

for collecting the licence fees. It is reasonable that the Board should recover by means of licence fees the expenses incurred for such purposes, but we do not think it was the intention of the legislature that municipalities should raise revenue for general purposes under the guise of imposing licence fees. If the Board intends to raise revenue from motor lorries plying for hire we think it would be contrary to the spirit and intention of the Act to raise the revenue in the form of a licence fee and not in the form of a tax. In the present case we have no facts upon which we can come to any conclusion as to whether the amount of licence fee is reasonable or not. The point was not raised in the trial court and the Municipal Board were not in a position to produce any evidence showing that the amount of licence fee was not unreasonable. We, therefore, cannot hold that the bye-law is invalid on the ground that the amount of licence fee was unreasonable. This is, however, a question which the Commissioner or the Local Government may consider. *Prima facie* it may be suspected that the amount of Rs.100 per annum is rather high with reference to the extra work imposed upon the Municipal Board in connection with the licensing business.

The recommendation that the fine should be reduced to Rs.50 seems to us reasonable. We, therefore, allow the application to this extent that we reduce the fine from Rs.100 to Rs.50 but maintain the conviction.

MISCELLANEOUS CIVIL

Before Mr. Justice Bennet

OFFICIAL LIQUIDATOR, INDIAN STATES BANK (APPLICANT) *v.* RUKMINI RANI AND OTHERS (OPPOSITE PARTIES)*

1933
December, 15

Court Fees Act (VII of 1870), section 19(iii)—Exemption from court fee—Written statement in a miscellaneous case—Reply to application by Official Liquidator—Civil Procedure Code, section 141.

*Stamp Reference in Miscellaneous Case No. 784 of 1931.

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Section 19, clause (iii) of the Court Fees Act, which exempts from court fee written statements in suits should not be interpreted to exclude written statements in miscellaneous cases. The word "suit" has not been defined in the Civil Procedure Code; and section 141 of the Code provides that the procedure for suits shall be followed in all proceedings in any court of civil jurisdiction.

So, a written statement, filed in reply to the application of the Official Liquidator under the Companies Act to set aside certain transfers as fraudulent, was *held* to be exempt from the payment of any court fee

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

Mr. *Din Dayal*, for the opposite parties.

BENNET, J.:—This is a reference by the taxing officer of the question as to whether a court-fee stamp should be affixed to written statements which are filed opposing an application by the Official Liquidator under the Indian Companies Act to set aside certain transfers as fraudulent. Under the Companies Act the procedure is similar to the procedure under the Provincial Insolvency Act. That, however, does not throw much light on the matter because there is no special provision under that Act. These proceedings under either of these Acts are apparently miscellaneous cases within the meaning of the General Rules (Civil) for courts subordinate to the High Court of Judicature at Allahabad, and miscellaneous cases are classified in the annual returns under chapter XVI, page 193, form No. 95. A foot-note, however, to that form states that applications under the Provincial Insolvency Act, Act V of 1920, are not to be entered in that particular statement, form No. 95, and apparently they are separately entered. They are, however, clearly miscellaneous cases. Under section 4 of the Court Fees Act it is provided that for every document, filed in any court, of the kind specified in the first or second schedule a court-fee stamp is required. It is, therefore, necessary for the learned Government Advocate to show that the

documents in question come under the first or second schedule. He argues that they come under article 1 of the second schedule as an application or petition. No doubt the application of the Official Liquidator to have the transfer set aside does come under that article and it has been stamped with a Rs.3 court-fee stamp under that article, but it is claimed on behalf of the opposite party that their application in reply amounts to a written statement and is therefore exempted from the court-fee duty under section 19(iii) which exempts "Written statements called for by the court after the first hearing of a suit." As regards written statements in a regular suit it is stated in schedule I, article 1, that a written statement pleading a set off or a counterclaim is liable to stamp duty; that is, written statements which do not plead a set off or counterclaim are not liable to stamp duty. It is claimed, however, by the learned Government Advocate that this exemption only applies in the case of a suit. There is no definition of a suit contained in the Civil Procedure Code, but there is a definition of "decree" in section 2(2) as the formal expression of an adjudication which conclusively determines the rights of the parties in regard to the matters in controversy in the suit. Section 141 provides that the procedure for suits shall be followed in all proceedings in any court of civil jurisdiction. The question is whether the exemption from stamp duty on the written statement in section 19(iii) should be limited to written statements in a suit and should not be allowed in the case of written statements in a miscellaneous case. I do not consider that the rule should be interpreted to exclude the written statement in a miscellaneous case. There is no reason to suppose that the legislature would have allowed a written statement in a suit to be free of stamp duty and have intended that the written statement in a miscellaneous case should be liable to stamp duty. There would be no reason to make such a distinction.

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If the legislature desires to make such a distinction then it ought to be clearly provided in the Court Fees Act that the written statement in a miscellaneous case shall be liable to stamp duty as an application or petition. Under these circumstances I consider that it is not necessary for the written statements in the present miscellaneous cases to be stamped. Let this finding be returned to the taxing officer.

REVISIONAL CRIMINAL

Before Mr. Justice Bennet

EMPEROR *v.* SURAJBALI*

1933
 December, 19

Criminal Procedure Code, section 164—Previous statements made by witnesses to the police—Time up to which copies thereof can be demanded by the accused—Evidence Act (I of 1872), sections 32, 80—Dying declarations—Mode of proof—Whether the Magistrate recording a dying declaration must be called to prove it—Admissibility in evidence.

Under section 162 of the Criminal Procedure Code the only use to which previous statements, made to the police, by the witnesses may be put is under section 145 of the Evidence Act to contradict a witness, and for this purpose the attention of the witness must be drawn to the previous statement at the time when he is being examined or cross-examined. That is the time when the application for copies of the previous statements should be made, and the section does not authorise the demanding of such copies after the evidence of the witnesses has closed and there is no longer any use to which such statements can then be put.

Under section 80 of the Evidence Act a dying declaration, which has been recorded by a Magistrate, can be tendered in evidence without the Magistrate who recorded it being called. Section 80 is applicable to depositions and similar statements, which may be proved by the production of the document without any witness being called to prove it.

A dying declaration does amount to "evidence" within the meaning of section 80, although there may not have been any case under inquiry before the Magistrate who recorded it.

*Criminal Revision No. 888 of 1933, from an order of Krishna Das, Second Additional Sessions Judge of Gorakhpur, dated the 2nd of October, 1933.