

parties to the contract by way of a set-off. In view of these facts, it seems preferable that the plaintiff should be left to proceed against the members of the "Om Press" separately, if he is advised to do so.

On the above findings, we would dismiss both the appeal and the petition for revision, and leave the parties to bear their costs.

P. S.

*Appeal dismissed.*

### APPELLATE CIVIL.

*Before Addison and Dalip Singh JJ.*

SONEPAT CO-OPERATIVE SOCIETY,  
LIMITED (PLAINTIFF) Appellant

*versus*

KAPURI LAL AND OTHERS (DEFENDANTS)  
Respondents.

Civil Appeal No. 2210 of 1929.

*Indian Contract Act, IX of 1872, section 139 : Employer—Negligence in supervision—whether sufficient to discharge sureties for the employee—Liability of sureties—where bond by one is superseded subsequently by a bond by another surety.*

*K. L.* was employed as an accountant by a Co-operative Society and was authorised to receive and disburse monies. On 23rd December, 1925, *S. R.* became surety on his behalf for the faithful discharge of his duties in the amount of Rs.2,000 and was to remain liable to the extent indicated, if *K. L.* showed any neglect or dishonesty in the discharge of his duties. On 27th May, 1927, the Society demanded security to the extent of Rs.5,000 and this was furnished by *R. C.*, the terms of the bond being similar to those undertaken by *S. R.* *K. L.* embezzled the Society's money to the extent of Rs.5,905-11-0. The Society claimed this amount together with interest from *K. L.* and his two sureties. The two sureties pleaded the Society's negligence in supervision and delay in taking action against *K. L.* who absconded. *S. R.* also

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pleaded that his security bond had been discharged. The trial Court dismissed the suit as against the sureties and passed an *ex-parte* decree against K. L. On appeal by the Society—

*Held*, that mere negligence in supervision, or the failure of the Society to inform the sureties as soon as the embezzlement was noticed, or the delay in making a report to the Police, by which time K. L. had absconded, was not sufficient in law to discharge the sureties.

*Mayor etc. of Durham v. Fowler* (1), *Mayor etc. of Kingston-upon-Hull v. Harding* (2), and *Damodar Das v. Muhammad Hussain* (3), relied on.

*Held also*, that as there was no resolution of the Society cancelling completely S. R.'s security bond, the bond continued to be in force till the 27th May, 1927, when the fresh security bond of Rs.5,000 was executed by R. C. and therefore S. R.'s liability for acts up to that date remained, while R. C. was only liable to the extent of embezzlements subsequent to the date of his security bond.

*First Appeal from the decree of Mirza Abdul Rab, Senior Subordinate Judge, Rohtak, dated 21st June, 1929, granting an ex-parte decree against Kapuri Lal, defendant No.1, for Rs.6,086, and dismissing the suit against Sri Ram and Ram Chand, defendants Nos.2 and 3.*

VISHNU DATTA and ACHHRU RAM, for BADRI DAS, for Appellant.

SHAMAIR CHAND and QABUL CHAND, for Respondents.

ADDISON J.

ADDISON J.—The Sonepat Co-operative Society, Limited, sued Kapuri Lal, their accountant, as principal, for the recovery of Rs.6,086, embezzled by him and also sought to make Sri Ram and Ram Chandar liable as sureties. Kapuri Lal absconded and an *ex parte* decree with costs has been passed against him. The

(1) (1899) 22 Q. B. D. 394.

(2) (1892) 2 Q. B. D. 494.

(3) (1900) I. L. R. 22 All. 351.

two sureties were absolved from liability. Against this decision the plaintiff society has appealed claiming that the sureties should also at least have been held liable for the sum of Rs.3,873-3-0 with costs on that amount.

The case is a simple one. Kapuri Lal was the accountant of the Union and was authorised to receive and disburse monies. On the 23rd December, 1925, Sri Ram became surety on his behalf for the faithful discharge of his duties in the amount of Rs.2,000. The bond stated that even though Kapuri Lal might be promoted to some higher post the surety would be liable to the extent indicated, if Kapuri Lal showed any neglect or dishonesty in the discharge of his duties. On the 27th May, 1927, the Union demanded security to the extent of Rs.5,000 and this was furnished by the third defendant, Ram Chandar, the terms of the bond being the same as those of the bond given by Sri Ram.

