

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

1914.

January 28.

CHANDRASHANKAR PRANSHANKAR AND OTHERS (ORIGINAL PLAINTIFFS),
APPELLANTS; v. BAI MAGAN *alias* TULJALAKSHMI AND OTHERS
(ORIGINAL DEFENDANTS), RESPONDENTS.*

*Stamp Act (II of 1809), Schedule I, Article 22—Registration Act (III of 1877), section 17, clause (e)—Trusts Act (II of 1882), section 5—
“Composition deed”—Compounding of debts due—Transfer of immoveable property—Registration not necessary.*

With the consent of creditors to the extent of Rs. 1,22,000 out of the total number of creditors claiming Rs. 1,61,800 of the family firm represented by one B, the latter executed a deed making over all the specified assets of the family to certain nominated trustees. The creditors coming in (by a particular day) under the deed agreed that after all the goods and the properties had been made over to the trustees no other claim whatever with regard to the amounts due to them should remain outstanding against B and the minor members of the family, but the whole claim should be understood to be written off against them, and B and the minors were to make use of the deed as a release passed on their behalf. The deed also provided that the trustees were to manage the properties for the benefit of the creditors interested and the monies realized from time to time were to be distributed among such creditors in proportion to their claims. The properties comprised in the deed, moveable as well as immoveable, were transferred to the trustees in due course. The deed was unregistered.

Subsequently in a suit brought by the trustees to recover possession of a house comprised in the deed, a question having arisen whether the deed was a composition deed,

Held, that the definition of the term “composition deed” as given in Article 22, Schedule I of the Stamp Act (II of 1899), meant the same thing as the term “composition deed” in section 17 of the Registration Act (III of 1877), that the term so defined covered three classes of instruments: (1) An assignment for the benefit of creditors, (2) an agreement whereby payment of a composition or dividend was secured to the creditors and (3) an inspectorship deed for the purpose of working the debtor’s business for the benefit of his creditors, that the inclusion of the term “composition deed” in section 17 of the Registration Act (III of 1877) showed that it was intended to apply to a transfer of immoveable property and not to a mere agreement to take fractional payment of money in settlement of claims, that the test of a “composition

* First Appeal No. 254 of 1912.

deed" was that there ought to be a compounding of debts due and that such a deed fell under clause (e) of section 17 of the Registration Act (III of 1877) and did not require registration under that Act nor under the provisions of section 5 of the Trusts Act (II of 1882).

Held, accordingly, that the deed in question was a composition deed within the meaning of section 17, clause 2 of the Registration Act (III of 1877), and did not require registration.

FIRST appeal against the decision of N. R. Majmundar, First Class Subordinate Judge of Surat, in suit No. 15 of 1910.

Suit to recover possession of a house and mesne profits.

The circumstances under which the suit was brought were as follows :—

The house in dispute originally belonged to a family firm known as Rajaram Parbhudas. The business of the firm was managed by the eldest member of the family whose name was Nagindas. He carried on the entire trade and other business of the firm very skilfully on a very extensive scale and died in the year 1902 leaving him surviving his widow Radha, two minor sons Motilal and Chunilal, and a brother Bhaidas. Bhaidas assumed the management, but he, apparently having no capacity for business, transferred the entire property of the firm consisting of trade, moveables and immoveables to certain trustees under a deed dated the 21st March 1903 for paying off the debts of the family firm. Under the deed the trustees were to take up in their charge all the properties of the firm including the house in dispute and absolve the family from all its liabilities. But it was agreed between Bhaidas and the trustees that the former should be permitted to reside in the house till the end of the Samvat year 1959 (October 1903) and on the expiration of that period Bhaidas, for himself and on behalf of his minor nephews Motilal and Chunilal, passed a rent note and

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remained in possession till his death which occurred in 1906. After his death his widow Magan and his minor nephews' mother Radha passed a fresh rent note in which his son Varajdas, however, did not join. A notice to quit was served upon them and they having refused to comply with it, the trustees filed the present suit in ejectment. The trustees relied for their title to the house on the deed of transfer passed by Bhaidas and they maintained that it was a composition deed. The material portions of the said deed were as follows :—

To wit : Since a long time past my (*i. e.*) Bhaidas Rajaram's father Rajaram Parbhudas was carrying on money lending (business) and the business of the broker, etc., for getting money lent by others in his name. And he having died about ten years ago, after his death I and my deceased brother Bhai Nagindas continued the same business in the same name. The said Nagindas took a prominent part in constructing the said business. But during its continuance unfortunately the said Naginbhai died about three and half months ago. And now the owners of the said business are by the right of survivorship myself (*i. e.*) Bhaidas and the said Motilal and Chunilal two minor sons of the said Naginbhai. And amongst us I the said Bhaidas am the manager of the family and the eldest male member thereof. And as our family is joint the said minors live with me under my care and protection and we all live, eat and drink together.

