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MADRAS RECORD OFFICE.

Government of Madras.

DEPARTMENT.

G.O. No.

Press
Mis.

Dated

18

Not to be folded or roughly handled

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—again the following papers:—

G.O., dated 23rd April 1891, No. 792, Judicial.

ABSTRACT.—Communicating to the Judges of the High Court and certain other officers letter from the Government of India, requesting opinion on the proposals for the amendment of the Presidency Small Cause Court Act, 1882.

G.O., dated 26th June 1891, No. 1257, Judicial.

ABSTRACT.—Communicating to the Judges of the High Court and certain other officers letter from the Government of India, making suggestions for facilitating the work of the Presidency Small Cause Courts.

READ—also the following papers:—

From the Chairman, Madras Trades' Association, to the Chief Secretary to Government, dated Madras, 28th May 1891.

I have the honour to inform you that, with reference to the proposed Bill to increase the jurisdiction of the Presidency Small Cause Court, the following points occur to the members of the Association:—

1. The alleged object of the Bill is to relieve the Original Side of the High Court by transferring to the Small Cause Court exclusive jurisdiction in all suits not exceeding Rs. 2,500, and the effect of the Bill will be to diminish the number of suits which are now brought in the High Court by about one-third. At present the Small Cause Court has jurisdiction with the High Court in all suits recognizable by the Small Cause Court, and if having to pay the costs of the High Court and the Small Cause Court, the plaintiff will have to establish that the High Court has no jurisdiction in the suit, and that the Small Cause Court has jurisdiction. The Bill will not be a notification of the jurisdiction of the Small Cause Court, but a transfer of jurisdiction.

It is possible that the Government may have been misled by the statement of the Chairman of the Association, who says that the High Court has no jurisdiction in suits where a plaintiff sues in the Small Cause Court, and that the High Court has jurisdiction in suits where a plaintiff sues in the High Court. But, as afterwards appears in appeals to the High Court that an additional Judge to the Small Cause Court, and the transfer of jurisdiction would enable the additional Judge now acting in the High Court to act in the Small Cause Court (excluding the Chief Judge) of the Small Cause Court, it would affect a saving to Government, but it would be compelled to sue in an inferior tribunal, and in the High Court. But, as afterwards appears in appeals to the High Court that an

3. Small Cause Courts were established for the summary administration of justice and are not Courts of record; pleadings, except in a concise and simple form, are dispensed with. Appeals lie to the full bench of the Court itself on questions of law only, and references on questions of law can in certain cases be made to the High Court. In cases over Rs. 1,000 an application can be made to the High Court by the losing party for a retrial of the suit in the High Court before a single Judge. It is now proposed that all cases not of a Small Cause nature and not exceeding Rs. 2,500 in value should be instituted and tried in the Small Cause Court as regular suits subject to the general law as to appeals and procedure. It is also proposed to give a right of appeal to the High Court in cases ranging from Rs. 1,000 to Rs. 2,000 in value which are now tried summarily.

The effect of this will be to change the procedure of the Small Cause Court both in the system of pleading and by making it a Court of record, as in cases where an appeal is allowed, there must be a record of evidence to transmit to the High Court. In the result the work of the Appellate Side of the High Court will be largely increased. There will be no advantage to suitors, but the reverse. Important questions of mercantile law will be tried in the first instance before an inferior tribunal instead of by a High Court Judge, and not summarily but with the procedure of the High Court, and an appeal will lie to the High Court in the same way as it now lies from the Original Side. There will probably be no saving of time by trying a suit in the Small Cause Court instead of in the High Court. An example of this will be found in a Small Cause Suit, No. 824 of 1887, *LeFancheur vs. Hajee Muhammad Batcha Saib and Co.*, reported in the *Madras Mail* of 15th October 1890. This was a summary suit involving only Rs. 720, and it has through no fault of the Court been pending for over three years, judgment being delivered on the 14th October 1890. Had the proposed Bill been passed, and had the value of the suit exceeded the amount in which under the Bill an appeal would lie to the High Court, the defendant would now be in a position to prefer an appeal to the High Court, which would not in the regular course be disposed of for many months.

4. The question of cost has also to be considered. In the High Court, the court fee on filing a plaint and issuing a summons is Rs. 32 in suits up to any amount, Court fees of fixed amount are also levied on petitions and judges' summons and on Court orders when made, and on the hearing of the suit and on decrees and executions. These fees are levied under rules framed by the High Court itself under the powers vested in it. In the Small Cause Court, the court fee on filing a plaint is on an *ad valorem* scale. The Court fee in a suit value Rs. 2,000 is Rs. 142. Court fees have also to be paid on summons applications, subpoenas and executions. If the suit is reported settled before the hearing, half the filing fee is returned. If not, and the case is disposed of at the first hearing, the court fees largely exceed the amount which a suitor would have to pay in a similar case in the High Court and is a heavy tax upon justice. The fees levied by the Small Cause Court are levied under the Presidency Small Cause Court Act, Act XV of 1882.

As regards lawyers' fees, the attorney's costs in a High Court suit depend on the work done. Counsels' fees on final disposals are fixed by the Bar rules at 15 pagodas in cases under Rs. 2,500 and 25 pagodas in cases over that amount. Refreshers of counsel of the same amount are payable where the case lasts over a day and are all to the successful party. In the Small Cause Court the costs of attorney and counsel are fixed on an *ad valorem* scale; for example, in a case of the value of over Rs. 1,000 the attorney's fee for the whole suit is Rs. 61, and counsel's fee, where counsel is employed—and this is optional—is Rs. 100, being higher than (in fact nearly double) the fee allowed in the High Court. No refreshers are, however, allowed by the Small Cause Court scale to either attorney or counsel, and therefore the above fees only can be recovered by the successful party from his opponent. As a fact, however, where the case lasts over a day, refreshers have generally to be paid both to attorney and counsel, and these costs have to be borne by the successful party personally.

In a case like the one quoted above, the costs actually paid by the successful plaintiff will largely exceed the costs he can recover from the defendant.

The Bill, it may be observed, does not lay down any rule as to either court fees or costs. The present fees and costs in the Small Cause Court are only calculated on suits up to Rs. 2,000.

5. It is also proposed by the Bill to invest the Small Cause Court with insolvency jurisdiction under chapter 20 of the Civil Procedure Code in certain cases.

The Insolvent Court of Madras has jurisdiction in all cases of insolvency in Madras and has a staff of officers to carry out the work of the Court, which the Small Cause Court has not. A sitting by the Commissioner once a fortnight is at present generally sufficient to dispose of the judicial work, and therefore it does not appear that the Court is unable to dispose of the pending business or requires to be relieved of some of it.

A second Insolvent Court, with only the limited power conferred by the Civil Procedure Code, which does not give the Court the same authority to punish dishonest debtors as the Insolvent Court possesses, would not benefit the mercantile community.

On the whole, it does not appear to us that the mercantile community will be benefited if the Bill becomes law.

(Signed) C. SETON,
Chairman.

From the Chairman, Chamber of Commerce, Madras, to the Chief Secretary to Government, dated Madras, 18th July 1891.

The Chamber has considered the suggestions contained in the letter from the Secretary to the Government of India to the Chief Secretary to the Government of Madras, No. 445, dated 28th March, 1891, regarding Act XV of 1882, which are as follows:—

- (1) That the present pecuniary limit of jurisdiction of the Presidency Small Cause Courts should be altered, and the limit laid down by Act XXVI of 1864 reverted to.
- (2) That section 38 of Act XV of 1882 be repealed.
- (3) That an appeal to the High Court should lie in cases of value of over Rs. 1,000.
- (4) The adoption of a system of default summonses as permitted in the County Courts in England.
- (5) That the procedure of the Small Cause Courts should be regulated by the High Court.

With regard to suggestion No. 1, the pecuniary limit of Rs. 2,000 is, the Chamber considers, very high for a Court of summary jurisdiction, and, unless the right to appeal to the High Court is given in all cases of Rs. 1,000 and upwards, the Chamber would prefer that the limit laid down by Act XXVI of 1864 be reverted to. The Chamber does not consider that the Madras Small Cause Court has failed to fulfil the purpose for which it was created. On the contrary, taking into consideration the number of Judges employed, the work is disposed of with as much expedition as can be fairly expected.

With reference to the 2nd suggestion, the Chamber advocates that section 38 of Act XV of 1882 be repealed, and that an appeal be allowed in all suits of Rs. 1,000 to the High Court.

The working of section 38 in this Presidency has been unsatisfactory and costly. For instance, the suitor has to pay on filing his suit an institution fee; if he afterwards takes the suit up to the High Court under this section, he has to pay the same fee over again; and if the suit is re-heard, all the fees prescribed by the High Court for the hearing of a suit on its Original Side are, in addition, levied on the suitor.

With regard to the 4th proposal, the Chamber would be glad to see the system of default summonses, which prevails in the County Courts in England, adopted, with such modifications as may be necessary, in the Small Cause Court, and it thinks that,

with, and gives no judgment except upon what it considers to be legal proof of the debt sued for and claimed by the plaintiff, and does not, on the plea of want of time or pressure of work, give unconsidered judgments. As instances of where the Court does not accept a plaintiff's answer of "Yes" to a question "Does the defendant owe you the money," I may mention that the Court ascertains and determines whether the act for limitation of suits is applicable, and whether, when the suit is on a document requiring to be stamped or registered, that the requirements of the Acts relating thereto have been complied with. And in carrying out this system we have experienced no inconvenience, nor, do we think, have the public.

13. The inability of the Calcutta Small Cause Court to make an investigation as to the claim of the plaintiff and to obtain proof of it seems to be the main reason for His Lordship the Chief Justice being desirous of introducing the system which he testifies has been in operation with the best results in England since 1852, and if the inability existed in this Court, his suggestion for the substitution of proof of debts by affidavit, copy of which should be served with the summons on the defendant, would probably be accepted as good and practicable, but where the disabilities do not exist, I do not see the necessity of making a change in the system which, so far as this Court is concerned, has worked well and without inconvenience. By saying it has worked well and without inconvenience, I do not for a moment wish it to be understood that inconvenience is not experienced by some suitors by the necessity of their having to attend court and prove upon oath or affirmation their right to a decree, but I do not think that the enforcement of such attendance can be said to be a hardship, seeing that in every-day life, no rights or advantages can, as a rule, be obtained without some trouble. As to its working well, the long practice which has prevailed has established the rule, which is known and understood, that a person wishing the Court to undertake his "debt-collecting business" must, before the Court will undertake it, prove strictly and in its presence that the debt is due.

14. So much for the necessity of the extension of the proposed system to the Madras Court of Small Causes. Now as to its desirability. The reasons which appear to have been put forward to the Government of India are that it would relieve the pressure on Judges of the Presidency Small Cause Courts, and be less costly and more expeditious than the procedure at present in force in those courts. There can be no doubt that the proposed system would lessen the work to be done by the Judges, but, as at present advised, I do not think it would be less costly or more expeditious.

15. As to being less costly.—Before this can be said to be the case, it will be necessary to provide by legislation for any reduction in the fees to be charged. As the law at present stands, a non-appearing or an unsuccessful contending defendant has ordinarily to pay the institution fees and other costs to which plaintiff has been put and which he has paid and it would seem to be the same under 38 and 39 Vict., C. 50, for the saving of half the hearing fee in case of not giving notice to defend cannot under the present law here have any effect, as the institution fee covers the hearing, or rather there is no special fee charged for the hearing, and nothing in the papers accompanying the Government order under reply indicate in what way or by what means the cost of a default summons is to be less than an ordinary summons. It may be said that the plaintiff may save subpoena costs, inasmuch as if no intention to defend is returned within the fixed time he will obtain judgment on his affidavit, but this saving would in the majority of cases in my opinion be so slight that it is hardly worthy of consideration in determining whether such a radical change in the procedure should be introduced. As in discussing the question as to whether the system will prove more expeditious I shall have to refer to the issuing of subpoenas I will only here state that, in cases where notice of intention to defend is given, the plaintiff will have to incur the expense thereof and no saving on this head effected. The office arrangements proposed by Sir Comer Petheram as to the issuing of these summonses, their return, registration of notices of defence, swearing the affidavits of services and drawing up the necessary decrees and orders, would, it appears to me, necessitate a large addition to the Court establishment of responsible officers, the cost of maintaining which would have to be taken into consideration in providing and making this procedure less costly to the parties (litigants) than the present.

