

Act XV of 1882

(THE PRESIDENCY SMALL CAUSE COURTS ACT,
1882.)

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	(a)	
	The Government of India (Adaptation of Indian Laws) Order, 1937.	
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	(d) The Adaptation of Laws (No. 2) Order, 1956.	

[17th March, 1882.] *An Act to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns.* 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 ; II is hereby enacted as followsô

CHAPTER I PRELIMINARY,

1. 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.

Preamble.

'For Summcm of Objccls and Reasons, see the (*Jaiue of India*, 1880, Pi. V, page 376; for first Report or the Select Commutes, see *ibid.*, 1881, Pt. V, page 381; for further Report of the Select Committee, see *ibid.*, 1882, Pt. V, page 3; for Proceedings in Council, see *ibid.*, Supplement, 1880, pages 1394 and 1433; *ibid.*, 1882, Supplement, page 204; and *ibid.*, 1882, Extra Supplement, page 43.

For portions of the Code of Civil Procedure extended to the Presidency Small Cause Court at Calcutta, see Schedule A to Rules of Practice, *Calcutta Gazette* of 1910, Part 1, page 814.

Short tide.
Commencement.

"In its application to West Bengal only.

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But nothing herein contained shall affect the provisions of the Army Act 1 "section 151, or the rights or liabilities of any person under any decree passed before that day.

2. [Repeal of enactments.]—Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch. and the West Bengal Repealing and Amending Act, 1948 (West Ben. Act VII of 1948), s. 3 and Second Sch.

3. [Amendments of Acts.]—Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch. and the West Bengal Repealing and Amending Act, 1948 (West Ben. Act VII of 1948), s. 3 and Second Sch.

"Small Cause Court" and "Registrar" defined.

4. 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,² and the expression "Registrar" includes a Deputy Registrar.]

¹See now the Code of Civil Procedure, 1908 (Act V of 1908).

²These words were inserted by s. 2 of Presidency Small Cause Courts Act, 1895 (I of 1895).

The words "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 Court subject to its appellate jurisdiction" were omitted by s. 3 (i) of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958).

³Substituted for the original section by para. 3 and the First Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴Substituted for the word "Provincial" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

⁵Substituted by s. 3 of the Presidency Small Cause Courts Act, 1899 (III of 1899) for the original s. 8A which had been inserted by s. 4 of the Presidency Small Cause Courts Act, 1895 (I of 1895).

⁶Substituted for the words "the qualifications required by section 7" by para. 3 and the First Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁷Substituted for the original section by s. 5 of the Presidency Small Cause Courts Act, 1895 (I of 1895).

⁸Inserted by s. 4 of the Presidency Small Cause Courts Act, 1899 (III of 1899).

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⁹Set foot-note 2 on page 377, *ante*.

¹⁰Substituted for the original section by para. 3 and the First Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.

¹¹Added by s. 6 of the Presidency Small Cause Courts Act, 1895 (I of 1895). The words "Act of Parliament of the United Kingdom or Central Act or Provincial Act or Act of the Legislature of a Part A State or a Part C State" were originally substituted for the words "Act of Parliament or Act of the Central Legislature or any Legislature established in a Province of India" by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950. Thereafter the words "Small Act" were substituted for the words "Act of the Legislature of a Part A State or a Part C State" by para. 3 and the Schedule of the Adaptation of Laws (No. 2) Order, 1950.

¹²The words within square brackets were substituted for the words "the Small Cause Court shall have jurisdiction to try all suits of a civil nature" by s. 3 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1980 (West Ben. Act XLVIII of 1980).

¹³The words "does not exceed five thousand rupees" were substituted for the original words "does not exceed two thousand rupees" by s. 3 (j) of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1969 (West Ben. Act XXXII of 1969) and subsequently, the words within square brackets were substituted by s. 3 (i) of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1978 (West Ben. Act LX of 1978).

¹⁴Added by s. 7 of the Presidency Small Cause Courts Act, 1895 (I of 1895).

¹⁵The words "not exceeding five thousand rupees" were substituted for the original words "not exceeding two thousand rupees" by s. 3 (2) of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1969 (West Ben. Act XXXII of 1969) and subsequently, the words within square brackets were substituted by s. 3 (2) of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1978 (West Ben. Act LX of 1978).

¹⁶The words "a Part A State or a Part C State" were originally substituted for the words "the Provinces", by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950. Thereafter the word "India" was substituted for the words "a Part A State or a Part C State" by para. 3 and the Schedule to the Adaptation of Laws (No. 2) Order, 1956.

¹⁷Inserted by s. 8 of the Presidency Small Cause Courts Act, 1895 (I of 1895).

¹⁸Paragraph (b) was substituted for the following paragraph, namely: "(b) rules concerning any act done by or by Order of the Central Government, the Crown Representative or the Provincial Government." by s. 3 and the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937.

¹⁹The words "the Crown Representative" were omitted by para. 3 and the First Schedule to the Adaptation of Laws Order, 1950.