As regards the business which the said Naginbhai carried on for the benefit of our family after the death of my father Rajabhai Parbhudas he in that business advanced sums of money to people on personal security and also advanced moneys on the pledge of ornaments in his own name as well as in the name of Rajabhai Parbhudas and he also carried on cloth business alone as well as in partnership with others in Surat and other places. And in order to conduct the said business he borrowed money from money-lenders on the personal security and also borrowed some money by pledging family ornaments already pledged with him by others. And the business which he carried on in this manner was very extensive and complicated. He is now dead as mentioned and I the said Bhaidas am not able enough to carry on the said business further and settle its claims and debts and myself pay off the debts due to creditors, and sons of Naginbhai are minor in age as mentioned above. Therefore it is not possible for them also to continue the family business. Taking all these facts into consideration it appeared to me that by continuing the family business for a longer time we as well as the creditors would have to suffer a great loss. In consequence thereof after having called a meeting

of the creditors of the family on the 21st day of December last in the year 1902 in Khan Bahadur Barjorji Nasserwanji Vakil's office I told them all the particulars of my difficulties as mentioned above, and I requested the creditors to take in their possession for their own benefit whatever goods and properties of the family there may be with me, and also the outstanding claims and stock-in-trade, etc., other property belonging to the family whatever the same may be and to free us.

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Agreeably to that resolution all of us pass in writing to you the said trustees the formal document of the composition deed with the undermentioned terms :—

We Bhaidas Rajaram and others the present owners of the firm of Sha Rajabhai Parbhudas are indebted to the extent of about Rs. 1,61,800 in all. Out of the same if creditors to the extent of the sum of Rs. 1,22,000 will sign this document before 12 o'clock in the midnight of the 5th day of April next in the year 1903 this document is duly to come into force. But if within that period creditors to the extent of the sum of Rs. 1,22,000 will not sign (this document) then this document is to be considered null and void thereafter. And in that case whatever cash money, jewellery, documents, account-books and other things which I Bhaidas have made over in charge of you trustees, out of the same you trustees are to again hand over to me Bhaidas after taking from me a receipt in writing whatever balance there may be after deducting thereupon the expenses that may have incurred.

2. Only those of the creditors who will sign this document up to 12 o'clock at night on 21st day of April 1903 will get the benefit of this document. And in order that all the creditors may thus get information about the document having been made and that they may get an opportunity of signing the same within the said period the said trustees are to give separate notices in public newspapers only by post and to request all the creditors to give the said signature. And it shall also be distinctly stated in the said notices that those who will not sign on this document within 21st day of April 1903 will have no right to the goods and property mentioned in this document.

7. I Bhaidas have goods, property, outstanding claims and jewellery, etc., belonging to our family as specified in Schedule B annexed thereto. Whatever goods, property, ornaments, etc., out of the same I have handed over to the members of the Committee prior to this day have been specified in the first part of the said Schedule B and the goods, property and outstanding claims, etc., which are still to be handed over by me are specified in the second part of this very Schedule, besides this I have no other goods or property left with me. And should you trustees hereafter find that I have concealed

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any immoveable property or goods or outstanding claim other than the goods and property specified in the second part of the Schedule which are to be handed over by me in charge of the said trustees then you trustees are entitled to obtain from me the goods, property or outstanding claim so concealed by me for the benefit of all the creditors.

8. After signatures of creditors are obtained on this document as mentioned in the clause 1, I Bhaidas am forthwith to make over to you trustees the possession of all goods and property specified in the second part of Schedule B as mentioned below should the amount of their claims have come to Rs. 1,22,000 agreeably to what is mentioned in the said clause and from that very date you trustees are duly to be the full owners of all the goods and properties mentioned in the Schedule B by virtue of this document, afterwards I Bhaidas and Motilal and Chumilal or our descendants and heirs shall have no interest left therein.

(a) We are to give trustees possession of the immoveable properties specified in Nos. 1 and 2 and in Schedule B and which are in our independent possession by vacating the same should you so desire or by passing leases in respect thereof. The sanads of the said houses and the sale deed in respect of a piece of land have been given to you and I have not found other old documents besides these, should however any be hereafter found I am to hand over the same to you. But out of these two houses at Surat a special condition is laid down with regard to our family dwelling houses situated at Kalapith that you are to allow our family to live therein up to the 30th of Aso Vad Samvat 1959 (20th October 1903) in the same manner as it has been living in this house after getting a lease passed by me Bhaidas, and thereafter we are to vacate the said house and make over the same forthwith in your possession and not to raise any dispute or objection with regard thereto.