16. As to being more expeditious.—If I am correctly informed (see Mr. Ewan's book), the system pursued in the Calcutta Small Cause Court as to issue, service and return of summonses is, that in all cases to entitle a party plaintiff to go to a hearing or trial, the summons must have been served on the defendant a certain number of days before the date fixed for hearing in the summons, and this in some cases is regulated by the amount in, or value of the subject of, dispute, and in others by the distance of the defendant's residence from the Court, and unless service is so affected, a fresh summons has to be taken out by plaintiff. In our Court the system followed is to fix a hearing date in the original summons, and on the date so fixed, unless the Court is of opinion that proper and timely notice of the claim has not been given, the case is taken up in its turn and disposed of, or, if otherwise, another date is fixed and it is then heard and disposed of. Under our system, the minimum of delay is brought about, and if adjournment has been necessary an absolute date for hearing has been given, whereas under the Calcutta system, what has been supposed to have happened on first occasion—viz., non-service within sufficient time—may happen again and again,—the defendant having notice of the claim, but being under no obligation to

attend Court and answer it, and the Court being powerless to investigate it and adjudicate on it. Now as to the proposed default summonses, it will be absolutely necessary to have a rule that service shall be so many days before date of hearing (that is, supposing that a date for hearing is fixed in the summons, though this is not done under the Statute 38 and 39 Vict., C. 50), and to so fix the date of hearing as to allow defendant time to give notice of his intention to defend and after receipt of such notice by the Court and intimation thereof to plaintiff in time to allow plaintiff to obtain processes for his witnesses and effect service thereof. If the procedure under the English statute be adopted, it will be necessary, on the receipt of notice to defend, to fix a date for hearing and intimate it to plaintiff and defendant and to so fix it as to allow of their obtaining process for and serving their witnesses. If this system is to be adopted except as to plaintiffs and defendants residing and personally served within the Presidency Town, it is almost impossible to predicate what trouble, loss of time and inconvenience may be caused to plaintiff. Take, for instance, a case of a claim for a shop debt or on a promissory note by a plaintiff residing in the Presidency Town against a defendant residing at Mandalay or some distant station of the Empire; he (defendant) will in the first instance have to be allowed a considerable time after service of summons and notice to send in his notice of intention to defend, then there will be the time taken in communicating to him the date fixed for hearing, which will have to be fixed with reference to the distance he is from Court or means of communication with the Presidency Town—in fact, he will at this stage have to be allowed the time which now under our system he is given with the original service of the summons; the same inconvenience, with minor results, will also be the consequence even as regards defendants in the Presidency Town, viz., that there will be required practically first a notice of claim and then the additional time which at present under our system is given in the original summons. It seems to me that though in some cases expedition may perhaps be attained and Judges relieved from routine work (if any judicial act can properly be so called), still, that as far as our Court is concerned, no practical benefits will result to the public. From the returns of our Court for the past nine years, 1882 to 1890, it will be seen that the average time of disposing of uncontested cases, numbering 174,107, and in which in a great many the defendants were resident beyond the limits of the Presidency town and in some cases in England and other distant countries, was 29 days, and that the same average for contested cases under similar circumstances and numbering 32,592 was 43 days, so that, taking the average of contested cases to be those in which notice of intention to defend would be given, the average duration of them would have to be increased by, as pointed out before, the time necessary to intimate the day fixed for hearing. The ordinary time within which a summons to be served in the Presidency town is made returnable is from 12 to 14 days, and this would have to be added to every contested case. It is impossible to give any approximate estimate as to average for summons issued under provisions of section 18, clauses (a) and (c), some being sent to Courts within 12 miles, while others have to be sent to Courts some thousands of miles away.

17. *Power to High Court to make Rules of Procedure.*—In view of the ruling of the Calcutta High Court, copy of which I have not seen, I am of opinion that the proposed amendment of Act XV of 1882 is desirable, so that the object for which, as I understand, section 9 was enacted may be obtained, and it seems to me that the enactment of the provisions of section 27 of 44 and 45 Viet., C. 68, may be substituted for section 9, and that an additional section may be enacted as suggested, that in cases not provided for by the Act or rules, such procedure may be adopted by the Judges of the Small Cause Court as in their discretion may appear conducive to the interests of justice.

18. *Cumbrous Procedure.*—Though the provisions of chapters 4 and 5 of the Code of Civil Procedure, which refer to the frame of suit and the institution thereof, with certain exceptions* have been extended to us by Schedule II of Act VX of 1882 and Act X of 1888, yet we have,

* Chapter 4, section 42 and section 44, rule (a), and chapter 5, section 53, clause (c), section 55, section 57, clause (b), and sections 58 and 62.

with the sanction of Government and the High Court, dispensed with the verification to the plaint required by section 52 and section 53, clause (c), and have provided a printed form which answers both for a plaint as well as a summons and headed "Plaint and Summons" (vide Appendix A). In this document the summons appears first, the money claimed and institution and summons fee next, and the particulars of the claim, the cause of action, and when and where it arose last. A party desirous of filing a suit for recovery of debt or damages files two copies of the said plaint and summons, one being a *facsimile* of the other, but with this distinction, one is drawn on a full sheet of paper which answers for the plaint and another on a half sheet of paper which serves for the original summons. On the back of this is printed for the information of the defendant a notice containing 5 paragraphs (vide Appendix A), so that, as regards the Chief Justice of Bengal's observation that all suits shall be commenced by a summons to be issued from the Court with a short statement of the claim endorsed upon it, in this Court the practice already exists, and our plaint and summons as above explained are one document and the copy of summons served on the defendant is a copy of the plaint and summons and contains a full statement of the claim.

19. *Sifting Cases.*—Paragraph 4 of letter. The difficulty experienced by the Calcutta Small Cause Court in sifting the daily cause list and separating the contested from the uncontested

cases, has not been felt here. The system pursued in Calcutta for a time, and referred to in paragraph 4 of Government of India's letter to Calcutta High Court, of one Judge disposing of all cases which could be summarily disposed of, and the other Judges entirely employed in hearing defended cases, has been followed here for some time with, I venture to say, the best results. The way it is worked is as follows: The summonses are made returnable at 10-30 A.M., a certain number being made returnable before each of the Judges. At 10-30 the Clerk of each Judge's Court calls over the list for his Court, and ascertains what cases are to be admitted *ex parte* or defended. These latter he retains and sends all the rest, including those in which summonses are not returned or not served, or in which parties wish to admit the claim to the Judge who is detailed for the day for disposal of summarily disposable cases, who on taking his seat passes the necessary orders or passes judgment, or should any parties who have not before expressed desire to defend then express such desire, he sends them to the Judge before whom the summons was made returnable. This system I think most convenient for all concerned; it allows of bailiffs having to attend only one Court for proof of service of summons, it enables parties between whom there is no contest to have their cases disposed of early in the day and return to their vocations, and allows of all the Judges being simultaneously engaged in work, and occupies but a short time, ordinarily not exceeding a couple of hours, so that by one o'clock the greater portion of suitors and their witnesses are released from attendance, instead of having to wait their turn while perhaps an early case in the day's list is defended and occupying a long time to dispose of. It also has the advantage of enabling the Judges to form at the commencement of the day an estimate of the probable number of the cases for their individual disposal. In the event of any Judge finding all his cases disposed of at an early hour, he applies to the others who have cases remaining undisposed to send him some, and thus all the Judges are at work during the whole day. The daily number of cases posted for trial before the Judges (exclusive of those posted before the Registrar) is about 55, and this with adjourned cases is the daily work of the Court which I think I have shown in remarking upon the average duration of cases, shows that the work of the Court is kept fairly abreast of the requirements of the public and legal profession and may I be allowed to say in words similar to those used in paragraph 10, G.O., 14th April 1887, No. 795, Judicial, "the work of the Court is expeditious and generally satisfactory."

20. *Extract from Secretary of State's Despatch.*—With reference to G.O., Judicial, No. 1257, dated 26th June 1891, communicating extract of Secretary of State's despatch, I have the honour to state that as in the foregoing part of this letter I have stated my opinion and given reasons for same that as far as this Court is concerned the working of the Small Cause Court Act XV of 1882 has not been found cumbersome or prejudicial to the interests of suitors. I am of opinion that no reduction of the amount over which summary (Small Cause) jurisdiction is to be exercised is necessary nor with the exception of the amendment of the Act as to giving the local High Court powers similar to those exercised by the County Court in England as to regulating the present status of the Judicial staff jurisdiction, and file is any addition necessary to the staff of Judges. As to strengthening the staff of ministerial officers, this matter has been submitted to Government through the Court by letter, dated 16th February 1891, No. 122, to High Court.

(Signed) PATRICK D. SHAW,
Acting Chief Judge.

STAMPS

PLAINT AND SUMMONS.
IN THE COURT OF SMALL CAUSES AT MADRAS.

Suit No. _____ of 189 .

1	Name.	Description.	Residence.

Plaintiff,

and

1	Name.	Description.	Residence.

Defendant.

You, the Defendant, are hereby summoned to appear before the Judge of this Court, on the _____ day of _____ 189 , at 10½ A.M., to answer the Plaintiff to a claim, the particulars of which are hereunto annexed. Given under my hand and the seal of the Court, this _____ day of _____ 189 .

	RS.	A.	P.
Debt or Claim			
Costs of Institution Fee and of Summons.			
Total Rupees			

Head Clerk.

Particulars of Claim, Cause of Action, and where and when it arose.

10

3RD SEPTEMBER 1891, Nos. 1773, 1774, JUDICIAL.

PLAINT AND SUMMONS.
IN THE COURT OF SMALL CAUSES AT MADRAS.

Sut No. of 189

1	Name.	Description	Residence.

Plaintiff.

1	Name.	Description.	Residence.

Defendant.

You, the Defendant, are hereby summoned to appear before the Judge of this Court, on the day of 1891, at 10 A.M., to answer the Plaintiff to a claim, the particulars of which are hereunto annexed.

Given under my hand and the seal of the Court, this day of 1891.

Debt or Claim

Costs of Institution Fee and Summons.

Total Rupees

Particulars of Claim

Etd.

Clerk.

Summons received on

189

Suit No.

of 189

Summons returned on

189

I hereby acknowledge service of this summons.

NOTICE—1. Should you apprehend your witnesses will not attend of their own accord, you can have subpoenas from this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence money.

2. If you admit the demand, you should pay the within-named amount into Court to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

3. Whenever this Suit is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time will be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.

4. Except by special leave of the Court, Pleaders' fees are not allowed in cases where the defendant, 3 days before the day of hearing, has intimated to the Court his intention not to contest the plaintiff's demand.

5. Bring the summons with you whenever you come to the Court House.

Hours of attendance at the Office of the Registrar, in the Small Cause Court Buildings, on the North Beach, from 10 A.M. till 4 P.M.

From the Registrar of the High Court of Judicature, Appellate Side, Madras, to the Chief Secretary to Government, dated Madras, 11th August 1891, No. 1972.

I am directed to reply to G.O., dated 23rd April last, No. 792, Judicial, and G.O., dated 26th June, No. 1257, Judicial, requesting an expression of the High Court's opinion upon certain definite proposals mentioned by the Government of India, for expediting the disposal of business in the Presidency Courts of Small Causes, and inviting the Judges to suggest any other amendments in the Presidency Small Cause Courts Act which they may consider likely to promote the same object.

2. The definite proposals alluded to above are three in number, namely:—

(a) the reduction of the pecuniary limit of the Small Cause jurisdiction of the Courts from Rs. 2,000 to Rs. 1,000, and, as a consequence, the repeal of section 38 of the Act;

(b) the introduction of the system of default summonses; and

(c) the simplification of the procedure.

3. With regard to the first proposal, I am to say that the Honorable the Judges do not consider it necessary or desirable to deprive the Court of Small Causes at Madras of the jurisdiction it now exercises in suits valued at over Rs. 1,000. The state of business in the court, as disclosed in the statistical returns, does not call for any such change. The court is just able, with its present strength, to keep pace with the current work, and there are practically no arrears. In 1882, the year when the present Act was passed, the number of suits filed was 21,000; it gradually increased till 1886, when it reached 27,000, and, since then, it has been almost stationary. The number disposed of each year has been about the same as the number filed, and hardly any suits have been left undisposed of at the end of each year, except such as, owing to the summonses not being served or being made returnable in the next year, or other similar causes, could not have been tried.