²⁰See foot-note 2 on page 377, *ante*.

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of 1882.]
CONSTITUTION AND OFFICERS OF THE COURT.

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Courts of Small Causes established.

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

Appointment of Judges,

44 & 45
Rank and precedence of Judges.
XIV
1832.
XVIII
Performance of duties of abscm Judge.

5. 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.

The Small Cause Court shall be deemed to be a Court subject to the superintendence of ³[the High Court at Calcutta,] Madras or Bombay, as the case may be, within the meaning of the Letters Patent, respectively, dated the twenty-eighth day of December, 1865, for such High Courts, and within the meaning of the "Code of Civil Procedure, 1882" ⁵[and to be a Court subordinate to the High Court within the meaning of section

6 of the Legal Practitioners Act, 1879.]

(Chapter If.—Constitution and Officers of the Court. Sections 7—9.)

¹7. 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. The Chief Judge shall be the first of [the Judges in rank and precedence.

The other Judges shall have rank and precedence as the ²[State] Government may, from time to time, direct.

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 ²[State] Government may appoint any person, having "[the requisite qualifications], to act as Chief Judge or Judge of the said Court, as (he 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 ²[State] Government sees cause to cancel the appointment of such acting Chief Judge or Judge, as the case may be.

⁹(J) The High Court may, from time to time, by rules having the force of law,

f 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, 1891, in or under this Act or any other enactment for the time being in force ; and

Procedure and practice of Small Cause Court,

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⁶ [(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.

(Chapter 11.—Constitution and Officers of the Court.—Sections. 10—14.)

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. 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. 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. 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. 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 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 ministerial nature, as the Chief Judge may, from time to time, by rule direct.

14. 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.

Chief Judge to
distribute
business of
Court.
Procedure in case
of difference of
opinion.

Seal to be used.

Appointment of
Registrar and
other officers.

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

(Chapter II.—Constitution and Officers of the Court.—Section 15.—Chapter III.—
Law administered by the Court.—Section 16.—Chapter IV.—Jurisdiction in respect
of suits.—Section 17.)

¹Explanation.— For the purpose of this section an application for possession
under section 4] shall be deemed to be a suit.

15. No Judge or other officer appointed under this Act shall, Judge or officer during his
continuance as such Judge or officer, either by himself or as officer not to a partner of any other person,
practise or act, either directly or indirectly, practise or as an advocate, attorney, *vakil* or other legal
practitioner, or be concerned, if a decipher 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 XLV of Indian Penal Code.
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, ²[Act of Parliament of the United Kingdom or
Central Act or Provincial Act or State Act.]

CHAPTER III

LAW ADMINISTERED BY THE COURT.

16. 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. 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.

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

Local limits of
jurisdiction of
Court.

of 1682.]

The Presidency Small Cause Courts Act, 1882.

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(Chapter IV.—Jurisdiction in respect of Suits.—Section 18.)

Suits in which
Court has
jurisdiction,

18. Subject to the exceptions in section 19, [the Small Cause Court shall have jurisdiction and the High Court shall not have jurisdiction to try all suits of a civil nature]

when the amount or value of the subject-matter² [does not exceed ten 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 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 :

³Provided 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 reasons for such refusal.

Explanation 1. When in any suit the sum claimed is, by a setoff admitted by both parties, reduced to a balance¹ [not exceeding ten thousand rupees] the Small Cause Court shall have jurisdiction to try such suit.

Explanation 2. 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.

(Chapter IV,—Jurisdiction in respect of Suits.—Sections ISA, 19.)

Explanation III. A Corporation or Company shall be deemed to carry on business at its sole or principal office in [India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

²18A. 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. The Small Cause Court shall have no jurisdiction in

(a) suits concerning the assessment or collection of the revenue ;

³(b) suits concerning any act done by or by order of the Central Government, or by the [State] Government;

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 ;

suits for the recovery of immovable property ;

suits for the partition of immovable property ;

suits for the foreclosure or redemption of a mortgage of immovable property ;

suits (c) for the determination of any other right to or interest in immovable property ;

suits for the specific performance or rescission of contracts; suits to obtain an injunction ;

suits (d) for the cancellation or rectification of instruments ; suits to enforce a trust) ;

suits (e) for a general average loss and suits on policies of insurance on sea-going vessels ;

suits (f) for compensation in respect of collisions on the high seas ;

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Plaintiff may
abandon suit
against defendant
resident out of
jurisdiction,

Suits in which
Court has no
jurisdiction.

(Chapter IV.—Jurisdiction in respect of Suits.—Section 19A.)

- (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-trans actions ;
- (p) suits for 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 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 Return of barred by any law for the time being in force.

plaint.

'19A. 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, 1882³, 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, 1877⁴, 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.

The words "the recovery of a wife" were repealed by s. 3 and Sch. I of the Repealing and Amending Act, 1914 (X of 1914).

inserted by s. 9 of the Presidency Small Cause Courts Act, 1895 (I of 1895).

