

**In Re: T.P. Waller**

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**Court :** Chennai

**Decided On :** Apr-20-1883

**Reported in :** (1883)ILR6Mad430

**Judge :** Charles A. Turner, Kt., C.J. and ;Muttusaml Ayyar, J.

**Appellant :** In Re: T.P. Waller

**Judgement :**

Charles A. Turner, Kt., C.J.

1. It was enacted by the Civil Procedure Code, Act X of 1877, Section 8, that, save as provided in Sections 3, 25, 86, 223, 225, 386 and Chapter XXXIX, that Code should not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras or Bombay; but that the Local Government might, by a notification published in the official gazette, extend to such Court the Civil Procedure Code or any part thereof except so far as related to appeals and reviews of judgment.

2. Chapter XX of that Code invested the District Court (a Court of unlimited jurisdiction in respect of value) with a jurisdiction in insolvency in the cases of insolvent judgment-debtors who might be residing, or in custody, within the local limits of its jurisdiction.

3. The jurisdiction so conferred enabled the District Court not only to discharge and protect an insolvent judgment-debtor from imprisonment (Section 351), but

committed to it powers which could only be properly delegated to a Court having jurisdiction, unlimited in value and possessing authority to deal with claims of every kind resulting in debts and with every class of property. The Court must require creditors to prove their claims, whatever their amount (Section 352), might admit or exclude these claims from the schedule (Section 353), and consequently from participation in the assets of the insolvent, might appoint a receiver to convert into money the insolvent's property, whether moveable or immoveable (Section 356), might during the period of twelve years from the date of the order of discharge, or until a certain proportion of the scheduled debts had been paid, attach and sell, with certain exceptions, the property of the insolvent, whether moveable or immoveable (Section 357), and, lastly, might inflict on a dishonest insolvent a sentence of imprisonment for a year (Section 359).

4. In conferring these large powers on District Courts, the Legislature was careful to provide an appeal from all orders passed under Sections 351, 352, 353 and 357, and it would probably be held that an appeal also lay from a sentence of imprisonment in view of the wide definition of the term decree. By Section 360 it was enacted that the Local Government might invest any Court, other than a District Court, with the powers conferred on District Courts by Sections 344 to 359, both inclusive, that the District Judge might transfer to any Court situate in his district and so invested, any case instituted under Section 344; and that any Court so invested might entertain an application under Section 344 by any person arrested in execution of a decree of such Court.

5. Lastly, it was declared that nothing in that chapter should apply to Courts having jurisdiction in certain places in British Burmah, where the property of the judgment-debtor exceeded in value Rs. 2,500, or the pecuniary claims against him exceeded Rs. 5,000, or the property or any part thereof was situated outside British Burmah.

6. It will be noticed that Section 360 was one of those sections which the Legislature had declared did not extend to Small Cause Courts in the Presidency towns; it seems then that the Local Government would have had no power under that section to invest a Presidency Small Cause Court with powers under Chapter XX. The power of transfer given by the section to the District Court also points to

the class of Courts to which the Legislature intended the section should apply, namely, Courts in a District: and probably it was contemplated that only such Courts in a District should be invested with powers as were competent, in the exercise of their ordinary jurisdiction, to deal with claims of all kinds resulting in debts and without any limit of amount; otherwise it would have been necessary to make some provision respecting Courts whose pecuniary jurisdiction was limited. Further, on reading Sections 344 and 360 together, it would seem that a Court invested under the latter section would not, except in cases transferred to it by the District Court, have been at liberty to entertain applications made by a decree-holder under Section 344, nor applications made by any judgment-debtor, but only applications made by a judgment-debtor arrested in execution of its own decree.

7. By a notification in the gazette of the 21st May 1878, the Governor in Council under Section 8 of the Code of Civil Procedure, Act X of 1877, declared that, among others, the following parts of the Code should be applicable to the Madras Court of Small Causes:

8. Section 344, except the 2nd clause.

Do. 345, except Clauses (e) and (f). Do. 346.

Do. 347, except the part which referred to creditors other than the decree-holder and except the clause relating to the publication of the application.

Do. 349.

Do. 350 and 351, except the parts which referred to creditors other than the decree-holder and except the parts referring to the appointment of a receiver.

9. This partial application of Chapter XX obviously created difficulties. If by applying to the Small Cause Court the provisions of Section 344, which prescribed that the application was to be made to the District Court, the Small Cause Court acquired jurisdiction as a District Court to entertain applications under the section, a judgment-debtor arrested or imprisoned or against whose property an order of attachment had been issued in execution of the decree of any Court, could have applied to be declared insolvent and the Court could have declared him an

insolvent and have discharged him but only as regards the claim under the decree which had afforded occasion for the application. The provisions relating to the appointment of a receiver and the attachment and sale of a judgment-debtor's property were not extended to the Small Cause Court.

