

1877 judgments and to dismiss the plaintiff's suit with costs in the  
 BANNOO Courts below, and they allowed the appellant the costs of the  
 v. KASHEE RAM. appeal.)

*Appeal allowed.*

Agent for the appellants: *Mr. T. L. Wilson.*

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## APPELLATE CIVIL.

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*Before Mr. Justice Ainslie and Mr. Justice Kennedy.*

1877 CHUTTERDHAREE LALL (DECREE-HOLDER) v. RAMBELASHEE  
 Dec. 21. KOER AND OTHERS (JUDGMENT-DEBTORS).\*

*Security Bond—Surety—Execution—Act VIII of 1859, ss. 204, 342.*

A bond given as security for costs under s. 342 of Act VIII of 1859 may be enforced in a summary way by proceedings in execution.

*Ram Kishen Doss v. Hurkhoo Singh (1) and Gujendro Narain Roy v. Hemanginee Dossee (2) distinguished.*

IN this case, Chutterdharee Lall, the present appellant, had obtained a decree against one Mohabir Persaud and another, in the Court of the Subordinate Judge of Tirhoot. An appeal was filed against this decree in the High Court. Before the hearing of the appeal, the then appellants were called upon, under s. 342 of Act VIII of 1859, to furnish security for costs of the appeal. One Brojo Coomar Singh stood surety for these costs, and signed a security bond to that effect. The appeal was thereupon heard and dismissed. Brojo Coomar Singh having in the meantime died, Chutterdharee Lall applied for execution of his decree for costs against his representatives. The Subordinate Judge refused such application, on the ground that the High Court had not specifically named the surety Brojo Coomar Singh in its final decree. Chutterdharee Lall appealed to the High Court.

Miscellaneous Regular Appeal, No. 218 of 1877, against the order of Baboo Grish Chunder Ghose, First Subordinate Judge of Zilla Tirhoot, dated the 24th of March 1877.

(1) 7 W. R., 329.

(2) 13 W. R., 35.

Baboo *Rajendro Nath Bose* for the appellant.

The respondents were unrepresented.

The judgment of the Court was delivered by

1877

CHUTTERDHAR  
LALL  
v.  
RAMBE-  
LASHEE  
KOR.

AINSLIE, J.—It appears to us that this case is clearly distinguishable from the cases of *Ram Kishen Doss v. Hurkhoo Singh* (1) and *Gujendro Narain Roy v. Hemanginee Dasse* (2), in which it was held that s. 204 does not apply to parties who have become sureties after the decree. In the present case the security was demanded and taken under s. 342 before the decree, for the purpose of securing to the respondent his costs in the event of his being successful.

The case must, therefore, go back to the Subordinate Judge in order that he may allow execution to proceed against the sureties; but before doing so, it will, of course, be necessary that the decree-holder should give the surety notice of his intention to proceed against him instead of proceeding against the original judgment-debtor; he should be served with notice to show cause why the decree should not be executed against him.

We may also observe that in this case the original surety appears to be dead. It will, therefore, also be necessary, unless it has already been done in an earlier stage of the proceedings, to issue a notice under s. 216 before any steps are taken for enforcing the decree against the respondents.

*Appeal allowed.*

(1) 7 W. R., 329.

(2) 13 W. R., 35.