

## APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Brandt.*

1887.  
Sept. 30.

KOMARASÁMI (PLAINTIFF), APPELLANT,

and

GOVINDU (DEFENDANT), RESPONDENT.\*

*Civil Procedure Code, ss. 344, 588—Appealable order—Insolvent judgment-debtor—  
Notice to decree-holder.*

A debtor was arrested on civil process. He presented a petition to the Court from which process issued, alleging that he was unable to pay the debt and praying to be declared insolvent and to be released. The Court passed an order on the same day, directing that he should be released and that the creditor should proceed against his property :

*Held* (1) that an appeal lay against the order ; (2) the order was bad for want of notice.

APPEAL against an order made by P. V. Rangacharyár, District Múnsif of Sholinghur, on an application under s. 344 of the Code of Civil Procedure.

A judgment-debtor, arrested on civil process, presented a petition to the Court, which set out his circumstances and concluded as follows :—

“ In the state of circumstances, I am not in position to pay the debt due under this decree. I will have no objection to pay plaintiff’s debts when I may come in possession of property.

“ I, therefore, pray that, on an investigation into the matter, an order may be passed, declaring me an insolvent and releasing me from the warrant.”

The Court, on the same day, without notice given to the plaintiff, at whose suit the applicant had been arrested, made the following order :—

“ Defendant is released. Plaintiff is to proceed against the properties of defendant, whatever they are, movable or immovable.”

The plaintiff preferred this appeal.

*Anandacharlu* for appellant.

\* Appeal against Appellate Order 78 of 1887.

*Rangacharyár* for respondent.

\* KOMARASÁMI  
v.  
GOVINDU.

The arguments adduced on this appeal appear sufficiently, for the purpose of this report, from the judgment of the Court (Collins, C.J., and Brandt, J.).

JUDGMENT.—Mr. Rangacharyár takes the preliminary objection that no appeal lies.

The objection is overruled. The order without doubt purports to be an order declaring the petitioner to be an insolvent and releasing him on that ground, but it was passed on the petition on the very day on which the application was made, and we set it aside as the notice required under chap. XX of the Code of Civil Procedure was not given. We shall not direct the District Munsif to take any further proceedings on it, as the petition does not contain the particulars required under chap. XX.

The petitioner, if so advised, can present a fresh application.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Muttusámi Ayyar and Mr. Justice Parker.*

KUPPAN, *in re*.\*

1887.  
Sept. 27.

*Act III of 1869 (Madras), ss. 2, 3—Service of summons.*

Where a summons to a witness, issued under Act III of 1869 (Madras), was shown to a person and taken back :

*Held*, that the summons had not been served.

CASE referred by C. W. W. Martin, Sessions Judge of Salem.

The facts were stated as follows :—

The accused (Kuppan) was charged, at the instance of the Acting Tahsildar of Namkal taluk, with intentional disobedience to a summons under s. 174 of the Indian Penal Code, in that he failed to appear before the Tahsildar as a witness in a revenue inquiry, although summons had been served on him personally.

The accused denied the service of summons on him, but said that the parties to the revenue inquiry told him that he was summoned, without mentioning the date, and that he therefore did not appear.

The summons issued by the Tahsildar to the accused bears on its back the endorsement "I read this summons I will come

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\* High Court Proceedings No. 521 of 1887.