

To

Baboo————

Sir

I do hereby give you notice to quit and deliver up possession to me of house No——situated at——in Calcutta, now in your occupation, on or before the 1st day of——1872, or, in default thereof, to pay rent for the said house at Rupees——, per month, from and after that date; and if you still continue to hold and occupy the said house from and after that date, you will be considered by me as agreeing to pay that rent.

Yours truly

Landlord

The 30th——,

After expiration of the time mentioned in the notice, the landlord shall have to bring a suit against the tenant for holding over without his leave

COSTS.

5—The costs in an action for the recovery of Small Tenements, are the same as those levied in ordinary cases, and are charged upon the annual rent of the premises

ISSUE AND SERVICE OF SUMMONS.

6—The summons shall then issue in the ordinary course, and shall be served by one of the Bailiffs of the Court in the manner following as provided by section 94 Act 9 of 1850.

1st—The service must be personal,

2nd—If the tenant or occupier is not to be found within the jurisdiction of the Court, the summons may be left with some person being in and apparently residing at the place of abode of the person or persons so holding over.

3rd—or it may be posted on some conspicuous part of the house held over by the tenant, if the place of abode of such person or persons shall either not be known, or admission thereto, can not be obtained.

HEARING.

7—Section 92 Act 9 of 1850 provides that if the tenant or occupier shall not thereupon appear at the time and place appointed, and show cause to the contrary, and shall still neglect or refuse to deliver up possession of the premises or of such part thereof, of which he is then in possession, to the said owner or his agent, such owner or agent may give to the Court proof of the holding, and of the end or other determination of the tenancy, if any had existed, with the time or manner thereof, and of the right by which he claims the possession.

SUITS BY CO-SHARERS.

8—If separately attorned, each and every shareholder of a premises may bring a separate suit of ejectment against the tenant holding over—A 24 pages 337 and 338.

PROOF BY THE PLAINTIFF.

9—The plaintiff is required to prove that he is the owner of the premises, or the right by which he claims possession of the property; that the defendant is a tenant; that the annual rent does not exceed 500 Rupees; * that the tenancy had ceased; and that the defendant refuses to quit and deliver up possession. If the defendant is an occupier and

* By Act 26 of 1864. One Thousand Rupees.

not a tenant, it must be proved that he occupies without leave of the plaintiff.

DEFENCE.

10—The defendant may urge that he has not attorned to the plaintiff; that he has never acknowledged him to be his landlord either by payment of rent or by giving him a kubooleut written or verbal; that he occupies the premises not as tenant of the plaintiff but of another person, who is the owner of the property; that the agreement under which he holds possession from the plaintiff, has yet to run; that his tenancy has not ceased; that he has not received any notice to quit; that the notice is informal; that the plaintiff has accepted rent for the period for which the notice is given; and that the annual rent of the premises exceeds the jurisdiction of the Court.

WARRANT OF POSSESSION.

11—Section 93 Act 9 of 1850—Upon proof of due service of the summons, and of the neglect or refusal of the tenant or occupier, as the case may be, the Judges may issue a Warrant under the seal of the Court, to any Bailiff of the Court requiring and authorizing him, within a period to be therein named, not less than *seven*, or more than *ten* clear days from the date of such Warrant, to give possession of the premises to such owner or agent, and such Warrant shall be a sufficient Warrant to the said Bailiff to enter upon the premises with such assistants as he shall deem necessary, and to give possession accordingly.

COSTS FOR THE WARRANT.

12—The Warrant cost and peon's Wages shall have to be

paid into the Warrant office on 'the day the judgment is pronounced, or within 24 hours from the time the judgment is passed.

ENTRY UPON THE WARRANT.

13—Entry upon any such Warrant shall not be made on Sunday, Good Friday, or Christmas day, or on any other day observed by the Court as a holiday, or at any time except between the hours of *six in morning* and *six in the afternoon*.

The Bailiff may enter the premises with such assistants as may be necessary, and break open doors if possession be not quietly given up. After he has got admission, he may remove all persons, goods &c from the premises, and put the owner or his agent in possession.

Any person, by whom any such Warrant shall be sued out, shall not be protected from any action which may be brought against him by any tenant or occupier for such entry and taking possession, where such person had not, at the time of suing out the Warrant as aforesaid, lawful right to the possession of the same premises.

ACTION FOR IRREGULARITY.

14—Section 96 Act 9 of 1850—Where the owner, at the time of applying for such Warrant as aforesaid, had lawful right to the possession of the premises, or of the part thereof so held over as aforesaid, neither the said owner nor his agent nor any other person acting in his behalf, shall be deemed to be a trespasser, by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this act, but the party aggrieved may,

if he think fit, bring an action on the case for such irregularity or informality, in which the damage alleged to be sustained thereby, shall be specially laid, and may recover full satisfaction for such special damage with costs of suit; provided that, if the special damage so laid, be not proved, the defendant shall be entitled to a verdict, and that, if proved, but assessed at any sum, not exceeding ten Rupees, the plaintiff shall recover no more costs than damages, unless the Judge, before whom the trial shall have been holden, shall certify that in his opinion full costs ought to be allowed.

ACTION FOR TRESPASS.

15—Section 97 Act 9 of 1850—In every case in which the person, by whom any such Warrant shall be sued out of the Court of Small Causes, had not, at the time of suing out the same, lawful right to the possession of the premises, the suing out of any such Warrant, as last aforesaid, shall be deemed a trespass by him against the tenant or occupier of the premises, although no entry shall be made by virtue of the Warrant; and in case any such tenant or occupier will become bound with two sufficient sureties, to be approved of by the Clerk of the Court, in such sum as to the Judges shall seem reasonable, regard being had to the value of the premises, and to the probable cost of such action, to sue the person by whom such Warrant was sued out with effect and without delay, and to pay all the costs of the proceeding in such action, in case a verdict shall pass for the defendant, or the plaintiff shall discontinue, or not prosecute his action or become nonsuit therein, execution upon the Warrant shall be stayed until judgment shall have been given in such action of trespass; and, if upon the trial of such action of trespass, judg-

ment be given for the plaintiff, such judgment shall supersede the said Warrant.

ACTION FOR MESNE PROFIT.

But if the plaintiff wants to sue the defendant for mesne profit during the time he was kept out of possession, he may sue the defendant upon the following cause of action.

"For that you trespassed on plaintiff's close or land, and kept him out of possession and took all the rents, issues and profits therefrom for—, whereby the plaintiff has sustained damages to the amount stated. A 29 page 112.

HOW WARRANTS ARE STAYED.

16—If the tenant or occupier wish to bring an action of trespass against the plaintiff, for having sued out the Warrant without having lawful right to the possession of the premises, execution of Warrant may be stayed, pending the result of such action of trespass, if such tenant or occupier will become bound, with two sufficient sureties, to be approved by the Clerk of the Court, in such sum as to the Judges shall seem reasonable, regard being had to the value of the premises, and to the probable cost of such action, to sue the person by whom such Warrant was sued out with effect and without delay, and to pay all the costs of the proceedings in such action, in case a verdict shall pass for the defendant, or the plaintiff shall discontinue or not prosecute his action, or become nonsuit therein.

BOND.

17—The 99th Section of Act 9 of 1850 enacts that the Bond shall be made to the other party to the action, and shall be approved by the Judges, and attested under the

seal of the Court ; and if the Bond so taken be forfeited, or if upon the proceeding for securing which such Bond was given, the Judge before whom such proceeding shall be had, shall not certify upon the record in Court, that the condition of the Bond hath been fulfilled, the party to whom the Bond shall have been so made, may bring an action of debt and recover thereon : provided always that the Court in which such action as last aforesaid shall be brought may, by a rule of Court, give such relief to the parties liable upon such Bond as may appear to him reasonable, and such rule shall have the nature and effect of a defeasance to such Bond.

PROTECTION TO OFFICERS.

18—No action or prosecution shall be maintainable against the judges or against the clerk for issuing, or against the Bailiff or any other person for executing such warrant, by reason of the person suing out the same not having lawful right to the possession of the premises.

ABANDONMENT OF EXCESS

19—By section 34 Act 9 of 1850, a plaintiff having cause of action for more than 500Rs, may abandon the excess, but in a suit for tenant holding over, in which the cause of action is for possession, and not for the recovery of the annual rent or value of the premises, the excess, if any, cannot be abandoned so as to suit the jurisdiction of the Court, because the annual rent or value is put down in the plaint merely for the purpose of levying the Court costs and fees.

