opinion that the cases were not in point, because in the present case it was not showed that the false document was made subsequent to the embezzlement. We entertain no doubt that the forgery and the criminal misappropriation form parts of one criminal transaction. Having regard to the definition of forgery, we are unable to hold that there was no forgery. There was clearly an intention to cause wrongful loss to Government by conveying the false impression that the receipt contained an acknowledgment of payment by the payee, and the fact of misappropriation in our opinion merely shows that there was an intention to cause wrongful gain to himself. A debtor who forges a release to screen himself from liability to pay the debt cannot be said not to be guilty of forgery, because he intended by the forgery to cover a dishonest purpose.

On the merits the appeal was dismissed.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Muttusami Ayyar.

ARIABUDRA AND ANOTHER (DEFENDANTS), APPELLANTS,

and

DORASAMI (PLAINTIFF), RESPONDENT.*

1888. February 27. March 15.

Civil Procedure Code, s. 244, Questions to be decided under—Hindu Law, Obligation of son to pay debt of deceased father—Nature of obligation.

D obtained a decree against the father of A and R, Hindus, on a hypothecation bond whereby certain land was pledged as security for repayment of a loan. The decree declared the land liable to be sold for repayment of the debt. The judgment-debtor having died before the decree was executed, A and R were made parties to the proceedings in execution and the land was attached. A and R objected to the attachment on the ground that their shares in the land were not liable to be sold in execution of the decree as they were not parties to the suit. This objection was allowed, and D brought a suit for a declaration that the property was liable to be sold. That suit was dismissed on the ground that a suit for a declaration would not lie. D then sued to recover from A and R the balance due under the decree against their father after crediting the amount recovered by the sale of their father's share. It was objected that the suit was barred by s. 244 of the Code of Civil Procedure:

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* Second Appeal No. 568 of 1887.

ARIABUDRA v. DORASAMI.

Held, that the duty of a son under Hindu law to pay his father's debt out of his own share of ancestral estate is not a matter which can be decided under s. 244 of the Code of Civil Procedure.

The questions contemplated by s. 244 are those which relate to the enforcement of the obligation created by the decree. The obligation to pay the father's debts out of the son's share of the ancestral estate is not an obligation created by a decree against the father.

APPEAL from the decree of J. A. Davies, District Judge of Tanjore, confirming the decree of S. Subbayyar, District Munsiff of Negapatam, in suit No. 349 of 1884.

The facts necessary for the purpose of this report appear from the judgment of the Court (Collins, C.J., and Muttusami Ayyar, J.).

Subramanya Ayyar for appellants.

Bhashyam Ayyangar for respondent.

JUDGMENT.—In original suit No. 329 of 1876 the respondent obtained a decree against the appellants' father upon a hypothecation bond executed by him in 1866. To this suit, however, the appellants were not parties, but the decree passed therein declared that the hypothecated property was liable to be sold, if necessary, in execution. The judgment-debtor having died before the decree was executed, execution was taken out against the appellants as his legal representatives and the property under hypothecation was placed under attachment. They objected to the attachment and the sale of their interest in the hypothecated property in execution of a decree to which they were not made parties, and their objection being allowed, the execution-creditor instituted original suit No. 83 of 1880 to have it declared that their shares were also liable for his debt. In second appeal No. 618 of 1881 it was held that the suit was not maintainable on the ground that the respondent sought for a declaratory decree only, though he was entitled to further relief. The High Court, however, observed that the execution-creditor, the respondent, would not be precluded from instituting an independent suit against the appellants to recover from them the balance of the judgment-debt which remained unsatisfied to the extent of the value of the ancestral property which had come to their hands. Thereupon the suit from which this second appeal arises was instituted by the respondent, and both the lower Courts decreed his claim on the ground that the decree-debt was neither illegal nor immoral, and therefore one which the appellants were bound to satisfy out of the ancestral property in their hands.

