

Presidency Small Cause Courts Act, 1882

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Act 15 of 1882

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Presidency Small Cause Courts Act, 1882(Act No. 15 of 1882)Last Updated 31st May, 2019[Dated 17.3.1882.]For first Report of the Select Committee, see Gazette of India, 1881, Pt. V, p. 381; for further Report of the Select Committee, see Gazette of India, 1881, 1882, Pt. V., p. 3; for Proceedings in Council, see Gazette of India, 1881, Supplement, 1880, pp 1394 and 1433; Gazette of India, 1881, 1882, Supplement, p. 204; and Gazette of India, 1881, 1882, Extra Supplement, p.43.This Act has been amended in its local application by Bengal Acts 4 of 1922 and 20 of 1932, Bombay Act 5 of 1933 and Madras Acts 5 of 1916, 3 of 1922 and 3 of 1927, in Bombay by Bombay Act 11 of 1959, in Madras by Madras Act 9 of 1960, in its application to the City of Ahmedabad by Gujarat Act 19 of 1961, in Maharashtra by Maharashtra Acts 35 of 1961, and 19 of 1976, in West Bengal by West Bengal Act 32 of 1969, in Gujarat by Gujarat Acts 28 of 1973 and 31 of 1973.An Act to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency towns.Preamble. - Whereas it is expedient to consolidate and amend the law relating to the Courts of Small Causes established in the towns of Calcutta, Madras and Bombay; it is hereby enacted as follows:-

Chapter I

Preliminary

1. Short title, Commencement.

- This Act may be called the Presidency Small Cause Courts Act, 1882; and it shall come into force on the first day of July, 1882.But nothing herein contained shall affect the provisions of the Army Act, [***] [The figures '1881' Repeal by Act 12 of 1891, s. 2 and the First Schedule.] (44 & 45 Vict., c. 58) section 151, or the rights or liabilities of any person under any decree passed before that day.

2.

[Repeal of enactments.] [Repeal by the Repealing Act, 1938 (1 of 1938), s. 2 and the Schedule.]

3.

[Amendment of Acts.] [Repeal by s. 2 and Schedule, *ibid.*]

4. "Small Cause Court" and "Registrar" defined.

- In this Act, "the Small Cause Court" means the Court of Small Causes constituted under this Act in the town of Calcutta, Madras or Bombay, as the case may be, [and the expression "Registrar" includes a Deputy Registrar] [Added by Act 3 of 1899, s. 2.].

Chapter II

Constitution and Officers of the Court

5. Courts of Small Causes established.

- There shall be in each of the towns of Calcutta, Madras and Bombay a Court, to be called the Court of Small Causes of Calcutta, Madras or Bombay, as the case may be.

6. Court to be deemed under superintendence, etc., of High Court.

- The Small Cause Court shall be deemed to be a Court subject to the superintendence of the High Court of Judicature at Fort. William, Madras or Bombay, as the case may be, within the meaning of the Letters Patent, respectively, dated the 28th day of December, 1865, for such High Courts, and within the meaning of the [Code of Civil Procedure (14 of 1882)] [See now the Code of Civil Procedure, 1908 (Act 5 of 1908).] [and to be a court subordinate to the High Court within the meaning of section 6 of the Legal Practitioners Act, 1879 (18 of 1879)] [Inserted by Act 1 of 1895, s. 2.], and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the twenty-fourth and twenty-fifth of Victoria, Chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction.

7. [Appointment of Judges. [Substituted by the A.O. 1937.]

- There shall be appointed from time to time a Chief Judge of the Small Cause Court and as many other Judges as the State Government thinks fit.]

8. Rank and precedence of Judges.

- The Chief Judge shall be the first of the Judges in rank and precedence. The other Judges shall have rank and precedence as the State Government may, from time to time, direct.

8A. [Performance of duties of absent Judge. [Substituted by Act 3 of 1899, s. 3, for section 8A.]

(1) During any absence of the Chief Judge or any Judge of the said Court, or during the period for which any Judge is acting as Chief Judge, the State Government may appoint any person, having [the requisite qualifications], to act as Chief Judge or Judge of the said Court, as the case may be. (2) Every person so appointed shall be authorised to perform the duties of the Chief Judge or a Judge of the said Court until the return of the absent Chief Judge or Judge, or of the Judge acting as Chief Judge, or until the State Government sees cause to cancel the appointment of such acting Chief Judge or Judges, as the case may be.]

9. [Procedure and practice of Small Cause Court. [Substituted by Act 1 of 1895, s. 5, for section 9.]

(1) The High Court may, from time to time, by rules having the force of law, - (a) prescribe the procedure to be followed and the practice to be observed by the Small Cause Court either in supersession of or in addition to any provisions which were prescribed with respect to the procedure or practice of the Small Cause Court on or before the thirty-first day of December, 1894, in or under this Act or any other enactment for the time being in force; and (aa) [empower the Registrar to hear and dispose of undefended suits and interlocutory applications or matters, and] (b) cancel or vary any such rule or rules. Rules made under this section may provide, among other matters, for the exercise by one or more of the Judges of the Small Cause Court of any powers conferred on the Small Cause Court by this Act or any other enactment for the time being in force. (2) The law, and any rules and declarations made, or purporting to be made, thereunder, with respect to procedure or practice, in force or treated as in force in the Small Cause Court on the thirty-first day of December, 1894, shall be in force, unless and until cancelled or varied by rules made by the High Court under this section.]

10. Chief Judge to distribute business of Court.

- Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof.

