holding by payment of the rent assessed upon the land comprised therein. In our opinion, section 48 applies to cases in which the land held by the raiyat is co-extensive with the land held by the under-raiyat. The section was never intended to apply to cases of the class now before us.

1912

NIM CHAND SAHA v. JOY CHANDRA NATH.

We may add, that in the course of the argument at the bar, reference was made to the decision of Mr. Justice Geidt in the case of *Akhil Chandra Biswas* v. *Amyad Ali* (1), where a question similar in scope to the one before us, appears to have been raised but not decided; that judgment, so far as it goes, supports the view we take.

The result therefore is that this appeal is allowed, the decree of the Court below set aside and that of the Court of first instance restored with costs in this Court.

S. K. B. *Appeal allowed.*

(1) (1904) S. A. No. 415 of 1903 (unreported).

CIVIL RULE.

Before Mr. Justice Coxe and Mr. Justice Imam.

RASIK LAL MANDAL

v.

SINGHESWAR RAI.*

1912

March, 8.

Hindu Law—Surety—Father's liability as surety—Whether son is liable to pay debt incurred by father as surety.

Under the Hindu Law, a son is liable for a debt incurred by his father as a surety.

Tukarambhat v. *Gangaram Mulchand Gujar* (1) and *Maharaja of Benares* v. *Ramkumar Misir* (2) referred to.

* Civil Rule, No. 368 of 1912, against the order of Ram Lal Das, Subordinate Judge of Purnea, dated Dec. 22, 1911.

(1) (1898) I. L. R. 23 Bom. 454. (2) (1904) I. L. R. 26 All. 611.

1912

RASIK LAL MANDAL v. SINGHESWAR RAI.

RULE granted to the defendant, Rasik Lal Mandal.

One Singheswar Rai brought a suit in the Court of the Subordinate Judge of Purnea exercising the powers of a Small Cause Court, against one Rasik Lal Mandal (the petitioner) for recovery of a sum of Rs. 409-8 including interest at the rate of eighteen per cent. per annum, on the basis of a hand-note, alleging that it was executed in his favour by the deceased father of the defendant as a surety of one Majlis Sahay. The defendant pleaded, *inter alia*, that the bond was not executed by his father, and that if at all executed by him, being without any consideration, it was not binding on him. It appeared that Majlis Sahay had brought a suit for recovery of possession of certain lands, in which the plaintiff Singheswar Rai was added as a party defendant, being a mortgagee of some of the lands in dispute. The suit was settled between the parties, and Majlis Sahay having agreed to pay Rs. 300 to Singheswar Rai, he gave up his rights as a mortgagee. It was for this amount that the hand-note in suit was executed.

The learned Judge, having held that the hand-note was a genuine document, and that it was executed for consideration, decreed the plaintiff's suit. Against this order the defendant moved the High Court and obtained the Rule.

Babu Provas Chunder Mitter (*Babu Sushil Madhub Mullick* with him), for the petitioner. The petitioner is not liable to pay, inasmuch as the hand-note was executed by his father as a surety. Under the Hindu Law a son is not bound to pay such a debt: see Yajnavalkya Sanhita translated by Babu Manmatha Nath Dutt, Chapter II, page 11. Surety is sanctioned in (*i*) *darsana* (presentation), (*ii*) *pratyaya* (creating confidence) and (*iii*) *dana* (giving).

In the third class of cases only a son is liable to pay after the demise of his father. This is not a case coming under that class. Unless the money covenanted to be repaid was a loan, the son is not liable. Manu, Yajnavalkya and other authorities on Hindu Law declare the liability of a son to pay the debts of a father when incurred as surety for payment of debt. The words "security for the payment of debt" clearly contemplate the case of an advance of money: see *The Maharaja of Benares* v. *Ramkumar Misir* (1). The cases of *Sitaramayya* v. *Venkatramanna* (2), *Chettikulam Reddiar* v. *Chettikulam Reddiar* (3), *Tukarambhat* v. *Gangaram Mulchand Gujar* (4) are not against my contention. The case of *Hira Lal Marwari* v. *Chandrabali* (5) lends support to my contention to some extent. In the hand-note, there is no mention of interest, and therefore the plaintiff is not entitled to get interest at the rate of not more than six per cent. per annum.

