

[HOUSE OF LORDS.]

H. L. (E.) COMMISSIONERS OF INLAND REVENUE . APPELLANTS ;
 1907
 AND
 Nov. 27. MAPLE & CO. (PARIS), LIMITED RESPONDENTS.

Revenue—Stamp Duty—“Conveyance on Sale”—Matter or Thing to be done in the United Kingdom—Property in France—Conveyance executed in France—Consideration payable in England—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 1 ; s. 14, sub-s. 4 ; s. 54 ; Sched. I.

By a deed of “apport,” executed in France, property in France was transferred by one English company to another English company, the consideration for the transfer being shares in the latter company which were to be issued, and delivered to the former company, in England. Stamp duty having been claimed as on a “conveyance on sale” in Sched. I. to the Stamp Act, 1891, on the ground that the instrument related to “a matter or thing to be done in the United Kingdom” within s. 14, sub-s. 4, of the Act:—

Held, that the instrument was a “conveyance on sale” within the meaning of the Act, and that it was liable to duty thereunder.

Decision of the Court of Appeal, [1906] 2 K. B. 834, reversed.

THE facts involved in this appeal are stated in Lord Macnaghten’s judgment.

May 1. *Sir R. B. Finlay, K.C.*, and *W. Finlay (Sir John L. Walton, A.-G., with them)*, for the appellants. Both companies are English companies, and the deed of “apport” was a conveyance on sale within the meaning of s. 54 of the Stamp Act, 1891. Valuable consideration passed from one party to the other. It is the instrument which is taxed, and not the transaction, and the necessity for stamping is irrespective of locality. By s. 14, sub-s. 4, the instrument, “wheresoever executed,” cannot be produced in evidence, or “be available for any purpose whatever,” unless it is stamped in accordance with the law in force at the time. Sect. 14, it is true, is not in itself a taxing section, but under it the untaxed instrument is made practically valueless, and it is a limitation or partial definition of the general taxation imposed by s. 1. The circumstance that the deed of “apport” is a French document, and must be construed

by French law, does not make it the less liable to contribute to British revenue. Walton J. held that the deed was a conveyance on sale; but held that no duty could be imposed as there was no obligation to state the consideration, as the instrument was not chargeable as a contract to sell, though it contained such a contract, because it was a contract to sell French property in France, and s. 59, by which contracts or agreements are made taxable, is confined to property in the United Kingdom. That is not so, because by s. 5 all the "facts and circumstances," which must include the amount of consideration, must "be fully and truly set forth." The transaction is not complete until certain requirements are fulfilled in England—the issue and allotment of shares. Fletcher Moulton L.J. is equally inaccurate in the statement that s. 14, sub-s. 4, imposes no duty to stamp. There is, indeed, no direct imposition of a tax, but, except for the purpose of evidence in a criminal case, the instrument is made inoperative. Farwell L.J.'s reasoning would exempt British subjects from taxation on any instrument executed abroad. But, the place of execution being under s. 14, sub-s. 4, immaterial, the case stands on precisely the same footing as *Great Western Ry. Co. v. Inland Revenue Commissioners* (1), a case of amalgamation of railways, and as *John Foster & Sons v. Inland Revenue Commissioners* (2), the conversion of a firm into a limited company. It is a conveyance on sale from one English company to another, necessitating the issue and delivery of shares in England.

Danckwerts, K.C., and *Beddall*, for the respondents. The "acte d'apport" is a French instrument, executed in France in accordance with French law, and deals with property situated in France. English revenue laws are directed to English, and not to foreign, property, and to instruments executed in England. The latter condition was laid down by Lord Mansfield in *Stonelake v. Babb*. (3) So *Ximenes v. Jaques* (4) and *Wright v. Inland Revenue Commissioners*. (5) Sect. 14, sub-s. 4, of the Stamp Act, 1891, is not a taxing section at all, and the words relied on, "wheresoever executed," do not impose duty on property otherwise

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(1) [1894] 1 Q. B. 507.

(3) (1770) 5 Burr. 2674.

(2) [1894] 1 Q. B. 516.

(4) (1795) 1 Esp. 311.

(5) (1855) 11 Ex. 458.

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exempt. The word “apport” does not suggest conveyance, and the instrument is not a conveyance on sale. The expert evidence of a French advocate stated that the deed is not a conveyance, not liable in France to conveyance duty, and of imperfect effect until further formalities are taken in a French Court. It is rather in the nature of partnership; there is no sole proprietorship transferred from one party to the other. There can be no tax in this country upon a decree, order, or certificate of a foreign tribunal. The proceedings necessary in this country—the issue and delivery of the shares forming part of the consideration—do not affect the essential character of the instrument. But, even if it were a conveyance on sale, this instrument would not be taxable. It would be a French transaction carried out in France under French law. It might also be regarded as a contract or agreement. Before the Revenue Act, 1889, agreements vesting the ownership in equity in one of the parties were exempt: *Inland Revenue Commissioners v. Angus*. (1) Sect. 15 of that Act was passed in consequence of that decision. But a French contract is not subject to duty. Even if the “acte d’apport” may be regarded in both aspects—conveyance and contract—the two are separable. Pallett C.B. in *Adams v. Morgan* (2), referring to *Matheson v. Ross* (3), said that an instrument, which might be regarded in two aspects, in one of which it was taxable and the other not, could, though unstamped, be tendered in evidence in the aspect in which it was free from duty. Sect. 14, sub-s. 4, however, has no real bearing on the case, and s. 59 is also wholly inapplicable. This instrument is altogether outside the operation of English law. [They also cited *Thomson v. Advocate-General* (4); *Attorney-General v. Jewish Colonial Association*. (5)]
W. Finlay in reply.