4. The Judges are not aware that complaints of extraordinary delay in contested cases of higher value, such as have been made in Calcutta, have arisen in Madras. The number of suits exceeding Rs. 1,000 in value which the Madras Court receives annually is comparatively small, not having exceeded 127 in any of the last five years, while the annual average of such suits in the Calcutta Court is 330. These suits, however, are almost invariably contested, but the High Court has no reason to suppose that they are inordinately delayed, and I am to say that Mr. Justice Handley, speaking from his eight years' experience as Chief Judge of the Court of Small Causes, is of opinion that they do not occupy much longer time on the average than other contested cases. It seldom happens that any case remains under trial for three months, except for such unavoidable causes as difficulty in serving summonses, and deaths or changes of the parties, and the average duration of all contested cases has not exceeded 45 days in the last five years. This period of pendency may be regarded as somewhat excessive in a court of summary procedure, but the Honorable the Judges do not consider that it is shown to be due to the exercise of jurisdiction in suits over Rs. 1,000 in value, and the proper remedy appears to them to be not the curtailment of jurisdiction but the appointment of an additional Judge. With that increase of strength the Madras Court would be enabled to dispose of all the work coming before it with a celerity that would leave nothing to be desired.

5. The substitution of Rs. 1,000 as the limit of pecuniary jurisdiction for the limit (Rs. 2,000) now fixed by the Small Cause Courts Act would render section 38 inoperative, but even if the existing jurisdiction be retained, the Honorable the Judges are strongly of opinion that that section should be repealed. It is not necessary to criticise it at length, for the procedure it provides is so cumbrous and costly and is productive of such unnecessary delay, that it is regarded with disfavour in every quarter. But the further question then arises whether it is necessary to provide any substitute for this procedure. Mr. Justice Wilkinson, I am to say, considers that the provisions of section 69 of the Small Cause Courts Act, which enable any party to a suit in the court to obtain a decision of the High Court on any point of law which may arise, and of section 37 which empowers the court to grant a new trial, are sufficient safeguards of the interest of suitors, and would not replace section 38 by any other provision. Mr. Justice Handley expresses the same opinion. He observes that to substitute a right of appeal would add to the work of the Small Cause Court Judges by compelling them to deliver written judgments. It would add more work to the High Court, since the fees payable on an appeal are considerably lower than the court costs on a re-trial under the present rules, and having regard to the efficiency of the protection which is afforded to suitors by the summary procedure, he questions the expediency of making the change. He also refers to the wishes of the mercantile community, and says that he would not oppose it.

6. The other Judges, in recommending that the summary procedure be retained, are of opinion that to a regular appeal to the High Court, the Small Cause Court Judges are not unusual for full judges.

7. If the Bill, now under consideration, be passed, the jurisdiction to the Madras Small Cause Court will be extended to suits not tried as small causes, and the limit of the small cause power will be raised to Rs. 2,000. If suits of a small cause nature be tried in the High Court, the summary procedure then would be applicable to them, as at present, under the existing procedure, and a right of appeal would be provided. As the limit of the jurisdiction of the Small Cause Court is now Rs. 1,000, it is probable that the suits of higher value which now come before the High Court will be transferred to the Small Cause Court, and the latter will have to deal with the

Cause Court at Madras in an exceptional manner in one respect, there seems no objection to treating it differently in relation to its small cause jurisdiction from the other Presidency Small Cause Courts and allowing it to retain its present jurisdiction with substitution of an appeal for the re-trial by the High Court in cases over Rs. 1,000 in value, even though in the other Presidency towns the small cause jurisdiction be reduced.

8. The next question is regarding the expediency of the introduction of the system of default summonses such as is adopted in the English County Courts. In point of celerity, I am to say, the Honorable the Judges do not think that it would have any advantage over the system now in use. The present procedure in the Madras Court in *ex-parte* cases is as simple and expeditious as possible. The summons is made returnable in 10 or 15 days, and on defendant's failure to appear on the day fixed, formal proof of the service of summons and of the debt are taken, judgment is passed at once, and the decree is issued the same day or the next. It may be, as thought by the Chief Justice of Calcutta, that the requirements of an affidavit afford the defendant in cases determined *ex-parte* greater protection against fraud than the present system, though the Honorable the Judges doubt whether there is really any great difference in that respect.

9. A more certain and obvious advantage is that the change of system would relieve the Judges of the purely mechanical work, which is all that the determination of undefended cases involves, and would leave them more time to devote to judicial work proper. But it must be borne in mind that though relief would be thus given to the Judges, the work of the Registrar would be correspondingly increased. The Registrar of the Madras Court has already, as has been frequently observed by the Madras Government, too much judicial and quasi-judicial work to allow of his properly discharging the administrative part of his duties, and if legislation in this direction should be resolved upon, the High Court considers that provision should be made for the appointment of one or more Assistant Registrars who shall have power to pass decrees on default summonses. Such a plan will be cheaper than an increase in the number of the Judges.

10. But the chief advantage claimed for the proposed system is that it will enable merchants and tradesmen, whose time is valuable and who have to seek the aid of the court for the purpose not of establishing but only of enforcing their claims, to obtain a decree without having to attend court in person. This consideration would seem sufficient to ensure the popularity of the system, and, if it were introduced as an alternative procedure, its success would be greatly dependent upon its popularity. But there seems reason to doubt whether it is likely, if legalized, ever to come into extensive use in Madras. The Judges, in this opinion, and considerations of the neglect with which the special provisions of Chapter XXIX of the Code of Civil Procedure have come to be treated, lead them to think that chapter prescribes for suits on a bill of exchange, promissory note, or other negotiable instrument, a procedure not dissimilar to that of the default summons, but, notwithstanding, it is the same, and the suitor of enabling him to obtain a decree without attending court, and notwithstanding hardly any use is made of it. It does not arise from any information received from the public of the fact that it affords, for, at one period, shortly after the enactment of the present Code, it rose high in public favour, but since 1834, as will be seen from the marginal figures, recourse has been had to it less and less frequently, and now the annual number of summary suits is hardly more than nominal. This forms no argument against the experimental introduction of the new system, provided the option of following the existing procedure be left to suitors, but in that case it cannot be predicted with any certainty that any relief will be afforded

Year	Summary Suits	Default Suits
1834	27	72
1835	49	49
1836	303	183
1837	138	138
1838	103	103
1839	50	50
1840	31	31

14 3RD SEPTEMBER 1891, Nos. 1773, 1774, JUDICIAL.

to the Court. If, on the other hand, it were proposed to adopt the procedure of default summonses to the exclusion of the present system (which appears to be what the Chief Justice of Calcutta suggests), it would be desirable first to ascertain whether the decline in the number of summary suits noted above does not indicate some special unsuitability to the requirements of suitors.

11. On the whole, the Judges doubt whether any benefit would accrue from the adoption of the system, but they are not prepared to offer any decided objection to its introduction if it be made alternative to that now in use.

12. Regarding the third question as to the simplification of the procedure, I am to say that the Honorable the Judges agree in the view expressed in the Government of India's letter, that the provisions of the Code of Civil Procedure are unnecessarily elaborate for use in a Court of summary jurisdiction, but they have to observe that the Act, as it at present stands, appears to contain sufficient provision for enabling the simplification of the procedure in any manner and to any extent that may be found desirable. Such it seems to their Lordships is the effect of the proviso to section 23 of the Act and they apprehend that the objection taken by the High Court of Calcutta to sanctioning certain rules proposed by the Judges of the Small Cause Court of that place proceeded on the ground that the combination of authorities specified in the proviso is not the Small Cause Court and the High Court, but the former court and the Local Government. No doubt has been felt in Madras as to the competence of these authorities to make, and as a matter of fact they have made, all desired modifications in the Civil Procedure Code as applied to the Small Cause Court, but such matters would seem to fall specially within the province of the High Courts and there is no reason why the power now vested for this purpose in the Local Government should not be delegated to the High Court.

13. One definite suggestion of a material alteration in the procedure of the Small Cause Courts appears in the papers under reference, namely, the substitution of the "list" system of posting cases for the present system of issuing summonses for a date certain. To this change, the High Court, with all deference to the opinion of the Chief Justice of Calcutta, from whom the suggestion proceeds, must express emphatic objection. With the exception of the Honorable Mr. Justice Shephard, the Judges concur in the opinion expressed by the Government of India that the cause list plan does not always work satisfactorily in the High Courts, and yet it is in these courts that it has the best chance of success. It is essential, for its satisfactory working, that the parties to suits should, as a rule, be represented by legal practitioners whose business requires their attendance in court daily and who are therefore always aware of the progress made with suits in the list. On the original side of the High Court every case is, generally speaking, conducted through a legal adviser, but in the Small Cause Court this is not so. There the greater number of the suits are of such small value that it is not worth while for the parties to employ Vakils or to attend in person more than once or twice for the trial of their cases. It would, the Judges think, be most undesirable to adopt for this court a system which would compel the parties in such cases to attend with their witnesses three or four days in succession and the number of suits disposed of daily in the Small Cause Court would make it difficult for a suitor, if the list system were in vogue, to estimate, even within three or four days, when his case was likely to be called. Even if the system of default summonses were introduced, to the exclusion of the present procedure, the shortening of the list by the removal of undefended cases would only slightly mitigate this evil of uncertainty.

14. The ideal Small Cause Court is one in which the parties can attend on a fixed day with an almost perfect certainty that the case will be disposed of on that day and that they will have no further trouble in the matter. Of course under no system can adjournments, in some cases, be avoided, but they should be the exception and conclusion of the trial on a day of which the parties have notice should be the rule. Under the list system, this ideal is altogether unattainable. It is to the Honorable the Judges that, under the Code, it would very surely be capable of

realization if a sufficient

provided, and, considering the large net revenue which the Madras Small Cause Court yields (an average of Rs. 77,000 per annum in the last four years), there can be no difficulty in making full provision for the convenience of the public in this respect. The addition of one Judge to the strength of the Madras Small Cause Court, which would absorb but a small fraction of the above surplus, would enable the court to work the present system perfectly, and this being so, the High Court deprecates any suggestion to apply an alternative remedy.

15. In conclusion, I am to refer to the suggestions contained in the extract from a Despatch of the Secretary of State which formed an enclosure to the second order quoted at the head of this letter. The Honorable the Judges have already expressed their belief that the "unsatisfactory state of things" referred to in His Lordship's Despatch does not exist in the Madras Small Cause Court. They have shown that no alteration is required in the procedure, and that if the transaction of business needs to be accelerated, the best remedy that can be devised, and one thoroughly efficient, is the addition of one Judge to the existing strength of the Court.

16. The Judges do not think that any benefit can be gained by making the proposed distinction between cases valued under and above Rs. 500. Practically it would amount to constituting two separate courts, and assuming that each court, with its establishment, would work according to the same rules of practice and procedure, their Lordships see no reason to suppose that the work would be better done than it is now. If the figure chosen had been Rs. 1,000, and there had been coupled with the proposal a suggestion to allow an appeal in all suits exceeding that sum in value, the distinction of offices, corresponding with a difference of work, might, in some measure, facilitate the transaction of business, but if the difference in value is to be accompanied by no difference in the class of business, the proposed division of the present establishment would, the Judges think, result in nothing but a loss of efficiency or an increase of expenditure.

(Signed) H. W. FOSTER,
Registrar, Appellate Side.

From the Government of India, Home Department, dated 14th. August 1891,
No. 1102.

ABSTRACT.—Requesting an early reply to letter regarding the proposed amendment of the Presidency Small Cause Courts Act.

ORDER—dated 3rd September 1891, No. 1774, Judicial.

The Government of India will be addressed.

J. F. PRICE,
Chief Secretary.

Letter to the Secretary to the Government of India, Home Department, dated Ootacamund, 3rd September 1891, No. 1774, Judicial.

I am directed to acknowledge the receipt of Mr. Lall's letter, dated 28th March 1891, No. 445, and subsequent reminder thereon, forwarding, for the opinion of this Government and the local High Court, certain proposals in regard to the amendment of the Presidency Small Cause Court Act, 1882; in reply, I am to submit copies of letters on the subject received from the High Court, the Chief Judge of the Madras Small Cause Court, and the Chairman of the Madras Chamber of Commerce and the Madras Trades' Association, together with the opinion of His Excellency in Council upon the proposed changes.

