1878.

SYED MOIDIN v. SUNDARAMURTHIA.

The Court (MORGAN, C.J., and FORBES, J.) delivered the following

JUDGMENT :—Two judgment-debtors arrested in execution of a Small Cause Court decree applied, under Section 336, to be allowed the benefit of the provisions of the Act relating to Insolvent Judgment Debtors (Chap. XX), the Sub-Judge (on the Small Cause Side of his Court) rejected the application, and in the letter above recorded, he refers the following questions for an authoritative ruling :—

(1) Whether Clause 5 of Section 336 applies to Small Cause Court debtors.

(2) Whether such persons can be allowed the benefit of Chapter XX.

We answer both questions in the affirmative. Small Cause Courts have, by Schedule II of the Code, been specifically empowered to act under Section 336, and they are bound to exercise the power, on occasion arising. It remains for a judgment-debtor who has obtained a provisional discharge under that section to take proceedings in a Court that has jurisdiction under Chapter XX, and in the present instance the remedy, we observe, could have been applied for on the subordinate side of the Court. (1).

Before Sir Walter Morgan, Kt., Chief Justice, and Mr. Justice Innes.

1876. October 11.

RÁMAN (PETITIONER) *v.* KARUNATHA THARAKAN (COUNTER-PETITIONER).*

Review—Act VIII of 1859, Secs. 376, 378.

Where a Judge allowed a review of his predecessor's judgment on the sole ground that it appeared to him that the judgment of his predecessor had done injustice, *Held* by the High Court (MORGAN, C.J., and INNES, J.) that though the generality of the terms used in the sections of the Procedure Code, Act VIII of 1859 relating to review of judgment, viz., "other good and sufficient reason" (Sec. 376) and "otherwise requisite for the ends of justice" (Sec. 378) confers a wide jurisdic-

(1) See Government notification, dated 17th October 1877, No. 2,473.

* Civil Miscellaneous Petition No. 259 of 1876, against the revised decree of K. Kunjan Menon, Subordinate Judge of South Malabar, dated 19th February 1876, confirming the decree of the District Munsif of Palghát, dated 26th May 1875.

tion, this jurisdiction could not be held to authorize a Judge to revise and reverse his predecessor's decree on the ground above-mentioned. If the review is asked for in reference to the conclusions of fact drawn from the evidence, it should not be granted simply upon the same evidence. *Reasut Hussain* v. *Hadjee Abdoollah* (1) discussed

THIS was an application under Section 35, Act XXIII of 1861, presented against the revised decree of the Subordinate Court of South Malabar in Regular Appeal No. 288 of 1875, confirming the decree of the Court of the District Munsif of Palghát in Original Suit No. 294 of 1874.

Mr. *Handley* for the Petitioner.

The facts and arguments are sufficiently set forth in the following judgments.

MORGAN, C.J.—Referring to his predecessor's judgment, the Subordinate Judge in the case before us says: "it appeared to me that this judgment had done injustice, and I consequently allowed a review."

The extreme generality of the terms used in the sections of the Civil Procedure Code relating to review of judgment (that is to say, "other good and sufficient reason," Section 376, and "otherwise requisite for the ends of justice," Section 378) doubtless confers a wide jurisdiction, extending, it has been laid down, to cases in which the parties may have failed to show that there was either positive error in law or new evidence to be brought forward which could not be before adduced. (*Reasut Hossain* v. *Hadjee Abdoollah and another*, decided by the Privy Council on the 24th May 1876.) (1).

But this jurisdiction, though wide, is not unlimited and cannot, I think, be held to authorize a Judge to revise and reverse his predecessor's decree without grounds assigned by him or otherwise appearing beyond the vague one alleged. The case itself was one in which there was a conflict of evidence. The conclusion drawn by the Subordinate Judge differed from that reached by his predecessor. This alone would not render the judgment of the former open to revision under the Code. (See *Roy Meghraj* v. *Beejoy Gobind Burral*) (2). The decree appealed against must be set aside and that of the 15th October 1875 restored.

The appellant is entitled to the costs both here and in the Lower Courts.

(1) I.L.R., 2 Calc., 131. (2) I.L.R., 1 Calc., 197.

1876.

RÁMAN v. KARUNATHA THARAKAN.

INNES, J.—Great mischief would result if a Judge were allowed to alter the decision of his predecessor simply because he differed from him in the conclusions he arrived at upon the evidence. The Section 376 of the Civil Procedure Code, which authorizes an application for review, supposes the applicant to be supplied with "new matter or evidence which was not within his knowledge or could not be adduced by him at the time when the decree was passed," or that he makes the application "from any other good and sufficient reason." If, therefore, the review is asked for in reference to the conclusions of fact drawn from the evidence, I think the section intends that it should not be granted simply upon the same evidence. It is contended, however, that the words "other good and sufficient reason" are wide enough to admit of a review being granted upon the same evidence. But I think with the High Court of Calcutta, that these general words are in their signification controlled by the obvious intention of the preceding words, and must be confined to reasons of a new character and such as were not before the Court at the time of the decree.

The opinion of the Privy Council in the case of *Reasut Hussain* v. *Hadjee Abdoollah* (1) no doubt places a very wide interpretation on the words; but the opinion on this point was not necessary for the decision of that case, and may without impropriety be regarded rather as a mere *obiter dictum* than as a binding authority. I think, therefore, that the Subordinate Judge, having only the same matter before him and being moved to grant the review solely on the ground that the conclusion of his predecessor was a conclusion in which he did not agree, had no jurisdiction to grant the review; and I agree in setting aside the new decree made upon review, and restoring the decree of the former Subordinate Judge.

Revised decree set aside.

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(1) I.L.R., 2 Calc., 131.