

1895.

BHA'U
S.
RANCHANDBA
RAO.

Judgment:—Having regard to the judgment of the Full Bench, to which the question whether section 10 of the Vatanár Act was applicable to the case of a vatan, in respect of which a settlement has been made under Gordon's Settlement, was referred, we must direct the District Court to cancel its order for the attachment and sale of the property in question.

District Court directed to cancel its order.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Jardine, and Mr. Justice Fulton.

CIVIL REFERENCE UNDER SECTION 46 OF THE INDIAN STAMP ACT.*

1895.

March 15.

Stamp—Stamp Act (I of 1879), Sch. I, Art. 21—Company—Winding up—Transfer of property by old to new company—Conveyance.

An instrument, which is in terms a conveyance of property at an agreed value, is a sale of such property at that price, and is governed by article 21, Schedule I of the Indian Stamp Act, (I of 1879). The circumstance that the transaction is a part of a larger transaction, cannot affect the character of the instrument.

THIS was a reference by J. M. Campbell, Collector and Superintendent of Stamps, Bombay, under section 46 of the Indian Stamp Act (I of 1879).

A certain deed of conveyance proposed to be entered into between the Chartered Mercantile Bank of India, London and China, Limited, of the first part, the liquidators of the said bank of the second part, and the Mercantile Bank of India, Limited, of the third part, having been taken to the Collector under section 30 of the Indian Stamp Act (I of 1879) for adjudication of the stamp duty which the deed required, and a question having arisen as to whether, for the purposes of the stamp duty, the deed was a conveyance or merely a transfer of property from one company to another for consideration, the Collector made a reference in the following terms:—

“By deed of conveyance proposed to be entered into between the Chartered Mercantile Bank of India, London and China, Limited, (hereinafter referred to as the old bank) of the first part, the liqui-

* Civil Reference, No. 2 of 1895.

dators of the old bank of the second part, and the Mercantile Bank of India, Limited, (hereinafter referred to as the new bank), after reciting that the old bank was seized and possessed of certain immoveable property in the city of Bombay, and that the old bank, being a company registered under the English Companies Acts, 1862 to 1890, by a special resolution, resolved to wind voluntarily, and the liquidators (parties of the second part) appointed invested with power under section 161 of the Companies Act of 1862 to enter into an agreement with the new bank under certain terms, and that by an agreement dated 3rd February, 1893, between the old bank and the liquidators of the one part and the new bank of the other part, it was agreed that the old bank and its liquidators should transfer to the new bank all the lands, buildings, goods, chattels, moneys, credits, debts, bills, notes, &c., of the old bank, the undertaking, business and the good-will thereof, with the full benefit of all contracts and engagements, &c., and all other real and personal property of the old bank, subject to all charges, liens and incumbrances. The new bank in consideration of such transfer agreed to pay and discharge all debts, liabilities and obligations of the old bank, to fulfil all its contracts and engagements, and to keep the old bank and its liquidators and contributories indemnified against such debts, liabilities, obligations, contracts and engagements, and against all actions and proceedings in respect thereof, and to pay the costs and expenses of winding up the old bank and of carrying the said transfer into effect, and in further consideration of such transfer it was agreed that every member of the old bank should, in respect of each share of £ 25 held by him or her, be entitled as of right to claim an allotment to himself or herself or his or her nominees of one B share of £ 25 in the new bank, with the sum of £ 12-10 per share audited and paid up thereon, and that the said new bank should allot the shares claimed. It also recited that to carry into effect the said agreement of the 3rd February, 1893, the old bank and its liquidators had agreed to transfer to the new bank its immoveable property at Bombay. Also that the premises stood in the books of the old company at the value of Rs. 1,50,000, which was the value at which the same were to be taken over, and was, therefore, the appropriate value of the consideration mentioned in the agreement of the 3rd February, 1893, which represented the transfer of the said heredita-

1895.

REFERENCE
UNDER STAMP
ACT, 1879,
SEC. 46.

