

## ORIGINAL CIVIL.

—  
*Before Mr. Justice White.*

POYNOR BIBEE *v.* NUJJOO KHAN.

1879  
 Nov. 20.

*Practice—Bond to secure Costs of Appeal—Rule nisi against Obligor—  
 Sureties.*

The proper mode of proceeding to put a bond to secure the costs of an appeal in suit, is to move upon affidavits, showing a breach of the condition of the bond, for a rule *nisi*, calling upon the obligor and sureties to show cause why the Court should not order that the bond be assigned to some person named in the rule.

IN this case the plaintiff's suit had been dismissed with costs. The plaintiff appealed, and was required to give security for the defendant's costs of the appeal; and the plaintiff thereupon executed a security bond to the Chief Justice for that purpose. The appeal was dismissed with costs, and the defendant now presented a petition, stating, that the whole of the costs remained unpaid; that the petitioner was desirous of proceeding against the surety for enforcing payment of the amount secured by the bond; and praying that the petitioner might be at liberty to sue on the bond for recovery of the amount thereof in the name of the Chief Justice, and that he might be at liberty to sign and verify the plaint and other proceedings in the suit.

Mr. *Allen* for the petitioner stated, that the practice to be pursued in these cases was not settled, and asked leave to amend the petition by an alternative prayer for a rule *nisi* calling upon the defendant and sureties to show cause why the bond should not be assigned to the defendant, and referred to *Neeram Begum v. Hafiz Moulvie Syed Ajeeb Ahmed* (1)

(1) NEERAM BEGUM *v.*  
 HAFIZ MOULVIE SYED AJEEB  
 AHMED.

security for the defendant's costs of the suit.

*Bond given to secure costs of a suit.*

By an order dated 13th May 1864, the plaintiffs were required to furnish

Under that order, one Lall Mohun Mookerjee executed a bond to Mr. Justice Peterson in the penal sum of Rs. 2,000, upon the condition that, if the plaintiffs should pay to the de-

1879 and to *Marshman v. Brookes* (1) and *In the Goods of*  
 POYNOR BIBER *Jones* (2).  
 v.  
 NUJJOO KHAN.

WHITE, J.—The preferable course is, that the bond should be assigned. Amend the petition by adding an alternative prayer, that the bond may be assigned to the petitioner, his executors and administrators, for the purpose of being sued upon, and let a rule *nisi* issue to the plaintiff to show cause why the bond should not be sued upon in the name of the Chief Justice, or why it should not be assigned to the defendant.

Attorney for the petitioner: Mr. *Leslie*.

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### PRIVY COUNCIL.

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P. C.\* ASHUTOSH DUTT (DEFENDANT) *v.* DOORGA CHURN CHATTERJEE  
 1879 AND ANOTHER (PLAINTIFFS).  
 May 28 &  
 July 26. [On appeal from the High Court of Judicature at Fort William in Bengal.]

*Trust for Religious uses—Beneficial Interest in Surplus—Construction of Will.*

A Hindu lady left by will to her sons lands belonging to her to support the daily worship of an idol, and defray the expenses of certain other religious ceremonies, with a provision, that in the event of there being a surplus after these uses had been satisfied out of the revenue of the said lands, such surplus should be applied to the support of the family.

*Held*, that this provision amounted to a bequest of the surplus to the members of the joint family for their own use and benefit, and that each of the sons of the testatrix took a share in the property, which, after satisfying the religious and ceremonial trusts, might be considerable, and could not be presumed to be valueless.

defendant such costs as might be de- Mr. Justice Peterson, against Lal Mo-  
 creed to him, the bond should be void, hun Mookerjee, and that the warrant  
 otherwise in full force. be signed, and plaint verified, by

Suit dismissed with costs.

Registrar.

5th September 1866.—On the appli- (1) 32 L. J., P. & M., 26.  
 cation of the defendant, it was ordered (2) *Ibid*, 26.  
 that a plaint be filed in the name of

\* *Present*:—SIR J. W. COLVILLE, SIR B. FRASER, SIR M. E. SMITH, and  
 SIR R. P. COLLIER.