2. It is suggested that the following alterations should be made in the existing law:—

- (1) the limit of the summary jurisdiction of the Small Cause Court to be reduced from Rs. 2,000 to Rs. 1,000;
- (2) section 38 of Act XV of 1882 to be repealed;
- (3) a system of "default summonses" to be introduced in order to simplify the recovery of debts;
- (4) the general procedure of the Small Cause Court to be rendered less cumbrous by the rejection of the Civil Procedure Code, save as a basis for rules of procedure to be framed by the High Court;
- (5) the introduction of the "list" system of posting cases in the court.

3. It will be observed from the letters of the authorities consulted that there is a general consensus of opinion that—

- (1) the Small Cause Court should retain the power it at present possesses of trying summarily suits between Rs. 1,000 and Rs. 2,000 in value;
- (2) there should be an appeal to the High Court in the case of all suits exceeding Rs. 1,000 in value;
- (3) Sections 38—40 of Act XV of 1882 should be repealed.

With these opinions His Excellency in Council is in complete accord, and the first in particular he strongly endorses. As regards the institution of regular appeals against decrees in suits valued at more than Rs. 1,000, I am to invite attention to paragraph 6 of the High Court's letter, from which it will be observed that the present system of recording notes of evidence in the Small Cause Court is considered sufficient for the purposes of the appellate court.

4. As regards the simplification of procedure, I am directed to say that His Excellency in Council concurs with the views expressed by the High Court in paragraph 12 of its letter. Section 23 of Act XV of 1882 already gives the Small Cause Court power, with the approval of the Local Government, to declare any portion of the Code of Civil Procedure inapplicable to itself and in this way the necessary provision is made for rendering the trial of suits more expeditious. But the combination of the Small Cause Court and the Local Government in this section is not, in the opinion of His Excellency in Council, a suitable one, and the Government would be glad to see the Act so amended as to transfer the power of making rules to the High Court; as being the authority best qualified to deal with this matter.

5. The Government also concurs with the High Court and the Chief Judge of the Small Cause Court in questioning the expediency of the proposed system of "default summonses." On this subject the arguments of the Chief Judge seem to His Excellency in Council to be particularly convincing, and the High Court also adverts to an important objection, viz., that the introduction of the proposed system would throw upon the Registrar a large additional amount of quasi-judicial work. The quantity of such work already falling upon this officer has been found prejudicial to the performance of his administrative duties.

6. The objection entertained by the High Court to the "list-posting system" of suits appears to His Excellency in Council to be well-grounded and any extension of the system is to be deprecated.

7. I am also directed to invite attention to Mr. Melitus' letter, dated 12th June 1891, No. 839, with which he forwarded an extract from a Despatch from the Secretary of State, commenting upon the unsatisfactory condition of things in one of the Presidency Small Cause Courts and suggesting the division of such courts into two branches—the one to deal with suits valued at not more than Rs. 500 and the other to dispose of suits above that value.

The views of the Madras Government as to the High Court upon this proposal were called for by the Government of India in the letter above referred to, and I am now to state, in reply, that His Excellency in Council does not consider the condition of the Madras Small Cause Court to be unsatisfactory and that he concurs with the High Court in deprecating any change in the direction proposed.

8. In conclusion, I am to point out that Act XV of 1882, as printed in the Collection of General Acts of the Governor-General of India in Council, contains an error in section 23, the word "Court" being printed for "Code;" if the section is to be amended this error might, I am to suggest, be rectified.

9. The letter from the Madras Trades' Association, which accompanies this communication, does not relate, it will be observed, to the questions now under consideration, which are confused in it with those connected with the Bill to amend Act XV of 1882, recently introduced by the Hon'ble Sir Philip Hutchins into the Council of the Governor-General for making Laws and Regulations.

J. F. PRICE,
Chief Secretary.

Govt. of. (1891) Madras.
JUDICIAL.

Issued

Recd.

Encl.

G.O., &c., 3rd September 1891,
Nos. 1773, 1774.

SEPTEMBER.

Presidency Small Cause Court Act,
1882.

Directing that the Government of India be
addressed on certain proposals for amendment of
the —.

N^o 575

Received

From

Madras Court of Small Causes
29th July 1891. 7A
10
P. D. Shaw, Esquire,
The Acting Chief Judge,
Court of Small Causes,
Madras

To

The Honorable J. F. Price,
Chief Secretary to the
Government of Madras

Sir,

I have the honor to submit herewith
the opinion called for by G.O., 28th April 1891,
N^o 792. judicial, and G.O., 26th June 1891,
N^o 1257.

I have the honor to be,
Sir,

Your most obedient Servant

K. P. P. V.
Acting Chief Judge

1891. Judicial
Madras Court of small causes.
No 26. 6. 91. 792 1257.
28. 4. 91. 792
P. D. Shaw, Esquire,
Acting Chief Judge,
Court of Small Causes,
Madras.

To
The Honble J. F. Price,
Chief Secretary to the
Government of Madras.

RECEIVED
31 JUL 91
CHIEF SECRETARY
GOVERNMENT OF MADRAS

Dated 29th
Despatched 30th
Received } July 1891.

N^o 575

enclosure. 2.

Submitting the opinion called for
by G. O., 28th April 1891, N^o 792,
Judicial, and by G. O., 26 June 1891,
N^o 1257.

Suggestion to revert
to Jurisdiction of
Rs 1000.

Opinion

With reference to the suggestion of the Government
of India in para 2 of letter N^o 445 to Government
of Madras dated 28th March 1891 to revert to jurisdiction
of Rs 1000 under provisions of Act ~~XXVI~~ of 1864.

2 Since Act XI of 1882 came into force up to 30th
June 1891 which is just nine years this Court has had
an annual average of 100 suits between 1000 and 2000
in value giving an annual revenue of about of 10,675.

3 During this period of nine years as far as I
have been able to ascertain and speaking from my
own knowledge as a practising barrister and subsequently
as Judge here, neither the Court nor the mercantile
community have expressed any dissatisfaction with the
increased jurisdiction of the Court nor mooted the question
of being given other rights than are conferred by Act
XI of 1882, nor by reason of increase of work in the
Court, complained of undue delay by reason of the
Court not coping or being able to cope with the work
before it.

4 As far as this Court is concerned I am
of opinion and my Colleagues agree with me that
nothing has occurred in the working of the Act of
1882 to indicate that the increase of jurisdiction
1000 to 2000 has been detrimental to the interest
suitors, and while being of opinion that an amount

over 1000. would prima facie appear too large to be left to be adjudicated on by a Small Cause Court (Summary Jurisdiction) and that S. 38 of the Act (XX of 1882) has not even been regarded as a satisfactory provision, still I feel justified in stating that I do not think that either the largeness of the amount or the provisions relating to rehearing such suits have ever been considered by the litigants and mercantile community as matters of grievance which required remedy, and that up to date of receipt of the Government of India's letter under reply Madras was satisfied with Act XV of 1882, and the way in which it was worked by the Court and even now that the mercantile public has had its attention called to the Government of India's view of the amount of jurisdiction to be exercised by the Presidency Small Cause Court, it, while accepting the proposition, does so mainly on the ground of the largeness of the amount being such as should not be adjudicated on, without right of appeal to a Higher Constituted Court.

5. As a matter of fact S. 38 Act XV of 1882 has been very little used, and with the result that out of the 900 cases filed in this Court since July 1882 in only about 14 cases has the High Court been resorted to.

I and my colleagues do not upon the practical working

working of the Act see reason or necessity for resorting to the jurisdiction conferred by Act XXVI of 1864. 13
7. That increase of jurisdiction and change of procedure has not interfered with the popularity of the Court nor impeded its expeditious disposal of suits appears from the fact that in 1882 with a file of 24,746 for disposal 22,910 were only disposed of while in 1890 with a file of 28,552 for disposal 26,363 were disposed of. Again in the year 1882 the average duration of contested suits under ordinary procedure was 52 days and in 1890 45 days. The during some of the intervening years it went so low as 36 and only in one year exceeded. The average for the nine years being 43 days, goes, I think, to show that the introduction of the new procedure has not detrimentally affected the disposal of cases. The average for uncontested cases under ordinary procedure for the same period is 29 days while in 1882 it was 46, in 1890 it was standard at 25. Again at end of 1890 the number of suits pending was 2,189 of which 1,155 were instituted in December and summons was not made return till this year while only 253 under ordinary procedure were pending more than 3 months and of these

these 128 were suits in which 2nd or further summons had had to be issued and 31 were standing adjourned by consent of parties.

8. In the year 1882 the net amount of fees credited to Government was Rs 22,644. In 1883, when Government under the powers conferred by S. 75 of Small Cause Court Act XV of 1882 lessened the scale of fees, the net amount of fees credited to Government was the largest on record, viz., Rs 85,233. Since Act XV of 1882 has been in force the average annual net amount credited up to end of 1890 has been Rs 64,209 while for the nine years preceding, 1873 to 1881, the average net amount credited to Government was Rs 27,955.

Increase of Revenue.

notification 23rd January 1883. Fort St George Gazette 30th January, page 51

9. The total value of the suits filed from 1873 to 1881 was Rs 77,37,673 or an annual average of Rs 8,59,741, while for the nine years from 1882 to 1890 the total was Rs 1,03,15,798 or an annual average of Rs 11,46,197.

average value of suits.

suggestion that Default summonses may be adopted.

10.

114
Para 3 of letter "proposal that a system of Default summonses may be adopted."

11.

I understand my opinion is asked as to the necessity and desirability of the proposal being brought into operation. My Colleagues and myself are unanimously of opinion, that the system proposed is neither necessary nor desirable for the working of this Court.

12.

As to the necessity for its introduction. Its introduction has been suggested upon among other grounds that the Court ordinarily acts mechanically in obtaining proof of the service of the summons and the claimant in it, and that it would be desirable with a view of releasing the Judges to do more important work and for the suitors by avoiding the necessity for their examination in open Court. The ordinary course is that in undefended cases of debt upon contracts, the Court, (Judge) only puts the questions to the serving officer and plaintiff set out by the Chief Justice of Bengal and upon the answers to them passes judgment. As to proof of service of the summons on the defendant or defendants this Court always requires strict proof on oath or solemn affirmation that the requirements of the law as to service have been complied with, and gives no judgment except upon what it considers to be legal proof of the debt sued for and claimed by the plaintiff, and does not on the plea of want of time or pressure of work give unconsidered judgments. As instances where the Court does not accept

a plaintiff's answer of yes to a question "does the defendant owe you the money?" I may mention that the Court ascertains and determines whether the Act for Limitation of Suits is applicable and whether when the suit is on a document requiring to be stamped or registered, that the requirements of the Acts relating thereto have been complied with. And in carrying out this system we have experienced no inconvenience nor, do we think, have the public.

13. The inability of the Calcutta Small Cause Court to make an investigation as to the claim of the plaintiff and to obtain proof of it seems to be the main reason for His Lordship the Chief Justice being desirous of introducing the system which he testifies has been in operation with the best results in England since 1852, and if the inability existed in this Court his suggestion for the substitution of proof of debts by affidavit copy of which should be served with the summons on the defendant would probably be accepted as good and practicable, but where the disabilities do not exist I do not see the necessity of making a change in the system which so far as this Court is concerned has worked well and without inconvenience. By saying it has worked well and without inconvenience, I do not for a moment wish it to be understood, that inconvenience is not experienced by some suitors by the necessity of their having to attend Court and prove upon oath or affirmation

12 1/2
affirmation their right to a decree, but I do not think that the enforcement of such attendance can be said to be a hardship, seeing that in every day life, no rights or advantages can as a rule be obtained without some trouble. As to its working well the long practice which has prevailed has established the rule which is known and understood, that a person wishing the Court to undertake his "debt collecting business", must, before the Court will undertake it, prove strictly and in its presence that the debt is due.

14. So much for the necessity of the extension of the proposed system to the Madras Court of Small Causes. Now as to its desirability. The reasons which appear to have been put forward to the Government of India are that it would relieve the pressure on Judges of the Presidency Small Cause Courts and be less costly and more expeditious than the procedure at present in force in those Courts. There can be no doubt that the proposed system would lessen the work to be done by the Judges, but as at present advised I do not think it would be less costly or more expeditious.