³See now the Code of Civil Procedure, 1908 (V of 1908), Sch. I, Order VJJ, rule 10(2).

⁴See now the Indian Limitation Act, 1908 (IX of 1908).

(Chapter IV.—Jurisdiction in respect of Suits.—Sections 20—22.)

20. Court may by consent try suits beyond pecuniary limits of jurisdiction.—Omitted by s. 4 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958.)]

21. Notwithstanding anything contained in [his Act or the Cily Civil Court Act, 1953, all suits to which in 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, may be instituted in the Calcutta Cily Civil Court at the election of the plaintiff.

West Ben. Act XX of 1953.

Suits by and against officers of Court

21A. The provisions of this Act shall have effect notwithstanding anything to the contrary in any other law, including in particular the Letters Patent of the High Court.

Act to override other laws including Letters Patent.

*22. [Costs when plaintiff sues in High Court in other cases cognizable by Small Cause Court.—Omitted by s. 6 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958.)]

The section which was omitted reads as follows, namely "Court may by consent try suits beyond pecuniary limits or 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."

This new section was substituted by s. 5 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958), for the following missing section, namely :

"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 may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed."

This section was inserted by s. 4 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1980 (West Ben. Act LXVIII of 1980). "The section which was omitted reads as follows, namely :

"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 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 cost 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.—Sections 23—26.)

CHAPTER V

PROCEDURE IN SUITS.

23. *[Portions of Civil Procedure Code extending to Court.]—Rep. by s. 12 of the Presidency Small Cause Courts Act, 1895 (1 of 1895).*

24. Except in cases of set-off under the Code of Civil Procedure, 1882, section 111, no written statement shall be received unless required by the Court,

25. 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 ²Code of Civil Procedure, 1882, 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 further 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. 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, 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.

²Insertion in the Code of Civil Procedure, 1903 (V of 1908), Sch. I, Order **Vin**, rule 6. ³See now Order XIII, rule B, *ibid*.

¹See now Order XXI, rule 58, *ibid*.

No written statement shall be received in cases of set-off.

Return of documents admitted in evidence.

Compensation payable, by plaintiff to defendant in certain cases.

XIV
of
1832,

(Chapter V.—Procedure in Suits.—Sections 27—30.)

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 shall 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. Whenever the Small Cause Court issues a warrant for the arrest of a judgment-debtor or 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.

Decree-holder to accompany officer executing warrant.

28. 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,] 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.

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

29. 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.

Discharge of judgment-debtor on sufficient security.

30. 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.

Court may in certain cases suspend execution of decree.

Inserted by s. 2 of the Presidency Small Cause Courts Act, 1906 (IV of 1906).

of 1882.]

The Presidency Small Cause Courts Act, 1882.

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(Chapter V.—Procedure in Small Cause Courts.—Sections 31—34.)

Execution of decree of Small Cause Court by other Courts,

31. 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 to

- (a) in the case of execution against immovable property situate within such local limits to the Madras City Civil Court¹ (or the Calcutta City Civil Court) or the High Court of Judicature at Bombay, as the case may be;
- (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.

The procedure prescribed by the Code of Civil Procedure⁴ for the execution of decrees by Courts other than those which made them shall be the procedure followed in such cases.

Procedure when decree transferred.

32. Notwithstanding anything contained in the Code of Civil Procedure⁴ 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, for wages or piece-work or for work as a servant, in the same manner as if he were of full age.

XIV of 1882.

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

33. Any non-judicial or quasi-judicial act which the Code of Civil Procedure⁴ 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.

IX of 1872.

Power to delegate non-judicial duties.

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.

Registrar to hear and determine suits like a Judge.

34. 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 :

²The words "Fori William or" were omitted by s. 7 (H), *ibid*,

³See now the Code of Civil Procedure, 1908 (Act V of 1908).

⁴Substituted for the original Chapter VI. by s. 13 of the Presidency Small Cause Courts Act, 1895 (I or 1895).

⁵See now the Code of Civil Procedure, 1908 (Act V of 1908). Sch. II, s. 16.

of 1882.)

(Chapter V.—Procedure in Suits.—Sections 35, 36.—Chapter VI.—Wen' Trials and Appeals.—Sections 37, 38.)

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. 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.

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

36. 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.

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

CHAPTER VI

NEW TRIALS AND APPEALS.

37. 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.

General finality of decrees and orders of Small Cause Court.

New trial of contested cases.

38. 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) 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 defendant.

of 1882.]

The Presidency Small Cause Courts Act, 1882.

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(Chapter VI.—New Trials and Appeals.—Sections 39, 40.)

¹**39.** *[Removal of certain causes into High Court.—Omitted by s. 8 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958)].*

²**40.** *[Rules with respect to suits removed under the last foregoing section.—Omitted by s. 9 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958)].*

(Chapter VII.—Recovery of Possession of Immovable Property.—Sections 41—43.)

