

deceased. Before a case is gone into, the defendant requires the plaintiff to shew that she is the administratrix to the estate of her husband, and if she cannot produce a certificate, she is either nonsuited, or a postponement is granted to her for the purpose of obtaining one. If the plaintiff has any houses or lands in the mofussil, she can get it at a small expense from the Zillah Court, within which the property is situated. But if her domicile is exclusively confined to the Town of Calcutta, and she is not at all subject to the jurisdiction of any Mofussil Court, her only alternative is to apply for a certificate to the High Court. But the High Court is for the rich and wealthy, and not for persons in plaintiff's position in life. The costs of an application for a letter of administration in this Court, are beyond the means of the applicant, and it is therefore but just and fair that power should be given to the Small Cause Court, where the costs are moderate, to deal with such applications. If Mofussil Judges can grant letters of administration, why should not the same power be given to the Small Cause Court, which is presided over by Barrister Judges, and is more competent to hear and dispose of such cases.

The eighth suggestion is that the Court should have the power to seize money due or payable to defendant, which is in the hands of a third party.

By the warrants issued for the seizure of goods and chattels, the Bailiff is also commanded to seize and take away money belonging to defendant if it be found in his box, but not if it be owing to him by a person who is indebted to him, or who acts as his depositary or stakeholder. Supposing a defendant, against whom there is a decree for 500 Rs., has no other property than a deposit in the Govern-

ment Saving's Bank of Rs 1000, the judgment creditor has no means of recovering his claim from that amount. The deposit in the Bank being exempt from seizure, is quite safe, and the judgment holder, though armed with a writ, is actually powerless. The law cannot assist him, because the money is in the custody of a third party, and though it is the defendant's own property, it is out of the reach of the process of the Court. The above suggestion, which does not appear to be unreasonable, ought to be adopted, as it will have to be done at a future time when the debtor's jail is abolished. It indeed seems anomalous that a defendant having money of his own, and unwilling to pay his just debts, cannot be compelled to satisfy judgments against himself

The 9th suggestion is that the Court be empowered to order partition, and to give possession, of immoveable property exceeding the value of Rs. 300 and not exceeding 1000 Rupees.

In this country, where every thing, moveable and immoveable, is liable to partition among the surviving heirs of a deceased, the want of a tribunal for the speedy partition of small property, at a small cost, is deeply felt by the middling classes of the people. They cannot go to the High Court for enforcement of their rights in such properties, for if they do so, the costs would exceed the value of the properties in dispute. The writer remembers an instance, in which to defend a suit in the High Court for one Thousand Rupees with interest thereon, the costs of attorney, Counsel, and Court, fees amounted to Rs 765-2-0, of which 194 Rs were paid by defendant, and a suit was brought against him in the Small Cause Court for the recovery of the balance Rs 571-2-0; which was decreed against him on 29th June 1871—See

A 24 page 147. Such being the costs of litigation in the High Court, the poor are deterred from resorting to it, without losing all that they possess. It seems therefore extremely desirable that the Small Cause Court should have the power to deal with real estates of the value of One Thousand in the same manner as ordinary suits.

THE JUDGES OF THE CALCUTTA COURT OF SMALL CAUSES FROM 1850 TO 1872.

	First Judge.	Second Judge.	Third Judge.	Fourth Judge.	Fifth Judge.
1850	J. Reddie. ...	C. W. Brietzke appointed in 1819 in the Court of Requests.	Russomoy Dutt appointed in 1838 in the Court of Requests.		
1851	M. Wylie November....	... Ditto. ...	... Ditto. ...		
1852	... Ditto. ...	... Ditto. ...	... Ditto. ...		
1853	... Ditto. ...	... Ditto. ...	... Ditto. ...		
1854	... Ditto. ...	... Ditto. ...	{ Ditto died in May. Hurro Chunder Ghose appointed in June. }		
1855	... Ditto. ...	{ John King 9th February. H. C. Ghose 9 August ... }	J. King. 9th August. ...		
1856	{ A. G. Macpherson. ... 2nd January. ... M. Wylie 29 January. C. Boulnois 4 September. M. Wylie 11 December. }	Hurro Chunder Ghose. ...	J. King. ...		
1857	M. Wylie. ...	... Ditto. ...	G. O. Wray 27 January		
1858	Ditto. ...	... Ditto. ...	C. Boulnois 17 November.		
1859	A. G. Macpherson 18 October.	... Ditto. ...	{ J. King 18 January G. O. Wray 23 March ... }		
1860	C. Boulnois 11 November.	... Ditto. ...	G. O. Wray.		
1861	{ J. T. Woodroffe 17 May A. G. Macpherson. ... 4 December. }	... Ditto. ...	H. W. Payne 12 July.		
1862	{ C. Boulnois 1 Feby. ... G. S. Fagan 14 June. ... C. Boulnois 1 August. ... G. S. Fagan 29 do. ... }	... Ditto. ...	... Ditto. ...		
1863	{ C. Boulnois 2nd Feby.... N. H. Thomson Novr. ... }	... Ditto. ...	... Ditto. ...		
1864	{ G. S. Fagan 2nd July. ... C. Boulnois 22 Novr. ... }	N. H. Thomson—2nd July.	H. C. Ghose. 2nd July....	{ J. H. A. Branson 7 July. } { E. Dacosta 6 December. }	
1865	C. Boulnois. ...	... Ditto. ...	... Ditto. ...	E. Dacosta	
1866	G. S. Fagan. 10 February.	J. H. A. Branson 20 Novr.	... Ditto. ...	... Ditto. ...	
1867	... Ditto. ...	N. H. Thomson 15 do.	... Ditto. ...	... Ditto. ...	
1868	... Ditto. ...	... Ditto. ...	{ ... Do. died 3rd Decr. ... E. Dacosta ... }	Koonjolall Banerjee 23 Decr.	R. S. T. MacEwen 4 March.
1869	... Ditto. ...	... Ditto. ...	E. Dacosta ...	... Ditto. ...	... Ditto. ...
1870	N. H. Thomson 9 September.	A. Moodie. 9th September.	Koonjolall Banerjee 13 Decr.	R. S. T. MacEwen 13 Decr.	
1871	... Ditto. ...	... Ditto. ...	... Ditto. ...	... Ditto. ...	G. C. Scone 21 January.
1872	G. S. Fagan. ...	N. H. Thomson. ...	... Ditto. ...	... Ditto. ...	... Ditto. ...

Note—The Record of the first Judge is Book A, the Record of the 2nd Judge is Book B, the Record of the 3rd Judge is Book C, the Record of the 4th Judge is Book D and the Record of the 5th Judge is Book E.

GUIDE TO SUITORS

CHAPTER I

ON THE

INSTITUTION OF SUIT.

Nothing is more easy than to bring a suit in the Small Cause Court. Here no long written statement of plaint is required, nor its verification. The following printed form duly filled up, answers the purpose of a plaint.

No _____ Book _____
 Page _____
 Returnable on _____ 187
 Barliff, _____ Date of Institution, _____
 Calcutta Court of Small Causes _____ 187

(Before the --Judge)

PLAINTIFF,
 (Place of Abode,)

DEFENDANT,
 (Place of abode,)

Cause of Action.

Defence.			
COSTS.		Particulars of Demand.	Amount of Claim : Rs.
Summons			Amount decreed,
Bench Warrant			„ Costs,
Plaintiff's Subpoena,			Total,
Defdt.'s Subpoena, .			
2nd summons, . .			
Attachment, ...			To Plaintiff,
Contempt Summons			Leviable Costs,
Proceedings and orders.			

Prior to the introduction of the system, requiring payment of costs by adhesive stamps in lieu of money, applications for summonses, or plaints, were in the first instance written on slips of plain paper, and their contents were afterwards transcribed into the Summons Book. This double work, which had the effect of impeding business, is rendered more simple, easy, and expeditious by dispensing with the application on plain paper, and the summons Book, and substituting in their stead the above loose printed forms, which being filled up with the names of the parties, their place of abode, the cause of action, and the amount of claim, are at once adopted as plaints. These plaints, according to the number distributed to each Judge, are sent from the summons office to the clerks of the different Courts, who enter therein the orders of the Judges; and after all the suits are disposed of, the plaints are then bound into Books and made over to the Record-keeper of the Court.

For the convenience of suitors, the Court has appointed ten persons to write plaints. These writers are not paid by Government. They charge the suitors, who require their services, at the following rates.

Applications for summons,	} 2 pice for each application.
Second summons, Subpoenas,	
Contempt summons, Attachments, ..	
Warrants, and New Trials, and to...	
draw money, deposit Debt and Costs, Peon's wages, Diet money, &	

Applications for Distress Warrants—————1 anna Ditto

Mookhtearnamahs and other applications—————1 anna for
each 100 words.

Gomashtahnamahs—————1 Rupee each.

