

## Appellate Jurisdiction. (a)

Referred Case No. 33 of 1869.

PERIYANNA CHETTY against GOVINDA GOUNDEN.

Section 168 of the Civil Procedure Code requires that there should appear to the Court to be satisfactory ground for believing that the default on the part of witnesses summoned to give evidence is without lawful excuse before issuing a warrant for the arrest of such witnesses. But it is not necessary for this purpose to institute a formal investigation and come to a determination on the evidence adduced.

1869.  
November 17.  
R. C. No. 33  
of 1869.

THIS was a case referred for the opinion of the High Court by A. J. Mangalam Pillay, the District Munsif of Tripatore in Suit No. 347 of 1869.

The case stated was as follows:—

This is a suit brought for the recovery of Rs. 24-6-0 due under a bond executed by defendant on 27th June 1865.

This suit came on for hearing before me on the 2nd Instant, and the defendant, not being then in attendance, was declared *ex-parte*.

The plaintiff's witnesses were not also then in attendance, though they had all been personally served with summonses.

The question for the decision of the High Court is, whether under the above circumstances, I am competent to order the witnesses "to be apprehended and brought before the Court" without previously satisfying myself that their non-attendance was "without lawful excuse." I am of opinion that under Section 168 of the Civil Procedure Code, it is the duty of the Court to satisfy itself, before ordering the witnesses disobeying summonses to be "apprehended and brought before the Court," that their non-attendance was without lawful cause, but that in doing so, the Court will be put to immense trouble, and the suitors to much delay and expense. I think, also, that before issuing a warrant against a witness not obeying a summons, the Court is bound to take evidence and make a due investigation as to the witness having wilfully and without proper cause disobeyed the summons.

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

No Counsel were instructed.

The Court delivered the following

1869.  
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K. O. No. 33  
of 1869. ?

**JUDGMENT** :—Section 168 of the Code of Civil Procedure requires that there should appear to the Court to be satisfactory ground for believing that the default on the part of the witness is without lawful excuse. But we are of opinion that it is not necessary for this purpose to institute a formal investigation and come to a determination on the evidence adduced.

The proper service of the summons must be proved, and if the proof in the present case led the judge to believe that the summons had come to the knowledge of the witness, and he saw no reason to doubt that the witness could give material evidence in the suit, and there was no one in attendance in the Court who could account for the absence of the witness, the discretionary power to issue a warrant given by the Section might, we think, be exercised.

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### Appellate Jurisdiction. (a)

*Civil Miscellaneous Special Appeal No. 52 of 1869.*

KARUPPANAN.....*Petitioner.*

MUTHANNAN SERVEY.....*Counter-Petitioner.*

A decree was passed in June 1851. Application was made for execution on the 21st July 1861, and from that date at various intervals, each less than three years, up to 1868. Upon different grounds all the applications were rejected, but the last order was reversed in appeal by the Civil Judge.

*Held*, that the last application was not barred by the Limitation Act.

**T**HIS was an appeal against the order of J. D. Goldingham, the Acting Civil Judge of Madura, dated the 20th November 1868, reversing the order of the Court of the District Munsif of Madura, dated the 22nd September 1868.

1869.  
November 18.  
C.M.S.A.No.  
52 of 1869.

*Handley* for Gover, counsel for the petitioner.

The Judges delivered the following judgments :—

**Mr. JUSTICE INNES.**—The decree in this case was passed on the 30th June 1851. Application for execution was made on 21st July 1861 and from this date at various intervals each less than three years up to 1868.

(a) Present : Innes and Collett, J.J.