1868. *June* 19. *C.P. No.* 123 *of* 1868.

we think it did not warrant the Judge in treating those applications as not having been made at all, and so shutting out the present application on the score of lapse of time. What Section 20 requires is, that some proceeding shall have been taken to enforce the decree or to keep it in force within three years; and though in the present case there may be ground for supposing that the applications in 1862 and 1865 were not made really for the purpose of then enforcing the decree, there is not, (as it appears to us) any ground for saying that they were not made in order "to keep it in force." There is no other way of keeping a decree in force than by some such application, and the use of these words seems to us to shew that the Legislature did not mean to compel a decree-holder to proceed *bonâ fide* to enforce his decree within three years, under the penalty of being altogether barred by lapse of time. We therefore reverse the decision of the Civil Judge and direct him to dispose of the application on the merits.

Petition allowed.

Original Jurisdiction (*a*)

Referred Case No. 46 *of* 1867.

C. APPIAH CHETTY against CHENGADOO.

The discharge of a defendant from confinement in jail, in consequence of the plaintiff's failure to pay subsistence money at the rate fixed by the Court, bars a second arrest and imprisonment in execution of the decree.

1868. *Jany.* 20. *R. C. No.* 46 *of* 1867.

THIS was a case referred for the opinion of the High Court by H. P. Gordon, the Acting Judge of the Court of Small Causes of Vellore, in Suit No. 215 of 1867.

No Counsel were instructed.

The Court delivered the following

JUDGMENT:—We take it that the plaintiff failed to pay the amount of subsistence batta for the unexpired portion of the current month at the rate fixed by the Court.

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

If so, we are of opinion, that the Acting Judge held rightly that the discharge of the defendant was a bar to a second arrest and imprisonment in execution of the decree.

Appellate Jurisdiction (a)

Regular Appeal No. 62 *of* 1868.

MR. D. W. AUCHTERLONIE..... .....*Appellant.*

MR. CHARLES BILL and another.....*Respondents.*

In the case of covenants in restraint of trade the deed of covenant must show a good consideration. The Courts will not enter into the question of the adequacy of the consideration. A covenant giving appellant the exclusive right to convey passengers to and fro on the road between Ootacamund and Metapolliem, is not a contract in general restraint of trade, and therefore is one which the law will enforce.

1868. *July* 3. *R. A. No.* 62 *of* 1868.

THIS was a Regular Appeal from the decree of R. G. Clarke, the Acting Civil Judge of Ootacamund, in Original Suit No. 4 of 1868.

Handley for the appellant, the plaintiff.

O'Sullivan for the respondents, the defendants.

The Court delivered the following

JUDGMENT :—This is a suit for the breach of a covenant not to carry on the business of carriers on the road between Mettapolliem and Ootacamund. The issues recorded properly raise the two points of the defence set forth in the written statement of the 1st defendant, namely, 1st the illegality of the covenant as being in restraint of trade and therefore opposed to public policy, secondly the want of any consideration for the covenant. No witnesses have been examined by either the plaintiff or the defendants, and neither of the documents marked B and C, nor the deposition taken from the plaintiff so far as the almost illegible writing can be deciphered, bear materially as evidence on either of the points. On the first issue, the Civil Judge has given judgment that the

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