

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 188

Press

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23 24

Dated

1-2-1865.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
1st February 1865.*

No. 23. Read the following Proceedings of the Madras Government in the Legislative Department:—

Recommending, to the Government of India, }
certain alterations and additions in the Draft } (Here enter 17th January 1865, No. 15.)
Bill of the new Civil Procedure Code.

No. 24. ORDER THEREON, 1st February 1865, No. 188.

Separate Revenue, No. 1.

Stamps.

Communicated to the Board of Revenue for their information, with reference to paragraph 4 of the foregoing Proceedings.

(True Extract.)

(Signed) C. G. MASTER,

Under Secretary to Government.

To the Board of Revenue, with Proceedings Legislative Department, No. 15.

Exd. S. T. Augustin.

Proceedings of the Madras Government, Legislative Department,
17th January 1865.

Read the following papers:—

Report of the Judges of the High Court on the Bill entitled the "Civil Procedure Code."

(Here enter 15th November 1864, No. 66. Printed separately.)

Reports of the Civil Judges and other Judicial Officers. (Printed separately.)

Read again Proceedings of Government in the Revenue Department.

Transferring a letter from the Board of Revenue, bringing to notice that Section 193 of the Draft Bill entitled the "Civil Procedure Code," if enacted, is likely to have a most injurious effect, upon the Stamp Revenues of the country, in order that the Supreme Government may be moved to modify the said Section so as to leave Section 17 of Act X of 1832 unrepealed.

(Dated 13th September 1864, No. 1690).

Read also Proceedings of Government, Judicial Department.

Authorizing the Advocate General to institute a prosecution against C. C. Streemom Teruvengada Mooncappah Ramanoojah Dasen, for criminal breach of trust in connection with certain charities, the management of which was entrusted to him; and directing that a copy of the Advocate General's letter be forwarded to the Government of India, pointing out the defect in Section 97 of the Civil Procedure Code in not providing for the payment of costs incurred by defendants in the event of the plaintiff withdrawing the suit before judgment.

(Dated 6th January 1865, No. 18).

ORDER THEREON, 17th January 1865, No. 15.

With regard to the observations made by the Judges of the High Court, the Governor in Council thinks it unnecessary to do more than express his general concurrence therein, especially with reference to the very important suggestions in Part A, as to matters wholly omitted from the Code.

2. As to the difference of opinion between Mr. Justice Frere and Mr. Justice Phillips on the one hand, and the Chief Justice and Mr. Justice Bittleston on the other hand, regarding the introduction into the High Court in its original jurisdiction of the system of Stamp duties now prevailing in the Mofussil, the Governor in Council inclines in favor of the views expressed by the former. Although the Court fees, for which Stamp duty would be substituted, are only due from time to time, they are practically, in the majority of cases where parties appear by a Solicitor, paid in a lump, either in the form of advances, or at the settlement of the Bill of costs. Little if any difference would probably be felt by the suitors under the new system, nor is there any reason to suppose that there is less ardour for litigation in Madras than in the Mofussil, where the burthen of Stamp duty is readily borne.

3. Nor is the Governor in Council disposed to agree with the Chief Justice and Sir Adam Bittleston in their opinion, that the provision of Section 634 which enables a Rupees 32 stamp to be used where the claim is not capable of estimation under Schedule B, is unnecessary. A case reported at page 154 of the Madras decisions for 1860, where a plaintiff sued for the restoration of his child, valued for Stamp duty at Rupees 5000, is exactly in point. Many cases might also arise where a plaintiff sued for a declaration of his right to be considered as an adopted or legitimate son, where any valuation of his right at the time of suit would be impossible.

4. The provision of Section 193 which authorizes the Court to admit an unstamped document on payment of the Stamp duty, and a penalty of double the amount, has already been made the subject of a separate communication to the Government of India.

Letter to Government of India, No. 339, dated 11th December 1864.

5. In reviewing the suggestions offered by the other Judicial authorities, it will only be necessary to comment upon those which appear to be of weight, adding such other observations as seem to be called for.