CHAPTER VH

RECOVERY OF POSSESSION OF IMMOVABLE PROPERTY.

41. 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 [ten] thousand rupees, as the tenant, or by permission, of another person, or of some person through whom such other person claims,

Summons against person occupying property without leave,

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 apply³ 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.

Xiv or 42. The summons shall be served on the occupant in the manner 1882. provided by the Code of Civil Procedure⁴ for the service of a summons on a defendant.

43. 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.

Service of summons.

*Explanation.*⁶ 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.

Order or Tor possession.

(Chapter VII.—Recovery of Possession of Immovable Property.—Sections 44—46.)

44. 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

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

³ 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

Applicant, if entitled to possession, not to be deemed, when he or his agent or attorney appears in proceedings.

⁴ If the applicant fails or neglects 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,

Application for order may be made for act of compensation.

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. 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. 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.

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.

fChapter VI. Recovery of Possession of Immovable Property.—Sections 47—49.)

41. {If, within twenty-one days from the date of service under section 42] of a summons on the occupant or where the summons has not been duly served from the date of the knowledge of the proceedings 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 * * * a suit in the High Court ³[or the Calcutta City Civil Court, as the case may be] 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 "[make an order staying the proceedings on the application made under section 41 until such suit is disposed of :

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

Provided that an order of stay made under this section shall be vacated if the occupant fails to institute such suit within twenty-one days from the date of the order.]

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. In all proceedings under this Chapter, the Small Cause Court shall, as far as may be and except as herein otherwise provided, follow XIV of the procedure prescribed for a Court of first instance by the Code of 1882, Civil Procedure.

49. Recovery of the possession of any immovable property under this Chapter shall be no bar to the institution or a suit in ⁶[any Court having jurisdiction] for trying the title thereto.

Proceedings to be regulated by Code of Civil Procedure.

Recovery of possession no bar to suit to try title.

The words "without delay" were omitted by s. 3(2), *ibid.*

These words within square brackets were substituted for the words "the High Court" by s. II of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958).

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*(Chapter VIII.—Distresses.—Sections 50—54.)***CHAPTER Vni****DISTRESSES.**

Local extent
of Chapter.
Saving of
certain rents.

50. This Chapter extends to every place within the local limits of the ordinary original civil jurisdictions of the High Courts [at Calcutta], Madras and Bombay. But nothing contained in this Chapter applies to

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

Appointment of
bailiffs and ap-
praisers.

52. The persons so appointed * * shall be deemed to be public servants within the meaning of the Indian Penal Code.

Appointees to
Application for
the public
distress-warrant.
servants.

53. 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.

x
lb

The application shall be supported by an affidavit or affirmation to the effect of the form (marked A) in the third schedule hereto annexed.

Issue
distress-warrant.

54. 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.

*These words were substituted for the words "of Judicature at Fort William," by 5, 12 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958).

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Substituted for the original section by para. 3 and the First Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.

The words "shall give security, to be approved by the said Judges, faithfully to discharge the duties of their office, and they" were omitted, *ibid.*

(Chapter VIII,—Distresses.—Sections 55—59.)

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

Time for
distress,

56. 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 or any room in such dwelling-house for the purpose of seizing property liable to be seized under this Chapter :

What property
the bailiff
may force
open.

Provided that he shall not enter or break open the door of any room appropriated for the *zenana* or residence of women, which by the usage of the country is considered private.

57. 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 :

Property which
may be seized.

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

Impounding
distress.

59. 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.

Inventory. Notice of
intended appraisal
and sale.

The bailiff shall, as soon as may be, file in the Small Cause Court copies of the said inventory and notice.
Code-29

Copies of inventory
and notice to be filed.

(Chapter VIII.—Distresses,—Sections 60—62.)

Application to discharge or suspend warrant. 60. 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. 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.

Claim to goods distrained made by a stranger. And thereupon any suit which may have been brought in the High Court [or the Calcutta City Civil Court, as the case may be,] in respect of such claim shall be stayed, and any Judge of the High Court, [or of the Calcutta City Civil Court, as the case may be,] 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.

Power to award compensation to debtor or claimant. 62. 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,

¹These words were inserted by s. 13(i) of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958).

²These words were inserted by s. 13(i), *ibid.*

(Chapter VIII.—Distresses.—Sections 63—65.)

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.—Omitted by s. 14 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958)].*

64. In default of any order to the contrary by a judge of the Small Cause 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.

Appraisal.
Notice of sale.

The bailiffs shall file in the Small Cause Court a copy of every notice given under this section.

65. In default of any such order to the contrary, the distressed property shall be sold on the day mentioned in such notice, and the said proceeds, 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 :

The section which was omitted reads as follows, namely :

"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."

¹The words "or by the High Court." were omitted by s. 15 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958).

(Chapter VIII,—Distresses.—Sections 66—68.—
Chapter IX.—References to High Court.—Section 69.)

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. 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.

Costs of distresses. i* * * *

67. 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 of the distressed and paid over to landlords under the provisions of this Chapter.

