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AMIL NADU ARCHIVES

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JUDICIAL DEPARTMENT

G.O. No. 1770-1771. / ~~B.P. No.~~ Press. / ~~Mis.~~

Dated 11-11-1890. ~~197~~ .

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11TH NOVEMBER 1890, No. 1770, JUDICIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—again the following paper:—

G.O., dated 9th May 1890, Mis. No. 805, Judicial.

Read—the following letter from C. J. LYALL, Esq., C.I.E., Officiating Secretary to the Government of India, Home Department (Judicial), to the Chief Secretary to the Government of Madras, dated Simla, 29th April 1890, No. 554.

In continuation of the letter from this Department No. 323, dated the 8th ultimo, I am directed to forward for the consideration of the Governor in Council and the High Court, the accompanying draft of a Bill which has been prepared for the purpose of giving effect to the scheme for affording relief to the Madras High Court by enlarging the jurisdiction of the Presidency Small Cause Court.

Order—dated 9th May 1890, Mis. No. 805, Judicial.

Communicated to the Honorable the Judges of the High Court with the request that they will, at an early date, favor the Government with their opinion on the provisions of the Bill forwarded by the Government of India.

(True Extract).

(Signed) J. F. PRICE,
Chief Secretary.

To the Honorable the Judges of the High Court, with Bill in original and covering letter.

READ—also the following paper:—

From H. W. FOSTER, Esq., Officiating Registrar of the High Court of Judicature, Appellate Side, Madras, to the Chief Secretary to Government, dated Madras, 3rd September 1890, No. 2115.

The correspondence between the Government of India and the Secretary of State regarding the proposal to enlarge the jurisdiction of the Presidency Court of Small Causes at Madras, forwarded with G.O. No. 691, Judicial, dated 16th April 1890, and the draft of a Bill to give effect to the scheme to which the Secretary of State has signified his approval, received with G.O., No. 805, Judicial, dated 9th May 1890, have been under consideration of the Honorable the Chief Justice and the Judges, and I am directed to forward the following expression of their views on the several details of the proposals.

The Bill may be briefly described as a measure for transferring from the High Court to the Small Cause Court jurisdiction over all suits arising within the local limits of the High Court's Original jurisdiction except testamentary, matrimonial and maritime suits up to a certain limit of pecuniary value of the subject matter in suit. The measure may be viewed in three different aspects, according as it affects

1. The High Court,
2. The Small Cause Court and
3. The interests of the public.

2. The last of these considerations is undoubtedly the most important, and one to which both the others should be entirely subordinated, but so far as can be gathered from the Bill itself and from the correspondence which preceded the Bill, it has been almost completely overlooked. To such an extent is this the case that the draft Bill makes no provision whatever regarding Court fees, a matter undoubtedly most material to a consideration of its effect in relation to the public at large and to the Small Cause Court. In fact, the measure appears to have been designed with a purely financial object, simply and solely to relieve the High Court of a portion of its work and thereby enable the Government to avoid appointing permanently a fifth puisne Judge in the High Court. If this is, in fact, the sole object which the Government has in view, the High Court is constrained to record its emphatic opinion that the mere possibility of effecting some small reduction of expenditure is not an adequate reason, in fact constitutes in itself no reason, for interfering with any portion of the system of administration of justice in this country, and must protest against the adoption of considerations of economy as the sole ground for proposing changes in the jurisdiction of the High Court. There are, however, other points of view from which the proposals may be regarded, and these the Honorable the Judges will proceed to consider.

3. In the first place, the High Court has always felt the necessity for creating some tribunal which might afford relief to suitors whose claims relating to land and being of small value, will not bear the expense of a High Court suit. Under the existing system of judicial administration in the Presidency Town, the High Court is the only *forum* before which disputes relating to matters not cognizable by the Court of Small Causes can be brought, and, owing to the comparative costliness of litigation before that tribunal, justice is practically denied to a not insignificant portion of the inhabitants of the city. On the assumption therefore that the suits under the new jurisdiction will, as regards levy of Court fees, be brought under the provisions of the Court Fees Act, the measure, so far as its effect is to provide a new and cheaper machinery for the benefit of small suitors, has the support of the High Court.

4. But even this side of the subject presents an aspect which does not appear to have received the attention and consideration its gravity demands. It is certain that the provision of a cheap and easily accessible tribunal will bring into existence a large number of suits. What the number will be it is impossible to conjecture with any degree of accuracy, but considering the very large amount of small and comparatively valuable house and land properties there are in Madras and the pertinacity with which claims to real estate are always prosecuted, it may confidently be predicted that suits concerning the title to and rights incident to such properties—rights of way, light and air and other easements—will be very numerous. If to these be added disputes relating to defamation, trespass, assaults and torts of all descriptions—disputes which now find their way to the Police Courts in large numbers but which, under the stimulus which the overcrowded state of the bar of Vakils is sure to supply, would undoubtedly be brought before the new tribunal—the sum total of new litigation which may be expected assumes formidable dimensions. It may be desirable to provide an outlet for this litigation, but this should, in the opinion of the High Court, be done carefully and advisedly, with due regard to all the consequences.

5. Considerations of purely abstract justice require that an opportunity for obtaining legal redress in all matters should be placed within the reach of all classes of the public, but in practice this is far from being an unmixed benefit and it is doubtful whether the true interests of the people would not be best consulted by retaining some limitation on certain classes of actions. For example, it is notorious that under the present system, even wealthy families in Madras have brought ruin upon themselves by suits for division of their joint property, and it is questionable whether, as a matter of policy, it is desirable, in the absence of any urgent demand on the part of the public, to give increased facilities for litigation of this description. It is also open to doubt whether it is a wise policy, in the Town of Madras where litigiousness reaches such a high degree of development, to suddenly cheapen actions for damages on account of defamation, assault and such like matters, of which the *bona fides* has hitherto been subjected to the preliminary test of the expense of the

High Court procedure. These are aspects of the question which from their gravity and importance are deserving of more consideration than appears to have been bestowed upon them.

6. Passing on to consider the effect which the measure will produce upon the Court of Small Causes, I am here again to remark that the gravity of the proposals does not appear to the Honorable the Judges to have been fully appreciated. The main business of that Court is and, in the opinion of the High Court, ought always to be the rapid disposal of ordinary small causes, of which now almost 30,000 come before it annually and are disposed of in a very satisfactory manner. But so far as concerns the new jurisdiction, the Court will cease to be a Court of Small Causes and the trial of the transferred suits and the indefinite number of new suits which will be attracted by the cheapness of the Court, will have to be conducted throughout in conformity with the provisions of the Procedure Code. The evidence will have to be recorded and the judgments written. Assuming that the Court and its establishment will be sufficiently strengthened, there will be great difficulty in distributing the new business so as not to interfere with the speedy despatch of the proper work of the Court. The new cases, it must be remembered, will be intrinsically of comparatively greater importance than those hitherto trouble by the Court, and great pressure will be put on the Judges to take up and dispose of them with the rapidity common in small causes. Owing to the greater formality with which the new suits will be tried, and to the fact that the decisions are subject to appeal, the Judges will the more readily yield to this pressure, and it will be very difficult for the Chief Judge to keep an even hand between the two classes of cases, to take up the new work with the desired promptness and yet not to allow the primary work of the Court to be delayed more than heretofore. The Honorable Mr. Justice Handley, whose eight years' experience as Chief Judge of the Court entitles him to speak with authority, has a very strong opinion upon this view of the matter, and while doubting whether the Small Cause Court will become a successful Court of ordinary jurisdiction, entertains the firm conviction that its efficiency as a Court of Small Causes will be grievously impaired by entrusting it with the proposed jurisdiction.

7. It has been said in answer to the objections set out above, that the difficulties connected with the dual jurisdiction either do not exist or have been successfully surmounted in the Mofussil Courts, but it appears to a majority of the Honorable the Judges that in this respect no comparison can be instituted between those Courts and the Presidency Small Cause Court. In the former Courts, the small cause work is of secondary importance, and, as a rule, the file of small causes is numerically smaller than that of ordinary suits. Small causes therefore without being unduly neglected, occupy but a fraction of the whole time of the Courts. But this can never be the case in the Presidency Small Cause Court. There the business of trying small causes should, notwithstanding any enlargement of jurisdiction, remain the primary work, but there is good ground for apprehension that the Judges and their officers may come to consider it of secondary importance in comparison with suits tried under the Procedure Code. It may be stated too that whereas the average duration of a small cause in a Mofussil Court is 42 days, the Presidency Court showed an average duration of only 32 days in 1889 when the figure was higher than it had been for some years.

8. An experiment, regarding the success of which there is room for such great doubt, upon the constitution of a special tribunal like the Small Cause Court, can be justified only if there is a certain prospect that counterbalancing advantages will accrue, and it is so far from clear that this will be the case that a majority of the High Court deprecates the proposed interference.

Mr. Justice Muttusami Aiyar adheres to the opinion he has formerly expressed that the transfer to the Small Cause Court of exclusive jurisdiction over suits up to the limit of Rs. 2,500 in value is unobjectionable and expedient.

9. I am here to refer to a matter regarding which some misapprehension appears to have arisen. In laying before the Secretary of State an outline of the measure under discussion, the Government of India, in para. 3 of its Despatch No. 124, dated

15th October 1889, laid great stress on the unanimity of local opinion in its favor. The High Court believes that the Government of India is mistaken on this point. It does not appear that the Judges of the Small Cause Court, the Bar, the Attorneys or the Native Mercantile Community were consulted on the proposed changes, and the generally favorable opinions recorded by the Chamber of Commerce and by the Trades Association, seem to have been based on a misunderstanding. These bodies were informed, in the letter of reference,* that "The High Court will of course be competent to call up cases to their own file and it is understood that they will readily exercise this power in all cases involving questions of mercantile law and usage."

* Communicated to the High Court with G.O., dated 30th January 1889, Judl., No. 199 R.

10. The High Court desires emphatically to repudiate any such understanding as one for which they are in no way responsible and which in point of law must be wholly inoperative. It is impossible, however, to say what weight may have been attached to this supposed understanding by the bodies consulted nor can their approbation of the measure which was described to them be said to raise any inference in favor of the present measure, inasmuch as the two measures differ in several important respects. Moreover, the High Court learns that the Chamber of Commerce approved of the measure only "provided the services of a sixth Judge of the High Court are not dispensed with until it is satisfactorily established that the relief afforded by the proposed change will reduce the work of that Court to dimensions that can be efficiently dealt with by a smaller number of Judges than six."

11. This leads to a consideration of the effect the introduction of the scheme will have on the work of the High Court. In this connection I am to premise that the Honorable the Judges view with favor the design of economising the judicial power of the High Court by constituting an inferior and cheaper tribunal for the determination of suits of low value and comparatively smaller intricacy and importance, but their Lordships are firmly convinced that the measure must fail to realize the hope of the Government of India, not, it is true, very sanguinely expressed, that the necessity of continuing permanently the appointment of a sixth Judge may be avoided by its means. As this is apparently the sole aspect of the measure which has received attention at the hands of the Government, the High Court considers it desirable to examine it in detail.

12. It will be within the remembrance of the Government that in 1886, when exceptional personal exertions on the part of the Judges of the Court had effected a great reduction in the arrears, the plea of carrying out this transfer of jurisdiction was proposed by the Honorable the Judges as a means to "avoid the necessity for the appointment of an additional Judge of the High Court, at all events for a time,"

Letter No. 586, dated 27th February 1886.

but the belief that the measure would have this result, which was then, it had entirely vanished when after a lapse of two years, nothing had been done. At the close of 1886 it became clear to the High Court that there was no possibility of overtaking the arrears except with the assistance of a sixth Judge. It was again pointed out to the Government that "the Judges have always felt grave doubts if the contemplated transfer of jurisdiction would afford material relief," and it was stated that as the expedient had not been adopted on its first proposal, at a time when the reduction of arrears that had with difficulty been effected afforded a favorable opportunity for a fresh start, it could no longer be of any avail to enable the postponement of an addition to the strength of the Court.

Letter No. 128, dated 23rd January 1887.

13. From that time there has been a continuous growth of the Appellate work of the High Court and the case for the permanent appointment of the sixth Judge has become far stronger than before. Since 1886, when the relief that would be gained from a transfer of jurisdiction such as the present Bill designs was declared by the Court to be wholly inadequate, there has been an increase in civil appellate work of

over 17 per cent., and even excluding Revision Cases (which the Secretary of State for reasons that the High Court does not appreciate, has refused to recognize as a substantial portion of the Court's work, though they undoubtedly occupy considerable time), the increase exceeds 16 per cent. During the two years 1888 and 1889, the High Court has had a strength of six Judges, and the outturn of work per Judge has been maintained at a substantially higher level than the average of the five years ending 1886. Nevertheless it has proved impossible to keep pace with the current appellate work of the Court, and in 1888 there was a large accumulation of arrears which was not materially reduced in 1889.

14. At the same time there has been a progressive increase in the number of suits instituted on the Original Side, doubtless attributable to the greater promptitude with which they are determined, and in 1889 the disposals did not equal the institutions. As regards Criminal Appeals, that year may be regarded as a normal one, since the number instituted was 520 against 495, the average of the preceding 7 years. Thus under the present conditions the Court with a strength of six Judges is with difficulty able to keep pace with the work coming before it in an ordinary year.

15. The next point to consider is the amount of relief that will be afforded to the High Court by the contemplated transfer of the jurisdiction. The whole number of original suits instituted in the High Court in the last 5 years (1885—89) was 1,647 or an average of 329 per annum. Out of this aggregate number, 537 were suits of value not exceeding Rs. 2,500 which would come under the new jurisdiction of the Small Cause Court, and 169 were suits which, from their nature, would have been cognizable by that Court but of which the value is not now ascertainable. Supposing that half of these 169 (say 85) would have been triable by the Small Cause Court, the total number is 622 or an average of 124 annually. This is 38 per cent. of the number of suits filed, but it must not be supposed that there will be a proportionate reduction of the whole work of the Court in the Original Side or that the reduction, so far as it goes, will represent a clear gain to the Court. The work involved in the remaining cases, which are from their superior value of greater importance will be proportionately greater, and there necessarily remains a great amount of work unconnected with suits, *e.g.*, applications in the matter of infants, applications for probate, execution proceedings in old suits and suits now pending and the like.

16. Again, it may safely be assumed that the proportion of appeals will be considerably higher in the case of the transferred suits than it is now that those suits are tried by a Judge of the High Court. On this point I am to quote the remarks of that learned lawyer Sir Henry Maine, recorded in a minute bearing date 30th April 1867, with which the Honorable the Judges are in entire agreement. Commenting on the low proportion of appeals from the Original Side of the High Court at Calcutta, he says "The reason of this is doubtless partly that litigants belonging to an intelligent community are generally satisfied with the decision of a competent Judge, but partly also that the appeal lies to the Judges who are of very much the same ability and dignity and who are habitually adjusting their judgments to the same common course of decision as the Judge who passes the original orders." And again "are we certain that if we found a subordinate tribunal of original jurisdiction, we shall not be devolving on the High Court under the name of appeals exactly the same work which it now performs under the name of original trials? It may be possible to find a competent Judge or Judges for the Lower Court, though the difference in pay will assuredly in the long run; correspond to a difference in ability or experience. But however competent be the Lower Judge, his Court will always be an inferior Court, and litigants, confident in the merits of their own cause, will always be under a stronger temptation than at present to take their chance of reversing an unfavorable decision." And again "the slightest suggestion of inferiority in the Lower Court would cause the appeals to multiply and thus the work which is now done once for all would be done twice over. There would be more litigation and no saving but a loss since the Appellate Court would have to be kept at its full strength."

17. And it is necessary to guard against losing sight of the fact that a large number of the new suits which the provision of the cheaper tribunal will bring into existence will eventually find their way into the High Court in the shape of appeals,

it must be remembered, will be the regular appeals in which it will be open to the parties to go into all the facts. The time which such appeals occupy bears a high ratio to the duration of the original suits, and they must come before a Divisional Bench of two Judges. Bearing in mind then, the considerations as to the increase of litigation to be looked for, set out in paragraph 4, and remembering that in the Mofussil, appeals are lodged against over 12 per cent. of appealable decrees passed, it may be confidently predicted that the amount of additional work received on the Appellate Side of the Court in consequence of the new jurisdiction will not be appreciably less, while it may prove to be very much greater than the gain on the Original Side by the transfer of 124 suits.

