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consenting parties, cannot bind the rest of the public. Section 11, explanation 6, has no application to such a case.

On both grounds, therefore, the arguments for the respondents fail, and their Lordships will humbly advise His Majesty that the decree of the High Court be set aside and the judgment and decree of the Subordinate Judge restored, with costs of the High Court appeal and the costs of this appeal.

Solicitors for the appellants: *W. W. Box & Co.*  
 Solicitors for the respondents: *Watkins & Hunter.*  
 A. M. T.

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### PRIVY COUNCIL.

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P. C.\*  
 1927  
 Dec. 5.

PURAN CHAND NAHATTA

v.

MONMOTHO NATH MUKHERJI AND OTHERS.

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA.]

*Vendor and Purchaser—Mortgage—Registration—Suit to administer trust—Mortgage of decreed property—Sale under later order in suit—Acknowledgment for registration—“Person executing”—Indian Registration Act (III of 1877) ss. 34, 35.*

In a suit to ascertain and administer the trusts under a deed a decree was made declaring one of the parties entitled to a one-sixth share in the surplus income, and that the trustees should have their costs out of the trust property. The beneficiary thereupon mortgaged his share. Under a later order in the suit part of the property was sold to realize the trustees' costs.

*Held*, that the mortgagee's rights were subject to the sale, and the mortgage was consequently not an encumbrance upon the title of the purchasers.

*Chatterput Singh v. Maharaj Bahadur* (1) applied.

\* *Present*: VISCOUNT SUMNER, LORD ATKINSON, LORD SINHA AND SIR JOHN WALLIS.

(1) (1904) I. L. R. 32 Calc. 198 ; L. R. 32 I. A. 1.

A document executed by an agent under a power of attorney can be acknowledged for registration under the Indian Registration Act, 1877, by another agent acting under a power of attorney given for the purpose ; the words " person executing " in s. 35 of the Act do not mean merely person signing, but the person who by a valid execution enters into obligation under the document.

Decree of the High Court affirmed.

APPEAL (No. 104 of 1925) from an order of the High Court in its Appellate Jurisdiction (February 13, 1925) reversing an order of that Court in its Original Jurisdiction.

A consent decree of the High Court ordered specific performance of a contract by which the respondents had sold to the appellant certain premises in Calcutta, subject to a good title being made upon enquiry. The Official Referee reported that the respondents had failed to make a good title, upon grounds which appear from the judgment of the Judicial Committee.

Upon objections to the report Ghose J. affirmed the report so far as it related to alleged defects under the Registration Act.

Upon an appeal, Sanderson C. J. and Rankin J., held that a good title had been made.

*DeGruyther, K.C.*, and *Kyffin*, for the appellant.

*Sir George Lowndes, K.C.*, and *Dube*, for the respondents.

With regard to the mortgage of 1886 reference was made to *Chatterput Singh v. Maharaj Bahadur* (1) and in reference to the alleged defect in registration to *Mahomed Ewaz v. Birj Lal* (2), *Kesho Deo v. Hari Das* (3) and *Kankaya Lal v. Sardar* (4).

(1) (1904) I. L. R. 32 Calc. 198 ; (3) (1899) I. L. R. 21 All. 281.

L. R. 32 I. A. 1.

(4) (1907) I. L. R. 29 All. 284.

(2) (1877) I. L. R. 1 All. 465 ;

L. R. 4 I. A. 166.

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The judgment of their Lordships was delivered by  
 VISCOUNT SUMNER. This appeal arises in a  
 vendors' suit for specific performance of a con-  
 tract, dated the 20th February, 1920, for the sale  
 of a house, No. 13, Marsden Street, Calcutta. The  
 appellant defended the suit on the ground that he  
 could not be required to accept the title offered to  
 him, because (a) the house was included in an out-  
 standing and enforceable mortgage, dated the 27th  
 March, 1886, which constituted a blot on the title, and  
 (b) because, partly by reason of the vendors' failure  
 to produce a certain power of attorney, which ought  
 to have been produced, and partly because the person,  
 who appeared before the Registrar to acknowledge the  
 execution of the conveyance with which the vendors'  
 title began, did not satisfy the requirements of the  
 Registration Act, the title offered was incomplete.  
 Ghose J., upheld his objection, but his judgment was  
 reversed by the High Court of Calcutta on appeal.