The House took time for consideration.

Nov. 27. LORD MACNAGHTEN. My Lords, this case seems to me to be very plain and very simple. But I must express my

(1) (1889) 23 Q. B. D. 579.

(3) (1849) 2 H. L. C. 286.

(2) (1882) 12 L. R. Ir. 1, 11.

(4) (1845) 12 Cl. & F. 1.

(5) [1900] 2 Q. B. 556.

opinion with diffidence, because I find that the view which I venture to think so plain and so simple has been described by one of the learned Lords Justices, in a most elaborate judgment, as based on premises which are absurd and ridiculous.

There are no facts in dispute.

A trading company, limited by shares and registered in England, had a branch in Paris, with property there, both movable and immovable. For some reason or other it was thought good to separate the French business from the English. So on May 10, 1905, a company, limited by shares, was registered in England with the object of purchasing the French business. On June 5 following an instrument in the French language was executed in Paris, both by the old company and the new, whereby the old company transferred to the new company, as from a past day, the French business with all the property attached to it, and the new company purported to allot to the old company a specified number of shares out of its share capital.

In connection with the actual allotment of the shares which were the consideration of the purchase it was of course necessary to register the instrument of June 5 duly stamped. Under the Companies Act of 1900 default is visited with so heavy a penalty as to make it practically impossible to get shares allotted for a consideration other than cash without complying with the requirements of s. 7.

The Commissioners of Inland Revenue were asked to determine whether the instrument in question was or was not subject to duty, and to fix the duty, if any. Their opinion was that it was a "conveyance on sale" within the meaning of the Stamp Act, 1891, and that an ad valorem stamp was necessary.

There is no question now raised as to the amount of duty, if duty is payable. But both Walton J. and the Court of Appeal (Lord Collins, then Master of the Rolls, dissenting) decided that the instrument was not a conveyance chargeable under the Act of 1891. From that decision the present appeal has been brought.

I think that there can be no doubt that the deed of June 5, 1905, is a "conveyance on sale" within the meaning of the Act of 1891, having regard to the definition contained in s. 54. It is

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an "instrument whereby . . . property . . . upon the sale thereof is transferred to . . . a purchaser." According to French law, too, if that be material, it is a conveyance on sale, although it appears that in the absence of registration a purchaser without notice might obtain a preferential title.

Then comes the question, How is the expression "conveyance on sale" to be understood? What limitations are to be placed upon it? Is it to be limited to conveyances executed in the United Kingdom? Such a limitation would be unreasonable when the instrument operates on property situate in the United Kingdom. A trip across the Channel would afford ready means of evading duty. Now s. 14, sub-s. 4, of the Stamp Act, 1891, shews that it was not intended so to limit the expression. Why may not that sub-section be referred to for the purpose of shewing that conveyances on sale executed abroad are chargeable with duty when they relate "to any matter or thing done or to be done in any part of the United Kingdom," as well as when they relate to any property situate in the United Kingdom?

Speaking for myself, I have some difficulty in seeing why it should be assumed that this instrument does not relate to property situate in the United Kingdom. The Act speaks of the "instrument." The provision is not confined to the operative part of the instrument. It speaks of the instrument as "relating to" certain subjects. There is no expression more general or far-reaching than that. This instrument relates to the capital of the new company, out of which it was agreed that a specified number of shares should be appropriated and allotted to the old company. The share capital of the new company, if it was situated anywhere, was situate in England. In my opinion this instrument does relate to property situate in England. Be that as it may, it certainly relates to something to be done in England. It relates to the registration in the name of the old company of shares which were to be allotted in an English company as the consideration for the purchase of the French property.

I agree with the judgment of Lord Collins in the Court of Appeal. I think judgment should be entered in favour of the

Commissioners, with costs here and below, and I move your Lordships accordingly.

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LORD ASHBOURNE. My Lords, I concur.

LORD JAMES OF HEREFORD. I agree.

LORD ATKINSON. My Lords, I concur.

Order of the Court of Appeal reversed, with costs here and below.

Lords' Journals, November 27, 1907.

Solicitors : *Solicitor of Inland Revenue ; Peake, Bird, Collins & Co.*

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WEST LEIGH COLLIERY COMPANY, { LIMITED }	APPELLANTS ;	H. L. (E.) 1907 Dec. 2.
AND		
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Damage—Subsidence—Measure of Damages—Risk of Future Subsidence²—Remoteness.

In assessing the damages recoverable by a surface owner for subsidence owing to the working of minerals under or adjoining his property, the depreciation in the market value of the property attributable to the risk of future subsidence must not be taken into account. To recover damages the surface owner must wait until the damage or injury caused by subsidence has happened.

Decision of the Court of Appeal, [1906] 2 Ch. 22, reversed ; and decision of Swinfen Eady J., [1905] 2 Ch. 390, restored.

THE facts material to this appeal are stated in the judgments of Lord Ashbourne and Lord Macnaghten.