

A PLEADER,
In re.
 LEACH C.J.

January 1938 will be sufficient, and the respondent will be suspended for this period. But we wish it to be clearly understood that we regard offences of this nature as being grave offences and in future the punishment will be made to fit the offence. I will add that the fact that proceedings of this nature are instituted as the result of a grudge—as appears to be the case here—makes no difference to the gravity of the offence and cannot be pleaded in excuse.

V.V.C.

APPELLATE CIVIL—FULL BENCH.

*Before the Hon'ble Mr. A. H. L. Leach, Chief Justice,
 Mr. Justice Varadachariar and Mr. Justice Mockett.*

1937,
 December 6.

ABUBACKER LABBAI CHINNATHAMBI ROWTHER,
 PETITIONER,

v.

MADARSA LABBAI AND ANOTHER, RESPONDENTS.*

Indian Stamp Act (II of 1899), Sch. I, arts. 40 and 57, corresponding to arts. 33 and 46 of the Madras Stamp Amendment Act of 1922—Order of Court under Provincial Insolvency Act (V of 1920), sec. 21—Security bond in favour of Sheristadar of the Court by sureties—Sureties hypothecating immovable property and binding themselves to the Sheristadar that an insolvent would attend when called upon—Stamp duty on such bond to be calculated under art. 40 and not art. 57, Sch. I.

On a reference under section 57 of the Indian Stamp Act by the Board of Revenue,

held, that a security bond for Rs. 4,500 executed by two sureties in pursuance of an order of a Subordinate Judge under

* Referred Case No. 4 of 1936.

section 21 (1) of the Provincial Insolvency Act in favour of the Sheristadar of that Court hypothecating also immovable property and binding themselves to the Sheristadar that an insolvent would attend when called upon, should be stamped under article 40, Schedule I (corresponding to article 33 of the Madras Stamp Amendment Act of 1922), and not under article 57, Schedule I, of the Indian Stamp Act (corresponding to article 46 of the Madras Stamp Amendment Act of 1922).

Stamp Reference by the Board of Revenue(1) and *Akshay Zemindary v. Ramanath*(2) followed.

Raj Raghubar Singh v. Jai Indra Bahadur Singh(3), relied on.

In re Stamp duty on Security bond under Provincial Insolvency Act, section 21(4) and *Tullah Shah-Ram Suran Shah v. Ghulam Hussain*(5) not followed.

CASE stated under section 57 of the Indian Stamp Act II of 1899 by the Additional Joint Secretary of the Board of Revenue, Madras, in his letter, Reference No. P. 4167/36-1, dated 4th November 1936.

Government Pleader (K. S. Krishnaswami Ayyangar) for the Board of Revenue.—The security bond in the case was executed by two sureties in pursuance of an order of the Subordinate Judge under section 21 of the Provincial Insolvency Act in favour of the Sheristadar of the Court. In and by that bond they hypothecated certain immovable properties and also bound themselves to the Sheristadar that the insolvent would attend when called upon. The question for decision is whether stamp duty should be levied under article 40, or article 57, of the First Schedule to the Indian Stamp Act, corresponding to articles 33 and 46 of the Madras Stamp Amendment Act, 1922, respectively. Article 40 deals with a mortgage deed which is not a security bond and article 57 deals with a security bond or mortgage executed by a surety for the due performance of a contract. The Allahabad and Calcutta High Courts have held that article 40 is applicable but the Lahore

(1) (1929) I.L.R. 52 All. 844 (F.B.).

(2) (1936) 40 C.W.N. 1281.

(3) (1919) L.R. 46 I.A. 228; I.L.R. 42 All. 158.

(4) (1935) I.L.R. 17 Lah. 74 (F.B.).

(5) (1933) I.L.R. 15 Lah. 78.

ABUBACKER
v.
MADARSA
LABBAJ.

High Court has held that article 57 is applicable. In Oudh the latter view has been held to be correct. There is no reported case in Madras or Bombay. Mulla and Pratt in their book on the Indian Stamp Act at page 215, 1935 Edition, say that article 40 is applicable. In section 17 (2) of the Indian Stamp Act a mortgage is defined as an engagement and not as a contract. In section 2 of the Indian Contract Act a contract is defined as an agreement enforceable by law. Section 10 of the Indian Contract Act says that all agreements are contracts if certain conditions are satisfied.

Though the bond is given in the name of the Sheristadar it is really given to the Court. The Court is not a juridical person; see *Raj Raghubar Singh v. Jai Indra Bahadur Singh*(1). So there cannot be a contract between the sureties and the Court. Article 57 would apply only if the bond was executed for the due performance of a contract. *In re Stamp duty on Security bond under Provincial Insolvency Act, section 21(2)* is a case similar to the present one. There, it was held that article 57 applied, following an earlier decision in *Tullah Shah-Ram Saran Shah v. Ghulam Hussain*(3) which deals with a security bond executed under Order XLI, rule 5, of the Code of Civil Procedure. There is no discussion in the latter case.

In a Full Bench case, *Stamp Reference by the Board of Revenue*(4), the Allahabad High Court held that article 40 was applicable to a security bond executed under Order XLI, rule 5, of the Code of Civil Procedure. In *Akshay Zemindary v. Ramanath*(5) the Calcutta High Court followed the Allahabad view.

