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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 23rd December 1885, and was referred to a Select Committee:—

No. 20 of 1885.

A Bill to amend Act XXXVI. of 1858.

Whereas it is expedient to amend Act XXXVI. of 1858 (*an Act relating to Lunatic Asylums*); It is hereby enacted as follows:—

1. After section 18 of the said Act the following section shall be inserted, namely:—

“When an Executive Government has not established within its limits a public asylum for the reception and detention of lunatics under this Act, the Governor General in Council may, from time to time, appoint an asylum established in British India beyond those limits to be an asylum to which a Magistrate or Judge exercising jurisdiction within those limits may send lunatics as

to an asylum established under this Act for the division in which his jurisdiction is situate.”

STATEMENT OF OBJECTS AND REASONS.

In some of the smaller Provinces, such as Coorg and the Andaman and Nicobar Islands, the Local Governments have not established asylums under Act XXXVI. of 1858 for the reception and detention of lunatics. Occasions have, however, arisen on which inconvenience has been experienced by reason of there not being asylums to which Magistrates exercising jurisdiction in those Provinces may send lunatics under the provisions of the Act. The object of this Bill is to enable the Governor General in Council to appoint asylums to which lunatics may be sent from those Provinces.

(Signed) S. C. BAYLEY.

The 18th December 1885.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

[Published with the "Bombay Government Gazette" on the 7th January 1886.]

PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 18th December 1885 :—

No. 19 of 1885.

THE PROVINCIAL SMALL CAUSE COURTS BILL, 1885.

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FIRST SCHEDULE.—ENACTMENTS REPEALED.

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

WHEREAS it is expedient to consolidate and amend the law relating to Courts of Small Causes established beyond the local limits for the time being of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William in Bengal and at Madras and Bombay; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Provincial Short title, local extent Small Cause Courts Act, and commencement. 1886.

XIV of 1874. (2) It extends to the whole of British India except the scheduled districts as defined in the Scheduled Districts Act, 1874; and

(3) It shall come into force on the first day of July 1886.

2. (1) The enactments specified in the first schedule to this Act are Repeal. repealed to the extent mentioned therein.

(2) But all Courts constituted, limits fixed, appointments, declaration and rules made, jurisdiction and powers conferred, forms prescribed, directions given and notifications published under Act XI of 1865 (*an Act to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*) shall, so far as may be, be deemed to have been respectively constituted, fixed, made, conferred, prescribed, given and published under this Act.

(3) Any enactment or document referring to the said Act XI of 1865 shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

Saving of procedure and jurisdiction in certain cases. 3. Nothing in this Act affects—

- (a) any proceedings prior to decree in any suit instituted before the day on which this Act comes into force or any proceedings after decree which were commenced before and were pending on that day;
- (b) the provisions of the Army Act, 1881, section 151; or
- (c) the jurisdiction of a Cantonment Joint Magistrate invested with civil jurisdiction under Act III of 1859, or of a Magistrate having jurisdiction under any law for the time being in force with respect to debts or other claims of a civil nature, or of Village Munsifs or Village Panchayats under the provisions of the Madras Code.

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

- (1) "Court of Small Causes" means a Court of Small Causes constituted under this Act;
- (2) "District Court" means a principal Civil Court of original jurisdiction;
- (3) "district" means the local limits of the jurisdiction of a District Court;
- (4) "value", used with reference to a suit, means the amount or value of the subject-matter of the suit; and
- (5) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund.

CHAPTER II.

CONSTITUTION OF COURTS OF SMALL CAUSES.

5. (1) The Local Government, with the previous sanction of the Governor General in Council, may, by order in writing, establish a Court of Small Causes at any place within the territories under its administration.

(2) The local limits of the jurisdiction of the Court shall be such as the Local Government may define.

6. (1) When a Court of Small Causes has been established, the Local Government shall, by order in writing, appoint a Judge of the Court.

(2) The Judge may be the Judge of one Court of Small Causes or of two or more such Courts, as the Local Government directs.

*The Provincial Small Cause Courts Bill, 1885.**(Chapter II.—Constitution of Courts of Small Causes.—Sections 7-16.)*