6. The phrase "suits of a civil nature" is, in general, taken as opposed to proceedings of a criminal character. But it is sometimes taken as excluding cases into which the religious element enters. The extent to which the Court can take cognizance of caste or religious disputes has been frequently discussed in Madras, and a decision will be found upon the point in the 1st High Court (Madras) Reports, p. 291, where the Court refused to take cognizance of matters of religious observance. On the other hand, in a very recent decision of the Privy Council, (9 Moo. Ind. App. 344) the Judicial Committee entered fully into a question of that nature, without apparently supposing that the subject was unfit for adjudication by a Civil Court. Many points, also, might arise which have never been decided. Could an action be brought against a Chaplain for refusing to christen, marry or bury a person within his District? Could a man bring an action to compel his wife to return and live with him? The old Madras Regulation II of 1802, Section 5, ranges suits and complaints respecting marriage and caste under the general head of "suits and complaints of a civil nature." Do disputes of that class come within the same phrase as used in the Code? The system of illustrations which has been introduced into the Indian Penal Code and the proposed Civil Code might be employed with advantage in clearing up doubts of this nature.

7. There are some forms of redress well known to English jurisprudence, which strictly involve civil rights, and yet can hardly be made the subject of a civil suit. For instance, proceedings by *habeas corpus*, *mandamus* and Interpleader, and those in the nature of a Commission of lunacy. The re-organization of a charity, where the purposes of the charity have failed. The appointment of new Trustees in private trusts, and the steps which may be taken by trustees to relieve themselves from, or to protect themselves in the discharge of their functions. None of the above class of cases seem to be within the cognizance of the Courts under Section 6. Such cases do undoubtedly come within the jurisdiction of the High Courts on their original side, but no procedure is pointed out in Chapter XIV as applying to them when they arise.

8. The Code lays down no rule as to the law which is to be applied, where both parties are of the same religion, or where they differ in religion. This is a matter which seems to come strictly under the head of Procedure, and was expressly, though not in very accurate language, provided for both in the Charter of the late Supreme Court and in the Madras Regulations.

9. Does this Section compel a party who sues for a sum not exceeding ten Rupees to bring his suit before a Village Moonsiff? Suits of this value, for rent or for tolls, might involve interests to an immense amount, and any such obligation would be most undesirable.

10. The words "amount or value of the property in suit" seem to limit this Section to suits for the recovery of property. It would be better to use the words "subject matter in dispute."

11. This Section is taken from the English Statute 15 and 16 Victoria, Cap. 86, Section 50, which has already given rise to many decisions limiting the apparent generality of its language. The law as to such declarations is little understood, and it would be well to make it clear by further definition, or by illustration. It might also be well expressly to enact, what has been decided by the Madras High Court, that execution cannot be sued out upon a merely declaratory decree. (1st High Court Reports, 184).

Section 6, page 34.

Section 11, p. 30.

Regulation IV of 1816, Section 5.

Section 16.

Section 24.

12. Very strong and numerous opinions have been expressed by the Judicial authorities that this Section, so far as it applies to females, will tend to foster unsound litigation. Nothing is more common than to see Native widows put forward to support claims, which they would never think of maintaining on their own account, but which bring in a handsome profit to some needy relative or agent. Such cases fall to the ground at once if the woman has to come forward herself, and the Governor in Council is of opinion, that this Section will exercise an injurious influence, by enabling her to be kept in the back-ground. No real inconvenience can happen, as she can always appear by a responsible Vakeel, and women of rank, &c., are protected from personal appearance by Section 40.

13. It would be well to add the words "and where" between "when" and "it accrued." For instance, in a suit on a bond, to state not only its date, as in the example given, but the place of its execution, so as to show that the cause of action arose within the jurisdiction of the Court, and to insert an express averment to that effect; and so in respect of any other circumstances which are relied on as giving jurisdiction. This would often stop a case *in limine* before unnecessary expense had been incurred.

14. It has been invariably held by the Madras High Court, in reference to Act VIII of 1859, Section 39, which corresponds to Section 66, that it only applies to documents "in the possession or under the control" of the plaintiff. It would be well to say so distinctly, because although Section 68 gives the Judge power to admit documents which were not originally produced, this leaves to his discretion what is a matter of strict right on behalf of the plaintiff. The same remarks apply to Section 191.