68. No distress shall be levied for arrears of rent except under the provisions of this Chapter; 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 for making illegal distresses by his proceedings.

CHAPTER IX

References to High Court.

Reference when compulsory. *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

"The second paragraph, relating to the application of sums raised as costs towards payment of contingent charges and remuneration of bailiffs, was omitted by para. 3 of the First Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937, substituted for the original section by s. 4 of the Presidency Small Cause Courts Act, 1906 (IV of 1906).

of 1882.]

The Presidency Small Cause Courts Act, 1882. 371
(Chapter IX.—References to High Court.—Section 70.— Chapter X.—Fees and Costs.—Section 71.)

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, shall, so far as they are applicable, be deemed to apply as if such reference had been made under section 617¹ 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. 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 :
XIV of 1882.

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.

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.

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

CHAPTER X

FEES AND COSTS. 71. A fee not exceeding

¹See now the Code of Civil Procedure, 1908 (Act V of 1908), Sch, I, Order XLVI, rules 36-5,
²See now rule I. *ibid.*

Institution-fee,

If no such security given, party to be deemed to have submitted to judgment.

(a) when the amount or value of the subject-matter does not exceed [fifty rupees] the sum of two annas in the rupee or such amount or value,

(b) when the amount or value of the subject-matter exceeds fifty rupees, but does not exceed five hundred rupees the sum of six rupees four annas and three annas in the rupee on the excess of such amount or value over fifty-rupees,

(c) when the amount or value of the subject-matter exceeds five hundred rupees the sum of [ninety rupees ten annas], and one anna [six pies] 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 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. 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.

*72A. Conveyance charges to bailiffs on such scale as may, from time to time, be fixed by the Chief Judge with the previous approval of the [State Government] shall be paid previous to the issue in any suit or proceeding under this Act of processes by the persons on whose behalf such processes are issued.

Conveyance charges for service of certain processes, Fees for processes.

These words were substituted for the words "five hundred rupees" by s. 16(7), of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922).

¹This clause was inserted by s. 16(2), *ibid.*

Clause (b) was renumbered as clause (c). for the words "fifty rupees eight annas" the words "ninety rupees ten annas" were substituted, and for the words "one anna" the words "six pies" were inserted by s. 16(A) *ibid.*

The words and figures "section 38 or" were repealed by the Presidency Small Cause Courts (1882) Amendment Act, 1896 (VJI of 1896.)

Section 72A was inserted by s. 3 of the Presidency Small Cause Courts (Bengal Amendment) Act, 1932 (Ben. Act XX of 1932).

The words "Provincial Government" were first substituted for the words "Local Government" by para 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Indian Laws Order, 1950.

of 1882.] The Presidency Small Cause Courts Act, 1882. 401 I

(Chapter X.—Fees and Costs.—Sections 72B—73.)

72B. A fee of two *annas* when the amount or value of the subject-matter of the suit or the amount of the decree does not exceed fifty rupees, and a fee of twelve *annas* in any other case, shall be paid on every application mentioned in the fifth schedule hereto annexed in all suits or other proceedings under this Act.

Every such application shall be in writing and no such applications shall be received until such fee has been paid :

Provided that an application referred to in item 15 of the said schedule may be received without payment of such fee but notice shall not be issued until the fee has been paid.

Fees for certain applications.

Explanation. For the purposes of this section 'suit' includes a proceeding under Chapter VII.

72C. A fee amounting to one-half of the fee payable on the plaint in a suit for the amount or value of the relief claimed in the application, including the value of any relief claimed in respect of costs, shall be paid on every application made under section 38 on which the Court orders that notice be issued on the opposite party, and such notice shall not be issued until such fee has been paid :

Provided that where a new trial is ordered to be held in respect of the whole of the subject-matter of the suit the Court may direct that such fee be repaid, in whole or in part, to the party by whom it has been paid.

73. Whenever any suit, or any proceeding under Chapter VII, 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, provided that

Fees for applications under section 38.

(a) the fact of such settlement is communicated, by a petition signed by the parties or their agents, to the Court before or within twenty-one days after the expiry of the period fixed by the Court or the Registrar for entering appearance, or, in the case of a proceeding under Chapter VII, before or within twenty-one days after the day appointed for showing cause, and

New sections 72B and 72C were inserted by s. 3 of the Presidency Small Cause Courts (Amendment) Act, 1934 (Ben. Act VIII of 1934).

This new section was substituted by s. 4, *ibid.*, for the following existing section, namely :

"Payment of half fees, on settlement before hearing. Whenever any such suit or proceeding is settled by agreement or 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."

Repayment of half fees on settlement before hearing.

[Act XV

(Chapter X.—Fees and Costs.—Sections 74—77.—Chapter XI.—Misconduct of Inferior Ministerial Officers.—Sections 78, 79.)

(b) application for (he repayment is made within twelve months after the date of such petition or within such further period, if any, as the Chief Judge, for reasons to be recorded in writing, may allow.