Baboo Sreeram Roy is placed over these writers, and any complaint against them, is required to be made to him.

It is not obligatory on all persons to get their applications or complaints written by the plaint-writers. Any person who is competent to do it himself, can obtain a printed form from Mr. Bolst, the additional clerk, and fill it up with the required particulars. A plaint, however, will not be accepted by the Court which is throughout written by the hand. It must be engrossed on a printed form.

Those who will have recourse to plaint-writers for the preparation of their complaints, are advised to state to them correctly the names of the plaintiffs and defendants, their place of abode, the amount of claim, and the cause of action; for if any inaccuracy is discovered in the above particulars at the time of trial, the record is ordered to be amended, and a second summons issued, on payment of fresh fees, and costs of the day to the opposite party.

By section 26 Act 9 of 1850, no misnomer of the defendants, vitiates the summons. An omission of one of the plaintiff's names had hitherto proved fatal to his case, but it was remedied by section 73 Act 8 of 1859, which has been extended to this Court by Government.

The foundation of a suit, is the cause of action, and a few forms of the same, are given below for the information and guidance of suitors.

ACTIONS ON CONTRACT.

1. *Goods sold*—For Goods sold and delivered to you by the plaintiff.

2. *Goods bargained*—For Goods bargained and sold to you by the plaintiff.

3. *Money lent*—For Money lent to you with Interest by the plaintiff.

4. *Money had*—For Money had and received by you for the use of the plaintiff

5. *Money paid*—For Money paid to your use by the plaintiff.

6. *Work and labor*—For Work and labor done for you by the plaintiff—and materials supplied (*as the case may be.*)

7. *Account stated*—For Money due by you to plaintiff on an account stated.

8. *Interest*—For Interest due on money lent to you by plaintiff, which Interest you agreed to pay.

9. *Use and occupation*—For the use and occupation by you of a certain house belonging to the plaintiff.

10. *Rent*—For rent of a certain house due by you to plaintiff.

11. *Good will*—For the good will of a certain business sold and relinquished to you by plaintiff.

12. *Board and lodging*—For Board and lodging provided for you by the plaintiff.

13. *Stabling*—For Stabling and Horse-meat provided by plaintiff for your horse at your request.

14. *Use and hire*—For the use and hire of a certain Cargo Boat let to hire to you by plaintiff.

15. *Work done*—For Work done for the carriage of certain goods for you by the plaintiff.

16. *Promissory note*—For money due on a Promissory note dated 4th Falgoon 1270, with interest thereon, made by you to plaintiff.

17. *Endorsed note*—For money due on a Promissory note dated 6th Chyite 1270 made by you to one Ramlohl Bose, and by him endorsed to plaintiff.

18. *Bill of Exchange*—Due on a Bill of Exchange, dated 12th May 1871, drawn by you upon and accepted by Ram Lochun Dhur, payable to plaintiff, or his order, for Rupees 100, which is now due and unpaid.

19. *Acceptor of a Bill of Exchange*—For that you are the acceptor of a Bill of Exchange, dated 4 May 1871, drawn by Hurray Kisto Dey, and endorsed to plaintiff, for Rupees 200, at 15 days after date, which was presented to you for payment, and which is now due and unpaid.

20. *Endorser of a Bill of Exchange*—For that you are the endorser of a Bill of Exchange, dated 6th May 1871, drawn by Preonath Sett upon and accepted by Rammohun Dutt for Rs. 500, at 15 days after date, and endorsed to plaintiff, which was duly presented to you for payment when due, and not paid, of which presentment and non-payment you have had due notice.

21. *Tenantable order*—For that you contracted with plaintiff to keep the house let to him by you in thorough repairs, or tenantable condition, which you have failed to do, whereby he has sustained damages to the amount stated.

22. *Demurrage*—For the demurrage of a cargo boat let to hire to you by the plaintiff, which you have kept on such demurrage, for a period of 9 days, at 12 annas per day.

23. *Warranty*—For that you sold a Horse to the plaintiff, and warranted the same to be sound and quiet, but the horse was not sound and quiet, whereby he has sustained damages to the amount stated.

24. *Guarantee*—For that you guaranteed to the plaintiff

the payment of a certain debt, due and owing by Ram Chunder Ghose to plaintiff, which, however, you did not pay to plaintiff as agreed, whereby he has sustained damages to the amount stated.

25. *Against a carrier*—For that you did not safely carry for the plaintiff certain goods from Calcutta to Dacca, according to the terms under which you received the said goods, whereby he has sustained damages to the amount stated.

26. *Partnership account*—For balance due by you to plaintiff on a partnership account.

27. *Wages*—For wages due by you to plaintiff, for the months of September and October 1870, at 5 Rupees per month.

28. *Under an Intestacy*—For Rs. 500 due by you to plaintiff, as administrator to the estate of Radhakissen deceased, who died Intestate, on account of the plaintiff's distributive share to the goods and chattels of the deceased.

29. *Legacy*—Being the amount due by you to plaintiff, as the Executor to the will of Hurray Kristo Doss deceased, on account of a legacy bequeathed to plaintiff by the said will.

30.—*On a Judgment*—Due on a Judgment of the Calcutta Court of Small Causes obtained by plaintiff against you, on 10 August 1868, which Judgment you have not as yet satisfied.

ACTIONS ON TORT.

1. *Assault*—For that you assaulted and beat the plaintiff at Bagbazar, on saturday the 4th March 1871, at 11 o'clock A. M. whereby he has sustained damages to the amount stated.

2. *Malicious prosecution*—For that you falsely and maliciously prosecuted the plaintiff in the Police Court of Calcutta on a charge of Theft, which charge against the plaintiff was, on trial, found to be false, and untrue, and from which he was duly acquitted and discharged, whereby he has sustained damages to the amount stated.

3. *Trespass*—For that you forcibly and unlawfully broke into the house of the plaintiff, and caused such disturbance as to frighten and annoy the inmates of the said house, whereby he has sustained damages to the amount stated.

4. *Trover*—For that you have converted and disposed of to your own use certain goods of the plaintiff, whereby he has sustained damages to the amount stated.

5. *Illegal seizure*—For that you unlawfully caused certain goods of the plaintiff to be seized in execution of a decree of the Court of Small Causes of Calcutta, alleging the same to be the property of your judgment debtor, which were afterwards released in an Interpleader suit, whereby plaintiff has sustained damages to the amount stated.

6. *Stopping a Drain*—For that you caused a certain drain, which carries off water from plaintiff's house into the public drain, to be blocked up, which has caused water to stagnate, and make the plaintiff's house damp, whereby he has sustained damages to the amount stated.

7. *Negligent driving*—For that your servant so carelessly, negligently, and unskilfully drove your carriage and horse, that they came into collision with plaintiff's carriage, by which the plaintiff's carriage was broken, and horse injured, whereby plaintiff has sustained damages to the amount stated.

8. *Ancient light*—For that you have raised a wall so close up to the plaintiff's wall, that it has blocked up certain win-

dows, which admitted air and light into the plaintiff's apartments, whereby plaintiff has sustained damages to the amount stated.

9. *Injury to personal property*—For that you broke to pieces, spoiled and injured certain articles of the plaintiff, whereby he has sustained damages to the amount stated.

If the plaintiff has slept over his claim for a longer time than usual, he ought to see whether it is barred or not.

Under Act 9 of 1871, schedule second—First Division, the period of limitation in the following suits is

ONE YEAR.

No 7. For the wages of a domestic servant, artisan or laborer

No 8. For the price of food or drink sold by the keeper of a hotel, tavern or lodging

No 9.—For the price of a lodging.

No 11 For damages for infringing copy-right or any other exclusive privilege

No 12 By executors, administrators or representatives.

No 21. For false imprisonment.

No 22. For any other injury to the person.

No 23. For a malicious prosecution.

No 26. For taking or damaging moveable property.

No 27. For loss of service occasioned by the seduction of plaintiff's servant.

No. 20 For wrongful seizure of moveable property under legal process.

In the following suits

TWO YEARS.

- No 31. For obstructing a way or watercourse.
- No 32. For wrongfully detaining title deeds.
- No 34. For wrongfully detaining any other moveable property.
- No 36. Against a carrier for losing or injuring goods.
- No 37. Against a carrier for delay in delivering goods.

In the following suits

THREE YEARS.

- No 43. For trespass upon immoveable property.
- No. 47 For lost moveable property not dishonestly misappropriated or converted.
- No 48. For moveable property acquired by theft, extortion, cheating or dishonest misappropriation or conversion
- No 49. For the hire of animals, Vehcles, beasts or household furniture.
- No 50. For balance of money advanced in payment of goods to be delivered.
- No 51. For the price of goods sold and delivered, where no fixed period of credit is agreed upon.
- No 52. For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.
- No 53. For the price of goods sold and delivered to be paid for by a Bill of Exchange, no such bill being given.
- No 55. For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.
- No 56. For money lent.
- No 58. For money lent payable on demand.

