

(1880) 04 AHC CK 0011

Allahabad High Court

Case No: None

Qutub Husain

APPELLANT

Vs

Jagat Narain and
Another

RESPONDENT

Date of Decision: April 12, 1880

Citation: (1880) ILR (All) 807

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

Bench: Division Bench

Final Decision: Dismissed

Judgement

Pearson, J.

The argument set out in the ground of appeal is more ingenious and plausible in appearance than agreeable in substance to reason and equity. The contention is that the properties purchased by the defendants-appellants, which were equally with that purchased by the plaintiff subject to the lien created by the bond executed on the 23rd March 1864 by Dildar Husain in favour of Ilahi Bakhsh, were released from liability because they were not included in the suit brought by the latter for the recovery of the bond-debt by enforcement of the lien. But the contention seems to be irreconcilable with the doctrine of contribution expounded in Story's Equity Jurisprudence. Assuming that Ilahi Bakhsh by the frame of his suit above-mentioned had put it out of his power to proceed at law by another suit on the basis of the same bond against the properties in the possession of the defendants in the present suit as purchasers, we are not prepared to admit, as a necessary consequence of such assumption, that the plaintiff's equitable right to recover a fair contribution from the defendants on the ground of his having paid the whole debt due to Ilahi Bakhsh is thereby invalidated. The appeal is dismissed with costs.