- [Act XI, 1865, s. 14.] 7. (1) A Judge who is the Judge of two or more such courts may fix the times at which he will sit in each of the Courts of which he is Judge.
- Appointment of times of sitting in certain circumstances.
- (2) Notice of the times shall be published in such manner as the High Court directs.
- [Act XI, 1865, s. 15, and Act XVII, 1875, s. 94.] 8. (1) The Local Government, with the previous sanction of the Governor General in Council, may, by order in writing, appoint an Additional Judge of a Court of Small Causes.
- Additional Judge.
- (2) The Additional Judge shall discharge such of the functions of the Judge as the Judge directs.
- [Act VI, 1871, s. 7.] (2) The Additional Judge shall discharge such of the functions of the Judge as the Judge directs.
- [cf. Act XIV, 1882, s. 25.] (3) The Judge may withdraw from the Additional Judge any business pending before him.
- [New.] (4) When the Judge is absent, the Additional Judge may discharge all or any of the functions of the Judge.
- [Act XI, 1865, ss. 29, 30 & 31.] 9. The Local Government may, by order in writing, direct that two Judges of Courts of Small Causes, or a Judge and an Additional Judge of a Court of Small Causes, shall sit together for the trial of such suits cognizable by a Court of Small Causes as may be described in the order.
- Power to require two Judges to sit as a bench.
- [Act XI, 1865, ss. 29, 30 and 34.] 10. (1) Where two Judges, or a Judge and an Additional Judge, sitting together under section 9, are of the same opinion as to a decree or order to be made, the decree or order shall follow their opinion.
- Decision in case heard by a bench.
- (2) If they differ as to a question of law or usage having the force of law, or in construing a document the construction of which may affect the merits, they shall draw up and refer, for the decision of the High Court, a statement of the facts of the case and of the point on which they differ in opinion, and the provisions of the Code of Civil Procedure applicable to a reference to the High Court shall apply.
- (3) If they differ on any matter other than a matter specified in sub-section (2), the opinion of the Judge who is senior in respect of date of appointment as Judge of a Court of Small Causes, or, if one of them is an Additional Judge, then the opinion of the Judge sitting with him, shall prevail.
- [Act XVIII, 1884, s. 5.] (4) For the purposes of sub-section (3), a Judge permanently appointed shall be deemed senior to an officiating Judge.
- [Act XI, 1865, ss. 35, 36 and 40.] 11. (1) The Judge of a Court of Small Causes shall, if the Local Government directs, appoint an officer to be called the Registrar.
- Registrar.
- (2) The appointment shall be subject to the sanction of the Local Government.
- (3) Where a Registrar is appointed, he shall be the chief ministerial officer of the Court.
- (4) The Local Government may, by order in writing, confer upon the Registrar, within the local limits of the jurisdiction of the Court, the jurisdiction of a Judge of a Court of Small Causes for the trial of suits of which the value does not exceed twenty rupees.
- (5) The Registrar shall exercise the jurisdiction subject to the general control of the Judge.
12. (1) Subject to the sanction of the Local Government, the Judge of a Court of Small Causes may appoint an officer to be called the Clerk of the Court.
- [Act XI, 1865, s. 44.]
- (2) A Registrar of a Court of Small Causes may also be the Clerk of the Court.
13. Subject to the sanction of the Local Government, the Judge of a Court of Small Causes may appoint as many other ministerial officers as may be necessary.
- [Act XI, 1865, s. 3.]
14. (1) The ministerial officers of a Court of Small Causes shall, in addition to any duties mentioned in this Act, or in any other enactment for the time being in force, as duties which are or may be imposed on any of them, discharge such duties of a ministerial nature as the Judge directs.
- [Act XV, 1882, s. 13.]
- Duties of ministerial officers.
- (2) The High Court may make rules consistent with this Act, and with any other enactment for the time being in force, conferring and imposing on the ministerial officers of a Court of Small Causes such powers and duties of a non-judicial or quasi-judicial nature as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed shall be exercised and performed.
- [Act XVIII, 1884, s. 14, cl. (f).]
15. (1) A Judge, Additional Judge or Registrar of a Court of Small Causes may be suspended or removed from office by the Local Government.
- [cf. Act XVIII, 1884, ss. 31, 36 & 37.]
- Suspension and removal of officers.
- (2) The Judge of a Court of Small Causes may suspend the Registrar of his Court if there appears to him to be urgent necessity for so doing, and may suspend or remove from office, or fine in an amount not exceeding one month's salary, any other ministerial officer of his Court who is guilty of misconduct or neglect in the performance of his duties.
- [Act XVI, 1885, s. 19, sub-section (4).]
- (3) A fine imposed under sub-section (2) may, if the order imposing it so directs, be recovered by deduction of the amount thereof from any salary which may be or become due to the officer fined.
16. (1) A Judge, Additional Judge or ministerial officer appointed under this Act shall not, during his tenure of office, either by himself
- [Act XV, 1882, s. 15, and Act XI, 1865, s. 17.]
- Penalty on Judge or ministerial officer practising or trading.

*The Provincial Small Cause Courts Bill, 1885.**(Chapter IV.—Practice and Procedure of Courts of Small Causes.—Sections 17-23.)*

or as a partner of any other person, practise or act, either directly or indirectly, as an advocate, vakil, attorney, pleader or other legal practitioner, or be concerned, either on his own account or for any other person, or as the partner of any other person, in any trade or profession.