RECOVERY OF IMMOVEABLE PROPERTY.

20—By 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 500 Rupees &c may be brought in the Court of Small Causes, and so) a suit for trying the title to or recovering the possession of immoveable property, may be brought in the Calcutta Court of Small Causes, provided the value of the property be not beyond the jurisdiction of the Court.

The suit is to be in the nature of an action of ejectment and the person in forcible possession, may be sued upon the following cause of action.

"To recover possession of a certain piece of land or house (as the case may be) No——situated at——in Calcutta and bounded as follows, on the north by——, on the south by——, on the east by——, and on the west by——, of which the value is Rs——, of which you have forcibly taken possession, and ejected the plaintiff therefrom, whereby the plaintiff has sustained damages to the amount stated."

COSTS.

21—The costs are charged upon the value of the property and the proceedings are nearly the same as in an action for recovery of small tenements.

NOTICE

22—By the 60th Rule of Court, a notice is required to be served in the following form on each of the tenants in possession of the land or house in dispute.

IN THE CALCUTTA COURT OF SMALL CAUSES BEFORE THE——JUDGE.

A. B.	...	...	...	Plaintiff
			vs.	
C. D.	...	...	...	Defendant

To——

Tenant in possession of th remises no——at——in
Calcutta.

This is to give you notice to attend at the Calcutta Court of Small Causes on the——day of——1872, then and there to state if you know any reason why the said A. B. should not recover possession of the said premises.

Given under the seal of the Court this——day of——
1872.

By the 60th Rule, the landlord is allowed to appear and make himself a defendant in the action.

WARRANT OF POSSESSION.

24—The Warrant directs one of the Bailiffs of the Court to give possession of the premises to the plaintiff within one month from the date on which it is issued. The Bailiff is also directed by it to levy the costs of the action by distress and sale of the defendant's goods and chattels.

CHAPTER VIII.

DISTRESS FOR RENT.

1—By section 2 Act 7 of 1847, the commissioners of the late Court of commissioners had the power to issue distress warrants up to one hundred rupees.

By section 89 Act 9 of 1850, the Judges of the Small Cause Court, were authorized to issue distress warrants up to five hundred rupees.

By section 4 Act 26 of 1864, the power of the Judges to issue distress warrants was further extended to one thousand rupees.

APPLICATION FOR DISTRESS WARRANT.

2—The application is to be made in the following form.

In the Calcutta Court of Small Causes

Name and place of residence of the Landlord.

Name and place of residence of the Tenant.

Premises No— in — street in Calcutta.

Arrears of rent due from the — day of — 1871 to the — day of — 1872 being — months, at the rate of — Rs per month, amounting to Rs —.

This application may be made either by the Landlord himself or by his duly constituted agent.

If the land or house belong to a female, who by the custom of the country, cannot make her appearance in Court, the application may also be made by her agent. Before making the application, the agent must file a power in Court from the landlady, authorizing him to act on her behalf in the matter.

If a landlord or his agent comes to apply for a distress warrant, he must, in the first instance, get the application written by one of the plaint-writers of the Court. But it will not be necessary to do so if he can write it himself. In that case, he can take a printed form from the clerk's office, and fill up the blanks.

After the application is written out, it should be presented to the warrant office, together with a lease, if there is any, which has not expired. The warrant office shall compare the particulars of the application with the terms of the lease, and send them up to the 5th Judge for permission to receive costs. But if there be no lease, or the time of the lease has expired, the applicant shall be instructed to present the application direct to the 5th Judge, and obtain an order from him to pay costs without lease.

Formerly Baboo Russomoy Dutt, late a Judge of the Small Cause Court, one of whose special duties it was to issue orders for distress warrants, was very averse to grant such application when unaccompanied by lease. Unless fully satisfied that there was an actual demise at a fixed rent, or that the circumstances were such as to imply tenancy, his practice was to refuse warrants.

After the 5th Judge grants an order to receive costs, the application is brought back to the warrant office, where an assistant puts down upon it the peon's Wages payable by the applicant, and directs him to pay the amount into Court.

The applicant next goes to the Stamp Vendors of the Court, and gets the application properly stamped. From thence he is sent to the Accountant's office, where the peon's Wages, put down by the warrant office upon the application,

having been registered, is paid into the Treasurer's department. After the amount is paid, a receipt is granted to him signed by the additional clerk. He shall then come back, and return the application to the warrant office, where he shall wait until the affidavit is made out, compared and examined by the Deputy Clerk; which done, it will be handed over to him for his perusal and signature. The affidavit is then sent to the 5th Judge, who, after swearing the landlord or his agent as to the correctness of its contents, shall sign the same.

The following is the form of the affidavit.

IN THE CALCUTTA COURT OF SMALL CAUSES.

A. B. Landlord.

vs.

C. D. Tenant.

A. B. (or E. F. constituted agent of A. B.) inhabitant of———, in Calcutta, maketh oath [or solemnly declareth) and saith that C. D, who is also an inhabitant of the Town of Calcutta, is justly indebted to the said A. B. in the sum of Rs———, for arrears of rent of the house and premises No———, situated at———, in Calcutta due for —— months,— to wit from———to———, at the rate of Rs———, per mensem.

Sworn (or declared on solemn affirmation) before me this——day of——18

Judge.

From the 5th judge's Court, the affidavit is sent back to the Warrant office, where a Warrant having been duly filled up, and examined, shall be signed by the Additional Clerk, and forwarded to one of the sworn Bailiffs and appraisers of the Court for execution,

The following is the form of the Warrant.

DISTRESS WARRANT..

In the Calcutta Court of Small Causes.

To G. H.

Sworn Bailiff and Appraiser.

I hereby direct you to distrain the goods and chattels on the premises of C. D, situate in the Town of Calcutta for the sum of RS—, being the amount of—month's rent, due to A. B. for the same, on the—day of— 18—, according to the provisions of Act 9 of 1850.

BY THE COURT.

Sd

Clerk of the Court

Rent ..	...	..	..	..	..	..
Costs ...	...	..	...	..	..	..
<hr/>						
Total ...	...	..	...	..	...	..
<hr/>						

SEIZURE OF GOODS UNDER THE WARRANT.

3—When the Warrant is delivered to one of the sworn Bailiffs and appraisers of the Court, he shall fix a time with the landlord or his agent to proceed with him to the premises in respect of which the rent is due, and shall seize the whole or such part of the goods of the tenant as will be sufficient to cover the amount of the writ and the costs of the distress. The Bailiff however shall not seize any property unless it is pointed out to him by the landlord or his agent.

On making the seizure, the Bailiff shall make an inventory on the back of the warrant of the goods seized by him, and serve a notice upon the tenant in the following

form, informing him as to what goods have been seized upon the warrant, and for what amount of rent.

INVENTORY AND NOTICE OF SEIZURE
IN THE CALCUTTA COURT OF SMALL CAUSES.

To

C. D. the tenant of premises No— at , in Calcutta
*Here state the particulars of the goods seized
and give the date.*

Take notice that I have this day seized the goods and chattels contained in the above inventory for the sum of Rs —, being the amount of — month's rent due to —, 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 of the Calcutta Court of Small Causes to the contrary, the same will be appraised and sold pursuant to the provisions of Act 9 of 1850.

Sd.

Sworn bailiff and appraiser.

The officer must file in Court a true copy of the above inventory and notice.

The Bailiff cannot, as before stated, break open the outer door to enter into the premises and make the distress. But having once made his entry, he may break open any inner door &c.

The distress warrant cannot be executed out of Calcutta, nor in any place except on the premises in respect of which the warrant is sued out. It cannot also be executed on Sunday, Christmas day, or Good Friday; nor on any day observed as a holiday by the Court.

By a recent decision of the High Court, goods belonging

to a stranger, found in the premises for the recovery of rent of which the distress warrant is issued, are exempted from seizure.

After making the seizure, and serving the inventory and notice on the tenant, the Bailiff may remove the goods for safe custody to the Court premises, or place peons in charge of the property, if the tenant or his agent so wish it.

COSTS OF DISTRESS.

The costs are charged at the following scale.

