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cannot claim it now. The decree was against her and her husband in general terms, and it should be executed as it is. See *Shaik Budan* v. *Ramchandra* (1). The execution proceedings came to an end when she was lodged in jail, and now the defence cannot be put forward.

JUDGMENT.

[230] SARGENT, C.J.—The application by Radhi to be released from prison was virtually an application for review of the order for her imprisonment, on the ground that it was contrary to law. Two objections were taken to this application by the judgment-creditor. First, that Radhi should have taken the objection when she was arrested and brought before the Judge, and that not having done so, it is now too late; but her mere omission to do so cannot, as it was contended by the opponent, be regarded as a waiver of her right of exemption from arrest; and, having regard to the nature of the right claimed, it was one which the Court could not properly decline to consider on review, however late the application might have been. Secondly, it was said that the decree was absolute in its terms, and contained no express limitation of her liability; and as she did not apply for a review, no other course was open to the Small Cause Court Judge in executing it but to enforce it in the ordinary manner. The decree had been made in a suit on a bond in which she had joined with her husband as surety, and simply directed her to pay the debt. As the law is clear that in such a case Radhi would only be liable to the extent of her *stridhan*—*Govindji Khimji* v. *Lakmidas Nathubhoy* (2) and *Narotam* v. *Nanka* (3)—it must be assumed that the direction to pay had reference to that fund only. We think, therefore, that the Small Cause Court Judge was wrong in refusing the application.

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APPELLATE CIVIL.

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

KASTURCHAND GUJAR (*Plaintiff*) *v.* PARSHA MAHAR (*Defendant*).*
[22nd September, 1887.]

Jurisdiction—Decree—Execution—British Courts in India, power of, to send their decrees for execution to Courts not in British India—Practice.

The Courts of British India have no authority to send their decrees for execution to Courts not in British India.

[F., 29 C. 400=6 C.W.N. 573; R., 34 C. 576=6 C.L.J. 30=11 C.W.N. 622.]

THIS was a reference by Rav Saheb Venkatrav R. Inamdar, Subordinate Judge of Bijapur, under s. 617 of the Civil Procedure Code (Act XIV of 1882).

[231] The question referred by the Subordinate Judge for the High Court's decision was :—

Has a Court in British India jurisdiction to transfer its decree to a foreign Court, or to a Court in a Native State, for execution by the latter?

The Subordinate Judge's opinion on the point was in the negative.

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* Civil Reference, No. 37 of 1887.

(1) 11 B. 537. (2) 4 B. 318. (3) 6 B. 473.

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Chimanlal Hiralal, for the plaintiff.—The decree can be sent for execution to the Court in a Native State. The term "Court" as used in s. 223 of the Civil Procedure Code will include a foreign Court. In s. 12 the word is qualified expressly by the addition of "foreign," and the intention of the Legislature may be gathered from this, that where "Court" is used alone it must include all Courts, and should not be confined to a Court in British India.

Motilal M. Munshi, for the defendant, contended that the British Courts cannot send their decrees for execution by Courts out of British India.

JUDGMENT.

SARGENT, C.J.—The Courts of British India have no authority to send their decrees for execution to Courts not in British India.

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12 B. 231.

APPELLATE CIVIL.

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

YASHVANT SHENVI AND OTHERS (*Original Plaintiffs*), *Appellants v.* VITHOBA SHETI, DECEASED, BY HIS MINOR SON (*Original Defendant*), *Respondent.** [22nd September, 1887.]

Mortgage—Mention in mortgage deed of another debt due to mortgagee distinct from sum advanced at date of mortgage—Clause in deed undertaking to pay off old debts when taking back the land—Old debt not a charge on land, but redemption conditional on payment of both debts—Execution—Claim to attached property—Order passed against claimant—Neglect of claimant to sue within a year after date of order—Civil Procedure Code (Act XIV of 1882), ss. 278, 279, 280, and 283—Limitation Act XV of 1877 sch. II, art. 11.

[232] V. mortgaged certain land to the defendant's father for a sum of Rs. 64 advanced by the latter at the date of the mortgage. The mortgage-deed stated that V. owed the mortgagee another debt of Rs. 100, which was due on a separate bond, and it contained a clause in the following terms:—

"The principal sum of *huns* (coins) due on that document, as also this document, I will pay at the same time, and take back the land along with this document as well as that document. Till then you are to continue to enjoy the land * * *." The plaintiff having obtained a decree against the mortgagor attached the land in execution. The defendant, (son of the original mortgagor), thereupon claimed that he held a mortgage upon it to the extent of Rs. 164. On the 9th March, 1881, the Court executing the plaintiff's decree made an order allowing the defendant's claim only to the extent of Rs. 64, and directed that the land should be sold subject to the defendant's lien for that sum. The plaintiffs brought the land at the execution sale, and offered the defendant Rs. 64 in redemption of his mortgage, which, the defendant refused. The plaintiffs then brought the present suit to recover possession.

Held, that the charge on the land did not include the old debt of Rs. 100. There were no words in the mortgage-deed expressly making that debt a charge on the property. The provisions in the deed only made the equity of redemption conditional on the payment of both the debts.

Quære—whether, under the circumstances of the case, the purchaser at the execution sale would be bound by such a condition.

Held, also, that the object of the defendant's application in March, 1881, was virtually that the Court should allow his mortgage to the extent of Rs. 164, and

* Second Appeal, No. 498 of 1885.