No 59. For money paid for the defendant.

No 60. For money received by Defendant for plaintiff's use.

No 61. For interest upon money due from defendant to plaintiff.

No 62. For money due from defendant to plaintiff on accounts stated.

No 65 On a single bond, where a day is specified for payment.

No 66. On a single bond where no such day is specified.

No 67. On a bond subject to a condition.

No 68. On a Bill of Exchange or promissory note payable at a fixed time after date.

No 69 On a Bill of Exchange payable at or after sight.

No 70. On a Bill of Exchange accepted payable at a particular place.

No 71 On a Bill of Exchange or promissory note payable at a fixed time after sight or after demand

No 72. On a Bill of Exchange or promissory note payable on demand, and not accompanied by any writing restraining or postponing the right to sue

No 73. By the endorsee of a Bill or promissory note against the endorser.

No 74. On a promissory note or bond payable by Instalment.

No 75. On a promissory note or bond payable by Instalments, which provides that if default be made in payment of one Instalment, the whole shall be due.

No 76. On a promissory note given by the maker to a third person, to be delivered to the payee after a certain event should happen.

No 78. By the payee against the drawer of a bill of exchange, which has been dishonored by non-acceptance.

No 79. Like suit when the Bill has been dishonored by non-acceptance, and afterwards by non-payment.

No 80. Suit on a Bill of Exchange or promissory note not herein expressly provided for

No 82 By a surety against the principal debtor.

No 83. By a surety against a co-surety.

No 84. Upon any other contract to indemnify.

No 85. By a Vakeel or Attorney for costs.

No 90. By a principal against his agent for moveable property received by the latter and not accounted for.

No 91. Other suits by principals against agents for neglect or misconduct.

No 95. For relief on the ground of fraud.

No 100. For contribution by a party, who has paid the whole amount due under a joint decree, or by a sharer in a joint estate, who has paid the whole amount of revenue due from himself and his co-sharers.

No 102. For a seaman's wages.

No 103. By a Mahomedan for exigible dower.

No 104. By a Mahomedan for deferred dower.

No 106. For an account and a share of the profits of a dissolved partnership.

No 109. For the profits of an immoveable estate belonging to the plaintiff wrongfully received by the defendant.

No 110. For arrears of rent.

In the following suit

SIX YEARS.

No 118. Suit for which no period of limitation is provided elsewhere in this schedule.

In the following suits

TWELVE YEARS.

No 122. For a legacy or for a distributive share of the moveable property of a testator or intestate.

No 128. By a Hindu for maintenance.

No 140. By a Landlord to recover possession from a tenant.

In the following suit

THIRTY YEARS.

No 147. Against a depository or pawnee to recover moveable property deposited or pawned.

The plaintiff ought also to see, whether the document upon which he proceeds, is properly stamped or not, under Act 18 of 1869.

In Promissory note payable on demand, exceeding 20 Rupees, the proper stamp is one anna.

In Promissory note payable otherwise than on demand.

			Rs.	As.	P.
Not exceeding 100 Rs	...	...	0	1	0
Exceeding Rs. 100	not exceeding 200 Rs.	...	0	2	0
Ditto ...	200 Do	300 Rs.	0	3	0
Ditto ...	300 Do	600 Rs.	0	6	0
Ditto ...	600 Do	900 Rs.	0	9	0
Ditto ...	900 Do	1200 Rs.	0	12	0

BOND FOR ANY SPECIFIED AMOUNT.

Not exceeding	25 Rs	0	2	0
Exceeding Rs	25 not exceeding 50 Rs...	0	4	0
Ditto	50 ... Do... .. 100 Rs ...	0	8	0
Ditto	100 ... Do... .. 200 Rs ...	1	0	0
Ditto	200 ... Do... .. 300 Rs. ...	1	8	0
Ditto	300 ... Do... .. 400 Rs. ...	2	0	0
Ditto	400 ... Do... .. 500 Rs. ...	2	8	0
Ditto	500 ... Do... .. 600 Rs ...	3	0	0
Ditto	600 ... Do... .. 700 Rs. ...	3	8	0
Ditto	700 ... Do... .. 800 Rs. ...	4	0	0
Ditto	800 ... Do... .. 900 Rs ...	4	8	0
Ditto	900 ... Do... .. 1000 Rs. ...	5	0	0
Ditto	1000 ... Do... .. 1500 Rs. ...	7	8	0
Ditto	1500 ... Do... .. 2000 Rs. ...	10	0	0
Ditto	2000 ... Do... .. 2500 Rs. ...	12	8	0
Ditto	2500 ... Do... .. 3000 Rs. ...	15	0	0

LEASE.

Where the Lease is expressed to be for a term of less than one year. } The stamp duty with which a Bond for the total amount payable under such Lease, is chargeable.

Where the Lease is expressed to be for a term of not less than one year, but not more than 3 years. } The stamp duty with which a Bond for the total amount payable under such Lease, during the first year of the term, is chargeable.

CONVEYANCE.

			Rs.	As	P.
Not exceeding Rs. 50 ...	...	...	...	8	0
Exceeding Rs. 50...not exceedingRs	100	...	1	0	0
Do 100	Do... .. 200	...	2	0	0
Do 200	Do... .. 300	...	3	0	0
Do 300	Do... .. 400	...	4	0	0
Do 400	Do... .. 500	...	5	0	0
Do 500	Do... .. 600	...	6	0	0
Do 600	Do... .. 700	...	7	0	0
Do 700	Do... .. 800	...	8	0	0
Do 800	Do... .. 900	...	9	0	0
Do 900	Do... .. 1000	...	10	0	0

INDEMNITY BOND

When the amount secured, } The stamp duty with which a
does not exceed Rs. 3000. } Bond for such amount is charge-
able.

When such amount exceeds }
Rs. 3000, or is not express- } Sixteen Rupees.
ed.

	Rs	As.	P.
Shipping order.	0	1	0
Bill of Lading.	0	4	0
Notice of Protest by the master of a ship. ...	0	8	0
Protest of the Master or owner of a ship ...	2	0	0
Charter Party.	2	0	0
Notarial act.	2	0	0
Protest of a Bill of Exchange or promissory note	2	0	0
Instrument of Copartnership	4	0	0
Do dissolution of Partnership.	1	0	0

Release	8	0	0
Composition Deed	8	0	0
General Power of attorney	8	0	0
Power of Attorney to present for Registration.	0	8	0
Power of Attorney for the performance of a single act, when the value of the matter to be dealt with does not exceed 500Rs	1	0	0
Ditto when the value of the matter to be dealt with exceeds 500 Rs	2	0	0

AWARD

Where the amount or value of the property in dispute expressed in such award, does not exceed Rs 500	0	8	0
Where such amount or value exceeds 500 Rupees or where no amount or value is expressed in the award	1	0	0
Articles of clerkship for admission as At- torney of any High Court.	500	0	0
Letter of credit	0	1	0
Agreement for the sale of shares &c ...	0	1	0
Receipt or discharge above 20 Rs	0	1	0
Dock Warrant	0	4	0
Where two or more letters are offered in evidence to prove an agreement... ..	0	8	0
Articles of Association	16	0	0
Deed of Partition	16	0	0
Appointment of Trustee	16	0	0
Instrument of Gift of immoveable property.	16	0	0

Section 28 Act 18 of 1869. No stamp shall be affixed to, or impressed on, any Bill of Exchange, or Promissory note, or any Instrument chargeable with the duty, of one

anna, after execution thereof, nor shall the provisions of sections 20 and 24 apply to any such instrument.

Section 20 Act 18 of 1869. If a document, which has not been stamped, or insufficiently stamped, is produced in Court within *one year* from date of its execution, the party producing it shall have to pay the deficient portion of the stamp, and also penalty upon it *five times* the value of the proper stamp.

After one year, the deficient portion, and penalty *twenty times*.

Section 15 Act 18 of 1869. Nothing in this Act shall render the following instruments chargeable with stamp duty.

1—Receipt or discharge granted to a cultivator for the rent of land paying revenue to Government.

2—Receipt given for money or securities for money deposited in any Bank, or in the hands of any Banker or person acting as a Banker to be accounted for.—Provided the same be not expressed to be received of or by the hands of any other than the person to whom the same is to be accounted for.

Provided, further, that this exemption shall not extend to a receipt or acknowledgment for any sum paid, or deposited for, or upon a letter of allotment for a share, or in respect of a call upon any scrip, or share of, or in any company or association or proposed or intended company or association.

3—Receipt or discharge endorsed on, or contained in any instrument duly stamped at the date of its execution, acknowledging the receipt of the consideration money therein expressed or the receipt of any principal money, interest or annuity or other periodical payment thereby secured.