[*The Junior Secretary to the Board of Revenue, United Provinces at Allahabad. In the matter of a deed executed by one Thakur Lalta Bakhsh Singh*(6) referred to.]

LEACH C.J. THE JUDGMENT of the Court was delivered by LEACH C.J.—The following question has been referred to the Court under section 57 of the

(1) (1919) L.R. 46 I.A. 228; I.L.R. 42 All. 158.

(2) (1935) I.L.R. 17 Lah. 74 (F.B.). (3) (1933) I.L.R. 15 Lah. 78.

(4) (1929) I.L.R. 52 All. 844 (F.B.).

(5) (1936) 40 C.W.N. 1281.

(6) (1930) I.L.R. 6 Luck. 601 (F.B.).

Indian Stamp Act by the Board of Revenue as the chief controlling revenue authority of the Presidency:

ABUBACKER
v.
MADARSA
LABBAI.
LEACH C.J.

“ Whether the document, a security bond for Rs. 4,500 executed in pursuance of an order of the Court of the Subordinate Judge of Tiruvarur hypothecating also immovable property, should be stamped under article 40, Schedule 1, or under article 57, Schedule 1, of the Indian Stamp Act.”

These articles correspond respectively to articles 33 and 46 of the Madras Stamp Amendment Act of 1922.

The facts are shortly these. One Abubacker Labbai Chinnathambi Rowther applied in the Court of the Subordinate Judge of Tiruvarur under the Provincial Insolvency Act to be adjudged an insolvent, and under section 21 (1) of that Act was required to give a bond with two sureties for his due appearance in the insolvency proceedings. A bond was accordingly executed by two sureties in favour of the Sheristadar of the Court in the sum of Rs. 4,500 and was stamped under article 57 of the Stamp Act, or rather, under the corresponding article of the local Act. The Madras Board of Revenue have asked the Court to decide whether this is correct. If article 57 does not apply the only other article which can be article 40. This is common ground.

Article 40 prescribes the duty to be paid on a mortgage deed not being an agreement relating to a deposit of title deeds, pawn or pledge, a bottomry bond, a mortgage of a crop, a respondentia bond and a security bond. Article 57 prescribes the duty payable in respect of a security bond or mortgage deed executed by way of security for the due execution of an office, or to

ABUBACKER
 v.
 MADARSA
 LABBAI.
 ———
 LEACH C.J.

account for money or other property received by virtue thereof, or executed by a surety to secure the due performance of a contract. It is said that article 57 and not article 40 applies because the bond in question is a surety bond for the due performance of a contract. Section 2 (h) of the Contract Act defines a contract as being an agreement enforceable by law.

The Lahore High Court held in a case headed *In re Stamp duty on Security bond under Provincial Insolvency Act, section 21(1)* that a bond of this nature is a bond for the due performance of a contract and consequently is to be stamped under article 57. In that case the bond differed materially from the bond we are now considering. The bond in the present reference was not executed by the debtor, but merely by the sureties. In the Lahore case the bond was executed by the debtor as well as the sureties. This decision followed a previous decision of the Lahore Court, *Tullah Shah-Ram Saran Shah v. Ghulam Hussain*(2), which concerned a bond given under Order XLI, rule 5, of the Code of Civil Procedure.

The Allahabad High Court has taken a contrary view in *Stamp Reference by the Board of Revenue*(3). A Full Bench consisting of KENDALL, YOUNG and KING JJ. held that the bond given under Order XLI, rule 5, was not a bond for the due performance of a contract, because there could be no contractual relation with the Court. An agreement amounting to a contract must be entered into by the parties with the object of

(1) (1935) I.L.R. 17 Lah. 74 (F.B.).

(2) (1933) I.L.R. 15 Lah. 78.

(3) (1929) I.L.R. 52 All. 844 (F.B.).

creating contractual relations between themselves and this was impossible where the Court was concerned. A Bench of the Calcutta High Court in *Akshay Zemindary v. Ramanath*(1) expressed a similar opinion, and expressly held that the word "contract" used in article 57 means a contract as defined in section 2 (h) of the Indian Contract Act.

ABUBACKER
v
MADARSA
LABBAL.
LEACH C.J.

We agree with the decisions of the Allahabad and Calcutta High Courts. As the Privy Council pointed out in *Raj Raghubar Singh v. Jai Indra Bahadur Singh*(2), the Court is not a juridical person and is incapable of contracting. Moreover, in circumstances such as these there is nothing in the nature of a contract with the Court. When a debtor applies to be adjudicated an insolvent, he is required by law to attend before the Insolvency Court when required. It is not a matter of agreement; it is his duty to be there and if he does not attend when he should attend, the Court can compel his attendance. In this case the sureties did bind themselves to the Sheristadar that the insolvent would attend when called upon, but their obligation was not an obligation connected with the performance of a contract by the insolvent.

For the reasons indicated we are of the opinion that article 40, not article 57, is the appropriate article. We answer the reference accordingly.

G. R.

(1) (1936) 40 C.W.N. 1281. (2) (1919) L.R. 46 I.A. 228; I.L.R. 42 All. 158.
