Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mahomed Ewaz and another v. *Birj Lall and another from the High Court of Judicature, North-Western Provinces, Allahabad; delivered* 13*th June* 1877.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR R. P. COLLIER.

THIS is a suit brought by the Appellants, the sons and heirs of Shere Mohammed, the vendee under a deed of sale which on the face of it purports to have been made by three persons, Mobaruk Jan, and her two sons, Hyat Mohammed and Salamuttoolah. The sale was of certain shares in two mouzahs, the shares which each held not being specified. It must be taken, however, on this Appeal, that although the amount of the shares to which each of the parties was entitled is not yet ascertained, the shares were held in such a manner that each might separately dispose of his own shares. The Respondents, who are purchasers under a subsequent deed of sale, and who impeach the deed of sale to Shere Mahommed, contend that the last-mentioned deed cannot be read in evidence because it was not properly registered. The deed has been in point of fact registered, and it lies upon the Respondents who impeach that registration to show the facts which invalidate it. They have not proved that the shares were held jointly, nor does it appear that that point was made in either of the Appeals below.

42353. 125.—7/77. Wt. 3458.

The subordinate Judge of Bareilly and the Judge of Bareilly to whom the case went from the subordinate Judge on appeal, found that the mother had not executed the deed, but that the two sons had done so, and a decree was given by the subordinate Judge, which was affirmed by the Judge, in these terms: "That "a decree be given to the Plaintiff for the "completion of the sale deed dated 14th "January 1874, to the extent of the rights of "Hyat Mohammed and Salamutulla, Defend-"ants, in the shares of mouzahs Tah and Kish-"anpur Maupur against the said Defendants "and the vendees, and the claim for possession "of the said shares, and for the rights of Mus-"samut Maborak Jan, be dismissed." That decree may be taken to be a declaration that the Appellants, as the heirs of the vendee, are entitled to the rights, whatever they were, of Hyat Mohammed and Salamutoollah in these mouzahs. The decree goes no further, it refuses to decree possession; and, from the reasons given by the Judge for his decree, it would seem that the amount of the shares to which each was entitled had not been proved before him.

From these judgments there was a special appeal to the High Court, and the only question upon which the High Court decided, and which alone their Lordships think it material to consider, is that of registration. The High Court came to the conclusion that the registration of the deed of sale to Shere Mahommed was null, because the requisites of the Registration Act had not been complied with.

It appears that the deed was brought to the Registrar on the 15th January; the vendors did not attend, and it became necessary to summon them. The two sons appeared on the following day, and admitted their own execution, but denied that of their mother. The deed purports

to have been executed by the two sons, each in his own handwriting, and by the mother, Mussumat Mobaruk Jan, by the hand of Hyat Mohammed. The sons admitted their own signatures and execution, but stated that their mother had not assented to the sale. The Sub-Registrar made the endorsements which are found upon the deed, and which consist of three separate paragraphs. The first endorsement was made on the 15th January, the day on which the deed was presented for registration, and is to the effect that the deed between the hours of 10 and 11 was presented for registration in the office of the officiating Sub-Registrar by Chotelal, the agent of the vendee, who also applied for the compulsory attendance of the vendors.

The two sons, having attended on the following day, and made the admissions and statement above referred to, the Sub-Registrar made this endorsement: "Hyat Mohammed "and Salamutullah, sons of Amirulla (sect "Shaikh Punjabi, occupation zemindary), and "residents of Pilibheet, in the district of Ba- "reilly, two of the three vendors named in this "sale deed, were identified," and so on, stating the identity, "and their written depositions were "taken down on separate papers, according to "the application of the manager of the vendee "for the compulsory attendance of the vendors. "The said vendors admitted before me, in their "written deposition, that they had executed the "sale deed now in the office, including therein "the name of their mother, and completed it "by having it duly signed and witnessed, but "that they had this sale deed drawn up without "consulting their mother, and she was not a "consenting party to it; that they had not "received any money from this vendee, and "they, having received a larger amount of "consideration from Byjnath, &c., executed a

" sale deed in their favour, and had it registered, " and that they had no mind to have this sale " deed registered." The last statement, that they had no mind to have the deed registered, appears to have been treated as a refusal on their part to endorse the document; but the Act gives power to the Registrar to register, notwithstanding such a refusal, and accordingly the Registrar did register the deed in the formal manner required by the Act, and made this formal endorsement of registration upon the instrument: "This document is registered at " No. 40, page 299, vol. 11, Register No. 1, on " 16th January 1874."