4—Transfer by endorsement of a negotiable instrument, or a policy of marine insurance, or of insurance against fire.

5—Letters of hypothecation accompanying a Bill of Exchange.

6—Transfers of securities of the Government of India.

7—Bond to Government for the due performance of the duties of any salaried office.

8—Agreement or memorandum of an agreement for, or relating to, the sale of goods or merchandize.

9—Lease granted to a cultivator, unless a fine or premium be paid in consideration of such lease.

10—Counterpart of such lease.

11—Surrender of land executed by a cultivator to his landlord.

12—Affidavit made for the sole purpose of enabling any person to receive any pension or charitable allowance.

13—Copy of any paper, which a public officer is by law required to make or furnish in his official capacity.

14—Copies made for the private use only of any person having the custody of the original instrument or of his counsel, attorney or vakeel.

15—Receipt or other instrument executed by or on behalf of Government, in cases where the Government would but for this exemption be liable to pay for the stamp thereon.

16—Letter of cover or engagement to issue a policy of insurance :

Provided that, unless such letter or engagement bear the stamp prescribed by this Act for such policy of insurance, nothing shall be recoverable thereunder, nor shall it be available for any purpose except to compel the delivery of the policy therein mentioned.

Under Section 17 Act 20 of 1866, Registration of the following documents, is compulsory.

1—Instruments of gift of immoveable property

2—Instruments (other than an instrument of gift) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards to or in immoveable property.

3—Instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right title or interest.

4—Leases of immoveable property for any term exceeding one year.

Provided that the former part of this section shall not apply to any Composition-Deed, nor to any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such company shall consist in whole or in part of immoveable property, nor to any endorsement upon transfer of any debenture issued by any such company. Provided also that, so far only as regards the territories respectively under the Governments of the Lieutenant Governors of Bengal, and the North-West Provinces, the local Government may, by order published in the Official Gazette, exempt from the operation of the former part of this section any leases of immoveable property, executed in any particular District or part of a District, the terms granted by which shall not exceed two years, and the annual rents reserved by which shall not exceed 50 Rs.

Section 18 Act 20 of 1866. Of the following documents registration is optional.

1—Instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees to or in immoveable property.

2—Instruments which acknowledge the receipt of payment of any consideration, on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest.

3—Leases of immoveable property for any term not exceeding one year, and the pattas, and muchalkas referred to in section 2.

4—Award relating to immoveable property.

5—Instruments which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in moveable property.

6—Wills to adopt a son.

7—Acknowledgments, Agreements, Appointments, articles of Partnership, Assignments, Awards, Bills of exchange Bills of sale, Bonds, Composition-Deeds, Conditions of sale, Contracts, Covenants, Grants, Instruments of dissolution of Partnership, Instruments of Partition, Powers of Attorney, Promissory notes, Releases, settlements, Writings of divorce-ment and all other Documents not hereinbefore mentioned.

Before coming to Court, the plaintiff ought to make a demand from the defendant, either written or verbal, of the amount due. If after that the defendant neglects or refuses to pay, the plaintiff may then proceed against him in due course of law.

After preparation of the plaint, the plaint-writer shall

note down upon it the cost payable on the amount of the claim, and hand it over to the plaintiff or his agent.

It is not necessary that the plaintiff should be personally present for the purpose of depositing costs into Court. Any man may do the same on his behalf.

The plaintiff or his agent is required to present the plaint to the Stamp Department of the Court, where on payment of the cost stated on the plaint by the plaintiff, the necessary stamps shall be affixed to it. The payment of costs by stamps is regulated according to the scale to be found in appendix A.

Where there are more defendants than one, a separate summons is issued to each, and the Court charges an additional fee for each summons. For instance, if a summons is applied for against two defendants for 50 Rs., the costs upon this amount at 2 annas per rupee shall be—Rs. 6-4-0 and fees for each summons against the two
 Defendants @ 8 annas each „ 1-0-0

Total Rs. 7-4-0

The Court does not charge costs and fees on fractions of rupees, unless they amount to, or exceed 8 annas, and then only one anna is taken. The fees are charged as follow under section 19 Act 9 of 1850.

FEES FOR EACH SUMMONS.

		Rs.	As.	P.
Not exceeding	10 Rs	0	2	0
Exceeding	Rs 10 not exceeding 20 Rs. ...	0	4	0

Ditto	20	Do... ..	50 Rs ...	0	8	0
Ditto	50	Do... ..	100 Rs. ...	1	0	0
Ditto	100	Do... ..	200 Rs. ...	1	4	0
Ditto	200	Do... ..	300 Rs. ...	1	8	0
Ditto	300	Do... ..	400 Rs. ...	1	12	0
Ditto	400	Do... ..	500 Rs ...	2	0	0
Ditto	500	Do... ..	600 Rs. ...	2	4	0
Ditto	600	Do... ..	700 Rs. ...	2	8	0
Ditto	700	Do... ..	800 Rs. ...	2	12	0
Ditto	800	Do... ..	900 Rs. ...	3	0	0
Ditto	900	Do... ..	1000 Rs ...	3	4	0

Let it be understood that if the claim exceed 10 Rupees by 3 pie, a fee of 4 annas shall be charged and not 2 annas, and so on.

Suitors are required to prepay all costs, but the Judges may at their discretion grant summonses to poor suitors without, or with a partial, deposit of costs. Section 20 Act 9 of 1850

Free-cost summonses are granted without much enquiry, if a pleader of the Court certify that the applicant is a pauper, and stand security for him for costs.

Applications for free-cost summonses are made to the First and Fifth Judges. The following form of application may be used by pauper-suitors.

To the———Judge of the Calcutta Court of
Small Causes

Sir,

Being a poor man, and not having the means to pay costs, I beg the favor of your granting me a summons for Rupees———, free of costs against one———, who owes me the amount.

I beg also you will at the same time grant me an order for free-cost Subpoenas against—witnesses whom I require to prove my case.

Yours most obediently

The——

From the Stamp Department, let the plaintiff or his agent take the plaint to the summons office, and present it to the Nazir. The Nazir after examining that the stamps affixed to it are correct, shall endorse upon it the returnable date of the suit, the name of the serving bailiff, and the Judge before whom the case is set down for hearing.

Plaintiffs generally complain that they cannot get their case placed before the judge by whom they wish it to be heard. But they forget, or seem not to know, that the cases as they come in by succession, are not set down at random before the judges, but distributed according to the following proportion, which renders it impossible for the distributing officer to conform to the wishes of the plaintiffs.

DISTRIBUTION OF CASES.

First Judge. { All cases above 500 Rs. to 1,000 Rs. and $\frac{1}{3}$ of cases from Rs. 100 to Rs. 500.

Second Judge . }
Third do..... } $\frac{2}{3}$ of all cases from Rs. 100 to Rs. 500.
Fourth do..... }

Second Judge. ... $\frac{1}{2}$ of all cases from Rs. 50 to Rs. 100.

Third and..... }
Fourth Judges. } $\frac{1}{2}$ of do do do.

Second Judge..... $\frac{1}{4}$ of all cases from Rs. 20 to Rs. 50.

Third and..... }
Fourth Judges. } $\frac{1}{4}$ do do do.

Third and..... }
Fourth Judges. } $\frac{1}{4}$ each of all cases from Rs. 10 to Rs. 20.

Third and..... } $\frac{1}{2}$ of all cases from Rs. 5 to Rs. 10.
 Fourth Judges. }

Fifth Judge. $\frac{1}{2}$ do do do.

Fifth Judge.all cases from Rupee one to Rs. 5.

But every case in which the plaintiff or his agent, on applying for a summons, or the defendant or his agent prior to the returnable date of the summons, certifies to the Chief Clerk that a point of law of any difficulty is involved, shall be set down for hearing before the First Judge.
 Rule 54 Act 9 of 1850.

Plaintiff or defendant may make the application for the above in the following form.

A. B.	...	...	...	...	Plaintiff.
C. D.	...	...	...	...	Defendant.
To					

The Chief Clerk of the Court of Small Causes
 Calcutta.

Sir,

As a point of law of difficulty is involved in the above case, I beg you will have the goodness, in accordance with the 54th Rule, to order it to be set down for hearing before the First Judge.

The—

I have &c.

By section 14 Act 26 of 1864, the First Judge is authorized to make such arrangements, as he shall think fit, with regard to the distribution of suits, and the general business of the Court, among the various judges thereof, and to vary such arrangements from time to time.

If a plaintiff has a number of suits of different values to file, he may obtain an order, previous to the payment of costs, from the First Judge for all those suits being placed before

one judge, otherwise they shall be set down for hearing, for the purpose of equal distribution according to the proportion mentioned above, before two or more judges, which will put the plaintiff to extreme inconvenience, in consequence of his being obliged to attend all those Courts on the same day, perhaps, at the same time.

The following form of application may be adopted for the above purpose.

