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original damage, had brought a suit in which he claimed damages on the ground that people were deterred from taking his surface lands for building purposes owing to a fear that there might be fresh subsidence, we apprehend that such a suit would not have lain. In this case the cause of action was the wrongful act of the defendant in building the "pushta" on the land of the plaintiff. For that wrongful act compensation was awarded in the first suit, and a further remedy was decreed in the form of a mandatory injunction. All that has happened since has been that people have been afraid to take the rooms in the plaintiff's house fearing that some injury might happen to them. We need not decide whether the plaintiff would have any remedy or not, if, by reason of the original acts of the defendant, structural or other damages should happen to his property. In our opinion this suit does not lie for damages for non-compliance with the mandatory injunction to compel the performance of which the plaintiff had his remedy in execution. It is always dangerous to give illustrations, but it appears to us that it might equally well be contended that plaintiff who had obtained a money decree might bring a subsequent action for the non-payment of the decretal amount. We set aside the decree below and make an order dismissing the suit with costs here and below.

Appeal allowed.

APPELLATE CIVIL.

1890
December 5.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.

RAMZAN (PETITIONER) v. GERHARD (OBJECTOR).*

Surety, liability of—Judgment-debtor applying to be declared an insolvent—Civil Procedure Code, ss. 336, 344.

A person who executes a bond undertaking to produce a judgment-debtor at any time when the Court should direct him to do so, and standing security under s. 336 of the Civil Procedure Code for the judgment-debtor's applying to be declared insolvent, is released from his obligation under the bond when the judgment-debtor

* Reference under s. 617 of the Civil Procedure Code, by C. Steel, Esq., Subordinate Judge, Dehra Dún, dated the 1st November 1889.

files his petition under s. 344 to be declared insolvent. *Koylash Chandra Shaha v. Christophoridi* (1) approved.

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THIS was a reference to the High Court, under s. 617 of the Civil Procedure Code, by the Subordinate Judge of Dehra Dún. The order of reference was as follows :—

“ Under the provisions of s. 617 of the Civil Procedure Code, I have the honour to forward a bond of F. B. Sakloth’s under s. 336, together with the whole record, for orders.

“ Briefly, Mr. Gerard was arrested in execution of a decree, and Mr. F. B. Sakloth gave the bond. Mr. Gerard did make his application under s. 344 of the Civil Procedure Code, but that application was rejected, as on the day fixed for the hearing he did not appear. A previous application had been rejected on the merits by the District Judge of Rawal Pindi. Subsequently to Mr. Gerard’s application, F. B. Sakloth gave in a petition to the effect that “ he understands his responsibility is now ended, but should it be otherwise, petitioner hereby revokes his suretyship so far as it involves further responsibility.’ Therefore he was ordered to produce Mr. Gerard. This was on the 23rd September, and up to the 8th November, the date fixed for the hearing under s. 347 of the Civil Procedure Code, he did not do so.

“ The question is, was F. B. Sakloth released from his bond when Mr. Gerard applied under s. 344 of the Civil Procedure Code?

“ I am of opinion that he was not. The bond, though drawn up by Mr. Melvill, a vakil of long standing, is not in the form prescribed on p. 326 of the Circular Book, and this escaped my notice at the time it was presented. However, it seems essentially the same in its provisions, which are, first, that ‘ I, Mr. Gerard shall apply ’ &c., and, second, that ‘ he shall appear when called on.’ This last I take to mean until the decision of the insolvency case. Both conditions appear in s. 336 of the Civil Procedure Code. Mr. Melvill, however, has referred me to *Koylash Chandra Shaha v. Christophoridi* (1), which seems to be against me. The reasons for

(1) I. L. R., 15 Cal., 171.

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that decision, however, do not appear in the report of the case. Possibly it may have been based on the terms of the bond.

"I have the honour then to ask whether I am to follow that ruling, and, if I am, what procedure am I to adopt on a person's applying under s. 344 to secure his subsequent attendance till discharged or otherwise."

EDGE, C.J., and TYRRELL, J.—We are of opinion that the case of *Koylask Chandra Shaha v. Christophoridi* (1) was rightly decided and applied, and that the surety is discharged. The record will be returned.

1888
July 17.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

HAKIM-UN-NISSA (PLAINTIFF) v. DEONARAIN AND OTHERS (DEFENDANTS).^{*}

Act IV of 1882 (Transfer of Property Act), s. 135—Actionable claim—Transfer of claim for an amount less than its value—Suit by transferee to enforce claim—Defendant not entitled to plead that terms of transfer were unconscionable.

A mortgagee by conditional sale having obtained an order for foreclosure under Regulation XVII of 1806, his heirs, who were out of possession, executed a deed of assignment to a third person, transferring to him the rights acquired by the mortgagee under that order. At the time of the execution of the deed no steps had been taken by the mortgagee or his heirs to bring a suit for declaration of their title and for possession of the property. A suit for that purpose was brought by the assignee, the defendants being the conditional vendors and also the assignors under the deed above-mentioned. The latter made no defence, but admitted the justice of the claim, and a decree was passed in favour of the plaintiff against them as well as against the other defendants.

Held that the answering defendants, the conditional vendors, could not take advantage of the terms of the assignment for the purpose of defeating the claim, on the ground that the assignment was an unconscionable bargain, so unfair that the Court should not enforce it. If a person who has an actionable claim against another chooses to sell it cheap, that is no reason why that other is to stand cleared and discharged of his liability to the assignor.

Held also that the answering defendants were entitled to the benefit contained in the first paragraph of s. 135 of the Transfer of Property Act (IV of 1882), and would be entitled to take the bargain off the plaintiff's hands by paying to him the

* Second Appeal No. 461 of 1887, from a decree of G. J. Nicholls, Esq., District Judge of Ghazipur, dated the 22nd December 1886, reversing a decree of Pandit Ratan Lal, Subordinate Judge of Ghazipur, dated the 29th September 1885.