The deed of sale to the Respondents, which also bears date on the 14th January 1874, had been brought to the Registry on the 15th; and all the vendors having admitted, either by themselves or their agent, that that deed had been executed, it was registered on that day. Nothing, however, turns upon the priority of the registration of this deed, because by the provisions of the Act a deed operates not from the time of its registration, but from the time when it would have commenced to operate if no registration had been required. If, therefore, a deed is tendered for registration within the time prescribed by the Act, and registered, it is immaterial that another deed has obtained priority of registration.

These being the facts of the case, the High Court have decided that the execution of the deed not having been admitted by the mother and her authority for its execution having been denied, it was improperly registered, and could not be received in evidence as against the sons. The decision is founded mainly on the 35th section of the last Registration Act, Act VIII. of 1871. Before coming to that section it will be right to call attention to the scheme of the Act, with

a view to see whether the general provisions do not furnish a context by which to construe the language used in the 35th section.

The 17th section describes the documents required to be registered. The 23rd prescribes the time within which deeds are to be presented for registration, viz., a period of four months after their execution; and there is a proviso to that section to which it is material to call attention. It is this: "Provided that where there are several "persons executing a document at different "times, such document may be presented for "registration and re-registration within four "months from the date of each execution." It is plain that under that proviso a deed, say, by several vendors may be registered as to one or two of them when one or two have executed the deed, and may be again registered when others have at a later period executed it. Then come the 34th and 35th sections, which are the most important sections to be considered. The 34th enacts that, "Subject to the provisions "contained in this part and in sections 41, 43, "45, 69, 76, and 86, no document shall be "registered under this Act unless the persons "executing such document or their representa-"tives, assigns, or agents authorised as aforesaid "appear before the registering officer within the "time allowed for presentation." There the persons described are the persons executing the document;—not those who on the face of the deed are parties to it, or by whom it purports to have been executed, but those who have actually executed it. Then there is power to enlarge the time, and a provision that the appearances may be simultaneous or at different times. Then "the "registering officer shall thereupon inquire "whether or not such document was executed "by the persons by whom it purports to have

" been executed," and "satisfy himself as to " the identity of the persons appearing before " him and alleging that they have executed the " document, and, in the case of any person " appearing as a representative, assign, or agent, " satisfy himself of the right of such person so " to appear."

The 35th section is: " If all the persons executing " the document"—again, not " purporting to exe- " cute it,"—but " if all the persons executing the " document appear personally before the register- " ing officer and are personally known to him, " or if he be otherwise satisfied that they are the " persons they represent themselves to be, and " if they all admit the execution of the docu- " ment, or, in the case of any person appearing " by a representative, assign, or agent, if such " representative, assign, or agent admits the " execution, or if the person executing the " document is dead and his representative or " assign appears before the registering officer " and admits the execution, the registering " officer shall register the document as directed " in sections 58 to 61 inclusive." Then comes the enactment which occasions the difficulty: " If all or any of the persons by whom the " document purports to be executed deny " its execution, or if any such person " appears to be a minor, an idiot, or a " lunatic, or if any person by whom the docu- " ment purports to be executed is dead and his " representative or assign denies its execution, " the registering officer shall refuse to register " the document." These words, taken literally, undoubtedly seem to require the registering officer to refuse to register a deed which purports to be executed by several persons if any one of those persons deny the execution. Such a construction, however, would cause great difficulty and injustice, which it cannot be supposed

