

[FISHER, C.J. AND GRIMSHAW, P.J.]

N. P. LANITIS & Co.

v.

1. KYRIAKO ANASTASSIADES, *Principal Debtor.*2. HAJI ANASTASSI HAJI THOMA, *Guarantor.*

FISHER,
C.J.
&
GRIM-
SHAW,
P.J.
1924
April 16

GUARANTOR—RELEASE—LIABILITY CANNOT REVIVE WITHOUT CONSENT OF
GUARANTOR.

Appeal by plaintiffs from the judgment of a District Court dismissing claim against 2nd defendant.

Facts are as follows:—

Defendant 2 is father of defendant 1. Defendant 2 by letter of guarantee undertook to pay to plaintiffs any amount due on current account by his son to plaintiffs arising out of any business done between them in respect of artificial manure. The business was concluded between plaintiff and defendant 1, and defendant 2 paid off all that was owing in respect of this guarantee and was released from his guarantee by plaintiffs.

In another action No. 742/1921 the 1st defendant together with 32 other persons were sued by present plaintiffs for £132 9s. balance due on a bond. The 1st defendant, out of this amount, was personally responsible for £106 odd. The plaintiffs, with consent of all parties to that action, asked to be allowed to amend their accounts and to credit money paid to them by the guarantor on the current account in respect of the 1st defendant to the bond sued on, which was interest bearing, and to debit the current account with the sum of £106 odd. The £106 was debited to the current account, and the plaintiffs seek to recover this sum from the 2nd defendant as guarantor.

For Appellant *N. Paschalis* and *Panayides*.

For Respondent (Defendant 2) *Theodotou* and *Pavrides*.

Judgment: Affirming the judgment of the District Court:—

But for what the District Court did, at request of the plaintiffs, the 2nd defendant was already discharged from his liability, according to admissions made by the plaintiffs, and as he was not a party in the action in which the alteration of the accounts was made, he cannot be held responsible for any additional amount debited to the 1st defendant. What was done in his absence cannot revoke his discharge.

Appeal dismissed with costs.