It is argued in second appeal that the liability of the ancestral property in their hands was a matter which ought to have been dealt with in execution proceedings, and that no separate suit will lie under s. 244 of the Code of Civil Procedure, and that the observation of the High Court in second appeal No. 618 of 1881 was a mere *obiter dictum* by which the appellants are not bound; and our attention is drawn to the decision of the Privy Council in *Chowdry Wahed Ali* v. *Mussamut Jumaee*(1) and to the decision of this Court in *Kuriyali* v. *Mayan*(2). It is provided by s. 244 that all questions arising between the parties to the suit in which the decree is passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree shall be determined by order of the Court executing the decree and not by a separate suit. The question, therefore, for decision in this second appeal is whether the son's pious obligation under the Hindu law to pay the debt of his father out of his share in the ancestral property is a matter which relates to the execution of a decree against his father within the meaning of that section. We are of opinion that it is an obligation distinct from that created by the decree which was passed against the father, that if the decree-debt was either illegal or immoral, the sons would be under no obligation to satisfy it, though the decree against the father might be perfectly valid, and that the questions contemplated by s. 244 are those which relate to the enforcement of the obligation created by the decree. It is one thing to execute a decree as we find it, and another to add to the obligation created by it so as to extend its scope. The cases cited by the appellants' pleader do not in our opinion support his contention. In *Chowdry Wahed Ali* v. *Mussamut Jumaee* the Privy Council observed that the question whether the property proceeded against in execution belonged to the judgment-debtor or to his legal representative in his own right was material for the purpose of fixing the legal representative with a liability *quâ* legal representative, and therefore one which related to the execution of the decree. The same view was taken by this Court in *Kuriyali* v. *Mayan*; and s. 234 of the Code of Civil Procedure is referred to as showing the nature of the inquiry which it is necessary to make in order to fix the legal representative with liability as such in execution. Though the

(1) 11 B.L.R., 149. (2) I.L.R., 7 Mad., 255.

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legal representative is, as ruled by the Privy Council, certainly a party to the decree under execution, he is so only for the purpose of the obligation created by it being enforced against him and the execution-creditor is not at liberty to insist on the enforcement of any obligation which is not included in it. In *Suraj Bunsi Koer* v. *Sheo Proshad Sing*(1), the claim asserted by sons to the recovery of their shares in ancestral property sold in execution of a decree against their father was entertained and decreed by the Privy Council in a subsequent suit, and the present suit, though brought by the execution-creditor, rests on the same principle, viz., the obligation on which the second suit is based is distinct from that created by the decree in the first suit. Another contention in appeal is that the claim is barred by limitation. The suit was clearly one to enforce payment of money charged on immovable property, and the contest was whether the charge was validly created by the father as against his son. The claim is therefore not barred by limitation, and we dismiss the second appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

1888. April 17.

MOIDIN AND ANOTHER (DEFENDANTS), APPELLANTS,

and

OOTHUMANGANNI (PLAINTIFF), RESPONDENT.*

Limitation—Adverse possession—Redemption of land by one of two co-mortgagors and re-mortgage thereof—Possession under second mortgage for more than 12 years.

A and B, two brothers, being entitled to certain land, mortgaged it in 1852 to C. In 1864 A redeemed the mortgage and re-mortgaged the land to D for the same amount. In 1885 the defendants (sons of A) redeemed the mortgage to D. In 1886 the plaintiff (son of B) sued defendants and the representatives of C and D to redeem a moiety of the land on payment of a moiety of the amount due on the mortgage of 1852. The defendants pleaded, *inter alia*, that the suit was barred by limitation as the land had been held adversely since the mortgage of 1864:

Held, that in the absence of proof that the land was held with an assertion of adverse title the plaintiff was entitled to a decree.

APPEAL from the decree of T. Kanagasabai Mudaliar, Subordinate Judge of Tanjore, confirming the decree of T. Venkatarama

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(1) L.R., 6 I.A., 88.

* Second Appeal No. 849 of 1887.