1895.

REFERENCE
UNDER STAMP
ACT, 1879,
SEC. 46.

ments. It witnessed that in consideration of the said agreement and of such proportionate part of the consideration mentioned in the agreement as represented Rs. 1,50,000, the old bank granted, and the liquidators confirmed to the new bank, its successors and assigns, all that piece of land measuring 532 square yards, &c., at Elphinstone Circle, Bombay, with the buildings thereon then in the occupation of the new bank, to hold the same unto and to the use of the new bank, its successors or assigns for ever. Then followed the usual covenants of title."

The Collector submitted the following question:—

"Whether the above-mentioned document required any and what stamp?"

The opinion of the Collector was that the document should be stamped as a conveyance under article 21 of the first schedule of the Stamp Act, and that it was not merely a transfer of the property from one company to another, in consideration of the exchange of shares of equal or less nominal value in the new company for shares in the old company share for share.

Lang (Advocate General with *Little*, Government Solicitor) appeared for the Government of Bombay:—We contend that the document is a conveyance on sale and not merely a reconstruction of the company. The stamp must cover the amount of Rs. 1,50,000, which is the value of the property belonging to the bank—*The Great Western Railway Company v. The Commissioners of Inland Revenue*⁽¹⁾; *Nagnidás Jeychand v. Halalkore Nathwa Gheesla*⁽²⁾.

The next question is whether, under the provisions of section 24 of the Stamp Act, the stamp should also cover the liabilities of the old bank which the new bank has undertaken to pay.

There was no appearance on behalf of the bank.

The judgment of the Full Bench was delivered by

SARGENT, C. J.:—We think that the Collector is right in holding that the instrument in question is a conveyance, the stamp on which is fixed by article 21 of Schedule I to Act I of 1879. The instrument is by its very terms a conveyance of the property mentioned

(1) (1894) 1 Q. B., 512.

(2) L. R., 5 Bom., 470.

in it at the agreed value of Rs. 1,50,000. In other words, it is a sale of such property at that price.

The circumstance that the transaction is a part of a larger transaction as provided by the agreement, between the banks, of the 3rd February, 1893, and that the Rs. 1,50,000 is a part of the larger consideration for that agreement, cannot affect the character of this particular instrument. The parties have fixed the price at Rs. 1,50,000, which by agreement between them is to be paid to the vendor's creditors. The remarks of the Judges of the Appeal Court in *The Great Western Railway Company v. The Commissioners of Inland Revenue*⁽¹⁾ are applicable to the present case as showing that it is substantially a purchase and sale of the property. The stamp will be determined on the Rs. 1,50,000 stated in the instrument to be the consideration for the conveyance.

Order accordingly.

(1) (1894) 1 Q. B., 512.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Parsons.

HARI VASUDEV KAMAT, PLAINTIFF, v. MAHADU DAD GAVDA,
DEFENDANT.*

1895.

March 21.

Hindu law—Joint family—Bond given in name of one member of joint family for loan made out of joint family funds—Suit on bond—Right of such member to sue alone—Other members not necessary parties—Parties—Practice—Procedure.

A loan was made to the defendant out of joint family funds, and a bond for the amount was given in the name of one of the members of the joint family. He sued the defendant on the bond.

Held that the other members of the joint family were not necessary parties.

THIS was a reference by Ráo Sáheb Vishvanáth Vaikunth Vágle, Subordinate Judge, Vengurla, in the Ratnágiri District, under section 617 of the Civil Procedure Code (Act XIV of 1882).

The plaintiff sued to recover from the defendant Rs. 34-12-0 due in respect of a money-bond passed by him to the plaintiff alone on the 30th July, 1890. The following is a translation of the bond:—

"Debt-bond. (I) Mahádu Dád Gavda Dicholkar, residing at the sea-port town of Vengurla, give (this) debt-bond in writing as follows:—This day I took from you

* Civil Reference, No. 3 of 1895.