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case to show that even if there were a charge against individual petitioners of causing hurt, they had exceeded the right of private defence. We are inclined to hold that the case of *Pachkauri v. Queen-Empress* (1) has the fullest application to the circumstances of this case. With these remarks, we make the rule absolute, and set aside the conviction and sentences under both the sections 147 and 325 read with 149, the result of which, of course, will be that the order under section 106 must also fail. The petitioners will be at once released from jail.

E. H. M.

Rule absolute.

(1) (1897) I. L. R., 24 Calc. 686.

APPELLATE CIVIL.

Before Stephen and Mullick, JJ.

NABIN CHANDRA HAZARI

v.

MIRTUNJOY BARICK.*

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May 22,

Execution of Decree—Judgment-debtor, death of—Insolvency—Civil Procedure Code (Act V of 1908), s. 55 (4)—Surety, discharge of.

A judgment-debtor having under s. 55 (4) of the Code of Civil Procedure, found a surety that he would apply to be declared an insolvent within a specified time, and would appear when called upon, died before the expiration of such time:

Held, that the surety was discharged by the death of the judgment-debtor, and it was not open to the decree-holder to proceed against him.

Krishnan Nayar v. Itinan Nayar(1) followed.

Appeal from Appellate Order, No. 341 of 1912, against the order of J. Phillimore, District Judge of Chittagong, dated April 30th, 1912, reversing the order of Suresh Chandra Sen, Munsif of Fatikchary, dated Jan. 27, 1912.

(1) (1901) I. L. R., 24 Mad. 637.

APPEAL by the decree-holder, Nabin Chandra Hazari. The facts of this case sufficiently appear from the judgment of the Court.

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Babu Atul Krishna Roy, for the appellant. This is an ordinary case of contract and is governed by the Contract Act, sections 33 and 35. The illustration to section 33 shows that the death of the judgment-debtor should not be regarded as discharging the liability of his surety under the Code of Civil Procedure, section 55(4). *Krishnan Nayar v. Ittinan Nayar*(2) is not binding on this Court. *Nrisingha Deb Chatterjee v. King Emperor*(1) is only an authority for the discharge of a bail bond in a criminal case.

Babu Dharendra Lal Kastgir, for the surety respondent, was not called upon.

STEPHEN AND MULLICK, JJ. In this case the appellant decree-holder applied to enforce the conditions of an undertaking given by a surety that the judgment-debtor would apply in insolvency within a specified time, and that he would appear in Court whenever he was required to do so. Before the time of his appearance in Court had arrived, the judgment-debtor died, and it was therefore impossible for the surety to produce him. The lower Appellate Court has held that thereupon the decree-holder loses his remedy against the surety. This is the correct view of the law, for the event which occurred was not in contemplation of either party and, therefore, put an end to the obligation that there was under the contract. This view is in accordance with the ruling laid down in the case of *Krishnan Nayar v. Ittinan Nayar* (2).

The result is that this appeal on behalf of the decree-holder is dismissed with costs.

H. R. P.

Appeal dismissed.

(1) (1912) 16. C. W. N. 550.

(2) (1901) I. L. R. 24 Mad. 637.