* * * * *

9. I the said Bhaidas have made over the whole of the goods and properties and assets belonging to our family for the benefit of the creditors as mentioned above. This being the case our large family has been reduced to an altogether destitute condition, and as I Bhaidas, I am not able to improve that condition at once, I request the creditors to give some support for a short time to our family. Thereupon considering the reputation and destitute condition of our family the creditors who were present at the last meeting passed a resolution to the effect that we should be allowed to live up to Diwali of this year in the dwelling house of our family and that you trustees should pay to me out of this trust property Rs. 40 every month for the maintenance of our family up to the Diwali of the same year, that the trustees should also pay off in full the sundry debts to the extent of Rs. 300 to 350 in respect of provisions which I have bought on credit from miscellaneous merchants for the maintenance

of our family up to now and that the trustees should not take possession of the household material (such as) pots, pans, clothes and wearing apparel, etc., of the value of about Rs. 300—400 belonging to our family but give the same as a present to our children for their use. You trustees are therefore to duly carry out the above resolution.

10. Immediately I the said Bhaidas give you possession of the property mentioned in the Schedule B belonging to my family as mentioned in clause 7 above you trustees are to duly give me receipt under your signatures in respect of the same. And on my obtaining the said receipt I Bhaidas and the said minors Motilal and Chunilal are to be duly altogether free from the debts due to all the creditors who may have signed this document as also to creditors of the shop of Hodeda. And we the creditors also hereby give in writing that after all the above goods and properties are made over to the trustees as mentioned above no other claim whatever with regard to the amounts due to us shall remain outstanding against Bhaidas and minors Motilal and Chunilal but the whole claim shall be understood to have been written off as against them and Bhaidas and minors Motilal and Chunilal and their descendants and heirs are duly to make use of this document against us as a release passed by us in that behalf.

11. After all the goods and property have come into possession of you trustees as mentioned above you trustees are duly to manage the same by right of ownership for the benefit of all the creditors interested in this document with regard thereto you are to collect the outstanding claims or if any person (debtor) is found out to be in insolvent condition you are to settle the claim against him by accepting a less or larger amount as may be to the utmost possible advantage or should a suit have to be filed against anyone with a view to recover the said amount or should any defence have to be made in any matter these in the name of the trustees you are to do the same or let the properties on rent or sell the same and besides this you are to do all that may have to be done for the benefit of creditors. Full authority is hereby given to you trustees in that behalf. All the moneys that may be recovered from time to time out of the said goods and property that have been made over to you are to be duly distributed by you among such creditors out of those who may have signed this document whose claim may have been decided to be just and within the period of limitation as mentioned above and among the creditors of the shop at Hodeda whose list may have been prepared by you as mentioned above in proportion to their respective claims. And all the creditors are duly to give you in writing their respective separate receipts for the amounts which they may receive from you from time to time.

12. You are to sell the goods and property made over to you trustees as early as possible with due regard to the interest of the creditors and by

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recovering also the outstanding claims at an early date. You are to dispose of this trust in as good time as possible. And should any assistance or consent or signatures of us debtors be required at any place hereafter in selling the said properties and goods or in recovering the outstanding claims I Bhaidas on behalf of myself and as guardian of the minors and our descendants and heirs after us (*i. e.* after our death) are duly to give the same without raising any objection whenever you trustees may demand the same.

13. You trustees have full authority to defray out of this trust property the expenses for getting this document prepared as also whatever other just and legal expenses that you trustees may have incurred or may hereafter have to incur in connection with the trust arising out of this document the expenses in connection with any suit that may have to be filed or defended in Court the expenses in connection with the arrears of salaries due to those clerks of the debtors' firm who may have continued after the 21st December and rendered assistance in preparing the books of account and in the expenses in connection with the arrears of the salaries due to the clerks in the shop at Hodeda and the expenses in connection with (the salaries of) men and clerks who may hereafter be employed. Similarly should you trustees incur any expenses in connection with this trust out of your own moneys you trustees are entitled to recover the same also first out of the trust property.

18. We debtors and we their creditors have given this document in writing to you with all the conditions mentioned above. And you trustees also have put your signatures on this document as (a proof of) your consent to undertake the trust mentioned in this document.

