

(1877) 05 AHC CK 0001

Allahabad High Court

Case No: None

Basant Ram

APPELLANT

Vs

Kolahal and Others

RESPONDENT

Date of Decision: May 2, 1877

Citation: (1875) ILR (All) 392

Hon'ble Judges: Robert Stuart, C.J; Oldfield, J

Bench: Division Bench

Final Decision: Allowed

Judgement

1. If it had been necessary to make Ram Kishen a defendant in this case, the procedure should have been as provided by Section 4 of Act XXIII of 1861, and the sanction of the proper Court in Calcutta obtained, but we do not consider that it was necessary to implead him at all even if he had not declared his bankruptcy, which it appears he did, when the hundi was presented to him for payment. The holder of a hundi, or, in other words, of a bill or note, is not bound, in the event of its dishonour, to sue all the parties liable to him under it, but he may, at his option, select his defendant or defendants, as he may judge best for recovery of the money. This is the law of England, where, although the holder of a bill may have issued the writs, or a writ, against all or any of his debtors, he is not bound to sign judgment against them all, but may select any one or more of them, and I am not aware that the law is different here. Besides, in the present case, the two defendants, Kolahal Earn and Gobind Ram, were those who got the whole Rs. 600 from the plaintiff, and it would have been sufficient to have proceeded against them, and to have left their bankrupt representatives in Calcutta alone, especially as his declared bankruptcy, which was tantamount of itself to a refusal to pay, gave the plaintiff a cause of action against the other two. This view of the law also avoids objection on the ground of misjoinder.

1. We set aside the decrees of both the lower Courts, and remand the cause u/s 351 of Act VIII of 1859, for trial of the suit on its merits against the two defendants,

Kolahal Ram and Gobind Ram, for the whole amount claimed under the hundi. The costs of this appeal to abide the result.