15. This Section implies that the summons when served upon a soldier will have its ordinary result in compelling his attendance. The Mutiny Act, Section 40, provides that no Soldier shall be liable by any process to appear before any authority for an original debt not amounting to £30. In recent proceedings of the Madras Government it has been proposed to extend this provision to soldiers of the Native Army in Madras. The Governor in Council is of opinion that it would be advisable to insert in the Code any provisions of law which establish a different liability to summons in the case of soldiers and civilians. This is the more necessary as English Statutes are not likely to be within the reach of Mofussil Judges.

16. This Section should go on to provide, that wherever the Government shall undertake the defence of a suit brought against one of their officers, it shall be continued against his successor, in the event of his death, or retirement from the office, or against the Government, if the office should cease to exist.

17. The provision in these Sections which makes the examination of the applicant a condition precedent to the granting of relief seems calculated, in many instances, to defeat justice, and in most to cause useless delay and trouble. The applicant may be in a different country, so as to make his examination impossible, and in the majority of cases he will know little or nothing personally of the facts on which the application is grounded.

18. This Section seems only to contemplate security being given by a surety. It should be worded so as to enable the defendant to deposit money or other valuable property sufficient to answer the claim against him.

19. It appears to the Governor in Council that the first clause of this Section will make it wholly nugatory. It is scarcely possible for a plaintiff to furnish a list of the various articles of moveable property that are in the defendant's house, which he has probably never entered, and to estimate the value of items which he has never seen. The simplest course would be, on the analogy of a distress for rent, to direct the attachment of so much property as may be sufficient to answer the demand, if so much is to be found.

Section 120, pp. 30, 59.

20. In the opinion of His Excellency in Council there ought to be an appeal against orders made under Section 138 also, which is even more stringent than Sections 136 or 140. Under the existing Code a defendant may appeal against an order granting a receiver. (Act VIII of 1859, Section 94). The Governor in Council is also of opinion, that orders under these Sections should be open to appeal by the plaintiff as well as by the defendant. In many cases the injury done to the plaintiff, by improperly refusing the injunction or receiver, will be very much greater than the injury to the defendant by improperly granting it. Take for instance the case of a defendant in a suit for land, who is capriciously felling trees, or destroying buildings. Little if any injury can be done to him by restraining such acts, though he should be finally successful in the suit. But the injury to the plaintiff will be irreparable if the application is refused, and he ultimately has a decree in his favor.

Section 141, p. 51.

21. With reference to Sections 143 and 144 the Governor in Council wishes to submit for the consideration of the Government of India, a copy of the Advocate General's letter of the 19th ultimo, wherein he draws attention to a report on Section 97 of the present Code (which corresponds to Sections 143 and 144 of the Bill) in permitting a plaintiff at any time before judgment is pronounced to withdraw his suit without payment of costs.

22. The circumstances under which a cause of action survives come, of course, under the head of substantive law, rather than of procedure. But the Governor in Council is of opinion, that a few illustrations might, with advantage, be appended to this Section, so as to point out when the action does, and when it does not survive. The opportunity might be taken of explaining, whether the rule *actio personalis moritur cum persona* is to be applied in India according to the law as it stood in England before, or as it stands since 3 and 4 William IV, c. 42, Sec. 2. Act XXVI of 1841 only extends the above Statute to "cases governed by English Law."

Section 147.

23. Probably these Sections would be construed so as to imply that the Court was to wait a reasonable time in order to admit of an application being made by the legal representative of the deceased plaintiff. But as the words are expressly inserted in Section 152, which refers to the case of a sole plaintiff, and deliberately left out in the other Sections, an opposite construction might, perhaps, be placed upon those Clauses.

Sections 149, 150, p. 29.

24. The wording of this Section seems to require the personal presence, of the parties. The words "either in person or by properly constituted agent" should be inserted. Those words would include every person whom the procedure of the Court admitted of as a substitute for personal appearance.

Section 161.

25. These Sections should be made applicable to the Small Cause Courts.

Sections 179, 180, p.p. 26, 51.

26. The use of the word "debt" in this Section seems to adopt the strict rule of Roman Law, and of the English Common Law, which only admits a set off where the claim on both sides is in respect of a definite liquidated amount. Is it intended to exclude the more liberal rule of equity on this point? In a recent case before the Madras High Court a claim for unliquidated damages was pleaded by way of

Section 182.

set off to a suit on a Bill of Exchange. The Court in an elaborate written judgment rejected the plea, as not coming within any of the cases under which it would have been admitted by a Court of Equity. But they expressed their opinion that the language of the Procedure Code was not intended to limit the jurisdiction which they would otherwise have possessed and that they would be willing to go as far as the English Courts of Equity in allowing a set off, though it did not come within the technical definition of a "debt."