To

The First Judge of the Court of Small Causes
Calcutta.

Sir,

I have—suits of different amounts to institute, and as it is likely that they will be distributed in more Courts than one, I pray for an order that they be set down for hearing in the file of one Judge.

Yours most obediently

The———.

After the plaint is passed by the Nazir, it is handed over to the Receipt-Writer, who prepares a receipt for the costs paid in as provided in Rule 14, gets it signed by the Nazir, and delivers it to the party who presented the plaint. The Court does not, however, deliver the receipts to the Dolalls or Brokers, who hang about the Court, even if the deposit of costs is made through their hands. The summons cost receipts, which were formerly signed and granted by the Clerk, are now signed and granted by the Nazir, because by Rule 37 all matters and things required to be done by the Clerk, may also be done by his Deputy or Deputies.

The summons cost receipt, besides containing an acknowledgment of the money paid for costs by stamps, shows other

particulars,—such as the judge in whose file the suit is placed, the date of trial, the name of the serving Bailiff, and the names of the plaintiff and defendant. This receipt ought to be carefully preserved, as no money shall be allowed to be drawn from the Court except on its production. Rule 14th Act 9 of 1850.

Loss of this receipt was a matter of frequent occurrence before. Numerous applications were daily made to Mr. Way, the then 3rd Judge, for orders for payment, without the production of the cost receipt. The judge felt so annoyed at the negligence of the applicants in not taking care of the receipt, that he made it an invariable practice not to grant any order, unless due search was made for it, and he allowed one month's time for the purpose. He often observed that when Bank Notes and other securities were not easily lost, he could not conceive why court-receipts, which are neither more nor less than money orders, should be so frequently mislaid. Those plaintiffs, who did not succeed in finding out the receipt, had to wait for a month, and as this delay kept them out of their money, which they could have drawn, but for the loss of the receipt, on the same day the application was made, it had the effect of making them more careful in future, and, at the present day, very few applications, comparatively speaking, are made for lost receipts.

The plaintiff or his agent is required to present the receipt to the Head Bailiff, on the second day after institution of suit, who thereupon makes over the summons to the serving bailiff, whose name is endorsed on the said receipt. The latter then enters the summons in a book kept by him as required by Rule 9th, and appoints a time for the service

of the same. In this book, the bailiff also notes down the time and manner of service, and produces it on the day of trial, from which he declares, on oath or solemn affirmation, the truth of the service made by him.

Section 34 Act 9 of 1850—A plaintiff shall not be allowed to divide any cause of action, for the sake of bringing two or more suits in any of the said Courts.

Cause of action means one cause of action, and is not limited to an action on one separate contract, therefore in the case of tradesmen's bills, in which one item is connected with another, and the dealing is not intended to terminate with one contract, but to be continuous, so that one item, if not paid, shall be united with another, and form one entire demand, the demand if it exceeds 50*l*, ceases to be within the jurisdiction of the County Court. So, where the sub-contractor of a Railway Company gave his workmen tickets or orders for goods, which were supplied by the plaintiff, and the latter brought 228 actions in the County Court against the defendant in respect thereof, for sums amounting in the aggregate to 303*l*. 19*s*, the Court of Exchequer granted a prohibition, although one claim only amounted to 5*l*, and many to less than 20*s*. P and N's Prac: of County Courts, page 50

Section 34 Act 9 of 1850 But any plaintiff having cause of action for more than 500 Rs., and by the Extension Act, for more than 1000 Rs., may abandon the excess: that is, if a plaintiff holds a promissory note for 1050 Rupees, he may abandon the 50 Rs., in order to bring it within the jurisdiction of the Small Cause Court, and this abandonment must be stated in the Summons, and entered in the Record or Plaint, and thereupon the said plaintiff shall on

proving his case, recover to an amount not exceeding 1000 Rupees, and the judgment of the Court shall be for that amount only, which shall be in full discharge of all demands in respect of that promissory note.

If it is discovered at the time of trial that the abandonment of excess is omitted to be inserted in the summons, and also in the record, no amendment may be allowed, as was held by Mr Fagan, the learned First Judge, in the case of Wooma Churn Bhuddur vs. Sinclair and Sampson, on the 8th January 1868.

Section 3 Act 26 of 1864. Any suit for an amount above One Thousand Rupees not included in Section 25 Act 9 of 1850, may be brought and tried in the Court of Small Causes, provided both parties shall agree by a Memorandum signed by them or by their Attorneys, and file it with the Clerk of the Court.

CHAPTER II.

JURISDICTION OF THE COURT

AND

SUBJECT MATTER AND NATURE OF SUITS.

1—Section 28 Act 9 of 1850—All persons shall be deemed within the jurisdiction of the Court, who

1—Dwell, or carry on business, or work for gain, within the district of the Court at the time of bringing the action,

2—Or who did so dwell, or carry on business, or work therein, at the time when the cause of action arose,

3—or who have so dwelt, or carried on business, or worked

for gain, within six months before the time of bringing the action, provided the cause of action arose within the same time.

2—Dwelling means a personal residence or abode.

A person who has a fixed residence with a permanent establishment in Calcutta, though he may be actually living at Monghir, is said to dwell within the jurisdiction of the Court.

In the case of *Gunnesh Singh, and Lutchmon Singh vs. S. A. Shircore*, Book A 270, page 385, decided on the 20th February 1867, it was contended for the defendant that he had a place of abode with an establishment in 24 Pergunnahs, that he was temporarily living in Calcutta, and that he was not subject to the jurisdiction of the Court.—Held “that temporary residence does not constitute dwelling within ‘the meaning of the Act,’—for if it were so, any man, who has slept for a night or two in Calcutta, shall be considered to be subject to the jurisdiction of the Court.

3—Several other cases have been decided, in which it was held, that a person occasionally coming with goods from the Mofussil, and stopping in Calcutta for a short time, in order to dispose it off, shall not be subject to the jurisdiction of the Court.

4—Carrying on business means more than a mere employment. A clerk in a public office, does not carry on business at the office where he performs his duties.

A Fisherman, who lives in Belliaghatah, and brings fish every morning to the Dhurmtullah Bazar to sell, is held to be carrying on business in Calcutta, and is subject to the Jurisdiction of the Court.

A person, who does not dwell, and has no fixed place

of business in Calcutta, but hawks about in goods in the Streets, is said to carry on business in Calcutta.

5—A person living elsewhere, but coming to Calcutta, and doing the business of a broker, is considered to be working for gain in Calcutta.

A Rajmistry, who comes from Alipore, and attends to the building of houses in Calcutta, is said to work for gain within the meaning of the Act.

6—Section 31 Act 9 of 1850.—A minor may sue for his wages, for piece work, or for work done as a servant, in the same manner as if he were of full age. But if he sues for any cause of action other than the above, the same advantage is not given him. He must, in the latter case, be attended with his next friend or guardian.

But a minor may be sued for the necessities of life.

7—Section 33 Act 9 of 1850.—Executors or Administrators may sue and be sued, in like manner as if they were parties in their own right. But no Executor or Administrator shall be summoned in that capacity within six months after the death of the person, whose Executor or Administrator he is.

8—Parties living at Bickaneer, Patna, Arrah and other places, but carrying on business at Calcutta by their Gomash-tas, are held to be subject to the jurisdiction of the Court. They may sue and be sued in the same manner as if they were themselves residing and carrying on business in Calcutta.

9—Married females professing the Christian faith, if their husbands are living, may plead exemption from the jurisdiction of the Court. The case is otherwise if they are living apart from their husbands, and leading an immoral life.

The Burrobazar and Chinabazar shop-keepers ought to exercise the utmost precaution in dealing with such females.

10—The owner of a scrow, screwing bales on the other side of the River, but receiving orders, and payment for his work and labor and materials supplied, in Calcutta, is subject to the jurisdiction of the Court.

11—A person who did dwell, or carry on business, or work for gain, in Calcutta at the time when the cause of action arose shall be subject to the jurisdiction of the Court. *Coonjobehary Dhur vs G. H. Hodge* A 277 P 168.

In this case, the Jurisdiction was disputed, but the Judge held there is jurisdiction, as defendant did dwell in Calcutta when the cause of action arose.

Explanation. A person, who borrowed money from a plaintiff at a time when he was dwelling & in Calcutta, and afterwards removed himself to 24 Pergunnahs, or to any other place out of Town, shall be liable to be sued in the Court of Small Causes of Calcutta.

Or if he have so dwelt, or carried on business, or worked for gain, within six months before the time of bringing the action; or otherwise if he have left Calcutta within six months before action brought, he shall be liable to be sued in the Court of Small Causes, provided the cause of action arose within the same time.

12—Section 36 Act 9 of 1850—Where any plaintiff shall have any demand recoverable under this Act, whether founded on contract or wrong, against two or more persons jointly answerable, it shall be sufficient if any of such persons be served with a process, and judgment may be obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable, may not

have been served or sued or may not be within the jurisdiction of the Court.

