For these reasons I think the exception in the Charter of 1800 was not in force, save as to land revenue, at the passing of the 24 & 25 Vic., c. 104, and the grant of the Charter thereunder.

As to the second defence and the grounds relating to it, I agree in the judgment pronounced by the Chief Justice.

1876. August 4.

COLLECTOR OF SEA CUSTOMS v. P. CHITHAM. BARAM.

ON REFERENCE BY THE BOARD OF REVENUE.

Before Sir W. Morgan, C.J., Mr. Justice Holloway and Mr. Justice Innes.

Case No. 1 of 1876.

Stamp Act, XVIII of 1869.—Conveyance.—Non-liability to additional duty as an indemnity-bond.

Where a document, purporting to be a conveyance, and for only one consideration, contains words which merely express, though very informally, the usual covenants for title which every properly drawn English conveyance contains, those words cannot be considered as constituting an indemnity bond, so as to render the document liable to stamp duty as an indemnity bond in addition to the stamp duty to which it is liable as a conveyance.

This was a case referred for the decision of the High Court under Section 41, Act XVIII of 1869, by the Board of Revenue in their Proceedings, dated 19th June 1876, No. 1,587.

1876. August 15

The Court delivered the following

JUDGMENT.—We are of opinion that the document is liable to the stamp upon a conveyance only. The words supposed to constitute an indemnity bond are merely a very informal expression of the covenants for title which every properly drawn English conveyance contains.

The stamp for a conveyance covers these words because they are a well understood part of it.

Section 14 shows that a stamp, for each category, upon a document falling within two distinct categories, is required only where there is what is called a distinct consideration. Here there is unity of consideration, and the document, with the contractual words, fulfils the definition of a conveyance, and without them would not.

1876.
August
18 and 21.

ORIGINAL CIVIL.

Before Mr. Justice Kindersley.

OAKES & COMPANY (PLAINTIFFS) *v.* JACKSON AND ANOTHER (DEFENDANTS).*

Agreement in restraint of trade—Application of law of place of performance, not lex loci contractûs—*Act IX of* 1872, *s.* 27.—*English law. Breach of covenant not entitling to damages.*

Agreement executed and stamped in England, afterwards executed in India.—Liability to Indian stamp-duty.

D and E, being in England, entered into a written agreement with A, B, and C, the partners of a firm carrying on trade in Madras, to go to Madras, and there enter into the service of the firm; the service to last for five years, or to be determined at any time by certain notice being given; and covenanted that on the expiry of the five years, or sooner determination of the service, they would not carry on within 800 miles from Madras any business carried on by the firm; and also covenanted that on such expiry, or sooner determination, they would, whenever requested by the firm so to do, return to England. In pursuance of the agreement D and E went to Madras, and entered into the service of the firm. After it had continued for about 2½ years, the service was determined, by notice from the firm. D and E then, in violation of their said covenants, refused to return to England, though requested to do so by the firm, and proceeded to set up and carry on, on their own account, business of the same kind as that carried on by the firm.

Held, in a suit by the firm against D and E for damages for breaches of the said covenants, and for a perpetual injunction restraining D and E from carrying on in Madras, or within 800 miles from Madras, any business carried on by the firm, that, treating the covenant in restraint of trade as one entered into in England, it could not, even if valid by the law of England, be enforced in India, inasmuch as its object was to contravene the law of India (Section 27 of Act IX of 1872). *Held* further that that covenant would have been void by the law of England because the limit of the restriction was unreasonable, and, as no narrower limit had been mentioned in the agreement, this was not a case where the covenant could have been enforced within a narrower, and reasonable, limits.

Held also that the covenant to return to England, except so far as it operated improperly in restraint of trade, was a covenant the breach of which did not in any way cause damage to the firm, and therefore such breach did not entitle them to any damages.

The agreement was first executed in England by D and E and by A, the senior partner in the firm, and stamped with the stamp required by English law for agreements executed in England, and it was subsequently executed in India by B and C, the other two partners, but not stamped with an Indian stamp. *Held* that the agreement was liable to Indian stamp-duty, and was not admissible in evidence unless and until the proper stamp-duty and penalty under Act XVIII of 1869 were paid.

* Original Suit No. 127 of 1876.