18. But besides transferring to the Small Cause Court part of the ordinary civil jurisdiction now exercisable by the High Court, it is proposed to free the latter tribunal from part of its work in connection with insolvency by conferring jurisdiction in such matters up to a limited extent on the Small Cause Court and by empowering the Commissioner in Insolvency sitting as a Court for the relief of Insolvent debtors to transfer to the same Court for disposal petitions in respect of matters to which the same limitations apply. The Honorable the Judges observe that when the question of effecting such a change was discussed in *1879, the opinion of the High Court was in the main favorable to the transfer. The only objection suggested to the plan was that based on the score of cost. In the smaller Insolvency cases there is rarely such a balance as to afford a substantial remuneration to the Official Assignee, for these cases are not necessarily the least troublesome, and if that officer were required to take up all cases without regard to the amount of the assets, it might be found necessary to give a fixed salary in order to retain his services.

* G.O., dated 27th May 1879, No. 1247.

19. But there is a more radical objection to the system which the present Bill proposes to create, in the possibility that a direct conflict of jurisdiction may arise from the administration by the two Courts of different systems of Insolvency Law in the same area. The provisions of the Procedure Code are in more than one respect less favorable to the debtor than the Insolvency rules followed in the High Court, and in cases falling within the new Insolvency jurisdiction, it is not at all improbable that a debtor and his creditor may simultaneously seek relief in the two different Courts. There is also the anomaly of applying a law of greater stringency to one class of bankrupts than to another class in exactly the same position, except as to the amount of their liabilities or assets.

20. I am also to point out that before the last amendment of the Presidency Small Cause Courts Act in 1882, the power with which the Court was invested under Chapter XX of the Civil Procedure Code was withdrawn. The reasons for the step are not within the knowledge of the Honorable the Judges, but they will probably be found worthy of consideration in reference to the matter now in hand.

Vide G.O., dated 11th March 1879, No. 446, para. 2.

21. As to the effect which the change will have on the work of the High Court, the Honorable the Chief Justice, after experience of six months continuous working of the Insolvent Court, over which he has presided since the commencement of the current year, is of opinion that no material relief will be afforded. It will, his Lordship considers, still remain necessary to have a session of the Court once every two or three weeks as at present, and the reduction in the duration of each sitting which the transfer of the smaller cases would entail would not be so great as to enable the Commissioner to take up any other branch of work on the same day.

22. The total result is that the net amount of judicial power which all the proposed changes will set free for application to the work now coming before the Court will be considerably less than the full strength of one Judge, and supposing that the new measure does enable the Court, in the course of time, to effect a substantial reduction of the arrears, such a development of litigation is certain to ensue

thereupon that the current work of the Court will increase to a degree which will call into requisition the full working capacity of six if not of seven Judges.

23. I am to remind the Government that a great increase of civil litigation is the natural and inevitable result of the extensive development of the country in material resources and of the advance in education and civilisation of the community which have marked the last three decades, while the additions which, as a direct result of the improvement in education, have been made annually of late years to the number of highly trained legal practitioners throughout the country, tend in the same direction. It is not reasonably to be expected therefore that a High Court of the numerical strength which was found sufficient in 1862 can suffice for the greatly increased requirements of the present day. The time for considering such a measure as the present Bill as an expedient for postponing the permanent addition of one Judge to the strength of the Court has long passed. The particulars given above of the growth of the Court's work make this abundantly clear, and in considering the financial effects of this measure, the Government must regard it as an established necessity that six Judges at least are essential for the proper performance of the High Court's work.

24. Before quitting the subject of the financial result of the scheme, I am to state the opinion of the Honorable the Judges that not one, and possibly not even two additional Judges of the Small Cause Court will be able to cope with the litigation which will arise under the new jurisdiction. That Court with its present strength is only just able to dispose of the work coming before it with the despatch that ought to characterise procedure in small causes, and can certainly spare none of its present judicial power for devotion to the new class of suits, while its ministerial establishment is fully provided with work. Unless therefore the whole benefit which the Bill will confer on the public is to be sacrificed—and this will be the result if for the check on litigation which has hitherto been supplied by the comparative costliness of High Court procedure, is substituted the repressive influence which excessive delay in disposal will exercise—the Government must be prepared to incur a much greater expenditure on the Small Cause Court than seems to be anticipated in the correspondence with the Secretary of State.

25. Turning to the detailed provisions of the Bill, I am to state at the outset that the High Court as at present constituted takes a strong exception to the application of peculiar legislation on this subject to Madras. It impairs the uniformity and symmetry of the system of legislation for the Presidency Towns. But a more specific reason for this disapproval is to be found in the clumsiness of the expedient which has to be adopted in order to confine the change in the law to Madras. Section 19 of the Presidency Small Cause Courts Act XV of 1882 expressly states that the Small Cause Court, a tribunal created by that Act, shall have no jurisdiction over certain classes of suits, but the present Bill, without professing to repeal or modify the Act proposes to enact that the Presidency Court of Small Causes at Madras *shall* have jurisdiction over certain of those suits. Thus there will be in existence two Acts relating to the Small Cause Court containing diametrically opposite rules.

26. But whereas the objection stated lies chiefly against the form and method of the proposed legislation, certain features of the measure, contained in Sections 3 and 4 of the Bill, are open to fundamental objections upon which, I am to say, the Honorable the Chief Justice and the Judges cannot too forcibly insist.

27. Section 3, besides making provision for immediately conferring jurisdiction upon the Small Cause Court in ordinary suits up to a limit of Rs. 2,500, also proposes to empower the Local Government, by notification in the Official Gazette, to raise the pecuniary limit to any larger amount and the only restriction placed upon the exercise of this power is that it should have the previous sanction of the Government of India in its executive capacity. This is a proposition involving as it does the potential extinction of the original jurisdiction of the Court except in matrimonial, testamentary and admiralty causes, to which the Chief Justice and the Honorable the other Judges feel an invincible repugnance. In the first place, the proposition assumes that the Indian Legislature can lawfully deprive the Court of a jurisdiction conferred upon it by Letters Patent granted under an Act of Parliament. Notwithstanding the decisions

reported in 14 Bengal, page 106, and I. L. R., Calcutta, IV, page 172, it is, to use the words of Sir Henry Maine, "questionable whether the reservation contained in Section 7 of the Act of 1861 and in the Letters Patent implies a permission to destroy one constituent element of the Court altogether."

28. But passing from the legal question to the question of policy, the Judges are at a loss to understand for what reason it is proposed to incorporate a provision of so sweeping a character in the Act. At no period during the discussion on the subject of the enlargement of the Small Cause Court's jurisdiction, ranging over the last twenty years, has the present proposal been hinted at or foreshadowed and the Judges are not aware of any circumstances since the date of the abolition of the Supreme Court which should make it expedient in the interests of the public that the High Court, in so far as it is a successor of the Supreme Court, should also be abolished. On the other hand, they are convinced that a radical change in the constitution of the Court, which would be destructive of the two English branches of the legal profession, would be most prejudicial to public interests.

29. It may be said that it is premature to discuss the possibility of action being taken by the Government under the power conferred upon it by Section 3 and that even if any such action were in contemplation, it would not go beyond an extension of the jurisdiction of the Small Cause Court to suits valued at Rs. 5,000. But the Judges are clearly of opinion that when it is proposed to confer on the Executive Government power to make any legislative enactment operative, it has first to be determined, whether under conditions not actually present but within the range of practical possibility, it is expedient that such an enactment should receive the sanction of the Legislature. By the mere fact of the Legislature conferring on the Government a power to reduce or abolish the original jurisdiction of the High Court, it is assumed that occasion is likely to arise for the exercise of that power, and when once such a power has been conferred, it would be too late to contend that it was inexpedient that the jurisdiction of the High Court should be tampered with.

30. In the opinion of the Judges, it is therefore not premature to consider now the expediency of the action which under the 3rd Section of the Bill the Government would be empowered to take. There is this further objection to the proposed legislation that it places the jurisdiction of the Court at the mercy of the Executive. It is not fitting that any High Court should be placed in such a position with regard to the Executive nor is it desirable, in the interests of the public, that it should be made possible to alter the jurisdiction of two Courts of original jurisdiction in the Presidency Town without the discussion and consideration which legislation involves.

31. It would be parting with powers and privileges which the Crown has by Letters Patent conferred on the High Court if the Judges were to consent to any such proposal, and they must protest against the design to empower the Government to intertere indefinitely with those powers and privileges, whenever it may see fit, without the necessity for first obtaining the advice and approval of the High Court.

32. The observations above made apply in a great measure to the provision of Section 4. It is proposed that the High Court should be absolutely deprived of its jurisdiction in cases below a certain value, and it is not certain that the jurisdiction of the High Court conferred by the Letters Patent can legally be curtailed in this way except by an Act of Parliament. So far as the Judges are aware, there is no precedent for such legislation with reference to a superior Court either in this country or in England—and on the contrary the provision here made in the Civil Procedure Code requiring suitors to institute their suits in the Court of lowest jurisdiction is so framed as not to exclude the jurisdiction of the Courts of higher jurisdiction. The provision with regard to costs contained in the present Small Cause Courts Act has been found amply sufficient to deter suitors who might resort to the Small Cause Court from resorting to the High Court and the Judges believe that no further precaution is required.

33. Section 6 of the Bill proposes to give the Small Cause Court jurisdiction in all cases of insolvency in which the "property" of the insolvent appears to be not more than Rs. 2,500 in value. It appears to the Honorable the Judges that it is very

undesirable to take as the standard for determining jurisdiction the value of the "property." In the first place the meaning of the word "property" is ambiguous. It may signify only the balance available for distribution, or it may include the full value of mortgaged property. It can hardly be meant to include property which, though not belonging to the debtor, is in his possession or custody. Yet important and difficult questions may arise in the Insolvency proceedings with respect to such property. The Honorable the Judges consider that regard should be had rather to the amount of the debt than to the amount of property. There is some probability that the questions to be decided will be comparatively simple when the amount of the debt is small. At what figure the amount should be fixed is a question to be decided with reference to the records of the Insolvency Court. Because Rs. 2,500 is the fair amount at which to limit the jurisdiction of the Small Cause Court, it does not follow that the same figure can safely be applied when Insolvency is in question either to property or to debt.

34. Advertence has already been made to the omission of the draft Bill to make any provision for the levy of fees on suits instituted under the new jurisdiction which it proposes to create. Fees will not be chargeable under the Court Fees Act because that Act excepts the Presidency Small Cause Court from its operation (Section 6) and they cannot be held to be leviable under Sections 71 and 72 of the Presidency Small Cause Courts Act in the case of suits *excluded by that Act* from the jurisdiction of the Small Cause Court. Moreover there is no provision for the levy of fees on processes in cases of such value that they do not fall under Schedule 4 of the Small Cause Courts Act.

35. The Honorable the Judges assume and have assumed throughout their consideration of the measure that it is intended to levy *ad valorem* fees in suits under the new jurisdiction. If, on the contrary, it is proposed to transfer, with the suits, the High Court system of fees which is now applicable, the principal ground on which the changes can be supported, viz., the relief they will afford to those suitors who now find the expense of litigation beyond their means, or disproportionate to the value of the matter in dispute, will entirely disappear. But though *ad valorem* institution fees on the scale prescribed by the Court Fees Act or that of the Presidency Small Cause Courts Act will be advantageous in cases where the matter in suit is of low value, they will form a heavier burden than the existing fee in the High Court on all suits over Rs. 400 in value. Whereas the institution fee under the Court Fees Act in a suit of value Rs. 2,500 would be Rs. 166 and in the Presidency Small Cause Court would be Rs. 168-12-0, the same suit could be instituted in the High Court on payment of Rs. 30, and in the case of an undefended suit there would be but a trifling subsequent expenditure in Court fees. This consideration furnishes an additional reason, if more be wanting, against the proposal to oust the jurisdiction of the High Court over suits which fall within the new jurisdiction.

36. The views of the High Court expressed above may be summarized as follows:—*First*, the Honorable the Judges are disposed to approve of the measure so far as its effect will be to create a cheaper *forum* for certain classes of actions which will not endure the expense entailed on suitors under the present system, but they would point out to the Government that the consequences of providing such a tribunal are likely to be more far-reaching and serious than seems to have been anticipated.

Secondly.—The measure, in exact proportion as it proves beneficial to one section of the public by providing an accessible tribunal will, if the jurisdiction be conferred on the Small Cause Court, be injurious to the interests of a larger and equally important class by diminishing the efficiency of that Court in the branch of work which must always remain its primary business.

And *lastly*.—The Honorable the Judges strongly condemn the proposals to place the continued existence of the Original Side of the High Court at the discretion of the Executive Government, and to limit the liberties and privileges of suitors in Madras and deprive them of the right they have always possessed of suing in the High Court.

37. I am now to state the views of the Honorable the Judges on certain changes in the establishment of the High Court which, with the approval of the Secretary of State, it is proposed to introduce simultaneously with the creation of the new jurisdiction.

38. It is proposed to make the Registrar on the Appellate Side, Registrar of both sides of the Court and to substitute for the Registrar on the Original Side a Deputy Registrar on the pay of Rs. 1,000.

A majority of the High Court, as at present constituted, is greatly averse to the proposed subordination of the chief officer of the Court on the Original Side and consider it would be a mistake to abolish the office of Registrar on that side of the Court. The objections to the proposal were well stated in a letter written by the late Chief Justice, Sir Colley Scotland, at the time when, on the creation of the High Court, this subject was once before discussed. Referring to the work of the Registrar of the Original Side he writes:—"It has become very considerable and it is in every respect dissimilar from that of the Registrar on the Appellate Side and requires special qualification and training. For the discharge of these duties the Registrar should, in my judgment, continue the chief officer in civil and ecclesiastical matters on the Original Side with independent ministerial responsibility, and the Registrar on the Appellate Side the same in matters of appeal. The distinction to be retained in this instance is accompanied by, as I have said, a very material difference in the duties and qualifications of the two officers, and in my opinion the suggested present change in designation would tend, without any advantage, rather to weaken the strictness with which the Judges regard the responsibility of each chief officer, and to impede the active and efficient discharge of the business of the Court." (Letter, dated 21st March 1863). There has since that time been no such change of circumstances as to deprive his opinion of any of its force, and Sir C. Scotland's reasons would hold good even if a large percentage of the original suits were withdrawn from the High Court. It must be remembered that, as stated before, the remaining suits, the number of which may become much larger than the present figures indicate, are far the most important, and must give proportionately more work to the Registrar. The business of taxing costs in suits in which Solicitors are engaged would still be very considerable. Assuming that a competent man could be found amongst the Solicitors to accept the post at a salary of Rs. 1,000, it is not clear to the Judges that any advantage would be gained by making him subordinate to the Registrar whose work would be chiefly on the Appellate Side. Practically the latter, who is usually a Covenanted Civilian, holding his office for a short time only, having no technical knowledge, and having his time fully occupied with his own special work would exercise no control over the chief officer on the Original Side. It is very doubtful whether for a salary of Rs. 1,000 it would be possible to find a Solicitor competent to do the work now required of the Registrar of the Original Side and other *quasi*-judicial work which may be delegated to him, and the difficulty would certainly be increased by making its holder subordinate to the other Registrar.

39. The High Court is unable to concur in the proposal to assign to the Deputy Registrar to be appointed to the Original Side the duties which are now performed by the Clerk of the Crown. The desirability of continuing this office was fully discussed in 1887 in connection with a proposal of the Finance Committee to combine it with that of Crown Prosecutor, and, on full consideration, the Honorable the Judges in their Registrar's letter, No. 512, dated 3rd March 1887, after describing its duties and responsibilities stated that they were "opposed to the abolition of the Clerk of the Crown as a separate office." The High Court adheres firmly to the same opinion on the subject. Even if it were determined to amalgamate the office with another, that of the Deputy Registrar, Original Side, is one very illsuited for the purpose. The Clerk of the Crown has to be in constant attendance in Court during each of the four annual Criminal Sessions which occupy on an average six days each and it would seriously impede the despatch of the business of the civil branch of the Original Side and materially prejudice the interests of the suitors if the Deputy Registrar were withdrawn for such lengthened period from his legitimate duties.

