

by them without proof of connivance, it would surely have provided for this in the Act. The very section (22) and following sections do enact that the master of any vessel shall be liable to be punished for acts done on board in breach of the rules laid down, though they may possibly be done without his knowledge, or even against his orders. This specific creation of criminal liability as against the master shews that without it he would not be liable for an act not done, or expressly permitted by himself.

We find nothing in the Act which renders the appellant liable to punishment for the acts done by others not proved to have been by his abetment or connivance. We therefore set aside the conviction and direct that the fine, if paid, be refunded.

For these reasons we set aside the convictions and sentences in appeals Nos. 156 and 157.

*Convictions set aside.*

## APPELLATE CIVIL.

*Before Mr. Justice Cunningham and Mr. Justice Maclean.*

LAKHIMONI CHOWDHRAIN (DEFENDANT) *v.* AKROOMONI  
CHOWDHRAIN (PLAINTIFF). \*

*Registration Act (III of 1877), ss. 74, 77—Refusal to execute deed—Suit to compel registration.*

If the non-registration of a deed has resulted from the refusal of one of the parties to it, to execute it, that matter must be enquired into by the Registrar, as directed by s. 74 of the Registration Act, before any right to sue under s. 77 can arise, and unless the requirements of the Act have been complied within, no cause of action arises under s. 77.

*Edun v. Mahomed Siddik* (1) followed.

THIS was a suit under s. 77 of the Registration Act (III of 1877) to enforce registration of a kobala. The defendant denied execution. An attempt had been made to register the deed before the Sub-Registrar who refused to register it upon the ground

\*Appeal from Appellate Decree No. 238 of 1882, against the decree of Baboo Nobin Chunder Gangooli, Second Sub-Judge of Dacca, dated the 9th December 1881, reversing the decree of Baboo Kalidhun Chatterjee, Second Munsiff of Moonshigunge, dated the 7th February 1881.

(1) *Ante*, p. 150.

1883

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CHURN  
MOOKERJEE  
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THE  
EMPRESS.

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May 9.

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 LAKHIMONI  
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 DHRAIN.

that it had not been presented by a proper person, and that his registration fees had not been paid. An appeal was preferred to the Registrar who held that the Sub-Registrar was right in refusing registration. The present suit was then instituted praying for a declaration that the defendant had executed the deed and for an order directing the Sub-Registrar to register it within thirty days. It was admitted that the defendant had not appeared before the Registrar. The Munsiff dismissed the suit. On appeal this decision was reversed. The defendant appealed to the High Court.

Mr. *O'Kinealy* and Baboo *Aukhil Chunder Sen* for the appellant.

Baboo *Hem Chunder Banerjee* and Baboo *Lall Mohun Dass* for the respondent.

The following judgments were delivered :—

CUNNINGHAM, J.—The order of the Sub-Registrar, which was the commencement of the proceedings out of which this suit has arisen, sets forth certain circumstances which occurred before him in connection with the application for registration. It then went on to state that Moheem, the person applying for registration, had stated that it was not his deed, and that he did not pay the fees on being asked for them. It then continued “the deed has not agreeably to s. 42, clause 7 of the rule in force been presented by a proper person, and the fees have not according to s. 66 been paid. Therefore, the registration of the deed is rejected.”

From this order there was an appeal to the Registrar who passed the following order: “The rural Sub-Registrar was right in refusing registration, as he was unable to satisfy himself that it had been presented by a person authorized to do so, and because the proper fee was not paid. Appeal dismissed.”

It is contended on behalf of the appellant that upon these orders the present suit could not be brought, or that, if brought, all that could be enquired into would be the question whether or not the Sub-Registrar and Registrar were right in holding that a proper presentation of the deed for registration had not been made.

On behalf of the respondent it has been urged that, inasmuch as there had been a refusal by the Sub-Registrar to register, and as

that refusal had been appealed against to the Registrar the respondent was at liberty to bring this action under s. 77, and in that action to raise the whole question whether or not the deed had been executed by the defendant, and whether it ought not therefore to be registered.

I do not think that this contention is right. It appears to me that the contention of the appellant is sound, that if the non-registration of the deed has resulted from the refusal of one of the parties to it to execute it, that matter must be enquired into by the Registrar, as directed by s. 74, before any right to sue under s. 77 would arise; and my opinion is, following the ruling of this Court in *Edun v. Mahomed Siddik* (1) that unless the requirements of the Act have been complied with, no cause of action arises under s. 77.

I am, therefore, of opinion that the decree of the lower Appellate Court must be set aside, and that of the original Court dismissing the plaintiff's suit restored with costs throughout.

MACLEAN, J.—In my opinion this suit cannot be maintained, either under s. 77 of the Registration Act or under the general provisions of the Code.

To maintain this suit it was indispensable, I think, that the requirements of the Act as to presentation of the document by some one executing it should have been found; but this has not been done. The Subordinate Judge does indeed find that the defendant went in a boat to the Sub-Registrar, but he evidently went to the place where the Sub-Registrar's Office is, for it is common to both plaintiff and defendant that the defendant did not appear before the Sub-Registrar. There is, therefore, no finding that the defendant appeared before the Sub-Registrar. He could not, therefore, register, and was bound to refuse to register the document; and the first Court could not properly direct that a document not presented according to law should be registered.

I think, on the authority of the case of *Edun v. Mahomed Siddik* (1) the appeal should be decreed and plaintiff's suit dismissed with all costs.

*Appeal allowed.*

(1) *Ante*, p. 150.

1888

LAKHIMONI  
CHOW-  
DHRAIN  
v.  
AKROOMONI  
CHOW-  
DHRAIN.