

1881

Munshi *Kashi Prasad*, for the plaintiff.

DHIRAJ
KUAR
v.
KRAMAJIT
SINGH.

Maulvi *Abdul Rahman*, for the defendant.

The Court (STRAIGHT, J., and OLDFIELD, J.,) delivered the following judgment:—

STRAIGHT, J.—We think it reasonable to infer that the agreement between the parties, of which the petition of the 15th November, 1876, is some evidence, was that an allowance of Rs. 2 per mensem should be paid by Bikramajit Singh to Dhiraj Kuar by way of provision for her, on account of their past cohabitation together. Such a consideration, if consideration it can properly be called, which seems to us more than doubtful, would not be immoral, so as to render the contract “*de facto*” void. But we think the more correct view is to regard the promise to pay the allowance as an undertaking on the part of Bikramajit Singh to compensate the woman for past services voluntarily rendered to him, for which no consideration, as defined in the Contract Act, would be necessary. The decision of the Small Cause Court Judge must be reversed, and the claim of the plaintiff decreed with costs. She will also get the costs of this application.

Application allowed.

FULL BENCH.

1881

May 9.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Spankie, Mr. Justice Oldfield, and Mr. Justice Straight.

Reference by the Board of Revenue, North-Western Provinces, under s. 46 of Act I of 1879.

Security-bond for due accounting for “property” received by virtue of office—Act I of 1879 (Stamp Act), sch. ii, No. 12 (b).

The question was whether a bond executed by the sureties of an officer of Government to secure the due execution of his office and the due accounting by him of “public moneys, deposits, notes, stamp-paper, postage labels, or *other property*” of Government committed to his charge was or was not exempted from stamp-duty by the provisions of art. 12 (b) of sch. ii of Act I of 1879, regard being had to the words “or other property.”

Per STUART, C. J., that such bond was one to secure the “due execution of an office” and the “due accounting for money received by virtue thereof,” and

nothing more, as the words "or other property" must be taken to mean property of the same kind as previously mentioned, and therefore "money" or the like of money, and such bond was therefore exempted from stamp-duty by the provisions of art 12 (b) of sch. ii of Act I of 1879.

Per OLDFIELD, J., that, inasmuch as the words in art. 12 (b) of sch. ii of Act I of 1879 "or the due accounting for money received by virtue thereof" should be regarded as mere surplusage, and the "due execution of an office" and the "due accounting for money received by virtue thereof" be considered one and the same thing, and as the due accounting for property received by him by virtue of his office was the "due execution of his office" by the officer in this case, such bond was one for the "due execution of an office" and was therefore exempted from stamp-duty.

Per SPANKIE, J., and STRAIGHT, J., that, inasmuch as the words in art. 12 (b) of sch. ii of Act I of 1879 could not be regarded as mere surplusage, and there was a distinction drawn by the Legislature between the "due execution of an office" and the "due accounting for money received by virtue thereof," such bond was not one for the "due execution of an office," and being one for the due accounting for "property," it was not one for the due accounting for "money;" and therefore it was not exempted from stamp-duty.

THIS was a reference by the Board of Revenue, North-Western Provinces, under s. 46 of Act I of 1879, as to the amount of stamp-duty chargeable on a bond entered into by the sureties of the Government treasurer in the Collector's office, Moradabad, dated the 5th November, 1879. This instrument had been exempted from stamp-duty, with reference to art. 12 (b), sch. ii of Act I of 1879. The following is a translation of the material portion of the bond: "Whereas — has been appointed treasurer in the Collectorate for the district of — and has filed his engagement of this date for the due discharge of the various trusts confided to him, we, in consideration of his being so appointed, of our free choice and intelligence, guarantee the honest and faithful administration on the part of the sadr treasurer aforesaid, his substitute during any temporary absence, and the subordinate agents appointed by him or on his nomination: should any loss or deficiency occur in public moneys, deposits, notes, stamp-paper, postage labels, or other property of Government committed to the charge of the treasurer, from the non-production of accounts, or from the misconduct or negligence of himself, of any temporary substitute appointed with his consent, or of agents appointed by him or on his nomination, whether at the sadr or mufassal offices of the district, we engage

1881

 REFERENCE
 BY THE BOARD
 OF REVENUE
 N.-W. P.

