

1891 since 1859, but so far as the present question now before us is concerned, we do not think they are of such a nature as to affect the view adopted by their Lordships of the Privy Council, already referred to. Act X of 1859, where it is in force, is still, as then, a Code complete in itself, and section 14 of the present Law of Limitation is almost identical with section 14 of Act XIV of 1859. We think, therefore, that the judgment of their Lordships of the Privy Council disposes of this reference, and we hold that section 14 of Act XV of 1877 does not apply to suits under Act X of 1859.

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MOHUN  
PARHI.

T. A. P.

*Appeal dismissed.*

### SMALL CAUSE COURT REFERENCE.

*Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Pigot, and Mr. Justice Macpherson.*

WALLIS & Co. v. BAILEY.\*

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April 10.

*Small Cause Court Presidency Towns—Jurisdiction—Presidency Town's Small Cause Court Act (XV of 1882), cl. 2, s. 1, s. 18—Army Act, 44 and 45 Vic., c. 58, sub-sect. 1, sect. 151—51 Vic., c. 4, sect. 7.*

The words of section 7 of 51 Vic., c. 4, amending sub-section 1 of section 151 of 44 and 45 Vic., c. 58, are meant to restrict the words "within the jurisdiction, &c." (found in sub-section 1 of section 151) to persons resident within it, so as to meet and exclude the case of persons casually within the jurisdiction and not actually resident within it, and are limited to that purpose, and do not therefore affect the powers conferred by section 18 of Act XV of 1882.

CASE stated for the opinion of the High Court under section 607 of the Code of Civil Procedure.

The claim in this case was for Rs. 422, the price of goods sold and delivered, and interest. The case stated was as follows:—

"The plaintiffs are Ranken and Company, tailors of Calcutta, and the defendant is an officer of the 5th Lancers described as of Kurpur Tal, Naini Tal. The claim is on a tailor's bill for clothes

\* Small Cause Court Reference No. 6 of 1890 made by R. S. T. MacEwen, Esq., 2nd Judge of the Court of Small Causes, Calcutta, dated the 9th of September 1890.

supplied to the defendant, and interest. The merits are not in dispute except as to the item of interest, which is objected to.

“The defendant is an officer of the army subject to Military law, and was not resident within the local jurisdiction of this Court when the suit was instituted. Leave to sue in this Court was applied for and granted under section 18 of the Presidency Small Cause Court’s Act. At the hearing it was contended for the defendant that the Court had no jurisdiction, having regard to the provisions of section 151, sub-section 1 of the Army Act (44 and 45 Vic., c. 58), as amended by section 7 of 51 Vic., c. 4.

“Sub-section 1 of section 151 of the Army Act originally stood thus:—‘In India all actions of debt and personal actions against persons subject to Military law other than soldiers of the regular forces *within the jurisdiction* of any Court of Small Causes shall be cognizable by such Court to the extent of its powers.’ The language of this section coupled with the provision in section 18 of the Presidency Small Cause Court’s Act relating to leave in the case of non-resident defendants has been held sufficient to give this Court jurisdiction over military officers subject to Military law as over other non-resident persons when the case, in other respects, came within the provisions of section 18, and leave to sue had been given—*Wallis v. Taylor* (1). That case was decided in 1885.

“Sub-section 1 of section 151 has since been amended by an Act of 1888 (51 Vic., c. 4), section 7, as follows:—In sub-section 1 of section 151 of the Army Act, 1881, the words ‘where the persons so subject are *resident within the local jurisdiction*’ shall be substituted for the words ‘*within the jurisdiction*.’

“The amendment makes an important alteration in the law. As it originally stood the words were, ‘within the jurisdiction’ (and the Court has jurisdiction beyond its local limits): now the words are, ‘where the persons so subject are *resident within the local jurisdiction*,’ clearly imposing, as it seems to me, a limitation of the jurisdiction to cases where the defendant (being a person subject to Military law other than a soldier) is resident within the *local* limits. I think this is clear from the preamble as well as from the language of the section. The preamble is ‘and whereas doubts have arisen as to whether the words “within the jurisdiction

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1891 of any Court" refer to persons resident within the jurisdiction, and  
 WALLIS & it is expedient to remove such doubts, &c.'  
 Co. "The cause of action having arisen in Calcutta and leave having  
 v. been granted, this Court would have jurisdiction but for the  
 BAILEY. alteration in the law, but in my opinion that alteration has ousted  
 the Court's jurisdiction in this case.

"The only answer the plaintiffs' pleader was able to advance to the objection was—(1) that the Act of 1888 being an *annual* Act, which expired with the year for which it was passed, the amendment expired with the Act; and (2) that sub-section 1 only applied to actions where the amount sued for did not exceed Rs. 400, whereas the present suit exceeds that sum.

"As to the first point it is only necessary to say that the amendment in the Act of 1888 forms part of the substantive law, and the Act of 1881 must be read as amended by the Act of 1888. The Act of 1889 keeps the Act of 1881 in force in India up to 31st December 1890. It does not repeal the amendment made in the previous year, which therefore continues.