Again the Section seems to follow the common law rule, that the debts must be due to and from plaintiff and defendant respectively. But if a trustee were to sue on behalf of his *cestui que trust*, Equity would allow a set off of a debt due from the *cestui que trust*, and it would be well to alter the wording so as expressly to recognize such principle.

27. The only law at present "in force for the punishment of a witness who may abscond or keep out of the way in order to avoid the service of a summons," is Section 172 of the Indian Penal Code. But the Civil Court has no power

Sections 235 and 237 p.p. 36, 33, 40, 54, 56, 57.

under that law to impose any fine upon a witness, nor has such power been given by the present Code. See Chapter XV. The Section ought to be amended by authorising the Court to impose upon the party such a fine as is sanctioned by Section 172 of the Penal Code. The Governor in Council is also of opinion, that the Court should be authorized to impose upon witnesses who do not attend when summoned such a fine as is sanctioned by Section 174 of the Penal Code. Very general complaints are made by the Judicial authorities of disregard of their process, while the labor and expense of instituting a prosecution under the Penal Code prevents such a course being ever adopted.

28. No provision is made for the costs incurred under these Sections, Act XXIII of 1861, Section 9 provided that they should be paid by

Sections 243—245, p. 20.

the Collector, unless deposited by either party, and should be costs in the suit. Some such pro-

vision seems to be necessary. It might happen that neither party was willing to incur the expense of taking such evidence, especially if the suit were a collusive one, and yet the ends of justice might render its production indispensable.

29. This Section should provide, as is done with reference to the High Court in Section 255, that the opinion of the District Court given on reference, should not bind it when the case was argued on appeal.

Section 254, p. 26.

30. No provision is made for any temporary disability on the part of the Judge. The Section might end with the following words, which are contained in the corresponding Section (Section 196) of the Criminal Procedure Code,

Section 266, p.p. 36, 40.

"unless the Judge be prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court."

31. The Governor in Council is of opinion that as a general rule, and unless some strong reason exists to the contrary, the evidence of prisoners ought to be taken in open Court in the presence of the Judge who tries the suit.

Sections 284, 283, p. 45.

Section 284 does not in terms exclude such a course, but this Code contains no provision enabling a person who is in custody to be brought up under a Judge's order.

Under the terms of Section 283 evidence taken under a commission from a prisoner can never be used without the consent of both parties. This requires amendment.

32. The Code should provide that either party may file a Memorandum of objections (as in Section 573) to the finding of the Commissioner; and that, except upon points specifically objected to, the finding should be conclusive, unless the Judge, either original or appellate, should himself think fit to open it up.

Sections 290, 292.

Section 297, p. 36.

33. The word "parties" should be included in this Section.

34. Very strong opinions, with which the Governor in Council agrees, have been expressed by the judicial authorities in regard to the uselessness of Assessors who are under no responsibility in the suit, and who exercise little if any

Sections 298, 299, p. p. 20, 36, 43, 54,

influence upon its decision. Unless where personal interest or corrupt motives intervene, it is hardly likely that many persons will take much trouble in forming an opinion, which has no effect when it is formed. The care and attention so generally shown by an English Jury entirely arise from the fact that the verdict is their verdict. The merits of the institution, either as an instrument of judicial investigation or of legal training, would, in the opinion of the Governor in Council, entirely disappear as soon as they descended from the position of Jurors to that of Assessors.

35. Hitherto Judges of the Court of Small Cause have not written their judgments, and have thereby been saved from great labor, and been enabled to dispose of their cases with

Section 304 p. p. 31, 57

much greater rapidity. The Governor in Council can see no advantage in requiring a written judgment, giving the reasons for a decision which is not open to appeal.

36. This Section enables the Court to decree specific performance of a contract which can be performed, where the suit was framed for damages. But there is no provision for the

Section 312.

converse case, viz., for awarding damages where the suit was for specific performance, and where it appears that the contract can no longer be carried out. Nor is there any provision for executing such a decree, since Section 323 refers to cases of an absolute decree for specific performance, and Section 324 refers to decrees under Sections 311 and 312.