15. As to being less costly. Before this can be said to be the case it will be necessary to provide by Legislation for any reduction in the fees to be charged. As the law at present stands a man appearing or an unsuccessful contending defendant has nothing to

to pay the institution fees and other costs to which plaintiff has been put and which he has paid and it would seem to be the same under 38 and 39 Vict. C. 50, for the saving of $\frac{1}{2}$ the hearing fee in case of not giving notice to defend, cannot under the present law here have any effect, as the institution fee covers the hearing, or rather there is no special fee charged for the hearing, and nothing in the papers accompanying the G.O., under reply indicate in what way or by what means the cost of a default summons is to be less than an ordinary summons. It may be said that the plaintiff may save subpoena costs in as much as if no intimation to defend is returned within the fixed time he will obtain judgment on his affidavit, but this saving would in the majority of cases in my opinion be so slight that it is hardly worthy of consideration. In determining whether such a radical change in the procedure should be introduced. As in discussing the question as to whether the system will prove more expeditious I shall have to refer to the issuing of subpoenas. I will only here state that in cases where notice of intimation to defend is given the plaintiff will have to incur the expense thereof and no saving on this head effected. The office arrangements proposed by Mr. Comar Petheram, as to the issuing of these summonses, their

As to being more
expeditious.

their return, registration of notices of defence, swearing the affidavits of service and drawing up the necessary decrees and orders would it appears to me necessitate a large addition to the Court Establishment of responsible officers, the cost of maintaining which would have to be taken into consideration in providing and making this procedure less costly to the parties (litigants), than the present.

16. As to being more expeditious. If I am correctly informed (see Mr. Evans' book) the system pursued in the Calcutta Small Cause Court as to issue, service and return of summonses is, that in all cases to entitle a party plaintiff to go to a hearing or trial the summons must have been served on the defendant a certain number of days before the date fixed for hearing in the summons and this in some cases is regulated by the amount in or value of the subject of dispute and in others by the distance of the defendant's residence from the Court and unless service is so effected a fresh summons has to be taken out by plaintiff. In our Court the system followed is to fix a hearing date in the original summons and on the date so fixed unless the Court is of opinion that proper and timely notice of the case has not been given, the case is taken up in its turn and disposed of or if otherwise another date is fixed and it is then heard and disposed of. Under our system the minimum of delay is brought about and if adjournment has been necessary an absolute date for hearing

hearing has been given, whereas under the Calcutta system, what has been supposed to have happened on first occasion vizt, non-service within sufficient time, may happen again and again, the defendant having notice of the claim but being under no obligation to attend Court and answer it, and the Court being powerless to investigate it and adjudicate on it. Now as to the proposed default summons - it will be absolutely necessary to have a rule that service shall be so many days before date of hearing (that is supposing that a date for hearing is fixed in the summons - though this is not done under the Stat. 38 and 39 Vict. C. 50) and to so fix the date of hearing as to allow defendant time to give notice of his intention to defend and after receipt of such notice by the Court and intimation thereof to plaintiff in time to allow plaintiff to obtain processes for his witnesses and effect service thereof. If the procedure under the English Statute be adopted it will be necessary on the receipt of notice to defend to fix a date for hearing and intimate it to plaintiff and defendant and to so fix it as to allow of their obtaining process for and serving their witnesses. If this system is to be adopted except as to plaintiffs and defendants residing and personally served within the Presidency Town, it is almost impossible to predicate what trouble, loss of time and inconvenience may be caused to plaintiffs. Take for instance a case

of

of a claim for a shop debt or on a Promissory Note by a plaintiff residing in the Presidency Town against a defendant residing at Mandalay or some distant station of the Empire, he (defendant) will in the first instance have to be allowed a considerable time after service of summons and notice, to send in his notice of intention to defend, then there will be the time taken in communicating to him the date fixed for hearing, which will have to be fixed with reference to the distance he is from Court or means of communication with the Presidency Town; in fact he will at this stage have to be allowed the time which now under our system he is given with the original service of the summons, the same inconvenience with minor results will also be the consequence even as regards defendants in the Presidency Town, vizt, that there will be required practically first a notice of claim and then the additional time which at present under our system is given in the original summons. It seems to me that though in some cases expedition may perhaps be attained and Judges relieved from routine work, (if any judicial act can properly be so called,) still, that as far as our Court is concerned no practical benefits will result to the public. From the returns of our Court for the past

mine

nine years 1882 to 1890 it will be seen that the average time of disposing of uncontested cases numbering 1,74,107 and in which in a great many the defendants were resident beyond the limits of the Presidency Town and in some cases in England and other distant countries was 29 days, and that the same average for contested cases under similar circumstances and numbering 32,592 was 43 days. So that taking the average of contested cases to be those in which notice of intention to defend would be given, the average duration of them would have to be increased by as pointed out before, the time necessary to intimate the day fixed for hearing. The ordinary time within which a summons to be served in the Presidency Town is made returnable is from 12 to 14 days and this would have to be added to every contested case. It is impossible to give any approximate estimate as to average for summons issued under provisions of s. 18 cl (a) & (c), some being sent to courts within 12 miles while others have to be sent to courts some thousands of miles away.

In view of the ruling of the Calcutta High Court

copy

Power to High Court
to make rules of
procedure.

15
18
copy of which I have not seen, I am of opinion that the proposed amendment of Act XV of 1882 is desirable, so that the object for which as I understand S. 9 was enacted may be obtained, and it seems to me that the enactment of the provisions of S. 27 of 44 & 45 Vict-c-68 may be substituted for S. 9 and that an additional section may be enacted as suggested, that in cases not provided for by the Act or rules such procedure may be adopted by the Judges of the Small Cause Court as in their discretion may appear conducive to the interests of justice.

Amendments Procedure.

18. Though the provisions of chapters 4 and 5 of the Code of Civil Procedure, which refer to the frame of suit and the institution thereof, with

* Chapter 4. section 42 and
section 44 rule (a) and
Chapter 5. section 53
Clause (c). Section 55
Section 57 (clause) (b) and
sections 58 & 62.

certain exceptions have been extended to us by Schedule II of Act XV of 1882 and Act X of 1888 yet we have with the sanction of Government and the High Court dispensed with the verification to the plaint required by section 52 and section 53 (clause (c)) and have provided a printed form which answers both for a plaint as well as a summons and headed "Plaint and Summons" (Vide Appendix A.) In this document the summons appears first, the money claimed and institution and summons fee

next, and the particulars of the claim, the cause of action, and when and where it arose last. A party desirous of filing a suit for recovery of debt or damages files two copies of the said plaint and summons one being a fac simile of the other, but with this distinction; one is drawn on a full sheet of paper which answers for the plaint and another on a half sheet of paper which serves for the original summons. On the back of this is printed for the information of the defendant a notice containing 5 paras (Vide Appendix A). so that as regards the Chief Justice of Bengal's observation that all suits shall be commenced by a summons to be issued from the Court with a short statement of the claim endorsed upon it, in this Court the practice already exists and our plaint and summons as above explained are one document and the copy of summons served on the defendant is a copy of the plaint and summons and contains a full statement of the claim.

16
19
sifting cases.

19. Para 4 of letter.

The difficulty experienced by the Calcutta Small Cause Court in sifting the daily cause list and separating the contested from the uncontested cases has not been felt here. The system pursued in Calcutta for a time and referred to in para 4 of Government of India's letter to Calcutta High Court, of one Judge disposing of all cases which could be summarily disposed of, and the other Judges entirely employed in hearing defended cases has been followed here for some time with, I venture to say, the best results. The way it is worked is as follows. The summonses are made returnable at 10.30 A.M., a certain number being made returnable before each of the Judges. At 10.30 the clerk of each Judge's Court calls over the list for his Court and ascertains what cases are to be admitted, ex parte or defended. These latter he retains and sends all the rest including those in which summonses are not returned or not served, or in which parties wish to admit the claim to the Judge who is detailed for the day for disposal of summarily disposable cases, who on taking his seat passes necessary orders or passes judgment, or should any parties who have not before expressed desire to defend

then express such desire he sends them to the Judge before whom the summons was made returnable. This system I think most convenient for all concerned, it allows of bailiffs having to attend only one Court for proof of service of summons, it enables parties between whom there is no contest to have their cases disposed of early in the day and return to their vocations, and allows of all the Judges being simultaneously engaged in work, and occupies but a short time, ordinarily not exceeding a couple of hours. So that by one o'clock the greater portion of suitors and their witnesses are released from attendance, instead of having to wait their turn while perhaps an early case in the day's list is defended, and occupying a long time to dispose of. It also has the advantage of enabling the Judges to form at the commencement of the day an estimate of the probable number of the cases for their individual disposal. In the want of any Judge finding all his cases disposed of at an early hour, he applies to the others who have cases remaining undisposed to find him some and thus all the Judges are at work during the whole day. The daily number of cases posted for trial before the Judges (exclusive of those posted before the Registrar) is about 55 and this with adjourned cases is the daily work of the Court which I think I have shown in remarking upon the average duration of cases, shows that the work of the Court is kept fairly abreast of the requirements of the public and legal profession and may be allowed to say in words similar to those used in para. 14 of G.O. 14th April 1887 N^o 775 Judicial "the work of the Court is expeditious and generally satisfactory."

Extract from Secretary
of State Despatch.

20.

1747
With reference to G.O. Judicial N^o 1257 dated 26th June 1891. Communicating extract of Secretary of State Despatch, I have the honor to state that as in the foregoing part of this letter I have stated my opinion and given reasons for same that as far as this Court is concerned the working of the Small Cause Court Act of 1882 has not been found cumbersome or prejudicial to the interests of suitors. I am of opinion that no reduction of the amount over which Summary (Small Cause) jurisdiction is to be exercised is necessary, nor with the exception of the amendment of the Act as to giving the Local High Court powers similar to those exercised by the High Court in England as to regulating procedure and practice in the County Courts, is simplifying the procedure necessary; nor with the present state of the Judicial Staff Jurisdiction, procedure and file is any addition necessary to the staff of Judges. As to strengthening the Staff of Ministerial Officers, this matter has been submitted to Government through the Court by letter dated 16 February 1891, to High Court.

Court of small causes
Madras 29th July 1891

K. V. S. S. S.
Acting Chief Judge.

MD

Chief Judge's permission.

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PLAINT AND SUMMONS.
In the Court of Small Causes at Madras.
Suit No. _____ of 189 .

STAMPS

1	Name.	Description.	Residence.

_____ Plaintiff.

AND

1	Name.	Description.	Residence.

_____ Defendant.

You, the Defendant , are hereby summoned to appear before the Judge of this Court, on the _____ day of _____ 189 , at 10½ A.M., to answer the Plaintiff to a claim, the particulars of which are hereunto annexed. Given under my hand and the seal of the Court, this _____ day of _____ 189 .

Debt or Claim
Costs of Institution Fee and
of Summons. }
Total Rupees...

RS.	A.	P.

Head Clerk.

Particulars of Claim, Cause of Action, and where and when it arose.

Adjournments, Orders and other proceedings.

"Plaint and Summons"
(Appendix A).

Small Cause Court
Madras

Suit No. _____ of 189 .

PLAINTIFF.

vs.

DEPENDANT.

PLAINT FOR Rs.

Filed on the _____ day of _____ 189 .
Summons delivered to Bailiff
on _____

Posted for hearing before the Judge
on the _____ day of _____ 189 .

Printed by me

J. Berryman

for the Small Cause Court.

PLAINT AND SUMMONS.

In the Court of Small Causes at Madras.

Suit No. _____ of 189 .

1 Name. _____ Description. _____ Residence. _____
_____ Plaintiff.

against

1 Name. _____ Description. _____ Residence. _____
To _____ Defendant.

, dwelling at

You, the Defendant, are hereby summoned to appear before the Judge
of this Court, on the _____ day of _____ 189, at 10 1/2 A. M., to answer
the Plaintiff to a claim, the particulars of which are hereto annexed.
Given under my hand and the seal of the Court, this _____ day of _____ 189

Debt or Claim
Costs of Institution Fee and)
of Summons)
Total Rupees...

RS.	A.	P.

Head Clerk.

Particulars of Claim, Cause of Action, and where and when it arose.