1881

 REFERENCE
 OF THE BOARD
 OF REVENUE,
 N.-W. P.

to make good the amount without delay or any pretext." The Board, having regard to the fact that the sureties bound themselves to make good to Government any loss or deficiency not only in "public moneys, deposits, notes, stamp-paper, postage labels," but also in "*other property*" of Government committed to the charge of the treasurer, were doubtful whether the bond had been rightly exempted under art. 12 (b), sch. ii of Act I of 1879 from stamp-duty, and this point it referred to the High Court for determination. The Board's own opinion on the point was as follows:—

"The question is whether the words 'executed by officers of Government or their sureties to secure the due execution of an office or the due accounting for money received by virtue thereof', [art. 12 (b), sch. ii of Act I of 1879], by which a certain class of instruments are declared exempt from stamp-duty, cover the security-bond of an officer into whose hands property other than money comes, and who in the course of his duty is responsible to Government for the due custody and disposition of the same. Such a class of officers are the nazirs of Civil and Revenue Courts, and hitherto the practice has been to take unstamped bonds from them. But if it is ruled that the exemption from stamp-duty above quoted does not extend to any clause in their bonds by which they pledge themselves to render account for all property received by them, it will be requisite either to stamp such bonds or to modify the wording of the exemption. It will be observed that the wording of the exemption [art. 12 (b), sch. ii] is identical with that of the corresponding article of sch. i (art. 14), by which the duty on security bonds is fixed; and art. 14 of sch. i seems to the Board to apply to all security-bonds for the due execution of an office, including those in which one of the duties is to account for property received. The exemption was intended to have the same scope as the article imposing the duty, and on this account the words 'or the due accounting for money received by virtue thereof' were added. The Board think that but for this wish to make the article and the clause imposing the duty conterminous, these words would not have been added. The exemption would then have stood 'executed by officers of Government or their sureties to secure the due execution of an office,' and to account for money or property received is usually supposed to be one of the chief ways in which an office

 1881
 May 6

is duly executed. Under the old Act (XVIII of 1869) the exemption in favour of these bonds was thus worded (s. 15, cl. 7), and when it was pointed out in 1873 to the Government of India that the exemption was silent as to bonds 'to account for money,' which were specified in art. 12 of schedule i of Act XVIII of 1869, the Government explained that the exemption, as worded, was meant to apply to all security-bonds given by officers who, as part of their duty, have to account for money. In amending the new Act the words 'to account for money' were, as has been mentioned, added simply to make the exemption co-extensive with the article imposing the duty, and remove whatever doubt might have existed before. It has been pointed out by the Government of India that in respect to all property other than money the officer intrusted with it is under a specific contract, and that to fulfil this contract is part of his ordinary duty, for the due execution of which he has given a bond."

1881

 REFERRED
 BY THE BOARD
 OF REVENUE
 N.-W. P.

The reference was laid before the Full Court.

The *Senior Government Pleader* (*Lala Juala Prasad*), for the Board of Revenue.

Pandit Bishambhar Nath and *Lala Harkishen Das*, for the sureties.

