

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

1888.
May 2.

SITHARAMA (COUNTER-PETITIONER No. 4), APPELLANT,

v.

VYTHILINGA (PETITIONER), RESPONDENT.*

Civil Procedure Code of 1882, s. 589—Civil Procedure Code Amendment Acts—Act VII of 1888, s. 53—Act X of 1888, s. 3—Appeal against order of a Subordinate Court on a petition of insolvency.

The judgment-debtor having been arrested in execution of a decree passed by the Small Cause Court at Madras, which was transferred for execution to the Subordinate Court of South Malabar, applied to the District Court to be declared an insolvent. The District Court transferred the application for disposal to the Subordinate Court, and the application was granted on 25th July 1888. On 5th November 1888 one of the opposing creditors appealed to the High Court:

Held, that the appeal did not lie.

APPEAL against the order of E. K. Krishnan, Subordinate Judge of South Malabar, on insolvent petition No. 4 of 1888, granting the prayer of the petition.

One of the opposing creditors presented this appeal to the High Court.

Ramachandra Ayyar for appellant.

Sundara Ayyar for respondent.

The facts of the case appear sufficiently for the purpose of this report from the judgment of the Court (Muttusami Ayyar and Wilkinson, JJ.).

JUDGMENT.—A preliminary objection is taken on the ground that no appeal lies to this Court. We are of opinion that this objection must prevail. The decree of the Madras Court of Small Causes was transferred for execution to the Subordinate Court of South Malabar. In execution the judgment-debtor was arrested, and applied to the District Court to be declared an insolvent. The District Judge in virtue of the powers conferred by section 360 transferred the application to the Subordinate Court of South Malabar for disposal, and on the 25th July 1888, the judgment-debtor was declared an insolvent. This appeal to this

* Appeal against Order No. 141 of 1888.

Court was presented on 5th November 1888. The first clause of section 589, Act XIV of 1882, by which appeals from orders in cases of insolvency lay to this Court was repealed by section 56 of Act VII of 1888, which came into force on the 1st July 1888. An appeal from such orders was, however, allowed by section 588 (17), and the question is, to what Court did the appeal in this case lie? It certainly did not lie to the High Court, because the first clause of section 589, which constituted the High Court the Court of appeal, had been repealed. Inasmuch as the suit in which the decree was passed was a small cause suit from which no appeal lay, clause 2 of the former section 589 did not apply. In the absence of any special provision as to the forum, the District Court would be the Court to which an appeal from an order passed by a Sub-Judge would lie. The proviso added to section 589 by section 3 of Act X of 1888 appears to us to explain what was intended to be the law when the first clause of section 589 was repealed.

The appeal therefore must be dismissed with costs.

SITHARAMA
v.
VYTHILINGA.

APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

v.

SITHARAMAYYA AND OTHERS.*

1889.
April 10.

*Arms Act—Act XI of 1878, s. 19(a)—Sale of sulphur and ammunition
by agent of a license-holder.*

Sale of sulphur and ammunition by the agent of one holding a license (in form VI) under Act XI of 1878 is not illegal.

CASE reported for the orders of the High Court under section 438 of the Code of Criminal Procedure by H. G. Turner, District Magistrate of Vizagapatam.

The case was stated as follows:—

“ In this case the Senior Assistant Magistrate convicted two persons: the first under section 19(a) of the Arms Act, Act XI of 1878 (offering for sale without license) and the second under

* Criminal Revision Case No. 61 of 1889.