

it was the opinion of the majority of the Court that their Lordships of the Privy Council did not intend to lay down any positive rule applicable to all cases.\* By this we understand it to be meant that their Lordships of the Privy Council did not intend to lay down any positive rule as to what may or may not be evidence of cause and effect in all cases, though they did lay down that in the absence of all evidence proved, injury cannot be presumed to be by reason of proved irregularity. There may be cases in which a reasonable presumption arising from proved facts or created by law would be good evidence that the injury was the result of the irregularity. Such cases would not be affected by the Privy Council decision, the effect of which, as we understand the meaning of their Lordships of the Privy Council, is this: that there must be some evidence, and that in the absence of evidence to show that the injury is the result of the irregularity, it is not to be presumed from the proved existence of irregularity and injury that the latter has occurred by reason of the former.

In this case, assuming the irregularity and injury to have been proved, there is no evidence that the latter is the result of the former.

The appeal is dismissed with costs.

*Appeal dismissed.*

*Before Mr. Justice Mitter and Mr. Justice Norris.*

GUNGARAM GHOSÉ SIRDAR (PLAINTIFF) v KALIPODD GHOSÉ  
(ONE OF THE DEFENDANTS)\*

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June 18.

*Registration Act (III of 1877, s. 50)—Registration Act (XVI of 1864)—  
Registration, Optional and Compulsory—Unregistered document of which  
registration was optional under Act XVI of 1864.*

*Held*, in the case of a document executed while Act XVI of 1864 was in force, the registration of which under that Act was optional and which was not registered thereunder, and of a document executed after Act III of 1877 had come into force, the registration of which was compulsory and

\* Appeal from Appellate Decree No. 3028 of 1883, against the decree of Baboo Balorain Mullick, Second Subordinate Judge of 24-Pargunnahs, dated the 21st of September 1883, reversing the decree of Baboo Aswini Coomar Guho, Second Munsiff of Baraset, dated the 20th of January 1883.

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which was duly registered, both documents relating to the same property, that under the provisions of s. 50 of Act III of 1877 the registered document took effect as regards, such property against the unregistered document.

*Held*, also, that all that a person seeking the benefit of s. 50 of Act III of 1877 is required to prove is that his document is a document of the kind mentioned in the first clause of that section; that it has been duly registered under that Act; and that it covers the same property as that covered by any unregistered document against which it is contended that his document shall take effect, and it is not necessary for him to show that he is claiming from a vendor common to both himself and the person claiming under the unregistered document.

*Lachman Das v. Dip Chand* (1), and *Shib Chandra Chuckerbutty v. Joha Bux* (2) referred to and followed.

IN this case there were six defendants, viz., No. 1 Kalipodo Ghose, No. 2 Mya Chand Ghose Sirdar, No. 3 Gunga Ram Ghose Sirdar, No. 4 Bholanath Ghose Sirdar, No. 5 Durga Ram Ghose Sirdar and No. 6 Bhubun Mohun Ghose. The plaintiff sued to set aside a *kut-kobala* or mortgage by conditional sale dated the 5th Assin 1272 B. S. (20th September 1865) which was alleged to have been executed by Mya Chand Ghose in favour of Kalipodo Ghose, and he charged that it was a forgery and had been fraudulently got up by all the defendants with a view to defeat his title to the lands, the subject matter of the suit.

The plaintiff's case was that the property covered by the deed originally belonged to one Kasamuddi who, on the 1st Bhadro 1272 (16th August 1865), sold it to Mya Chand Ghose, defendant No. 2. Subsequently defendant No. 2 sold 12 annas of the property to defendants Nos. 3, 4 and 5 by a registered *kobala* dated the 9th Assar 1274 (22nd June 1867), and by another registered *kobala* he sold the remaining 4 annas to defendant No. 4.

On the 3rd Bhadro 1281 (18th August 1874) the defendants Nos. 3, 4, and 5 sold the property by a registered *kobala* to defendant No. 6, who in his turn on the 16th July 1878 sold it to the plaintiff by a registered deed in consideration of a loan of Rs. 300, and an agreement by the plaintiff to reconvey the property on repayment of the loan. Subsequently the plaintiff advanced a further sum of Rs. 200 to the defendant No. 6, and in

(1) I. L. R., 2 All., 851.

(2) I. L. R., 7 Calc., 570; 9 C. L. R., 224.

consideration of the aggregate sum of Rs. 500 the defendant No. 6 executed an unconditional sale deed in favour of the plaintiff on the 17th Pous 1287 (31st December 1880) which was duly registered under the provisions of Act III of 1877.

The plaintiff further alleged that on the 28th April 1882 the defendant No. 1, Kalipodo Ghose, filed before the District Judge an application for foreclosure of the *kut-kobala*, dated the 5th Assin 1272 (20th September 1865) purporting to have been executed by the defendant No. 2 in his favor, and caused the usual notice to be served on him. He therefore brought this suit, alleging that document to be spurious and collusive, and contended that, as it was unregistered, it could not affect his title, and he prayed to have it declared that it was a spurious and collusive document, that his title was unaffected by it, that the property was not subject to the charge it purported to create, and that the first defendant could not proceed with his foreclosure proceedings. The first defendant alone appeared and contested the suit. He alleged that the sale to the plaintiff was not a *bond fide* transaction, and stated that his *kut-kobala* was a genuine document, and that there was no necessity for its registration, inasmuch as the amount advanced upon it was less than Rs. 100. He also took other legal objections to the suit being maintainable, which are immaterial for the purpose of this report.

In his application for foreclosure it appeared that the defendant No. 1 alleged Rs. 61 to be due to him as principal and Rs. 365-15-10 as interest under his conditional sale.

