

“ 9. As I entertain, under the circumstances detailed above, a reasonable doubt as to whether an application for execution of a decree presented by the transferee thereof under an oral assignment can be legally granted or not, I beg to submit the point to the Honourable the Chief Justice and the Judges of the High Court for an authoritative decision thereon.”

There was no appearance in the High Court on behalf of either party.

KEMBALL, J.—The transferee of a decree is not entitled to have execution as of right like the original decree-holder; but section 232 of the Code of Civil Procedure (XIV of 1882) provides that, if the transfer be by assignment in writing, the transferee may apply for execution, and it provides what course under such circumstances may be taken.

Order accordingly.

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.

TIMA'PA SHANBHOG, PLAINTIFF, v. MA'NESHVAR KA'SHI,
DEFENDANT.*

1884
November 28.

*Civil Procedure Code, Act XIV of 1882, Sec. 341—Release of judgment-debtor—
Confinement in Court-house.*

Where the warrant of committal to jail has been made out, the discharge of the defendant whilst in confinement in the Court-house, for non-payment of the instalment of subsistence allowance, is a discharge from jail within the meaning of section 341 of the Code of Civil Procedure, Act XIV of 1882.

THIS was a reference under section 617 of the Code of Civil Procedure (XIV of 1882) from RáV Sáheb V. V. Vagle, Subordinate Judge of Kumta, who stated the case as follows :—

“ One Timápa obtained a money decree against Máneshvar in a case cognizable by a Court of Small Causes. In execution of the decree he applied for arrest and imprisonment of the judgment-debtor. Máneshvar was accordingly arrested and brought to the Court on 7th December, 1883. On the 10th December, 1883, he was directed to be committed to the Civil Jail at Kar-

* Civil Reference, No. 47 of 1884.

1884

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n.
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KÁSHI.

wár; but Timápa having failed to pay the subsistence allowance, the judgment-debtor was discharged on the 12th December 1883, and the application for execution was dismissed on 14th December 1883.

“Timápa now presents a fresh application for execution, praying for the arrest and imprisonment of his judgment-debtor.

“Section 341 of the Civil Procedure Code (XIV of 1882) says that a judgment-debtor discharged under that section cannot be re-arrested in execution of the same decree. I am humbly of opinion that this section applies not only in the case of a discharge by the officer in the charge of the jail, but also in the case of a discharge by the Court executing the decree. The confinement of a judgment-debtor in the Court-house till his removal to the Civil Jail must be counted as part of his imprisonment in the jail. I may here point out that judgment-debtors are often kept in custody in the Court-house for a considerable time on account of want of bailiffs to take them to the Civil Jail. But my opinion runs counter to the practice followed in this Court in the time of my predecessor. Under section 617 of the Code I, therefore, beg to refer the following question for the decision of the High Court:—

“A judgment-debtor is arrested and brought to the Court in execution of a decree for money. He is ordered to be committed to the Civil Jail and kept in custody in the Court-house for some time to enable the Názir to make arrangements for his removal to the jail. He is subsequently discharged by the Court on the judgment-creditor omitting to pay the subsistence allowance to be sent together with the warrant of committal. Can the judgment-debtor be re-arrested in execution of the decree against him?

“My opinion on this point is in the negative.”

There was no appearance in the High Court on behalf of either party.

SARGENT, C. J.—We think that the warrant of committal to jail having been made out, the discharge of the defendant whilst in confinement in the Court-house for non-payment of the instalment of subsistence allowance must be regarded as a discharge from jail within the meaning of section 341 of the Code of Civil Procedure.