11. Procedure in case of difference of opinion.

- Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail; and if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or, in his absence, the Judge first in rank and

precedence of the Judges so differing, shall have the casting voice.

12. Seal to be used.

- The Small Cause Court shall use a seal of such form and. dimensions as are for the time being prescribed by the State Government.

13. [Appointment of Registrar and other officers. [Substituted by the A.O. 1937, for s. 13.] - There shall be appointed an officer to be called the Registrar of the Court who shall be the chief ministerial officer of the Court; there shall also be appointed a Deputy's Registrar and as many clerks, bailiffs and other ministerial officers as may be necessary for the administration of justice by the Court and for the exercise and performance of the powers and duties conferred and imposed on it by this Act or any other law for the time being in force.

The Registrar and other officers so appointed shall exercise such powers and discharge such duties, of a ministerial nature, as the Chief Judge may, from time to time, by rule direct.]

14. Registrar may be invested with powers of a Judge in suits not exceeding twenty rupees.

- The State Government may invest the Registrar with the powers of a Judge under this Act for the trial of suits in which the amount or value of the subject-matter does not exceed twenty rupees. And, subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to the file of the Registrar any suit which the latter is competent to try.[Explanation. [Added by Act 1 of 1895, S. 6.] - For the purposes of this section an application for possession under section 41 shall be deemed to be a suit.]

15. Judge or other officer not to practise or trade.

- No Judge or other officer appointed under this Act shall, during his continuance as such Judge or officer, either by himself or as a partner of any other person, practise or act, either directly or indirectly, as an advocate, attorney, vakil 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. Any such Judge or officer so practising, acting or concerned shall be deemed to have committed an offence under section 168 of the Indian Penal Code (45 of 1860). Nothing herein contained shall be deemed to prohibit any such Judge or officer from being a member of any company incorporated or registered under Royal Charter, Letters Patent, [Act of Parliament of the United Kingdom or Central Act or Provincial Act or [State Act] [Substituted by the A.O. 1950, for certain words.]].

Chapter III

Law Administered by the Court

16. Questions arising in suits, etc., under Act to be decided according to law administered by High Court.

- All questions, other than questions relating to procedure or practice, which arise in suits or other proceedings under this Act in the Small Cause Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

Chapter IV

Jurisdiction in Respect of Suits

17. Local limits of jurisdiction of Court.

- The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court.

18. Suits in which Court has jurisdiction.

- Subject to the exceptions in section 19, the Small Cause Court shall have jurisdiction to try all suits of a civil nature-when the amount or value of the subject-matter does not exceed two thousand rupees; and-(a)the cause of action has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given before the institution of the suit; or(b)all the defendants, at the time of the institution of the suit, actually and voluntarily reside, or carry on business, or personally work for gain, within such local limits; or(c)any of the defendants at the time of the institution of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, within such local limits, and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution:[Provided that where the cause of action has arisen wholly within the local limits aforesaid, and the Court refuses to give leave for the institution of the suit, it shall record in writing its reason for such refusal.] [Added by Act 1 of 1895, s. 7.]Explanation I. - When in any suit the sum claimed is, by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit.Explanation II. - Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.Explanation III. - A Corporation or Company shall be deemed to carry on business at its sole or principal office in [India] [Substituted by the A.O. (No. 2) 1956, for 'a Part A State or a Part C State], or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

18A. [Plaintiff may abandon suit against defendant resident out of jurisdiction. [Added by Act 1 of 1895, s. 8.]

- The Small Cause Court may allow a plaintiff at or before the first hearing of a suit in which a joint and several liability is alleged on a cause of action arising either wholly or in part within the local limits of the jurisdiction of the Court to abandon the suit as against any defendant who does not reside or carry on business or personally work for gain within such local limits, and to sue for a decree against such defendants only as do so reside, carry on business or personally work for gain.]

19. Suits in which Court has no jurisdiction.

- The Small Cause Court shall have no jurisdiction in -(a)suits concerning the assessment or collection of the revenue;(b)[suits concerning any act done by or by order of the Central Government, [***] [Substituted by the A.O. 1937.] or the State Government;](c)suits concerning any act ordered or done by any Judge or judicial officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court or any such Judge or judicial officer;(d)suits for the recovery of immovable property;(e)suits for the partition of immovable property;(f)suits for the foreclosure or redemption of a mortgage of immovable property;(g)suits for the determination of any other right to or interest in immovable property;(h)suits for the specific performance or rescission of contracts;(i)suits to obtain an injunction;(j)suits for the cancellation or rectification of instruments;(k)suits to enforce a trust;(l)suits for a general average loss and suits on policies of insurance on sea going vessels;(m)suits for compensation in respect of collisions on the high seas;(n)suits for compensation for the infringement of a patent, copyright or trade-mark;(o)suits for a dissolution of partnership or for an account of partnership-transactions;(p)suits for an account of property and its due administration under the decree of the Court;(q)suits for compensation for libel, slander, malicious prosecution, adultery or breach of promise of marriage;(r)suits for the restitution of conjugal rights [***] [The words 'for the recovery of a wife' Repeal by Act 10 of 1914, s. 3 and the Second Schedule.] or for a divorce;(s)suits for declaratory decrees;(t)suits for possession of a hereditary office;(u)suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States;(v)suits on any judgment of a High Court;(w)suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force.

19A. [Return of plaint. [Added by Act 1 of 1895, s. 9.]

