

Before Mr. Justice Kemp and Mr. Justice Glover.

1871
March 9. PURI SUNDARI DEBI (PLAINTIFF) v. SRIMATI DROBOMAYI DEBI
 AND OTHERS (DEFENDANTS).*

Principal and Surety—Discharge of Surety.

A. and his surety B. executed a bond to C. for the faithful discharge of A.'s duties as a gomasta. In September 1866, upon accounts being rendered, A. was found indebted to C. in a certain sum of money. A. thereupon executed an ikrar to C., which was accepted by C., agreeing thereby to pay the amount due in February following. On default being made, C. sued A. and B. for the amount due.

Held, that the acceptance of the ikrar without the knowledge or consent of B. giving time for payment, was a discharge to the surety.

UPON the appointment of Baikantnath Sirkar, as gomasta of Puri Sundari Debi, Baikantnath and Chandra Sikhar Ghosal, as surety, executed a bond in favour of Puri Sundari; on the terms "that I become the *Mal* and *Haziree Zamin* (security), and that I do hereby pledge my share of my rent-free land, as per boundary mentioned at the foot of this bond, that the gomasta will, according to the terms of his kabuliya, collect rent from the ryots, and do other duties; that if he (the gomasta) omits to do so, or causes any loss, or neglects to render accounts, or when on your own account any amount be found due from him, the said Sirkar will pay the same, if he fails to pay, I and my heirs will pay the same."

In Aswin 1273 (September 16th to October 16th, 1866) upon the accounts being rendered, a sum of Rs. 1,628 was found due from Baikantnath. Baikantnath thereupon executed an ikrar in favor of Puri Sundari, agreeing to pay the amount in the month of Falgun then next ensuing. Baikantnath failed to pay the amount, and hence this present suit against Baikantnath and Chandra Sikhar for recovery of the amount due from Baikantnath.

The defendant Chandra Sikhar denied the execution of the security bond.

The Subordinate Judge found that the defendants had executed the bond, and that the amount was due. He accordingly passed a decree in favor of the plaintiff.

On appeal the Judge found that there was no evidence that the ikrar of 1273 (1866) had been executed with the consent of Chandra Sikhar, and held citing *Pogose v. Anundo Chunder Gohoo* (1), that he was not therefore liable for the balance due from Baikantnath.

The plaintiff appealed to the High Court, on the ground that her acceptance of the ikrar did not absolve the surety from his liability.

* Special Appeals, Nos 2143 and 2144 of 1870, from the decisions of the Judge of Hooghly, dated the 27th June 1870, reversing the decrees of the Subordinate Judge of that district, dated the 31st January 1870.

Baboo *Gupinath Mookerjee* and *Anand Chandra Ghosal* for the appellant.

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Baboo *Ramesh Chandra Mitter*, *Teyrucknath Sen*, and *Prasanna Kumar Roy* for the respondents.

PURI
SUNDARI BEBI
v.
DROBOMAY
DEBI

The judgment of the Court was delivered by

KEMP, J.—The only point taken in this case is that the Judge was wrong in holding that the surety was discharged from all liability to the plaintiff. The Judge, in support of his decision, has quoted a decision—*Pogose v. Anund Chunder Gohoo* (1). The Judge found that the surety had no knowledge of the bond or ikrar, for the ikrar is in the nature of a bond taken by the plaintiff from the principal,—that is to say the gomasta; and that this bond or ikrar was taken without the knowledge or consent of the surety, and fixing certain periods for the payment of the sums named in the bond without the knowledge of the said surety. We think that the Judge was quite right in applying the decision in *Pogose v. Anund Chunder Gohoo* (1) to this case. The liabilities of the parties were changed by this ikrar, and the surety in our opinion was rightly discharged. There can be no doubt that by the ikrar, which was executed on an adjustment of accounts, and which states that a certain sum, after deductions, was found to be due by the principal, the gomasta, he accepted that liability, stating that he could not pay that sum at present, and he took time up to the month of Falgun of the year in which the ikrar was executed, and this having been done without the consent or knowledge of the surety and his liability being thereby changed, he is entitled to be discharged from all liability, and the mere recital in the ikrar that the surety was still bound, cannot in any way affect or bind him.

The second ground taken in appeal is that the Judge has dismissed the whole case of the plaintiff even as against the principal who has been found liable by the first Court, and who has not appealed. Nobody appears for him in this Court, and as he has not appealed to the Judge against the decree of the first Court, that decree as against him must stand, and the decision of the lower Appellate Court will be modified to that extent. Costs in proportion.

*Before Mr. Justice Macpherson and Mr. Justice Mookerjee.**

TILAK PATAK (DEFENDANT) v. MAHABIR PANDAY AND ANOTHER
(PLAINTIFFS).*

1871
April 27.

Landlord and Tenant—Onus Probandi—Act VIII of 1869 (B. C.) s. 20.

¶ THIS was a suit for arrears of rent of a ticca cultivation, from 1274 Fasli (1867) to the 12 annas kist of 1277 (1870).

* Special Appeal, No. 2417 of 1870, from a decree of the Subordinate Judge of Sarun, dated the 26th August 1870, modifying the decree of the Moonsiff of that district, dated the 18th June 1870.