Fees and costs of poor persons.

74. 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. The [State Government] may, from time to time, by notification in the *Official Gazette*, vary the amount of the fees payable under sections 71 and 72 :

Power to vary fees.

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

76. The expense of employing an advocate, *vakil*, attorney or other legal practitioner incurred by any party shall not be allowed as costs in 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.

Expense of employing legal practitioners.

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

VII of 1870,

CHAPTER XI

MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS,

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

³78. [Power to fine officers.—Rep. by para. 3 and the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937.]

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

79. 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.

³See foot-note 6 on page 398. *ante*.

This power is now regulated by rules made or deemed to have been made under article 309 of the Constitution of India.

of 1882.]

The Presidency Small Cause Courts Act, 1882. 403
(Chapter XI.—Misconduct of Inferior Ministerial Officers.—Sections 80—82.—Chapter XI!.—Contempt of Court.—Sections 83—87.)

80. 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 any money so levied as aforesaid, and of damages and costs, by such officer, as it thinks fit.

Extortion or
default of
officers.

81. For the purposes of any inquiry under [his 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. 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.

Court empowered to
summon witnesses,
etc.

CHAPTER XII

CONTEMPT OF COURT.

Enforcement of
order.

83. *[Procedure of Court in certain cases of contempt.—Repealed by the Repealing and Amending Act, 1914 (X of 1914), s. 3 and Schedule I].*

84. *[Record in such cases.—Repealed by the Repealing and Amending Act, 1914 (X of 1914), s. 3 and Schedule I].*

85. *[Procedure where Court considers that case should not be dealt with under section 83.—Repealed by the Repealing and Amending Act, 1914 (X of 1914), s. 3 and Schedule II].*

86. *[Discharge of offender on submission apology.—Repealed by the Repealing and Amending Act, 1914 (X of 1914), s. 3 and Schedule II].*

87. 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

Imprisonment or
commitment to prison
refusing to answer or
produce document.

or

(Chapter XII.—Contempt of Court.—Section 88.6 Chapter XIII.—Miscellaneous.—
Sections 89—97)

questions or to produce such document, as the court 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 the Code of Criminal Procedure, 1898.

Appeal from
orders under
Section 87

88. Any person deeming himself aggrieved by an order under section 87 may appeal to the High Court, and the provisions of the Code of Criminal Procedure, 1896 relating to appeals shall, so far as may be, apply to appeals under this section. *ar mz.*

CHAPTER XIII

MISCELLANEOUS,

Persons by whom
process may be
served.

89. Notices in product 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.

Registers and returns.

90. 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.

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

91. 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.

Holidays and vacations.

92. 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.

¹Substituted for the words "83 or section 85" by s. 2 and Sch. I of the Repealing and Amending Act, 1914 (X of 1914).

²The words and figures "section 83 or" were repealed by s. 3 and Sch. II, *ibid.*

³Substituted for the words and figures "Presidency Magistrates' Act. 1877" by s. 2 and Sch. I, *ibid.*

⁴See foot-note 6 on page 39S, *ante*,

⁵Substituted for the words "local official Gazette" by para. 4(1) of the Government of India (Adaptation of Indian JJWS) Order, 1937.

of 1882.]

The Presidency Small Cause Courts Act, 1882.

371

(Chapter XIII.—Miscellaneous.—Sections 93—97.—the First and Second Schedules.)

93. The [President]⁷* * "[Bombay and West Bengal],¹* Judges of the High Courts * order of the Small Cause Court.

, the Governors of [Madras], * and the Chief Justices and shall not be liable to arrest by

Certain persons exempt from arrest by Court,

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

No suit to lie upon decree of Court.

95. Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such place as the⁸[State Government], from time to time, appoints in this behalf,

Place of imprisonment.

96. 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.

Tender in suit for anything done under Act.

97. 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.]

Rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and Sch. and the West Bengal Repealing and Amending Act, 1948 (West Ben. Act VII of 1948), s. 3 and the Second Sch.

Limitation of prosecutions.

THE SECOND SCHEDULE.

Portions of Civil Procedure Code extending to Court.—Rep. by the Presidency Small Cause Courts Act, 1895 (1 of 1895), s. 12.

⁷Substituted for the words "Governor General" by para i(I) of the Adaptation of Laws Order, 1950.

The words "(ant) members of his Council" were omitted by part 3 and the First Schedule of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1950.

⁸Substituted, *ibid.*, for the words "Forist, George".
¹See footnote 6 on page 398, *ante*.

(The Third Schedule.)

THE THIRD SCHEDULE.

FORMS A

(See section 53.)

Iti the Small Cause Court for A. B.

_____ (plaintif

f),

C. D. _____

Versus
(defendant).

of _____ B. of _____ in the town
_,maketh oath [or affirms] and saith lhat C. D.

of _____ in,
the sum of Rs. _____ for arrears of renl of ihe house
and premises No. _____ situated at _____,
in ihe town of _____ is juslly indebted lo _____ months,
to wil, from _____ at the rate of
mensem. Rs. _____ per

due for.