- Whenever the Court finds that for want of jurisdiction it cannot finally determine the question at issue in the suit, it may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the question. When the Court so returns a plaint, it shall comply with the provisions of the second paragraph of section 57 of the [Code of Civil Procedure (14 of 1882)] and make such order with respect to costs as it may think just, and the Court shall for the purposes of the Indian Limitation Act, 1877 (15 of 1877) be deemed to have been unable to entertain the suit by reason of defect of jurisdiction. When a plaint so returned is afterwards presented to a High Court, credit shall be given to the plaintiff for the amount of the court-fee paid in the Small Cause Court in respect of the plaint in the levy of any fees which according to the practice of the

High Court are credited to the Government.]

20. Court may by consent try suits beyond pecuniary-limits of jurisdiction.

- When the parties to a suit, which, if the amount or value of the subject-matter thereof did not exceed two thousand rupees, would be cognizable by the Small Cause Court, have entered into an agreement in writing that the Small Cause Court shall have jurisdiction to try such suit, the Court shall have jurisdiction to try the same, although the amount or value of the subject-matter thereof may exceed two thousand rupees. Every such agreement shall be filed in the Small Cause Court, and, when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit.

21. Suits by and against officers of Court.

- All suits to which an officer of the Small Cause Court is, as such, a party, except suits in respect of property taken in execution of its process, or the proceeds or value thereof [and all suits whereof the amount or value of the subject matter exceeds one thousand rupees] [Inserted by Act 1 of 1895, s. 10.] may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed.

22. Costs when plaintiff sues in High Court in other cases cognizable by Small Cause Court.

- If any suit cognizable by the Small Cause Court other than a suit to which section 21 applies, is instituted in the High Court, and if in such suit the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than [one thousand] [Substituted by s. 14, *ibid.*, for 'two thousand'] rupees, and in the case of any other suit a decree for any matter of an amount or value of less than three hundred rupees, no costs shall be allowed to the plaintiff; and if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs as between attorney and client. The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court.

Chapter V

Procedure in Suits

23.

[Portions of Civil Procedure Code extending to Court.] [Repeal by Presidency small cause courts Act 1 of 1895, s. 12.]

24. No written statement except in cases of set-off.

- Except in cases of set-off under the [Code of Civil Procedure (14 of 1882)] [See now the code of civil Procedure, 1908 (Act 5 of 1908).], section 111, no written statement shall be received unless required by the Court.

25. Return of documents admitted in evidence.

- When a period of eight days from the decision of a suit has expired without any application for a new trial or re-hearing of such suit having been made, or when any such application has been made within such period and such application has been refused, or the new trial or re-hearing (as the case may be) has ended, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record, shall, unless the document is impounded under section 143 of the [Code of Civil Procedure (14 of 1882)] [See now the Code of Civil Procedure, 1908 (Act 5 of 1908).], be entitled to receive back the same: Provided that a document may be returned at any time before any of such events on such terms as the Court may direct: provided also that no document shall be returned which, by force of the decree, has become void or useless. On the return of a document which has been admitted in evidence, a receipt shall be given, by the party receiving it, in a receipt-book to be kept for the purpose.

26. Compensation payable by plaintiff to defendant in certain cases.

- In any suit in which the defendant appears and does not admit the claim, and the plaintiff does not obtain a decree for the full amount of his claim, the Small Cause Court may in its discretion order the plaintiff to pay to the defendant, by way of satisfaction for his trouble and attendance, such sum as it thinks fit. When any claim preferred, or objection made, under section 278 of the 3Code of Civil Procedure (14 of 1882), is disallowed, the Small Cause Court may in its discretion order the person preferring or making such claim or objection to pay to the decree-holder, or to the judgment-debtor, or to both by way of satisfaction as aforesaid, such sum or sums as it thinks fit. And when any claim or objection is allowed the Court may award such compensation by way of damages to the claimant or objector as it thinks fit; and the order of the Court awarding or refusing such compensation-bar any suit in respect of injury caused by the attachment. Any order under this section may, in default of payment of the amount payable thereunder, be enforced by the person in whose favour it is made against the person against whom it is made as if it were a decree of the Court.

27. Decree-holder to accompany officer executing warrant.

- Whenever the Small Cause Court issues a warrant for the arrest of a judgment-debtor on the attachment of his property, the decree-holder, or some other person on his behalf, shall accompany the officer of the Court entrusted with the execution of such warrant, and shall point out to such officer the judgment-debtor or the property to be attached, as the case may be.

28. Things attached to immovable property and removable by tenant to be deemed movable in execution.

- When the judgment-debtor under any decree of the Small Cause Court is a tenant of immovable property, anything attached to such property, and which he might before the termination of his tenancy lawfully remove without the permission of his landlord, shall, for the purpose of the execution of such decree [and for the purpose of deciding all questions arising in the execution of such decree] [Inserted by Act 4 of 1906, s. 2.], be deemed to be movable property, and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.

29. Discharge of judgment-debtor on sufficient security.

- Whenever any judgment-debtor, who has been arrested or whose property has been seized in execution of a decree of the Small Cause Court, offers security to the satisfaction of such Court for payment of the amount which he has been ordered to pay and the costs the Court may order him to be discharged or the property to be released.

30. Court may in certain cases suspend execution of decree.

- Whenever it appears to the Small, Cause Court that any judgment-debtor under its decree is unable, from sickness, poverty or other sufficient cause, to pay the amount of the decree, or, if such Court has ordered the same to be paid in instalments, the amount of any instalment thereof, it may, from time to time, for such time and upon such terms as it thinks fit, suspend the execution of such decree and discharge the debtor, or make such order as it thinks fit.

