
(1904) 09 MAD CK 0008

Madras High Court

Case No: None

M. Subraya Chetty

APPELLANT

Vs

A.S. Rajammal

RESPONDENT

Date of Decision: Sept. 14, 1904

Acts Referred:

- Probate and Administration Act, 1881 - Section 78

Citation: (1904) 14 MLJ 482

Judgement

1. In this case the 1st defendant who is the administratrix of her husband's estate gave the bond required by Section 78 of the Probate and

Administration Act and the plaintiff became one of her sureties. The plaintiff brought a suit in which he alleged that the 1st defendant was wasting

and mismanaging the estate and he asked that he might be discharged from his recognizances as a surety as regards future transactions on the part

of the first defendant or alternatively that the first defendant might be directed to discharge certain specified claims against the estate and complete

the administration. The learned Judge dismissed the suit and the plaintiff appeals.

2. As regards the plaintiff's first claim for relief that he may be discharged from future liability under his surety bond, we think the learned Judge

was right in refusing to make the order asked for. In Williams on Executors, 1893, Vol. I, p. 462, it is laid down that the Court will not discharge

the original sureties to an administration bond and allow other sureties to be substituted for them and a similar statement of the law and practice is

to be found in Dixon on Probate, p. 271 and Tristram and Coote's Probate Practice, 11th Edition, p. 105. The authority cited is Re Stark L.R. 1

P. & D. 76. The later case of Re Ross L.R. 2 D. & D. 274, where an administrator having gone abroad and under an order in chancery, assets

had accrued to the estate during his absence, a substitute was allowed to execute the fresh bond which was necessarily limited to the

administrator's execution of a similar bond on his return is in no way inconsistent with the rule of practice which was recognised in Re Stark L.R. 1

P. & D. 76.

2. Mr. Chamier on behalf of the plaintiff sought to distinguish the case of Re Stark L.R. 1 P. & D. 76 upon the ground that the basis of the decision

in that case was that the substituted sureties could not be made responsible for past transactions and that the plaintiff in the present case only asked

to be released from responsibility as regards future transactions. But the case of Re Stark L.R. 1 P. & D. 76 appears to have been accepted by

practitioners as recognising the rule that the original Sureties cannot be discharged either as regards past or future liability.

3. No precedent is to be found for the order which we are asked to make and on principle, we do not think that any such order ought to be made.

The making of such an order might defeat the object for which an administrator is required to find sureties to his administration bond. We are

unable to agree with the decision in the case of Raj Narain Mookerjee v. Full Kumari Debi I.L.R., 29 C. 68. The attention of the learned Judges of

the Calcutta High Court does not appear to have been drawn to the case of Re Stark. If, as we should be prepared to hold, the surety to an

administration bond is not entitled to an order discharging him from future liability on an application in the probate proceedings to the judge or

officer who is the obligee under the bond of suretyship, it seems to follow a fortiori that he is not entitled to this relief where he claims it as here in a

separate suit.

4. We are of opinion that Section 130 of the Contract Act which provides that a continuing guarantee may at any time be revoked by the surety,

as to future transactions by notice to the creditor, does not apply to the special contract of suretyship which is entered into by a surety to an

administration bond. If the section applies, the "creditor" would presumably be the obligee under the bond, i.e., the Judge or Registrar and the

surety could without action or any other legal proceeding, put an end to his liability by giving notice to the Judge or Registrar. This is contrary to the

well established practice and might lead to great inconvenience. Section 130 embodies the English rule of law and the proceedings in the case of

Re Stark L.R. 1 P. & D. 76 show that, so far as the English practice is concerned, it has never been suggested that the general rule of law as to

continuing guarantees applies in the case of a suretyship to an administration bond. In the Calcutta case the Chief Justice guards himself by saying

that he was not dealing with the case of a person who becomes surety and then from mere caprice or for no sound reason desires to be

discharged; but u/s 130 the surety has an absolute right at any time to revoke his guarantee as to future transactions and if that section is applicable

it seems to us that it would not be open to the Court to inquire into the grounds upon which the surety had given notice of revocation, In Calvert v.

Gordon 7 B. & C. 809 it was held that upon a bond conditioned for a clerk accounting for and paying over money received by him the obligor

could not discharge himself from further liability by notice. In Lloyds v. Harper I.R. 16, Ch. D. 290 it was held that a guarantee given to the

Committee of Lloyds could not have been withdrawn during the lifetime of the guarantor and was not determined by his death. In the case of Bai

Somi v. Chokshi Ishvardas and Mangaldas I.L.R., 19 B. 245 where a surety for the guardian of a minor's estate applied to be released from his

obligation on the ground of the guardian's maladministration, the Court held that the surety could not be discharged and that S 130 of the Contract

Act was not applicable.

5. We entirely agree with this decision and with the reasoning upon which it was based.

6. As regards the plaintiff's alternative claim to relief, as he is neither a creditor nor a legatee and is therefore not entitled to bring an administration

suit, it is clear that it is not open to him to obtain an order against the administration refusing her to administer the estate.

7. We think the decision of Moore, J. was right and we dismiss this appeal with costs.