respondent that it was a prudent act of management to grant a perpetual lease of such a large extent of property. We cannot help feeling that the karnam, who must have known more or less the real extent of the property he had taken on lease, took undue advantage of the ignorance of the other co-sharers in obtaining a permanent lease and in getting the clause, we have referred to already, inserted in it.

CHARYULU v. GOVINDASARI. SESHAGIRI AYYAR, J.

In our opinion, the proper decree to be passed is to declare that the lease is not binding on the plaintiffs and that they should be decreed possession for themselves and on behalf of the other co-sharers. We must therefore reverse the decree of the Courts below and grant a decree as above indicated. The plaintiffs are entitled to their costs against the defendant in this and in the lower Appellate Court. As they were content to have a decree for joint possession in the first Court, we make no order as to costs in that Court.

K.R.

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice Spencer.

THANGATHAMMAL AND ANOTHER (DEFENDANTS NOS. 5 AND 9), APPELLANTS,

v.

V. A. A. R. ARUNACHALAM CHETTIAR AND SEVEN OTHERS (PLAINTIFF AND DEFENDANTS NOS. 1 TO 4 AND 6 TO 8), RESPONDENTS.*

1918, April 22 and 25.

Hindu Law—Surety—Son's liability—Kinds of sureties—Surety for appearance, assurance and payment, meaning of—Texts of Yajnavalkya, construction of—Debt contracted prior to surety-bond—Effect on son's liability.

Where a Hindu executed a surety-bond stating that he would make the debtor pay within two months the amount due on a promissory note already executed by the latter and that, in default of payment by the debtor, he would pay.

Held, that the surety was one for payment; that the sons of the surety were liable under Hindu law for the payment and that it made no difference that

---

* Appeal No. 80 of 1917.

THANGATHAMMAL v. ARUNACHALAM CHETTIAR

the money had already been lent to the creditor before the surety-bond was executed.

Suretyship, according to the texts of Yajnavalkya, is of three kinds, viz., for appearance, for assurance and for payment: in the last case the surety's sons are also liable to pay his surety-debts.

According to the Mitakshara, the suretyship by way of assurance consists of a general warranty of credit, but a surety for payment is one who says, 'If he does not pay, then I myself will pay'.

Tukaram Bhat v. *Gangaram* (1899) I.L.R., 23 Bom., 454; *Rasik Lal Mandal* v. *Singheswar Rai* (1912) I.L.R., 39 Calc., 843, referred to.

APPEAL against the decree of A. S. BALASUBRAHMANYA AYYAR, the Subordinate Judge of Trichinopoly, in Original Suit No. 42 of 1916.

The plaintiff sued to recover Rs. 7,672 due to him on a promissory note executed by the first defendant on 7th April 1913, and impleaded his undivided sons as defendants Nos. 2 to 4; on account of the first defendant's failure to pay the amount due, the plaintiff gave him a registered notice by post on 18th May 1914; thereupon one Audinarayana Pillai, the deceased husband of the fifth defendant and alleged adoptive father of the ninth defendant, executed a varthamanam bond on 15th July 1914 agreeing that he would cause payment of the sum then due under the pro-note by the first defendant within two months and that, on the first defendant's failing to do so, he would himself pay the same to the plaintiff. On the failure of the first defendant and Audinarayana Pillai in paying the amount, the plaintiff brought this suit to recover the amount from the first defendant, his sons as well as the widow and the alleged adopted son of Audinarayana Pillai, who were joined as defendants Nos. 5 and 9, respectively. The latter pleaded that the surety-bond was not a genuine document and also that they were not liable under the Hindu Law. The other defendants raised other pleas regarding their liability for the debt. The Sub-Judge, who tried the suit, decided against the contentions of the defendants Nos. 5 and 9 as well as of the other defendants and decreed the suit for the plaintiff. The fifth and ninth defendants preferred an appeal (A.S. No. 80 of 1917) to the High Court, while the other defendants preferred the connected appeal (A.S. No. 155 of 1917); the latter appeal being principally on questions of fact, the judgment of the High Court thereon has been omitted from this report.

