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him to write out the false statement that the search had actually taken place. Whilst being, therefore, of opinion that the petitioners should be acquitted of the charges under sections 147 and 332 of the Indian Penal Code, I am of opinion that they are guilty under section 503, read with section 149 of the Indian Penal Code. The applicants have been sentenced to heavy terms of imprisonment and also to heavy fines. I am informed that each of them has undergone 10 days' rigorous imprisonment. They have served sufficient terms of imprisonment, and I reduce the periods of their imprisonment to the periods already served. It is further submitted, and not contested, that the ten petitioners are members of one and the same family. The combined fines to which they have been sentenced amount to an aggregate sum of Rs. 1,900. I sentence each of the petitioners to a fine of Rs. 50, in addition to the imprisonment under the section under which I have convicted them. In case of non-payment of fine, each accused who does not pay such fine, will serve a term of three months' rigorous imprisonment.

Conviction altered.

APPELLATE CIVIL.

[Before Mr. Justice Stuart and Mr. Justice Ryves.]

BARKAT-UN-NISSA BEGAM (PLAINTIFF) v. MAHBUB ALI MIAN
AND OTHERS (DEFENDANTS).*

Act no. IX of 1872 (Indian Contract Act), sections 126 and 140—Mortgage—Payment of mortgage-debt by surety, and subsequent suit for sale brought by the surety upon the mortgages redeemed—Limitation—Act no. IX of 1908 (Indian Limitation Act), schedule I, article 135.

B, at the request of her sister L, agreed to guarantee payment of the amount due under two mortgages executed by L's deceased husband. B paid up the mortgage money and thereafter sued the representatives of L, who had since died, to recover the amount due under the mortgages by sale of the mortgaged property.

Held that B was entitled to the benefit of the securities held by the mortgagees; but she was in no better position than they had been, and as to one of the mortgages it was found that the suit would have been barred by limitation had the plaintiff been the original mortgagee, and was therefore barred as regards the surety.

* First Appeal no. 265 of 1916, from a decree of Harihar Lal Bhargava, Subordinate Judge of Shahjahanpur, dated the 15th of August, 1916.

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THIS was a suit for sale on two mortgages brought by a plaintiff, who, as surety for the debtor, had paid the amounts due thereon. The facts of the case are fully stated in the judgment of the Court.

Dr. S. M. Sulaiman and the Hon'ble Pandit Moti Lal Nehru, for the appellant.

Mr. B. E. O'Conor, Mr. Ishaq Khan and Munshi Baleshwari Prasad, for the respondents.

STUART and RYVES, JJ. :—Khurshed Ali Mian and his wife, Musammat Latif-un-nissa, executed the two mortgages, the subject of this appeal—(1) dated the 14th of June, 1899, in favour of Darbari Lal, for Rs. 3,000; and (2) dated the 27th July, 1900, for the same amount in favour of Darbari Lal and Lalta Prasad.

They had also executed two other mortgages, dated the 29th of November, 1897, and the 10th of August, 1899, in favour of Lalta Prasad alone. Those two mortgages formed the subject of the connected suit, and are disposed of by our judgment in First Appeal no. 264.

The only reason for mentioning this fact is because the two suits were tried together, and the evidence was recorded as one only, and in order to appreciate correctly the evidence in this case, it is necessary to remember the circumstances of the other case as well.

Khurshed Ali died in 1905, and in 1906, the creditors, that is, Lalta Prasad and Darbari Lal, demanded payment. Musammat Latif-un-nissa asked for time, which the creditors agreed to give her, provided they got security for their debts. Latif-un-nissa appealed to her sister Rani Barkat-un-nissa (plaintiff appellant), who was a wealthy woman, and she agreed to secure all the four mortgage debts. On their side the creditors agreed to reduce the rate of interest. All four mortgages were paid off by Barkat-un-nissa, according to the plaint, and these suits were brought by her to recover the amounts so paid from the sons and daughters of Khurshed Ali and Latif-un-nissa, who also is now dead. This suit was filed on the 7th of June, 1915.

The defendants are three adult sons, three adult daughters and some minors under the guardianship of Musammat Hasina Begam. One of the adult sons, Mahub Ali, admitted the claim

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and is the chief witness in the case. The two other adult sons and one of the adult daughters did not appear to contest the suit. Two adult daughters only, Musammats Hasina Begam and Anwari Begam opposed the claim.

It is, we think, necessary to bear this circumstance in mind in judging the value to be assigned to the evidence in the case.

The contesting defendants in this case admitted the execution of the mortgages, but pleaded that the mortgages had been paid off by Musammats Latif-un-nissa herself out of her own funds, and that Barkat-un-nissa, in fact, paid nothing. But they go on to say that if the court holds that Barkat-un-nissa made any or all of the payments, she cannot recover them from the defendants, as the payments were merely voluntary, and therefore gave her no lien over the defendants' property.

