

(1909) 04 CAL CK 0026

Calcutta High Court

Case No: None

Kanai Prosad Basu

APPELLANT

Vs

Jatindra Kumar Roy
Chowdhury and
Another

RESPONDENT

Date of Decision: April 2, 1909

Final Decision: Dismissed

Judgement

1. This was a suit for accounts by the zamindar against the Tahsildar and one Kanai Prosad Basu, who stood surety for the due performance of the Tahsildar's duties. The Courts below have decreed the suit and the surety appeals. The ground of the appeal is that as the contract between the zamindar and the Tahsildar was varied, the surety was discharged from liability by Section 133 of the Contract Act. The terms of the contract to which reference has been made are as follows: "As long as I do not make over the tahsil in my jimba on clearing my nikash of any year to your satisfaction, I will not be able to take up the work of realizations and collections from the said mahals for the following year." It is said that the Tahsildar did not render accounts for the year 1308; but notwithstanding that omission continued to realize rent for 1309. We do not think that this amounted to a variation of the contract. The breach of a contract is not a variation of it. Under the contract it was stipulated that if the accounts were not rendered the Tahsildar should pay 50 Rupees a year as the cost of having them prepared. Doubtless also the zamindar had other remedies. He could probably dismiss the Tahsildar or take the work away from his hands. But the mere fact that he did not enforce any of these remedies immediately, did not amount in our opinion to a variation of the original contract. The original contract remained the same. If the Tahsildar committed a breach of the contract by realizing rent for 1309 the zamindar was able to enforce the original contract and the remedies which he had under it. It is not stated that the zamindar and the Tahsildar ever met together and came to any agreement on the subject. All that happened was that the Tahsildar to a certain extent broke his part of the contract and the

zamindar did not immediately enforce his remedies under it.

2. It is argued that the surety might in this way become liable for the defalcations of several years, although it was originally intended that accounts should be completed and rendered at the end of each year. But the security was limited to a fixed amount and it could at any time have been revoked by the surety.

3. In our opinion there was no variation in the contract between the parties and we think, therefore, that the decisions of the Courts below were right and that this appeal must be dismissed with costs.