

(1867) 04 CAL CK 0002

Calcutta High Court

Case No: None

Bharut Chunder Dutt

APPELLANT

Vs

Dengar Gope
 Shaboo

Majee and Others Vs Noorai

Mollah and Others
 Sheikh

Joneep Vs Sheikh Noboo

RESPONDENT

Date of Decision: April 15, 1867

Judgement

Sir Barnes Peacock, Kt., C.J.

We are of opinion that the view taken by the Judge of the Small Cause Court was correct. In Bharut Chunder Dutt v. Dengar Gope the plaintiff was a surety, upon whose security milk was supplied to the defendant; the surety having paid the debt, he sued the defendant for the amount. If a man request another to pay money for him, there is an implied contract to repay the amount. If he request another to become surety for him, and that other becomes surety, and is obliged to pay, the person at whose request he becomes surety is bound by an implied contract to indemnify him, and to repay him any amount which as such surety he is obliged to pay. An action lies in the Small Cause Court for the amount, if it do not exceed Rs. 500. In Shaboo Majee v. Noorai Mollah and Sheikh Joneep v. Sheikh Noboo nothing appears, except the mere fact that the decree was recovered against the plaintiff and defendant jointly, which the plaintiff paid. The cases are governed by the case of Rambux Chittangeo v. Modoosoodhun Paul Chowdhry Ante, p. 675 decided to-day. There is nothing to show that there was an implied contract on the part of the defendant to indemnify the plaintiff, or to repay him the amount which he was obliged to pay. The Judge of the Small Cause Court was wrong in supposing that the law would not have allowed the defendant to prove (if it had been necessary) that he was a mere surety for the plaintiff in the bond upon which the decree was obtained. If the plaintiff had been endeavoring to show that he was the surety and the defendant the principal at whose request he became surety, the evidence would have been admissible for the purpose of showing that there was an implied contract

of indemnity. So if the suit had been brought against the defendant in the Civil Court, upon the prima facie obligation on the part of the defendant as a co-debtor to contribute, he would have had a right to prove that he was merely a surety for the plaintiff, and that the plaintiff was bound to indemnify him.