37. This section apparently relates to cases where the decree provides for something being paid by the plaintiff. For instance, in case of a suit by a mortgagor to redeem, where he is

Section 326, p. 45.

ordered to pay off the balance due on the mortgage; or in case of judgment against the plaintiff on a plea of set off. No case, it is conceived, can arise where a decree for money can be made against a person who is no party to the suit. To prevent mis-apprehension, however, it would be well to alter the Section so as to make it run.

"If in any suit a decree for money is made against a plaintiff, the decree may be enforced against him in the same manner as a decree may be enforced against a defendant."

38. There is no provision in this Section that the Court shall execute the conveyance so tendered, nor is any power given to the Judge to direct an alteration in its form, if it does not properly carry out the decree. Further it

Section 327.

might happen that a Judge would agree to a conveyance which went beyond the terms of the decree, or refuse to agree to a conveyance which was in conformity with those terms. In either case there should be an appeal, and none such seems to be allowed under this Code. See Section 614.

39. A separate communication has already been addressed by this Government to the Government of India, requesting that the right of creditors to attach or take in execution the pay, allowances or pensions of public servants, whether Civil or Military, may be distinctly defined.

Sections 332, 375 p. 40.

Vide Letter No. 329, Legislative Department, dated 6th December 1864.

40. "The Court whose duty it is to execute the decree" is in all cases the Court by which the first decree was passed. See Sections 584 and 602. It would save the trouble of hunting

Section 335.

through the Code if this rule were at once distinctly stated here. Sections 584 and 602 would then become unnecessary.

41. Where a decree has been transferred, the same right of setting off a cross decree against the assignee should exist as if he had been the original decree-holder. The words "if there be cross decrees between the same parties" might be held to exclude such a set off.

Section 333.

42. The first clause of this Section seems to be founded on the old rule of English Law, that after a year and a day judgment could not be enforced without a proceeding by *scire facias*.

Section 350, p. 33.

This rule was founded on the presumption that the judgment had in the meantime been satisfied. But as no adjustment of the decree can now be recognized by the Court unless made through the Court or duly certified to it, such a precaution seems useless. The case is, of course, different where the application is made against the representative of the judgment debtor, as he may show that he has no effects.

43. If the application is made against the representative of the judgment debtor, who pleads that he has no assets, [or that he has properly spent them, or that he has only enough in hand to satisfy prior claims, it would be necessary to take an account of the entire estate, and no machinery is provided for this purpose. See the remarks of the High Court Judges (p. 15) upon Section 330.

Section 351.

44. These Sections regulate the mode in which Section 321, is to be carried out, and only relate to immoveable property. No provisions are made for carrying out Section 322 which relates to the delivery up of specific moveables.

Sections 359—367, p. 33.

It would, of course, be quite "practicable to enforce the seizure" of such property wherever it could be pointed out, and no matter in whose possession it might be. But in that case also, provisions analogous to those of Sections 362—367 ought to exist, where a *bona fide* claim is set up by a party, other than the defendant, in actual possession. Claims of this sort would be even more difficult to adjudicate on than claims to real property, as a sale in market overt might give a perfectly valid title to a purchaser, though his vendor had no title whatever.

45. Both these Sections should authorize the immediate sale of perishable commodities, such as meat, fish, vegetables, &c.

Sections 369, 400, p. 45.

46. Where it appears that there is a mortgage or lien upon the property it could hardly be said that the defendant held possession "not on his own account or as his own property, but on account of or in trust for some other person."

Section 390, p. 41.

The attachment should then be continued, but subject to the prior claims of the person who had the mortgage or lien.

47. The words "shall be made at the earliest opportunity" seem to leave no discretion to the Court where the claim has been postponed for two or three days, however reasonable the delay may have been under the circumstances.

Section 393, p. 41.

The word "promptly" would satisfy what is really intended by the Section.

48. Where the decree-holder is himself the purchaser, no deposit should be required from him, his debt being itself a deposit.

Section 404, p. p. 31, 34, 41.

The time for payment ought to be made clear by using the words "from and exclusive of the day on which the sale of the property took place."