31. Execution of decree of Small Cause Court by other Courts.

- If the judgment-debtor under any decree of the Small Cause Court has not, within the local limits of its jurisdiction, movable property sufficient to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution-(a)in the case of execution against immovable property situate within such local limits-[to the Madras City Civil Court or the High Court of Judicature at Fort William or Bombay, as the case may be] [Substituted by Act 7 of 1892, s. 12, for 'to the high court'];(b)in all other cases-to any Civil Court within the local limits of whose jurisdiction such judgment-debtor, or any movable or immovable property of such judgment-debtor, may be found.Procedure when decree transferred. - The procedure prescribed by the [Code of Civil Procedure (14 of 1882)] [See now the Code of Civil Procedure, 1908 (Act 5 of 1908).] for the execution of decrees by Courts other than those which made them shall be the procedure followed in such cases.

32. Minors may sue in certain cases as if of full age.

- Notwithstanding anything contained in the [Code of Civil Procedure (14 of 1882)] [See now the Code of Civil Procedure, 1908 (Act 5 of 1908).] as applied by this Act, any minor may institute a suit for any sum of money, not exceeding five hundred rupees, which may be due to him under section 70 of the Indian Contract Act, 1872 (9 of 1872), for wages or piece work or for work as a servant, in the same manner as if he were of full age.

33. Power to delegate non-judicial duties.

- Any non-judicial or quasi-judicial act which the [Code of Civil Procedure (14 of 1882)] [See now the Code of Civil Procedure, 1908 (Act 5 of 1908).] as applied by this Act requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code as so applied, may be done by the Registrar of the Small Cause Court or by such other officer of that Court as that Court may, from time to time, appoint in this behalf. The High Court may, from time to time, by rule, declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

34. Registrar to hear and determine suits like a Judge.

- The suits cognizable by the Registrar under section 14 shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same: Proviso. - Provided that, subject to the control of the Chief Judge, any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar.

35. Registrar may execute all decrees with the same powers as a Judge.

- The Registrar may receive applications for the execution of decrees of any value passed by the Court, and may commit and discharge judgment-debtors, and make any order in respect thereof which a Judge of the Court might make under this Act.

36. Decrees and orders of Registrar to be subject to new trial as if made by a Judge.

- Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court. [Chapter VI] [Substituted by Act 1 of 1895, s. 13, for Chapter VI.] New Trials and Appeals

37. General finality of decrees and orders of Small Cause Court.

- Save as otherwise provided by this Chapter or by any other enactment for the time being in force, every decree and order of the Small Cause Court in a suit shall be final and conclusive.

38. New trial of contested cases.

- Where a suit has been contested, the Small Cause Court may, on the application of either party, made within eight days from the date of the decree or order in the suit (not being a decree passed under section 522 of the Code of Civil Procedure (14 of 1882), order a new trial to be held, or alter, set aside or reverse the decree or order, upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings. Explanation. - Every suit shall be deemed to be contested in which the decree is made otherwise than by consent of or in default of appearance by the defendant.

39. Removal of certain causes into High Court.

(1) In any suit instituted in a Small Cause Court in which the amount of value of the subject-matter exceeds the sum of one thousand rupees, the defendant or any one of the defendants may, before the day fixed by the summons for the appearance of the defendant or within eight days after the service of the summons on him, whichever period shall last expire, apply ex parte on an affidavit setting forth the facts on which he relies for his defence to a Judge of the High Court for an order removing the cause into the High Court. (2) [Unless the Judge is of opinion that the application has been made solely for the purpose of delay, the applicant shall be entitled to such order as of right: Provided that the removal directed by such order shall, unless the Judge otherwise directs, be conditional upon the applicant giving security, to the approval of the Judge, within a reasonable time to be prescribed in the order for the payment of the amount claimed and of the costs which may become payable by him to the plaintiff in respect of the said suit.] [Substituted by Act 4 of 1906, s. 3, for sub-section (2).] (3) If the applicant fail or neglect to complete the required security (if any) within the prescribed time (if any), the said order shall be discharged and the suit shall proceed in the Small Cause Court as if such order had never been made. (4) If the plaintiff in any case which has been removed under this section into the High Court has abandoned a portion of his claim in order to be able to bring the suit within the jurisdiction of a Small Cause Court, he shall be permitted to revive the portion of his claim so abandoned.

40. Rules with respect to suits removed under the last foregoing section.

(1) When a suit has been removed into the High Court under the last foregoing section, it shall be heard and disposed of by such Court in the exercise of its original jurisdiction, and the said Court shall have all the same powers and jurisdiction in respect thereof as if it had been originally instituted such Court. (2) In every suit so removed as aforesaid the affidavit filed under section 39, sub-section (1), shall be treated as a written statement of the defendant tendered under section 110 of the [Code of Civil Procedure (14 of 1882)] [See now the Code of Civil Procedure, 1908 (Act 5 of 1908).], unless the Court shall otherwise order. (3) In every suit so removed as aforesaid credit shall be given to the plaintiff for the amount of the court-fee paid in the Small Cause Court in respect of the plaint in the levy of any fees which according to the practice of the High Court are payable to the Government.

