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I find no such indication here. The land was leased for a fixed period at the end of which the lease terminated: provision was made for the recovery of the whole advance out of the rent payable to the lessor by the lessee and the land was in no way mortgaged as security for the repayment of the sum advanced. I am not called on, looking to the pleadings, to say whether this instrument should have been registered as a lease.

The last portion of the instrument, however, undoubtedly effects an hypothecation of a four annas share of the mauza, and the only question which is raised in this appeal for our decision under the Registration Law is whether this portion of the instrument creates a mortgage to the value of Rs. 100 and registration was in consequence compulsory under s. 17 of the Act of 1871. I think not: for the only certain sum secured by the hypothecation is Rs. 99-8-0, and the instrument cannot be held in the terms of the law to purport or operate to create any right, title, or interest of greater value than that sum.

The particular objection taken to the inadmissibility of the instrument in evidence with which we have to deal fails, and so far the first ground of appeal is valid, but the instrument cannot be used to enforce a lien to any greater extent than Rs. 99-8-0 against the property in suit.

Before Mr. Justice Pearson and Mr. Justice Straight.

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KHATUN BIBI (PLAINTIFF) *v.* ABDULLAH (DEFENDANT).*

Principal and Surety—Discharge of Surety by variance in terms of Contract—Act IX. of 1872 *(Contract Act), s.* 133.

A *kabuliyat* whereby a lessee agrees, without the consent of the person guaranteeing the payment of the rent agreed to be paid under a former *kabuliyat*, that he will pay rent at a higher rate than that agreed to be paid in such former *kabuliyat*, amounts to a variance of the terms of the contract of guarantee and discharges the lessee's surety in respect of arrears of rent accruing subsequent to such variance.

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* Second Appeal, No. 1321 of 1879, from a decree of Maulvi Mahmud Bakhsh, Additional Subordinate Judge of Ghâzipur, dated the 8th September, 1879, reversing a decree of Munshi Kulwant Prasad, Munsif of Rasra, dated the 13th May, 1879.

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TUN BIBI v. DULLAH.

On the 9th March, 1872, one Abdul Qayum, to whom a lease of certain zemindari estates for a term of seven and a half years had been granted by the proprietors of such estates in consideration of an annual payment of Rs. 390, executed a *kabuliyat* or counterpart of the lease in favor of the lessors. In this instrument he covenanted, *inter alia*, to pay the lessors Rs. 390 annually in four equal instalments. On the same date, that is to say, on the 9th March, 1872, one Tafazzul, as the lessee's surety, executed a bond in favor of the lessors in which he hypothecated his two-anna eight-pie share in a village called Chahubandh as collateral security for the due payment of the lessee's rent. On the 29th May, 1872, without the consent of his surety, the lessee gave the lessors a second *kabuliyat*. This instrument, after referring to the execution of the lease and the *kabuliyat* of the 9th March, 1872, declared as follows: "But owing to the absence of the collection-papers relating to the aforesaid villages, a small amount was fixed as the profits of the lessors, and only Rs. 390 were entered in the *kabuliyat* as the profits of the lessors: according to the *tahsíl* papers of the above villages, however, Rs. 450 should be fixed and paid as the profits of the lessees after deducting the revenue, the village-expenses, patwáris' fees, and the lessee's collection-fees: of this amount Rs. 390 have already been entered in the *kabuliyat*: for the purpose of paying the balance of such profits, Rs. 60, I declare, by maintaining all the conditions of the *kabuliyat* referred to, and hereby agree, that the Rs. 60 in question shall be paid in four instalments." The instrument then provided that these instalments should be paid together with the four instalments payable under the *kabuliyat* of the 9th March, 1872. On the 20th December, 1874, Tafazzul executed a deed of sale of his two-anna eight-pie share in the village of Chahubandh in favor of his wife Khatun Bibi, the plaintiff in the present suit, in consideration of a dower-debt. On the 14th May, 1877, the lessors obtained an *ex parte* decree against the lessee and his surety Tafazzul for arrears of rent which became due in 1873, which decree gave the lessors a lien on the surety's share in Chahubandh for its amount. This decree was subsequently purchased by the defendant in the present suit, Abdullah, who caused Tafazzul's two-anna eight pie share in the village of Chahubandh to be attached and pro-

