

share-holder; that is to say, if the amounts bid by the stranger and the share-holder at auction be equal, it shall be knocked down to the share-holder. The rule as to the right of pre-emption in *partidari* villages which was fixed under s. 14, Act XXIII of 1861, with a view to assimilating it to Act I of 1811, has been annulled by this section: and since it is admitted that the plaintiff made no bid at auction, the defendant alone having bid, and the officer conducting the sale knocked the same down to the bid of the latter, the plaintiff under such circumstances is in no way entitled to bring a suit in the Civil Court on the ground of pre-emptive right by virtue of his having filed an application for pre-emption before the officer conducting the sale on the date of the sale, and having paid earnest-money, and having paid the remainder of the purchase-money within the period of fifteen days, and for the Court to have made a decree for maintenance of pre-emptive right."

The plaintiff appealed to the High Court.

*Babu Jogindro Nath Chaudhri*, for the appellant.

*Pandit Bishambhar Nath*, for the respondents.

The judgment of the Court (PEARSON, J., and STRAIGHT, J.) was delivered by

PEARSON, J.—The construction put by the lower appellate Court on the terms of s. 310, Act X of 1877, appears to us to be correct. The appeal, therefore, fails and is dismissed with costs.

*Appeal dismissed.*

## FULL BENCH.

*Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, Mr. Justice Oldfield, and Mr. Justice Straight.*

LACHMAN DAS (PLAINTIFF) v. DIP CHAND (DEFENDANT).\*

*Optional and compulsory registration—Act VIII of 1871 (Registration Act)—Act III of 1877 (Registration Act), s. 50—Act I of 1868 (General Clauses Act), s. 6—Registered and unregistered document.*

*Held*, 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

\* Second Appeal, No. 402 of 1879, from a decree of H. G. Keene, Esq., Judge of Agra, dated the 16th January, 1879, modifying a decree of Maulvi Munir-ud-din, Muasif of Jalesar, dated the 22nd November, 1878.

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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, 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, the provisions of s. 6 of Act I of 1868 notwithstanding.

The plaintiff in this suit claimed to recover Rs. 82-2-3 on two bonds dated respectively the 11th June, 1875, and the 24th July, 1876, by the sale of the property hypothecated in such bonds. The bond dated the 11th June, 1875, was for Rs. 25, payable on demand with interest at the rate of Rs. 2-8-0 per cent. per mensem. The bond dated the 24th July, 1876, was for Rs. 21, payable on demand with similar interest. Neither of the bonds were registered. The defendant Dip Chand, to whom the other defendants had transferred the property hypothecated in these bonds, under a deed of sale, dated the 13th July, 1878, contended that the deed of sale, being duly registered under Act III of 1877, took effect as regards the property in suit as against the unregistered bonds. The Court of first instance did not determine this contention, but gave the plaintiff a decree in respect of the property. The lower appellate Court allowed the contention, having regard to s. 50, Act III of 1877, and reversed the decree of the Court of first instance so far as it affected the property.

On appeal by the plaintiff to the High Court it was contended on his behalf that Act VIII of 1871, and not Act III of 1877, was applicable and, inasmuch as under the former Act the registration of the deed of sale was compulsory while the registration of the bonds was optional, the former instrument did not take effect as regards the property in suit as against the latter instruments. The Division Bench (Stuart, C. J., and Oldfield, J.,) before which the appeal came for hearing, having regard to the fact that there were conflicting rulings of the Calcutta and Allahabad High Courts,—*Oghra Singh v. Ablakhi Kooer* (1); S. A. 1196 of 1878, decided the 5th August, 1879, (2)—referred to the Full Bench the following question:—“Whether the provisions of s. 50, Act III of 1877, apply to give effect to the defendant’s registered deed against

(1) I. L. R., 4 Calc., 536. (2) Unreported.

plaintiff's deeds, so as to prevent the plaintiff enforcing his mortgage against the property bought by defendant."

Munshi *Hanuman Prasad*, for the appellant.

The respondent did not appear.

The following judgments were delivered by the Full Bench :—

STUART, C. J.—There cannot be the least doubt or difficulty as to the meaning and application of s. 50, Act III of 1877, to such a case as the present. I have held that opinion ever since that Act came into operation, and I lately gave effect to it in a judgment on a Division Bench, not then anticipating the present reference. As to s. 6 of the General Clauses Act, it is idle to contend that it has any bearing whatever in such a case as this.

PEARSON, J.—S. 50, Act III of 1877, declares that registered documents relating to land of which registration is optional shall take effect against unregistered documents; and the word "unregistered" is defined in the explanation thereunder to mean, in cases where the document is executed after the first day of July, 1871, not registered under Act VIII of 1871 or the Act of 1877. That definition appears to me to preclude and negative the view that an unregistered document of 1876 could be protected by s. 6, Act I of 1868, from being affected by s. 50, Act III of 1877. Whether such a view could be maintained was stated to be the point for consideration.

SPANKIE, J.—In reply I would say that the provisions of s. 50, Act III of 1877, do apply to this case. I do not think that s. 6 of the General Clauses Act would apply to a case of this nature.

OLDFIELD, J.—The registration of the plaintiff's deeds is optional, and by s. 50 of Act VIII of 1871, which was in force at the time they were executed, they would take effect in preference to such a deed as that of the defendant though registered, since the registration of the latter is compulsory.

By the terms of s. 50, Act III of 1877, however, every registered document, whether its registration be compulsory or optional, shall take effect against every unregistered document relating to the same property, and hence the defendant's document executed since the Act came into force will now take effect in preference to the

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plaintiff's. The effect upon the plaintiff's is of course that a document, which was perfectly valid and effective at the time it was executed against any such registered document as that of defendant which might subsequently be executed, has now become ineffectual against such a document.

I was at first inclined to consider that the Legislature could not have intended such a result, particularly as no provision is made for enabling parties to register within a reasonable time those unregistered documents affected for the first time by the provisions of the new Act; and I was inclined to think that the right of persons circumstanced like the plaintiff might be saved by the provisions of s. 6, General Clauses Act, whereby the repeal of any Statute, Act, or Regulation shall not affect anything done before the repealing Act shall have come into operation. But a careful examination of s. 50 and the explanation annexed to it has satisfied me that the application of s. 6 of the General Clauses Act will not save plaintiff's document from being affected by the provisions of s. 50, for Act III of 1877 does more than merely repeal Act VIII of 1871. It contains in s. 50 an express provision by which all unregistered documents executed at the time the former laws referred to in the section were in force are to be defeated by all registered documents of the nature of those mentioned in the section. I would, therefore, answer the reference in the affirmative.

STRAIGHT, J.—It appears to me that s. 50 of the Registration Act of 1877 is conclusive, and that the defendant's registered deed takes precedence of the plaintiff's unregistered bonds.

## APPELLATE CIVIL.

*Before Mr. Justice Pearson and Mr. Justice Oldfield.*

GHULAM MUSTAFA (PLAINTIFF) v. HURMAT AND ANOTHER (DEFENDANTS).  
*Muhammadian Law—Gift—Dower.*

*Held* that the provisions of the Muhammadian law applicable to gifts made by persons labouring under a fatal disease do not apply to a so-called gift made in lieu of a dower-debt, which is really of the nature of a sale.

\* Second Appeal, No. 1286 of 1879, from a decree of Maulvi Abdul Qayam Khan, Subordinate Judge of Bareilly, dated the 14th August, 1879, affirming a decree of Shah Ahmad-ullah, Munsif of Bareilly, dated the 30th May, 1879.