"As to the second point, sub-section 2 of section 151 was clearly meant to exclude suits exceeding Rs. 400 for the jurisdiction of Military Courts of Request under section 148, but the Act of 1888 repeals sections 148, 149 and 150, and the Act of 1890 repeals sub-section 2 of section 151 as being no longer required.

"I have been asked by the plaintiffs' pleader to refer the point for the opinion of the High Court, and as it is one of some importance to the trading community of Calcutta and affects the jurisdiction of this Court in a particular class of cases I do so.

"The question which I submit for the opinion of the High Court is—

"Whether on the facts as stated in this reference this Court has jurisdiction to try this case, having regard to the provisions of section 151, sub-section 1 of the Army Act, as amended by section 7 of the Act of 1888 (51 Vic., c. 4).

"I have reserved judgment pending the opinion of the High Court."

Subsequently to this reference being submitted, and prior to its hearing, the learned Judge of the Small Cause Court drew the attention of the High Court to a further point which had

previously escaped his notice and consideration, namely, "whether, having regard to the first part of clause 2 of section 1 of the Presidency Small Cause Court's Act (XV of 1882), the jurisdiction given by the Small Cause Court's Act, section 18(a), over non-resident defendants can prevail in this case as against the provisions of the Army Act as amended by 51 Vic., c. 4, section 7."

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*Mr. Pugh* for the plaintiffs:—The question raised is the same as that decided in *Wallis v. Taylor* (1) under the Army Act of 1881 (44 and 45 Vic., c. 58), section 151, the point being whether the jurisdiction of the Small Cause Court is ousted by the provisions of the Army Act of 1881 (44 and 45 Vic., c. 58), section 151, as amended by the Act of 1888 (51 Vic., c. 4), section 7, which substitutes for 'within the jurisdiction' the words 'resident within the local jurisdiction.' The identical point was decided last September by Mr. Justice Wilson in *Watts & Co. v. Blackett* (2), and he held that the jurisdiction was not affected. In *Wallis v. Taylor* (1) other questions were discussed, and the defendant was stationed at Quetta, where there was a Court of Small Causes. Courts of Request are abolished by section 6 of the amending Act, which repeals sections 148—150 of the Act of 1881. Probably the word 'resident' was added to explain 'within the jurisdiction' and meet the case of troops on the march, and not to affect the cause of action. It is not likely that the amendment was introduced on account of *Wallis v. Taylor* (1). In that case it is ruled that the jurisdiction should be cautiously exercised (p. 39 of the report). These expressions are explained by Trevelyan, J., in *Collett v. Armstrong* (3). [PETHERAM, C.J.—Sections 148—150 established Military Courts of Request in places where there was no Court of Small Causes, and section 151 says what was apparently not necessary because there is nothing in the Act taking away any jurisdiction from Courts of Small Causes.] Section 151 is unnecessary. Here the Small Cause Court refuses to exercise any jurisdiction, and pending the decision of this reference, the Court has refused to grant any decrees, and keeps all cases similar to this pending. [PIGOR, J.—What was the intention of the Legislature in using the word 'resident'?] I can only suggest that it was intended

(1) I. L. R., 13 Calc., 37.

(2) I. L. R., 18 Calc., 144.

(3) I. L. R., 14 Calc., 826.

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to exclude officers on the line of march. It has no reference to *Wallis v. Taylor* (1). The Provincial Small Cause Court's Act (IX of 1887) says nothing as to residence or cause of action (*vide* chapters 2, 3). A certain jurisdiction is given by the Presidency Small Cause Court's Act, and I contend that if it is taken away by the Army Act it must be done by apt words of exclusion, such as 'resident only' or 'not elsewhere.' Clear and undoubted language would be required to take away the jurisdiction. The Army Act is re-enacted every year without being debated or considered. There is a consensus of opinion in this Court in favour of the view I put forward. The jurisdiction of Courts of Request was exclusive in cases under Rs. 400, and their abolition leaves all other Courts to exercise their jurisdiction, so that where there is no Court of Small Causes there would be no jurisdiction at all. Thus the limits of the jurisdiction being Rs. 500 at that time, if all other Courts were excluded, a man would only have to incur a debt exceeding Rs. 500, and he would be safe. This question is of great importance to Calcutta tradesmen.

No one appeared for the defendant.

The opinion of the Court (PETHERAM, C.J., and FIGOT and MACPHERSON, JJ.) was delivered by

FIGOT, J.—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 Court's Act.

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.

This question has already been considered in this Court in the case of *In the matter of the proposed suit of Watts & Co. v. Blckett* (2). 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

(1) I. L. R., 13 Calc., 37. (2) I. L. R., 18 Calc., 144.

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.

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.

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.”

This section so amended applies in the present case.

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

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, &c.,” 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.

Attorneys for the plaintiffs: Messrs. Sanderson & Co.