

Appellate Jurisdiction (a)

Referred Case No. 37 of 1868.

SINTHAYEE, widow of SANKARA UDAYAN (deceased),
against THANAKAPUDAYEN *alias* PONDILY UDAYAN and
another.

Arrears of maintenance can be recovered by process of execution in a suit in which a decree is passed providing for the payment of future maintenance. Where arrears of maintenance can be recovered by such process of execution they cannot be made the subject of a fresh suit.

THIS was a case referred for the opinion of the High Court by A. Annasamy Mudali, the Acting Principal Sadr Amin of Tanjore, in Suit No. 414 of 1868. 1868.
December 21,
R. C. No. 37
of 1868.

The plaintiff, a Hindu widow, brought the present suit to recover Rupees 78-10-8 due for arrears of maintenance from January 1866 to September 1868 at 15 callums of paddy and Rupees 7 in cash per annum. She alleged that her right to maintenance at the above rate had been allowed by the decree of the Additional Munsif of Tanjore in Original Suit No. 210 of 1865. The decree awarded to the plaintiff annual maintenance at a fixed rate. It had hitherto been held that such decrees might be executed annually on the failure of the judgment debtor to pay the amount or perform any other act mentioned in the decree; but the plaintiff put in a copy of an order, dated the 26th July 1868, made by the late Civil Judge of Tanjore, Mr. E. W. Bird, in which the Civil Judge held that a similar decree could not be executed every year. The Civil Judge was of opinion, having reference to the recent Stamp Act, the Civil Procedure Code, and the Rules for the guidance of District Munsifs as Judges of Small Cause Courts, that a suit for future maintenance could not be regarded otherwise than as declaratory decrees incapable of execution, but which might afford a good ground for a separate suit.

The question put by the Principal Sadr Amin was as follows :—

Does the constantly recurring cause of action, which

(a) Present : Bittleston and Ellis, JJ.

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

the failure to pay maintenance every year discloses form the subject of fresh suits in the face of a decree granting relief for a whole life ?

He intimated his own opinion that a fresh suit could not be maintained.

No Counsel were instructed.

The Court delivered the following

JUDGMENT.—The practice of all the Indian Courts has been for very many years to make decrees for payment of future maintenance to Hindu widows, either by directing the periodical payment of a fixed sum or by setting apart a portion of the property and assigning the interest or proceeds thereof to the widow for her maintenance. One instance is afforded in the case reported at page 36 of the 2nd Volume of *Madras H. C. Reports* (S. A. 433 of 1863), where this Court approved of the decree of the Principal Sadr Amin ordering future maintenance at 3 Rupees a month from the date of the plaint, and observed that “there is no authority for saying that a woman entitled to maintenance must, to obtain the sum to which she is entitled, bring annual actions.” That observation was no doubt made with reference to the question raised in that suit whether the plaintiff could recover arrears of maintenance ; but if it be true that the Courts have authority to decree payment of a fixed sum per month for maintenance it follows that such decrees must be capable of execution, in the same way as decrees for payments of money by instalments may be executed. (See Civil Procedure Code, Section 194, and Referred Case 25 of 1863, *Madras High Court Reports*, Volume 1, page 459).

There is nothing which we can discover in the Stamp Act of 1867, or in the Civil Procedure Code, to prevent the execution of such a decree, and if the arrears of maintenance can be recovered by process of execution in the suit in which the decree was passed, then they must be so recovered, and cannot be made the subject of a fresh suit (Section 11 of Act XXIII of 1861).

A question might arise as to the jurisdiction of a Small Cause Court to pass any such decree on account of the limit

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