

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Bombay Burmah Trading Corporation, Limited, v. Frederick Yorke Smith, from the High Court of Judicature at Bombay; delivered 20th June 1894.

Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD MORRIS.

SIR RICHARD COUCH.

[*Delivered by Lord Macnaghten.*]

THIS Appeal raises a question as to the meaning and effect of a provision contained in an Agreement of purchase and sale which was made between the Appellants and the late Mr. William Wallace in 1864. The question relates to the continuance of a special or extra dividend attached to certain shares, part of the consideration for the purchase.

Mr. Wallace was the possessor of an extensive and valuable business as a timber merchant in Burmah. In 1863, under the Limited Liability Act then in force in Bombay (Act XIX. of 1857), a Joint Stock Company, which is now called The Bombay Burmah Trading Corporation, Limited, was formed for the purpose of taking over Mr. Wallace's business.

The Company was registered with a nominal capital of 25 lacs, divided into 1,000 shares of 2,500 rupees each.

The Company's Articles of Association, printed in the Record, contain two regulations which it will be convenient to notice in passing. Article 9 gives the Company a lien on all the

the faith of certain representations by Mr. Wallace as to the value of his business, and the nature and circumstances of the property which he proposed to hand over. After setting out these representations somewhat in detail the Agreement proceeds as follows:—“ And whereas
 “ the said parties hereto of the second part have
 “ made such enquiries as were in their power with
 “ regard to the said representations and so far as
 “ such enquiries extended the said representations
 “ appeared to be correct but as to many of the
 “ matters about which the said representations
 “ were concerned the said parties hereto of the
 “ second part have been obliged to rely on such
 “ representations alone it being of great consequence for the interests as well of the said
 “ Company as of the said William Wallace that
 “ some binding arrangement should be made with
 “ the least possible delay And whereas it was
 “ considered by the said parties hereto that having
 “ regard to the great difficulty of estimating the
 “ value of the said forest operations rights and
 “ grants of the said William Wallace and of the
 “ said trained establishment and goodwill the
 “ interests as well of the Company as of the said
 “ William Wallace would be best consulted by
 “ entering into the arrangement hereinafter in
 “ clause 13 contained.” Then clause 12 provided that in consideration of the transfer of certain property, referred to as “ the fixed assets,” Mr. Wallace should be entitled to have allotted to him 100 shares in the Company of 2,500 rupees each, but at the same time it declared that the Company should not be bound to give their consent to or recognise as valid any assignment of the said 100 shares, or any of them, during a period of five years from the date of the registration of the Company.

Clause 13, so far as material, is in these terms:—
 “ In consideration of the transfer by the said



a time as possible. They were not bound to allow a transfer of his shares for 5 years; after that period they trusted it seems to the influence and operation of the inducement held out in the shape of an extra dividend, leaving the duration of the arrangement to depend on the course of events.

Mr. Wallace is now dead. He died on the 28th of June 1888. He left a will naming executors, two of whom survived him. His will has been proved in England by one of the executors. As the attorney of that executor, Mr. Smith, the Plaintiff and Respondent in this case, has obtained a grant of letters of administration, with the will annexed, from the High Court at Bombay. The letters of administration have been produced to the Company, and they have recognised the title of the administrator by noting the letters of administration in the share register. The shares still stand in the name of Mr. Wallace; but it is not disputed, if it was not actually admitted, that all the testator's debts have been paid or satisfied.

The only question, if there be a question, is whether in these circumstances the extra dividend still continues to be payable. The Appellants contend that the extra dividend is not payable now because there is nobody who can be said to hold Mr. Wallace's shares. Mr. Wallace, they say, does not hold them, because he is dead; his executors do not hold them, because their names are not on the register. But then who does hold them? Certainly, no one else. And why are the shares not held by Mr. Wallace or his executors or administrators? There is no magic in the word "hold." Mr. Wallace's name is on the register. [The Company cannot remove it.] As long as it is there the Company are bound to credit the proper dividends to his holding, and to recognise the title of his

Their Lordships think that according to the true meaning of clause 13, and the very letter of its terms, the shares in question are held by Mr. Wallace, or his executors or administrators. They will, therefore, humbly advise Her Majesty that this Appeal should be dismissed.

The Appellants will pay the costs of the Appeal.