Amount of claim.	Costs.	If compromised.	
		To Govt.	To Ptff.
From 1 to 5 Rupees. ...	1 4	4	1
" 5 to 10 do. ...	2	8	1 8
" 10 to 15 do. ...	2 8	8	2
" 15 to 20 do. ...	3 8	8	3
" 20 to 25 do. ...	1 4	12	3 8
" 25 to 30 do. ...	5	1	4
" 30 to 35 do. ...	5 8	1	4 8
" 35 to 40 do. ...	6 8	1	5 8
" 40 to 45 do. ...	7 12	1 4	6 8
" 45 to 50 do. ...	8 8	1 8	7
" 50 to 60 do. ...	10	2	8
" 60 to 80 do. ...	11 8	2 8	9
" 80 to 100 do. ...	13	3	10

If the tenant apply to the seizing officer not to remove the goods distrained to the Court house, but to leave them at the place of seizure, he must pay peon's wages at the rate of 4 annas per each person per day. The number of peons generally employed is not less than two, but if the goods seized are numerous and of a valuable nature, the seizing officer exercises his discretion as to the number of men

he shall employ for the safe custody of the property. The peon's wages are taken for a period of not less than seven days, and therefore the amount required to be deposited is Rs. 3-8

SETTLEMENT BETWEEN LANDLORD AND TENANT.

4—If the landlord make a settlement with the tenant and wish to remove the seizure, he must first come to the seizing officer, and report the same, whereupon the seizing officer will write out the necessary entry of compromise in the warrant Book and get it signed by the additional clerk. After it has been so done, the book will be sent to the warrant office, whence an order will be issued for the removal of the seizure, and the withdrawal of the peons, who were placed in charge of the property.

DEPOSIT OF THE RENT AND COSTS.

5—If the tenant come to deposit the rent and costs into Court, he must file a written application to the effect in the warrant office, together with the notice served upon him by the Bailiff at the time of seizure. The writer* who prepares the distress warrant shall endorse upon the application the amount of rent and costs which the tenant shall have to pay, and direct him to take it to the Accountant of the Court, who shall register the same, and desire him to pay the amount to the treasurer of the Court. Upon payment of the money, he will obtain a receipt from the cash office signed by the additional clerk. On production of this receipt, the warrant office shall issue the usual release order for removal of the peons, who were placed over the property seized.

* Babu Greesh Chunder Chuckrobutty.

SALE.

6—If the Bailiff finds that no settlement has been made by the landlord, or that the rent and costs have not been paid by the tenant, he will appraise the property on the sixth day from the day of seizure, and send a notice to the tenant that his property has been appraised and will be sold on the eighth day.

NOTICE.

To

C. D. Tenant &c.

Take notice that we have appraised the goods and chattels seized on the———, under the provisions of Act 9 of 1850, of which a notice and inventory had been duly served upon you under date the——, and that the said goods and chattels will be sold on the——, at ——, pursuant to the provisions of the said Act.

Sd. E. F.

G. H.

Sworn Bailiffs and appraisers.

The———18——.

The sale may be held either at the place of seizure or in the Court premises, of which due notice is given in the Exchange Gazette.

STAY OF SALE.

7—If the tenant applies for a postponement of the sale to a future day, he will prepare an application with the consent of his landlord, and present it to the 5th Judge. If the application is granted, it will have to be taken to the warrant office, and the assistant in charge of the distraint business shall require the tenant to pay peon's wages for the number of days the sale is stayed on his account.

In some instances, time has not only been allowed to the tenant, but the goods have been released on the execution of a security bond like that taken in the case of personal arrest under a writ of execution.

DISTRAINT DISPUTE.

8—If the tenant disputes the distress, he must make an application to the 5th Judge at any time within five days from the date of seizure, on the ground.

1. That no tenancy exists ;
 2. That no rent is due ; or that it has been paid or tendered ;
 3. That the distress was not made on the premises ;
 4. That the things distrained, are not lawfully the subject of distress ;
 5. And that the distress is excessive ;
- praying that a notice do issue to the landlord returnable on a certain date for him to shew cause, why the distress should not be set aside and the seizure removed.

If the application is granted by the 5th Judge, it shall have to be taken to the warrant office, and the officer in charge of the distraint business, shall cause the above notice to be issued, charging the tenant a fee for this notice according to the scale authorized by the distress Act for subpoenas.

On the returnable date of the notice. the parties shall appear, either personally or by duly authorized agents. The landlord shall shew cause as is required by the notice, and if the rule stands good, the property shall be released, but if it be discharged, the property shall be ordered to be sold, and the whole amount of the rent and costs shall be realized from the sale-proceeds, and credited to the landlord.

If the goods of a third party be seized under a distress warrant, his only remedy is by an action of replevin, within three days from the day of the execution of the replevin bond.

PAYMENT TO THE LANDLORD.

When the landlord comes to draw money from the Court, he must make his application to the warrant office with the receipts in his possession. The warrant office shall then issue a cheque in his favor for the amount payable to him. This cheque shall be passed by the accountant of the Court and being signed by the additional clerk, shall be paid by the treasurer of the Court.

PAYMENT TO THE TENANT.

If the tenant is entitled to refund of any surplus money, he must likewise make his application to the warrant office with the notice which was served upon him by the seizing officer at the time of seizure, upon which, a cheque shall be issued in his favor for the amount due, and it shall be subject to the same process as stated above before payment can be made.

REPLEVIN.

NATURE OF THE ACTION.

1—An action of replevin is the regular way of contesting the validity of a distress. It is a redelivery of the pledge, or thing taken in distress, to the owner, upon his giving security to try the right of the distress, and to restore it if the right be adjudged against him; after which the distrainer may keep it to be sold or otherwise disposed of, as if no replevin had been made.

For a distress made under a writ of execution, replevin does not lie. In practice, the action is usually confined to the

wrongful taking of goods under a distress for rent, or cattle damage feasant.

BY AND AGAINST WHOM IT LIES.

2.—It is a general rule that whoever brings replevin, ought to have the property in the goods at the time of the taking. If the goods of several persons be taken, every one must bring a separate action. An executor may have replevin for goods taken in the life-time of his testator. The action lies against him who takes the goods, and also against him who commands the taking; or against both.

FOR WHAT THINGS

3.—Replevin does not lie for things which are not distrainable.

REMEDY FOR WRONGFUL DISTRESS.

4.—Though replevin is the regular mode of trying the validity of a distress, a more summary remedy is provided by the Distress Act, for setting aside a wrongful distress for rent made under its provisions; but this remedy is available only to the party from whom such rent is claimed to be due, and not to any third person whose goods may have been unlawfully taken. By section 3 of that Act it is provided that "it shall be lawful for the party from whom such rent is claimed to be due, at any time within *five* days from such seizure to apply to any judge of the said Court to discharge or suspend such (distress) warrant; and it shall be lawful for such judge to discharge or suspend such warrant accordingly, with or without costs." In consequence of this provision in the Distress Act, an action of replevin is seldom brought in the Court of Small Causes, except when the person contesting the distress is not the "party from whom the rent is claimed to be due."

REPLEVIN BOND.

5—The following is the form of the bond provided in the schedule to the Rules of the Court, to be given as security by the party replevying the goods. It is made to the distrainer by the plaintiff and two sufficient sureties, for double the value of the goods distrained; and is conditioned for prosecuting the replevin suit with effect and without delay, and for a return of the goods if a return be adjudged.

“Know all men by these presents, that we A. B. (the plaintiffs) and C. D.—, and E. F. (two sureties) are jointly and severally held and firmly bound to G. H. (the other party in the action) in the sum of Company's Rupees (double the value of the goods distrained) to be paid to the said G. H. or his certain attorney, executors, administrators or assigns, for which payment, to be well and truly made, we bind ourselves and each of us, and each and every of our heirs, executors and administrators firmly by these presents.” Sealed with our seal, dated this—day of—18—.

“The condition of this obligation is such, that the above bound A. B. do enter a suit in the Calcutta Court of Small Causes on or before the—day of—next and do prosecute his suit with effect and without delay against the said G. H. (the distrainer) for the taking and unjustly detaining of (here set forth the goods &c. distrained) and do make return of the said (goods &c.) if a return thereof shall be adjudged, and then this present obligation shall be void and of no effect or else to be and remain in full force and virtue.”

