

Abdur Rahim, J., stating that he would follow the decision in 3 M.H.C.R., App. vii, ordered the jury to be impanelled.

The Crown Prosecutor stated the facts to the jury.

His Lordship then charged the jury that, the case of the Crown as stated by the Crown Prosecutor being that the accused had renounced Christianity at the time of or some time before the second marriage which was contracted not according to Christian rites but according to the rites prevalent among Hindus of the class to which the accused, a Pariah, belonged, the offence of bigamy could not in law be established on the evidence and directed them to return a verdict of not guilty.

The jury returned a verdict of not guilty in accordance with such direction and the accused was acquitted.

ABDUR
RAHIM, J.
EMPEROR
v.
ANTONY.

APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice
Krishnaswami Ayyar.*

IN THE MATTER OF ARTHUR GERALD NORTON KNIGHT,
PETITIONER—APPELLANT.*

1909.
December
16.

Surety to administration bond—Right of Surety to apply for cancellation of bond on administration being completed.

A surety to an administration bond cannot, when the administration is complete and the bond becomes void and ineffective, apply to the Court to have the bond vacated and to be discharged from his suretyship.

There is nothing in the Indian Succession Act or in the Rules of Practice to authorise such an application.

APPEAL from the order of Wallis, J., dated 1st day of December 1908, passed in the exercise of the ordinary original testamentary jurisdiction of the High Court.

The facts for the purpose of this case are sufficiently set out in the judgment.

D. M. C. Downing for petitioner—appellant.

JUDGMENTS (SIR ARNOLD WHITE, C.J.).—This is an appeal from an order by Mr. Justice Wallis refusing to direct the discharge of certain sureties and that the surety bond executed by them should be cancelled and held void.

* Original Side Appeal No. 71 of 1908.

WHITE, C.J.,
AND
KRISHNA-
SWAMI
AYYAR, J.

The sureties were appointed under section 256 of the Succession Act. Their bond provides that on the fulfilment of the conditions specified in the bond, the bond shall be void and of no effect.

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ARTHUR
GERALD
NORTON
KNIGHT.

I have practically no doubt that in this particular case the administration is complete and that the conditions of the bond have been fulfilled, and that, consequently, under the condition of the bond, it has become void and of no effect. That being so, I should have been glad, if I could see my way to do so, to make the order we are asked to make. But so far as I am aware, there is no provision of law which enables us to make the order. The only rule which can be said to have any bearing on the question is rule 470 of the Original Side Rules: "An application by an administrator or surety to vacate a bond or surety's recognisance may be made by summons in Chambers." I think that rule applies to an application to vacate a bond during the pendency of the administration with a view to having another surety appointed in the place of the surety whose bond is vacated. With regard to the substitution of sureties, the English practice would appear to be that the Court will not discharge an Original Surety to the Administration bond and allow another to be substituted for him. That was what was held *In the goods of Stark*(1).

We have looked at the English Probate Rules, and so far as I can see, there is there no provision for making the order which we are asked to make in this case. I ought to refer to a case to which our attention has been called—a case in which an order was made by Mr. Justice Boddam on the 13th August 1907 on a similar application. We are told by Mr. Downing that Mr. Justice Kernan also made an order under similar circumstances. The only observation I have to make with regard to these orders is, that orders of this sort, if made at all, would be made as of course. In all probability, in the case of these orders, the point was not considered, and the learned Judges assumed that they had jurisdiction. I can only say with all respect, having considered the matter fully and having had the assistance of Mr. Downing's arguments, I cannot follow the decision of Mr. Justice Boddam. Mr. Justice Wallis did not see his way to make the order, and I do not see my way to say that Mr. Justice Wallis is wrong. The appeal is dismissed.

(1) (1866) L.R.I.P. & D., 76.

KRISHNASWAMI AYYAR, J.—I would like to add a few words as the question relates to a matter of practice. I am not aware of any provision in the Indian Succession Act enabling the sureties to make an application to the Court for their discharge. Mr. Downing has called our attention to none. Indeed I am not aware of any provision in the Act authorising the administrator to make an application to the Court for an order of discharge or for a declaration that the administration has become complete.

WHITE, C.J.,
AND
KRISHNA-
SWAMI
AYYAR, J.
—
ARTHUR
GERALD
NORTON
KNIGHT.

It seems to me that the principle of law is that as the bond becomes void on the happening of a condition it is allowed to work itself out on the happening of that condition and, if, as a matter of fact the administration has become complete in this case, the bond becomes void. If it is not, the bond is in force. There is no need for the Court being invited to make a declaration on the subject. I agree in the order of the learned Chief Justice.

Sir *H. C. King*—attorney for appellants.

APPELLATE CIVIL.

Before Mr. Justice Wallis and Mr. Justice Sankaran-Nair.

NATESA IYER AND ANOTHER (DEFENDANTS Nos. 1 AND 2),
APPELLANTS,

v.

APPAVU PADAYACHI (PLAINTIFF), RESPONDENT.*

Contract Act IX of 1872, ss. 55, 64, 73, 74—Right of party to recover deposit, forfeited by terms of contract.

1909.
August 6, 9,
September
21.

A entered into a contract with B for the purchase of lands belonging to the latter for Rs. 41,000. Of this amount Rs. 4,000 was paid in advance, Rs. 20,000 was agreed to be paid by means of a mortgage and the balance before the 24th May when the conveyance was to be executed. The contract provided that the Rs. 4,000 was to be forfeited if there was any delay on the part of the vendee. It was also stipulated that the vendor was to execute the conveyance either in favor of the purchaser or those nominated by him. In part performance of this contract, a sale of a portion of the lauds was effected in favor of M on the 28th March. Just before the day of payment, B gave notice to A that if the sale was not completed on or before the agreed date, the contract would be avoided. A failed to perform the contract before that date. Subsequently B sold the lands to third parties and realised Rs. 1,500 in excess of the price stipulated by A. A brought a suit for specific performance of the contract or, in the alternative to

* Appeal No. 131 of 1907.