The defendants contended *inter alia* that the conveyance to the plaintiffs was not a composition deed, that it was a transfer to trustees for the benefit of creditors and that being unregistered was inoperative and inadmissible in evidence.

The plaintiffs in their reply stated that the deed was a composition deed and that even if it be not a composition deed on its face, they were prepared to prove it to be so by extrinsic evidence. They further urged that the defendants were estopped from contending that the deed was not a composition deed inasmuch as it was treated as such by Bhaidas and his son Varajdas, the present defendant 2.

The Subordinate Judge found that the deed relied on by the plaintiffs was not a composition deed, that the plaintiffs were not entitled to adduce extrinsic evidence to show that it was a composition deed and that the defendants were not estopped from contending that the deed was not a composition deed. He, therefore, dismissed the suit. The following were some of his reasons :—

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It will appear from the above that the family properties were conveyed to trustees, not because Bhaidas was unable to pay off the family debts in full, but because he had no capacity to carry on the family business and because the other male members of the family were minors. That this was the object of executing the conveyance is distinctly admitted in the plaint also. How then can the conveyance be held to be a composition deed? "A composition deed is an agreement made between an insolvent debtor and his creditors by which the latter accept a part of their debts in satisfaction of the whole." (Wharton's Law Lexicon.) In the present case a majority,—a large majority of the creditors became parties to the deed. But the family of Bhaidas was not said to be in insolvent circumstances and the creditors did not agree to accept less than what was due to them. * * *

I think, therefore, that the creditors did not agree to compound their dues and take less. I am supported, I believe, in this conclusion by the fact, the assets exceeded the debts. The outstandings alone amounted to nearly 1,40,000 rupees, Rs. 6833-4-0 were in cash; and the family owned besides a number of ornaments and five immoveable properties. The value of the ornaments and of the immoveable properties is not given in the Schedule B. But there is very little doubt that it could not be inconsiderable. The total debts amounted Rs. 1,56,000 approximately out of which debts amounting to about Rs. 35,000 were secured by a pledge of ornaments. Some of the outstandings may have been time-barred or otherwise become unrecoverable. But the same can be said of the debts also. The deed itself provides that though the Committee had prepared a list of the creditors and ascertained the debts due to them only those debts were to be paid, which were proved to be true and within the period of limitation. It is clear, therefore, to my mind that the creditors did not think that they would not get their dues in full; and if that was so, the deed in question is not a composition deed.

The plaintiffs appealed.

Strangman (Advocate General) with *D. A. Khare* for the appellants (plaintiffs):—The deed in ques-

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tion is clearly a composition deed. Under it the creditors claimed rateably and they took the chance of being paid in full or not. They limited their claims to the properties conveyed by the deed and gave up their debts. The essence of the deed is a composition of creditors' claims, for the creditors agree under it to take anything they may get for the properties and accept what they may get. The Court always favours deeds of this class: *Bamanji Mankeji v. Naoroji Palanji*⁽¹⁾, *Malukchand v. Manilai*⁽²⁾. The case of *The Queen v. Cooban*⁽³⁾ is distinguishable, for in that case there was no *cessio bonorum*, similar to the one in this case.

This very deed had come up before the Court on two different occasions. It first came before a bench consisting of Scott, C. J., and Knight, J., in *Fida Ali Mahamad Ali v. Chandrashankar Franshankar*⁽⁴⁾,

⁽¹⁾ (1864) 1 Bom. H. C. R. 233.

⁽²⁾ (1904) 28 Bom. 364.

⁽³⁾ (1886) 18 Q. B. D. 269.

⁽⁴⁾ Unreported Second Appeals Nos. 332 and 347 of 1907, decided on the 1st December 1909.

SCOTT, C. J. (after setting out the facts, continued). On the 21st of March 1903 a trust and composition deed was signed by the debtors formally making over their property to the trustees for the benefit of their creditors. On subsequent dates the plaintiff and the other creditor who had filed the suit obtained decrees in their suits and applied at once for sale of the houses attached under the conditional order of attachment before judgment.

The debtor then applied to have the attachment raised, but his application was refused on the 15th of June 1903, and on the 30th June a proclamation of sale was issued on the application of one of the plaintiffs which had been made on the 14th June 1903.

Thereupon the trustees under the trust and composition deed intervened in order to get the attachment raised, and on the 30th October the attachment was raised.

The trustees have sold one of the houses included in the deed of the 6th defendant who is accordingly joined as a party to the suit.

where it was held to be a composition deed. On the second occasion it came before a bench composed of Chandavarkar and Batchelor, JJ., who held it to be not a composition deed : *Shekh Adam v. Chandrashankar*⁽¹⁾.