Signed, sealed and	...	...	A. B.	0
delivered in the	..	...	C. D.	0
presence of	...	...	E. F.	0

PLAINT AND SUMMONS.

6—The 23rd Rule of the Court provides that when any cattle, goods or chattels, taken as a distress for rent in arrear or damage feasant, shall have been replevied, the party at whose instance such replevin shall have been made, shall enter his suit in the Court, held under the authority of Act 9 of 1850, and thereupon a summons shall issue against the defendant and such summons shall be served in such time and manner as hereinbefore directed.

REPLEVIN SUMMONS.

7—The form of the summons is just the same as in ordinary cases, with the exception of the cause of action which is as follows

“For the taking and seizing as a distress, and wrongfully detaining the goods and chattels of the plaintiff, whereby the said plaintiff has been injured and sustained damages to the amount stated—Yizt. Co’s Rs———”

PARTICULARS OF GOODS &C.

8—On entering a suit in replevin, the plaintiff must specify and describe, in a statement of particulars to be made in writing, the cattle or the goods and chattels taken under the distress, and of the taking of which he complains,

THE HEARING AND JUDGMENT.

9—By Rule 25th it is provided that “all actions of replevin in cases of distress for rent in arrear or damage feasant, shall be tried in a summary way as other suits and actions in the Court held under the authority of Act 9 of 1850; and the judgment therein in ordinary cases, whether for plaintiff or defendant, shall be according to the forms below or to the like effect.”

JUDGMENT FOR PLAINTIFF IN REPLEVIN.

Between	}	A. B.	...	..	...	Plaintiff
		C. D.	...	...	...	Defendant

Upon hearing this cause at a Court holden on the——day of——, it is adjudged that the said plaintiff do recover against the said defendant the sum Co's Rs——, for his debt (or damages by him sustained) together with the costs of suit, amounting to the sum of Co's Rs——, and it is ordered that the said defendant do pay the same to the clerk of the Court at his office on or before the——day of——.

Given under the seal of the Court this—day of—1872.

By the Court
Clerk

JUDGMENT FOR DEFENDANT IN REPLEVIN.

Between	}	A. B.		Plaintiff
		C. D.	vs.	Defendant

Upon hearing this action of replevin at a Court holden on the ——day of ——1872, it is adjudged that the said plaintiff do return to the said defendant the cattle (or the goods and chattels as the case may be, stating the particulars thereof) forthwith (or as the case may be) and that the said defendant do recover against the said plaintiff the costs of suit, amounting to the sum of Co's Rs——, and it is further ordered that the said plaintiff do pay the same to the clerk of the Court at his office, on or before the ——day of——.

Given under the seal of the Court this—day of——1872

By the Court
Clerk.

EXECUTION FOR PLAINTIFF.

10—If the judgment be given for the plaintiff, he may sue out execution for the damages and costs awarded to him as in ordinary cases.

EXECUTION FOR DEFENDANT.

11—If the judgment be for the defendant, he may have execution for a return of the goods, which were replevied, and he may also have execution for his costs.

The following is the form of the writ for a return of the goods, as provided in the schedule to the Rules of the Court.

WARRANT FOR A RETURN IN REPLEVIN.

Between	{	A. B.	...	...	...	Plaintiff
		C. D.	...	...	...	Defendant

12—Upon hearing this action of replevin at a Court holden on the——day of——, it was adjudged that the said plaintiff do return to the said defendant the cattle (or the goods or chattels as the case may be, stating the particulars thereof) forthwith (or as the case may be) and whereas the said plaintiff has not returned to the said defendant the [cattle or the said goods and chattels] pursuant to the said judgment; these are therefore to require and order that without delay, you cause the cattle [or goods and chattels aforesaid] to be returned to the said defendant.

Given under the seal of the Court this —day of —18—. To——Bailiff of the said Court.

PROCEEDINGS ON THE BOND

13—The Bond given as security when the goods are replevied is conditioned that the plaintiff enter his suit on or before a certain day therein named, that the suit be

prosecuted with effect and without delay and that the goods be returned if judgment be given for the defendant. If, therefore, any one of these conditions be not fulfilled, the bond is forfeited and an action may be brought on it by the defendant against the plaintiff and his sureties.

REMOVAL OF THE ACTION.

14—A replevin suit cannot be removed to the High Court except by a writ of certiorari, under the same conditions as any other action may be removed.

APPENDIX.

Act 9 of 1850.

STYLE OF THE COURT.

Section IV. The style of the several Courts holden under this Act shall be the () Court of Small Causes, inserting in the blank space. Calcutta, Madras or Bombay, as the case requires. (*Local Act*)

LOCAL JURISDICTION.

Section V. The jurisdiction of the several Courts, holden under this Act, shall extend over the whole district now within the jurisdiction thereof respectively, and over such further district as may, from time to time, be declared by proclamation of the Governor in Council. provided that no proclamation for extending the district of any of the said Courts be made without the previous sanction of the Governor General of India in Council. (*Local.*)

COURT OF RECORD AND COURT OF REQUESTS.

Section VI. Every Court holden under this Act shall be a Court of Record, and shall be deemed a Court of Requests within the meaning of Act VII. of 1841, Section VI. (*County Court Act Section 3*)

•SUITS PENDING IN COURT OF REQUESTS

Section VII. All proceedings commenced in any of the said Courts, before the time when the constitution and practice of such Court shall be altered under this Act, may be continued, executed and enforced against all persons liable thereunto, in the same manner as if they had been commenced according to this Act: and each of the said Courts shall be empowered in any case of doubt as to the proper manner of continuing, executing or enforcing any

such proceedings, to make such orders thereon as shall appear to the Court to be necessary for giving full effect to this enactment. (*C. C. Act Sec 4.*)

APPOINTMENT OF JUDGES.

Section VIII. The Governor in Council shall appoint as many persons as are necessary, not exceeding three, to be Judges of the Court, one of whom shall be a Barrister at Law, or Advocate of one of the Supreme Courts of India, or of the Court of Session in Scotland. (*C. C. Act Sec. 9.*)

Section IX. No Judge appointed under this Act shall, during his continuance as such Judge, practice as an Advocate, Attorney or Vakeel in any of the Queen's Courts, or in any Court of the East India Company, or trade or traffic for his own benefit, or for the benefit of any other person, or be the partner of any person so practising, trading or trafficking. (*C. C. Act Sec. 17.*)

Section X. The Governor General of India in Council may remove any such Judge on the application of the Governor in Council. (*C. C. Act Sec. 18.*)

JUDGES OF THE SUPREME COURT.

Section XI. Any Judge or Judges of the Supreme Court of Judicature, who shall consent to aid in the execution of this Act, may exercise all the powers of a Judge appointed under this Act, and suits may be tried by him sitting in the Supreme Court under this Act, in like manner as if he were a Judge of the Court of Small Causes, and no appointment of a Judge under this Act shall be made, while it appears to the Governor in Council that the whole business of the Court can be transacted by the Judges of the Supreme Court so consenting to act. (*Local.*)

Section XII. The duties herein directed to be performed by the Clerk and Bailiffs respectively of the Court of Small Causes, shall be performed in such cases as are tried by a Judge of the Supreme Court, by such Ministerial Officers of the Supreme Court

as shall be, from time to time, appointed by the said Judge of the Supreme Court for that purpose, and the persons so appointed shall have all the powers and protections by this Act given to the Clerk and Bailiffs of the Court of Small Causes respectively, and shall receive such remuneration for their services out of the fees received in the causes tried by a Judge of the Supreme Court as he shall deem reasonable, and the residue shall form part of the general fund of the Court of Small Causes. (*Local.*)

CLERK AND HIS DUTIES.