40. The High Court is also under the necessity of expressing regret at the suggestion made with regard to the Deputy Registrar, Appellate Side. The Secretary of State would defer the operation of the arrangement by which this officer is to have a salary on increasing scale (Rs. 700—1,000) till the office of Clerk of the Crown is abolished, but on what principle or what consideration this decision is based the High Court is unable to conjecture. The offices are in no way connected nor will the abolition of the Clerkship of the Crown as a separate office at all affect the work of the Deputy Registrar, Appellate Side, which fully deserves the new scale of pay now and will have no better claim to it after the abolition of the Clerkship of the Crown. So far from there being any justification for postponement of the long expected increase, I am to point out that the High Court in its letter, No. 3030, dated 12th December 1889, laid before Government a scheme which had for one of its objects the anticipation of the step by the appropriation to the purpose of Rs. 300 out of the pay (Rs. 550) of the office of Judges' Clerk, which was then vacant and in place of which the Chief Justice proposed to create two Bench Clerkships to be provided out of the balance (Rs. 250) of the Judge's Clerk's pay. The Government accepted and forwarded to the Government of India the proposal to abolish the Judges' Clerk's office and to appoint two Bench Clerks to do the work, but with regard to the other portion of the proposal, stated that the contemplated increase to the Appellate Side Deputy Registrar's pay was contingent on the transfer of jurisdiction now under discussion. In reply, the High Court showed, in letter, No. 470, dated 24th February 1890, that the increase of pay was *not* necessarily contingent on the said scheme being put into effect, but that it had become fully deserved on account of the growth of the work, and a request was made that the proposal might be considered even though that scheme should be negatived—but owing to the arrival, in the meantime, of the Secretary of State's despatch approving the scheme, this letter never went beyond the Local Government. As matters stand, the Secretary of State's direction that the augmentation of the Deputy Registrar's pay is to be conditional on the abolition of an office *which the High Court deems it essential to retain* will, until formally cancelled, remain an effectual bar to an addition to Mr. Morgan's pay, and the High Court trusts therefore that its recommendations on the subject contained in the letters quoted may be forwarded to the Secretary of State with the request that he may be pleased to sanction at once the increased scale of pay for the Deputy Registrar, Appellate Side, to be met from the source indicated, and in consideration of the unanimous testimony of the High Court to the deserts of Mr. Morgan, the present incumbent, and of his service of over eighteen years, to allow him to enjoy the maximum pay of Rs. 1,000 forthwith.

41. The last point to which I am to allude with reference to the effect the proposed measure will have with regard to individual officers of the Court establishment, is the position of the present incumbent of the office of Registrar, Original Side, and the provision which it is proposed to make for him should the enactment of the present measure result in the abolition of his office. When the subject was discussed in 1885, it was assumed that the appropriate course would be to appoint this officer to the fourth Judgeship of the Small Cause Court, which it is part of the plan to create, and to grant him a personal allowance sufficient to raise his emoluments to the level of his present pay of Rs. 1,500. But the fact was overlooked that under the Act regulating the Small Cause Court it is imperative, owing to the present composition of the Court, that the fourth seat should be filled by an advocate of one of the High Courts of Calcutta, Madras or Bombay, and as Mr. Steavenson does not possess such qualification he is not eligible for the appointment. The High Court would be glad to be informed what other provision it is proposed now to make for Mr. Steavenson, for it is clear that without adequate provision being made, his services ought not to be dispensed with.

42. The Judges of the High Court think it very probable that the work on the Original Side will not be decreased materially by the introduction of the new scheme. It has been found by experience that if intending suitors are aware that their causes can be tried without delay many suits are brought which under other circumstances would never be proceeded with, and it may well be that although the Original Side

may be relieved of a certain number of causes of comparatively small value, yet their place will be supplied by an increase in suits of a larger value and more intricate character.

43. It will probably, therefore, be eventually found impossible to carry on the work of the Original Side, even after the transfer of jurisdiction, with any smaller establishment than that hitherto entertained, and, this being so, it would be very inadvisable to put into effect the reductions proposed simultaneously with the passing of the Act, as the Secretary of State suggests. In the opinion of a majority of the Judges, the best plan would probably be to defer the introduction of all the changes in establishment except that referred to in paragraph 40, till some experience of the effect of the new Act shows whether they are really feasible, and I am to suggest that the fairest way of dealing with the present Registrar of the Original Side would be to postpone any change in his office till it becomes vacant.

ORDER—dated 11th November 1890, No. 1770, Judicial.

The Government of India will be addressed.

2. The proposed reorganization of the establishment of the High Court has been sanctioned by the Secretary of State; the scheme in its main features appears to have originated with the High Court and its adoption was decided upon only after careful consideration. Under these circumstances, His Excellency the Governor in Council is not disposed to reopen the question. The various changes sanctioned in the Secretary of State's despatch, dated 9th January 1890, No. 4 (Judicial), will accordingly be carried into effect from the 1st April 1891, from which date as a consequence the office of Clerk of the Crown will be vacated, the duties being in future performed by the Deputy Registrar on the Original Side.

3. The Government agrees with the High Court in regarding Mr. J. Stevenson's claims as entitled to consideration and will be prepared to recommend to the Secretary of State the grant of a personal allowance of Rs. 600 per mensem should Mr. Stevenson be willing to accept the post of Deputy Registrar on the Original Side in the new scheme. In this way Mr. Stevenson will suffer no pecuniary loss by the change and the High Court is requested to call on that gentleman to report at once whether he is willing to accept these terms and to point out to him that the only alternative is a proportionate pension. The Secretary of State will further be asked to sanction the immediate payment of the full salary of Rs. 1,000 per mensem to Mr. W. Morgan in case he remains in the post of Deputy Registrar on the Appellate Side, when the reorganization is effected.

(True Extract.)

Chief Secretary.

To the Honorable the Chief Justice, with C.L.

Copy to the Government of India, Home Department (Judicial).

Exd. A. D. Xavier.

Govt. of {1890} Madras.

JUDICIAL.

Issued,

Recd. *Encl.*

G.O., 11th Nov. 1890, No. 1770.

NOVEMBER.

Presidency Small Cause Court Jurisdiction.

Addressing the Government of India regarding the draft Bill for the extension of the —; and passing orders on certain points in connection with the reorganization of the establishment of the High Court.

11TH NOVEMBER 1890, No. 1771, JUDICIAL.

JUDICIAL DEPARTMENT.

LETTER—from

THE CHIEF SECRETARY TO THE GOVERNMENT OF FORT ST. GEORGE,

TO

THE SECRETARY TO THE GOVERNMENT OF INDIA, HOME DEPARTMENT (JUDICIAL).

SIR,

I am directed to forward a copy of a letter received from the High Court containing the views of the Honorable the Judges upon the draft Bill for the extension of the jurisdiction of the Court of Small Causes at Madras, which was referred to this Government for consideration with your letter, dated the 29th April 1890, No. 554.

2. It will be observed that the High Court in its letter deals not only with the draft Bill but also with two other questions upon which remarks were not specifically called for, but which are closely connected with the revision of the High Court's jurisdiction. These questions are the ret[illegible]on of a fifth Puisne Judge and the reorganization of establishment in the High Court. As this Government desires to express its opinion categorically upon the various questions involved, it will be convenient in the first instance to deal solely with the objects of the draft Bill, mentioning the arguments for and against such objects, and then to pass on to the connected questions referred to above.

3. The first object of the Bill is to raise the pecuniary limit of jurisdiction of the Madras Small Cause Court from Rs. 2,000 to Rs. 2,500 and the second is to withdraw most of the restrictions as to the nature of the suits triable by the Small Cause Court which appear in section 19 of the present Act XV of 1882.

With reference to the portions of the Bill in which provision is made for the above two objects, the High Court makes [illegible] observations. In the first place the Honorable the Judges point out that the Bill nowhere specifies the fees to be levied upon suits falling within the extended jurisdiction of the Small Cause Court. In this respect the Bill is, in the opinion of this Government, undoubtedly defective; without a change in the law the fees chargeable under the Court Fees Act and the Presidency Small Cause Act cannot be levied upon the suits which it is proposed to bring within the jurisdiction of the Small Cause Court, and His Excellency the Governor in Council would be averse to any extension of the arbitrary system of fees in force in the High Court. It appears to this Government that the best way to meet the difficulty would be the insertion in the Bill of a provision to the effect that fees upon suits falling within the extended jurisdiction of the Small Cause Court shall be levied in accordance with the principles laid down in chapter X of Act XV of 1882; at the same time it will of course be necessary to extend schedule 4 of that Act so as to cover suits for sums exceeding Rs. 2,000 in value.

The amendment of the Court Fees Act, which is the only alternative to the above proposal, could not be carried out without a complete alteration in the system of fees leviable in suits of all values before the Presidency Small Cause Court and for other reasons the extension of the system obtaining in Act XV of 1882 appears preferable. It must be borne in mind that the sudden cheapening of litigation, which

the introduction of the proposed amending Act would involve is likely to lead to a large increase in the number of vexatious law suits, and while His Excellency the Governor in Council cannot approve of the continuance of the present state of affairs, which amounts, in the words of the Honorable the Judges, "to a practical denial of justice to a not insignificant portion of the inhabitants of the city," he is yet of opinion that the present cost of litigation should not be decreased too quickly. To avoid the danger suggested above and still to afford relief to the poorer class of suitors, the fees leviable under Act XV of 1882 seem admirably adapted, for in suits for small sums they lie in amount between the High Court fees and the fees leviable under the Court Fees Act.

4. The objection on the score of fees is not, however, the only one urged by the High Court against the proposed extension of jurisdiction. The Honorable the Judges remark that the main business of the Small Cause Court must be small causes and that the indefinite growth in such a Court of suits not of the nature of small causes and triable by a different procedure would in practice result in confusion. As regards these views, I am directed to state that they are not shared by His Excellency in Council. There is, in the opinion of this Government, no valid reason why the main business of a Small Cause Court should necessarily be small causes and the mere existence side by side of two different modes of procedure affords no grounds for supposing that difficulties will be found to result therefrom. Apart from the fact that a double procedure exists in the Courts of all District Judges and Munsifs and produces none of the evil effects apprehended by the High Court, it is to be observed that a previous High Court held a totally different opinion to that now recorded and in a letter to this Government, dated the 27th February 1885, spoke of the objections brought against the co-existence of two modes of procedure as "untenable."

5. As regards the first and second objects of the Bill I am therefore to express the general approval of His Excellency the Governor in Council.

6. The third object of the Bill is [illegible] power to the local Government to raise the pecuniary limit of the jurisdiction of the Small Cause Court by notification in the Official Gazette, this power being exercisable subject to the authority of the Governor-General in Council.

The Honorable the Judges object strongly to this provision and I am to state that His Excellency in Council agrees with the High Court in this matter and considers that those portions of the Bill, which refer to the issue of a notification of this nature, should be excised. It appears undesirable to subject the Judicature to the Executive Government to the extent proposed and further this Government is of opinion that the public should have an opportunity of expressing its views if the question of extending the jurisdiction of the Small Cause Court again comes under consideration. For these reasons, [illegible] necessary to restrict the power of raising the limits of the jurisdiction of the [illegible] Court to the Legislature and I am to suggest that the Bill be amended accordingly.

7. The fourth object of the Bill is to abolish the concurrent jurisdiction of the High Court in suits triable by the Presidency Small Cause Court. With regard to this I am to say that this Government is entirely in favor of this portion of the Bill and is unable to regard the objections raised thereto by the High Court as sufficient—apart from the legal objection—to justify the continuance of the present system.

The High Court regards the existing provision in section 22 of Act XV of 1882 as a sufficient restriction upon the unnecessary institution of suits in the High Court and observes that the number of suitors taking advantage of the concurrent jurisdiction is, as a fact, very small. Upon this His Excellency in Council has only to remark that the latter argument seems to afford a strong reason for the withdrawal of a privilege which is admittedly seldom availed of.

The further assertion that the present proposals will result in the destruction of the two English branches of the legal profession is supported by no reasons and I am merely to point out that in a letter, dated the 27th February 1885, the High Court held a different opinion and to invite attention to paragraph 4 of a letter, dated 23rd July 1885, No. 1918 (Judicial), from this Government to the Government of India.

8. The fifth object of the Bill is to gi[illegible] the Presidency Small Cause Court to receive applications for declaratio[illegible]ney, where the value of the property does not exceed Rs. 2,500. The s[illegible] of the Bill is to empower the Court of Insolvent Debtors to transfer to th[illegible]use Court petitions presented under Statute 11 & 12 Vic., c. 21, where th[illegible] of the debtor does not exceed Rs. 2,500 in value.

It will be observed that the High Cou[illegible] these proposals with disfavor. The objections raised may be summarised as [illegible]

(1) At present a Judge of the High [illegible]ng as a Court for the Relief of Insolvent Debtors follows the procedure l[illegible] Statute 11 & 12 Vic., c. 21. This procedure is more favorable to the debt[illegible] laid down in the Civil Procedure Code and therefore difficulties are likel[illegible] the proposals contained in the Bill become law. These difficulties are—

(a) The debtor and creditor will [illegible]k relief in different Courts, and

(b) Debtors will be treated with [illegible]grees of leniency according as their property is above or b[illegible] in monetary value.

(2) The question as to insolvency ju[illegible] should be decided with reference rather to the amount of the debt than to the [illegible]e debtor's property.

9. Dealing with the latter objection fin[illegible] to say that this Government concurs with the High Court in thinking that [illegible]equires amendment with a view to determining the limit of the insolvency ju[illegible] of the Small Cause Court with reference to the amount of the debt and to [illegible]at this be done.

10. As regards the first objection ap[illegible] paragraph 8 above, it seems to His Excellency in Council that the difficul[illegible] result from the fact that debtor and creditor will seek relief in different Cou[illegible] exaggerated, for it will always be within the power of the Court for the I[illegible]lvent Debtors to transfer to the Small Cause Court any application made [illegible]alling within the jurisdiction of the latter Court and in this way the diffic[illegible]d can be avoided.

11. The second objection referred to i[illegible] 8, namely, the co-existence in the same area of two systems of procedure differ[illegible]ce of leniency, the applicability of which is determined by a pecuniary limit, [illegible] of a serious nature and requires careful consideration. The Bill which aft[illegible]came Act XV of 1882 originally provided for the transfer to the Small C[illegible]t of insolvency jurisdiction over non-traders only on the ground that such [illegible] likely to be of a simpler nature than those in which traders are concerne[illegible] his proposal the then High Court agreed generally. The clauses were, howe[illegible]ed from the second draft of the Bill on the ground that to be of any effect in [illegible] relief to the High Court it would be necessary to give the Small Cause C[illegible]iction over cases of such intricacy as to render their removal from the ju[illegible] the High Court undesirable. In the statement of objects and reasons, wh[illegible]amied the original draft of the Bill, which became Act XV of 1882, the o[illegible] the co-existence of two separate systems of procedure in insolvency case[illegible] attention and Mr. Whitley Stokes remarked: "It might seem to be the sim[illegible] to transfer to the Small Cause Court a portion of the jurisdiction conferred o[illegible]gh Court by Statute 11 & 12 Vic., c. 21, but ..... it would be difficult to m[illegible] as to suit the case. This being so the more limited provisions of the Civil [illegible]re Code have been thought more suitable."

It is to be observed that the decisio[illegible]ted was arrived at in consideration of the fact that the insolvency jurisdictio[illegible]mall Cause Court was to be limited to cases of a simple nature, whereas in th[illegible]y under consideration the nature of the case is not regarded and the limit of j[illegible] is determined solely with reference to the amount involved.

The difficulty is a real one, and, unl[illegible]ion of the jurisdiction conferred on the High Court by Statute 11 & 12 V[illegible] is transferred to the Small Cause Court, His Excellency in Council is u[illegible] see any way of avoiding a certain inequality of treatment which will affect [illegible]r class of debtors unfavorably.

12. It will be observed tl urt suggests that the proposed limit of Rs. 2,500 in the case of insol on has been arrived at in an arbitrary fashion. In this connection, at that the limit of Rs. 2,500 was proposed by the High Court itself his Government, dated 3rd March 1887, No. 512, which was communic ernment of India with letter, dated 14th May 1887, No. 1027 (Judicial) ion the High Court remarked that its proposal to fix the limit at Rs. 2,5 rived at "after very full consideration." I am, however, directed to sa ellency the Governor in Council is not confident of the desirability of e limit appearing in the draft Bill. In 1884, there were only 143 case dealt with by the High Court, in which the amount involved did not 500 and to such extent only would the extended jurisdiction of the Sn rt have afforded relief; it would further appear that in 1888 the averag application in insolvency was Rs. 5,599 and this being so His Excelle l is disposed to believe that to afford appreciable relief to the High C ble to raise the limit of the jurisdiction of the Small Cause Court in ers to that suggested by the Finance Committee, namely, Rs. 5,000. nment is not, however, inclined to press the matter.

13. The draft Bill having ed above, there remain the questions of *personnel* and establishment to ed. It will be seen that the High Court looks upon the retention of a fi Judge as indispensable, and I am to state that His Excellency the Govern l is in full accord with the High Court on this point. The relief afforded nt Bill will be small and may be largely counteracted by a growth of lit as the existing staff of Judges is hardly capable of coping with the worl mes before it, it is the decided opinion of this Government that the h of High Court will never admit of reduction. In this connection I attention to the remarks in paragraphs 23 and 24 of the High Court's l

14. The proposal to reorga shment of the High Court met (except as regards the abolition of the C vn) with the approval of the Honorable the Judges on a previous occasi ellency the Governor in Council is not disposed to endorse the objectio The reorganization of establishment has already received the sanctio ry of State and it is therefore unnecessary to deal further with the me er; the copy of the Proceedings of this Government forwarded to the G India with this letter will render clear the steps which it is now propos

have the honor to be,

Sir,

Your most obedient servant,

FORT ST. GEORGE,
11th November 1890.