claimed for sale in the execution of it. Thereupon the present suit was instituted by the plaintiff, Khatun Bibi, in which she claimed in virtue of the deed of sale dated the 20th December, 1874, and her possession thereunder, a declaration of her proprietary right to the property, "by releasing it from attachment and protecting it from auction-sale," and the cancellation of the decree dated the 14th May, 1877. The contentions of the parties to the suit gave rise to the question whether or not, regard being had to s. 133 of the Contract Act of 1872, the terms of the contract between the lessors and the lessee contained in the *kabuliyat* of the 9th March, 1872, had been varied by the terms of the subsequent *kabuliyat* of the 29th May, 1872, and thereby the surety was discharged, and the decree of the 14th May, 1877, was invalid as against the plaintiff, who was no party thereto. Upon this question the Court of first instance held that the terms of the contract contained in the first *kabuliyat* had been varied by those of the contract contained in the second *kabuliyat*, and Tafazzul was thereby discharged from his suretyship, and the plaintiff, being no party to the suit in which the decree of the 14th May, 1877, was made, was not affected by that decree; and in the event gave the plaintiff a decree. On appeal by the defendant the lower appellate Court held on the question above-stated that Tafazzul was not discharged from his suretyship, and the plaintiff was bound by the decree made against him.

The plaintiff appealed to the High Court.

Munshi *Hanuman Prasad* and Babu *Lal Chand*, for the appellant.

Pandit *Bishambhar Nath* and Shah *Asad Ali*, for the respondent.

The judgment of the High Court (PEARSON, J., and STRAIGHT, J.,) was delivered by

STRAIGHT, J.—We think that the first plea in appeal should prevail and that the judgment of the first Court should be restored. The *kabuliyat* of the 29th May, 1872, is practically an addition to that of the 9th March, and under it the amount of profits to be paid by the lessee is increased by Rs. 60 a year. It might well be that the surety would be willing to guarantee payment of Rs. 390, but unwilling to stand security for a larger sum, and it is admitted

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that his consent was neither asked nor given to the second agreement. The failure of the lessee to pay his rent was subsequent to the 29th May, and his defaults, in respect of which the suretyship was enforced, were all made after that date. S. 133 of the Contract Act therefore applies, and there having been a variance in the terms of the contract between the lessor and the lessee without the surety's consent, he was discharged. We think that the plaintiff appellant is not debarred from taking advantage of this objection to bring a suit for the relief she now seeks. The appeal will therefore be decreed with costs.

Appeal allowed.

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ne 7.

Before Mr. Justice Pearson and Mr. Justice Oldfield.

AHMAD-UD-DIN KHAN (PLAINTIFF) *v.* MAJLIS RAI AND OTHERS (DEFENDANTS).*

Attachment of Property—Debt—Vendor and Purchaser—Act X. of 1877 (Civil Procedure Code), ss. 266, 268.

The right or interest which the vendor of immoveable property has in the purchase-money, where it has been agreed that the same shall be paid on the execution of the conveyance, is not, so long as the conveyance has not been executed, a debt, but a merely possible right or interest, and as such, under s. 266 of Act X. of 1877, is not liable to attachment and sale in the execution of a decree. The person who purchases such a right or interest at a sale in the execution of a decree takes nothing by his purchase.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Babu *Oprokash Chandar Mukarji*, for the appellant.

Babus *Joyindro Nath Chaudhri* and *Ratan Chand*, for the respondents.

The following judgment was delivered by the Court:

OLDFIELD, J. (PEARSON, J., concurring).—The facts are these:—Defendants claimed certain property which was also claimed by one Rahso, and had been sold by her to Umrao Begam. Defendants then sold one half of their interest to Aftab Begam, wife of plaintiff, and she joined them in a suit against Rahso and Umrao Begam to recover the property. The Court of first instance dis-

* First Appeal, No. 100 of 1879, from a decree of Maulvi Sami-ul-lah Khan, Subordinate Judge of Moradabad, dated the 26th June, 1879.