10. The result then of this notification of 21st May 1878, if it were effectual, was to create a form of relief in insolvency which was not contemplated by the Procedure Code.

11. On 25th February 1879 there was published in the gazette a notification in the following terms:

Under the provisions of Section 360 of the Code of Civil Procedure and in modification of so much of the notification published in the Fort St. George Gazette under date 21st May 1878, as declared certain parts only of Chapter XX of the said Code to be applicable to the Madras Court of Small Causes, His Grace the Governor in Council is pleased to invest the Court of Small Causes at Madras with the powers conferred on District Courts by Sections 344 to 359 (both inclusive), and he is further pleased under the provisions of Section 8 to extend Section 336 of the said Code to the Court of Small Causes at Madras and under Clause 4 thereof to direct,' etc.

12. It will be seen that while the extension of Section 336 is expressed to be made under Section 8, it is declared that the investiture of the Small Cause Court with the powers conferred on a District Court under Sections 344 to 359 is made in virtue of the provisions of Section 360. We have observed that that Section was not extended by the Legislature to Small Cause Courts in the Presidency towns, and therefore it would seem that Section 360 should first have been extended to the Madras Small Cause Court before action was taken on it. But, assuming that Section 360 was inferentially extended to the Small Cause Court, the question addressed to us in the reference before the Court is, whether or not the notification of 25th February 1879 has effect in view of the enactment of the Civil Procedure Code, 1882, and the Presidency Small Cause Courts Act, 1882.

13. These Acts received the assent of the Governor-General on the same date. The Civil Procedure Code, Act XIV of 1882, came into force on 1st June 1882 (Section I). The Civil Procedure Code of 1877 was wholly repealed by it; but it was provided that notifications published and made under that enactment should, so far as they were not inconsistent with the Civil Procedure Code of 1882, be deemed to have been published and made thereunder. It was also declared that when in any Act, Regulation, or Notification passed or issued prior to the day on which the Civil Procedure Code of 1882 came into force reference was made to (among other Acts) the Code of Civil Procedure or to Act X of 1877, such reference should, as far as might be practicable, be read as applying to the Code of 1882, or the corresponding part thereof.

14. The 8th Section, paragraphs 1 and 2 of the Civil Procedure Code, 1877, corresponds with the 8th Section, paragraphs 1 and 2 of the Civil Procedure Code of 1882; the provisions of these corresponding sections are expressed in the same terms.

15. When then Act XIV of 1882 came into force, the notification of 25th February 1879, assuming it to have been otherwise valid, took effect as a notification under that Act.

16. The Presidency Small Cause Courts Act, 1882, came into force on 1st July 1882. The 2nd Section declares that on and from the day on which the Act came into force, the enactments specified in the 1st Schedule thereto annexed were repealed to the extent mentioned therein. In the Schedule 'Act X of 1877, the Code of Civil Procedure, Section 8, paragraph 2,' is specified as repealed. The 3rd Section inserts in the 8th Section of the Code of Civil Procedure after the words and figures 'Chapter XXXIX 'the words' and by the Presidency Small Cause Courts Act, 1882.' The 23rd Section declares that the portions of the Civil Procedure Code specified in the 2nd Schedule thereto (and which did not include Chapter XX of the Civil Procedure Code) shall, so far as they shall in the judgment of the Court be applicable, be applied to the Small Cause Court. But it is provided that the Court may, with the sanction of the Local Government from time to time, by notification in the official Gazette declare that any of the said portions of the Code shall not

extend and be applied to the Small Cause Court, or that any of such portions shall so extend and be applied with such modifications as the Court, subject to the control aforesaid, may think fit.

17. The Judges of the Small Cause Court in their reference to this Court suggest that, inasmuch as Act X of 1877 had been wholly repealed by Act XIV of 1882 when the Presidency Small Cause Court Act, 1882, came into force, the repeal of Section 8, paragraph 2 of the Act of 1877 by the Presidency Small Cause Courts Act was wholly inoperative. They attribute this to a fault in drafting; they consider it clear that the Legislature did not intend to confer insolvent jurisdiction on the Presidency Small Cause Courts, from the fact that a chapter conferring a limited jurisdiction in insolvency found a place in the Bill originally drawn, but was omitted on the recommendation of the special Committee; they also express themselves as equally convinced that the Legislature can never have intended, while extending certain provisions of the Civil Procedure Code to the Presidency Small Cause Courts by schedule, to leave it open to the Local Government to extend any other provisions of the Code to the Small Cause Court by notification. They doubt whether, in order to give effect to what they believe to be the intention of the Legislature, they are at liberty to hold that the words 'Act X of 1877' in the first column of Schedule I of Act XV are a misdescription, and that what is repealed is the Civil Procedure Code, Section 8, paragraph 2.