Chapter VII

Recovery of Possession of Immoveable Property

41. Summons against person occupying property without leave..

- When any person has had possession of any immovable property situate within the local limits, of the Small Cause Court's jurisdiction and of which the annual value at a rack-rent does not exceed [two] [Substituted by Act 9 of 1912, s. 2, for] thousand rupees, as the tenant, or by permission, of another person, or of some person through whom such other person claims, and such tenancy or permission has determined or been withdrawn, and such tenant or occupier or any person holding under or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person, such other person (hereinafter called the applicant) may apply to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

42. Service of summons.

- The summons shall be served on the occupant in the manner provided by the [Code of Civil Procedure (14 of 1882)] [See now the Code of Civil Procedure, 1908 (Act 5 of 1908).] for the service of a summons on a defendant.

43. Order for possession.

- If the occupant does not appear at the time appointed and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section 41, be entitled to an order addressed to a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order. Explanation. - If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section.

44. Such order to justify bailiff entering on property and giving possession. Bar to proceedings against Judge or officer for issuing, etc., order or summons.

- Any such order shall justify the bailiff to whom it is addressed in entering after the hour of six in the morning and before the hour of six in the afternoon upon the property named therein, with such assistants, as he thinks necessary, and giving possession of such property to the applicant: and no suit or prosecution shall be maintainable against any Judge or officer of the Small Cause Court by whom any such order as aforesaid was issued, or against any bailiff or other person by whom the same was executed, or by whom any such summons as aforesaid was served, for the issue, execution

or service of any such order or summons, by reason only that the applicant was not entitled to the possession of the property.

45. Applicant, if entitled to possession, not to be deemed trespasser for any error in proceedings. Occupant may sue for compensation.

- When the applicant, at the time of applying for any such order as aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed, on account of any error, defect or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser; but any person aggrieved may bring a suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect or irregularity: when no such damage is proved, the suit shall be dismissed; and when such damage is proved but the amount of the compensation assessed by the Court does not exceed ten rupees, the Court shall award to the plaintiff no more costs than compensation, unless the Judge who tries the case certifies that in his opinion full costs should be awarded to the plaintiff.

46. Liability of applicant obtaining order when not entitled.

- Nothing herein contained shall be deemed to protect any applicant obtaining possession of any property under this Chapter from a suit by any person deeming himself aggrieved thereby, when such applicant was not at the time of applying for such order as aforesaid entitled to the possession of such property. Application for order in such case an act of trespass. - And when the applicant was not, at the time of applying for any such order as aforesaid, entitled to the possession of such property, the application for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant.

47. Stay of proceedings on occupant giving security to bring suit against applicant.

- Whenever on an application being made under section 41 the occupant binds himself, with two sureties, in a bond for such amount as the Small Cause Court thinks reasonable, having regard to the value of the property and the probable costs of the suit next hereinafter mentioned, to institute without delay a suit in the High Court against the applicant for compensation, for trespass and to pay all the costs of such suit in case he does not prosecute the same or in case judgment therein is given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suit is disposed of. If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section 43. Nothing contained in section 22 shall apply to suits under this section.

48. Proceedings to be regulated by Code of Civil Procedure.

- In all proceedings under this Chapter, the Small Cause Court shall, as far as may be and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the [Code

of Civil Procedure (14 of 1882)] [See now the Code of Civil Procedure, 1908 (Act 5 of 1908).].

49. Recovery of possession no bar to suit to try title.

- Recovery of the possession of any immovable property under this Chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto.

Chapter VIII

Distresses

50. Local extent of Chapter. Saving of certain rents.

- This Chapter extends to every place within the local limits of the ordinary original civil jurisdictions of the High Courts of Judicature at Fort William, Madras and Bombay. But nothing contained in this Chapter applies-(a)to any rent due to Government ;(b)to any rent which has been due for more than twelve months before the application mentioned in section 53.

51. [Appointment of bailiffs and appraisers. [Substituted by the A.O. 1937, for section 51.]

- Four or more persons shall be appointed bailiffs and appraisers for the purposes of this Chapter.]

52. Appointees to be public servants.

- The persons so appointed [***] [Certain words omitted, ibid.] shall be deemed to be public servants within the meaning of the Indian Penal Code (45 of 1860).

53. Application for distress-warrant.

- Any person claiming to be entitled to arrears of rent of any house or premises to which this Chapter extends, or his duly constituted attorney, may apply to any Judge of the Small Cause Court, or to the Registrar of the Small Cause Court, for such warrant as is hereinafter mentioned. The application shall be supported by an affidavit or affirmation to the effect of the form (marked A) in the Third Schedule hereto annexed.

54. Issue of distress-warrant.

- The Judge or Registrar may thereupon issue a warrant under his hand and seal and returnable within six days, to the effect of the form (marked B) contained in the same Schedule, addressed to any one of such bailiffs. The Judge or Registrar may at his discretion, upon personal examination of the person applying for such warrant, decline to issue the same.

55. Time for distress.

- Every distress under this Chapter shall be made after sunrise and before sunset, and not at any other time.

56. What places bailiff may force open.

- The bailiff directed to make the distress may force open any stable, outhouse or other building, and may also enter any dwelling-house, the outer door of which may be open, and may break open the door of any room in such dwelling-house for the purpose of seizing property liable to be seized under this Chapter: Provided that he shall not enter or break open the door of any room appropriated for the zenana or residence of woman, which by the usage of the country is considered private.

57. Property which may be seized.

- In pursuance of the warrant aforesaid, the bailiff shall seize the movable property found in or upon the house or premises mentioned in the warrant and belonging to the person from whom the rent is claimed (hereinafter called the debtor), or such part thereof as may, in the bailiff's judgment, be sufficient to cover the amount of the said rent, together with the costs of the said distress: Provided that the bailiff shall not seize-(a) things in actual use; or (b) tools and implements not in use, where there is other movable property in or upon the house or premises sufficient to cover such amount and costs; or (c) the debtor's necessary wearing apparel; or (d) goods in the custody of the law.

