

(1877) 12 CAL CK 0004

Calcutta High Court

Case No: None

Chutterdharee Lall

APPELLANT

Vs

Rambelashee Koer
and Others

RESPONDENT

Date of Decision: Dec. 21, 1877

Citation: (1878) ILR (Cal) 319

Hon'ble Judges: Kennedy, J; Ainslie, J

Bench: Division Bench

Judgement

Ainslie, J.

It appears to us that this case is clearly distinguishable from the cases of Ram Kishen Doss v. Hurkhoo Singh 7 W.R. 329 and Gujendro Narain Roy v. Hemanginee Dassee 13 W.R. 35 in which it was held that Section 204^[1] I does not apply to parties who have become sureties after the decree. In the present case the security was demanded and taken u/s 342 before the decree, for the purpose of securing to the respondent his costs in the event of his being successful.

2. The case must, therefore, go back to the Subordinate Judge in order that he may allow execution to proceed against the sureties; but before doing so, it will, of course, be necessary that the decree-holder should give the surety notice of his intention to proceed against him instead of proceeding against the original judgment-debtor; he should be served with notice to show cause why the decree should not be executed against him.

3. We may also observe that in this case the original surety appears to be dead. It will, therefore, also be necessary, unless it has already been done in an earlier stage of the proceedings, to issue a notice u/s 216 before any steps are taken for enforcing the decree against the respondents.

[1] [Section 204: Whenever a person has become liable as security for the decree or of any part thereof, the decree may be

Decree against sureties. against such person to the extent to which he has
self liable, in the same manner as a decree may
against a defendant.]