

(1877) 06 AHC CK 0001

Allahabad High Court

Case No: None

Sarupi

APPELLANT

Vs

Ganpat Rai and
Another

RESPONDENT

Date of Decision: June 21, 1877

Citation: (1875) ILR (All) 446

Hon'ble Judges: Turner, J; Pearson, J

Bench: Division Bench

Judgement

Turner, J.

The sale in this case extended not to the original debt but to the decree, and in the sale-deed no reference is made to any securities held by the original creditor, hi our judgment then the sale-deed conveyed to the purchaser no title to the securities.

2. We do not say that if the debt itself had been sold, the purchaser might not have been entitled to call upon the seller to assign the securities. That question when it arises will be determined in reference to the terms of the contract, but in the case before us it is clear all that was sold was the money-decree.

3. Instances may be suggested in which the holder of such a decree would be unwilling to part with the lien though willing to sell the decree. He may, for instance, have a second mortgage of the same property, and it would, in our judgment, lead to injustice to hold that the sale of the decree carried with it necessarily the right to an assignment of all securities held by the original creditor.

4. Whether this be so or not the lien in the present instance has not been assigned to the plaintiffs, and, therefore, they cannot claim the benefit of it. The decree of the Court below must be reversed and the suit dismissed with costs.