58. Impounding distress.

- The bailiff may impound or otherwise secure the property so seized in or on the house or premises chargeable with the rent.

59. Inventory. Notice of intended appraisement and sale.

- On seizing any property under section 57 the bailiff shall make an inventory of such property and shall give a notice in writing to the effect of the form (marked C) in the Third Schedule hereto annexed to the debtor, or to any other person upon his behalf in or upon the said house or premises. Copies of inventory and notice to be filed. - The bailiff shall, as soon as may be, file in the Small Cause Court copies of the said inventory and notice.

60. Application to discharge or suspend warrant.

- The debtor or any other person alleging himself to be the owner of any property seized under this Chapter, or the duly constituted attorney of such debtor or other person, may, at any time within five days from such seizure, apply to any Judge of the said Court to discharge or suspend the

warrant, or to release a distrained article, and such Judge may discharge or suspend such warrant or release such article accordingly, upon such terms as he thinks just, and any of the Judges of the said Court may in his discretion give reasonable time to the debtor to pay the rent due from him. Upon any such application, the costs attending it and attending the issue, and execution of the warrant shall be in the discretion of the Judge, and shall be paid as he directs.

61. Claims to goods distrained made by a stranger.

- If any claim is made to, or in respect of, any property seized under this Chapter, or in respect of the proceeds or value thereof, by any person not being the debtor, the Registrar of the Small Cause Court, upon the application of the bailiff who seized the property, may issue a summons calling before the Court the claimant and the person who obtained the warrant. And thereupon any suit which may have been brought in the High Court in respect of such claim shall be stayed, and any Judge of the High Court, on proof of the issue of such summons and that the property was so distrained, may order the plaintiff to pay the costs of all proceedings in such suit after the issue of such summons. And a Judge of the Small Cause Court shall adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings as he thinks fit, and such order shall be enforced as if it were an order made in a suit brought in such Court. The procedure in Small Cause Courts in cases under this section shall conform, as far as may be, to the procedure in an ordinary suit in such Courts.

62. Power to award compensation to debtor or claimant.

- In any case under section 60 or section 61 the Judge by whom the case is heard may award such compensation by way of damages to the applicant or claimant (as the case may be) as the Judge thinks fit, and may for that purpose make any inquiry he thinks necessary; and the order of the Judge awarding or refusing such compensation shall bar any suit for the recovery of compensation for any damage caused by the distress.

63. Power to transfer to High Court cases involving more than one thousand rupees.

- In any case under section 60 or section 61, if the value of the subject-matter in dispute exceeds one thousand rupees, the applicant or claimant may apply to the High Court to transfer the case to itself, and the High Court, on being satisfied that it is expedient that the case should be disposed of by itself, may direct the case to be transferred accordingly, and may thereupon alter or set aside any order passed in the case by a Judge of the Small Cause Court, and may make such order therein as the High Court thinks fit. Every application under this section shall be made within seven days from the date of the seizure of the subject-matter in dispute. In granting applications under this section, the High Court may impose such terms as to payment of, or giving security for, costs or otherwise as it thinks fit. The procedure in cases transferred under this section shall conform, as far as may be, to the procedure in suits before the High Court in the exercise of its ordinary original civil jurisdiction; and orders made under this section may be executed as if they were made in the exercise of such

jurisdiction, and every such order awarding or refusing compensation shall bar any suit for the recovery of compensation for any damage caused by the distress which gave rise to the case wherein such order was made.

64. Appraisement.

- In default of any order to the contrary by a Judge of the Small Cause Court or by the High Court, any two of the said bailiffs may, at the expiration of five days from a seizure of property under this Chapter, appraise the property so seized, and give the debtor notice in writing to the effect of the form (marked D) in the Third Schedule hereto annexed. Notice of sale. - The bailiffs shall file in the Small Cause Court a copy of every notice given under this section.

65. Sale. Application of proceeds.

- In default of any such order to the contrary, the distrained property shall be sold on the day mentioned in such notice, and the said bailiffs shall, on realizing the proceeds, pay over the amount thereof to the Registrar of the Small Cause Court; and such amount shall be applied first in payment of the costs of the said distress and then in satisfaction of the debt; and the surplus, if any, shall be returned to the debtor: Provided that the debtor may direct that the sale shall take place in any other manner, first giving security for any extra costs thereby occasioned.

66. Costs of distresses.

- No costs of any distress under this Chapter shall be taken or demanded except those mentioned in the part (marked E) of the Third Schedule hereto annexed.[* * * *] [Second paragraph omitted by the A.O. 1937.]

67. Account of costs and proceeds.

- The Registrar of the Small Cause Court shall keep a book in which all sums received as costs upon distresses made under this Chapter, and all sums paid as remuneration to the said bailiffs, and all contingent charges incurred in respect of such distresses, shall be duly entered. He shall also enter in the said book all sums realised by sale of the property distrained and paid over to landlords under the provisions of this Chapter.

68. Bar of distresses except under this Chapter.

- No distress shall be levied for arrears of rent except under the provisions of this Chapter; Penalty for making illegal distresses. - and any person, except a bailiff appointed under section 51, levying or attempting to levy any such distress, shall, on conviction before a Presidency Magistrate, be liable to be punished with fine which may extend to five hundred rupees and with imprisonment for a term which may extend to three months, in addition to any other liability he may have incurred by his proceedings.