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The term "composition deed" is not defined in the Registration Act, 1908. It is, however, defined in Article 22, Schedule I of the Stamp Act. This definition, which is contained in a kindred Act of Legislature, can be used for ascertaining the meaning of the term. The term was first used in the Registration Act XX of 1866. The term "composition deed" was defined for the first time in the Stamp Act (XVIII of 1869) where the term was defined *to include* "every instrument executed by a debtor, whereby the debtor conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business under the supervision of inspectors, or under letters of

Now it is clear that if the plaintiff has no rights which he can enforce under the attachment obtained by him in December 1902 his suit must fail, for the trust deed under which the trustees claim was a perfectly *bona fide* document of a nature which is much favoured by the Courts : see 1 Bom. H. C. R., p. 233, *Bamanji Manikji v. Naoroji Palanji*, a case which establishes that a *bona fide* assignment by a debtor of his entire property to trustees for the benefit of his creditors divests him of any interest which can be the subject of attachment subsequently issued in execution of a decree against such debtor, until the trusts of the deed of assignment have been carried out.

It is not disputed that the conditions have been carried out. A trust deed has been regularly made and it bears the signatures of the creditors to whom three-fourths of the total debts are due.

For these reasons we hold that the provisions of section 276 cannot be effectively called in aid to support the plaintiff's claim, and having regard to the decision of this Court already referred to in 1 Bom. H. C. R. the attachment of the judgment-creditor cannot prevail against the title of the trustees under this trust deed.

⁽¹⁾ (1912) 14 Bom. L. R. 506.

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license, for the benefit of his creditors". In the next Stamp Act (I of 1879), the entire definition is preserved with the difference that instead of "includes" the words "that is to say" are used, Article 22. The deed in question evidently falls within this definition.

Inverarity and *Weldon* with *N. K. Mehta* for the respondents (defendants):—The first Registration Act XVI of 1864 contains no mention of composition deed. It was first introduced in the Registration Act XX of 1866, section 17, and it has since appeared in all subsequent Registration Acts. The early Stamp Acts XXXVI of 1860 and X of 1862 provided for composition deeds but contained no definition of the term. The definition was first introduced in the Stamp Act XVIII of 1869 and then, with a slight change made in it, in the Stamp Act I of 1879. It has appeared in all subsequent Stamp Acts.

The term "composition deed" is used in the Registration Act in its proper legal sense. In the Stamp Act of 1869, the Legislature subsequently enlarged the meaning of the term and made it to *include* certain things. The Stamp Act is not in *pari materia* with the Registration Act and there is no indication that the Legislature intended to alter the meaning of "composition deed" in the Registration Act. In England, a deed of arrangement is not regarded as a composition deed: see 50 and 51 Vic., c. 57, s. 4, see also *Baines v. Wright*⁽¹⁾.

Composition deeds are not favourably regarded by the Courts. It has been held that an assignment by debtor of his property to his creditors is an act of bankruptcy.

The present deed is no composition deed. The debtor was not insolvent. There is no recital that he

(1) (1885) 16 Q. B. D. 330.

was not able to pay his debts, but that he was unable to carry on the business. The trust was for such of his creditors as came in under the deed by a particular date. It was not for the benefit of all his creditors. It seems that under the deed the creditors would be paid in full, and if there was a surplus, it was also to go to them. It was thus a deed of arrangement by which it was thought the creditors would be paid in full if the business was allowed to be carried on by trustees : see Halsbury's Laws of England, Vol. II, p. 326, *The Queen v. Cooban*⁽¹⁾.

[Scott, C. J., referred to *Subbaraya v. Vythilinga*⁽²⁾ and *Aslatt v. Corporation of Southampton*⁽³⁾.]

Strangman, in reply.

SCOTT, C. J. :—This suit was filed by the plaintiffs to obtain possession of a certain dwelling house according to the terms of a deed executed on the 21st March 1903 by Bhaidas Rajaram for himself and members of his family. By that document it was recited that it had been resolved at a meeting of creditors that if creditors of the family firm represented by Bhaidas to the extent of a sum of Rs. 1,22,000 out of the total number of creditors claiming Rs. 1,61,800 should sign the deed before midnight on the 5th March 1903, Bhaidas should make over to the trustees all the assets of the family specified in Schedule B, subject to a special condition regarding the family houses at Kalapith, namely that the trustees should allow the family to live therein up to the 20th of October 1903 in the same manner as it had been living there after getting a lease passed by Bhaidas, and that thereafter the family should take the house and make over the same forthwith into the possession of the trustees. By the 9th clause it was stated that Bhaidas

⁽¹⁾ (1886) 18 Q. B. D. 269.

