matter by way of revision; and this petition must accordingly be dismissed with costs.

We cannot leave this case without saying that it is a glaring example of protracted litigation. The suit was filed in 1918 and in 1932, fourteen years afterwards, the issue as to its maintainability was first decided. This seems to us to be nothing short of a scandal. The suit must now be disposed of without further delay. Issues 2 and 3 have already been decided, and the other issues as yet undecided must be pronounced upon as soon as possible. In order to save any delay should there be an appeal against the decree upon this point, the Subordinate Judge is directed to frame a scheme for the general endowments, and another for those for specific purposes.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Madhavan Nair and Mr. Justice Cornish.

1934, October 26.

MOWLAVI HAJI MAHOMED ABDUL BAQI (SECOND RESPONDENT), APPELLANT,

v.

KANURU SUNDARARAMAYYA AND ANOTHER (PETITIONER AND FIRST RESPONDENT), RESPONDENTS.*

Code of Civil Procedure (Act V of 1908), *sec.* 145—*Applicability of—Contract of suretyship imposing personal liability for performance of a decree.*

Section 145 of the Code of Civil Procedure is not restricted to suretyships undertaken through the Court. The language

* Appeal against Order No. 82 of 1933.

ABDUL BAQI v. SUNDARA-RAMAYYA.

of section 145 (*a*) is wide enough to apply to any contract of suretyship whereby a personal liability has been undertaken for the performance of a decree.

Subbaraya Pillai v. *Sathanatha Pandaram*, 1918 M.W.N. 764, dissented from.

Joyma Bewa and others v. *Easin Sarkar*, (1926) I.L.R. 53 Calc. 515, followed.

Raj Raghubar Singh v. *Jai Indra Bahadur Singh*, (1919) I.L.R. 42 All. 158; L.R. 46 I.A. 228, referred to.

APPEAL against the order of the Court of the Subordinate Judge of Nellore, dated 7th September 1932 and made in Execution Petition No. 48 of 1931 in Original Suit No. 44 of 1929 on the file of the Court of the Subordinate Judge of Bezwada.

K. Kuppuswami for appellant.

P. Satyanarayana Rao for respondents.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by

CORNISH J.

CORNISH J.—The appellant by a letter (Exhibit A), dated 7th October 1930, undertook to be surety for the payment of a decree debt due by his brother. The letter recited that the decree-holder had agreed not to execute his decree against the brother on the representation that it would be fully satisfied before the end of April 1931, and it concluded with these words:

"If we fail to so pay the amount to you, not only will my younger brother be liable therefor, but you can take proceedings against our properties and against us and we shall not raise any objection thereto."

It is clear from the terms of Exhibit A that the appellant had made himself personally liable to the decree-holder as surety for the payment of the decree against his brother. The learned Subordinate Judge has ordered execution to issue against the appellant as surety, and it is from this

order that he has appealed. The question turns upon the construction of section 145 of the Civil Procedure Code, of which the material portion runs as follows :

"Where any person has become liable as surety—(*a*) for the performance of any decree or any part thereof, . . . the decree . . . may be executed against him, to the extent to which he has rendered himself personally liable, in the manner herein provided for the execution of decrees. . . . Provided that such notice as the Court in each case thinks sufficient has been given to the surety."

This apparently means that where a person has made himself personally liable as surety for the performance of a decree it can be executed against him as though he were a party to the suit and the judgment-debtor.

The appellant relies on *Subbaraya Pillai* v. *Sathanatha Pandaram*(1), which is certainly a decision in his favour. In that case it was held that section 145 was limited to surety bonds taken through the Court and was inapplicable to suretyships undertaken for the performance of decrees entered into outside the Court. NAPIER J., who delivered the leading judgment, thought that, inasmuch as clauses (*a*), (*b*) and (*c*) of section 145 could be referred to specific provisions of the Code, e.g., Order XLI, rule 5, clause 3 (*c*), Order XLI, rule 6, and Order XXXVIII, rule 2, clause 2, the section should be confined to cases where the surety had entered into his liability "in the face of the Court". But the learned Judge stated that he found it impossible to express a confident opinion on the matter. We also find from a reference to the record in that case that permission to report it in the Indian Law Reports was refused

(1) 1918 M.W.N. 764.

ABDUL BAQI v. SUNDARA-RAMAYYA.

CORNISH J.

for the reason that the learned Judges were doubtful of the correctness of the decision.

In these circumstances we should in any event feel justified in regarding the case as of doubtful authority. But we think that its *ratio decidendi* has been negatived by the subsequent ruling of the Judicial Committee in *Raj Raghubar Singh* v. *Jai Indra Bahadur Singh*(1) that the Court has an inherent power, apart from section 145, to enforce a security which has been given in pursuance of the order of the Court. In the particular case section 145 had no application, because the security was in the form of a charge upon property and was not a bond imposing a personal liability. Similarly, in *Sankunni Variar* v. *Vasudevan Nambudripad*(2), where sureties had executed a bond to the Court undertaking to produce the property of a judgment-debtor which had been released from attachment upon that undertaking, it was held that section 145 would be inapplicable but that the bond could be enforced by execution.

In our opinion this recognised power of the Court to enforce execution against a surety independently of section 145 deprives of any further force the reason in *Subbaraya Pillai* v. *Sathanatha Pandaram*(3) for restricting section 145 to suretyships undertaken through the Court.

Furthermore, there is the direct decision in *Joyma Bewa and others* v. *Easin Sarkar*(4) that it is not essential for the purpose of executing a decree against a surety under the provision of section 145 (*a*) that the contract of suretyship

(1) (1919) I.L.R. 42 All. 158; L.R. 46 I.A. 228.
(2) (1926) 51 M.L.J. 239. (3) 1918 M.W.N. 764.
(4) (1926) I.L.R. 53 Calc. 515.

should be in the form of a bond or that it should be in favour of the Court.

We think that the language of section 145 (*a*) is wide enough to apply to any contract of suretyship whereby a personal liability has been undertaken for the performance of a decree. The order of the Subordinate Judge directing execution to issue against the appellant was correct, and the appeal must be dismissed with costs.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao.

1934,
November 19.

GOVINDASWAMI MUDALIAR (RESPONDENT-DECREE-HOLDER), PETITIONER,

v.

RASU MUDALIAR (PETITIONER), RESPONDENT.*

Indian Registration Act (XVI of 1908), *sec.* 17 (2) (*vi*) *as amended by the Transfer of Property (Amendment) Supplementary Act,* 1929, *sec.* 10—*Application for attachment before judgment—Whether a "proceeding" within the meaning of—Consent order thereon—Exempt from registration.*

An application for attachment before judgment is a "proceeding" within the meaning of section 17 (2) (vi) of the Indian Registration Act (XVI of 1908) as amended by section 10 of the Transfer of Property (Amendment) Supplementary Act, 1929; and a consent order thereon is excepted from registration.

PETITION under section 115 of Act V of 1908 praying the High Court to revise the order of the Court of the District Munsif of Shiyali, dated

* Civil Revision Petition No. 490 of 1934.