Section XIII. There shall be a Clerk for every Court holden under this Act, whom the Judges of the Court shall appoint, subject to the approval of the Governor in Council, and may remove, subject to the like approval: if necessary, additional Clerks may be appointed with the sanction of the Governor in Council. (*C. C. Act Sec. 24*)

Section XIV. The Clerk of each Court shall issue all summonses, warrants, precepts and writs of execution, and keep an account of all proceedings of the Court, and shall take charge of, and keep an account of all Court fees, and fines payable or paid into Court, and of all monies paid into, and out of Court, and shall enter an account of all such fees, fines and monies in a book belonging to the Court, to be kept by him for that purpose, and shall monthly, or at such other times as shall be directed by the Governor in Council, submit his accounts to be audited or settled in such manner as the Governor in Council, from time to time, shall direct. (*C. C. Act Sec. 27.*)

Section XVII. Every Clerk or other Officer of any such Court, who shall, by himself or by any partner, or in any way, directly or indirectly, be concerned or act as Attorney, or Vakeel, or be concerned in any trade or profession on his own account, or for any other person shall forfeit and pay the sum of Five Hundred Rupees to any person who shall sue for the same in the Supreme Court by action of debt or on the case. (*C. C. Act Sec. 29.*)

Section XVIII. The Clerk and Bailiffs shall give security for such sum, and in such manner and form, as the Governor in Council, from time to time, shall order, for the due performance of their several offices, and for the due accounting for and payment of all monies received by them under this Act, or which they may become liable to pay for any misbehaviour in their office. (*C. C. Act Sec. 37*)

Section XXVI. On the application of any person desirous to bring a suit under this Act, the Clerk of the Court shall issue, under the seal of the Court, a summons, which shall be numbered, and shall set forth the names of the plaintiff and defendant, the cause of action, with such particulars as shall be, from time to time, directed by the Rules of the Court, and the amount sued for, and shall be served on the defendant, so many days before the day on which the Court shall be holden at which the cause is to be tried, as shall be directed by the rules for regulating the practice of the Court, and delivery of such summons to the defendant, or in such other manner as shall be specified in the rules of practice, shall be deemed good service; and no misnomer or inaccurate description of any person or place in any such summons shall vitiate the same, if the person or place be therein described so as to be commonly known (*C. C. Act Sec 59.*)

Section LXXVII. The Clerk of the Court shall keep an account of all sums received upon such sales, distinguishing the amount paid to the party entitled to the benefit of the execution, and the amount levied and retained as costs, and also of all sums allowed to the brokers and appraisers upon such sales. (*C. C. Act Sec. 106.*)

Section LXXIX. No judgment or execution shall be stayed delayed or reversed upon or by any writ of error or *supersedeas* thereon, to be sued for the reversing of any judgment given in any Court holden under the provisions of this Act, unless the amount recovered exceeds One Hundred Rupees, and then only

after the person suing out such writ, shall become bound with two sufficient sureties to be approved by the Clerk of the Court, in treble the sum adjudged to be recovered in the former judgment, to prosecute the said writ with effect, and also to satisfy and pay (if the writ be not prosecuted, or if the judgment be affirmed), the debt or damages and costs adjudged, and all costs and damages to be awarded for the delay of execution. (*C. C. Act Sec. 108.*)

Section LXXX. Upon every warrant of execution issued against the goods and chattels of any person, the Clerk of the Court shall cause to be stated the sum of money and costs adjudged, with the sum paid for such warrant; and if the party against whom such execution shall be issued shall, before an actual sale of the goods and chattels, pay or cause to be paid or tendered unto the Clerk of the Court or to the Bailiff holding the warrant of execution, such sum of money and costs, as aforesaid, or such part thereof as the person entitled thereto shall agree to accept in full of his debt or damages and costs, together with the fees herein directed to be paid, the execution shall be superseded, and the goods and chattels of the said party shall be discharged and set at liberty. (*C. C. Act Sec. 109.*)

Section. LXXXI. The Clerk of every Court holden under this Act shall cause a record of all summonses, and of all orders, and of all judgments and executions, and returns thereto, and of all fines, and of all other proceedings of the Court, to be fairly entered, from time to time, in a book or books belonging to the Court, which shall be kept at the Office of the Court; and shall be duly authenticated by one or more of the Judges; and such entries in the said book or books, or a copy thereof, bearing the seal of the Court, and purporting to be signed and certified as a true copy by the Clerk of the Court, shall be admitted in all Courts and places as evidence of such entries, and of the proceeding referred to by such entry or entries, and of the regularity of such proceeding, without any further proof. (*C. C. Act, Sec. 111.*)

Section. LXXXII. The Clerk of every such Court shall, in the month of *March*, in each year, make out a correct list of all sums of money belonging to suitors in the Court, which shall have been paid into Court, and which shall have remained unclaimed for five years before the first day of the month of *January* then last past, specifying the names of the parties for whom, or on whose account, the same were so paid into Court; and a copy of such list shall be put up and remain during Court hours in some conspicuous part of the Court House, and at all times in the Clerk's Office; and all sums of money which shall have been paid into any such Court, to the use of any suitor or suitors thereof, and which shall have remained unclaimed for the period of six years before the passing of this Act, and which are now in the hands of any Commissioner or Officer of such Court, or otherwise held in trust for such suitors, and all further sums of money, which shall hereafter be paid into such Court to the use of any suitor or suitors thereof shall, if unclaimed for the period of six years after the same shall have been so paid into Court, be applicable as part of the fees receivable on account of the Court, and shall be carried to the same account; and no person shall be entitled to claim any sum which shall have remained unclaimed for six years, but no time during which the person entitled to claim such sum shall have been an infant or married woman, or of unsound mind, or out of the Territories under the Government of the East India Company, shall be taken into account in estimating the said period of six years. (*C. C. Act. Sec. 112.*)

Section LXXXIII. If any person shall wilfully insult any Judge, Clerk or Officer of the said Court, for the time being, during his sitting or attendance in Court, or shall wilfully interrupt the proceedings of the Court, or otherwise misbehave in Court, it shall be lawful for any Bailiff or Officer of the Court, with or without the assistance of any other person, by the order of the Judges, to take such offender into custody, and detain him until the rising

of the Court; and the Judges shall be empowered, if they shall think fit, by a warrant under their hands, and sealed with the seal of the Court, to commit any such offender to any prison to which they have power to commit offenders under this act, for any time not exceeding seven days, or to impose upon any such offender a fine not exceeding Fifty Rupees for every such offence, and in default of payment thereof to commit the offender to any such prison as aforesaid, for any time not exceeding seven days, unless the said fine be sooner paid, or instead of inflicting summary punishment under this Act may cause the offender to be indicted in the Supreme Court, if the offence be an indictable misdemeanour. (*C. C. Act Sec. 103.*)

Section LXXXVI. If any Clerk, Bailiff or Officer of the Court, acting under colour or pretence of the process of the said Court, shall be charged with extortion or misconduct, or with not duly paying or accounting for any money levied by him under the authority of this Act, the Judges may inquire into such matter in a summary way, and for that purpose may summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any case may be enforced, and may make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied as aforesaid, and for the payment of such damages and costs, as they shall think just; and also, if they shall think fit, may impose such fine upon the Clerk, Bailiff or Officer, not exceeding One Hundred Rupees for each offence, as they shall deem adequate; and in default of payment of any money so ordered to be paid, payment of the same may be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said Court. (*C. C. Act Sec. 116.*)

Section LXXXVII. Every Clerk, Bailiff or other officer employed in putting this Act or any of the powers thereof in execution, who shall wilfully and corruptly exact, take or accept any

fee or reward whatsoever, other than his lawful salary, for any thing done or to be done by virtue of this Act, or on any account whatsoever, relative to putting this Act into execution, shall upon proof thereof before the said Court, and in the case of a Clerk, on confirmation of the finding of the Court by the Governor in Council, be for ever incapable of serving, or being employed under this Act in any office of profit or emolument, and shall also be liable for damages as herein provided. (*C. C. Act Sec. 117.*)

Section XCVII. In every case in which the person by whom any such warrant shall be sued out of the Court of Small Causes, had not, at the time of suing out the same, lawful right to the possession of the premises, the suing out of any such warrant, as last aforesaid, shall be deemed a trespass by him against the tenant or occupier of the premises, although no entry shall be made by virtue of the warrant, and in case any such tenant or occupier will become bound with two sufficient sureties to be approved by the Clerk of the Court, in such sum as to the Judges shall seem reasonable, regard being had to the value of the premises, and to the probable cost of such action, to sue the person by whom such warrant was sued out with effect and without delay, and to pay all the costs of the proceeding in such action, in case a verdict shall pass for the defendant, or the plaintiff shall discontinue or not prosecute his action, or become nonsuit therein, execution upon the warrant shall be stayed until judgment shall have been given in such action of trespass, and, if upon the trial of such action of trespass, judgment be given for the plaintiff, such judgment shall supersede the said warrant. (*C. C. Act Sec. 126*)

Section CII. If any person shall bring any suit in the Supreme Court in respect of any grievance committed by the Clerk Bailiff or Officer of any Court holden under this Act, under colour or pretence of the process of the said Court, and upon the trial of the action, no greater damages shall be found for the plaintiff than the sum of Five Hundred Rupees, no costs shall be awarded

to the plaintiff in such action, unless the Judge shall certify in Court, upon the back of the Record, that the action was fit to be brought in the Supreme Court. (*C. C. Act Sec. 139.*)

Rule 11th.—The Clerk shall keep the several books, and in the form in the Schedule, and every entry in such books shall have a number prefixed, corresponding with the number of the summons to which it refers.