the Legislature contemplated, and would be inconsistent with the language and tenor of the rest of the Act; their Lordships, therefore, think the words should be read distributively, and be construed to mean that the registering officer shall refuse to register the document *quoad* the persons who deny the execution of the deed, and *quoad* any person who appears to be a minor, an idiot, or a lunatic. There appears to be no reason for extending the clause further than this, so as to destroy the operation of the deed as regards those who admit the execution, and who are under no disability which would be the practical effect of a refusal to register at all. The proviso in the 23rd section to which allusion has already been made shows that the Legislature contemplated a partial registration of a deed, that is, partial as to the persons executing it. Now it would be extremely difficult to give effect to this enactment in the 35th clause in its literal meaning, and at the same time to give effect to the proviso in the 23rd clause. To do so would certainly create an anomaly. Supposing three vendors live in different places, and are called upon at different times to execute the deed of sale, in that case there undoubtedly may be three several registrations. Supposing No. 1 and No. 2 attend the Registrar and admit the execution of the deed, and it is registered, but No. 3 afterwards comes and denies the execution of the deed, what is to be the consequence? Is the previous registration of the two to be rendered invalid? If so, effect could not be given to the proviso. And if that registration is not to be invalid, what difference in principle can there be between the case where three vendors appear at different times to admit or deny the execution, and where they appear at the same time to admit or deny the same fact? That

which is required of them is precisely the same in both cases, and the admission and denial ought in reason to have the same effect in both.

Their Lordships cannot but think that considerable light is thrown upon the intention of the Legislature by the provision that there may be under the circumstances mentioned a registration and re-registration of the same document.

Again, the registering officer is to refuse to register, not only in the case of persons who deny the execution of the deed, but in the case of persons who appear—that is, who appear to him—to be minors, or idiots, or lunatics. Suppose a deed executed by three persons, two of whom were under no disability, and who admit their execution, but the third had become a lunatic, it would follow, if the construction contended for by the Respondents were to prevail, that that deed could not be registered against the persons who admitted their execution, and who were under no disability. The consequences of such a construction would be so injurious that it cannot be supposed that the Legislature intended to produce them. The consequences of non-registration are pointed out in the 49th section, and are of the most stringent description:—"No "document required by section 17 to be regis- "tered shall affect any immovable property "comprised therein, or confer any power to "adopt, or be received as evidence of any trans- "action affecting such property or conferring "such power, unless it has been registered in "accordance with the provisions of this Act." The effect, therefore, in the case which has just been supposed, would be that the deed could not be given in evidence against those who had executed it, and who were under no disability, because some other person interested in the property, and made a party to it, had become

lunatic (it may be after the execution), or appeared to the Registrar to be lunatic. No injustice is done by admitting a deed to registration, because the effect is no more than to satisfy an onerous condition before the deed can be given in evidence; and when in evidence, it is subject to every objection that can be made to it precisely as if no registration had taken place; whereas when registration is refused, the effect may be to deprive the party altogether of perfectly good rights which he might have under the deed but for the Registration Act.

The Act gives little discretion to the Sub-Registrar. He is bound either to register or not to register when he is satisfied by the admission or denial of the parties that the deed has been executed, and no discretion is given to him to inquire further into the matter. He can only obtain from the parties or their agents the admission or the denial. But provision is made for an appeal from his refusal to register to the District Court, and that Court is empowered to go into evidence, and if the District Judge is satisfied that the deed was executed by the parties, he is then to order the registration. The power of that Court, however, does not and could not arise in this case, because in point of fact the Sub-Registrar did register the deed.

Their Lordships do not think it necessary to refer specifically to the other sections in the Act. They have referred to those which furnish, in their view, a context to explain and cut down the generality of the words used in the 35th section.

This point will of course dispose of the Appeal. But there is another part of the Judgment of the High Court which their Lordships think requires consideration. The High Court say, "It has been held by this Court more than "once that unless a deed be registered in ac-"cordance with the substantial provisions of the