Chief Secretary.

Exd. A. D. Xavier.

Jegr. No.

HOME 1890 DEPT.

[ ]

From the Government of Fort St. George.

Issued

Recd. *Encl.*

Letter, 11th Nov. 1890, No. 1771.

NOVEMBER.

Presidency Small Cause Court Jurisdiction.

Addressing the Government of India on the subject of the draft Bill for the extension of the — and on certain other connected questions.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

DRAFT OF
A
BILL
FOR
Authorising the transfer of certain jurisdiction from the High Court of Judicature at Madras to the Court of Small Causes at Madras.

C. C. Press, Simla.—No. 26 L. D.—11-4-95.—18.
(Revision—107 L. D.—20-5-95.—25.)

DRAFT OF
A
BILL
FOR

Authorising the transfer of certain jurisdiction from the High Court of Judicature at Madras to the Court of Small Causes of Madras.

WHEREAS it is expedient to authorise the transfer of certain jurisdiction from the High Court of Judicature at Madras to the Court of Small Causes of Madras; it is hereby enacted as follows:—

Title and commencement.

1. (*1*) This Act may be called the Madras Small Cause Court Act, 1890; and

(*2*) It shall come into force on the first day of July, 1890.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

(*a*) "High Court" means the High Court of Judicature at Madras;

(*b*) "Small Cause Court" means the Court of Small Causes of Madras; and

(*c*) "Court for the Relief of Insolvent Debtors" means the Court for the Relief of Insolvent Debtors continued at Madras under the provisions of the Statute 11 and 12 Victoria, chapter 21.

Original civil jurisdiction of Small Cause Court in cases of suits not exceeding Rs. 2,500.

3. (*1*) The Small Cause Court shall have jurisdiction to receive, try and determine—

(*a*) suits of classes not mentioned in section 19 of the Presidency Small Cause Courts Act, 1882, and of value exceeding two thousand rupees but not exceeding two thousand five hundred rupees or such larger amount as the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the official Gazette, prescribe; and XV of 1882.

(*b*) suits of classes mentioned in any of the clauses of the said section except clauses (*a*), (*b*), (*c*), (*f*), (*ff*), (*i*) and (*k*), up to the value of two thousand five hundred rupees or such larger amount as the Local Government may, with such sanction and by such a notification as aforesaid, prescribe.

The provisions of the Code of Civil Procedure shall apply to all proceedings before the Small Cause Court or any Judge or Judges XIV of 1882

thereof exercising jurisdiction conferred [illegible] under this section, and appeals from [illegible] orders passed in the exercise of that [illegible] shall, when such appeals are allowed [illegible] to the High Court.

(7) The Presidency Small Cause Co[illegible] 1882, shall, in relation to the Small Cau[illegible] be read as if the words "in the High [illegible] were omitted from sections 47, 49 and [illegible] as if the words "any Judge having juris[illegible] with respect to the suit" had been e[illegible] stead of the words "any Judge of the High Court" where these latter words occur [illegible] mentioned of those sections.

Suits cognizable by Small Cause Court not to be instituted in High Court.

4. (1) A suit [illegible] Small Cause Court [illegible] Judge or Judges [illegible] Court is or are [illegible] to try shall not be instituted in the High [illegible]

(2) The Presidency Small Cause Court [illegible] 1882, shall, in relation to the Small Cause Court, be read as if section 22 were repealed.

Attachment before judgment in Small Cause Court.

5. Notwithstanding anything to the contrary in section 23 of [illegible] second schedule [illegible] Presidency Small [illegible]

XV of 1882. Courts Act, 1882, sections 483 to [illegible] X of 1882. inclusive) and section 491 of the Code [illegible] Procedure, respecting the attachment [illegible] moveable property before judgment, shall [illegible] and shall, so far as the same may, in the [illegible] ment of the Court, be applicable, be [illegible] the Small Cause Court when exercising [illegible] jurisdiction conferred upon it by section [illegible] the said Act.

Small Cause Court to have insolvency jurisdiction in certain cases.

6. (1) The Small Cause Court may [illegible] an application for [illegible] tion of insolvency [illegible] the provisions of Chapter

XIV of 1882. XX of the Code of Civil Procedure in [illegible] a judgment-debtor who resides, or is in [illegible] within the local limits of its jurisdiction [illegible] Court is satisfied by affidavit or otherwise [illegible] the value of his property is not likely to exceed [illegible] two thousand five hundred rupees or such larger amount as may have been prescribed by the Local Government by a notification for the time being in force under section 3, sub-section [illegible] clause (a).

(2) Any person who is in insolvent circumstances and resides within the local limits [illegible] jurisdiction of the Small Cause Court may apply to that Court for a declaration of his insolvency and the Court may, if satisfied as aforesaid, receive the application.

(3) All the provisions of Chapter XX of the

XIV of 1882. Code of Civil Procedure relating to an application by a judgment-debtor shall apply, so far as they can be made applicable, to an application under sub-section (2).

(4) The person for the time being holding the office of official assignee to the Court in

the Relief of Insolvent Debtors shall, in all cases over which jurisdiction is conferred on the Small Cause Court by this section, be the receiver for the purposes of Chapter XX of the said Code, and may retain as remuneration for the performance of his duties as receiver the commission which may be allowed to a receiver under that Chapter.

(5) An appeal shall lie to the High Court from an order passed by the Small Cause Court under section 351, section 352, section 353 or section 357 of the said Code in exercise of the jurisdiction conferred by this section.

(6) When a petition is presented to the Court for the Relief of Insolvent Debtors by or against a debtor under section 5, section 8 or section 9 of the Statute 11 and 12 Victoria, chapter 21, the Court may, if it is satisfied by affidavit or otherwise that the property of the debtor is not likely to exceed in value two thousand five hundred rupees or such larger amount as may have been prescribed by the Local Government by a notification for the time being in force under section 3, sub-section (1), clause (a), transfer the petition to the Small Cause Court, to be there disposed of as nearly as may be as an application for a declaration of insolvency under Chapter XX of the said Code and subject, in respect of appeal from orders passed in proceedings thereon, to the provisions of sub-section (5).

(7) Section 360A of the Code of Civil Procedure shall, as regards the town of Madras, be read subject to the provisions of this section.

Judicial

~~REVENUE~~ DEPARTMENT.

Current No. 3574.

From

Dated 3 Sept. 1890.

FOR ORDERS.

This is among post-[illegible] at the same time I think the High Court should not be asked to express an opinion on the question of the jurisdiction of the S.C.C. Bill, or on the matter on which there may be [illegible]

[illegible]

5/8/90

The following seems to deal with three questions —

(1) The amendment of the Presidency Small Cause Act XV of 1882 with a view to extending the jurisdiction of the S.C.C. of Madras.

(2) The retention of a 5th puisne judge in the High Court.

(3) The reorganization of the establishment of the High Court.

These matters are dealt with separately below.

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1. The amendment of the Presidency Small Cause Act

Before dealing with the Bill as it now stands it is necessary to give a short account of the previous correspondence upon the

FOR ORDERS.

× vide fo. 3 a hand '79 no 494-9

× fo 3 18.3.79 no 566

In 1879 the Act was, upon a reference from India on the subject, again called upon for an expression of opinion in regard to the delegation to the H.C. C.C. of Insolvency jurisdiction. Upon this the C.J. & Judges recorded minutes signifying general approval of the proposal.

Accordingly a Bill was drafted amending the law relating to S.C. Courts & giving effect to the above suggestions. This Bill was forwarded by India to this Govt. on 18 Sept. 1888. The Select Committee however made considerable alteration in the Bill & dropped the clause relating to Insolvency business but retained a clause raising the pecuniary jurisdiction of the S.C.C. from R1000 to R5000. The amended Bill was referred to this Govt. in March 1891 on the opinion of persons interested called for. Upon replies being received from various quarters but this Govt. in forwarding the replies expressed general approval of the Bill & the Act became law shortly thereafter. Act XV of 1892. At the same time the Charter powers of Judges were withdrawn.

L.R. The question of relieving the High Court of a portion of its original jurisdiction by extending that of the Small Cause Court is an old one but it is not necessary to go further back than 1877 when Govt. asked for the views of the High Ct. on the subject. The reply of the H. C. was dated 29 Sept. 1877. I have copies of a letter from Mr. Justice Dudley Chief Judge of the S.C.C. to Mr. B. recommending an extension of jurisdiction of the S.C.C. to R5000.

(2) Appeal to C. & H.C. in case of Suits of over R5000.

(3) Arrangement of fees payable in S.C.C. so as to make it cheaper than the H.C.

These recommendations are followed by a Minute of the H.C. Judges & Tennant J.

The answer of this Govt. to the address India seemingly the adoption of Rules of Practice based & regarding that & those of the Charter Courts for

[illegible] the judicial
[illegible] have been filled
up. The Govt appointed a matter was
[illegible] up to High Court in 1898.
[illegible] from the Registrar
[illegible] the N.C. applied
[illegible] unless an additional
Puisne Judge was appointed
[illegible] the inferior Courts &
[illegible] place visit to work on
circuit & spend some time
[illegible] Judges made the following
proposals & [illegible]:—

(1) That the Small Cause Ct should
be improved & by all divisions of
which it could not take
cognizance (with the exception
of Commercial business
& Testamentary cases) not exceeding
Rs 1000 or Rs 500 in value subject
to appeal to the H.C.

(2) That the S.C.C. should
receive business by [illegible]
of the above proposals were
[illegible] that it would be
[illegible] Judge
[illegible] the
[illegible] of the
[illegible] Govt
[illegible] the
[illegible] of the
[illegible] the appointment of an
additional Puisne Judge, also
the following suggestions
(1) That Juries should be
taken & trial of [illegible]

* That the Chief Justice [illegible]
made an [illegible] in
a letter dated [illegible] 1
June 1912.

* It is necessary to bear in mind
that the new Judge should be raised
to pecuniary limit of jurisdiction
from Rs 500 to Rs 1000, Rs 25 only in
certain cases & transfer from the S.C.C.
[illegible] 2nd assessors chosen from each
[illegible] amount. It was to be fixed by
one the trial by jury chosen provided the
amount in value did not exceed Rs 2000 or (?)
that the H.C. made the proposals included in the
[illegible]

* It is not quite clear from the
[illegible] letter [illegible] the
[illegible] proposed. [illegible]
[illegible]

(3) That the H.C. Registrar on
the original side should be abolished
& a Deputy Registrar on the
[illegible] side.

The next steps were to communicate
to the H.C. for remarks a draft
from the Secretary of State of
the proposals of the Finance
Committee; the replies of the
H.C. were dealt with by the
Govt in G.O. of 19 May 1897 no
1026. The H.C. in their letter
declared that they it unanimously
that (1) The S.C.C.C. should be
given jurisdiction in cases
not exceeding Rs 2000 in value
(2) There should be one
Registrar on the Appellate
side having under him
2 Deputy Registrars, one
for the Appellate & one
for the Original side

Upon this the Madras Govt addressed
India (letter of 14 May 07 no 102)
& after remarking that
concurred with the views of the
H.C. & the opinion that the S.C.C.
jurisdiction should be raised to
Rupees 2000 & that the Appellate
Jurisdiction should not be
limited based on a proposal
for the appointment of a
temporary 5th Puisne Judge
In this letter particular
attention is invited for about
what it would be found to
[illegible] Rs 2000 including in the
the whole question is the
[illegible]

The order & letter referred to above were also communicated to the Secretary of State for India on the same day & the Secretary of State agreed generally in the various proposals made & his despatch was communicated to this Govt. & will be found embodied in Govt. of India No. 18 of 1890 & 29 of 1891.

Finally the Govt. of India forwarded to us a draft Bill containing the various changes proposed in the law & this Bill was communicated to the High Court for remarks in Govt. of India No. 5 of 1890.

The reply of the High Court which forms the present annual

B. The Bill which the High Court objects

differs from the existing law of the proposed amendment of the law in 1892 it omits the words the proper Court & specifies the Bill cases in which proceedings may be instituted & specifies the cases

I. The present Act provides that the Residency of all land lies

the following sections) provides the value of the subject-matter does not exceed Rs 2000, the Judge Bill raises the limit to Rs 2500.

II. In section 19 of the present Act certain classes of suits are specified which the S.C.C. is absolutely prohibited from adjudicating upon whatever the value of the property involved. The Bill repeals the matter part of the section so far as regards the jurisdiction of the S.C. & entirely of the all classes of cases specified in sec. 19 (except (a) Rent suits (b) suits against Govt. (c) suits against Judges (d) Criminal Maritime suits (e) Testamentary suits (f) suits against Princes) provided that the value of the subject-matter does not exceed Rs 2000.

It is to be observed that the Bill did give the S.C.C. authority to hear suits for compensation for wrongs, defamation, suits for recovery of temporal rights can be tried from the jurisdiction. The Govt. of India intended by proposing this section to prevent parties

it would seem that the jurisdiction of the S. C. C. has been extended to testamentary suits which are at present heard in the High Court. This last amendment has apparently never come to the notice of the Judges.

The opinion of the High Court upon the subject detailed above have now to be considered.

In the first place it is pointed out that the Bill makes no provision as regards the Judicial methods of levying fees. This is undoubtedly an important point & it is to be regretted that it should have been overlooked by the framers of the Bill. At present there are three modes of levying fees in India.

(1) India is considered as a unit & a single fee is levied in every case whether it be a small cause or a suit in a small cause court which is made the residuary S. C. C. Act of 1887 (2) A fee is made payable by the court in lieu of stamp duties (3) Fees are fixed and arbitrary but are levied under the Court Fees & Suits Cause Act & are to be returned

being & this fact it is not easy to estimate the exact impression which the cost of litigation under the three methods but an attempt to do so is made in the following table. It will be seen that it is assumed that the defendant & the witnesses are summoned & that the hearing is completed in one day.

	Value of suit	Institution fee	Summoning witnesses	Hearing fee	Total
~~High Court.~~	R 50	R 6-2-0	R 1-8-0		R 7-10-0
	R 100	R 12-4-0	R 3-0-0		R 15-4-0
Presidency Small Cause Court.	R 500	R 13-12-0	R 6-0-0		R 19-12-0
	R 1000	R 35-0-0	~~R 6-0-0~~ R 9-12-0		R 44-12-0
	R 2000	R 47-8-0	R 10-8-0		R 57-8-0
Mofussil Court	R 2500	R 68-12-0	R 15-6-0		R 84-12-0
High Court	R 50				
	R 100				
	R 500	10	6	10	26
	R 1000				
	R 2000				
	R 2500				
Mofussil Court	R 50	R 3-12-0	R 1-14-0	0	R 5-10-0
	R 100	R 7-8-0			R 9-0-0
	R 500	R 37-8-0			R 39-6-0
	R 1000	R 75-0-0			R 76-14-0
	R 2000	R 125-0-0			R 126-14-0
	R 2500	R 150-0-0			R 151-14-0

The average cost of a suit in the S. C. C. is Rs 65-8

in the High Court Rs 66 & in
any other Court Rs 1-12-0.
Yet the High Court charges
Mandamus asked a fee
for final decree varying
between Rs 10 & Rs 12, an average
of Rs 11; the mean cost
of a suit in the High Court
by therefore be just at
Rs 77. That is 6 times the
average cost of litigation
in the High Court is higher
than that in the N.C.C. for
all suits below about Rs 600
in value & higher than that
in any other Court for all
suits below about Rs 300
in value & in every case
of suits the fees levied
in the N.C.C. are higher
than those levied under
the Court Fees Act.
We can form a conclusion
that with some of the
objective aims of the High
Ct. & the High Court legitimately
hoping to avoid the evil
of present expense, the
actual denial of justice
to the poorer class of litigants
is the approach of the highest
alternative in the case, but we
regret to the reduced rate of
fees which will be levied in
future because it will mean
the of litigation, for

the relief afforded will not
be great.
It must be admitted that
the above remarks are to
a certain extent in conflict
& may be seen that the
Commission have regarding
the desirability of cheap
& easy justice, in
the case of India, the ideal
subject to reservations, but
there can be no question
that a condition of affairs
amounting, in the High Court
to, "the practical
denial of justice to a not
insignificant portion of
the inhabitants of the city,
is undesirable & that
any measures which
lead to the removal of
this blot on the administration
would be generally viewed
as has been shown above
the levy of fees calculated
in accordance with the
principles of the Small Cause
Court Act would afford
a substantial relief to
persons who sue in the
High Court for small sums
and, were the fees thus
levied in accordance with
the Court Fees Act, it

would be still greater.
For should the amount
of relief afforded be
estimated only by the mere
rates of fees for these
are miscellaneous expenses
connected with the High Ct.
which fall within under it
still more expensive than
been only.
Still there is the fact that
the charging of litigation
bill in such cases tends to
diminish increase to be considered
so as to be a considerable
portion of this increase
will probably be due to
the enhanced opportunities
for vexatious litigation
it is not perhaps desirable
that the minimum Court
rate of fees should be
lower. It will be better
therefore to lay fees in
the Civil Court at the higher
rate of the jurisdiction of
the Small Cause Court
at fees in the Court of
Day relief will be afforded
to persons who of right
get the relief will have
large a proportion
of many litigation

There is another advantage
that in adopting the Small
Cause Ct Act rate of fees
in preference to that of
the Ct Fees Act of 1870 in
that particular has power by
notification to vary the
rate from time to time
(vide sec. 78) & has indeed
already done so (G.O. of
23 Jan. 1883 & 104 Act.).
The High Ct officials that
as the Small Cause Court
Act stands fees cannot
be levied under it upon the
entry of the report within
the jurisdiction of the V.C.
C. Act is true, but the
addition of a section to
the Bill laying down that
the fees should be levied
according to the
principle of the Act
of 1882 & adding that
4 as a common rate of
Rs 2000 in value will be
a simple matter & the
fact of this may be
noted & so etc.
A much greater anomaly
of a system of the Bill is
the issue of fees. Here
similar a second of
procedure which is

Go. the Legislative
Law mis. inc. and
Office

The main business of the Small Causes Court must be Small Causes, but the extension of jurisdiction will be such which are not of the nature of Small Causes will result in the indefinite power in the S.C.C. of suits which are tried under a different procedure to S. Causes; difficulties are likely to follow from this."

