

**Wallis and Co. Vs. Bailey**

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**SooperKanoon Citation :** [sooperkanoon.com/853603](http://sooperkanoon.com/853603)

**Court :** Kolkata

**Decided On :** Apr-10-1891

**Reported in :** (1891)ILR18Cal372

**Judge :** W. Comer Petheram, Kt., C.J., ;Pigot and ;Macpherson, JJ.

**Appellant :** Wallis and Co.

**Respondent :** Bailey

**Judgement :**

**Pigot, J.**

1. In this case the defendant resides outside the local limits of the jurisdiction of the Calcutta Court of Small Causes. Leave to institute the suit was granted under the provisions of Section 18 of the Presidency Small Cause Courts Act.

2. The defendant is an officer of the army subject to Military law, and the question is whether, having regard to the provisions of Section 151 of the Army Act, 1881, as amended by Section 7 of the Army Act of 1888, the operation of which Act is by the Army Act of 1889 continued up to December 1890, the Small Cause Court has jurisdiction to entertain this suit against the defendant.

3. This question has already been considered in this Court in the case of In the matter of the proposed suit of Watts & Go. v. Blackett I.L.R. 18 Cal. 144 In that

case the Chief Judge of the Small Cause Court on being applied to for leave under Section 18 to institute a suit against an officer of the army subject to Military law and resident out of the local limits of the jurisdiction refused to grant such [377] leave, on the ground that by reason of the provisions of Section 151 as amended, the Court had no jurisdiction under Section 18 to entertain the suit. Application was then made to this Court on its Original Side for an order to the Small Cause Court to exercise its discretion under Section 18 as to granting or withholding leave to institute the suit. Mr. Justice WILSON made the order applied for, holding that nothing in the terms of the amended section operated to restrict the jurisdiction of the Small Cause Court under Section 18.

4. On this reference, which, it may be mentioned, was made before the decision of Mr. Justice WILSON, we are practically asked as an Appellate Bench to overrule that decision.

5. Section 2 of the Presidency Small Cause Court Act provides that nothing herein contained shall affect the provisions of the Army Act, 1881, Section 151; and this section as amended by the Army Act of 1888 is now to be read as follows:

In India all actions of debt and personal actions against persons subject to Military law, other than soldiers of the regular army, where the persons so subject are resident within the local jurisdiction of any Court of Small Causes, shall be cognizable by such Court to the extent of its powers.

6. This section so amended applies in the present case.

7. The contention is that this limits the jurisdiction to the case of persons who are resident within the jurisdiction.

8. We do not think so. We agree with the judgment of WILSON, J., above mentioned. It is not, perhaps, very easy to construe the preamble to the amending section: as it is difficult to suppose that any doubt could have arisen that, at any rate, 'persons resident within the jurisdiction' must be referred to by the words 'within the jurisdiction.' However this may be, we think the words in the amending section must be meant to restrict the words 'within the jurisdiction, etc.,' to persons

resident within it, so as to meet and exclude the case of persons casually within the jurisdiction for a short time and not actually resident within it, and that it is limited to this purpose, and therefore does not affect the powers conferred by Section 18. We answer the question therefore in the affirmative.

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