⁽²⁾ (1892) 16 Mad. 85.

⁽³⁾ (1880) 16 Ch. D. 143.

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having made over the whole of the trust properties and assets belonging to the family for the benefit of the creditors the family was reduced to a destitute condition, and therefore the creditors passed a resolution to the effect that they should be allowed to occupy the dwelling house as aforesaid and that the trustees should pay an allowance of Rs. 40 a month to Bhaidas up to the same date, namely the 20th of October, and the creditors coming in under the deed agreed that after all the goods and properties had been made over to the trustees no other claim whatever with regard to the amounts due to them should remain outstanding against Bhaidas and the minor members of his family, but the whole claim should be understood to be written off against them, and Bhaidas and the minors were to make use of the deed as a release passed by them on their behalf, and by subsequent clauses it was provided that the trustees were to manage the properties for the benefit of all the creditors interested, and the monies realized from time to time were to be distributed amongst such creditors in proportion to their claims. The period during which the occupation of the dwelling house was permitted to Bhaidas and his family has long since expired, but a notice to quit having been served upon them they refused to comply with it and the present suit was therefore instituted to eject them.

The deed was not registered, and objection was taken at the hearing that it was inoperative in respect of the immoveable properties mentioned in Schedule B, and that therefore the title of the plaintiffs to the house in question was not established.

If the document is a composition deed within the meaning of the Registration Act it does not require registration (see section 17, clause (e)). This very document has twice come before the High Court in previous litigation, on one occasion before a bench

consisting of myself and Mr. Justice Knight and on another occasion before a bench consisting of Sir Narayan Chandavarkar and my present colleague Mr. Justice Batchelor. In the first case the deed was held to have passed the property to the trustees so as to defeat an attaching creditor who attached subsequent to the execution of the deed, and in the judgment the deed is referred to as a trust and composition deed. In the second case the trustees sought to recover rent from the tenants of certain immovable property mentioned in the Schedule to the deed, but it was held that the document was compulsorily registrable, and not having been registered it could not be admitted in evidence. The Court there said: "There is nothing whatever in the language of the deed to show that there was any composition, any settlement with the creditors that the debtor should pay less than he owed to them and that they agreed to accept that composition. The essential test of a composition deed is that there ought to be a compounding of debts due. Of that there is no trace whatever so far as the language of this document is concerned": *Shekh Adam v. Chandrashankar*⁽¹⁾. It does not appear from the record which we have examined that any translation of the deed was supplied to the Court. The Court's opinion appears to have been based upon *The Queen v. Cooban*⁽²⁾, where the question was whether a *cessio bonorum* for the benefit of creditors by a document which incorporated a release by the creditors was a composition deed within the meaning of certain Municipal rules so as to disqualify the debtor from election to a Municipal office.

In the first case disposed of by myself and Mr. Justice Knight it was not disputed that the deed now before us was a composition deed. In the second case though it was disputed, the Court was not referred to a definition

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⁽¹⁾ (1912) 14 Bom. L. R. 506.

⁽²⁾ (1886) 18 Q. B. D. 269.

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of the term "composition deed" which is to be found in the Acts of the Indian Legislature. That definition we have now been referred to and much reliance is placed upon it. It is the definition which has been found in all the general Stamp Acts of the Government of India from 1869 up to the present time. It is now to be found in Article 22 of Schedule I of Act II of 1899, and it runs as follows :—"Composition-deed, that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of license for the benefit of his creditors." That definition covers three classes of instruments : (1) an assignment for the benefit of creditors ; (2) an agreement whereby payment of a composition or dividend is secured to the creditors ; (3) an inspectorship deed for the purpose of working the debtor's business for the benefit of his creditors. It is not disputed that the deed now before us falls under the first class, and it is contended on behalf of the appellants that it also falls under the second class in that the creditors compound by giving a release for their debts in consideration of the assignment of property the proceeds of which are to be distributed rateably among them, whether or not such proceeds are more or less than the amount of their claims ; and it is argued that the Stamp Act is a Statute in *pari materia* with the Registration Act and that the definition contained therein should be used for the purpose of interpreting section 17, clause (e) of the Registration Act.