(Hy Smyth)

The argument is based on 3 assumptions

(1) That the main business of a S.C.C. must be Small Causes.

(2) That the increase of suits in consequence of the widening of the jurisdiction will be indefinite.

(3) That the extension of the system of procedure which by the Small Cause Court will be inconvenient.

The first assumption is plain & indisputable. The second is hard to make out. Why the main business of a S.C.C. should be Small Causes I cannot see. It may be and I believe it is not the intention of the legislature that the increase of the jurisdiction will cause the Small Cause Court to become a court for the trial of suits of a certain class.

The third assumption is based on experience. Upon 24 of a letter of 27 Feb. 1885 and in G.O. 23 Aug. 1885 extracted from the Registrar of the High Court. Therein the Judges remarked that the system that the Small Cause Judge cannot become a Small Cause Judge ordinary jurisdiction is included in some place judges of experience in the Mofussil have been asked to dispose of suits of a certain class in addition to their ordinary judicial work.

(See para 15 of Dr C. Turner's Tr by Mack pp 24-25.)

II.

Custom in the Presidency Town has assigned to the High Court the jurisdiction over all suits other than Small Causes.

As regards the second assumption it may be remarked that if the system of fees & training under the Small C.C. Act be adopted to the jurisdiction use of its from the Small Cause Judge the increase of litigation will cease to be excessive so as to swamp the Small Cause Court of the S.C.C.

As the third assumption it is not supported by experience. Upon 24 of a letter of 27 Feb. 1885 and in G.O. 23 Aug. 1885 extracted from the Registrar of the High Court. Therein the Judges remarked that the system that the Small Cause Judge cannot become a Small Cause Judge ordinary jurisdiction is included in some place judges of experience in the Mofussil have been asked to dispose of suits of a certain class in addition to their ordinary judicial work.

the cases of suits then
may be some confusion
but if the P.C. Ct Act not
be adopted for but there
is no likelihood of the
recurring & the argument
in favor of the P.C. letter
seems destitute of weight.
it might just as well be
argued that precedent
might be cited to prove
a first class magistrate
disposes of all cases before
him but the same objection
as summary cases. There
is a double procedure in
magistrates' courts and
a double procedure in the
courts of Munsiff & District
Judge & be difficult to
see how they should be
form, they should the
Judge of the Dist. Ct
be alone in regards
of hearing the Jurisdiction
being decided the objection
the point the objection of
the Munsiff & Judge have to
be heard objection

III. With the question
of the Jurisdiction is closely
the question is connected
may by extension the
legislature raise the
pecuniary limit of the

quite

there is also a double procedure
and appeal lies in the High Ct
itself among the concurrent
with the original jurisdiction
on third from procedure which
proposed concentration upon this
the High Ct on third among
the Court of Cases brought to Ct
when in my opinion for those
who are in my opinion for those
who are in my opinion for those
who are

the Civil Justice Report does not appear to contain any particulars whence the ~~[illegible]~~ talent to which record was made in the alternative. If the High Court can be ascertained, that from Judicial Statement 8 it seems that only 47 cases but exceeding £1000 in value were instituted in the High Court in 1887. Whatever the facts may be the principle of abolishing the concurrent jurisdiction of the High Court appears sound if, as the Judges say, recovery below such the High Court under the existing system, for there is not the same reason for withdrawing from suitors an unnecessary privilege.

(2) The second objection is to the effect that the withdrawal of the original jurisdiction of the High Court will result in the destruction of the High Court, the Equity Judges and the Equity Bar.

In the above section the H.C. is given the same as a superior Court and a strictly ordinary jurisdiction will be taken from the

Dig C

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of a letter from the Registrar
on the 29 Feb 1884. Attention
is also invited to para 4
of a letter from this Govt. to the
Govt. of India (both the above
letters appear in G. of I. Resolution
No 1119 dated 28th Aug 1884). Among
other things the effect upon
debtors & creditors, if
the goodwill of the public knows
the change, it should be kept.

V. The 5th object of the
Bill is to give power
to the Small Cause Court
to receive applications
for declaration of bankruptcy
under Chap. XX of the
Civil Proc. Code when
the value of the property
does not exceed Rs 2500.
& P.C.C. may also
receive applications for
such declaration & make
order in accordance with
the Civil Proc. Code.

VI. & lastly it is
proposed to give power
to the Court of Insolvent
Jurisdiction & Chief
& Small Cause Court
a petition presented by
a debtor for his
discharge when the property of
the debtor does not exceed

The objections raised to the
proposals by the High Court
are two:—

(1) At present a Judge of
the High Court sits as a
Court for the relief of
insolvent debtors, whereas
the procedure laid down
in the Civil Proc. Code
Ch. XX, the procedure is
how formalities of the
debtors than that laid
down in the Civil Proc.
Code, the difficulties
will arise in connection
(a) The debtors will seek
relief in the Court of
Addl. Judge by [illegible]
and the creditors will
seek relief in the Small
Cause Court, when the
Code of Civil Procedure
will be followed.
(b) Person who is a
[illegible] will be treated
in one Court by the
[illegible] & the person who
will remain liable
only to the Court of
Judge & Small Cause.

(2) It is objectionable
to determine the kind
of the Court of
Jurisdiction by the
value of the property of the
debtor, & moreover
the debt should be
better criterion for

the boundary limit should be not yet been determined with applicant case.

The objection shown above as (b) is of a trivial nature for the High Court can at once fix a stop of any tendency on the part of creditor & debtor to seek redress in the Court by bringing all applications made & staff by debtor to the final case. The other objections are concerning of a serious nature.

It is obvious, first of all, that the beginning limit should be fixed not exceed the Rs 2000 that the [illegible] of India [illegible] & the [illegible] to a beginning limit?

The present Act fixes it at Rs 2000 that limit the Mysore Civil & Regular, has been recommended in an ordinary judicial (vide p. 33 of the letter) if so the limit is the High Court for the is the figure recommended by the Hon'ble the Finance Committee after any full consideration? (see para 2 of the Resident's letter & [illegible] 2126 L.)

| 99

| 40 C

12.

It is to be presumed therefore that before Rs 2,000 was recommended as a limit due care taken of the tendency and record was made. Still in view of the opinion of the Resident which divided as it stepping limit of jurisdiction of the Financial Committee recommended Rs 5,000, the Chief Justice of the M.C. in 1879 Rs 10,000, the Tahsildar Rs 3,000 & so on (see Resident's letter to P.D. 29 May 1879 no. 1297).

Without particulars which are not available it is impossible for Prof. to suggest any boundary limit for India. It would appear from the Civil Justice Report for 1887-88 in 1000 years 209 tendency applications relating to debt amounting to Rs 22,310 were disposed of in the High Court. This would give an average of Rs 107 in the debt involved. If the figure be correct the proposed limit of Rs 2000 is probably too low to effect any appreciable reduction but with a simple solution.

X But see in this connection Table D in letter from the Chief C.J. in para 23 infra as appears from the [illegible] that in 1884 the cases of tendency that according Rs 2500 [illegible] 6 [illegible] [illegible] 1000 [illegible] 2000 [illegible] 1000 [illegible] 43

course valueless for the purpose of determining the limit of retrospectively at all events, it seems advisable to accept the limit proposed in the Bill, seeing that the Judges recommended it in 1899.

The objection to the co-existence of two systems of bankruptcy procedure in the same case the application of which is determined by a consideration of the amount of the debt or property of the debtor, one of which is much cheaper than the other in the dealing inevitably of creditors, then the third objection, namely, that the Act of 1883 is in many respects harsher for the bankrupt than the Act of 1884, and has caused many to prefer the simple bankruptcy procedure, but that there are cases in which the debtor may be benefited by the application of the Act of 1884 rather than the Act of 1883, the Bill provides that the bankruptcy shall be deemed to be a bankruptcy under the Act of 1884 unless the debtor shall elect to be adjudged bankrupt under the Act of 1883, and the Bill provides that the Act of 1884 shall be deemed to be the Act under which the bankruptcy shall be deemed to be, unless the debtor shall elect to be adjudged bankrupt under the Act of 1883.

He might point out that by means of the Bill a person who is adjudged bankrupt under the Act of 1884 may be adjudged bankrupt under the Act of 1883 upon a petition of the creditors, and that the Act of 1884 provides that the debtor may be adjudged bankrupt under the Act of 1883 if he elects to be so adjudged bankrupt.

from the 2nd clause of the Bill on the ground that it is to be of no effect in the way of relief to the S.C.C. right to receive jurisdiction over bankruptcy cases of such extraordinary that their removal from the jurisdiction of the S.C. would be undesirable (v. para. 20 of the Report of the Select Committee of 1899). In the statement of Objects and Reasons which accompanied the original Bill in which the bankruptcy clauses appeared the objecting to existence side by side of two bankruptcy procedures received the highest authority. Lord Selborne remarked "It might seem "to be simplest that the "bankruptcy of the whole country "should be under one jurisdiction" "the high authority Lord Selborne" "(v. Hansard, 21 Feb. 1884) "but the difficulty of doing "it so as not to disturb the "jurisdiction of the County Courts has been too great" "and the Bill has been drafted" "accordingly."

of the draft bill of 1889.
Still it must not be forgotten that the above decision was arrived at on a consideration of the purely [illegible] of the case & he dealt with by the N.C.C. & the appellant was not the same person as now a newly appointed Judge. Both between the case tried with one before the High & N.C. Courts respectively. As to the above of special knowledge on the subject it is difficult to come to a conclusion as to technical a matter, but it seem advisable to draw the attention of the Public to the question of the necessity of keeping up a sufficient number of Judges to enable the business of the Courts to be carried on without unnecessary delay. Considering the High Court has only two Judges & one of them is now in England & the other is expected shortly to return from Tonga, the chance of one or the other being ill or absent seems very remote. Such a thing has never happened.

HS 95
C

2.

So now come to the second question of the necessity of retaining a 5th Puisne Judge in the High Court supposing the present bill becomes law.

It is difficult to arrive to a conclusion that the real cause of the extraordinary backlog of the bill arrived by the present High Court is due to the absence of the Judge for the N.C.C. Rules, should seem the generally adjudged of

the present staff is only just capable of coping with the work; all that has been done is to examine to what extent the present staff of it passes in to law will afford relief.

In para 15 of its letter the H.C. shows that an average of 124 civil suits would have been filed annually in the H.C. will now come before the S.C.C.C. under the new Bill. It then proceeds to advert to the hardship arising from which ten years disposed of in 1885–186, in 1886–109, in 1887–103 & in 1888–107; that is an average of 108 per annum, assuming that half of these cases could have been filed in the ordinary course, the relief in hardship, trouble and amount of 54 appeals in complete accounts, add 12 more since it we perceive in the reduction in the original side, assuming (on footing of H.C. letter) that appeals amount to 12 p.c. in the case of suits the number would be reduced by 10 to relief is finally 202.

* It is not perfectly clear from the left – hand, see note on p. 12 of this.

Cos – but the opinion of the Bar is strongly against the [illegible] for the reasons set out in the 25th para of the High C.C.'s letter. It is probable that the number of Original Judges in the High C.C. can safely be reduced to 4.

C. 85

15.

But all this is more or less guess-work. It is necessary to have to inform the public of India that the Bar will not be prepared to recommend the reversion of the High C.C. to its original strength of 4 Puisne Judges, until it has been shown by experience that the Act will effect an appreciable relief.

In addition to a salary of R1200 the Judges of the C.C.C. have been allowed sanctioned by the Secy. of State (in Council in No. 8 of 16 April 1890 at 951)

3.

There remain the functions of the General Assignees of the H.C. & Official Trustee. These changes appear below.

Present Scale	Proposed Scale (sanctioned by Secy of State in Council 8.9.1890)
Registrar Original Side R1500	Registrar R1450 – R50
Registrar Appellate Side R1600	Deputy Registrar Appellate Side R700 – R100
Deputy Registrar R700	Deputy Registrar Original Side R700
Clerk of the Crown R300	

The work of the Clerk of the Crown is to be done by the Deputy Registrar Original Side.

The present Registrar (Original) is the Oliveira, the present Deputy Registrar is the Morgan & the present Clerk of the Crown is the Rorsan. The changes above referred to are found in the free immediately on the Bill passing Council. The High Court only sets aside & all these alterations.

The first proposal on the subject seems to have originated with the Govt. which in a letter to India No 195 of 23 July 1888 suggested that the Registrar Original side should be abolished & his place taken by a Deputy Registrar on Rs 1000.

The next step occurred in 1888 when the Finance Committee recommended:

(1) Abolition of the Registrar Original side.

(2) Creation of a Deputy Registrar (Original) on Rs

(3) Creation of the Commissioner Registrar on the original side

(4) Transfer of Nos. of Clerk of Crown & Commissioner.

The High Court then sent in a Minute on the subject expressing instead of recommending the High Court:

(1) Objected to the proposed amalgamation of the Judge of Clerk of the Crown & Commissioner.

(2) Recommended the appointment of the Registrar

16.

on Rs 1000 – 1000 & of two Deputy Registrars on Rs 500.

(From this letter it appears that the Govt. adhered for in 1888 also with recommendations similar to those given above but the previous letter does not appear to be in the file.)

From this letter, dt. 19 May 1890 it appears that the proposal in the first letter of India was dropped & the following recommendations:—

(1) Abolition of the Registrar (Original side)

(2) Appointment of one Registrar on Rs 1400 – 1100

(3) Appointment of a Deputy Registrar (Original) on Rs 700 – 1000.

(4) Appointment of a Deputy Registrar (Appellate) on Rs 1000.

(5) Transfer of work of Clerk of Crown to Deputy Registrar (Original side)

From the above it would appear that the Commissioner Office on the original side was to be retained, after the former attention is solicited & from 29 of the Judicial Dept. dated 14 May 1890 & the important paragraph

Observe in that the High Court in 1807 agreed with the advisability of the proposed reorganization scheme regarding the Clerk of the Crown which the Act intended to retain as an officer of the Court. It is now for consideration whether this should be done or whether his duties should be assigned to the Deputy Registrar of Original Jurisdiction as previously proposed by Justice Lucas. The Clerk of the Crown is entitled to receive of State and not from the revenue the pay of the Deputy Registrar Appellate Side, though that the two posts upon the Establishment which should be assumed a pay of some contingent on the abolition of the other in order that no pay should appear.

It is assumed that Justice will be able to determine if a carry out all the recommendations of the reorganization scheme should be done as regards the Clerk of the Crown.

Yet, since the recommendation

Sir, the will be the best, and under the initial pension of the Deputy Registrar on the Appellate side, as proposed. W. Hutchinson in pension at the old rate. Do you think [illegible] 14/07/89 No. 027. Justice has been consulted the best of pension of the Deputy Registrar.

[illegible]

I think the wise way has proved to be the Registrar. The High Court may [illegible] take him away for his other work for 24 days in two years. But I think there is a conclusive objection

JG

(1) What is the force with his stenographers who now draw £1500 as Registrar, Original Side?

(2) Will Justice accede to the earlier and recommendation of the High Ct. & raise the pay of his Bargain the Deputy Reg. Appellate side £1000 from £700 his present pay?