The Court delivered the following judgments :

STUART, C. J.—The pressure and multiplicity of other business has prevented me until to day considering the question submitted to us by the Board of Revenue in this case, although since it was heard it has very much occupied my mind. At the hearing I entertained considerable doubts on the subject, but a very careful examination of the Stamp Act has satisfied me that the instrument before us ought to be regarded as exempt from duty. The letter from the Board does not appear to me to state the case with sufficient clearness, or with a due regard to the legal meaning and scope of the bond by the sureties. The letter lays undue stress on the expression "or other property," and makes no allusion to the subsequent and operative engagement undertaken by the sureties, by which, as will be presently seen, their

1881

REFERENCE
THE BOARD
REVENUE,
L. W. P.

responsibility is determined. The provision of the Stamp Act under which the question must be considered is that contained in sch. ii of the Act headed "Instruments exempted from duty," and in (b) of No. 12 of that schedule, which is in these terms:—

"Instruments executed by officers of Government or their sureties to secure the due execution of an office, or the due accounting for money received by virtue thereof." I cannot agree to the suggestion that any part of this provision may be regarded as surplusage, nor on the other hand do I consider that the introduction of the words "or other property" takes the bond out of the exemption; these words simply, in my opinion, forming part of the engagement as to the execution of the office. There is no specification in the bond of such other property excepting such as may be derived from the context, and that I may say at once simply means money or its convertible equivalent. The terms of the schedule under consideration are intended to apply to two classes of instruments, those which secure the due execution of an office, and do not provide for any accounting for money, and those which, while securing the due execution of an office, do provide for such accounting, but both of which instruments it is intended to exempt from duty. The bond in the present case falls under the latter description as being an instrument for the due execution of an office, and for securing the due accounting for money in virtue thereof, and it is therefore exempt from duty. The bond recites the appointment to the office of treasurer of the district referred to; that he has filed his engagement; and that in consideration of his being appointed, the sureties "guarantee the honest and faithful administration" of the treasurer or his substitute, and his subordinate agents, and the precise nature and nature of this guarantee is explained as follows: "Should any loss or deficiency occur in public moneys, deposits, notes, stamp-papers, postage labels, or other property of Government committed to the charge of the treasurer, from the non-production of accounts, or from the misconduct or negligence of himself, of any temporary substitute appointed with his consent, or of agents appointed by him or on his nomination, whether at the *sadr* or *mufassal* offices of the district, *we engage to make good the amount without delay or any pretext.*" That is

1881

 REFERENC
 BY THE BOA
 OF REVENUE
 N.-W. P.

to say, for whatever loss the Government may sustain from this officer's mismanagement, misfeasance or defalcations, we hold ourselves liable, and we engage to make good the amount, or in other words to pay to the Government in money the estimated loss. Such was the sureties' guarantee to the Government. Now if there were nothing more in the bond, such provisions might be taken to secure the due execution of the treasurer's office. But the bond also provides that "for the further securing the payment of all moneys that we may be bound to pay by virtue of these presents," the sureties mortgage certain specified property, and covenant and agree that the Collector for the time being shall have power to sell any portion of that property "in satisfaction of and for this money or any moneys for which we may be liable under the bond, and ending in these terms: "And if the proceeds of sale of the property herein pledged fail to cover any loss or deficiency above mentioned, then the Collector for the time being shall be at liberty to attach and sell any other property we may now have or may hereafter acquire." These provisions are certainly ample for the purpose of securing the due accounting for money. But they do not go further, the enumeration of particulars in the first part of the bond being controlled by the subsequent engagement to make good any loss or deficiency; and as to the expression "or other property," that must be read in connection with the other particulars in the sentence in which it is found, and be taken to be *ejusdem generis*, and therefore to mean simply money or its proper equivalent, neither more or less. There was a good deal of discussion at the hearing as to what "money" legally meant, that is, what is included in the word, and it seemed to be thought that in law money only meant coin in gold, silver, or copper. That, however, is not the legal meaning of the term; it means and includes not only coin, but also bank notes, Government promissory notes, bank deposits, and otherwise and generally any paper obligation or security that is immediately and certainly convertible into cash, so that nothing can interfere with or prevent such conversion. But the definition of money is not in my view material to the question before us, the obligation on the part of the sureties being such as to leave no doubt as to their liability being a mere pecuniary

1881

REFERENCE
OF THE BOARD
OF REVENUE,
N.-W. P.

one, but not necessarily to be measured by any arbitrary meaning or limit to be put on the word "money."