Now the exemption of composition deeds from the compulsory provisions of the Registration Act dates from the Registration Act of 1866 and has been continued

through all subsequent Registration Acts up to the present time. The question, therefore, is whether the term "composition deed" was either in ordinary parlance or in the understanding of lawyers limited so as to exclude an assignment in trust for the benefit of creditors, the creditors being parties and releasing their claims. A reference to Murray's Dictionary will show that in ordinary parlance a compounding or composition of claims does not necessarily exclude a general agreement for settlement of debts, although no exact sum may be arrived at as the amount of the settlement, and the case of *Bamanji Manikji v. Naoroji Palanji*⁽¹⁾ decided in 1864 shows that the Chief Justice thought that the agreement whereby the property of the trader was assigned to trustees for the benefit of the creditors signing the trust deed was a composition deed. Why then should it be assumed that the Legislature in enacting the Registration Act of 1866 intended that the term should have some more restricted signification? It appears to me that the definition in the Stamp Act may be taken as an indication that the Legislature had no such intention. The Stamp Act may not be strictly speaking in *pari materia* with the Registration Act, but a lawyer preparing a deed such as we have here for an insolvent client, or for his creditors would have first to see what stamp was required upon the document and for that purpose would have to look at the definitions in the Stamp Act and after having got the document duly stamped would have to consider whether it required registration. It would be a very extraordinary thing if the Legislature intended that the term "composition deed" in the Registration Act should mean something else than the same term in the Stamp Act and the inclusion of the term in section 17 of the Registration Act shows it was intended to apply to a transfer of

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immoveable property and not to a mere agreement to take fractional payment of money in settlement of claims. The decision of this Court in *Shekh Adam v. Chandrashankar*⁽¹⁾ states the test of a composition deed to be that there ought to be a compounding of debts due. It appears to me that judged by this test the document in question would be a composition deed.

In *Pennell v. Rhodes*⁽²⁾ Patteson, J., said: "I think that, under the Statute, (5 and 6 Vic., c. 122, s. 14) compounding is an arranging with the creditor to his satisfaction. If there is a binding arrangement for discharge of the debt, from which neither party can recede, and with which the creditor is satisfied, it is a compounding, though something still remains to be done." The case of *Malukchand v. Manilal*⁽³⁾ decided by Chandavarkar and Batty, JJ., appears to me to support the same conclusion. There the debtor passed a document whereby three persons were appointed trustees which was signed by the debtor and some of his creditors, but not registered, and by it the judgment-debtor made over to the trustees his immoveable property, goods and the account-books for sale on the day he signed the deed. The Court there said (page 369): "Certain immoveable and moveable property of the debtor and his account-books are vested in the trustees for the purpose of paying his creditors. There is no conveyance of the immoveable property of the debtor to the creditors. Under these circumstances we think the lower Courts were right in holding that the deed fell within the exemption of clause (e) of section 17 of the Registration Act. The deed recites that the composition is for the benefit of *all* the creditors and all of them are to derive equal benefit from it."

⁽¹⁾ (1912) 14 Bom. L. R. 506.

⁽²⁾ (1846) 9 Q. B. 114 at p. 129.

⁽³⁾ (1904) 28 Bom. 364.

It does not appear to me that the decision of the Queens Bench Division in *The Queen v. Cooban*⁽¹⁾ affords any assistance in the present case. The words of the rule were held to have a particular and restricted implication, and an earlier case of *Aslatt v. Corporation of Southampton*⁽²⁾, decided by Sir George Jessel, shows how special words in such a connection may limit the ordinary notion of compounding. In my opinion the document falls within clause (e) of section 17 of the Registration Act and did not require registration, nor does it, for the reasons given in *Malukchand's case*⁽³⁾, require registration under the provisions of section 5 of the Trusts Act of 1882. I would therefore reverse the decree of the lower Court and remand the case for trial after admission in evidence of the deed in question. Costs costs in the cause.

BATCHELOR, J.:—The only question before us is whether the document Exhibit 67 is a “composition deed” within the meaning of section 17 of the Registration Act. The document after reciting that the family business, which Naginbhai had carried on in his life, was “very extensive and complicated”, continues:—“He (Naginbhai) is now dead and I, Bhaidas, am not able enough to carry on the said business further and settle its claims and debts, and myself pay off the debts due to creditors; and the sons of Naginbhai are minors; therefore it is not possible for them also to continue the family business. Taking all these facts into consideration, it appeared to me that by continuing the family business for a longer time we as well as the creditors would have to suffer a great loss.” In consequence of these considerations it is then set out, in paragraph 9 of the deed, which in the original Gujarati is called a “composition deed”, that “I, the

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(1) (1886) 18 Q. B. D. 269.

(2) (1880) 16 Ch. D. 143.

