Appellate Jurisdiction (*a*)

Civil Petition No. 123 *of* 1868.

KONDARAJU VENKATA SUBBAIYA.....*Petitioner.*

RAMAKRISHNAMMA *alias* URUPKRISTNAIYA and another..... } *Counter Petitioners.*

In order to keep a decree alive it is, under Section 20 of the Limitation Act, not necessary that the application for execution should be made with the intention of enforcing the decree at that time. All that the section requires is, that some proceeding shall have been taken to enforce the decree or to keep it in force within three years.

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

THIS was a petition against an order of J. R. Cockerell, the Civil Judge of Nellore, dated 7th February 1868.

Parthasarady Aiyangar for the petitioner.

The Court delivered the following

JUDGMENT :—This was an application for execution, which was rejected by the Civil Judge as barred by lapse of time.

The application was made in December 1867 ; and there had been two previous applications for execution, one on 5th January 1865 and the other on the 18th January 1862. The decree was dated 30th June 1852.

Act XIV of 1859 did not come into operation until the 1st January 1862 ; and by virtue of Section 21 the 1st application for execution was clearly in time, although nearly ten years after the date of the decree. Then the 2nd application was within three years of the 1st, and the third within three years of the second as required by Section 20 of Act 14 of 1859. But the Civil Judge appears to have considered that the first and second applications were not made *bonâ fide*. Now nothing is said in Section 20 about the *bonâ fides* of the applications ; and all that the Civil Judge meant by saying that they were not *bonâ fide* probably was that they were not really made for the purpose of obtaining process of execution at the time. This possibly may be so. It is not at all events an unreasonable inference from the facts to which the Civil Judge alludes ; but assuming it to be so,

(*a*) Present : Bittleston and Ellis, J.J.

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.