The following answers are suggested to the above questions:—

(1) The Secretary of State will be expected to sanction the grant to his stenographers of a personal allowance of £500 in addition to the pay of £1000 which he will draw if he accepts the appointment of Registrar, Original Side, of the Appellate Side at the time. Should be found for him another one same pay (the only other case is exceptional) the initiation of the reorganization is not affected by the [illegible]

Sapur. I think the Chief Justice [illegible] Sir [illegible] on the Reg. [illegible] Appellate side [illegible] [illegible] Justice.

JG

Read - clerk filing papers 3rd Cl. 3574 36

No. 2115.

High Court of Judicature,
Madras, 3rd September 1890.

From

H. W. FOSTER, Esquire,
Officiating Registrar of the High Court of Judicature,
Appellate Side, Madras.

To

The Honorable J. F. PRICE,
Chief Secretary to Government,
Fort Saint George.

Sir,

The correspondence between the Government of India and the Secretary of State regarding the proposal to enlarge the jurisdiction of the Presidency Court of Small Causes at Madras, forwarded with G. O. No. 691, Judicial, dated 16th April 1890, and the draft of a Bill to give effect to the scheme to which the Secretary of State has signified his approval, received with G. O. No. 895, Judicial, dated 9th May 1890, have been under consideration of the Honorable the Chief Justice and the Judges, and I am directed to forward the following expression of their views on the several details of the proposals.

The Bill may be briefly described as a measure for transferring from the High Court to the Small Cause Court jurisdiction over suits arising within the local limits of the High Court's Original jurisdiction except testamentary, matrimonial and maritime suits up to a certain limit of pecuniary value of the subject matter in suit. The measure may be viewed in three different aspects, according as it affects

1. The High Court,
2. The Small Cause Court and
3. The interests of the public.

2. The last of these considerations is undoubtedly the most important, and one to which both the others should be entirely subordinated, but so far as can be gathered from the Bill itself and from the correspondence which preceded the Bill, it has been almost completely overlooked. To such an extent is this the case that the draft Bill makes no provision whatever regarding Court Fees, a matter undoubtedly most material to a consideration of its effect in relation to the public at large and to the Small Cause Court. In fact, the measure appears to have been designed with a purely financial object, simply and solely to relieve the High Court of a portion of its work and thereby enable the Government to avoid appointing permanently a fifth puisne Judge in the High Court. If this is, in fact, the sole object which the Government has in view, the High Court is constrained to record its emphatic opinion that the mere possibility of effecting some small reduction of expenditure is not an adequate reason, in fact constitutes in itself no reason, for interfering with any portion of the system of administration of justice in this country, and must protest against the adoption of considerations of economy as the sole ground for proposing changes in the jurisdiction of the High Court. There are, however, other points of view from which the proposals may be regarded, and these the Honorable the Judges will proceed to consider.

3. In the first place, the High Court has always felt the necessity for creating some tribunal which might afford relief to suitors whose claims relating to land and being of small value, will not bear the expense of a High Court suit. Under the existing system of judicial administration in the Presidency Town, the High Court is the only *forum* before which

disputes relating to matters not cognizable by the Court of Small Causes can be brought, and owing to the comparative costliness of litigation before that tribunal, justice is practically denied to a not insignificant portion of the inhabitants of the city. On the assumption therefore that the suits under the new jurisdiction will, as regards levy of Court fees, be brought under the provisions of the Court Fees Act, the measure, so far as its effect is to provide a new and cheaper machinery for the benefit of small suitors, has the support of the High Court.

4. But even this side of the subject presents an aspect which does not appear to have received the attention and consideration its gravity demands. It is certain that the provision of a cheap and easily accessible tribunal will bring into existence a large number of suits. What the number will be it is impossible to conjecture with any degree of accuracy, but considering the very large amount of small and comparatively valuable house and land properties there are in Madras and the pertinacity with which claims to real estate are always prosecuted, it may confidently be predicted that suits concerning the title to and rights incident to such properties—rights of way, light and air and other easements—will be very numerous. If to these be added disputes relating to defamation, trespass, assaults and torts of all descriptions—disputes which now find their way to the Police Courts in large numbers but which, under the stimulus which the overcrowded state of the bar of Vakils is sure to supply, would undoubtedly be brought before the new tribunal—the sum total of new litigation which may be expected assumes formidable dimensions. It may be desirable to provide an outlet for this litigation, but this should, in the opinion of the High Court, be done carefully and advisedly, with due regard to all the consequences.

5. Considerations of purely abstract justice require that an opportunity for obtaining legal redress in all matters should be placed within the reach of all classes of the public, but in practice this is far from being an unmixed benefit and it is doubtful whether the true interests of the people would not be best consulted by retaining some limitation on certain classes of actions. For example, it is notorious that under the present system, even wealthy families in Madras have brought ruin upon themselves by suits for division of their joint property, and it is questionable whether, as a matter of policy, it is desirable, in the absence of any urgent demand on the part of the public, to give increased facilities for litigation of this description. It is also open to doubt whether it is a wise policy, in the Town of Madras where litigiousness reaches such a high degree of development, to suddenly cheapen actions for damages on account of defamation, assault and such like matters, of which the *bona fides* has hitherto been subjected to the preliminary test of the expense of the High Court procedure. These are aspects of the question which from their gravity and importance are deserving of more consideration than appears to have been bestowed upon them.

6. Passing on to consider the effect which the measure will produce upon the Court of Small Causes, I am here again to remark that the gravity of the proposals does not appear to the Honorable the Judges to have been fully appreciated. The main business of that Court is and, in the opinion of the High Court, ought always to be the rapid disposal of ordinary small causes, of which now almost 30,000 come before it annually and are disposed of in a very satisfactory manner. But so far as concerns the new jurisdiction, the Court will cease to be a Court of Small Causes and the trial of the transferred suits and the indefinite number of new suits which will be attracted by the cheapness of the Court, will have to be conducted throughout in conformity with the provisions of the Procedure Code. The evidence will have to be recorded and the judgments written. Assuming that the Court and its establishment will be sufficiently strengthened, there will be great difficulty in distributing the new business so as not to interfere with the speedy despatch of the proper work of the Court. The new cases, it must be remembered, will be intrinsically of comparatively greater importance than those hitherto triable by the Court, and great pressure will be put on the Judges to take up and dispose of them with the rapidity common in small causes. Owing to the greater formality with which the new suits will be tried, and to the fact that the decisions are subject to appeal, the Judges will the more readily yield to this pressure, and it will be very difficult for the Chief Judge to keep an even hand between the two classes of cases, to take up the new work with the desired promptness and

yet not to allow the primary work of the Court to be delayed more than heretofore. The Honorable Mr. Justice Handley, whose eight years' experience as Chief Judge of the Court entitles him to speak with authority, has a very strong opinion upon this view of the matter, and while doubting whether the Small Cause Court will become a successful Court of ordinary jurisdiction, entertains the firm conviction that its efficiency as a Court of Small Causes will be grievously impaired by entrusting it with the proposed jurisdiction.

7. It has been said in answer to the objections set out above, that the difficulties connected with the dual jurisdiction either do not exist or have been successfully surmounted in the Mofussil Courts, but it appears to a majority of the Honorable the Judges that in this respect no comparison can be instituted between those Courts and the Presidency Small Cause Court. In the former Courts, the small cause work is of secondary importance, and, as a rule, the file of small causes is numerically smaller than that of ordinary suits. Small causes therefore without being unduly neglected, occupy but a fraction of the whole time of the Courts. But this can never be the case in the Presidency Small Cause Court. There the business of trying small causes should, notwithstanding any enlargement of jurisdiction, remain the primary work, but there is good ground for apprehension that the Judges and their officers may come to consider it of secondary importance in comparison with suits tried under the Procedure Code. It may be stated too that whereas the average duration of a small cause in a Mofussil Court is 42 days, the Presidency Court showed an average duration of only 32 days in 1889 when the figure was higher than it had been for some years.

8. An experiment, regarding the success of which there is room for such great doubt, upon the constitution of a special tribunal like the Small Cause Court, can be justified only if there is a certain prospect that counterbalancing advantages will accrue, and it is so far from clear that this will be the case that a majority of the High Court deprecates the proposed interference.

Mr. Justice Muttusami Aiyar adheres to the opinion he has formerly expressed that the transfer to the Small Cause Court of exclusive jurisdiction over suits up to the limit of Rupees 2,500 in value is unobjectionable and expedient.

9. I am here to refer to a matter regarding which some misapprehension appears to have arisen. In laying before the Secretary of State an outline of the measure under discussion, the Government of India, in para. 5 of its Despatch No. 324, dated 15th October 1889, laid great stress on the unanimity of local opinion in its favour. The High Court believes that the Government of India is mistaken on this point. It does not appear that the Judges of the Small Cause Court, the Bar, the Attorneys or the Native Mercantile Community were consulted on the proposed changes, and the generally favourable opinions recorded by the Chamber of Commerce and by the Trades Association, seem to have been based on a misunderstanding. These bodies were informed, in the letter of reference,* that "The High Court will of course be competent to call up cases to their own file and it is understood that they will readily exercise this power in all cases involving questions of mercantile law and usage."

* Communicated to the High Court with G. O. dated 30th January 1889, Judl., No. 109 R.

10. The High Court desires emphatically to repudiate any such understanding as one for which they are in no way responsible and which in point of law must be wholly inoperative. It is impossible however to say what weight may have been attached to this supposed understanding by the bodies consulted nor can their approbation of the measure which was described to them be said to raise any inference in favor of the present measure, inasmuch as the two measures differ in several important respects. Moreover, the High Court learns that the Chamber of Commerce approved of the measure only "provided the services of a sixth Judge of the High Court are not dispensed with until it is satisfactorily established that the relief afforded by the proposed change will reduce the work of that Court to dimensions that can be efficiently dealt with by a smaller number of Judges than six".

11. This leads to a consideration of the effect the introduction of the scheme will have on the work of the High Court. In this connection I am to premise that the

Honorable the Judges view with favor the design of economising the judicial power of the High Court by constituting an inferior and cheaper tribunal for the determination of suits of low value and comparatively smaller intricacy and importance, but their Lordships are firmly convinced that the measure must fail to realize the hope of the Government of India, not, it is true, very sanguinely expressed, that the necessity of continuing permanently the appointment of a sixth Judge may be avoided by its means. As this is apparently the sole aspect of the measure which has received attention at the hands of the Government, the High Court considers it desirable to examine it in detail.

12. It will be within the remembrance of the Government that in 1885, when exceptional personal exertions on the part of the Judges of the Court had effected a great reduction in the arrears, the plan of carrying out this transfer of jurisdiction was proposed by the Honorable the Judges as a means to "avoid the necessity for the appointment of an additional Judge of the High Court, at all events for a time," but the belief that the measure would have this result, which was felt then, had entirely vanished when after a lapse of two years, nothing had been done. At the close of 1886 it became clear to the High Court that there was no possibility of overtaking the arrears except with the assistance of a sixth Judge. It was again pointed out to the Government that "the Judges have always felt grave doubts if the contemplated transfer of jurisdiction would afford material relief", and it was stated that as the expedient had not been adopted on its first proposal, at a time when the reduction of arrears that had with difficulty been effected afforded a favorable opportunity for a fresh start, it could no longer be of any avail to enable the postponement of an addition to the strength of the Court.

Letter No. 535, dated 27th February 1885.

Letter No. 123, dated 22nd January 1887.

13. From that time there has been a continuous growth of the Appellate work of the High Court and the case for the permanent appointment of the sixth Judge has become far stronger than before. Since 1886, when the relief that would be gained from a transfer of jurisdiction such as the present Bill designs was declared by the Court to be wholly inadequate, there has been an increase in civil appellate work of over 17 per cent., and even excluding Revision Cases, (which the Secretary of State for reasons that the High Court does not appreciate, has refused to recognize as a substantial portion of the Court's work, though they undoubtedly occupy considerable time), the increase exceeds 16 per cent. During the two years 1888 and 1889, the High Court has had a strength of six Judges, and the out-turn of work per Judge has been maintained at a substantially higher level than the average of the five years ending 1886. Nevertheless it has proved impossible to keep pace with the current appellate work of the Court, and in 1888 there was a large accumulation of arrears which was not materially reduced in 1889.

14. At the same time there has been a progressive increase in the number of suits instituted on the Original Side, doubtless attributable to the greater promptitude with which they are determined, and in 1889 the disposals did not equal the institutions. As regards Criminal Appeals, that year may be regarded as abnormal one, since the number instituted was 520 against 495, the average of the preceding 7 years. Thus under the present conditions the Court with a strength of six Judges is with difficulty able to keep pace with the work coming before it in an ordinary year.

15. The best point to consider is the amount of relief that will be afforded to the High Court by the contemplated transfer of jurisdiction. The whole number of original suits instituted in the High Court in the last five years (1885-89) was 1647 or an average of 329 per annum. Out of this aggregate number, 537 were suits of value not exceeding Rupees 2,500 which would come under the new jurisdiction of the Small Cause Court, and 169 were suits which, from their nature, would have been cognizable by that Court but of which the value is not now ascertainable. Supposing that half of these 169 (say 85) would have been triable by the Small Cause Court, the total number is 622, or an average of 124 annually. This is 38 per cent. of the number of suits filed, but it must not be supposed that there will be a proportionate

reduction of the whole work of the Court in the Original Side or that the reduction, so far as it goes, will represent a clear gain to the Court. The work involved in the remaining cases, which are from their superior value of greater importance, will be proportionately greater, and there necessarily remains a great amount of work unconnected with suits, *e. g.*, applications in the matter of infants, applications for probate, execution proceedings in old suits and suits now pending and the like.

16. Again, it may safely be assumed that the proportion of appeals will be considerably higher in the case of the transferred suits than it is now that those suits are tried by a Judge of the High Court. On this point I am to quote the remarks of that learnad lawyer Sir Henry Maine, recorded in a minute bearing date 30th April 1867, with which the Honorable the Judges are in entire agreement. Commenting on the low proportion of appeals from the Original Side of the High Court at Calcutta, he says "The reason of this is doubtless partly that litigants belonging to an intelligent community are generally satisfied with the decision of a competent Judge, but partly also that the appeal lies to the Judges who are of very much the same ability and dignity and who are habitually adjusting their judgments to the same common course of decision as the Judge who passes the original orders." And again "are we certain that if we found a subordinate tribunal of original jurisdiction, we shall not be devolving on the High Court under the name of appeals exactly the same work which it now performs under the name of original trials? It may be possible to find a competent Judge or Judges for the Lower Court though the difference in pay will assuredly in the long run correspond to a difference in ability or experience. But however competent be the Lower Judge, his Court will always be an inferior Court, and litigants, confident in the merits of their own cause, will always be under a stronger temptation than at present to take their chance of reversing an unfavorable decision." And again "the slightest suggestion of inferiority in the Lower Court would cause the appeals to multiply and thus the work which is now done once for all would be done twice over. There would be more litigation and no saving but a loss since the Appellate Court would have to be kept at its full strength."

17. And it is necessary to guard against losing sight of the fact that a large number of the new suits which the provision of the cheaper tribunal will bring into existence will eventually find their way into the High Court in the shape of appeals. The appeals, it must be remembered, will be Regular Appeals in which it will be open to the parties to go into all the facts. The time which such appeals occupy bears a high ratio to the duration of the original suits, and they must come before a Divisional Bench of two Judges. Bearing in mind then, the considerations as to the increase of litigation to be looked for, set out in para. 4, and remembering that in the Mofussil, appeals are lodged against over 42 per cent. of appealable decrees passed, it may be confidently predicted that the amount of additional work received on the Appellate Side of the Court in consequence of the new jurisdiction will not be appreciably less, while it may prove to be very much greater than the gain on the Original Side by the transfer of 124 suits.

18. But besides transferring to the Small Cause Court part of the ordinary civil jurisdiction now exercisable by the High Court, it is proposed to free the latter tribunal from part of its work in connection with insolvency by conferring jurisdiction in such matters up to a limited extent on the Small Cause Court and by empowering the Commissioner in Insolvency sitting as a Court for the relief of Insolvent debtors to transfer to the same Court for disposal petitions in respect of matters to which the same limitations apply. The Honorable the Judges observe that when the question of effecting such a change was discussed in *1879, the opinion of the High Court was in the main favorable to the transfer. The only objection suggested to the plan was that based on the score of cost. In the smaller Insolvency cases there is rarely such a balance as to afford a substantial remuneration to the Official Assignee, for these cases are not necessarily the least troublesome, and if that Officer were required to take up all cases without regard to the amount of the assets, it might be found necessary to give a fixed salary in order to retain his services.

* Government Order No. 1247, dated 27th May 1879.

19. But there is a more radical objection to the system which the present Bill proposes to create, in the possibility that a direct conflict of jurisdiction may arise from the administration by the two Courts of different systems of Insolvency Law in the same area. The provisions of the Procedure Code are in more than one respect less favorable to the debtor than the Insolvency rules followed in the High Court, and in cases falling within the new Insolvency jurisdiction, it is not at all improbable that a debtor and his creditor may simultaneously seek relief in the two different Courts. There is also the anomaly of applying a law of greater stringency to one class of bankrupts than to another class in exactly the same position, except as to the amount of their liabilities or assets.

