

APPELLATE CIVIL.

*Before Sir Walter Morgan, Kt., Chief Justice, and
Mr. Justice Forbes.*

SYED MOLDIN, PLAINTIFF *v.* SUNDARAMURTHIA AND TWO
OTHERS, DEFENDANTS.*

1878.
Sept. 20.

*Debtor—Small Cause Court—Act X of 1877, Sec. 336, Cl. 5—Act X of 1877,
Cap. XX.*

Clause 5 of Section 336 of Act X of 1877 applies to Small Cause Court debtors, such persons can obtain the benefit of Chapter XX of that Act by applying to a Court which has jurisdiction under that Chapter.

CASE stated under Section 617 of Act X of 1877 by the Subordinate Judge of Tinnevely. "The 1st and 2nd defendants in this case are under arrest in execution of the decree passed against them in Small Cause Suit No. 227 of 1877, and they apply under Section 336 of Chapter XIX of Act X of 1877 to be allowed the benefit of Chapter XX of the Act, and to be declared insolvents.

But I believe that Chapter XX which regulates the whole procedure in respect of insolvent judgment-debtors is not extended to *Mufassal* Small Cause Courts (*vide* Schedule II annexed to the Act) and I think that the application of defendants must, therefore, be refused."

The defendants relied upon Section 336, Chapter XIX, which extends to such Courts, and on paragraph 5 of that Section which permits generally a person arrested to apply to be declared an insolvent. But the Subordinate Judge thought that this paragraph did not apply to Small Cause judgment-debtors.

He referred the following questions :—

1. Whether paragraph 5 of Section 336 applies to Small Cause judgment-debtors ; and
2. Whether such debtors can be allowed the benefit of
* Chapter XX.

V. Bhāshyam Ayyangār for the Plaintiff.

There was no appearance for the Defendants.

* Referred Case No. 9 of 1878, stated under Section 617 of Act X of 1877, by A. Annasāmi, Subordinate Judge of Tinnevely, dated 16th July 1878.

1878.

STEF MOHDIN
v.
SUNDARAMUR-
THIA.

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.*

RĀMAN (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 Palghat, dated 26th May 1875.

1876.
October 11.