" law, it must be regarded as unregistered, " though it may in fact have been improperly " admitted to registration." Their Lordships think this is too broadly stated, if the High Court is to be understood to mean that in all cases where a registered deed is produced, it is open to the party objecting to the deed to contend that there was an improper registration,—that the terms of the Registration Act in some substantial respects have not been complied with. Undoubtedly it would be a most inconvenient rule if it were to be laid down generally that all Courts, upon the production of a deed which has the Registrar's endorsement of due registration, should be called on to inquire, before receiving it in evidence, whether the Registrar had properly performed his duty. Their Lordships think that this rule ought not to be thus broadly laid down. The registration is mainly required for the purpose of giving notoriety to the deed, and it is required under the penalty that the deed shall not be given in evidence unless it be registered. If it be registered, the party who has presented it for registration is then under the Act in a position which *primâ facie* at least entitles him to give the deed in evidence. If the registration could at any time, at whatever distance of time, be opened, parties would never know what to rely upon, or when they would be safe. If the Registrar refuses to register, there is at once a remedy by an appeal; but if he has registered, there is nothing more to be done. Supposing, indeed, the registration to be obtained by fraud, then the act of registration, like all other acts which have been so arrived at, might be set aside by a proper proceeding. The 60th section is, " After " such of the provisions of sections 34, 35, 58, " and 59 as apply to any documents presented " for registration have been complied with, the " registering officer shall endorse thereon a

" certificate containing the word 'registered,' " together with the number and page of the " book in which the document has been " copied. Such certificate shall be signed, " sealed, and dated by the registering officer, " and shall then be admissible for the purpose " of proving that the document has been duly " registered in manner provided by this Act, " and that the facts mentioned in the endorse- " ments referred to in section 59 have occurred " as therein mentioned." The certificate is that which gives the document the character of a registered instrument, and the Act expressly says that that certificate shall be sufficient to allow of its admissibility in evidence. Then by the 85th clause, it is enacted that "Nothing done " in good faith pursuant to this Act, or any Act " hereby repealed, by any registering officer, " shall be deemed invalid merely by reason of " any defect in his appointment or procedure." No doubt, in this case, the fact of the non-admission of the mother's execution appears upon the endorsement made on the deed itself, and did not require to be proved *aliunde*; but the observations in the Judgment go beyond the particular case.

This point does not come before their Lordships for the first time. It was a good deal considered in the case to which Mr. Cowie has referred, *Sah Mukhun Lall Panday* v. *Sah Koondun Lall* (2nd Law Reports, Indian Appeals, 210); and although it was not there necessary to decide the point,—indeed the point did not arise, and the appeal was decided upon another ground,—yet the considerations to which their Lordships have just adverted were discussed in the Judgment in this way:—" Now considering that " the registration of all conveyances of im- " moveable property of the value of Rs. 100 " or upwards is by the Act rendered compulsory,

" and that proper legal advice is not generally " accessible to persons taking conveyances of " land of small value, it is scarcely reasonable " to suppose that it was the intention of the " legislature that every registration of a deed " should be null and void by reason of a non- " compliance with the provisions of sections 19, " 21, or 36, or other similar provisions." It may be observed that section 36 in the former Act is the equivalent of section 35 in the present Act. "It is rather to be inferred that the " legislature intended that such errors or defects " should be classed under the general words " 'defect in procedure' in section 88 of the " Act,"—which is the same as section 85 in the " present Act—" so that innocent and ignorant " persons should not be deprived of their pro- " perty through any error or inadvertence of a " public officer on whom they would naturally " place reliance. If the registering officer refuses " to register, the mistake may be rectified upon " appeal under section 83, or upon petition " under section 84, as the case may be; " but if he registers where he ought not to " register, innocent persons may be misled, and " may not discover until it is too late to rectify " it, the error by which, if the registration is " in consequence of it to be treated as a nullity, " they may be deprived of their just rights.

It is to be observed, with regard to the inconvenience which it is suggested may arise from a deed being registered when some only of the parties to it have executed it, that provision is made for disclosing the parties who have really executed the deed. A copy of the deed is to be made in a book, and there are to be indexes, and it is directed that " Index No. 1. shall contain the names and " additions of all persons executing, and of all " persons claiming under every document copied

" into or memorandum filed in book No. 1 or " book No. 3." So that anyone consulting the register would find a copy of this deed, and that the two sons only had executed it, and that the mother had not.

On these grounds their Lordships think that the decree of the High Court cannot be sustained, and they will humbly advise Her Majesty to reverse it, and to order that the Appeal from the decree of the Judge of Bareilly to the High Court be dismissed, with costs, and that the last-mentioned decree be affirmed.

The Appellants will have the costs of this Appeal.