(2) If a Judge, Additional Judge or ministerial officer aforesaid practises, acts or is concerned in any trade or profession, in contravention of the provisions of sub-section (1), he shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

(3) Nothing in this section shall be deemed to prohibit a Judge, Additional Judge or ministerial officer from being a member of an incorporated or registered company.

CHAPTER III.

JURISDICTION OF COURTS OF SMALL CAUSES.

17. (1) A Court of Small Causes shall not take

Cognizance of suits by Courts of Small Causes. cognizance of the suits specified in the second schedule to this Act.

(2) Subject to the exceptions specified in the said schedule, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes.

(3) Subject to the exceptions aforesaid, the Local Government may, by order in writing, direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order.

18. Save as expressly provided by this Act or by any other enactment by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes, Exclusive jurisdiction of Courts of Small Causes. for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes.

CHAPTER IV.

PRACTICE AND PROCEDURE OF COURTS OF SMALL CAUSES.

19. The procedure prescribed in the chapters and sections of the Code of Civil Procedure specified in the second schedule annexed to the said Code, as amended by this Act, shall, so far as those chapters and sections are applicable, be the procedure followed in a Court of Small Causes in all suits cognizable by it :
Provided that—

(a) where the applicant for a review of judgment was the defendant or one of the defendants, the Court shall not grant his application unless, at the time of presenting the application, he deposits in the Court the amount due from him under the decree or order; and

(b) where a person to be arrested or property to be attached under section 648 of the said Code resides or is situate within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or Bombay, or of the Recorder of Rangoon, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras, Bombay or Rangoon, as the case may be; and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court.

20. Except in a case of set-off, a written statement shall not be received unless required by the Court.

21. If it appears to a Court of Small Causes that a judgment-debtor under its decree has not, within the local limits of the jurisdiction of the Court, moveable property sufficient to satisfy the decree, it may, on the application of the decree-holder, send the decree for execution to another Court in the manner provided by the Code of Civil Procedure, sections 223 and 224.

22. Suits cognizable by the Registrar under section 11, sub-section (4), shall be tried by him, and decrees passed there-
Trial of suits by Registrar. in shall be executed by him, in like manner in all respects as the Judge might try the suits, and execute the decrees, respectively :

Provided that the Judge may transfer to his own file, or to that of the Additional Judge if an Additional Judge has been appointed, any suit or other proceeding pending on the file of the Registrar.

23. (1) When the Judge of a Court of Small Causes is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may return or reject a plaint for any reason for which the Judge might return or reject it.

(2) The Judge may, of his own motion or on the application of a party, return or reject a plaint which has been admitted by the Registrar, or admit a plaint which has been returned or rejected by him :

Provided that, where a party applies for the return or rejection or the admission of a plaint under this sub-section, his application shall be made at the first sitting of the Court after the day on which the Registrar admitted, or returned or rejected, the plaint.

XLV of 1860.

[Act XV, 1882, ss. 18 and 19.]

[Act XI, 1865, s. 7.]

[Act XI, 1865, s. 12. Act XVII, 1879, s. 6.]

[Act XIV, 1882, s. 5.]

XIV of 1882.

Act XI, 1865, s. 21.]

[cf. Act XIV, 1882, ss. 86 and 223.]

[Act XI, 1865, s. 18; and Act XV, 1882, s. 24.]

[Act XI, 1865, s. 20.]

XIV of 1882.

[Act XI, 1865, s. 41.]

[Act XI, 1865, s. 37.]

*The Provincial Small Cause Courts Bill, 1885.**(Chapter V.—Supplemental Provisions.—Sections 24-33.)*

CHAPTER V.

SUPPLEMENTAL PROVISIONS.

24. (1) If, before the date appointed for the hearing of a suit, the defendant or his agent duly authorised in that behalf appears before the Registrar and admits the plaintiff's claim, the Registrar may, if the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, pass against the defendant, upon the admission, a decree, which shall have the same effect as a decree passed by the Judge.

(2) Where a decree has been passed by the Registrar under sub-section (1), the Judge may grant an application for review of judgment and re-hear the suit, on the same conditions, on the same grounds and in the same manner as if the decree had been passed by himself.

25. (1) If the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar shall receive applications for the execution of decrees and orders made by the Court of which he is Registrar or sent to that Court for execution, and may, subject to any instructions which he may have received from the Judge or, with respect to decrees or orders made by an Additional Judge, from the Additional Judge, make any orders in respect of the applications which the Judge might make under this Act.