20. I am also to point out that before the last amendment of the Presidency Small Cause Courts Act in 1882, the power with which the Court was invested under Chapter XX of the Civil Procedure Code was withdrawn. The reasons for the step are not within the knowledge of the Honorable the Judges, but they will probably be found worthy of consideration in reference to the matter now in hand.

Vide Government Order 445, dated 11th March 1879, para. 2.

21. As to the effect which the change will have on the work of the High Court, the Honorable the Chief Justice, after experience of six months continuous working of the Insolvent Court, over which he has presided since the commencement of the current year, is of opinion that no material relief will be afforded. It will, his Lordship considers, still remain necessary to have a session of the Court once every two or three weeks as at present, and the reduction in the duration of each sitting which the transfer of the smaller cases would entail would not be so great as to enable the Commissioner to take up any other branch of work on the same day.

22. The total result is that the net amount of judicial power which all the proposed changes will set free for application to the work now coming before the Court will be considerably less than the full strength of one Judge, and supposing that the new measure does enable the Court, in the course of time, to effect a substantial reduction of the arrears, such a development of litigation is certain to ensue thereupon that the current work of the Court will increase to a degree which will call into requisition the full working capacity of six if not of seven Judges.

23. I am to remind the Government that a great increase of civil litigation is the natural and inevitable result of the extensive development of the country in material resources and of the advance in education and civilisation of the community which have marked the last three decades, while the additions which, as a direct result of the improvement in education, have been made annually of late years to the number of highly trained legal practitioners throughout the country, tend in the same direction. It is not reasonably to be expected therefore that a High Court of the numerical strength which was found sufficient in 1862 can suffice for the greatly increased requirements of the present day. The time for considering such a measure as the present Bill as an expedient for postponing the permanent addition of one Judge to the strength of the Court has long passed. The particulars given above of the growth of the Court's work make this abundantly clear, and in considering the financial effects of this measure, the Government must regard it as an established necessity that six Judges at least are essential for the proper performance of the High Court's work.

24. Before quitting the subject of the financial result of the scheme, I am to state the opinion of the Honorable the Judges that not one, and possibly not even two additional Judges of the Small Cause Court will be able to cope with the litigation which will arise under the new jurisdiction. That Court with its present strength is only just able to dispose of the work coming before it with the despatch that ought to characterise procedure in small causes, and can certainly spare none of its present judicial power for devotion to the new class of suits, while its ministerial establishment is fully provided with work. Unless therefore the whole benefit which the Bill will confer on the public is to be sacrificed—and this will be the result if for the check on litigation which has hitherto been supplied by the comparatively

costliness of High Court procedure, is substituted the repressive influence which excessive delay in disposal will exercise—the Government must be prepared to incur a much greater expenditure on the Small Cause Court than seems to be anticipated in the correspondence with the Secretary of State.

25. Turning to the detailed provisions of the Bill, I am to state at the outset that the High Court as at present constituted takes a strong exception to the application of peculiar legislation on this subject to Madras. It impairs the uniformity and symmetry of the system of legislation for the Presidency Towns. But a more specific reason for this disapproval is to be found in the clumsiness of the expedient which has to be adopted in order to confine the change in the law to Madras. Section 19 of the Presidency Small Cause Courts Act XV of 1882 expressly states that the Small Cause Court, a tribunal created by that Act, shall have no jurisdiction over certain classes of suits, but the present Bill, without professing to repeal or modify the Act proposes to enact that the Presidency Court of Small Causes at Madras *shall* have jurisdiction over certain of those suits. Thus there will be in existence two Acts relating to the Small Cause Court containing diametrically opposite rules.

26. But whereas the objection stated lies chiefly against the form and method of the proposed legislation, certain features of the measure, contained in Sections 3 and 4 of the Bill, are open to fundamental objections upon which, I am to say, the Honorable the Chief Justice and the Judges cannot too forcibly insist.

27. Section 3, besides making provision for immediately conferring jurisdiction upon the Small Cause Court in ordinary suits up to a limit of Rupees 2,500, also proposes to empower the Local Government, by notification in the Official Gazette, to raise the pecuniary limit to any larger amount and the only restriction placed upon the exercise of this power is that it should have the previous sanction of the Government of India in its executive capacity. This is a proposition involving as it does the potential extinction of the original jurisdiction of the Court except in matrimonial, testamentary and admiralty causes, to which the Chief Justice and the Honorable the other Judges feel an invincible repugnance. In the first place, the proposition assumes that the Indian Legislature can lawfully deprive the Court of a jurisdiction conferred upon it by Letters Patent granted under an Act of Parliament. Notwithstanding the decisions reported in 14 Bengal, page 106, and I. L. R., Calcutta, IV, page 172, it is, to use the words of Sir Henry Maine, "questionable whether the reservation "contained in Section 7 of the Act of 1861 and in the Letters Patent implies a permission "to destroy one constituent element of the Court altogether."

28. But passing from the legal question to the question of policy, the Judges are at a loss to understand for what reason it is proposed to incorporate a provision of so sweeping a character in the Act. At no period during the discussion on the subject of the enlargement of the Small Cause Court's jurisdiction, ranging over the last twenty years, has the present proposal been hinted at or foreshadowed and the Judges are not aware of any circumstances since the date of the abolition of the Supreme Court which should make it expedient in the interests of the public that the High Court, in so far as it is a successor of the Supreme Court, should also be abolished. On the other hand, they are convinced that a radical change in the constitution of the Court, which would be destructive of the two English branches of the legal profession, would be most prejudicial to public interests.

29. It may be said that it is premature to discuss the possibility of action being taken by the Government under the power conferred upon it by Section 3 and that even if any such action were in contemplation, it would not go beyond an extension of the jurisdiction of the Small Cause Court to suits valued at Rupees 5,000. But the Judges are clearly of opinion that when it is proposed to confer on the Executive Government power to make any legislative enactment operative, it has first to be determined, whether under conditions not actually present but within the range of practical possibility, it is expedient that such an enactment should receive the sanction of the Legislature. By the mere fact of the Legislature conferring on the Government a power to reduce or abolish the original jurisdiction of the High Court, it

is assumed that occasion is likely to arise for the exercise of that power, and when once such a power has been conferred, it would be too late to contend that it was inexpedient that the jurisdiction of the High Court should be tampered with.

30. In the opinion of the Judges, it is therefore not premature to consider now the expediency of the action which under the 3rd Section of the Bill the Government would be empowered to take. There is this further objection to the proposed legislation that it places the jurisdiction of the Court at the mercy of the Executive. It is not fitting that any High Court should be placed in such a position with regard to the Executive nor is it desirable, in the interests of the public, that it should be made possible to alter the jurisdiction of two Courts of original jurisdiction in the Presidency Town without the discussion and consideration which legislation involves.

31. It would be parting with powers and privileges which the Crown has by Letters Patent conferred on the High Court if the Judges were to consent to any such proposal, and they must protest against the design to empower the Government to interfere indefinitely with those powers and privileges, whenever it may see fit, without the necessity for first obtaining the advice and approval of the High Court.

32. The observations above made apply in a great measure to the provision of Section 4. It is proposed that the High Court should be absolutely deprived of its jurisdiction in cases below a certain value, and it is not certain that the jurisdiction of the High Court conferred by the Letters Patent can legally be curtailed in this way except by an Act of Parliament. So far as the Judges are aware, there is no precedent for such legislation with reference to a superior Court either in this country or in England—and on the contrary the provision here made in the Civil Procedure Code requiring suitors to institute their suits in the Court of lowest jurisdiction is so framed as not to exclude the jurisdiction of the Courts of higher jurisdiction. The provision with regard to costs contained in the present Small Cause Courts Act has been found amply sufficient to deter suitors who might resort to the Small Cause Court from resorting to the High Court and the Judges believe that no further precaution is required.

33. Section 6 of the Bill proposes to give the Small Cause Court jurisdiction in all cases of insolvency in which the "property" of the insolvent appears to be not more than Rupees 2,500 in value. It appears to the Honorable the Judges that it is very undesirable to take as the standard for determining jurisdiction the value of the 'property'. In the first place the meaning of the word 'property' is ambiguous. It may signify only the balance available for distribution, or it may include the full value of mortgaged property. It can hardly be meant to include property which, though not belonging to the debtor, is in his possession or custody. Yet important and difficult questions may arise in the Insolvency proceedings with respect to such property. The Honorable the Judges consider that regard should be had rather to the amount of the debt than to the amount of property. There is some probability that the questions to be decided will be comparatively simple when the amount of the debt is small. At what figure the amount should be fixed is a question to be decided with reference to the records of the Insolvency Court. Because Rupees 2,500 is the fair amount at which to limit the jurisdiction of the Small Cause Court, it does not follow that the same figure can safely be applied when Insolvency is in question, either to property or to debt.

34. Advertence has already been made to the omission of the draft Bill to make any provision for the levy of fees on suits instituted under the new jurisdiction which it proposes to create. Fees will not be chargeable under the Court Fees Act because that Act excepts the Presidency Small Cause Court from its operation (Section 6) and they cannot be held to be leviable under Sections 71 and 72 of the Presidency Small Cause Courts Act in the case of suits excluded by that Act from the jurisdiction of the Small Cause Court. Moreover there is no provision for the levy of fees on processes in cases of such value that they do not fall under Schedule 4 of the Small Cause Courts Act.

The Honorable the Judges assume and have assumed throughout their consideration of the measure that it is intended to levy *ad valorem* fees in suits under the new jurisdiction. If, on the contrary, it is proposed to transfer, with the suits, the High Court system of fees which is now applicable, the principal ground on which the changes can be supported, namely, the relief they will afford to those suitors who now find the expense of litigation beyond their means, or disproportionate to the value of the matter in dispute, will entirely disappear. But though *ad valorem* institution fees on the scale prescribed by the Court Fees Act or that of the Presidency Small Cause Courts Act will be advantageous in cases where the matter in suit is of low value, they will form a heavier burden than the existing fee in the High Court on all suits over Rupees 400 in value. Whereas the institution fee under the Court Fees Act in a suit of value Rupees 2,500 would be Rupees 155 and in the Presidency Small Cause Court would be Rupees 168-12-0, the same suit could be instituted in the High Court on payment of Rupees 30, and in the case of an undefended suit there would be but a trifling subsequent expenditure in Court Fees. This consideration furnishes an additional reason, if more be wanting, against the proposal to oust the jurisdiction of the High Court over suits which fall within the new jurisdiction.

35. The views of the High Court expressed above may be summarized as follows:—*First*, the Honorable the Judges are disposed to approve of the measure so far as its effect will be to create a cheaper *forum* for certain classes of actions which will not endure the expense entailed on suitors under the present system, but they would point out to the Government that the consequences of providing such a tribunal are likely to be more far-reaching and serious than seems to have been anticipated.

Secondly:—The measure, in exact proportion as it proves beneficial to one section of the public by providing an accessible tribunal will, if the jurisdiction be conferred on the Small Cause Court, be injurious to the interests of a larger and equally important class by diminishing the efficiency of that Court in the branch of work which must always remain its primary business.

And *lastly*:—The Honorable the Judges strongly condemn the proposals to place the continued existence of the Original Side of the High Court at the discretion of the Executive Government, and to limit the liberties and privileges of suitors in Madras and deprive them of the right they have always possessed of suing in the High Court.

37. I am now to state the views of the Honorable the Judges on certain changes in the establishment of the High Court which, with the approval of the Secretary of State, it is proposed to introduce simultaneously with the creation of the new jurisdiction.

38. It is proposed to make the Registrar on the Appellate Side, Registrar of both sides of the Court and to substitute for the Registrar on the Original Side a Deputy Registrar on the pay of Rupees 1,000.

A majority of the High Court, as at present constituted, is greatly averse to the proposed subordination of the chief officer of the Court on the Original Side and consider it would be a mistake to abolish the office of Registrar on that side of the Court. The objections to the proposal were well stated in a letter written by the late Chief Justice, Sir Colley Scotland, at the time when, on the creation of the High Court, this subject was once before discussed. Referring to the work of the Registrar of the Original Side he writes:—"It has become very considerable and it is in every respect dissimilar from that of the Registrar on the Appellate Side and requires special qualification and training. For the discharge of these duties the Registrar should, in my judgment, continue the chief officer in civil and ecclesiastical matters on the Original Side with independent ministerial responsibility, and the Registrar on the Appellate Side the same in matters of appeal. The distinction to be retained in this instance is accompanied by, as I have said, a very material difference in the duties and qualifications of the two officers, and in my opinion the suggested present change in designation would tend, without any advantage, rather to weaken the strictness with which the Judges regard the responsibility of each chief officer, and to impede the active and efficient discharge

of the business of the Court." (Letter dated 21st March 1863). There has since that time been no such change of circumstances as to deprive this opinion of any of its force, and Sir C. Scotland's reasons would hold good even if a large percentage of the original suits were withdrawn from the High Court. It must be remembered that, as stated before, the remaining suits, the number of which may become much larger than the present figures indicate, are far the most important, and must give proportionately more work to the Registrar. The business of taxing costs in suits in which Solicitors are engaged would still be very considerable. Assuming that a competent man could be found amongst the Solicitors to accept the post at a salary of Rupees 1,000, it is not clear to the Judges that any advantage would be gained by making him subordinate to the Registrar whose work would be chiefly on the Appellate Side. Practically the latter, who is usually a Covenanted Civilian, holding his office for a short time only, having no technical knowledge, and having his time fully occupied with his own special work would exercise no control over the chief officer on the Original Side. It is very doubtful whether for a salary of Rupees 1,000 it would be possible to find a Solicitor competent to do the work now required of the Registrar of the Original Side and other *quasi*-judicial work which may be delegated to him, and the difficulty would certainly be increased by making its holder subordinate to the other Registrar.

39. The High Court is unable to concur in the proposal to assign to the Deputy Registrar to be appointed to the Original Side the duties which are now performed by the Clerk of the Crown. The desirability of continuing this office was fully discussed in 1887 in connection with a proposal of the Finance Committee to combine it with that of Crown Prosecutor, and, on full consideration, the Honorable the Judges in their Registrar's letter No. 512, dated 3rd March 1887, after describing its duties and responsibilities stated that they were "opposed to the abolition of the Clerk of the Crown as a separate office". The High Court adheres firmly to the same opinion on the subject. Even if it were determined to amalgamate the office with another, that of the Deputy Registrar, Original Side, is one very ill-suited for the purpose. The Clerk of the Crown has to be in constant attendance in Court during each of the four annual Criminal Sessions which occupy on an average 6 days each and it would seriously impede the despatch of the business of the Civil branch of the Original Side and materially prejudice the interests of the suitors if the Deputy Registrar were withdrawn for such lengthened periods from his legitimate duties.

40. The High Court is also under the necessity of expressing regret at the suggestion made with regard to the Deputy Registrar, Appellate Side. The Secretary of State would defer the operation of the arrangement by which this officer is to have a salary on increasing scale (Rs. 700—1,000) till the office of Clerk of the Crown is abolished, but on what principle or what consideration this decision is based the High Court is unable to conjecture. The offices are in no way connected nor will the abolition of the Clerkship of the Crown as a separate office at all affect the work of the Deputy Registrar, Appellate Side, which fully deserves the new scale of pay now and will have no better claim to it after the abolition of the Clerkship of the Crown. So far from there being any justification for postponement of the long expected increase, I am to point out that the High Court in its letter No. 3,030, dated 12th December 1889, laid before Government a scheme which had for one of its objects the anticipation of the step by the appropriation to the purpose of Rs. 300 out of the pay (Rs. 550) of the office of Judges' Clerk, which was then vacant and in place of which the Chief Justice proposed to create two Bench Clerk-ships to be provided out of the balance (Rs. 250) of the Judge's Clerk's pay. The Government accepted and forwarded to the Government of India the proposal to abolish the Judges' Clerk's office and to appoint two Bench Clerks to do the work, but with regard to the other portion of the proposal, stated that the contemplated increase to the Appellate Side Deputy Registrar's pay was contingent on the transfer of jurisdiction now under discussion. In reply, the High Court showed, in letter No. 470 dated 24th February 1890, that the increase of pay was not necessarily contingent on the said scheme being put into effect, but that it had become fully deserved on account of the growth of the work, and a request was made that the proposal might be considered even though that scheme should be negatived—but owing to the arrival, in the meantime, of the Secretary of State's Despatch approving the scheme,

this letter never went beyond the Local Government. As matters stand, the Secretary of State's direction that the augmentation of the Deputy Registrar's pay is to be conditional on the abolition of an office *which the High Court deems it essential to retain* will, until formally cancelled, remain an effectual bar to an addition to Mr. Morgan's pay, and the High Court trusts therefore that its recommendations on the subject contained in the letters quoted may be forwarded to the Secretary of State with the request that he may be pleased to sanction at once the increased scale of pay for the Deputy Registrar, Appellate Side, to be met from the source indicated, and in consideration of the unanimous testimony of the High Court to the deserts of Mr. Morgan, the present incumbent, and of his service of over eighteen years, to allow him to enjoy the maximum pay of Rupees 1,000 forthwith.

