

to amount prescribed for Small Cause Courts, but, in the particular case under reference, no objection on that ground has been or can now be taken; and it is unnecessary therefore to consider that point.

1868.
December 21.
R. C. No. 37
of 1868.

Another objection which may be suggested is that such decrees, providing for the payment of maintenance for a future indefinite period, could not be enforced if, at a subsequent period, the widow by misconduct should forfeit her right to maintenance, but this objection has never been considered sufficient to prevent the passing of such decrees, and probably in a case of proved misconduct, sufficient to destroy the right, the Court which passed the decree would be as much at liberty to entertain that objection in answer to any application for execution in the same suit as the same Court or another Court would be at liberty to entertain it in a fresh suit.

Appellate Jurisdiction (a)

Criminal Regular Appeal No. 166 of 1868.

A. VEDAMUTTU *Appellant (Prisoner).*

A Hindu, who has become a convert to Christianity, is not under a legal obligation to speak the truth, unless his evidence be given under the sanction of an oath on the Holy Gospels, so as to justify a conviction under Section 193 of the Indian Penal Code.

A statement made by a witness in a criminal trial not upon oath or solemn affirmation is not a declaration within the meaning of Section 199 of the Penal Code, nor is the witness bound to make a declaration under Section 191.

THIS was an appeal against the sentence of J. C. Hannington, the Acting Session Judge of Calicut, in Case No. 84 of the Calendar for 1868.

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

The prisoner was charged with having, on the 4th of August 1868, being then a witness in Calendar Case No. 13 of 1868, which was a judicial proceeding then pending before the Assistant Magistrate of Malabar, and being bound by solemn affirmation to state the truth, intentionally given false evidence, by knowingly and falsely stating that he on the previous Monday week in company with one Karichen

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

went to Izad amsham, having left Calicut at $\frac{1}{2}$ past 5 that morning and reached Izad at half past 5 on the same evening, whereas he did not proceed to Izad, but remained at Calicut during the greater part of that day, and that he had thereby committed an offence punishable under Section 193 of the Indian Penal Code.

The prisoner was also charged under Section 199 with having made the above statement as a declaration in Calendar Case No. 13 of 1868 then pending before the Assistant Magistrate of Mulabar, which declaration the Assistant Magistrate was authorised to receive as evidence of a fact material to the issue of that case.

The defence, apart from that founded upon the facts, was that the prisoner was not legally bound to speak the truth, that the prisoner was a Christian, and his deposition before the Assistant Magistrate was given upon solemn affirmation, whereas it ought to have been taken on oath. It was established that the prisoner was a Christian, and that his deposition was taken on solemn affirmation.

The Session Judge held that there was a legal obligation to speak the truth within Section 193, and that there was a declaration within the meaning of Section 199 of the Penal Code, and the prisoner was convicted and sentenced to twenty-four hours' simple imprisonment, and to pay a fine of rupees 200, and in default one month's further simple imprisonment.

The prisoner appealed to the High Court against the conviction.

Gover for the appellant.

The Court delivered the following

JUDGMENT:—The prisoner in this case has been convicted on two charges under Sections 193 and 199 of the Penal Code, the charge of giving false evidence in a judicial proceeding being bound by solemn affirmation to state the truth, and that of making a false statement in a declaration before a Magistrate which he was authorised to receive as evidence of a fact material to the case then pending. Both charges relate to the same statement of the prisoner made when he was under examination before the Assistant Magis-

trate of Malabar as a witness in a criminal case, and taken down at the time in the form of a deposition. There is no doubt that the statement was wilfully false, but the prisoner had become a convert to the Christian faith, and the usual oath appears not to have been administered to him before he was examined ; he had simply made the affirmation required by Act V of 1840. The omission of the oath is now urged by the prisoner's Counsel as a fatal objection to the conviction, and we are of opinion that it is.

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

It was essential to the first charge to prove that the prisoner, at the time he made the false statement, was under a legal obligation as a witness to state the truth, and to constitute that obligation in the case of a witness in a judicial proceeding who professes the Christian faith, the sanction of an oath on the Holy Gospels is an absolute requirement of the law. Act V of 1840, which gives to the affirmation made by the prisoner the same legal effect as an oath, applies only to persons who are Hindus and Mahomedans by religion as well as by birth. The prisoner therefore has not, we think, been guilty of the offence alleged in the first charge.

In regard to the second charge, the question is whether the false statement can be held to be a statement made in a declaration within the meaning of the Section (199) on which the charge is framed. We are of opinion that it was intended by the Section to make the penalty attached to the offence of giving false evidence applicable to declarations which, although not compellable, have, on being made, the same effect as the compulsory declarations referred to in Sections 51 and 191, and that "declaration" in the Section means any statement of fact in the form simply of a declaration, which, for the purpose of proof of the fact declared to, has by itself all the legal force of evidence given on oath or the solemn affirmation substituted for an oath : in short a declaration receivable in lieu of personal testimony. Here the statement is a part of the prisoner's deposition as a witness, and as such, not having been made under the sanction of an oath, it is not receivable as legal evidence of the fact stated. Further, the provision in the Section making it essential to prove the materiality of the

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.

1869.
January 4.
C. M. R. A.
No. 183
of 1868.

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.