

1868.
December 21.
C. R. A. No.
166 of 1868.

false statement, (which is not necessary under Section 193 (*The Queen v. Aidrus Sahib*, 1 *Mad. H. C. Rep.* 38.) and declaring the offence punishable in the same manner as if the offender "gave false evidence," shows clearly, we think, that the Section has no reference to the examination of a witness in a judicial proceeding. On the second charge therefore the conviction is not sustainable.

But it is necessary to decide the further question, whether, when the prisoner made the false statement, he was under a legal obligation to *make a declaration* within the meaning of Section 191, for, if so, we should be bound to uphold the sentence under Section 426 of the Criminal Procedure Code, although that offence has not been charged. We are of opinion that the prisoner was not at the time under such an obligation, for the same reason as that on which we have held the first charge invalid. His statements were made in the character of an ordinary witness, and were so taken down, and as a witness he was not by law bound or at liberty to make any declaration or statement touching the matter under enquiry except on oath.

The result is that the conviction and sentence must be annulled, and the fine, if paid, returned to the prisoner.

Appellate Jurisdiction (a)

Civil Miscellaneous Regular Appeal No. 183 of 1868.

NA'RA'YANASAMY NAIKAR.....*Petitioner.*

VE'LU PILLAY.....*Counter-Petitioner.*

The Civil Court has no jurisdiction under Section 29 of Regulation IV of 1816 to make an order for the execution of a decree in a suit tried before a Village Munsif. The Section only applies where a Village Munsif has been guilty of corruption or partiality in the decision of a cause tried by him.

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THIS was a petition against an order of F. S. Child, the Civil Judge of Tinnevely, dated the 3rd April 1868.

The appellant in this case was the defendant in a suit before the Village Munsif of Thurgungycolam, in the

(a) Present : Scotland, C. J., and Ellis, J.

district of Tinnevely. The counter-petitioner Vélú Pillai was the plaintiff in the suit, which was tried before the Village Munsif under Regulation IV of 1816, in which a decree was passed in favor of the plaintiff. The counter-petitioner Vélú Pillai alleged that he had not obtained satisfaction of the decree in consequence of the misconduct of the Village Munsif, and he presented a petition to the Civil Judge of Tinnevely praying to have the decree executed. A petition was alleged to have been sent by Vélú Pillai to the Village Munsif asking him to withdraw the execution of the decree on the ground that he had received the amount of the decree from the defendant in the suit; but Vélú Pillai denied that the document was a genuine one.

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By an order dated the 3rd April 1868, the Civil Judge directed that the petitioner had a right to have his decree executed, and, holding that the petition said to have been given by Vélú Pillai to the Village Munsif was a forgery, the Civil Judge annulled it under Section 24, Regulation IV of 1816.

The appellants appealed to the High Court under Section 35 of Act XXIII of 1861 upon the ground that the Civil Judge had no jurisdiction to make the order.

O'Sullivan for the petitioner.

Rama Rao for *Srinivasa Chariyar* for the counter-petitioner.

The Court delivered the following

JUDGMENT:—This case is not within the Code of Civil Procedure, and Section 29 of Regulation IV of 1816 did not empower the Civil Court to make the order in question. That Section applies only when a Village Munsif has been guilty of corruption or partiality in the decision of a case. Here the decree is not objected to, but it is alleged that a fraud has been practised by which the execution of it is prevented. The order of the Civil Court must therefore be set aside under Section 35 of Act XXIII of 1861.

The plaintiff will be quite at liberty to apply again to the Village Munsif giving all the evidence that he can to

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support the charge of fraud, and, should he refuse to take the proper proceeding to enforce the decree, the plaintiff may, if so advised, seek redress by taking criminal proceedings against him or the defendant or both.

It is accordingly ordered that the order of the Civil Court, dated the 3rd April 1868, be, and the same hereby is, set aside as having been passed without jurisdiction.

Appellate Jurisdiction (a)

Special Appeal No. 311 of 1868.

TOTAKOT SHANGUNNI MENON the } *Special Appellant.*
Dewan of Cochin.....

KURUSINGAL KAKU VARID and } *Special Respondents.*
another

A suit may be maintained against a surety according to Hindu Law although the principal debtor has not been sued.

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of 1868.

THIS was a Special Appeal against the decree of G. R. Sharpe, the Civil Judge of Calicut, in Regular Appeal No. 428 of 1867, modifying the decree of the Court of the Principal Sadr Amin of Calicut in Original Suit No. 46 of 1865.

This was a suit to recover from the defendants as the sureties of one Punakel Parunji Kunhappa the sum of rupees 5,887-15-5 with interest.

The plaint set forth that the abkarry farm of the Cochin Circar was taken at an auction by Punakel Parunji Kunhappa on his agreeing to manage it for one year from the 1st Chingam 1040 to the 31st Karkedagam last, and to pay rupees 610 per mensem by two instalments ; that accordingly on the strength of two kachits executed by the 1st and 2nd defendants on the 29th and 30th of Karkedagam 1039 agreeing as sureties to pay the amount on the failure of Kunhappa to do so, the purchase of the farm was confirmed to him ; that accordingly Kunhappa managed the farm for a year from the said Chingam to Karridagam and surrendered the farm, leaving a balance on that account

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