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 VERNON R. STUART

law is in doubt upon this point it is clearly the duty of the legislature to amend the Indian Divorce Act and make provision similar to the provision in the English Divorce Act to enable parties named in the divorce petition to be added to the parties to the proceedings.

I make no order as to costs.

MISCELLANEOUS CIVIL

*Before Sir Shah Muhammad Sulaiman, Chief Justice and
 Mr. Justice Bennet*

1935
 January, 28

REFERENCE UNDER THE CIVIL PROCEDURE CODE*

Stamp Act (II of 1899), article 57, exemption (e)—Surety for an officer of Government—Exemption from stamp duty—Security bond by custodian of property attached by court amin—Civil Procedure Code, order XXI, rules 43, 122, 123.

In execution of a decree movable property of the judgment-debtor was attached by the court amin and handed over by him to a custodian who executed a *supurdnama*, undertaking to produce the property whenever demanded by the court or the amin and declaring that in case of failure the court could realise the value from his person and property. Approval of the court was obtained to this arrangement, as required by order XXI, rules 122 and 123, of the Civil Procedure Code:

Held, that the position of the custodian was that of a surety for the amin, and the document was a security bond executed by a surety for an officer of Government and was exempt from stamp duty under exemption (e) of article 57 of the Stamp Act.

The Government Advocate (Mr. Muhammad Ismail), for the Crown.

SULAIMAN, C.J., and BENNET, J.:—This is a reference by the Munsif of Ghaziabad under order XLVI, rule 1, of a question of law which arose before him when executing a decree. A simple money decree had been put in execution and certain movable property of the judgment-debtor was ordered to be attached. The amin went to the spot and attached the property and handed over the same to a *supurddar* who executed a

*Miscellaneous Case No. 307 of 1934.

document which is the subject-matter of consideration. On report to the court, the court approved of the arrangement made by the amin.

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There is no question before us as to the legal liability of the supurddar to restore the goods placed in his custody. The only question is whether the document executed by him was chargeable with stamp duty.

The terms of the document were that the supurddar acknowledged having received the attached property from the amin and agreed to produce the same whenever demanded by the court or the amin and further agreed that in case of failure the court would be at liberty to realise the price thereof from his person and property. The question before us is whether this document is exempt from duty or whether it is chargeable with duty as an agreement or as a security bond.

As the supurddar was not paid any remuneration for his offering to take charge of the property there may be some difficulty in holding that the document amounted to an agreement. But there can be no doubt that the language brings it within the scope of the definition of security bond as given in schedule I, article 57 of the Indian Stamp Act. A bond executed by way of security to account for property received by virtue thereof, even though executed by a surety, is a security bond within the meaning of that article. But exemption (e) under that article exempts from the payment of stamp duty any instrument executed by a surety for an officer of Government to secure the due accounting for property received by virtue thereof. The point for consideration is whether this document comes under this exemption. Under order XXI, rule 43 where property to be attached is movable property in the possession of the judgment-debtor attachment is to be made by actual seizure and the attaching officer is to keep the property in his own custody or in that of one of his subordinates and "shall be responsible for the due custody thereof"; therefore, the legal responsibility for the due custody of

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the attached property lies on the attaching officer. Rules 122 and 123 provide for the approval or permission of the court as to the arrangement made by the attaching officer, which when approved would exonerate the attaching officer personally. Nevertheless the supurddar who keeps the property in his own custody on behalf of the amin is really a surety for the amin and undertakes to restore the goods or pay their price if not produced before the court. The position of the supurddar was therefore that of a surety for the amin undertaking duly to account for the property received from the amin by virtue of the document executed by the supurddar, and such document is covered by exemption (e).

The learned advocate for the Secretary of State relies on the Full Bench case of *Shakir Husain v. Chandu Lal* (1), but that case in no way helps him because it was laid down there that although the amin ceases to be liable after the court has approved of the arrangement or given him permission to make the arrangement, the supurddar was liable as a surety under section 145 of the Civil Procedure Code. It follows that the position of the supurddar as surety for the amin undertaking to produce the goods was accepted by the Bench and his liability as a surety was actually enforced.

We are therefore of opinion that the supurdnama in question was not liable to duty because it was exempted under exemption (e) to article 57. This is our answer to the reference.

(1) (1931) I.L.R., 54 All., 263.