Exd.

Clerk

Summons received on

189

Suit No.

of 189

Summons returned on

189

I hereby acknowledge service of this summons.

Notice—1. Should you apprehend your witnesses will not attend of their own accord, you can have subpoenas from this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence money.

2. If you admit the demand, you should pay the within-named amount into Court to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

3. Whenever this Suit is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time will be repaid by the Small Cause Court to the parties, by whom the same have been respectively paid.

4. Except by special leave of the Court, the fees are not allowed in cases where the defendant, 3 days before the day of hearing, has intimated to the Court his intention not to contest the plaintiff's demand.

5. Bring the summons with you whenever you come to the Court House.

Hours of attendance at the Office of the Registrar, in the Small Cause Court Buildings, on the North Beach, from 10 A.M. till 4 P.M.

Printed by T. BERRYMAN, for the Small Cause Court.

2nd 1972 In the Small Cause Court of Judicature
Madras
I, the undersigned, do hereby certify that the within
summons, in the above-mentioned suit, is a
true and correct copy of the original, and that
it is in conformity with the order of the Court.
In witness whereof, I have hereunto set my hand
and the seal of the Court, at Madras, this 1st day
of April 1972.
The Registrar, Small Cause Court, Madras.
I am directed to certify that the within
summons, in the above-mentioned suit, is a
true and correct copy of the original, and that
it is in conformity with the order of the Court.
In witness whereof, I have hereunto set my hand
and the seal of the Court, at Madras, this 1st day
of April 1972.
The Registrar, Small Cause Court, Madras.

2. The definite proposals alluded to above are three in number, namely:
(a) The reduction of the pecuniary limit of the final cause jurisdiction of the Court from Rs. 2000. to Rs. 1000, and as a consequence, the repeal of section 38 of the Act.

(b) The introduction of the system of default summonses and
(c) The simplification of the procedure.

3. With regard to the first proposal, I am to say that the trouble the Judges do not consider it necessary or desirable to deprive the Court of final causes at Madras of the jurisdiction it now exercises in suits valued at over Rs. 1000. The state of business in the Court as disclosed in the Statistical returns does not call for any such change. The Court is justly able with its present strength to keep pace with the current work, and there are practically no arrears. In 1882, the year when the present Act was passed, the number of suits filed was 21,000. It gradually increased till 1886, when it reached

210
527,000 and since then it has been almost stationary. The number disposed of each year has been about the same as the number filed and hardly any suits have been left undisposed of at the end of each year except in the case of the summonses, owing to the summonses not being served or being made returnable in the next year or their judicial causes not having been acquiesced in. It is not, however, that the Judges are not aware that the complaint of extraordinary delay in contested cases of higher value suits as have been made in Calcutta and in Madras. The number of suits exceeding Rs. 1000 in value was in the Madras Court receives annually a comparatively small not knowing exceeded 127 in any of the last five years, while the annual average of such suits in the Calcutta Court is 330. These suits, however, are almost invariably contested but the High Court has no reason to suppose that they are

unordinately delayed, and I am to say
that Mr Justice Handley, speaking
from his eight years' experience
as Chief Judge of the Court of Small
Causes is of opinion that they
do not occupy much longer time
on the average than other contested
cases. It seldom happens that any
case remains under trial for three
months except for such unavoidable
causes as difficulty in serving
summonses, and death or change
of the parties and the average
duration of all contested cases has
not exceeded 40 days in the last
five years. This period of pendency
may be regarded as somewhat excessive
in a Court of summary proceedings, so
but he trusts the judges do not
consider that it is shown to be due
to the exercise of jurisdiction in suits
over Rs 1000 in value and that
proper remedy appears to them to be
not the curtailment of jurisdiction
but the appointment of an additional
judge. With that increase of strength

and so on to which is added
the Madras Court would be enabled
to dispose of all the work coming before
it with the celerity that would leave
nothing to be desired.
5. The substitution of Rs 2000 as the
limit of pecuniary jurisdiction
for the limit (Rs 2000) now fixed
by the Small Cause Courts Act
under section 28 inoperative where
if the existing jurisdiction be retained,
the judges are strongly of
opinion that that section should
be repealed. It is not necessary
to criticize it at length for the pro-
cedure it provides is so "cumbrous"
and so unproductive of
such unnecessary delay, that it is
regarded as a disfavorable
quarter. But other questions
then arise as to whether it is necessary
to provide any substitute for the
procedure. Mr Justice Williams
I am to say considers that it is

provisions of section 69 of the Small Cause Courts Act which enable any party to a suit to apply to obtain a decision of the High Courts on any point of law which may arise out of a decision which can empower the Court to grant a new trial are sufficient safeguards of the interests of suitors and would not replace section 38 by any other provision. Mr. Justice Handley expresses the same opinion. He observes that to substitute a right of appeal would add to the work of the Small Cause Court-judging by entailing on them the necessity of making a regular record of the evidence and delivering written judgments. It would also bring the proceedings before the High Courts since the fees payable on an appeal are considerably lower than the costs for a retrial under the present rules, and having regard to the efficiency of the protection which is afforded to suitors by the sections quoted above, he questions the

expediency of making the change suggested. He would however defer to the wishes of the mercantile community and if they expressed a strong desire for a right of appeal he would not oppose it. Like other judges I am to say, I fully concur with the Government of Madras in recommending that the decrees in suits valued at over Rs 1000 be made subject to a regular appeal to the High Court. The notes of evidence now taken by the Small Cause Court judges would be sufficient for the purposes of the appeal and it is not unusual for full judgments to be written now in important cases.

7. If the Bill now under consideration, for transferring certain ordinary jurisdiction to the Madras

Small Cause Court be enacted
there will be an appeal in
all suits not tried as Small
Causes and thereupon the
reduction to Rs. 1000 of the pe-
cuniary limit of the Small
Cause power would have the
effect of creating a right
of appeal in suits of a Small
Cause nature between Rs. 1000
and Rs. 2000 in value. The
question then would be whether
the regular procedure should
be applied to these suits or
whether they should continue to be
heard, as at present, under
the more summary procedure
and a right of appeal spe-
cially provided. As there is
no reason to suppose that
the Small Cause Court is
not perfectly efficient in the
disposal of the suits of higher

26 P
value which now come before
it the honorable the Judges,
I am to say, would of the
two plans, prefer the latter
and since it is resolved to
deal with the Small Cause Court
at Madras in an exceptional
manner in one respect there
seems no objection to treating
it differently in relation to
its Small Cause jurisdiction
from the other Presidency Small
Cause Courts and allowing it
to retain its present jurisdiction
with substitution of an appeal
for the trial by the High Court
in cases over Rs. 1000 in value,
even though in the other Pre-
sidency Towns, the Small Cause
jurisdiction be reduced.

8. The next question is re-
garding the expediency
of the introduction of the
system of default sum-
monses such as is adopted
in the English County
Courts. In point of cele-
rity I am to say the Hon-
orable the Judges do not
think that it would have
any advantage over the
system now in use. The
present procedure in the
Madras Court in ex parte
cases is as simple and
expeditions as possible.
The summons is made

returnable

returnable in 10 or 15 days and on
defendant's failure to appear on the
day fixed, formal proof of the service
of summons and of the date of taking
judgment is passed at once and the
decree is issued the same day or the
next. It may be as thought by the
Chief Justice of Calcutta that the
requirements of affidavits and
the defendant in cases determined
ex parte greater protection against
fraud than the present system,
though the humble the Judge is doubtful
whether there is really any great
difference in that respect.

9. A more serious and obvious advan-
tage is that the change of system
would relieve the Judges of the painful
mechanical work which is all that
the determination of ex parte cases
involves and would leave
them more time to devote to private
work proper. But it must be borne
in mind that though relief

be thus given to the judges the work
of the Registrar would be correspondingly
increased. The Registrar of the Madras
Court has already been fre-
quently observed by the Madras
Government to be much judicial
and quasi-judicial work to allow
of properly discharging the ad-
ministrative part of his duties and
of legislation in this direction
should be resolved upon. The
High Court further that provision
should be made for the appointment
of one or more Assistant Registrars
who shall have power to pass decrees
on default summonses. Such a
plan will be cheaper than an increase
in the number of the judges.
10. But the chief advantage
claimed for the proposed system
is that it will enable merchants
and traders who are sometimes in
want of the Court to seek the
aid of establishing but only of
enforcing their claims to obtain
a decree without having to attend

26 P

Court in person. This consideration
would seem sufficient to ensure
the popularity of the system and, if
it were introduced, as an alternative
procedure its success would be
greatly dependent upon its popularity.
But there seems reason to doubt
whether it is likely, if legalized, to
come into extensive use in Mad-
ras. The judges base this opinion
upon considerations of the neglect
with which the special provisions of
Chapter XXXIX of the Code of Civil
Procedure have come to be treated
in recent years. That chapter
prescribes for suits an obligatory
document as a preliminary step
to that of the default judgment.
whereas, as a law, it offers the civil
debtor to the creditor of a default
judgment to obtain a decree without
personal attendance in court.
hardly any use is made of it.
This does not arise from any question
on part of the public of the facility

it affords for at one period, shortly
 after the enactment of the present procedure Code it rose
 high in public favor. Statistics Pending Small Cause Suits
of Plaints filed under Chapter XXXIX, Civil Procedure Code.
 The figures since 1884, as far as they go, are as follows:
 1884 22
 1885 410
 1886 305
 1887 138
 1888 203
 1889 50
 1890 37
 The annual number of summary suits
 is hardly more than nominal. This
 is an argument against the
 experimental introduction of the new
 system, provided the option of fol-
 lowing the existing procedure be
 left to suitors. But in great cases
 it cannot be put into effect.
 Certainly any relief will be
 afforded to the Court. If on the other
 hand it were proposed to adopt
 the procedure of default summonses
 & the exclusion of the present system,
 which is to be introduced by the Chief
 Justice of Calcutta, it would
 be desirable first to ascertain whether
 the decline in the number of sum-
 mary suits noted above does not
 indicate some special unsuitability

to the requirements of suitors. ²⁷⁸
 11. On the whole the judges doubt
 whether any benefit would accrue
 from the adoption of the system
 but they are not prepared to offer
 any decided objection to its introduc-
 tion if it be made alternative to
 that now in use.
 12. Regarding the third question
 the simplification of the procedure
 I am to say that the Hon'ble Mr. Justice
 in the year expressed the
 Government of India as letter that the
 provisions of the Code of Civil Procedure
 are somewhat elaborate for use
 in a local court of summary jurisdiction
 but they have to observe that the law
 at present stands appears
 to contain sufficient provision for
 enabling the simplification of
 procedure in any manner and
 any extent that may be found
 desirable. Such it seems to me
 Lordship is the effect of the provision
 to section 23 of the Act and the
 judges.

adhered to that the objection taken
by the High Court of Calcutta to sanctioning
certain rules proposed by the Judges of the
Small Cause Court of that place pro-
ceeded on the ground that the Com-
bination of authorities specified in
the proviso is not the Small Cause Court
and the High Court but the former Court
and the local government. No doubt
Ramesh Chandra Das as the Com-
petition of these authorities to make
and alter rules of fact they have
made a demand for modification
of the Small Cause Court as applied
to the Small Cause Court but such matters
would seem to fall especially within
the province of the High Court and
there is no reason why the provisions
needed for this purpose in the local
government should not be delegated
to the High Court.

