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different from stranding, appears from the fact, as stated by Bayley (p. 174), that this clause is usually written "unless sunk, burnt or stranded." Sinking in its ordinary acceptation means "subsidence" in deep water, and is different from mere submersion by the high tide when stranded. Had the vessel slipped off the rock of ground where it stranded, and fallen back into deep water, it would then have sunk. But I cannot hold where a vessel, as in this case, merely runs aground and lists over, and is in consequence covered by the high tide which causes damage to goods on board, that she has "sunk" within the meaning of the word as used in a policy of insurance. I am of opinion, therefore, that the damage, in respect of which the claim is made in this case, was not caused by the sinking of the ship, and is not covered by the policy of insurance effected by the plaintiff. The plaint must be dismissed with costs.

Suit dismissed.

Attorneys for plaintiffs.—Messrs. *Craigie, Lynch and Owen.*

Attorneys for defendant.—Messrs. *Smith and Frere.*

4 B. 318—5 Ind. Jur. 255.

ORIGINAL CIVIL.

Before Sir C. Sargent, Justice.

GOVINDJI KHIMJI (*Plaintiff*) v. LAKMIDAS NATHUBHOY,
AN INSOLVENT, HIS WIFE GOMTIBAI AND C. A. TURNER,
ESQ., OFFICIAL ASSIGNEE (*Defendants*).
[12th August, 1879.]

*Husband and wife—Hindu married woman, effect of joint and separate contract by—
Stridhan—Separate property.*

A contract entered into by a Hindu married woman jointly with her husband and separately for herself, must, in the absence of special circumstances, be considered as entered into with reference to her *stridhan*, which is analogous to a woman's separate property in England.

[F., 6 B. 473 (477); R., 12 B. 228.]

THIS was a suit by the plaintiff to recover the sum of Rs. 1,109 and interest from the first and second defendants.

On 3rd January 1877 the plaintiff advanced to the first defendant a sum of Rs. 5,000 on the security of a mortgage upon a house in Bhendy Bazar belonging to the second defendant. On the same day a mortgage deed was executed, made between the [319] first defendant of the first part, the second defendant of the second part, and the plaintiff of the third part. The deed contained a covenant by the first and second defendants "for themselves, their heirs, &c., and as a separate covenant each of them for himself and herself, his and her heirs, &c." to repay the plaintiff the said sum with interest on the 3rd January 1878. By a subsequent clause the second defendant conveyed the house in Bhendy Bazar to the plaintiff as security for the loan.

The defendants failed to repay the money, and on the 8th October 1878 the plaintiff, in pursuance of the power of sale contained in the mortgage deed, sold the house for Rs. 4,100, and subsequently brought this suit for the balance of the debt. No written statement was filed.

When the case came on for hearing, the first defendant appeared, and consented to a decree; but the second pleaded her coverture, and objected to a decree being passed against her. The learned Judge ordered that the case should stand over for argument as to the second defendant, and further ordered that the plaint should be amended by inserting a paragraph giving particulars of the separate property (if any) possessed by the second defendant, and which the plaintiff sought to make available in execution of his decree.

Telang, for the plaintiff.—The plaintiff asks for a decree, not against Gombai personally but against her separate property. When execution is issued on the decree, the question as regards separate property may be raised. [SARGENT, J.—But is it not necessary for you to give some evidence that she has separate property?] It is not necessary to show that she has separate property prior to decree. The form of decree in Seton on Decrees (4th ed.), pp. 688-89, shows that in England a decree may be obtained without such evidence being given at the hearing. The texts cited in *Nathubhai v. Javher Raiji* (1) show that a married woman is responsible for debts contracted by herself or by her jointly with her husband. Counsel referred to *Evans v. Chester* (2); Daniel's Chan. Pr., 169; *Pemberton v. McGill* (3). The wife here is surety for her husband. [320] The intention is clear that she as surety contracted with reference to her separate estate; otherwise why did she join? *Johnson v. Gallagher* (4).

Mankar for the second defendant cited Norton's Leading cases, p.247; 1 White and Tudor's Leading Cases (4 ed.), 501.

JUDGMENT.