Chapter IX

References to High Court

69. [Reference when compulsory. [Substituted by Act 4 of 1906, s. 4, for section 69.]

(1) If two or more judges of the Small Cause Court sit together in any suit, or in any proceeding under Chapter VII of this Act, and differ in their opinion as to any question of law or usage having the force of law or the construction of a document, which construction may affect the merits, or if in any suit or in any such proceeding, in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises upon which the Court entertains reasonable doubt, and either party so requires, the Small Cause Court shall draw up a statement of the facts of the case and the point on which there is a difference of opinion or on which doubt is entertained, and refer such statement with its own opinion on the point for the opinion of the High Court; and the provisions of sections 619 to 621 of the [Code of Civil Procedure (14 of 1882)], shall, so far as they are applicable, be deemed to apply as if such reference had been made under section 617 of the said Code. (2) When the Small Cause Court refers any question for the opinion of the High Court as provided in sub-section (1), it shall either reserve judgment or give judgment contingent upon such opinion.]

70. Security to be furnished on such reference by party against whom contingent judgment given.

- When judgment is given under section 69 contingent upon the opinion of the High Court, the party against whom such judgment is given shall at once furnish security, to be approved by the Small Cause Court, for the costs of the reference to the High Court and for the amount of such judgment: Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court, and the same has been paid accordingly. If no such security given, party to be deemed to have submitted to judgment. - Unless such security as aforesaid is at once furnished, the party against whom such contingent judgment has been given shall be deemed to have submitted to the same.

Chapter X

Fees and Costs

71. Institution-fee.

- A fee not exceeding-(a) when the amount or value of the subject-matter does not exceed five hundred rupees-the sum of two annas in the rupee on such amount or value, (b) when the amount or value of the subject-matter exceeds five hundred rupees-the sum of sixty-two rupees eight annas, and one anna in the rupee on the excess of such amount or value over five hundred rupees, shall be paid on the plaint in every suit, and every application under [***] [The words and figures 'section

38 or' Repeal by Act 7 of 1896, s. 1.] section 41; and no such plaint or application shall be received until such fee has been paid. An additional fee of ten rupees shall be paid on the filing of every agreement under section 20.

72. Fees for processes.

- The fees specified in the third and fourth columns of the Fourth Schedule hereto annexed shall be paid previous to the issue in any suit or in any proceeding under Chapter VII of this Act of the processes, to which the said columns respectively relate, by the persons on whose behalf such processes are issued, when the amount or value of the subject-matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column of the said Schedule.

73. Repayment of half fees on settlement before hearing.

- Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.

74. Fees and costs of poor persons.

- The Small Cause Court may, whenever it thinks fit, receive and register suits instituted, and applications under section 41 made, by poor persons, and may issue processes on behalf of such persons, without payment or on a part-payment of the fees mentioned in sections 71 and 72.

75. Power to vary fees.

- The State Government may from time to time, by notification in the Official Gazette, vary amount of the fees payable under sections 71 and 72: Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

76. Expense of employing legal practitioners.

- The expense of employing an advocate, vakil, attorney or other legal practitioner incurred by any party shall not be allowed as costs in any suit or in any proceeding under Chapter VII of this Act, in the Small Cause Court, in which suit or proceeding the amount or value of the subject-matter does not exceed twenty rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable.

77. Sections 3, 5 and 25 of Court-fees Act, 1870, saved.

- Nothing contained in this Chapter shall affect the provisions of sections 3, 5 and 25 of the Court-fees Act, 1870 (7 of 1870).

Chapter XI

Misconduct of Inferior Ministerial Officers

78.

[Power to fine officers.] [Repeal by the A.O. 1937.]

79. Default of bailiff or other officer in execution of order or warrant.

- If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court who is employed as such in the execution of any order or warrant, loses, by neglect, connivance or omission, an opportunity of executing such order or warrant, he shall be liable, by order of the Chief Judge, on the application of the person injured by such neglect, connivance or omission, to pay such sum, not exceeding in any case the sum for which the said order or warrant was issued, as, in the opinion of the Chief Judge, represents the amount of the damage sustained by such person thereby.

80. Extortion or default of officers.

- If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court is charged with extortion or misconduct while acting under colour of its process, or with not duly paying or accounting for any money levied by him under its authority, the Court may inquire into such charge, and may make such order for the repayment or payment of any money so extorted, or of any money so levied as aforesaid, and of damages and costs, by such officer, as it thinks fit.

81. Court empowered to summon witnesses, etc.

- For the purposes of any inquiry under this Chapter, the Small Cause Court shall have all the powers of summoning and enforcing the attendance of witnesses and compelling the production of documents which it possesses in suits under this Act.

82. Enforcement of order.

- Any order under this Chapter for the payment or repayment of money may, in default of payment of the amount payable thereunder, be enforced by the person to whom such amount is payable as if the same were a decree of the Small Cause Court in his favour.

Chapter XII

Contempt of Court

83.

[Procedure of Court in certain cases of contempt.] [Repeal by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and the Second Schedule.]

84.

[Record in such cases.] [Repeal by s. 3 and the Second Schedule, 1914 (10 of 1914).]

85.

[Procedure where Court considers that case should not be dealt with under section 83.] [Repeal by s. 3 and the Second Schedule, 1914 (10 of 1914).]

86.

