

certificate has actually issued, namely, by appeal or upon petition to the High Court.

1870.
April 21.
R. A. No. 52
of 1869.

Then the effect of the next section is to make a certificate, which has not been questioned by an appeal or petition, or which has been affirmed or freshly granted by the High Court under Section 6, prohibitory of the granting subsequently of another valid certificate, except as afterwards specially mentioned in the Act; and by Section 5 provision is made for taking security from the certificate-holder for the indemnity of persons entitled, as legal representatives or otherwise, to the money received by virtue of the certificate, whose right to recover by regular suit is expressly declared not to be affected by the Act.

It appears to us clear from these provisions that the intended operation of the Act is to make the right to the certificate conclusively determinable in the manner specially provided, and that the representative title of the certificate-holder is left open to question only in a suit or proceeding to enforce a claim to the assets realized under the certificate or to other property of the deceased. In the Bengal cases which were cited in argument from 8, *Weekly Reporter (Civil Rulings)* 126, and 3, *Bengal Law Report*, 28, note (1), no decision is expressed on the present question, and in both, the establishment of such a claim appears to have been part of the relief prayed.

The present suit therefore not being in our judgment maintainable, the decree of the Court below must be reversed, and the suit dismissed. We think the parties should bear their own costs in this Court and in the Court below.

Appeal allowed.

Appellate Jurisdiction' (a)

Referred Case No 20 of 1870.

M. BUTCHENNER *against* RAYUDU.

The granting a judgment-debtor the indulgence of a temporary stay of the warrant of execution issued to enforce his decree does not prejudice his right to execution at a subsequent time.

THIS was a case referred for the opinion of the High Court by C. Venkataratnam, the District Munsif of Rayavaram Zillah, Vizagapatam, in Suit No. 255 of 1867.

1870.
April 27.
R. C. No. 20
of 1870.

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

1870.
 April 27.
 R. C. No. 20
 of 1870.

The case was as follows :—

Plaintiff obtained a decree in his favor in the said suit for a certain amount and applied for execution of the same by the attachment of defendant's moveable property under Section 214 of the Civil Procedure Code.

When a warrant was issued for the realization of the sum, the plaintiff gave a document to the Court Amin entrusted with the execution of it, stating that the defendant satisfied him by saying that he could not pay the decree amount at present, and that he would pay the same in future ; and praying that the execution of the warrant might be postponed. The warrant was then returned in the terms of the said document.

The plaintiff subsequently applied for the execution of the said decree, but I entertain a doubt whether a decree, the execution of which was once given up by the judgment-creditor on the reliance of the terms alleged to have been offered to him by the judgment-debtor can be enforced, and whether such an arrangement as the above cannot be viewed as a fresh contract between the parties liable to an action on its breach.

The questions therefore for the decision of the High Court are whether a decree, the execution of which was once given up by the judgment-creditor, relying on the terms, alleged by him to have been offered by the judgment-debtor can be executed, and whether such an arrangement cannot be viewed as a fresh contract liable to an action on its breach ?

No counsel were instructed.

The Court delivered the following

JUDGMENT:—The plaintiff's act in granting his judgment-debtor the indulgence of a temporary stay of the warrant of execution issued to enforce the decree did not prejudice his right to execution at a subsequent time. The decision reported in 2, *Madras High Court Reports*, 305, has not the least bearing on the present case. The plaintiff therefore is entitled to execute the decree.