1897.
May 26 & 28.

VIRASINGAM *v.* KATHIRAVELU.

C. R., Chavakachcheri, 9,163.

Transferee of decree—"Equities" enforceable by a judgment-debtor—Setting off amount of decree in one case against that of decree in another—Decree for costs—Decree capable of execution—Civil Procedure Code, ss. 340 and 345.

The "equities" mentioned in section 340* of the Civil Procedure Code need not necessarily be equities of the judgment-debtor in the same cause. Hence, where the transferee of a decree in an action applied for execution, *held* that the judgment-debtor was entitled to set off against such decree the amount of a decree in his favour in another action against the decree-holder in the former.

A decree for costs not yet taxed cannot be said to be a decree capable of execution in terms of explanation 1 of section 345 of the Civil Procedure Code.

THE facts of the case appear in the judgment.

28th May, 1897. WITHERS, J.—

The facts of this case are briefly these. The original plaintiff on record received judgment against the first defendant for a sum of Rs. 80 with costs. If the formal decree which should follow the judgment and bears the same date is the one minuted at page 3, it is imperfect, for it does not state the amount of costs which the first defendant was adjudged to pay to the plaintiff.

The 188th section of the Civil Procedure Code requires the amount of costs to be entered in the decrees of a Court of Requests. But this by the way. The decree was assigned to a person whose name was allowed to be substituted for the original plaintiff on the record. When the substituted plaintiff applied to take out execution for the decree in full, he was opposed by the judgment-debtor, who claimed to set off against the new judgment-holder two judgments for costs which he had recovered against the original judgment-creditor in two cases of the Court below, viz., 9,121 and 9,346, and to reduce the amount liable in this case by the combined amount of the costs in the two other cases.

The Commissioner favoured the judgment-debtor's contention to this extent. He said 'those costs are an equity to which the

* Section 340 of the Civil Procedure Code: "Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder."

transferee's decree is subject, and so he stayed the issue of the petitioner's writ for ten days to enable the judgment-debtor to have the costs taxed in the two cases referred to.

Now, I think the Commissioner's order technically wrong, but I do not propose to disturb it, for it has not been shown to me that the delay imposed on the judgment-holder has prejudiced any substantial rights (see section 39 of Ordinance No. 1 of 1889).

This of course implies that I think his order right in principle. I am of that opinion, notwithstanding the argument of Mr. Sampayo, that the equity referred to in section 340 of the Civil Procedure Code must be an equity of the judgment-debtor in the very same cause.

That this is not so is clear from section 345. Cross decrees in the same Court are equities according to illustration 1 of that section. But then those decrees must be capable of execution at the same time.

Now, until the costs have been ascertained and certified by the chief clerk, I do not see how the decree ordering costs can be said to be capable of execution.

If section 188 before mentioned had been duly observed, the decree in the two cases referred to would have been capable of execution at the time the present decree-holder applied for execution of his decree in this case.

Hence I call the order technically wrong, because on the Commissioner's own showing the cross decrees were not ripe for execution at the time of the decree-holder's application.

If the costs of the cross decrees were duly certified within the time allowed by the Courts to the judgment-debtor, the Commissioner's order will stand. If they were not so certified the decree-holder must be allowed to take out execution in full.

No costs of this appeal.