(3) (1904) 28 Bom. 364.

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said Bhaidas, have made over the whole of the goods and properties and assets belonging to our family for the benefit of the creditors." Paragraph 10 provides that "we the creditors also hereby give in writing that after all the above goods and properties are made over to the trustees as mentioned above, no other claim whatever with regard to the amounts due to us shall remain outstanding against Bhaidas and the minors, but the whole claim shall be understood to have been written off as against them ; and Bhaidas and the minors and their descendants are duly to make use of this document against us as a release passed by us in that behalf." Then in paragraph 11 there is a provision that the trustees are to devote the proceeds of the trust properties to the payment of the creditors "in proportion to their respective claims", as the original is officially translated. It may be observed, however, upon this phrase that the Gujarati does not necessarily bear the precision of meaning conveyed by the English rendering, and may mean no more than that payments are to be made to the creditors "in regard or relation to their claims".

In *Shekh Adam v. Chandrashankar*⁽¹⁾ it was held by my brother Chandavarkar and me that this deed was not a composition deed, but a mere *cessio bonorum* or deed of arrangement assigning Bhaidas's property to trustees for the payment of the creditors. I still think that that decision was right on the arguments which were then submitted to us, and I venture to doubt whether in English Law, from which the technical expression is derived, this document would be held to be a 'composition deed'. It is not, in my opinion, substantially distinguishable from the deed which in *The Queen v. Cooban*⁽²⁾ was held by Denman and Hawkins, JJ., to be not a composition deed. The reasons

(1) (1912) 14 Bom. L. R. 506.

(2) (1886) 13 Q. B. D. 269.

for which the deed in that case was held to be not a composition deed are, I think, exactly applicable to the deed in this appeal, for, to use the words of Hawkins, J., there is not "anything to show that the property which the debtor has assigned will not produce 20 shillings in the pound for his creditors. It contains no provision by which any one creditor can be compelled to take less than 20 shillings in the pound if he can get it, for all the property is to be divided, and there is no obligation on any creditor to take less than the full amount of his debt. The deed, therefore, does not bind the creditors to take less than the full amount of their debts, and it cannot properly be called an arrangement for a composition; it is in fact an assignment of all his property by the debtor for the benefit of his creditors, who, however, are not asked to make any sacrifice; but who are authorised to divide all the debtor's property amongst themselves". If, then, the matter rested here, I should feel bound to hold that the deed in suit is not a composition deed for the simple reason that a composition deed is a deed which compounds, and this deed does not compound. The assignor, moreover, does not even profess to be insolvent, but the arrangement is made merely to avoid a possible loss in the future.

The only consideration which moves me now, not without hesitation, to abandon this opinion is a consideration which was not placed before the Court when the case of *Shekh Adam v. Chandrashankar*⁽¹⁾ was decided: I mean the definition enacted by the Indian Legislature in Article 22 of Schedule I of the Indian Stamp Act, 1899. For "composition deed" is there defined as meaning *inter alia* "any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors". Having regard to this definition, to the fact that the Stamp Act is in large

⁽¹⁾ (1912) 14 Bom. L. R. 506.

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measure *in pari materia* with the Registration Act, and to the favour with which such deeds are regarded by the law, I think the better opinion is that the deed in controversy here is a composition deed within the meaning of the Indian Registration Act.

Mr. Inverarity has pointed out that when in 1866 the first Indian Registration Act was passed which exempted composition deeds, there was no statutory definition of "composition deed" either in the then prevailing Stamp Act or elsewhere; and there is much force in the consequent argument that when a composition deed was first exempted from registration by the Legislature, what was exempted must have been a composition deed as the phrase was understood by English lawyers, and that the undefined phrase was retained, preserving this original meaning, in the successive Registration Acts *per in curiam* of the special definition which in the meanwhile had crept into the Stamp Act. But to read the two Acts in this way would come very near to reading them as if the Legislature had created traps not only for the unwary, but for the reasonably wary; and, whatever the Legislature may have intended in fact, I think that any time after the Stamp Act of 1869, which first enlarged the phrase by statutory definition, it must be taken to have intended that the "composition deed" of the concurrent Registration Act should bear the same meaning. It is open to the Indian Legislature, if it think fit, to enact that a mere *cessio bonorum* shall for certain purposes be regarded as a composition, and, having regard to the definition in the Stamp Act, I conceive that that is what has happened in reference to the phrase as used in the Registration Act.

For these reasons I agree that the deed in suit is exempt from the necessity of registration.

Decree reversed and case remanded.

G. B. R.