(2) The Judge, in the case of any decree or order with respect to the execution of which the Registrar has made an order under sub-section (1), and the Additional Judge, in the case of any such decree or order made by himself, may, within fifteen days from the date of the order of the Registrar or of the execution of any process issued in pursuance of that order, reverse or modify the order, either of his own motion or on the application of a party.

(3) The period of fifteen days mentioned in sub-section (2) shall be computed in accordance with the provisions of the Indian Limitation Act, 1877.

26. The Clerk of the Court shall, subject to the orders of the Judge, and of the Registrar if a Registrar has been appointed, receive plaints and applications, issue summonses and notices, and, unless the High Court has ordered otherwise, take charge and keep an account of all moneys and securities for money paid or delivered into or out of Court.

27. Save as in this Act expressly provided, a decree or order made under the foregoing provisions of this Act shall be final.

28. The Local Government may fix the place or places, within the local limits of the jurisdiction of a Court of Small Causes, at which the jurisdiction shall be exercised.

29. A Court of Small Causes shall be subject to the control of the District Court and to the superintendence of the High Court, and shall—

(a) Keep such registers, books and accounts as the High Court prescribes; and

(b) comply with such requisitions as may be made by the District Court, the High Court or the Local Government for records, returns and statements in such form and manner as the authority making the requisition directs.

30. A Court of Small Causes shall use a seal of such form and dimensions as are prescribed by the Local Government.

31. The Local Government may, by order in writing, abolish a Court of Small Causes.

32. (1) Nothing in this Act shall prevent the Local Government from appointing a person who is a Judge or Additional Judge of a Court of Small Causes to be also a Judge of any other Civil Court subordinate to a District Court, or to be a Magistrate of any class.

(2) When a Judge or Additional Judge is so appointed, the ministerial officers of his Court shall, subject to such rules as the Local Government may make in this behalf, be deemed to be ministerial officers appointed to aid him in the discharge of his duties as the Judge of the other Civil Court or as a Magistrate.

33. (1) So much of this Act as relates to the nature of the suits cognizable by Courts of Small Causes, to the exclusion of the jurisdiction of other Courts in those suits, to the powers and procedure of Courts of Small Causes, and to the finality of the decrees and orders of those Courts, applies to Courts invested under any enactment for the time being in force with the jurisdiction of a Court of Small Causes when the Courts are exercising that jurisdiction.

(2) A Court invested with the jurisdiction of a Court of Small Causes, with respect to the exercise of that jurisdiction, and the same Court, with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable

The Provincial Small Cause Courts Bill, 1885.

(Chapter V.—Supplemental Provisions.—Sections 34-36. The First Schedule.—Enactments repealed. The Second Schedule.—Suits excepted from the cognizance of a Court of Small Causes.)

by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure, be deemed to be different Courts.

[Act XV,
1882, s. 37.]
XV of
1877.

34. In the third division of the second schedule to the Indian Limitation Act, 1877,—
(a) before No. 158, the following shall be inserted, namely:—

"157A. For a review of judgment by a Provincial Court of Small Causes, or by a Court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction.	Eight days.	The date of the decree or order."
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and (b) in No. 173, the words, figures and letter "No. 157A and" shall be inserted before the word and figures "No. 162."

[Act XVIII,
1884, s. 65.]

35. All powers conferred by this Act may be exercised from time to time as occasion requires.

[Act XVI,
1885, s. 27.]

36. All orders required by this Act to be made in writing by the Local Government shall be published in the official Gazette, but shall take effect from the date on which they are made.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

Number and year.	Subject or title.	Extent of repeal.
Act XI of 1865.	Mufassal Small Cause Courts Act.	So much as has not been repealed.
Act VI of 1871.	Bengal Civil Courts Act.	Section 30.
Act III of 1873.	Madras Civil Courts Act.	Section 29, paragraph one.
Act XIV of 1882.	The Code of Civil Procedure.	(a) In the second schedule, in the particulars specified against Chapter XLIX, the words and figures "sections 640 to 647 (both inclusive), sections 649 to 652 (both inclusive)," and (b) so much of that schedule as extends to Provincial Courts of Small Causes sections 121 to 136 and such portions of sections 137, 447, 453, 454 and 456 as require applications to be supported by affidavit.

THE SECOND SCHEDULE.

SUITS EXCEPTED FROM THE COGNIZANCE OF A COURT OF SMALL CAUSES.

