12 B. 46.

1887
JULY 7.

APPELLATE CIVIL.

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Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.

12 B. 46.

MAHOMED HUSEIN (*Plaintiff*) *v.* RADHI (*Defendant*).*

[7th July, 1887.]

Civil Procedure Code (Act XIV) of 1882, s. 349—Court, power of, to release judgment-debtor after he is imprisoned—"Arrest" and "imprisonment."

"Arrest" as used in s. 349 of the Civil Procedure Code (Act XIV) of 1882 does not include "imprisonment." Therefore the power conferred on the Court, under that section, to release a judgment-debtor arrested in execution of a decree on security being given by him, ceases after he has been imprisoned or put into jail.

In the matter of William Hastie (1), dissented from.

In re Quarme (2), followed.

REFERENCE by Rav Bahadur K. C. Bedarkar, Acting Judge of the Court of Small Causes, Poona, under s. 617 of the Civil Procedure Code (Act XIV) of 1882. The reference was as follows :—

"In this case the defendant Radhi, was arrested and brought up before the Court under s. 336 of Code of Civil Procedure in execution of the decree passed against her in favour of the plaintiff, Mahomed Husein. Under the provisions of that section she was informed by the Court that she might apply, under chap. XX of the Code, to be declared an insolvent, and that she would be discharged if she had not committed any act of bad faith regarding the subject of her appilcation. The defendant did not express her intention to make such an application, and was committed to jail.

"Subsequently, she from jail made an application, under section 344, to be declared an insolvent, and prayed under s. 349 to [47] be released from jail on furnishing sufficient security that she would appear when called upon."

The question referred by the Small Cause Court Judge for the High Court's decision was :—

Whether her prayer for release could be complied with ?

The Small Cause Court Judge's opinion was in the negative.

Daji Abaji Khare, for the applicant.—The applicant can apply to be released on furnishing security. She did not lose the right by reason of being in jail at the time she applied. No doubt the words used in ss. 344, 349 of the Civil Procedure Code (Act XIV) of 1882, are "arrest" and "imprisonment." See *In the matter of William Hastie* (1).

Narayan Ganesh Chandavarkar, for the decree-holder :—When the applicant was committed to jail she lost the right to be released under s. 349 of the Code. The terms "arrest" and "imprisonment" are distinguished in the case of *In the matter of Rattonsi Kalianji* (3). When a judgment-debtor is once put into jail it is the right of the judgment-creditor to have him detained there. Section 341 of the Code expressly provides for the release of the debtor in certain cases only. The maxim *expressio unius est exclusio alterius*, therefore, is applicable. The Code does not

* Civil Reference No. 19 of 1887.

(1) 11 C. 451. (2) 8 M. 503. (3) 2 B. 148 (159 and 182).

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allow *interim* release of the debtor when he has been put into jail, except as provided by s. 341. *Hastie's case* (1) has put a wrong interpretation on the terms " arrest " and " imprisonment," and the interpretation of this Court should be upheld. Section 345 says that in the application the debtor shall state whether he is " arrested " or imprisoned ": so this shows that the intention of the Legislature was that the two terms should be distinguishable, and the right, which the debtor has to apply upon arrest, is lost when he is imprisoned. See also *In re Quarme* (2).

JUDGMENT.

SARGENT, C.J.—The circumstance that throughout the Code the terms " arrest " and " imprisonment " are employed as denoting different things, and, further, that in ss. 344 and 345 both " arrest " and " imprisonment " are mentioned where the **[48]** provisions of the sections are intended to apply in either case, precludes, we think, the larger construction that has been placed by the Calcutta High Court, *In the matter of William Hastie* (1), upon term " arrest " in s. 349.

Had the Legislature intended to give the Judge the power of releasing the judgment-debtor when in jail, we should have expected to find " imprisonment " mentioned as well as " arrest," as is done in the above sections. The decision *In re Quarme* (2) supports the construction of the section. The question referred to us is answered in that sense.

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12 B. 48.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.

KRISHNAJI JANARDAN (*Original Plaintiff*), *Appellant v.* MURRARRAV AND NARSINGRAV (*Original Defendants*), *Respondents.**
[7th July, 1887.]

Limitation - Joint family—Death of judgment-debtor—Execution against one of several representatives of a sole debtor—Death of such representative—Subsequent application for execution against other representatives—Practice.

An application for execution against one of the representatives of a sole judgment-debtor saves limitation against another representative.

Accordingly where the plaintiff, on the death of his sole debtor, sued out execution on the 18th June, 1881, under a *darkhast* No. 718 of 1878, against V., one of the three sons of the debtor, and the execution proceedings continued till the death of V. in March, 1884, whereupon the plaintiff applied on the 28th May, 1884, to put M. and N., the brothers of V., on the record as his representatives,

Held, that the application was not too late against M. and N. regarded as joint representatives with their brother V. of their father, the original judgment-debtor.

[F., 13 Ind. Cas. 313=22 M L.J. 169=11 M.L T. 19=(1912) M.W.N. 9.]

THIS was a second appeal from a decision of A. C. Watt, Acting District Judge of Poona.

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* Appeal, No. 691 of 1885.

(1) 11 C. 451 (457). (2) 8 M. 503.