R. Kuppuswami Ayyar, *S. Krishnaswami Ayyangar*, *K. R. Rangaswami Aygangar* and *V. Pattabhirama Ayyar* for the appellants.

The Hon. *Mr. T. Rangachariar* and *K. S. Ganesa Ayyar* for eighth respondent.

A. Krishnaswami Ayyar for first respondent.

The JUDGMENT of the Court was delivered by—

SPENCER, J. SPENCER, J.—In Appeal No. 80 of 1917 at the hearing of this appeal, two contentions were raised—

(1) that the varthamanam or guarantee (Exhibit M) alleged to have been written by fifth defendant's husband Audinarayana Pillai was not genuine :

(2) that owing to the nature of the transaction which Exhibit M evidenced, the heirs of the guarantor are not liable under Hindu Law.

On the first point, we do not find the least reason to doubt the correctness of the learned Subordinate Judge's finding of fact. The circumstance that, during Audinarayana's lifetime a notice of demand setting out his liability under the varthamanam was sent to him and he did not repudiate his liability, tells strongly against the present theory that it is a forgery. It was again mentioned in the subsequent promissory note (Exhibit Q) in a sentence which may have been written after the stamp was affixed but not necessarily after Audinarayana had signed across the stamp.

The attempts made to prove an *alibi* for the first defendant on the day when Exhibit M was executed by means of certain post cards do not in our opinion in the least detract from the genuineness of that document.

The determination of the second point depends upon the application to the facts of this case of the Hindu Law as to the liability of sons of persons who have stood sureties for others. Verses 53 and 54 of Yajnavalkya run as follows :

दर्शनप्रत्यये दाने प्रातिभाव्यं विधीयते ।
आद्यौ तु वितथे दाप्यावितरस्य सुता अपि ॥
दर्शनप्रतिभूर्यत्र मृतः प्रात्ययिकोऽपि वा ।
न तत्पुत्रा ऋणं दद्युर्दानायय: स्थित: ॥

which are translated by Mr. Gharpure in his collections of Hindu Law texts thus :

THANGATH-AMMAL v. ARUNA-CHALAM CHETTIAR

SPENCER, J.

"Suretyship is ordained for appearance, assurance and for payment. The first two, however, should be made to pay in case of default while in the case of the last even the sons (should be made to pay). Where a surety for appearance or a surety by assurance dies, the sons of such a one must not pay (but) in the case of a surety for payment, they should pay."

It is argued that the fifth defendant was under Exhibit M a surety for assurance (pratyaye) not for payment (dana) and that the fact that the money had already been lent to the debtor when the surety bond was executed is an indication of this. According to the illustration given in the Mitakshara when commenting upon the above verses, the suretyship by way of assurance consists of a general warranty of credit, but a surety for payment is one who says : "If he does not pay, then I myself will pay." The distinction between these two classes of sureties is further explained in Colebroke's Digest, volume I, page 164, and has been discussed fully by RANADE, J., in *Tukaram Bhat* v. *Gangaram*(1). In *Rasik Lal Mandal* v. *Singheswar Rai*(2) it was held that a surety obligation for payment was binding on the son even where the creditor's claim against the principal debtor did not arise out of a loan from the creditor to the debtor.

In Exhibit M, the promise which Audinarayana Pillai made was in these words:

"I shall make the said Veera Pillai pay the amount due under the said promissory note within two months from this date. In default of payment as aforesaid by the said person within the said time, I shall pay the amount of principal and interest due on the said promissory note and get back the said promissory note and the surety bond and the title-deeds."

There could hardly be a more definite promise to pay, if the debtor failed to pay, than this, and therefore this falls under the third class of suretyship, that for payment (dana), and it makes no difference that the money had already been lent to the debtor when the surety executed the bond.

Defendants Nos. 5 and 9 are therefore liable to pay out of the family assets in their hands.

The appeal is dismissed with costs of plaintiff and eighth defendant (two sets).

K.R.

(1) (1899) I.L.R., 23 Bom., 454. (2) (1912) I.L.R., 39 Calc., 843.