- (1) a suit concerning an act or order purporting to be done or made by the Governor General in Council or the Local Government, or by the Governor General or a Governor, or by a Member of the Council of the Governor General or of the Governor of Madras or Bombay, in his official capacity, or concerning an act purporting to be done by any person by order of the Governor General in Council or the Local Government;
- (2) a suit concerning an act or order purporting to be done or made by a Court or by a judicial officer acting in the execution of his office, or concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court or of a judicial officer acting as aforesaid;
- (3) a suit concerning an act or order purporting to be done or made by any other officer of the Government in his official capacity, or by a local authority or Court of Wards, or by an officer or servant of a local authority or Court of Wards in the execution of his office or in the course of his service;
- (4) a suit for the possession of immoveable property; [Act XV, 1877, Sch. II, Arts. 3, 10, 46, 47, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144 and 148.]
- (5) a suit for the partition of immoveable property;
- (6) a suit by a mortgagee of immoveable property for the foreclosure of the mortgage or for the sale of the property, or by a mortgagor of immoveable property for the redemption of the mortgage; [Act XV, 1877, Sch. II, Arts. 147 and 148.]
- (7) a suit for the recovery of, or otherwise concerning, the rent of land used for agricultural purposes, or for the assessment, enhancement, abatement or apportionment of the rent of any immoveable property. [Act XV, 1877, Sch. II, Arts. 110 and 130; Act XI, 1865, s. 6, proviso (4); and I. L. R. 5 Cal. 902.]
- (8) a suit concerning the liability of land to be assessed to land-revenue; [Act XV, 1877, Sch. II, Art. 130.]
- (9) a suit to restrain waste; [Act XV, 1877, Sch. II, Art. 41.]
- (10) a suit for the determination of any other right to or interest in immoveable property; [Act XV, 1877, Sch. II, Arts. 15, 111, 121, 125, 126 and 132.]

The Provincial Small Cause Courts Bill, 1885.

(*The Second Schedule.—Suits excepted from the cognizance of a Court of Small Causes.*)

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| <p>[Act XV, 1877, Sch. II, Art. 145.] (11) a suit for the enforcement of a lien on moveable property, or by a pawnor for the redemption or recovery of a pledge;</p> <p>[Act I, 1877, Chaps. II and IV; and Act XV, 1877, Sch. II, Arts. 113 and 114.] (12) a suit for the specific performance or rescission of a contract;</p> <p>[Act I, 1877, Chaps. III and V; and Act XV, 1877, Sch. II, Art. 91.] (13) a suit for the rectification or cancellation of an instrument;</p> <p>[Act I, 1877, Chap. X.] (14) a suit to obtain an injunction;</p> <p>(15) a suit to enforce a trust;</p> <p>(16) a suit for a declaratory decree;</p> <p>[Act XV, 1877, Sch. II, Arts. 92, 93, 118, 119, 129, and 131.] (17) a suit to set aside a sale under a decree or order of a Court or of a revenue-authority, or a sale by a guardian;</p> <p>[Act XV, 1877, Sch. II, Arts. 13 and 95.] (18) a suit to alter or set aside a decision, decree or order of a Court or of a person acting in a judicial or quasi-judicial capacity;</p> <p>[Act XV, 1877, Sch. II, Arts. 1 and 45.] (19) a suit to contest an award of a revenue-authority under any enactment for the time being in force;</p> <p>[Act XV, 1877, Sch. II, Art. 11.] (20) a suit by a person against whom an order is passed under section 280, section 281 or section 282 of the Code of Civil Procedure, to establish his right to, or to the present possession of, the property comprised in the order;</p> <p>[Act XV, 1877, Sch. II, Art. 43.] (21) a suit under the Indian Succession Act, 1865, section 320 or section 321, or under the Probate and Administration Act, 1881, section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets;</p> <p>[Act XV, 1877, Sch. II, Art. 123; and Act XI, 1865, s. 6, proviso (2).] (22) a suit for a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate;</p> <p>[Act XV, 1877, Sch. II, Art. 124.] (23) a suit for the possession of an hereditary office;</p> <p>[Act XV, 1877, Sch. II, Art. 106; and Act XI, 1865, s. 6, proviso (1).] (24) a suit—</p> <p style="margin-left: 2em;">(a) for a dissolution of partnership;</p> <p style="margin-left: 2em;">(b) for an account of partnership-transactions; or</p> <p style="margin-left: 2em;">(c) for a balance of partnership-account unless the balance has been struck by the parties or their agents;</p> <p>[Act XIV, 1882, s. 213.] (25) a suit for an account of property and its due administration under the decree of a Civil Court;</p> | <p>(26) any other suit for an account;</p> <p>(27) a suit for a general average loss or for salvage;</p> <p>(28) a suit for compensation in respect of a collision on the high seas;</p> <p>(29) a suit on a policy of insurance;</p> <p>(30) a suit for compensation—</p> <p style="margin-left: 2em;">(a) for false imprisonment;</p> <p style="margin-left: 2em;">(b) for malicious prosecution;</p> <p style="margin-left: 2em;">(c) for libel;</p> <p style="margin-left: 2em;">(d) for slander;</p> <p style="margin-left: 2em;">(e) for adultery or seduction;</p> <p style="margin-left: 2em;">(f) for breach of promise of marriage;</p> <p style="margin-left: 2em;">(g) for inducing a person to break a contract made with the plaintiff;</p> <p style="margin-left: 2em;">(h) for illegal, irregular or excessive distress; or</p> <p style="margin-left: 2em;">(i) for injury caused by an injunction wrongfully obtained;</p> <p>(31) a suit for the restitution of conjugal rights, for the recovery of a wife, or for a divorce;</p> <p>(32) a suit for maintenance;</p> <p>(33) a suit to enforce payment of the allowance or fees respectively called <i>mīlikāna</i> and <i>hakk</i>, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immoveable property;</p> <p>(34) a suit for arrears of land-revenue, village-expenses or other sums payable to the representative of a village-community or to his heir or transferee;</p> <p>(35) a suit for profits payable by the representative of a village-community or by his heir or transferee after payment of land-revenue, village-expenses and other sums;</p> <p>(36) a suit for contribution by a sharer in a joint estate in respect of a payment made by him of money due from a co-sharer, or by the manager of a joint estate of an undivided family in respect of a payment made by him on account of the estate;</p> <p>(37) a suit against the Government to recover money paid under protest in satisfaction of a claim made by a revenue-authority on account of an arrear of land-revenue or of a demand recoverable as an arrear of land-revenue;</p> <p>(38) a suit the cognizance whereof by a Court of Small Causes is barred by any enactment for the time being in force.</p> |
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[Act XV, 1877, Sch. II, Art. 88.]