[Discharge of offender on submission or apology.] [Repeal by s. 3 and the Second Schedule, 1914 (10 of 1914).]

87. Imprisonment or committal of person refusing to answer or produce document.

- If any witness before the Small Cause Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, the Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to answer such questions or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section [480 or section 482 of Code of Criminal Procedure, [1898] [Substituted by Act 10 of 1914, s. 2 and the First Schedule.] (5 of 1898)].

88. Appeal from orders under section 87.

- Any person deeming himself aggrieved by an order under [***] [The words and figures 'section 83 or' omitted by Act 10 of 1914 s. 3 and the Second Schedule.] section 87 may appeal to the High Court, and the provisions of the [Code of Criminal Procedure, [1898] [Substituted by Act 10 of 1914, s. 2 and the First Schedule.] (5 of 1898)], relating to appeal shall, so far as may be, apply to appeals under' this section.

Chapter XIII

Miscellaneous

89. Persons by whom process may be served.

- Notices to produce documents, summonses to witnesses, and all other processes issued in the exercise of any jurisdiction conferred on the Small Cause Court by this Act, except summonses to defendants and writs of execution, may, if the Court by general or special order so directs, be served by such persons as the Court, from time to time, appoints in this behalf.

90. Registers and returns.

- The Small Cause Court shall keep such registers, books and accounts, and submit to the High Court such statements and returns, as may, subject to the approval of the State Government, be prescribed by the High Court.

91. Court to furnish records, etc., called for by State Government or High Court.

- The Small Cause Court shall comply with such requisitions as may, from time to time, be made by the State Government or High Court for records, returns and statements in such form and manner as such Government or Court, as the case may be, thinks fit.

92. Holidays and vacations.

- The Small Cause Court shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the State Government. Such list, when it has received such approval, shall be published in the Official Gazette, and the said holidays and vacations shall be observed accordingly.

93. Certain persons exempt from arrest by Court.

- The President [*] **[The words 'and Members of his Council' Repeal by the A.O. 1948.] the Governors of [Madras] [Substituted by the A.O. 1948, for 'Fort St. George] [Bombay and [West Bengal] [Substituted by Act 7 of 1912, s. 7 and the Schedule E, for 'and Bombay]],** [*] [The words 'and the Members of their respective Councils' rep, by the A.O. 1937.] [*] **[The words 'the Lieutenant-Governor of Bengal' omitted by Act 7 of 1912, s. 7 and the Schedule E.] and the Chief Justice and Judges of the High Courts** [*] [The words and letter 'for Part A state' omitted by the A.O. (No. 2) 1956.], shall not be liable to arrest by order of the Small Cause Court.

94. No suit to lie upon decree of Court.

- No suit shall lie on any decree of the Small Cause Court.

95. Place of imprisonment.

- Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such place as the State Government, from time to time, appoints in this behalf.

96. Tender in suit for anything done under Act.

- If any person against whom any suit is brought for anything purporting to be done by him under this Act, has before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover.

97. Limitation of prosecutions.

- All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence was committed. The First Schedule. - [Enactments repealed.] [Repeal by the Repealing Act, 1938 (1 of 1938), s. 2 and the Schedule.] The Second Schedule. - [Portions of Civil Procedure Code extending to Court.] [Repeal by the Presidency Small Cause Courts Act, 1895 (1 of 1895), s. 12.] The Third Schedule Forms A [See section 531] In the Small Cause Court for A.

B. _____ (plaintiff) versus C. D. _____ (Defendant) A. B.,
of _____, in the town of _____ maketh oath [or affirms and saith that
C. D. _____, of _____, is justly indebted to _____ in the
sum of Rs. _____ for arrears of rent of the house and premises
No. _____, situated at _____, in the town of _____,
due for _____ months, to wit from _____ to _____, at the rate
of Rs. _____ per mensem. Sworn [or affirmed] before me the _____ day
of _____ 18: Judge [or Registrar]. B [See section 54] In the small cause court for Form of
Warrant I hereby direct you to distrain the movable property, of C. D., on the house and premises
situated at No. _____, in the town of _____, for the sum of _____ Rs. And the
costs of the distress, according to the provisions of Chapter VIII of the Presidency Small Cause
Courts Act, 1882. Dated day of 18. (Signed and sealed). C [See section 59] In the Small Cause Court
for Form of Inventory and Notice (State particulars of property seized.) Take notice that I have this
day seized the movable property contained in the above inventory for the sum _____ Rs.,
being the amount of _____ months' rent due to A. B. at _____ last, and that unless
you pay the amount thereof, together with the costs of this distress, within five days from the date
hereof, or obtain an order from one of the Judges or the Registrar of the Small Cause Court to the
contrary, the same will be appraised and sold pursuant to the provisions of Chapter VIII of the
Presidency Small Cause Courts Act, 1882. Dated the day of 18. (Signed) E. F., Bailiff and Appraiser. To
C. D. D [See section 64] In the Small Cause Court for Take notice that we have appraised the movable
property seized on the _____ day of _____, under the provisions of Chapter VIII of
the Presidency Small Cause Courts Act, 1882, of which seizure and property a notice and inventory
were duly served upon you [or upon on your behalf, as the case may be] under date the
_____, and that the said property will be sold on the _____ [two clear days at least
after the date of the notice] at _____ pursuant to the provisions of the said Act. Dated this
_____ day of _____ 18 (Signed) E. F., G. H., Bailiffs and Appraisers. To C. D. E [See

section 66]In the Small Cause Court forScale of Fees to be Levied in Distraints for House-Rent

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