The facts are these. On the 29th April, 1853, Hari  
 Mohan Sircar executed a family deed of trust of  
 sundry properties, which included the house in ques-  
 tion. In 1879 his grandson, Brojo Nath Sircar, was a  
 trustee. On the 19th May, 1879, a suit was brought  
 against the trustees for the construction of his deed,  
 for the ascertainment of the respective rights of the  
 parties interested thereunder, and for directions as to  
 the administration of the trust.

By a decree dated the 31st August, 1885, it was  
 declared, *inter alia*, that Radha Nath Sircar, another  
 grandson and one of the beneficiaries, was entitled  
 to a one-sixth share of the surplus income of proper-  
 ties which included No. 13, Marsden Street, and after  
 other declarations and directions it was ordered that  
 the trustees should retain their costs of suit out of  
 the trust properties. Thereupon, and while further

proceedings in the suit were still pending, Radha Nath Sircar mortgaged his one-sixth share on the 27th March, 1886. This is the outstanding mortgage in question. On 10th March, 1887, a further order was made in the suit for sale of No. 13, Marsden Street and other properties, in order to raise the money for payment of the trustees' costs payable under the decree of 31st August, 1885. The sale was duly held and the house was bought by the father of the present respondents, the vendors to the appellant. Pursuant to the order of the Court the trustees, Upendra Nath Bose and Brojo Nath Sircar, executed a conveyance accordingly on the 2nd September, 1890, which was registered on the 2nd May, 1891. For some reason the conveyance was signed on behalf of Brojo Nath Sircar by Joy Krishna Bose, purporting to act under a power of attorney dated 30th June, 1889. This is the document which is not forthcoming. When the conveyance came to be registered, Brojo Nath Sircar again acted by an attorney, not Joy Krishna Bose, but another person. The objection taken is that only Joy Krishna Bose, the person whose hand signed the conveyance, could appear as one of the persons executing it so as to make the registration valid, and that the appearance and admission by the second attorney, or, indeed, of Brojo Nath Sircar himself, would not suffice for a valid admission of execution of the conveyance before the Registrar. Accordingly, under the Indian Registration Act, 1877, sections 34 and 35 and other sections, the conveyance was not validly registered. It is evident that, if the execution of the conveyance on the part of Brojo Nath Sircar was validly acknowledged before the Registrar, the non-production of the power of attorney held by Joy Krishna Bose is immaterial, since the admission of Brojo Nath Sircar that

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he was bound by the deed, as executed, would cover both the signature and the power of attorney to sign.

In their Lordships' opinion these objections fail. Radha Nath Sircar could only mortgage such interest as he took under the deed as declared by a competent Court and the interest declared in the interim decree of 1885 was subject to further orders and directions to be given by the Court in further proceedings in the same suit to provide for payment of the costs of the suit itself. The mortgagee therefore took subject to the sale, which was subsequently ordered, and the mortgage cannot prevail against the conveyance of 1890 or encumber the title to the house conveyed. The principle laid down in *Chatterput Singh v. Maharaj Bahadur* (1) applies equally to the suit now in question as to the case of a suit for administration of the estate of a deceased person, which was the matter then before their Lordships. No reasonable ground for distinguishing it has been pointed out.

By section 35 of the Registration Act registration is directed when certain persons have appeared, have been duly identified, and have admitted the execution of the document propounded, and the necessary persons are "the persons executing the document". The appellant contends that in these words executing means and means only "actually signing". Their Lordships cannot accept this. A document is executed, when those who take benefits and obligations under it have put or have caused to be put their names to it. Personal signature is not required, and another person, duly authorized, may, by writing the name of the party executing, bring about his valid execution, and put him under the obligations involved. Hence the words "person executing" in the Act cannot be read merely as "person signing".

(1) (1904) I. L. R. 32 Calc. 198 ; L. R. 32 I. A. 1.

They mean something more, namely, the person, who by a valid execution enters into obligation under the instrument. When the appearance referred to is for the purpose of admitting the execution already accomplished, there is nothing to prevent the executing person appearing either in person or by any authorized and competent attorney in order to make a valid admission. Their Lordships have failed to find in the scheme of the Act anything repugnant to this construction. Any other would involve risk of confusion and might even defeat the statutory procedure by multiplying the persons, who have to be traced and induced to attend, either by themselves or by some representative.

Their Lordships will accordingly humbly advise His Majesty that the decree appealed from should be affirmed and that this appeal ought to be dismissed with costs.

Solicitors for the appellant: *Downing, Middleton & Lewis.*

Solicitor for the respondent: *H. S. L. Polok.*

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