Babu Satis Chunder Ghose (*Babu Anilendra Nath Roy Chowdhry* with him), for the opposite party, was not called upon to reply on the question of the liability of the son; but as to the question of interest he conceded that interest, at the rate of six per cent., would be the proper rate of interest.

COXE AND IMAM JJ. The facts of the case, as laid before us, are as follows: One Majlis Sahay brought a suit for recovery of certain land over which the plaintiff had a mortgage. In the end it was agreed that Rs. 300 should be paid by Majlis to the plaintiff apparently by way of redemption of this mortgage and the defendant's father agreed to pay that sum in the

(1) (1904) I. L. R. 26 All. 611, 616.
(2) (1888) I. L. R. 11 Mad. 373.
(3) (1905) I. L. R. 28 Mad. 377.
(4) (1898) I. L. R. 23 Bom. 454.
(5) (1908) 13 C. W. N. 9.

1912

RASIK LAL MANDAL v. SINGHESWAR RAI.

event of Majlis' default. The plaintiff thereupon gave up the land. The defendant's father died and the plaintiff then brought this suit against the defendant for the recovery of the money. It was decreed by the Court below and the defendant obtained from this Court a Rule on the opposite party to show cause why the decision should not be set aside on the grounds, *first*, that the debt was incurred by the defendant's father in respect of a suretyship, and, *secondly*, on the ground that the Court had no jurisdiction to award more than six per cent. interest.

As regards the first point, we see no reason why the plaintiff should not be entitled to the relief that he has obtained. We have been referred to Yajnavalkya Sanhita translated by Babu Maumatha Nath Dutt, Chapter II, page 71. It is there stated that "surety is sanctioned in *darsana* (presentation), *pratyaya* (creating confidence) and *dana* (giving). The first two sureties, if their statements be false, must be compelled to repay the money. As regards the other, that is one who undertakes to repay the money himself, if it is not realised from the party, even his sons are to repay the money after his demise." We can see no reason why the suretyship of the defendant's father should not be regarded as coming within the term "dana." In the foot-note to this section, the word "dana" is thus defined :— "The third form of surety is when a person undertakes to repay the money himself if the party for whom he stands surety fails to do so." It has been argued that the obligation created by this form of surety is not binding on the sons unless the money covenanted to be repaid, was a loan. It is difficult for us to see why the obligation of the defendant's father in the circumstances we have described above should be any less than the obligation would have been if

the money had actually been lent to Majlis. In *Tukarambhat* v. *Gangaram Mulchand Gujar* (1), it is stated that Brihaspati recognised four different classes of sureties: (*i*) sureties for appearance, (*ii*) sureties for honesty, (*iii*) sureties for payment of money lent, and (*iv*) sureties for delivery of goods; and stress is laid on the description of the third class as being sureties only for payment of money lent. Further on, however, the Judges say: "The texts of Narad and Yajnavalkya recognise three classes of surety obligation only—those for appearance, those for honesty and those for payment" and it is not said that the money to be repaid must be a loan. As we have said, we see no reason why this class of surety should be restricted only to cases in which money has actually been advanced and no case has been shown where this distinction is clearly laid down. The case of *The Maharaja of Benares* v. *Ramkumar Misir* (2) is clear authority for holding that a surety obligation of this nature is binding on the son even when no money has been advanced. We think, therefore, that the decision of the learned Subordinate Judge in this respect is right.

As regards the question of interest, it is conceded that six per cent. interest is sufficient.

The Rule is accordingly made absolute to this extent that the interest is reduced to the rate of six per cent.

We make no order for costs in this Court. Costs of the Court below will stand.

S. C. G. *Rule absolute.*

(1) (1898) I. L. R. 23. Bom. 454. (2) (1904) I. L. R. 26 All. 611.