[9 W. R. 252.]

[Act XV, 1877, Sch. II, Arts. 86 and 87.]

[Act XV, 1877, Sch. II, Arts. 19, 23, 24, 25, 26, 27, 28, 36, 42 and 115; and Act XI, 1865, s. 6, proviso (3).]

[Act XV, 1877, Sch. II, Arts. 34 and 35.]

[Act XV, 1877, Sch. II, Art. 128.]

[Act XV, 1877, Sch. II, Art. 132.]

[Act XV, 1877, Sch. II, Arts. 99 and 107.]

[Act XV, 1877, Sch. II, Art. 16.]

STATEMENT OF OBJECTS AND REASONS.

THE suits cognizable in Courts of Small Causes are, subject to certain provisos, described in section 6, Act XI of 1865, as "claims for money due on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage or demand does not exceed in amount or value the sum of five hundred rupees whether on balance of account or otherwise": and section 586 of the Code of Civil Procedure provides that "no second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees." Since section 6 of the Act of 1865 was enacted, a vast quantity of case-law has grown up around it, and, as the rulings of the Courts have not been uniform, doubts constantly arise on the question whether a suit is or is not a suit of the nature cognizable by a Court of Small Causes, and, consequently, whether or not, where the suit is of value not exceeding five hundred rupees and the original decree made in it was not final but was open to appeal, an appeal will also lie from the appellate decree in the suit. It appears to the Government of India that the conflicting constructions placed on section 6, of which some are due to the progress of legislation during the last twenty years (I. L. R. 3 All. 66), render a more accurate definition necessary of the suits of which Courts of Small Causes may take cognizance, and that legislation to this end should follow sections 18 and 19 of the Presidency Small Cause Courts Act, 1882, in declaring the jurisdiction of those Courts to extend to all suits of a civil nature, subject to specified exceptions. This Bill has accordingly been prepared, its primary object being to remove the doubts now felt as to the effect of section 6, Act XI of 1865; and, as several sections and parts of sections of that Act have, from time to time, been repealed and other sections are obsolete as regards both expression and utility, it has been considered desirable to repeal the Act and re-enact the substance of the extant portions of it.

2. The parts of the Bill which appear to call for remark will be noticed in the following paragraphs.

3. *Section 3.*—The limited extent of the savings in this section, as compared with section 12 of the Act of 1865, is due to the Government of India having decided to move the legislature to repeal Act XI of 1841, and connected Acts, regarding Military Courts of Requests for Native Officers and Soldiers, and so much of Bombay Regulation XXII of 1827 as relates to the trial of small suits by superintendents of bázárs in military stations in the presidency of Bombay.

4. *Section 8.*—Inconvenience has resulted from the restrictive terms in which section 15 of the Act of 1865 was drawn. It is proposed, therefore, to empower Local Governments to appoint Additional Judges without limit of time.

5. *Section 9.*—Sections 29 and 30, Act XI of 1865, appear to be little, if at all, used. It seems unnecessary, therefore, to retain them. If it is deemed desirable that two Judges should anywhere sit together as a bench for the trial of particular suits or classes of suits, a bench can be constituted under section 9 of the Bill, corresponding with section 31 of the Act of 1865.