Explanation. Three persons have made a promissory note to a plaintiff, in which they are jointly and severally liable, of whom one has been served with the summons. The plaintiff may proceed and recover judgment against the one served, notwithstanding that the other two are jointly answerable, and have not been served with summonses. He shall not however be allowed to bring separate actions against each of those persons for the amount of the promissory note. The names of those, who have not been served with the summonses, and had no notice of the suit, shall be expunged from the record of the Court. The person against whom judgment has been given, may sue the other two for contribution. If the plaintiff does not succeed in recovering the whole amount of his claim, together with costs thereon, from the person against whom judgment has gone, he shall not be allowed to sue the other two defendants, either separately or jointly, for the unrecovered portion of his claim.

13—Section 25 Act 9 of 1850—All suits, where the debt or damage claimed, or value of the property in dispute is not more than One Thousand rupees,* whether on balance of account or otherwise, may be brought in the Court of Small Causes of Calcutta.

14—Section 32 Act 9 of 1850—The jurisdiction of the Court shall extend to the recovery of any demand, not exceeding the sum of One Thousand Rupees, which is

1—The whole or part of the unliquidated balance of a partnership account,

* Section 16 Act 26 of 1864. This Act and Act 9 of 1850, shall be read and construed as one Act.

2—or the amount or part of the amount of a distributive share under an intestacy,

3—or of any legacy under a will.

15—By “unliquidated balance,” it means a balance not mutually settled or agreed to. Thus, two persons are carrying on a business in partnership with each other. The partnership is dissolved, but the balance due to each has not been ascertained by mutual agreement.

16—A partner may sue his co-partner on determination of the partnership business, though the balance may remain unliquidated. To ascertain this balance, the Court may order its officer, the Adjuster of disputed accounts, to state the account.

17—Discharge by one partner is binding upon his co-partner⁸, unless fraud is shown, as was held in the suit of Banerjee Friend and Co. vs. Gopee Mohun Chatterjee, on the 10th December 1867. A 278, page 352.

18—If a partner ceases to be the member of a Firm, and makes an arrangement with his co-partners that he shall not be answerable for the debts of the Concern, such arrangement shall not be binding upon the creditors of the said Firm, unless it be duly notified in the Exchange or any other Gazette or Newspaper, and unless it be proved to the satisfaction of the Court that it has come to the notice of such creditors.

19—Act 15 of 1866. Section 1. The advance of money by way of loan to a person engaged, or about to engage in any trade or undertaking, upon a contract in writing with such person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on such trade or undertaking,

shall not, of itself, constitute the lender a partner with the person or persons carrying on such trade or undertaking, or render him responsible as such.

Section 2. No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking, by a share of the profits of such trade or undertaking shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

Section 3. No person being the widow or child of the deceased partner of a trader, and receiving by way of annuity a portion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be partner of, or be subject to, any liabilities incurred by such trader.

Section 4. No person receiving by way of annuity or otherwise a portion of the profits of any business, in consideration of the sale by him of the good will of such business, shall, by reason only of such receipt, be deemed to be a partner of, or be subject to, the liabilities of the person carrying on such business.

Section 5. In the construction of this Act, the word "person" shall include a Partnership Firm, a Joint Stock Company, and a Corporation.

If two partners, who have quarreled, have a claim against a defendant, and one of them proceeds, and the other refuses to join, the suit cannot be brought by one partner alone, but that both of them must be made as plaintiffs.

If two partners have quarreled, and one of them recovers money from a defendant, and the other partner disowns the payment, and brings a suit in the name of the firm, it shall be sufficient if the defendant can produce a receipt from

the partner who had received the money, or an entry in the Hathchitta, failing which the defendant shall be liable to pay.

In the suit of Romanath Bhattacharjee and Pittambur Sircar vs. Cally Nath Dutt, the 2nd plaintiff admitted payment by defendant, and 1st plaintiff ignored it, a judgment went against defendant, as he had no other witness to prove the payment.

20—The Court has jurisdiction to try actions for the recovery of immoveable property or its value, if the amount of claim does not exceed Five Hundred Rupees See case referred to the High Court. Radhamoney Boistomy vs. Aunundmoye Dabee.

21—The Court has power to try suits where the original debt was beyond Five Hundred Rupees, but was reduced by payments to Five Hundred—See case referred to the High Court. Boyle vs. Turner in 1851.

22—A suit shall not lie for an enhanced rent, unless the tenant has expressly promised to pay the increase. Gubby Vs. Aunund Chowdhery A 18 p 347 decided on the 28 September 1870.

A landlord may bring a suit for use and occupation, where there exist α no lease, and for rent, where there is a lease.

A landlord may sue his tenant for all the rent due up to the institution of suit. If he sues for a portion, the claim for the remainder shall be considered to be given up, or it may induce the Court to hold that it is a splitting of the demand.

If a tenant has come in under the plaintiff, and has acknowledged his title by the payment of rent to him or otherwise, he will not be permitted to impeach it at the trial.

23—One who is party to an immoral contract, cannot enforce it. Thus the price of obscene and libellous prints cannot be recovered.

A prostitute may not sue for wages, if her engagement be for immoral purposes. It is customary in Calcutta for a landlord or landlady to pay up the debts of a prostitute, in order to remove her to his or her brothel. Such loans shall not be recoverable, even if they are secured by a writing, because it is a well known fact that the prostitute shall repay the debt from the earnings of her prostitution, as was decided by Full Bench on Saturday the 24th June 1871, in the case of Lukheemoney Bewah Vs. Goonomoney Bewah &c., C 82 page 174.

A gambler may not sue and be sued for debts contracted in gambling.

24—A Mahomedan female may sue for Dinmohur, if it is reduced into writing, and so may a Hindu lady for maintenance. But there has not been a single suit, since the institution of the Court, in which the Dinmohur or maintenance was recovered, which was guaranteed to be paid by a verbal promise.

25—By Act 26 of 1864 Section 2. All suits exceeding 500 Rs., and not exceeding 1000 Rs, shall be subject to the jurisdiction of the Court, provided the cause of action shall have arisen, or the defendant at the time of bringing the action, shall dwell, or carry on business, or personally work for gain, within the local limits of the jurisdiction of the Court.

Explanation. If a cause of action shall have arisen in Calcutta, the defendant, wherever he may be living, shall be subject to the jurisdiction of the Court, provided the amount of claim exceeds 500 Rs, but does not exceed 1000

Rs. For instance, if a person having made purchases to the value of more than 500 Rs., goes out of Calcutta, and takes up his residence in the Mofussil, he shall be liable to be sued in the Calcutta Court of Small Causes. Or if a person sends for goods for more than 500 Rs. from some place in the Mofussil, or from any part of the country, and orders delivery to be given to his servant or agent, or to the Railway Station at the Armenian Ghat, in Calcutta, he shall be subject to the jurisdiction of the Court.

26 —The local limits of the Jurisdiction of the Court, are as follow.

North—The site of the old Chitpore Nullah or Marhattah entrenchment, from the old Chitpore Bridge, to the old Dum-Dum Bridge.

South—A line running along the Ditch on the South-side of Circular Road, and passing along the Road immediately in front of the General Hospital and Sudder Court, to the Alipore Bridge; and thence along the Southern Bank of Tolly's Nullah, to the River.

East—The Ditch on the Eastern side of the Circular Road, including a piece of ground called Halsee Bagan, which adjoins that Road on the North-East of the Town.

West—A line drawn at low water mark along the Western or Howrah side of the River, extending from the point opposite the mouth of Tolly's Nullah, to the point opposite the mouth of the old Chitpore Nullah or Marhattah entrenchment.

This local Jurisdiction, however, may be extended over such further district as may, from time to time, be declared by proclamation of the Governor General in Council. Section 5 Act 9 of 1850

27—Section 25 Act 9 of 1850. The Court shall not have Jurisdiction in

1—Any matter concerning the Revenue.

2—Or concerning any act ordered or done by the Governor, or Governor General, or any member of the Council of India, or of any Presidency, in his public capacity, or done by any person by order of the Governor General, or Governor in Council.

3—Or concerning any act ordered, or done by any judge or judicial officer in the execution of his office.

4—Or by any person in pursuance of any judgment or order of any Court or any judge or judicial officer.

5—Or in any suit for libel or slander.

28—With the above exceptions, all other suits, whether founded on contract or wrong, shall be amenable to the Jurisdiction of the Court, provided the amount claimed does not exceed the sum of One Thousand Rupees.

29—In 1860, it was doubted in the suit of Judoo Nauth Mullick Vs, Moulvie Mahomed Ismael, whether the Court has Jurisdiction to try a suit for damages for infringement of copyright; and on a reference to the late Supreme Court, it was decided that the Court of Small Causes has Jurisdiction in such matters, because the 25th Section of the Act provides that the Court of Small Causes shall have Jurisdiction *in all suits &c.* and a claim for damages for infringement of copyright, comes within the term "all suits," and does not form an exception.