The suggestion of
total alteration in the procedure
of the Small Cause Court is a
paper matter and is a matter
of administration and is a matter
of the High Court for the present

system of issuing summonses for
date certain. To this change the High
Court with all deference to the opinion
of the Chief Justice of Calcutta from
whom the suggestion proceeds must
express emphatic objection. With
the exception of the Hon. Mr. Justice
Shepherd, the Judges concur in the
opinion expressed by the Government
of India that the Small Cause Court plan
does not always work satisfactorily
in the High Court and yet it is in
these Courts that it has the best
chance of success. It is essential
for its satisfactory working that the
cases to be tried should be a rule be
represented by legal practitioners
whose business requires their atten-
dance in Court daily. It is well
known that the High Court is
therefore always aware of the
progress made with trials in the
list. On the original side of the
High Court every case is, for a
speaking, conducted through a legal
adviser, but in the Small Cause Court
this is not so. Here the greater the

of the suits and of such small value
that it is not worthwhile for the parties
to employ Vakils or to attend in person
more than once or twice for the trial
of their cases. It would, the Judges
think, be most undesirable to adopt
for this Court a system which would
compel the parties in such cases to
attend with their witnesses three or four
days in succession and the numbers
of suits disposed of daily in the
small Cause Court would make it
difficult for a Justice if the list system
were in vogue to estimate even within
three or four days when his case
was likely to be called. Even if the system
of default judgments were introduced
to the exclusion of the present procedure
the shortening of the list by the removal
of undefended cases would only slightly
mitigate this sort of uncertainty.
If the ideal small Cause Court is
set up, the parties can attend
on a fixed day with an almost
perfect certainty that the case will
be disposed of on that day and
that they will have no further trouble
the matter. Of course under the

system some adjournments in some
cases be avoided, but they should
be the exception, and conclusion
opines that on a day of which the
parties have notice should be the
rule. Under the list system this ideal
is altogether unattainable but it
appears to me that the Judges
that under the plan prescribed by
the Code of Procedure it would
very easily be capable of realization
if an efficient staff of Judges were
provided and considering the large
net revenue which the Madras
Small Cause Court yields (an average
of Rs. 27,000 per annum in the last
four years) there can be no difficulty
in making full provision for the
maintenance of the public in this
respect. The abolition of the present
system would strengthen the Madras Small
Cause Court which would absorb
but a small fraction of the ab-
sorptions would enable the Court
to work the present system perfectly
and this being to the well of the

deprecates any suggestion to establish
an alternative remedy. It is
his own conclusion. I am to refer to the
suggestions contained in the extracts
from a despatch of the Secretary
of State which formed an enclosure
to the second order quoted at the
head of this letter. The Honble the
Judges have already expressed
their belief that such a modification
of the present system referred to in the
despatch does not exist.
The Honble the Cause Court
have shown that no alteration
is required in the procedure and
that if the transaction of business
needs to be accelerated the best
remedy that can be devised, and
one thoroughly efficient, is the addi-
tion of one judge to the existing
strength of the Court.
16. The Judges do not think that any
benefit can be gained by making
the proposed distinction between
cases valued under and above
Rs 500. Practically it would amount
to constituting two separate Courts.

308
and assuming that each Court with
its establishment would work ac-
cording to the same rules of practice
and procedure, there is no reason to suppose that the work
would be better done than it is now.
If the figure chosen had been Rs 1000,
and there had been coupled with the
proposal a suggestion to allow an
appeal in all suits exceeding that
sum in value, the distinction of of-
fices corresponding with a difference
of work might in some measure
facilitate the transaction of business,
but if the difference in value is to be
accompanied by no difference in the
class of business, the proposed division
of the present establishment would,
the Judges think, result in nothing
but a loss of efficiency or an increase
of expenditure.

I have the honor to be,
Sir,
your most obedient servant,
H. S. S. S.
Registrar

20/11

[The page contains approximately 20 lines of handwritten text in Urdu script, which is mostly illegible due to extreme fading and blurring.]

1. The first part of the document is a list of names and addresses, which appears to be a directory or a list of contacts. The names are written in a cursive script, and the addresses are listed below them. The list includes names such as "J. H. Smith", "W. J. Jones", and "A. B. Brown", among others. The addresses are also written in cursive and include street names and city names.

Go 26. 6. 91. 1257 m
 3. 8. 91. 1537 m
 10. 6. 91. 1114 m
 23. 4. 91. 792
 7. 5. 91. 344 R
 13. 6. 91. 640 R

Judicial { 189/ } Department.

No

FROM

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

Dated 11th August

Received

No. 1972.

Enc -

Submitting the views of the
 High Court upon the proposals
 mentioned by the Govt. of
 India, for expediting the
 disposal of business in the
 Presidency Courts of Small
 Causes.

Home Department,
 (Judicial)
 Simla, the 14th August 1891

No. 1102.

To

The Chief Secretary to the
 Government of Madras

Subject.

Proposed amendment
 of the Presidency Small
 Cause Courts Act.

20 AUG 91

SIR,

I AM directed to invite attention to the
 communication marginally noted,* and to
 request an early reply thereto.

* No. 445 dated 28th March 1891
 Subsequent reminder
 No. — dated —

I have the honour to be,

SIR,

Your most obedient Servant,

Under-Secretary to the Govt. of India.

From

The Government of India
Home Department

Dated

Received

Enclosures

SUBJECT.

Requesting an early
reply to the letter regarding
proposed amendment
of the Presidency Small
Cause Courts Act.

Judicial DEPARTMENT.

2525

29.5.91

3279

18.7.91

3431

29.7.91

3644

11.8.91

Dated

189

ORDERS.

The proposals to which the above
currents relate must not be
confounded with Sir P. P. Stubbins
Bill for extending the jurisdiction
of the Madras Small Cause Court.
2. The Bill provides for the following
objects:—

(1) It empowers the Small Cause Court
to try suits of a summary nature
provided their value does not
exceed Rs. 500.

(2) It gives a similar power in
respect of certain classes of
suits which the Small Cause Court
hitherto prohibited from trying
by Sec. 19 of Act of 1882.

(3) It provides for an appeal
from the Small Cause Court where such
appeal would ordinarily lie
under the Civil P. C. in respect
of the above extended jurisdiction.

3. On the other hand the proposals
which are now forwarded to
Govt for opinion by the Govt of
India are to the following effect:

(1) It is proposed to reduce
the limit of summary jurisdiction
of all Pres. S. C. Courts from Rs. 2,000 to
Rs. 1,000.

(2) It is proposed to repeal the
38 of the Act (XX of 1882) by
which section gives an undoubted
party in a suit valued at
Rs. 1,000 in the S. C. C. to
to apply to the High Court
for an order that the case
be reheard, & if the
is granted, the High Court
to rehear the case.

In the U.S. 40. 773-4
3/9/91 38 39

1. Draft letter returned
some time on the 8th. The
Bill made no alterations
as the C.L. alterations
have been seen by the Sec.
The paper has been sent
to the Madras office & the
printed Shams. It must
reach Madras today.

2. Reminder has been sent
to India on the 2nd & the Sec.
Wells says that he subd. the
ship with reply on the day day.

3. I have asked the Secy
Dept to put up Shams the
necessary references.

K.P. 5/7.

From 2

2

Dated 12

Received

Enclosures

SUBJECT.

Requesting an early
reply to ~~the~~ letter regarding
the proposed amendment
to the Presidency, Small
Court's Act.

[The page contains several lines of handwritten Arabic script, which are mostly illegible due to extreme fading and blurring. Some fragments of words like "بسم الله الرحمن الرحيم" (In the name of Allah, the Most Gracious, the Most Merciful) can be discerned at the top.]

PFO



My dear Brother,

In the Senate on the same
morning of the 1st of April, 1861,
during the preceding Senate
Court act, there was a reference
"to the Bill introduced by Sen. Sumner
relative to the same." I introduced the
word "other" before Bill but I mean
now that there is only one Bill relative
to the proposed divorce and the wife's
form. Please send me the Bill.

1945

1860.

25-25

and DEPARTMENT

section gives an undertaking
party in a sum valued at
R. 1,000 in the S. C. C.
to apply to the High Court
for an order that the
be reheard, & if the
is granted, the High Court
to rehear the case;

41

	2525	
	29.5.91	

No. 3279 3431 3644 3715
18.7.91 29.7.91 11.8.91

From

Dated

189

FOR ORDERS.

The proposals to which the above currents relate must not be compounded with Sir P. P. Stutchman's Bill for extending the jurisdiction of the Madras Small Cause Court.

L.S. in 1877/78 Bico

2. The Bill provides for the following objects:—

* [But the provisions of the Civil Proc. Code are to apply to all cases which come under the extended powers of the S.C.C., that is to say the limit of summary jurisdiction remains unaltered, the change has in the direction of introducing regular trials.]

(1) It empowers the Small Cause Court to try suits of a summary nature provided their value does not exceed Rs. 5,000.

(2) It gives a similar power in respect of certain classes of suits which the Court was hitherto prohibited from trying by Sec. 19 of Act of 1882.

(3) It provides for an appeal from the Court where such appeal would ordinarily lie under the Civil P.C. in respect of the above extended jurisdiction.

3. On the other hand the proposals which are now forwarded for opinion by the Govt. for India are to the following effect:

(1) It is proposed to reduce the limit of summary jurisdiction of all Pres. S. Courts from Rs. 2,000 to Rs. 1,000.

(2) It is proposed to repeal Sec. 38 of the Act (XX of 1882) which gives an unsuccessful party in a suit valued at Rs. 1,000 in the S.C.C. the right to apply to the High Court for an order that the suit be reheard & if the application is granted, the High Court to rehear the case.

It is proposed to reduce the limit of summary jurisdiction of all Pres. S. Courts from Rs. 2,000 to Rs. 1,000.

Madras Presidency Small Cause Courts Act.

(3) It is proposed to introduce a system of default summonses under this system a plaintiff suing for a debt may take out a special summons upon affidavit requiring the defendant to give notice to the Registrar of the Court within a limited time whether he intends to contest the claim; if he fails to give notice accordingly the Court forthwith gives judgment in favor of the plaintiff;

(4) It is proposed to simplify the procedure holding in Part S. C. Courts at present large portions of the Civil Proc. Code apply, it is proposed to alter all this & leave the procedure to be determined by Rules to be framed by the High Courts utilizing the Civil Proc. Code merely as a basis;

(5) It is proposed by Sir Compton Petheram to substitute for the system of issuing summonses for a fixed date a "list" system; under this system a list of cases posted for hearing will be exhibited in the Court of S. Courts & litigants will be obliged to calculate from it themselves the probable date of hearing.

above proposals were referred to the High Court, S. C. Court, Chamber of Commerce & Trades' Association for opinion. Their files have now been received, are abstracted below:-

High Court.

High Court objects to propose it observes that no complaints have been received of extraordinary delay on the part of the S. Courts in dealing with suits worth above Rs. 1,000 & points out that the S. C. C. keeps pace with its work & requires no assistance from Justice speaking from 8 years' experience considers that suits of over Rs. 1,000 do not take much longer than suits of less value.

Strongly endorses this opinion
H.H.

smaller values. The High Ct. admits that the average duration of a contested suit in the S. C. C. is (75 days) is rather long but considers that the only way of shortening the time is by appointing an additional judge.

(2) As regards proposal (2) the H. C. observes that if proposal (1) be carried out proposal (2) follows of necessity for if the S. C. C. is prohibited from trying suits for over Rs. 1,000 the power for rehearing suits above the value in the H. C. must of necessity be repealed.

But anyhow the H. C. thinks that Sec. 38 which gives unsuccessful litigants power to demand retrial in the H. C. should be repealed. The J. observes that it is under the foot of Sec. 38 that the power of repealing this Sec. (para. 2 of Mr. Lyall's letter) & the H. C. says it agrees with the foot on this point. He says if J. & the H. C. agree to do this, para. 4 of letter to J. of J. dated 14 May 1897 1019 J.D. The foot therein is the attention of the J. of J. certain suggestions of Sir R. Hutchins & one of these was the repeal of the above section.

After giving its opinion that Sec. 38 should be repealed the J. goes on to discuss the question whether any provision for should replace the action at this point the Judges are various, some hold that there is no need to provide for a regular repeal of Sec. 38 be repealed, other judges would not following changes in the

(i) They would retain jurisdiction over S. C. suits to Rs. 2,000 in value.

Mr. Bramley is of opinion that mercantile community is in favor of an appeal it should be referred to Chamber of Commerce & Trades' Association. I would express concurrence with majority of the judges.

1898

FOR ORDERS.

(ii) they would allow an appeal from the H.C. in all summary cases where the value of the suit exceeds Rs. 1,000;

(iii) they would leave the procedure in hearing suits between Rs. 1,000 & Rs. 2,000 a summary procedure for they say that the bulk of evidence taken in summary suits will be sufficient for the appellate Court.

(3) The Judges do not express any decided opinion as to proposal (3). The question is discussed in Sir Com. Peterman's dissent read on 23.4.91 & 792 Ind. C. The object of the proposal is to save trouble to creditors & to afford greater security at the same time to persons against whom false suits for debt are due.