SPANKIE, J.—Regulation X of 1829, Acts XXXVI and X of 1860 and 1862, respectively, exempted (apparently) all bonds executed by Government or Government officers for the due execution of an office. There was no special exemption, but there was a general exemption and rule. Act XVIII of 1869, s. 15 (7) exempted from duty bonds to Government for the due performance of the duties of a salaried office. But art. 12, sch. i of the Act contains an addition of an important character. Bonds are referred to in this article not only for the due execution of an office, but also "or to account for money received by virtue thereof." The Stamp Act now in force (I of 1879) expressly exempts instruments executed by officers of Government and their sureties "to secure the due execution of an office, or the due accounting for money received by virtue thereof." Certainly looking at the earlier Acts, we are at liberty to assume that the addition made in reference to accounting was purposely made by the Legislature, and we must look upon it as an acknowledgment "that there was something wanting in the earlier Acts. But on the evidence before us we are not at liberty to assume that the addition of the words "or the due accounting for money received by virtue thereof" was mere surplusage. On the contrary, there is more reason to believe that the Legislature purposely corrected an omission. For Act XII of 1850 required that public accountants should provide security for the due discharge of the trusts of office, and for the due account of all moneys which came into their possession or control by reason of their offices. Act XVIII of 1869 differs little in language from Act XII. of 1850, substituting or rather using the words "the due execution of an office" instead of the words "the due discharge of the trusts of office", and the words "to account for money received by virtue of office" instead of the words "and for the due account of all moneys which shall come into his possession or control by reason of his office." Moreover, when the present Act was drafted, art. 14, sch. i, stood as it stands now and as the corresponding article in Act XVIII of 1869 was passed. But the exemption when the Bill was originally before Council was

1881

 REFERRED
 BY THE BOARD
 OF REVENUE
 N.-W. I

confined to instruments executed by salaried officers of Government to secure the due performance of their duties. It may be that the wording of the Viceroy's Notification of 1876 was followed, which followed the exemption provided by s. 15 (7) of Act XVIII of 1869. But when the Bill became law, the words "or the due accounting for money received by virtue thereof" were added, and we must conclude that they were deliberately added. Thus the Legislature appears to have drawn a distinction between the due execution of an office and the due accounting for moneys received by virtue thereof, and it is only natural that it should do so, because there may be an office with duties which does not involve the receipt or custody of money, whilst in another the receipt and control of money received by virtue of the office form the chief and most important duty. Moreover, when the language of an Act is free from doubt, it best declares without more language the intention of the law-givers and is decisive of it. The Legislature in such a case must be intended to mean what it has plainly expressed, and consequently there is no room for construction. This is the rule, and a safe one. When the language is clear and plain, to say that it is surplusage is to suggest that the Legislature did not know its own meaning and purpose. Having arrived at this conclusion after a consideration of the wording of the several Acts of the Legislature, in so far as they relate to the question before us, I am quite of the same mind with my colleague Mr. Justice Straight, whose opinion I have seen, and whose conclusion I take the liberty of citing here, that, "supposing therefore a bond merely executed to secure the due execution of an office, the language of this article [12 (b), sch. ii, Act I of 1879] would preclude the construction that it covered the 'due accounting for money' received by virtue of such office. If then we are to assume, and the assumption seems irresistible, that the words 'due execution of an office' were considered insufficient to include 'due accounting for money', then *a fortiori* they cannot be held to cover the non-accounting for other property." For unless it can be shown that "public moneys," the words used in the surety-bond, include deposits, notes, stamp-paper, postage labels, or other property of Government, it cannot be contended that the exemption in (b), art. 12 of the second schedule covers such various property.

1881

REFERENCE
 THE BOARD
 REVENUE,
 W. P.