30—A person assaulted and beaten may bring a suit in this Court for damages for injuries done to his person. This shall not be an estoppel to his proceeding in the Police Court for breach of the public peace.

31—A person falsely and maliciously charged with theft, or other misdemeanour, may bring a suit in this Court for malicious prosecution, if he has been duly acquitted by the Magistrate after trial and investigation.

32—A bill collecting sirkar, receiving payment of a bill, which he went to collect on behalf of his master, and not accounting for the money so received, shall be liable to be sued for money had and received.

33—A person paying up the debts of another at his request, may sue for money paid to his use.

34—A person receiving money in advance for the performance of a certain contract, and afterwards failing to fulfil it, may be sued for money had and received; or for breach of contract.

35—"A native becoming security to a native, for the good conduct of another native, by a verbal guarantee, may be sued on such guarantee; as was decided by the High Court in the case of Neckram Jomadar Vs. Issorey Prosad Panchowry, when a reference was made to it on the subject. On the 17th November 1865, A 265 page 97, Jesroop Mahirchand brought a suit against one Dhurm Paul, for standing security, by word of mouth, for one Frithy Sing, who embezzled some money belonging to plaintiff. The suit was decreed against defendant.

36—A purchaser, who had bargained and purchased goods, and afterwards refused to take delivery, may be sued for the difference arising from the resale of the said goods by public auction, within a reasonable time from date of such refusal, after due notice being given to the purchaser of the vendor's intention to resale.

37—A payment made under a mistake of fact, may be

recovered. Thus where a money was paid on account, and a dispute afterwards occurred between the parties, and a balance was struck, omitting to notice the sums paid, and the plaintiff paid the whole balance, he was permitted to recover the sum paid on account, as money paid under a mistake of fact in the hurry of business.

38—A manufacturer may claim a lien upon the goods he has manufactured, until paid for his work and labour. But if the thing manufactured, is not executed according to order, or sample, he is entitled to *quantum meruit* for his work and labour.

39—A servant, if he quits service without completing the month, or without notice, forfeits his pay for the number of days he has served in that month.

40—A master, if he discharges his servant without allowing him to complete the month, or without giving him notice, may be sued for wages for the unexpired portion of that month. But if the servant commits fraud, or misconducts himself, the master may dismiss him without notice.

41—A master, who has lost goods, which were in charge of his servant, and took no steps to recover them from him, but continued keeping him in his employ, and paying him his wages as they became due, is said to have shown condonation towards that servant, for which he shall not afterwards recover from him the value of the goods so lost.

42—Wages, if earned for a complete month, becomes an absolute debt of the master, from which no deduction may be admitted, either by way of set off, or for any other counter claim.

43—A servant may be liable to an action for damages, if he has been negligent in the performance of his duties, and for which negligence the master has sustained a loss.

44—A master is not responsible for goods ordered by his servant in his name, but without his authority, unless he has been in the habit of paying for goods so ordered. But if, in one instance, the master has employed the servant to buy on credit, he will be liable for any goods which the same servant subsequently buys on credit, until the credit is distinctly withdrawn. If the master gives his servant money to pay for commodities as he buys them, and the servant buys them without paying, and embezzles the money, the master is not liable.

45—On the death of a sole plaintiff, the suit brought by him in this Court, cannot be continued, as the Court has not the power to substitute the names of the heirs and representatives in place of the deceased. The suit, however, may be revived by the heirs or representatives of the deceased by paying fresh costs, and proceeding denovo.

46—But if there be two or more plaintiffs, and one of them dies, the case may not be nonsuited, but a fresh summons granted, making the surviving partners plaintiffs in the suit.

47—If there be one defendant, and he dies, the case is nonsuited, but the plaintiff may bring a suit against his heirs, if they have taken possession of the estate of the deceased.

48—If there be two or more defendants, and one of them dies, the plaintiff may obtain a judgment against the surviving defendant or defendants. Mackinon Mackenzie brought a suit against Ramrutten and Kissenchand, and it was stated for information of the Court by Mr. Ross, that both the defendants were dead, and that Heeralaul was carrying on business under the Firm of Ramrutten Kissenchand.

The Court allowed an amendment without a fresh summons, A 1 page 214.

49—If an account is stated between the parties after the limitation has run out, and the defendant admits the balance, it will be the ground of a fresh suit, to which limitation cannot be pleaded as a bar.

50—When a horse has been sold, and warranted sound, but it is in fact unsound, the purchaser may maintain an action for the warranty, or, in some cases, may rescind the contract, and recover the money paid, under the count for money had and received.

51—An action may be maintained on a lost khut or Promissory note. In the case of Trannath Chatterjea Vs. Gooroodass Chatterjea, decided on the 13th February 1868, A 1 page 70, the plaintiff had lost the khut, yet he was allowed to proceed under the provisions of section 14 Act 5 of 1866, which runs as follows.

In case of any suit founded upon a Bill of Exchange or other negotiable instrument, if it shall be proved to the satisfaction of the Court that the instrument is lost, and if an indemnity be given by the plaintiff to the satisfaction of the Court, against the claims of any other person upon such instrument, it shall be lawful for the Court to make such decree as it would have made, if the plaintiff had produced the instrument in Court when the plaint was presented, and had, at the same time, delivered a copy of the instrument to be filed with the plaint.

52—A khut is not a negotiable instrument, and the suit, as quoted above, was allowed to proceed.

53—In the case of Kissory Mohun Biswas Vs. Aunund Chunder Benerica. tried on the 18th April 1870, A 20 P 194,

in which the promissory note was lost, it was contended by Babu Mohendro Boll Dey, pleader for the defendant, that the action was not maintainable under Act 5 of 1866, because it applied to Mofussil Courts, and not to the Calcutta Court of Small Causes. The plaintiff at last took a nonsuit by election.

54—On the 7th July 1871, H. Mackintosh brought two suits against George Dunford upon two Promissory Notes, one for Rs 416-10-3, and the other for Rs 568-12-0. Of these, one was lost on the 6th December 1870. The question, in the suit in which the Promissory note was lost, was whether the plaintiff can proceed under Act 5 of 1866. The Judge was of opinion that the plaintiff can, and gave a verdict for the amount of the claim.

It is doubtful whether the ruling of the Court in the above case is correct. In the latter part of Section 14 Act 5 of 1866, occur the following words that, "it shall be lawful for the Court to make such decree as it would have made if the plaintiff had *produced the instrument in Court, when the plaint was presented*, and had, at the same time, *delivered* a copy of the instrument to be *filed* with the *plaint*." Nowhere in the Calcutta Small Cause Court Act it is provided that documents, or any copies thereof, are to be filed with the plaint. It is only in the Mofussil Civil Courts, under Section 39 Act 8 of 1859 that documents are required to be produced when the plaint is presented, and a copy filed with the plaint. From this circumstance alone, if not from the whole tenor of Act 5 of 1866, it appears that it is not applicable to this Court, for if it were so, the wording of Section 14 would not have been in accordance with the provisions of Section 39 Act 8 of 1859.

55—Section 91 Act 9 of 1850.—An action of ejectment may be brought against a tenant or occupier, if the value of the property, or the rent payable in respect thereof, does not exceed the sum of One Thousand Rupees. The directions with regard to such suits, shall be found under the head of "Recovery of Small Tenements."

56—The Court had hitherto granted execution on application by plaintiffs against defendants, who had confessed judgment under special Registration. On a reference made to the High Court in the suit of Nilcomul Banerjee vs. Modhusudon Chowdhry, Book A 283 page 18, it was held by the judges of that Court, that the Small Cause Court has no power to enforce decree under such Registration.

57—By section 35 Act 9 of 1850, the Governor General, and members of Supreme Council of India, the Governors and members of Council of the Presidencies of Fort William in Bengal, Fort St. George and Bombay respectively, and the chief justices and judges of the several Supreme Courts established therein by Royal Charter, shall not be liable to arrest or imprisonment by process issuing out of any Court holden under the Act, and no writ or process shall be sued out of the said Court against any of the persons privileged by Act 1 of 1844 or Act 18 of 1848 without the consent of the Governor in Council. The persons referred to by these Acts are the Nobabs of Surat and the Carnatic.

58—Section 100 Act 9 of 1850. All actions and proceedings, which before the passing of this Act, might have been brought in the Supreme Court, where any officer of the Court, of Small Causes shall be a party, except in respect of any claim to any goods and chattels taken in execution of the process of the Court or the proceeds or value thereof, may be

brought and determined in the Supreme Court at the election of the party suing or proceeding, as if this Act had not been passed.

