

## CIVIL REFERENCE.

*Before Newbould and Panton JJ.*

SARBO MUSALMANI

v.

SAFAR MANDAL\*.

1922

Feb. 23

*Court Fee—Stamp-duty—Bond given in pursuance of an order made by a Court under the Civil Procedure Code—Court Fees Act (VII of 1870), Sch. II, Art. 6—Stamp Act (II of 1899), Sch. I, Art. 15.*

A security-bond, executed by a person who agreed to be liable for a certain amount in case he failed to produce certain attached animals, which was filed by the claimant in a claim case, is governed by Article 6 of Schedule II of the Court Fees Act.

*Re District Munsif of Tiruvallur (1) referred to.*

## CIVIL REFERENCE.

The facts of the case are set out fully in the Reference, the material portion of which was as follows:—

“In Claim Case No. 21 of 1921 arising out of the execution of decree in Small Cause Court Suit No. 1997 of 1918, the claimant has filed a security-bond, under an order of the Court made under section 145 (b) read with Order XXI, rule (2) of the Code of Civil Procedure for the release of the cattle attached. The bond is engrossed on non-judicial stamp paper of 2 annas on the ground that the value of the cattle is Rs. 10. Claimant contends that the stamp duty is payable under Article 57 (read with Article 15), Schedule I of the Stamp Act.

But Article 15 excludes from its operation a bond provided for by the Court Fees Act. I think that the deed is governed by Article 6, Schedule II of the Court Fees Act, as being an ‘instrument of obligation given in pursuance of an order made by a Court under any section of the Code of Civil Procedure.’

As I entertain a doubt on the question, I beg to refer it for the decision of the Hon’ble High Court under Order XLVI, rule 1 of the Code of Civil Procedure,”

*The Senior Government Pleader (Babu Dwarkanath Chakrabarti), for the Crown, supported the*

Civil Reference No. 10 of 1921.

(1) (1911) I. L. R. 37 Mad. 17.

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 MANDAL.

NEWBOULD AND PANTON JJ. This is a reference under Order XLVI, rule 1 of the Code of Civil Procedure made by the Munsif of Meherpur and forwarded by the District Judge of Nadiya.

In a certain claim case the claimant filed a security-bond executed by one Yad Ali Ahmed who agreed to be liable for 10 rupees in case he failed to produce certain attached goats. The question referred is whether this bond had been rightly engrossed on a non-judicial stamp paper of 2 annas, or whether it is governed by Article 6, Schedule II of the Court Fees Act, in which case it would be liable to be stamped with court-fee stamp of 8 annas. Article 15 of the First Schedule to the Indian Stamp Act gives the stamp duty payable on bonds not being otherwise provided for by the Court Fees Act. Article 6 of Schedule II of the Court Fees Act applies to instruments of obligation given in pursuance of an order made by a Court under any section of the Code of Civil Procedure, 1908. The same point arose in a reference made under Section 60 of the Indian Stamp Act to the Madras High Court [*Re District Munsif of Tiruvallur* (1)] and it was there held that a bond of this kind may be said to be given in pursuance of an order made by a Court under a section of the Civil Procedure Code, and it was held that the proper stamp was 8 annas stamp under the Court Fees Act. We are in agreement with this conclusion and we accordingly answer the question referred by saying that the deed in question is governed by Article 6, Schedule II of the Court Fees Act and that the proper stamp is 8 annas court-fee stamp.

S. M.

(1) (1911) I. L. R. 37 Mad. 17.