The court framed two main issues :—

(1) Whether the plaintiff stood surety for payment of the money due under the two bonds in suit; and made payments as surety?

(2) Whether she can obtain a decree for sale?

The court held that the plaintiff paid off the mortgage of the 27th of July, 1900, on the 12th of October, 1906, by a payment of Rs. 6,300, but that she did not do so as a surety, and therefore cannot get a decree for this amount.

With regard to the second mortgage, the plaintiff claimed to recover seven items.

[Their Lordships set out the amount and dates of each item.]

The court below has held that all these payments were made (though it has not discussed item no. 7 in its judgment), and apparently were made by money advanced by the plaintiff, but it held that, although there was no reason to suppose that Barkat-un-nissa advanced the money voluntarily, still, as "there was no privity of contract between the plaintiff and Darbari Lal, and she gave no guarantee to the latter, she did not become invested with the rights of Darbari Lal against the mortgaged property and therefore she could not get a decree for sale." It seems to have come to the conclusion that item 7 had not been proved, and held that, inasmuch as item no. 5 could not be

traced in the account books of the plaintiff, it could not be held with certainty that the plaintiff had paid it. In the result it gave plaintiff a simple money decree for item no. 6, for Rs. 1,376 with future interest, and held that the rest of the payments having been made more than three years before suit, were irrecoverable being barred by limitation.

The plaintiff has appealed and claims to recover the whole amount.

[Their Lordships discussed the evidence at length and found that the bulk of the money was paid by Barkat-un-nissa.]

We have now to discuss Barkat-un-nissa's legal position. We find, as the lower court did, that there was an oral guarantee given by Barkat-un-nissa to Latif-un-nissa, and that it was not voluntary. Section 126 of the Indian Contract Act makes no difference between an oral and a written guarantee. See also section 127 of the Act.

We have now to consider the effect of sections 140 and 141 of the Act.

Under section 140, it seems to us that when the surety has paid off the whole debt, he is entitled to stand in the place of the creditor who has been so paid off, and under section 141 the surety is entitled to the benefit of every security which the creditor has against the debtor at the time when the contract of surety is entered into. We have no doubt that Rani Barkat-un-nissa was fully informed about the mortgages, and that she agreed to pay up her sister's debt, and that the creditors, for that reason, agreed on a lower rate of interest being charged in the future. So far there is no difficulty.

The appellant's counsel claims that the plaintiff can take the benefit of both mortgages, and is entitled to a decree for sale of the properties hypothecated under both.

A difficulty at once arises with regard to the mortgage of the 27th of July, 1900. That was payable on demand, and time began to run from the date of its execution. Barkat-un-nissa (plaintiff) paid it up in full on the 12th of October, 1906. Her suit was brought in 1915, that is to say, within twelve years of her paying it off, but long after twelve years of its execution. On consideration, we hold, that she should have brought her suit on the basis

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of this security within twelve years of its execution, and, not having done so, her claim under this head is barred by time. We cannot see how she, as a transferee of the mortgagee rights, can be put in a better position than the mortgagee. She had approximately six years within which to sue; as she did not sue in this interval, we must hold that her present claim is barred, and in so far, we accept the decision of the lower court.

The same difficulty is not present in regard to the second mortgage. Payments were made yearly in reduction of both principal and interest, up to 1913. The suit was brought in 1915, within three years of the penultimate payment, and the suit is therefore clearly within time.

We have therefore only to satisfy ourselves that the seven items claimed by the plaintiff as having been paid by her, were in fact so paid.

[Their Lordships found that with the exception of one item all were paid by the plaintiff.]

We therefore think that the appeal must be allowed in part, and the decree of the court below be amended.

Decree modified.

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July, 31.

Before Justice Sir Pramada Charan Banerji and Mr. Justice Piggott.
NAND KISHORE (PLAINTIFF) v. ABDUR RAHMAN (DEFENDANT)*
Civil Procedure Code (1908), section 104; order XLIII, rule 1 (a) — Order returning a plaint for presentation in the proper court — Appeal.

Held that an appeal will lie from the order of an Appellate Court returning a plaint to be presented in the proper court. Dalip Singh v. Kundan Singh (1) followed.

THIS was an appeal from an order passed by the Subordinate Judge of Moradabad in an appeal, directing the plaint filed in the case to be returned to the plaintiff for presentation in the proper court. The suit was brought in the court of the City Munsif of Moradabad. One of the pleas taken in defence was that the suit was not cognizable by that court, but should have been brought in the court of the Munsif of Sambhal. The City Munsif, however, found against the defendant on this plea,

* First Appeal no. 69 of 1919, from an order of Lalta Prasad Johri, Subordinate Judge of Moradabad, dated the 1st of February, 1919.