6. *Section 17.*—This section declares the jurisdiction of a Court of Small Causes to extend to all suits, subject to certain exceptions specified in the second schedule to the Bill.

7. *Second Schedule.*—This schedule follows, with slight modifications, section 19 of the Presidency Small Cause Courts Act, 1882, so far as that section goes.

8. As regards No. (11) of the suits specified in the schedule, it has been held that suits for the redemption of a mortgage of moveable property (16 W. R. 58) or for the sale of moveable property by enforcement of lien (9 W. R. 136) do not now, and (I. L. R. 7 All. 855) ought not to, lie in a Court of Small Causes.

9. The suits referred to in No. (20) are of two descriptions—

(a) by a decree-holder to have the right of his judgment-debtor declared to property of which the attachment has been raised; and

(b) by the owner of attached property, after disallowance of his objection to the attachment, either against the decree-holder or an auction-purchaser, to recover the property.

Suits of description (a), being suits for declaratory decrees, appear to have been held by most, if not all, High Courts not to be cognizable by a Court of Small Causes (10 W. R. 141; I. L. R. 4 Bom. 503; 3 All. H. C. Rep. 156: Punjab Record, No. 84 of 1870). As to suits of description (b), there is a conflict of authority (I. L. R. 7 All. 152, and cases there cited). It would seem, apart from section 6 of Act XI of 1865, that if suits of the one description ought not to be cognizable by Courts of Small Causes, the jurisdiction of those Courts ought to be barred in respect of suits of the other description also.

10. The suits referred to in No. (30) are of superior importance, and there should be a right of appeal from decrees passed in them. The rulings at I. L. R. 3 All. 747, and in the cases there cited, were made solely with reference to the language of section 6 of the Act of 1865. Most of these suits have been excluded from the jurisdiction of Presidency Small Cause Courts.

11. As regards the suits which No. (32) is intended to exclude from the jurisdiction of Courts of Small Causes, Westropp, C. J., has observed that "the very possible necessity of varying the maintenance from time to time, and of enquiring into the circumstances of the claimant, or of the family estate, or the

family itself, shows how unsuitable maintenance suits are for the Small Cause Courts " (I. L. R. 2 Bom. 630). Arrears of maintenance are usually claimed on one of four grounds—

- (a) the legal right of the plaintiff to maintenance;
- (b) a decree of Court;
- (c) an award of arbitrators fixing the maintenance; or
- (d) a special bond or other contract for the payment of maintenance.

Suits on ground (a) involve intricate questions of title, and those on grounds (b) and (c) have been held not to be cognizable by a Court of Small Causes (6 All. H. C. Rep. 91, and cases there cited; 3 All. H. C. Rep. 117 and 7 All. H. C. Rep. 329). Suits on ground (d) are at present cognizable by a Court of Small Causes. But, seeing that even in those suits questions may be raised as to re-adjustment of maintenance (5 C. L. R. 18), and possibly as to forfeiture (I. L. R. 7 Bom. 84), it seems desirable that suits for maintenance generally, including suits of the kind referred to at I. L. R. 7 Bom. 537, should be excluded from the jurisdiction of Courts of Small Causes.

12. As regards No. (33), reference may be made to 1 All. H. C. Rep. 205, and I. L. R. 1 All. 444, 2 All. 905, and 9 Cal. 183. Moreover, in suits which No. (33) is intended to cover, claims may be, and often are, included which ought not to be cognizable by a Court of Small Causes.

13. As regards Nos. (34) and (35), reference may be made to the case reported at I. L. R. 5 All. 438. It seems proper that such a suit as is there described, involving, as it may, intricate village-accounts and important questions of right, should not be cognizable by a Court of Small Causes. Moreover, the decree in the suit should be open to appeal, as ordinarily the decree of a Revenue Court would be in a suit by a recorded co-sharer against a lambardár.

14. There appears to be no sufficient reason for excluding any suits for contribution from the jurisdiction of Courts of Small Causes, except the suits referred to in Nos. (36) and (38). As to the cognizance of suits for contribution generally under the Act of 1865, there has been some conflict of authority, the High Court at Fort William holding them not to be cognizable by Courts of Small Causes (B. L. R., F. B., 675, and I. L. R. 10 Cal. 388), and the High Courts at Madras and Allahabad holding them to be cognizable by those Courts (5 Mad. H. C. Rep. 200, and I. L. R. 3 All. 66).

There would seem, apart from section 6 of Act XI of 1865, to be no sufficient ground for excluding from the cognizance of a Court of Small Causes such a suit as that reported at I. L. R. 7 All. 378.

