

1935

AIJAZ  
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simply because of the termination of the execution proceedings and the re-transmission of the decree to the civil court. In *Nand Kishore's* case (1) the order of the Collector setting aside the sale was sought to be supported in this Court on the ground that the Collector could, in exercise of the power of review vested in him, set aside a sale. But this Court overruled this contention on the ground that there was nothing in the order of the Collector in that case to suggest that he was exercising the power of review. In the case before us, however, we find that in the application that was made by Muhammad Munawar for setting aside the sale he requested the Collector to review his order confirming the sale. Apart from this, in our judgment the decision in *Nand Kishore's* case (1) cannot be reconciled with the Full Bench decision of this Court noted above.

For the reasons given above we hold that the Collector had jurisdiction to set aside the sale and the propriety of his order could not be called in question in the civil court. We accordingly allow this appeal, set aside the decree of the court below and dismiss the plaintiff's suit with costs here and below.

## MISCELLANEOUS CIVIL

*Before Mr. Justice Bennet*

SMURTHWAITE (PETITIONER) v. SMURTHWAITE  
(RESPONDENT)\*

*Indian and Colonial Divorce Jurisdiction Act, 1926 (16 and 17  
Geo. 5. ch. 40)—Petition for divorce—Court fees.*

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The court fee payable on a petition for divorce under the Indian and Colonial Divorce Jurisdiction Act of 1926 is Rs.2. The court, in hearing such a petition, does not apply the Indian Divorce Act, and, therefore, the court fee applicable to that Act can not be applied to a petition under the Indian and Colonial Divorce Jurisdiction Act of 1926.

\*Stamp Reference in Matrimonial Suit No. 3 of 1935.

(1) (1926) I.L.R., 48 All., 568.

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SMURTH-  
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v.  
SMURTH-  
WAITE

Mr. *T. A. Bradley*, for the petitioner.

BENNET, J.:—This is a reference by the Taxing Officer on the question of what is the proper court fee for a petition for divorce under the Indian and Colonial Divorce Jurisdiction Act of 1926. The stamp reporter reported that in such petitions a court fee of Rs.20 had always been paid under article 20, schedule II of the Court Fees Act. Learned counsel for the petitioner contended that the petition for divorce was not under the Indian Divorce Act and that article 20 only refers to a petition for divorce under the Indian Divorce Act. Learned counsel therefore contended that the proper court fee was Rs.2. The Indian and Colonial Divorce Jurisdiction Act is not merely an Act conferring jurisdiction on this Court but the Act further sets out in section 1, proviso (a), that the decree shall be granted only on grounds according to the law for the time being in force in England. The court therefore in hearing this petition does not apply the Indian Divorce Act and therefore the court fee applicable to the Indian Divorce Act cannot be applied to a petition under the Indian and Colonial Divorce Jurisdiction Act of 1926. For these reasons I consider that the report of the stamp reporter is incorrect. I hold that the proper court fee of Rs.2 has been paid in this case and therefore the petition should proceed. I do not think that a notice should issue to the Government Advocate.