

having been added to the amount of the said debt. This would not invalidate the rest of the agreement if the part which is void could be properly separated from it. The parties, however, have treated the two debts as a lump sum, and under these circumstances we think the contract must be regarded as an integral one. The agreement being void, the action against the present defendants, who are only sureties, also fails.

*Order accordingly.*

## APPELLATE CIVIL.

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

JA'VERMAL HIRA'CHAND, APPLICANT, v. UMA'JI  
HAYABATI, OPPONENT.\*

1884  
November 23.

*Civil Procedure Code, Act XIV of 1882, Sec. 341—Decree—Execution—Transfer—Assignment.*

The transferee of a decree is not entitled to have execution as of right like the original decree-holder; if, however, the transfer be by assignment, and in writing, section 232 of the Code of Civil Procedure, Act XIV of 1882, enables the transferee to apply for, and the Court to proceed to execution in the manner therein provided.

THIS was a reference under section 617 of the Code of Civil Procedure (XIV of 1881) made by Ráv Sáheb V. K. Joglekar, Subordinate Judge of Pátas, who stated the case as follows:—

“ A conciliation agreement purporting to have been executed before Mr. Gopál Annáji, the Conciliator of Bárámáti, between one Sháligrá́m Táraáchand and one Umáji bin Hayabati was ordered to be filed in Court on the 26th of November, 1880. The said agreement on the date it was ordered to be filed in Court commenced, under section 45 of the Dekkhan Agriculturists' Relief Act, (XVII of 1879), to take effect as a decree.

“ 2. One Javermal Hirááchand on the 9th of June, 1884, presented a *darkhast* for the execution of the said agreement, alleging that it was orally assigned to him by the said Sháligrá́m Táraáchand.

\* Civil Reference, No. 40 of 1884.

1884

JAVERMAL  
HIRACHAND  
v.  
UMAJI  
HAYABATI.

" 3. The said Sháligram Tárachand declared on oath that he had orally assigned the agreement to the said Javermal, that he had received nothing from the said Umáji bin Hayabati in satisfaction of the said agreement, and that he had no interest in the said agreement.

" 4. Notice was issued to Umáji bin Hayabati, in pursuance of the provisions of section 232 of the Civil Procedure Code, to show cause why the application for execution presented by the said Javermal should not be granted, believing that the said section was applicable to the present case. The said Umáji in pursuance of the said notice appeared and pleaded satisfaction of the said agreement. His contention under the provision of section 257 A. of the Civil Procedure Code and article 172 of the Second Schedule of the Limitation Act was over-ruled.

" 5. The question for determination now is, whether an application for the execution of a decree presented by the transferee of the same under an oral assignment can be entertained.

" 6. I am of opinion that an application for execution presented under the above circumstances can be entertained.

" 7. A bond can be assigned either orally or by a writing. In a Civil Court a decree can be obtained by the transferee of a bond transferred under an oral assignment against the debtor on the strength of the said bond. If a decree can be obtained by the transferee of a bond under an oral assignment, there seems to be no reason why the transferee of a decree under an oral assignment should fail in obtaining execution of it. The operation of obtaining a decree being, in my opinion, more important than that of procuring its execution, I believe an application for the execution of a decree transferred under an oral assignment presented by the transferee thereof can be fairly entertained.

" 8. The Civil Procedure Code, however, lays down no procedure as to the execution of a decree transferred under an oral assignment. Section 232 of the Civil Procedure Code seems to require that the assignment should be in writing. Why the Legislature should have laid so much stress on the assignment being in writing, is not quite clear.

"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 SHA'NBHOG, 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 Ráy 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 Kár-

\* Civil Reference, No. 47 of 1884.