49. The Governor in Council is strongly opposed to this clause. No one will ever take

Section 405, p. 29.

the trouble of attending a sale of undivided property, and coming prepared with his deposit, if he is liable to have his bargain taken out of his hands, should it prove a good one. If any co-sharer wishes to keep the property in the family nothing is easier than for him to bring money with him, and bid at the sale. It is unfair alike to the judgment creditor and to the purchaser, that a person who is highly interested in getting the property should at once keep down the price by abstaining from competition, and then step in to carry off a bargain which somebody else has secured.

50. There seems to be no necessity for throwing upon the Court the merely formal duty of

Sections 407, 409, 410, p. 49.

confirming a sale to which no one objects. It would be better to provide that the sale should be absolute after 30 days, unless in the meantime objections had been made, in which case only an order of confirmation should be required.

51. It does not appear from what source the interest, payment of which is provided for in this Section, is to be derived, nor against whom payment is to be enforced. The sale can only

Section 411, p. 29.

be set aside "for material irregularity in publishing or conducting it" from which the applicant "has sustained substantial injury" (See Section 408). It is clear, therefore, that the applicant ought not to suffer the further injury of paying interest. Neither ought the judgment creditor who has derived no benefit from the sale, and it is difficult to see any third person who can be called on to pay, unless perhaps the officer of the Court who permitted the irregularity to occur.

52. These sections should provide for the case of persons who are not liable to arrest, either

Sections 427, 428, p. p. 22, 41.

absolutely or from some temporary cause; for instance, soldiers, sailors in the Royal Navy and Marines, witnesses who are privileged from arrest *cundo, morando et redeundo*, and parties in a cause which is actually under trial. Where the ground of exemption is poverty, the Sections seem to require a written application with full particulars of property to be put in at first. But, as has been pointed out, the class of persons to whom this Section will apply, are not likely to be able to put in such an application. It would be better to allow an oral application to the Judge, followed, if he thought fit, by an examination in Court which should be taken down in writing and signed by the applicant.

53. It is strongly urged by several of the judicial authorities, that this Section ought to be

Section 430, p. p. 23, 26, 41, 41.

extended to the case of a debtor who gives the Judge reason to believe that a short indulgence will enable him to pay or to arrange matters with his creditors. The Governor in Council is of opinion that such an amendment would be equally for the benefit of creditor and debtor. A clerk in a Government office, for instance, if summarily thrown into Jail might lose his appointment, and with it the means of paying his debts, whereas if left at large for a few days, under the pressure of impending imprisonment, he might be able to settle with his creditor.

54. The word "defendant" in this and subsequent Sections should be altered into "judgment debtor," as the judgment may happen to be against the plaintiff, for instance on a plea of set off, or for costs.

Section 432, p. 38.

55. The justice of these clauses is not obvious. Small creditors are likely to be poor

Sections 443, 444, p. 41.

creditors, and small debts are likely to be debts contracted for necessary purposes, such as daily supplies or unavoidable loans. It is not apparent why the debtor should be given a facility of escaping from these obligations which he

does not possess in reference to heavier liabilities. If the converse rule had been laid down, it might have been fairly defended, as releasing the debtor from a burthen whose weight was too heavy to be borne. But the Governor in Council can see no reason why he should be relieved from the very debts which he can pay with the greatest ease to himself, and whose non-payment will inflict the greatest suffering upon others.

56. Under what law, and with what penalties are wrongful acts or irregularities in the execution of a decree to be punished? This word apparently refers to proceedings of a Criminal character. But the only power of punishment possessed by the Civil Courts is that conferred by Section 632, none of whose provisions apply to the case.

Section 456, p. 56.

57. This Section has been construed by one of the Subordinate Judges as excluding an application to enforce a bond payable by instalments, until all the instalments had fallen due. Probably this was not the intention of the framers of the Section. If not, some amendment is advisable to exclude similar doubts.

Section 463, p. 27.

58. There is an oversight in the last clause. The representative of a deceased person cannot be prevented from pleading, either that he never received any assets from the deceased, or that they have been lawfully paid away, or that they are insufficient to meet the debt.

Section 471, p. 44.

59. Some provision should be [made for] compelling a plaintiff who has commenced a suit as a pauper to continue it in the ordinary form, and to supply all the stamps from which he was originally excused, in the event of his

[Chapter VI, p.p. 37, 42.]

becoming possessed of property in the progress of the suit.

60. The former of these Sections should contain the words "or neglect to act," which is quite as common with Native arbitrators as either death, refusal, or incapacity. The latter Section should, in general words, allow the

Sections 501, 505, p. 57.