Rule 14th.—The Clerk shall grant a receipt or memorandum for every sum paid into Court, by the suitors, as fees or commission, or on any account whatsoever, and no money shall be paid out of the Court, unless on production of said receipt or memorandum, or by order of a judge

Rule 18th.—When a defendant is desirous to set-off any debt or demand alleged to be due to him by the plaintiff, he must state the particulars of such set-off to the Clerk, one clear day before the return of summons, unless the Court shall fix some other day for stating the same.

Rule 20th.—No new trial shall be granted unless application be made within four days after judgment, and without leave of the Court having been first obtained, and before such application for leave shall be made, the party making such application, shall deposit in Court the whole amount of the debt or damages decreed against him, with costs thereon, and shall give notice, in writing, of such application to the Clerk at his office, at the time of making such deposit. The Clerk, on such application being granted, shall cause a summons, for such new trial, in the usual form to be served on the other party.

Rule 21st.—When money has been paid by any party, under any execution, or order, if the Clerk receive notice from such party of his intention to apply to the Court to set aside the execution, or orders, under which the money is paid into Court, or to grant a new trial, the Clerk shall retain the same for five days, within which time the party must make such application to the Court,

and if made, the money shall be retained until such application has been determined on, or until the Judge shall otherwise order.

Rule 22nd —When any order is made for the payment of any debt or damages, costs, or other sums of money, by instalments, such instalments shall be payable at the office of the Clerk, at such periods, as the Court shall order, and if no order be made, fixing the dates of payment of the instalments, then the first instalment shall become due at the expiration of one calendar month from the day of making the order, and every successive instalment at like periods of one calendar month, from the day of the previous instalment becoming due

Rule 33rd —All costs shall be taxed by the Clerk

Rule 36th —The Clerk shall have an office in or attached to the Court House

Rule 37th —All matters and things required to be done by the Clerk, may also be done by his Deputy or Deputies

Rule 38th —The office of the Clerk shall be open daily, (except on Sundays and authorized Holidays) and the office hours shall be from 10 o'clock in the forenoon until 4 in the afternoon. No money shall be paid out of Court before 1 P M, nor shall any be received on account of costs after 3 P M

Rule 47th —In case of proceedings not provided for, by the forms in the Schedule, the Clerk shall issue the necessary process, using, where practicable, the forms prescribed in the Schedule, as guides in framing the same

Rule 48th —No process of any kind shall be set aside for irregularity, it shall be amendable and amended, and the Judge may, if he think it right so to do, make the party in error pay the costs of the application for, and of, the amendment

Rule 49th.—All parties shall be liable to appear in person before the Court, but when any person shall appear, with leave of the Court, not in person, nor by any relative or servant of his, or any member of his establishment, but by some person previously

unconnected with him, such person shall not only be constituted in writing the agent for the party for the conduct of the case, but be subject to the jurisdiction of the Court, and to summary taxation of any sum claimed as remuneration.

Rule 50th.—No correspondence relating to suits instituted in, or proceedings before the Court of Small Causes, can be attended to, and parties having business with the Clerk, or in his Office, shall transact the same in person or by an accredited Agent.

BAILIFFS.

Section XV. The Judges of every such Court shall, from time to time, appoint a sufficient number of persons to be Bailiffs of the Court, not exceeding the number, from time to time, allowed by the Governor in Council, and may at their pleasure suspend or dismiss any Bailiff so appointed. (*C. C. Act Sec 31.*)

Section XVI. The Bailiffs shall attend every sitting of the Court, for such time as shall be required by the Judges, and shall serve all the summonses and orders, and execute all the warrants, precepts and writs, issued out of the Court; and shall, in the execution of their duties, conform to all such general rules as shall be, from time to time, made for regulating the proceedings of the Court. (*C. C. Act Sec. 33.*)

Section LX. Whenever any warrant shall issue for taking in execution the body of any person under this Act, the Bailiffs of the Court shall be empowered, by virtue thereof, to take and convey him to any prison, appointed by the Governor in Council to be the prison of the Court, there to remain for such term as shall be directed by the warrant, not longer than six calendar months, or until he shall sooner perform the order of the Court. (*Local.*)

Section LXIX. Every Bailiff executing any process of execution issuing out of the said Court against the goods of any person, may, by virtue thereof, seize and take any of

the goods of such person, (excepting the necessary wearing apparel and bedding of such person or his family, and the tools and implements of his trade,) and may also seize and take any money or bank-notes, and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to any such person against whom any execution shall have issued as aforesaid. (*C. C. Act Sec. 96.*)

Section LXX. The Bailiff shall forthwith deliver any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money which shall have been so seized or taken as aforesaid, to the Clerk or other person appointed by the Judges to receive the same, who shall hold them as security or securities for the amount directed to be levied by such execution, or so much thereof as shall not have been otherwise levied or raised, for the benefit of the plaintiff; and the plaintiff may sue in the name of the defendant or in the name of any person in whose name the defendant might have sued, for the recovery of the sum or sums secured, or made payable thereby, when the time of payment thereof shall have arrived. (*C. C. Act Sec. 97.*)

Section LXXXIV. If any Officer or Bailiff of any Court holden under this Act shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made of any person rescued, or goods levied under process of the Court, the person so offending shall be liable to a fine, not exceeding One Hundred Rupees, to be recovered by order of the Court, or before a Magistrate as hereinafter provided; and the Bailiff of the Court, or any Peace Officer in any such case, may take the offender into custody, (with or without warrant) and bring him before such Court, or Magistrate accordingly. (*C. C. Act Sec. 114.*)

Section. LXXXV. If any Bailiff of the said Court, who shall be employed to execute any warrant of the Court shall, by neglect, or connivance, or omission, lose an opportunity of executing such warrant, then upon complaint of the party aggrieved by

reason of such neglect, connivance or omission, (and the fact alleged being proved to the satisfaction of the Court,) the Judges shall order the Bailiff to pay such damages, as it shall appear that the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the said execution is issued, and the Bailiff shall be liable thereto; and upon demand made thereof, and on his refusal so to pay and satisfy the same, payment thereof shall be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said Court without prejudice nevertheless to the execution of the original warrant. (*C. C. Act Sec. 115.*)

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

Rule 4th.—The service of summons to appear to a suit or action must be either personal or by delivering the same to some person at the place of abode, or place of business of the defendant, and in such cases as the Judge may deem it necessary, the plaintiff or his agent must accompany the Bailiff, to point out the defendant, or his place of abode, or place of business.

Rule 9th.—The Bailiff who serves a summons to appear to a suit or action, shall endorse on a copy of such summons, the time and manner of the service thereof, and shall produce such copy so endorsed, at the Court on the day in which the summons shall be returnable, and such copy shall be filed by the Clerk of the Court. (*No copies are now issued by the Court. Practically they were deemed unnecessary.*)

Rule 39th.—At every Court, or at such times as the Judge shall require, the Bailiffs of the Court shall deliver statements and returns pursuant to the form in the Schedule, of what shall have been done since their last return, under every process of execution or commitment, which they shall have been required to execute.

Rule 40th.—One day before the day of the holding of the Court, the Bailiffs shall deliver to the Clerk, a list of all summonses to appear to suits or actions, which shall have been issued, and the Clerk shall forthwith cause such lists to be put up in the Court House. (*This Rule is never carried into effect. The lists are prepared by the Writers, and sent to the different Courts on the day of the holding of the Courts, from which the Interpreters call out the cases.*)

Rule 41st.—Every Bailiff required to execute any warrant of execution or commitment, if he shall not have executed such warrant, shall return the same to the Clerk's office, at the expiration of two calendar months from the date thereof. (*After one calendar month, and not two, as is provided in the Rule*)

Rule 42nd.—Every Bailiff levying or receiving any money by virtue of any process issuing out of the Court shall forthwith, or on the day after the receipt thereof, pay over the same to the Clerk of the Court.