41. The last point to which I am to allude with reference to the effect the proposed measure will have with regard to the individual officers of the Court establishment is the position of the present incumbent of the office of Registrar, Original Side, and the provision which it is proposed to make for him should the enactment of the present measure result in the abolition of his office. When the subject was discussed in 1885, it was assumed that the appropriate course would be to appoint this officer to the fourth Judgeship of the Small Cause Court, which it is part of the plan to create, and to grant him a personal allowance sufficient to raise his emoluments to the level of his present pay of Rupees 1,500. But the fact was overlooked that under the Act regulating the Small Cause Court it is imperative, owing to the present composition of the Court, that the fourth seat should be filled by an advocate of one of the High Courts of Calcutta, Madras or Bombay, and as Mr. Steavenson does not possess such qualification he is not eligible for the appointment. The High Court would be glad to be informed what other provision it is proposed now to make for Mr. Steavenson, for it is clear that without adequate provision being made, his services ought not to be dispensed with.

42. The Judges of the High Court think it very probable that the work on the Original Side will not be decreased materially by the introduction of the new scheme. It has been found by experience that if intending suitors are aware that their causes can be tried without delay many suits are brought which under other circumstances would never be proceeded with, and it may well be that although the Original Side may be relieved of a certain number of causes of comparatively small value, yet their place will be supplied by an increase in suits of a larger value and more intricate character.

43. It will probably, therefore, be eventually found impossible to carry on the work of the Original Side, even after the transfer of jurisdiction, with any smaller establishment than that hitherto entertained and, this being so, it would be very inadvisable to put into effect the reductions proposed simultaneously with the passing of the Act, as the Secretary of State suggests. In the opinion of a majority of the Judges, the best plan would probably be to defer the introduction of all the changes in establishment except that referred to in para. 40, till some experience of the effect of the new Act shows whether they are really feasible, and I am to suggest that the fairest way of dealing with the present Registrar of the Original Side would be to postpone any change in his office till it becomes vacant.

I have the honor to be,

Sir,

Your most obedient servant,

Officiating Registrar.

Cost 5 pence Copies.

C No. 3574.

Judicial {1890} Department.

No.

From

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

Dated 3rd September } 1890.
Received 4th do.

SECRETARIAT OF INDIA
04 SEP 90
Department of Revenue

No. 2165.
Exc. 5 Pages.

Submitting the views of the High Court on the details of the proposal to enlarge the jurisdiction of the Presidency Court of Small Causes, &c. with reference to G.O. No. 691, Judicial, 9th September 1890 and the draft of a Bill on the subject.

[5] DEPARTMENT. 90

Papers to be read in Proceedings :—

Again G.O., dated 9-5-91 18 , No. [illegible]
Again G.O., dated 18 , No.
Current No. of 18 , dated from

Current No. 3574 of 1890 , dated 3 Sept. from Secy. of the High Court

Ans. F.S. dtd. 11th June No. 1770

The Bill of India will be addressed to the proposed reorganization of the establishment of the City Court has been considered by the Secretary of State, the scheme in its main features appears to have original with the High Court & its adoption has decided upon only after careful consideration. Under these circumstances it is not desired to oppose the passing the various changes sanctioned in the Secretary of State's despatch dated 9th Jan. 1890 (Judicial) will accordingly be carried into effect from and after the 1st April 1891, from which date as a temporary measure the office of Clerk of the Court will be created, the Judge

3/11/90
9/11

being in future postponed
by the deputy registrar in
the [illegible]

3. The Govt. agrees with the High
Court in [illegible] regarding
Mr. J. Sharma's claims
as entitled to consideration
& will be prepared to recom-
mend to the Secretary of State
the grant of a personal allowance
of Rs 100 per mensem should
Mr. Sharma be sitting in
except the post of Deputy
Registrar on the Original
side in the new scheme.
In this way Mr. Sharma
will suffer no pecuniary
loss by the change. ~~[illegible]~~
and the High Ct. is requested to
~~[illegible]~~ inform that gentleman
to report at once whether he
accepts this offer, pointing
out to him that he may
otherwise be in a precarious
position. The Secretary of State
~~[illegible]~~ is requested
to sanction a fixed pay of
Rs 1000 per mensem to Mr.
H. Morgan in case he comes
in the post of Deputy Registrar
on the original side, that
the arrangement is fixed.

(Sd) [illegible]
[illegible]

Sd/- [illegible]
[illegible]

(Sd) [illegible]
[illegible]

(Sd) [illegible]
[illegible]

(Sd)

It will be observed that the Supreme Court in its letter dealt not only with the draft Bill but also with the other proposals upon which comments were not specifically called for but which are closely connected with the revision of the High Courts' jurisdiction. These proposals are the abolition of a fifth Judge, the re-organisation of Subordinate Courts, the jurisdiction of a single Judge of the High Court, the [illegible] of appeals upon a [illegible] involved ~~[illegible]~~ it will be convenient to deal with the objects of the draft Bill in the sequence for which such objects have been given in the connected section referred to above.

The first object of the Bill is to give the frequency of jurisdiction of the Madras Small Cause Court and the second ~~[illegible]~~ is a modification of the restrictions as to the [illegible] of the Small Cause Court which appear in section 19 of the Presidency Small Cause Courts Act.

Subject to the [illegible]

the Bill in which provision is made for the above two objects the High Court makes several observations. In the first place the Hon'ble the Judges point out that the Bill contains specific provisions for the transfer of suits falling within the extended jurisdiction of the Small Cause Court, and they suggest that this is unnecessary and retrograde. Without a change in the law the fees chargeable under the Court Fees Act in the Presidency Small Cause Court cannot be levied upon the suits ~~[illegible]~~ which are within the original jurisdiction of the Small Cause Court and it is, moreover, a very debatable question if the arbitrary system of fees in force in the High Court appears to be fair or reasonable. The effect would be that the question is left of a person who has filed a suit upon such pleading within the extended jurisdiction of the Small Cause Court would be liable to pay the same fees as would be payable if the suit had been filed in the ordinary Court.

at the same time it will
secure the recovery
of such debts by the
Court so as to cover such
fees, sums exceeding £2000
in value.

~~The system which has~~
~~helped to the system of fees~~
~~which prevails in the Recording~~
~~Small Cause Court not is~~
~~[illegible]~~

If the above suggestion be not
approved the only course
will ~~[illegible]~~
~~[illegible]~~

The amendment of the Court
Fees Act, which is the only
alternative of the above pro-
posal, ~~would be impracticable~~
~~[illegible]~~ cannot be carried out
without a complete alteration
in the system of fees levied
in civil of all Courts before
the Prov. S. C. Courts for
Account other reasons the
[illegible] retention of the
system ~~introduced by Act XV of~~
~~1872~~ appears preferable.
~~[illegible]~~
It is true in fact that the
[illegible] of litigants
[illegible] in the amount of
fees in the Small Cause Court
[illegible] of the Court Fees Act
[illegible] the Small Cause Court

present state of affairs
which arises, in the
opinion of the Judges,
from a practical denial of
justice to a not insignificant
portion of the inhabitants
of the city he is quite of
opinion that the present
cost of litigation should not
be decreased to ~~[illegible]~~ highly
to avoid the danger suggested
above or not to afford relief
to the poorer classes of
suitors the fees leviable under
Act XV of 1872 seem admirably
suited adapted, for in this
for small cases, they be
between the Civil Court fees
the fees levied under the
Court Fees Act.

4. The system in the Bombay
Fees is not known to the
only ~~[illegible]~~ respect by
the High Court against the
proposed extension of juris-
diction. The Judges
cannot ~~[illegible]~~ hesitate
to be of the Small Cause Court
but be small cause or
~~[illegible]~~ definite proceed
in such a court of small
cost of the nature of small
cause proceedings

of the Cause
Course he to

different procedure in practice would be confusion. As regards these lines of an Act to state that they are not shared by the in the opinion of the Bill as it stands the main business of a Small Cause Court ~~but the Small Cause~~ Jurisdiction the same Evidence side by side of two different modes of procedure afford no grounds for supposing that difficulties will be found to result therefrom. Apart from the fact that a double procedure exists in the Courts of all Executive & Revenue Officers, Judges & Magistrates & produces none of the evil effects apprehended by the High Court, it is to be remembered that a Presidency Court held a totally different opinion, & in a letter to the Govt. dated the 27th Feb. 1885 [illegible] the objections taught against the adoption of the rules of procedure & evidence with regards the practical effect of the Bill then before the Council as the Govt. of N.W.P. in C. [illegible]

4.

On the third objection of the Bill is the sine power to the local Govt. to cause the pecuniary limit of the jurisdiction of the Small Cause Courts, by notification in the Gazette this power being exercised only at the authority of the Govt. in C.

The Hon. the Judges objection strongly to this provision & state that Govt. in C. acted with the High Court in this matter & that the portion of the Bill which refers to it is of a retrograde character & that the nature should be left to the Legislature & not to the Executive. The Judges state that the intention of the Legislature should be the extent proposed & the public should have the opportunity of expressing their views on the question of extending the jurisdiction of the Small Cause Courts upon consideration. For these reasons it appears necessary to restrict the power of raising the limit of the jurisdiction of the Courts to the Legislature & to leave it as much as possible

the main object of the
Bill is to ~~[illegible]~~ abolish
the concurrent jurisdiction
of the High Court in bankruptcy
[illegible] to the Court of Bankruptcy
[illegible] cases where
[illegible] to say that
the Act is entirely in favour
of the position of the Bill
& is made to regard the
objections raised there to
by the High Court as apparent
~~[illegible]~~ — apart from the
legal objection — to justify
the continuance of the
present system.
The High Court ~~[illegible]~~ regards
the existing provision in section
122 of the Act of 1882 as sufficient
safeguard against the unnecessary
exercise of suits in the
High Court & observes that
the number of suits thus
advantage of the concurrent
jurisdiction is in a great
very small when the Bill
[illegible] can only remark that
the latter argument seems
to afford strong reason for
the retention & enlargement
which is admittedly section
[illegible] of.
The further question that the
present proposed bill could
be introduced into the
[illegible] branches of the legal

profession is supported by
no reasons of [illegible] weight
& ~~[illegible]~~ that in a letter dated
[illegible] Feb 1891 the High Court
held a different opinion &
drew attention to para 4
of a letter dated 23rd July 1892
1918, Judicial, from the Secy. to the
Govt. of India
It is the first object of the Bill to
give power to the Bankruptcy
Court to receive applications
for a declaration of insolvency
~~[illegible]~~ where the value
of the property does not exceed
Rs 2500, & the second object of
the Bill is to empower the Court
of insolvent debtors, though
the A.C. Court jurisdiction is
under Chapter II of 12 Vic. c. 21
where the property of the debtor
does not exceed Rs 2500 in
value.
It will be observed that the
High Court regards these
proposals with disfavour.
The objections raised have been
summarized as follows:—
"It is meant a large portion
of the High Court suits are
for the sake of insolvent
debtors, where the procedure
laid down in Chapter II of 12 Vic.
c. 21 the procedure is more

remedies of the debtor that
in the case cited the Civil Procedure Code
therefore difficulties are
likely to arise if the provisions
contained in the Bill become
law. These difficulties are
as the debtor & creditor will
naturally seek relief in
different Courts & (b) debtors
will be treated with varying
degrees of leniency according
as their property is above or
below a certain monetary
value.

(2) The question as to the territorial
jurisdiction should be decided
with reference rather to the
amount of the debt than
to the value of the debtor's
property.

9. Taking with the latter
proposal first I am of
opinion that the proper course
for the High Court is to frame
rules with regard to such
debts a sum fixed by the
Court of the territorial
jurisdiction of the Small
Cause Court with reference
to the amount of the debt
I suggest that this be done.

10. As regards the first difficulty
referred to in para 8 above
I am of opinion that
the difficulty may be met
by the fact that when the

creditor will seek relief in
different Courts has been
exaggerated for it will only
be getting the power of the
Court for the relief of Insolvent
debtors. Except the Small
Cause Court any application
made to it will be falling
within the jurisdiction of the
other Courts so this may
the difficulty suggested can
be avoided. The second
difficulty, namely, the varying
leniency shown to debtors
in consequence of the difference
in the methods of procedure
to be followed is a real one &
[illegible]

11. The second difficulty
referred to in para 8, namely,
the coexistence in the same
area of two systems of procedure
differing in degree of leniency,
the difficulty of which
is determined by a fixed
[illegible] is, I think, of a
serious nature & requires
careful consideration. The
Bill which ultimately became
Act III of 1882 originally
provided for the transfer
to Small Cause Courts of all
suits for debts [illegible]

[illegible] trades only as the [illegible]
[illegible] such cases are
likely to be of a simple kind
than those in which trades
are concerned & to this proposal
the Admiralty Court agreed
generally, the clauses were
however dropped from the
second draft of the bill on
the ground that it is of any
effect in the way of relief,
the ship court would be
necessary to give the small
claims court jurisdiction over
cases of such intricacy as
would make their removal from
the jurisdiction of the ship court
inadvisable. In the attempt
of which it seemed which
accompanied the original draft
of the bill which became act
XX of 1861 the objections to
the extension of the general
system of procedure in Admiralty
cases seemed almost
insuperable. The remedies
which have been suggested
by Sir Charles Pearson
of the jurisdiction conferred on the
ship court by clause 1 of the
act, it would be difficult
to see any way of avoiding
the difficulty. Still being of the
opinion that the court procedure could be
[illegible]

Still it is observed that the
decision just quoted was
arrived at in consideration
of the fact that the admiralty
jurisdiction of the small claims
court was to be limited to
cases of a simple nature,
whereas in the bill as now drafted
no consideration of the ~~complexity~~ nature
of the case is to be regarded
& the limit of jurisdiction
is determined solely with
reference to the amount
involved.
The difficulty is a real one
& unless a portion of the
jurisdiction conferred on the
ship court by clause 1 of the
act is transferred to the small
cause court act XX of 1861 it
is hard to see any way of avoiding
a certain inequality of treatment
which ~~must~~ bill affect the
poorer class of debtors unfavorably.
12. It will be observed that the
ship court suggests that the
~~proposed~~ limit of 1250 in
the case of Admiralty jurisdiction has been examined
at in an arbitrary fashion.
In this connection it should
be noted that the limit of 1000
was proposed by the ship court

12. The draft Bill having been discussed, there remained the question of the establishment of the concession. It will be seen that the High Court ~~[illegible]~~ looks upon the retention of a fifth Puisne Judge as indispensable. It states that Art. 67 is in full accord with the High Court on this point. The relief afforded by the proposed Bill will be small & may be largely counteracted by a period of litigation & the existing staff of Judges is barely capable of coping with the work. It is the decided opinion of this Govt. that the present strength of High Court will never admit of reduction. In this connection & with attention to the remarks in paras 23 & 24 of the High Court's letter.

13. The proposal to reorganize the establishment of the High Court but (together regard to abolition of the block of the Crown) with the [illegible]

[illegible] in a letter [illegible] 4th March 1907 & [illegible] which [illegible] the [illegible] of India, [illegible] the High Court remarked that the proposal of fixing the limit at Rs 2000 had been arrived at after very full consideration. The Lieutenant Governor desires to say that Govt. is not doubtful of the desirability of maintaining the limit appearing in the Bill. In 1904 the Government decided by the High Court's case of Kuchbihar, in which the amount involved did not exceed Rs 2000. [illegible] of which that only [illegible] the Bench [illegible] that [illegible] the High Court [illegible] appeal [illegible] a [illegible] rule of [illegible] action in Bombay [illegible] of the King v. the [illegible] [illegible] officials [illegible] the High Court [illegible] have the limit of the jurisdiction of the C.C. in Bombay [illegible] that [illegible] the Committee [illegible] the [illegible] High Court [illegible]

of the Hon: the Judges on a
previous occasion, that
in fact it is not disposed
~~[illegible]~~ necessary to endorse
the objections now raised.
The reorganization of Esta-
blishment has already
received the sanction of
the Secretary of State, &
it is therefore unnecessary
to deal further with the
matter in this letter; the
Copy of the Proceedings of
the Govt. Commander & the
Govt. of India with this letter
will render clear the steps
which it is now incumbent on
Govt.

Place 25

[illegible]

ORDINARY PAPER

[illegible]

[illegible] 24/10

25/10

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]