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Court. The only complaint is that the *thakbust* map, which was made in the year 1863, is erroneous. It is nowhere alleged that any injury has accrued to the plaintiff in consequence of that error, and therefore we think that there is no cause of action disclosed by the plaint. That being so, we think we are bound to entertain the objection, and not to allow this litigation to proceed further.

Under these circumstances we set aside the decree of the lower Appellate Court, and dismiss the plaintiffs' suit upon the ground that the plaint discloses no cause of action. But inasmuch as this objection was not taken in the Court below, we make no order as to costs.

Before Mr. Justice Phear and Mr. Justice Morris.

SYUD MAHOMED ABDUL HYE (PLAINTIFF) v. LUNJEET SING
 AND ANOTHER (DEFENDANTS).

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 June, 10

Court of Wards—Suit on Behalf of a deceased Lunatic's Estate by a Manager appointed by the Court of Wards

Baboo *Unnoda Persad Banerjee* for the appellant.

Baboo *Mohesh Chander Chowdhry* for the respondents.

The judgment of the Court was delivered by.

PHEAR, J.—It appears to us that there is no ground whatever upon which this suit can be supported.

The plaintiff is described as Syud Mahomed Abdul Hye, manager under the Court of Wards of the estate of Baboo Bindesharee Prosad Singh, deceased; and in this suit he sues two defendants Lunjeet Singh and his brother Sheochurn Lall. The case of the plaintiff is that Lunjeet Singh, in December 1867, entered into a security bond by which he undertook to be answerable to the Court of Wards for any default in the payment of rent and otherwise which a person of the name of Seosahoy might make, in performing the stipulation of a certain contract of lease which Lunjeet Singh, as was recited in his security bond, had himself perused, and had satisfied himself with regard to. It was described in the recit als as a lease of 8 annas of Muaza Salampore at rent of Rs. 243, and of 8 annas of another muaza at a rent of Rs. 170 to Seosahoy; and it is plain that it was the terms of this lease and of no other which Lunjeet Singh guaranteed the due performance of.

* Special Appeal, No. 1964 of 1873, against the decree of the Judge of Zilla Shahabad, dated the 3rd June 1873 affirming the decree of the Munsif of Arrah, dated the 18th January 1873.

Now at the outset, it is manifest upon this statement that Sheochurn Lall had no liability of any kind towards the plaintiff or anybody else, under the terms of this security bond, and therefore, so far as anything goes which appears in the plaint, it was certainly gratuitous on the part of the plaintiff to make Sheochurn Lall a defendant in this suit.

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But further, there is no ground shown in the plaint whereon Syud Mahomed Abdul Hye can maintain a suit for the purpose of enforcing the security bond which Lunjeet Singh made in December 1867. The bond was not made with Syud Mahomed Abdul Hye. Indeed, it is somewhat difficult to satisfy oneself as to the person with whom the bond was supposed to have been made. The words of the bond are exceedingly general, and all that can be gathered from it, is that Lunjeet Singh undertook to be responsible to the Court of Wards in whose charge the property of one Baboo Bindesharee Prosad Singh, a lunatic, was at the time when the bond was made for the due payment of rents, &c., which might become due under the specified lease of a portion of that property to Seosahoy. If the bond be construed strictly, then the Court of Wards is the only person who could sue to enforce its terms. But we are not aware that the Court of Wards has any such personality as would enable it to sue in this way.

It is however perhaps possible to construe this security bond as having been in the intention of the parties concerned made by Lunjeet Singh with the lunatic Bindesharee Prosad through the intervention of the Court of Wards in whose charge his property was. And in that case a suit could of course be brought upon the bond in the name of Bindesharee Prosad Singh, while he was alive, by any one who was manager of his estate acting as his next friend for the purpose of recovering compensation according to the terms of the bond in respect of rents which had become due to the lunatic from Seosahoy. But the present suit is not even framed in that way. Syud Mahomed Abdul Hye does not bring this suit in the name of the lunatic acting for the lunatic as his next friend and seeking to recover money which had become due to him. In truth, it was almost impossible for the present plaintiff to have brought this suit in that form, because he could not well have styled himself the next friend of the deceased person. Thus a grave difficulty meets him at the outset of the case, and that difficulty is really the test of the merits of the present suit. It shows that the plaintiff has no right to make the claim which he has preferred in the present suit. So far as any of the arrears of rent which are sought to be made good by this suit are arrears which accrued due during the lifetime of the lunatic Bindesharee Prosad Singh, these arrears, and the compensation in respect of them, must be debts which the lunatic's personal representative is entitled to recover; and so far as they are arrears which accrued due after the death of the lunatic, they must be debts which the successor of the lunatic, whoever he may be, is entitled to recover. It is plain, therefore, that, in this suit, two perfectly independent claims have been united; and there is nothing disclosed in the

1874 present plaint or elsewhere on the record to show that Syud Mahomed
 Abdul Hye is entitled to sue for the enforcement of either of them.

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Again, if Abdul Hye had established his right under a certificate, or otherwise to represent the deceased lunatic, still it seems quite plain that the surety is not by virtue of his bond of December 1867 bound to make good the liabilities which Seosahoy had incurred and failed to discharge under the kabuliat executed by him in 1868.

It has been argued before us by the learned Government Pleader that the liabilities of Seosahoy under his kabuliat of 1868 are substantially the same as the liabilities which he was under in respect of this particular mauza according to the terms of the original kabuliat or agreement of 1867. This may be so. But still it is not the liability which Lunjeet Singh undertook by his bond of December 1867 to guarantee. It is admitted by the learned Government Pleader that the original contract which Seosahoy entered into in 1867 was for a single lease to him alone of 8 annas of one mauza at a specified rent, and 8 annas of the other mauza at another rent. Whereas the lease which was finally agreed upon and accepted in 1868 was a double lease, *i. e.*, a lease of the 4 annas of the one mauza to Seosahoy alone, and a lease of 8 annas of the other mauza to Seosahoy with others, that is the contracts of lease into which Seosahoy entered in 1868 were different from the single contract of lease into which he entered in 1867, and which was recited in the security bond as the contract which Lunjeet Singh guaranteed the due performance of. There can be no doubt on these facts that Lunjeet Singh is not liable on his bond of December 1867 to make good the liabilities of Seosahoy under his kabuliat of June 1868. And therefore for every reason the present suit fails and ought to be dismissed.

Accordingly we are of opinion that the decree of the lower Courts is correct. And this appeal will be dismissed with costs.