PROTECTION AGAINST VEXATIOUS ACTIONS

Section CXI. All actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be commenced within three calendar months after the fact committed, and not afterwards, and notice in writing of such action and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action, and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action is brought, or if after action brought, a sufficient sum of money shall have been paid into Court, with costs by or on behalf of the defendant. (*C. C. Act Sec 138*)

FEEES AND COSTS

Section XIX. There shall be payable in the Courts holden

under this Act the fees set forth in the annexed Schedule beside the sum of Two Annas in the Rupee on the amount of the sum claimed, which fees shall be paid over to an account to be termed the General Fund of the Court. (*Local.*) (*See Appendix.*)

Section XX. The rateable fee or commission shall be paid by the plaintiff, before the summons issues, the other fees on every proceeding shall be paid in the first instance by the plaintiff or party on whose behalf such proceeding is to be had, on or before such proceeding: if the plaintiff recovers a less sum than he has demanded, the defendant shall not, in any case, be required to repay to him more than the fees and commission calculated upon the sum recovered. If the case is settled by agreement of the parties, before hearing, half the amount of the fees paid up to that time shall be returned to the parties by whom they have been severally paid. The Judges of the said Court may at their discretion grant summonses to poor plaintiffs without deposit, or with a partial deposit, of fees and commission, and also may remit costs wholly or partially to poor suitors. (*Local.*)

Section XXI. The Governor in Council may, at any time, lessen the amount of the fees to be taken in the Courts holden under this Act in such manner as to him shall seem fit, and may again increase such fees, so that the scale of fees given in this Act be not in any case surpassed. (*Local.*)

Section XXII. The Governor in Council shall, from time to time, make such rules as to him shall seem meet for securing the balances, and other sums of money in the hands of any Officers of every Court holden under this Act, and for the due accounting for and application of all such balances and other sums of money. (*Local.*)

Section LII. All the costs of any action or proceeding in the Court, not herein otherwise provided for, shall be paid by or apportioned between the parties, in such manner as the Judges shall think fit, and, in default of any special direction, shall abide

the event of the action ; and execution may issue for the recovery of any such costs, in like manner as for any debt adjudged in the said Court. (*C. C. Act Sec 88*)

Section XLII. If upon the day of the return of any summons, or at any continuation or adjournment of the said Court, or of the cause for which the said summons shall have been issued, the plaintiff shall not appear, the cause shall be struck out ; and if he shall appear, but shall not make proof of his demand to the satisfaction of the Court, the Judges may nonsuit the plaintiff or give judgment for the defendant , and, in either case, where the defendant shall appear and shall not admit the demand, may award to the defendant, by way of costs and satisfaction for his trouble and attendance, such sum as they, in their discretion, shall think fit, and such sum shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the same Court can be recovered ; provided always, that if the plaintiff shall not appear when called upon, and the defendant, or some one duly authorized on his behalf, shall appear, and admit the cause of action to the full amount claimed, and pay the fees payable in the first instance by the plaintiff, the Court, if it shall think fit, may proceed to give judgment, as if the plaintiff had appeared. (*C. C. Act Sec. 79*)

Section XLV The defendant in any action brought under this Act for the recovery of money, whether for debt or damages, within such time as shall be directed by the rules for regulating the practice of the Court, may put into Court such sum of money as he shall think a full satisfaction for the demand of the plaintiff, with the costs incurred by the plaintiff up to the time of such payment , and the said sum of money shall be paid to the plaintiff ; but, if he shall elect to proceed, and if the plaintiff shall recover no farther sum in the action than shall have been so paid into Court, the plaintiff shall pay to the defendant the costs incurred by him in the said action after such payment , and such costs

shall be settled by the Court, and an order shall thereupon be made by the Court for the payment of such costs by the plaintiff. (*C. C. Act. Sec. 82.*)

Rule 15th—When the defendant pays money into Court, the sum shall be large enough to include all necessary costs in Court up to that time, incurred by the plaintiff, together with the costs of notification to be given by the plaintiff, of his acceptance of the money and costs of taking the same out of Court; the amount so paid shall be duly registered. A receipt or memorandum shall also be granted by the Clerk to the party for the amount so paid in.

Rule 16th.—If the plaintiff elect to accept, in full satisfaction of the debt or damages claimed, and costs, the sum that has been so paid into Court by the defendant, and shall notify the same to the Clerk in writing, the action shall be discontinued, and the parties to the suit or action shall not be liable to any further costs, after such payment and satisfaction to the plaintiff as aforesaid. But if in default of plaintiff notifying to the Clerk such acceptance as aforesaid, or otherwise, the suit or action proceed, and the plaintiff fail to prove that he is entitled to more than has been paid into Court, and the defendant is put to fresh costs, the plaintiff shall be liable to pay to the defendant such costs as the defendant may incur after such payment.

Section XI. There shall be payable in the Court of Small Causes at Calcutta, Madras and Bombay respectively, in every cause of an amount to which jurisdiction is given to the said Court by this Act, the fees set forth in schedule hereto annexed besides the sum of two annas in each Rupee of the amount sued for so far as such amount does not exceed Five Hundred Rupees, and one anna in the Rupee so far as such amount exceeds Five Hundred Rupees, which fee shall be paid over to the same account as that to which the fees payable under section XIX of Act IX of 1850 are paid over—Act 26 of 1864. (*For schedule See. Appendix.*)

HOLIDAYS.

Section XXIII. The Court shall sit daily, except on Sundays, Christmas-day, and Good Friday, and on Native or other Holidays, which the Governor in Council shall direct the Court to observe; and each of the Judges may sit apart from the others or with either of them, at the same time or at different times; and any one or two of the said Judges so sitting apart shall have all the Judicial authority, which is herein given to all the Judges. (*Local*)

Rule 43rd.—No summons, notice, order, or any execution on a judgment, or any other process whatsoever, shall be served or executed on Sunday, Christmas-day and Good Friday.

Rule 44th.—With reference to Section XXIII. of Act IX. of 1850, the Court, under the authority of the Governor in Council, will not hold sittings on any of the Holidays which are observed as such in the General Treasury, and no writ of attachment, referred to in the 13th Rule, shall be served on those days.

Rule 45th.—No summons, notice, order, execution on a judgment or any other process whatsoever, shall be served or executed on a person, professing the Hindoo religion, during the four days of Doorga Poojah, viz., Saptami, Ashtami, Navami and Dashami.

Rule 46th.—Provided that all such days mentioned in the three preceding rules shall be counted in the computation of the time required by Rule 34th, unless any such days shall be the last day of such time, in which case it shall be excluded from such computation.

SEAL.

Section XXIV. A seal shall be made for every Court holden under this Act, under the direction of the Governor in Council, and all summonses and other process issuing out of the Court, shall be sealed or stamped with the seal of the Court; and every person who shall forge the seal or any process of the Court, or who shall serve or enforce any such forged process, knowing the same

to be forged, or deliver or cause to be delivered to any person any paper falsely purporting to be a copy of any summons, or other process of the said Court, knowing the same to be false, or who shall act or profess to act under any false colour or pretence of the process of the said Court, shall be guilty of felony. (*C. C. Act Sec. 57*)

SUBJECT MATTER.

Section XXV. All suits, where the debt or damage claimed or value of the property in dispute is not more than Five Hundred Rupees, whether on balance of account or otherwise, may be brought in the Court of Small Causes, and all such suits brought in the said Court shall be heard and determined in a summary way, and every defence which would be deemed good in the Supreme Court sitting as a Court of Equity, shall be a good bar to any legal demand in the Court of Small Causes. Provided always, that the Court shall not have jurisdiction in any matter concerning the revenue, 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, or 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, or in any suit for libel or slander. (*C. C. Act Sec. 58.*)

EXTENSION OF JURISDICTION.

Section 2 Act 26 of 1864.—The jurisdiction of the Courts held or to be held under the said Act 9 of 1850, shall extend to the recovery of any debt, damage, or demand exceeding the sum of 500 Rs, but not exceeding the sum of 1000 Rs, and to all actions in respect thereof (except the several actions specified in the proviso in section 25 of the same Act,) provided that 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.