SARGENT, J.—The English authorities are of much assistance as laying down the general principle which governs the analogous case of married women in England in respect of their separate estate. Mr. Spence, in discussing the liability of a wife, says (5) that "by reason that her dealings cannot be considered as entered into in respect of any personal responsibility, the course of modern authority had been in favour of holding that all her dealings must be considered as entered into in reference to her separate property." In *Owens v. Dickinson* (6) Lord Cottenham said that, if a married woman has a power to deal with her separate property, "she has the other power incident to property in general, namely, the power of contracting debts to be paid out of it; and inasmuch as her creditors have not the means at law of compelling payment of those debts, a Court of Equity takes upon itself to give effect to them, not as personal liabilities, but by laying hold of the separate property as the only means by which they can be satisfied."

In India the *stridhan* of a married woman is, as regards her power over it, analogous to the separate property of a married woman in England, and there is no reason why it should not be similarly dealt with, so as to give effect to her contracts. In this case the second defendant has joined in a mortgage deed, by which she and her husband jointly and separately enter into a contract to repay the plaintiff the money which he advanced. This is a sufficient indication of intention to bind her *stridhan* in respect of which she was competent to contract. There is nothing to show that any improper influence was used to induce her to join in the

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(1) 1 B. 121 (124).

(2) M. & W. 847.

(3) 1 Jur. 1045.

(4) 3 DeG. F. & J. 415, per Turner, L.J.

(5) Spence Eq. Jur. Vol. II, p. 516.

(6) Cr. & Ph. p. 48.

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transaction. She appears to have voluntarily undertaken the liability in return for a benefit to the family. Under these circumstances she must be assumed to have contracted with reference to her *stridhan*, and to be, therefore, so far as her *stridhan* extends, liable to the plaintiff.

[321] I think the plaintiff is entitled to judgment against the first and second defendants. Execution, however, will only issue against the second defendant in respect of any *stridhan* of which she may be shown to be possessed (1).

Order accordingly.

Attorney for plaintiff.—*J. J. Cama.*

Attorneys for second defendant.—*Messrs. Tyabji and Sayani.*

4 B. 321 = 5 Ind. Jur. 256.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice (Officiating) and Mr. Justice M. Melvill.

HARI TRIMBAK AKOLKAR (*Plaintiff*) v. ABASAHEB *alias*
BAHIRJI JUGJIVAN SIRKE (*Defendant*).^{*} [27th January, 1880.]

Suit by one surety against another for contribution—Jurisdiction—Court of Small Causes—Act XI of 1865, s. 6.

A suit by one surety against another for contribution, where the sureties are bound by the same instrument, is a suit on an implied contract, and, therefore, within the jurisdiction of a Court of Small Causes.

Govinda Muneye Tiruyan v. Bapu and others (2) concurred in.

Ratanshankar v. Gulabshankar (3) followed.

[R., 6 B. 292.]

THIS case was referred for the opinion of the High Court by Madan Sbrikrishna, Judge of the Court of Small Causes at Poona. He stated it as follows:—

“This is a suit brought by a surety against his co-surety for contribution of the amount which he was compelled to pay on default of payment by the principal debtor. It was originally filed in the First Class Subordinate Court at Poona; but the Joint Second Class Subordinate Judge, Mr. Naoroji Dorabji, on the authority of the ruling of the High Court of Judicature at Bombay in *Ratanshankar v. Gulabshankar* (10 Bom. H. C. Rep., A. C. J., 21) returned the plaint to the plaintiff in order to its being presented to this Court.

“The plaintiff has accordingly presented the plaint to this [322] Court, and the question for decision is whether a suit for contribution between sureties can lie in a Small Cause Court or not?

“My opinion is, that such a suit cannot be maintained in a Court of Small Causes. By s. 6 of the Mofussil Small Cause Court Act (No. XI) of 1865, suits for money due on a bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, are (subject to certain exceptions) cognizable by a Court of Small Causes, and

^{*} Small Cause Court Reference, No. 6 of 1879.

(1) NOTE.—See *Collett v. Dickinson*, 11 Ch. Div., 687; and *In re Harvey's Estate*, 13 Ch. Div., 216.

(2) 5 M.H.C.R. 200.

(3) 10 B.H.C.R. 21.