15. No. (38) will exclude the following among other suits:—

- (a) suits for compensation for infringing copyright (I. L. R. 6 Cal. 499);
- (b) suits for compensation for infringing the exclusive privilege of an inventor (Act XV, 1859, section 22);
- (c) suits against Sovereign Princes or Ruling Chiefs, or Ambassadors or Envoys of Foreign States (Act XIV, 1882, section 433);
- (d) suits for dissolution of marriage or judicial separation (Act IV, 1869); and
- (e) suits founded on the liability of a contributory (Act VI, 1882, section 125).

16. *Sections 19 and 34.*—As to the second proviso to section 21 of the Act of 1865, reference may be made to I. L. R. 6 Cal. 236 and 8 Cal. 287. As the law now stands, a person wishing to have a decree set aside may apply for (a) a new trial under section 21, Act XI of 1865, or (b) a review under Chapter XLVII of the Code, or (c) both a new trial and a review. "It is difficult," as observed by the learned Chief Justice of the High Court at Fort William, "to conceive any reasons which would justify a new trial which would not also afford good grounds for a review" (I. L. R. 6 Cal. 238). It is proposed, therefore, to replace the alternative or cumulative remedies of new trial and review by the single remedy of review, but to impose on applications for review restrictions similar to those imposed by the existing law on applications for new trial.

17. *Section 21.*—This section supplements section 223 of the Code of Civil Procedure, which extends to Courts of Small Causes. Section 20 of the Act of 1865, which the section supersedes, appears in some places to have been construed to require a decree-holder to proceed in the first instance against moveable property even when the moveable property of the judgment-debtor is known to be of no appreciable value.

18. *Section 26.*—Under section 45 of the Act of 1865, it is the duty of the Clerk of the Court to "take charge of and keep an account of all moneys payable or paid into or out of Court" and to "enter an account of all such moneys in a book belonging to the Court to be kept by such Clerk for that purpose." The terms of that section have been held to preclude the transfer of the duty of receiving moneys and keeping accounts in a Court of Small Causes to the special staff of accountants which in some provinces is employed at the head-quarters of each district to receive and account for moneys paid into the Civil Courts located there. It has been provided in section 26 of the Bill that the High Court may, if it sees fit, relieve the clerk of the Court of his duties as cashier and accountant.

19. *Section 22.*—The High Court for the North-Western Provinces has held (5 All. H. C. Rep. 55) that section 51 of the Act of 1865 does not authorise the Local Government to permanently and unconditionally invest the Judge of a Small Cause Court with the powers of a Principal Sadr Amín, and that the section only contemplates an occasional investment of the powers, and one contingent on the state of the business of the Court. Under section 32 of the Bill the question will not again arise.

20. In sections 32 and 33 regard has been had to I. L. R. 8 Bom. 230, 9 Bom. 237, 1 All. 87, 1 All. 624, and 3 All. 710. It has been made clear that, for the purposes of sections 223 and 295 of the Code of Civil Procedure and section 21 of the Bill, the Court of a Judge of a Court of Small Causes when the Judge is acting as such, and the Court of the same Judge when the Judge has been appointed to be and is acting as a Subordinate Judge, are different Courts, and that, for the same purposes, the Court of a Subordinate Judge when the Judge is acting as such, and the Court of the same Judge when the Judge has been invested with the jurisdiction of a Court of Small Causes and is exercising that jurisdiction, are different Courts.

21. The first proviso to section 21 of Act XI of 1865 has been omitted because its retention has been rendered unnecessary by the extension of section 108 of the Code of Civil Procedure to Courts of Small Causes.

22. Section 52 of the Act of 1865 has been omitted, as it is believed not to be used.

23. It is proposed by the first schedule to make section 648 of the Code of Civil Procedure, which extends to the Presidency Small Cause Courts, extend also to Provincial Courts of Small Causes.

24. It is proposed by the same schedule to repeal so much of the second schedule of the Code of Civil Procedure as extends sections 121 to 136 of the Code to Provincial Courts of Small Causes. These sections do not extend to Presidency Small Cause Courts, and their provisions, which contemplate elaborate and lengthened trials in suits of superior importance, are incompatible with the speedy disposal of the petty suits cognizable by a Court of Small Causes. The want of the sections is not likely to be really felt in Courts of Small Causes, while their application to those Courts is not unlikely to be taken advantage of for the purpose of delaying proceedings.

25. So much of sections 137, 447, 453, 454 and 456 of the Code of Civil Procedure as requires applications to Courts of Small Causes to be supported by affidavit is proposed to be repealed. Chapter XVI of the Code, respecting affidavits, does not extend to Provincial Courts of Small Causes.

The 18th December 1885.

(Signed) C. P. ILBERT.

S. HARVEY JAMES,
Offg. Secretary to the Government of India.