Sworn [or affirmed] before me the Jo_ _____ day of 188

Judge [or Registrar] :

B

[See section 54.]

In the Small Cause Court for

FORM OF WARRANT

I hereby direct you lo distraint ihc movable property of C.D.,
on the house and premises situate at No. _____, in
the town of _____, for the sum of Rs. _____
and the cosls of the distress, according the provisions of Chapter VIII of the
Presidency Small Cause Courts Act, 1882.

(Signed and sealed.)

raiser,

(The Third Schedule.)

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 of the sum of 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 properly 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.,

To C. D.

Bailiffs and Appraisers.

(See section 66.)
In the Small Cause Court for

SCALE OF FEES TO BE LEVIED IN DISTRAINTS FOR
HOUSE-RENT.

Sums sued for		Affidavit and warrant to distrain	Order to sell	Commi- ssion	Total	
Rs.		Rs.	Rs. p.	Rs. p.	Rs. p.	
1	and under	5	0.25	0.50	0.50	1.25
5	and under	10	0.50	0.50	1.00	2.00
10	and under	15	0.50	0.50	1.50	2.50
15	and under	20	0.50	1.00	2.00	3.50
20	and under	25	0.75	1.00	2.50	4.25
25	and under	30	1.00	1.00	3.00	5.00
30	and under	35	1.00	1.00	3.50	5.50
35	and under	40	1.00	1.50	4.00	6.50
40	and under	45	1.25	2.00	4.50	7.75
45	and under	50	1.50	2.00	5.00	8.50
50	and under	60	2.00	2.00	6.00	10.00
60	and under	80	2.50	2.50	6.50	11.50
SO	lo	100	3.00	3.00	7.00	13.00
Upwards of		100	3.00	3.00	<i>1 per cent um.</i>	

The above scale includes all expenses, except in suits where the tenant disputes the landlord's claim and witnesses have to be subpoenaed, in which case each subpoena for sums under Rs. 40 must be paid for at twenty-five paise each, and seventy-five paise above that amount; and also where peons are kept in charge of properly distrained, such sum not exceeding fifty paise per day as may be fixed from time to time by the Chief Judge must be paid per man.]

* Form E of the Third Schedule was substituted by s. 5 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1969 (West Ben. Act XXXII of 1969).

(Fourth Schedule.)

¹ [THE FOURTH SCHEDULE

[See section 72.]

FEEES FOR SUMMONSEES AND OTHER PROCESSES.

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summonses	Fee for other processes
Rs.	Rs.	Rs. P.	Rs. P.
0 ..	10	0.15	0.15
10 ..	20	0.25	0.25
20 ..	50	0.50	0.50
50 ..	100	1.00	1.00
100 ..	200	1.25	2.00
200 ..	300	1.50	3.00
300 ..	400	1.75	4.00
400 ..	500	2.00	5.00
500 ..	600	2.25	6.00
600 ..	700	2.50	7.00
700 ..	800	2.75	8.00
800 ..	900	3.00	9.00
900 ..	1,000	3.25	10.00
1,000 ..	1,100	3.40	10.50
1,100 ..	1,200	3.50	11.00
1,200 ..	1,300	3.65	11.50
1,300 ..	1,400	3.75	12.00
1,400 ..	1,500	3.90	12.50
1,500 ..	1,600	4.00	13.00
1,600 ..	1,700	4.15	13.50
1,700 ..	1,800	4.30	14.00
1,800 ..	1,900	4.45	14.50
1,900 ..	2,000	4.60	15.00
2,000 ..	2,200	4.75	15.50
2,200 ..	2,400	4.90	16.00
2,400 ..	2,600	5.05	16.50
2,600 ..	2,800	5.20	17.00
2,800 ..	3,000	5.35	17.50
3,000 ..	3,200	5.45	17.75
3,200 ..	3,400	5.55	18.00
3,400 ..	3,600	5.65	18.25

Firstly, the Fourth Schedule was substituted by s. 6 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1969 (West Ben. Act XXXII of 1969) and subsequently, this Schedule was substituted by s. 5 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1978 (West Ben. Act LX of 1978).

(The Fourth Schedule.)

