(1867) 09 CAL CK 0001

Calcutta High Court

Case No: None

Ramgopal Law		APPELLANT
	Vs	
Richard Blaquiere		RESPONDENT

Date of Decision: Sept. 16, 1867

Judgement

Norman, J.

This application must be dismissed with costs. The first point taken was that the Court had no jurisdiction; I think there are no grounds for setting aside the judgment on that ground. The note was payable to a payee who resides in Calcutta, and it was made, and delivered to him in Calcutta; the whole cause of action, therefore, arose in Calcutta. The next point is one made by Mr. Woodroffe, who says that in this Court with regard to persons like Blaquiere, there is no difference between specialty and simple contract-debts. In the case of a contract where a Hindu or Mohammedan is defendant, the Court recognizes no distinction, but if the defendant is a Eurasian, I think it will recognize a distinction. If Blaquiere had died before the passing of the Indian Succession Act, I have no doubt, that in the administration of his estate, of the creditors, those secured by deed would have been paid first. It may be Chat the position of such creditors is altered by the Succession Act, but that was the law of the Court. The more important point is in reference to the 52nd Section of Act XX of 1866.

2. The promissory note in this case is an instrument of a double character: first, it contains a promise to pay to the defendant Rs. 6,000 at the end of three months; secondly, there is a distinct agreement, at the foot of it, that the amount secured by the note shall be recoverable in a summary way. Now the giving of a subsequent security of a higher nature does not produce a merger, unless the subsequent security covers the same ground as the original security; or in other words, unless the remedy given by the subsequent security is coextensive with that given by the security which is to be merged. This may be seen in the oases of Holmes v. Bell (3 M. and G., 213), and Bell v. Banks, ((3 M. and G., 258(). In Holmes v. Bell, it was held that a bond by A. and B. operated as no merger of a simple contract-debt by A. alone. In

Bell v. Banks, there was an original obligation by two, and it was held not to be merged by a higher security given by one. Now here the second instrument did cover the same ground so far as it contained a promise to pay the same money, but it left untouched the power given in the first to proceed in a summary way. This was the second instrument given in satisfaction of the first. There is nothing to lead to such an inference. It is all-important that this promissory note, containing this most important power, was not given up when the further security was taken. I am, therefore, satisfied that the parties did not intend this mortgage to be in substitution of the note. The application to set aside the judgment must be dismissed with costs.