The Munsiff came to the conclusion that the plaintiff had proved his title as alleged in his plaint, and held that the *kut-kobala* of the 20th September 1865, under which the defendant No. 1 claimed, was not a genuine document. He accordingly gave the plaintiff a decree.

Upon appeal the Subordinate Judge reversed the Munsiff's findings as to the genuineness of the defendant's *kut-kobala*, but upheld his decision as to the plaintiff's title. Upon these findings, and without going into the question as to whether the plaintiff was still entitled to succeed, inasmuch as the *kut-kobala* of the defendant No. 2 was not registered, he reversed the Munsiff's decree and dismissed the suit with costs.

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The plaintiff now brought a special appeal to the High Court upon the ground, amongst others, that his deed being registered, and the defendant's unregistered, the defendant had no right to enforce his lien as against him, and that his title was paramount to that of the defendant.

Baboo *Bhobani Charan Dutt* for the appellant.

Baboo *Boidomath Dutt* and Baboo *Bachyram Ghose* for the respondent.

The judgment of the High Court (MITTER and NORMIS, J.J.) was as follows:—

The plaintiff brought this suit to recover possession of the property in dispute under a bill of sale executed by defendant No. 6 on the 3rd Bhadro 1281. He was evicted by the defendant No. 1, who claimed a right in the property in dispute under a conditional bill of sale by the defendant No. 2 in the month of September 1865.

It is not disputed that the property in suit became the property of one Kasamuddi by purchase on the 27th May 1865. Kasamuddi sold it to defendant No. 2 in the month of August of the same year; and, a few months later, that is to say in the month of September, defendant No. 2 executed the conditional bill of sale in favor of the defendant No. 1, the respondent before us.

After having executed this conditional bill of sale, defendant No. 2, in the month of June 1867, sold the property in dispute to defendants Nos. 3, 4, and 5, and these defendants, in August 1874, sold it to the defendant No. 6, the immediate vendor of the plaintiff appellant.

The Munsiff decreed the plaintiff's suit, being of opinion that the conditional bill of sale of September 1865 upon which the defendant, respondent, relied, was not a genuine instrument. The Munsiff found that the plaintiff's title as set out above was established to his satisfaction.

On appeal the Subordinate Judge has upheld the finding of the Munsiff as regards the plaintiff's title; but he has come to a conclusion different from that of the Munsiff as regards the conditional bill of sale in favor of the defendant, respondent. The Subordinate Judge is of opinion that the aforesaid document

has been proved to his satisfaction. Having come to those conclusions he has dismissed the plaintiff's suit, inasmuch as the conditional bill of sale of the defendant No. 1 is of prior date to the conveyance in favor of the defendants 3, 4 and 5.

In this second appeal the only point that has been urged before us is that under s. 50 of the Registration Act of 1877, the plaintiff's conveyance must take effect against the conditional bill of sale of the month of September 1865 which is unregistered.

It has been held by a Full Bench of the Allahabad High Court in *Lachman Das v Dip Chand* (1) that "in the case of a document executed while Act VIII of 1871 was in force, the registration of which under that Act was optional, and which was not registered thereunder, and of a document executed after Act III of 1877 had come into force, the registration of which under that Act was compulsory, and which was registered thereunder, both documents relating to the same property, under the provisions of s. 50 of Act III of 1877, the registered document took effect as regards such property against the unregistered document; the provisions of s. 6 of Act I of 1868 notwithstanding."

This case has been followed by this Court in *Shib Chandra Chuckerbutty v. Joha Bux* (2). Now, the only difference between the case before us and the case before the Allahabad High Court is, that in the former the unregistered document was executed at a time when the Registration Act of 1871 was in force; while in the case before us the unregistered document was executed when Act XVI of 1864 was in operation. But that is a non-essential difference because, according to the explanation to s. 50 of Act III of 1877, "in cases where Act XVI of 1864 or Act XX of 1866 was in force in the place and at the time in and at which such unregistered document was executed, 'unregistered' means not registered according to such Act, and, where the document is executed after the first day of July 1871, not registered under Act VIII of 1871 or this Act." In this case therefore the defendant's mortgage deed having been executed when Act XVI of 1864 was in operation, the document in question is an "unregis-

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tered document" within the meaning of s. 50 of Act III of 1877. No doubt, the words, "if duly registered" means registered under the Act of 1877; and, in this case, the plaintiff's document was registered under that Act. It is therefore quite clear that under s. 50, the plaintiff's *kobala* must take effect against the unregistered document of the defendant No. 1.

In the course of the agreement a doubt arose in our minds whether s. 50 would entitle the plaintiff to a decree in this case against the defendant No. 1, because the plaintiff is not claiming directly from the same vendor. From the facts of the case given at the outset of the judgment, it is clear that the plaintiff is claiming directly from defendant No. 6 who was the purchaser of this property from defendants Nos. 3, 4 and 5, and they purchased it from defendant No. 2. The document in favor of defendant No. 1 was executed by defendant No. 2.

But we do not think that under s. 50 it is necessary for a person who seeks the benefit of it to show that he is claiming from a common vendor. The section does not say so. All that it says is, that "every document of the kind mentioned in clauses (a), (b), (c), and (d) of section 17, and clauses (a) and (b) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property." All that a person seeking the benefit of this section is required to prove is that his document is a document of the kind mentioned in the clause aforesaid; that it has been duly registered under the Act of 1877; and that it covers the same property as that covered by any unregistered document against which it is contended that his document shall take effect.

We therefore set aside the judgment of the lower Appellate Court, and restore that of the Court of first instance with costs in all the Courts.

*Appeal allowed.*