Court to enlarge the time, when the award has not been completed within the period specified. Wilful or indolent neglect would not come within the words "good or sufficient cause" for not completing the award. But if one or both of the parties were anxious to have the award, it would be hard that any prejudice should arise from the dilatoriness of the arbitrators.

61. The first clause of this Section is much objected to. Practically, charges of misconduct or corruption are very difficult of proof, and are very seldom credited by the Judge to whom the application to set aside the award is made.

Section 512, p.p. 48, 54.

But the fact that these are the only charges which give a chance of setting aside the award, or of delaying its operation, make them much more common than they would otherwise be, and the probability of being exposed to such charges makes respectable men unwilling to arbitrate. In theory, no doubt, an award ought not to stand if corruption or misconduct can be proved. But it is very doubtful whether in practice the clause under consideration does not produce more evil than it prevents.

62. The Appellate Court ought also to have the power which is possessed by the original Court under Section 110, of adding such parties not included in the original suit as it may be necessary to join, for the purpose of fully and finally deciding all matters in dispute.

Section 544, p.p. 37, 42.

63. The latter clause of this Section puts the respondent who tenders a written Memorandum of objections in a worse position than he would be in if he took his objections verbally. Not only has he to pay for a stamp,

Section 560.

10 *Proceedings of the Madras Government, Legislative Department,*
17th January 1865.

but under Section 534 he is precluded from taking any other objections than those which are contained in the Memorandum without the leave of the Court. It may safely be assumed then that no such Memorandum will ever be put in. The Governor in Council is of opinion that no objections should be allowed unless they are tendered in writing, at least one week before the day fixed for the hearing of the appeal. Such objections constitute a cross appeal, and both for the information of the Judge who is to try the case, and in fairness to the opposite party, due notice should be given that such a cross appeal is intended.

64. The Madras High Court has ruled that the time occupied in the application for a review of judgment, and in the disposal of that application, is to be excluded from the time allowed for appeal. This seems advisable,

Section 536.

otherwise it would be necessary in order to save the appeal time to carry on both proceedings simultaneously, although the success of the review petition might render the special appeal useless. It would be well to incorporate this rule in Section 586. It is to be remembered that the pendency of the special appeal does not dispense with the necessity for review, since on special appeal the suitor must accept all findings of fact against him, however, erroneous and absurd they may be, while such errors in the regular appeal may be corrected on review.

65. This Section excludes an application for review in cases where the decision, whether original or on appeal, is final. That is, in cases where no other tribunal can correct the Judge, if he is wrong, he is forbidden to correct himself.

Section 617, p. 42.

This seems to the Governor in Council to be unwise. It may be that cases will not often arise in which a Judge, who is secure from an appeal against his judgment, will still be of opinion that his decision was unsound. But the case may arise, and as the Code is now worded, if the Judge found out the very day after he had pronounced his decision that he had fallen into an error, it would be impossible for him to correct it.

(Here enter letter to the Government of India, No. 16, dated 17th January 1865.)

(True Extract).


Asst. Secretary to Government,
Legislative Department.

To the Honorable the Chief Justice and Judges of the High Court.

- „ Civil Judge of
- „ Judge of the Court of Small Causes at
- „ Judicial Department.
- „ Revenue Department, *with reference to para H.*
- „ Advocate General.

N. B. No comments have been made upon the observations submitted by Mr. Collett Civil Judge of Vizagapatam and by Mr. Longley Judge of the Court of Small Causes at Vellore, inasmuch as they arrived too late to be taken into consideration in the present proceedings.

Long Island City, N.Y. 1888
Sept. 14. 1888

Received of the
Board of Governors
the sum of \$100.00

(Received of the
Board of Governors
the sum of \$100.00
for the purpose of
the "Regulation")

(Made at 1700-33 1/2
West 17th St. N.Y.
Dec. 1888)

W. 1888

The sum paid
to the Board of Directors
and all other persons
additionally in the draft
Bill of the new Civil
Procedure Code.

W. 1888

Communicated to
the Board of Governors for
their information with the
reference to them & of the
Proceedings.

John W. George
1st. Dec. 1888
2nd. Dec. 1888
3rd. Dec. 1888

W. 1888

W. 1888

W. 1888

W. 1888