

decree should be given effect to. Therefore, we would set aside the orders of the lower Courts and ask the first Court to take up the applications on file and dispose of them according to law. The respondents will pay the appellants costs.

We fix the fee at Rs. 15 in each case.

It is not denied that in three of the appeals (Appeals Nos. 132, 135 and 136) payments were made before the 20th of February 1920; they are therefore dismissed.

K.R.

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### APPELLATE CIVIL.

*Before Mr. Justice Kumaraswami Sastri and  
Mr. Justice Wallace.*

MUTHUKATHAN AMBALAM AND OTHERS (RESPONDENTS),  
APPELLANTS,

1927,  
October 21.

v.

GOVINDA AYYAR (PETITIONER—PLAINTIFF), RESPONDENT.\*

*Surety—Bond executed to the Court, undertaking to pay decree amount, if defendant did not file petition for insolvency within one month—Bond accepted by Court some days after bond was filed—Petition for insolvency filed more than one month from date of filing of bond, but within one month of its acceptance—Default—Bond, whether enforceable.*

Where a surety executed a bond and filed it in Court, undertaking to pay the decree amount if the defendant who was arrested in execution of a decree did not file an application for insolvency within one month, but the bond was accepted by the Court and the defendant released on a later date, and the latter filed an application for insolvency more than one month from the date on which the bond was filed in Court but within one month of its acceptance by the Court, on an application being filed by the decree-holder to enforce the bond against the surety,

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\* Appeal against Appellate Order No. 9 of 1926.

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*Held*, that the contract of suretyship became operative only on the date when the contract was accepted by the Court, that time should be computed from the date of acceptance and that, consequently, there was no default under the bond to make the surety liable under it.

APPEAL against the order of the District Court of Trichinopoly in A.S. No. 302 of 1925 preferred in E.P. No. 885 of 1925 (O.S. No. 152 of 1924) on the file of the Additional District Munsif of Kulittalai.

The material facts appear from the judgment.

*S. Panchapagesa Sastri* for appellant.

*K. G. Srinivasa Ayyar* for respondent.

### JUDGMENT.

The question in this case is whether the appellants, sureties, are liable on the bond executed by them. The bond is not dated but was filed in Court on the 19th March 1925 and the appellants bound themselves to pay the decree amount if the defendant who was arrested in execution of the decree did not file the schedule in one month or did not prosecute the proceedings after filing the schedule or if he was not produced in Court whenever the Court called upon the sureties to produce him. The petition for releasing the defendant was filed on the 19th and on the same date the sureties put in this bond. The decree-holder's vakil however did not consent to the release but stated that he wanted time to ascertain about the competence of the sureties. The Court passed the following order :—

“The decree-holder's vakil wants time to ascertain about the competency of the sureties. Call on 23rd March 1925. Let it be also tested in the meantime.”

On 23rd March 1925 the security bond was accepted by the Court and the following order was passed :—

“Security furnished and the security is accepted and so the man is released.”

It is admitted that the defendant applied for the benefit of the Insolvency Act within a month from 23rd March 1925, the date when the security bond was accepted and the defendant was released. Execution was taken out against the sureties on the ground that the insolvency petition ought to have been filed within one month from 19th March 1925 and that being out of time by one day, 20th April being a holiday, the sureties are liable to pay the decree amount under the terms of the bond. This contention was upheld by the District Judge. We do not think that the sureties are liable, as the surety bond became operative from the date when the surety bond was accepted by the Court. It is difficult to see how the liability of the sureties began immediately they presented the bond on the 19th. The Court did not accept the bond, it did not release the defendant, he was kept in custody till the 23rd and it made the acceptance of the bond conditional on the suretyship being satisfactory. To hold that the obligation to file the schedule began on the 19th would involve holding that the contract of suretyship began to operate before its acceptance. It is argued for the respondent that as the defendant had 27 days within which to file the schedule there was ample time for him to do so and it was not a case of impossibility of performance. The question is not impossibility of performance but the question is as to the date when the contract became operative. That date must be the date when the contract was accepted by the other side. The surety bond is a contract between the Court and the parties and there is no reason to put this contract on any different footing. There is no date fixed in the contract as the date on which he should file the schedule and the words "இது முதல்" in the contract which may be translated "from this date" had to be put in there

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because the sureties filed the document on that day and they assumed that the document would be accepted and the defendant released on that day. If, for any reason, whether due to the action of the Court or the vakil on the other side, the acceptance of the document is postponed, we see no reason for holding that the liability began from a date anterior to the acceptance of the contract. 'Thirty days' time is fixed by the Code in order to enable the defendant to prepare and file the schedule. To hold that the acceptance can be delayed and yet the period is to run before acceptance would be tantamount to holding that the defendant should file the schedule within a period shorter than the one month allowed by law and stipulated by the sureties and it may be that if the sureties were told that the defendant had to file the schedule within a much shorter time they might not have consented to be sureties as any abridgement of time increases the risk. We think that the proper way to construe a contract like this is that the contract runs from the date of the acceptance by the Court and the month begins from the date when the contract is accepted, unless there is something clear on the document to show that the parties contemplated the possibility of a lesser time being allowed for the filing of the schedule.

We would allow the appeal and dismiss the execution application against the appellants with costs throughout.

K. R.

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