

## PRIVY COUNCIL.

P. C.<sup>c</sup>  
1922

July 31.

MA SHWE MYA

v.

MAUNG HO HNAUNG.

[ON APPEAL FROM THE COURT OF THE JUDICIAL COMMISSIONER,  
UPPER BURMA.]

*Registration—Presentation—Security bond—Presentation by clerk of Court—“Representative”—Registration Act (XVI of 1908), ss. 32(b), 33.*

Where a security bond is given to the Court pending an appeal, a clerk of the Court is not a “representative” of the Judge so as to be qualified by s. 32 of the Indian Registration Act, 1908, to present the bond for registration under that Act. Unless the clerk is duly authorized by power-of-attorney under s. 33, a presentation so made is invalid, but facilities should be given for a re-presentation under Act XV of 1917.

S. 33 of the Indian Registration Act does not apply to instruments under which the Government officers and functionaries mentioned in it may claim.

Judgment of the Court of the Judicial Commissioner reversed.

APPEAL (No. 63 of 1921) from two Orders of the Court of the Judicial Commissioner, Upper Burma, (July 12, 1920), affirming two orders of the District Judge, Magwe.

The respondent sued the appellant in the District Court, and upon appeal to the Court of the Judicial Commissioner that Court, reversing the District Court, made a decree in favour of the respondent for Rs. 34,000. While an appeal to His Majesty in Council was pending the respondent applied to the

<sup>c</sup> Present : VISCOUNT HALDANE, VISCOUNT CAVE, LORD PARMOOR AND MR. JUSTICE DUFF.

Court of the Judicial Commissioner for leave to execute the decree. An order was made under Order XLV, r. 13(2)(c) of the Civil Procedure Code giving the respondent leave provided he gave security, to the satisfaction of the District Court, for Rs. 75,000 in immovable property for the performance of any orders which might be made in the pending appeal.

On January 20, 1920, the persons executed a security bond for Rs. 75,000, mortgaging certain oil wells. The bond was executed before the Additional District Judge, and was in the form provided by the Code, Appendix G, Form 3, no person being named as the obligee. The bond was presented for registration under the Indian Registration Act, 1908, by the head clerk of the Court, who, according to the endorsement, presented it "on behalf of" the Additional Judge of the District Court.

The appellant presented a petition to the District Court stating that the bond was not legally presented for registration, and praying that the sale should not proceed in the absence of a validly registered bond. The District Court held that the registration was valid, and ordered that the sale should proceed. That decision was affirmed on appeal to the Court of the Judicial Commissioner, the learned Judicial Commissioner being of opinion that the presentation by the clerk was as a "representative" of the Additional District Judge and valid under s. 32(b) of the Act. The appellant appealed to the Privy Council.

*Parikh*, for the appellant. The respondent did not appear.

The judgment of their Lordships was delivered by VISCOUNT CAVE. The question arising for determination upon this appeal is whether a certain

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security bond dated the 8th January, 1920, was validly registered under the Indian Registration Act (XVI of 1908). Section 32 of that Act, so far as it is now material, requires that every document to be registered under the Act "shall be presented at the proper registration office (a) by some person executing or claiming under the same. . . ; or (b) by the representative or assign of such person; or (c) by the agent of such person, representative or assign, duly authorised by power of attorney executed and authenticated in manner hereinafter mentioned. It is established by a series of decisions, of which one of the most recent is *Jambu Prasad v. Muhammad Aftab Ali Khan* (1) that the provisions of the section are imperative, and that, unless a document presented for registration is so presented by one of the persons described in the section, the presentation does not give to the Registrar the indispensable foundation of his authority to register it, and the registration, if made, is invalid.

In the present case the document in question—a mortgage bond given by certain persons to the District Judge of Yenangyaung, to secure the performance of any order which His Majesty in Council might make on an appeal then pending in this suit—was presented for registration (as the endorsement shows) to the Sub-Registrar at Yenangyaung "by Maung U on behalf of the Additional District Judge, Yenangyaung," and was registered by the Sub-Registrar who gave the usual certificate of registration. Maung U appears to have been a clerk of the District Court. On application being made to the District Judge for the approval of this security as sufficient, the appellant objected that it had not been duly presented for registration under the Act; but

(1, (1914) L. L. R. 37 All. 49; L. R. 42 I. A. 22.

the District Judge overruled the objection and approved the security, and his decision was affirmed by the Judicial Commissioner. Hence the present appeal. It should be added that the principal appeal in the suit has since been allowed by His Majesty in Council, so that the bond, if valid, has become operative; and that the appellant is desirous, before seeking to enforce the bond against the obligors and the mortgaged property, to have it determined whether the bond is effective or requires re-registration under Act XV of 1917.

The respondent was not represented on the appeal, and their Lordships have accordingly not heard an argument in support of the validity of the bond; but on the facts brought to their notice they are of opinion that there was no proper presentation under the section, and accordingly that the registration was invalid. The bond was not presented by any person executing or claiming under it. For the District Judge was not present; and, although the obligors appear to have attended for the purpose of admitting execution, they did not join in the presentation. Nor was the document presented by any agent holding a power of attorney. The only question, therefore, is whether Maung U, who appears to have attended and presented the deed on behalf of the District Judge, can be said to have been a "representative" of the District Judge within the meaning of paragraph (b) of s. 32. In their Lordships' opinion, he cannot. The word "representative" is a term of ambiguous meaning, and must be construed according to its context. In ordinary legal use, it denotes the executor or administrator, or sometimes the heir or next of kin. In a certain context it may mean an agent; but in the present case, that meaning is excluded by the circumstance that under paragraph (c) of the section, the agent is separately

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referred to and is required to hold a duly authenticated power of attorney. By s. 88 of the Act, it is provided that Government officers and certain public functionaries need not appear in person or by agent at a registration office in any proceeding connected with the registration of instruments executed by them in their official capacity, and that, in such cases, reference may be made to the office for information; but no similar provision is made for the case of instruments under which any such officer or functionary may claim. Probably the omission is inadvertent; but if so, this must be remedied (if at all) by legislation. Their Lordships' attention has not been called to any enactment which makes a clerk of a Court the representative, in any legal sense, of the Judge.

Upon the whole their Lordships are satisfied that the term "representative" in s. 32 refers to the legal personal representative or (by virtue of s 2) the guardian or committee of the person described and does not include a clerk or agent. The result is that, in their Lordships' opinion, this appeal should be allowed, and it should be declared that the registration of the security bond was invalid, and that the security was insufficient. Upon this declaration being made, the District Judge will, no doubt, give facilities for the re-registration of the bond under Act XV of 1917. The appellant should be at liberty to add her costs of the appeal to the Judicial Commissioner on the question of the security, and her costs of this appeal, to her security.

Their Lordships will humbly advise His Majesty accordingly.

Solicitor for the appellant: *E. Dalgado.*

A. M. T.