code of Civil
Procedure and the Presidency Small Cause
Court Act, 1882.

The proposed alterations in the Schedule
to the Code of Civil Procedure and the Presi-
dency Small Cause Courts Act are few, and
have become necessary in consequence of the
passing of Acts VI and VII of 1888.

I have the honor to be

Sir

Your Most Obedient Servant

J. H. Spring Bantore

Acting Advocate General

Judicial Dept

Letter No 2/28

From

The Acting Advocate General
Madras.

To

The Acting Chief Secy to Govt
Colacannur.

Dated 1st October

Despatched 1st October

Received 2nd October

Subject

Bill to amend the Code of
Civil Procedure and the
Presidency Small Courts
Act 1882. For
wanting opinion on the

A

CNP 4085, 4078, 4255, 4201

Order No 2/28, dated 5th Oct/88.
Govt of India will be
addressed.

Agd
3 Oct.

A

Letter No 2/29

dated 5th Oct/88.

To the Secy to the Govt of India,
Sept 1888.

I am directed to acknowledge the receipt
of your Letter no. 1476, dated the 5th August
1888, requesting to be furnished with the
opinions of this Govt, of the Honble the Judges of
the High Court & of selected officers on the
provisions of a Bill to amend the Code of
Civil Procedure & the Presidency Small Courts
Act 1882. It was added that the reply to
this Letter should be sent in by the 15th
Sept 1888.

1. In reply, I am to forward P.D. of Govt
of this date, no. 1476, recording
the opinions of the Honble the Judges of the
High Court & other officers on the Bill in
question, & to say that H.E. the Govt in
Council has no objection to the provisions of
the Bill. It was published in the Fort St.
George Gazette on the 11th Sept.

2. I am to observe that your Letter dated the
25 Aug. was not recd until the 1st of Sept
and that it was, therefore, impossible to
furnish a reply within the date mentioned.
It ~~was~~ ^{appears} ~~was~~ ^{however}, ~~the~~ ^{about} the 1st of the
Council of the Govt for making laws &
reg. that the Bill was passed into law
on the 20th Sept. It would be convenient if
in future a period of 2 months at least
can be allowed before the date of a letter
for the Legal Secy calling for opinion on a
Bill and the date fixed for reply. For
important measures a longer time would
be necessary.

Agd
3 Oct.

5/10

Put in a lot of
Procedures

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228-22
228-22

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1910

As to Bills . . . Recently
of course of a rather anti-
one the bill to amend the
Code of Civil Procedure and
the Presidency Small Courts
Act 1909, inasmuch that
they had to address