

Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice,
and Mr. Justice Wendt.

1908.
April 8.

ENSOHAMY v. MARICAR.

D. C., Matara, 2,455.

Execution, application for—Order thereon—Res judicata.

An order allowing an application for execution of decree, after notice to the defendant, is conclusive of the rights of the parties as at the date of the order, and operates as *res judicata* between them.

A PPEAL by the plaintiff from an order of the District Judge of Matara. The facts sufficiently appear in the judgment of the Chief Justice.

A. St. V. Jayewardene, for the plaintiff, appellant.

E. H. Prins, for the defendant, respondent.

Cur. adv. vult.

April 8, 1908. HUTCHINSON C.J.—

This was an application by the defendant to certify payment of the judgment debt. Judgment was obtained by consent in March, 1900, for Rs. 399, with interest and costs. On July 6, 1900, writ of execution issued. The defendant alleges that he paid the debt in December, 1900, and he produces a receipt dated December 20, 1900, purporting to be signed by the plaintiff, and to be a discharge in full of principal, interest, and costs, except proctor's fees. On June 27, 1901, the writ was returned, and the sale stayed at the request of the creditor. In June, 1902, the plaintiff applied for writ to be re-issued. November, 1902, similar application to recover Rs. 459.76. January, 1903, the plaintiff applied for notice on the defendant to show cause why writ should not issue against him for Rs. 459.76. Notice was duly served on defendant for February 21. On February 21, 1903, the defendant was absent, and execution ordered to issue. March, 1903, fresh writ ordered to issue for Rs. 459.76. September, 1906, the plaintiff having died, his widow obtained notice on defendant to show cause why she should not be substituted plaintiff. November, 1906, plaintiff and defendant being present and no objection made, the motion for substitution of plaintiff was allowed. January, 1907, notice on defendant to show cause why execution should not issue. February 23, defendant said he had cause to show. Case fixed for March 9. March 9, defendant absent; order for writ to issue. Then in August the defendant made this application. The District Judge said that the issue is, whether the receipt produced by the defendant is genuine

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or not, and he decided that it is genuine. But there is the further question which was raised, and which the Judge does not refer to, whether the defendant can prove any payment made before the order of March, 1907. In my opinion the orders made for issue of execution for Rs. 459.76 in February, 1903, and March, 1907, are a *res judicata* between the parties, and the defendant cannot be allowed now to prove that the judgment debt was satisfied before the date of the order of March, 1907. I would therefore discharge the order of the District Judge, with costs in both Courts.

WENDT J.—

I am of the same opinion. I think we must regard the two orders for the issue of execution against the defendant as conclusively settling the rights of the parties at their respective dates.

Appeal allowed.