18. The circumstance that the Presidency Small Cause Courts Act contains no insolvency provisions, and that it does not extend to the Presidency Small Cause Court Chapter XX of the Civil Procedure Code, suggests that the Legislature recognized the objections to conferring insolvency jurisdiction on Courts of limited jurisdiction and of whose jurisdiction it is the special feature that it is exercised without appeal.

19. We agree with the Judges of the Small Cause Court that it may fairly be inferred from the provisions of Section 2, read with the 1st Schedule, and of Section 23 of the Presidency Small Cause Courts Act, that it was the intention of the Legislature to declare what provisions of the Code might or should, with or without modifications, be extended to the Presidency Small Cause Courts, and

that it was no longer intended to depute to Local Governments the extension of other parts of the Procedure Code by notification. The retention of the 2nd paragraph of Section 8 in the Code of Civil Procedure may have been necessary until Act XV came into force and indicated what sections of the Code of Civil Procedure should govern proceedings in Courts of Small Causes. When the Act XV of 1882 was passed, the Procedure Code in force was Act X of 1877, and this circumstance probably explains the reference to that Act in the Schedule to Act XV, but the 2nd paragraph of the 3rd Section of the Code of Civil Procedure to which the Judges of the Small Cause Court have not referred, effects what they have in our judgment correctly apprehended to have been the intention of the Legislature. The Presidency Small Cause Courts Act, 1882, although it came into force after the Civil Procedure Code, 1882, was passed prior to the day on which the Civil Procedure Code, 1882, came into force; consequently any reference made in the Presidency Small Cause Courts Act to the Code of Civil Procedure or to Act X of 1877, must, so far as is practicable, be read as applying to the corresponding part of Act XIV of 1882. The repealing Section of Act XV of 1882 has therefore repealed Section 8, paragraph 2 of Act XIV of 1882, and, inasmuch as the notification of 25th February 1879 is repugnant to Section 8, Act XIV of 1882, as amended by Act XV of 1882, if otherwise valid, it ceased to have effect when Act XV of 1882 came into force.

**Muttusami Ayyar, J.**

20. I concur. The question referred to us is, 'does the insolvent jurisdiction of the Small Cause Court under Chapter XX of the Civil Procedure Code conferred by notification of the Local Government under Section 8, para-graph 2 of Act X of 1877 still subsist, since Act XV of 1882 came into operation? '

21. It seems to me that our decision must depend on the effect to be given to Section 2 of Act XV of 1882 and to the words in the 1st Schedule there in mentioned 'Act X of 1877, the Code of Civil Procedure, Section 8, paragraph 2.' Act XV of 1882 came into force on the 1st July 1882, and by the 1st Schedule annexed to Act XIV of 1882, which came into force on 1st June 1882, the whole of Act X of 1877 was formally repealed. The learned Judges of the Small Cause

Court argue that Act X of 1877 was not in force on the 1st July 1882, and that the repeal contained in Act XV of 1882 is inoperative.

22. It seems to me, however, that where there is an apparent absurdity in a legislative enactment, we are not at liberty to treat it as altogether inoperative, but that, on the other hand, we should endeavour to ascertain the intention of the Legislature as far as practicable and to place such a construction as would execute that intention. I do not think that we are entitled for this purpose to look at the debate in the Legislative Council or at the first Bill that was published, neither of which is part of Act XV of 1882, nor of any other Act in pari materia. Confining, therefore, my attention to Section 8, paragraph 2, and Section 3 of Act XIV of 1882, Section 8, paragraph 2 of Act X of 1877, and the Schedules annexed to Acts XIV and XV of 1882, I think that the reasonable intention, if any, must have been to repeal Section 8, paragraph 2 of Act X of 1877, as retained in Section 8, paragraph 2 of Act XIV of 1882. In any other view no effect can be given to the words of repeal in the 1st Schedule annexed to Act XV of 1882, and the words, Act X of 1877, must therefore be taken as intended to refer to that Act as re-enacted in Section 8, paragraph 2, Act XIV of 1882. I would, therefore, answer the question referred to us in the negative.