

(1912) 04 CAL CK 0055

Calcutta High Court

Case No: None

Basanti Lal and Another

APPELLANT

Vs

Cheddu Singh and Others

RESPONDENT

Date of Decision: April 19, 1912**Citation:** 16 Ind. Cas. 118**Hon'ble Judges:** Lawrence Jenkins, C.J; Chapman, J**Bench:** Division Bench

Judgement

Lawrence Jenkins, C.J.

This, I think, is a very-clear case; money was deposited by the surety as a security for the benefit of the decree-holder, whose rights were interfered with, to enable the judgment-debtor to make an application in insolvency with a view to his protection from arrest. The insolvency application failed, and so it became incumbent upon the surety to produce the debtor before the Court. This he failed to do, and in the circumstances, the Officiating District Judge has determined that the sum of Rs. 500 deposited by the surety is forfeited to the Government. The Secretary of State has been represented before us and the learned Pleader tells us--I think most properly--that he leaves the matter in the hands of the Court. It is to my mind obvious that there was no power in the Court to declare a forfeiture in favour of the Government. The surety was anxious to suggest that his suretyship did not extend beyond the pendency of the insolvency proceedings. But he has not appealed from the order adjudicating upon this point adversely to him so that we could not give effect to it, even if we thought there was merit in the contention. We must set aside the order under appeal and direct that the sum of Rs. 500 be paid to the decree-holder.

2. We make no order as to costs.

Chapman, J.

3. I agree.