The H.C. observes that the proposed system is an improvement upon the present system so far as relief of the debtor is concerned & they doubt whether the fact that the summons is based on an affidavit will give greater security to defendants but they observe that the change would relieve the S.C.C. Judges from a quantity of mechanical work involved in the determination of undefended suits & that it may cause a saving of time & trouble to merchants & tradesmen.

On the whole the H.C. would rather introduce the change as an alternative merely to the present procedure or would require further why the provisions of Chap. XXIII (which contains provisions similar to those of default summonses) are so rarely availed of by plaintiffs.

As to the simplification of procedure the Judges point out that sec. 33 of Act IV of 1852, already gives the S.C.C. power with the approval of the local Govt. to make any portion of the Civil Proc. Code shall not apply to the procedure & in this way to simplify the course of litigation in that Court.

In important cases written judgment and now generally needed. Anyhow the suits average only 100 a year.

The H.C. advert to one important objection viz. that the proposed system would throw upon the Regt. a larger amount of summary judicial work, the extent of which is already found prejudicial to his administrative duties. The S.C. Court say that if it is introduced the staff of responsible officers to deal with it will have to be increased by the appointment of Assistant Regts. I think there is no doubt of the soundness of these views. We have heard of the complete proof of the necessity of greater attention to an administrative business of the Court in the irregularities connected with the summary procedure. I am sure that the Regt. will be able to show reason to show why the proposed system would afford greater security & expedition in cases in which it is compared with the summary procedure in the S.C. Court.

There is a misprint in Sec. 23 of Act XV of 1872. In the 3rd line Court should be Code. If the section is amended this can be corrected. 24/9

The obvious remedy is to transfer the power of making rules to the H.C. who is best qualified to deal with the matter. 24/9

are valid grounds. 16/5 24/9

Mr. Shaw, J. is I think a very good one. 24/9

There seems no doubt that Sec. 23 does bear the interpretation put upon it by the High C. & it is probable that the objection on the part of the Calcutta High Court to issue rules regulating the procedure of the Calcutta S.C.C. is due to the fact that Sec. 23 confines the duty of making such rules to the H.C. & the Local Govt.

The H.C. agrees in thinking that the present procedure in the S.C.C. is unnecessarily cumbersome & that it would be replaced with advantage by rules of procedure framed by themselves. They therefore propose to do away with Sec. 23 as to leave the framing & promulgation of rules of procedure at the discretion of the H.C. & the S.C.C.

(5) The H.C. objects strongly to the extension of the 'last day' of posting cases obtaining in the H.C. to the S.C.C. also. 16/5 24/9

(b) Small Cause Court

(1) The Judges of the Small C. C. are of opinion that it is not desirable to remove the value limit from summary procedure from Rs. 2,000 to Rs. 1,000. They say that there is no delay in the disposal of suits of high value & that the existence of this power in the matter of such has never been made the subject of complaint.

(2) The Judges do not deal with proposal to repeal Sec. 33 of Act IV of 1852. But the Chief Judge is para. 7 of his letter that he never been regarded as satisfactory provision.

(3) The proposal to introduce system of 'default summonses' deals with a length by Judges & they come to the conclusion that it is neither necessary nor desirable.

It is not necessary to give the arguments of the Judges in detail; the ~~advantage~~ ^{benefit} of the system seems to be that plaintiffs will be able to avoid personal appearance in Court which on the other hand the system will cause a certain amount of delay where the deft. elects to defend the case. The Chief Judge further observes that the decision of an ~~uncontested~~ ^{uncontested} suit is not a mere mechanical function.

(A) The Chief Judge approves the proposal to amend the Act as to allow of the H.C. issuing rules of procedure for the S.C. Court.

(B) The question of adopting the "list system" of posting cases has not been touched on by the Chief Judge.

(C) Traders' Association

The Traders' Association has considered the proposals now under discussion with Sir P.P. Hutchinson's Bill. Their letter will therefore be reserved for consideration until the replies to G.O. 3 Aug. 1891 at 1537 have been received.

(d) Chamber of Commerce

(1) The Chamber considers that the S.C. C.E. disposes of its work as expeditiously as can be expected, but considers that ~~the~~ ^{the} right of appeal in all summary suits above Rs. 1,000 should be given ~~for~~ ⁱⁿ that (ii) the limit of summary jurisdiction should be reduced to Rs. 1,000.

(2) The Chamber considers that sec. 38 should be repealed & appeal in suits above Rs. 1,000 substituted.

(3) The Chamber approves the proposal to introduce a system of "default summonses".

(4) The Chamber makes no remarks ~~except~~ ^{except} that the present procedure is not inconvenient.

The Chamber then goes on to discuss Sir P.P. Hutchinson's Bill; it is not necessary to deal with the portion of it.

It is sufficiently ~~distinctly~~ ^{distinctly} ~~by~~ ^{by} the ~~High Court~~ ^{High Court}

The Chamber distinctly advocates a ~~system~~ ^{system} of appeal in cases above Rs. 1,000 - ~~Para 3 of the letter~~ ^{Para 3 of the letter} says so further - ~~Para 4 of the letter~~ ^{Para 4 of the letter} states in the case of ~~the~~ ^{the} ~~reduction~~ ^{reduction} - ~~reducing~~ ^{reducing} the ~~limit~~ ^{limit} of the ~~value~~ ^{value} ~~to~~ ^{to} Rs. 1,000

Sec. 38 only is specifically ~~should be~~ ^{should be} ~~but~~ ^{but} ~~introduced~~ ^{introduced} ~~almost~~ ^{almost} ~~eliminating~~ ^{eliminating} the ~~power~~ ^{power} of Sec. 38 & 40

we may adopt the ~~chances~~ ^{chances} ~~then~~ ^{then} conclusion I think -

5. There is then a general ~~consensus~~ ^{consensus} of opinion upon ~~the~~ ^{the} ~~following~~ ^{following} ~~points~~ ^{points} -

(A) The power of the S.C. C.E. to try summarily suits up to Rs. 2,000 in value should be retained;

(B) There should be a right of appeal to the High Court in all summary suits above Rs. 1,000 in value.

(C) Sections 38-40 of Act III of 1852 should be repealed.

(D) The Act should be so amended as to empower the High Court (not the local for.) to frame rules for the procedure adopted in the S.C. Court.

The High Court & S.C. Court also oppose the introduction of the "default summons" system but the Chamber of Commerce approves it. Finally the High C.E. objects to the "list posting system".

6. There remain ~~these~~ ^{these} ~~points~~ ^{points} to be considered.

In a despatch No. 2 in P.O. of 26.6.91 at 11.57 dated Secy of State commented upon the unsatisfactory state of things in the (Calcutta?) S.C. Cause Court & proposed a division of the S.C. Courts into two divisions branches the one to try suits valued at not more than Rs. 500 & the other with suits valued higher. He suggested remedy to the S. of J. but did not explain in what an improvement might be expected to result from a change.

This despatch was communicated to the S.C. C.E. & the Chamber of Commerce. All are of the opinion that the state of things under S.C. Court is unsatisfactory & the Court opposes - with

2-17 14.11

reason it seems — the proposed
division of the S. C. Court into
two branches. The S. C. Court
& the Chamber do not deal
expressly with this proposal
but the former seems to be
opposed to it.

II. The High Ct. deals in its
letter with a proposed increase
in the number of Judges of
the S. C. Court, but the matter
certainly calls for no order
yet, it is altogether premature.

III. In the last para. of its
letter under No. 23.4.91
of 1892 the H. Ct. refers to the classification of
small causes. The
last correspondence on the
subject will be found in No.
of 10.6.91, but 11/7/91
no order is now called for.

15 Aug.
17 Aug.

The High Ct. has got a copy under its present
Ct. for a proposed increase in the
number of Judges of the S. C. Court.

There is no necessity while the
work is done as well as it can be.

This order has not yet been referred to, and
the matter need not it seems be now
referred to.

20 Aug. 1891
28/8/91

1773-74-3-9-91

Papers to be read in Proceedings:—

Again G.O., dated 23 April 1891, No. 772
Again G.O., dated 26 June 1891, No. 1257
Current No. 2525 of 1891, dated 29 May from Chairman, Madras Chamber of Commerce
3279 — 18 July — Chairman, Chamber of Commerce
5431 — 29 July — Chief Judge, S. C. C.
Current No. 3644 of 1891, dated 11 Aug. from Secy. High Ct.
— 15/8 — Secy. — J. of S.

Order 3rd Sept. 91 No. 1773
The Govt. of India will be
addressed.

Dept. 8, copy of letter
22/9/91

1774
The Secy. to the Govt. of India
18/9/91

32k

I am directed to acknowledge the
receipt of Mr. Spalding's letter dated
25 March 1891, No. 445, enclosing
reminders to the Government of India
the Government of India
Chief Judge of the Madras
Court of Appeal, certain
in regard to the amendment of
Presidency Small Cause Court
1882, & in reply I am to send
copies of letters on the subject
received from the Government of India
the Chief Judge of the Madras
Court of Appeal, the Chairman of
Madras Chamber of Commerce
Madras Trades Association
with the opinion of the High Ct.
the proposed changes.
It is suggested that the
alterations should be made in
existing law:—
(1) The limit of a summary
judgment in small cases

be reduced from \$2,000 to \$1,000.

(2) Section 35 of Act XX of 1882 to be repealed;

(3) a system of "defendant summonses" to be introduced in order to simplify the recovery of debts;

(4) the general procedure of the Small Cause Court to be rendered less cumbersome by the rejection of the Civil Procedure Code as a basis, or rules of procedure to be framed by the High Court;

(5) the introduction of the "list" system of posting cases in the Court.

It will be observed from these views of the authorities quoted that there is a general consensus of opinion that

(1) the Small Cause Court should retain the power it at present possesses of trying summarily suits below \$1,000 & \$2,000 in value;

(2) there should be an appeal to the High Court in the case of all suits exceeding \$1,000 in value;

(3) sections 35-40 of Act XX of 1882 should be repealed;

These opinions Mr. J. C. is in full accord with the first in particular he strongly endorses, and with the institution of summary criminal process in suits valued at more than \$1,000. He is also in full accord with paragraph 1 of the High Court's letter, from which it will be observed that the present system of recording evidence in the Small Cause Court is "extremely defective" for the purpose of the appellate Court. As regards the simplification of procedure I am directed to say that Mr. J. C. concurs with the suggestion by the High Court in para. 12 of its letter, bearing date 12th of 1882, already quoted, that the Small Cause Court should retain the

approval of the local J. C. to declare any portion of the Code of Civil Procedure inapplicable to itself. In this way the necessary provision is made for rendering the trial of suits more expeditious. But the combination of the Small Cause Court & the local J. C. in this section is not, in the opinion of Mr. J. C., a suitable one for the J. C. would be glad to see the Act so amended as to transfer the power of making rules to the High Court, in being the only body qualified to deal with the question. Mr. J. C. also concurs with the High Court & the Chief Justice of the Small Cause Court in questioning the expediency of the proposed system of "defendant summonses". On this subject the arguments of the Chief Justice of 1882 are to be particularly convincing, & the High Court, and adverts to an important objection, namely, that the introduction of the proposed system would tend to increase the amount of "quasi-judicial" work, which the amount of such work already lying upon the High Court is most prejudicial to the performance of his administrative duties. As the objection entertained by the High Court to the "list-posting" system of Mr. J. C. appears to Mr. J. C. to be well-grounded, & any extension of the system is to be deprecated, I am also directed to draw attention to Mr. J. C.'s letter of 17th June 1882 at 839, in which he forwarded an extract from a resolution passed by the Government upon the subject, commenting upon the "factory condition" of things, and that one of the President's

✓
ORDINARY, PRINTED.

Judicial DEPARTMENT.
G.O., DATED 3. 9. 91
No. 1773.
1774

14/9/03 ✓
23-4-10 ✓
23-1-15 ✓
11-11-31 ✓

NOTED

For Copy sent to Press. 5-9-91.

Returned for signature. 12.9.91.

Despatched in print. 15.9.91.



(Despatch Abstract)

Presidence Small
Court-Act, 1002

Ordering that the
of India be advised
in certain proposals
~~in regard to~~ ^{for} the
amendment of the

the proposals will
go to the amend-
ment of the
with the opi-
on of the pro-
posed change

7 letters
Submitting
copies
letter received
at the office