[Act XV

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summonses	Fee for other processes
Rs. Rs.	Rs. P.	Rs. P.	
3,600 ...	3,800	5.75	18.50
3,800 ...	4,000	5.85	19.00
4,000 ...	4,200	5.95	19.15
4,200 ...	4,400	6.05	19.30
4,400 ...	4,600	6.20	19.45
4,600 ...	4,800	6.30	19.60
4,800 ...	5,000	6.40	19.75
5,000 ...	5,200	6.65	20-25
5,200 ...	5,400	6.90	20.75
5,400 ...	5,600	7.15	21.25
5,600 ...	5,800	7.40	21.75
5,800 ...	6,000	7.65	22.25
6,000 ...	6,200	7.90	22.75
6,200 ...	6,400	8.15	23.25
6,400 ...	6,600	8.40	23.75
6,600 ...	6,800	8.65	24.25
6,800 ...	7,000	8.90	24.75
7,000 ...	7,200	9.15	25.25
7,200 ...	7,400	9.40	25.75
7,400 ...	7,600	9.65	26.25
7,600 ...	7,800	9.90	26.75
7,800 ...	8,000	10.15	27.25
8,000 ...	8,200	10.40	27.75
8,200 ...	8,400	10.65	28.25
8,400 ...	8,600	10.90	28.75
8,600 ...	8,800	11.15	29.25
8,800 ...	9,000	11.40	29.75
9,000 ...	9,200	11.65	30.25
9,200 ...	9,400	11.90	30.75
9,400 ...	9,600	12.15	31.25
9,600 ...	9,800	12.40	31.75
9,800	10,000	12.65	32.25].

[See section 72B.]

Applications

- (1) for leave to sue,
- (2) for leave to sue as a pauper,
- (3) for amendment of the pleadings except for a slight amendment of the cause-title only,
- (4) for appointment of a guardian *ad litem* for a minor defendant or opposite party,
- (5) for substitution of the successor of a deceased party or of the transferee of a party,
- (6) for issue of a commission, to examine a witness or to hold a local inspection,
- (7) for an account to be taken by the Court accountant or by any other person,
- (8) for payment of a decretal debt by instalments, except applications made on the day on which the decree is passed,
- (9) for execution of a decree or order,
- (10) complaining against resistance to attachment,
- (11) claiming attached property,
- (12) by the decree-holder for permission to bid at a sale,
- (13) for permission to draw money from Court (a) without production, by the plaintiff, of the plaint-receipt granted to him or without production, by the defendant, of the summons served on him, (b) on the day the money is deposited in Court,
- (14) by a third party for permission to take certified copy of proceedings,
- (15) for purposes other than those specified above, on which the Court orders that notice be issued on the opposite party.

This Schedule was inserted by s. 5 of the Presidency Small Cause Courts (Bengal Amendment) Act, 1934 (Ben. Act VIM of 1934).

Code-10

The figures "1881" were repealed by s. 1 and Sch. I of the Amending Act, 1891 (XII of 1891).

These words were added by s. 2 of the Presidency Small Cause Courts Act, 1899 (IK of 1899).

These words were substituted for the words "the High Court of Judicature at Fort William," by s. 3(f) of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1955 (West Ben. Act XVI of 1955).

'Substituted by the Madras City Civil Court Act, 1892 (VII of 1892).

These words were inserted by s. 1(i) of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1955 (West Ben. Act XVI of 1958).

[Act XV

The section which was omitted reads as follows, namely:—
412 *The Presidency Small Cause Courts Act, 1882.*

"Removal of certain causes into High Court. (1) In any suit instituted in a Small Cause Court in which the amount or 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.

(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."

The section which was omitted reads as follows, namely:—

"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 in such Court.

(2) In every suit so removed as aforesaid the affidavit filed under section 39, sub-section (t), shall be treated as a written statement of the defendant tendered under section 110 of the Code of Civil Procedure (XIV of 1882), 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."

The word "two" was substituted for the original word "one" by s. 2 of the Presidency Small Cause Courts (Amendment) Act, 1912 (IX of 1912). Then the word "five" was substituted for the word "two" by s. 4 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1969 (West Ben. Act XXXII of 1969). Finally, the word within square brackets was substituted for the word "five" by s. 4 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1978 (West Ben. Act LX of 1978).

-For the fee on such application, see s. 71, *infra*.

'See foot-note 4 on page 386, *ante*.

"These words within square brackets were substituted for the words "Whenever on an application being made under section 41 by s. 3f/J of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1955 (West Ben, Act XI of 1955).
The Presidency Small Cause Courts Act, 1952. 371

³Those words within square brackets were inserted by s. 10 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben, Act XVI of 1958).

"These words within square brackets were substituted for the words "slay the proceedings on such application until such suit is disposed of by s. 3(3) of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1955 (West Ben, Act XI of 1955).

*.See foot-note 4 on page 386, *ante*.

The words "Bombay and Fort William in Bengal" were first substituted for the words "and Bombay" by s. 7 and Sch. E of the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (VII of 1912) *and* thereafter the words "West Bengal" were substituted for the words "Fort William in Bengal" by para. 3 and the First Schedule to the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948,

⁵The words "and the Members of their respective Councils" were omitted by para. 3 and the First Schedule to the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948, and the words "the Lieutenant-Governor of Bengal" were omitted by s. 7 and Sch. E of the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (VII of 1912).

⁶The words "for Part A States" were first substituted for the words "established under the twenty-fourth and twenty-fifth of Victoria, Chapter 104," by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950, and thereafter the words "for Part A States" were omitted by para. 3 and the Schedule of the Adaptation of Laws (No. 3) Order, 1956,