If it could be shown that " money received by virtue of (the treasury) office " included all the other property cited above, then indeed the addition of the words " deposits, notes, stamp-paper, postage labels or other property of Government " is mere surplusage, and the instrument is exempt from duty. But this has not been shown in any way, and as far as I know such a contention cannot be supported. I would therefore reply to the reference that such an instrument as that marked *A* is only exempted by the Act in regard to a suretyship to secure the due execution of the office and the due accounting for money received by virtue thereof, but if there is a suretyship for anything beyond this, the instrument is chargeable with duty in respect of such further suretyship.

OLDFIELD, J.—Clause (*b*), art. 12, sch. ii, Act I of 1879, exempts from stamp-duty instruments executed by officers of Government or their sureties to secure the due execution of an office or the due accounting for money received by virtue thereof. The instrument *A* is one executed by the sureties of the *sadr* treasurer to secure the due execution of his office, and so far comes within the exemption in the first part of the clause, and it is not taken out of the exemption by that part of the deed which provides for security against loss of property committed to the charge of the treasurer, so far as the accounting for such property forms part of the duties of his office, since the security must be considered to be given for the due execution of the office. I do not think it is necessary to take the last part of the clause, which specially exempts instruments to secure the due accounting for money received by virtue of an office, as intended to mark a distinction between security for the due accounting for money received by virtue of an office and for due accounting for other property received by virtue of an office. It seems reasonable to hold that the due accounting for property received by virtue of an office is something which is included in the due execution of an office, and it is not necessary to assume the contrary* from the mere introduction of the special exemption referred to, since there might be reasons such as the Board of Revenue have pointed out for introducing that clause, quite apart from any consideration of the kind. I am disposed to regard that part of the clause as surplusage.

STRAIGHT, J.—I am of opinion that the bond to which our attention is called by this reference, being for the due accounting for property other than money, is not within the exemption of art. 12, cl. (b), sch. ii to the Stamp Act (I of 1879.) The difficulty has been created by the introduction of the words “or the due accounting for money received by virtue thereof,” which I cannot concur with my honorable colleague Mr. Justice Oldfield should be regarded as surplusage. On the contrary, the Legislative authorities would seem to have drawn a distinction between the due execution of the duties of an office and the due accounting for moneys received by virtue thereof, as if the latter obligation were not necessarily part of the duties under the former. Supposing therefore a bond merely executed “to secure the due execution of an office,” the language of this article would preclude the construction that it covered the “due accounting for money” received by virtue of such office. If then we are to assume, and the assumption seems irresistible, that the words “due execution of an office” were considered insufficient to include “due accounting for money,” then *a fortiori* they cannot be held to cover the non-accounting for other property. The express mention of money seems to exclude any accountability for other property, and so inferentially to place a limitation upon the earlier words of the article, which, had they stood alone, need not have been applied.

1881

REFERED
BY THE HON.
OF REVENUE
N.-W. I.]

APPELLATE CIVIL.

1881
May 10

Before Mr. Justice Straight and Mr. Justice Tyrrell.

BENI MADHO AND ANOTHER (DEFENDANTS) v. ZAHURUL-HAQ AND OTHERS
(PLAINTIFFS).*

Sale in execution of decree of house in Mohalla—Right of zamindars to “haqq-i-chaharam”—Wajibularz—Liability of auction-purchaser.

The zamindars of a certain mohalla claimed from the purchaser of a house situated in such mohalla which had been sold in execution of a decree one-fourth of the sale-proceeds of such house, such purchaser being the holder of such decree. Such suit was based upon the terms of the *wajibularz*. That document stated,

* Second Appeal, No. 1105 of 1880, from a decree of Hakim Rahat Ali, Subordinate Judge of Gorakhpur, dated the 16th July, 1880, affirming a decree of Maulvi Ahmad-ul-lah, Munsif of Gorakhpur, dated the 19th March, 1880.