

MADRAS HIGH COURT REPORTS.

APPELLATE JURISDICTION (a)

Referred Case No. 4 of 1871.

E. CHENGALRAYA CHETTI

against.

W. SUBBIAH.

The Code of Civil Procedure expressly preserves a distinction between arrest and imprisonment, and the immunity from further process is only generated by actual confinement.

1871.
January 8.
C. No 4
of 1871.

CASE referred for the opinion of the High Court by A. R. Virasámi Ayyar, the District Munsif of Tirupathi, in Suit No. 284 of 1866.

Plaintiff presented a Petition, No. 311 of 1870, praying for the execution of the decree in this suit by arrest of the defendant. It appeared that previously, on the 9th January 1869, the defendant was arrested in execution of the same decree and brought before the Court. He obtained 15 days' time for payment of the sum for which the arrest was made, remaining all the time a prisoner under the charge of the batta peon. On the 1st February following the plaintiff applied to the Court for the staying of the warrant of execution for a time, in consequence of a part payment made by defendant. The Court granted the application and discharged the defendant from arrest. The question submitted to the High Court was 'whether the re-arrest of the defendant, under the circumstances of this case, is legal.'

No counsel were instructed.

The Court delivered the following

JUDGMENT :—Our answer to the question referred must be that the second arrest is perfectly legal. It was decided by this Court in Civil Mis. Regular Appeal, 279 of 1870 (Calicut) that the Code expressly preserves a distinction between arrest and imprisonment, and the immunity from further process is only generated by actual confinement.

(a) Present : Holloway, Ag. C. J. and Kindersley, J.