It has been found (and this was not contested before us) that Kapuri Lal embezzled the following amounts :—

Rs.		A.	P.	
2,700	0	0		on the 18th October, 1926.
600	0	0		on the 31st January, 1927.
732	8	0		on the 1st April, 1927.
1,873	3	0		on the 1st August, 1927.
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Total	5,909	11	0	

Interest to the extent of Rs.180-5-0 was also claimed. The sureties accused the Society of negligence, and added that as it allowed Kapuri Lal to run away it could not enforce any liability against them. Sri Ram also pleaded that his security bond had as a

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matter of fact been discharged and that he was not liable for any of the sums embezzled. The Court below held that the bond of Sri Ram had been completely discharged and that he was thus not liable for any amount. It further held that the Union was negligent in superintending the work of Kapuri Lal and waiting from the 2nd of March, 1928 to the 12th of March, 1928 before reporting the matter to the police. For the reasons given both sureties were held not liable.

The appeal must succeed. It has been held in *Mayor etc. of Durham v. Fowler* (1), that mere laches of the obligee, or a mere passive acquiescence by the obligee in acts which are contrary to the conditions of a bond, is not sufficient of itself to relieve the sureties. It was found in that case that the plaintiffs had permitted the Collector to retain monies in his hands for a longer period than a week (which was contrary to statute and to a resolution passed by the plaintiffs), and also that the plaintiffs had permitted the Collector to mix the proceeds of the different rates. It was held that the plaintiffs' acquiescence in the Collector's irregular mode of accounting was not such connivance as to discharge the sureties; and that upon the facts proved and on the findings there was no defence to the action. This case applies with full force to the case of the two sureties before us, except of course as regards the special plea of Sri Ram that his security bond was discharged. There is another case *Mayor etc. of Kingston-upon-Hull v. Harding* (2). In this case the plaintiffs had the right of superintending the works of their contractor through their engineer, who ultimately gave a final certificate upon which the contractor was paid. The plaintiffs

(1) (1899) 22 Q. B. D. 394.

(2) (1892) 2 Q. B. D. 494.

then sued the sureties for the contractor and it was found that there was an omission on the part of the plaintiffs properly to superintend the work which led to the scamping of it. It was held that the mere non-exercise by the plaintiffs of their right of superintendence did not discharge the defendants from their liability as sureties; and also, that they were not discharged by the fact that the plaintiffs' engineer had given his final certificate. Lastly, it was held in *Damodar Das v. Muhammad Hussain* (1), that a mere gratuitous agreement by a creditor to give time to the principal debtor will not discharge the surety. In the present case all that was alleged was that there was negligence in supervision, that the sureties should have been informed on the 2nd March, 1928, when the Assistant Registrar became fully aware of the embezzlement, and that the matter should have been reported to the police on that date, instead of the 12th March, 1928, by which time Kapuri Lal had absconded. On the authorities quoted none of these things are sufficient to discharge the sureties.

It is also clear that Sri Ram's security bond was not completely discharged when the new surety bond for Rs. 5,000 was taken from Ram Chandar on the 27th May, 1927. The trial Court has based its findings as to this fact principally on the circumstance that Sri Ram had in his possession the security bond and produced it in Court. There is, however, good evidence to the effect that all documents were kept by Kapuri Lal who must have given back the bond to Sri Ram when Sri Ram resigned his Directorship on the 27th May, 1927, and the new security bond was taken. To rebut this evidence Sri Ram did not himself go into the witness box. This society is not run in the regular

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way employed by Banks, the work being for the most part superintended by honorary workers. There is no resolution of the society cancelling completely Sri Ram's security bond when fresh security to the extent of Rs.5,000 was taken from Ram Chandar on the 27th May, 1927. Of course it was discharged on that date but his liability for past acts remained. All that can be held is that on the date in question Sri Ram ceased to be liable on his security bond and Ram Chandar commenced to be liable on his. This means that Sri Ram must be held liable as surety to the extent of Rs.2,000 for the embezzlements, prior to the 27th May, 1927. Ram Chandar obviously can only be held liable to the extent of embezzlements subsequent to the date of his security bond. There was only one embezzlement of Rs.1,873-3-0 after that day. It must, therefore, be held that he is liable to that extent.

In the result, I would accept the appeal and, in addition to the decree already given against Kapuri Lal, I would grant a decree for Rs.2,000 against Sri Ram, as surety and a decree for Rs.1,873-3-0 against Ram Chandar, as surety. The two sureties will be jointly and severally liable for the costs of this appeal and will be similarly liable along with Kapuri Lal for half the costs of the plaintiffs in the Court below.

DALIP SINGH J.

DALIP SINGH J.—I agree.

P. S.

*Appeal accepted.*