59.—The Secretary of State for India is subject to the jurisdiction of the Court, and may be sued in this Court for any claim up to 1000 Rs., which a party may have against Government.

60.—If an agreement be made between a landlord and tenant, that the house shall be kept in tenantable condition, and if the former neglects or refuses to repair, the latter may do it himself, and deduct the expences he is put to from the rent accruing due.

61.—^aIf a tenant occupies a house under a lease, which has not ended, and the landlord sells the house, the purchaser cannot oust him from the house, until the expiration of the lease.

62.—If the lease of an immoveable property be for more than a year, and if it is not registered, the landlord cannot produce it in Court at the time of trial, because registration in such cases is compulsory.

63.—A cause of action is not allowed to be altered from contract to tort, or to a totally different cause of action.

In the suit of *Toyeboolah vs. Golam Moulah Ostagar*, book A. 287 page 42, the plaintiff sued upon a Mortgage Bond, which, however, he was not able to produce, because it was not registered. The question was whether the plaintiff could be permitted to change the cause of action. It was held by the Court that such alteration could not be allowed, and the plaintiff was nonsuited.

64.—A decree of this Court, continues in force for 3 years from the date of Judgment. Rule 34 Act 9 of 1850.

After which, the plaintiff is required to bring a fresh suit upon the judgment, for the whole, or the unrecovered portion, of his claim.

65—The mere fact of suing in a Court, does not subject the person so suing to the Jurisdiction of this Court, so as to render him liable to be sued in it himself, Case referred to the High Court, Gibbon vs. Gobindo Mally, Gasper's Reports Part 1. Vol 1.

66—A defendant who dwelt and carried on his business in Calcutta, at the time when the cause of action arose, is subject to the Jurisdiction of this Court, though he may have ceased to dwell or work for gain within the Jurisdiction for more than six months before the action is brought. Case referred to the High Court. W. Craven vs. R. L. Brocos. Gasper's Reports. Part 1 Vol 1.

67—An agent to whom goods are consigned by a Bill of Lading, does not acquire a right to sue in his own name for damage done to the goods in which he has no property of any kind at the time of the shipment, nor at the time of the damage. Under the Act, the Court has no power to substitute a new plaintiff, when, by error, the suit is intentionally brought in the name of one who has no right to sue. Case referred to the High Court, Macvicar Smith & Co. vs. Captain R. Watson, Gasper's Reports Part 1 Vol 1.

68—Where the borrower is a British subject, and the lender, a native, the statute 13 Geo : 111 c 63 against usury does not apply. Referred to the High Court, Essan Chunder vs. Biddle, Gasper's Reports Part 1 Vol 1.

69—Persons born in the territories of the East India Company of Christian Parents, who were also born there, are not Her Majesty's subjects within the meaning of statute 13

Geo 111 c 63. s 30. and there is no usury law which affects them. Referred to, the High Court, Walter vs. De Santo, Gasper's Reports Part 1 Vol 1.

The above will give the suitors an idea of the Court's Jurisdiction, and the subject matter and nature of suits that may be brought in the Calcutta Court of Small Causes. To multiply more instances, would be to exceed the limit of the work, inasmuch as this chapter has already occupied more space than was originally intended for it.

CHAPTER III
ON THE ISSUE AND SERVICE
OF
SUMMONS AND SUBPŒNAS

UNDER ACT 9 OF 1850

ISSUE OF SUMMONS

1—The Clerk shall issue all summonses, Warrants, Precepts, and Writs of Execution. Section 14

2—The present jurisdiction of the Court is One Thousand Rupees, and any man may take out a summons up to that amount. But if the claim be for a higher sum, the excess, as before mentioned, must be abandoned, and stated in the body of the plaint, form of which is given in page. 1 The Summons is written out from the plaint, and consequently the abandonment will appear on the face of the former

3—The following is the form of the summons.

No.

Before the

Judge.

No. 1.

IN THE CALCUTTA COURT OF SMALL CAUSES

THESE are to will and require, and in Her Majesty's name strictly to charge and command you

personally
to appear before the Judges of the Calcutta Court of Small

Causes, at the said Court on the day of
 at o'Clock in the forenoon
 to answer
 in an action
 brought against you for Rupees (abandoning an excess
 of—Rupees)
 and not to depart the same Court without license. Given
 under the Seal of this Court, this day of
 One Thousand Eight Hundred and Seventy
 Amount of Demand, Rs.
 Cost, ————Rs.

Clerk of the Court.

c	Total Rs
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N. B.—If the case is settled by agreement between the parties, and such agreement is reported by the Plaintiff or his constituted Agent to one of the Judges, or to the Clerk of the Court, before the hearing, only half costs will be charged.

In default of Defendant's appearance, or valid cause shown for non appearance by a constituted Agent, (for example a Medical certificate or attestation of illness) the cause will be heard and determined ex-parte, or a writ of Attachment may issue to compel the appearance of the Defendant.

Bailiff.

4—The summonses, subpoenas &c. issuing out of the Calcutta Small Cause Court are signed by the Deputy Clerks, and sealed or stamped with the seal of the Court. Section 24.

5—Rule 2. The summons shall be dated as of the day when issued, and shall be made generally returnable in 7 days.

By Rule 53, the return day was enlarged to 14 days, which continued in force for some years, when, in January 1868, it was again reduced to one week. Explanation. If a

plaintiff pays costs for a summons on a monday, it shall be made returnable on Monday week, which is seven days, excluding the day of the institution of the suit.

SUMMONS OTHERWISE THAN IN ONE WEEK.

6—The summonses, however, may be made returnable in a shorter or longer time on the applications of the parties, which are required to be made to the 5th Judge.

IMMEDIATE SUMMONS.

7—The application for the issue of immediate summons returnable on the same date it is applied for, must be made to the First Judge. This is granted on an affidavit made by the plaintiff, or his agent, to the effect, that the defendant is

1—Concealing himself with a view to evade process of the Court,

2—Or is disposing of his property and effects, with intent to defraud the plaintiff, or his creditors generally,

3—Or is about to withdraw his person or effects from the Jurisdiction of the Court.

The following is the form of the Affidavit.

IN THE CALCUTTA COURT OF SMALL CAUSES

Plaintiff,

versus

Defendant.

saith on

that
of

within the District of this Court,

is justly

indebted to

in the sum of Co.'s Rs.

and this Deponent further saith, that he is informed and verily believes that the said
is

and this Deponent therefore craves that

Sworn before me this day of 187

Explained by

Judge.

Judge.

Interpreter.

8—Bench Warrants were granted before under the above circumstances, if the debt or demand exceeded the sum of 30 Rupees. But immediate summonses are now substituted in their stead, be the amount of the claim what it may.

9—For the purpose of obtaining an immediate summons, no separate application is necessary. The above affidavit signed and sworn to by the plaintiff, stating the grounds of such application, is sufficient. This affidavit together with the plant, is handed over to the judge, who examines the plaintiff, and, if satisfied, grants the usual order. As applications of this nature have become too common, and as such process is liable to abuse, the judge always attaches a condition to the order that the service of the summons must be personal, otherwise the plaintiff shall lose his cost.

10—If an immediate summons is obtained by plaintiff under misrepresentation, or by false affidavit, the Judge either non-suits the plaintiff, or grants a longer time to the defendant, provided it be proved to his satisfaction, that it is not a case where a short date summons may be granted.

SERVICE OF SUMMONS.

11—Section 16. The Bailiffs shall serve the summonses &c., but as they are not supposed to know the defendants, it

is necessary that the plaintiff or his agent must accompany the Bailiff to point them out.

12—In the High Court, the serving writers of the attorneys serve some of the processes, but here none but the authorized Bailiffs can do the whole work.

13—There are 50 native Bailiffs attached to the Court, who serve summonses &c. both in English and Native suits. These Bailiffs have fixed days for their attendance in Court. Some attend on Monday and Thursday, others on Tuesday and Friday, and the remainder on Wednesday and Saturday. By this, it must not be understood that they absent themselves on other days. They are required to make their appearance in office once in the morning every day.

14—It is necessary to mention that the suitors meet with the greatest difficulty in finding out the Bailiffs, who are appointed to serve their summonses, but they can easily have them by applying to the Nazir, or the Head Bailiff of the Court.

15—Rule 3 Every such summons to appear to a suit or action, shall be served by one of the Bailiffs *two clear days* before the holding of the Court, at which it shall be made returnable, unless the Court shall otherwise order.

Explanation—By two clear days, it is meant that two whole or entire days must intervene between the service of the summons, and the date of hearing of the suit. In the suit of Dinnonath Mitter vs. J. Moran, Book A 19 page 365, which came on for trial on the 14 September 1870, the summons was not served in two clear days, and the Court postponed the case for one week, and ordered plaintiff to pay 16 Rs. to defendant as costs of the day.

If a suit, for instance, be made returnable on Monday, the summons must be served on Thursday preceding, so that