EXTENDED JURISDICTION BY CONSENT OF PARTIES.

Section 3rd Ditto.—If both parties shall agree by a Memo: signed by them, or by their attorneys, and filed with the Clerk of the Court of Small Causes, that the said Court shall have power to try any action (not included in the proviso in section 25 Act 9 of 1850) in which the debt or damage claimed, or value of the property in dispute, whether on balance of account, or otherwise, shall exceed the sum of 1000 Rs, then and in such case, the said Court shall have jurisdiction to try such action.

EXTENSION OF POWERS &c. AS TO DEBTS, DAMAGES AND DEMANDS.

Section 6th Ditto.—The several powers and provisions of the said Act, and all rules, orders, and regulations, which have been or may be made in pursuance of the said Act, shall extend to all debts, damages, and demands, which may be, sued for in the said Courts, exceeding the sum of 500 Rs, and to all proceedings and judgments for the recovery of the same, or otherwise in relation thereto respectively, as fully and effectually to all intents and purposes, as the same respectively are now or may be applicable to debts, damages, and demands within the present jurisdiction of the said Court.

MINOR.

Section XXXI. Any minor may prosecute a suit in any Court holden under this Act for any sum of money not greater than Five Hundred Rupers which may be due to him for wages or piece-work, or for work as a servant, in the same manner as if he were of full age. (C. C. Act. Sec. 64.)

UNLIQUIDATED BALANCE.

Section XXXII. The jurisdiction of the Court shall extend to the recovery of any demand, not exceeding the sum of Five Hundred Rupees, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of a distributive share under an intestacy, or of any legacy under a will. (*C. C. Act. Sec. 65.*)

DIVIDING CAUSE OF ACTION. ABANDONING EXCESS.

Section XXXIV. 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; but any plaintiff, having cause of action for more than Five Hundred Rupees, may abandon the excess, which shall be entered in the record, and stated in the summons, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding Five Hundred Rupees; and the judgment of the Court shall be in full discharge of all demands in respect of such cause of action; and entry of the judgment shall be made accordingly. (*C. C. Act. Sec 63.*)

CO-CONTRACTORS, ONE OF SEVERAL PARTIES LIABLE.
MISJOINDER OF DEFENDANTS.

Section XXXVI. 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 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: and every such person against whom judgment shall have been obtained under this Act, and who shall have satisfied such judgment, shall be entitled to demand and recover in the Court

holden under this Act, contribution from any other person jointly liable with him ; and in all cases of misjoinder of defendants, the Judges may order the suit to proceed against such of the defendants only against whom cause of action appears, and may give judgment against them only ; giving also judgment for costs for the defendants improperly joined. (C. C. Act Sec. 68.)

EXECUTORS AND ADMINISTRATORS.

Section XXXIII. Any executor or administrator may sue and be sued in any Court holden under this Act, in like manner as if he were a party in his own right, and judgment and execution shall be such as in the like case would be given or issued in the Supreme Court in the like case, 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. (C. C. Act Sec. 66.)

Rule 27th.—When judgment has been given for or against a person deceased, his Executors or Administrators may, in the same manner, sue and be sued upon the judgment

Rule 28th.—The ordinary judgment against Executors or Administrators shall be to pay the debt or damages and costs, to be levied out of the goods of the deceased in their hands, and as to the costs, if there are no such goods, then to be levied out of their own goods.

Rule 29th.—If the sole defence by Executors or Administrators be, that they have fully administered, and the judgment of the Court is for the defendants, it shall be that the amount found to be due, be paid and levied out of the future assets of the deceased, and the costs shall be in the discretion of the Judge. If the Executor or Administrator have assets to satisfy part of the debt only, then he must admit assets to satisfy the demand to that amount, and say that he has none besides, and if that be so found, then the plaintiff shall have judgment for the assets on hand, and for fu-

ture assets, as to the residue, and the costs shall be in the discretion of the Judge.

Rule 30th.—When judgment has been given against Executors or administrators, that the amount be levied from the future assets of the deceased when they shall come to hand, the plaintiff may, at any time, proceed, by application for summons against them, suggesting that assets have come to their hands, and the Court shall proceed (after due service of summons) and give judgment thereon, as in Rule 28, and if for the defendant, they shall be entitled to their costs.

Rule 31st.—When the ordinary judgment has been given, that the debt, or damages, and costs be levied out of the Testator's effects, then, if there be no assets to satisfy the judgment in the whole or in part, the plaintiff may apply to the Judge for leave to levy the whole, and costs, out of the defendant's own goods on a suggestion of misapplication of the assets, and the Judge shall direct such notice to be given of the application as he thinks fit, and dispose of the motion in a summary way.

Rule 32nd.—If the party, sued as Executor or Administrator or Representative, have set up any vexatious and groundless defence, and the matter of the defence be adjudged against him, and the Judge shall think the defence vexatious and groundless, he shall give judgment out of the assets. And if none, out of the party's own goods for the sum which it adjudges.

PRIVILEGES AND EXEMPTION FROM THE JURISDICTION OF THE COURT.

Section XXXV. The Governor General and Members of the 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 this Act, and no writ or process shall be sued out of the said Court against any of the persons privileged by Act I. of 1844, or Act, XVIII. of 1848, without the consent of the Governor in Council. (*C. C. Act Sec. 62.*)

PROCEEDINGS, INSTITUTION OF SUIT, MISNOMER.

Section XXVI. On the application of any person desirous to bring a suit under this Act, the Clerk of the Court shall issue, under the seal of the Court, a summons, which shall be numbered, and shall set forth the names of the plaintiff and defendant, the cause of action, with such particulars as shall be, from time to time, directed by the rules of the Court and the amount sued for, and shall be served on the defendant, so many days before the day on which the Court shall be holden at which the cause is to be tried, as shall be directed by the rules for regulating the practice of the Court; and delivery of such summons to the defendant, or in such other manner as shall be specified in the rules of practice, shall be deemed good service; and no misnomer or inaccurate description of any person or place in any such summons shall vitiate the same, if the person or place be therein described so as to be commonly known. (*C. C. Act Sec. 59.*)

Rule 1st. — All applications for the usual process of the Court, shall be made to the Clerk in writing, setting out the names and designations in full of plaintiff and defendant, if known; if not known, describing them by such names and descriptions to the extent to which the same are known, with their last place of abode, or business, the cause or causes of action, and the amount claimed to be recovered.

Rule 2nd. — The summons to appear to suits or actions, shall be issued according to the forms in the Schedule, and shall be dated, as of the day when issued. Summonses shall be made generally returnable on the seventh day, but may be made returnable in a shorter or longer period at the discretion of the Judge.

Rule 53rd.—It is ordered that summonses shall in future be returnable on the 14th day, unless when the plaintiff shall apply for a summons at a shorter date in terms of the 2nd Rule of the Court.

Note—*At present, all summonses are issued according to Rule 2nd.*

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

Rule 4th.—The service of summons, to appear to a suit or action, must be, either personal, or by delivering the same to some person at the place of abode, or place of business of the defendant; and in such cases as the Judge may deem it necessary, the plaintiff, or his agent, must accompany the Bailiff to point out the defendant, or his place of abode, or place of business.

Rule 5th.—When a defendant shall be living or serving on board of any Ship or Vessel, or be residing or quartered in any Barracks, and serving Her Majesty, or the East India Company, as a Mariner or Soldier, it shall be sufficient service to deliver the summons, to appear to a suit or action, to the Senior Officer on board, or to the person, who, for the time, may have charge of such Ship or Vessel; or to the Adjutant of the Corps, or any Officer or Sergeant of the Company to which such Soldier shall belong or be attached. And in the case of Pilots and Preventive officers respectively, while engaged in actual service, it shall be sufficient to deliver the summons to the senior officer of the Banks, or the Superintendent of the Preventive Service at the Custom House.

Rule 6th.—When any defendant shall, by keeping his house, place of abode, or place of business closed, or by absconding, or by violence or threats, prevent any Bailiff from serving any summons to appear to a suit or action, as hereinbefore directed, and such summons shall have been conspicuously fixed on, or near to such place of abode, or place of business, or otherwise served, as nearly, as may be according to the mode heretofore directed, such service may be deemed good service.